Commission has recognized such a connection involved invalidity for indefiniteness, 35 U.S.C. 112 ¶ 2, and the Commission did so in that context because indefiniteness there made it impossible for the complainant to demonstrate whether a patent claim was practiced. Notice, *Certain Video Graphics Display Controllers and Products Containing Same,* Inv. No. 337–TA–412, 64 FR 40042, 40043 (July 23, 1999). There is no such difficulty with regard to invalidity under 35 U.S.C. 102 and 103. Thus, under the technical prong, the complainant bears the burden of proving that its domestic industry practices a claim of each asserted patent. The Commission has determined not to review the remainder of the ID's domestic industry analysis, which found the existence of a domestic industry without regard to the validity of the asserted patent claims.

The Commission has determined not to review the remainder of the ID. Accordingly, the Commission has terminated this investigation with a finding of no violation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46).

Issued: January 21, 2011.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2011–1706 Filed 1–26–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10–56]

Kermit B. Gosnell, M.D.; Decision and Order

On April 30, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Kermit B. Gosnell, M.D. (Respondent), of Philadelphia, Pennsylvania. The Show Cause Order proposed the revocation of Respondent's DEA Certificates of Registration, AG4676992 and BG9223176, and the denial of any pending applications to renew or modify the registrations, on the ground that Respondent lacked authority to handle controlled substances in Pennsylvania and Delaware, the States in which he maintained the respective registrations. Show Cause Order, at 1 (citing 21 U.S.C. 824(a)(3)).

Respondent, acting *pro se,* timely requested a hearing, and the matter was placed on the docket of the Agency's Administrative Law Judges (ALJ). Thereafter, the ALJ issued an order directing the parties to file prehearing statements in the matter.

In lieu of a prehearing statement, the Government filed a Motion for Summary Disposition. Summ. Disp. Mot., at 1. Therein, the Government contended that Respondent had previously voluntarily surrendered his DEA registration, BG9223176, thereby negating the need for any further action regarding that registration; with regard to registration, AG4676992, the Government contended that Respondent lacks authority to handle controlled substances in Pennsylvania, the jurisdiction in which he is licensed to practice medicine and is registered with the DEA. *Id.* at 1–2.

In support of its motion, the Government attached an Affidavit (dated June 16, 2010) of a DEA Diversion Investigator (DI), who stated that Respondent's Delaware medical license and controlled substances license were suspended and that Respondent had surrendered DEA registration, BG9223176. DI Aff., at 1–2. The DI further stated that Respondent holds DEA registration, AG4676992, at the location of 3801 Lancaster Avenue, Philadelphia, Pa., that this registration will expire by its terms on September 30, 2010; and that Respondent's Pennsylvania medical license was then suspended. *Id.* at 2. In support of its motion, the Government also attached a copy of the Order of Temporary Suspension and Notice of Hearing issued to Respondent by the Commonwealth of Pennsylvania Department of State, State Board of Medicine, dated February 22, 2010, which ordered the temporary suspension of Respondent's Pennsylvania medical license effective on the service of the order.

The Government thus contended that because Respondent "currently lacks authority to handle controlled substances in" Pennsylvania, he "is not authorized to possess a DEA registration in that state." Summ. Disp. Mot., at 1 (citing 21 U.S.C. 801(21), 823(f), 824(a)(3)). The Government therefore requested that the ALJ grant its motion and recommend to me that Respondent's registration, AG4676992, be revoked.[1]

[1] The Government further requested that the ALJ issue an order staying any further filings pending resolution of its motion.

On July 8, 2010, the ALJ issued an order which granted Respondent until July 16, 2010, to file a response to the Government's motion. Respondent, however, failed to file a prehearing statement, a response to the Government's motion, or any other documents or information, other than his Request for Hearing. Accordingly, on July 20, 2010, the ALJ granted the Government's Motion, finding that there were no disputed facts regarding Respondent's loss of state authority to handle controlled substances in the State in which he held a DEA registration, and, further, that he had waived his right to a hearing under 21 CFR 1301.43(d). The ALJ recommended that Respondent's DEA registration be revoked and that any pending applications be denied. The Respondent did not file exceptions to the decision. The ALJ then forwarded the record to my office for final agency action.

I adopt the ALJ's finding that Respondent has waived his right to participate in the proceeding by failing to file a pleading in response to the Government's motion. ALJ at 4. However, I reject the ALJ's recommended decision because I conclude that this case is now moot.

The DI's affidavit establishes that Respondent's Philadelphia registration was due to expire on September 30, 2010. According to the Agency's registration record for Respondent, of which I take official notice,[2] Respondent has not submitted a renewal application, let alone a timely one, which would have kept his registration in effect pending the issuance of this Order. I therefore find that Respondent's registration expired on September 30, 2010.

It is well settled that "[i]f a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke." *Ronald J. Riegel,* 63 FR 67132, 67133 (1998); *see also William W. Nucklos,* 73 FR 34330 (2008). Because Respondent's registration has expired and there is no pending application to act upon, I conclude that this case is now moot.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 21 CFR 0.100(b) and 0.104, I order that the Order to Show Cause issued to

[2] Under the Administrative Procedure Act (APA), an agency "may take official notice of facts at any stage in a proceeding—even in the final decision." U.S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979).

Kermit B. Gosnell, M.D., be, and it hereby is, dismissed.

Dated: January 18, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–1691 Filed 1–26–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John M. Chois; Decision and Order

On September 27, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to John M. Chois, D.O. (Registrant), of Orlando, Florida. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration, BC6071904, as a practitioner, and the denial of any pending applications to renew or modify his registration, on the ground that he "do[es] not have authority to handle controlled substances in the [S]tate of Florida." Show Cause Order, at 1 (citing 21 U.S.C. 824(a)(3)).

More specifically, the Show Cause Order alleged that the Florida Department of Health had ordered the emergency suspension of Registrant's license to practice medicine. *Id.* The Order thus alleged that Registrant is "currently without authority to handle controlled substance in the State of Florida, the [S]tate in which [Registrant is] registered with DEA," and that as a consequence, his registration was subject to revocation. *Id.* at 1–2. The Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for doing either, and the consequence for failing to do either. *Id.* at 2 (citing 21 CFR 1301.43).

On October 4, 2010, the Show Cause Order was served on Registrant by Certified Mail, Return Receipt Requested, which was addressed to him at his registered location. Since the date of service of the Order, thirty (30) days have now passed and neither Registrant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement in lieu of a hearing. I therefore find that Registrant has waived his right to a hearing or to submit a written statement in lieu of hearing, and issue this Decision and Final Order based on relevant evidence contained in the record submitted by the Government. 21 CFR 1301.43(d) & (e). I make the following findings of fact.

Findings

Registrant is the holder of DEA Certificate Registration, BC6071904, which authorizes him to dispense controlled substances in Schedules II through V as a practitioner, at the registered address of Advanced Aesthetics, 7425 Conroy Road, Orlando, Florida 32835. His registration does not expire until August 31, 2013.

Registrant is an osteopathic physician licensed by the State of Florida, who is board-certified in plastic surgery and hand surgery. On August 6, 2010, the State Surgeon General, Florida Department of Health (DOH), ordered the emergency suspension of Registrant's medical license. *In re John Michael Chois, D.O.,* Order of Emergency Suspension of License, at 1 (Fla. DOH Aug. 6, 2010) (No. 2010–03967). The State Surgeon General suspended Registrant's license because he failed to comply with the DOH's order that he provide a hair sample for drug testing and that he enter an approved inpatient evaluation program for healthcare professionals with substance abuse problems. *Id.* at 9.

Registrant's license to practice medicine remains suspended as of the date of this Order. Thus, Registrant is currently without authority to handle controlled substances under the laws of the State of Florida, the State in which he is registered with DEA.

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."). As these provisions make plain, possessing authority under state law to handle controlled substances is an essential condition for obtaining and maintaining a DEA registration.

Accordingly, DEA has held that revocation of a registration is warranted whenever a practitioner's state authority to dispense controlled substances has been suspended or revoked. *David W. Wang,* 72 FR 54297, 54298 (2007); *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 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").

DEA has further held that revocation is warranted even where a practitioner's state authority has been summarily suspended and the State has yet to provide the practitioner with a hearing to challenge the State's action and at which he may ultimately prevail. *See Robert Wayne Mosier,* 75 FR 49950 (2010) ("revocation is warranted * * * even in those instances where a practitioner's state license has only been suspended, and there is the possibility of reinstatement"); *accord Bourne Pharmacy,* 72 FR 18273, 18274 (2007). *See also Alton E. Ingram, Jr.,* 69 FR 22562 (2004); *Anne Lazar Thorn,* 62 FR 12847 (1997) ("the controlling question is not whether a practitioner's license to practice medicine in the state is suspended or revoked; rather, it is whether the Respondent is currently authorized to handle controlled substances").

As found above, on August 6, 2010, the Florida Surgeon General immediately suspended Registrant's state medical license. Because Registrant is without authority to dispense controlled substances in the State where he practices medicine and holds his DEA registration, he is not entitled to maintain his registration. *See* 21 U.S.C. 802(21), 823(f), 824(a)(3). Accordingly, Registrant's registration will be revoked and any pending application will be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 21 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration, BC6071904, issued to John M. Chois, D.O., be, and it hereby is, revoked. I further order that any pending application of John M. Chois, D.O., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[1]

[1] For the same reasons as cited in the State's Emergency Suspension Order, I find that the public interest requires that this Order be made effective immediately. *See* 21 CFR 1316.67.