

Washington, DC 20544, telephone (202) 502-1820.

Dated: December 8, 2011.

Benjamin J. Robinson,

Rules Committee Deputy and Counsel.

[FR Doc. 2011-32401 Filed 12-16-11; 8:45 am]

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JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Committee on Criminal Rules

AGENCY: Judicial Conference of the United States, Advisory Committee on Criminal Rules.

ACTION: Notice of Cancellation of Open Hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Criminal Procedure has been canceled: Criminal Rules Hearing, January 6, 2012, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Robinson, Deputy Rules Officer and Counsel Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502-1820.

Dated: December 7, 2011.

Benjamin J. Robinson,

Rules Committee Deputy and Counsel.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 11-49]

Barry M. Schultz, M.D.; Decision and Order

On June 17, 2011, Administrative Law Judge (ALJ) Gail A. Randall issued the attached recommended decision. Neither party filed exceptions to the ALJ's decision.

Having reviewed the record in its entirety, 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), I order that DEA Certificate of Registration BS1314210, issued to Barry M. Schultz, M.D., be, and it hereby is, revoked. I further order that any pending application of Barry M. Schultz, M.D., to renew or modify his

registration, be, and it hereby is, denied. This Order is effective immediately.¹

Dated: December 8, 2011.

Michele M. Leonhart,

Administrator.

Dedra S. Curteman, Esq., for the Government.

Michael R. Lowe, Esq., for the Respondent.

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

I. Facts

Gail A. Randall, Administrative Law Judge. On April 19, 2011, the Administrator, Drug Enforcement Administration ("DEA" or "Government"), issued an Order to Show Cause and an Immediate Suspension of Registration ("Order to Show Cause" or "Order"), immediately suspending the DEA Certificate of Registration, Number BS1314210, of Barry M. Schultz, M.D. ("Respondent"), as a practitioner, pursuant to 21 U.S.C. 824(d) (2006), because the Respondent's continued registration constitutes an imminent danger to the public health and safety. The Order also proposed to revoke the Respondent's registration, pursuant to 21 U.S.C. 824(a)(4), and deny any pending applications for renewal or modification of such registration, pursuant to 21 U.S.C. 823(f), because the Respondent's continued registration is inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f). Specifically, the Order alleged that between May of 2009 and August of 2010, the Respondent issued prescriptions for an inordinate amount of controlled substances to ten patients for illegitimate medical purposes. [Order at 1]. The Government set out the various circumstances of those prescriptions including that during one month, the Respondent prescribed "over 5,000 thirty milligram oxycodone tablets to R.L.," and "on one occasion [the Respondent] prescribed 1,980 thirty milligram oxycodone tablets per day that equates to an individual ingesting 66 thirty milligram oxycodone per day." [Id. at 2].

The Order also alleged that from March 2009 through December 2009, the Respondent ordered approximately 281,000 dosage units of oxycodone to be delivered to his pain management clinic in Del Ray Beach, Florida. [Id. at 3]. The Order similarly alleged that from

¹For the same reasons that led me to order the Immediate Suspension of Respondent's registration, I conclude that the public interest requires that this order be effective immediately. See 21 CFR 1316.67.

January 2010 through August 2010, the Respondent ordered approximately 378,000 dosage units of oxycodone. [Id. at 3].

Further, the Government alleged that on March 24, 2011, the Respondent was arrested and charged with trafficking in oxycodone and writing illegal prescriptions. [Id. at 3].

Last, the Order alleged that on April 14, 2011, the Florida Department of Health suspended the Respondent's authority to practice medicine in Florida. [Id. at 3].

On May 19, 2011, the Respondent, through counsel, timely filed a request for a hearing in the above-captioned matter.

On May 20, 2011, the Government filed its Motion for Summary Disposition and Motion to Stay Proceedings ("Government's Motion"). Therein, the Government requested that I grant its Motion for Summary Disposition, terminate the hearing in this matter, and forward the matter to the Deputy Administrator for a Final Order with a recommendation that the Respondent's registration be revoked and pending applications be denied. [Government's Motion ("Govt") at 2].

The Government argues that summary disposition is appropriate where the Respondent lacks state authority to handle controlled substances as the DEA is barred by statute from continuing the Respondent's registration. [Id. at 1 (citing 21 U.S.C. 801(21), 823(f), 824(a)(3); *Layfe Robert Anthony, M.D.*, 67 FR 20,346 (2009)]. Hence, the Government argues, the DEA has consistently revoked such registrations. [Govt. at 1 (citing *Roy Chi Lung, M.D.*, 74 FR 20,346 (2009); *Michael Chait, M.D.*, 73 FR 40,382 (2008); *Shahid Musud Siddiqui*, 61 FR 14,818 (1996); *Michael D. Lawton*, 59 FR 17,792 (1994); *Abraham A. Chaplan, M.D.*, 57 FR 55,280 (1992)].

In addition, the Government argues that summary revocation is appropriate even where the suspension of the state license is temporary and, thus, may be reinstated. [Govt. at 2 (citing *Stuart A. Bergman, M.D.*, 70 FR 33,193 (2005); *Roger A. Rodriguez, M.D.*, 70 FR 33,206 (2005)].

Consequently, the Government argues that summary revocation of the Respondent's registration in this case is appropriate as he currently lacks state authority to handle controlled substances. [Govt. at 1-2]. The Government attached to its motion an order for the emergency suspension of the Respondent's medical license ("ESO"), issued by the State of Florida Department of Health on April 13, 2011. [Govt. Exhibit ("Exh.") A].