*Gregory D. Owens, D.D.S.,* 74 FR 36751, 36757 and n.22 (2009) (''The residents of this Nation's poorer areas are as deserving of protection from diverters as are the citizens of its wealthier communities, and there is no legitimate reason why practitioners should be treated any differently because of where they practice or the socioeconomic status of their patients.'' Considering community impact evidence would ''inject a new level of complexity into already complex proceedings and take the Agency far afield of the purpose of the . . . registration provisions, which is to prevent diversion.'').[3]

Counsel's Written Statement suggests that Respondent, like the respondent in *Seglin,* ''did not 'attempt to conceal his misconduct and in fact was quite straightforward with the investigators.' '' GX 7 (Written Statement, at 3, citing *Melvin N. Seglin, M.D.,* 63 FR at 70,433). As already discussed, Respondent's obstruction of justice was recorded on more than one occasion. Thus, although I will not revoke Respondent's registration, I reject Counsel's argument that Respondent did not attempt to conceal his misconduct.

As for acceptance of responsibility, Agency precedent requires unequivocal acceptance of responsibility when a respondent has committed knowing or intentional misconduct. *Lon F. Alexander, M.D.,* 82 FR 49704, 49728 (2017) (collecting cases) (A respondent who committed knowing or intentional misconduct must unequivocally acknowledge his misconduct.). *Cf. Melvin N. Seglin,* 63 FR at 70433 (Respondent thought the billing method he used was acceptable). Respondent's participation in the multi-year illegal cash kickback payment conspiracy was just that, knowing and intentional. *See, e.g.,* GX 3, at 2–3 (Respondent's admissions in the Plea Agreement to knowing and willful criminality); GX 7 (Government Sentencing Memo, at 2–3) (describing the recorded acts forming the basis for the obstruction of justice enhancement); GX 7 (Transcript of Sentencing Hearing, at 37) (AUSA's description of Respondent's knowing and willful acts).

I find, however, that the record as a whole shows the requisite acceptance of responsibility. According to the Plea Agreement, Respondent ''has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct.'' GX 3, at 9. While Respondent ''appeared to have no plans to stop committing his crime prior to being approached by law enforcement,'' the AUSA acknowledged that ''he did accept responsibility for his actions immediately.'' GX 7 (Government Sentencing Memo, at 5). The AUSA also stated that Respondent ''has unquestionably taken full responsibility for his action going so far as to provide significant cooperation to the government after his arrest.'' *Id.* at 7. Moreover, at the sentencing hearing, in addressing the need for specific deterrence, the AUSA concluded there was ''no need'' for it, stating that Respondent's ''immediate acceptance of responsibility demonstrate[s] not only an acknowledgement of his wrongdoing, but a sincere effort to take steps to make amends for the crime that [he] has committed.'' *Id.* at 8–9. Notably, DEA has put forward no evidence challenging the sincerity of Respondent's acceptance of responsibility.

As for evidence in the record regarding whether Respondent should continue to be entrusted with a registration, the District Judge was troubled by Respondent's greed and the fact that Respondent took affirmative steps to obstruct justice. I, too, am troubled by the same facts. I do note, however, that Respondent's criminality did not directly involve his registration or controlled substances. There is nothing in the record addressing, let alone impugning, Respondent's use of his registration.

As for the Agency's interest in deterrence, I adopt the District Judge's conclusion that specific deterrence is not a concern. GX 7 (Transcript of Sentencing Hearing, at 8). I agree with the District Judge that ''[g]eneral deterrence is the question.'' *Id.* at 30. While not issuing some sanction due to Respondent's outrageous misconduct sends the wrong message to the registrant community, not acknowledging the prosecutors' unqualified satisfaction with Respondent's significant cooperation likewise sends the wrong message.

On the whole, while I find that the Respondent was involved in knowing and willful criminal conduct, I also find that this conduct did not involve the misuse of his registration to handle controlled substances. I further find, as the District Judge did, that the Respondent has accepted responsibility for his conduct. In sum, this case is factually unique, and, as such, I will impose a unique sanction.

Based on all of the evidence in the record, I shall suspend Respondent's registration for a minimum period of two years. Said suspension shall terminate upon Respondent's providing evidence that he has satisfied the judgment of the District Court by paying the entire amount due pursuant to the District Court's Judgment.

