

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Danielle Ouellette, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Proposed collection; comments requested.

(2) *Title of the Form/Collection:* Status of COPS Grant Implementation Facsimile.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Under the Violent Crime and Control Act of 1994, the U.S. Department of Justice COPS Office would require the completion of the Status of COPS Grant Implementation Facsimile from law enforcement agencies if they have yet to send in their current Federal Financial Report (SF-425). This is to ensure that these agencies are planning on implementing their COPS grant program and/or project that they had previously been awarded.

(5) *An estimate of the total number of respondents and the amount of time estimate for an average respondent to respond/reply:* It is estimated that 200 respondents annually will complete the form within .1 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 20 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, 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

Matthew J. Kachinas, M.D.; Decision and Order

On September 27, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Matthew J. Kachinas, M.D. (hereinafter, Registrant), of Ft. Myers and Venice, Florida. The Show Cause Order proposed the revocation of Respondent's DEA Certificates of Registration, #s FK1795624 and FK1794305, and the denial of any applications to renew or modify the registrations, on two grounds. Show Cause Order at 1 (citing 21 U.S.C. 823(f), 824(a)(3) & (4)).

First, the Order alleged that as a result of an action taken by the Florida Board of Medicine, Registrant no longer holds authority to dispense controlled substances in Florida, the State in which he holds his registrations. Show Cause Order at 2. Second, the Order alleged that "DEA's investigation revealed that [Registrant] stored and later abandoned controlled substances at an unregistered location, in violation of 21 CFR 1301.12(a)." *Id.* The Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedures for doing either, and the consequences for failing to do either. *See id.* (citing 21 CFR 1301.43(a), (c), (d), & (e)).

As evidenced by the signed return receipt card, on December 5, 2011,

service was accomplished on Registrant by certified mail addressed to him at his residence. GX 7. Since the date of service, more than thirty days have now passed and neither Registrant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement in lieu of a hearing. Accordingly, I find that Registrant has waived both his right to a hearing and his right to submit a written statement in lieu of a hearing. 21 CFR 1301.43(e). Accordingly, I issue this Decision and Order based on relevant evidence contained in the Investigative Record submitted by the Government. I make the following findings.

Findings

Registrant is the holder of two DEA Certificates of Registration, which authorize him to dispense controlled substances in schedules II through V as a practitioner: (1) #FK1795624, with the registered address of 13100 Westlinks Terrace, Suite 12, Ft. Myers, Florida; and (2) #FK1794305, with the registered address of 401 Commercial Ct., Suite D, Venice, Florida. Both of these registrations do not expire until December 31, 2012.¹

Registrant formerly held a license to practice medicine which was issued by the Florida Board of Medicine. However, on April 16, 2010, the Board of Medicine issued a Final Order which adopted the recommended order of a state Administrative Law Judge and revoked Registrant's medical license. GX 5, at 10-11. Accordingly, I find that Registrant is without authority under the laws of Florida to practice medicine and dispense controlled substances.

The Government also submitted various Incident Reports it obtained from the Longboat Key, Florida Police Department. According to these reports, on July 6, 2011, a police officer was summoned to a home located at 1590 Harbor Cay Lane based on "a complaint of some type of hazardous materials located in a repossessed home." GX 6, at 1. According to the report, the responding officer spoke with one Ms. O. of Field Asset Services, an Austin, Texas based firm, who stated that the home had been recently repossessed from a former physician and that she was hired to clean up the property. *Id.* at 3. Ms. O. showed the officer items that she believed to be narcotics, a large amount of needles, and a lab specimen medium. *Id.* The officer took possession of the items suspected of being

¹ Registrant also held a third registration, which expired on December 31, 2011. However, the Government states that Registrant did not file a renewal application for this registration. Request for Final Agency Action at 7.

controlled substances and advised Ms. O. that the needles and other medical supplies should be declared bio-hazards and removed by a professional disposal firm. *Id.* Another portion of the report lists the confiscated items and includes five vials of injectable Diazepam 5mg/ml (a schedule IV controlled substance), 11 vials of injectable midazolam 50mg/10ml (also a schedule IV controlled substance), 1 vial of ketamine 500gm/10ml (a schedule III controlled substance), as well as one partially used vial of each of these drugs, and one vial of brevilat sodium (a schedule IV controlled substance). *Id.* at 2. The police report, however, contains no further information explaining how the determination was made that the vials contained the above listed drugs. *See generally id.* Nor does any other evidence in the record establish how this determination was made.

