See Philip E. Kirk, M.D., 48 FR 32887 (1983), *aff'd sub nom. Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *see also Puerto Rico Aqueduct & Sewer Auth.* v. *EPA,* 35 F.3d 600, 605 (1st Cir. 1994); *NLRB* v. *Int'l Assoc. of Bridge, Structural & Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consol. Mines & Smelting Co.,* 455 F.2d 432, 453 (9th Cir. 1971). To paraphrase the Agency's view as stated in *Ramsey,*

> [t]here being no dispute that the Respondent lacks the requisite authority, there [is] no need for an evidentiary hearing, as summary judgment has been used for more than 100 years to resolve legal ''actions in which there is no genuine issue as to any material fact'' and has never been deemed to violate Due Process. See Fed. R. Civ. P. 56 (Advisory Committee Notes 1937 Adoption). *Cf. Codd* v. *Velger,* 429 U.S. 624, 627 (1977).

76 FR at 20036.

The record evidence in the instant case clearly demonstrates that no genuine dispute exists over the established material fact that Respondent currently lacks state authority to handle controlled substances in Maryland, his state of registration with the DEA, since his state medical practitioner's license was suspended (with his own consent) on June 7, 2011. Notwithstanding the Respondent's arguments to the contrary, the dispositive consideration lies in his absence of state authority to handle controlled substances, which inexorably dictates that he is not entitled to maintain his DEA registration. Simply put, there is no contested factual matter adducible at a hearing that can provide the Agency with authority to continue (or *a fortiori* for me to recommend) his entitlement to a COR under the circumstances, and further delay in ruling on the Government's Motion for Summary Disposition is not warranted.

Accordingly, the Government's Motion for Summary Disposition is hereby *granted,* its motion for a stay of proceedings is *denied* as moot, and in view of the presently uncontroverted fact that the Respondent lacks state authority to handle controlled substances, it is herein recommended that the Respondent's DEA registration be *revoked* forthwith and any pending applications for renewal be denied.

Dated: August 9, 2011.

John J. Mulrooney, II,

Chief Administrative Law Judge.

[FR Doc. 2011–29709 Filed 11–16–11; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10–54]

Joseph Giacchino, M.D.; Decision and Order

On July 9, 2010, Administrative Law Judge (ALJ) Timothy D. Wing, issued the attached recommended decision. The Respondent did not file exceptions to the decision.

Having reviewed the record in its entirety including the ALJ's recommended decision, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended Order.

Respondent contends that because the State of Illinois has not issued a final determination as to whether his licenses should be suspended or revoked, DEA lacks authority to revoke his registration. Respondent's Resp. to Mot. for Summ. Disp., at 2. He argues that 21 U.S.C. 824(a)(3) ''expressly contemplates a final decision of the state agency, as it contains the plain and ordinary language that the physician is 'no longer authorized''' to handle controlled substances, that ''the future status of [his] license is uncertain and subject to procedural safeguards before a final determination is made,'' and that interpreting the statute ''to apply to 'temporary' suspensions, which are uncertain and transitory, is not consistent with the language'' of the statute. *Id.* at 3.

Respondent ignores that the Controlled Substances Act (CSA) defines ''[t]he term 'practitioner' [to] mean[] a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to dispense * * * a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). He also ignores that the CSA expressly requires, as a condition of obtaining a registration, that a practitioner be ''authorized to dispense * * * controlled substances under the laws of the State in which he practices.'' *Id.* § 823(f).

Furthermore, in 21 U.S.C. 824(a)(3), Congress expressly authorized the revocation of a DEA registration issued to a registrant whose ''State license or registration [has been] suspended * * * by competent State authority and is no longer authorized by State law to engage in the * * * dispensing of controlled substances * * * or has had the suspension, revocation, or denial of his registration recommended by competent State authority.'' Thus, the CSA expressly grants the Agency authority to revoke where a practitioner's state authority is under a suspension, which by definition is a sanction of finite duration. *See Merriam-Webster's Collegiate Dictionary* 1187 (10th ed. 1998) (defining ''suspend'' as ''to debar temporarily from a privilege * * * or function'').

