Resp. Opp., and a ''Rescheduled Second Pre-Hearing Conference Order.'' Ex. 3 to Resp. Opp.

The ALJ granted the Government's motion. The ALJ found that there was no material factual dispute regarding whether Respondent currently has authority under Massachusetts law to handle controlled substances. ALJ Dec. at 3. The ALJ specifically rejected Respondent's contention that its state controlled substance registration had not been suspended, but rather, was being held in escrow by the Massachusetts Board pending a final decision. *Id.* Relatedly, the ALJ also dismissed Respondent's argument that the State never implemented the summary suspension order, reasoning that ''whether the license is suspended pending a hearing on the merits, or is held in escrow,'' is irrelevant, because ''[i]n either event, Respondent is without authority to handle controlled substances in Massachusetts.'' *Id.* The ALJ thus held that Respondent is not entitled to maintain its DEA registration and recommended that I revoke Respondent's registration. The ALJ then forwarded the record to me for final agency action.

Having considered the record as a whole, I adopt the ALJ's holding that Respondent is currently without authority to handle controlled substances in Massachusetts and is therefore not entitled to maintain its DEA registration. Here, the State's ''Final Order of Summary Suspension,'' which is signed by the Board's President, clearly ordered the suspension, effective October 23, 2005, of Respondent's state controlled substance registration ''pending a final decision on the merits.''

Respondent's assertion that the State ''has never executed or implemented the Final Order of Summary Suspension'' does not raise a genuine issue of fact that requires a hearing to resolve. Respondent's evidence—*i.e.*, a letter to the Board's lawyer discussing an agreement to surrender its state registration to be held in escrow pending a final decision—does not create a factual dispute as to whether Respondent's state registration has been suspended. As a leading authority explains, ''evidence in opposition to the motion that is clearly without any force is insufficient to raise a genuine issue.'' Charles Allen Wright, *et al.*, *Federal Practice and Procedure* section 2727 (3d. ed. 2006).[1] In short, this letter contains nothing that refutes the Government's assertion that Respondent's state controlled substance registration has been suspended.

Under the Controlled Substances Act (CSA), it is irrelevant that Respondent's state registration is being held in escrow pending state proceedings. Under the Act, a practitioner must be currently authorized to handle controlled substances in ''the jurisdiction in which [it] practices'' in order to maintain its DEA registration. *See* 21 U.S.C. 802(21) (''[t]he term 'practitioner' means a * * * pharmacy * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which [it] practices * * * to * * * dispense * * * a controlled substance in the course of professional practice''). *See also id.* section 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which [it] practices.'').

Furthermore, in section 304, Congress expressly authorized the revocation of a DEA registration issued to a registrant whose ''State license or registration [has been] suspended * * * by competent State authority and is no longer authorized by State law to engage in the * * * dispensing of controlled substances.'' *Id.* section 824(a)(3). By definition, a suspension is of a finite duration. *See Merriam-Webster's Collegiate Dictionary* 1187 (10th ed. 1998) (defining ''suspend'' as ''to debar temporarily from a privilege * * * or function''). Under the CSA, it does not matter whether the suspension is for a fixed term or for a duration which has yet to be determined because it is continuing pending the outcome of a state proceeding. Rather, what matters—as DEA has repeatedly held—is whether Respondent is without authority under Massachusetts law to dispense a controlled substance. *See Oakland Medical Pharmacy,* 71 FR 50100, 50,102 (2006) (''a registrant may not hold a DEA registration if it is without appropriate authority under the laws of the state in which it does business''); *Accord Rx Network of South Florida, LLC,* 69 FR 62,093 (2004); *Wingfield Drugs, Inc.,* 52 FR 27,070 (1987).

Because the State suspended its controlled substances registration, Respondent clearly lacks authority under Massachusetts law to handle controlled substances. Therefore, it is not entitled to maintain its DEA registration.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) and 0.104, I hereby order that DEA Certificate of Registration, AB2802468, issued to Bourne Pharmacy, Inc., 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 May 11, 2007.

Dated: March 30, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–6760 Filed 4–10–07; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 06–58]

Piyush V. Patel, M.D.; Revocation of Registration

On May 9, 2006, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Piyush V. Patel, M.D. (Respondent) of Midland, Texas. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, AP1614800, as a practitioner, on the ground that Respondent's license to practice medicine in the State of Texas had been revoked, and that Respondent was therefore ''without authority to handle controlled substances in Texas, the State in which [he] practices.'' Show Cause Order at 1. The Show Cause Order also informed Respondent of his right to request a hearing.

Respondent, acting *pro se,* filed a timely request for a hearing; the matter was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner. In that request, Respondent stated that he was currently incarcerated and requested that the hearing be delayed until after his release on April 7, 2007. Respondent also indicated that he was not currently licensed by the Texas State Board of Medical Examiners.

On June 21, 2006, the Government moved for summary disposition on the ground that Respondent was ''not currently authorized to engage in the active practice of medicine or to handle controlled substances in Texas.'' Mot. for Summary Disp. at 2. In support of its motion, the Government attached an ''Agreed Order'' (dated August 26, 2005) which Respondent had entered into with the Texas State Board of Medical

[1] Respondent's other evidence likewise does not create a factual dispute as to whether its state controlled substance registration has been suspended.

