examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* Copies of the proposed agreements may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting from the Consent Decree Library a copy of the consent decree for *United States* v. *Mariana Acquisition Corp.,* Civil Action No. CV 11–0006 (D. Northern Marianas), please enclose a check in the amount of $7.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–7399 Filed 3–29–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10–64]

Alfred E. Boyce, M.D.; Decision and Order

On August 12, 2010, Administrative Law Judge (ALJ) John J. Mulrooney, II, issued the attached recommended decision. The Respondent did not file exceptions to the decision.

Having reviewed the record in its entirety including the ALJ's recommended decision, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended Order.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration, FB0003943, issued to Alfred E. Boyce, M.D., be, and it hereby is, revoked. I further order that any pending application of Alfred E. Boyce, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.

Dated: March 18, 2011.

Michele M. Leonhart,

Administrator.

James Hambuechen, Esq., for the Government;

Bradford M. Cohen, Esq., for the Respondent

Order Granting Government Motion for Summary Disposition and Recommended Decision

John J. Mulrooney, Administrative Law Judge. The Deputy Assistant Administrator, Drug Enforcement Administration (DEA or Government), issued an Order to Show Cause (OSC), dated May 13, 2010, proposing to revoke the DEA Certificate of Registration (COR), Number FB0003943, of Alfred E. Boyce, D.O. (Respondent), pursuant to 21 U.S.C. 824(a)(3) and (4), and deny any pending applications for renewal or modification of the COR, pursuant to 21 U.S.C. 823(f), because the Respondent's continued registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). In the OSC, the Government alleges that the Respondent is, *inter alia,* "without authority to handle controlled substances in the state of Florida" as grounds for revocation of Respondent's DEA registration.

On July 22, 2010, the DEA Office of Administrative Law Judges (OALJ) received two separate documents from Respondent's counsel, each dated July 19, 2010, reflecting a notice of attorney appearance and a timely [1] request for hearing.[2]

On July 27, 2010, an order issued which directed, *inter alia,* that the Government provide evidence to support its allegation that Respondent lacks state authority in the state in which he is registered with DEA to handle controlled substances. A briefing schedule was also provided in the order fixing dates for the requesting filings, any Government motions for summary judgment or termination of proceedings based thereon, and any reply thereto by the Respondent.

On July 28, 2010, the Government timely filed a document styled "Government's Motion for Stay of Proceedings and Summary Disposition" (Government's Motion) wherein it seeks relief in the form of summary disposition based on its assertion that the Respondent "is not duly authorized to possess, dispense, or otherwise handle controlled substances in the State of Florida, the jurisdiction in which the Respondent engages in the practice of medicine." Govt. Mot. at 1. Attached to the Government's Motion was a copy of an Order of Emergency Suspension of License (Emergency Suspension Order) issued by the State of Florida Department of Health (Florida DOH) on April 28, 2010. Govt. Mot. at Attach. 1 [3] (Florida DOH Order of Emergency Suspension of License dated April 28, 2010). The Emergency Suspension Order reflects the immediate suspension of the Respondent's license to practice as an osteopathic physician in the state, pending further proceedings. The Florida DOH action is not based upon pending DEA proceedings, but based upon on its own factual findings that the Respondent violated numerous Florida statutes and administrative code provisions related to the prescribing of controlled substances, and its determination that the Respondent's "continued practice as an osteopathic physician constitutes an immediate serious danger to the health, safety, or welfare of the public." *Id.* In its motion, the Government correctly contends that state authority is a necessary condition precedent for the acquisition or maintenance of a DEA registration, and the suspension of the Respondent's state practitioner's license precludes the continued maintenance of his DEA COR, thus requiring revocation. Govt. Mot. at 2; *see id.* at Attach. 1.

The Respondent filed an opposition on August 10, 2010, asserting, in essence, that the CSA does not strictly require COR revocation pursuant to 21 U.S.C. 824(a)(3) where a registrant's state license has been suspended and the registrant has lost state authorization to dispense controlled substances. The Respondent argues that sanctions provided for under the CSA that are lesser than revocation are appropriate, such as suspension of his COR,[4] or limiting the suspension or revocation of his COR only "to the particular controlled substance [] with respect to which grounds for revocation or suspension exist." 21 U.S.C. 824(b). As a mitigating basis for a sanction recommendation lesser than revocation, the Respondent points out that the cases cited by the Government in its summary disposition motion involve DEA COR revocations based on conduct other than

[1] Because the initial record contained no indication about the actual service date of the OSC or other information allowing for an evaluation of whether the Respondent's hearing request was timely made pursuant to 21 CFR 1301.43, an order issued on July 27, 2010 wherein the Government was directed to provide evidence of the date of OSC service. After review of the submissions of the parties, it appears that the Respondent's hearing request was timely filed.

[2] The Respondent's request for a hearing "*in the matter of: Department of Health* v. *Alfred Eversley Boyce, D.O., Case No. 10–3167PL*" (emphasis supplied), *i.e.* the state administrative action in Florida, that was filed on OALJ is herein deemed to constitute a sufficient request for hearing relative to these proceedings.

[3] The Government's attachment will be included in the record as Government Exhibit 1.

[4] *See* 21 U.S.C. 824(a) ("A registration * * * may be *suspended* or revoked * * *." (emphasis supplied)).

a temporary suspension of a state medical license. For that reason, the Respondent argues that a summary disposition in these DEA proceedings, based on the suspension of his state licensure, "would be inconsistent with [the Agency's] previous rulings and would create a manifest injustice to Respondent." While the Respondent's position is not without some level of facial appeal, it is unsupported by the applicable statutes, regulations and precedent emanating from both the courts and the Agency.

The Controlled Substances Act (CSA) requires that 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.* § 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."). Therefore, because "possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration," this Agency has consistently held that "the CSA *requires* the revocation of a registration issued to a practitioner who lacks [such authority]" (emphasis supplied). *Roy Chi Lung,* 74 FR 20346, 20347 (2009); *Scott Sandarg, D.M.D.,* 74 FR 17528, 174529 (2009); *John B. Freitas, D.O.,* 74 FR 17524, 17525 (2009); *Roger A. Rodriguez, M.D.,* 70 FR 33206, 33207 (2005); *Stephen J. Graham, M.D.,* 69 FR 11661 (2004); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Abraham A. Chaplan, M.D.,* 57 FR 55280 (1992); *Bobby Watts, M.D.,* 53 FR 11919 (1988).

Denial of an application or revocation of a registration via a summary disposition procedure is also warranted if the period of a suspension is temporary, or if there exists the potential that Respondent's state controlled substances privileges will be reinstated, because "revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement," *Rodriguez,* 70 FR at 33207 (citations omitted), and even where there is a judicial challenge to the state medical board action actively pending in the state courts. *Michael G. Dolin, M.D.,* 65 FR 5661, 5662 (2000).

In order to revoke a registrant's DEA registration, the DEA has the burden of proving that the requirements for revocation are satisfied. 21 CFR 1301.44(e). Once DEA has made its *prima facie* case for revocation of the registrant's DEA COR, the burden of production then shifts to the Respondent to show that, given the totality of the facts and circumstances in the record, revoking the registrant's registration would not be appropriate. *Morall* v. *DEA,* 412 F.3d 165, 174 (DC Cir. 2005); *Humphreys* v. *DEA,* 96 F.3d 658, 661 (3d Cir. 1996); *Shatz* v. *U.S. Dept. of Justice,* 873 F.2d 1089, 1091 (8th Cir. 1989); *Thomas E. Johnston,* 45 FR 72311 (1980).

Regarding the Government's request for summary disposition of the present case, it is well-settled that where no genuine question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required, *see Jesus R. Juarez, M.D.,* 62 FR 14945 (1997); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993), under the rationale that Congress does not intend for administrative agencies to perform meaningless tasks. *See Philip E. Kirk, M.D.,* 48 FR 32887 (1983), *aff'd sub nom. Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *see also Puerto Rico Aqueduct & Sewer Auth.* v. *EPA,* 35 F.3d 600, 605 (1st Cir. 1994); *NLRB* v. *Int'l Assoc. of Bridge, Structural & Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consol. Mines & Smelting Co.,* 455 F.2d 432, 453 (9th Cir. 1971).

The record evidence in the instant case clearly demonstrates that no genuine dispute exists over the established material fact that Respondent currently lacks state authority to handle controlled substances in Florida, his state of registration with the DEA, since his state osteopathic medical practitioner's license was suspended on April 28, 2010. Notwithstanding the Respondent's attempts to distinguish the rationale for revocation in the cases cited by the Government as factually dissimilar to his own circumstances, the dispositive consideration here is that because the Respondent presently lacks state authority, both the plain language of the applicable federal statutory provisions and Agency interpretive precedent set forth herein dictate that the Respondent is not entitled to maintain his DEA registration, and therefore a registration action less than revocation is not appropriate. Simply put, there is no contested factual matter adducible at a hearing that can provide the Agency with authority to continue (or *a fortiori* for me to recommend) his entitlement to a COR under the circumstances and further delay in ruling on the Government's motion for summary disposition is not warranted.

Accordingly, the Government's Motion for Summary Disposition is hereby *granted,* its Motion for Stay of Proceedings is *denied* as moot, and in view of the presently uncontroverted fact that the Respondent lacks state authority to handle controlled substances, it is herein recommended that the Respondent's DEA registration be *revoked* forthwith and any pending applications for renewal be denied.

Dated: August 12, 2010.

John J. Mulrooney, II,

U.S. Administrative Law Judge.

[FR Doc. 2011–7390 Filed 3–29–11; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 09–12]

Bienvenido Tan, M.D.; Denial of Application

On October 31, 2008, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Bienvenido Tan, M.D. (Respondent), of Newhall, California. The Show Cause Order proposed the denial of Respondent's application for a DEA Certificate of Registration as a practitioner, on the ground that "his registration is inconsistent with the public interest." ALJ Ex. 1, at 1.

More specifically, the Show Cause Order alleged that on April 12, 2007, Respondent "voluntarily surrendered [his] controlled substances privileges" when he was under investigation for illegally distributing controlled substances, and that in February 2008, he had applied for a new registration. *Id.* The Order alleged that "[l]aw enforcement personnel conducted at least eleven (11) undercover visits" to Respondent's office between October 2006 and March 2007 and that on several occasions, he had prescribed Lorcet and Vicodin, schedule III controlled substances which contain hydrocodone, as well as alprazolam, a schedule IV controlled substance, to them "with cursory or no medical examinations, and without a legitimate medical purpose." *Id.* (citing 21 CFR 1306.04).

The Show Cause Order further alleged that a medical expert had reviewed Respondent's files and "found 'strong