Anthony, M.D., 67 FR 35,582 (DEA 2002); *Michael G. Dolin, M.D.,* 65 FR 5661 (DEA 2000); *see also Philip E. Kirk, M.D.,* 48 FR 32,887 (DEA 1983), *aff'd sub nom. Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984). *Accord Puerto Rico Aqueduct & Sewer Auth.* v. *EPA,* 35 F.3d 600, 605 (1st Cir. 1994).

In the instant case, the Government asserts, and Respondent concedes, that Respondent's Illinois license to practice medicine and handle controlled substances is suspended. This allegation is confirmed by Government Exhibit A. I therefore find there is no genuine dispute as to any material fact, and that substantial evidence shows that Respondent is presently without state authority to handle controlled substances in Illinois. I decline to delay ruling on the Government's motion, particularly in light of the fact that Respondent does not appear to have a scheduled hearing date before the IDFPR. *Compare Bergman,* 70 FR at 33,193 (noting that the ALJ delayed ruling on the Government's motion where the respondent had an evidentiary hearing scheduled before the state board). Because ''DEA does not have statutory authority under the Controlled Substances Act to maintain a registration if the registrant is without state authority to handle controlled substances in the state in which he practices,'' *Sheran Arden Yeates, M.D.,* 71 FR 39,130, 39,131 (DEA 2006), I conclude that summary disposition is appropriate. It is therefore

Ordered that the hearing in this case, scheduled to commence on March 6, 2012, is hereby *cancelled;* and it is further

Ordered that all proceedings before the undersigned are *stayed* pending the Agency's issuance of a final order.

Recommended Decision

I grant the Government's Motion for Summary Disposition and recommend that Respondent's DEA COR AN1255733 be revoked and any pending applications for renewal or modification be denied.[2]

Dated: December 23, 2011.

Timothy D. Wing,

Administrative Law Judge.

[FR Doc. 2012–12121 Filed 5–17–12; 8:45 am]

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[2] Notably, Respondent requests that I recommend the immediate suspension of his registration, rather than revocation, citing 21 U.S.C. 824(a)(4). (Resp't Mot. in Opp'n at 3.)

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 12–30]

James Edgar Lundeen, Sr., M.D.; Dismissal of Proceeding

On December 19, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to James Edgar Lundeen, Sr., M.D. (Respondent), of Uniontown, Ohio. The Order proposed the revocation of Respondent's DEA Certificate of Registration as a practitioner, and the denial of any pending application to renew or modify the registration, on the ground that Respondent does not have authority under Ohio law to practice medicine or dispense controlled substances. Show Cause Order at 1.

Following service of the Show Cause Order, Respondent requested a hearing. Thereafter, the Government moved for summary disposition; Respondent opposed the motion. On February 22, 2012, the ALJ granted the Government's motion, finding that there was no dispute as to the material fact that Respondent does not possess authority under Ohio law to dispense controlled substances and that he was therefore not entitled to hold his DEA registration. ALJ Dec. at 4–7. The ALJ thus recommended that Respondent's registration be revoked and that any pending application to renew or modify his registration be denied. *Id.* at 8. Neither party filed exceptions to the ALJ's decision and on March 20, 2012, the ALJ forwarded the record to me for Final Agency Action.

Upon review of the record, it was noted that the Government had alleged in the Show Cause Order that Respondent's registration was due to expire on March 31, 2012. Show Cause Order at 1. The record, however, contained no evidence as to whether Respondent had filed a renewal application.[1] Because in the absence of a timely renewal application, Respondent's registration would expire, *see* 5 U.S.C. 558(c), pursuant to 5 U.S.C. 556(e) and 21 CFR 1316.59, I have taken official notice of Respondent's registration record with the Agency.[2] According to this record, Respondent has not filed a renewal application. Accordingly, I find that Respondent's registration has expired.

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); *see also Thomas E. Mitchell,* 76 FR 20032, 20033 (2011). 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.[3]

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I hereby order that the Order to Show Cause issued to James Edgar Lundeen, Sr., M.D., be, and it hereby is, dismissed. This order is effective immediately.

Dated: May 4, 2012.

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–12118 Filed 5–17–12; 8:45 am]

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[1] Nor does the record contain a copy of Respondent's Registration or any other evidence establishing the Agency's jurisdiction. Henceforth, the ALJs should ensure that such evidence is submitted for the record prior to acting upon any dispositive motion.

[2] In accordance with the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding-even in the final decision.'' U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request to an opportunity to show to the contrary.'' 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). To allow Respondent the opportunity to refute the facts of which I take official notice, Respondent may file a motion for reconsideration within fifteen calendar days of service of this order which shall commence on the date this order is mailed.

[3] 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 dispense * * * controlled substances under the laws of the State in which he practices.''

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site visit review of the Materials Research Science and Engineering Center (MRSEC) at the University of Chicago by the Division of Materials Research (DMR) #1203.

Dates & Times: June 6, 2012; 6:00 p.m.–8:30 p.m.

June 7, 2012; 7:15 a.m.–8:30 p.m.

June 8, 2012; 7:15 a.m.–3:00 p.m.

Place: University of Chicago, Chicago, IL.

Type of Meeting: Part open.