reviews. Comments are due on or before November 17, 2017 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by November 17, 2017. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 29, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–21429 Filed 10–4–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Warren B. Dailey, M.D.; Decision and Order

On February 7, 2017, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Warren B. Dailey, M.D. (Registrant), of Houston, Texas. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration, pursuant to 21 U.S.C. 824(a)(3) and (5), on two grounds: (1) That he does not have authority to handle controlled substances in Texas, the State in which he is registered with the Agency; and (2) he has been excluded from participation in a program pursuant to section 1320a–7(a) of Title 42. GX 2 (Order to Show Cause), at 1.

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Registrant is registered as a practitioner in schedules II through V, under Certificate of Registration No. AD9639038, at the registered address of 2305 Southmore, Houston, Texas. *Id.* The Order alleged that Registrant's registration expires by its terms on June 30, 2018. *Id.*

As to the substantive grounds for the proceeding, the Show Cause Order specifically alleged that ''[o]n October 12, 2016, the Texas Medical Board issued an Order of Suspension by Operation of Law, suspending [Registrant's] Texas Medical License . . . based on [his] felony conviction on March 30, 2016 . . . for health care fraud.'' *Id.* The Show Cause Order then alleged that Registrant is ''currently without authority to practice medicine or handle controlled substances in the State of Texas, the [S]tate in which he registered with'' the Agency, thus subjecting his registration to revocation. *Id.* at (citing 21 U.S.C. 824(a)(3); other citations omitted).

The Show Cause Order also alleged that on December 30, 2016, the Office of Inspector General, U.S. Department of Health and Human Services (HHS IG), issued a letter to Registrant ''excluding [him] from participation in all Federal health care programs based on [his] felony conviction on March 30, 2016, in the U.S. District Court for the Southern District of Texas for health care fraud.'' *Id.* at 2. The Show Cause Order further alleged that ''[t]he exclusion was effective twenty days from the date of the letter and is for a minimum period of twenty years.'' *Id.* The Show Cause Order then asserted that Registrant's ''DEA registration is also subject to revocation based on [his] exclusion from participation in a program pursuant to section 1320a–7(a) of Title 42.'' *Id.* (citing 21 U.S.C. 824(a)(5)).

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.* (citing 21 CFR 1301.43). The Order also notified Registrant of his right to submit a corrective action plan under 21 U.S.C. 824(c)(2)(C). *Id.* at 3.

On February 7, 2017, the Show Cause Order was mailed to Registrant, via first class mail, addressed to him at his registered address at 2305 Southmore, Houston, Texas. GX 5. Affidavit of Service by DEA Analyst, Office of Chief Counsel. Also, on February 21, 2016, a Diversion Investigator (DI) with the Houston Division Office emailed the Show Cause Order to an attorney, who represented Registrant in the state board proceeding, who accepted service on his behalf. GX 4. In his email, the attorney represented that he was ''accepting service upon'' Registrant. *Id.* (copy of email between DI and attorney accepting service on Registrant.)

On April 6, 2017 the Government forwarded a Request for Final Agency Action (RFAA) and an evidentiary record to my Office. On review, I found the Government's attempts at service insufficient. As for the Government's attempt to serve Registrant by mail addressed to his registered address, I found this inadequate because it clearly knew that Registrant had been convicted of multiple federal felony offenses more than a year earlier and was likely incarcerated in a United States Penitentiary. *See Robinson* v. *Hanrahan,* 409 U.S. 38, 40 (1972) (''[T]he State knew that appellant was not at the address to which the notice was mailed . . . since he was at that very time confined in . . . jail. Under these circumstances, it cannot be said that the State made any effort to provide notice which was 'reasonably calculated' to apprise appellant of the pendency of the . . . proceedings.''); *see also Jones* v. *Flowers,* 547 U.S. 220, 230 (2006) (citing with approval *Robinson* and noting that its cases ''require[] the government to consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provided notice in the ordinary case'').

