

falsity of that assertion, the DEA registers pharmacies, not pharmacists,¹ and Treasure Coast as a retail pharmacy currently lacks state authority to operate.

In addition, the Respondents' argument that the State of Florida may not revoke a pharmacy's registration on the basis of its pharmacist's wrongdoing is equally irrelevant. Upon a motion for summary disposition due to lack of state licensure, the DEA will not consider whether the State has a valid basis for revoking the Respondent's registration; it will only consider whether the Respondent currently possesses state authority. As Treasure Coast does not, its registration must be revoked.

III. Conclusion, Order, and Recommendation

It is well-settled that when no question 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 35,582 (DEA 2002); *Michael G. Dolin, M.D.*, 65 FR 5,661 (DEA 2000); see also *Philip E. Kirk, M.D.*, 48 FR 32,887 (DEA 1983), *aff'd sub nom. Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); *Puerto Rico Aqueduct & Sewer Auth. v. EPA*, 35 F.3d 600, 605 (1st Cir. 1994)]. Consequently, there is no genuine dispute of material fact as the Respondent currently lacks state authority to handle controlled substances. Therefore, summary disposition for the Government is appropriate.²

Accordingly, I hereby grant the Government's Motion for Summary Disposition.

I also forward the portion of this case that relates to Treasure Coast's registration to the Deputy Administrator for final disposition. I recommend that Treasure Coast's DEA Certificate of Registration, Number BT9856002, be revoked and any pending renewal applications for this registration be denied.

Dated: August 16, 2011.

Gail A. Randall,

Administrative Law Judge.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Abelardo E. Lecompte-Torres, M.D. Decision and Order

On April 29, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Abelardo E. Lecompte-Torres, M.D. (Respondent), of Ponce, Puerto Rico. The Show Cause Order proposed the denial of Respondent's application for a DEA Certificate of Registration, on the ground that his registration "would be inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f)." Show Cause Order at 1.

The Show Cause Order specifically alleged that "[o]n or about April 7, 2009, [Respondent] filed an application for registration[,] seeking a DEA Certificate of Registration as a practitioner in Schedules II through V * * * at the registered location of 620 Lady Di Street, Apartment #10, Parque Los Almendros, Ponce, Puerto Rico 00716." *Id.* The Show Cause Order then alleged that on August 21, 2006, Respondent had voluntarily surrendered his previous DEA registration pursuant to a Memorandum of Understanding he entered into with DEA on July 11, 2006. *Id.*

The Show Cause Order further alleged that on May 2, 2007, Respondent was indicted in the United States District Court for the District of Puerto Rico and charged with violations of 18 U.S.C. 2; 1349; 1956(h) and (a)(1)(A)(i); as well as 21 U.S.C. 841(a)(1) and 846. Show Cause Order at 2. The Show Cause Order also alleged that the indictment alleged that Respondent had authorized multiple prescriptions for controlled substances, including hydrocodone, for internet customers who resided in jurisdictions where he was not authorized to practice medicine. *Id.* The Order further alleged that the indictment had charged him with authorizing "prescriptions for individuals with whom [he] did not establish a valid doctor-patient relationship" because he "(1) fail[ed] to establish a sufficient patient history; (2) fail[ed] to perform an adequate physical or mental exam; (3) fail[ed] to use appropriate diagnostic or laboratory testing; and (4) fail[ed] to provide a means to monitor medication response." *Id.*

Finally, the Show Cause Order alleged that on January 10, 2008, Respondent pled guilty to one count of conspiracy to possess with intent to distribute

hydrocodone, a violation of 21 U.S.C. 841(a)(1) and 846. *Id.* The Order then alleged that Respondent was subsequently convicted and sentenced to three years probation. *Id.*

On May 22, 2010, the Show Cause Order, which also notified Respondent 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, was served on him by certified mail as evidenced by the signed returned receipt card. See *id.* at 2 (citing 21 CFR 1301.43(a)); see also GX 10. Thereafter, on June 22, 2010, Respondent's counsel timely submitted a letter to the Office of Administrative Law Judges (ALJ) wherein he waived his right to a hearing but requested the opportunity to file a written statement. See GX 11. Respondent further stated that he did not contest the numbered allegations of the Show Cause Order (which are set forth above), but that he would "bring to [the Agency's] attention facts that particularize and expand said findings." *Id.* Respondent also stated that he would like to bring to the Agency's attention "extenuating circumstances which should attenuate the agency's final determination." *Id.*

However, when, as of September 21, 2010, the Government had not received his statement, it filed its Request for Final Agency Action and forwarded the Investigative Record to this Office. Subsequently, on December 17, 2010, the Government filed an Addendum to its Request for Final Agency Action, stating that it had since learned that Respondent had entered into an agreement with the Puerto Rico Board of Licensing and Medical Discipline (Board), and that on September 22, 2010, the Board had issued a resolution, the terms of which include, *inter alia*, that Respondent surrender his authority to prescribe controlled substances for a term of three years, effective September 29, 2010.

On December 17, 2010, the Government served the Addendum on Respondent's counsel by first class mail. Since Respondent's June 2010 letter, DEA has not received any other correspondence from Respondent or his counsel.

I therefore find that Registrant has waived his right to a hearing and to submit a written statement beyond that contained in his June 2010 letter. See 21 CFR 1301.43(e). Accordingly, I issue this Decision and Final Order based on relevant evidence contained in the record submitted by the Government, including Respondent's statement that he does not contest the allegations

¹ 21 U.S.C. 823(f).

² This opinion does not reach the other factual issues made in the Order to Show Cause. Rather, this opinion solely addresses Treasure Coast's loss of ability to handle controlled substances in the State of Florida, and, thus, ability to maintain a DEA registration.

contained in the Order to Show Cause. See 21 CFR 1301.46; 1316.49. I make the following findings of fact.

Findings

Respondent previously held a DEA registration as a practitioner. However, on September 19, 2005, Respondent was issued an Order to Show Cause and Immediate Suspension of Registration based on allegations that he had issued controlled-substance prescriptions over the internet to persons he neither saw nor physically examined and with whom "he had no prior doctor-patient relationship," and on whom he did not maintain patient records. GX 3, at 5. The 2005 Show Cause Order thus alleged that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose in issuing the prescriptions. *Id.* at 6–7.

Thereafter, Respondent and DEA settled the matter by entering into a Memorandum of Agreement (MOA), which became effective on July 11, 2006, and which is to remain in effect for five years. GX 4, at 8. Pursuant to the MOA, Respondent agreed to surrender his registration and the Government agreed that it would approve his application for a new registration "after the expiration of twenty-four (24) months from service of the" 2005 Show Cause Order "barring any unforeseen or heretofore unknown basis to deny the application," and that "no act that formed the basis for * * * paragraphs 15–17" of the 2005 Show Cause Order "shall form the sole basis for [the] denial of Registration."¹ *Id.* at 4–5. On August 21, 2006, Respondent surrendered his registration. GX 5.

On May 2, 2007, a Federal grand jury sitting in the District of Puerto Rico, issued a superseding indictment, which charged Respondent with conspiring to distribute controlled substances, in violation of 21 U.S.C. 846; unlawfully distributing a controlled substance (hydrocodone), in violation of 21 U.S.C. 841(a)(1); conspiracy to commit wire fraud, in violation of 18 U.S.C. 1349; and conspiracy to commit money laundering, in violation of 18 U.S.C.

1956(h) and 1956(a)(1)(A)(i). See GX 7. On January 10, 2008, Respondent pled guilty to one count of Conspiracy to Possess with Intent to Distribute Hydrocodone, in violation of 21 U.S.C. 841(a)(1) and 846; on August 8, 2008, the United States District Court entered its judgment finding him guilty of the offense and sentenced him to three years' probation and 288 hours of community service. See GX 8.

On April 7, 2009, Respondent submitted an online application for a new DEA Certificate of Registration as a Practitioner in schedules II–V. Respondent sought registration at the address of 620 Lady Di Street, Apt. #10, Parque Los Almendros, Ponce, Puerto Rico 00716. GX 1, at 1.

On May 26, 2010, the Puerto Rico Board issued a complaint against Respondent's license on the ground that he had been convicted of a crime involving moral turpitude. Declaration of Diversion Investigator, at 2. On September 2, 2010, Respondent and the Board's Investigator agreed to a settlement; on September 22, the Board voted to adopt the settlement. *Id.*

Pursuant to the settlement, Respondent was allowed to continue practicing medicine. *Id.* at 3. However, Respondent "[s]urrender[ed] his capacity to prescribe controlled substances for a term of three years." *Id.* I therefore find that Respondent is currently without authority to handle controlled substances in the Commonwealth of Puerto Rico, the jurisdiction in which he has sought registration.

Discussion

Section 303(f) of the Controlled Substances Act (CSA) provides that "[t]he Attorney General shall register practitioners * * * to dispense * * * controlled substances * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices." 21 U.S.C. 823(f). Moreover, the CSA defines "[t]he term 'practitioner' [to] mean[] a physician * * * licensed, registered, or otherwise permitted, by the United States or 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). See also *id.* § 824(a)(3) (authorizing revocation of 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").

As these provisions make plain, possessing authority under state law (or in the case of Puerto Rico, the law of the Commonwealth) to handle controlled substances is an essential condition for obtaining and maintaining a DEA registration. *Steven B. Brown*, 75 FR 65660, 65663 (2010) (citing *John B. Freitas*, 74 FR 17524, 17525 (2009)); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988).

It is undisputed that the Puerto Rico Board has suspended Respondent's authority to dispense controlled substances in the Commonwealth, the jurisdiction in which he practices, for a period of three years, and that he does not satisfy the CSA's requirement for obtaining a registration. See 21 U.S.C. 802(21) & 823(f). Accordingly, his pending application will be denied.²

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b) and 0.104, I order that the pending application by Abelardo E. Lecompte-Torres, M.D., for DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This Order is effective immediately.

Dated: October 17, 2011.

Michele M. Leonhart,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Aaron Gloskowski, D.O.; Decision and Order

On March 17, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Aaron Gloskowski, D.O. (Registrant), of Kearny, Arizona. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration BG6908757, as a practitioner in Schedules II through V, and the denial of any pending applications to renew or modify his registration, pursuant to 21 U.S.C. 824(a)(3) & (4) and 823(f). Show Cause Order at 1.

² While the Government contends that Respondent's application should also be denied based on his involvement in an additional internet prescribing scheme and his felony conviction for participating in this scheme, see Request for Final Agency Action, at 7–9; for the reason stated above, I conclude that it is unnecessary to address whether this conduct provides a further ground for denying his application.

¹ The MOA also provided that:

DEA is not precluded from introducing this Agreement, violations of this Agreement and any other relevant allegations, whether enumerated herein or not, that preceded or may ensue during or after the effective period of this Agreement in any future administrative proceedings. Further, nothing in this Agreement shall be construed as a waiver to use any other grounds for revocation or denial of a DEA registration, including, but not limited to, the admissibility of this Agreement and/or any violations of this Agreement in the event that future administrative proceedings become necessary.

GX 4, at 5–6.