United States District Judge

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

**[Docket No. 10–60]**

## Robert G. Crummie, M.D.; Decision and Order

On July 9, 2010, Administrative Law Judge (ALJ) Timothy D. Wing, issued the attached recommended decision. The Respondent did not file exceptions to the decision.

Having reviewed the record in its entirety including the ALJ's recommended decision, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended Order.

### 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 DEA Certificate of Registration, BC2964965, issued to Robert G. Crummie, M.D., be, and it hereby is, revoked. I further order that any pending application of Robert G. Crummie, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[1]

Dated: November 8, 2011.

**Michele M. Leonhart,**

*Administrator.*

*Christine Menendez, Esq.,* for the Government.

*Ryan G. Cason Crummie, Esq.,* for the Respondent.

### Opinion and Recommended Decision of the Administrative Law Judge

Timothy D. Wing, Administrative Law Judge. This proceeding is an adjudication governed by the Administrative Procedure Act, 5 U.S.C. 551 *et seq.,* to determine whether Respondent's Certificate of Registration with the Drug Enforcement Administration (DEA) should be revoked and any pending applications for renewal or modification of that registration denied. Without this registration, Respondent, Robert G. Crummie, M.D., would be unable to lawfully possess, prescribe, dispense, or otherwise handle controlled substances.

On May 27, 2010, the Deputy Assistant Administrator, Office of Diversion Control, DEA, issued an Order to Show Cause why the DEA should not revoke Respondent's DEA Certificate of Registration, BC2964965, on the ground that Respondent lacked authority to handle controlled substances in North Carolina, the state in which he maintained his DEA registration. Respondent, through counsel, timely requested a hearing on the issues raised in the Order to Show Cause.

The Government subsequently filed a Motion for Summary Disposition, asserting that on March 17, 2010, the North Carolina Medical Board indefinitely suspended Respondent's medical license, effective April 2, 2010, and that Respondent consequently did not have authority to possess, dispense or otherwise handle controlled substances in North Carolina, the jurisdiction in which he maintained his DEA registration. The Government contended that such state authority is a necessary condition for DEA registration and therefore asked that I grant the Government's motion for summary disposition and recommend to the Deputy Administrator that Respondent's registration be revoked and any pending application for renewal or modification of such registration be denied. Counsel for the Government attached to the motion two supporting documents: (1) An Affidavit of Stephanie A. Evans, DEA Diversion Investigator, affirming that she had confirmed with the North Carolina Medical Board that Respondent's medical license had not been reinstated as of July 9, 2010 and (2) a copy of the North Carolina Medical Board's Findings of Fact, Conclusions of Law and Order of Discipline regarding Respondent, indicating that Respondent's North Carolina medical license was suspended indefinitely, beginning April 2, 2010.

On July 14, 2010, I issued an order directing Respondent to reply to the Government's motion no later than July 20, 2010. On July 20, 2010, Respondent filed a Motion for Enlargement of Time to respond to the Government's motion, requesting an extension of time until August 20, 2010, on the grounds that counsel for Respondent needed ''additional time to consult with [Respondent] and prepare a response to the Government's motion.'' I afforded Respondent an extension of time until July 29, 2010, to reply to the Government's motion. To date, Respondent has failed to file a response to the Government's motion or to request an additional extension of time.

### Discussion

Loss of state authority to engage in the practice of medicine and to handle controlled substances is grounds to revoke a practitioner's registration under 21 U.S.C. 824(a)(3). Accordingly, this agency has consistently held that a person may not hold a DEA registration if he is without appropriate authority under the laws of the state in which he does business. *See Scott Sandarg, D.M.D.,* 74 FR 17528 (DEA 2009); *David W. Wang, M.D.,* 72 FR 54297 (DEA 2007); *Sheran Arden Yeates, M.D.,* 71 FR 39130 (DEA 2006); *Dominick A. Ricci, M.D.,* 58 FR 51104 (DEA 1993); *Bobby Watts M.D.,* 53 FR 11919 (DEA 1988). In the instant case, the Government asserts, and Respondent does not deny, that Respondent's North Carolina medical license is indefinitely suspended.

Summary disposition is warranted if the period of suspension is temporary, or if there is the potential for reinstatement of state authority because ''revocation is also appropriate when a state license had been suspended, but with the possibility of future reinstatement.'' *Stuart A. Bergman, M.D.,* 70 FR 33193 (DEA 2005); *Roger A. Rodriguez, M.D.,* 70 FR 33206 (DEA 2005).

It is well-settled that when no question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required, under the rationale that Congress does not intend administrative agencies to perform meaningless tasks. *See Layfe Robert Anthony, M.D.,* 67 FR 35582 (DEA 2002); *Michael G. Dolin, M.D.,* 65 FR 5661 (DEA 2000). *See also Philip E. Kirk, M.D.,* 48 FR 32887 (DEA 1983), aff'd *sub nom. Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *Puerto Rico Aqueduct and Sewer Auth.* v. *EPA,* 35 F.3d 600, 605 (1st Cir. 1994).

As noted above, there remain no material disputed facts. The Government asserted with uncontroverted evidence that Respondent is without state authority to handle controlled substances in North Carolina at the present time. In these circumstances, I conclude that further delay in ruling on the Government's motion for summary disposition is not warranted. I therefore find that the motion for summary disposition is properly entertained and granted.

Further, inasmuch as Respondent has failed to respond to the directives issued in this proceeding, and has not shown good cause for such failure, I also find that Respondent has waived his right to a hearing under 21 CFR 1301.43(d).

[1] Based on the findings of the North Carolina Medical Board, which led it to impose an indefinite suspension of Respondent's state medical license, I conclude that the public interest requires that this Order be made effective immediately. *See* 21 CFR 1316.67.

**Recommended Decision**

I grant the Government's Motion for Summary Disposition and recommend that Respondent's DEA registration be revoked and any pending applications denied.

Dated: July 30, 2010.

**Timothy D. Wing,**

*Administrative Law Judge.*

[FR Doc. 2011–29721 Filed 11–16–11; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 11–3]**

### Silviu Ziscovici, M.D.; Decision and Order

On December 10, 2010, Administrative Law Judge (ALJ) Timothy D. Wing, issued the attached recommended decision. The Respondent did not file exceptions to the decision.

Having reviewed the record in its entirety including the ALJ's recommended decision, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended Order.

**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 DEA Certificate of Registration, BZ4692756, issued to Silviu Ziscovici, M.D., be, and it hereby is, revoked. I further order that any pending application of Silviu Ziscovici, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[1]

Dated: November 8, 2011.

**Michele M. Leonhart,**

*Administrator.*

Christine M. Menendez, Esq., for the Government

Peter D. Greenspun, Esq., for the Respondent

**Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge**

Timothy D. Wing, Administrative Law Judge. This proceeding is an adjudication governed by the Administrative Procedure Act, 5 U.S.C. 551 *et seq.,* to determine whether Respondent's Certificate of Registration (COR) with the Drug Enforcement Administration (DEA) should be revoked and any pending applications for renewal or modification of that registration denied. Without this registration, Respondent Silviu Ziscovici, M.D. (Respondent), would be unable to lawfully possess, prescribe, dispense or otherwise handle controlled substances.

**I. Procedural Posture**

On September 15, 2010, the Deputy Administrator, DEA, issued an Order to Show Cause and Immediate Suspension (OSC/IS) of DEA COR BZ4692756, dated September 15, 2010, and served on Respondent on September 22, 2010. The OCS/IS alleged that Respondent's continued registration constitutes an imminent danger to the public health and safety. The OSC/IS also provided notice to Respondent of an opportunity to show cause as to why the DEA should not revoke Respondent's DEA COR BZ4692756 pursuant to 21 U.S.C. 824(a)(4), and deny any pending applications for renewal or modification, on the grounds that Respondent's continued registration would be inconsistent with the public interest under 21 U.S.C. 823(f). On October 18, 2010, Respondent, through counsel, in a letter dated October 15, 2010, timely requested a hearing with the DEA Office of Administrative Law Judges (OALJ).

I issued an Order for Prehearing Statements on October 19, 2010. The parties filed prehearing statements, and on November 23, 2010, I issued a Prehearing Ruling.

On December 2, 2010, the Government filed a Motion for Summary Disposition, with a copy served on Respondent via facsimile on December 2, 2010, and another copy sent via U.S. mail. On December 2, 2010, I issued an order staying the proceedings until the resolution of the Government's motion. Pursuant to the November 23, 2010 Order for Prehearing Statements, Respondent had until ''4:00 p.m. EST three business days after the date of service of [the Government's] motion[ ] to file a response * * * In the absence of good cause, failure to file a written response to the moving party's motion will be deemed a waiver of objection.'' (Prehearing Ruling at 6.)

As of December 10, 2010, six business days after service of the Government's motion for summary disposition, Respondent had not filed a response. Respondent is therefore deemed to waive any objection to the Government's motion. This waiver of objection does not mean that I will automatically grant the relief requested by the Government. Instead, I will carefully consider the merits of the Government's positions, taking into consideration Respondent's lack of objection, but only granting whatever relief may be warranted by the law and the facts.

**II. The Parties' Contentions**

*A. The Government*

In support of its motion for summary disposition, the Government asserts that on December 1, 2010, the Maryland State Board of Physicians[2] issued an order immediately suspending Respondent's Maryland medical license, and that Respondent consequently lacks authority to possess, dispense or otherwise handle controlled substances in Maryland, the jurisdiction in which he maintains his DEA registration. The Government contends that such state authority is a necessary condition for maintaining a DEA COR and therefore asks that I summarily recommend to the Deputy Administrator that Respondent's COR be revoked and any pending application for renewal or modification be denied. In support of its motion, the Government cites agency precedent and attaches the ''Order for Summary Suspension of License to Practice Medicine'' issued by the Maryland State Board of Physicians, marked for identification as Exhibit A.

*B. Respondent*

As noted above, Respondent did not respond to the Government's Motion for Summary Disposition or seek an extension within the deadline for response and is therefore deemed to waive objection.

**III. Discussion**

At issue is whether Respondent may maintain his DEA COR given that Maryland has suspended his state license to practice medicine.

Under 21 U.S.C. 824(a)(3), a practitioner's loss of state authority to engage in the practice of medicine and to handle controlled substances is grounds to revoke a practitioner's registration. Accordingly, this agency has consistently held that a person may not hold a DEA registration if he is without appropriate authority under the laws of the state in which he does business. *See Scott Sandarg, D.M.D.,* 74 FR 17,528 (DEA 2009); *David W. Wang, M.D.,* 72 FR 54,297 (DEA 2007); *Sheran*

[1] For the same reasons that led me to order that Respondent's registration be immediately suspended, I conclude that the public interest necessitates that this Order be effective immediately. *See* 21 CFR 1316.67.

[2] The Government refers to the Maryland medical licensing body as the ''Maryland Board of Medicine'' (Mot. Summ. Disp. at 1.) Government Exhibit A, however, suggests the correct name is the Maryland State Board of Physicians. (Gov't Ex. A at 1.)