In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 1, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–19316 Filed 9–3–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Uvienome Linda Sakor, N.P.; Decision and Order

I. Introduction

On June 19, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Uvienome Sakor, N.P., also known as Uvienome Linda Sakor, N.P., (hereinafter, Respondent) of Douglasville, Georgia. OSC, at 1. The OSC proposed the revocation of Respondent's Certificate of Registration No. MS1972101, the denial of any pending applications for renewal or modification of that registration, and the denial of any applications for additional DEA registrations for two reasons. *Id.* First, it alleged that Respondent ''materially falsified multiple renewal applications . . . filed with the DEA.'' *Id.* (citing 21 U.S.C. 824(a)(1)). Second, it alleged that Respondent ''pled guilty to a felony relating to controlled substances.'' OSC, at 1 (citing 21 U.S.C. 824(a)(2)).

Specifically, the OSC alleged that Respondent entered a guilty plea in Georgia Superior Court to one count of Forgery in the First Degree ''for attempting to fill a forged controlled substance prescription.'' OSC, at 2. This OSC allegation acknowledged that, under Georgia's First Offender Act, Respondent was discharged from probation, was exonerated of any criminal purpose, and is not considered to have a criminal conviction. *Id.*

Second, the OSC alleged that Respondent entered into a Consent Order with the Georgia Board of Nursing (hereinafter, GBN) for her failure to report her Forgery guilty plea as required by Georgia statute. *Id.* It also alleged that the Consent Order placed Respondent on probation for two years. *Id.*

Third, the OSC alleged that Respondent submitted three materially false registration renewal applications after her guilty plea because she did not respond affirmatively to the first Liability question. *Id.* at 2–3. Similarly, the OSC alleged that Respondent submitted two materially false registration renewal applications after the beginning of the Consent Order's probationary period because she did not respond affirmatively to the third Liability question. *Id.* at 3.

Fourth, the OSC alleged that Respondent's guilty plea to the state Forgery charge implicates 21 U.S.C. 824(a)(2). *Id.*

The OSC notified Respondent 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 4 (citing 21 CFR 1301.43). The OSC also notified Respondent of the opportunity to submit a corrective action plan. OSC, at 4–5 (citing 21 U.S.C. 824(c)(2)(C)).

The Government forwarded its Request for Final Agency Action (hereinafter, RFAA), along with the evidentiary record, to this office on September 5, 2019. Attached to the RFAA is the Declaration of a DEA Diversion Investigator (hereinafter, DI) that is signed and sworn to under penalty of perjury. RFAA Exhibit (hereinafter, RFAAX) 6 (Declaration of Diversion Investigator, dated September 5, 2019 (hereinafter, DI Declaration)). The DI Declaration states that the DI ''personally served'' the OSC on Respondent at her registered location on June 24, 2019. *Id.* at 3. I credit the DI's sworn statement.

Respondent waived her right to a hearing and filed a written statement. RFAAX 3 (Respondent's Written Statement, dated July 17, 2019 (hereinafter, Written Statement)), at 1. Her Written Statement explicitly references the OSC. *Id.*

Based on all of the evidence in the record, I find that the Government's service of the OSC was legally sufficient. In addition, based on all of the evidence in the record, I find that Respondent timely filed her Written Statement. 21 CFR 1301.43.

I issue this Decision and Order based on the Government's submission, which includes the Written Statement, and is the entire record before me. 21 CFR 1301.43(e).

II. Findings of Fact

A. Respondent's DEA Controlled Substance Registration

Respondent is the holder of DEA Certificate of Registration No. MS1972101 at the registered address of 6559 Church St., Douglasville, GA 30134–1885. RFAAX 1 (Certification of Registration History, dated September 4, 2019), at 1. Pursuant to this registration, Respondent is authorized to dispense controlled substances in schedules III through V as a MLP-nurse practitioner.[1] *Id.* Respondent's registration expired on February 28, 2021, and is in an ''active pending status.'' *Id.*

B. The Investigation of Respondent

According to the DI assigned to this matter, ''a large number of prescriptions that had been issued by . . . [Respondent] had been filled'' at a pharmacy the DI was investigating, and Respondent is the sister of the pharmacy's owner. RFAAX 6, at 1. The DI Declaration states that Respondent ''previously had been convicted of a felony involving forgery and that her nursing license had been placed on probation.'' *Id.* According to the DI Declaration, the DI's investigation included obtaining certified copies of records of the Superior Court of Douglas County and of the GBN. *Id.* at 2; *see also infra* section II.C.

C. The Government's Case

The Government's case includes five exhibits, one of which is the Written Statement.

The first exhibit is the Certification of Registration History. RFAAX 1. According to that Certification, Respondent submitted to the Agency registration renewal applications on December 31, 2011, February 25, 2015, and January 5, 2018. *Id.* at 1. On each of the three submissions, the Certification of Registration History states, Respondent answered ''No'' to whether she ''has . . . ever been convicted of a crime in connection with controlled substance(s) under state or federal law, . . . or any such action pending.'' *Id.* at 1–2, 4, 7, 10. Further, on each of the three submissions, according to the Certification of Registration History, Respondent answered ''No'' to whether she ''has

[1] MLP means Mid-Level Practitioner. 21 CFR 1300.01(b).

. . . ever surrendered (for cause) or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, or is any such action pending.'' *Id.* at 2, 4, 7, 10.

The next exhibit is the OSC, RFAAX 2, and the third exhibit is the Written Statement, RFAAX 3.

The next exhibit consists of ten documents certified by the ''Clerk Superior/State Court'' as true and correct copies from case ''10CR00980 State of Georgia vs. Linda U. Sakor.'' [2] RFAAX 4, at 1; *see also* RFAAX 6, at 2. The first document is one page consisting of the ''Petition for Discharge of Defendant (First Offender Act)'' and the signed ''Order of Discharge,'' dated March 20, 2012. RFAAX 4, at 2. In this document, a probation officer states that Respondent is ''eligible for discharge as shown by having fulfilled the term of . . . probation and upon review of . . . [her] criminal record.'' *Id.* Below the probation officer's statement, the Court's signed Order of Discharge states that (1) Respondent is ''discharged without Court adjudication of guilt,'' (2) the ''discharge shall completely exonerate . . . [Respondent] of any criminal purpose,'' (3) the ''discharge shall not affect any of . . . [Respondent's] civil rights or liberties,'' (4) Respondent ''shall not be considered to have a criminal conviction,'' and (5) the ''discharge may not be used to disqualify a person in any application for employment or appointment to office in either the public or private sector by reason of criminal conviction . . . unless otherwise provided by law.'' *Id.*

