

substances in “the jurisdiction in which he practices” in order to maintain a DEA registration. See 21 U.S.C. 802(21) (“[t]he term ‘practitioner’ means a physician \* \* \* licensed, registered, or otherwise permitted, by \* \* \* the jurisdiction in which he practices \* \* \* to distribute, dispense, [or] administer \* \* \* a controlled substance in the course of professional practice”). See also *id.* 823(f) (“The Attorney General shall register practitioners \* \* \* if the applicant is authorized to dispense \* \* \* controlled substances under the laws of the State in which he practices.”). DEA has held repeatedly that the CSA requires the revocation of a registration issued to a practitioner whose state license has been suspended or revoked. See *Sheran Arden Yeates*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988). See also 21 U.S.C. 824(a)(3) (authorizing the revocation of a registration “upon a finding that the registrant \* \* \* has had his State license or registration suspended [or] revoked \* \* \* and is no longer authorized by State law to engage in the \* \* \* distribution [or] dispensing of controlled substances”).

As found above, on June 7, 2006, the South Carolina Board of Medical Examiners issued a final order revoking Respondent’s medical license and the South Carolina Bureau of Drug Control has suspended his State controlled substances registration. Respondent has submitted no evidence to this Agency establishing that the State orders have been stayed or set aside. Therefore, it is clear that Respondent lacks authority to handle controlled substances in South Carolina, the State in which he is registered with DEA. Respondent is therefore not entitled to maintain his Federal registration.<sup>2</sup>

#### Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, BG4535641, issued to Brenton D. Glisson, M.D., be, and it hereby is, revoked. I further order that any

<sup>2</sup> In his letter responding to the Show Cause Order, Respondent asserted that the revocation of his state medical license was based on “false allegations of sexual misconduct with a patient.” DEA precedents hold, however, “that a registrant can not collaterally attack the results of a state criminal or administrative proceeding in a proceeding under section 304 of the CSA.” *Sunil Bhasin, M.D.*, 72 FR 5082, 5083 (2007); see also *Shahid Musud Siddiqui*, 61 FR 14818, 14818–19 (1996); *Robert A. Leslie*, 60 FR 14004, 14005 (1995). Accordingly, I do not consider Respondent’s defense.

pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective October 24, 2007.

Dated: September 14, 2007.

**Michele M. Leonhart,**

*Deputy Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### David W. Wang, M.D.; Revocation of Registration

On August 7, 2006, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to David W. Wang, M.D. (Respondent), of Orlando, Florida. The Show Cause Order proposed the revocation of Respondent’s DEA Certificate of Registration, AW2834528, as a practitioner, and the denial of his pending application to renew the registration, on two grounds.

First, the Show Cause Order alleged that Respondent had committed acts which render his continued registration inconsistent with the public interest. See 21 U.S.C. 824(a)(4). More specifically, the Show Cause Order alleged that Respondent had issued prescriptions for controlled substances to undercover operatives for no legitimate medical purpose and outside of the usual course of professional practice. *Id.* at 1–2.

Second, the Show Cause Order alleged that on August 16, 2005, the Florida Department of Health ordered the emergency suspension of Respondent’s state medical license and that the suspension remains in effect. *Id.* at 2. The Show Cause Order thus alleged that Respondent lacks “state authorization to handle controlled substances,” which is “a necessary prerequisite for DEA registration.” *Id.* (citing 21 U.S.C. 802(21), 823(f), & 824(a)(3)).

On August 17, 2006, the Show Cause Order was served on Respondent by certified mail, return receipt requested. Thereafter, on September 5, 2006, Respondent submitted a letter in which he “den[ie]d all of the allegations in the suspension of [his] Florida license,” and stated that he was pursuing various state law remedies to obtain reinstatement of his medical license. Letter from Resp. to Hearing Clerk (Sep. 5, 2006).

Respondent further requested that the DEA proceeding be continued until the state administrative proceeding was

completed. Respondent stated that he was “requesting to withdraw[] my renewal request and that [DEA] hold all proceedings against [his] DEA registration pending the outcome of the proceedings involving” his medical license. *Id.* Respondent added that “if there is no possible way to stop [the DEA] proceedings then I hereby request a formal hearing.” *Id.* Respondent added, however, that he would need to have the DEA hearing “postponed until I finish the” Florida medical license proceedings.

The case was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner. On September 25, 2006, the ALJ issued a Memorandum to the Parties regarding the issues Respondent raised in his letter. In the Memorandum, the ALJ denied Respondent’s request “to hold this proceeding in abeyance pending the resolution of the Florida licensure proceedings.” Memorandum to Parties at 2. The ALJ further advised Respondent of the procedures that must be followed under DEA regulations to withdraw his renewal application. *Id.* The ALJ thus directed Respondent to advise her by October 16, 2006, whether he intended to withdraw his renewal application, or whether he intended to proceed with his request for a hearing. *Id.* at 3.

Respondent did neither. Accordingly, on December 15, 2006, the Government moved to terminate the proceeding on the ground that Respondent had waived his right to a hearing. Motion to Terminate at 2.

