

I thus conclude that Respondent's failure to disclose the earlier surrender of his DEA registration was a material misrepresentation because it "ha[d] a natural tendency to influence the * * * decision" of the Agency as to whether to grant his application for a new registration.³ Under DEA precedent, this act "provides an independent and adequate ground for denying" Respondent's application. *The Lawsons*, 72 FR at 74338; *Cf. Bobby Watts*, 58 FR 46997 (1993).

The Lack of State Authority Allegation

As found above, on May 25, 2007, the Florida Department of Health issued an order which imposed an emergency suspension of Respondent's state medical license. Shortly thereafter, on June 21, 2007, the Florida Department of Health issued a further order which revoked Respondent's state medical license.

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 to dispense a controlled substance under the laws of the State in which a physician practices medicine is an essential condition for holding a DEA registration.

Because Respondent's Florida medical license has been revoked, he is without authority under state law to handle controlled substance and does not meet an essential prerequisite under the CSA for obtaining a new DEA registration. *See Richard Carino, M.D.*, 72 FR 71955, 71956 (2007) (citing cases); 21 U.S.C. 823(f). Accordingly, his application will be denied for this reason as well.

³ While Respondent indicated on 2003 application that both his Florida and Ohio licenses had been subjected to discipline, he further stated that the basis of the discipline was his "abuse of a non-controlled substance (Stadol nasal spray)." Stadol nasal spray contains butorphanol tartrate, and is a schedule IV controlled substance. *See* 21 CFR 1308.14(f). Respondent's statement was thus an additional misrepresentation.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b) & 0.104, I hereby order that the application of Craig H. Bammer, D.O., for the renewal of his registration be, and it hereby is, denied. This order is effective July 17, 2008.

Dated: June 6, 2008.

Michele M. Leonhart,
Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 07-52]

Benjamin Levine, M.D.; Dismissal of Proceeding

On August 7, 2007, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Benjamin Levine, M.D. (Respondent), of East Brunswick, New Jersey. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BL3612480, as a practitioner, and the denial of any pending applications to renew or modify his registration, on three separate grounds. Show Cause Order at 1. More specifically, the Show Cause Order alleged that: (1) Respondent had materially falsified his renewal application for his current registration; (2) Respondent lacked authority to handle controlled substances under the laws of the State in which he practiced medicine and held his DEA registration; and (3) Respondent had committed acts inconsistent with the public interest. *Id.* at 1-3.

Respondent requested a hearing on the allegations and the case was assigned to Administrative Law Judge (ALJ) Gail A. Randall. Shortly thereafter, the Government moved for summary disposition on the ground that the New Jersey State Board of Medical Examiners had suspended Respondent's state medical license. Motion for Summary Judgment at 1-2.

Respondent requested additional time to respond to the Government's motion. In his motion, Respondent did not deny that his state license had been suspended. Instead, Respondent noted that he was appealing the State board's order. *Resp. Br. in Support of Motion for Additional Time* at 3-4. Respondent also cited a litany of legal proceedings that he was litigating including a criminal case, a tort action, a motion for

post-conviction relief of a 1996 conviction, a suit for libel and slander, another suit "related to the Medical Board and * * * malpractice insurance lawyers," and a bankruptcy proceeding. *Id.* at 3-4.

The ALJ, however, denied Respondent's motion (as well as his Renewed Request for an extension of time). Applying agency precedent, she also rejected Respondent's argument that the Agency should not revoke his registration because his state license was only temporarily suspended. ALJ Dec. at 6 (citing *Alton E. Ingram, Jr.*, 69 FR 22562, 22563 (2004)). Because "Respondent lack[ed] authority to practice medicine and handle controlled substances in New Jersey," the ALJ held that "DEA lack[ed] authority to continue * * * Respondent's DEA registration." ALJ Dec. at 7. The ALJ thus granted the Government's motion for summary disposition and recommended that I revoke Respondent's registration. The ALJ then forwarded the record to me for final agency action.

Having considered the record as a whole (including Respondent's exceptions), I conclude that this case is now moot. It is undisputed that Respondent's registration expired on March 31, 2008. *See* Order to Show Cause at 1; *see also* Respondent's Counter-Statement of Material Facts at 1. Moreover, according to the registration records of this Agency, Respondent has not filed a renewal application.¹ I therefore find that Respondent is not currently registered with this Agency.

Under DEA precedent, "if a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke." *David L. Wood*, 72 FR 54936, 54937 (2007) (quoting *Ronald J. Riegel*, 63 FR 67132, 67133 (1998)). Moreover, while I have recognized a limited exception to this rule in cases which commence with the issuance of an immediate suspension order because of the collateral consequences which may attach with the issuance of such a suspension, *see William R. Lockridge*,

¹ Under the Administrative Procedure Act (APA), an agency "may take official notice of facts at any stage in a proceeding—even in the final decision." U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is "entitled on timely request, to an opportunity to show to the contrary." § 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). Respondent can dispute these facts by filing a properly supported motion for reconsideration within fifteen days of service of this order, which shall begin on the date this order is mailed.