I also found the Government's service on the attorney insufficient. In holding so, I explained that the CSA states that ''[b]efore taking action pursuant to [21 U.S.C. 824(a)] . . . the Attorney General *shall serve upon the . . . registrant* an order to show cause why registration should not be . . . revoked[ ] or suspended.'' 21 U.S.C. 824(c) (emphasis added). While I explained that the Agency has found that service on an attorney may satisfy the CSA's requirement that a Show Cause Order be ''serve[d] upon the . . . registrant,'' I noted that the Agency has made clear

that '' [t]he mere relationship between a defendant and his attorney does not, in itself, convey authority to accept service.'' *David M. Lewis,* 78 FR 36951 (2013) (quoting *Harbinson* v. *Commonwealth of Virginia,* 2010 WL 3655980, at *9 (E.D. Va. Aug. 11, 2010) (quoting *Davies* v. *Jobs & Adverts Online, Gmbh,* 94 F.Supp.2d 719, 722 (E.D. Va. 2000))). *See also United States* v. *Ziegler Bolt & Parts Co.,* 111 F.3d 878, 881 (Fed. Cir. 1997); *Grandbouche* v. *Lovell,* 913 F.2d 835, 837 (10th Cir. 1990); *Ransom* v. *Brennan,* 437 F.2d 513, 518–19 (5th Cir. 1971). ''Rather, the party seeking to establish the agency relationship must show ''that the attorney exercised authority beyond the attorney-client relationship, including the power to accept service.'' *Harbinson,* 2010 WL 3655980, at * 9 (quoting *Davies,* 94 F.Supp.2d at 722 (quoting Ziegler, 111 F.3d at 881)).

I further explained that while an attorney's authority to act as an agent for the acceptance of process ''may be implied from surrounding circumstances indicating the intent of'' his client, *In re Focus Media Inc.,* 387 F.3d 1077, 1082 (9th Cir. 2004) (other citation and internal quotations omitted), ''an agent's authority to act cannot be established solely from the agent's actions.'' *Id.* at 1084. ''Rather, the authority must be established by an act of the principal.'' *Id.* (citing *FDIC* v. *Oaklawn Apartments,* 959 F.2d 170, 175 (10th Cir. 1992)). Because the Government offered no evidence of an act by the Registrant establishing that he granted authority to the attorney to accept process on his behalf *in this proceeding,* I found that the Government had not properly served Respondent. *Focus Media,* 387 F.3d at 1084.

Thereafter, the Government reissued the Show Cause Order and on July 17, 2017, a Diversion Investigator mailed the Order by certified mail addressed to Respondent, at the United States Penitentiary in Beaumont, Texas.[1] GX 7. According to the tracking information obtained from the U.S. Postal Service, on July 20, 2017, the mailing was delivered to the Penitentiary. *Id., see also* GX 8. I therefore find that the Government accomplished service on July 20, 2017.

On September 20, 2017, the Government submitted a new Request for Final Agency Action. (Hereinafter, cited as RFFA). Therein, the Government represents that ''Registrant has not requested a hearing and has not otherwise corresponded or communicated with DEA regarding the Reissued Order served on him, including the filing of any written statement in lieu of a hearing.'' RFAA, at 2.

Because more than 30 days have now passed since the date of service of the Show Cause Order and that Registrant has not submitted a request for a hearing or a written statement, 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(d). I therefore issue this Decision and Final Order based on relevant evidence contained in the record submitted by the Government. *Id.* § 1301.43(d) & (e). I make the following findings of fact. *Id.* § 1301.43(e).

Findings

Registrant is the holder of DEA Certificate of Registration No. AD9639038, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 2305 Southmore, Houston, Texas. GX 1 (Certification of Registration History). He is also authorized to dispense Suboxone and Subutex as a Data-Waiver practitioner pursuant to the Drug Addiction Treatment Act of 2000 (DATA), for the purpose of treating up to 100 opiate-addicted patients. *Id.; see* 21 U.S.C. 823(g)(2). His registration does not expire until June 30, 2018. *Id.*

On October 12, 2016, the Texas Medical Board (Board) issued an Order of Suspension by Operation of Law, suspending Registrant's Texas Medical License No. F–8454, based on Registrant's felony conviction on March 30, 2016 for health care fraud in the U.S. District Court for the Southern District of Texas.[2] GX 3, at 2. The Board found that on or about March 30, 2016, Registrant was convicted of one count of conspiracy to commit healthcare fraud, two counts of false statements related to healthcare matters, one count of conspiracy to pay and receive healthcare kickbacks, and one count of payment and receipt of healthcare kickbacks. *Id.* at 1–2 (citing 18 U.S.C. 1349, 1035, 371, 2; 42 U.S.C. 1320a–7b(b)(1) and (b)(2)).

The Government provided evidence that the Texas Medical Board Web site shows that Registrant's medical license remained suspended as of September 20, 2017, and according to the Board's Web site, his license remains suspended as of the date of this Decision and Order. GX 9. *See also http://reg.tmb.state.tx.us/OnLineVerif/Phys_ReportVerif_new.asp.* The Board's Order states that the suspension is to remain in effect until superseded by a subsequent Order of the Board. GX 3, at 2. I therefore find that Registrant does not possess authority to dispense controlled substances under the laws of Texas, the State in which he is registered with the Agency.

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 of Title 21, ''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.'' With respect to a practitioner, DEA has long held 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 registration. *See, e.g., James L. Hooper,* 76 FR 71371 (2011) (collecting cases), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); see *also Frederick Marsh Blanton,* 43 FR 27616 (1978) (''State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.'').

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.'' *Id.* § 823(f). Because Congress has clearly mandated that a practitioner 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

[1] There is no evidence in the record as to how the DI obtained Registrant's address. However, according to the Bureau of Prisons Inmate Locator (of which I take official notice), Registrant is incarcerated at USP Beaumont. *See* 5 U.S.C. 556(e).

[2] The Board's Disciplinary Panel issued the Order following a hearing on October 7, 2016, at which it considered the Board's Application for Suspension by Operation of Law. GX 3, at 1. While Registrant was provided with notice of the hearing, neither he nor his attorney appeared. *Id.*

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 Frederick Marsh Blanton,* 43 FR 27616 (1978).

Because Registrant is no longer currently authorized to dispense controlled substances in Texas, the State in which he is registered with the Agency, I will order that his registration be revoked.[3] 21 U.S.C. 824(a)(3).

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration AD9639038 and Data-Waiver Identification No. XD9639038, issued to Warren B. Dailey, M.D., be, and they hereby are, revoked. Pursuant to the authority vested in me by 21 U.S.C. 823(f), I further order that any pending application of Warren B. Dailey, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective November 6, 2017.

Dated: September 27, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–21382 Filed 10–4–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 17–24]

William J. O'Brien, III, D.O.; Decision and Order

On March 13, 2017, the Assistant Administrator, Diversion Control Division, issued an Order to Show Cause to William J. O'Brien, III, D.O. (Respondent), formerly of Levittown, Pennsylvania. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(2), on the ground that he ''ha[s] been convicted of a felony relating to controlled substances.'' Show Cause Order, at 1.

As to the Agency's jurisdiction, the Show Cause Order alleged that Respondent is registered as a practitioner in schedules II through V, under Registration No. BO3937781, at the address of 49 Rolling Lane, Levittown, Pa. *Id.* The Order also alleged that Respondent's registration expires on December 31, 2017. *Id.*

As to the substantive grounds for the proceeding, the Show Cause Order alleged that ''[o]n June 28, 2016, [Respondent was] convicted by a Federal jury of . . . two counts of conspiracy to distribute controlled substances, in violation of 21 U.S.C. 846; 110 counts of distribution of controlled substances (oxycodone, methadone and amphetamine, all [s]chedule II controlled substances), seven counts of distribution of controlled substances (alprazolam, a [s]chedule IV controlled substances, in violation of 21 U.S.C. 841(a)(1); and one count of distribution of controlled substances resulting in death, in violation of 21 U.S.C. 841(a)(1). *Id.* at 1–2. The Show Cause Order also alleged that on October 5, 2016, the judgment was entered against him. *Id.* at 2. The Order then asserted that a ''[c]onviction of a felony related to controlled substances warrants revocation of [his] registration pursuant to 21 U.S.C. 824(a)(2).'' *Id.*

