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Page v. Bruce  
 D.Utah,2004.

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United States District Court,D. Utah, Northern  
 Division.

Gary PAGE, M.D., Plaintiff,

v.

Byron K. BRUCE, et al., Defendants.

**No. 1:02CV141DAK.**

Feb. 2, 2004.

[Peter Stirba](#), Gary R. Guelker, Teresa L. Welch,  
 Stirba & Associates, Salt Lake City, UT, for  
 Plaintiff.

Carlie Christensen, [Jeffrey E Nelson](#), US Attorney's  
 Office, for Defendants.

#### MEMORANDUM DECISION AND ORDER

[KIMBALL, J.](#)

\*1 This matter is before the court on Plaintiff Gary Page's Motion for Partial Summary Judgment on the second and third causes of action and Defendants' Cross Motion for Summary Judgment on all causes of action. A hearing on the motions was held on January 28, 2004. At the hearing, Plaintiff was represented by Peter Stirba, and Defendants were represented by Assistant United States Attorney Carlie Christensen. Before the hearing, the court considered carefully the memoranda and other materials submitted by the parties. Since taking the matter under advisement, the court has further considered the memoranda, exhibits, and affidavits submitted by the parties, and the law and facts relevant to the motions. Now being fully advised, the court renders the following Order.

#### BACKGROUND

Many of the following facts are taken from the court's previous findings made in its Order denying Plaintiff's Temporary Restraining Order. At all relevant times prior to June 11, 2002, Dr. Page possessed a Drug Enforcement Administration

("DEA") Certificate of Registration pursuant to 42 U.S.C. § 822 ("DEA registration") that allowed him to distribute and dispense controlled substances.

On or about April 15, 2002, Dr. Page began working part-time for a company called MedScripts.MD ("MedScripts"). MedScripts' purpose was to allow patients in need of weight loss and other prescription medicine to obtain their prescriptions electronically via the internet. In doing so, MedScripts would forward patient information to a licensed physician. The physician would review the information, determine whether the patient's medical conditions warranted the prescription sought and, if so, issue the appropriate prescription. Dr. Page was employed as one of MedScript's reviewing physicians. Between April 15 and June 11, 2002, Dr. Page worked a total of 21 days for Medscripts.

In early June 2002, Dr. Page received a telephone call from DEA Investigator Lynette Wingert. Investigator Wingert said she needed Dr. Page to sign a change of address form so that she could update her records. Wingert stated that she had another appointment in the Ogden area and that she wanted to come by Dr. Page's home to complete the form. Dr. Page agreed to meet Investigator Wingert on June 11, 2002 at his home. Prior to her arrival, Investigator Wingert never informed Dr. Page that she would also be serving him with a grand jury subpoena or that she was going to question him as to his involvement with MedScripts. She also never told Dr. Page that she would be accompanied by two other federal agents.

On June 11, 2002, Investigator Wingert arrived at Dr. Page's home and was accompanied by Investigator Byron K. Bruce, a Diversion Investigator with the DEA, and Special Agent Kim Heavy with the Food and Drug Administration (collectively "the investigators"). When Dr. Page answered his door, the investigators identified themselves, showed Dr. Page their credentials, and explained the purpose of their visit. The

investigators served Dr. Page with a subpoena to produce documents to a grand jury in the United States District Court for the Northern District of Alabama.

\*2 In addition to serving Dr. Page with the above-referenced subpoena, Agent Heavey also began asking Dr. Page a series of questions regarding his involvement with MedScripts. These questions had been provided to Agent Heavey by Special Agent Robert West. Agent West was involved with the above-referenced federal prosecution in Alabama. All of the investigators were present during this questioning. Dr. Page admitted that he had reviewed patient information submitted to Medscripts via electronic mail and, based on this information, had written prescriptions for these patients.

The investigators spoke to Dr. Page about the legality of his involvement with Medscripts and specifically whether he had the requisite doctor/patient relationship to prescribe controlled substances to individuals seeking prescriptions through Medscripts when he had not actually met face-to-face with each patient for whom he had issued a prescription. The investigators concluded that such prescriptions had not been issued for a legitimate medical purpose and/or in the usual course of Dr. Page's professional practice and that Dr. Page had violated federal regulations and the terms of his DEA registration by issuing such prescriptions.

Based on their conclusion, Investigator Bruce told Dr. Page that the DEA would seek an immediate suspension of Dr. Page's DEA registration and would issue an order to show cause why Dr. Page's DEA registration should not be revoked. As an alternative, Investigator Bruce told Dr. Page that he could voluntarily surrender his DEA registration by signing DEA Form 104, entitled "Voluntary Surrender of Controlled Substances Privileges" ("Form 104"). This form stated, in pertinent part, as follows:

After being fully advised of my rights, and understanding that I am not required to surrender

my controlled substances privileges, I freely execute this document and choose to take the actions described herein.

X In view of my alleged failure to comply with the Federal requirements pertaining to controlled substances, and as an indication of my good faith in desiring to remedy any incorrect or unlawful practices on my part

I hereby voluntarily surrender my Drug Enforcement Administration Certificate of Registration, unused order forms, and all my controlled substances listed in schedule(s) [form left blank] as evidence of my agreement to relinquish my privilege to handle controlled substances listed in schedule(s) [form left blank]. Further, I agree and consent that this document shall be authority for the Administrator of the Drug Enforcement Administration to terminate and revoke my registration without an order to show cause, a hearing, or any other proceedings....

The investigators further advised Dr. Page that if he signed Form 104, they would inform the federal prosecutors in Alabama that he had been cooperative.

Investigator Bruce read Form 104 to Dr. Page and gave the form to Dr. Page to read for himself. The investigators and Dr. Page discussed Form 104 and Dr. Page was told that if he voluntarily surrendered his DEA registration by signing Form 104, he would be entitled to reapply for registration at any time. The investigators also told Dr. Page that he could prescribe controlled substances using his employing hospital's DEA registration.

\*3 Despite the parties' discussion, Dr. Page was never fully advised of all the rights to which he would be entitled if the DEA sought to revoke his DEA registration in the absence of a voluntary surrender. While Dr. Page was generally advised that he would be entitled to a hearing, he was never advised that (a) the order to show cause issued by the DEA would have to outline the specific grounds upon which the DEA was seeking to revoke Dr. Page's DEA registration; (b) prior to any hearing,

Dr. Page would have an opportunity to consult an attorney and file a written response; (c) prior to any revocation, the DEA would have the burden of proving at a hearing that Dr. Page posed an immediate danger to the public health and safety; (d) Dr. Page would be entitled to have an attorney represent him at the hearing and have the attorney present and cross-examine witnesses; (e) Dr. Page would be entitled to appeal any adverse decision handed down at the hearing, both administratively and judicially; and (f) Dr. Page would retain possession of his DEA registration during the course of the foregoing procedures, hearings and appeals.

The investigators never encouraged or mentioned that Dr. Page could consult an attorney before deciding whether to sign Form 104. Dr. Page claims that he was given only half an hour to decide whether to sign the form and that the offer was a "one-time deal." Dr. Page was not arrested or threatened with arrest during the interview with the investigators. However, Dr. page feared criminal prosecution because of the proceedings ongoing against MedScripts.

After being presented with the form, Dr. Page did not read the form and signed it approximately ten minutes later. Dr. Page did not and has not surrendered his DEA registration form to the DEA.

Also while the investigators were at his home on June 11, 2002, Dr. Page turned over to Special Agent Heavey copies of all of the requested documents in the subpoena. Special Agent Heavey testified that Dr. Page was cooperative throughout the meeting.

On June 11, 2002, about two hours after the investigators left his home, Dr. Page contacted Investigator Wingert and informed her that he wanted to withdraw the Form 104. Investigator Wingert told Dr. Page to call Investigator Bruce. Dr. Page called Investigator Bruce while he was at the airport and because of the poor connection, Investigator Bruce told Dr. Page to call him the next day at his office in Colorado. Dr. Page called

Investigator Bruce the next day and stated that he wanted to withdraw the consent and waiver that he had signed because he no longer wanted to voluntarily surrender his DEA registration. However, Investigator Bruce to Dr. Page that he could not do so because he believed that the revocation of Dr. Page's DEA registration was final and binding at the time Dr. Page signed Form 104. At the time Dr. Page called the investigators, the investigators had not taken any formal action to revoke Dr. Page's DEA registration. Investigator Bruce testified that he had put a code into the computer when he returned to office in Colorado. However, at that time, Investigator Wingert already knew that Dr. Page wished to revoke his consent and Investigator Bruce had spoken to Dr. Page and asked him to call him back. As of the time of Dr. Page's telephone conversation with Investigator Bruce, it is clear that the DEA Administrator had not taken any action to revoke Dr. Page's DEA registration.

\*4 Dr. Page's DEA registration has been revoked. However, Dr. Page was never provided written notice or an opportunity to be heard prior to this revocation. Dr. Page is no longer employed by MedScripts and is no longer prescribing medicine via electronic mail or the internet.

## DISCUSSION

### I. Plaintiff's Motion for Partial Summary Judgment

Dr. Page has moved for partial summary judgment on his second and third causes of action and seeks an order declaring that the DEA Form 104 signed by him did not constitute a voluntary surrender of his DEA Certificate of Registration. Dr. Page's Second Cause of Action seeks a declaration that the Form 104 that he signed is an invalid surrender of his DEA registration. Dr. Page's Third Cause of Action seeks a declaration that the DEA and Defendant Hutchinson exceeded their authority in revoking Dr. Page's DEA registration based on the Form 104. Dr. Page also seeks injunctive relief reinstating his DEA Certificate of Registration.

Dr. Page is alleging that he was deprived of his

Fifth Amendment right to due process when the DEA revoked his DEA registration without notice and a fair hearing. Physicians have a property interest in their DEA registrations. *Harline v. Drug Enforcement Admin.*, 148 F.3d 199, 204 (10<sup>th</sup> Cir.1998). There is no dispute that Dr. Page did not receive notice or a hearing. However, Dr. Page asserts that his signing of the Form 104 did not waive his due process rights because the requirements of a voluntary surrender were not met. Specifically, Dr. Page argues that he did not waive these rights when he signed Form 104 because (1) he was never fully informed of his rights as required by the express language of Form 104; (2) he never surrendered his certificate of registration or unused order forms as is stated on Form 104 and which is required by DEA regulations for a voluntary surrender; (3) he timely revoked any consent he may have given prior to DEA action to revoke his registration; and (4) the investigators did not have the authority to revoke Dr. Page's registration.

#### (1) *Advisement of Rights*

The first sentence of Form 104 states: "*After being fully advised of my rights, and understanding that I am not required to surrender my controlled substances privileges, I freely execute this document and choose to take the actions described herein.*" Dr. Page argues that he was not fully informed of his rights by the investigators. Although he was generally advised that he would be entitled to an order to show cause and a hearing, he was never advised of any of the specific rights attendant to the hearing and administrative process to which he would be entitled if he pursued a hearing, such as his right to counsel, the applicable burdens of proof, and the right to appeal an adverse decision.

However, the court concludes that in this case the agents were not required to make Dr. Page aware of all of the procedural trappings that attend the administrative process for revocation of a DEA registration. The Fifth Amendment right to procedural due process is simply the right to notice

and an opportunity to be heard in a meaningful manner. *Spring*, 479 U.S. at 574-75. Dr. Page did not need to be informed of every procedural right in the administrative process before he could fully consent to a waiver of his DEA registration without an order to show cause and a hearing. It was enough that he knew he was forfeiting notice and an opportunity to be heard. *Patterson v. United States*, 487 U.S. 285, 292-94, 108 S.Ct. 2389, 101 L.Ed.2d 261 (1988) (the Constitution does not require "a full and complete appreciation of all the consequences flowing" from a waiver)(waiver of right to counsel after *Miranda* warning); *Colorado v. Spring*, 479 U.S. 564, 574-75, 107 S.Ct. 851, 93 L.Ed.2d 954 (1987) ("The Constitution does not require that a criminal suspect know and understand every possible consequence of a waiver of the Fifth Amendment privilege.")(waiver of right to remain silent after *Miranda* warning).

\*5 Even though the agents did not recite a statement of rights pre-approved by a court, such as a *Miranda* warning, Form 104 states that the registrant agrees that the form is authority for the DEA Administrator to terminate and revoke the DEA registration without an order to show cause, a hearing, or any other proceeding. In addition, the Form also informs the registrant of the consequences flowing from a voluntary surrender of a DEA registration. In this case, Investigator Bruce read the form to Page, gave Page the form to read, and offered to answer any questions regarding the form. Dr. Page was allowed to ask any questions he had regarding the process before signing the form. Therefore, the information that Form 104 and the individual agents gave Dr. Page satisfied the constitutional minimum. Accordingly, the court concludes that Plaintiff was advised of his constitutional rights and understood what he was forfeiting.

#### (2) *Surrender of Documentation*

Form 104 states: "I hereby voluntarily surrender my DEA Certificate of Registration, unused order forms, and all my controlled substances listed in schedule(s) [form left blank] as evidence of my

*agreement* to relinquish my privilege to handle controlled substances listed in schedule(s) [*form left blank*].” The language of the form is consistent with DEA regulations that a registrant must return this documentation to voluntarily surrender his or her registration. Federal law states that any DEA registrant desiring to discontinue business activities “shall return for cancellation his/her certificate of registration, and any unexecuted order forms in his/her possession.” 21 C.F.R. § 1301.52.

Plaintiff argues that because he never turned any of these documents or controlled substances over to the DEA, a voluntary surrender of his DEA registration never happened. Defendants argue that there is no requirement that Plaintiff had to surrender his actual certificate and order forms to the DEA in order for the waiver form to be effective. Defendants contend that it is the physicians duty to comply with this regulation and the fact that the physician does not comply with it should not preclude the DEA from accepting a voluntary surrender of a DEA registration form. Defendants also claim that it was unnecessary for the form to be filled in as to what schedules were surrendered because Dr. Page surrendered his registration in its entirety, *i.e.*, for all schedules.

The court concludes that a failure to turn over the documentation is not a basis for finding the entire form invalid. The form states that the surrender of documents is evidence of the registrant's intent to consent to the revocation of his or her DEA registration. However, a signing of the form would also evidence an intent to consent to the revocation of a registrant's DEA registration. The court finds that the fact that no documents were surrendered is evidence of the rushed manner in which the procedures were followed in this case. Dr. Page's failure to turn over the documents after the June 11, 2002 meeting is evidence that he did not intend for the Form 104 to be effective after he attempted to withdraw his consent. However, the court cannot conclude that the failure to surrender documents, alone, is a basis for invalidating a form in every instance. In this case, Dr. Page signed the form and the evidence of the events and discussions during

his meeting with the investigators on June 11, 2002, indicate that he intended to give his consent when he signed the document. Therefore, the court does not find that the failure to surrender the documentation referred to in the form is grounds for invalidating the form in this instance.

### (3) *Withdrawal of Waiver*

\*6 Dr. Page next argues that even if the Form 104 is valid and he gave his consent merely by signing the form, he had the ability to withdraw his consent to surrender his DEA registration, and in fact did withdraw his consent, before the DEA Administrator took action to revoke his registration. Defendants contend that Dr. Page could not withdraw his consent at any time after he signed the Form 104. Defendants assert that the surrender of the DEA registration become effective immediately upon a registrant's signing of the Form 104 and such signing constitutes an immediate and final revocation of a physician's DEA registration.

Form 104 states: “I agree and consent that this document shall be *authority for the Administrator* of the DEA *to terminate and revoke my registration* without an order to show cause, a hearing, or any other proceedings.” Federal law does not recognize a surrender as a means of terminating one's DEA privileges. The only action that can be taken with respect to a DEA Certificate of Registration is a denial, suspension or revocation by the DEA Administrator. *See* 21 U.S.C. § 824; 21 C.F.R. 1301.35 to .36.

Defendants contend that Form 104 is entitled “Voluntary Surrender of Controlled Substances Privileges,” and the title shows that once the form is signed, the voluntary surrender is complete. However, this argument completely ignores the language in the form acknowledging that the registrant is giving his consent for the DEA Administrator to revoke his or her registration.

Defendants next argue that the fact that the form speaks in the present tense and states that the registrant will no longer be able to distribute, dispense, prescribe, etc. controlled substances

suggests that the surrender becomes effective upon signing of the form.