In addition, the record includes a document which provides Master Information for Registrant's expired registration and lists the same 1590 Harbor Cay Lane address as his mailing address. GX 3. While this document creates a reasonable suspicion that Registrant brought the above items to this address, the record contains no further evidence sufficient to move beyond suspicion and into the realm of substantial evidence necessary to establish this as a fact. *See NLRB v. Columbian E. & S. Co.*, 306 U.S. 292, 300 (1939) ("Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established."). More specifically, while the police report notes that the home had "recently been repossessed from" Registrant, no other evidence establishes the declarant's basis of knowledge, let alone such facts as the respective dates on which Registrant vacated the premises and the home was repossessed, whether the home was secured after Registrant vacated the premises and was in that state when Ms. O. entered it and found the items, and whether Registrant was the only person who stayed in the home and who had access to controlled substances.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 "upon a finding that the registrant * * * has had his State license * * * suspended [or] revoked * * * by competent State authority and is no longer authorized by State law to engage in the * * * dispensing of controlled substances." Moreover, DEA has repeatedly held that the possession

of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration.

This rule derives from the text of two provisions of the CSA. First, Congress defined "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). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that "[t]he Attorney General shall register practitioners * * * 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). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices medicine. *See, e.g., Calvin Ramsey*, 76 FR 20034, 20036 (2011); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988).

As found above, on April 16, 2010, the Florida Board of Medicine revoked Registrant's medical license and accordingly, he is no longer authorized under Florida law to dispense controlled substances. Because Registrant no longer satisfies the CSA's requirement for maintaining his registrations, I will order that his registrations be revoked and that any pending applications be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a)(3), as well as 28 CFR 0.100(b), I order that DEA Certificates of Registration FK1795624 and FK1794305, issued to Matthew J. Kachinas, M.D., be, and they hereby are, revoked. I further order that any pending application of Matthew J. Kachinas, M.D., to renew or modify either registration, be, and it hereby is, denied. This Order is effective June 18, 2012.

Dated: May 4, 2012.

Michele M. Leonhart,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 12-28]

Segun M. Rasaki, M.D.; Decision and Order

On January 27, 2012, Administrative Law Judge (ALJ) Timothy D. Wing issued the attached recommended decision. Neither party filed exceptions to the decision. Having reviewed the entire record, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended Order.

To make clear, DEA's longstanding rule that a practitioner may not hold a registration if he lacks authority under state law to dispense controlled substances and that the loss of such authority subjects a practitioner's registration to revocation is not based solely on 21 U.S.C. 824(a)(3), which is a grant of authority to either suspend or revoke a registration "upon a finding" that a registrant "has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the * * * dispensing of controlled substances." As explained in numerous cases, DEA's rule derives primarily from two other provisions of the CSA, 21 U.S.C. 802(21), which defines the term "practitioner," and 21 U.S.C. 823(f), which sets forth the requirements for obtaining a registration as a practitioner.

More specifically, the CSA 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). Consistent with this definition, Congress, in setting the requirements for obtaining a practitioner's registration, provided that "[t]he Attorney General shall register practitioners * * * 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). Accordingly, because one cannot obtain a practitioner's registration unless one holds authority under state law to dispense controlled substances, and because where a registered practitioner's state authority has been revoked or suspended, the practitioner no longer meets the statutory definition of a practitioner, DEA has repeatedly held that the possession of authority to dispense controlled substances under the laws of