notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

By order of the Commission.

Issued: July 22, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–17745 Filed 7–26–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Geoffrey D. Peterson, N.P.; Decision and Order

On April 14, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Geoffrey D. Peterson, N.P. (hereinafter, Registrant), of Hixson, Tennessee. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration MP3330545,[1] pursuant to which he is authorized to dispense controlled substances in schedules II through V, as a mid-level practitioner, and the denial of any applications on two grounds. GX 1, at 1.

First, the Show Cause Order alleged that effective January 27, 2015, the Tennessee Nursing Board had summarily suspended Registrant's nurse practitioner license. *Id.* at 2. The Order thus alleged that Registrant is currently without authority to dispense controlled substances in the State in which he is registered with the Agency and therefore, his registration is subject to revocation. *Id.* (citing 21 U.S.C. 802(21), 823(f), 824(a)(3)).

Second, the Show Cause Order alleged that Registrant materially falsified his October 7, 2014 application for the above registration. *Id.* (citing 21 U.S.C. 824(a)(1)). More specifically, the Show Cause Order alleged that on February 17, 2014, Registrant was arrested by local authorities and charged with the ''unlawful possession of marijuana.'' *Id.* The Order then alleged that the charge was still pending at the time Registrant submitted his renewal application, and that ''[o]n this application, [he] did not answer 'yes' to the . . . liability question: 'Has the applicant ever been convicted of a crime in connection with controlled substance(s) under state or federal law, or is any action pending?' '' *Id.* The Government thus alleged that Registrant violated 21 U.S.C. 824(a)(1).[2]

The Show Cause Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* at 2–3 (citing 21 CFR 1301.43, 1301.46). On April 23, 2015, the Show Cause Order was personally served on Registrant by a DEA Diversion Investigator. GX 3.

On April 7, 2016, the Government forwarded a Request for Final Agency Action. Therein, the Government represented that neither Registrant ''nor anyone representing him has requested a hearing or sent any other correspondence to DEA.'' Req. for Final Agency Action, at 7. Based on the Government's representation, I find that 30 days have now passed since the Show Cause Order was served on Registrant and that he has neither requested a hearing nor submitted a written statement in lieu of hearing. 21 CFR 1301.43(b) & (c). Accordingly, I find that Registrant has waived his right to a hearing or to submit a written statement and issue this Decision and Order based on the evidence submitted by the Government. *Id.* § 1301.43(d) & (e). I make the following findings.

Findings

Registrant is the holder of DEA Certificate of Registration MP3330545, pursuant to which he is authorized to dispense controlled substances in schedules II through V, as a mid-level practitioner, at the registered address of Hormone Replacement Specialists, 5550 Highway 153, Suite 103, Hixson, Tennessee. GX 7, at 1. Registrant renewed this registration on October 7, 2014, at which time he was required to answer the following question: ''Has the applicant ever been convicted of a crime in connection with controlled substance(s) under state or federal law, or been excluded or directed to be excluded from participation in a medicare or state health care program, or any [sic] such action pending?'' GX 6. Registrant entered ''N'' for no. *Id.*

On February 17, 2014, Registrant was arrested by a member of the Sequatchie County Sheriff's Department and charged with felony possession of marijuana, an offense under Tenn. Code Ann. § 39–17–415. GX 5, at 1, 3, 6. According to a March 31, 2015 letter from the Clerk of the General Sessions Court of Sequatchie County, criminal charges were pending against Registrant ''as of October 31, 2014.'' GX 8. The Clerk's letter further states that the ''[c]harges were expunged on 11/21/2014.'' *Id.*

Registrant was also previously licensed by the Tennessee Board of Nursing (Board) as an advanced practice nurse (APN) and held a Certificate of Fitness to prescribe. GX 4, at 2. However, on January 27, 2015, the Board ordered the summary suspension of Registrant's advance practice nurse license and Certificate of Fitness to Prescribe. *Id.* at 7. The Board based its order on findings which included that on December 19, 2014, a search warrant was executed at Registrant's residence during which the search team found ''prefilled syringes of morphine, vials of morphine, shopping bags full of used needles, a bottle of prednisone, and a bottle of animal morphine,'' and that ''[t]he syringes of morphine are of unknown origin with no identifying prescription information.'' *Id.* at 3. The search team also found a pipe containing marijuana residue. *Id.*

[1] While Government also alleges that Registrant holds an additional registration (MP1971731) and seeks its revocation as well, in its Request for Final Agency Action, the Government acknowledges that this registration had expired shortly before the issuance of the Show Cause Order. To ensure that Registrant did not file a renewal application for this registration, I have taken official notice of Registrant's registration record with the Agency. *See* 5 U.S.C. 556(e). That record shows that Registrant allowed this registration to expire and did not file an application to renew it whether timely or not. Accordingly, I find that this proceeding is moot insofar as it seeks the revocation of this registration.

[2] While the Government contends that Registrant violated section 824(a)(1), this provision is simply a grant of authority to the Attorney General to revoke or suspend a registration and does not itself impose a substantive rule of conduct. Rather, the rule of conduct is imposed by 21 U.S.C. 843(a)(4)(A) (''It shall be unlawful for any person knowingly or intentionally . . . to furnish false or fraudulent material information in, or omit any material information from, any application . . . filed under this subchapter[.]'').

The Board also based its order on findings that from April 1, 2013 through March 31, 2014, Registrant was ''a top 50 prescriber in Tennessee based on morphine equivalents,'' and that in a letter to the Board, he had stated that ''he had no intention of curbing his prescribing practices.'' *Id.* at 4. The Board further found that on January 12, 2015, Registrant had ''obstructed a Department of Health investigation'' into his activities at a pain clinic, by ''refus[ing] to allow access to [the] clinic or to cooperate in any fashion, leaving the Department unable to verify the conditions of the clinic or obtain patient charts to determine whether [he] has a supervising physician or a medical director at the pain clinic.'' *Id.*

Based on these and other findings, the Board found that Registrant ''[i]s unfit or incompetent by reason of negligence, habits or other cause''; ''[i]s guilty of unprofessional conduct''; and ''[h]as violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of or conspired to violate any provision of this chapter or any lawful order of the board.'' *Id.* at 6. (citing Tenn. Code Ann. § 63–7–115(a)(1)). The Board then explained that Registrant's ''impaired judgment combined with the high amount of controlled substances he prescribes . . . create[s] an extreme and untenable danger to his patients and the public of Tennessee'' and his ''actions constitute a serious and immediate danger to the public's health, safety and welfare and require emergency action by this Board.'' *Id.*

Subsequently, on May 6, 2015, Registrant entered into an Agreed Order with the Board, which the latter approved on August 6, 2015 and which suspended his APN license and his Certificate of Fitness to prescribe.[3] GX 10, at 8. The Order also imposed numerous conditions, including that he voluntarily surrender his DEA registrations within 10 days of the Board's ratification of the Order. *Id.* at 10.

Therein, the parties agreed to a variety of factual findings pertinent to his prescribing of controlled substances. These included that during 2011, he had worked at a Chattanooga-based clinic (Superior One Medical Clinic) and ''wrote prescriptions for schedule II controlled substances with no medical necessity or supporting documentation as to the condition which would warrant such prescribing.'' *Id.* at 3. As for his prescribing at Holistic Health and Primary Care (a pain clinic in Hixson, TN which was owned by his father), the Board reviewed 10 patients charts maintained by him ''from March 2012 to December 2013'' and found that it reflected treatment ''with controlled substances in amounts and/or durations not medically necessary, advisable, or justified.'' *Id.* The Board also found that ''he typically prescribed opioids in amounts not medically necessary,'' that he ''does not utilize alternative treatments . . . for his pain management patients and neglected to establish a treatment plan . . . other than the continuation of controlled substances,'' and that while he had patients provide urine drug tests, he ''often failed to address inconsistent results.'' *Id.* at 3–4.

Registrant also stipulated to the findings of the Summary Suspension Order regarding the various controlled substances and paraphernalia found during the execution of a search warrant at his residence, the findings that he was a Top 50 prescriber of morphine equivalents and had told the Board that he did not intend to curb his prescribing, and the findings related to his obstruction of the Department of Health's investigation of his father's pain clinic.[4]

Discussion

Registrant's Lack of State Authority

Pursuant to 21 U.S.C. 824(a)(3), ''[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' This Agency has further held that notwithstanding that this provision grants the Agency authority to suspend or revoke a registration, other provisions of the Controlled Substances Act ''make plain that a practitioner can neither obtain nor maintain a DEA registration unless the practitioner currently has authority under state law to handle controlled substances.'' *James L. Hooper,* 76 FR 71371, 71372 (2011), *pet. for rev. denied, Hooper* v. *Holder,* 481 F. App'x 826 (4th Cir. 2012). *See also Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978) (''State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.'').

These provisions include section 102(21), which defines the term ''practitioner'' to ''mean[ ] a physician . . . licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice,'' 21 U.S.C. 802(21), as well as section 303(f), which directs that ''[t]he Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' *Id.* § 823(f). As the Supreme Court has explained, ''[i]n the case of a physician, this scheme contemplates that he is authorized by the State to practice medicine and to dispense drugs in connection with his professional practice.'' *United States* v. *Moore,* 423 U.S. 122, 140–41 (1975).

Here, it undisputed that the Tennessee Board of Nursing has suspended Registrant's advance practice nursing license and his Certificate of Fitness to prescribe. I therefore find that Registrant is without authority to dispense controlled substances in Tennessee, the State in which he is registered. Because Registrant no longer meets the CSA's prerequisite for maintaining a practitioner's registration, I will order that his existing registration be revoked.

Material Falsification

Pursuant to section 304(a)(1), the Attorney General is also authorized to suspend or revoke a registration ''upon a finding that the registrant . . . has materially falsified any application filed pursuant to or required by this subchapter.'' 21 U.S.C. 824(a)(1). Based on Registrant's failure to disclose his arrest for marijuana possession on his October 7, 2014 application, the Government contends that he materially falsified the application when he answered ''N'' or no to the question: ''Has the applicant ever been convicted of a crime in connection with controlled substance(s) under state or federal law, or been excluded or directed to be excluded from participation in a medicare or state health care program, or any [sic] such action pending?'' GX 6.

Notably, the Government does not argue that Registrant has been convicted of the unlawful possession of marijuana, let alone that he had been convicted of the offense prior to submitting his

[3] I take official notice of the Agreed Order and have made it a part of the record. *See* 5 U.S.C. 556(e).

[4] Registrant also stipulated to findings that he had abused animals and his 88-years old father, who was listed as his supervising physician, as well as that he had ''obstructed attempts by three independent agencies to determine the welfare of'' his father. Agreed Order, at 4–7.

application on October 7, 2014. Indeed, the only evidence it offers relevant to whether Registrant has been convicted of a controlled substance offense is the state court clerk's letter stating that Registrant ''did have criminal charges pending against him . . . as of October 31, 2014'' and that the ''[c]harges were expunged'' several weeks later.

The clerk's letter does not, however, even identify what charges were pending against Registrant at the time. Moreover, the Government does not rely on the line of cases holding that a deferred adjudication of an offense falling under 21 U.S.C. 824(a)(2) which ultimately results in dismissal of the charge is still a conviction for purposes of the Controlled Substances Act and that the failure to disclose such conviction on a subsequent application is a material falsification. *See Hoxie* v. *DEA,* 419 F.3d 477, 481(6th Cir. 2005) (upholding Agency's finding that practitioner committed material falsification when he failed to disclose a controlled substance conviction which was expunged). *See also Pamela Monterosso,* 73 FR 11146, 11148 (2008) (citing *David A. Hoxie,* 69 FR 51477, 51478 (1994); *Eric A. Baum,* 53 FR 47272, 42274 (1988)); *see also Kimberly Maloney,* 76 FR 60922, 60922 (2011); *Mark De La Lama,* 76 FR 20011, 20013–14, 20019–20 (2011).

Instead, the Government argues that Registrant materially falsified his application because ''the new application required that [Registrant] disclose this arrest because the application asked: 'Has the applicant ever been convicted of a crime in connection with controlled substance(s) or is any action pending?' '' Request for Final Agency Action, at 5–6. The question does not, however, require the disclosure of an arrest. Rather, it requires the disclosure of ''any action pending,'' and while this is reasonably read to include a criminal prosecution for a controlled substance offense which is ongoing at the time an application is submitted, the Government's evidence establishes only that charges were pending 24 days after Registrant submitted his application and not on the date he submitted his application. While it may be that the marijuana possession charge was pending on October 7, 2014 and was expunged pursuant to a deferred adjudication, which under Agency precedent constitutes a conviction even where the conviction is later expunged, the Government did not produce any evidence establishing that this was the basis for the expungement of the charge.

Accordingly, I find that the Government has failed to provide substantial evidence to support its contention that Registrant materially falsified his application. Nonetheless, because Registrant no longer holds authority under Tennessee law to dispense controlled substances, he is not entitled to maintain his registration. Accordingly, I will order that his registration be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration MP3330545 issued to Geoffrey D. Peterson, N.P., be, and it hereby is, revoked. I further order that any application of Geoffrey D. Peterson to renew or modify the above registration be, and it hereby is, denied. This Order is effective immediately.[5]

Dated: July 19, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–17722 Filed 7–26–16; 8:45 am]

BILLING CODE 4410–09–P

[5] Based on the findings of the Tennessee Board, I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67. I further note that as of this date, Registrant has failed to surrender his DEA registration as required by the Board.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0016]

Nemko-CCL, Inc.: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces its final decision to expand the scope of recognition for Nemko-CCL, Inc., as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on July 27, 2016.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of Nemko-CCL, Inc. (CCL), as an NRTL. CCL's expansion covers the addition of two recognized testing and certification sites and twenty-two additional test standards to their NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages are available from the Agency's Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

CCL submitted two applications, dated January 28, 2015 (OSHA–2013–0016–0008) and January 26, 2016 (OSHA–2013–0016–0011), to expand its recognition to include the addition of two recognized testing and certification sites located at: Nemko USA, Inc., 2210 Faraday Avenue, Suite 150, Carlsbad, California 92008; and Nemko Canada,