71 FR 77791, 77797 (2006), here, no such order was issued. Because there is neither an existing registration nor an application to act upon, and there is no suspension order to review, this case is now moot.²

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 hereby order that the Order to Show Cause issued to Benjamin L. Levine, M.D., be, and it hereby is, dismissed.

Dated: June 6, 2008.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. E8-13617 Filed 6-16-08; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 07-40]

William W. Nucklos, M.D.; Dismissal of Proceeding

On June 18, 2007, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to William W. Nucklos, M.D. (Respondent), of Powell, Ohio. The Show Cause Order proposed the revocation of Respondent's registration, BN2037314, as a practitioner, and the denial of any pending application to renew his registration, on two grounds.

First, the Show Cause Order alleged that on March 8, 2006, the State Medical Board of Ohio had suspended Respondent's state medical license. Show Cause Order at 1 (citing 21 U.S.C. 824(a)(3)). Second, the Show Cause Order alleged that on or about February 15, 2006, Respondent had been "convicted of ten felony counts of drug trafficking and the illegal processing of drug documents." *Id.*; see also 21 U.S.C. 824(a)(2) & (a)(4).

Respondent requested a hearing on the allegations; the matter was therefore assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner. Thereafter, the Government moved for summary disposition and to stay the proceeding on the ground that the Ohio board had suspended Respondent's medical license, and Respondent was thus without authority to handle controlled substances in the State in which he maintained his DEA registration. ALJ

Dec. at 1-2. The Government supported its motion with a copy of the Notice of Immediate Suspension which had been issued by the Ohio Board, and which referenced Respondent's indictment and conviction on ten felony counts of trafficking Oxycontin, and ten felony counts of "[i]llegal [p]rocessing of [d]rug [d]ocuments." Notice of Immediate Suspension and Opportunity for Hearing (Mar. 8, 2006) (citing Ohio Rev. Code 2925.03 & 2925.23).

Respondent opposed the Government's motion. Respondent's principal contention was that his convictions had been reversed by the Court of Appeals of Clark County, Ohio, and that he had a pending request with the State Medical Board to vacate the suspension because it had been based on the criminal convictions. Respondent's Resp. at 1.

The ALJ granted the Government's motion. According to the ALJ, there was no dispute that Respondent's state medical license remained suspended and that he was not "currently authorized to handle controlled substances in Ohio." ALJ at 3. The ALJ further explained that although Respondent had requested that the Ohio Board vacate his suspension, he "ha[d] not demonstrated that the suspension will be lifted." *Id.* Reasoning that she was "compelled to grant the Government's motion" because Respondent's license had been suspended, the ALJ recommended that Respondent's registration be revoked and that any pending applications be denied. *Id.* Thereafter, the record was forwarded to me for final agency action.

In reviewing the record, I have taken official notice of the Agency's records pertaining to Respondent's registration status.¹ According to the Agency's records, Respondent's registration expired on October 31, 2007. Moreover, there is no evidence showing that Respondent has filed a renewal application, let alone a timely one. See 21 CFR 1301.36(i). Accordingly, I conclude that there is neither a registration nor an application to act upon. *Id.*

Under DEA precedent, "if a registrant has not submitted a timely

renewal application prior to the expiration date, then the registration expires and there is nothing to revoke." *David L. Wood*, 72 FR 54936, 54937 (2007) (quoting *Ronald J. Riegel*, 63 FR 67132, 67133 (1998)). Moreover, while I have recognized a limited exception to this rule in cases which commence with the issuance of an immediate suspension order because of the collateral consequences which may attach with the issuance of such a suspension, see *William R. Lockridge*, 71 FR 77791, 77797 (2006), here, no such order was issued. Because there is neither an existing registration nor an application to act upon, and there is no suspension order to review, this case is now moot.²

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 hereby order that the Order to Show Cause issued to William W. Nucklos, M.D., be, and it hereby is, dismissed.

Dated: June 6, 2008.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. E8-13618 Filed 6-16-08; 8:45 am]

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DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Inmate Behavior Management: Implementation and Evaluation

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: This project has two areas of focus: Assistance to selected jails in implementing the six elements of inmate behavior management and evaluation of the process and impact of implementation. The project award will be for a two-year period, and the project will be carried out in conjunction with the NIC Jails Division. The awardee will work closely with NIC Jails Division staff.

DATES: Applications must be received by 4 p.m. (EDT) on Friday, July 18, 2008.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of

² The dismissal of a proceeding on mootness grounds does not, however, have collateral estoppel effect in the event that Respondent reapplies for a DEA registration in the future.

¹ Under the Administrative Procedure Act (APA), an agency "may take official notice of facts at any stage in a proceeding-even in the final decision." U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is "entitled on timely request, to an opportunity to show to the contrary." 5 U.S.C. 556(e); see also 21 CFR 1316.59(e). Respondent can dispute these facts by filing a properly supported motion for reconsideration within fifteen days of service of this order, which shall begin on the date this order is mailed.

² The dismissal of a proceeding on mootness grounds does not, however, have collateral estoppel effect in the event that Respondent reapplies for a DEA registration in the future.