

that Dr. DeFrank's continued registration would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration DB8259346, issued to Salvatore DeFrank, D.P.M., be, and it hereby is revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective June 17, 2005.

Dated: May 9, 2005.

**Michele M. Leonhart,**

*Deputy Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 04-30]

#### **Lance L. Gooberman, M.D.; Denial of Registration**

On March 15, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lance L. Gooberman, M.D. (Dr. Gooberman), notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AG9773703, as a practitioner, pursuant to 21 U.S.C. 824(a)(3) and (a)(4) and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f).

The Order to Show Cause alleged that Dr. Gooberman's license to practice medicine in New Jersey, where he was registered, had been suspended by the State of New Jersey, Board of Medical Examiners (New Jersey Board) and he was not authorized to handle controlled substances in that state.

On April 13, 2004, Dr. Gooberman, acting pro se, requested a hearing and on April 20, 2004, Administrative Law Judge Gail A. Randall (Judge Randall) issued an Order for Prehearing Statements. On July 7, 2004, in response to a Government motion for Consolidation, Judge Randall ordered Dr. Gooberman's case consolidated with the pending case of David W. Bradway, M.D. (Docket No. 04-27). Dr. Bradway had been in practice with Dr. Gooberman and they had been disciplined by the New Jersey Board in

a joint proceeding, for the same professional misconduct.

After authorized delays, on September 8, 2004, counsel for the Government filed a Motion for Summary Disposition. It alleged that on July 14, 2004, the Commonwealth of Pennsylvania, Department of State, State Board of Medicine (Pennsylvania Board) issued an Adjudication and Order suspending Dr. Gooberman's Pennsylvania medical license. That action was predicated on the New Jersey Board's Final Order of March 10, 2003, which suspended Dr. Gooberman's New Jersey medical license for a period of two years from the Order's effective date of June 19, 2003. The Government attached a copy of both the Pennsylvania and New Jersey Orders and argued that, since Dr. Gooberman's licenses to practice medicine in New Jersey and Pennsylvania were both suspended, he was not authorized to handle controlled substances in the jurisdiction of his registration and ineligible for a modification of location to Pennsylvania.

Judge Randall issued an order allow Dr. Gooberman to respond to the Government's motion. Having noticed that Dr. Gooberman's DEA Certificate of Registration had expired prior to initiation of the show cause proceedings, she also directed the Government to address the impact of its apparent expiration.

The Government replied that Dr. Gooberman submitted a renewal application one week before his registration's expiration. On the application, Dr. Gooberman noted he had left New Jersey and requested a change in registered location to an address in Pennsylvania. Judge Randall agreed with the Government that Dr. Gooberman's New Jersey registration was terminated by operation of law and that his request for an address modification must be treated as an application for registration in Pennsylvania. See 21 CFR 1301.51 and 1301.52.

The Government argued Dr. Gooberman's application was thus still pending before the administrative law judge and, based on lack of state authority to handle controlled substances in Pennsylvania, the Government moved for summary disposition. When Dr. Gooberman was given an opportunity to respond, he acknowledged his New Jersey and Pennsylvania licenses were suspended and that he did not "have a basis on which to hold a DEA Certificate of registration at this time." Thus, he did not oppose the Government's motion.

On October 14, 2004, Judge Randall issued her Order, Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Randall granted the Government's Motion for Summary Disposition, finding Dr. Gooberman's New Jersey DEA registration had terminated by operation of law and he lacked authorization to handle controlled substances in Pennsylvania, the jurisdiction where he was seeking registration.

In granting the Government's motion, Judge Randall recommended that Dr. Gooberman's application to renew and modify his registration be denied. No exceptions to the Opinion and Recommended Decision were filed and on November 23, 2004, Judge Randall forwarded her Opinion and Recommended Decision to the Deputy Administrator for final order pursuant to 21 CFR 1316.65(c).

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds Dr. Gooberman currently possesses DEA Certificate of Registration AG9773703, as a practitioner in schedules II through V, with a registered location in Merchantville, New Jersey. On September 30, 2003, that registration was due to expire. However, a week earlier, Dr. Gooberman submitted a renewal application, requesting a change to a Pennsylvania location. Because Dr. Gooberman had abandoned his New Jersey registered location, Certificate of Registration AG9773703 was terminated under 21 CFR 1301.52.

