DATES: *Effective Date:* November 24, 2009.

FOR FURTHER INFORMATION CONTACT: Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, MS–4639 MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION:

Corrections

In the **Federal Register** of November 13, 2007, in FR Doc. E7–22158, on page 63924, in the second column, line seven, change ''North 60 degrees 2′ 31″ East'' to ''North 60 degrees 25′ 31″ East,'' such that line seven reads as follows:

Degrees 25′ 31″ East, 347.43 feet; thence.

Dated: October 21, 2009.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. E9–28157 Filed 11–23–09; 8:45 am]

BILLING CODE 4310–W7–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Notice of Availability of Draft Environmental Impact Statement, Flood Control Improvements and Partial Levee Relocation, Presidio Flood Control Project, Presidio, TX

AGENCY: United States Section, International Boundary and Water Commission (USIBWC).

ACTION: Notice of Availability of Draft Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, the United States Section, International Boundary and Water Commission (USIBWC) has prepared a Draft Environmental Impact Statement (Draft EIS) for flood control improvements to the Presidio Flood Control Project, Presidio, Texas (Presidio FCP). The EIS analyzes potential impacts of the No Action Alternative and six action alternatives under consideration. Site-specific information is used to evaluate environmental consequences that may result from implementing improvements in the upper, middle and lower reaches of the Presidio FCP. The following environmental resources are assessed in the Draft EIS: Biological resources, cultural resources, water resources, land use, socioeconomic resources and transportation, environmental health issues (air quality, noise, public health, and environmental hazards), and cumulative impacts. A public hearing will be held in the City of Presidio to receive comments on the Draft EIS from interested organizations and individuals through transcription by a certified court reporter. Written comments may be submitted at the public hearing, or mailed to the USIBWC during the public review period to the contact and address below.

DATES: Written comments are requested by January 12, 2010. The Draft EIS for the Presidio Flood Control Project will be available to agencies, organizations and the general public on November 20, 2009. A copy of the Draft EIS will be available for review at the City of Presidio Library, 2440 O'Reilly Street, Presidio, Texas 79845, and will also be posted at the USIBWC Web site at *http://www.ibwc.gov.* The USIBWC will conduct a public hearing at the Presidio Activities Center, 1200 East O'Reilly Street, Presidio, Texas 79845, on December 10, 2009, from 5 p.m. to 7 p.m. CST. The hearing date and location will also be announced in local newspapers two weeks prior to the hearing date.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Borunda, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–100, El Paso, Texas 79902 or e-mail: *danielborunda@ibwc.gov.*

SUPPLEMENTARY INFORMATION: The Draft EIS analyzes potential effects of the No Action Alternative and flood control improvement alternatives for the Presidio FCP. The following six action alternatives are under consideration: (1) Retaining the current levee alignment, repairing structural levee damage and raising some levee segments as required to ensure full protection from a 25-year flood event; (2) 100-year flood protection of the City of Presidio and agricultural lands along the Presidio FCP by raising the levee system along its entire length and current alignment; (3) raising the entire levee system for 100-year flood protection, retaining current levee alignment in the upper and middle reaches of the Presidio FCP but partially relocating approximately 3.4 miles of the levee in the lower reach; (4) 100-year flood protection of the City of Presidio by raising the levee system in the upper and middle reaches of the Presidio FCP, in conjunction with a new 1.3-mile spur levee starting at mile 9.2 to connect the raised levee section to elevated terrain south of the City of Presidio; a 25-year flood protection would be retained in the lower reach along agricultural lands; (5) 100-year flood protection of the City of Presidio by raising in place the levee system along the upper and middle reaches of the Presidio FCP, constructing a new 1.4-mile spur levee at mile 8.5, and retaining the 25-year flood protection in the lower reach; and (6) raising the levee along the upstream sections of the levee system to provide 100-year flood protection to the City of Presidio and retaining the 25-year flood protection of agricultural lands in the lower reach, as in the two previous alternatives, and constructing a new 2.9-mile-long spur levee in the middle reach, starting at levee mile 7.3, along a railroad track.

Five copies of the Draft EIS for the Presidio FCP have been filed with USEPA, Region 6 Office of Federal Activities, in accordance with 40 CFR parts 1500–1508 and USIBWC procedures. The public comment period of the Draft EIS will end January 12, 2010.

Dated: November 18, 2009.

Pamela Barber,

Legal Counsel.

[FR Doc. E9–28136 Filed 11–23–09; 8:45 am]

BILLING CODE 7010–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Mohammed F. Abdel-Hameed, M.D.; Revocation of Registration

On April 4, 2008, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Mohammed F. Abdel-Hameed, M.D. (Respondent), of Orlando, Florida. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BA6015158, as a practitioner, and proposed the denial of any pending applications for modification or renewal of the registration, on the ground that Respondent's ''continued registration is inconsistent with the public interest'' as that term is defined in 21 U.S.C. 823(f) and 824(a)(4). Show Cause Order at 1.

The Show Cause Order specifically alleged that while Respondent is licensed as a physician only in Florida, he prescribed controlled substances for internet customers ''throughout the United States from approximately June 2002, through September 2004, on the basis of online questionnaires and/or telephone consultations,'' such that he issued prescriptions ''without a legitimate medical purpose and outside the usual course of professional practice, in violation of 21 CFR 1306.04(a) and 21 U.S.C. 841(a)(1).'' *Id.*

at 1. The Show Cause Order further alleged that Respondent's writing of controlled substance prescriptions ''violated state laws that prohibit the unauthorized practice of medicine, including unlicensed, out-of-state physicians issuing controlled substance prescriptions to state residents'' in such States as California and Alabama. *Id.* at 1–2.

The Show Cause Order was served on Respondent by FedEx to Respondent's last-known address on April 11, 2008; on April 14, 2008, FedEx delivered the Order. GX 2, at 2; GX 3. Because more than 30 days have passed and neither Respondent, nor any other person purporting to represent him, has requested a hearing, I find that Respondent has waived his right to a hearing. 21 CFR 1301.43(d). I therefore enter this Decision and Final Order based on relevant evidence contained in the investigative file. *See* 21 CFR 1301.43(e), 1301.46.

Having considered the record in this matter, I find that Respondent's continued registration is inconsistent with the public interest. Accordingly, Respondent's registration will be revoked and any pending applications for renewal or modification will be denied. I make the following findings.

Findings

Respondent is the holder of DEA Certificate of Registration, BA6015158, which authorizes him to dispense controlled substances in schedules II through V, as a practitioner, with a registered location in Orlando, Florida. Respondent's registration does not expire until June 30, 2010.

Respondent earned a Ph.D. in genetics and an M.D. from the University of California. In 1990, Respondent began practicing medicine in the Orlando, Florida area. Throughout the time at issue in this proceeding, Respondent was licensed as a physician in only the State of Florida. GX 7, at 17; GX 10, at 2.

On November 4, 2004, two DEA Diversion Investigators (DIs) interviewed Respondent. GX 5, at 1. In the interview, Respondent indicated that sometime in late 2002, Ken Shobola, the sole owner of Ken Drugs, Inc. (''Ken Drugs''), contracted with him to work as an internet prescribing physician for Ken Drugs. *Id.;* GX 7, at 10. Respondent worked part-time—20 hours per week—for Ken Drugs/Kenady Medical Clinic,[1] for which he received a bi-weekly paycheck. GX 5, at 2. Respondent handled both internet-initiated calls and some walk-in patients. *Id.*

Respondent also indicated to the DIs that he was operating under a Ken Drugs/Kenady Medical Clinic policy dated October 8, 2004, under which internet prescribing physicians are not expected to prescribe controlled substances to internet clients until the patients/clients are first seen by a physician or a physician's assistant. *Id.*

In September 2002, DEA, in conjunction with other law enforcement agencies, commenced a criminal investigation of various web sites which were believed to be engaged in the distribution of controlled substances in violation of federal law, as well as Ken Drugs, Kennedee Group, Inc., pharmacist Kenneth Shobola, and various physicians including Respondent. GX 7, at 14. As part of the investigation, on March 27, 2003, investigators conducted a trash run at the Ken Drugs pharmacy which was located on Waters Avenue in Tampa, Florida. *Id.* at 18. The investigators found prescription labels bearing the name ''Dr. Fathi Hamid.'' *Id.* Subsequently, in June 2004, Investigators obtained records from the Kenady Medical Clinic, a Tampa-based clinic owed by Shobola, which included prescription records signed by ''Hamid'' and which bore Respondent's DEA registration number. *Id.* at 22.

