

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 05-11215 Filed 6-6-05; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 05-2]

#### **Stuart A. Bergman, M.D., Revocation of Registration**

On September 16, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Stuart A. Bergman, M.D. (Respondent) of San Antonio, Texas, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BB0187953 as a practitioner pursuant to 21 U.S.C. 824(a)(3) and (4), and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f).

As a basis for revocation, the Order to Show Cause alleged, in sum, that Respondent's Texas medical license had been temporarily suspended and he did not have authority to handle controlled substances in that state; that he issued prescriptions to a physician's assistant for non-therapeutic reasons and failed to keep medical records on that individual; that he failed to respond to inquiries from pharmacies and the Texas State Board of Medical Examiners (Texas Board) about those prescriptions; that he left threatening voicemails for a staff attorney from the Texas Board; and that he purchased excessive quantities of controlled substances and told investigators he distributed them to family members without keeping medical charts on those individuals.

Respondent, through counsel, timely requested a hearing in this matter and Presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued an Order for Prehearing Statements. On November 17, 2004, in lieu of filing a prehearing statement, the Government filed its Motion for Summary Disposition and Motion to Stay the Filing of Prehearing Statements (Motion). In its Motion the Government asserted the Texas Board had temporarily suspended Respondent's license to practice medicine, effective July 27, 2004, and that he was no longer authorized to handle controlled substances in Texas, where he is registered with DEA. As a result, the Government argued that further

proceedings in this matter were not required. Attached to the Government's Motion was a copy of the Texas Board's Order Granting Temporary Suspension, temporarily suspending Respondent's medical license, effective July 27, 2004, until such time as that action was superseded by a subsequent order of the Board.

On November 18, 2004, Judge Bittner issued a Memorandum to Counsel providing Respondent until December 6, 2004, to respond to the Government's Motion. Respondent filed an opposition and an amended opposition to the Government's Motion and on December 17, 2004, his counsel requested that Judge Bittner delay her ruling on the Government's Motion until after February 2, 2005, when a hearing was scheduled before the Texas Board, which could impact the suspension status of his license. Over the Government's objections, Judge Bittner granted Respondent a delay until March 1, 2005, in order to file documentation showing he was then-authorized to handle controlled substances in Texas.

On March 1, 2005, Respondent filed an Advisory Memorandum with the Administrative Law Judge. In that document he did not claim his Texas medical license had been reinstated. However he asserted that during the February 2nd hearing, the Texas Board had offered to return his license, subject to certain conditions. However, Respondent claimed that when he received the draft Agreed Order, he would not sign it, as he felt it contained findings and conditions to which he had not agreed. Because he did not sign the Agreed Order, the matter would be proceeding to a formal disciplinary hearing and Respondent asked Judge Bittner to "temporarily suspend" his DEA registration until the Texas Board had rendered its final decision.

On March 8, 2005, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Bittner denied Respondent's request to temporarily suspend his registration and granted the Government's Motion for Summary Disposition, finding Respondent lacked authorization to handle controlled substances in Texas, the state in which he is registered with DEA and recommending that Respondent's DEA Certificate of Registration be revoked and any pending applications denied.

No exceptions were filed by either party to Judge Bittner's Opinion and Recommended Decision and on April 14, 2005, the record of these proceedings was transmitted to the

Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her 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 holds DEA Certificate of Registration BB0187953 as a practitioner. The Deputy Administrator further finds that effective July 27, 2004, Respondent's license to practice medicine in Texas was temporarily suspended after the Texas Board concluded "Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare." That action was based primarily upon facts similar to those alleged in DEA's Order to Show Cause and there is no evidence that the temporary suspension has been set aside, stayed or modified.

The Deputy Administrator therefore finds Respondent is currently not licensed to practice medicine in Texas and lacks authorization 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 business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Stephen J. Graham, M.D., 69 FR 11,661 (2004); Dominick A. Ricci, M.D., 58 FR 51,104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1988). Denial or revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement. *See* Paramaballoth Edwin, M.D., 69 FR 58,540 (2004); Alton E. Ingram, Jr., M.D., 69 FR 22,562 (2004); Anne Lazar Thorn, M.D., 62 FR 847 (1997).

