

Sam F. Moore, D.V.M. 58 FR 14428 (1993).

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. There is no dispute that the Respondent is currently without authorization to handle controlled substances in Tennessee. Therefore, it is well settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. *See* Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1983), *aff'd* sub nom *Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers*, AFL-CIO, 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AG0387604, issued to Francis A. Goswitz, M.D. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of the aforementioned registration be, and they hereby are, denied. This order is effective June 9, 2003.

Dated: April 21, 2003.

John B. Brown III,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 01-30]

Michael D. Jackson, M.D.; Revocation of Registration

On June 8, 2001, the then-Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause, Immediate Suspension of Registration to Michael Delano Jackson, M.D. (hereinafter referred to as "Respondent") of the Myrtle Beach Medical Center in Myrtle Beach, South Carolina. The Order to Show Cause notified the Respondent of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BJ5063532 pursuant to 21 U.S.C. 824(a)(4) and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f),

for reason that Respondent's continued registration with DEA would be inconsistent with the public interest.

Specifically, the Order to Show Cause outlined numerous allegations related to *inter alia*, the Respondent issuing various Schedules II through IV controlled substances for no legitimate medical purpose. Included among the drug purportedly prescribed in this fashion was OxyContin, a heavily abused Scheduled II narcotic controlled substance. The Order to Show Cause further notified the Respondent of the immediate suspension of his DEA Certificate of Registration, with the suspension to remain in effect until the final determination was reached in this matter.

By letter dated June 20, 2001, the Respondent acting *pro se* requested a hearing on the matter raised in the Order to Show Cause. Following the filing of various pre-hearing submissions by the respective parties, on May 22, 2002, the Government filed Government's Request for Stay of Proceedings and Motion for Summary Judgment (Motion). The Government asserted in its motion that the Respondent was without state authority to handle controlled substances in the State of South Carolina as well as in Alabama where he has apparently relocated his medical practice. On May 28, 2002, the presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued a Memorandum to Counsel and Ruling on Motion affording the Respondent until June 11, 2002, to respond to the Government's Motion. However, the Respondent did not file a response.

On June 13, 2002, Judge Bittner issued her Opinion and Recommended Ruling of the Administrative Law Judge (Opinion and Recommended Ruling) where she granted the Government's Motion for Summary Disposition and found that the Respondent lacks authorization to handle controlled substances in South Carolina. In granting the Government's motion, Judge Bittner further recommended that the Respondent's DEA registration be revoked and any pending applications for modification or renewal be denied. Neither party filed exceptions to the Administrative Law Judge's Opinion and Recommended Decision, and on July 17, 2002, Judge Bittner transmitted the record of these proceedings to the Office of the Deputy Administrator. Following a review of the record in this proceeding, the Deputy Administrator now enters his final order pursuant to 21 CFR 1301.46.

The Deputy Administrator finds that the South Carolina Department of

Health and Environmental Control (DHEC), Bureau of Drug Control, maintains a database of practitioners in South Carolina who possess valid state authority to handle controlled substances. On May 17, 2002, a DEA Diversion Investigator assigned to the agency's South Carolina District Office contacted DHEC and inquired whether the Respondent possessed state authority to handle controlled substances in that state. The investigator was informed that on June 14, 2001, DHEC revoked Respondent's state controlled substance license following the suspension of his DEA Certificate of Registration. DHEC divulged further that the Respondent surrendered his state medical license on June 29, 2001, and as a consequence, he lacks authority to handle controlled substances in South Carolina.

The Deputy Administrator's review of the records of the Alabama State Board of Medical Examiners reveals that the Respondent was also issued a controlled substance certificate in that state on June 29, 2001. That certificate expired on December 31, 2001. There is no evidence in the record that the Respondent's South Carolina medical license or his Alabama controlled substances certificate have been reinstated. It is clear that the Respondent lacks controlled substance authority in Alabama. In addition, since the Respondent is not currently authorized to practice medicine in the State of South Carolina, the Deputy Administrator finds it reasonable to infer that he is not authorized to handle controlled substances in that state as well.