## 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 FA3926055 issued to Mohammed Asgar, M.D., be, and it hereby is, suspended for a minimum period of two years and that said suspension shall terminate upon Respondent's providing evidence that he has satisfied the judgment of the District Court by paying the amount he was ordered to pay pursuant to the Court's judgment. This Order is effective July 25, 2018.

Dated: June 11, 2018.

**Robert W. Patterson,**

*Acting Administrator.*

[FR Doc. 2018–13531 Filed 6–22–18; 8:45 am]

**BILLING CODE 4410–09–P**

[3] DEA's brief appears to agree with Respondent's reading of *Kwan Bo Jin* while distinguishing it on the facts. RFAA, at 5–6. As recognized in 21 CFR 1301.43, a written statement ''shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.'' In this case, other credible evidence, such as the District Court's acceptance of the Respondent's guilty plea, the application of the Sentencing Guidelines provision crediting Respondent with accepting responsibility, and the concession by the AUSA in the criminal case that Respondent accepted responsibility, supports Respondent's contention that he has accepted responsibility.

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 18–15]**

### Decision and Order: Kevin G. Morgan, RN/APN

On December 22, 2017, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Kevin G. Morgan, RN/APN (Respondent), of Nederland, Texas. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration No. MM2890312 on the ground that he does ''not have authority to handle controlled substances in the state of Texas, the state in which [Respondent is] registered with the DEA.'' Order to Show Cause, at 1 (citing 21 U.S.C. 823(f), 824(a)(3)).

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Respondent is the holder of Certificate of Registration No. MM2890312, pursuant to which he is authorized to dispense controlled substances as a practitioner in schedules III through V, at the registered address

of 1003 Nederland Ave., Nederland, Texas. *Id.* The Order also alleged that this registration does not expire until January 31, 2019. *Id.*

Regarding the substantive ground for the proceeding, the Show Cause Order alleged that on December 1, 2017, the Texas State Board of Nursing (TSBN), ''suspended [Respondent's] nursing license, including [Respondent's] prescriptive authority'' and that ''[t]his suspension remains in effect.'' *Id.* at 2. The Order alleged that the TSBN's suspension was ''based on allegations that [Respondent] acted outside [his] authorized scope of practice and misrepresented information to the public which was likely to deceive the public.'' *Id.* The Order further alleged that Respondent is therefore ''without authority to handle controlled substances in Texas, the [S]tate in which [he is] registered with the DEA.'' *Id.* Based on his ''lack of authority to [dispense] controlled substances in . . . Texas,'' the Order asserted that ''DEA must revoke'' his registration. *Id.* (citing 21 U.S.C. 802(21), 823(f)(1), 824(a)(3)).

The Show Cause Order notified Respondent of (1) his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, (2) the procedure for electing either option, and (3) the consequence for failing to elect either option. *Id.* at 2–3 (citing 21 CFR 1301.43). The Show Cause Order also notified Respondent of his right to submit a corrective action plan. *Id.* at 3–4 (citing 21 U.S.C. 824(c)(2)(C)).

On January 23, 2018, Respondent filed a letter with the Office of Administrative Law Judges (OALJ) in which he requested a hearing on the allegation of the Show Cause Order and stated his desire to explain ''how he is not a threat, provided great care, and how the State of Texas erroneously and wrongly suspended his license.'' Letter from Respondent's Counsel to Hearing Clerk (dated January 22, 2018) (hereinafter, Hearing Request), at 1. The matter was placed on the OALJ's docket and assigned to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, CALJ). On January 23, 2018, the CALJ issued an order entitled ''Order Directing the Filing of Government Evidence of Lack of State Authority Allegation and Briefing Schedule'' (hereinafter, ''Briefing Order'') in which the CALJ found, *inter alia,* that ''the Respondent, by counsel, filed a letter which requested a hearing in the matter of [sic] order to show cause. Therefore, the letter is construed as the Respondent's Request for Hearing.'' Briefing Order, at 1.

Pursuant to 21 CFR 1301.43(a), ''any person entitled to a hearing . . . and desiring a hearing shall, within 30 days after the date of receipt of the order to show cause, . . . file with the Administrator a written request for a hearing.'' *Accord* Show Cause Order, at 2. The CALJ did not indicate in his Briefing Order or in his Recommended Decision—and the rest of the administrative record does not indicate—when Respondent received the Show Cause Order. Without any evidence in the record establishing when Respondent received the Show Cause Order, the only way in which I could find that Respondent's Hearing Request was timely is if it had been filed with the Administrator within 30 days of the December 22, 2017 date of the Show Cause Order. However, the OALJ did not receive Respondent's Hearing Request until January 23, 2018.[1] Hearing Request, at 1. Accordingly, I find that Respondent's Hearing Request was not timely filed pursuant to 21 CFR 1301.43(a), and as a result, Respondent waived his right to a hearing.