Here, it is clear Respondent is not currently licensed to handle controlled substances in Texas, the jurisdiction in which he is registered with DEA. Therefore, he is not entitled to registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BB0187953, issued to Stuart A. Bergman, M.D., be, and it hereby is, revoked. The Deputy

Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective July 7, 2005.

Dated: May 25, 2005.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 05-11244 Filed 6-6-05; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### **Robert M. Canon, M.D., Revocation of Registration**

On February 11, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert M. Canon, M.D. (Dr. Canon) of Tullahoma, Tennessee, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AC2221707 under 21 U.S.C. 824(a)(3) and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged that Dr. Canon is not currently authorized to practice medicine or handle controlled substances in Tennessee, his state of registration and practice. The Order to Show Cause also notified Dr. Canon 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 by certified mail to Dr. Canon at his registered address at 600 East Carroll Street, Tullahoma, Tennessee 37388. However, that letter was unclaimed by Dr. Canon and eventually returned by postal authorities to DEA, as he apparently did not provide the post office a forwarding address. DEA has not received a request for hearing or any other reply from Dr. Canon or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that thirty days having passed since the attempted delivery of the Order to Show Cause to the registrant's address of record and no request for hearing having been received, concludes that Dr. Canon is deemed to have waived his hearing right. *See* Thomas J. Mulhearn, III, M.D., 70 FR 24,625 (2005); James E. Thomas, M.D., 70 FR 3,654 (2005); Steven A. Barnes, M.D., 69 FR 51,474 (2004); David W. Linder, 67 FR 12,579 (2002).

After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds Dr. Canon currently possesses DEA Certificate of Registration AC2221707, as a practitioner authorized to handle controlled substances. The Deputy Administrator further finds that on August 18, 2004, the State of Tennessee Board of Medical Examiners (Tennessee Board) issued an Order suspending Dr. Canon's license to practice medicine in Tennessee.

That suspension was based upon the Tennessee Board's findings that on March 1, 2004, Dr. Canon was convicted in the United States District Court for the Eastern District of Tennessee of 95 felony counts of False Statements Relating to a Healthcare Matter and Health Care Fraud, in violation of 18 U.S.C. 1035 and 1347. He was sentenced to 41 months imprisonment on each count, to be served concurrently and was ordered to pay over three million dollars in restitution. That judgment is currently on appeal to the United States Court of Appeals for the Sixth Circuit and Dr. Canon is free on bond pending resolution of his appeal. The Tennessee Board's Order provides that the suspension of Dr. Canon's medical license is to remain in effect until his criminal case has been fully adjudicated.

The investigative file contains no evidence that the Tennessee Board's Order has been stayed, modified or terminated or that Dr. Canon's medical license has been reinstated. Therefore, the Deputy Administrator finds Dr. Canon is not currently authorized to practice medicine in the State of Tennessee. As a result, it is reasonable to infer he is also without authorization 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 business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Stephen J. Graham, M.D., 69 FR 11,661 (2004); Dominick A. Ricci, M.D., 58 FR 51,104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1988). Revocation is also appropriate when a state license has been suspended, but with possibility of future reinstatement. *See* Alton E. Ingram, Jr., M.D., 69 FR 22,562

(2004); Anne Lazar Thorn, M.D. 62 FR 847 (1997).

Here, it is clear Dr. Canon's medical license has been suspended and he is not currently licensed to handle controlled substances in Tennessee, where he is registered with DEA. Therefore, he 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 her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AC2221707, issued to Robert M. Canon, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective July 7, 2005.

Dated: May 24, 2005.

**Michele M. Leonhart,**

*Deputy Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 03-025]

#### **Carlin Paul Graham, Jr., M.D. Revocation of Registration**

On November 8, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Carlin Paul Graham, Jr., (Respondent) of Talladega, Alabama, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BG2476186 as a practitioner pursuant to 21 U.S.C. 824(a) and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged that Respondent's license to practice medicine in Alabama had been indefinitely suspended and he was no longer authorized to handle controlled substances in that state.

Respondent, through counsel, timely requested a hearing in this matter. One January 19, 2005, the Presiding Administrative Law Judge Gail A. Randall (Judge Randall) issued the Government, as well as Respondent, an Order for Prehearing Statements.

In lieu of filing a prehearing statement, the Government filed a Request for Stay of Proceedings and