considered a waiver of his right to hearing.

Therefore, the Deputy Administrator finds as follows: (1) Respondent requested a hearing; (2) he was directed to file a prehearing statement and cautioned that failure to comply with that order could be considered a waiver of hearing and an implied withdrawal of his request for hearing; and (3) Respondent failed to submit a prehearing statement. The Deputy Administrator therefore concludes Respondent is deemed to have waived his hearing right and, after considering material from the investigative file in this matter, now enters her final order without a hearing, pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

Respondent is currently registered with DEA as a practitioner under Certificate of Registration number BG2485173, at a registered location in Mayaguez, Puerto Rico. That registration expires on September 30, 2005.

According to information in the investigative file, in November 2001, Special Agents from the DEA San Juan Field Office received information that the Sea Brave, a Puerto Rico registered vessel owned by Respondent, may have been used in the trafficking of controlled substances in St. Maarten, Netherlands Antilles. The same information was communicated to Dutch Customs, which placed a lookout for Respondent's vessel.

On June 16, 2002, the Dutch Coast Guard observed the Sea Brave outside the St. Maarten harbor channel. Dutch authorities instructed the vessel return to the marina, inside St. Maarten territorial waters,where it was boarded by Dutch authorities. At the time of boarding, Respondent was on board, along with two others. Upon search of the vessel by Dutch Customs officers, 549 grams of heroin were recovered from a hidden compartment in the cabin area and all individuals on board were arrested and taken to the St. Maarten Police Station.

When questioned the next day, Respondent admitted being told by an individual that at least nine kilograms of cocaine and six kilograms of heroin had been placed on board the Sea Brave. Further he admitted seeing an individual place two boxes and eighty pellets of suspected heroin inside a hidden compartment, behind a television set on board the vessel. Upon receipt of this information, Dutch Customs went back on board the Sea Brave, which had been docked overnight at a nearby pier. However, it was discovered that someone had apparently already boarded the vessel and removed the television from its wall unit. A hidden compartment behind the television was empty.

After negotiations between the United States Department of Justice and the Dutch Government, it was concluded prosecutions would take place in the United States District Court, District of Puerto Rico and Respondent and his cohorts were indicted on charges of conspiring to import more than one kilogram of heroin, a Schedule I Narcotic Controlled Substance, and more than five kilograms of cocaine, a Schedule II Narcotic Controlled Substance, in violation of 21 U.S.C. 952, 960 and 963. Respondent entered pleas of not guilty and was detained pending trial at the Metropolitan Detention Center in Guaynabo, Puerto Rico. On September 19, 2002, Respondent plead guilty to one felony count of 21 U.S.C. 952(a), Possession With Intent To Import Heroin. On May 16, 2003, he was sentenced to 20 months incarceration and 60 months supervised release.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certification of Registration and deny any pending applications for renewal of such registration, if she determines that continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See Henry J. Schwartz, Jr., M.D.*, 54 FR 16,422 (1989).

It is undisputed that Respondent was convicted of Possession With Intent to Import Heroin. Since Respondent's felony conviction related to controlled substances, grounds exist to revoke his DEA registration under 21 U.S.C. 824(a)(2). *See William C. Potter, D.V.M.*, 65 FR 50,569 (2000).

Next, the Deputy Administrator considers whether Respondent's continued registration would be inconsistent with the public interest. In this case, the Deputy Administrator finds factors three, four and five relevant in determining whether continuing Respondent's registration would be inconsistent with the public interest.

As to factor one, the recommendation of the appropriate state licensing board or professional disciplinary authority, there is no evidence in the investigative file of action being taken against any professional license of Respondent. With respect to factor two, his experience in dispensing, or conducting research with respect to controlled substances, there is no information in the investigative file relative to Respondent's lawful handling of controlled substances in his professional practice.

With regard to factors three, four and five, the Deputy Administrator finds that Respondent, by his own admission, used his vessel to knowingly transport cocaine and heroin and attempted to conceal the drugs in a hidden compartment. He was then arrested and convicted of Possession With Intent to Import Heroin. The egregious nature of Respondent's conduct bears directly upon his fitness to possess a DEA registration and, applying the above factors, leads to the obvious conclusion that Respondent's continued registration would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BG2485173, previously issued to Ivan D. Garcia-Ramirez, be, and it hereby is, revoked. This order is effective November 22, 2004.

Dated: October 5, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–23714 Filed 10–21–04; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 04–01]

RX Network of South Florida, LLC Revocation of Registration

On October 10, 2003, the then-Acting Deputy Administrator of the Drug Enforcement Administration (DEA),

issued an Order to Show Cause and Immediate Suspension of Registration to RX Network of South Florida, LLC (Respondent), notifying it of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, BR7139238, as a retail pharmacy, and deny any pending applications for renewal or modification of registration pursuant to 21 U.S.C. 823(f) and 824(a)(4), for reason that Respondent's continued registration would be inconsistent with the public interest. The Order to Show Cause and Immediate Suspension of Registration further informed Respondent of the suspension of its DEA Certificate of Registration, as an imminent danger to the public health or safety pursuant to 21 U.S.C. 824(d).

