On September 26, 2001, the Texas Department of Public Safety (DPS) notified Dr. Clark of the cancellation of his state Controlled Substances Registration Certificate number Y0042101. The action by DPS was initiated based upon Dr. Clark's failure to meet a necessary precondition for a Texas controlled substance registration—a medical license with the Board that was current and in good standing.

The above referenced Order to Show Cause—Notice of Immediate Suspension further alleged, and a review of information in the investigative file suggests, that Dr. Clark materially falsified his August 16, 2001 application for renewal of his DEA registration by failing to disclose information regarding the suspension of his Texas medical license. The investigative file also reveals that Dr. Clark continued issuing prescriptions for controlled substances despite the lack of state authorization to practice medicine or handle controlled substances, and being advised by DEA personnel on August 30, 2001, to cease writing such prescriptions.

There is no evidence in the record that the Board has lifted the suspension of Dr. Clark's medical license or that his Texas State Controlled Substances Certificate has been reinstated. Therefore, the Acting Administrator finds that Dr. Clark is not currently 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 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 Dr. Clark is not licensed to handle controlled substances in Texas, where he is registered with DEA. Therefore, he is not entitled to maintain that registration. Because Dr. Clark is not entitled to a DEA registration in Texas due to his lack of state authorization to handle controlled substances, the Acting Administrator concludes that it is unnecessary to address whether Dr. Clark's registration should be revoked based upon the other grounds asserted in the Order to Show Cause—Notice of Immediate Suspension. *See Fereida Walker-Graham, M.D.,* 68 FR 24761 (2003); *Nathaniel-Aikens-Afful, M.D.,* 62 FR 16871 (1997); *San F. Moore, D.V.M.,* 58 FR 14428 (1993).

Accordingly, the Acting 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, AC1074892, issued to Cordell Clark, M.D., be, and it hereby is, revoked. The Acting Administrator further orders that any pending application for renewal or modification of such registration be, and they hereby are, denied. This order is effective September 15, 2003.

Dated: July 28, 2003.

William B. Simpkins,

Acting Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02–50]

Kanwaljit S. Serai, M.D.; Revocation of Registration

On June 28, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Kanwaljit S. Serai, M.D. (Respondent). 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, AS1852715, and deny any pending applications for renewal or modification of that registration. The Order to Show alleged in relevant part that the Respondent is not authorized to handle controlled substances in the State of Florida pursuant to 21 U.S.C. 824(a)(3), and his continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 824(a)(4) based, in part, upon allegations that the Respondent inappropriately treated five patients, and that on April 17, 2001, he was arrested and charged with six counts of delivery of a controlled substance.

By letter dated July 17, 2002, the Respondent, through counsel, requested a hearing in this matter. On July 30, 2002, the presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued an Order for Prehearing Statements. However, in lieu of filing a prehearing statement, the Government filed Government's Motion for Summary Judgement and Stay of Proceedings, arguing that the Respondent is without authorization to handle controlled substances in the State of Florida, and as a result, further proceedings in the matter were not required. Attached to the Government's motion was an Order of Emergency Suspension of License dated August 27, 2001, whereby the State Florida Department of Health (Department of Health) ordered the immediate suspension of the Respondent's license to practice medicine in that state.

On August 15, 2002, Judge Bittner issued a Memorandum to Counsel staying the filing of prehearing statements and afforded the Respondent until September 4, 2002, to respond to the Government's Motion. The Respondent did not file a response.

On September 18, 2002, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Bittner granted the Government's Motion for Summary Disposition and found that the Respondent lacked authorization to handle controlled substances in the State of Florida, the jurisdiction in which he is registered with DEA.

In granting the Government's motion, Judge Bittner also recommended that the Respondent's DEA registration be revoked and any pending applications for modification or renewal be denied. Neither party filed exceptions to her Opinion and Recommended Decision, and on October 28, 2002, Judge Bittner transmitted the record of these proceedings to the Office of the DEA Deputy Administrator.

The Acting 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 Acting Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Acting Administrator finds that the Respondent currently possesses DEA Certificate of Registration AS1852715, and is registered at an address in Tallahassee, Florida. That registration remains valid until February 28, 2004.

The Acting Administrator further finds that on August 27, 2001, the Department of Health issued an Order of Emergency Suspension of License suspending the Respondent's license to practice medicine. The Acting Administrator's review of the Department of Health's suspension order reveals that in or around January 2000, the Respondent was found to have delivered controlled substances to

several patients as well as to an undercover law enforcement agent without medical justification. In further support of its suspension action, the Department of Health also found that the Respondent engaged in sexual misconduct with respect to his treatment of a patient.

