

(which was limited to the statements of counsel in a post-hearing brief and which do not constitute evidence, see *INS v. Phinpathya*, 464 U.S. 183, 186 n.6 (1984)), I conclude that none of the “favorable facts” cited by the ALJ provide any reason to impose a sanction less than revocation. *Jayam Krishna-Iyer*, 74 FR 459, 463 (2009). Indeed, none of Respondent’s proposed remedial measures mitigate the egregious harm Respondent has caused to public health and safety.

I therefore conclude that it would be inconsistent with the public interest to grant her even a restricted registration. Accordingly, I will order that Respondent’s registration be revoked and that any pending application be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as by 28 CFR 0.100(b), I hereby order that DEA Certificate of Registration, AD9234446, issued to Satinder K. Dang, M.D., be, and it hereby is, revoked. I further order that any pending application of Satinder K. Dang, M.D., to renew or modify her registration be, and it hereby is, denied. This Order is effective September 22, 2011.

Dated: August 9, 2011.

Michele M. Leonhart,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Roots Pharmaceuticals, Inc.; Revocation of Registration

On September 9, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Roots Pharmaceuticals, Inc. (Registrant), of American Fork, Utah. The Show Cause Order proposed the revocation of Registrant’s DEA Certificate of Registration BR9610571, which authorizes it to dispense controlled substances as a retail pharmacy, on the ground that Registrant’s state pharmacy and controlled substance licenses had expired on September 30, 2009, and that it therefore lacks authority under the laws of the State in which it is registered with DEA to dispense controlled substances. Show Cause Order at 1 (citing 21 U.S.C. 823(f) and 824(a)(3)). The Show Cause Order also notified Registrant of its right to request

a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedures for doing either, and the consequence for failing to do either. *Id.* at 2.

The Government’s initial attempt to serve Registrant by certified mail was unsuccessful. Thereafter, as evidenced by the signed return receipt card, on January 14, 2011, the Government accomplished service by mailing the Show Cause Order to Registrant’s Registered Agent. On January 11, 2011, the Government also sent an electronic version of the Show Cause Order to Registrant’s Registered Agent at the e-mail address he had previously provided to the Agency. However, since the date of service of the Show Cause Order, no person has requested a hearing, or submitted a written statement in lieu of a hearing, on behalf of Registrant. Because thirty days have now passed since service of the Show Cause Order, I find that Registrant has waived its right to request a hearing or to submit a written statement in lieu of a hearing. See 21 CFR 1301.43(a), (c), and (d). I therefore issue this Decision and Final Order without a hearing based on relevant evidence contained in the record submitted by the Government. *Id.* § 1301.43(e).

Findings

Registrant is the holder of DEA Certificate of Registration BR9610571, which authorizes it to dispense controlled substances in schedules II through V as a retail pharmacy, at the registered location of 12 W 100N, Suite 201B, American Fork, Utah. GX A. Registrant’s registration does not expire until April 30, 2012. *Id.*

According to a Pharmacy Licensing Specialist with the State of Utah, Department of Commerce, Division of Occupational and Professional Licensing, Registrant’s Utah Pharmacy License and Utah Controlled Substance Dispensing License expired on September 30, 2009. GX B. Registrant did not renew either license. *Id.*

Discussion

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in the “jurisdiction in which [it] practices” in order to maintain a DEA registration. See 21 U.S.C. 802(21) (“[t]he term ‘practitioner’ means a * * * pharmacy * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which [it] practices * * * to * * * dispense * * * a controlled substance in the course of professional practice”). See also *id.* § 823(f) (The Attorney General shall

register practitioners * * * to dispense * * * controlled substances * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which [it] 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.

The CSA further authorizes the Agency to revoke a registration “upon a finding that the registrant * * * has had [its] 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.” 21 U.S.C. 824(a)(3). Moreover, because holding state authority is a statutory requirement for registration as a practitioner, see 21 U.S.C. 802(21) and 823(f), DEA has held that revocation is warranted even when a registrant has merely allowed his state licenses to expire. *James Stephen Ferguson*, 75 FR 49994, 49995 (2010); *Mark L. Beck*, 64 FR 40899, 40900 (1999). See also *Anne Lazar Thorn*, 62 FR 12847, 12848 (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, Registrant allowed its state pharmacy and controlled substance licenses to expire, and thus, it no longer holds authority under Utah law to dispense controlled substances. See Utah Code Ann. §§ 58–17b–302(1); 58–37–6(2)(a)(i). Accordingly, Registrant no longer satisfies the CSA’s requirement that it be currently “authorized to dispense controlled substances” under Utah law. 21 U.S.C. 823(f). Accordingly, its DEA registration will be revoked. *Id.* § 824(a)(3).

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a)(3), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BR9610571, issued to Roots Pharmaceuticals, Inc., be, and it hereby is, revoked. I further order that any pending application of Roots Pharmaceuticals, Inc., to renew or modify its registration, be, and it hereby is, denied. This Order is effective September 19, 2011.

Dated: August 5, 2011.

Michele M. Leonhart,
Administrator.

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