Nothing in the statute precludes DEA from revoking a registration in those cases where a practitioner's state authority has been summarily suspended. Indeed, that Congress has authorized revocation where the suspension or revocation of a practitioner's state license or registration has merely been recommended by state authority, demonstrates that DEA is not required to await a final decision from the State before acting to revoke his registration. Thus, for purposes of the CSA, it does not matter that Illinois suspended Respondent's medical license and state registration prior to a hearing, at which he may ultimately prevail. *See, e.g., Bourne Pharmacy,* 72 FR 18,273, 18,274 (2007); *Agostino Carlucci, M.D.,* 49 FR 33,184, 33,184–85 (1984). Rather, what matters—as DEA has repeatedly held—is whether Respondent is without authority under Illinois law to dispense a controlled substance. *See Oakland Medical Pharmacy,* 71 FR 50,100, 50,102 (2006) (''a registrant may not hold a DEA registration if it is without appropriate authority under the laws of the state in which it does business''); *Accord Rx Network of South Florida, LLC,* 69 FR 62,093 (2004); *Wingfield Drugs, Inc.,* 52 FR 27,070 (1987). Because it is undisputed that Respondent currently lacks authority under Illinois law to dispense controlled substances, I reject Respondent's argument.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration, BG6335485, issued to Joseph Giacchino, M.D., be, and it hereby is, revoked. I further order that any pending application of Joseph Giacchino, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[1]

[1] In suspending Respondent's state licenses, the Illinois Department of Financial and Professional Regulation found that the public interest and safety ''imperatively require emergency action.'' *Department of Fin. and Prof. Reg.* v. *Joseph Giacchino, M.D.,* No. 2009–04502 (Ill. Dep't Fin. & Prof. Reg. Apr. 22, 2010) (suspension order at 1). For the same reason, I conclude that the public interest requires that this Order be effective immediately. 21 CFR 1316.67.

Dated: November 8, 2011.

Michele M. Leonhart,

Administrator.

James Hambuechen, Esq., for the Government

Gerald G. Goldberg, Esq., for the Respondent

Recommended Ruling, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

Timothy D. Wing, Administrative Law Judge. This proceeding is an adjudication governed by the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* to determine whether Respondent's Certificate of Registration with the Drug Enforcement Administration (DEA) should be revoked and any pending applications for renewal or modification of that registration denied. Without this registration, Respondent, Joseph Giacchino, M.D., would be unable to lawfully possess, prescribe, dispense or otherwise handle controlled substances.

On April 22, 2010, the State of Illinois Department of Financial and Professional Regulation, Division of Professional Regulation, ordered that Respondent's Physician and Surgeon License and Controlled Substance License be temporarily suspended pending further state proceedings. On April 30, 2010, the Deputy Assistant Administrator, Office of Diversion Control, DEA, issued an Order to Show Cause why DEA should not revoke Respondent's DEA Certificate of Registration, BG6335485, on the ground that Respondent lacked authority to handle controlled substances in Illinois, the state in which he maintained his DEA registration. Respondent, through counsel, timely requested a hearing on the issues raised in the Order to Show Cause.