The Show Cause Order notified Respondent of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* The Show Cause Order also notified Respondent of his right to submit a Corrective Action Plan pursuant to 21 U.S.C. 824(c)(2)(C). *Id.* at 2–3.

On March 21, 2017, the Government served the Show Cause Order on Respondent. Notice of Service of Order to Show Cause, at 1. On April 25, 2017, Respondent's hearing request was received by the Office of Administrative Law Judges (OALJ) and assigned to ALJ Charles Wm. Dorman. Hearing Request, at 1.

On May 1, 2017, the ALJ issued an Order for Prehearing Statements. Noting that Respondent's hearing request was received on April 25, 2017 and that DEA's regulation requires that a hearing request be received ''within 30 days after the date of receipt of the'' Show Cause Order to be deemed timely, the ALJ ordered the Government to ''submit evidence showing when it served the'' Order and to file any motion seeking to terminate the proceeding ''based on the timeliness of the . . . hearing request.'' Order for Prehearing Statements, at 1. The ALJ directed the Government to comply with this portion of his order by May 8, 2017. *Id.* The ALJ's Order also directed both parties to file a prehearing statement setting forth their proposed witnesses, a summary of their proposed testimony, and the documentary evidence they intended to introduce. *Id.* at 1–2.

On May 5, 2017, the Government submitted a pleading addressing the timeliness of Respondent's hearing request. Therein, the Government noted that the envelope used by Respondent to mail the hearing request was stamped by the Agency's mailroom as having been received on April 13, 2017. Notice of Service of Order to Show Cause, at 1. The Government therefore did not move to terminate the proceeding based on the timeliness of Respondent's hearing request. *Id.* at 1–2.

Also, on May 5, 2017, the Government moved for summary disposition on two grounds. Mot. for Summ. Disp., at 1. First, the Government noted that subsequent to the issuance of the Show Cause Order, the State of Pennsylvania suspended Respondent's license to practice osteopathic medicine and surgery, and therefore, he has no authority to handle controlled substances in the State in which he is registered. *Id.* at 2–4. As support for this contention, the Government submitted a copy of the State Board of Osteopathic Medicine's Final Order of Automatic Suspension (April 12, 2017). GX 2. The Government argued that because Respondent does not have state authority to dispense controlled substances in Pennsylvania, he ''is not authorized to possess a DEA registration in that [S]tate,'' and therefore, his registration should be revoked. Mot. at 3.

The Government also sought summary disposition on the ground that it is undisputed that Respondent has been convicted of a controlled substance felony. The Government argued that Respondent has been convicted of two counts of conspiracy to distribute controlled substances, 110 counts of unlawful distribution of schedule II controlled substances, seven counts of unlawful distribution of other controlled substances, and one count of distribution of controlled substances resulting in death. *Id.* at 4 (citing 21 U.S.C. 841(a)(1) and 846). As support for this contention, the Government submitted a copy of the Amended Judgment in a Criminal Case which was entered by the United States District

[3] The Show Cause Order also proposed revocation pursuant to 21 U.S.C. 824(a)(5), which provides that a registration may be revoked ''upon a finding that the registrant has been excluded or directed to be excluded from participation in a program pursuant to section 1320a–7(a) of Title 42.'' GX 2, 1–2. While the Show Cause Order alleged that the HHS IG has issued a letter to Registrant excluding him from participation in federal health care programs pursuant to 42 U.S.C. 1320a–7(a), the Government has provided no evidence to support the allegation, and it does not raise this ground in its Request for Final Agency Action. I therefore dismiss the allegation.