The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on June 19, 2018. The views of the Commission are contained in USITC Publication 4795 (June 2018), entitled *Tin- and Chromium-Coated Steel Sheet from Japan: Investigation No. 731–TA–860 (Third Review).*

By order of the Commission.

Issued: June 19, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–13504 Filed 6–22–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Decision and Order: Mohammed Asgar, M.D.

On March 29, 2017, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA), issued an Order to Show Cause to Mohammed Asgar, M.D. (hereinafter, Respondent), of Gary, Indiana.[1] GX 6 (Order to Show Cause), at 1. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration as a practitioner, on the ground that the U.S. Department of Health and Human Services, Office of Inspector General (hereinafter, HHS OIG) notified Respondent of his ''mandatory exclusion from participation in all Federal health care programs for a minimum period of five years pursuant to 42 U.S.C. 1320a–7(a).'' *Id.* at 2 (citing 21 U.S.C. 824(a)(5)). The Show Cause Order also proposed the denial of any pending application by Respondent to modify or renew his registration. *Id.* at 1.

As for the Agency's jurisdiction, the Show Cause Order alleged that Respondent holds DEA Certificate of Registration No. FA3926055, which authorizes him to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 600 Grant Street, Gary, Indiana 46402. *Id.* The Show Cause Order alleged that this registration expires on June 30, 2019. GX 6, at 2.

As to the substantive ground for the proceeding, the Show Cause Order specifically alleged that Respondent was ''notified by . . . [the HHS OIG] of . . . [his] mandatory exclusion from participation in all Federal health care programs for a minimum period of five years pursuant to 42 U.S.C. 1320a–7(a).'' GX 6, at 2. It asserted that, ''[m]andatory exclusion from Medicare is an independent ground for revoking a DEA registration pursuant to 21 U.S.C. 824(a)(5).'' *Id.* The Show Cause Order further asserted that ''although your conviction was unrelated to your handling of controlled substances, DEA has nevertheless found that the underlying conviction forming the basis for a registrant's exclusion from participating in federal health care programs need not involve controlled substances for revocation under 21 U.S.C. 824(a)(5)'' to be warranted. *Id.*

The Show Cause Order notified Respondent of his right to request a hearing on the allegations, or to submit a written statement in lieu of a hearing, the procedures for electing each option, and the consequences 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 under 21 U.S.C. 824(c)(2)(C). *Id.* at 3.

By letter dated April 27, 2017, Respondent's counsel acknowledged service of the Show Cause Order on April 4, 2017, waived Respondent's right to a hearing, and stated that he was filing Respondent's written response to the Show Cause Order. GX 7 (Written Statement), at 1. Attached to the Written Statement are the Show Cause Order, 22 letters ''submitted voluntarily by patients and colleagues'' of Respondent, the transcript of Respondent's Sentencing Hearing, and the Government's Sentencing Memorandum concerning Respondent. *Id.* at 2.

On October 13, 2017, DEA submitted a Request for Final Agency Action (RFAA) including an evidentiary record to support the Show Cause Order's allegations and Respondent's Written Statement and attachments.

I issue this Decision and Order based on the entire record before me. 21 CFR 1301.43(e). I make the following findings of fact.

Findings of Fact

Respondent's DEA Registration

Respondent is the holder of DEA Certificate of Registration No. FA3926055, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 600 Grant Street, Gary, Indiana 46402. GX 1 (copy of registration); GX 2 (Certification of Registration Status), at 1. This registration expires on June 30, 2019. GX 1; GX 2, at 1.

The Nature and Scope of Respondent's Criminality

Respondent's criminal conduct began in Chicago in or about 2005. GX 3 (Plea Agreement, *United States* v. *Asgar,* No. 12 CR 491–10 (N.D. Ill. Dec. 18, 2014) (hereinafter, Plea Agreement)), at 2. At this time, Respondent and another medical doctor, Dr. Farzana Begum, ''conspired with each other to knowingly and willfully refer Medicare beneficiaries to Grand Home Health for the provision of home health care services in exchange for illegal cash kickback payments.'' *Id.* at 2–3. Each Medicare patient that the doctors referred resulted in a cash payment of $400 to Dr. Begum. *Id.* at 3. According to the Plea Agreement, Respondent ''knew that it was illegal to solicit and receive kickbacks . . . in exchange for . . . referrals of Medicare patients.'' *Id.* ''From in or about January 2006 through May 2008,'' Dr. Begum received about ''$141,100 in kickbacks in exchange for [Respondent's] referral of Medicare beneficiaries to Grand Home Health.'' *Id.*

The relationship between Respondent and Dr. Begum ended in approximately May 2008. *Id.* As a result, Respondent ended the arrangement under which Dr. Begum received cash kickbacks in exchange for Respondent's Medicare patient referrals. *Id.*

About six months later, however, the cash kickback payments resumed. This time, Respondent received cash kickbacks in exchange for his referral of Medicare patients to Grand Home Health. *Id.* On or about February 9, 2011, for example, Respondent received $1,500 in cash for his referral of three patients to Grand Home Health ''for the furnishing of home health care services for which payment may be made in whole and in part under Medicare.'' *Id.* at 3–4. For the two-year period between about February 2009 and February 2011, Respondent received about $15,900 in exchange for his referral of Medicare beneficiaries to Grand Home Health. *Id.* at 4.

By May 2011, the Government was investigating the conspiracy. *Id.* On or about May 3, 2011, Respondent met with an individual who was cooperating with the investigation and recording the meeting. *Id.* During the meeting, Respondent received about $1,500 in exchange for the referral of three Medicare patients to Grand Home Health. *Id.*

At another meeting that was recorded by a different individual, Respondent urged the individual to ''deny right away'' if anyone raised the kickback conspiracy. *Id.* Respondent said, ''So

[1] The Show Cause Order caption also listed an address in Posen, Illinois for Respondent.

that's the story, okay?'' as he apparently sought to confirm that the individual would call such a claim a lie and say ''nothing . . . happened.'' *Id.; see also* GX 7 (Government's Sentencing Memorandum, *United States* v. *Asgar,* No.–12 CR 491–10 (N.D. Ill June 7, 2016) (hereinafter, Government Sentencing Memo), at 2–3 (After law enforcement discovered the Grand Home Health Care scheme, Asgar was recorded cautioning the owner of Grand Home Health Care about keeping records of the kickback payments, probing for information related to law enforcement's discovery of the scheme, and assuring the owner that, ''I have to be a little careful now, listen when you're cleared, I will start [referring patients], ok?'').

In total, from about January 1, 2006 through March 31, 2011, Medicare paid about $201,635 for claims submitted for home health services provided to the Medicare patients that Respondent referred to Grand Home Health in exchange for illegal kickbacks. GX 3, at 5. From about January 1, 2006 through May 31, 2008, Medicare paid about $1,002,728 for claims submitted for home health services provided to the Medicare beneficiaries that Dr. Begum referred to Grand Home Health in exchange for illegal kickbacks. *Id.* Thus, ''Grand Home Health earned approximately $317,952 in net proceeds from these illegally referred patients.'' *Id.* According to the Plea Agreement, Respondent acknowledged these facts. *Id.*

In addition to the above, beginning in or about 2008, Respondent agreed to refer Medicare beneficiaries to ''Company A'' for home health care services in exchange for illegal cash kickbacks from ''Individual A.'' *Id.* at 6. Pursuant to this conspiracy, Respondent typically received about $500 per patient referral. *Id.* In total, Respondent solicited and received about $74,000 in cash kickbacks in exchange for his referral of Medicare patients to Company A between about 2008 and August 2011. *Id.* Medicare paid about $1,725,762 for claims submitted by Company A for home health services provided to the Medicare patients whom Respondent referred in exchange for illegal kickbacks. *Id.* Company A received about $146,689 in net proceeds from the patients Respondent illegally referred. *Id.* According to the Plea Agreement, Respondent acknowledged the amounts Medicare paid to Company A during this phase of the illegal cash kickback conspiracy in which he participated. *Id.*

The Plea Agreement: On December 18, 2014, Respondent, Respondent's attorney, the United States Attorney for the Northern District of Illinois, and an Assistant U.S. Attorney signed a Plea Agreement. GX 3, at 22. Respondent agreed to plead guilty to ''conspiracy to commit an offense against the United States, namely, conspiring to solicit and receive kickbacks, in violation of Title 42, United States Code, Section 1320a–7b(b)(1)(A), all in violation of Title 18, United States Code, Section 371.'' *Id.* at 1. In sum, Respondent's criminality consisted of a multi-year conspiracy involving more than $2.9 million of Medicare payments to two home health care companies and the netting of hundreds of thousands of dollars in kickbacks by doctors involved in this conspiracy. GX 3, at 2–6.

According to the Plea Agreement, Respondent ''has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct.'' *Id.* at 9. Moreover, the Plea Agreement includes language giving Respondent credit for acceptance of responsibility pursuant to the United States Sentencing Guidelines, § 3E1.1(b). *Id.* at 10. This provision of the Plea Agreement provides that ''if the Court determines that the defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.'' *Id.* Further, in the Plea Agreement, Respondent agreed to full and truthful cooperation ''in any matter in which he is called upon to cooperate'' by the Chicago U.S. Attorney's Office. *Id.* at 12. The expected cooperation included ''providing complete and truthful information in any investigation and pre-trial preparation and complete and truthful testimony in any criminal, civil, or administrative proceeding.'' *Id.*

At some point, Respondent appeared before the United States District Court and pled guilty to the charge. The District Court accepted his plea.

The Government Sentencing Memo: Respondent's counsel attached the Government's Sentencing Memo to his Written Statement. According to the Government's Sentencing Memo, Respondent ''took advantage of the faith and commitment of his patients in order to extract benefits for himself to which he knew he was not entitled. In doing so, he abused his position as their trusted doctor for his own pecuniary advantage, knowing that it was wrong all along.'' GX 7, Government's Sentencing Memo, at 6. According to the Government's Sentencing Memo, Respondent treated his ''patients as a commodity to be traded . . . for additional, secret profits,'' *id.* at 7, subjugating his patients' interests to his own greed, since he did not need the money given he ''was earning more than half a million dollars per year,'' according to ''what was actually reported on . . . [Respondent's] tax returns.'' *Id.* at 6.

The Government's Sentencing Memo states that, while Respondent ''appeared to have no plans to stop committing his crime prior to being approached by law enforcement, he did accept responsibility for his actions immediately.'' *Id.* at 5. Elsewhere, the Government's Sentencing Memo states that Respondent ''has unquestionably taken full responsibility for his action [sic] going so far as to provide significant cooperation to the [G]overnment after his arrest.'' *Id.* at 7. Respondent's ''significant cooperation,'' according to the Sentencing Memo, consisted of ''conduct[ing] two recordings that were ultimately used . . . in the investigation and prosecution of administrators and physicians,'' testifying at two trials ''over the course of multiple days and participat[ing] in numerous preparation sessions during the course of his cooperation,'' and providing law enforcement with ''information regarding other corrupt home health entities and doctors that the [G]overnment was able to use'' in other investigations. *Id.* at 5–6. The Sentencing Memo states that Respondent's ''significant cooperation'' was the reason it was recommending a lower sentence than it otherwise would have recommended, given that Respondent ''took advantage of the faith and commitment of his patients in order to extract benefits for himself to which he knew he was not entitled.'' *Id.* at 6.

Respondent's Sentencing Hearing: Respondent also attached the Transcript of Sentencing Hearing to the Written Statement. When Respondent took advantage of his right to speak at his Sentencing Hearing, he stated that ''it has been a long, rough and stressful five years for me and my family.'' GX 7 (Transcript of Proceedings—Sentencing Hearing at 38–39, *United States* v. *Asgar,* No.–12 CR 491–10 (N.D. Ill. June 15, 2016) (hereinafter, Transcript of Sentencing Hearing). Regarding acceptance of responsibility, Respondent stated that, ''Over this period my character and reputation that was at the peak slid down to the bottom as a consequence of my wrongdoing, for which I deeply regret, and accept full responsibilities.'' *Id.* at 39. He emphasized that he ''cooperated and helped the [G]overnment in every way possible to successfully bring to an end one of the biggest and high profile

medical scandals in Illinois history.'' *Id.* Respondent stated that his cooperation with the investigation included ''recording of conversation [sic] with medical personnel, administrative officers, meeting with prosecutors, federal agents, lengthy trial, trial preparations and testifying at trials.'' *Id.*

An Assistant United States Attorney (hereinafter, AUSA) also addressed the Court at Respondent's Sentencing Hearing. He agreed that Respondent cooperated with the criminal investigation and reiterated that Respondent's cooperation was ''one of the essential factors in mitigation.'' *Id.* at 31. He stated that Respondent ''has also undertaken significant steps to make amends.'' *Id.* at 37.

The AUSA also addressed aggravating factors. He stated that Respondent's crime involved ''betrayal of patients' trust[, and] . . . betrayal of larger society, which places trust in doctors to do the right thing [–] to put the patients over their own personal pecuniary gains.'' *Id.* at 34. The AUSA stated that, ''for reasons that may be simply greed,'' Respondent was among those ''willing to trade off the trust that their patients and their society placed in them and trade that for financial gain.'' *Id.* at 36. The AUSA stated that doctors ''occupy a special place in our society'' and criminal sentences ''do have a real deterrent effect.'' *Id.* He urged the Court to ''send a message'' that ''[i]f you violate the anti-kick back [sic] statute, if you conspire to turn your patients into chips to be turned in, there are repercussions.'' *Id.*

During the sentencing hearing, the Court repeatedly referenced Respondent's greed and obstruction of justice. The Court pointed out that Respondent ''probably . . . had the most lucrative practice going at the time.'' *Id.* at 33. Yet, the Court stated, ''on top of that,'' Respondent was ''helping himself to the kickbacks.'' *Id.* Further, the Court stated, agreeing with the AUSA, that despite ''inflection points, . . . times when someone would have caught themselves maybe and said, 'Eh, I'm out,' '' Respondent, instead, wanted to ''cover it up.'' *Id.* at 33–34. The ''obstruction piece on top of it,'' the Court stated, ''compounds that a little bit.'' *Id.* at 34.

Based on the uncontroverted evidence in the record, I find that Respondent participated in multi-year illegal kickback conspiracies involving the payment of about $230,900 in illegal kickbacks to himself and his co-conspirator, and of Medicare claims of over $2.9 million.

In addition, I find that, during the criminal investigation, Respondent urged another doctor ''to lie if asked whether that doctor had ever provided patients in return for money.'' GX 7 (Government Sentencing Memo) at 3; *see also* GX 3, at 4. Thus, I find, as the District Judge found, that Respondent sought to obstruct justice.

While Respondent, according to the Government Sentencing Memo, ''appeared to have no plans to stop committing his crime prior to being approached by law enforcement, he did accept responsibility for his actions immediately.'' GX 7 (Sentencing Memo, at 5); *see also id.* at 8–9 (Respondent's ''cooperation in this case and his immediate acceptance of responsibility demonstrate not only an acknowledgement of his wrongdoing, but a sincere effort to take steps to make amends for the crime that [he] has committed.''). Thus, I find, based on the record as a whole, including the plea agreement; the statements by the prosecutor handling the criminal case, both in the Government's Sentencing Memo (stating that Respondent had ''acknowledged the full scope of his lengthy criminal conduct,'' GX 7 (Sentencing Memo, at 3) and at the sentencing hearing; and the District Court's acceptance of the guilty plea, the plea agreement, and application of the sentencing guidelines reductions based on his acceptance of responsibility; that Respondent accepted responsibility for his criminality.

Respondent's Mandatory Exclusion From Participation in All Federal Health Care Programs

By letter dated September 30, 2016, a Health Care Program Exclusions Reviewing Official of the HHS OIG notified Respondent that he was ''being excluded from participation in any capacity in the Medicare, Medicaid, and all Federal health care programs as defined in section 1128B(f) of the Social Security Act . . . for a minimum period of 5 years.'' GX 5, at 1 (hereinafter, HHS Exclusion Letter), also citing 42 U.S.C. 1320a–7(a). The HHS Exclusion Letter explained that Respondent's exclusion was ''due to . . . [his] conviction . . . of a criminal offense related to the delivery of an item or service under the Medicare or a State health care program.'' *Id.* It stated that Respondent's exclusion is ''effective 20 days from the date of this letter.'' *Id.*

As 42 U.S.C. 1320a–7(a) makes clear, Respondent's conviction subjected him to the mandatory exclusion provision, and in his Written Statement, Respondent admits that he has been mandatorily excluded under 42 U.S.C. 1320a–7(a). I find, therefore, that Respondent has been excluded under the mandatory exclusion provisions of 42 U.S.C. 1320a–7(a). Based on the terms of the HHS Exclusion Letter, uncontroverted by evidence in the record, I further find that Respondent's period of exclusion is still in effect.

Discussion

Pursuant to 21 U.S.C. 824(a)(5), the Attorney General may suspend or revoke a registration issued under section 823 of Title 21, ''upon a finding that the registrant . . . has been excluded . . . from participation in a program pursuant to section 1320a–7(a) of Title 42.'' Further, ''It is well established that the various grounds for revocation or suspension of an existing registration that Congress enumerated in [§ 824(a)] are also properly considered in deciding whether to grant or deny an application under [§ 823].'' *Arthur H. Bell, D.O.,* 80 FR 50035, 50037 (2015) (citing *The Lawsons, Inc.,* 72 FR 74334, 74337 (2007); *Anthony D. Funches,* 64 FR 14267, 14268 (1999); *Alan R. Schankman, M.D.,* 63 FR 45260 (1998); *Kuen H. Chen, M.D.,* 58 FR 65401, 65402 (1993)); *see also Serling Drug Co. and Detroit Prescription Wholesaler, Inc.,* 40 FR 11918, 11919 (1975) (consistent Agency precedent has held that the CSA does not require the Agency to indulge in the useless act of granting a license on one day only to withdraw it on the next).

Agency precedent has made clear that revocation under 21 U.S.C. 824(a)(5) may be appropriate regardless of whether or not the misconduct that led to the mandatory exclusion involved controlled substances. *KK Pharmacy,* 64 FR 49507, 49510 (1999) (collecting cases) (The Agency ''has previously held that misconduct which does not involve controlled substances may constitute grounds, under 21 U.S.C. 824(a)(5), for the revocation of a DEA Certificate of Registration.''); *Melvin N. Seglin, M.D.,* 63 FR 70431, 70433 (1998) (''[M]isconduct which does not involve controlled substances may constitute grounds for the revocation of a DEA registration pursuant to 21 U.S.C. 824(a)(5).''), *Stanley Dubin, D.D.S.,* 61 FR 60727, 60728 (1996) (Registration revoked and pending applications for renewal denied when registrant's ''actions cast substantial doubt on . . . [his] integrity.''); *George D. Osafo, M.D.,* 58 FR 37508, 37,509 (1993) (Submission of fraudulent medical claims and larceny convictions indicated that registrant ''placed monetary gain above the welfare of his patients, and in so doing, endangered the public health and safety.'').

Under 42 U.S.C. 1320a–7(a)(1), the HHS OIG is required to exclude from

participation in any Federal health care program any individual who has been convicted of a criminal offense ''related to the delivery of an item or service under . . . [42 U.S.C. 1395 *et seq.*] or under any State health care program.'' As found above, Respondent has been excluded from participation in any Federal health care program based on his ''conviction . . . of a criminal offense related to the delivery of an item or service under the Medicare or a State health care program,'' GX 5, at 1, and this is a mandatory exclusion subject to 21 U.S.C. 824(a)(5). Accordingly, I hold that DEA's evidence satisfies its *prima facie* burden to support revocation of Respondent's registration.

Sanction

Where, as here, DEA has established grounds to revoke a registration or deny an application, a respondent must then ''present[ ] sufficient mitigating evidence'' to show why he can be entrusted with a registration. *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988)). '' 'Moreover, because ''past performance is the best predictor of future performance,'' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), [DEA] has repeatedly held that where [an applicant] has committed acts inconsistent with the public interest, the [applicant] must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct.' '' *Jayam Krishna-Iyer,* 74 FR 459, 463 (2009) (quoting *Medicine Shoppe,* 73 FR 364, 387 (2008)); *see also Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Cuong Tron Tran,* 63 FR 64280, 64283 (1998); *Prince George Daniels,* 60 FR 62884, 62887 (1995). The same rule applies to the other grounds for sanctioning a registrant where the Agency has discretion as to the choice of sanction such as section 824(a)(5). *See Arvinder Singh,* 81 FR 8247, 8248 (2016) (denying application based, in part, on practitioner's mandatory exclusion, where practitioner ''failed to adequately acknowledge his misconduct'').

While a registrant must accept responsibility for his misconduct and demonstrate that he will not engage in future misconduct in order to establish that he is entitled to retain his registration, DEA has repeatedly held that these are not the only factors that are relevant in determining the appropriate disposition of the matter. *See, e.g., Joseph Gaudio,* 74 FR 10083, 10094 (2009); *Southwood Pharmaceuticals, Inc.,* 72 FR 36487, 36504 (2007). Obviously, the egregiousness and extent of an applicant's misconduct are significant factors in determining the appropriate sanction. *See Singh,* 81 FR at 8248 (denying application based, in part, on mandatory exclusion, noting that the practitioner's ''misconduct was egregious''); *Jacobo Dreszer,* 76 FR 19386, 19387–88 (2011) (explaining that a respondent can ''argue that even though the Government has made out a *prima facie* case, his conduct was not so egregious as to warrant revocation''); *see also Paul Weir Battershell,* 76 FR 44359, 44369 (2011) (imposing six-month suspension, noting that the evidence was not limited to security and recordkeeping violations found at first inspection and ''manifested a disturbing pattern of indifference on the part of [r]espondent to his obligations as a registrant''); *Annibal P. Herrera,* 61 FR 65075, 65078 (1996) (declining to revoke registration in mandatory exclusion case).

So too, the Agency can consider the need to deter similar acts, both with respect to the respondent in a particular case and the community of registrants. *See Gaudio,* 74 FR at 10095 (quoting *Southwood,* 71 FR at 36503); *Singh,* 81 FR at 8248 (adopting ALJ's finding that ''agency's interest in specific deterrence support[ed] denial of'' application); *Cf. McCarthy* v. *SEC,* 406 F.3d 179, 188–89 (2d Cir. 2005) (upholding SEC's express adoption of ''deterrence, both specific and general, as a component in analyzing the remedial efficacy of sanctions'').

In his Written Statement, Respondent argues that ''[i]t is doubtful there is a better example of a situation where a physician has earned the opportunity to retain his . . . [registration].'' GX 7 (Written Statement, at 4). The Written Statement supports this claim by stating that Respondent ''admitted throughout this entire process . . . that he made a regrettable error in judgment.'' *Id.* at 3. It also asserts that Respondent ''took complete responsibility for his actions, cooperated fully with authorities, went above and beyond to assist the government in charging and convicting health care providers engaged in wrongdoing, made restitution, completed his incarceration and has never had any aspersions cast upon his ability to practice medicine or manage prescriptions.'' *Id.* The Written Statement, however, does not include documentary evidence that Respondent made restitution or completed his incarceration.

The Written Statement also asserts that Respondent ''continues to comply with all conditions of his probation.'' [2] GX 7 (Written Statement, at 1). It states that, ''[d]uring the . . . 5 . . . year period prior to his sentencing, . . . [Respondent] worked diligently to assist the government in identifying and investigating cases against persons involved in health care fraud.'' *Id.* According to the Written Statement, Respondent's ''cooperation and testimony were instrumental in securing the conviction and sentencing of multiple health care providers,'' *id.,* and the record shows that the Federal prosecutors and the District Judge agreed with the value and completeness of Respondent's eventual cooperation.

In his Written Statement, Respondent stated that he is ''a caring, compassionate and skilled physician'' whose ''colleagues regard him as skilled, hardworking, dependable, sought after by patients, thorough and exceedingly competent.'' GX 7 (Written Statement, at 2). It states that Respondent ''provides services to an historically underserved and indigent community in Gary, Indiana.'' *Id.* It also asserts that the District Judge who presided over Respondent's sentencing and the Assistant United States Attorney ''involved in'' Respondent's prosecution ''recognized . . . [his] contribution to the practice of medicine and noted the important role he has in the community as a physician.'' *Id.* According to the Written Statement, the District Judge ''hoped'' Respondent ''could continue to practice medicine in his community.'' *Id.* As support for his argument, Respondent relies on *Kwan Bo Jin, M.D.,* 77 FR 35021 (2012).

However, Respondent's reliance on *Kwan Bo Jin* for the proposition that the Agency has considered such community impact regarding prescribing practitioners is misplaced. In fact, the case stands for the opposite proposition in all types of prescribing practitioner revocation proceedings, not just in mandatory exclusion revocation proceedings under 21 U.S.C. 824(a)(5). *See* 77 FR at 35021 (''I have decided to adopt the ALJ's findings of fact and conclusions of law, except for his discussion of the role of community impact evidence in agency proceedings . . . which is contrary to agency precedent.''). *See also Michael W. White, M.D.,* 79 FR 62957, 62964 (2014) (Holding that hundreds of letters written by Respondent's patients vouching for the quality of care Respondent provided them are ''irrelevant. The Agency has consistently held that so-called 'community impact evidence' is not relevant in these proceedings.'');

[2] DEA does not challenge this assertion.

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