As part of their investigation, DEA and the cooperating agencies conducted seventeen undercover purchases of controlled substance prescriptions and refills for hydrocodone, Xanax, and Soma. *Id.* at 18–19. Whether the officers initiated contact through *http://www.medsviaweb.com* or by contacting Ken Drugs directly, each purchase included the payment of $120 or $125 for a telephonic consultation fee with a purportedly licensed physician. *Id.* at 19. After payment of the fee, each undercover officer talked by telephone to an employee of Kenaday Group,[2] who advised the individual that he or she would have to fax his/her medical record accompanied by a photocopy of his/her driver's license. *Id.* Regardless of whether the officer actually faxed in his/her medical records, the employee would notify the individual that a doctor would soon be available for a consultation, after which, according to the employee, the prescribed controlled substances would arrive via UPS or FedEx. *Id.* On all but one of the buys, the phone consultation was recorded and transcribed. *Id.*

Throughout the undercover purchases, officers dealt with one of three physicians but not with Respondent. *See Id.* In each instance, the telephonic consultation lasted only a few minutes. *Id.* at 19–20. In general, the physicians inquired whether the purchaser had faxed the requested medical records to Kenaday Group, the nature of the medical complaint, what drugs or medications the purchaser had taken in the past, and what medications the purchaser currently desired. *Id.* at 20.

The officers, however, rarely faxed in their medical records. *Id.* When they did, the purchaser's age conflicted with the age given on the photocopied driver's license. *Id.* Nevertheless, on each occasion, the physicians prescribed schedule III controlled substances containing hydrocodone, which was expeditiously shipped and delivered to the officer. *Id.* In no instance was an undercover officer required to obtain a physical examination by a doctor associated with Ken Drugs, Kenady Medical Clinic, or Kenaday Group. *Id.*

On October 7, 2003, the Winchester, Kentucky Police Department interviewed E.C., who had used eighteen names and seven addresses to receive drug shipments from Ken Drugs. *Id.* E.C. confessed that he was addicted to hydrocodone and that his source for controlled substances was Ken Drugs. *Id.* According to E.C., he initially consulted with one of the other three doctors, who requested that he send medical records. *Id.* at 20–21. Although E.C. never sent the requested records, Ken Drugs dispensed controlled substances to him. *Id.* at 21.

On November 20, 2003, the Cabell County, West Virginia Department of Public Safety detained C.W. for traffic violations. *Id.* In an interview, C.W. stated that he and his wife had been obtaining hydrocodone 7.5 mg. and 10 mg. tablets and Xanax 1 mg. and 2 mg. tablets from Ken Drugs. *Id.* In order to obtain a larger quantity of controlled substances, C.W. and his wife submitted to Ken Drugs the names, addresses, drivers' licenses, and medical records of friends and relatives, as well as falsified medical records including MRIs and test results which were obtained from internet sites. *Id.*

In June 2004, the law enforcement agencies obtained records from Kenady Medical Clinic corresponding to some of the fictitious names given by Mr. and Mrs. C.W. *Id.* at 22. Among these records were prescriptions written by

[1] Kenady Medical Clinic, Inc., is a Florida corporation incorporated by Kenneth Shobola in April 2002. In the period under consideration in this decision, Mr. Shobola was the president and registered agent of the corporation. GX 7, at 16.

[2] Kennedee Group, Inc., a/k/a Kenaday Group, is a Florida corporation incorporated by Kenneth Shobola in September 2000. GX 7, at 16, 19. Mr. Shobola was president of Kennedee Group. *Id.*

''Fathi Hamid'' under Respondent's DEA registration number. *Id.*

On September 21, 2004, a search warrant was executed at the Ken Drugs pharmacy on Habana Avenue in Tampa, Florida. The Investigators obtained computer records which showed that between the dates of September 4, 2002, and December 12, 2003, Respondent had issued 992 controlled substance prescriptions. Respondent issued these prescriptions to residents of 38 States and Puerto Rico.

