



BILLING CODE: 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Stacey Lynne Schirmer, M.D.; Decision And Order

On February 14, 2020, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Stacey Lynne Schirmer, M.D. (hereinafter, Applicant), of Angels Camp, California. Order to Show Cause (hereinafter, OSC), at 1. The OSC proposed the denial of Applicant's application for a DEA Certificate of Registration. It alleged that Applicant is without "authority to handle controlled substances in California, the state in which [Applicant] seek[s] registration with DEA." *Id.* (citing 21 U.S.C. 823(f) and 824(a)(3)).

Specifically, the OSC alleged that the Medical Board of California (hereinafter, Board) issued a Cease Practice Order on January 7, 2020, which prohibits Applicant from "engaging in the practice of medicine." *Id.* at 1-2. The OSC further alleged that, because Applicant's California medical license is suspended, Applicant lacks the authority to handle controlled substances in California, and is, therefore, ineligible to obtain a DEA registration. *Id.* at 2.

The OSC notified Registrant of the right to either request a hearing on the allegations or submit a written statement in lieu of exercising the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. 824(c)(2)(C)).

A DEA Diversion Investigator personally served Applicant with the OSC on May 21, 2020. Government's Request for Final Agency Action Exhibit (hereinafter, RFAAX) 9, at 3 (Declaration of Diversion Investigator); RFAAX 5 at 1 (Service Receipt). I find that more than

thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government's written representations, I find that neither Applicant, nor anyone purporting to represent Applicant, requested a hearing, submitted a written statement while waiving Applicant's right to a hearing, or submitted a corrective action plan. *Id.*; RFAAX 6. Accordingly, I find that Applicant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.46.

I. FINDINGS OF FACT

A. Applicant's Application for a DEA Registration

On October 18, 2019,¹ Applicant submitted an application for DEA registration as a practitioner seeking authorization to handle controlled substances in schedules IIN, IIIN, IV, and V. RFAAX 1-2. Applicant's proposed DEA registered address is P.O. Box 939, Angels Camp, California 95222. *Id.* Applicant is the former holder of DEA Certificate of Registration No. BH5379549, which she voluntarily surrendered on September 27, 2011. RFAAX 2, at 1.

B. The Status of Applicant's State License

Applicant has been the holder of California Physician's and Surgeon's Certificate No. A 62148 (hereinafter, medical license). RFAAX 3, at 1 (Cease Practice Order). On August 9, 2019, the Medical Board of California placed Applicant's license on a five-year probation subject to certain terms and conditions. *Id.*

On January 7, 2020, the Medical Board of California issued a Cease Practice Order with respect to Applicant's medical license. *Id.* According to the Cease Practice Order, Applicant

¹ The OSC incorrectly cited October 21, 2019, as the submission date for Applicant's application for a DEA registration. I find this error to be a scrivener's error.

failed to obey the probationary conditions that were placed on her medical license by the Board on August 9, 2019. *Id.* The Board, therefore, issued the Cease Practice Order prohibiting Applicant from “engaging in the practice of medicine.” *Id.* The Cease Practice Order further stated that Applicant “shall not resume the practice of medicine until a final decision has been issued on an accusation and/or petition to revoke probation filed pursuant to this matter.” *Id.* at 1-2.

The online records of the California Department of Consumer Affairs, of which I take official notice, state that Applicant’s medical license is suspended.² <https://search.dca.ca.gov/results> (last visited September 24, 2020). The records further state that Applicant is prohibited from “ordering, prescribing, dispensing, administering, furnishing, or possessing” any controlled substances. *Id.*; RFAAX 8, at 1 (Medical Board of California, Online Licensing Details for Physician’s and Surgeon’s Certificate No. A 62148, dated June 24, 2020).

Accordingly, I find that Applicant is currently without authorization to dispense controlled substances in California, the state in which Applicant has applied for registration with DEA.

² Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding – even in the final decision.” United States Department of Justice, Attorney General’s Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Applicant may dispute my finding by filing a properly supported motion for reconsideration within fifteen calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Applicant files a motion, the Government shall have fifteen calendar days to file a response. Any such motion and response may be filed and served by e-mail (dea.addo.attorneys@dea.usdoj.gov).

II. DISCUSSION

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 practitioner's registration. *See, e.g., James L. Hooper, M.D.*, 76 FR 71,371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978); *see also* 21 U.S.C. 824(a)(3) (authorizing revocation "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"). 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).

Here, the undisputed evidence in the record is that Applicant currently lacks authority to dispense controlled substances in California, the state in which she seeks registration. Because Applicant lacks authority to dispense controlled substances in California, she is not eligible for DEA registration in California. Accordingly, I will order that Applicant's application for a DEA registration be denied.

III. ORDER

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny the application of Stacey Lynne Schirmer for a DEA Certificate of Registration in California. This Order is effective **[Insert Date Thirty Days From the Date of Publication in the Federal Register]**.

Timothy J. Shea,
Acting Administrator.

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