In the absence of a timely hearing request, I also find that the CALJ consequently lacked jurisdiction to hear the case. *Accord David A. Ruben, M.D.,* 83 FR 12027, 12028 (2018) (same) (citing *Brown's Discount Apothecary BC, Inc., and Bolling Apothecary, Inc.,* 80 FR 57393, 57394 (2015) (''in the absence of a hearing request, the ALJ had no authority to rule on the issue of whether its registration should be revoked'')). I therefore cancel the hearing *nunc pro tunc* held by the CALJ by summary disposition. *See* 21 CFR 1301.43(e); *accord Ruben,* 83 FR at 12028. Accordingly, I will treat this case as a Request for Final Agency Action and issue this Decision and Order based on the relevant evidence forwarded to my office by the CALJ on March 19, 2018.[2] *See id.* I make the following findings.

## Findings of Fact

Respondent is a holder of DEA Certificate of Registration No. MM2890312. Government Exhibit (GX) 1 to Govt. Mot. Pursuant to his registration, Respondent is authorized to dispense controlled substances in schedules III through V as an ''MLP-Nurse Practitioner.'' *Id.* Respondent's registered address is 1003 Nederland Ave., Nederland, Texas. *Id.* Respondent's registration does not expire until January 31, 2019. *Id.*

On December 1, 2017, the TSBN issued an ''Order of Temporary Suspension'' stating that Respondent's ''Permanent Advanced Practice Registered Nurse License Number AP123323 with Prescription Authorization Number 13799 and Permanent Registered Nurse License Number 758246 . . . to practice nursing in the State of Texas is/are, hereby SUSPENDED IMMEDIATELY.'' GX 2, at 17. The TSBN issued this Order after finding that ''given the nature of the charges, the continued practice of nursing by [Respondent] constitutes a continuing and imminent threat to public welfare.'' *Id.* Finally, the TSBN stated that ''a probable cause hearing be conducted . . . not later than seventeen (17) days following the date of the entry of this order, and a final hearing on the matter be conducted . . . not later than the 61st day following the date of the entry of this order.'' *Id.* There is no evidence in the record establishing that the TSBN ever lifted this suspension. Based on the above, I find that Respondent does not currently have authority under the laws of Texas to dispense controlled substances.

## 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 the CSA, ''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.''

[1] Although the front of Respondent's Hearing Request is stamped ''Received'' by the Office of Administrative Law Judges on January 23, 2018, the fax confirmation page attached to the Hearing Request states that it arrived in that office on ''January 22, 2018.'' *Compare* Hearing Request, at 1, *with id.* at 3. In any event, neither date is within 30 days of the December 22, 2017 date of the Show Cause Order.

[2] In his Briefing Order, the CALJ ordered the Government to file evidence to support its allegation that Respondent lacks state authority to handle controlled substances, and any motion for summary disposition on these grounds, on February 2, 2018. Briefing Order at 1–2. The CALJ also directed Respondent to file his response to any summary disposition motion on February 15, 2018. *Id.* at 2. On February 2, 2018, the Government filed its Motion for Summary Disposition, and the Respondent filed his response on February 15, 2018. *See* Government's Motion for Summary Disposition (hereinafter, ''Govt. Mot.''); Response to the DEA's Proposed Revocation and Motion to Temporarily Abate and Stay the Proceedings for Fifty Days (hereinafter, ''Respondent's Brief'' or ''Resp. Br.''). On February 20, 2018, the CALJ issued his Order granting summary disposition and Recommended Decision. Order Granting the Government's Motion for Summary Disposition and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (hereinafter, Recommended Decision or R.D.). Neither party filed exceptions to the CALJ's Recommended Decision. Although the CALJ's Recommended Decision did not establish that he had jurisdiction in this case, I will nonetheless consider the administrative record that he submitted to me in its entirety.

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., James L. Hooper,* 76 FR 71371 (2011), *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.'' 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 CSA, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he engages in professional practice. *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); *Blanton,* 43 FR at 27616.

Moreover, because ''the controlling question'' in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a practitioner's registration ''is currently authorized to handle controlled substances in the [S]tate,'' *Hooper,* 76 FR at 71371 (quoting *Anne Lazar Thorn,* 62 FR 12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner has lost his state authority by virtue of the State's use of summary process and the State has yet to provide a hearing to challenge the suspension. *Bourne Pharmacy,* 72 FR 18273, 18274 (2007); *Wingfield Drugs,* 52 FR 27070, 27071 (1987). Thus, it is of no consequence that the TSBN summarily suspended Respondent's state medical license. What is consequential is the undisputed fact that Respondent is no longer currently authorized to dispense controlled substances in Texas, the State in which he is registered. Accordingly, Respondent is not entitled to maintain his DEA registration, and I will therefore order that his registration be revoked.[3]

## 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 No. MM2890312, issued to Kevin G. Morgan, RN/APN, be, and it hereby is, revoked. I further order that any pending application of Kevin G. Morgan to renew or modify the above registration, or any pending application of Kevin G. Morgan for any other DEA registration in the State of Texas, be, and it hereby is, denied. This Order is effective immediately.[4]

Dated: June 14, 2018.

**Robert W. Patterson,**

*Acting Administrator.*

[FR Doc. 2018–13530 Filed 6–22–18; 8:45 am]

**BILLING CODE 4410–09–P**

[3] The CALJ received and considered the Government's Motion for Summary Disposition and Respondent's Brief. In his brief, Respondent ''d[id] not contest that he is subject to a temporary suspension of his state prescriptive authority.'' Resp. Br. at 1. However, Respondent argued that he will be presenting evidence at ''a probable cause hearing to be held on March 6, 2018,'' that his suspension ''was granted on flawed information and false allegations,'' and that he ''has not had the chance to defend his self [sic] against these allegations.'' *Id.* However, as already noted above, the TSBN suspended Respondent's nursing license and his authority to issue prescriptions. GX 2, at 17. As of the date of this order, Respondent has not filed a motion for reconsideration on the ground that the TSBN has lifted the suspension. The CALJ concluded that the fact that the State has yet to provide a hearing to challenge Respondent's suspension does not change the undisputed fact that Respondent's state prescriptive authority is suspended. R.D. at 7–8. Accordingly, if the CALJ had the authority to issue his conclusion rejecting Respondent's argument, I would have adopted this conclusion.

[4] For the same reasons which led the TSBN to suspend Respondent's license and prescriptive authority, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

## DEPARTMENT OF JUSTICE

### Executive Office for Immigration Review

**[EOIR Docket No. 18–0202]**

**RIN 1125–AA81**

## EOIR Electronic Filing Pilot Program

**AGENCY:** Executive Office for Immigration Review, Department of Justice.

**ACTION:** Public notice.

**SUMMARY:** The Executive Office for Immigration Review (EOIR) is creating a voluntary pilot program to test an expansion of electronic filing for cases filed with the immigration courts and the Board of Immigration Appeals (BIA). This notice describes the procedures for participation in the pilot program.

**DATES:** The pilot program will be in effect from July 16, 2018 until July 31, 2019. Initially, expanded electronic filing will be available in six immigration courts, but will be expanded to all remaining courts and the BIA incrementally. Eligible attorneys and accredited representatives may choose to participate at any time during the pilot program and will be permitted to continue using electronic filing throughout the pendency of electronically filed cases.

**FOR FURTHER INFORMATION CONTACT:** Nathan Berkeley, Acting Chief, Communications and Legislative Affairs Division, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2618, Falls Church, VA 22041, telephone (703) 305–0289 (not a toll-free call) or email *PAO.EOIR@usdoj.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

In 1998, Congress passed the Government Paperwork Elimination Act, which required federal agencies to provide the public with the ability to conduct business electronically with the federal government. *See* Public Law 105–277 (Oct. 21, 1998). Similarly, in 2002, Congress passed the E-Government Act of 2002, which promoted electronic government services and required agencies to use internet-based technology to increase the public's access to government information and services. *See* Public Law 107–347 (Dec. 17, 2002).

As a result, EOIR began pursuing a long-term agency plan to create an electronic case access and filing system for the immigration courts and BIA. *See* 68 FR 71650 (Dec. 20, 2003) (''The Department is . . . designing an