

While courts have recognized that use of e-mail to serve process has “its limitations,” including that “[i]n most instances, there is no way to confirm receipt of an email message,” *Rio Properties*, 284 F.3d at 1018, I conclude that the use of e-mail to serve Registrant satisfied due process because service was made to an e-mail address which Registrant provided to the Agency and the Government did not receive back either an error or undeliverable message.²

Having found that the service of the Show Cause Order was constitutionally adequate, I further find that Respondent has waived his right to a hearing or to submit a written statement in lieu of a hearing. I therefore issue this Decision and Final Order based on relevant evidence contained in the Investigative Record submitted by the Government. 21 CFR 1301.43(d) and (e). I make the following additional findings of fact.

Findings

Registrant is an anesthesiologist and the holder of DEA Certificate of Registration BK9514375, which authorizes him to dispense controlled substances in Schedules II through V as a practitioner, at the registered address of 2300 South 57th Street, Suite 11, Fort Smith, Arkansas 72903. *See* GX A. His registration expires on December 31, 2011. *Id.*

On April 7, 2009, the Arkansas State Medical Board (Arkansas Board) issued an Emergency Order of Suspension and Notice of Hearing charging Registrant with violations of the Arkansas Medical Practices Act, including that he violated a statute or rule governing the practice of medicine by a medical licensing authority or agency of another State. *See* GX B, at 1 (citing Ark. Code Ann. § 17-95-409(a)(2)(r)).³ More specifically, the Arkansas Board charged that following a hearing, on March 31, 2009, the Oklahoma Board of Medical Licensure and Supervision found that Registrant had violated numerous provisions of the Oklahoma Statutes and Administrative

² To make clear, however, the use of e-mail to serve an Order to Show Cause is acceptable only after traditional methods of service have been tried and been ineffective.

³ Under Arkansas law, the “Board may revoke an existing license, impose penalties as listed in § 17-95-410, or refuse to issue a license in the event the holder or applicant * * * has committed any of the acts or offenses defined in this section to be unprofessional conduct.” Ark. Code Ann. § 17-95-409(a)(1). The statute further provides that “[t]he words ‘unprofessional conduct’ as used in the Arkansas Medical Practices Act, § 17-95-201 *et seq.*, § 17-95-301 *et seq.*, and § 17-95-401 *et seq.*, mean * * * [h]aving been found in violation of a statute or a rule governing the practice of medicine by a medical licensing authority or agency of another state.” *Id.* § 17-95-409(a)(2)(r).

Code and was guilty of Unprofessional Conduct; the Oklahoma Board thus revoked his Oklahoma medical license. *Id.* at 2 (citations omitted). The Arkansas Board thus suspended Registrant’s license to practice medicine “on an emergency basis, pending a disciplinary hearing * * * or further orders of the Board.” *Id.* at 3.

Registrant subsequently allowed his Arkansas medical license to expire; his license remains in inactive status as of the date of this order. GX C. I therefore find that Registrant is currently without authority to dispense controlled substances under the laws of the State in which he is registered with DEA.

Discussion

Under the Controlled Substances Act (CSA), 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) (“[t]he term ‘practitioner’ means a physician * * * 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 handle controlled substances is an essential condition for obtaining and maintaining a DEA registration.

The CSA further authorizes the Agency 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 consistently held that revocation of a registration is warranted whenever a practitioner’s state authority to dispense controlled substances has been suspended or revoked, and has done so even when a practitioner’s state authority has been summarily suspended and the State has yet to provide the practitioner with a hearing to challenge the State’s action and at which he may ultimately prevail. *See Robert Wayne Mosier*, 75 FR 49950 (2010) (“revocation is warranted * * * even in those instances where a practitioner’s state license has only been suspended, and there is the possibility of reinstatement”); *accord Bourne Pharmacy*, 72 FR. 18273, 18274 (2007).