However, if a registrant's privileges were terminated immediately upon the signing of Form 104, there would be no need to include language in the form authorizing the Administrator to revoke the privileges. The DEA is fully capable of crafting a process for self surrender under its regulations, however, it has not done so. Rather, its Form 104 indicates that the DEA recognizes, or at least recognized at the time the form was drafted, that only the DEA Administrator has the authority to revoke a DEA registration. Defendants' position that a signed Form 104 constitutes an immediate and final revocation of a physician's DEA registration is not consistent with the terms of Form 104 or federal law. It is the DEA Administrator's authority to revoke a DEA registration, not the registrant's authority to revoke his own registration. The statute, regulations, and form do not authorize the termination or revocation of the registrant's DEA privileges based solely on the registrant's signing of Form 104. A registrant's signing of the Form 104 is merely a step along the process. The court concludes that, under the applicable statutes and regulations, action on the part of the DEA Administrator is required for a revocation of a registrant's DEA registration. Dr. Page had the ability to retract any consent he may have given in the form until the DEA Administrator revoked his registration.

\*7 In this case, Dr. Page notified the agents that he wished to rescind his Form 104 within hours of signing it and before any further action had been taken by anyone at the DEA. Dr. Page should have been allowed to rescind his Form 104 at that time. Dr. page should then have been afforded his due process rights before his DEA registration was revoked. Without Dr. Page's consent, there was no authority for the DEA to revoke Dr. Page's registration without due process. Accordingly, Dr. Page is entitled to summary judgment and reinstatement of his DEA registration pending the proper administrative proceedings.

#### *(4) Investigators' Authority*

Plaintiff argues that the investigators did not have the authority to revoke Dr. Page's DEA registration under 21 U.S.C. § 821, 21 C.F.R. 1301.36, and Form 104. Defendants argue that diversion investigators routinely accept the surrender of a registrant's DEA privileges and they are fully authorized to do so. However, acceptance of a Form 104 is different than the power to revoke a registrant's registration. In accordance with the court's above analysis, the court finds that only the DEA Administrator had the authority to revoke Dr. Page's DEA registration. The power to revoke a registrant's registration is vested solely with the DEA Administrator or his designee. There is no evidence in this case that the DEA Administrator had designated field investigators to revoke Dr. Page's registration. Therefore, Investigator Bruce did not have authority to revoke Dr. Page's DEA registration. Moreover, because the court found that a voluntary surrender is not the same as a revocation, even if Investigator Bruce had been designated with the authority to revoke a DEA registration, Investigator Bruce did not have authority to revoke Dr. Page's DEA registration based solely on Form 104 because Dr. Page timely withdrew his consent. Accordingly, Dr. Page's motion for partial summary judgment on his Second and Third Causes of Action is granted.

#### *Defendants' Cross Motion for Summary Judgment*

Defendants move for summary judgment on all three causes of action. Defendants' motion on the Second and Third Causes of Action are simply the reverse of Plaintiff's motion for partial summary judgment. Therefore, Defendants' motion on the Second and Third Causes of Action is denied. Defendants' motion on the First Cause of Action asserts that the individual agents are entitled to qualified immunity. Dr. Page's First Cause of Action contends that (1) Defendants Bruce, Wingert and Heavey unlawfully interfered with his procedural due process rights when they used coercion, duress, and misinformation to induce him to sign the DEA Form 104 agreeing to voluntarily

surrender his DEA Certificate of Registration, and that (2) Defendant Bruce violated Dr. Page's procedural due process rights when he revoked Dr. Page's DEA registration based solely on the Form 104 and without notice or an opportunity to be heard.

Qualified immunity shields government officials performing discretionary functions "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). In determining the issue of qualified immunity, "the court should ask whether the [defendants] acted reasonably under settled law in the circumstances." *Hunter v. Bryant*, 502 U.S. 224, 228, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991). If the facts alleged show the violation of a constitutional right, the next step is to ask whether the right was clearly established at the time of the defendant's unlawful actions. *Saucier v. Katz*, 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001). In other words, the court determines whether "the contours of the right [were] sufficiently clear that a reasonable official would understand that what he was doing violates that right." *Id.* at 202.

