handle controlled substances in New York. Consequently, his DEA registration must be revoked.

Next, Respondent argues that his continued DEA registration would not be inconsistent with the public interest and therefore, his DEA registration should not be revoked. [Response at 2–3]. Respondent argues that the factors to be considered in determining whether an application for registration should be denied or revoked under 21 U.S.C. 824(a)(4) weigh in favor of maintaining the Respondent's DEA registration because he has not issued any prescriptions that are inconsistent with the public interest. [*Id.*].

While the Respondent may have raised genuine disputes of fact, concerning the allegations in the Government's Order to Show Cause, those disputes are immaterial in light of the Respondent's current lack of state registration. Indeed, the CSA and Agency precedent make clear that as a prerequisite to registration the Respondent must have state authority to handle controlled substances, and that without such authority all other issues before this forum are moot. *See* 21 U.S.C. 802(21); 21 U.S.C. 823(f); *Joseph Baumstarck, M.D.,* 74 FR at 17,527 (DEA 2009). Thus, because there is no dispute that the Respondent lacks state authority to handle controlled substances, the Respondent's registration must be revoked.

B. There Is Insufficient Evidence That Respondent Has Permanently Ceased the Practice of Medicine

A registrant's DEA registration terminates as a matter of law when the registrant ceases to practice at his registered location. *See* 21 U.S.C. 822(e) (2006) (''A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances of list I chemicals''); 21 CFR 1301.52(a) (2012) (''[T]he registration of any person, and any modifications of that registration, shall terminate, without any further action by the Administration, if and when such person dies, ceases legal existence, discontinues business or professional practice, or surrenders a registration''). In addition, a registrant must either request that his DEA registered address be changed or the registrant must notify the DEA that he is no longer practicing at the place of business where he is registered. *See* 21 CFR 1301.51 (2010) (''Any registrant may apply to modify his/her registration to authorize the handling of additional controlled substances or to change his/her name or address, by submitting a letter of request to the Registration Unit, Drug Enforcement Administration''); 21 CFR 1301.52(c) (2011) (''Any registrant desiring to discontinue business activities altogether or with respect to controlled substances (without transferring such business activities to another person) shall return for cancellation his/her certificate of registration, and any unexecuted order forms in his/her possession, to the Registration Unit, Drug Enforcement Administration'').

The Respondent does not dispute that he no longer is working at his DEA registered location. However, the Respondent argues that the closure of his medical practice at 104 Mill Road Woodstock, N.Y. is the result of the consensual Interim Order issued by the New York Board and cannot form the basis for a termination of his DEA registration. [Response at 3].

In this case, there is insufficient evidence to support a finding that the Respondent has permanently ceased the practice of medicine and therefore, the Court declines to address the issue of whether or not the Respondent's DEA registration terminates by operation of law. *See John B. Freitas, D.O.,* 74 FR 17,524, 17,525 (DEA 2009) (finding that a registrant's registration had not terminated because the registrant had not permanently ceased the practice of medicine or returned his registration for cancellation); *William R. Lockridge, M.D.,* 71 FR 77,791, 77,797 (DEA 2006) (interpreting 21 CFR 1301.52(a) to require a registrant to permanently cease the practice of medicine). Therefore, because there is insufficient evidence to determine whether the Respondent intends to permanently cease the practice of medicine, the Court declines to address whether the Respondent's DEA registration has terminated as a matter of law.

C. Respondent Is Entitled To Reapply for Registration With the DEA

Any person who is required to register with the DEA may apply for registration at any time. 21 CFR 1301.13(a) (2012) (''Any person who is required and who is not registered may apply for registration at any time. No person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a Certificate of Registration is issued by the Administrator to such person'').

Respondent requests that he be able to reapply for a Certificate of Registration with the DEA, when, and if, his medical license becomes active. [Response at 3].

The Respondent is permitted to reapply for a Certificate of Registration with the DEA at any time in the future. 21 CFR 1301.13(a). However, the Respondent will not be permitted to engage in activity for which a registration is required until his application is granted by the DEA. *Id.*

III. Conclusion, Order, and Recommendation

Consequently, there is no genuine dispute of material fact regarding the Respondent's lack of state authority to handle controlled substances. Thus, summary judgment for the Government is appropriate. It is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. *See Michael G. Dolin, M.D.,* 65 Fed. Reg. 5,661 (DEA 2000). Here, there is no genuine dispute that the Respondent currently lacks state authority to practice medicine and to handle controlled substances in New York.

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

I also forward this case to the Deputy Administrator for final disposition. I recommend that the Respondent's DEA Certificate of Registration, Number BL9651250, be revoked.[1]

September 6, 2012.

Gail A. Randall,

Administrative Law Judge.

[FR Doc. 2012–27546 Filed 11–9–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 12–48]

Larry Elbert Perry, M.D.; Decision and Order

On July 2, 2012, Chief Administrative Law Judge John J. Mulrooney, Jr., issued the attached Recommended Decision. Neither party filed exceptions to the Recommended Decision.

Having reviewed the entire record, I have decided to adopt the ALJ's findings of fact, conclusions of law, and recommended order. Accordingly, I will order that Respondent's DEA Certificate of Registration be revoked and that any pending application to renew or modify his registration be denied.

[1] The sole basis of my recommendation is the loss of Respondent's state licensure. I make no findings or conclusions concerning the other allegations asserted in the Order to Show Cause.

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 Number BP2742357, issued to Larry Elbert Perry, M.D., be, and it hereby is, revoked. I further order that any pending application of Larry Elbert Perry, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective December 13, 2012.

Dated: October 26, 2012.

Michele M. Leonhart,

Administrator.

Theresa Krause, Esq., for the Government
Frank J. Scanlon, Esq., for the Respondent

ORDER GRANTING THE GOVERNMENT'S UNOPPOSED MOTION FOR SUMMARY DISPOSITION, DENYING THE GOVERNMENT'S MOTION TO STAY AND RECOMMENDED DECISION

Chief Administrative Law Judge John J. Mulrooney II. On May 4, 2012, the Deputy Assistant Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OSC), proposing to revoke the DEA Certificate of Registration (COR), Number BP2742357, of Larry Elbert Perry, M.D. (Respondent), pursuant to 21 U.S.C. § 824(a)(3) and (4) (2006), and to deny any pending applications for renewal or modification of such registration, pursuant to 21 U.S.C. § 823(f). In the OSC, the Government alleges that revocation is necessary because the Respondent does ''not have authority to practice medicine or handle controlled substances in the State of Kentucky,'' the State of the Respondent's registration. OSC, at 1–2.

On June 6, 2012, the DEA Office of Administrative Law Judges (OALJ) received from the Respondent, through counsel, a timely filed request for hearing (Hearing Request) that contained a request for continuance, and which conceded that the Respondent lacks authority to handle controlled substances in the State of Kentucky. The Respondent's Hearing Request contended that the loss of his Kentucky authority was based, in large part, on a disciplinary action by the Tennessee Board of Medicine, and that an extension should be granted for ''a reasonable period of time to allow [the Respondent] to regain his licenses in Tennessee and Kentucky.'' The same day, by order of this tribunal, the Respondent's motion for a continuance was denied. Order Denying the Respondent's Request for Continuance and Directing the Filing of Government Evidence in Support of its Lack of State Authority Allegation and Briefing Schedule (''Briefing Schedule Order''), at 1. In addition to denying the request for a continuance, the Briefing Schedule Order directed the Government ''to provide evidence to support the allegation that the Respondent lacks state authority to handle controlled substances [on or before] June 15, 2012.'' *Id.* at 2. In this regard, the Schedule Order set a June 15, 2012, deadline for the Government to file a motion for summary disposition regarding the Respondent's alleged lack of state authority and a June 25, 2012, deadline for any response to such motion. *Id.* at 2.

On June 7, 2012, the Government filed a Motion for Stay of Proceedings and Summary Disposition (''MSD''), seeking: (1) summary disposition; (2) a recommendation that ''the Respondent's DEA COR as a practitioner be revoked, based on the Respondent's lack of a state licensure;'' (3) the transmission of the instant matter to the Administrator for Final Agency Action; and (4) ''a stay of these administrative proceedings pending the results of this Government motion.'' MSD, at 5. A copy of a November 19, 2009, Emergency Order of Suspension (Suspension Order) issued by the Commonwealth of Kentucky Board of Medical Licensure, and a copy of a September 26, 2011, Agreed Order of Surrender, which memorialized the Respondent's surrender of his state license to practice medicine, were both attached to the MSD. The Respondent did not file a response to the Government's motion within the time allowed.[1] Accordingly, the motion will be deemed unopposed.