The Order to Show Cause and Immediate Suspension of Registration alleged in relevant part, that Respondent, owned and operated by Vincent Chhabra, Sabrina Faruqui and Carleta Carolina, dispensed over 19,300,000 various controlled substances through orders of customers who had accessed an Internet Web site set up by Respondent. Customers of Respondent would complete a questionnaire set up on the Web site, which solicited information about the customer, including the type of medication desired. After the customer's credit card was processed, the questionnaire was forwarded to one of several ''staff'' physicians who then issued prescriptions for the controlled substances being ordered. The prescriptions were then sent electronically to Respondent, which then dispensed the controlled substances to customers through the mail. The ''staff'' physicians, as well as Respondent's customers, were located in various states throughout the United States and the physicians had no interaction with customers before prescribing the controlled substances.

The Order to Show Cause and Immediate Suspension of Registration also alleged that on April 21, 2001, DEA issued a policy statement, *Dispensing and Purchasing Controlled Substances over the Internet,* 66 FR 21,181 (2001). The policy statement delineated certain circumstances under the which DEA deems prescribing over the Internet to be unlawful, including, inter alia, the circumstance when a controlled substance is issued or dispensed without a bona fide doctor/patient relationship. The policy further explained that completed questionnaires, later reviewed by a doctor hired by the Internet pharmacy ''could not be considered the basis of a doctor/patient relationship.'' *Id.,* at 21,182–21,183. In further support of DEA policy, the Order to Show Cause and Immediate Suspension of Registration cited the final order revoking the DEA registration of a practitioner who had participated in an Internet pharmacy scheme similar to that of Respondent. *See Rick Joe Nelson, M.D.* 66 FR 30,752 (2001).

The Order to Show Cause and Immediate Suspension of Registration further referenced correspondence during November 2002 and February 2003 between the United States Department of Justice and the then-attorney of Vincent Chhabar. In those letters, Mr. Chhabra's attorney was reminded that his client had been notified of the foregoing DEA policy and requested to shut down its Internet pharmacy operation.

The Order to Show Cause and Immediate Suspension of Registration further referenced an order of emergency suspension issued by the Florida Department of Health (the Department) against Respondent on May 30, 2002, as well as administrative complaints issued by the Department's Pharmacy Board against Respondent and one of its pharmacists. While both actions stemmed from allegations that Respondent operated an Internet pharmacy, the Order to Show Cause and Immediate Suspension of Registration referenced the Pharmacy Board's March 31, 2003, assessment of a $48,000 fine as the only sanction.

The Order to Show Cause and Immediate Suspension of Registration further alleged that on seven separated occasions during September and October 2003, DEA diversion investigators and agents from the United States Food and Drug Administration conducted a series of undercover operations with the objective of obtaining controlled substances from Respondent through its Internet operation. The operation resulted in law enforcement officers receiving quantities of Bontril (a Schedule III controlled substance) and phentermine (a Schedule IV controlled substance) from Respondent after filling out Internet questionnaires with fictitious names and fictitious weights. The law enforcement officers had no contact with the prescribing physicians, who issued prescriptions from locations in Florida, Missouri and Pennsylvania. However, there were no allegations in the Order to Show Cause and Immediate Suspension of Registration addressing the status of Respondent's authorization to handle controlled substances in the State of Florida.

By letter dated November 3, 2003, Respondent, through counsel, requested a hearing in this matter. The request included various arguments challenging the basis for the Order to Show Cause and Immediate Suspension of Registration. On November 10, 2003, Presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued an Order for Prehearing Statements.

On November 21, 2003, in lieu of a prehearing statement, counsel for DEA filed Government's Motion for Summary Judgment and Motion to Stay the Filing of Prehearing Statements. In support of its motions, the Government referenced a letter dated November 20, 2003, in which Respondent's counsel had notified the Florida Board of Pharmacy of the following: ''Without the ability to dispense controlled substance[s], a crucial element of operating a pharmacy, [Respondent] can no longer remain viable, and must relinquish its pharmacy permit.'' According to the Government, the letter indicated Respondent no longer had a pharmacy license in the State of Florida and, as a result, further proceedings in the matter were not required. Attached to the Government's motion was the aforementioned letter from Respondent's counsel to the Florida Board of Pharmacy.

In response to the Government's motion, Respondent argued in relevant part, that the Order to Show Cause and Immediate Suspension of Registration had not alleged that it did not have a current state pharmacy license. Respondent further argued that its lack of such a license now rendered these proceedings ''legally moot'' and that the Administrative Law Judge should deny the Government's Motion for Summary Disposition and issue an order dismissing the case as moot.

On December 17, 2003, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Bittner rejected Respondent's contentions concerning the Government's failure to initially allege lack of state authority, holding the relevant question was Respondent's status to handle controlled substances at the time of the Opinion and Recommended Decision, not at what stage of the proceedings that status may have changed. She further noted Respondent had never surrendered its DEA Certificate of Registration and that the surrender of its state pharmacy license did not render this proceeding moot.

Judge Bittner granted the Government's Motion for Summary Disposition, finding Respondent lacked authorization to handle controlled

substances in Florida, the jurisdiction in which it is registered with DEA. In granting the Government's motion, Judge Bittner further recommended that Respondent's DEA registration be revoked and any pending applications be denied. According to the letter transmitting this matter to the Deputy Administrator, no exceptions were filed by either party to the Opinion and Recommended Decision.

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

The Deputy Administrator finds that Respondent currently possesses DEA Certificate of Registration RB7139238 and is registered to handle controlled substances in Florida as a retail pharmacy. The Deputy Administrator's review of the November 20, 2003, letter from Respondent's counsel to the Florida Board of Pharmacy reveals that after receiving the order of immediate suspension of its DEA registration, Respondent surrendered its pharmacy permit to the Board of Pharmacy. It appears from this action that Respondent surrendered its authority to handle controlled substances in Florida and, as a result, lacks a necessary prerequisite for DEA registration. There is no evidence before the Deputy Administrator that Respondent's pharmacy permit has been returned or reinstated or that Respondent is currently licensed in Florida as a retail pharmacy. Accordingly, it is reasonable to infer that Respondent is without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Prescriptionline.com,* 69 FR 5583 (2004); *Graham Travers Schuler, M.D.,* 65 FR 50,570 (2000); *Wingfield Drugs, Inc.,* 52 FR 27,070 (1987). The agency has also maintained this standard in matters involving the immediate suspension of a DEA Certificate of Registration under 21 U.S.C. 824(d). *See Chemical Dependence Associates of Houston,* 58 FR 37505 (1993).

Here, Respondent is currently not licensed to handle controlled substances in Florida, the state where it maintains its registration with DEA. Therefore, Respondent is not entitled to maintain that registration. Because Respondent is not entitled to a DEA registration in Florida due to its lack of state authorization to handle controlled substances, the Deputy Administrator concludes it is unnecessary to address whether Respondent's registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause and Immediate Suspension of Registration. *See Deanwood Pharmacy,* 68 FR 41662 (2003); *Nathaniel-Aikens-Afful, M.D.,* 62 FR 16871 (1997); *Greenbelt Professional Pharmacy,* 57 FR 55000 (1992).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BR7139238, issued to RX Network of South Florida, LLC, be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–23715 Filed 10–21–04; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Daniel Ortiz-Vargas, M.D.; Revocation of Registration

On March 2, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Daniel Ortiz-Vargas, M.D. (Respondent) of Yauco, Puerto Rico, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BO6085395, as practitioner, under 21 U.S.C. 824(a)(5) and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Respondent had been mandatorily excluded from participating in federal health programs pursuant to 42 U.S.C. 1320–7(a).

By letter dated March 28, 2004, Respondent, through legal counsel, requested a hearing. On April 20, 2004, Administrative Law Judge Gail A. Randall (Judge Randall) issued an Order for Prehearing Statements, requiring the Government and Respondent to file prehearing statements by May 11 and June 1, 2004, respectively. The Government filed a timely prehearing statement, however, Respondent failed to file his prehearing statement by the deadline.

On June 29, 2004, Judge Randall issued a *sua sponte* Notice and Order to Respondent allowing him a limited extension of time, until July 21, 2004, to file his prehearing statement. The Notice and Order cautioned Respondent that if he failed to meet this deadline, Judge Randall would deem his inactivity to be a waiver of his hearing entitlement and that she would issue an order terminating the case. Respondent did not file a prehearing statement and on August 10, 2004, Judge Randall issued her Order terminating the proceedings. On August 26, 2004, the Office of Chief Counsel forwarded the record to the Deputy Administrator for entry of a final order based on the investigative file.

Therefore, the Deputy Administrator finds that Respondent, having requested a hearing but having failed to participate in the matter after being apprised of the consequences, is deemed to have waived his hearing right. *See Bill Lloyd Drug,* 64 FR 1823–01 (1999); *Vincent A. Piccone, M.D.,* 62 FR 62,074 (1997). After considering material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Respondent currently possesses DEA Certificate of Registration BO6085395. The Deputy Administrator further finds that as a result of Respondent's fraudulent activities, pursuant to his guilty plea, he was convicted in the United States District Court, District of Puerto Rico of one count of conspiring to solicit and receive kickbacks in relation to Medicare referrals for durable medical equipment, in violation of 18 U.S.C. 371. On September 17, 2002, he was sentenced to three years probation.

As a result of Respondent's conviction, on January 31, 2003, he was notified by the Department of Health and Human Services of his five-year mandatory exclusion from participation in the Medicare program pursuant to 42 U.S.C. 1320a–7(a). Exclusion from Medicare is an independent ground for revoking a DEA registration. 21 U.S.C. 824(a)(5); *see Johnnie Melvin Turner, M.D.,* 67 FR 71,203 (2002). The underlying conviction forming the basis for registrant's exclusion from participating in Federal health care programs need not involve controlled