

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]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John M. Choix; 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. Choix, 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 Choix, 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. Choix, D.O., be, and it hereby is, revoked. I further order that any pending application of John M. Choix, 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.

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.

[FR Doc. 2011-1692 Filed 1-26-11; 8:45 am]

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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).