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* Joseph Thomas Allevi, M.D., 67 FR 35581 (2002); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that the Respondent is not licensed to handle controlled substances in South Carolina where he is registered with DEA, or in Alabama, where he has apparently relocated his medical practice. Therefore, the Respondent is not entitled to maintain his DEA Certificate of Registration. Because he is not entitled to a DEA registration due to his lack of state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to

address whether the Respondent's registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause. *See* Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BJ5063552, issued to Michael D. Jackson, 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 9, 2003.

Dated: April 21, 2003.

John B. Brown, III,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Kenneth S. Nave, M.D.; Denial of Application

On April 10, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Kenneth S. Nave, M.D. (Dr. Nave) of Chicago, Illinois, notifying him of an opportunity to show cause as to why DEA should not deny his pending application for DEA Certificate of Registration, pursuant to 21 U.S.C. 823(f) for reason that such registration would be inconsistent with the public interest. The Order to Show Cause also notified Dr. Nave that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Nave at his proposed registered location in Chicago, Illinois. The order was returned to DEA on June 10, 2002 by the United States Postal Service indicating that it had been "unclaimed." On June 11, 2002, DEA resent the show cause order to the same address by regular mail. The order was not returned. DEA has not received a request for hearing or any other reply from Dr. Nave or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the attempted delivery of the Order to Show Cause at the applicant's last known address, and (2) no requests for hearing having been

received, concludes that Dr. Nave is deemed to have waived his hearing right. *See* David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator's review of the investigative file reveals that on January 3, 2002, the Illinois Medical Disciplinary Board (Board) issued its Findings of Fact, Conclusions of Law and Recommendation (Recommendation) to the Director of the State Department of Professional Regulation (Director). Following its finding of a "long history of chemical dependency with several relapses" the Board recommended the indefinite suspension of Dr. Nave's Physician and Surgeon's license for a period of one year. The Director adopted the Board's Recommendation and effective March 5, 2002, ordered the indefinite suspension of Dr. Nave's Physician and Surgeon's license as well as his Controlled Substance license for a minimum period of one year.

The Deputy Administrator's review of a DEA investigative report further revealed that as of April 3, 2003, Dr. Nave's Physician and Surgeon and Controlled Substance licenses remained suspended in the State of Illinois. As of the date of this final order, there is no evidence in the record that these licenses have been reinstated. Therefore, the Deputy Administrator finds that Dr. Nave currently lacks state authorization to practice medicine and handle controlled substances in Illinois.

DEA does not have statutory authority under the Controlled Substances Act to issue a registration if the applicant 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). The Deputy Administrator and his predecessors have consistently so held. *See* Douglas L. Geiger, M.D., 67 FR 64418 (2002); Theodore T. Ambadgis, M.D., 58 FR 5759 (1993); Ihsan A. Karaagac, M.D., 51 FR 34694 (1986).

Here, it is clear that Dr. Nave is not licensed to handle controlled substances in Illinois, where he seeks registration with DEA. Therefore, he is not entitled to such registration. Because Dr. Nave lacks state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address whether or not his application for DEA registration should be denied based upon the public interest grounds asserted in the Order to Show Cause. *See* Samuel Silas Jackson,

D.D.S., 67 FR 65145 (2002); Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997); Sam F. Moore, D.V.M., 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certification of Registration, submitted by Kenneth S. Nave, M.D., be, and it hereby is, denied. This order is effective June 9, 2003.

Dated: April 21, 2003.

John B. Brown III,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Fereida Walker-Graham, M.D.; Revocation of Registration

On August 16, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Fereida Walker-Graham, M.D. (Dr. Walker-Graham) at her registered location in Trotwood, Ohio, and at a second location in Dayton, Ohio. The Order to Show Cause notified Dr. Walker-Graham of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, BW2846256 under 21 U.S.C. 824(a)(2), (a)(3), and (a)(4), and deny any pending applications for renewal or modification of that registration for reason that Dr. Walker-Graham was convicted of a felony offense related to controlled substances, is not authorized to handle controlled substances in the State of Ohio, and her continued registration would be inconsistent with the public interest. The order also notified Dr. Walker-Graham that should no request for a hearing be filed within 30 days, her hearing right would be deemed waived.

As alluded to above, the Order to Show Cause was sent by certified mail to Dr. Walker-Graham at a location in Dayton, Ohio, and DEA received a signed receipt indicating that it was received sometime in August 2001. DEA has not received a request for hearing or any other reply from Dr. Walker-Graham or anyone purporting to represent her in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing