

and that a final hearing “has yet to be scheduled.” *Id.* (citation omitted).

Respondent admits that she is not currently authorized to prescribe any medications in Texas. *Id.* at 3. She contends, however, that because the temporary suspension “is not a final order” of the Board, DEA’s authority under 21 U.S.C. 824(a)(3) must be considered in light of its authority under subsection 824(d), the provision which authorizes the Attorney General to suspend a registration based upon a finding of imminent danger to public health or safety. *Id.* Respondent thus argues that because a suspension under section 824(d) “runs until the conclusion of such proceeding, including judicial review, . . . the principle of comity . . . suggest[s] that while a suspension of [her] registration may be appropriate [contingent on the outcome of the Board proceeding], a revocation is not appropriate.” *Id.*

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 this title, “upon a finding that the registrant . . . has had [her] State license . . . suspended . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” Also, 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., Frederick Marsh Blanton*, 43 FR 27616, 27617 (1978) (“State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.”); *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 Controlled Substances. First, Congress defined “the term ‘practitioner’ [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which [s]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 [s]he practices.” 21 U.S.C. 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 long held that revocation of a practitioner’s registration is the appropriate sanction whenever she is no longer authorized to dispense controlled substances under the laws of the State in which she 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).

This is so even where, as here, the state board has imposed a suspension of a practitioner’s dispensing authority prior to providing a hearing and the practitioner has yet to be afforded the opportunity to challenge the basis of the state board’s action. *See, Ramsey* 76 FR at 20036 (citations omitted). As the Agency previously explained: “Under the CSA, it does not matter whether the suspension is for a fixed term or for a duration which has yet to be determined because it is continuing pending the outcome of a state proceeding. Rather, what matters—as DEA has repeatedly held—is whether Respondent is without authority under [state] law to dispense a controlled substance.” *Bourne Pharmacy, Inc.*, 72 FR 18273, 18274 (2007) (citation omitted). Cf. *James L. Hooper*, 76 FR 71371 (2011) (collecting cases); *Blanton*, 43 FR 27616 (1978) (revoking registration of physician whose medical license had been suspended for one year, but thereafter, would have his license restored subject to probationary conditions); “[a]s a result of the suspension of his medical license, the [r]espondent is no longer authorized to dispense or otherwise handle controlled substances under the laws of Florida. Accordingly . . . the [r]espondent’s DEA registration must be revoked”. *See also Rezik A. Sager*, 81 FR 22122, 22126 (2016).

Because the CSA clearly makes the possession of state authority a condition for maintaining a practitioner’s registration, it is of no consequence that the Texas Board’s temporary suspension order is not a final order of the Board. As for her contention that the principle of comity suggests that I should impose a suspension rather than a revocation, revoking her registration in no manner interferes with the Texas Board’s authority to adjudicate the allegations it has raised against her.¹ Respondent

remains free to challenge the allegations raised by the State before the Board, and in the event she prevails, she can immediately apply for a new DEA registration.

Accordingly, because it is undisputed that Respondent’s Texas Advanced Practice Nursing License and Prescription Authority remains suspended, I find that she no longer has authority under the laws of Texas, the State in which she is registered, to dispense controlled substances. Therefore, she is not entitled to maintain her DEA registration. Accordingly, I will order that her 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 28 CFR 0.100(b), I order that DEA Certificate of Registration MB1907611, issued to Prianglam Brooks, N.P., be, and it hereby is, revoked. I further order that any application of Prianglam Brooks, N.P., to renew or modify this registration, be, and it hereby is, denied. This Order is effective immediately.²

Dated: June 27, 2016.

Chuck Rosenberg,
Acting Administrator.

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DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 6-16]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations

the Agency’s authority to immediately suspend a DEA registration, “simultaneously with the institution of proceedings under” section 824(a), based upon a finding that a registrant poses “an imminent danger to public health or safety.” The provision says nothing about the Agency’s authority where a registrant’s state authority has been suspended prior to hearing. Section 824(a) does, however, and while it provides the Attorney General with discretionary authority to suspend or revoke upon making one or more of the five enumerated findings, for the reasons explained above, the specific provisions that apply to practitioners establish that a registrant who loses her state authority no longer meets the definition of a practitioner and cannot retain her registration even in a suspended status.

² For the same reasons which led the Nursing Board to conclude that the continued practice of nursing by Respondent constitutes “a continuing and imminent threat to public welfare” and to order the summary suspension of Respondent’s licenses, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

¹ Respondent’s invocation of 21 U.S.C. 824(d) provides no support for her contention that comity suggests that I suspend rather than revoke her registration. That provision governs the exercise of

(45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Wednesday, July 13, 2016: 10:00 a.m.—Issuance of Proposed Decisions in claims against Iraq.

11:00 a.m.—Issuance of Proposed Decisions in claims against Libya.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616-6975.

Brian M. Simkin,
Chief Counsel.