The Government subsequently filed a Motion for Stay of Proceedings and Summary Disposition, asserting that on April 22, 2010, the State of Illinois Department of Financial and Professional Regulation, Division of Professional Regulation, ordered that Respondent's Physician and Surgeon License and Controlled Substance License be suspended and that Respondent consequently did not have authority to possess, dispense or otherwise handle controlled substances in Illinois, the jurisdiction in which he maintained his DEA registration. The government contended that such state authority is a necessary condition for DEA registration and therefore asked that I issue an order of temporary stay with regard to further filing deadlines in the instant case. The Government further requested that I grant the Government's motion for summary disposition and recommend to the Deputy Administrator that Respondent's registration be revoked. Counsel for the Government attached to the motion a copy of the Notice of Temporary Suspension issued to Respondent by the State of Illinois Department of Financial and Professional Regulation, Division of Professional Regulation. The notice included an Order that suspended Respondent's Illinois Physician and Surgeon License and Controlled Substance License, effective April 22, 2010, ''pending proceedings before an Administrative Law Judge at the Department of Financial and Professional Regulation and the Medical Disciplinary Board of the State of Illinois.''

Respondent replied to the Government's motion on June 23, 2010, asserting that because the suspension of Respondent's Illinois Physician and Surgeon License and Controlled Substances License is merely temporary, the status of Respondent's state license is uncertain. Respondent argues that the Government's motion is therefore premature.

Discussion

Loss of state authority to engage in the practice of medicine and to handle controlled substances is grounds to revoke a practitioner's registration under 21 U.S.C. 824(a)(3). Accordingly, this agency has consistently held that a person may not hold a DEA registration if he is without appropriate authority under the laws of the state in which he does business. See *Scott Sandarg, DMD,* 74 FR 17528 (DEA 2009); *David W. Wang, M.D.,* 72 FR 54297 (DEA 2007); *Sheran Arden Yeates, M.D.,* 71 FR 39130 (DEA 2006); *Dominick A. Ricci, M.D.,* 58 FR 51104 (DEA 1993); *Bobby Watts M.D.,* 53 FR 11919 (DEA 1988). In the instant case, the Government asserts, and Respondent does not deny, that Respondent's Illinois Physician and Surgeon License and Controlled Substance License are temporarily suspended.

Summary disposition is warranted if the period of suspension is temporary, or if there is the potential for reinstatement of state authority because ''revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement.'' *Stuart A. Bergman, M.D.,* 70 FR 33193 (DEA 2005); *Roger A. Rodriguez, M.D.* 70 FR 33206 (DEA 2005). Respondent's argument that 21 U.S.C. 824(a)(3) ''expressly contemplates a final decision of the state agency'' is not supported by agency precedent.

It is well settled that when no questions of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required, under the rationale that Congress does not intend administrative agencies to perform meaningless tasks. See *Layfe Robert Anthony, M.D.,* 67 FR 35582 (DEA 2002); *Michael G. Dolin, M.D.,* 65 FR 5661 (DEA 2000). See also *Philip E. Kirk, M.D.,* 48 FR 32887 (DEA 1983), aff'd *sub nom. Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *Puerto Rico Aqueduct and Sewer Auth.* v. *EPA,* 35 F.3d 600, 605 (1st Cir. 1994).

As noted above, in the instant case it is clear that there are no material disputed facts. The Government asserted and Respondent did not deny that Respondent is without state authority to handle controlled substances in Illinois at the present time. In these circumstances, I conclude that further delay in ruling on the Government's motion for summary disposition is not warranted. I therefore find that the motion of summary disposition is properly entertained and granted.

Recommended Decision

I grant the Government's Motion for Summary Disposition and recommend that Respondent's DEA registration be revoked and any pending applications denied.

Dated: July 9, 2010.

Timothy D. Wing,

Administrative Law Judge.

[FR Doc. 2011–29692 Filed 11–16–11; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Scott D. Fedosky, M.D.; Denial of Application

On March 30, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Scott D. Fedosky, M.D. (Respondent), of Fayetteville, Arkansas. The Show Cause Order proposed the denial of Respondent's pending application for a DEA Certificate of Registration as a practitioner, on the ground that his ''registration would be inconsistent with the public interest.'' Show Cause Order, at 1 (citing 21 U.S.C. 823(f)).

More specifically, the Show Cause Order alleged that ''from December 1999 through September 2003,'' Respondent had ''issued fraudulent prescriptions for