

abstract: Primary: Business or other for-profit. Other: Individual or households.

Need for Collection

The form is primarily used when a Federal firearms licensee makes application to change the location of the business premises. The form is also used for changes of trade or business name, changes of mailing address, changes of contact information, changes of hours of operation/availability, and allows for licensees to indicate any changes of business structure.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond*: It is estimated that 18,000 respondents will complete a 30 minute form once annually.

(6) *An estimate of the total public burden (in hours) associated with the collection*: There are an estimated 9,000 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E-508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Mladen Antolic, M.D.; Decision and Order

On August 8, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Mladen Antolic, M.D. (Registrant), of Orlando, Florida. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration BA1325528, as a practitioner in Schedules II through V, on the ground that he does "not have authority to practice medicine or handle controlled substances in the state of Florida." Show Cause Order at 1 (citing 21 U.S.C. 824(a)(3)).

The Show Cause Order alleged that "on or about March 29, 2011, the Florida Department of Health [had] ordered the emergency suspension of [Registrant's] medical license," and that he is thus "without authority to handle controlled substances in the State of Florida, the state in which [he is]

registered with DEA." *Id.* The Show Cause Order alleged that the state suspension was based on allegations that Registrant had engaged "in sexual activity with patient(s)," that he "[i]nappropriately dispens[ed], administer[ed] or otherwise provid[ed] controlled substances to individuals in [his] home as payment for sex or for recreational use," and that he had "[a]dminister[ed] controlled substances to [him]self when such controlled substances were not prescribed to [him] by a practitioner authorized to prescribe, dispense or administer medicinal drugs." *Id.* at 1-2 (citing Fla. Sta. § 458.331(1)(j), (q), (r)). In addition to the allegations, the Order 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 August 12, 2011, DEA Diversion Investigators personally served the Show Cause Order on Registrant, in the presence of his attorney. GX 3 (Affidavit of DI). Since the date of service of the Order, thirty days have now have 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 a 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 of Registration BA1325528, which authorizes him to dispense controlled substances in Schedules II through V, as a practitioner, at the registered address of 509 W. Colonial Drive, Orlando, Florida 32804. GX 1. His registration has an expiration date of June 30, 2012. *Id.*

On March 29, 2011, the Acting State Surgeon General of the Florida Department of Health (DOH) issued to Registrant an Order of Emergency Suspension of License (hereinafter, DOH Order). GX 4, at 11. The State Surgeon General suspended Registrant's license based on findings that he violated Florida Statutes sections 458.331(1)(j) (exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity), 458.331(1)(q) (inappropriately dispensing, administering or otherwise providing oxycodone, cocaine or Xanax to people

at his home), and 458.331(1)(r) (engaging in prescribing, dispensing or administering any medicinal drug appearing on any schedule * * * to himself * * * except one prescribed * * * by another practitioner authorized to prescribe, dispense or administer medicinal drugs.). DOH Order, at 8-9.

Registrant did not dispute or respond to the State's allegations. GX 5, at 1 (Final Order, at 2, *Department of Health v. Mladen Antolic, M.D.*, DOH Case No. 2010-20687 (Fla. Bd. of Med. Oct. 6, 2010)). Accordingly, on October 6, 2011, the Florida Board of Medicine issued a final order revoking Registrant's state medical license. *Id.* at 2. I therefore find that Registrant currently lacks authority under Florida law to dispense controlled substances.

Discussion

The Controlled Substances Act (CSA) grants the Attorney General authority to revoke 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." 21 U.S.C. 824(a)(3). Moreover, DEA has long held that 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 Gerald T. Hanley*, 53 FR 5658 (1988). This rule derives from the text of the CSA, which defines "the term 'practitioner' [to] mean[] a * * * physician * * * or other person 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," 21 U.S.C. 802(21), and which imposes, as a condition for obtaining a registration, that a practitioner be authorized to dispense controlled substances under the laws of the State in which he practices. *See 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 dispense controlled substances is an essential condition for holding a DEA registration. *See 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). Therefore, because

Registrant no longer has authority to dispense controlled substances in the State in which he holds his DEA registration and formerly engaged in professional practice, he is not entitled to maintain his DEA registration. See 21 U.S.C. 802(21), 823(f), and 824(a)(3). Accordingly, Registrant's registration will be revoked.

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), I order that DEA Certificate of Registration BA1325528, issued to Mladen Antolic, M.D., be, and it hereby is, revoked. I further order that any pending application of Mladen Antolic, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.¹

Dated: December 23, 2011.

Michele M. Leonhart,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Joseph Deluca, D.O.; Dismissal of Proceeding

On July 16, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Joseph Deluca, D.O. (Registrant), of Coral Springs, Florida. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration as a practitioner and the denial of any pending applications to renew or modify his registration, on the ground that "[a]s a result of action by the Florida Department of Health, Board of Osteopathic Medicine, [he is] without authority to handle controlled substances in the State of Florida, the [S]tate in which [he is] registered with DEA." Show Cause Order at 1.

