cause as to why the DEA should not revoke his DEA Certificate of Registration, BA4784927, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), on the grounds that Dr. Allevi was not authorized by the State of California to handle controlled substances. The order also notified Mr. Allevi that should no request for hearing be filed within 30 days, his right to a hearing would be deemed waived.

The OTSC was sent to Dr. Allevi at his DEA registered premises in Laguna Niguel, California. The OTSC was returned, marked ''Attempted, Not Known.'' To date, no communications have been received from Dr. Allevi nor anyone purporting to represent him.

Therefore, the Deputy Administrator, finding that (1) 30 days having passed since the DEA made a legally sufficient attempt to serve the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Allevi is deemed to have waived his right to a hearing. Following a complete review of the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e), and 1301.46.

The Deputy Administrator finds as follows. Dr. Allevi currently possesses DEA Certificate of Registration BA4784927, issued to him in California. By Order of the Medical Board of California (Board), dated May 8, 2000, the State of California issued charges seeking the revocation of Dr. Allevi's Physician's and Surgeon's Certificate. The Board outlined five separate causes for discipline, including *inter alia* an allegation that between December 1999 and April 2000, Dr. Allevi issued false prescriptions for Schedule III and IV controlled substances in the names of his wife and daughters, but in fact was obtaining the prescriptions for his own personal use. Dr. Allevi subsequently admitted to an investigating law enforcement officer that he was addicted to controlled substances, and was diverting controlled substances for his own personal use. Each of the five causes for discipline set forth in the Order by the Board stemmed from various acts of misconduct by Dr. Allevi concerning the mishandling of controlled substances.

As a result of the Board's action, Dr. Allevi entered into a Stipulation for Surrender of License with the Board, effective August 29, 2000. Among the terms and conditions was an agreement that Dr. Allevi surrender his Physician's and Surgeon's Certificate. The investigative file contains no evidence that Dr. Allevi's Certificate has been reinstated. Therefore, the Deputy Administrator concludes that Dr. Allevi is not currently licensed or authorized to handle controlled substances in California.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. *See* 21 U.S.C. 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.,* 65 FR 50,570 (2000); *Romeo J. Perez, M.D.,* 62 FR 16,193 (1997); *Demetris A. Green,* M.D., 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993).

In the instant case, the Deputy Administrator finds the Government has presented evidence demonstrating that Dr. Allevi is not authorized to practice medicine in California, and therefore, the Deputy Administrator infers that Dr. Allevi is also not authorized to handle controlled substances in California, the state in which he holds his DEA Certificate of Registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and).104, hereby orders that the DEA Certificate of Registration BA4784927, previously issued to Joseph Thomas Allevi, M.D., be, and it hereby is, revoked. The Deputy Administrator hereby further orders that any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective June 19, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–12483 Filed 5–17–02; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Layfe Robert Anthony, M.D.; Revocation of Registration

On June 22, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Layfe Robert Anthony, M.D., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration BA4090320, pursuant to 21 U.S.C. 834(a)(3), and deny any pending applications for renewal of this registration, pursuant to 21 U.S.C. 823(f), for the reason that Respondent is not currently authorized to practice medicine or to handle controlled substances in Utah, the state in which he is registered.

By letter received August 6, 2001, Respondent, through counsel, requested a hearing in this matter. On August 10, 2001, the Government filed a Request for Stay of Proceedings and Motion for Summary Disposition. By Order dated August 15, 2001, Administrative Law Judge Gail A. Randall (Judge Randall) granted Respondent time to respond to the Government's Motion. On August 23, 2001, the Respondent timely filed Respondent's Memorandum in Opposition to Government's Request for Stay and Summary Disposition. On August 29, 2001, Judge Randall issued an Order Granting a Stay in this proceeding. The Stay was lifted by her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge dated October 2, 2001 (Opinion and Recommended Ruling), granting the Government's Motion for Summary Disposition. The record of these proceedings was subsequently transmitted to the Deputy Administrator for his final decision November 20, 2001.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.

The Government requests summary disposition based upon its allegation that Respondent does not have state authority to handle controlled substances. The Government attached to its motion a copy of an Emergency Order, entered by J. Craig Jackson, R.Ph., Director of Occupational and Professional Licensing, Department of Commerce, State of Utah, dated April 3, 2001. In the Order, Director Jackson ordered the immediate suspension of the Respondent's licenses to perform surgery and to administer and prescribe controlled substances, ''pending further order of the Division.'' Director Jackson further stated that the Division will issue a restricted license to the Respondent pending a formal adjudicative proceeding in the matter.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the application or registrant is without state authority to

handle controlled substances in the state in which he or she practices. *See* 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.,* 65 FR 50,570 (2000); *Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

In the instant case, the Deputy Administrator finds the Government has presented undisputed evidence demonstrating that the Respondent is not authorized to practice medicine or to administer or prescribe controlled substances in the State of Utah.