\*8 "Once a defendant asserts a qualified immunity defense, the burden shifts to the plaintiff." *Verdecia v. Adams*, 327 F.3d 1171, 1174 (10<sup>th</sup> Cir.2003). "The plaintiff must show that (1) the official violated a constitutional or statutory right; and (2) the constitutional or statutory right was clearly established when the alleged violation occurred. If the plaintiff does not satisfy either portion of the two-pronged test, the Court must grant the defendant qualified immunity." *Id.*

First, Defendants argue that Dr. Page cannot establish that Defendants Bruce, Wingert, and Heavey violated his constitutional right to procedural due process when they met with him at his home and requested that he sign the Form 104 to voluntarily surrender his DEA registration. The court should look at all relevant factors in assessing

a plaintiff's knowledge and voluntariness of the waiver. *Torrez v. Public Service Co. of New Mexico, Inc.*, 908 F.2d 687, 689 (10<sup>th</sup> Cir.1990).

The court concludes that the circumstances of the June 11, 2002 meeting were not coercive and did not render Page's waiver involuntary. Although Dr. Page was expecting only Investigator Wingert and thought the visit was only to update his address, the agents could have arrived unannounced. Furthermore, there is nothing coercive about the agents identifying themselves, showing their badges, stating the purpose of their visit, and serving a subpoena. In addition, the visit took place in Dr. Page's own home.

There is no evidence that the individual agents used any technique or method during the interview that would offend due process. The individual agents and the language of Form 104 ensured that Page understood that he was giving up his right to notice and a hearing, which meets the constitutional minimum. The individual agents read Form 104 to Dr. Page and discussed the consequences of signing the form with him. As the court found above, Dr. Page did not need to know all the procedural trappings that attend the administrative process. Furthermore, neither the Fifth nor Sixth Amendment required the individual agents to advise Page to consult an attorney before signing Form 104 because he was not in custody and was not being questioned about criminal matters. The agents did not threaten Dr. Page with arrest if he failed to answer their questions and he was free to end the visit at any time.

Moreover, although Dr. Page now attacks the amount of time he was given to decide whether to sign the Form 104, he did not request additional time or ask questions that the agents did not answer. The entire interview lasted less than two hours. In addition, even if Defendant Wingert incorrectly told Dr. Page that he could continue prescribing controlled substances using his employer's DEA registration, there is no evidence that the answer was an intent to deceive. Qualified immunity protects an individual against mistakes.

Therefore, there was nothing that occurred at the June 11, 2002 meeting that exceeded the bounds of established law. Accordingly, the court concludes that the individual agents are entitled to qualified immunity on Dr. Page's claim that they violated his right to procedural due process.

\*9 Second, insofar as Dr. Page's due process claim relates to an improper revocation of his registration, his claim is asserted against only Investigator Bruce. Dr. Page alleges that Investigator Bruce violated his procedural due process rights when he revoked Dr. Page's DEA registration based on his signed Form 104 because the form was facially incomplete, he timely withdrew his waiver, and Investigator Bruce did not have the authority to authorize the revocation.

The court found above that Dr. Page was entitled to withdraw his Form 104 before the DEA Administrator took action to revoke his registration and that Investigator Bruce did not have authority to revoke Dr. Page's DEA registration. However, the court concludes that Investigator Bruce is entitled to qualified immunity because the law was not clearly established at the time Investigator Bruce acted. Investigator Bruce's belief that the Form 104 was effective immediately and is all that is needed for a voluntary surrender of a DEA registration was in accord with the DEA's understanding of the process at the time he acted. Under DEA protocol, he also believed he had the authority to accept Dr. Page's voluntary surrender even if he did not have the authority to revoke Dr. Page's registration. This belief is consistent with the testimony of Ms. Nagel with the DEA. The DEA's interpretation was not wholly without basis. Therefore, even though this court has found the DEA's interpretation of the law to be incorrect, the court concludes that the law was not clearly established at the time Investigator Bruce acted. Accordingly, Investigator Bruce is entitled to qualified immunity. Therefore, Defendants' Motion for Summary Judgment on Dr. Page's First Cause of Action is granted.

#### CONCLUSION

Based on the above reasoning, Plaintiff's Motion for Partial Summary Judgment is GRANTED on his Second and Third Causes of Action and this court orders that Dr. Page's DEA registration be reinstated pending appropriate administrative proceedings. Defendants' Motion for Summary Judgment is DENIED as to the Second and Third Causes of Action and GRANTED as to the First Cause of Action. Therefore, this case is dismissed in its entirety.

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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