There is no evidence before the Acting Administrator that the suspension of the Respondent's medical license has been stayed or lifted. Therefore, the Acting Administrator finds that the Respondent is currently suspended from the practice of medicine in the State of Florida and as a result, it is reasonable to infer that he is also without authorization to handle controlled substances in that state.

Pursuant to 21 U.S.C. 824(a), the Acting Administrator may revoke a DEA Certificate of Registration if he finds that the registrant has had his state license revoked and is no longer authorized to dispense controlled substances or has committed such acts as would render his registration contrary to the public interest as determined by factors listed in 21 U.S.C. 823(f). *Thomas B. Pelkowski, D.D.S.,* 57 FR 28538 (1992). Nevertheless, despite the findings of the Florida Department of Health related to the Respondent's inappropriate handling of controlled substances, his sexual misconduct with a patient, as well as other public interest factors for the revocation of his DEA registration asserted herein, the more relevant consideration here is the present status of the Respondent's state authorization to handle controlled substances.

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, MD.,* 67 FR 35581 (2002); *Dominick A. Ricci, MD.,* 58 FR 51104 (1993); *Bobby Watts, MD.,* 53 FR 11919 (1988).

Here, it is clear that the Respondent is not licensed to handle controlled substances in Florida, the state where he currently possesses a DEA registration. Therefore, the Respondent is not entitled to maintain that registration. Because the Respondent lacks state authorization to handle controlled substances, the Acting Administrator concludes that it is unnecessary to address whether the Respondent's DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause. *See Samual Silas Jackson,* 67 FR 65145 (2002); *Nathaniel-Aikens-Afful, MD.,* 62 FR 16871 (1997); *Sam F. Moore, D.V.M.,* 58 FR 14428 (1993).

Accordingly, the Acting 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, AS1852715, issued to Kanwaljit S. Serai, M.D., be, and it hereby is, revoked. The Acting Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective September 5, 2003.

Dated: July 28, 2003.

William B. Simpkins,

Acting Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Karen Joe Smiley, M.D.; Revocation of Registration

On September 13, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Karen J. Smiley (Dr. Smiley), notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, BS5832868 under 21 U.S.C. 824(a)(3), and deny any pending applications for that registration, pursuant to 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged that Dr. Smiley was not currently authorized to practice medicine or handle controlled substances in Tennessee, the State in which she practices. The order also notified Dr. Smiley that should no request for a hearing be filed within 30 days, her hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Smiley at her registered location in Lexington, Tennessee. The show cause order was subsequently returned to DEA unclaimed with a post office notation ''Returned to Sender—Not Deliverable as Addressed'' stamped to the mailing envelope. According to the investigative file, DEA has made diligent attempts to locate Dr. Smiley and serve her with the Order to Show Cause, but such attempts have not met with success. Her current whereabouts are unknown. DEA has not received a request for hearing or any other reply from Dr. Smiley or anyone purporting to represent her in this matter.

Therefore, the Acting Administrator of DEA, finding that (1) thirty days having passed since the attempted delivery of the Order to Show Cause at Dr. Smiley's registered address, (2) the Order to Show Cause having been returned and DEA's unsuccessful attempts at redelivery of the same, and (3) no request for hearing having been received, concludes that Dr. Smiley is deemed to have waived her hearing right. *See David W. Linder,* 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Acting Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Administrator finds that Dr. Smiley currently possesses DEA Certificate of Registration BS5832868, and that registration remains valid until February 29, 2004. A review of the investigative reveals that on September 19, 2001, a majority of a quorum of the Tennessee Board of Medical Examiners (Board) approved an Order of Permanent Revocation of the medical license of Dr. Smiley in that state. The matter involving the disposition of Dr. Smiley's Tennessee medical license came before the Board pursuant to an earlier Notice of Charges and Memorandum of Assessment of Civil (Notice of Charges) with respect to Dr. Smiley's medical license. In the Notice of Charges, it was alleged, and the Board subsequently found that Dr. Smiley was ''guilty of gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of medical practice.'' Specifically, the Board found, among other things, that Dr. Smiley violated the Board's statutes governing the dispensing and/or prescribing of controlled substances.

The investigative file contains no evidence that the Board's Order of Permanent Revocation has been stayed or that Dr. Smiley's medical license has been reinstated. Therefore, the Acting Administrator finds that Dr. Smiley is not currently authorized to practice medicine in the State of Tennessee. 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 he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently