comply with the Supreme Court's instruction, several courts have held that the emailing of process can, depending on the facts and circumstances, satisfy due process, especially where service by conventional means is impracticable because a person secretes himself. *See Rio Properties, Inc.* v. *Rio Int'l Interlink,* 284 F.3d 1007, 1017–18 (9th Cir. 2002); *see also Snyder, et al.* v. *Alternate Energy* Inc., 857 N.Y.S. 2d 442, 447–449 (N.Y. Civ. Ct. 2008); *In re International Telemedia Associates, Inc.,* 245 B.R. 713, 721–22 (Bankr. N.D. Ga. 2000). While courts have recognized that the use of email 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 email to serve Registrant satisfied due process because service was made to an email address which Registrant provided to the Agency and the Government did not receive back either an error or undeliverable message.[3] *See Robert Leigh Kale,* 76 FR 48898, 48899–900 (2011).

Having found that the service of the Show Cause Order was constitutionally adequate, I further find that thirty days have now passed since service of the Order and neither Registrant, nor any one purporting to represent him, has either requested a hearing or submitted a written statement in lieu of a hearing. I therefore find that Registrant has waived his right to a hearing or to submit a written statement in lieu of a hearing, *see* 21 CFR 1301.43(d), and issue this Decision and Final Order based on relevant evidence contained in the Investigative Record submitted by the Government. *Id.* 1301.43(d) & (e). I make the following additional findings of fact.

unclaimed, in most cases, the Government can satisfy its constitutional obligation by simply re-mailing the Show Cause Order by regular first class mail. *Jones,* 547 U.S. at 234–35. It also seems doubtful that any court would hold that going to the clinic where Registrant formerly practiced would provide '' 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' '' *Jones,* 547 U.S. at 226 (quoting *Mullane,* 339 U.S. at 314). At that point, nearly a year had passed since the State Board had prohibited Registrant from practicing medicine and it was a widely publicized fact that Registrant was a fugitive from justice and wanted by the FBI.

[3] While in *Kale,* I explained that the use of email to serve an Order to Show Cause is acceptable only after traditional methods of service have been tried and been ineffective, given Registrant's status as a fugitive and the likelihood that the traditional methods would (and ultimately did) prove futile, I conclude that the timing of the Government's use of email service does not constitute prejudicial error.

Findings

Registrant is the holder of DEA Certificate of Registration BL5670686, which authorizes him to dispense controlled substances in schedule II through V at the registered location of 4137 N. 108th Ave., Phoenix, Arizona 85037. GX 1. Registrant's registration does not expire until March 31, 2013. *Id.* At the time this proceeding was commenced, Registrant was also the holder of an allopathic medicine license issued by the Arizona Medical Board. GX 2, at 1.

On September 1, 2010, Registrant was arrested by the Federal Bureau of Investigation and charged with distributing child pornography in interstate commerce. *Id.; see also* GX 6, at 2. The next day, the State Board received word of the arrest and concluded that ''if Respondent were to practice medicine in Arizona there would be a danger to the public health and safety.'' *Id.* at 2. The following day, the Board's Executive Director and Registrant entered into an Interim Order, pursuant to which Registrant was ''not [to] practice clinical medicine or any medicine involving direct patient care, and [wa]s prohibited from prescribing any form of treatment including prescription medications, until [he] applie[d] to the Board and receive[d] permission to do so.'' *Id.*

Subsequently, on October 6, 2011, the Board revoked Registrant's medical license. GX 7. I therefore find that Registrant is currently without authority under the laws of Arizona to dispense controlled substances, the State in which he holds his DEA registration.

Discussion

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to dispense 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 practitioner's registration.

Accordingly, DEA has held that revocation of a registration is warranted whenever a practitioner's state authority to dispense controlled substances has been suspended or revoked. *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). *See also* 21 U.S.C. 824(a)(3) (authorizing revocation of 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'').

As found above, on September 3, 2010, the Arizona Board issued an Interim Order prohibiting Registrant ''from prescribing any form of treatment including prescription medications,'' GX 2, at 2, and on October 6, 2011, the Board issued an Order revoking his medical license. GX 7, at 4. Accordingly, Registrant is without authority to dispense controlled substances in the State where he practices medicine and holds his DEA registration, and is therefore no longer entitled to hold his registration. *See* 21 U.S.C. 802 (21), 823(f), 824(a)(3). Therefore, pursuant to the authority granted under 21 U.S.C. 824(a)(3), his registration will be revoked.

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), I order that DEA Certificate of Registration BL5670686, issued to Emilio Luna, M.D., be, and it hereby is, revoked. I further order that any pending application of Emilio Luna, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[4]

Dated: January 17, 2012.

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–1974 Filed 1–30–12; 8:45 am]

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[4] Based on the findings of the Arizona Board, I conclude that the public interest requires that this Order be made effective immediately. 21 CFR 1316.67.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Southwest K–9; Decision and Order

On August 16, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to

Show Cause to Southwest K–9 (hereinafter, Applicant), of New Braunfels, Texas. The Show Cause Order proposed the denial of Applicant's application for a DEA Certificate of Registration as a Canine Handler/Researcher, on the ground that its ''registration would be inconsistent with the public interest.'' Show Cause Order at 1.

More specifically, the Show Cause Order alleged that Applicant had applied for a registration as a Canine Handler/Researcher of controlled substances in schedule I but that it currently lacks authority to handle controlled substances in the State of Texas, the State in which it seeks a DEA registration. *Id.* The Show Cause Order further alleged that Applicant has failed to: (1) Obtain other required state licenses, (2) provide information required by DEA on the application for registration, (3) ''provide proposed procedures for sufficiently reporting findings of illicit drugs to law enforcement officials,'' (4) ''provide evidence that [it has] taken steps to obtain dogs from a kennel or trainer,'' as well as to either lease or build its own kennel space, and (5) ''institute * * * procedures for ensuring that its services will not be offered to illegal drug traffickers.'' *Id.* at 2. In addition, the Order alleged that Applicant ''requested a registration to handle controlled substances in types and quantities far in excess of what is required to conduct research involving canines'' and that it ''failed to provide sufficient evidence of need'' for canine drug detection services in the area where it proposes to do business. *Id.* The Order also notified applicant of its right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedures for doing so, and the consequences for failing to do either. *Id.*

As evidenced by the signed return receipt card, on September 6, 2011, the Government served the Show Cause Order on Applicant. GX 4. Since then, more than thirty days have now passed and neither Applicant, nor anyone purporting to represent it, have requested a hearing or submitted a written statement in lieu of a hearing. 21 CFR 1301.43(d). I therefore find that Applicant has waived its right to a hearing or to submit a written statement and issue this Decision and Final Order based on the record submitted by the Government. *Id.* 1301.43(d) & (e). I make the following findings.

Findings

On March 3, 2010, Applicant applied for a registration authorizing it to handle schedule I controlled substances as a canine handler, an activity which requires a researcher's registration. GX 6. Applicant provided as its proposed registered location an address in New Braunfels, Texas and checked each of the twenty-two schedule I controlled substances listed on the application form as drugs it sought authority to handle. *Id.* at 1–2. While on the application, Applicant was required to list any state licenses or controlled substances registration which authorizes it to engage in research or otherwise handle controlled substances, Applicant left this part of the form blank. *Id.* at 3. According to the affidavit of a Diversion Investigator (DI) who was assigned to review its application, Applicant possesses neither a Texas Controlled Substances Registration, which is required by Texas law, nor the license required by Texas law to operate a Guard Dog Company. GX 5, at 2. (citing Texas Health & Safety Code § 481.061(a) and Texas Occupations Code § 1702.116).

According to the DI, he interviewed Mr. Ryan Taylor, Applicant's co-owner, who stated he had two and one half years of law enforcement experience and that its manager, Ms. Mellissa Jones, was a retired police officer with twenty years of law enforcement experience. *Id.* However, Mr. Taylor ''provided no evidence that any of its employees and/or owners possessed any ability or experience [in] training * * * canines for drug detection.'' *Id.* (citing 21 CFR 1301.18(a)(1)(iii)). The DI also found Applicant's protocols to be deficient in that they did not explain how Applicant would screen its potential customers to ensure that it was not providing services to drug dealers. *Id.*

Discussion

Under the Controlled Substances Act (CSA), a canine handler is deemed to be a researcher and is subject to the registration and licensing requirements of section 303(f), 21 U.S.C. 823(f). *See Angelos Michalatos d/b/a Contraband Searches and Investigations,* 54 FR 48161 (1989) (applying registration standards of 21 U.S.C. 823(f) to canine handlers); *see also* 21 U.S.C. 802(21) (''The term 'practitioner' means * * * [an] other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, * * * conduct research with respect to, * * * or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.''). Likewise, section 823(f) imposes, as a condition of obtaining a registration under this provision, that the applicant must be currently authorized to handle controlled substances under the laws of the State in which it performs such activities. *See* 21 U.S.C. 823(f) (''The Attorney General shall register practitioners * * * to * * * conduct research with[] controlled substances * * * if the applicant is authorized to * * * conduct research with respect to controlled substances under the laws of the State in which he practices.''); *see also id.*§ 824(a)(3) (authorizing revocation of 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''). *See Michalatos,* 54 FR at 48161; *see also Robert G. Crummie,* 76 FR 71369 (2011); *David W. Wang,* 72 FR 54297 (2007).

Under Texas law, ''a person who is not a registrant may not manufacture, distribute, prescribe, possess, analyze, or dispense a controlled substance in th[at] State.'' Tex. Health & Safety Code § 481.061(a).[1] Because Applicant does not possess authority under Texas law to handle controlled substances, it therefore does not meet a threshold requirement for obtaining a registration as a researcher under the CSA.[2] *See* 21 U.S.C. 802(21) & 823(f). Accordingly, Respondent's application will be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b), I order that the application of Southwest K–9 for a DEA Certificate of Registration as a Canine Handler/Researcher, be, and it hereby is, denied. This Order is effective March 1, 2012.

Dated: January 19, 2012.

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–1976 Filed 1–30–12; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice

[1] While Texas law provides several exemptions from registration, none of these apply here. *See* Tex. Health & Safety Code § 481.062(a).

[2] Because Respondent does not have current authority to handle controlled substances under Texas law, it is not necessary to make further findings as to whether its registration is consistent with the public interest.