More specifically, between April 2, 2003, and December 1, 2003, Respondent wrote 147 prescriptions for schedule III drugs containing hydrocodone and 13 diazepam prescriptions for residents of California. Between April 2, 2003, and December 4, 2003, he wrote 54 prescriptions for combination hydrocodone drugs for residents of Georgia. Between April 4, 2003, and December 11, 2003, he wrote 24 prescriptions for combination hydrocodone drugs for residents of Texas. Between June 2, 2003, and October 27, 2003, he wrote 21 prescriptions for combination hydrocodone drugs for residents of Alabama. Between April 4, 2003, and December 5, 2003, he wrote nineteen prescriptions for combination hydrocodone drugs for residents of North Carolina. *Id.*

Combination schedule III controlled substances containing hydrocodone heavily predominated in the 992 prescriptions Respondent wrote. As I have noted in numerous other decisions, the drugs are highly popular drugs with abusers. *See Southwood Pharmaceuticals, Inc.,* 72 FR 36487, 36504 (2007) (noting 2004 survey of the National Institute of Drug Abuse which found that ''9.3 percent of twelfth graders reported using Vicodin, a brand name Schedule III controlled substance without a prescription in the previous year''); *William R. Lockridge,* 71 FR 77791, 77796 (2006) (noting that in 2002, the abuse of hydrocodone products resulted in more than 27,000 emergency room visits).

Discussion

Section 304(a) of the Controlled Substances Act (CSA) provides that a registration to ''dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). In making the public interest determination, the CSA requires consideration of the following factors:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f).

''[T]hese factors are * * * considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors, and I may give each factor the weight I deem appropriate in determining whether to revoke an existing registration. *Id.* Moreover, I am ''not required to make findings as to all the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (DC Cir. 2005).

Having considered all of the factors, I acknowledge that the record contains no evidence that the State of Florida has taken action against Respondent's medical license (factor one) or that Respondent has been convicted of an offense related to controlled substances (factor three).[3] However, the record contains substantial evidence that Respondent's experience in dispensing controlled substances (factor two) and his record of compliance with applicable Federal and state laws (factor four) is characterized by his repeated violation of the CSA's prescription requirement, as well as his repeated violation of state laws and regulations prohibiting the unlicensed practice of medicine and setting the standards for prescribing controlled substances and dangerous drugs. Accordingly, I conclude that Respondent's continued registration would be inconsistent with the public interest and will revoke his registration.

[3] This Agency has long held that a State's failure to take action against a practitioner's authority to dispense controlled substances is not dispositive in determining whether the continuation of a registration would be consistent with the public interest. *See Mortimer B. Levin,* 55 FR 8209, 8210 (1990). The absence of a criminal conviction is likewise not dispositive of the public interest inquiry. *See, e.g., Edmund Chein,* 72 FR 6580, 6593 n.22 (2007).

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Record of Compliance With Applicable Controlled Substance Laws

The primary issue in this case is whether the controlled-substance prescriptions which Respondent wrote in 2003, pursuant to his arrangement with Ken Drugs/Kenady Medical Clinic, were lawful prescriptions under the CSA. Under a longstanding DEA regulation, a prescription for a controlled substance is not ''effective'' unless it is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). This regulation further provides that ''an order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of [21 U.S.C. 829] and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.'' *Id.* As the Supreme Court recently explained: ''The prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzalez* v. *Oregon,* 546 U.S. 243, 274 (2006) (citing *United States* v. *Moore,* 423 U.S. 122, 135, 143 (1975)).

Under the CSA, for a physician to act ''in the usual course of * * * professional practice'' and to issue a prescription for a ''legitimate medical purpose,'' he or she must be authorized to ''practice medicine and to dispense drugs in connection with his [or her] professional practice,'' and he or she must also have established a bona fide doctor-patient relationship with the individual for whom the prescription is written. *Moore,* 423 U.S. at 140–43. *See also Patrick W. Stodola,* 74 FR 20727, 20731 (2009); *Joseph Gaudio,* 74 FR 10083, 10090 (2009). *See also Dispensing and Purchasing Controlled Substances Over the Internet,* 66 FR 21181 (2001).

A ''physician who engages in the unauthorized practice of medicine'' under state laws—such as an out-of-state physician who lacks the license to prescribe to a State's residents—''is not a practitioner acting in the usual course of * * * professional practice'' under the CSA. *United Prescription Services, Inc.,* 72 FR 50397, 50407 (2007) (citing 21 CFR 1306.04(a)). This rule derives directly from the text of the CSA which

defines the term ''practitioner'' as ''a physician * * * licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to * * * dispense * * * a controlled substance.'' 21 U.S.C. 802(21). *See also Moore,* 423 U.S. at 140–41 (''In the case of a physician [the CSA] contemplates that *he is authorized by the State to practice medicin*e and to dispense drugs in connecting with his professional practice.'') (emphasis added). A controlled-substance prescription issued by a physician who lacks the license or authority required to practice medicine within a State is therefore unlawful under the CSA. *See* 21 CFR 1306.04(a).

As to the issue of a bona fide doctor-patient relationship, at the time of the prescriptions at issue in this case, the CSA generally looked to state law to determine its elements.[4] *See Stodola,* 74 FR at 20731; *Kamir Garces-Mejias,* 72 FR 54931, 54935 (2007); *see also* Dispensing and Purchasing Controlled Substances Over the Internet, 66 FR at 21182–83. As the DEA elaborated in the 2001 Guidance:

> For purposes of state law, many state authorities, with the endorsement of medical societies, consider the existence of the following four elements as an indication that a legitimate doctor/patient relationship has been established:
>
> —A patient has a medical complaint;
> —A medical history has been taken;
> —A physical examination has been performed; and
> —Some logical connection exists between the medical complaint, the medical history, the physical examination, and the drug prescribed.

66 FR at 21182–83.

As found above, Respondent wrote 147 prescriptions for schedule III controlled substances containing hydrocodone and thirteen prescriptions for diazepam for residents of California between April 2, 2003, and December 1, 2003. These prescriptions were filled by Ken Drugs pursuant to Respondent's contractual arrangement with Ken Drugs/Kenady Medical Clinic.

In 2000, California enacted a law specifically prohibiting the prescribing or dispensing of a dangerous drug ''on the Internet for delivery to any person in [California], without an appropriate prior examination and medical indication therefore, except as authorized by Section 2242.'' Cal. Bus. & Prof. Code § 2242.1.[5] Moreover, in 2003, the Medical Board of California expressly held that a ''physician cannot do a good faith prior examination based on a history, a review of medical records, responses to a questionnaire and a telephone consultation with the patient, without a physical examination of the patient.'' *In re John Steven Opsahl, M.D.,* Decision and Order, at 3 (Med Bd. Cal. 2003) (available by query at *http://publicdocs.medbd.ca.gov/pdl/mbc.aspx*). The California Board further held that ''[a] physician cannot determine whether there is a medical indication for prescription of a dangerous drug without performing a physical examination.'' *Id.*

In addition, well before Respondent's issuance of the prescriptions, the California Board had cited an out-of-state physician for violating state law by prescribing to state residents through the internet. Citation Order, Carlos Gustavo Levy (Nov. 30, 2001). As Respondent did not hold a California license, he clearly violated California law and the CSA when he wrote controlled-substance prescriptions for California residents. Moreover, because Respondent did not perform physical examinations of the California residents, his prescriptions were not issued in the usual course of professional practice and lacked a legitimate medical purpose and thus violated the CSA for this reason as well. *See* 21 CFR 1306.04(a).

Respondent wrote 54 prescriptions to residents of Georgia for schedule III controlled substances which contain hydrocodone. Under Georgia law (which was in effect when he issued the prescriptions), an individual ''who is physically located in another state'' and who ''through the use of any means, including electronic * * * or other means of telecommunication, through which medical information or data is transmitted, performs an act that is part of a patient care service located in this state * * * that would affect the diagnosis or treatment of the patient'' is ''engaged in the practice of medicine'' in Georgia. Ga. Code Ann. § 43–34–31.1. Such practice of medicine requires the individual to have ''a license to practice medicine in [Georgia]'' and subjects him or her to ''regulation by the board.'' *Id.* By issuing controlled substance prescriptions to Georgia residents via telephone and the internet without having a Georgia license to practice medicine, Respondent violated both Georgia law and the CSA.

In addition, under the regulation of the Georgia Composite State Board of Medical Examiners, it is ''unprofessional conduct'' to ''[p]rovid[e] treatment and/or consultation recommendations via electronic or other means unless the licensee has performed a history and physical examination of the patient adequate to establish differential diagnoses and identify underlying conditions and or contraindications to the treatment recommended.'' Ga. Comp. R. & Regs. 360–3–.02(6) (2002). Respondent's failure to perform a physical examination on the Georgia residents he prescribed to thus violated Georgia law and the CSA for this reason as well. *See* 21 CFR 1306.04(a).

Respondent wrote 24 prescriptions to residents of Texas for schedule III controlled substances containing hydrocodone. Texas law provides that individuals who are ''physically located in another jurisdiction but who, through the use of any medium, including an electronic medium, perform[ ] an act that is part of a patient care service initiated in [Texas] * * * and that would affect the diagnosis or treatment of the patient'' are engaged in the practice of medicine. Tex. Occup. Code § 151.056(a); *see also* Tex. Occup. Code § 155.001 (requiring a license to engage in the practice of medicine). In order to issue prescriptions for controlled substances, such individuals must also obtain a state registration to dispense such drugs, which in turn requires them to be licensed under the laws of Texas. Tex. Health & Safety Code §§ 481.061(a) & 481.063(d).

More specifically, Texas regulations provide that ''[p]hysicians who treat and prescribe through the Internet are practicing medicine and must possess appropriate licensure in all jurisdictions where patients reside.'' Tex. Admin. Code 174.4(c). Because Respondent was not licensed to practice medicine in Texas and did not hold a Texas Controlled Substances Registration, his prescriptions to the Texas residents violated Texas law and the CSA. *See* 1306.04(a).

Respondent issued 21 prescriptions to residents of Alabama for schedule III controlled substances containing hydrocodone. Notably, Alabama law defines the practice of medicine to mean ''[t]o diagnose, treat, correct, advise or prescribe for any human disease,

[4] On October 15, 2008, President Bush signed into law the Ryan Haight Online Pharmacy Consumer Protection Act of 2008, Public Law 110–425, 122 Stat. 4820 (2008). Section 2 of the Act prohibits the dispensing of a prescription controlled substance ''by means of the Internet without a valid prescription,'' and defines ''[t]he term 'valid prescription' [to] mean[ ] a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by * * * a practitioner who has conducted at least 1 in-person medical evaluation of the patient.'' 122 Stat. 4820. Section 2 further defines ''the term 'in-person medical evaluation' [to] mean[ ] a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.'' *Id.* These provisions do not, however, apply to Respondent's conduct.

[5] This statute became effective on January 1, 2001.

ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, by any means or instrumentality.'' Ala. Code § 34–24–50(1). Under Alabama law, ''the practice of medicine * * * across state lines'' as it applies to ''[t]he rendering of treatment to a patient located within [Alabama] by a physician located outside [Alabama] as a result of transmission of individual patient data by electronic or other means from this state to such physician or his or her agent'' constitutes the ''practice of medicine,'' such that ''[n]o person shall engage in the practice of medicine * * * across state lines in [Alabama]'' unless he or she has ''been issued a special purpose license to practice medicine * * * across state lines.'' Ala. Code § 34–24–501 & 34–24–502(a). As Respondent did not possess a special purpose license from Alabama, his prescribing over the internet to these patients constituted violations of Alabama law. In issuing these controlled-substance prescriptions, Respondent acted outside the usual course of professional practice and violated the CSA. *See* 21 CFR 1306.04(a).

Respondent wrote nineteen prescriptions for schedule III drugs containing hydrocodone to residents of North Carolina. Under North Carolina law prior to 2007, ''prescribing medication by use of the internet or a toll-free number,'' was ''regarded as practicing medicine'' in North Carolina. N.C. Gen. Stat. Ann. 90–18(b).[6] As such, it subjected a practitioner to North Carolina law and the regulation of the North Carolina Medical Board. *Id.* North Carolina prohibits the practice of medicine without the appropriate license and registration and makes out-of-state violators guilty of a ''Class I felony.'' N.C. Gen. Stat. Ann. 90–18(a). Respondent's prescribing to North Carolina residents via the internet clearly violated North Carolina law.

Additionally, in February 2001, the North Carolina Medical Board issued its position statement, ''Contact with Patients Before Prescribing,'' which stated that ''prescribing drugs to an individual the prescriber has not personally examined is inappropriate.'' Contact with Patients before Prescribing, at 1 (available at *http://www.ncmedboard.org/position_statements/*). The Board further explained that ''[o]rdinarily, this will require that the physician personally perform an appropriate history and physical examination, make a diagnosis, and formulate a therapeutic plan, a part of which might be a prescription.'' *Id.* As Respondent failed to perform physical examinations of these patients, his conduct was not in the usual course of professional practice. He consequently violated the CSA in writing these prescriptions as well. *See* 21 CFR 1306.04(a).

As the foregoing demonstrates, Respondent repeatedly violated state laws and regulations prohibiting the unlicensed practice of medicine and establishing standards of medical practice by prescribing controlled substances to persons he never physically examined and who resided in States where he was not licensed to practice and prescribe drugs. In issuing the prescriptions, Respondent also acted outside of ''the usual course of professional practice'' and lacked ''a legitimate medical purpose'' and thus repeatedly violated the CSA. I therefore conclude that Respondent has committed acts which render his continued registration ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). Accordingly, Respondent's 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) and 0.104, I hereby order that DEA Certificate of Registration, BA6015158, issued to Mohammed F. Abdel-Hameed, M.D., be, and it hereby is, revoked. I further order that any pending application to renew or modify the registration be, and it hereby is, denied. This order is effective December 24, 2009.

Dated: November 17, 2009

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–28189 Filed 11–23–09; 8:45 am]

BILLING CODE 4410–09–P

[6] This provision was deleted, effective October 1, 2007, by S.L. 2007–346, section 23.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 09–32]

Harrell E. Robinson, M.D.; Revocation of Registration

On February 26, 2009, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Harrell E. Robinson, M.D. (Respondent), of Santa Ana, California. The Order proposed the revocation of Respondent's DEA Certificate of Registration, AR8613487, which authorizes him to dispense controlled substances in schedules II through V as a practitioner, on the ground that Respondent's continued registration is ''inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f), 824(a)(4).'' Show Cause Order at 1. The Order also proposed the denial of any pending applications for renewal or modification of Respondent's registration. *Id.*

Specifically, the Show Cause Order alleged that from February 2007 through October 2008, Respondent ''purchased approximately 613,000 dosage units of hydrocodone combination products and unlawfully distributed these drugs to an unregistered individual in exchange for $10,000 per month * * * in violation of 21 U.S.C. 841(a)(1).'' *Id.* In addition, the Show Cause Order alleged that from September 2007 through October 2008, Respondent ''purchased approximately 397,000 dosage units of hydrocodone combination products using the DEA registration numbers of two other practitioners in violation of 21 U.S.C. 843(a)(2) and (3).'' *Id.* at 2. Further, Respondent allegedly then ''distributed these drugs to an unregistered individual, in violation of 21 U.S.C. 841(a)(1).'' *Id.*

Based on the above, I further concluded that Respondent's ''continued registration while these proceedings are pending constitutes an imminent danger to the public health and safety.'' Show Cause Order at 2. Consequently, pursuant to my authority under 21 U.S.C. 824(d) and 21 CFR 1301.36(e), I immediately suspended Respondent's registration, with the suspension to remain in effect until the issuance of this Final Order. *Id.*

Respondent requested a hearing on the allegations. The case was placed on the docket of the Agency's Administrative Law Judges (ALJ) and a hearing was scheduled for May 12, 2009. On April 9, 2009, the ALJ ordered Respondent to file a prehearing statement no later than May 4, 2009. ALJ at 2 n.1; ALJ Ex. 3. The same day, the ALJ's law clerk faxed Respondent a letter advising him of his right to counsel. ALJ at 2 n.1; ALJ Ex. 4.

On May 1, Respondent requested an extension of time to file his prehearing statement, advising that he was retaining counsel that afternoon. ALJ at 2 n.1. On May 4, the ALJ granted Respondent an extension of time to May 7, noting that the hearing was set for May 12 and that Respondent had not asked for a postponement of the hearing. *Id.*

On May 6, Respondent filed a request to postpone the hearing; in response, the ALJ's law clerk ''left a telephone message for Respondent advising that