Examiners. Under the order, Respondent's Texas medical license was revoked.

Thereafter, on July 13, 2006, the ALJ denied Respondent's request to stay the hearing until after his release from prison. ALJ Dec. at 2. The ALJ further ordered that Respondent file a response to the Government's motion by August 3, 2006. Respondent, however, failed to do so.

Thereafter, the ALJ granted the Government's motion. The ALJ noted that Respondent ''acknowledges that his license to practice medicine in Texas is revoked, and will remain revoked at least until his release from prison on April 7, 2007.'' *Id.* As this material fact was undisputed, the ALJ held that because ''Respondent lacks state authority, he is not entitled to a DEA registration in Texas,'' and therefore recommended that Respondent's registration be revoked. *Id.* at 2–3. The ALJ then forwarded the record to me for final agency action.

Having considered the record as a whole, I adopt the ALJ's recommendation that Respondent's registration be revoked. But in doing so, I decline to adopt the ALJ's reasoning to the extent it relies solely on the Texas State Board of Medical Examiner's revocation of Respondent's medical license. Under Texas law, a practitioner must obtain a separate state registration to dispense a controlled substance. Texas Health & Safety Code § 481.061. The record, however, contains no evidence regarding the status of Respondent's state registration.

Therefore, in accordance with 5 U.S.C. 556(e), I take official notice of the fact that according to the Texas Department of Public Safety's Controlled Substances Registration verification search page, Respondent is not currently registered to dispense controlled substances in the State.[1]

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in ''the jurisdiction in which he practices'' in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) (''[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''). *See also id.* section 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). DEA has held repeatedly that the CSA requires the revocation of a registration issued to a practitioner who no longer possesses authority under state law to handle controlled substances. *See Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). *See also* 21 U.S.C. 824(a)(3) (authorizing 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 * * * distribution [or] dispensing of controlled substances''). Therefore, Respondent's DEA registration must be revoked.[2]

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 hereby order that DEA Certificate of Registration, AP1614800, issued to Piyush V. Patel, 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 May 11, 2007.

Dated: March 30, 2007.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 05–8]

Rick's Picks, L.L.C.; Revocation of Registration

On October 7, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Rick's Picks, L.L.C. (Respondent), of Moore, Oklahoma. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, 003949RPY, as a distributor of list I chemicals, on the ground that its continued registration was inconsistent with the public interest. Show Cause Order at 1 (citing 21 U.S.C. 823(h)).

The Show Cause Order incorporated the allegations of a show cause order which was initiated by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control; the latter order proposed the denial of Respondent's application for a state registration to distribute pseudoephedrine products that are Schedule V drugs under State law, as well as the revocation of Respondent's state registration to distribute pseudoephedrine products which are not scheduled under state law. *Id.* at 2. Specifically, the state show cause order alleged that Respondent and its owner, Rick D. Fowler, ''have a history of selling very large amounts of pseudoephedrine under suspicious and questionable circumstances, and with great negligence and reckless disregard for whether this product would be used in the clandestine manufacture of methamphetamine,'' and that Respondent, and its owner, had engaged in this activity notwithstanding ''numerous warnings from . . . DEA officials that Respondent's sales were fueling illicit methamphetamine laboratories.'' *Id.*

Relatedly, the State show cause order alleged that from January 2002 through April 2004, Respondent sold more than $ 2.2 million of Max Brand (for a total of nearly 10.5 million tablets), a product in which pseudoephedrine is the single active ingredient and which is the ''preferred choice [of] methamphetamine cooks.'' *Id.* at 4–5. The state show cause order also alleged that Respondent had brokered the sale of approximately 400,000 pseudoephedrine tablets for D & E Pharmaceutical. *Id.* at 5. The DEA Show Cause Order then repeated ten different allegations made in the state show cause order which asserted specific instances in which Respondent had sold extraordinary quantities of pseudoephedrine to convenience stores, gas stations and other non-traditional retailers of this product, and that Respondent had failed to report any of these transactions to DEA. *Id.* at 6–8.

The State show cause order further alleged that pseudoephedrine distributed by Respondent had been found at twenty-two methamphetamine dumpsites. *Id.* at 8. Finally, the DEA Show Cause Order alleged that in November 2003, DEA had conducted an inspection of Respondent during which numerous recordkeeping violations were observed. *Id.* at 9.

Respondent requested a hearing on the allegations. The matter was assigned

[1] Under the Administrative Procedure Act, ''[a]gencies may take official notice of facts at any stage in a proceeding—even in the final decision.'' *Attorney General's Manual on the Administrative Procedure Act* 80 (1946) (Wm. W. Gaunt & Sons, Inc., reprint 1979). In accordance with the Act, Respondent may ''show to the contrary'' by filing a request for reconsideration which includes supporting documentation within fifteen days of receipt of this order.

[2] The expiration date of Respondent's DEA registration is March 31, 2008.