Congress does not intend for administrative agencies to perform meaningless tasks. *See Philip E. Kirk, M.D.,* 48 Fed. Reg. 32887 (1983), *aff'd sub nom. Kirk v. Mullen,* 749 F.2d 297 (6th Cir. 1984); *see also Puerto Rico Aqueduct & Sewer Auth. v. EPA,* 35 F.3d 600, 605 (1st Cir. 1994); *NLRB v. Int'l Assoc. of Bridge, Structural & Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977); *United States v. Consol. Mines & Smelting Co.,* 455 F.2d 432, 453 (9th Cir. 1971). Thus, it is well-settled that, where no genuine question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required. *See Jesus R. Juarez, M.D.,* 62 Fed. Reg. 14945 (1997); *Dominick A. Ricci, M.D.,* 58 Fed. Reg. 51104 (1993), Here, both parties agree that the Respondent is without authorization to practice medicine or handle controlled substances in Kentucky, the jurisdiction where the Respondent holds the DEA COR that is the subject of this litigation.

In order to revoke a registrant's DEA registration, the Government has the burden of proving that the requirements for revocation are satisfied. 21 C.F.R. § 1301.44(e). Once the Government has made its *prima facie* case for revocation of the registrant's DEA COR, the burden of production shifts to the Respondent to show that, given the totality of the facts and circumstances in the record, revoking the registrant's registration would be inappropriate. *Morall v. DEA,* 412 F.3d 165, 174 (D.C. Cir. 2005); *Humphreys v. DEA,* 96 F.3d 658, 661 (3d Cir. 1996); *Shatz v. U.S. Dept. of Justice,* 873 F.2d 1089, 1091 (8th Cir. 1989); *Thomas E. Johnston,* 45 Fed. Reg. 72311 (1980).

The Controlled Substances Act (CSA) requires that, in order to maintain a DEA registration, a practitioner must be authorized to handle controlled substances in ''the jurisdiction in which he practices.'' *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.''). Therefore, because ''possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration,'' this Agency has consistently held that ''the CSA requires the revocation of a registration issued to a practitioner who lacks [such authority].'' *Roy Chi Lung,* 74 Fed. Reg. 20346, 20347 (2009); *Scott Sandarg, D.M.D.,* 74 Fed. Reg. 17528, 174529 (2009); *John B. Freitas, D.O.,* 74 Fed. Reg. 17524, 17525 (2009); *Roger A. Rodriguez, M.D.,* 70 Fed. Reg. 33206, 33207 (2005); *Stephen J. Graham, M.D.,* 69 Fed. Reg. 11661 (2004); *Dominick A. Ricci, M.D.,* 58 Fed. Reg. 51104 (1993); *Abraham A. Chaplan, M.D.,* 57 Fed. Reg. 55280 (1992); *Bobby Watts, M.D.,* 53 Fed. Reg. 11919 (1988); *see also Harrell E. Robinson,* 74 Fed. Reg. 61370, 61375 (2009).

As explained above, summary disposition of an administrative case is warranted where, as here, ''there is no factual dispute of substance.'' *See Veg-*

[1] Indeed, a week has passed since the response due date with no word from the Respondent or his counsel.

Mix, Inc., 832 F.2d 601, 607 (DC Cir. 1987) (''an agency may ordinarily dispense with a hearing when no genuine dispute exists'').[2] At this juncture, no genuine dispute exists over the fact that the Respondent lacks state authority to handle controlled substances in the State of Kentucky. Because the Respondent lacks such state authority, both the plain language of applicable federal statutory provisions and Agency interpretive precedent dictate that the Respondent is not entitled to maintain his DEA registration. Simply put, there is no contested factual matter adducible at a hearing that would provide sufficient grounds to allow the Respondent to continue to hold his COR. I therefore conclude that further delay in ruling on the Government's motion for summary disposition is not warranted. *See Gregory F. Saric, M.D.,* 76 Fed. Reg. 16821 (2011) (stay denied in the face of Respondent's petition based on pending state administrative action wherein he was seeking reinstatement of state privileges).

Accordingly, I hereby

GRANT the Government's Motion for Summary Disposition;

DENY the Government's Motion for Stay of Proceedings as moot; and further RECOMMEND that the Respondent's DEA registration be REVOKED forthwith and any pending applications for renewal be DENIED.

July 2, 2012.

John J. Mulrooney II,

Chief Administrative Law Judge.

[FR Doc. 2012–27522 Filed 11–9–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 12–56]

Fernando Valle, M.D.; Decision and Order

On August 10, 2012, Chief Administrative Law Judge John J. Mulrooney, Jr., issued the attached Recommended Decision. Neither party filed exceptions to the Recommended Decision.

Having reviewed the entire record, I have decided to adopt the ALJ's findings of fact, conclusions of law, and recommended order. Accordingly, I will order that Respondent's DEA Certificates of Registration be revoked and that any pending applications to renew or modify his registrations be denied.

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 Numbers FV1935595, FV2000711, and FV2000735, issued to Fernando Valle, M.D., be, and they hereby are, revoked. I further order that any pending applications of Fernando Valle, M.D., to renew or modify his registrations, be, and they hereby are, denied. This Order is effective immediately.[1]

Dated: October 26, 2012.

Michele M. Leonhart,

Administrator.

Michelle Gillice, Esq., for the Government.

Dale Sisco, Esq., for the Respondent.

Order Granting the Government's Motion for Summary Disposition and Recommended Decision

Chief Administrative Law Judge John J. Mulrooney, II. On June 25, 2012, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) immediately suspending and proposing to revoke the DEA Certificate of Registration (COR), Number FV1935595, of the Respondent pursuant to 21 U.S.C. 824(a), and to deny any pending applications for registration, renewal or modification pursuant to 21 U.S.C. 823(f) and 824(a) because the Respondent's continued registration would ''be inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f).'' As grounds for these proposed actions, the OSC/ISO alleges that the Respondent ''prescribed * * * controlled substances to * * * undercover law enforcement officers not for a legitimate medical purpose in the usual course of professional practice in violation of applicable Federal, State and local law.'' OSCI/ISO, at 1. The OSC/ISO was served on the Respondent on June 27, 2012. Gov't Not. of Service. On July 26, 2012, the Respondent, through counsel, filed a timely request for hearing.

On July 27, 2012, the Government filed a Motion for Summary Disposition and Motion to Stay Proceedings (''MSD''), in which it represented that ''[o]n June 26, 2012, the State of Florida [the state in which Respondent holds his COR] Department of Health executed an emergency order suspending Respondent's medical license M41752, effective immediately.'' [1] MSD, at 1. Based on the foregoing, the Government sought the following relief: (1) Summary disposition; (2) a recommendation that the ''Respondent's DEA registration be revoked and any pending application for renewal or modification of such registration be denied;'' (3) the transmission of the instant matter to the Administrator for Final Agency Action; and (4) a stay of these administrative proceedings pending the results of the Government's motion for summary disposition. MSD, at 3.

By a July 27, 2012, Order, this tribunal granted the Government's motion to stay, and directed the Respondent to file a response to the Government's motion for summary disposition on or before August 6, 2012. Order Regarding Government's Motion for Summary Disposition, at 2.

On August 3, 2012, the Respondent filed his response to the MSD. Respondent's Response to Government's Motion for Summary Disposition (''Response''). In the Response, the Respondent contends that revocation based on the Emergency Order ''will effectively result in a denial of Due Process to Respondent without notice or opportunity for hearing and based only on the minimal standards of probable cause.'' Response, at 2–3. The Respondent further submits that:

> Summary Disposition is inappropriate prior to resolution of the numerous questions of material fact, as well as procedural issues, associated with the emergency suspension of his Florida Medical License and immediate suspension of his DEA registrations. With regard to his DEA registrations, these include, but are not limited to, whether the immediate suspension of the Respondent's registration was based on a valid inspection and investigation; whether the continued registration of the Respondent constitutes an imminent danger to the public health and safety; and whether other grounds exist for the Government to limit the suspension of the Respondent's registration.

Response, at 3.

On August 6, 2012, the Government filed a Reply to Respondent's Response

[2] Even assuming *arguendo* the possibility that the Respondent's state controlled substances privileges could be reinstated, summary disposition would still be warranted because ''revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement,'' *Rodriguez,* 70 Fed. Reg. at 33207 (citations omitted), and even where there is a judicial challenge to the state medical board action actively pending in the state courts. *Michael G. Dolin, M.D.,* 65 Fed. Reg. 5661, 5662 (2000).

[1] Based on the findings of the Florida Department of Health's Order of Emergency Suspension of License, I conclude that the public interest requires this Order be effective immediately. 21 CFR 1316.67.

[1] The order of suspension (''Emergency Order'') is attached to the MSD as ''Exhibit A.'' The emergency suspension appears to be based on the same allegations set forth in the OSC/ISO.