

comply with a condition imposed by the Board's previous order. Mot. for Summ. Disp., at 1–2. Citing agency precedent, the Government argued that because Respondent lacks authority to dispense controlled substances in California, he is not authorized to hold a DEA registration in the State and his registration should be revoked. *Id.* As support for the motion, the Government attached the various MBC orders, as well as a printout of Respondent's registration status, which indicated that his registration was to expire on January 31, 2010. Mot. for Summ. Disp., at Exs. 1–4.

On November 16, 2009, Respondent filed an opposition to the motion. Respondent's Opposition at 4. Therein, Respondent argued that the MBC's order "is not reasonable and is fraught with procedural misconduct, misrepresentations and the subsequent illegitimate denial of due process." *Id.*

On November 25, 2009, following a further round of briefing by both parties on an issue of no material consequence,¹ the ALJ issued her Recommended Decision. Therein, she found that it was undisputed that Respondent lacks authority to dispense controlled substances in California and that under the Controlled Substances Act, DEA therefore lacks authority to continue his registration. ALJ Dec. at 5. The ALJ thus granted the Government's motion and recommended that Respondent's registration be revoked. *Id.*

Neither party filed exceptions to the ALJ's Decision. On January 8, 2010, the ALJ forwarded the record to my Office for final agency action. Upon receipt of the record, it was determined that while Respondent's registration was to expire on January 31, 2010, he had yet to file a renewal application. A subsequent query of the Agency's registration records confirmed that Respondent allowed his registration to expire and did not file a renewal application.

Under DEA precedent, "if a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke." *Ronald J. Riegel*, 63 FR 67132, 67133 (1998). Moreover, in the absence of an application (whether timely filed or not), there is nothing to act upon. Accordingly, because Respondent has allowed his registration to expire and has not filed any application, this case is now moot and will be dismissed.²

¹ Specifically, that Respondent had previously held a West Virginia medical license.

² While the Show Cause Order will be dismissed, under 21 U.S.C. 823(f), Respondent is not entitled to be registered until he is again "authorized to

Order

Pursuant to the authority vested in me by 21 U.S.C. 824, as well as 21 CFR 0.100(b) and 0.104, I hereby order that the Order to Show Cause issued to Thomas E. Mitchell, M.D., be, and it hereby is, dismissed. This Order is effective immediately.

Dated: April 1, 2011.

Michele M. Leonhart,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10–8]

Robert Charles Ley, D.O. ; Dismissal of Proceeding

On September 28, 2009, I, the then Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration ("Order") to Robert Charles Ley, D.O. (Respondent), of Kihei, Hawaii. Order to Show Cause at 1. The Order, which also sought the revocation of Respondent's registration and the denial of any pending applications to renew his registration, alleged, *inter alia*, that Respondent had issued numerous prescriptions for controlled substances to undercover police officers which lacked a legitimate medical purpose and therefore violated Federal law. *Id.* at 2.

On October 2, 2009, Respondent was served with the Order, and on October 7, 2009, he requested a hearing on the allegations. The matter was then assigned to an Agency Administrative Law Judge (ALJ), who proceeded to conduct pre-hearing procedures.

On November 4, 2009, the Government moved for summary disposition on the ground that the State of Hawaii had suspended Respondent's state controlled substances registration and that he was therefore no longer entitled to hold a registration under the Controlled Substances Act. *See* 21 U.S.C. 823(f) and 824(a)(3). Finding that there were no material facts in dispute, the ALJ granted the motion, recommended that I revoke Respondent's registration and deny any pending applications, and forwarded the record to me for final agency action. Order Granting Summary Disposition and Recommended Decision, at 6.

On January 12, 2010, the State of Hawaii re-instated Respondent's state

dispense * * * controlled substances under the laws of the State in which he practices."

registration. As a consequence, the Government was no longer entitled to a Final Order adopting the ALJ's Recommended Decision. Accordingly, on March 2, 2010, the Government moved to remand the case for further proceedings. Motion to Remand Case for Further Proceedings, at 1.

Respondent did not, however, file an application to renew his registration which was due to expire on March 31, 2010. Respondent's registration therefore expired on March 31, 2010.

Accordingly, on May 5, 2010, the Government moved to terminate the proceeding on the ground that this case is now moot. Motion to Terminate Administrative Proceedings, at 2. On May 26, 2010, I therefore ordered that Respondent file a response to the Government's motion; I further ordered that if Respondent contended that the matter was not moot, he should specifically address what collateral consequence attach as a result of the issuance of the immediate suspension, whether he intends to remain in professional practice, and why he failed to file a renewal application. *See* Order at 1–2 (May 26, 2010).

On June 25, 2010, Respondent filed his response. *See* Respondent's Memorandum In Response to Motion to Terminate Administrative Proceedings. Therein, Respondent "maintain[s] that the summary suspension of his DEA registration * * * was improper and unjustified, [but] due to physical conditions beyond his control, [he] is no longer in a position to pursue his administrative remedies." *Id.* at 1. Respondent therefore "does not object to the termination" of the proceeding. *Id.*

DEA has previously held that "if a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke." *Ronald J. Riegel*, 63 FR 67132 (1998). While DEA has recognized a limited exception to the mootness rule in cases which commence with the issuance of an immediate suspension order because of the collateral consequences which may attach with the issuance of an immediate suspension, *see William R. Lockridge*, 71 FR 77791, 77797 (2006), Respondent has not identified any collateral consequence caused by the order. Indeed, Respondent does not object to the termination of this proceeding. Accordingly, this proceeding is now moot and the Government's motion to terminate the proceeding will be granted.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824, as well as 28 CFR

0.100(b) and 0.104, I hereby grant the Government's motion to terminate the proceeding. I further order that the Order to Show Cause and Immediate Suspension of Registration issued to Robert Charles Ley, D.O. be, and it hereby is, dismissed.