The second document, consisting of fifteen pages, is the ''Transcript of Proceedings'' of the criminal hearing on November 18, 2010. *Id.* at 3–17. The Transcript states that Respondent was present with her attorney ''to enter a negotiated guilty plea.'' *Id.* at 4. According to the Assistant District Attorney (hereinafter, ADA), Respondent changed employers in July of 2008. Early in 2009, the ADA stated, Respondent presented a prescription for hydrocodone, purportedly issued by her previous employer, to be filled at a pharmacy. *Id.* at 9. The ADA indicated that Respondent had forged the prescription in the name of her previous employer. *Id.* at 10. He also stated that ''[t]here's no evidence that there were any other forged prescriptions presented'' by Respondent. *Id.; see infra* section II.E. Respondent's Public Defender added that Respondent had ''retained the [prescription] pad after she had left their employ and basically she wrote *prescriptions* out for herself which basically she would have to have gone back to the doctor to get that authorized prior to the time this was done and that's not the way it was done.'' RFAAX 4, at 13 [emphasis added]; *see infra* section II.E.

When the Court invited her to speak, Respondent stated that ''nurse practitioners actually do have the authority and . . . [she has] the authority, . . . [has] the license to write prescriptions for people in the State of Georgia as in many other states, and that is part of . . . [her] job.'' RFAAX 4, at 14–15. She did not mention the controlled substance schedule parameters, schedules III through V, of her federal authority to issue controlled substance prescriptions. She finished by stating that she ''did the wrong thing in writing it for . . . [her]self.'' *Id.* at 15. When the Court asked her why she forged the prescription, she stated that she ''was having severe pain and could not make it to . . . [her] doctor's office.'' *Id.* When the Court asked her, she denied having ''any sort of drug abuse problem.'' *Id.* The Transcript ends with the Court imposing the recommended sentence and treating Respondent as a first offender. *Id.* at 15–16.

The third document is the one-page Plea Sheet filed on November 18, 2010. *Id.* at 18. The Plea Sheet shows that Respondent pled guilty to one count, that she was to undergo substance abuse counseling, that she was fined $1,000, and that she received a sentence of five years' probation with the possibility of four years being suspended ''after completion of 1st year of probation successfully.'' *Id.*

The fourth document is the one-page Waiver of Rights, dated November 18, 2010. *Id.* at 19. This document, signed by Respondent and her attorney, lists the rights that Respondent waived by pleading guilty. *Id.* Over the Court's signature, the document states that ''inquiry has been made of the . . . [Respondent] concerning the rights listed,'' that the Court is ''satisfied there is an adequate factual basis to support the guilty plea,'' and that the Court is satisfied that Respondent ''is acting knowingly, freely and voluntarily and no promise, threat or force has been used to induce the . . . [Respondent] to enter this plea.'' *Id.*

The document comprising the next three pages is the ''First Offender Treatment Order,'' the ''General Conditions of Probation,'' and the ''Special Conditions of Probation Imposed Pursuant to Code 42–8–34.1,'' dated November 18, 2010. *Id.* at 20–22. This document shows that Respondent ''negotiated'' a guilty plea to one count and was sentenced to five years, which may be served on probation, and the payment of a $1,000 fine. *Id.* at 20–21.

The sixth set of documents concerns the ''Felony Accusation'' about Respondent. *Id.* at 23–26. The documents indicate that Respondent pled guilty to one count of ''Forgery in the First Degree (O.C.G.A. 16–9–1)'' on November 18, 2010. *Id.* at 23, 24, and 26. Her attorney and the ADA signed the fully completed document along with Respondent. *Id.* at 26.

The next two documents, ''Entry of Appearance; and Notice of Intent to Engage in Reciprocal Discovery'' and ''Rule 5.2(2) Certificate of Service of Discovery,'' dated April 24, 2010, show that Respondent was represented by counsel at the proceedings. *Id.* at 27–28. These documents also show two ''unindicted'' case numbers. *Id.*

The ninth document is the two-page ''Affidavit for Arrest'' concerning Respondent, signed by a Douglas County Magistrate Judge on March 30, 2010. *Id.* at 29–30. The first page shows a warrant in the matter of ''The State of GA vs. [Respondent]'' charging four counts of Forgery, a Felony in the First Degree, with bail set at $16,000. *Id.* at 29. The second page of the ''Affidavit for Arrest'' shows a warrant in the matter of ''The State of GA vs. [Respondent]'' charging one count, Theft by Taking, a misdemeanor, with bail set at $1,000. *Id.* at 30.

The tenth and final document is entitled ''Arrest Warrant, County of Douglas, State of Georgia, Exhibit: A page 1 of 1'' to the Forgery in the First Degree ''Affidavit for Arrest,'' filed on April 2010.[3] *Id.* at 31. The ''Arrest Warrant'' describes four counts of Forgery in the First Degree. The first count concerns the ''knowing,'' ''with intent to defraud'' making of a ''certain writing in such a manner that the writing as made purports to have been made by authority of one . . . who did not give such authority at another time and did deliver said writing being a prescription for Hydrocodon [sic] and Phenergan.'' *Id.* The other three counts specifically concern the delivery to a pharmacy of forged prescriptions for Vicodin and Phenergan on September 8, 2009, Tussionex Pennkinetic on

[2] Although the certification for RFAAX 4 references ''Linda U. Sakor,'' five of the documents in RFAAX 4 refer to ''Uvienome Linda Sakor,'' three of the documents refer to ''Linda Sakor,'' one document refers to ''Linda U. Sakor,'' and one document does not refer to anyone by name. RFAAX 4, at 2 (Linda U. Sakor); *id.* at 3–26 (Uvienome Linda Sakor); *id.* at 27–30 (Linda Sakor); *id.* at 31 (no name). I find substantial record evidence that all of the documents in RFAAX 4 pertain to Respondent.

[3] The day in April is not legible. RFAAX 4, at 31.

November 6, 2009, and Vicodin, Ibuprofin, and Phenergan on November 11, 2009. *Id.*

The first page of the next exhibit is the Certification of the GBN, dated July 23, 2019, concerning its Consent Order with Respondent and the statement that ''Respondent has met the terms and conditions outlined in this order.'' RFAAX 5, at 1. The second page is the GBN letter to Respondent, dated July 20, 2015, advising Respondent that her ''license is unencumbered and free of the conditions imposed by'' the Consent Order. *Id.* at 2.

The remaining ten pages of RFAAX 5 is the June 25, 2013 Consent Order between Respondent and the GBN. *Id.* at 3–11. The first page of the Consent Order states that Respondent pled guilty, ''[o]n or about November 18, 2010,'' to the ''felony criminal offense of Forgery, First Degree in the Superior Court of Douglas County.'' *Id.* at 3. It also states that ''Respondent failed to report her felony conviction to the Board within ten (10) days of such conviction as required'' by Georgia statute. *Id.* Page three of the Consent Order states that, ''[u]pon the effective date of this Consent Order, the Respondent's license to practice as a registered professional nurse and authorization to practice as an advanced practice nurse in the State of Georgia shall be placed on probation for a period of two (2) years, or until lifted by the Board.'' *Id.* at 5. The Consent Order specifies that ''this Consent Order, once approved and docketed, shall constitute a public record, evidencing disciplinary action by the Board.'' *Id.* at 10. The Consent order was approved on June 20, 2013, and docketed on June 25, 2013. *Id.* at 10, 3.

The last exhibit of the RFAA is the DI Declaration. RFAAX 6. In addition to certifying some of the Government's other exhibits and providing the origins of the investigation leading to the OSC, as already discussed, the DI Declaration affirms that Respondent pled guilty to one felony count ''for attempting to fill a forged controlled substance prescription'' and ''agreed [with the GBN], among other things, to be placed on probation for a period of two (2) years.'' *Id.* at 2.

D. Respondent's Case

As already discussed, Respondent submitted a timely Written Statement. *Supra* section I. In her Written Statement, Respondent stated that she was responding to the ''material falsification of renewal applications for . . . [her] DEA license'' by ''writ[ing] a statement of explanation.'' [4] RFAAX 3, at 1. Respondent began the explanation by stating that ''[i]n the year 2008, . . . [she] made a very grave mistake which . . . [she] will forever regret.'' *Id.* She elaborated, stating that she ''wrote a prescription for . . . [her]self in 2008 on a prescription pad which belonged to . . . [her] collaborating physician.'' *Id.* The prescription, according to her Written Statement, ''was for Vicodin which is also known as Hydrocodone 5/500 mg.'' *Id.* She ''did this,'' she stated, ''because . . . [she] was in severe menstrual pain and could not make it to see . . . [her] personal physician to prescribe this medication for . . . [her].'' *Id.* Respondent wrote that she ''presented this prescription to a local pharmacy who notified the physician . . . [she] worked with, and then proceeded to notify the local authorities.'' *Id.* She stated that ''[s]ince then . . . [she has] undergone a lot of emotional stress regarding the risk . . . [she] placed . . . [her] career in.'' *Id.*

According to her Written Statement, she pleaded *nolo contendere* and ''was sentenced under the first offender act [sic] and upon completion of . . . [her] one-year probation was noted not to have a felony conviction.'' *Id.* ''It was based on this understanding,'' Respondent wrote, ''that . . . [she] responded to the questions in . . . [her] subsequent DEA renewal applications.'' *Id.* Specifically, she admitted that ''[i]n December of 2011 on . . . [her] DEA renewal application, . . . [she] responded 'No' to liability question 1 with the understanding that . . . [she] was not guilty of a felony substance control conviction.'' *Id.*

Regarding her nursing license, Respondent stated that she ''answered 'Yes' on the renewal of . . . [her GBN] license to the questions regarding a pleading Nolo Contedere [sic] and was then placed on a two-year probationary period in 2013 which after careful monitoring was lifted in 2013.'' *Id.* According to her Written Statement, she ''underwent psychological evaluation and testing requested by the . . . [GBN] which concluded that . . . [she] did not have substance abuse problems and was able to practice safely as a nurse.'' *Id.* Regarding the registration renewal applications she submitted, she admitted that, in 2015 and 2018, she ''answered ''no'' to liability question 2 [sic] with the understanding because at that time . . . [her] nursing license was no longer under probation.'' [5] *Id.*

Respondent addressed her three false answers to the first Liability question on the registration renewal applications she submitted in December, 2011, February, 2015, and January, 2018, and her two false answers to the third Liability question on the registration renewal applications she submitted in 2015 and in 2018. *Id.* She stated that she ''did not intentionally answer these questions to misrepresent or give false information for . . . [her] DEA application.'' *Id.* Respondent wrote that she ''also renewed . . . [her] Georgia nursing license and when faced with similar questioning ha[s] answered yes to . . . [her] Nolo Contendere plea with an explanation of the situation.'' *Id.* She did not attach documentary evidence to support this assertion.

Respondent's Written Statement states that she ''prescribe[s] medications to patients in . . . [her] role as a nurse practitioner'' and that she has practiced as a nurse, and then a nurse practitioner, ''for the past 25 years.'' *Id.* Respondent stated that she ''cannot emphasize how sorry . . . [she] is that . . . [she has] placed [her]self in such a position.'' *Id.* at 2. She stated that she is a mother of two and a wife, that she has ''worked hard throughout . . . [her] life to have a successful career which . . . [she] placed in jeopardy,'' and that she is ''an upstanding member of . . . [her] community and church and [has] never abused any medications.'' *Id.* The Written Statement characterizes the ''circumstances'' as her ''unwittingly submit[ting] the wrong responses on . . . [her] renewal applications,'' and, ''instead of a complete revocation'' of her registration, ''appeal[s]'' for ''a period of either probation or suspension with monitoring and the ability to reapply or renew'' her registration. *Id.*

I find substantial record evidence that Respondent admitted, in her Written Statement, to writing a prescription for herself in 2008 on a prescription pad belonging to her collaborating physician. *Id.* at 1. This wrongdoing by Respondent is not set out in the Government's case. While the Government's case presents evidence of one negotiated guilty plea by Respondent arising from events in 2009, I find substantial record evidence that the Written Statement references ''a very grave mistake'' of forgery by Respondent in 2008. *Compare* RFAAX 4, 3–16 and *id.* at 29–31 with RFAAX 3, at 1; *see also* RFAAX 5, at 1 (referring to Respondent's ''plea of guilty to the felony criminal offense of Forgery, First Degree in the Superior Court of Douglas County . . . pertain[ing] to her forging prescriptions in 2009 for pain medication for her own use''). I further

[4] Respondent explicitly ''request[ed] a waiver of a hearing.'' RFAAX 3, at 1.

[5] Respondent may have meant to refer to Liability question ''3,'' not ''2.''

find, based on substantial record evidence, that the ''Affidavit for Arrest'' and the ''Arrest Warrant'' state that Respondent presented four forged prescriptions for filling in 2009, the year after Respondent's 2008 ''very grave mistake'' forgery admission described in her Written Statement. RFAAX 4, at 29–31. I find substantial record evidence that one of the instances described in the Arrest Warrant corresponds to the facts underlying Respondent's negotiated guilty plea according to the Transcript of that plea. *Id.* at 9.

There is substantial fact congruity between the evidence submitted by the Government and Respondent's Written Statement. The glaring exceptions to this substantial fact congruity are the number of controlled substance prescription forgeries the evidence indicates and the number of times Respondent pled to forging a controlled substance prescription.

Regarding the number of controlled substance prescription forgeries the evidence indicates, there are significant differences between the Written Statement's description of the forgery Respondent states took place in 2008, and the forgery underlying her 2009 guilty plea documented in the Government's evidence along with the alleged forgeries described in the Arrest Warrant. These significant differences lead me to conclude that they describe two different forgeries. For example, in its description of the four purported self-prescribed controlled substance prescriptions, the Arrest Warrant differentiates between brand names and generic names for controlled substances. *See, e.g.,* RFAAX 4, at 31 (Arrest Warrant description of four purported self-prescribed controlled substance prescriptions for ''hydrocodone,'' ''Vicodin,'' ''Tussionex Pennkinetic,'' and ''Vicodin''). The Written Statement states that the forged prescription she wrote for herself in 2008 ''was for Vicodin which is also known as Hydrocodone 5/500 mg.'' RFAAX 3, at 1. The Transcript of Respondent's guilty plea, on the other hand, describes the forged prescription of 2009 to have been for ''hydrocodone.'' RFAAX 4, at 7. While the Written Statement explains that ''Vicodin is also known as Hydrocodone,'' this is in direct contrast to the record evidence in the Arrest Warrant that provides the precise name of the controlled substance entered on the purportedly forged prescriptions. Accordingly, in this context, I find that ''Vicodin,'' not ''hydrocodone,'' is a noteworthy departure and points to two different forgeries.

By way of further example, according to the Written Statement, Respondent wrote the Vicodin prescription for herself in 2008 ''on a prescription pad which belonged to . . . [her] collaborating physician'' and she ''presented this prescription to a local pharmacy who notified the physician . . . [she] worked with and then proceeded to notify the local authorities.'' RFAAX 3, at 1. According to the Transcript of her 2009 guilty plea, by contrast, the prosecutor stated that Respondent left the employ of a medical practice in 2008 to work for another medical practice. RFAAX 4, at 9. Several months after that job change, he stated, Respondent presented a forged hydrocodone prescription written on a pad that belonged to the previous employer. *Id.* at 9–10. The pharmacy contacted Respondent's new employer and then the previous employer who ''informed them that he did not write or authorize this prescription.'' *Id.* at 10. The previous medical practice notified law enforcement. *Id.* Neither Respondent nor her Public Defender corrected any part of these prosecutor statements. Instead, the Public Defender added that Respondent had retained the prescription pad from the former employer and forged the prescription while at the subsequent employment. *Id.* at 11. I find that the differences between the Written Statement and the guilty plea Transcript on these critical points are too significant to result from faulty memory. I further find that the absence of any correction of those differences by Respondent or her Public Defender during the guilty plea proceeding means that the 2008 forgery described in the Written Statement and the forgery to which Respondent pled guilty in 2009 are not the same. Consequently, I find that the Written Statement describes a different forgery than the forgery to which Respondent pled guilty and the forgeries alleged in the Arrest Warrant. RFAAX 4, at 31. I consider the fact that the 2009 guilty plea for forging a controlled substance in the Government's evidence was not an isolated incident in determining the appropriate sanction.[6] *Infra* section IV.

Regarding the number of forgery pleas, the Written Statement describes a 2008 *nolo contendere* plea for forging a controlled substance prescription. RFAAX 3, at 1. The conviction described in the Government's evidence is a 2009 guilty plea for forging a controlled substance prescription on February 5, 2009. RFAAX 4, at 3–16; *see also* RFAAX 5, at 1 (referring to Respondent's ''plea of guilty to the felony criminal offense of Forgery, First Degree in the Superior Court of Douglas County . . . pertain[ing] to her forging prescriptions in 2009 for pain medication for her own use''). I need not sort out whether there were two pleas or one plea because the OSC alleges one felony conviction and because I am carrying out the provisions of 21 U.S.C. 824 regarding that felony conviction alleged in the OSC. 28 CFR 0.100(b). Whether Respondent pled *nolo contendere* to a violation in 2008 is not an issue presented by the OSC, is not before me for adjudication, and, therefore, I shall not resolve it.

E. Allegation That Respondent Has Been Convicted of a Felony Related to a Controlled Substance (21 U.S.C. 824(a)(2))

I find that there is substantial record evidence that Respondent, after leaving employment at a medical practice, retained a prescription pad of a doctor in that medical practice. *Id.* at 13 (statement of Respondent's attorney). I find that there is substantial record evidence that Respondent used the prescription pad after leaving that employment to ''wr[i]te prescriptions out for herself'' without authorization of the doctor to whom the prescription pad belonged. *Id.* (statement of Respondent's attorney). I find that there is substantial record evidence that Respondent ''would have to have gone back to the doctor to get that [prescription] authorized prior to the time this was done and that's not the way it was done.'' *Id.* (statement of Respondent's attorney).

I find that there is substantial record evidence that Respondent presented for filling a controlled substance (hydrocodone) prescription on February 5, 2009, that this prescription purported to be issued by a doctor at her former employment, and that this prescription was one of the unauthorized prescriptions Respondent wrote for herself on the prescription pad of a doctor at her former employment. *Id.* at 9.

I find that there is substantial record evidence that the pharmacist investigated this prescription. *Id.* at 10. I find that there is substantial record evidence that the doctor for whom Respondent had previously worked stated that he neither wrote nor authorized the prescription, that this doctor notified his practice, and that the practice notified law enforcement. *Id.* I find that there is substantial record evidence that the prosecutor at Respondent's sentencing stated that

[6] Although I find this fact relevant to my determination of a sanction, there is more than enough record evidence without it to support revocation as a sanction based on the Government's *prima facie* case.

''[t]here's no evidence that there were any other forged prescriptions presented by . . . [Respondent].'' *Id.* I find that there is substantial record evidence that Respondent's attorney stated that Respondent ''retained the [prescription] pad after she had left . . . [her prior medical office employer's] employ and basically she wrote prescriptions out for herself.'' *Id.* at 13. I further find that the ''Arrest Warrant'' for Respondent describes four allegations of Forgery in the First Degree, including presenting those forged prescriptions to a pharmacy for filling, spanning February 5, 2009, through November 11, 2009. *Id.* at 31. I credit the statement of Respondent's attorney and the items addressed in the ''Arrest Warrant'' for Respondent. I conclude that the statement of Respondent's attorney, that Respondent ''wrote prescriptions for herself,'' was made to ensure that all of Respondent's alleged criminality was subsumed in her guilty plea. *Id.* at 13. Given, among other reasons, that the statement of Respondent's attorney implicated Respondent in criminality in addition to the one instance to which she pled guilty through a ''negotiated plea,'' I credit the statement of Respondent's attorney, which I consider in my determination of Respondent's appropriate sanction. *Id.* at 10; *supra* section II.C.

Based on substantial record evidence, I find that Respondent entered a negotiated guilty plea to Forgery in the First Degree, Ga. Code Ann. 16–9–1, a Georgia felony, and that the Court accepted her guilty plea on November 18, 2010. RFAAX 4, at 3–5, 9, 20, 26 (hydrocodone prescription); *see also* RFAAX 5, at 3 (''forging prescriptions''). I find that there is substantial record evidence that the facts underlying Respondent's First-Degree Felony conviction include her having forged and presented for filling a controlled substance, hydrocodone, prescription for herself, and that the Court ordered Respondent discharged under the Georgia Probation for First-Offenders Act. RFAAX 4, at 9–10; *id.* at 2.

F. Allegation That Respondent Materially Falsified Registration Renewal Applications (21 U.S.C. 824(a)(1))

I find clear, unequivocal, and convincing evidence that, on November 18, 2010, the Honorable William H. McClain, Superior Court Judge of Douglas County, Georgia, found that Respondent pled guilty to one count of Forgery in the First Degree under Georgia law, ''freely and voluntarily, with a full knowledge, understanding in waiver of her rights, there's a factual basis, and no promises, threats or force has been used to induce'' her plea. *Id.* at 13; *see also id.* at 4–9. I find clear, unequivocal, and convincing record evidence that the facts underlying the Georgia felony to which Respondent pled guilty are that she forged and presented for filling a controlled substance (hydrocodone) prescription made out to herself on prescription paper belonging to a former physician employer. *Id.* at 9–10, 13. I find clear, unequivocal, and convincing record evidence that Judge McClain accepted her guilty plea, imposed sentence, and treated Respondent as a first offender on November 18, 2010. *Id.* at 15–16; *see also id.* at 20–22. I find clear, unequivocal, and convincing record evidence that, on November 18, 2010, when Judge McClain asked her before imposing sentence if ''there [is] anything that . . . [she] would like to say,'' Respondent replied that she would ''[j]ust . . . enlighten people that nurse practitioners actually do have the authority and . . . [she] do[es] have the authority, . . . the license to write prescriptions for people in the State of Georgia as in many other states, and that is part of . . . [her] job.'' *Id.* at 14–15. I find clear, unequivocal, and convincing record evidence that Respondent also stated that she ''did the wrong thing in writing it for [her]self.'' *Id.* at 15. I find clear, unequivocal, and convincing record evidence that, when Judge McClain asked her whether she had ''any sort of drug abuse problem,'' Respondent answered, ''No, I do not.'' *Id.*

I find clear, unequivocal, and convincing record evidence that, after her felony guilty plea and sentencing on November 18, 2010, Respondent submitted registration renewal applications to the Agency on December 31, 2011, on February 25, 2015, and on January 5, 2018. RFAAX 1, at 1–10; *see also* RFAAX 3, at 1–2. I find clear, unequivocal, and convincing record evidence that, on those three registration renewal applications, Respondent answered ''no'' to the first Liability question that asked whether she had ''ever been convicted of a crime in connection with controlled substance(s) under state or federal law . . . or any such action pending?'' RFAAX 1, at 1–2, 4, 7, 10. I find clear, unequivocal, and convincing record evidence that Respondent admitted in her Written Statement that she answered ''no'' to this liability question ''in . . . [her] subsequent DEA renewal applications.'' RFAAX 3, at 1. I find clear, unequivocal, and convincing record evidence that Respondent stated that she provided this negative answer in ''December of 2011 . . . with the understanding that . . . [she] was not guilty of a felony substance control conviction.'' *Id.*

I find clear, unequivocal, and convincing record evidence that, on June 25, 2013, the GBN placed Respondent's Georgia Nurse Practitioner license on probation for two years due to her ''fail[ure] to report her felony conviction to the . . . [GBN] within ten (10) days of such conviction.'' RFAAX 5, at 3–11, citing Ga. Code Ann. 43–1–27.[7] I find clear, unequivocal, and convincing record evidence that, after the GBN placed her nurse practitioner license on probation on June 25, 2013, Respondent submitted registration renewal applications to the Agency on February 25, 2015 and on January 5, 2018. RFAAX 1, at 1–10; *see also* RFAAX 3, at 1–2. I find clear, unequivocal, and convincing record evidence that, on those two registration renewal applications, Respondent answered ''no'' to the third Liability question that asked whether she had ''ever surrendered (for cause) or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, or is any such action pending.'' RFAAX 1, at 1–2, 4, 7, 10. I find clear, unequivocal, and convincing record evidence that Respondent admitted in her Written Statement that she answered ''no'' to this liability question in 2015 and in 2018. RFAAX 3, at 1. I find clear, unequivocal, and convincing record evidence that Respondent stated that she provided these two negative answers ''with the understanding because at that time . . . [her] nursing license was no longer under probation.'' *Id.*

III. Discussion

A. The Controlled Substances Act

Under the Controlled Substances Act (hereinafter, CSA), ''[a] registration . . . to . . . distribute[ ] or dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant—(1) has materially falsified any application filed pursuant to or required by this subchapter or

[7] ''Any licensed individual who is convicted under the laws of this state, the United States, or any other state, territory, or country of a felony as defined in paragraph (3) of subsection (a) of Code Section 43–1–19 shall be required to notify the appropriate licensing authority of the conviction within ten days of the conviction. The failure of a licensed individual to notify the appropriate licensing authority of a conviction shall be considered grounds for revocation of his or her license, permit, registration, certification, or other authorization to conduct a licensed profession.''

subchapter II; [or] (2) has been convicted of a felony under . . . any . . . law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance,'' among other reasons. 21 U.S.C. 824(a). The OSC alleged material falsification and felony conviction as the proposed bases for revocation of Respondent's registration. 21 U.S.C. 824(a)(1) and (2).

B. Allegation That Respondent Materially Falsified an Application (21 U.S.C. 824(a)(1))

As already discussed, I find clear, unequivocal, and convincing record evidence that Respondent submitted to the Agency three registration renewal applications containing a false answer to the first Liability question. *Supra* section II.F. Also, as already discussed, I find clear, unequivocal, and convincing record evidence that Respondent submitted to the Agency two registration renewal applications containing a false answer to the third Liability question. *Id.* My findings that Respondent submitted these false answers to the Agency stem from Respondent's conviction for violating a Georgia First-Degree Felony when she forged and presented for filling a controlled substance prescription for herself. *Id.; infra* section III.C. Further, my fact findings directly implicate three of the factors I am statutorily mandated to consider as I act on applications for registration: The applicant's experience in dispensing controlled substances, the applicant's conviction record under Federal or State laws relating to the dispensing of controlled substances, and other conduct which may threaten the public health and safety. 21 U.S.C. 823(f)(2), (3), and (5). Thus, Respondent's false responses on three registration renewal applications directly implicated my statutorily-mandated analyses and decisions by depriving me of legally relevant facts when I evaluated those three registration renewal applications of Respondent. RFAAX 1, at 1–11; *see also Frank Joseph Stirlacci, M.D.,* 85 FR 45,229, 45,235 (2020). Accordingly, I find, based on the CSA and the analyses underlying multiple Supreme Court decisions explaining ''materiality,'' that the five false Liability question responses Respondent submitted to the Agency in the three registration renewal applications at issue were material, and that the five false responses are grounds for the suspension or revocation of her registration. 21 U.S.C. 824(a)(1); *see Frank Joseph Stirlacci, M.D.,* 85 FR 45,235.

According to the Written Statement, Respondent ''responded 'No' to liability question 1 with the understanding that . . . [she] was not guilty of a felony substance control conviction.'' RFAAX 3, at 1. Due to the clear, unequivocal, and convincing record evidence, I do not credit this portion of Respondent's Written Statement.[8] *See, e.g.,* RFAAX 4, at 9 and RFAAX 5, at 3; *see also infra* section III.C.

Respondent's Written Statement also states that she ''answered 'No' '' to the third Liability question ''with the understanding because at that time . . . [her] nursing license was no longer under probation.'' RFAAX 3, at 1. I do not credit this portion of Respondent's Written Statement because the third Liability question asks whether the applicant ''*ever* . . . had a state professional license . . . placed on probation.'' RFAAX 1, at 4; *id.* at 10 [emphasis added].

C. Allegation That Respondent Has Been Convicted of a Felony Related to Any Controlled Substance (21 U.S.C. 824(a)(2))

As already discussed, I find substantial record evidence that Respondent entered a negotiated guilty plea to Forgery in the First Degree, Ga. Code Ann. 16–9–1, a Georgia felony, on November 18, 2010.[9] *Supra* section II.E. I also find substantial record evidence that the facts underlying Respondent's First-Degree Felony conviction include her having forged a controlled substance prescription for herself. *Id.*

Based on the facts I found in this matter, I conclude that Respondent has been convicted of a felony under a State law relating to a controlled substance. 21 U.S.C. 824(a)(2). First, to state the obvious, the state of Georgia used its First-Degree Felony Forgery statute to prosecute and convict Respondent of forging a controlled substance prescription even though that Georgia statute does not include the phrase ''controlled substance'' in its text. *See* n.9. Georgia's choice of this forgery statute shows that Respondent was convicted of a felony under a state law relating to any controlled substance. 21 U.S.C. 824(a)(2).

Second, according to the Supreme Court, the phrase ''in relation to'' is interpreted expansively, and means ''with reference to'' or ''as regards.'' *Smith* v. *United States,* 508 U.S. 223, 237 (1993). The *Smith* decision involved an offer to trade an automatic weapon for cocaine. 508 U.S. at 225. The decision addressed the question of whether the exchange of a firearm for cocaine constitutes using a firearm ''during and in relation to . . . [a] drug trafficking crime'' within the meaning of 18 U.S.C. 924(c)(1). *Id.* The Supreme Court's analysis cited prior Supreme Court and appellate court decisions interpreting the phrase ''in relation to'' and concluding that the phrase should be interpreted expansively. *Id.* at 237; *see, e.g., District of Columbia* v. *Greater Washington Board of Trade,* 506 U.S. 125, 129 (1992) (''We have repeatedly stated that a law 'relate[s] to' a covered employee benefit plan . . . 'if it has a connection with or reference to such a plan.' . . . This reading is true to the ordinary meaning of 'relate to' . . . and thus gives effect to the 'deliberately expansive' language chosen by Congress.''); *United States* v. *Harris,* 959 F.2d 246, 261 (D.C. Cir. 1992) (per curiam) (''The only limitation is that the guns be used ''in relation'' to the drug trafficking crime involved, which we think requires no more than the guns facilitate the predicate offense in some way.''); *United States* v. *Phelps,* 877 F.2d 28 (9th Cir. 1989) (concluding that the situation was ''unusual'' and not covered, the court stated that ''the phrase 'in relation to' is broad'').

The Supreme Court also cited a dictionary definition in its analysis. 508 U.S. at 237–38. It stated that ''[a]ccording to Webster's, 'in relation to' means 'with reference to' or 'as regards.' '' *Id.* at 237. It concluded, thus, that the phrase ''in relation to,'' at a minimum, ''clarifies that the firearm must have some purpose or effect with respect to the drug trafficking crime; its presence or involvement cannot be the result of accident or coincidence.'' *Id.* at 238. The Court also stated that ''the gun at least must 'facilitate[e], or ha[ve] the

[8] If Respondent intended to argue that her negotiated guilty plea in 2010 and her treatment as a first offender mean that she was not convicted of a First-Degree Felony, I reject her argument. The Agency established over thirty years ago, and recently reiterated, that a deferred adjudication is ''still a 'conviction' within the meaning of the . . . [CSA] even if the proceedings are later dismissed.'' *Kimberly Maloney, N.P.,* 76 FR 60,922, 60,922 (2011). In reaching this conclusion, the Agency explained that, ''[a]ny other interpretation would mean that the conviction could only be considered between its date and the date of its subsequent dismissal.'' *Id.* (citing *Edson W. Redard, M.D.,* 65 FR 30,616, 30,618 (2000)). The same reasoning applies to treatment as a first offender. I also note that the GBN Consent Order exists because Respondent ''failed to report her felony conviction to the Board within ten (10) days of such conviction as required by O.C.G.A. § 43–1–27.'' RFAAX 5, at 3.

[9] ''A person commits the offense of forgery in the first degree when with intent to defraud he knowingly makes, alters, or possesses any writing in a fictitious name or in such manner that the writing as made or altered purports to have been made by another person, at another time, with different provisions, or by authority of one who did not give such authority and utters or delivers such writing.'' Ga. Code Ann. § 16–9–1 (West, Westlaw effective to June 30, 2012).

potential of facilitating,' the drug trafficking offense.'' *Id.* Applying its analysis to the facts before it, the Court concluded that the use of the firearm ''meets any reasonable construction'' of ''in relation to'' because the gun was ''an integral part of the transaction.'' *Id.* I apply these conclusions of the Supreme Court as I analyze the record evidence before me.

According to the facts I already found, Respondent used the prescription pad of a doctor at her former place of employment to write a schedule II controlled substance prescription for herself. RFAAX 4, at 9–10 and 13. My found facts also include that Respondent's registration did not have schedule II authority. RFAAX 1, at 1. As such, for Respondent to have any chance of obtaining a schedule II controlled substance from a pharmacy by her efforts alone, she had to present a prescription written on the prescription pad of, and purportedly signed by, a registrant with schedule II authority. As my found facts show, Respondent had already absconded with the prescription pad of a doctor at her former place of employment and used that prescription pad to prescribe a schedule II controlled substance for herself, including forging the name of the registrant to whom the prescription pad belonged. RFAAX 4, at 9–10 and 13. Under my found facts, therefore, the use of the forged prescription was ''an integral part of the transaction.'' *Smith* v. *United States,* 508 U.S. at 238. Based on the Supreme Court's explanation of ''in relation to,'' I conclude that Respondent's Georgia felony forgery conviction was ''with reference to'' and ''as regards'' a controlled substance and, accordingly, I also conclude that Respondent's felony forgery conviction satisfies the terms of 21 U.S.C. 824(a)(2).

Third, prior Agency decisions have applied the felony conviction provision of 21 U.S.C. 824(a)(2) to circumstances similar to those in this matter. *See, e.g., Samuel S. Jackson, D.D.S.,* 72 FR 23,848, 23,852 (2007) (conspiracy to be an accessory after the fact); *Clark G. Triftshauser, M.D.,* 67 FR 71,202, 71,203 (2002) (criminal possession of a forged instrument); *Charles A. Buscema, M.D.,* 59 FR 42,857, 42,858 (1994) (First-Degree Felony conviction for falsifying business records about the dispensing of controlled substances, but ultimately not finding for revocation); *Lambert N. DePompei, M.D.,* 49 FR 37,862, 37,863 (1984) (possession of false or forged prescriptions are ''all felony convictions relating to controlled substances''); *Ontario Drugs, Inc., Fullerton-Kedzie Pharmacy, Inc.,* 46 FR 16,004, 16,005 (1981) (theft and forgery of controlled substance prescriptions). Consequently, my finding that Respondent's Georgia forgery felony guilty plea satisfies the terms of 21 U.S.C. 824(a)(2) is consistent with Agency decisions issued in the last forty years.

For all of the above reasons, I conclude that the found facts in this matter meet the requirements of 21 U.S.C. 824(a)(2). Accordingly, I find that Respondent has been convicted of a felony related to any controlled substance. 21 U.S.C. 824(a)(2).

In sum, I find that the record evidence supports two independent legal bases for the suspension or revocation of Respondent's registration—(1) five material falsifications in three registration renewal applications and (2) Respondent's conviction of a felony related to any controlled substance. 21 U.S.C. 824(a)(1) and (2).

IV. Sanction

Where, as here, the Government presented two, independent bases for the suspension or revocation of Respondent's registration, and Respondent did not present evidence rebutting either of the two bases, it is then up to Respondent ''to assure the Administrator'' that she ''can be entrusted with the responsibilit[ies] that accompany registration.'' *White* v. *Drug Enf't Admin.,* 626 F. App'x 493, 496 (5th Cir. 2015); *see also Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018) (quoting *Akhtar-Zaidi* v. *Drug Enf't Admin.,* 841 F.3d 707, 711 (6th Cir. 2016)); *MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 816 (10th Cir. 2011) (quoting *Volkman* v. *Drug Enf't Admin.,* 567 F.3d 215, 222 (6th Cir. 2009) quoting *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005)). As the Fifth Circuit also stated, ''[s]uch evidence includes acceptance of responsibility and a demonstration that the . . . [Respondent] 'will not engage in future misconduct.' '' *White* v. *Drug Enf't Admin.,* 626 F. App'x at 496; *see also Pharmacy Doctors Enterprises, Inc.* v. *Drug Enf't Admin.,* 789 F. App'x, 724, 733 (2019) (citing *Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d at 831 (citing *MacKay* v. *Drug Enf't Admin.,* 664 F.3d at 820 (noting that past performance is the best predictor of future performance and, when a registrant has ''failed to comply with . . . [her] responsibilities in the past, it makes sense for the agency to consider whether . . . [she] will change . . . [her] behavior in the future'') and *Alra Labs., Inc.* v. *Drug Enf't Admin.,* 54 F.3d 450, 452 (7th Cir. 1995) (''An agency rationally may conclude that past performance is the best predictor of future performance.'')).

The Agency has decided that the egregiousness and extent of misconduct are significant factors in determining the appropriate sanction. *Garrett Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018) (collecting cases); *Samuel Mintlow, M.D.,* 80 FR 3630, 3652 (2015) (''Obviously, the egregiousness and extent of a registrant's misconduct are significant factors in determining the appropriate sanction.''). The Agency has also considered the need to deter similar acts in the future by Respondent and by the community of registrants. *Garrett Howard Smith, M.D.,* 83 FR 18,910; *Samuel Mintlow, M.D.,* 80 FR 3652.

In terms of egregiousness, the five instances of material falsification and the felony conviction go to the heart of the CSA: Non-compliance with the closed regulatory system devised to ''prevent the diversion of drugs from legitimate to illicit channels'' and not prescribing controlled substances in compliance with the applicable standard of care and in the usual course of professional practice. *Gonzales* v. *Raich,* 545 U.S. 1, 13–14, 27 (2005). These material falsifications and felony conviction alone support revocation.

