

Dated: January 18, 2011.

Michele M. Leonhart,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John G. Costino, D.O.; Dismissal of Proceeding

On June 1, 2010, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause to John G. Costino, D.O. (Respondent), of North Wildwood, New Jersey. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, AC5210480, and the denial of pending applications to renew or modify his registration, on the ground that "[a]s a result of actions by the New Jersey State Medical Board, [Respondent is] currently without authority to handle controlled substances in the State of New Jersey, the state in which [he is] registered with DEA." Show Cause Order at 1. The Show Cause Order also notified Respondent of his right to request a hearing on the allegations or to submit a written statement in lieu of hearing, the procedures for doing either, and the consequence for failing to do either. *Id.* at 2 (citing 21 CFR 1301.43(a), (c), (d) & (e)).

On June 17, 2010, Respondent filed a letter with the Hearing Clerk in which he noted that he had filed an appeal of some unspecified action and that he was "requesting reinstatement of [his] medical license among other things." Letter of Respondent to Hearing Clerk (June 14, 2010). Therein, Respondent also filed a request to waive his right to a hearing. *Id.*

Thereafter, the Government submitted the record to me for Final Agency Action. Based on Respondent's letter to the Hearing Clerk, I find that Respondent has waived his right to a hearing. I further find, however, that Respondent's registration expired on August 31, 2010, and that Respondent has not filed a renewal application.

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) & 824(a), as well as 28 CFR 0.100(b) and 0.104, I hereby order that the Order to Show Cause issued to John G. Costino, D.O., be, and it hereby is, dismissed.

Dated: January 18, 2011.

Michele M. Leonhart,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Algirdas J. Krisciunas, M.D.; Revocation of Registration

On January 19, 2010, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration (Order) to Algirdas J. Krisciunas, M.D. ("Registrant"), of Lauderdale Lakes, Florida. The Order proposed the revocation of Registrant's DEA Certificate of Registration, BK4015334, and the denial of any applications for renewal or modification of his registration, on the ground that his "continued registration is inconsistent with the public interest, as that term is defined in 21 U.S.C. § 823(f)." Order, at 1. Based on the allegations presented, I also concluded that Registrant's continued registration during the pendency of this proceeding "constitutes an imminent danger to the public health and safety" and immediately suspended his registration. *Id.* at 2.

The Order alleged that Registrant was the "owner of Social Medical Center (SMC), a pain clinic located at [his] registered location" and that he "issue[d] many purported prescriptions for controlled substances" from there. *Id.* at 1. The Order further alleged that Registrant "prescribed and dispensed controlled substances, including oxycodone¹ and alprazolam,² to two undercover law enforcement officers on five different occasions from July 13 through September 10, 2009, in violation of 21 U.S.C. §§ 841(a)(1) and 846." *Id.* at 2. The Order also alleged that Registrant and his staff "falsified medical records for the two undercover officers" and that Registrant "advised the undercover officers how to falsify medical records to make it appear that

they had legitimate medical conditions warranting the use of controlled substances." *Id.* The Order next alleged that Registrant and his staff "sold the medical records of others to an undercover officer so that the records could be altered to appear that they were the medical records of the undercover officer." *Id.*

The Order further alleged that "[b]ased on [his] consultations with, and examinations of, the two undercover officers," Registrant "knew, or should have known, that neither of the undercover officers had a legitimate medical condition warranting the prescribing of controlled substances" because the "undercover officers provided inconsistent statements regarding the nature of their alleged injuries and gave negative answers when queried about any pain they were experiencing." *Id.* The Order thus alleged that Registrant "issue[d] [controlled substance] prescriptions outside the usual course of professional practice or for other than a legitimate medical purpose," in violation of Federal law. *Id.* (citing 21 U.S.C. 823(f)(4); 21 CFR 1306.04).

Finally, the Order alleged that on July 1, 2009, Registrant's "office staff sold 53 oxycodone 30 mg pills to an undercover officer for \$500, in violation of 21 U.S.C. § [] 841(a)(1)," and that "[t]his transaction occurred at [his] office during regular business hours while [he was] on the premises." *Id.* The Order thus alleged that Registrant "failed to exercise proper oversight of [his] office staff or take proper measures to ensure the safeguarding of controlled substances stored at [his] office." *Id.*

Based on the above, I made the "preliminary finding that [Registrant's] continued registration is inconsistent with the public health and safety." *Id.* (citing 21 U.S.C. 823(f), 824(a)(4)). Having concluded that Registrant's "continued registration while these proceedings are pending constitutes an imminent danger to the public health and safety because [he has] repeatedly displayed a willingness to prescribe widely abused controlled substances for other than a legitimate medical purpose," I further ordered the immediate suspension of his registration. *Id.* (citing 21 U.S.C. 824(d); 21 CFR 1301.36(e); 28 CFR 0.100). *Id.*

On January 20, 2010, the Order, which also notified Registrant of his rights to either request a hearing or submit a written statement in lieu of a hearing, the procedures for doing either, and the consequences for failing to do either, was personally served on Registrant by a DEA Diversion Investigator. Since the date of service of

¹ Oxycodone is a schedule II controlled substance. 21 CFR 1308.12(b)(1)(xiii).

² Alprazolam is a schedule IV controlled substance. 21 CFR 1308.14(c)(1).