



**BILLING CODE: 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**[Docket No. 11-13]**

**Donald Brooks Reece II, M.D.  
Dismissal Of Proceeding**

On November 19, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Donald Brooks Reece II, M.D. (Respondent), of Morehead City, N.C. The Order proposed the revocation of Respondent's DEA Certificate of Registration as a practitioner, and the denial of any pending application to renew or modify the registration, on the ground that Respondent's registration is inconsistent with the public interest as that term is defined in 21 U.S.C. 823(f). Show Cause Order at 1 (citing 21 U.S.C. 824(a)(4)).

Respondent requested a hearing on the allegations and an Administrative Law Judge (ALJ) conducted a hearing on May 9-13, 2011. Thereafter, on September 30, 2011, the ALJ issued his decision, which concluded that "Respondent's continued registration would be fully inconsistent with the public interest," and recommended that his registration be revoked and that any pending application to renew or modify his registration be denied. ALJ at 33. Respondent filed Exceptions, and on November 21, 2011, the ALJ forwarded the record to this Office for final agency action.<sup>1</sup>

---

<sup>1</sup> On February 9, 2012, the Government also filed a pleading entitled: "Notice To The Administrator Regarding State Authority," with attachments. Therein, the Government observed that Respondent had entered into a Consent Order with the North Carolina Medical Board, pursuant to which he agreed to cease the practice of medicine or surgery in North Carolina, the State in which he held his DEA registration. Notice to the Administrator Regarding State Authority, at 3. This Order was effective on December 8, 2011. *Id.*, Attachment 5, at 6.

Upon review of the record, it was noted that Respondent's registration was due to expire on April 30, 2012. GX 1. Because in the absence of a timely renewal application, Respondent's registration would expire, see 5 U.S.C. 558(c), pursuant to 5 U.S.C. 556(e) and 21 CFR 1316.59(e), I have taken official notice of Respondent's registration record with the Agency.<sup>2</sup> According to this record, Respondent has not filed a renewal application. I therefore find that Respondent's registration has expired.

Under DEA precedent, "if a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke." Ronald J. Riegel, 63 FR 67132, 67133 (1998); see also Thomas E. Mitchell, 76 FR 20032, 20033 (2011). Moreover, in the absence of an application (whether timely filed or not), there is nothing to act upon. Accordingly, because Respondent has allowed his registration to expire and has not filed either a renewal or a new application, this case is now moot and will be dismissed.

### **ORDER**

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I hereby order that the Order to Show Cause issued to Donald Brooks Reece II, M.D., be, and it hereby is, dismissed. This Order is effective immediately.

Dated:  
June 2, 2012

Michele M. Leonhart  
Administrator

---

<sup>2</sup> In accordance with the Administrative Procedure Act (APA), an agency "may take official notice of facts at any stage in a proceeding-even in the final decision." U.S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is "entitled on timely request to an opportunity to show to the contrary." 5 U.S.C. 556(e); see also 21 CFR 1316.59(e). To allow Respondent the opportunity to refute the facts of which I take official notice, Respondent may file a motion for reconsideration within fifteen calendar days of service of this order which shall commence on the date this order is mailed.

[FR Doc. 2012-14315 Filed 06/11/2012 at 8:45 am; Publication Date: 06/12/2012]