

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.

[FR Doc. 2012-12096 Filed 5-17-12; 8:45 am]

BILLING CODE 4410-09-P

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

the State in which a practitioner engages in professional practice is a fundamental condition for both obtaining and maintaining a practitioner's registration. *See* ALJ at 4 (citing cases).¹ So too, "revocation is warranted even where a practitioner's state authority has been summarily suspended and the State has yet to provide the practitioner with a hearing to challenge the State's action at which he may ultimately prevail." *Kamal Tiwari, M.D.*, 76 FR 71604, 71606 (2011); *see also Bourne Pharmacy, Inc.*, 72 FR 18273, 18274 (2007); *Anne Lazar Thorn*, 62 FR 12847 (1997). Accordingly, I adopt the ALJ's recommended order.

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), I order that DEA Certificate of Registration BR9738595, issued to Segun M. Rasaki, M.D., be, and it hereby is, revoked. I further order that any pending application of Segun M. Rasaki, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.²

Dated: May 4, 2012.

Michele M. Leonhart,
Administrator.

Paul E. Soeffing, Esq., for the
Government

Brian J. Lutz, Esq., for Respondent

Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge

Timothy D. Wing, Administrative Law Judge. This proceeding is an adjudication governed by the Administrative Procedure Act, 5 U.S.C. § 551 et seq., to determine whether a practitioner's Certificate of Registration (COR) with the Drug Enforcement Administration (DEA, Government or Agency) should be revoked. Without this registration, Segun M. Rasaki, M.D. (Respondent) would be unable to lawfully possess, prescribe, dispense or otherwise handle controlled substances.

I. Procedural Posture

The Administrator, DEA, issued an Order to Show Cause and Immediate Suspension of Registration (OSC/IS) relating to Certificate of Registration (COR) BR9738595, served on Respondent on December 21, 2011. On January 19, 2012, Respondent, through

counsel, filed a request for hearing with the DEA Office of Administrative Law Judges (OALJ) in the above-captioned matter.

On January 20, 2012, I issued an Order for Prehearing Statements, ordering that the parties file their respective prehearing statements no later than January 27, 2012.

On January 24, 2012, the Government filed a Motion for Summary Disposition on the grounds that Respondent is not duly authorized to handle controlled substances in the State of Indiana, the jurisdiction in which he is registered with the Drug Enforcement Administration. (Mot. Summ. Disp. at 1.) The Government attached a letter issued by the Director of the Medical Licensing Board of Indiana stating that Respondent's state controlled substance registration has been placed on suspended status pursuant to Ind. Code § 35-48-3-5(e). That section provides as follows:

(e) If the Drug Enforcement Administration terminates, denies, suspends or revokes a federal registration for the manufacture, distribution, or dispensing of controlled substances, a registration issued by the board under this chapter is automatically suspended.

Because the State of Indiana automatically suspended Respondent's state controlled substance registration based solely on the OSC/IS issued by DEA, I ordered that "counsel for each party shall file a written statement addressing the due process implications of granting summary disposition in this matter, specifically indicating whether the Medical Licensing Board of Indiana has provided or will provide Respondent with a hearing." (Memo & Order at 2 (citing *Barry M. Schultz, M.D.*, 76 Fed. Reg. 78,695, 78,696-97 (DEA 2011) (discussing a respondent's right to hearing and due process))).

On January 26, 2012, the Government filed a written statement addressing Respondent's right to due process before the Board. On January 27, 2012, Respondent filed a response to the Government's motion for summary disposition, in which he also addressed his due process rights.

II. The Parties' Contentions

A. The Government

In support of its Motion for Summary Disposition, the Government asserts that on January 3, 2012, the Medical Licensing Board of Indiana (the Board) issued a letter to Respondent notifying him that his state controlled substance registration was suspended as of December 22, 2011. (Gov't Mot. Summ.

Disp. at 1.) The Government contends that such state authority is a necessary condition for maintaining a DEA COR and, therefore, asks that I grant its motion and forward the matter to the Administrator. (*Id.* at 2-3.) In support of its motion, the Government cites Agency precedent and attaches the January 3, 2012 letter issued by the Board.

The Government asserts that Respondent's due process rights are not violated, noting that Respondent "can avail himself of a hearing at the state level . . . pursuant to Ind. Code § 35-48-3-5(f)." (Gov't Written Stmt. Ordered by ALJ at 2.) In support of this assertion, the Government cites Agency precedent and state law, and attaches Respondent's request for hearing before the Board.

B. Respondent

Respondent does not dispute that his state controlled substance registration is currently suspended, but rather concedes that it was suspended "as a result of the DEA's immediate suspension" of his DEA registration. (Resp't Resp. to Gov't Mot. Summ. Disp. at 1.) Respondent concedes that "[a]fter speaking with the Indiana Professional Licensing Agency and the Indiana Board of Pharmacy[, Respondent] will be afforded a hearing on the reinstatement of his state Controlled Substances Registration." (*Id.*) Nonetheless, Respondent contends that if the Government's motion for summary disposition is granted, he will not be afforded any due process in the present case. Thus, Respondent requests that his DEA hearing be postponed "to allow for the state administrative process to be completed as this is the only way that the respondent will be afforded due process to address the merits of his suspension." (*Id.*)

III. Discussion

At issue is whether Respondent may maintain his DEA COR given that Indiana, the State in which Respondent maintains his DEA COR, has suspended Respondent's state controlled substance registration, and whether Respondent has been or will be afforded adequate due process.

A. Respondent's State Authority

Under 21 U.S.C. § 824(a)(3), a practitioner's loss of state authority to engage in the practice of medicine and to handle controlled substances is grounds to revoke a practitioner's registration. Accordingly, this Agency has consistently held that a person may not hold a DEA registration if he is without appropriate authority under the

¹ This citation is to the slip opinion as issued by the ALJ.

² For the same reasons which led me to order the Immediate Suspension of Respondent's registration, I conclude that the public interest necessitates that this Order be effective immediately. *See* 21 CFR 1316.67.

laws of the state in which he does business. *See Scott Sandarg, M.D.*, 74 Fed. Reg. 17,528 (DEA 2009); *David W. Wang, M.D.*, 72 Fed. Reg. 54,297 (DEA 2007); *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130 (DEA 2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104 (DEA 1993); *Bobby Watts M.D.*, 53 Fed. Reg. 11,919 (DEA 1988).

Summary disposition in a DEA revocation case is warranted even if the period of suspension of a respondent's state medical license is temporary, or even if there is the potential for reinstatement of state authority because "revocation is also appropriate when a state license had been suspended, but with the possibility of future reinstatement." *Stuart A. Bergman, M.D.*, 70 Fed. Reg. 33,193 (DEA 2005); *Roger A. Rodriguez, M.D.*, 70 Fed. Reg. 33,206 (DEA 2005).

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 Fed. Reg. 5661 (DEA 2000); *see also Philip E. Kirk, M.D.*, 48 Fed. Reg. 32,887 (DEA 1983), *aff'd sub nom. Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984). *Accord Puerto Rico Aqueduct & Sewer Auth. v. EPA*, 35 F.3d 600, 605 (1st Cir. 1994).

In the instant case, the Government asserts, and Respondent concedes, that Respondent's Indiana controlled substance registration is suspended. This allegation is confirmed by the January 3, 2012 letter from the Board to Respondent. I therefore find there is no genuine dispute as to any material fact, and that substantial evidence shows that Respondent is presently without state authority to handle controlled substances in Illinois.

B. Respondent's Right to Due Process

"[W]here the state has revoked a registrant's license to handle controlled substances, summary revocation of the registrant's DEA registration is only appropriate if the registrant will be afforded a state hearing on the merits of the state revocation or suspension." *Schultz*, 76 Fed. Reg. at 78,697; *cf. Odette Louise Campbell, M.D.*, No. 09-62 (DEA May 11, 2010) (order remanding for further proceedings where it did not appear that state law provided registrant with opportunity to challenge merits of state suspension based solely upon DEA immediate suspension).

In the present case, the Board suspended Respondent's state controlled substance registration based upon Ind. Code § 35-48-3-5(e), which states:

(e) If the Drug Enforcement Administration terminates, denies, suspends or revokes a federal registration for the manufacture, distribution, or dispensing of controlled substances, a registration issued by the board under this chapter is automatically suspended.

Section 35-48-3-5(f) further provides, however, that "[t]he board may reinstate a registration that has been suspended under subsection (e), after a hearing, if the board is satisfied that the applicant is able to manufacture, distribute, or dispense controlled substances with reasonable skill and safety to the public * * *." Thus, Respondent is entitled to a hearing to challenge the Board's automatic suspension of his state controlled substance registration. Furthermore, not only has Respondent requested such a hearing, but he concedes that the Board has confirmed that he will be afforded such a hearing.

Because Respondent is afforded adequate due process under state law, and because "DEA does not have statutory authority under the Controlled Substances Act to maintain a registration if the registrant is without state authority to handle controlled substances in the state in which he practices," *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (DEA 2006), I conclude that summary disposition is appropriate. *See Kamal Tiwari, M.D.*, 76 Fed. Reg. 71,604 (DEA 2011) (summarily revoking the respondents' DEA registrations for lack of state authority where the state summarily suspended the registrants' state controlled substance registrations based upon DEA's immediate suspension, noting that the registrants "are entitled to a hearing to challenge the underlying allegations before the State board"). It is therefore

ORDERED that the hearing in this case, scheduled to commence on February 21, 2012, is hereby **CANCELLED**; and it is further

ORDERED that all proceedings before the undersigned are **STAYED** pending the Agency's issuance of a final order.

Recommended Decision

I grant the Government's Motion for Summary Disposition and recommend that Respondent's DEA COR BR9738595 be revoked and any pending applications for renewal or modification be denied.

Dated: January 27, 2012

Timothy D. Wing,

Administrative Law Judge.

[FR Doc. 2012-12119 Filed 5-17-12; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 12-19]

Richard H. NG, D.O.; Decision and Order

On December 23, 2011, 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