Further, the uncontroverted record evidence, including Respondent's admissions, shows that Respondent's forgery of controlled substance prescriptions for herself spanned 2008 and 2009. *Supra* sections II.C., II.D., II.E., and II.F. The record evidence includes five instances of Respondent's founded (including negotiated and admitted) or alleged forgery of a controlled substance prescription. *Id.* The admittedly and allegedly forged, self-prescribed controlled substance prescriptions, Vicodin/hydrocodone (4) and Tussionex Pennkinetic (1), all include hydrocodone, a highly abused schedule II controlled substance. *Supra* sections II.C., II.D., and II.E. In this regard, I note Respondent's sworn denials of ''any sort of drug abuse problem.'' *Supra* sections II.C. and II.F. I also note, though, that Respondent's current registration does not authorize her to issue schedule II controlled substance prescriptions, and that Respondent allegedly forged two, self-prescribed schedule II controlled substance prescriptions in one month. *Supra* sections II.A., II.C., and II.E.

Respondent's submission does not address acceptance of responsibility. *See supra* section II.D. Indeed, Respondent does not even acknowledge the entirety of the OSC's charges against her. Her Written Statement begins by stating that she is writing it about ''material falsification of renewal

applications for . . . [her] DEA license.'' RFAAX 3, at 1. At the end of her Written Statement, Respondent asks for ''a period of either probation or suspension with monitoring'' ''based on the circumstances in which . . . [she] unwittingly submitted the wrong responses on . . . [her] renewal applications.'' *Id.* at 2. In other words, Respondent does not even acknowledge that the OSC also proposed the revocation of her registration based on 21 U.S.C. 824(a)(2).

Further, the focus of her Written Statement is that she ''made a very grave mistake which . . . [she] will forever regret.'' *Id.* at 1. It points out that she has ''undergone a lot of emotional stress regarding the risk . . . [she] placed . . . [her] career in.'' *Id.* The Written Statement, however, does not move beyond the impact her wrongdoing has on herself and her career. *Id.* at 1–2. It characterizes her wrongdoing as ''unwittingly submitting the wrong responses,'' not as violating the law and betraying the trust of her employer and the Agency. *Id.* at 2.

Respondent's choice to submit a Written Statement, instead of taking advantage of her right to a hearing, means that she cannot answer questions about her admittedly and allegedly forged controlled substance prescriptions and whether she accepts responsibility for her wrongdoing. The areas of concern I have about her admitted and alleged violations include how many times she forged controlled substance prescriptions for herself, what controlled substances were involved, why she forged the prescriptions, and what she did with the controlled substances. The areas of concern I have about acceptance of responsibility include whether, and for what, Respondent unequivocally accepts responsibility. In other words, Respondent's recognition of having made a ''grave mistake'' that placed her career in risk, the resulting experience of ''a lot of emotional stress,'' and being ''sorry'' that she placed herself ''in such a position'' do not constitute unequivocal acceptance of responsibility for her wrongdoing. All of the areas of concern to me remain unresolved.

In sum, the record evidence raises, but does not answer, the extent and degree of Respondent's wrongdoing and whether Respondent unequivocally accepts responsibility for it as the Agency requires. *Jeffrey Stein, M.D.,* 84 FR 46,968, 46,972–73 (2019) (unequivocal acceptance of responsibility); *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 463 (2009) (collecting cases). These deficiencies are concerning. For example, they may mean that Respondent does not appreciate (1) the full extent of her wrongdoing and the (2) breadth of the harm her wrongdoing caused. I am also left wondering what Respondent learned from her wrongdoing, and whether Respondent has the resources to avoid future wrongdoing.

For all of the above reasons, it is not reasonable for me, at this time, to trust that Respondent will comply with all controlled substance legal requirements in the future.[10] *Alra Labs., Inc.* v. *Drug Enf't Admin.,* 54 F.3d at 452 (''An agency rationally may conclude that past performance is the best predictor of future performance.''). Accordingly, I shall order that Respondent's registration be revoked, and that all pending applications to renew or modify Respondent's registration and any pending application for a new registration in Georgia, be denied.

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. MS1972101 issued to Uvienome Linda Sakor, N.P. Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and by 21 U.S.C. 823(f), I further hereby deny any pending application of Uvienome Linda Sakor, N.P., to renew or modify this registration, as well as any other pending application of Uvienome Linda Sakor, N.P. for registration in Georgia. This Order is effective October 7, 2021.

Anne Milgram,

Administrator.

[FR Doc. 2021–19194 Filed 9–3–21; 8:45 am]

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[10] I do not consider remedial measures when a Respondent does not unequivocally accept responsibility. As discussed, the scope of Respondent's discussion of remedial efforts was limited and, therefore, unpersuasive and not reassuring.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 21–13]

Lora L. Thaxton, M.D.; Decision and Order

On March 24, 2021, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Lora L. Thaxton, M.D. (hereinafter, Respondent) of Naples, Florida. OSC, at 1. The OSC proposed the revocation of Respondent's Certificate of Registration No. FT3429227. It alleged that Respondent is without ''authority to handle controlled substances in Florida, the state in which [Respondent is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that the Florida Department of Health issued an Order of Emergency Restriction of License on April 14, 2020. *Id.* at 1. This Order, according to the OSC, suspended Respondent's Florida medical license following its findings, *inter alia,* that a medical evaluator from the impaired practitioner program for the Florida Board of Medicine had determined that Respondent was ''unable to practice medicine with reasonable skill and safety to patients due to alcohol use disorder.'' *Id.* at 2. According to the OSC, Respondent subsequently entered into a settlement agreement with the Florida Board of Medicine on February 5, 2021,[1] under which Respondent's medical license would remain suspended until she demonstrated her ability to practice medicine with reasonable skill and safety, submitted to an evaluation by the impaired practitioner program, and petitioned the Florida Board of Medicine for reinstatement of her medical license. *Id.*

The OSC notified Respondent 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 Respondent of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. 824(c)(2)(C)).

By letter dated April 29, 2021, Respondent timely requested a hearing.[2] Request for Hearing (Official Notification). The Office of Administrative Law Judges put the matter on the docket and assigned it to

[1] The Government's Exhibit demonstrates that the Florida Board of Medicine approved the settlement agreement on April 5, 2021. *See* Government's Motion for Summary Disposition, Exhibit D, at 1–2.

[2] According to the Declaration of the lead Diversion Investor (hereinafter, DI) assigned to this case, the DI mailed two copies of the OSC to Respondent on March 31, 2021. Government Motion Exhibit 1, at 1–2. By email dated April 2, 2021, Respondent's counsel indicated that Respondent had received the OSC on April 2, 2021, and would be filing a request for hearing within 30 days, as well as a proposed corrective action plan. Request for Hearing (Emailed). Because Respondent's hearing request, was filed within thirty days of the DI's mailing the OSC on April 29, 2021, I find that the Government's service of the OSC was adequate and that the hearing request was timely filed.