Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2529 Filed 2–4–00; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–33]

Brett L. Lusskin, M.D.; Revocation of Registration

On August 10, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Brett L. Lusskin, M.D. (Respondent), of Hallandale, Florida, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AL0133102, and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3). The Order to Show Cause alleged that Respondent is not currently authorized to handle controlled substances in the State of Florida.

By letter dated September 8, 1999, Respondent, through counsel, filed a request for a hearing, and the matter was docketed before Administrative Law Judge Gail A. Randall. On October 7, 1999, the Government filed a Motion for Summary Disposition, alleging that Respondent is currently registered with DEA to handle controlled substances in Florida, however he is not currently authorized by the State of Florida to handle controlled substances. On November 1, 1999, Respondent filed a response to the Government's motion arguing that Judge Randall does not have sufficient evidence to support the allegation that Respondent lacks authorization to handle controlled substances in Florida.

On November 15, 1999, Judge Randall issued her Opinion and Recommended Decision finding that Respondent lacks authorization to handle controlled substances in the State of Florida; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her Opinion and Recommended Decision, and on December 14, 1999, Judge Randall transmitted the record of these proceedings to the Office of the Deputy Administrator.

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

The Deputy Administrator finds that Respondent currently possesses DEA Certificate of Registration AL0133102, issued to him at an address in Hallandale, Florida. The Deputy Administrator further finds that on May 7, 1998, the Medical Board of the State of Florida (Medical Board) issued a final order indefinitely suspending Respondent's medical license. In an Opinion filed on March 31, 1999, the District Court of Appeal of the State of Florida, Fourth District, granted Respondent a new hearing before the Medical Board but declined to stay the suspension of Respondent's medical license.

In his response to the Government's motion, Respondent argued that he is retired from the active practice of medicine, and therefore, his continued registration poses no risk to the public interest. Additionally, Respondent noted that he has filed an Amended Complaint with the Agency for Health Care Administration and expects a hearing in the near future.

In her Opinion and Recommended Decision, Judge Randall found that the Government presented credible evidence that Respondent's Florida medical license was indefinitely suspended, and the suspension has not been stayed. Respondent has presented no evidence to the contrary. As Judge Randall noted, ''[a] pending rehearing of the Medical Board's decision does not alter the Respondent's status in Florida. The outcome of a rehearing of the Medical Board's action is speculative, and the decision of the Medical Board is final until otherwise overturned.''

Therefore, the Deputy Administrator finds that Respondent is not currently authorized to practice medicine in the State of Florida and as a result, it is reasonable to infer that he is also not 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 his business. See 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 Respondent is not licensed to handle controlled substances in Florida. Since Respondent lacks this state authority, he 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. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in Florida. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1983), aff'd sub nom *Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977).

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 Certificates of Registration AL0133102, issued to Brett L. Lusskin, M.D., 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 March 6, 2000.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2530 Filed 2–3–00; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Charles W. Marshall, D.P.M.; Revocation of Registration

On July 28, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Charles W. Marshall, D.P.M., of Chicago, Illinois, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BM2648472 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. 8231(f), for reason that he is not currently authorized to handle controlled substances in the State of Illinois. The order also notified Dr.