

controlled substances for no legitimate medical use and outside the scope of professional practice; (2) On or about January 10, 1991, Respondent was indicted in the United States District Court for the Southern District of Georgia and charged with 12 counts of illegal distribution of controlled substances; (3) On May 8, 1991, Respondent was found guilty in the United States District Court for the Southern District of Georgia of four counts of illegal distribution of controlled substances; (4) Between 1989 and 1991, Respondent prescribed numerous different controlled substances to an individual for no legitimate medical reason. On May 17, 1991, the individual died of a drug overdose after consuming a combination of controlled substances prescribed by Respondent. A subsequent autopsy revealed that the individual died of multiple drug poisoning, consistent with the controlled substances that Respondent prescribed; (5) On September 3, 1991, the Composite State Board of Medical Examiners, State of Georgia, ordered the summary suspension of Respondent's privileges to handle controlled substances. Pursuant to the Order, Respondent was ordered to surrender DEA Certificate of Registration AC 9230311. Accordingly, on September 10, 1991, Respondent voluntarily surrendered his DEA registration.

On March 22, 1996, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was scheduled to commence on January 29, 1997. On October 16, 1996, the Government filed a Motion for Summary Disposition, alleging that Respondent was not currently authorized to handle controlled substances in the State of Georgia. The Government's motion was supported by a copy of a Consent Order entered into by Respondent and the Composite State Board of Medical Examiners for the State of Georgia (Board) on January 9, 1992, and a copy of a letter from the Board to DEA dated October 11, 1996, stating that Respondent was not authorized to possess or prescribe controlled substances. Although provided an opportunity to do so, Respondent did not file a response to the Government's motion.

On November 22, 1996, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision finding that Respondent lacked authorization to

handle controlled substances in the State of Georgia; granting the Government's Motion for Summary Disposition; and recommending that Respondent's application for a DEA Certificate of Registration be denied. Neither party filed exceptions to her opinion, and on January 8, 1997, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy 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 Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Laws and Decision of the Administrative Law Judge.

The Acting Deputy Administrator finds that on January 9, 1992, Respondent and the Board entered into a Consent Order whereby Respondent's license to practice medicine was suspended for five years with all but the first six months suspended and was then placed on probation. As part of the Consent Order, Respondent relinquished, until further order of the Board, "his right to prescribe, administer, dispense, order or possess \* \* \* controlled substances." A letter from the Board dated October 11, 1996, indicated that Respondent was "not authorized to possess or prescribe any controlled substance." There is no evidence in the record that the Board has since reinstated Respondent's controlled substance privileges. Therefore, the Acting Deputy Administrator finds that Respondent is not currently authorized to handle controlled substances in the State of Georgia.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 FR 51,104 (1993); James H. Nickens, M.D., 57 Fed. Reg. 59,847 (1992); Roy E. Hardman, M.D., 57 FR 49,195 (1992). In the instant case, the record indicates that Respondent is not currently authorized to handle controlled substances in the State of Georgia. As Judge Bittner notes, "[b]ecause Respondent lacks this state authority, he is not currently entitled to a DEA registration." Because Respondent is not entitled to a DEA registration, the

Acting Deputy Administrator finds it unnecessary to address whether Respondent's registration would be inconsistent with the public interest as alleged in the Order to Show Cause.

Judge Bittner also properly granted the Government's Motion for Summary Disposition. Here, the parties did not dispute the fact that Respondent was unauthorized to handle controlled substances in Georgia. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See *Phillip E. Kirk, M.D.*, 48 FR 32,887 (1983), *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977); *United States v. Consolidated Mines & Smelting Co.*, 44 F.2d 432 (9th Cir. 1971).

Accordingly, the Acting Deputy 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 submitted by Jose R. Castro, M.D. for a DEA Certificate of Registration, be, and it hereby is, denied. This order is effective May 5, 1997.

Dated: March 24, 1997.

**James S. Milford,**

*Acting Deputy Administrator.*

[FR Doc. 97-8560 Filed 4-3-97; 8:45 am]

BILLING CODE 4410-09-M

#### **Abbas Helim Demetrios, M.D.; Revocation of Registration**

On June 24, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Abbas Helim Demetrios, M.D., notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BD1248029, and deny any pending requests for modification of such registration to change the registered address from California to Georgia, pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the States of California and Georgia. The order also notified Dr. Demetrios that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The DEA received a signed receipt indicating that the order was received on July 1, 1996. No request for a hearing

or any other reply was received by the DEA from Dr. Demetrios or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that: (1) Thirty days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Demetrios is deemed to have waived his hearing right. After considering the relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Acting Deputy Administrator finds that Dr. Demetrios is currently registered with DEA in the State of California. On June 3, 1993, he submitted a renewal application for his DEA registration indicating that he wanted to change the address to a location in Cumming, Georgia.

The Acting Deputy Administrator further finds that on December 6, 1993, the Composite State Board of Medical Examiners for the State of Georgia (Georgia Board) ordered the summary suspension of Dr. Demetrios' license to practice medicine in the State of Georgia "based upon (his) repeated pattern of inappropriate sexual conduct with his patients." Subsequently, on October 5, 1994, the Georgia Board accepted the voluntary surrender of Dr. Demetrios' Georgia medical license. Thereafter, on May 30, 1995, the Medical Board of California (California Board) filed an Accusation proposing to revoke Dr. Demetrios' license to practice medicine in the State of California based upon the action of the Georgia Board, as well as Dr. Demetrios' conviction in a Georgia state court on charges of rape, battery, aggravated sexual battery, simple battery, sexual battery, and sexual assault by a practitioner of psychotherapy against a patient. On April 3, 1996, the California Board entered a Default Decision revoking Dr. Demetrios' California medical license effective May 3, 1996. The Acting Deputy Administrator concludes that Dr. Demetrios is not currently authorized to handle controlled substances in the State of California, where he is currently registered with DEA, nor in the State of Georgia, where he is requesting modification of his DEA registration.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f), and 824(a)(3).

This prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 FR 51,104 (1993); James H. Nickens, M.D. 57 FR 59,847 (1992); Roy E. Hardman, M.D., 57 FR 49,195 (1992). Here, it is clear that Dr. Demetrios is neither currently authorized to practice medicine nor to dispense controlled substances in the States of Georgia and California. Therefore, he is not entitled to a DEA registration in either state.

Accordingly, the Acting Deputy 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 DEA Certificate of Registration, BD1248029, previously issued to Abbas Helim Demetrios, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending requests for renewal and/or modification of such registration, be, and they hereby are, denied. This order is effective May 5, 1997.

Dated: March 24, 1997.

**James S. Milford,**

*Acting Deputy Administrator.*

[FR Doc. 97-8559 Filed 4-3-97; 8:45 am]

BILLING CODE 4410-09-M

#### [Docket No. 95-44]

#### **Hagura Pharmacy; Denial of Application**

On May 23, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Hagura Pharmacy (Respondent) of Philadelphia, Pennsylvania, notifying it of an opportunity to show cause as to why DEA should not deny its application for registration as a retail pharmacy under 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest.

By letter dated June 22, 1995, the Respondent, through counsel, timely filed a request for a hearing, and following prehearing procedures, a hearing was held in Philadelphia, Pennsylvania on March 19, 1996, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called a witness to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. On December 6, 1996, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for a DEA Certificate of Registration be denied. Neither party

filed exceptions to her Opinion and Recommended Ruling and on January 9, 1997, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy 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 Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. The Acting Deputy Administrator's adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent pharmacy is located in Philadelphia, Pennsylvania and is owned and operated by Tahir Abdullah, R.Ph., M.D. (hereinafter referred to as Dr. Abdullah). Respondent pharmacy is seeking registration with DEA in order to handle controlled substances.

Dr. Abdullah received his pharmacy training in Pakistan and came to the United States in 1973. From approximately 1977 until 1985, Dr. Abdullah owned another pharmacy, also named Hagura Pharmacy, at another location in Philadelphia, Pennsylvania. In 1979, Dr. Abdullah's brother came to the United States and worked at Hagura Pharmacy as a clerk. Dr. Abdullah was the pharmacist-in-charge at Hagura Pharmacy until approximately 1981 when he began his medical education outside of the United States. Beginning in 1981, Dr. Abdullah's brother and the pharmacist-in-charge handled the daily operations of the pharmacy and Dr. Abdullah's wife paid the bills. In 1983, he returned to the United States after the university he was attending closed. While he was in Philadelphia for the most part from 1983 through 1985, Dr. Abdullah only occasionally went to Hagura Pharmacy and was not involved in the daily operations of the pharmacy.

In 1984, unbeknownst to Dr. Abdullah, his brother attempted to fraudulently assume ownership of Hagura Pharmacy. However in this proceeding, it is undisputed that Dr. Abdullah remained the owner of Hagura Pharmacy. In February 1985, Dr. Abdullah decided to sell Hagura Pharmacy to his brother-in-law and on February 28, 1995, papers were filed with the State Board of Pharmacy for a change of ownership and listing the new name of the pharmacy as Khawaja