

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. MV3148257 issued to Melanie Baker, N.P., and deny any pending applications for renewal or modification of that registration. This Order is effective June 4, 2021.

D. Christopher Evans,

Acting Administrator.

[FR Doc. 2021-09463 Filed 5-4-21; 8:45 am]

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DEPARTMENT OF JUSTICE**Drug Enforcement Administration****Michele L. Martinho, M.D.; Decision and Order**

On December 4, 2019, the Drug Enforcement Administration (hereinafter, DEA or Government) Administrative Law Judge Mark M. Dowd (hereinafter, ALJ), issued a Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (hereinafter, RD) on the action to revoke the DEA Certificate of Registration Number BM9434440 of Michele L. Martinho, M.D. The ALJ transmitted the record to me on January 7, 2020, and asserted that no exceptions were filed by either party. ALJ Transmittal Letter, at 1. Having reviewed and considered the entire administrative record before me, I adopt the ALJ's RD with minor modifications, where noted herein.*

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby dismiss the Order to Show Cause issued to Michele L. Martinho, M.D. This Order is effective immediately.

D. Christopher Evans,

Acting Administrator.

Paul E. Soeffing, Esq., for the
Government

Douglas M. Nadjari, Esq. and David
Durso, Esq., for the Respondent

*A I have made minor, nonsubstantive, grammatical changes to the RD. Where I have made any substantive changes, omitted language for brevity or relevance, or where I have added to or modified the ALJ's opinion, I have bracketed the modified language and explained the edit in a footnote marked with an asterisk and a letter in alphabetical order.

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

The Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OSC),¹ dated February 26, 2019, seeking to revoke the Respondent's Certificate of Registration (COR), number BM9434440, pursuant to 21 U.S.C. 824(a)(5), and deny any applications for renewal or modification of such registration and any applications for any other DEA registrations pursuant to 21 U.S.C. 824(a)(5), because the Respondent has been excluded from participation in a program pursuant to section 1320a-7(a) of Title 42. The Respondent requested a hearing on March 13, 2019,² and prehearing proceedings were initiated.³ A hearing was conducted in this matter on October 3, 2019, at the DEA Hearing Facility in Arlington, Virginia.

The issue ultimately to be adjudicated by the Acting Administrator, with the assistance of this recommended decision, is whether the record as a whole establishes by a preponderance of the evidence that the Respondent's subject registration with the DEA should be revoked pursuant to 21 U.S.C. 824(a)(5).

After carefully considering the testimony elicited at the hearing, the admitted exhibits, the arguments of counsel, and the record as a whole, I have set forth my recommended findings of fact and conclusions of law below.

The Allegations

In the OSC, the Government contends that the DEA should revoke the Respondent's DEA COR because she has been excluded from participation in a program pursuant to section 1320a-7(a) of Title 42.

Specifically, the Government alleges the following:

1. The Respondent is registered with the DEA as a practitioner in Schedules II through V under DEA COR BM9434440. The Respondent's COR expires by its terms on January 31, 2020.
2. On June 14, 2017, the Respondent was found guilty in the United States District Court for the District of New Jersey of "Transporting in Aid of Travel Act-Accepting Bribes in Violation of the Travel Act." Judgment was entered in *U.S. v. Michele Martinho*, No. 2:14-CR-00271-SRC-1 (D.N.J. filed June 14, 2017).

¹ ALJ Ex. 1.

² ALJ Ex. 2.

³ ALJ Ex. 3.

3. Based on the Respondent's conviction, the U.S. Department of Health and

Human Services, Office of Inspector General ("HHS/OIG"), by letter dated July 31, 2018, mandatorily excluded the Respondent from participation in Medicare, Medicaid, and all federal health care programs for a minimum period of five years pursuant to 42 U.S.C. 1320a-7(a), effective August 20, 2018. Notwithstanding the fact that the underlying conduct for which the Respondent was convicted had no nexus to controlled substances, mandatory exclusion from Medicare, Medicaid, and all federal health care programs by HHS/OIG warrants revocation of the Respondent's registration pursuant to 21 U.S.C. 824(a)(5).

The Hearing*Government's Opening Statement*

In the Government's Opening Statement, the Government indicated that revocation is sought for the Respondent's COR involving Schedules II through V, pursuant to 21 U.S.C. 824(a)(5). Tr. 10. The facts in this matter are undisputed and have been stipulated to by the parties. *Id.* The Respondent was found guilty in U.S. District Court of transporting in aid of the Travel Act and accepting bribes in violation of the Travel Act. *Id.* The following year, HHS/OIG mandatorily excluded the Respondent from participation in Medicare, Medicaid, and all federal health care programs. *Id.* at 10-11. Pursuant to 42 U.S.C. 1320a-7(a), the Respondent's exclusion remains in effect, which is the basis upon which the DEA seeks to revoke the Respondent's COR. *Id.* at 11.

Respondent's Opening Statement

The Respondent asserted in her opening statement that this matter is not about controlled substances, and it has nothing to do with the issuance of prescriptions or record keeping for controlled substances. *Id.* at 11. The Respondent admitted that the Government is correct that she accepted cash payments in exchange for referring blood work to a particular lab, that she pleaded guilty to a single count violation of the Travel Act, and that she has been excluded by HHS/OIG from participation in Medicare, Medicaid, and all federal health care programs. *Id.* at 11-12. The Respondent maintained that the evidence will show that she can be entrusted to maintain and properly use her DEA COR. *Id.* at 12. Revocation in this matter is not mandatory. *Id.* at 12. The Respondent

asserted that she has accepted responsibility and has demonstrated that she will not engage in misconduct again. *Id.* at 12.

Dr. Martinho completed courses of study in medical ethics before her criminal proceedings began. *Id.* at 12–13. She also began to lecture other doctors and medical students about her experiences to help prevent them from making the same choices she did. *Id.* at 13–14. She has given over 60 lectures during her own time and at her own expense. *Id.* at 14. During her sentencing hearing at the U.S. District Court, the presiding judge said that “he felt that her talks had a greater deterrent impact than anything that the court or the U.S. Attorney could have done to prevent other people—to deter other people from engaging in this kind of conduct.” *Id.* at 14. Dr. Martinho’s efforts have been featured in the Washington Post, the Wall Street Journal, and on NPR. *Id.* at 14. The Respondent submitted that the evidence will show that she can be entrusted to maintain her DEA COR. *Id.* at 15. She has used her COR properly throughout her life. *Id.* The Respondent argued that the evidence will demonstrate that the Government’s application to revoke the Respondent’s COR should be denied. *Id.*

Government’s Case in Chief

Before presenting witnesses, the Government offered the sworn and notarized COR history for the Respondent, which was admitted without objection.⁴ See GX 1.⁵ The Government otherwise presented its case in chief through the testimony of a single witness. The Government presented the testimony of a Diversion Investigator (hereinafter, the DI).⁶

The DI

The DI is a Diversion Investigator for the DEA and has been employed by the DEA for two years, currently assigned to the New York Division. Tr. 20. He previously served with the New York City Police Department for 23 years, retiring as a Detective Sergeant. *Id.* at 20. He also served in the U.S. Army Reserves, retiring as a Lieutenant Colonel. *Id.* at 20. He additionally served for four years in the United Nations International Police Task Force in Kosovo, including one year as a Regional Security Officer in Liberia and six months in Iraq working with the

Iraqi Police Department. *Id.* at 20. He has a Bachelor’s Degree from City College of New York. *Id.* at 21. The DI indicated that he was assigned this matter by his group supervisor. *Id.* at 22. The DI identified the criminal judgment in the criminal case of *U.S. v. Michele Martinho* from the U.S. District Court in Newark, New Jersey. *Id.* at 23; GX 2. He obtained a copy of the judgment via email from the District Court. Tr. 23. Next, he identified a letter from the HHS/OIG regarding the exclusion of the Respondent from all federal health care programs. *Id.* at 24; GX 3. He obtained it via email from the OIG. Tr. 25.

The DI identified a screenshot from the OIG’s website that demonstrated that the Respondent was still excluded from all federal health care programs as of the morning of October 3, 2019, the date of the hearing in this matter. Tr. 25–26; GX 4. He obtained this document by going to the OIG’s website and taking a screenshot of the Respondent’s information. Tr. 26. He verified the information on the morning of the hearing by going to the OIG’s website, entering the Respondent’s name, and confirmed that she was still excluded. *Id.* at 27.

Respondent’s Case in Chief

Dr. Michele Martinho, M.D.

The Respondent currently lives in New York, where she has been licensed to practice medicine since 2005. *Id.* at 29. The Respondent is forty-five years old and has two children for whom the Respondent is the primary caretaker. *Id.* at 45. She is first generation American, with both of her parents being Portuguese immigrants. *Id.* She went to Catholic school from grades K–12 and received her undergraduate degree in psychology from New York University. She went on to attend Ross University for medical school for two years in the Caribbean and returned to the United States for her clinical rotations for the last two years, from which she graduated in 2002. *Id.* at 47. She completed her residency at Mount Sinai Elmhurst Hospital with a focus in internal medicine, which lasted another three years. *Id.* After completing her residency, she worked at a satellite clinic for the hospital for almost three years in preparation for private practice. *Id.* at 48. She then went into private practice and eventually purchased the practice. *Id.* at 48–49. Her practice is located in the Lower East Side of Manhattan. *Id.* at 49. It is surrounded by a significant amount of government public housing whose tenants make up a large portion of her practice. *Id.* Over the years, as the population of

Manhattan has changed, her patients have transitioned to younger patients. *Id.*

The Respondent explained the genesis of her involvement in the criminal activity for which she was convicted. *Id.* at 50. Prior to her purchasing the practice, the Respondent was introduced by a lab testing representative to K.K., a sales representative for Biodiagnostic Testing Laboratories (BIL), a blood testing lab. *Id.* at 29–30, 50. BIL was located in New Jersey, but was looking to gain business in New York. *Id.* at 50–51. The unnamed lab testing representative introduced the Respondent to the owner of BIL. The three of them had dinner together where they offered the Respondent what amounted to a referral fee for referring bloodwork to their lab, to which the Respondent conceded that such financial arrangement does not exist in the medical field. *Id.* at 51.

She was paid every month by the laboratory’s representative with an envelope of cash. *Id.* Over the course of two and a half years, she received \$155,000. *Id.* at 51–52. When asked about the process that resulted in the bribes, the Respondent explained that patients would come into her office and she would conduct a blood draw on the patients who needed it, including new patients. *Id.* at 80. She decided which lab would get the blood depending on which insurance company the patient had. *Id.* She testified that BTL lied to her and said they took all insurances. When she found out that they did not take certain insurances, she stopped sending certain patients’ blood work to that lab, because she did not want patients getting a bill. *Id.* She said that either she or a member of her staff would conduct the draw and a note would be placed in the patient’s file designating the blood testing lab. *Id.* at 80–81. She had billing software set up with the lab so she could order the lab tests online. *Id.* at 81.

The Respondent stopped taking the cash payments once the laboratory owner and a few laboratory representatives were arrested on April 13, 2013, for bribery. *Id.* at 53. The Respondent explained that while she did not know that the referral fee was illegal, she did know that what she was doing in taking the cash was wrong and admitted “[t]hat I own 100 percent.” *Id.* at 53–54. The Respondent admitted that she knew it was wrong to accept the payments at the time she accepted them. *Id.* at 52. Although the Respondent did not realize that the referral fees would be considered bribes under the law, she admitted that she accepted the money and now realizes they constituted illegal

⁴ The Respondent noted that all of the Government’s evidence had been stipulated to and that there were no objections to any of the Government’s exhibits. Tr. 18.

⁵ GX—Government Exhibit

⁶ The DI was called to sponsor the Government’s exhibits. Tr. 18–19.

bribes. *Id.* at 51. The Respondent understood what she did was also wrong from a moral standpoint. *Id.* at 56. She claimed that she understood that she violated her fiduciary responsibility to her patients, and that she had been questioned by patients at her practice when they learned about the allegations. *Id.* She found that when she was questioned by patients as to the medical necessity of the blood draws and whether she had only done it for the money, it was a “big moment” for her. *Id.* at 56–57, 58. She explained that a moderator at one of the health care courses she has attended explained this violation of patient trust aspect to her, and it has affected how she has attempted to remediate herself. *Id.* at 57. She again claimed full responsibility for her actions and did not place blame on the laboratory or the laboratory representative. *Id.* When asked pointedly by the Government whether she accepted responsibility for the acts that led to her criminal conviction, the Respondent answered, “[o]ne hundred percent, yes.” *Id.* at 74. She further confirmed that she considers those criminal actions to be serious violations of the law and that she is remorseful. *Id.* at 74–75. Apart from copays, she had not ever taken cash payments before that time, and has not since. *Id.* at 52.

The Respondent asserted that while she now understands that ignorance of the law is no excuse, at the time, she did not fully understand what bribery meant. *Id.* at 54–55. The Respondent ultimately amended her tax returns and paid the taxes on the cash payments. As part of her criminal sentence, the Respondent paid back the \$155,000. *Id.* at 52, 55–56. She stated that she never conducted medically unnecessary blood draws. *Id.* at 55. As developed in her criminal case, there was never any allegation by the Government that the blood testing lacked medical necessity. *Id.* at 58.

The Government’s investigation into BTL resulted in the prosecution and conviction of a large number of physicians, including the Respondent. *Id.* at 30. The Respondent cooperated with the Government in the investigation and prosecution involving BTL. The Respondent ultimately pled guilty to violating the federal Travel Act by accepting bribes for sending some of her blood work to BTL. *Id.* at 30. The Respondent continued to lawfully send blood work to two other laboratories, including Quest Diagnostics and Bio Reference. *Id.* at 30–31.

