0.100(b) and 0.104, I hereby grant the Government's motion to terminate the proceeding. I further order that the Order to Show Cause and Immediate Suspension of Registration issued to Robert Charles Ley, D.O, be, and it hereby is, dismissed.

Dated: April 1, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–8544 Filed 4–8–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10–28]

Louisiana All Snax, Inc.; Dismissal of Proceeding

On January 21, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order To Show Cause to Louisiana All Snax, Inc. (Respondent), of Baton Rouge, Louisiana. The Show Cause Order proposed the revocation of Respondent DEA's Certificate of Registration, which authorized it to distribute the list I chemicals ephedrine and pseudoephedrine, on the ground that, effective August 15, 2009, the State of Louisiana made both chemicals Schedule V controlled substances; that those persons who distribute these substances "must possess a license issued by the Louisiana Board of Pharmacy"; that Respondent "does not possess" the necessary license; and that DEA must therefore revoke its registration. Show Cause Order at 1 (citing 21 U.S.C. 824(a)(3), La. Rev. Stat. Ann. §§ 40:973 & 40:1049.1).

On February 18, 2010, Respondent requested a hearing on the allegations. In his letter, Respondent's owner stated that it had "stopped distributing ephedrine products prior to August 15, 2009 and do[es] not plan to distribute any as long as Act 314 * * * is in effect. My registration certificate will expire in March 2010 and we do not plan to renew it because we can not distribute legally." Letter of Robert Howerter to Hearing Clerk (Jan. 28, 2010). Mr. Howerter further wrote: "We do not understand why the DEA is revoking a certificate we can not use and will expire in a little over a month especially since we do not plan to renew it." *Id.* "As a token of [his] good faith," Mr. Howerter "attached [his] certificate to [his] letter." *Id.*

The matter was then placed on the docket of the DEA Office of Administrative Law Judges (ALJs), and on February 22, 2010, the ALJ ordered the Government to determine whether Respondent had filed a timely renewal application and to provide evidence supporting its allegation that Respondent lacked the requisite State authority. Order Directing the Government To Provide Proof That Respondent Lacks State Authority To Handle Controlled Substances and Briefing Schedule, at 1.

Two days later, the Government moved for summary disposition or to dismiss on the grounds of mootness. Therein, the Government noted that it had determined that Respondent's registration "expires on March 31, 2010" and that, "[a]s of the date of this filing, Respondent has not filed an application for renewal of its registration, and in its request for a hearing Respondent admitted that it does not plan to renew its DEA registration." Motion for Summ. Disp., at 2. While the Government also provided a copy of a letter from the Louisiana Board of Pharmacy to a Diversion Investigator stating that Respondent does not hold a Louisiana Controlled Dangerous Substances License and argued that "DEA must therefore revoke Respondent's DEA registration," the Government also observed that "[d]ismissal of this matter will also be appropriate * * * after March 31, 2010, on grounds of mootness, if Respondent does not apply for renewal of its registration." *Id.* at 3–4.

Respondent did not file a response to the Government's motion. ALJ Dec. at 2. On March 8, 2010, the ALJ granted the Government's motion for summary disposition based on Respondent's lack of authority under State law to handle listed chemicals. *Id.* at 5–6. However, the ALJ also noted that under Agency precedent, "'[i]f a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke.'" *Id.* at 2 (quoting *David L. Wood, M.D.,* 72 FR 54936, 54937 (2007) (quoting *Ronald J. Riegel, D.V.M.,* 63 FR 67132, 67133 (1998))). Noting that the Agency's regulation imposes a 25-day period to allow the parties to file exceptions prior to the ALJ's forwarding of the record to my Office for final agency action, the ALJ observed that by the time a decision is issued "on the proposed revocation * * * there will be nothing to revoke and the issue will be moot." *Id.* at n.2. The ALJ thus explained that "dismissal of this proceeding on mootness grounds * * * will be required when the matter is transmitted to" me. *Id.* at 2.

Having taken Official Notice of the registration records of the Agency, I find that Respondent's registration expired on March 31, 2010, and that Mr. Howerter was true to his word that Respondent did "not plan to renew it." Because Respondent's registration has now expired and there is no pending renewal application, there is neither a registration, nor an application, to act upon. Accordingly, the case is now moot. *See, e.g., Riegel,* 63 FR at 67133.

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 the Order To Show Cause issued to Louisiana All Snax, Inc., be, and it hereby is, dismissed. This order is effective immediately.

Dated: April 1, 2011.

Michelle M. Leonhart,

Administrator.

[FR Doc. 2011–8541 Filed 4–8–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10–25]

Calvin Ramsey, M.D.; Revocation of Registration

On December 18, 2009, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Calvin Ramsey, M.D. (Respondent), of Millington, Tennessee. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, AR7086689, as a practitioner, and the denial of any pending application to renew or modify the registration, on the ground that he does not "have authority to practice medicine or handle controlled substances in the State of Mississippi," the State in which he is registered with DEA.[1] Show Cause Order at 1 (citing 21 U.S.C. 823(f) and 824(a)(4)).

On January 8, 2010, Respondent, who is currently incarcerated at the Federal Correctional Institute Memphis Satellite Camp in Millington, Tennessee, requested a hearing on the allegations [2]

[1] The Order also alleged that Respondent's Registration does not expire until April 30, 2012. Show Cause Order at 1. Because Respondent does not dispute this, I find that he has a current registration.

[2] Therein, Respondent also requested that the Administrative Law Judge "issue a writ of Habeas Corpus to allow [him] to have a personal hearing in Springfield, Virginia in the interest of true [j]ustice." Response to Order to Show Cause, at 2.

and the matter was placed on the docket of the Agency's Administrative Law Judges (ALJs). Thereafter, on January 27, the ALJ ordered the Government "to provide evidence to support its allegation that Respondent lacks authority in the state in which he is registered with DEA" and set February 3, 2010 as the due date for any motion for summary disposition and a due date of February 17 for Respondent to file a reply. Order Directing Gov. to File Evidence Regarding Status of Resp.'s State Authority, at 1–2.

On January 29, 2010, the Government moved for summary disposition. Mot. for Summ. Disp. Therein, the Government noted that the State of Mississippi had suspended Respondent's state medical license effective May 4, 2009, *id.* at 2, and that Respondent did not dispute that the Mississippi State Board of Medical Licensure (Mississippi Board) had taken "adverse actions against" him. *Id.* at 5 (quoting Respondent's Resp. to Order to Show Cause, at 1). As support for its motion, the Government attached a copy of a Consent Order which Respondent entered into with the Mississippi Board.

The Consent Order noted that on or about October 16, 2008, Respondent had been convicted by the U.S. District Court for the Southern District of Mississippi of two counts of Filing a False Tax Return in violation of 26 U.S.C. 7201(1). Consent Order at 1. The Consent Order further noted that under Mississippi law, "conviction of a felony or misdemeanor involving moral turpitude" is ground for the suspension or revocation of a state medical license and that Respondent had "consent[ed] to the indefinite suspension of his license to begin on May 4, 2009, the date he was ordered by the District Court to surrender and commence serving his sentence. *Id.* at 1–2. Based on the Agency's longstanding rules that (1) a practitioner must be currently authorized to handle controlled substances in the State in which he practices in order to hold a DEA registration in that State, and (2) where a registrant loses his state authority, he is not entitled to maintain his DEA registration, the Government moved for summary disposition. Mot. for Summ. Disp., at 3.

On February 16, 2010, Respondent filed a motion which requested that the ALJ transfer his request for a writ of habeas corpus to an Article III judge. The motion was premised on Respondent's contention that he has a right to "a personal hearing at DEA headquarters" under the Due Process Clause and 21 U.S.C. 824(c). Resp. Motion Req. Transfer of Req. for Writ of Habeas Corpus, at 1–2.

The next day, Respondent filed his response to the Government's motion for summary disposition. Respondent's Resp., at 1. Therein, Respondent asserted that "[d]ue process dictates that this Court must ensure that legal representation is obtained for" him and that "[h]e had a right to be present at the formal hearing as indicated in [the] Show Cause Order." *Id.* at 2. Respondent further stated that he "cannot reply to the Government's response, [as] to do so, allows the assumption that he is acting Pro Se, without legal representation in this proceeding." *Id.* Continuing, Respondent contended that "it is incumbent that this Court secure the assistance of an Article III [j]udge" to issue a writ of habeas corpus. *Id.* Respondent thus requested that the proceeding be stayed pending resolution of the issue. *Id.*

On March 16, the ALJ issued an Amended Order granting the Government's Motion for summary disposition.[3] Amended Order Granting Summary Disposition, at 5. Therein, the ALJ noted that "no genuine dispute exists over the material fact that Respondent currently lacks state authority to handle controlled substances in Mississippi, his state of registration with the DEA, since his state license was indefinitely suspended on May 4, 2009." *Id.* at 4. The ALJ thus applied the Agency's settled rules 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," and "because 'possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration * * * the CSA requires the revocation of a registration issued to a practitioner who lacks [such authority].'" *Id.* at 3 (quoting *Roy Chi Lung,* 74 FR 20346, 20347 (2009) (other citations omitted)). The ALJ further noted that revocation is warranted even "'when a state license has been suspended, but with the possibility of future reinstatement,'" *id.* (quoting *Roger A. Rodriguez,* 70 FR 33206, 33207 (2005)), "and even where there is a judicial challenge to the state medical board action actively pending in the state courts." *Id.* at 4 (citing *Michael G. Dolin,* 65 FR 5661, 5662 (2000)). The ALJ thus granted the Government's motion for summary disposition and recommended that Respondent's registration be revoked and that any pending applications be denied.[4] *Id.* at 5.

On March 11, 2010, following the ALJ's initial order granting summary disposition, Respondent filed a pleading he entitled as "Inter-Agency Appeal For Reconsideration of Administrative Law Judge's Decision and Request For Stay of ALJ's Final Judgement [sic]." For the purpose of this decision, this pleading will be deemed to be Respondent's Exceptions to the ALJ's recommended decision.

On April 12, 2010, the ALJ forward the record to me for final agency action. Having considered the entire record, I reject each of the arguments raised in Respondent's Exceptions and adopt the ALJ's decision in its entirety.

In his Exceptions, Respondent raises three primary arguments. First, he contends that the ALJ erred by failing to either appoint counsel to represent him or alternatively, by failing to refer his request for a writ of habeas corpus to an Article III judge, who would presumably order the Government to allow him to personally attend the hearing. As for the first part of his contention, there is no constitutional right to appointed counsel in a proceeding under 21 U.S.C. 824(a). *See Goldberg* v. *Kelly,* 397 U.S. 254, 270 (1970). Nor does Respondent cite any authority for his contention that the ALJ was required to transfer his request for a writ of habeas corpus to an Article III judge, which Respondent could have filed in the appropriate federal district court.[5]

Next, Respondent contends that the ALJ's grant of summary disposition was "arbitrary and capricious" because there were disputed issues of material fact. According to Respondent, he did not

In his Order Directing the Government to File Evidence, the ALJ noted that Respondent's "request is beyond the jurisdiction of this tribunal." Order Directing Gov. to File Evidence Regarding Status of Resp.'s State Authority, at 1 n.1.

[3] Apparently, the ALJ initially mistook Respondent's February 16 motion requesting that his request for a writ of habeas corpus be transferred to an Article III judge as his pleading responding to the Government's summary judgment motion and issued a recommended decision on February 17. At some point thereafter, the ALJ concluded that the pleading Respondent filed on February 17 was, in fact, intended to be his response to the Government's summary disposition motion although he maintained that he "cannot reply to the Government's response, [because] to do so, allows the assumption that he is acting Pro Se, without legal representation in this proceeding." Respondent's Resp. to ALJ's Order, at 2. The ALJ therefore considered the arguments contained therein and issued an amended decision.

[3] In his Amended Order, the ALJ did not address any of the contentions raised by Respondent in his March 11, 2010 "Inter-Agency Appeal for Reconsideration of Administrative Law Judge's Decision and Request for Stay of ALJ's Final Judgement [sic]." Amended Order Granting Summary Disposition, at 3 n.4.

[5] The ALJ explained that had a hearing been necessary, he would have taken "all reasonable steps" to provide a hearing, "notwithstanding his incarcerated status." ALJ Amended Order at 5 n.5.

"knowingly and intelligently" waive his right to a hearing before the Mississippi Board, *id.* at 12; his "waiver [was] obtained through misrepresentation and under extreme duress," *id.* at 8; and he is currently challenging the validity of his waiver in the Mississippi State Courts. *Id.* at 12.

This argument, however, takes Respondent nowhere because "DEA has repeatedly held 'that a registrant cannot collaterally attack the results of a state criminal or administrative proceeding in a proceeding under section 304 [21 U.S.C. § 824] of the CSA.'" *Hicham K. Riba,* 73 FR 75773, 75774 (2008) (quoting *Brenton D. Glisson,* 72 FR 54296, 54297 (2007) (other citation omitted)). *See also Shahid Musud Siddiqui,* 61 FR 14818 (1996); *Robert A. Leslie,* 60 FR 14004 (1995). Respondent's various contentions regarding the validity of the Consent Order are therefore not material to this Agency's resolution of whether he is entitled to maintain his DEA registration.

Because 21 U.S.C. 824(a)(3) authorizes the revocation of a registration "upon a finding that the registrant * * * has had his State license suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substance," the only fact material to resolving this dispute is whether Respondent holds a State license. There being no dispute that Respondent lacks the requisite state authority, there was no need for an evidentiary hearing, as summary judgment has been used for more than 100 years to resolve legal "actions in which there is no genuine issue as to any material fact" and has never been deemed to violate Due Process. *See* Fed. R. Civ. P. 56 (Advisory Committee Notes—1937 Adoption). *Cf. Codd* v. *Velger,* 429 U.S. 624, 627 (1977).

Nor was Respondent entitled to an in-person hearing to challenge the sanction which the ALJ recommended. *Cf. Anderson* v. *Recore,* 446 F.3d 324, 330–31 (2d Cir. 2006). Under DEA's longstanding interpretation of the CSA, revocation is warranted whenever a practitioner's state authority has been revoked because, under the plain terms of the statute, possessing such authority is an essential condition for holding 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.").

Accordingly, DEA has repeatedly held that the CSA requires the revocation of a registration issued to a practitioner whose state license has been suspended or revoked. *David W. Wang,* 72 FR 54297, 54298 (2007); *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988).[6] This is so even where a state board has suspended (as opposed to revoked) a practitioner's authority with the possibility that the authority may be restored at some point in the future, *Rodriguez,* 70 FR at 33207, as well as where, as here, a practitioner has sought judicial review of the state board proceeding. *Dolin,* 65 FR at 5662. Because Respondent currently lacks authority to dispense controlled substances in Mississippi, the State in which he holds his DEA registration, his registration will be revoked and any pending applications will be denied.[7]

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 order that DEA Certificate of Registration, AR7086689, issued to Calvin Ramsey, M.D., be, and it hereby is, revoked. I further order that any pending application of Calvin Ramsey, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective May 11, 2011.

Dated: April 1, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–8533 Filed 4–8–11; 8:45 am]

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[6] In his Exceptions, Respondent cites two cases which he contends the ALJ "failed to consider" as cases where physicians had lost their state licenses and yet "no revocation of [the] physician's DEA license occurred. Exceptions at 8 (citing *Barry H. Brooks, M.D.,* 66 FR 18305 (2001); *Vincent J. Scolaro,* 67 FR 42060 (2002)). Neither of these case support Respondent because in both of them, the physician's state authority had been restored at the time of the proceeding. *See Brooks,* 66 FR at 18308; *Scolaro,* 67 FR at 42065.

[7] In the event the State Board restores Respondent's medical license at some point in the future, he can then apply for a new registration.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Clifton D. Burt, M.D.; Revocation of Registration

On April 6, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Clifton D. Burt (Registrant) of Richmond, Virginia and Union, New Jersey. The Show Cause Order proposed the revocation of Registrant's DEA Certificates of Registration, FB0575499 and FB1499587, on the ground that his "continued registrations are inconsistent with the public interest as that term is defined in 21 U.S.C. 823(f)." Show Cause Order, at 1.

The Show Cause Order alleged that from "May 2008 to October 2008," Registrant "prescribed controlled substances to individuals via the Internet based on online questionnaires, submissions of unverifiable medical records, and telephone consultations" such that the prescriptions "were for other than a legitimate medical purpose or outside the usual course of professional practice in contravention of 21 CFR 1306.04(a)." *Id.* at 2. The Order further alleged that Registrant "failed to establish a valid physician-patient relationship as required by the laws of Virginia." *Id.* (citing, *inter alia,* Va. Code Ann. §§ 54.1–2915.A(3), (13), (16) & (17)). The Order next alleged that "[f]rom October 2008 to March 2009," Registrant "directly dispensed control substances to patients in Schedules IV and V without possessing a controlled substance certificate in violation of the laws of the Commonwealth of Virginia." *Id.* (citing, *inter alia,* Va. Code Ann. §§ 54.1–2914.A., 54.1–2915.A(17) & (18), 54–1–111.A(4),[1] and 54.1–3303(A)). The Order also informed Registrant of his right to request a hearing or to submit a written statement in lieu of a hearing, the applicable procedures for doing so, and the consequence if he failed to do either. *Id.* at 2–3.

On April 9, 2010, the Show Cause Order was served on Registrant by registered mail addressed to him at both of his registered locations. Since that time, thirty days have now passed, and neither Registrant, nor anyone purporting to representing him, has either requested a hearing or submitted a written statement. I therefore find that Registrant has waived his rights under 21 CFR 1301.43(b) and (c) and therefore

[1] The correct citation is Va. Code Ann. § 54.1–111.A(4).