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DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Partial Consent Decree Under the Clean Air Act

On June 28, 2016, the Department of Justice lodged a proposed Partial Consent Decree with the United States District Court for the Northern District of California in the lawsuit entitled *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), partially resolving Clean Air Act and various California claims (including under the California Health and Safety Code) against Volkswagen Group of America, Inc., and others, concerning certain noncompliant 2.0 liter diesel vehicles. In addition, the Federal Trade Commission (“FTC”) filed a related proposed Partial Stipulated Order for Permanent Injunction and Monetary Judgment with Volkswagen (“FTC Order”), and the private Plaintiffs’ Steering Committee (“PSC”) filed a proposed Consumer Class Action Settlement Agreement and Release (“Class Action Settlement”) with Volkswagen with respect to the 2.0 liter diesel vehicles on the same date. The three settlements resolve separate claims but offer coordinated relief.

On January 4, 2016, the United States, on behalf of the Environmental Protection Agency (“EPA”) filed a complaint against Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga Operations, LLC, Audi AG,

Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North America, Inc. alleging that the defendants violated Sections 203(a)(1), (2), (3)(A), and (3)(B) of the Clean Air Act (“Act”), 42 U.S.C. 7522(a)(1), (2), (3)(A), and (3)(B), with regard to approximately 500,000 model year 2009 to 2015 motor vehicles containing 2.0 liter diesel engines (2.0 Liter Subject Vehicles) and approximately 80,000 model year 2009 to 2016 motor vehicles containing 3.0 liter diesel engines (3.0 Liter Subject Vehicles). The United States’ complaint alleges that each 2.0 and 3.0 Liter Subject Vehicle contains computer algorithms that are prohibited defeat devices that cause the emissions control system of those vehicles to perform differently during normal vehicle operation and use than during emissions testing. The complaint alleges that the defeat devices cause the vehicles, during normal vehicle operation and use, to emit levels of oxides of nitrogen (“NOx”) significantly in excess of EPA-compliant levels. The complaint seeks, among other things, injunctive relief to remedy the violations, including mitigation of excess NOx emissions, and civil penalties.

On June 27, 2016, the People of the State of California (“California”), by and through the California Air Resources Board (“CARB”) and the California Attorney General filed a complaint against defendants alleging that defendants violated Cal. Health & Safety Code §§ 43106, 43107, 43151, 43152, 43153, 43205, 43211, and 43212; Cal. Code Regs. tit. 13, §§ 1903, 1961, 1961.2, 1965, 1968.2, and 2037, and 40 CFR Sections incorporated by reference in those California regulations; Cal. Bus. & Prof. Code §§ 17200 *et seq.*, 17500 *et seq.*, and 17580.5; Cal. Civ. Code § 3494; and 12 U.S.C. 5531 *et seq.*, with regard to approximately 71,000 model year 2009 to 2015 motor vehicles containing 2.0 liter diesel engines and approximately 16,000 model year 2009 to 2016 motor vehicles containing 3.0 liter diesel engines, for a total of approximately 87,000 motor vehicles. The California complaint alleges, in relevant part, that the motor vehicles contain prohibited defeat devices and have resulted in, and continue to result in, increased NOx emissions from each such vehicle significantly in excess of CARB requirements, that these vehicles have resulted in the creation of a public nuisance, and that defendants engaged in related conduct that violated unfair competition, false advertising, and consumer protection laws.

This Partial Consent Decree (“Decree”) is entered into between the

United States, California, and certain of the defendants, namely, Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga Operations, LLC, and Audi AG (collectively, “Volkswagen”). The Decree partially resolves the governments’ claims for injunctive relief with respect to the 2.0 Liter Subject Vehicles, by providing remedies for the cars on the road and the environmental harm from the violations. It does not address the governments’ claims, *inter alia*, for prospective injunctive relief to prevent future violations of the same type that are alleged in the complaints, claims for civil penalties, or claims regarding the 3.0 liter Subject Vehicles. Because the Decree only addresses 2.0 Liter Subject Vehicles, and the Porsche defendants only manufacture 3.0 liter diesel vehicles for the United States market, no claims against the Porsche defendants are settled under this Decree.

Under the Decree, Volkswagen must offer all Eligible Owners and Lessees of Eligible Vehicles (all as defined in Appendix A to the Decree) the option to have Volkswagen buy back their cars or to terminate their leases at no cost. In addition, the Decree permits Volkswagen to submit for EPA and CARB review and approval, a proposal for modifying the 2.0 Liter Subject Vehicles to reduce emissions. If EPA and CARB approve an emissions modification for any category of the 2.0 Liter Subject Vehicles, Volkswagen must also offer all Eligible Owners and Lessees of an Eligible Vehicle the additional option of receiving an emissions modification in lieu of a buyback. Volkswagen must achieve a recall rate (through the buyback, lease termination, scrapped vehicles, and the emissions modification option, if approved) of 85% by June 30, 2019. If it fails to do so, Volkswagen must augment the mitigation trust fund discussed below by \$85 million for each 1% that it falls short of the 85% rate. Volkswagen must also achieve a separate 85% recall rate for vehicles in California, and must pay \$13.5 million to the mitigation trust (solely for mitigation projects in California) for each 1% that it falls short of this target. See Decree Section IV.D and Appendices A and B.

In connection with the buyback, Volkswagen must pay Eligible Owners no less than the cost of the retail purchase of a comparable replacement vehicle of similar value, condition and mileage as of September 17, 2015, the day before the existence of the defeat devices was made known to the public (“retail replacement value”). The Decree