Dated: July 25, 2014.

Jonathan C. Rose,

Secretary and Chief Rules Officer.

[FR Doc. 2014–17945 Filed 7–29–14; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Franklyn Seabrooks, M.D.; Decision and Order

On April 8, 2014, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Franklyn Seabrooks, M.D. (hereinafter, Registrant), of Fairfield, California. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration BS4003795, which authorizes him to dispense controlled substances in schedules II–V as a practitioner, on the ground that he does ''not have authority to practice medicine or handle controlled substances in the [S]tate of California.'' Show Cause Order at 1 (citing 21 U.S.C. 823(f) and 824(a)(3)).

The Show Cause Order alleged that Registrant is registered as a practitioner in Schedules II–V at the registered address of 5140 Business Center Drive, Suite 109, Fairfield, California. Show Cause Order at 1. The Show Cause Order further alleged that this registration does not expire until February 28, 2015. *Id.*

Next, the Show Cause Order alleged that Registrant is currently without authority to handle controlled substances in California, the State in which he is registered, because on July 12, 2012, the Medical Board of California (MBC) filed a ''Petition for Ex Parte Interim Suspension Order,'' which was granted the following day by the Medical Quality Hearing Panel (''Hearing Panel'') of the State's Office of Administrative Hearings, thereby suspending Registrant's Physician's and Surgeon's license on an interim basis. *Id.* The Show Cause Order then alleged that on November 7, 2012, an MBC Hearing Panel ordered that the suspension be continued, and that following a further hearing, the MBC revoked his license effective November 22, 2013. *Id.* The Order thus asserted that based upon his lack of authority to handle controlled substances in the State of California, Registrant's Registration must be revoked. *Id.* (citing 21 U.S.C. 802(21), 823(f) and 824(a)(3)). The Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* (citing 21 CFR 1301.43).

According to the Declaration of a DEA Diversion Investigator (DI), on April 11, 2014, the Order to Show Cause was served on Registrant at his home unit at the Napa State Hospital. GX 2. The DI stated on that date, he and a DEA Special Agent attempted to personally serve Respondent after being advised by Respondent's attorney that Respondent was a patient at that facility. *Id.* The DI further stated that upon arriving at the hospital gate, he was told that service of the Show Cause Order would have to be performed by a police officer, who would then confirm service by an email to the DI. *Id.* On April 14, 2014, the DI received an email from a police officer confirming that service had occurred. *Id.*

On May 5, 2014, the DEA Office of Administrative Law Judges received a letter from David Brown, Esq., an attorney with the law firm of Beyer, Pongratz & Rosen, in Sacramento, CA. GX 8. The letter, which is dated April 30, 2014 and appears to be printed on the law firm's letterhead, states: ''The undersigned, David L. Brown, hereby waives a hearing regarding the Order to Show Cause regarding Franklyn E. Seabrooks, M.D. and his DEA Certificate of Registration.'' *Id.* The printed signature line for David L. Brown states: ''Attorney for Respondent, Franklyn E. Seabrooks, II''; however, the letter is unsigned. *Id.* at 3. Attached to this letter is a copy of the April 8, 2014 Order to Show Cause issued to Registrant. *Id.* at 4–5.

Notwithstanding that the letter was not signed, I note that the law firm on the letterhead is the same firm that represented Registrant before the MBC. I therefore find that Mr. Brown is Registrant's attorney and based on his representation in the letter, I find that Registrant has waived his right to a hearing or to submit a written statement in lieu of a hearing. 21 CFR 1301.43(e). I therefore issue this Decision and Order based on relevant material contained in the record submitted by the Government. I make the following factual findings:

Findings

Registrant is the holder of DEA Certificate of Registration BS4003795, which authorizes him to dispense controlled substances in schedules II–V as a practitioner, at the registered address of 5140 Business Center Drive, Suite 109, Fairfield CA. GX 3. This registration does not expire until February 28, 2015. *Id.*

On July 13, 2012, an administrative law judge (ALJ) of the Office of Administrative Hearings, Department of Consumer Affairs, State of California, heard a petition for Ex Parte Interim Suspension of Registrant's Physician's and Surgeons' Certificate (hereinafter, medical license). GX 4. Following an evidentiary hearing during which Registrant was neither present nor represented but submitted documents for consideration by the ALJ, the ALJ ordered the immediate suspension of Registrant's medical license. The ALJ found, *inter alia,* that Registrant had ''engaged in actions constituting violations of various laws and regulations involving the practice of medicine,'' that permitting him to continue ''in the practice of medicine will endanger the public health, safety and welfare,'' and that ''serious injury will result to the public before the matter may be heard on regular notice.'' *Id.* at 2. The ALJ then scheduled a further hearing on the State's petition. *Id.*

On October 29, 2012, the hearing was held before another state ALJ. GX 5. At the hearing, Registrant was represented by counsel, oral and documentary evidence was presented, and oral argument was offered. Following the hearing, the ALJ found that Registrant ''has engaged in acts or omissions constituting a violation of the Medical Practice Act and that he is unable to practice medicine safely due to a mental or physical condition, and that permitting [him] to continue to engage in the practice of medicine will endanger the public health, safety or welfare.'' *Id.* at 19–20. Further finding ''that the likelihood of injury to the public in not issuing the order outweighed the likelihood of injury to [Registrant] in issuing the order,'' on November 7, 2012, the ALJ ordered that the Interim Suspension Order on Registrant's medical license remain in effect. *Id.* at 20.

On September 30, 2013, a further hearing was held before a third state ALJ. GX 6. Registrant was represented by counsel but did not personally appear. The ALJ found that ''due to his mental impairment, [Registrant] has engaged in unprofessional conduct on multiple occasions,'' that ''[c]ause exists to revoke [his] Physician's and Surgeon's certificate,'' that his ability to practice medicine safely is impaired because he is ''mentally ill, or physically ill affecting competency,'' and that ''at this time, protection of the public can be achieved only through license revocation.'' *Id.* at 20. The ALJ

then proposed that Registrant's license be revoked. *Id.* at 21. The MBC adopted the proposed decision, which became effective on November 22, 2013. GX 7.

In his letter waiving Registrant's right to a hearing, Registrant's counsel acknowledges that Registrant's medical certificate had been revoked by the MBC. GX 8, at 2. The letter then states that the state ALJ ''specifically left open the possibility of reinstatement of [Registrant's] medical certificate upon satisfaction of Business and Professions Code section 822.'' *Id.* Continuing, Registrant ''respectfully requests the Drug Enforcement Administration allow the same remedy to remain available for purposes of DEA certificate and registration.'' *Id.* The waiver letter also contains a ''prayer . . . for reservation of rights. . . . If [Registrant's] Medical Certificate is reinstated, the next logical progression would to [sic] apply for reinstatement of his DEA Certificate. [Registrant] humbly seeks this avenue to remain available to him, should he return to the practice of medicine.'' *Id.* at 2–3.

An internet search of the MBC's public record actions Web page reveals that Registrant's medical license remains revoked.

Discussion

The Controlled Substances Act (CSA) grants the Attorney General authority to revoke a registration ''upon a finding that the registrant . . . has had his State license or registration suspended [or] revoked . . . and is no longer authorized by State law to engage in the . . . distribution [or] dispensing of controlled substances.'' 21 U.S.C. 824(a)(3). Moreover, DEA has long held 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. *See* 21 U.S.C. 802(21) (''the term 'practitioner' means a . . . physician . . . or other person 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.''). As these provisions make plain, possessing authority under state law to dispense controlled substances is an essential condition for holding a DEA registration. *See 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).

Here, the evidence shows that Respondent's medical license has been revoked and that he no longer holds authority under California law to dispense controlled substances. Registrant is therefore not entitled to maintain his DEA registration. *See* 21 U.S.C. 802(21), 823(f), and 824(a)(3). Accordingly, Registrant's registration will be revoked.[1]

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 DEA Certificate of Registration BS4003795, issued to Franklyn Seabrooks, M.D., be, and it hereby is, revoked. I further order that any pending application of Franklyn Seabrooks, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective August 29, 2014.

Dated: July 22, 2014.

Thomas M. Harrigan,

Deputy Administrator.

[FR Doc. 2014–17893 Filed 7–29–14; 8:45 am]

BILLING CODE 4410–09–P

[1] In the event the MBC reinstates Registrant's Physician's and Surgeon's Certificate, he may apply for a new DEA Certificate of Registration.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Robert V. Cattani, M.D.; Decision and Order

On February 19, 2014, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Robert V. Cattani, M.D. (hereinafter, Registrant, of Staten Island, New York. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration AC6553437, which authorizes him to dispense controlled substances in schedules II through V as a practitioner, on the ground that he does not possess ''authority to practice medicine or handle controlled substances in the State of New York, the State in which [he is] registered.'' Show Cause Order at 1.

The Show Cause Order alleged that Registrant is registered as a practitioner in schedules II through V at the registered location of 450 Slosson Avenue, Staten Island, New York and that his registration does not expire until August 31, 2014. *Id.* The Show Cause Order then alleged that on November 11, 2011, the New York State Department of Health, State Board for Professional Medical Conduct had summarily suspended Registrant's medical license, and that following a hearing, the Board revoked his medical license effective September 10, 2012. *Id.* The Show Cause Order further alleged that on April 11, 2013, the New York State Professional Medical Conduct Administrative Review Board denied Registrant's appeal of the Board's order, and that order remains in effect. *Id.* Based on Registrant's ''lack of authority to handle controlled substances in the State of New York,'' the Show Cause Order thus asserted that his registration must be revoked. *Id.* at 2 (citing 21 U.S.C. 802(21), 823(f), and 824(a)(3)). Finally, the Show Cause Order notified Registrant that he had the right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedures for electing either option, and the consequence of failing to electing either option. *Id.*

On March 4, 2014, two DEA Diversion Investigators (DIs) went to a residence located in Lloyd Harbor, New York, which they believed was Registrant's residence. GX 2, at 3. Beforehand, they went to the post office which services this address and confirmed that Registrant was still receiving mail at this address. *Id.* The DIs then went to the residence, where they rang the bell and knocked on the door. *Id.* While the DIs heard a voice inside, no one answered the door. The DI then attached the envelope which contained the Show Cause Order to the front door. *Id.*

As the DIs were walking away, a male opened the door from inside and retrieved the envelope; the DI asked the person if he was Registrant. *Id.* While the person said ''no'' and slammed the door, the DI recognized him as being Registrant from photographs she had previously seen. *Id.*

On leaving the residence, the DI also noted the license plate number of a vehicle parked in the driveway. *Id.* The next day she determined that the car had been rented by Registrant. *Id.*

Based on the above, I find that Registrant has been served with the Order to Show Cause. Based on the Government's representation that since the date of service, neither Registrant, nor any person purporting to represent him, ''has requested a hearing or otherwise corresponded with DEA'' regarding the Show Cause Order, and finding that more than thirty (30 days) have no passed, I find that Registrant has waived his right to request a hearing or to submit a written statement in lieu of a hearing. 21 CFR 1301.43(d). I therefore issue this Decision and Final