Respondent contends the Emergency Order resulted from a closed hearing in which he was not permitted to appear, call witnesses, confront his accusers, or participate in any meaningful fashion. Respondent argues that because a formal hearing has yet to be concluded, the matter before the DEA should be stayed pending the outcome of the proceeding before the Utah State Division of Occupational and Professional Licensing. In support of this contention, Respondent cites to *Hezekiah K. Heath, M.D.,* 51 FR 26,612 (1986) (*Heath*) for the proposition that the DEA has recognized it cannot rely upon a state's suspension where the respondent in a DEA hearing did not have the opportunity to contest the state's action in a plenary hearing.

The Deputy Administrator concurs with Judge Randall's reading of *Heath,* which she found ''did not create an exception to the statutory mandate for cases in which a registrant's state license has been suspended by the appropriate state licensing authority without a hearing. Rather, the Administrator informed the Respondent that the DEA would accept as lawful and valid, a state regulatory board's order, unless and until such order had been overturned 'by a state court or otherwise pursuant to state law.' '' *Heath* further found that he DEA proceedings were an inappropriate forum in which to challenge a state regulatory board's order. The Deputy Administrator hereby reaffirms *Heath's* conclusion that ''* * * 21 U.S.C. 824(a) clearly provides that a registrant's state license need only have been suspended to provide a lawful basis for revocation of a DEA registration.'' *Id* at 26,612.

The Deputy Administrator further concurs with Judge Randall's finding that respondent's allegation that he was authorized to handle controlled substances in the State of Nevada is not supported by the evidence, meritless, and ultimately irrelevant. Respondent's DEA Certificate of Registration is for a Utah address, and Respondent is not authorized to practice medicine or to handle controlled substances in Utah.

The Deputy Administrator also concurs with Judge Randall's finding that it is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. *See Michael G. Dolin, M.D.,* 65 FR 5,661 (2000); *Jesus R. Juarez, M.D.,* 62 FR 14,945 (1997); *see also Philip E. Kirk, M.D.,* 48 FR 32,887 (1983), *aff'd sub nom. Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BA4090320, issued to Layfe Robert Anthony, M.D., be, and it hereby is, revoked; and that any pending applications for the renewal or modification of said Certificate be, and hereby are, denied. This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown, III,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Byron L. Aucoin, M.D.; Revocation of Registration

On June 29, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Byron L. Aucoin, M.D., notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, BA5204817, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), on the grounds that Dr. Aucoin was not authorized by the State of Louisiana to handle controlled substances. The order also notified Dr. Aucoin that should no request for hearing be filed within 30 days, his right to a hearing would be deemed waived.

The OTSC was sent to Dr. Aucoin at his DEA registered premises in Shreveport, Louisiana. A postal delivery receipt was signed July 12, 2001, on behalf of Dr. Aucoin, indicating the OTSC was received. To date, no response has been received from Dr. Aucoin nor anyone purporting to represent him.

Therefore, the Deputy Administrator, finding that (1) 30 days having passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Aucoin is deemed to have waived his right to a hearing. Following a complete review of the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 130.143(d) and (e), and 1301.46.

The Deputy Administrator finds as follows: Dr. Aucoin currently possesses DEA Certificate of Registration BA5204817, issued to him in Louisiana. In a letter dated October 30, 2000, the Louisiana State Board of Medical Examiners (Board) notified the DEA New Orleans Field Division that Dr. Aucoin had entered into a Stipulation and Agreement for Voluntary Surrender of his medical license, effective September 27, 2000. Subsequent to his failure to attend a hearing set by the Board to address charges of misconduct, Dr. Aucoin informed the Board that he wished to permanently retire from the practice of medicine in Louisiana by voluntarily surrendering his medical license. The investigative file contains no evidence that Dr. Aucoin's medical license has been reinstated. Therefore, the Deputy Administrator concludes that Dr. Aucoin is not currently licensed or authorized to handle controlled substances in Louisiana.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. *See* 21 U.S.C. 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.*, 65 FR 50,570 (2000); *Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

In the instant case, the Deputy Administrator finds the Government has presented evidence demonstrating that Dr. Aucoin is not authorized to practice medicine in Louisiana, and therefore, the Deputy Administrator infers that Dr. Aucoin is also not authorized to handle controlled substances in Louisiana, the state in which he holds his DES Certificate of Registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823