The Respondent testified that her federal criminal case did not involve controlled substances, prescriptions for controlled substances, or record keeping

for controlled substances. *Id.* at 31. She has never before been disciplined or sanctioned for her prescribing methods with respect to controlled substances or her record keeping practices. *Id.* The Respondent discussed each of her proposed documentary evidentiary exhibits.⁷ *Id.* at 31–32. The Respondent identified a presentencing memorandum given to the District Court judge before her sentencing in 2017. *Id.* at 32; RX 1.⁸ The Respondent identified a flyer for Boston Medical Center, which advertised an event, in which she was the keynote speaker for their Ethics and Compliance Week in 2017. Tr. 33; RX 2. The Respondent indicated that this was an example of the type of lectures she has given and continues to give, as discussed in her opening statement. The flyer included a picture, a description of the crime of conviction and the purpose of the lecture. *Id.* at 33.

The Respondent offered a letter from Dr. B.F., who is an orthopedic surgeon at MD Anderson. Tr. 34; RX 3. Dr. B.F. invited the Respondent to speak with his orthopedic fellows to tell her story and hopefully deter them from engaging in similar behavior for which she had been convicted. Tr. 34. It was submitted to the District Court in conjunction with the presentencing memorandum. *Id.*; see RX 1. The Respondent offered a letter from Dr. J.E., a professor of philosophy at Marin University. Tr. 35–36; RX 4. The Respondent contacted him and offered to give her presentation to his medical students, which he accepted. Tr. 36. It was also submitted to the District Court in conjunction with the presentencing memorandum. *Id.*

The Respondent offered a letter from J.W., an ethics professor from Ohio University. Tr. 36–37; RX 5. J.W. arranged for the Respondent to provide a radio presentation on NPR regarding her crime. Tr. 37. The Respondent offered a newspaper article from the Washington Post, featuring the Respondent and her presentation at Georgetown University. Tr. 38; RX 6. The Respondent offered certificates for completion of programs in health care ethics. Tr. 39–41; RX 7, 8. The Respondent offered the transcript of her sentencing hearing before the U.S. District Court conducted on June 14, 2017. Tr. 41; RX 9.

Finally, the Respondent offered a consent agreement between her and the New York State Department of Health State Board for Professional Medical Conduct. Tr. 42; RX 10. The Respondent explained that after her sentencing in

the District Court, a pre-hearing was conducted with the New York State Department of Health, Office of Professional and Medical Conduct, and based upon her efforts at remediation, the Respondent was allowed to continue practicing medicine with no interruptions or restrictions placed on her state license. Tr. 44–45.

Following completion of her ethical course of study at Creighton University, the Respondent discovered that the prosecutor on her criminal case was going to law schools to discuss health care fraud. She offered to go with the prosecutor and tell her side of the story to the students. Tr. 60–61. While the prosecutor declined her invitation, she began to research medical schools, law schools, ethics societies, and medical societies to share her story to whomever would listen and would benefit from her presentation. *Id.* at 61–62. She sent out a cold email and offered to pay her own travel and expenses for the opportunity to share her story, which has cost approximately \$20,000, in addition to taking her away from her current practice. *Id.* at 62, 68, 74. As of the date of the instant hearing, the Respondent indicated that she had completed sixty-nine of these speaking engagements and continues to do them. *Id.* at 62–63.

The Respondent discovered “restorative justice” during one of her medical ethics courses and began to focus on that. *Id.* at 63–64. She found it was not just about being sorry for your conduct, but how she could do better and correct her mistake. *Id.* at 64. She explained that she understood her crime had affected her patients, other physicians, and the community. *Id.* at 64–65. The Respondent indicated that medical school does not adequately prepare students for these real-life issues and that she wanted to share her experience as an example. *Id.* at 65. The Respondent reported that J.W. (see RX 5) was an educator of health care ethics, and that J.W. told the Respondent that she was changing her curriculum to include scenarios such as the Respondent’s experience. *Id.* The Respondent further advised that at one of the schools she spoke, New York Medical College, they established a medical legal course for their law students and medical students to discuss situations similar to the Respondent’s in order to better prepare their students. *Id.* at 66.

The Respondent opened her presentation by giving her name, explaining that she is an internal medicine physician from New York, and that she was convicted of a crime in 2014, referring to herself as a felon. *Id.* at 67. She testified that she always refers

⁷ The Government did not object to any of the Respondent’s proposed documentary evidence.

⁸ RX—Respondent’s Exhibit

to herself as a felon as that is part of her story. *Id.* The Respondent noted statements made by the prosecutor, the sentencing judge, and probation department during her sentencing hearing in support of the Respondent and her remedial actions taken since pleading guilty. Tr. 68–71; RX 9, pp. 9, 13–14.

The Respondent was questioned regarding whether the underlying criminal conduct was “aberrational” and how she can be entrusted to maintain her DEA COR. *Id.* at 71–72. The Respondent testified that for the past six years, she has been able to reach thousands of medical students and physicians. *Id.* at 72. She said that some of her presentations at universities have been recorded and are required to be watched by students, so she knows she is making an impact on medicine in this way. *Id.* She stated that she wants to continue in her profession because it is what she has wanted for her entire life. *Id.*

When questioned, she indicated that while she had been ordered to complete thirty lectures by the sentencing judge, she had already completed twenty-six speaking engagements by the date of the sentencing hearing. *Id.* at 73. She was ordered to complete thirty presentations within two years of sentencing, which she completed in only six months. *Id.* She further indicated that she has no plans to stop doing her speaking engagements, even though her probation term ended on June 14, 2019. *Id.* at 73–77, 90.

She further offered her cooperation to a number of government agencies as part of her remedial efforts. Tr. 85–87; RX 1, p. 463. She testified that she brought information concerning other potential criminal activity to approximately seven other state and federal law enforcement agencies across the federal government and two states, for which she received a 5K reduction letter for those efforts.⁹ Tr. 87. The Respondent scored a level 19 of the sentencing guidelines, which would normally carry a punishment of thirty to thirty-seven months in prison. *Id.* at 88. The prosecutors in the criminal case filed a 5K1 recommendation letter, which recommended that she be sentenced within a guideline level which would make her probation eligible. *Id.* at 88–89. She stated that

every other physician involved in the matter went to prison. *Id.* at 89.

The Respondent indicated that she plans to reapply to participate in Medicare and Medicaid when her exclusion is over. *Id.* at 77. She explained that she had been excluded from Medicare, Medicaid, and the State of New York’s Medicaid program, which she appealed and had rescinded. *Id.* at 77–78. She stated that she had been excluded from the state program even though she hadn’t been participating in the program following her residency. *Id.* at 78–79.

When I asked the Respondent if she had ever before taken the position that she did not commit the bribery, she responded, no, she had never taken that position, nor the position that bribery was not a serious offense warranting punishment. *Id.* at 83. She testified that after she had found out she had committed a crime, she had her office manager pick a random selection of patients to determine whether the rate of ordering bloodwork had increased at all based on the bribes. *Id.* at 84. The office manager picked one-hundred random patients established before the Respondent purchased the practice, one-hundred new patients before using BTL, and one-hundred new patients after starting to use BTL. *Id.* The office manager found that there was essentially no difference in the rate or frequency of ordering or what types of tests were ordered. *Id.* at 84.

I asked why she believed that the Acting Administrator should trust her with her COR. *Id.* at 121. The Respondent asserted credibly that her efforts over the past six years is evidence of her contrition and trying to “pay it forward to the next generation of physicians.” *Id.* at 121–22. She cannot imagine repeating any part of her life from the past six years due to fear of going to jail, not being able to support her children, or not being able to take care of them. *Id.* at 122. She expressed that she would “never do anything to compromise [her] license ever again.” *Id.*

P.R., J.D., M.S.W., M.Bioethics

P.R. is currently a professor at Temple University’s Lewis Katz School of Medicine and the Center for Bioethics Urban Health and Policy. *Id.* at 94. She also serves as the Assistant Director of the Master’s program in Urban Bioethics. *Id.* She received her bachelor’s degree in political science, a master’s degree in social work from the University of Pennsylvania, School of Social Policy and Practice, and a law degree from Temple University’s law school. *Id.* at 93. She has previously

taught at Drexel University, Simmons College, and previously worked as a geriatric social worker for approximately five years. *Id.* at 94.

P.R. met the Respondent through an email the Respondent sent to the Center for Urban Bioethics approximately one year before P.R. started at the Center. *Id.* at 95. After a review of the Respondent’s email, P.R. contacted the Respondent to hear more about her experiences and to determine if it would be appropriate for the Respondent to come to the University and speak to the students. *Id.* at 95. P.R. found that the Respondent’s experience “would be a good fit for their program” and she invited the Respondent to come and talk to her class of physician assistants in the summer of 2017. *Id.* at 96. Since that time, the Respondent has spoken to several classes at Temple University. P.R. also invited her to speak to her students at Simmons College, including social work students, and undergraduate health care administration students at Drexel University. *Id.* at 97.

P.R. described the Respondent’s lecture and her presentation to the students. *Id.* at 97–98. She found the Respondent’s story very “honest, raw, and compelling.” *Id.* at 97. The Respondent did not minimize her actions or try to make excuses, but explained what she had done and how it had happened. *Id.* at 98–99. The Respondent explained that apart from the medical knowledge required of health care professionals, it is also important to “have a sense of how to run a business” and other necessary considerations before entering the health care field. *Id.* at 98.

P.R. expressed that the Respondent showed contrition during her presentation. *Id.* at 100. She also expressed that the Respondent “[a]bsolutely” accepted responsibility for her actions. *Id.* She found that the Respondent’s reputation among the students was one of respect for being candid about her story, and that the students found her talk to be very relevant to their education, and what it looks like to be confronted with ethical decisions in the field. *Id.* at 100–01.

I asked P.R. if the Respondent appeared sincere in her presentations to students. *Id.* at 101. P.R. indicated that the Respondent “could not have been more sincere.” *Id.* P.R. expressed that it was clear from the Respondent’s demeanor that she was being truthful and honest about her story. *Id.* at 102. There was no doubt in P.R.’s mind that she was absolutely sincere in her presentations. *Id.* The Respondent gave live presentations twice at the Center for Urban Bioethics. She gave four live

⁹ A “5K reduction” refers to USSG § 5K1.1—Substantial Assistance to Authorities. Upon motion of the Government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines.

presentations for P.R. in total. *Id.* at 102–03. She found that the Respondent’s talk was beneficial to the students as it demonstrated what a real-world ethical dilemma looks like and not only showed the consequences of making a bad decision, but also what a person can do to correct their mistake. *Id.* at 103–04. P.R. explained what she perceived to be a lack of ethical training in medical school, and found that the Respondent’s presentations provided a bridge between this gap. *Id.* at 104–06. P.R. stated that the Respondent is “exactly the type of doctor I would want to have” and that “we’re wanting our students to be.” *Id.* at 105.

Dr. J.G., M.D.

Dr. J.G. received her undergraduate degree from Stony Brook, her master’s degree from Brooklyn College, and finally her medical degree at Ross University. *Id.* at 108. She completed her residency in obstetrics and gynecology at George Washington University. *Tr. Id.* Afterwards, she began working at Columbia University, Columbia Presbyterian in the Allen Pavilion for two years. *Id.* at 109. She then joined Mt. Sinai Hospital and Icahn School of Medicine as an Assistant Professor in obstetrics, gynecology, reproduction, endocrine and fertility, and minimally invasive surgery, where she worked until the end of 2013. *Id.* She went on to BronxCare Health System as an Assistant Professor in obstetrics and gynecology. *Id.* After her time in academia, she moved into private practice at Maiden Lane Medical before presently moving to join the Respondent at the Respondent’s practice as a gynecologist. *Id.* at 110.

Dr. J.G. met the Respondent during medical school and they became close friends. *Id.* They have been friends for about 21 years. *Id.* at 118. She has referred patients to the Respondent and the Respondent has referred patients to her. *Id.* at 111. Dr. J.G. opined that the Respondent provides excellent care to her patients, is a very thorough and excellent clinician, and that she trusts the Respondent with their care. *Id.* at 111. Dr. J.G. has found that her patients greatly enjoy being treated by the Respondent. *Id.* at 111–12. Despite being aware of the Respondent’s conviction and the circumstances surrounding it, Dr. J.G. continues to refer patients to the Respondent. *Id.* at 112. From her observations, she found that one particular patient was “remarkably healthier” after being treated by the Respondent. *Id.*

Dr. J.G. says that she has personally observed that the Respondent has accepted responsibility for the conduct

which led to her conviction. *Id.* at 113–14. She has observed the Respondent not only show remorse for her conduct and to try and better understand what she did wrong, but that the Respondent has gone out to share her experiences with medical students and residents. *Id.* at 114–15. Dr. J.G. reiterated that ethics education is lacking in medical school, and she found the Respondent’s lectures to be “beyond remarkable.” *Id.* at 115. Based upon her professional and personal interactions with the Respondent, Dr. J.G. has found that the Respondent is an excellent judge of medical treatment. *Id.* at 115. The Respondent is a thorough clinician and takes her time with each patient to provide thorough treatment. *Id.* at 115–16. Although Dr. J.G. is preparing to join the Respondent’s practice, she does not currently have a financial relationship with the Respondent. *Tr.* 116. When she refers patients to the Respondent, there is no referral fee or fee sharing and Dr. J.G. noted that that is illegal within the profession. *Id.* at 117. When Dr. J.G. enters into a practice arrangement with the Respondent, she expects they will share expenses equally for staff, rent and utilities. *Id.* at 116–17.

Dr. J.G. holds a DEA Certificate of Registration and is familiar with the responsibilities of being a registration holder. *Id.* at 117–18. She believes that the Respondent possesses all of the necessary requirements, ethics, judgment, and aptitude to hold a DEA COR. *Id.* at 118.

The Facts

Stipulations of Fact

The Government and the Respondent have agreed to five stipulations, which I recommend be accepted as fact in these proceedings:

1. Respondent is registered with the DEA as a practitioner in Schedules II through V under DEA Certificate of Registration BM9434440 with a registered address of 308A East 15 Street, New York, NY 10003, and a mailing address of 20 River Terrace, Apt. 23E, New York, NY 10282. Respondent’s registration expired by its terms on January 31, 2020.

2. On June 14, 2017, Respondent was found guilty in the United States District Court for the District of New Jersey of “Transporting in Aid of Travel Act-Accepting Bribes in Violation of the Travel Act,” in violation of 18 U.S.C. 1952(a)(3) and 18 U.S.C. 2. Judgment was entered against Respondent in *U.S. v. Michele Martinho*, No. 2:14–CR–00271–SRC–1 (D.N.J. filed June 14, 2017).

3. Based on Respondent’s conviction, the U.S. Department of Health and Human Services, Office of Inspector General (“HHS/OIG”), by letter dated July 31, 2018, mandatorily excluded Respondent from participation in Medicare, Medicaid and all federal health care programs for the minimum period of five years pursuant to 42 U.S.C. 1320a–7(a), effective August 20, 2018.

4. Reinstatement of eligibility to participate in Medicare, Medicaid and all federal health care programs after exclusion by HHS/OIG is not automatic.

5. Respondent is currently excluded from participation in Medicare, Medicaid and all federal health care programs.

Findings of Fact

The factual findings (FoF) below are based on a preponderance of the evidence, including the detailed, credible, and competent testimony of the aforementioned witnesses, the exhibits entered into evidence, and the record before me.

1. The Respondent currently holds DEA COR BM9434440 in Schedules II through V with a registered address of 308A East 15 Street, New York, NY 10003, and a mailing address of 20 River Terrace, Apt. 23E, New York, NY 10282. The Respondent’s COR expires by its terms on January 31, 2020. ALJ Ex. 1, 9.

2. The Respondent received her undergraduate degree in psychology from New York University. *Id.* at 47.

3. The Respondent attended Ross University for medical school and returned to the United States for her clinical rotations, from which she graduated in 2002. *Id.* at 47.

4. The Respondent completed her residency at Mount Sinai Elmhurst Hospital with a focus in internal medicine. *Id.* at 47.

5. The Respondent worked at a satellite clinic for the hospital for almost three years after her residency. *Id.* at 48.

6. The Respondent went into private practice and eventually purchased the practice, which is an internal medicine practice on the Lower East Side of Manhattan. *Id.* at 48–49.

7. The Respondent has been licensed to practice medicine in the state of New York since 2005. *Id.* at 29; RX 10.

Respondent’s Criminal Act, Conviction, and Exclusion

1. The Respondent pled guilty to “[v]iolating the federal Travel Act for accepting bribes for sending [her patients’] blood work to a laboratory.” *Tr.* 30. She was sentenced to probation for a period of two years, of which the

first twelve months were served in home confinement. RX 9.

2. The Respondent has never been disciplined or sanctioned concerning her prescribing of controlled substances. Tr. 30.

3. The Respondent's conviction did not involve any controlled substances. *Id.* at 31.

4. After her sentencing in her criminal case, the New York State Department of Health, Office of Professional and Medical Conduct, allowed the Respondent "to continue to practice medicine with no interruption and no restriction." *Id.* at 44–45; RX 10.

5. The Respondent accepted a referral fee or bribe to send her patients' blood work to Biodiagnostic Testing Labs. Tr. 50–51.

6. Every month the lab test representative would give the Respondent an envelope of cash as payment for her use of the lab. *Id.* at 51.

7. Over the course of two and a half years, the Respondent received \$155,000 in payments from the testing lab. *Id.*

8. The Respondent knew it was wrong to take these payments at the time that she accepted them. *Id.* at 52.

9. The Respondent eventually paid taxes on these payments and forfeited them. *Id.*

10. The Respondent continued to accept the referral fees until the lab owner and some of the lab representatives were arrested on April 13, 2013. *Id.* at 53.

11. When the lab owner was arrested, the Respondent knew that she was in trouble for accepting the cash payments, but that she did not know at the time that the referral fees were illegal. *Id.* at 53–54.

12. The Respondent "never put a needle in anyone's arm to draw their blood for any reason except for medical necessity." *Id.* at 55, 58. The Respondent continued to send bloodwork to other labs in the area, without receiving a kickback from those labs. *Id.* at 29–30.

13. The Respondent knew accepting the cash payments was wrong as a tax issue. *Id.* at 56.

14. The rate of blood work the Respondent ordered was either less than before or "there was essentially no difference in the rate of ordering, in the types of tests" after she started taking the payments. *Id.* at –84.

15. There were 29 doctors prosecuted in the Respondent's criminal case. Tr. 65.

Respondent's Acceptance of Responsibility and Corrective Action

1. The Respondent testified that "I blame myself only" and that "I was responsible for all of it." *Id.* at 57.

2. The Respondent admits that she violated her fiduciary duty to her patients. *Id.* at 56.

3. The Respondent presented her cautionary story to medical students, practicing physicians, health care ethics students and educators. *Id.* at 61–62.

4. The Respondent was ordered by the District Court to complete thirty speaking engagements as community service work over a period of two years. GX 2, p. 2.

5. The Respondent completed the thirty speaking engagements within six months. Tr. 73.

6. The Respondent has completed sixty-nine of these speaking engagements as of the date of the DEA hearing and continues to perform them. *Id.* at 62–63, 66, 73.

7. The Respondent makes her presentations to provide "restorative justice" and "to try to make it up to my community." *Id.* at 63–64.

8. The Respondent refers to herself as a felon because it is part of her story and will never go away. *Id.* at 67, 75–76.

9. The Respondent accepts "one hundred percent" responsibility for the acts that led to her criminal conviction. *Id.* at 74, 83.

10. The Respondent has never taken the position that she did not commit the crime to which she eventually pled guilty. *Id.* at 83.

11. The Respondent believes her criminal acts were serious violations of the law. *Id.* at 74, 83.

12. The Respondent is remorseful for her crime. *Id.* at 75.

13. The Respondent has been excluded from Medicare and the State of New York's Medicaid program. *Id.* at 77–78.

14. The Respondent plans to reapply to participate with Medicare and Medicaid when her exclusion is over. *Id.* at 77, 87.

15. Every doctor in the Respondent's criminal case went to prison except for her and she believes her speaking engagements made the difference in her avoiding jail time. *Id.* at 88–89.

16. The Respondent completed her probation on June 14, 2019. *Id.* at 89–90. P.R.

1. P.R. is a professor at Temple University's Lewis Katz School of Medicine and the Center for Bioethics Urban Health and Policy and also the Assistant Director of the master's program in Urban Bioethics. *Id.* at 94.

2. The Respondent has spoken to several of P.R.'s classes including a PA class, a class at Temple University that included a variety of students, two MSW classes and two classes of undergraduate health care administration students at Drexel University. *Id.* at 96–97. Four of these lectures were live, and not recorded. *Id.* at 103.

3. The Respondent told these classes her cautionary story and shared that she is a convicted felon. *Id.* at 98.

Dr. J.G.

1. Dr. J.G. is a physician who practices in obstetrics and gynecology. *Id.* at 108–09.

2. The Respondent is Dr. J.G.'s best friend and colleague, having met in medical school. *Id.* at 108, 118.

3. Dr. J.G. plans to join the Respondent in her office to practice gynecology. *Id.* at 110.

4. The Respondent and Dr. J.G. refer many patients to each other. *Id.* at 111.

5. When Dr. J.G. enters into a practice arrangement with Respondent, she expects they will share expenses equally for staff, rent and utilities. *Id.* at 116–17.

6. According to Dr. J.G., the Respondent has accepted responsibility for her conduct. She is remorseful and has made remarkable efforts to correct her mistakes by cautioning others about these real pitfalls. *Id.* at 114–115.

7. Dr. J.G. believes that the Respondent possesses the necessary ethics, intelligence and aptitude to properly hold a registration and administer and prescribe controlled substances. *Id.* at 118.

Analysis

Credibility Analysis of Fact Witness: The DI

The DI's uncontroverted testimony, while generally limited to the initiation of the investigation and authentication of the Government's exhibits in this matter, was consistent, genuine and credible. The DI effectively explained how the investigation of the Respondent began, and how the DI verified the fact of the Respondent's exclusion from all federal health care programs.

The DI, as a public servant, typically has no personal stake in the outcome of the instant investigation or in the revocation of the Respondent's registration. I noted no animus on the DI's part as to the Respondent. Although he may be viewed as being part of the prosecution team, I saw no indication from his testimony that any partiality interfered with his reliable testimony. Based on a complete review of the DI's presentation of testimony, I find his testimony to be entirely credible.

*Credibility Analysis of Fact Witness:
P.R.*

P.R. is currently a professor at Temple University's Lewis Katz School of Medicine and the Center for Bioethics Urban Health and Policy. Tr. 94. She also serves as the Assistant Director of the Master's program in Urban Bioethics. *Id.* She met the Respondent through an email the Respondent sent to the Center for Urban Bioethics about a year before P.R. started at the Center. *Id.* at 95.

She has gotten to know the Respondent throughout the course of the Respondent's presentations to P.R.'s students. P.R. expressed that the Respondent showed contrition during her presentation. *Id.* at 100. She also expressed that the Respondent "[a]bsolutely" accepted responsibility for her actions. *Id.* at 100. P.R. indicated that the Respondent "could not have been more sincere." *Id.* at 101. P.R. expressed that it was clear from the Respondent's demeanor that she was being truthful and honest about her story. *Id.* at 102. There was no doubt in P.R.'s mind that the Respondent was absolutely sincere in her presentations. *Id.*

P.R. presented clear and candid testimony. She shared only a professional relationship with the Respondent. She appeared to be sincere in her description of the Respondent's presentations and corroborated the Respondent's testimony. I find her testimony to be entirely credible.

*Credibility Analysis of Fact Witness:
Dr. J.G.*

Dr. J.G. has prepared to move into the Respondent's private practice as a gynecologist after a career working in hospitals and academia. *Id.* at 108–10. She met the Respondent during medical school and they became close friends. *Id.* at 110. They have been friends for about 21 years. *Id.* at 118. She has referred patients to the Respondent and the Respondent has referred patients to her. *Id.* at 111.

Dr. J.G. reports that she has observed that the Respondent has accepted responsibility for her conduct leading to her conviction. *Id.* at 113–14. She has observed the Respondent not only show remorse for her conduct and try to better understand what she did wrong, but also go out to share her cautionary tale to medical students and residents. *Id.* at 114–15. Based upon her professional and personal interactions with the Respondent, Dr. J.G. has found that the Respondent is an excellent medical diagnostician. *Id.* at 115. The Respondent is a thorough clinician and

takes her time with each patient to provide thorough medical care. *Id.* at 115–16. Dr. J.G. holds a DEA Certificate of Registration and is familiar with the responsibilities of being a registration holder. *Id.* at 117–18. She believes that the Respondent possesses all of the necessary requirements, ethics, judgment, and aptitude to hold a DEA COR. *Id.* at 118.

Dr. J.G. presented clear and candid testimony. She appeared to be sincere in her description of the Respondent's remorse and acceptance of responsibility, and corroborated the Respondent's testimony. Although they have been lifelong friends and soon-to-be business partners, I do not find that Dr. J.G. was unduly influenced by any personal relationship, or financial gain, or overt loyalty to the Respondent such that it interfered with her testimony. I find her testimony to be entirely credible.

*Credibility Analysis of Fact Witness:
Dr. Michele Martinho*

The Respondent explained the circumstances leading up to her underlying criminal conviction. She met with a lab testing representative who offered the Respondent referral fees to send their laboratory bloodwork. Tr. 50–51. The Respondent was paid every month in cash by the representative. *Id.* at 51. Over the course of two-and-a-half years, she was paid \$155,000, which the Respondent indicated has been forfeited, and the taxes paid. *Id.* at 51–52, 55–56. On June 14, 2017, the Respondent was found guilty in the United States District Court for the District of New Jersey of "Transporting in Aid of Travel Act-Accepting Bribes in Violation of the Travel Act," in violation of 18 U.S.C. 1952(a)(3) and 18 U.S.C. 2. See Stipulation 2.

The Respondent admitted that she knew it was wrong to accept the payments at the time she accepted them. *Id.* at 52. Apart from copays, she had not ever taken cash payments before that time, and has not since. *Id.* The Respondent asserted that while she now understands that ignorance of the law is no excuse, at the time, she did not fully understand what bribery meant. *Id.* at 54–55. She stated that she never conducted medically unnecessary blood draws. *Id.* at 55. The Respondent provided lengthy testimony that she has fully accepted responsibility for her conduct. She further testified as to her remedial efforts and how she has continued speaking engagements on her own in order to share her story and help prevent others from making the same decisions that she made that resulted in

her criminal conviction and exclusion from all federal health care programs.

The Respondent presented clear and candid testimony. She appeared to be sincere in her remorse and acceptance of responsibility. Although the stakes are very high in this proceeding, as the Agency's investigation and prosecution could effectively preclude the Respondent from practicing medicine, the Respondent did not appear to color her testimony. She appeared sincere and authentic. Her commitment to remedial efforts in the form of numerous cautionary lectures to health care professionals and to medical students is probably the most convincing evidence of the Respondent's acceptance of responsibility, remorse, and evidence she is trustworthy of her responsibilities as a possessor of a DEA COR. She presented her testimony in a consistent and convincing manner, and I find her testimony to be entirely credible.

Findings as to Allegations

The Government alleges that the Respondent's COR should be revoked and any pending applications be denied because the Respondent has been excluded from all federal health care programs, pursuant to 21 U.S.C. 824(a)(5). The Agency has held that section 824(a)(5) authorizes the revocation of existing registrations, as well as the denial of applications. *Dinorah Drug Store, Inc.*, 61 FR 15972 (1996); *Kuen H Chen, MD.*, 58 FR 65401 (1993).

In the adjudication of a revocation or suspension of a DEA COR, DEA has the burden of proving that the requirements for such revocation or suspension are satisfied. 21 CFR 1301.44(e) (2010). Where the Government has sustained its burden and made its *prima facie* case, a respondent must both accept responsibility for her actions and demonstrate that she will not engage in future misconduct. *Patrick W Stodola, MD.*, 74 FR 20727, 20734 (2009). Acceptance of responsibility and remedial measures are assessed in the context of the "egregiousness of the violations and the [DEA's] interest in deterring similar misconduct by [the] Respondent in the future as well as on the part of others." *David A. Ruben, M.D.*, 78 FR 38363, 38364 (2013). Where the Government has sustained its burden, that registrant must present sufficient mitigating evidence to assure the Acting Administrator that he/she can be entrusted with the responsibility commensurate with such a registration. *Medicine Shoppe-Jonesborough*, 73 FR 364387 (2008).^{*B}

^{*B}[Text omitted for brevity].

Exclusion Under U.S.C. 1320a–7(a)

The Government has alleged that the Respondent has been excluded from participation in a program pursuant to section 1320a–7(a) of Title 42. The Government can meet its burden under § 824(a)(5) simply by advancing evidence that the registrant has been excluded from a federal health care program under 42 U.S.C. 1320a–7(a). *Johnnie Melvin Turner, MD.*, 67 FR 71203 (2002); *Dinorah Drug Store, Inc.*, 61 FR at 15973. The Administrator has sanctioned registrants where the Government introduced evidence of a registrant/applicant's plea agreement and judgment, and the resulting letter of exclusion from the U.S. Department of Health and Human Services, Office of Inspector General, imposing mandatory exclusion under section 1320a–7(a). See *Richard Hauser, MD.*, 83 FR 26308 (2018).

Additionally, the Agency has consistently held that the underlying conviction that led to mandatory exclusion does not need to involve controlled substances to support a revocation or denial. See, e.g., *Mohammed Asgar, MD.*, 83 FR 29569 (2018); *Narciso A. Reyes, MD.*, 83 FR 61678 (2018); *Richard Hauser, M.D.*, 83 FR at 26308; *Orlando Ortega-Ortiz, M.D.*, 70 FR 15122 (2005); *Juan Pillot-Costas, MD.*, 69 FR 62804 (2004). However, evidence that the underlying conviction does not relate to controlled substances can be used in mitigation. *Mohammed Asgar, MD.*, 83 FR at 29573 (noting respondent's conviction "did not involve the misuse of his registration to handle controlled substances"); *Kwan Bo Jin, M.D.*, 77 FR 35021, 35027 (2012) (showing a lack of evidence concerning respondent's "prescribing practices"). The Agency must determine if a sanction is appropriate where the record demonstrates "questions as to the" registrant's integrity. *Anibal P. Herrera, MD.*, 61 FR 65075, 65078 (1996).

Government's Burden of Proof and Establishment of a Prima Facie Case

Based upon my review of the allegations by the Government, it is necessary to determine if it has met its *prima facie* burden of proving the requirements for a sanction pursuant to 21 U.S.C. 824(a).

It is clear from the stipulations, the Government's evidence, and the Respondent's position in this matter that there is no controversy between the parties that the Respondent was convicted of the underlying criminal charge in the U.S. District Court for the District of New Jersey, and was

subsequently mandatorily excluded from all federal health care programs by HHS/OIG, pursuant to 42 U.S.C. 1320a–7(a). The Government's evidence clearly demonstrates the necessary elements of proof under 21 U.S.C. 824(a)(5) and I find that the Government has established a *prima facie* case for revocation of the Respondent's COR and denial of any pending applications.

Therefore, the remaining issue, and the central focus for determination in this matter, is whether the Respondent has sufficiently demonstrated that she has accepted responsibility for her actions, has demonstrated remorse, and has taken sufficient rehabilitative and remedial steps to demonstrate to the Acting Administrator that she can be entrusted to maintain her COR. *Kwan Bo Jin, MD.*, 77 FR at 35021. The Agency must determine whether revocation is the appropriate sanction "to protect the public from individuals who have misused controlled substances or their DEA Certificate of Registration and who have not presented sufficient mitigating evidence to assure the Administrative that they can be trusted with the responsibility carried by such a registration." *Jeffrey Stein, M.D.*, 84 FR 46968, 46973 (2019) (quoting *Leo R. Miller, MD.*, 53 FR 21931, 21932 (1988)). "The Agency also looks to the nature of the crime in determining the likelihood of recidivism and the need for deterrence." *Id.* In determining whether and to what extent a sanction is appropriate, consideration must be given to both the egregiousness of the offenses established by the Government's evidence and the Agency's interest in both specific and general deterrence. *David A. Ruben, M.D.*, 78 FR 38363, 38364, 38385 (2013).^c

Acceptance of Responsibility and Rehabilitative Measures

The Government's *prima facie* burden having been met, []^d the Respondent must present sufficient mitigating evidence to assure the Administrator that she can be entrusted with the responsibility incumbent with such registration. *Medicine Shoppe*, 73 FR at 387; *Samuel S. Jackson*, 72 FR 23848, 23853 (2007). * [] The egregiousness and extent of an applicant's misconduct are significant factors in determining the appropriate sanction. See *Jacobo Dreszer*, 76 FR 19386, 19387–88 (2011) (explaining that a respondent can "argue that even though the

^cC Analysis of public interest factors omitted for relevance.

^dD Omitted text for clarity and omitted text throughout this section where noted with an asterisk to remove the public interest analysis.

Government has made out a *prima facie* case, his conduct was not so egregious as to warrant revocation"); *Paul H. Vollanan*, 73 FR 30630, 30644 (2008); *Gregory D. Owens*, 74 FR 36751, 36757 n.22 (2009).

Since the exposure of the "kick-back" scheme, the Respondent has maintained a consistent posture of acknowledging the impropriety and illegality of her actions, of cooperation with the Government and of truly commendable and extensive remedial efforts toward her goal of "restorative justice." She has fully accepted responsibility for her conduct, which led to the underlying criminal conviction, both in her criminal prosecution, as well as in the instant proceeding. Tr. 83; FoF 33. The Respondent testified credibly during the hearing that "I blame myself only" and that "I was responsible for all of it." Tr. 57; FoF 24. When directly asked by Government counsel during cross-examination if she accepted responsibility, she stated that she accepts "one-hundred percent" responsibility for the acts that led to her criminal conviction. Tr. 74, 83; FoF 32. The Respondent has further demonstrated remorse for her crime. Tr. 75; FoF 35. She has repaid the bribes, amended her tax returns, and paid the taxes on the money she took. Tr. 52; FoF 17. As for her speaking engagements, the Respondent has completed sixty-nine speaking engagements, far beyond the required thirty speaking engagements ordered by the District Court, and continues to complete speaking engagements even though she is no longer required to do so. Tr. 61–63, 66, 73; GX 2, p.2; FoF 26–29. She completed all requirements for her probation on June 14, 2019. Tr. 89–90; FoF 39. She has consistently demonstrated that she has taken the necessary steps to rehabilitate herself and has demonstrated contrition for her conduct that led to her underlying conviction.

During the underlying criminal proceedings, both the Assistant United States Attorney (AUSA) and the sentencing U.S. District Court Judge believed that the Respondent had accepted responsibility for her conduct. The AUSA stated during the Respondent's sentencing hearing that the Respondent "had demonstrated a level of contrition that has been unique among the many, many doctors that we've dealt with in this case." Tr. 68–69; RX 9. Further, U.S. District Court Judge Stanley R. Chesler found that the

Respondent had accepted responsibility. RX 9.*^E

Although correcting improper behavior and practices is very important to establish acceptance of responsibility, conceding wrongdoing is critical to reestablishing trust with the Agency. *Holiday CVS, L.L.C.*, 77 FR 62316, 62346 (2012); *Daniel A. Glick, D.D.S.*, 80 FR at 74801. Based upon the evidence presented, I find that the Respondent has demonstrated the full measure of acceptance of responsibility, and has fully demonstrated that she is remorseful of her actions and has taken considerable rehabilitative steps to ensure that this conduct will not be repeated.

Loss of Trust

Where the Government has sustained its burden and established that a registrant has committed acts inconsistent with the public interest, that registrant must present sufficient mitigating evidence to assure the Acting Administrator that he can be entrusted with the responsibility commensurate with such a registration. *Medicine Shoppe*, 73 FR at 387.

As demonstrated by the evidence presented in this matter, it is clear to me that the Respondent has unequivocally accepted responsibility for her conduct. She continues to not only improve herself, but works to ensure that current and future practitioners learn from her past criminal conduct and will not make the same choices. [I also find credible Respondent's statement that she would "never do anything to compromise [her] license ever again." Tr. 122.] Her underlying criminal conduct did not relate to her handling of controlled substances and the Government has not alleged any deficiencies by the Respondent related to controlled substances. The Government argues that revocation in this matter is appropriate for its deterrent effect. *[]* [Further, although I am not bound by them in this case, I agree with the statements of] U.S. District Court Judge Chesler found that "in many ways your efforts may have as much, if not more, impact than the prosecutions per se because it sends out a message and it sends out a message from someone who has personally impacted by having made the wrong decision." RX 9. It appears the Respondent's outreach to physicians,

medical staff and to students has provided and continues to provide valuable deterrence to the medical community. The Respondent's efforts have greatly satisfied the need for deterrence. At sentencing, the AUSA stated that the Respondent's "efforts have been substantial, including the speaking engagements that she's been involved with. I can tell you, your Honor, that I have heard unsolicited from folks in the medical field about the work that she has been doing and folks who are involved in educating physicians and supervising physicians have reported to me that her efforts have made an impact in educating the community, which is meaningful thing from the government's perspective." RX 9. *[] [In this case,] the Respondent has clearly demonstrated that she can be entrusted to properly maintain her COR.

Recommendation

Considering the entire record before me, the conduct of the hearing, and observation of the testimony of the witnesses presented, I find that the Government has met its burden of proof and has established a *prima facie* case for revocation. However, *[] the evidence overwhelmingly suggests that the Respondent has unequivocally accepted responsibility, is remorseful for her conduct, has worked to rehabilitate herself, has taken extraordinary steps to educate medical personnel and students, and has presented convincing evidence demonstrating that the Agency can entrust her to maintain her COR.

Therefore, I recommend the Respondent's DEA COR BM9434440 should *Not be Revoked* and any pending applications for renewal or modification of such registration, or for additional DEA registrations, be *Granted*

December 4, 2019

Mark M. Dowd,

U.S. Administrative Law Judge.

[FR Doc. 2021-09464 Filed 5-4-21; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 20-21]

Emmanuel A. Ayodele, M.D.; Decision and Order

On April 29, 2020, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Emmanuel

Ayodele, M.D. (hereinafter, Applicant) of Compton, California. OSC, at 1. The OSC proposed the denial of Applicant's application for a DEA Certificate of Registration. *Id.* It alleged that Applicant is without "authority to handle controlled substances in California, the state in which [Applicant] seek[s] registration with DEA." *Id.* (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that the Medical Board of California (hereinafter, MBC) issued an order on February 3, 2020, revoking Applicant's California Physician's and Surgeon's Certificate. *Id.* at 2. The OSC further alleged that, because the Board revoked Applicant's medical license, Applicant lacks the authority to handle controlled substances in the State of California. *Id.*

The OSC notified Applicant of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to 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 OSC also notified Applicant of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. 824(c)(2)(C)).

On June 24, 2020, Applicant, through counsel, requested a hearing, stating that Applicant "has filed a writ of administrative mandate in the Superior Court of California, San Francisco Division . . . for judicial review of the decision of the Medical Board of California" and that "DEA should await the final judgment." Request for a Hearing, at 1.

The Office of Administrative Law Judges put the matter on the docket and assigned it to Chief Administrative Law Judge John J. Mulrooney II (hereinafter, Chief ALJ), who issued an Order Directing the Filing of Government Evidence Regarding its Lack of State Authority Allegation and Briefing Schedule on June 25, 2020, with which the Government complied by filing a Motion for Summary Disposition (hereinafter, Govt Motion) on July 7, 2020.

In its Motion, the Government submitted evidence that the MBC "found [Applicant] non-compliant with the probationary terms of its June 2017 order, ultimately resulting in the revocation of his California Physician's and Surgeon's Certificate." Govt Motion, at 3-4. Further, the Government noted that the MBC had denied Applicant's Petition for Review of his revocation on April 14, 2020. *Id.* In light of these facts, the Government argued that DEA must deny Applicant's application. *Id.* at 5.

On July 15, 2020, Applicant filed "Applicant's Reply" (hereinafter, App

^ERemoved text. I agree with the Government that the District Court's findings on acceptance of responsibility are not binding on this agency, see Govt Posthearing Brief, at 9; however, I also agree with the ALJ that these findings are relevant in that they further support the ALJ's finding of Respondent's credible acceptance of responsibility. See *Mohammed Asgar, MD.*, 83 FR at 29573 n.3.