Finally, because holding state authority is a statutory requirement for registration as a practitioner, *see* 21 U.S.C. 802(21) and 823(f), DEA has held that revocation is warranted even when a registrant has merely allowed his registration to expire. *James Stephen Ferguson*, 75 FR 49994, 49995 (2010); *Mark L. Beck*, 64 FR 40899, 40900 (1999). *See also Anne Lazar Thorn*, 62 FR 12847, 12848 (1997) (“the controlling question is not whether a practitioner’s license to practice medicine in the state is suspended or revoked; rather, it is whether the Respondent is currently authorized to handle controlled substances”).

As found above, on April 7, 2010, the Arkansas State Medical Board suspended Registrant’s state medical license. Moreover, his Arkansas license is now expired and in inactive status. Because Registrant is without authority to dispense controlled substances in Arkansas, the State in which he holds the DEA registration which is the subject of this proceeding, he is not entitled to maintain the registration. *See* 21 U.S.C. 802(21), 823(f), 824(a)(3). Accordingly, Registrant’s registration will be revoked and any pending application will be denied.

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, BK9514375, issued to Robert Leigh Kale, M.D., be, and it hereby is, revoked. I further order that any pending application of Robert Leigh Kale, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.⁴

Dated: July 27, 2011.

Michele M. Leonhart,
Administrator.

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BILLING CODE 4410-09-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Powered Industrial Trucks Standard

ACTION: Notice.

⁴ For the same reasons cited by the Arkansas Board as warranting its Emergency Order of Suspension, I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Powered Industrial Trucks Standard," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before September 8, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, <http://www.reginfo.gov/public/do/PRAMain>, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an e-mail to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202-395-6929/*Fax:* 202-395-6881 (these are not toll-free numbers), *e-mail:* OIRA_submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by e-mail at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Powered Industrial Trucks Standard contains several information collection requirements addressing truck design, construction, and modification, as well as certification of training and evaluation for truck operators. See 29 CFR 1910.178. These information collections are subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB

Control Number 1218-0242. The current OMB approval is scheduled to expire on August 31, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on April 20, 2011 (76 FR 22154).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1218-0242. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Title of Collection: Powered Industrial Trucks Standard.

OMB Control Number: 1218-0242.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 1,769,162.

Total Estimated Number of Responses: 2,506,607.

Total Estimated Annual Burden Hours: 777,244.

Total Estimated Annual Other Costs Burden: \$247,640.

Dated: August 4, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011-20164 Filed 8-8-11; 8:45 am]

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DEPARTMENT OF LABOR

Office of the Secretary

Office of Trade and Labor Affairs; National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements; Notice of Open Meeting

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

ACTION: Notice of Open Meeting, August 25, 2011.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2, the Office of Trade and Labor Affairs (OTLA) gives notice of a meeting of the National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements ("Committee" or "NAC"), which was established by the Secretary of Labor.

The purpose of the meeting is to provide advice to the Secretary of Labor through the Bureau of International Labor Affairs (ILAB) concerning the implementation of the North American Agreement on Labor Cooperation (NAALC)—the labor side accord to the North American Free Trade Agreement (NAFTA)—and the labor provisions of free trade agreements.

DATES: The Committee will meet on Thursday, August 25, 2011 from 9 a.m. to 5 p.m.

ADDRESSES: The Committee will meet at the U.S. Department of Labor, 200 Constitution Avenue, NW., Secretary's Conference Room, Washington, DC 20210. Mail comments, views, or statements in response to this notice to Paula Church Albertson, Office of Trade and Labor Affairs, ILAB, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-5004, Washington, DC 20210; phone (202) 693-4789; fax (202) 693-4784.

FOR FURTHER INFORMATION CONTACT: Paula Church Albertson, Designated Federal Officer, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-5004, Washington, DC 20210; phone (202) 693-4789 (this is not a toll free number). Individuals with disabilities wishing to attend the meeting should contact Ms. Albertson no later than August 18, 2011, to obtain appropriate accommodations.

SUPPLEMENTARY INFORMATION: NAC meetings are open to the public on a first-come, first-served basis, as seating is limited. Attendees must present valid identification and will be subject to security screening to access the Department of Labor for the meeting.