

As a preliminary matter, the Deputy Administrator must determine whether or not to consider Respondent's Amended Response to Motion for Summary Disposition filed on October 30, 1998. Given Judge Randall's October 19, 1998 Order, there could arguably be some confusion as to whether Respondent was permitted to file a second response. Therefore, the Deputy Administrator has considered this filing in rendering his decision in this matter.

The Deputy Administrator finds that by order issued July 23, 1998, the Board indicated that it considered Respondent's Mississippi pharmacy permit null and void and placed it in a "closed pharmacy" status. In its responses to the Government's motion, Respondent argued that because Mr. Bonds has a motion pending before the Supreme Court of Mississippi regarding his criminal conviction, DEA should not take action at this time. However, Respondent did not dispute that it was not currently authorized to handle controlled substances.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without authority to handle controlled substances in the state in which it conducts business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See, Andrew Mobley, Inc., d/b/a Medicine Shoppe*, 54 FR 16,421 (1989); *Wingfield Drugs, Inc.*, 52 FR 27,070 (1987); *Tony's Discount Store, Anthony Sekul, Proprietor*, 51 FR 12,578 (1986).

Here it is clear that Respondent's pharmacy permit is considered null and void. Consequently, it is reasonable to infer that it is not authorized to handle controlled substances in Mississippi, where it is registered with DEA. Since Respondent lacks this state authority, it is not entitled to a DEA registration in that state.

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. It is well-settled that where there is no material question of fact involved, or when the facts are agreed upon, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. *See Gilbert Ross, MD.*, 61 FR 8664 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993); *Philip E. Kirk, M.D.*, 48 FR 32,887 (1983), *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984). Here, there is no dispute concerning the material fact that Respondent is not currently authorized

to handle controlled substances in Mississippi.

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 BB4240723, previously issued to Bonds Discount Pharmacy, 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 14, 1999.

Dated: May 6, 1999.

**Donnie R. Marshall,**

*Deputy Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Joseph M. Burt, M.D.; Revocation of Registration

On July 29, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Joseph M. Burt, M.D., of Murrels Inlet, South Carolina, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BB0955774 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of South Carolina. The order has notified Dr. Burt that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent to Dr. Burt by registered mail to his DEA registered address, but was returned to DEA unclaimed. Attempts by DEA to locate a current address for Dr. Burt were unsuccessful.

The Deputy Administrator finds that DEA has made numerous attempts to locate Dr. Burt and has determined that his whereabouts are unknown. It is evident that Dr. Burt is no longer practicing medicine at the address listed on his DEA Certificate of Registration. The Deputy Administrator concludes that considerable effort has been made to serve Dr. Burt with the Order to Show Cause without success. Dr. Burt is therefore deemed to have waived his opportunity for a hearing. The Deputy

Administrator now enters his final order in this matter without a hearing and based on the investigative file pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that on June 10, 1997, the State Board of Medical Examiners of South Carolina (Board) suspended Dr. Burt's license to practice medicine. As a result, on July 2, 1997 the South Carolina Department of Health, Bureau of Drug Control terminated Dr. Burt's state controlled substance registration. Thereafter, on July 20, 1998, the Board issued a Final Order revoking Dr. Burt's license to practice medicine in South Carolina.

The Deputy Administrator finds that Dr. Burt is not currently authorized to handle controlled substances in South Carolina, the state where he is registered with DEA. The DEA does not have the 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 his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Dr. Burt is not currently authorized to handle controlled substances in the State of South Carolina. Therefore, Dr. Burt is not entitled to a DEA registration in that state.

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 BB0955774, previously issued to Joseph M. Burt, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective June 14, 1999.

Dated: May 6, 1999.

**Donnie R. Marshall,**

*Deputy Administrator.*

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