On July 27, 2010, the Government attempted to serve the Order to Show Cause on Registrant by certified mail, return receipt requested, which was addressed to him at his registered location. However, on August 9, 2010, the mailing was returned to DEA and stamped with the notations: "MOVED, LEFT NO ADDRESS" and "RETURNED TO SENDER." GX 4.

¹ For the same reasons that the State imposed its emergency suspension of Respondent's medical license, I conclude that the public interest requires that this Order be effective immediately. 21 CFR 1316.66.

On December 30, 2010, the Government submitted the investigative record and a Request for Final Agency Action to this Office. Therein, the Government stated that: "[t]he Order to Show Cause was delivered via certified mail to the registered location of the Registrant, but was returned unclaimed. The Government has no information on a forwarding address for the Registrant or of his whereabouts." Request for Final Agency Action, at 1.

In its Request, the Government noted that on November 12, 2008, the Florida Department of Health, Board of Osteopathic Medicine (Board), issued an administrative complaint to Registrant. *Id.* The Government further noted that on March 23, 2010, the Board issued a final order (a copy of which was submitted in the Investigative Record) suspending Registrant's medical license for a period of two years. *Id.* at 1-2.

In its discussion of the procedural history of the Board proceeding, the Board's Final Order stated that "[o]n October 12, 2009, the Petitioner [Florida Department of Health] received a request from the Respondent for a Hearing Not Involving Disputes Issues of Material Fact or Informal Hearing." GX 6, at 1. The Board's Final Order then noted that the "Petitioner has filed a Motion for Final Order by Hearing Not Involving Disputes Issues of Material Facts," and that "Respondent filed a response to the Motion for Final Order." *Id.* The Final Order also included a Certificate of Service, which noted that a copy of the order had been mailed to Respondent at an address in Pembroke Pines, Florida. *Id.* at 8.

Discussion

It is well settled "that due process requires the government to provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Jones v. Flowers*, 547 U.S. 220, 223 (2006) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Moreover, "'when notice is a person's due * * * [t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.'" *Jones*, 547 U.S. at 229 (quoting *Mullane*, 339 U.S. at 315).

In *Jones*, the Court further noted that its cases "require[] the government to consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provide notice in the ordinary case." *Id.* at 230. The Court cited with approval its decision in

Robinson v. Hanrahan, 409 U.S. 38 (1972), where it "held that notice of forfeiture proceedings sent to a vehicle owner's home address was inadequate when the State knew that the property owner was in prison." *Jones*, 547 U.S. at 230.¹ See also *Robinson*, 409 U.S. at 40 ("[T]he State knew that appellant was not at the address to which the notice was mailed * * * since he was at that very time confined in * * * jail. Under these circumstances, it cannot be said that the State made any effort to provide notice which was 'reasonably calculated' to apprise appellant of the pendency of the * * * proceedings."); *Covey v. Town of Somers*, 351 U.S. 141 (1956) (holding that notice by mailing, publication, and posting was inadequate when officials knew that recipient was incompetent).

The *Jones* Court further explained that "under *Robinson* and *Covey*, the government's knowledge that notice pursuant to the normal procedure was ineffective triggered an obligation on the government's part to take additional steps to effect notice." 547 U.S. at 230. The Court also noted that "a party's ability to take steps to safeguard its own interests [such as by updating his address] does not relieve the State of its constitutional obligation." *Id.* at 232 (quoting Brief for United States as *Amicus Curiae* 16 n.5 (quoting *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 799 (1983))). However, the Government is not required to undertake "heroic efforts" to find a registrant. *Dusenbery v. United States*, 534 U.S. 161, 170 (2002).

Here, it is clear that "[t]he means employed" by the Government were not "'such as one desirous of actually informing the [registrant] might reasonably adopt to accomplish it.'" *Jones*, 547 U.S. at 229 (quoting *Mullane*, 339 U.S. at 315). While in its Request for Final Agency Action, the Government asserts that it "has no information on a forwarding address for the Registrant or of his whereabouts," the very state board order it relies upon as the basis

¹ The CSA states that "[b]efore taking action pursuant to [21 U.S.C. 824(a)] * * * the Attorney General shall serve upon the * * * registrant an order to show cause why registration should not be * * * revoked[] or suspended." 21 U.S.C. 824(c). In contrast to the schemes challenged in *Jones* and *Robinson*, which provided for service to the property owner's address as listed in state records, neither the CSA nor Agency regulations state that service shall be made at any particular address such as the registered location. In any event, while in most cases, service to a registrant's registered location provides adequate notice, the Supreme Court's clear instruction is that the Government cannot ignore "unique information about an intended recipient" when it seeks to serve that person with notice of a proceeding that it is initiating. *Jones*, 547 U.S. at 230.