

September 2001, Dr. Clair sought to renew his DEA registration when he submitted an undated application for renewal. In response to a question on the application which asks the applicant whether he has ever had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, Dr. Clair replied in the affirmative. He supplemented that response with a written explanation where he asserted that his Maryland dental license had been revoked in August 2000 for a period of five years, but the revocation action was "not related in any way to the prescribing of controlled substances." Dr. Clair further wrote that he is " * * * actively licensed in [Florida] and [Massachusetts]."

The Deputy Administrator's review of the investigative file reveals that on September 17, 2001, the State of Florida Board of Dentistry (Dental Board) entered a Final Order revoking Dr. Clair's state license to practice dentistry. The Dental Board's action was taken in response to the revocation of Dr. Clair's license to practice in the State of Maryland on August 12, 1999. The Dental Board also based its action in part upon findings that while practicing dentistry in Maryland, Dr. Clair performed unnecessary dental procedures on patients and encourage dentists who worked for him to do the same.

Despite assertions of professional good standing in Florida which accompanied his most recent DEA renewal application, there is no evidence before the Deputy Administrator to rebut findings that Dr. Clair's Florida dental license has been revoked and has not been reinstated. Therefore, the Deputy Administrator finds that since Dr. Clair is not currently authorized to practice dentistry in Florida, it is reasonable to infer that he is not authorized 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 he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Richard J. Clement, M.D., 68 FR 12103 (2003); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Clair is not licensed to handle controlled substances in Florida, where he is registered with

DEA. Therefore, he is not entitled to maintain that registration.

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, BC1867172, issued to Michael Jerome Clair, D.D.S., be, and it hereby is, revoked. The Deputy Administrator further orders that Dr. Clair's pending application for renewal of the aforementioned registration 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

[Docket No. 02-41]

Jacqueline Cleggett-Lucas, M.D., JCL Enterprises, L.L.C., Revocation of Registration

On March 21, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jacqueline Cleggett-Lucas, M.D., and JCL Enterprises, L.L.C. (Respondents)¹, proposing to revoke her DEA Certificate of Registration, BC3404681, pursuant to 21 U.S.C. 824(a)(4) and deny any pending applications for renewal or modification of such registration under 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged that the Respondents' continued registration would be inconsistent with the public interest and that the Respondent was no longer authorized to handle controlled substances in Louisiana, the State in which she practices.

By letter dated April 24, 2002, the Respondents, through legal counsel, requested a hearing in this matter. In the request for hearing, the Respondents legal counsel argued that "(Respondents) have not been found guilty of 'prescribing large amounts of controlled substances in an

inappropriate (manner) to many people who do not [have] proven indications for the need of pain alleviating drugs.' " The Respondents further asserted that any decision involving the DEA license at issue should be withheld pending the outcome of a scheduled hearing before the Louisiana State Board of Medical Examiners (Board).

On May 31, 2002, the Government filed Government's Motion for Summary Disposition and a request for stay of proceedings pending a ruling on its motion. On June 3, 2002, the presiding Administrative Law Judge Gail A. Randall (Judge Randall) issued an Order providing Respondents until June 24, 2002, to respond to the Government's motion. However, the Respondents did not file a response.

On July 19, 2002, Judge Randall issued her Opinion, Order, 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 Respondents lack authorization to handle controlled substances in the State of Louisiana. In granting the Government's motion, Judge Randall also recommended that the Respondents' DEA registration be revoked and any pending applications for renewal be denied. Neither party filed exceptions to her Opinion and Recommended Ruling, and on October 29, 2002, Judge Randall transmitted the record of these proceedings to the Office of the Deputy Administrator. The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Deputy Administrator finds that the Respondents are currently registered as a practitioner under DEA Certificate of Registration BC3404681. That registration was issued under the names of two separate entities at an address in New Orleans, Louisiana. On February 14, 2002, the Board issued its Order for Summary Suspension of Medical License with respect to the Respondents' Louisiana medical license. The Board's action was based on a finding that the Respondent inappropriately prescribed "large amounts of controlled drugs" to individuals for no legitimate medical purpose. While the Civil District Court of Louisiana granted the Respondents' subsequent request for stay of the Board's suspension order, that same court lifted the stay on February 22, 2002, and reinstated the suspension of Respondents' medical license.

¹ In her July 19, 2002, Opinion, Order, and Recommended Ruling, Administrative Law Judge Gail A. Randall noted that for purposes of these proceedings, the two names represented herein are separate entities who obtained a single DEA registration by virtue of Dr. Cleggett-Lucas' ability to handle controlled substances. The Deputy Administrator hereby adopts that finding for purposes of this final ruling.

Notwithstanding the Respondents' request that DEA withhold its decision regarding her Certificate of Registration pending completion of a Board hearing, there is no evidence before the Deputy Administrator that the Board has taken any action to lift the current suspension of the Respondent's medical license.

In her Opinion and Recommended Ruling, Judge Randall found that the Respondent is without State authority to handle controlled substances. The Deputy Administrator adopts the finding of the Administrative Law Judge.

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 *Muttaiya Darmarajeh*, M.D.; 66 FR 52936 (2001); *Dominick A. Ricci*, M.D., 58 FR 51104 (1993); *Bobby Watts*, M.D., 53 FR 11919 (1988).

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. There is no dispute that the Respondents are currently without authorization to handle controlled substances in Louisiana. 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 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BC3404681, issued to Jacqueline Cleggett-Lucas, M.D. and JCL Enterprises, L.L.C. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal 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

[Docket No. 02-52]

Francis A. Goswitz, M.D.; Revocation of Registration

On June 24, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Francis A. Goswitz, M.D. (Respondent), proposing to revoke his DEA Certificate of Registration, AG0387604, pursuant to 21 U.S.C. 824(a). The Order to Show Cause alleged, *inter alia*, that the Respondent's Tennessee State medical license had been suspended.

By letter dated July 19, 2002, the Respondent, through legal counsel, requested a hearing in the matter. In the request for hearing, the Respondent's legal counsel acknowledged that the Respondent's medical license had been suspended by the Tennessee Department of Health, but argued that the matter "is pending, and a hearing on the merits has not yet been held."

On August 13, 2002, the Government filed a Motion for Summary Disposition and Stay of Proceedings, arguing that as of August 6, 2002, the Respondent's medical license remained suspended. On August 15, 2002, the presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued a Memorandum to Counsel staying the filing of prehearing statements and providing the Respondent until September 4, 2002, to respond to the Government's motion. However, the Respondent did not file a response to the motion.

On October 8, 2002, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision) where she granted the Government's motion for summary disposition and found that the Respondent lacked authorization to handle controlled substances in the State of Tennessee. In granting the Government's motion, Judge Bittner also recommended that the Respondent's DEA Certificate of Registration be revoked and any pending applications for modification or renewal of that registration be denied. Neither party filed exceptions to her Opinion and Recommended Decision, and on November 12, 2002, Judge Bittner transmitted the record of these proceedings to the Office of the Deputy Administrator for a final agency decision.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Deputy Administrator finds that the Respondent is currently registered as a practitioner under DEA Certificate of Registration AG0387604. On February 14, 2002, the Tennessee Board of Medical Examiners (Board) issued an Order of Summary Suspension with respect to the Respondent's Tennessee medical license. The Board's action was based in part upon a finding that the Respondent engaged in inappropriate sexual conduct with a patient, and subsequently attempted to influence her testimony by offering the patient money. The Board also found that in September 2001, the Respondent dispensed to a patient and her husband the controlled substances hydrocodone and alprazolam, for no legitimate medical purpose.

In its Motion for Summary Disposition, the Government attached a declaration from the Administrator of the Board, who asserted that the Respondent's Tennessee medical license remains suspended. Judge Bittner agreed with the Government that the Respondent is without state authority to handle controlled substances in Tennessee, and accordingly, granted the Government's Motion for Summary Disposition.

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 *Muttaiya Darmarajeh*, M.D., 66 FR 52936 (2001); *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 Tennessee, the state where he currently holds a DEA registration. Therefore, he is not entitled to maintain that registration. Because the Respondent lacks state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address whether or not his Certificate of Registration should be revoked based upon allegations of his improper dispensing of controlled substances and other public interest grounds alleged in the Order to Show Cause. See *Samuel Silas Jackson*, D.D.D., 67 FR 65145 (2002); *Nathaniel-Aikens-Afful*, M.D., 62 FR 16871 (1997);