Proposed Decision. GX 7, at Attachments 2 and 3.

The CALJ then issued a second Order directing Respondent to respond to the Government's Motion to Preclude by September 22, 2015, the same due date for Respondent's reply, if any, to the Government's Motion for Summary Disposition. GX 8. This order was also sent to Respondent's address at 2058 N. Mills Avenue, #142, Claremont, California. *Id.* at 2.

On September 24, the CALJ issued a Notice of Re-Service. GX 10. Therein, the CALJ explained the all of his prior orders had been sent to Respondent at the return address listed on the envelope the latter had used to mail his Hearing Request to the OALJ. The CALJ further noted that this address was different from the address the Government had used to serve Respondent with the Order to Show Cause and its motions. Thus, to ensure Respondent received sufficient notice of the response deadlines to the Government's motions, the CALJ re-sent his orders to the address of Respondent's residence and extended the time permitted to respond to the Government's motions.[2] *Id.*

On October 7, 2015, the CALJ, having received no response from Respondent to either motion, granted the Government's motion to terminate the proceedings, finding that Respondent's request for a hearing was not timely filed and that he had neither sought an extension nor offered an explanation for the untimeliness of his hearing request. GX 9, at 3. The CALJ also denied the Government's Motion for Summary Disposition as moot. *Id* at 4.

Thereafter, the Government submitted its Request for Final Agency Action to this Office. The Government supported its request with various exhibits, including the Proposed Decision of the MBC's ALJ and the MBC's Decision.

Based on the record, I find that Respondent's Hearing Request was untimely and that he has failed to demonstrate good cause to excuse his untimeliness. 21 CFR 1301.43(d). Accordingly, I find that Respondent has waived his right to be heard on the matters of fact and law at issue and issue this Decision and Order based on the record submitted by the Government. I make the following findings of fact.

Respondent is a physician authorized to handle controlled substances in schedules II through V at the registered address of 99 N. San Antonio Ave., #140, Upland, California. GX 2. His registration does not expire until May 31, 2017. *Id.*

On August 13, 2014, the MBC issued an order adopting the Proposed Decision of a state ALJ and ordered the revocation of Respondent's Physician's and Surgeon's License to practice medicine in the State of California, effective September 12, 2014. GX 7, at 9. Based on a search of the MBC's license verification Web page, Respondent's Physician's and Surgeon's license remains revoked. *See www.breeze.ca.gov* (accessed January 14, 2016).

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823, ''upon a finding that the Registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' Moreover, DEA has held repeatedly that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 Fed Appx. 826 (4th Cir. 2012).

This rule derives from the text of two provisions of the CSA. First, Congress defined ''the term 'practitioner' [to] mean[ ] 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.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a physician possess state authority in order to be deemed a practitioner under the Act, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices medicine. *See, e.g., Calvin Ramsey,* 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988); *see also Hooper* v. *Holder,* 481 Fed. Appx. at 828.

Based on the revocation of his California Physician's and Surgeon's Certificate, I find that Respondent currently lacks authority to dispense controlled substances in California, the State in which he holds his DEA registration. Accordingly, I will order that his registration be revoked and that any pending applications be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 21 CFR 0.100(b), I order that DEA Certificate of Registration FW2729804, issued to Louis Watson, M.D., be, and it hereby is, revoked. I further order that any pending application of Louis Watson, M.D., to renew or modify his registration, as well as any other pending application be, and it hereby is, denied. This Order is effective March 7, 2016.

Dated: January 18, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–02130 Filed 2–3–16; 8:45 am]

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[2] In his Order, the CALJ also noted that his staff had contacted by telephone the attorney listed by Respondent in his Hearing Request to determine the attorney's status because he had not submitted any filings. GX 10, note 2. According to the CALJ, the attorney stated that he ''was not currently, and has never been, [Respondent's] counsel in this matter''; the attorney also stated that upon his receipt of the Government's motions he had called Respondent and clarified to him that he was not representing him in this matter. *Id.*

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Pharmacore, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before April 4, 2016.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of

the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on December 3, 2015, Pharmacore, Inc., 4180 Mendenhall Oaks Parkway, High Point, North Carolina 27265 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Oxymorphone (9652)	II
Noroxymorphone (9668)	II

The company plans to manufacture the listed controlled substances as active pharmaceutical ingredients (APIs) for clinical trials.

Dated: January 27, 2016.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–02128 Filed 2–3–16; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

David W. Bailey, M.D.; Decision and Order

On September 9, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David W. Bailey, M.D. (Registrant), of Hesperia, California. The Show Cause order proposed the revocation of Registrant's Certificate of Registration FB4421474, and the denial of any applications to renew or modify this registration or for any other registration on two grounds. GX 1, at 1.

First, the Show Cause Order alleged on April 3, 2015, the Medical Board of California (MBC or Board) revoked his state medical license, and that therefore, Registrant is ''without authority to handle controlled substances in California, the [S]tate in which [he is] registered with the DEA. *Id.* (citing 21 U.S.C. 802(21), 823(f), and 824(a)(3)).

Second, the Order alleged that Registrant's registration ''is inconsistent with the public interest'' because he failed to ''comply with applicable state and Federal law[s]'' related to controlled substances. *Id.* at 2.

With respect to the latter contention, the Show Cause Order alleged that in the MBC proceeding, the MBC Administrative Law Judge (ALJ) found that Registrant admitted to eighteen occasions on which he issued clonazepam prescriptions to his wife but had the drugs dispensed to himself for his ''own abuse.'' *Id.* at 2. The Show Cause Order also alleged that the MBC's ALJ found that Registrant ''started a treatment program for alcohol and clonazepam abuse but completed only five days of the thirty-day program,'' and that ''[a]n expert physician testified that [his] diagnosis included benzodiazepine dependence and that [he was] not currently undergoing any recovery. *Id.* The Order alleged these findings establish that Registrant violated 21 U.S.C. 844(a) and 843(a)(3), as well as various provisions of the California Business and Professions Code. *Id.* The Order thus alleged that the MBC ALJ's findings prove that Registrant's registration ''is inconsistent with the public interest under 21 U.S.C. 824(a)(4) and 823(f)(4).'' *Id.*

Finally, the Show Cause Order 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 for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). On September 16, 2015, DEA Diversion Investigators (DIs) travelled to Registrant's address and after verifying his identity, personally served him with the Show Cause Order. GX 5, at 2 (Declaration of DI).

On December 1, the Government filed its Request for Final Agency Action along with with various exhibits. In its Request, the Government states that since the date of service of the Show Cause Order, neither Registrant, ''nor anyone representing him[,] has requested a hearing or sent any other correspondence to'' the Agency. Request for Final Agency Action, at 9.

Based on the Government's submission, I find that 30 days have now passed since the date of service of the Show Cause Order, and neither Registrant, nor anyone purporting to represent him, has either requested a hearing on the allegations or submitted a written statement in lieu of a hearing. *See* 21 CFR 1301.43(a) and (c). Accordingly, I find that Registrant has waived his right to a hearing or to submit a written statement in lieu of hearing. *Id.* § 1301.43(c) and (d). I therefore issue this Decision and Final Order based on the Investigative Record submitted by the Government. *Id.* § 1301.43(e). I make the following findings of fact.

Findings

Registrant is a physician authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of LaSalle Medical Associates, 16455 Main St., Suite 1, Hesperia, California. GX 2. His registration is not due to expire until July 31, 2016. *Id.*

On March 6, 2015, the MBC issued an order revoking Registrant's Physician's and Surgeon's License to practice medicine in the State of California, effective April 3, 2015. GX 4. The MBC's revocation was based on the decision of a state ALJ who found, based on clear and convincing evidence, that Registrant: (1) Is alcohol and benzodiazepine dependent, (2) used alcohol and controlled substances in a manner dangerous to himself and others, (3) prescribed a controlled substance to another with the intention of using that substance himself, (4) self-administered a controlled substance that he had prescribed in the name of another, (5) violated the California Medical Practice Act, and 6) engaged in unprofessional conduct.[1] GX 3, at 1.

More specifically, the state ALJ found, by clear and convincing evidence, that Registrant:

> engaged in unprofessional conduct by violating state laws related to the prescription and use of Klonopin as follows: [he] repeatedly issued prescriptions for Klonopin in [his wife's] name with the intent of self-administering the Klonopin obtained from the prescriptions; he engaged in fraud and deceit in order to obtain Klonopin; he provided a false name to obtain Klonopin; he repeatedly used Klonopin in violation of the

[1] Notwithstanding that Registrant failed to appear at the MBC hearing, the MBC's findings of fact and conclusions of law are entitled preclusive effect in this proceeding. The MBC found that Registrant was properly served with the Accusation and, in fact, several days before the hearing telephoned the MBC's counsel ''and advised her that he was not going to appear.'' GX 3, at 2. Thus, notwithstanding that he defaulted, Registrant had a full and fair opportunity to challenge the MBC's allegations. *See Jose G. Zavaleta,* 78 FR 27431, 27434 (2013) (collecting cases holding that findings made in a proceeding against a party in default are entitled to preclusive effect if the party could have appeared and defended if he had wanted to); *see also id.* (quoting *Gottlieb* v. *Kest,* 141 Cal. App. 4th 110, 149 (Cal. Ct. App. 2006) (''A default judgment conclusively establishes, between the parties so far as subsequent proceedings on a different cause of action are concerned, the truth of all material allegations contained in the complaint in the first action, and every fact necessary to uphold the default judgment.'') (int. quotations and citations omitted).