

Dated: October 10, 2001.

**Asa Hutchinson,**

*Administrator.*

[FR Doc. 01-26183 Filed 10-17-01; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### **Jack's Sales, Inc.; Denial of Application**

On September 5, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Jack's Sales, Inc. (Respondent), proposing to deny its application for a DEA Certificate of Registration as a distributor of list I chemicals pursuant to 21 U.S.C. 823(h) on the grounds that on June 12, 2000, the California Department of Justice, Bureau of Narcotic Enforcement (BNE), denied Respondent's application for a Precursor Business Permit. On October 12, 2000, Respondent filed a request for a hearing on the issue raised in the OTSC.

On October 18, 2000, the Government filed a motion seeking summary disposition, arguing that Respondent is not authorized to distribute or otherwise to handle listed chemicals in California, the jurisdiction in which it proposes to conduct business.

On October 23, 2000, Administrative Law Judge Mary Ellen Bittner issued a Memorandum to Counsel granting Respondent until November 7, 2000, to file a response to the Government's motion. Respondent timely filed a response, asserting, in substance, that the BNE denied its application for a Precursor Business Permit on the basis of information provided to BNE by DEA; that Respondent had appealed the denial; that counsel for Respondent had spoken with a member of the BNE staff who said there would be a meeting within the next ten days to discuss respondent's appeal; and that this proceeding should be stayed pending the outcome of Respondent's BNE appeal.

The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.

Loss of state authority to engage in the distribution of list I chemicals is grounds to revoke a distributor's

registration pursuant to 21 U.S.C. 824(a)(3). While the Controlled Substances Act does not specify that state licensure is a condition precedent to registration as a distributor of list I chemicals, it is well-settled that the Administrator may apply the bases for revoking a registration pursuant to 21 U.S.C. 824(a) to the denial of applications pursuant to 21 U.S.C. 823. See Anthony D. Funches, 64 FR 14268 (1999). Accordingly, DEA consistently has held that a person may not hold a DEA registration if that person is without appropriate authority pursuant to the laws of the state where he or she conducts business. See Anne Lazar Thorn, 62 FR 12847 (1997); Bobby Watts, M.D., 53 FR 11919 (1988); Robert F. Witek, D.D.S., 52 FR 47770 (1987); Wingfield Drugs, Inc., 52 FR 27070 (1987).

In the instant case, Respondent does not deny that it is not currently authorized to handle list I chemicals in the State of California, the jurisdiction where it conducts business. The Government attached to its motion a copy of a letter dated June 12, 2000, from the BNE to Respondent, denying Respondent's Precursor Business Permit, together with a copy of the applicable provision of the California Health and Safety Code governing permits and the application procedure.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she conducts business. See 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Graham Travers Schuler, M.D., 65 FR 50570 (2000); Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

In the instant case, the Administrator finds the Government has presented evidence demonstrating that the Respondent is not authorized to handle list I chemicals in California, where it conducts business. The Administrator finds that Judge Bittner has allowed Respondent ample time to refute the Government's evidence, and that Respondent has submitted no evidence or assertions to the contrary. Thus, there is no genuine issue of material fact concerning Respondent's lack of authorization to handle list I chemicals in the state where it conducts business.

The Administrator concurs with Judge Bittner's finding that it is well settled that when there is no question of

material fact involved, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. See Michael G. Dolin, M.D., 65 FR 5661 (2000); Jesus R. Juarez, M.D., 62 FR 14945 (1997); see also Philip E. Kirk, M.D., 48 FR 32887 (1983), *aff'd sub nom. Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration as a distributor of list I chemicals submitted by Jack's Sales, Inc., be, and it hereby is, denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

**Asa Hutchison,**

*Administrator.*

[FR Doc. 01-26177 Filed 10-17-01; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### **Carla Johnson, M.D.; Denial of Application**

On March 21, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Carla M. Johnson, M.D., (Respondent) notifying her of an opportunity to show cause as to why the DEA should not deny her application for DEA registration, pursuant to 21 U.S.C. 823(f), for reason that Respondent's registration would be inconsistent with the public interest. On May 8, 2000, Respondent filed a request for a hearing in this matter.

On August 10, 2000, the Government filed a Motion for Summary Disposition, asserting that Respondent is not currently authorized to handle controlled substances in the state in which she seeks a DEA Certificate of Registration, and attached a copy of an opinion from the Louisiana State Medical Board dated July 12, 2000, suspending Respondent's license to practice medicine in that State. On August 14, 2000, Administrative Law Judge Mary Ellen Bittner issued a memorandum to Counsel granting Respondent until August 29, 2000, to file a response to the Government's motion. As of this date, Respondent has failed to respond to the Government's motion.