On December 18, 2006, the ALJ found that Respondent had “waived his right to a hearing.” Order Terminating Proceedings. The ALJ thus granted the Government’s motion and ordered that the proceeding be terminated. *Id.*

Thereafter, on June 11, 2007, the investigative file was forwarded to me for final agency action. Based on Respondent’s failure to respond to the ALJ’s Memorandum, I find that he has waived his right to a hearing. 21 CFR 1301.43(d). I therefore enter this Final Order without a hearing based on relevant material contained in the investigative file. *Id.* § 1301.43(e). I make the following findings.

#### Findings

Respondent is the holder of DEA Certificate of Registration, AW2834528, which authorizes him to handle controlled substances as a practitioner at the registered location of 3827 Landlubber Street, Orlando, Florida. Respondent’s registration expired on May 31, 2006. Respondent, however, applied for a renewal of his registration on May 24, 2006. Respondent’s

registration has therefore remained in effect pending the issuance of this Final Order. See 5 U.S.C. 558(c).

On August 19, 2005, the Secretary of the Florida Department of Health issued to Respondent an "Amended Order of Emergency Suspension of License" (hereinafter, State Order). The State Order alleged that Respondent had prescribed drugs including controlled substances "other than in the course of the physician's professional practice." State Order at 23. The State Order further alleged that Respondent had "inappropriately and excessively prescribed controlled substances \* \* \* to six undercover agents without performing adequate physical examinations of them; by repeatedly prescribing controlled substances to these patients without ascertaining the etiology of their pain; and by prescribing controlled substances to the patients without medical justification." *Id.* at 20.

The State Order further alleged that "[o]n or about August 16, 2005, the Circuit Court for Brevard County, Florida issued an arrest warrant for [Respondent] based on charges of trafficking in hydrocodone over 28 grams in violation of [Fla. Stat. § 893.135], and unlawful distribution of controlled substances in violation of" Fla. Stat. § 893.13. *Id.* Relatedly, the State Order alleged that on August 17, 2005, Respondent was arrested by officers of the Melbourne, Florida Police Department. *Id.*

The Order thus concluded that Respondent's "continued practice as a physician constitutes an immediate serious danger to the health, safety, and welfare of the public," and "immediately suspended" his Florida medical license. *Id.* at 23-34. According to the online records of the Florida Department of Health, the emergency suspension order remains in effect.

Moreover, according to the online records of the Brevard County Clerk of Courts, on July 17, 2006, Respondent was charged with two counts of trafficking in illegal drugs, a violation of Fla. Stat. § 893.135.1(c).1.C, and a first degree felony under Florida law. The criminal case remains pending.

### Discussion

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in "the jurisdiction in which he practices" in order to maintain a DEA registration. See 21 U.S.C. 802(21) ("[t]he term 'practitioner' means a physician \* \* \* licensed, registered, or otherwise permitted, by \* \* \* the jurisdiction in which he practices \* \* \*

to distribute, dispense, [or] administer \* \* \* a controlled substance in the course of professional practice"). See also *id.* § 823(f) ("The Attorney General shall register practitioners \* \* \* if the applicant is authorized to dispense \* \* \* controlled substances under the laws of the State in which he practices."). DEA has held repeatedly that the CSA requires the revocation of a registration issued to a practitioner whose state license has been suspended or revoked.<sup>1</sup> See *Sheran Arden Yeates*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988). See also 21 U.S.C. 824(a)(3) (authorizing the revocation of a registration "upon a finding that the registrant \* \* \* has had his State license or registration suspended [or] revoked \* \* \* and is no longer authorized by State law to engage in the \* \* \* distribution [or] dispensing of controlled substances").

As found above, on August 19, 2005, the Secretary of the Florida Department of Health immediately suspended Respondent's state medical license and that suspension remains in effect. Respondent is therefore without authority to handle controlled substances in the State in which he is registered and is not entitled to maintain his DEA registration.

### Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, AW2834528, issued to David W. Wang, M.D., be, and it hereby is, revoked. I further order that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective October 24, 2007.

Dated: September 14, 2007.

**Michele M. Leonhart,**

*Deputy Administrator.*

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<sup>1</sup> DEA regulations allow a registrant to submit "a written statement regarding such person's position on the matters of fact and law," along with a waiver of the opportunity for a hearing. 21 CFR 1301.44(c). Even if I was to hold that Respondent's letter denying the allegations of the state suspension complied with this regulation, his statement is immaterial to the ground I rely on in revoking his registration.

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration is issuing this notice to announce the receipt of a "Certification of Non-Relocation and Market and Capacity Information Report" (Form 4279-2) for the following:

*Applicant/Location:* Hamley Land Company, LLC; Hamley Steakhouse, LLC; and, Hamley's, LLC/Pendleton, Oregon.

*Principal Product:* The loan, guarantee, or grant application is for a mixed business project that plans to construct, through a real estate holding company, two new business ventures: A steakhouse, and a coffee, wine and gift shop while additionally expanding an existing retail facility. The NAICS industry codes for this enterprise are: 531120 Lessors of Nonresidential Buildings (except Miniwarehouses); 722110 Full-Service Restaurants; 722211 Limited-Service Restaurants; and, 448140 Family Clothing Stores.

**DATES:** All interested parties may submit comments in writing no later than October 9, 2007. Copies of adverse comments received will be forwarded to the applicant noted above.

**ADDRESSES:** Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S-4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov*; or transmit via fax 202-693-3015 (this is not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Anthony D. Dais, at telephone number (202) 693-2784 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture