South Carolina

Bamberg County

Bamberg Post Office, 11955 Heritage Hwy., Bamberg, 07000074

Darlington County

Dove Dale, Address Restricted, Darlington, 07000075

Utah

Carbon County

Verde Homestead, 233 200 East, Helper, 07000079

Davis County

Mills—Hancock House, (Centerville MPS), 571 S. 400 West, Centerville, 07000077

Salt Lake County

Copperton Community Methodist Church, 410 E. Hillcrest Rd., Copperton, 07000080

Evergreen Avenue Historic District, Roughly bounded by Evergreen Ave., 2300 East, 3300 South and 2700 East, East Mill Creek, 07000081

Sandy Historic District, (Sandy City MPS), Roughly bounded by State St. 9000 South, 700 East and Pioneer Ave., Sandy, 07000084

Weber County

Dumke, John F., and Lillia, House, 1607 Kiesel Ave., Ogden, 07000078

Virginia

Loudoun County

Locust Grove, 200 Locust Grove Dr., Purcellville, 07000083

Staunton Independent City

Western State Hospital (Boundary Increase), 301 Greenville Ave., SE. Corner of VA 11 and VA 250, Staunton, (Independent City), 07000082

Requests for removals has been made for the following resources:

Utah

Carbon County

Bruno, Giacomo and Maria, House and Farmstead, 524 N. Main St., Helper, 02000506

Iron County

Hunter, Joseph S., House, 86 E. Center St., Cedar City, 82004126

Salt Lake County

Bonnyview Elementary School, (Murray City, Utah MPS), 4984 S. 300 W., Murray, 01000473

Redman Van and Storage Company Building, (Sugar House Business District MPS), 1240 East 2100 South, Salt Lake City, 03000635

Shupe-Williams Candy Company Factory, 2605 Wall Ave., Ogden, 78002716

[FR Doc. E7–1295 Filed 1–26–07; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 06–39]

Gerald E. Dariah, M.D.; Revocation of Registration

On October 12, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Gerald E. Dariah, M.D. (Respondent) of Albany, Ga. The Show Cause Order proposed the revocation of Respondent's Certificate of Registration, BD4754683, as a practitioner, and to deny any pending application for renewal of the registration, on the grounds that Respondent's state medical license had been revoked, and that Respondent had committed acts that rendered his registration inconsistent with the public interest. See 21 U.S.C. 824(a)(3) & (4); *id.* section 823(f).

The Show Cause Order specifically alleged that Respondent had engaged in the pre-signing of prescriptions for controlled substances which were then issued to patients by Respondent's nurse. Show Cause Order at 2. The Show Cause Order further alleged that investigators from DEA and the Georgia Board of Medical Examiners (Board) had subsequently executed a search warrant at Respondent's office and seized approximately thirty blank pre-signed prescriptions. *See id.* The Show Cause Order also alleged that Respondent's nurse told investigators that each morning, Respondent provided her with four pages of blank, pre-signed prescriptions. *See id.*

The Show Cause Order next alleged that Respondent had authorized his staff to fill in and issue numerous pre-signed prescriptions between November 23rd and December 29, 2003, when he was traveling abroad. *See id.* The Show Cause Order alleged that during this period, Respondent's staff issued prescriptions for Schedule II controlled substances to several patients. *See id.*

Finally, the Show Cause Order alleged that on September 21, 2004, the Board issued an order which summarily suspended Respondent's medical license, that the order had not been stayed, and that his license had not been reinstated. *See id.* at 3. The Show Cause order thus alleged that Respondent was ''not currently authorized to handle controlled substances in the State of Georgia.'' *Id.* The Show Cause Order also informed Respondent of his right to a hearing. *Id.*

On November 15, 2005, Respondent, through his counsel, timely requested a hearing. Respondent's counsel also moved to stay the proceedings until a pending criminal case brought against him by the State of Georgia was resolved. Respondent's counsel further noted that Respondent had been out of the country for ''the past five and a half months'' and that ''[h]e anticipate[d] returning next month.'' Letter from Respondent's Counsel to Hearing Clerk (Nov. 15, 2005). Alternatively, Respondent's counsel sought an extension of time to respond to the Show Cause Order. ALJ Dec. at 1. The case was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner; the ALJ then issued a memorandum which offered the Government the opportunity to respond.

On January 9, 2006, the Government opposed Respondent's motions. Specifically, the Government noted that Respondent had failed to provide any information regarding the dates of his return to the country and the resolution of the State criminal proceeding. Gov. Resp. at 2. The Government further argued that because Respondent was unable to participate in a hearing he should be deemed to have waived his right to a hearing. *Id.* The Government urged the ALJ to deny Respondent's motions, to hold that Respondent had waived his right to a hearing, and to issue an order terminating the proceeding. *Id.* at 3.

On January 18, 2006, the ALJ denied Respondent's motions. The ALJ specifically noted that the motion had been filed more than two months earlier and that Respondent had subsequently failed to provide any information regarding ''the duration of his stay abroad'' and ''when the criminal matters will be resolved.'' ALJ Memorandum and Ruling 1 (Jan. 18, 2006). The ALJ thus denied both of Respondent's motions and issued an Order for Prehearing Statements. *Id.* at 2.

Thereafter, on February 8, 2006, the Government moved for summary disposition. The basis of the Government's motion was that Respondent's state medical license had been summarily suspended by the Georgia Board, the suspension had not been lifted, and it was undisputed that Respondent was not authorized to handle controlled substances in Georgia, the State in which he holds his DEA registration. Gov. Mot. for Summary Disposition at 2. The Government attached to its motion a copy of the Georgia Board's Order of Summary Suspension. Upon receipt of the Government's motion, the ALJ offered Respondent the opportunity to respond.

On March 15, 2006, Respondent filed a response. Respondent acknowledged that his state license had been

suspended but asserted that the state superior court had ruled that his alleged offenses were misdemeanors and not felonies and that he was currently in negotiations with the Board for the reinstatement of his license. Respondent's Response at 1. Respondent further contended that notwithstanding the suspension of his medical license, ''Georgia law allows unlicensed individuals to work as subordinates and laborers in the manufacturing, distributing, and dispensing of controlled substances.'' *Id.* at 3. Respondent further asserted that he was ''still eligible to apply for employment in the state as a physician's assistant, pharmacy technician, drug manufacturing employee or drug representative, among other occupations involving the handling of controlled substances.'' *Id.* Respondent maintained that ''[t]he fact that [21 U.S.C. 824(a)(3)] requires both action on the Respondent's license and an inability to engage in the manufacture, distribution, and dispensing of drugs would seem to indicate that suspension of one's license does not necessarily render the individual unable to handle controlled substances.'' *Id.* Respondent thus contended that there was an issue of fact presented and an evidentiary hearing was required. *Id.*

On April 17, 2006, the ALJ issued her opinion and recommended decision. The ALJ rejected Respondent's argument explaining that ''[i]mplicit in'' DEA's long-standing interpretation of the Controlled Substances Act ''is the assumption that the authority at issue is that inuring to the registrant as a practitioner, not whatever authority the state grants to individuals who do not hold a license to practice medicine.'' ALJ Dec. at 3. The ALJ further explained that ''[t]o hold otherwise would permit unlicensed physicians to maintain DEA registrations, contrary to the plain purpose of the CSA.'' *Id.*

The ALJ also found that it was undisputed that Respondent's state license was suspended and that he was without authority to handle controlled substances as a practitioner. *Id.* Because there was no factual issue in dispute, the ALJ granted the Government's motion for summary disposition and recommended that Respondent's DEA registration be revoked. *Id.* at 4.

Having considered the record as a whole, I hereby issue this decision and final order. I adopt the ALJ's opinion and recommended decision.