Dated: April 1, 2011.

Michele M. Leonhart,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10-28]

Louisiana All Snax, Inc.; Dismissal of Proceeding

On January 21, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order To Show Cause to Louisiana All Snax, Inc. (Respondent), of Baton Rouge, Louisiana. The Show Cause Order proposed the revocation of Respondent DEA's Certificate of Registration, which authorized it to distribute the list I chemicals ephedrine and pseudoephedrine, on the ground that, effective August 15, 2009, the State of Louisiana made both chemicals Schedule V controlled substances; that those persons who distribute these substances "must possess a license issued by the Louisiana Board of Pharmacy"; that Respondent "does not possess" the necessary license; and that DEA must therefore revoke its registration. Show Cause Order at 1 (citing 21 U.S.C. 824(a)(3), La. Rev. Stat. Ann. §§ 40:973 & 40:1049.1).

On February 18, 2010, Respondent requested a hearing on the allegations. In his letter, Respondent's owner stated that it had "stopped distributing ephedrine products prior to August 15, 2009 and do[es] not plan to distribute any as long as Act 314 * * * is in effect. My registration certificate will expire in March 2010 and we do not plan to renew it because we can not distribute legally." Letter of Robert Howerter to Hearing Clerk (Jan. 28, 2010). Mr. Howerter further wrote: "We do not understand why the DEA is revoking a certificate we can not use and will expire in a little over a month especially since we do not plan to renew it." *Id.* "As a token of [his] good faith," Mr. Howerter "attached [his] certificate to [his] letter." *Id.*

The matter was then placed on the docket of the DEA Office of

Administrative Law Judges (ALJs), and on February 22, 2010, the ALJ ordered the Government to determine whether Respondent had filed a timely renewal application and to provide evidence supporting its allegation that Respondent lacked the requisite State authority. Order Directing the Government To Provide Proof That Respondent Lacks State Authority To Handle Controlled Substances and Briefing Schedule, at 1.

Two days later, the Government moved for summary disposition or to dismiss on the grounds of mootness. Therein, the Government noted that it had determined that Respondent's registration "expires on March 31, 2010" and that, "[a]s of the date of this filing, Respondent has not filed an application for renewal of its registration, and in its request for a hearing Respondent admitted that it does not plan to renew its DEA registration." Motion for Summ. Disp., at 2. While the Government also provided a copy of a letter from the Louisiana Board of Pharmacy to a Diversion Investigator stating that Respondent does not hold a Louisiana Controlled Dangerous Substances License and argued that "DEA must therefore revoke Respondent's DEA registration," the Government also observed that "[d]ismissal of this matter will also be appropriate * * * after March 31, 2010, on grounds of mootness, if Respondent does not apply for renewal of its registration." *Id.* at 3-4.

Respondent did not file a response to the Government's motion. ALJ Dec. at 2. On March 8, 2010, the ALJ granted the Government's motion for summary disposition based on Respondent's lack of authority under State law to handle listed chemicals. *Id.* at 5-6. However, the ALJ also noted that under Agency precedent, "[i]f a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke." *Id.* at 2 (quoting *David L. Wood, M.D.*, 72 FR 54936, 54937 (2007) (quoting *Ronald J. Riegel, D.V.M.*, 63 FR 67132, 67133 (1998))). Noting that the Agency's regulation imposes a 25-day period to allow the parties to file exceptions prior to the ALJ's forwarding of the record to my Office for final agency action, the ALJ observed that by the time a decision is issued "on the proposed revocation * * * there will be nothing to revoke and the issue will be moot." *Id.* at n.2. The ALJ thus explained that "dismissal of this proceeding on mootness grounds * * * will be required when the matter is transmitted to" me. *Id.* at 2.

Having taken Official Notice of the registration records of the Agency, I find that Respondent's registration expired on March 31, 2010, and that Mr. Howerter was true to his word that Respondent did "not plan to renew it." Because Respondent's registration has now expired and there is no pending renewal application, there is neither a registration, nor an application, to act upon. Accordingly, the case is now moot. *See, e.g., Riegel*, 63 FR at 67133.

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) and 0.104, I order that the Order To Show Cause issued to Louisiana All Snax, Inc., be, and it hereby is, dismissed. This order is effective immediately.

Dated: April 1, 2011.

Michelle M. Leonhart,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10-25]

Calvin Ramsey, M.D.; Revocation of Registration

On December 18, 2009, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Calvin Ramsey, M.D. (Respondent), of Millington, Tennessee. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, AR7086689, as a practitioner, and the denial of any pending application to renew or modify the registration, on the ground that he does not "have authority to practice medicine or handle controlled substances in the State of Mississippi," the State in which he is registered with DEA.¹ Show Cause Order at 1 (citing 21 U.S.C. 823(f) and 824(a)(4)).

On January 8, 2010, Respondent, who is currently incarcerated at the Federal Correctional Institute Memphis Satellite Camp in Millington, Tennessee, requested a hearing on the allegations.²

¹ The Order also alleged that Respondent's Registration does not expire until April 30, 2012. Show Cause Order at 1. Because Respondent does not dispute this, I find that he has a current registration.

² Therein, Respondent also requested that the Administrative Law Judge "issue a writ of Habeas Corpus to allow [him] to have a personal hearing in Springfield, Virginia in the interest of true [j]ustice." Response to Order to Show Cause, at 2.