The Deputy Administrator finds Dr. Gooberman's license to practice medicine in New Jersey was suspended by the New Jersey Board's Final Order of March 10, 2003, and his Pennsylvania license was suspended by the Pennsylvania Board's Adjudication and Order of July 14, 2004. There is no evidence before the Deputy Administrator that either the New Jersey or Pennsylvania Orders have been lifted, stayed or modified. Therefore, the Deputy Administrator finds Dr. Gooberman is currently not licensed to practice medicine in either New Jersey or Pennsylvania. As a result, it is reasonable to infer he is also without authorization to handle controlled substances in either state.

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. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). this prerequisite has been consistently upheld. *See* Stephen J. Graham, M.D., 69 FR 11,661 (2004); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1988). Revocation is also appropriate when a State license has been suspended, but with possibility of future reinstatement. *See* Alton E. Ingram, Jr., M.D., 69 FR 22,562 (2004); Ann Lazar Thorn, M.D., 62 FR 847 (1997).

Here, it is clear Dr. Goobermen is not currently licensed to handle controlled substances in Pennsylvania, where he seeks registration with DEA. Therefore, he is not entitled to such a registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application of Lance L. Gooberman, M.D., for registration be, and it hereby is, denied. This order is effective June 17, 2005.

Dated: May 9, 2005.

**Michele M. Leonhart,**

*Deputy Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 05-01]

#### Katarzyna Rygiel, M.D.; Revocation of Registration

On September 3, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Katarzyna Rygiel, M.D. (Dr. Rygiel) of San Diego, California, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration BK4222179, as a practitioner, pursuant to 21 U.S.C. 824(a)(3) and deny any pending applications for renewal of that registration pursuant to 21 U.S.C. 823(f). As the basis for revocation, the Order to Show Cause alleged that Dr. Rygiel's license to practice medicine in California had been revoked and accordingly, she was not authorized to

handle controlled substances in California, the state in which she is registered.

In a letter dated October 6, 2004, through her counsel, Dr. Rygiel timely requested a hearing in this matter. In that letter she admitted the California Medical Board had revoked her license but argued that decision was being reviewed by the Superior Court of California, County of San Diego.

On October 13, 2004, the government filed a Motion for Summary Disposition, requesting that Administrative Law Judge Gail A. Randall (Judge Randall) summarily dismiss the action, arguing that Dr. Rygiel lacked state authority to handle controlled substances in California. On October 14, 2004, Judge Randall issued an Order staying proceedings and affording Dr. Rygiel an opportunity to respond to the Government's motion. Dr. Rygiel then filed a Motion for Further Stay of Proceedings and Opposition to Government's Motion for Summary Adjudication and Alternatively, Motion for Stay of Judgment (Response). In that Response Dr. Rygiel acknowledged she was currently without state authority to practice medicine in California but argued the DEA hearing should be stayed until the San Diego Superior Court had issued an anticipated decision in her favor.

On November 22, 2004, Judge Randall issued her Order, Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Randall granted the Government's Motion for Summary Disposition, finding Dr. Rygiel lacked authorization to handle controlled substances in California, the jurisdiction in which she is registered. Judge Randall recommended that Dr. Rygiel's DEA registration be revoked. No exceptions were filed by either party to the Opinion and Recommended Decision and on January 11, 2005, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Dr. Rygiel holds DEA Certificate of Registration, BK4222179. The Deputy Administrator further finds that on March 16, 2004, the Division of Medical Quality, Medical Board of California,

Department of Consumer Affairs, State of California (Board) issued a Decision revoking Dr. Rygiel's Physician and Surgeon's Certificate. In that Decision, the Board adopted a February 13, 2004, Proposed Decision of a California Administrative Law Judge which recommended revocation of Dr. Rygiel's medical license on certain enumerated grounds.

There is no evidence in the record indicating the Board's Decision has been stayed or set aside by judicial action, rescinded by the Board or that Dr. Rygiel's license has been reinstated. Therefore, the Deputy Administrator finds that Dr. Rygiel is currently not licensed to practice medicine in California and, as a result, it is reasonable to infer that she is also without authorization to handle controlled substances in that state.

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 she conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Gabriel Sagun Orzame, M.D., 69 FR 58959 (2004); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Rygiel is not currently authorized to handle controlled substances in California, where she is registered with DEA. Therefore, she is not entitled to maintain that registration. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BK4222179, issued to Katarzyna Rygiel, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective June 17, 2005.

Dated: May 9, 2005.

**Michele M. Leonhart,**

*Deputy Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Rebecca Sotelo Denial of Registration

On October 6, 2004, the Deputy Assistant Administrator, Office of