Respondent's contention that he is entitled to maintain his DEA registration notwithstanding that he lacks authority under Georgia law to practice medicine is easily dismissed. Even assuming that Georgia law allows Respondent to engage in some activities involving controlled substances, the CSA makes plain that one must be currently authorized by the State to engage in the specific activities for which he holds a DEA registration.[1]

The CSA's definition of the ''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance *in the course of professional practice*.'' 21 U.S.C. 802(21) (emphasis added). Relatedly, the CSA directs that ''[t]he Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.'' *Id.* section 823(f). See also *id.* section 802(10) (''the term 'dispense' means to deliver a controlled substance to an ultimate user * * * pursuant *to the lawful order of a practitioner*'') (emphasis added).

As the CSA's definition of the term ''practitioner'' makes plain, a physician must be currently authorized to dispense a controlled substance ''in the course of professional practice.'' *Id.* section 802(21). A physician whose state license has been suspended or revoked does not have authority under state law to engage in the ''professional practice'' of medicine and cannot lawfully issue an order to dispense a controlled substance. Accordingly, section 304 of the CSA authorizes the revocation of a registration ''upon a finding that the registrant * * * has had his State license or registration suspended or revoked * * * and is no longer authorized by State law to engage in the * * * dispensing of controlled substances.'' *Id.* § section824(a)(3).[2]

DEA has consistently held that the CSA requires the revocation of a registration issued to a practitioner whose state license has been suspended or revoked. See Sheran Arden Yeates, 71 FR 39130, 39131 (2006); Dominick A. Ricci, 58 FR 51104, 51105 (1993); Bobby Watts, 53 FR 11919, 11920 (1988).

I therefore conclude that Respondent's argument is without merit. Because Respondent has produced no evidence that the Georgia's Board's summary suspension order has been set aside or stayed, I conclude that Respondent lacks authority under Georgia law to handle controlled substances as a practitioner and is not entitled to maintain his DEA registration.

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, BD4754683, issued to Gerald E. Dariah, M.D., be, and it hereby is, revoked. I further order that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective February 28, 2007.

Dated: January 19, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–1320 Filed 1–26–07; 8:45 am]

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[1] Contrary to the understanding of Respondent's counsel, the word ''handle'' as used in DEA cases interpreting the CSA is a term of art. It refers to a registrant's authority to perform the specific activities for which registration is required.

[2] Even if it is true, Respondent's ''contention that he is still authorized by state law to engage in the manufacturing [and] distribution * * * of controlled substances,'' Respondent Resp. at 3, is irrelevant. Respondent was registered under the CSA as a practitioner and not as a manufacturer or distributor. The Act specifically defines ''the term 'distribute''' to exclude ''dispensing.'' 21 U.S.C. § 802(11). The only activity which is relevant in assessing whether Respondent can maintain his practitioner's registration is dispensing. *See id.* § 823(f); see also 21 CFR 1301.13(e) (table) (distributing and dispensing are independent activities and require separate registrations).

Finally, even if ''Georgia law allows unlicensed individuals to work as subordinates * * * in the * * * dispensing of controlled substances,'' Resp. Resp. at 3, Respondent does not maintain that he can lawfully issue a prescription for a controlled substance under state law, which is what matters for purposes of the CSA.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Stephen J. Heldman, Denial Of Application

On November 18, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Stephen J. Heldman of Cincinnati, Ohio (Respondent). The Show Cause Order proposed to deny Respondent's pending application for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine and pseudoephedrine on the ground that his registration would be inconsistent with the public interest. See 21 U.S.C. 823(h) & 824(a).

The Show Cause Order specifically alleged that Respondent was proposing to distribute products containing pseudoephedrine and ephedrine, which are precursor chemicals used to manufacture methamphetamine, to non-traditional retailers of these products such as convenience stores and gas stations. See Show Cause Order at 1–2.