The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. See 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See *Graham Travers Schuler, M.D.*, 65 FR 50570 (2000); *Romeo J. Perez, M.D.*, 62 FR 16193 (1997); *Demetris A. Green, M.D.*, 61 FR 60728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993).

In the instant case, the Administrator finds the Government has presented evidence demonstrating that the Respondent is not authorized to practice medicine in Louisiana, and therefore, the Administrator infers that Respondent is also not authorized to handle controlled substances in Louisiana, the State in which she seeks to obtain a DEA registration. The Administrator finds that Judge Bittner allowed Respondent ample time to refute the Government's evidence, and that Respondent has submitted no evidence or assertions to the contrary. Thus, there is no genuine issue of material fact concerning Respondent's lack of authorization to practice medicine in Louisiana or to handle controlled substances in that State.

The Administrator concurs with Judge Bittner's finding that it is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaning less tasks. See *Michael G. Dolin, M.D.*, 65 FR 5661 (2001); *Jesus R. Juarez, M.D.*, 62 FR 14945 (1997); see also *Philip E. Kirk, M.D.*, 48 FR 32887 (1983), *aff'd sub nom. Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Carla M. Johnson, M.D., be, and it hereby is, denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

**Asa Hutchinson,**  
*Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### **George Samuel Kouns, D.O.;** **Revocation of Registration**

On April 28, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an amended Order to Show Cause (OTSC) by certified mail to George Samuel Kouns, D.O., notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, AK8923496, pursuant to 21 U.S.C. 823(f) and 21 U.S.C. 824(a) (2), (3), and (4), on the grounds that Dr. Kouns is no longer authorized to handle controlled substances in Indiana, the State in which Dr. Kouns is currently registered with DEA. The amended OTSC also stated that Dr. Kouns' request to modify his registration address from Indiana to Alabama should be denied pursuant to 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4), because Dr. Kouns is not authorized to handle controlled substances in Alabama. The amended OTSC also alleged that Dr. Kouns' DEA registration should be revoked and his request for modification denied because on March 23, 1998, he was convicted of a felony relating to controlled substances in the Union County Circuit Court of the State of Indiana. The amended OTSC also notified Dr. Kouns that should not request for hearing be filed within 30 days, his right to a hearing would be deemed waived.

On May 2, 2000, the amended OTSC was sent to Dr. Kouns at the address at which he sought to have his DEA registration modified, and also to his last known address in Alabama. Subsequently, DEA received a postal receipt dated May 26, 2000, and signed on behalf of Dr. Kouns, indicating the amended OTSC was received.

DEA has received no request for a hearing nor other response from Dr. Kouns nor anyone purporting to represent him in this matter. Therefore, the Administrator, finding that (1) 30 days having passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Kouns is deemed to have waived his right to a hearing. Following a complete review of

the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 9d) and (e), and 1301.46.

The Administrator finds as follows. Dr. Kouns currently possesses DEA Certificate of Registration AK8923496, issued to him in Indiana. On or about March 23, 1998, pursuant to a plea agreement Dr. Kouns pleaded guilty to 15 felony counts of Issuing Unlawful Prescriptions, including controlled substance prescriptions. Also pursuant to the plea agreement, Dr. Kouns agreed to (1) pay a \$5,000 fine and (2) to not practice medicine in Indiana, to surrender any licensure to practice medicine in Indiana, and not to reapply for medical licensure in Indiana. By Order dated May 12, 1998, the Union County Circuit Court sentenced Dr. Kouns to 15 consecutive years in prison, which term was suspended, and placed Dr. Kouns on probation for 15 years.

Based on the felony convictions, the Indiana Medical Licensing Board revoked Dr. Kouns license to practice medicine in Indiana by Order dated August 31, 1998. On or about September 18, 1998, the Controlled Substance Advisory Committee and the Indiana Board of Pharmacy issued a Final Order denying Dr. Kouns' application for a controlled substances registration. There is no evidence in the investigative file indicating that Dr. Kouns has regained authority to handle controlled substances in the State of Indiana.

The Administrator further finds that on or about January 14, 1999, the Alabama Medical Licensure Commission issued an Order revoking Dr. Kouns' license to practice medicine in the State of Alabama based upon (1) Dr. Kouns' controlled substances-related felonies in the State of Indiana, and (2) the subsequent disciplinary action taken against Dr. Kouns by the Indiana State authorities. There is no evidence in the file indicating that Dr. Kouns has regained authority to handle controlled substances in the State of Alabama.

In addition, the Administrator finds substantial evidence in the investigative file that Dr. Kouns' license to practice medicine in Ohio expired September 30, 1998, due to non-payment of renewal fees, and as of this date, there is no evidence in the investigative file to conclude that his Ohio medical license has been reinstated.

Therefore, the Administrator concludes that Dr. Kouns is not currently licensed or authorized to handle controlled substances in either Alabama, Indiana, or Ohio.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain