

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Joint Board for the Enrollment of Actuaries gives notice of a teleconference meeting of the Advisory Committee on Actuarial Examinations (a portion of which will be open to the public) on January 6–7, 2022.

DATES: Thursday, January 6, 2022, from 9:00 a.m. to 5:00 p.m. (EST), and Friday January 7, 2022, from 8:30 a.m. to 5:00 p.m. (EST).

ADDRESSES: The meeting will be held by teleconference.

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at 202–317–3648 or elizabeth.j.vanosten@irs.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet by teleconference on Thursday, January 6, 2022, from 9:00 a.m. to 5:00 p.m. (EST), and Friday, January 7, 2022, from 8:30 a.m. to 5:00 p.m. (EST).

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the November 2021 Pension (EA–2F) Examination in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the May 2022 Basic (EA–1) Examination and the May 2022 Pension (EA–2L) Examination also will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the portions of the meeting dealing with the discussion of questions that may appear on the Joint Board's examinations and the review of the November 2021 Pension (EA–2F) Examination fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics

will commence at 1:00 p.m. (EST) on January 6, 2022 and will continue for as long as necessary to complete the discussion, but not beyond 3:00 p.m. (EST). Time permitting, after the close of this discussion by Advisory Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should contact the Designated Federal Officer at NHQJBEA@IRS.GOV and include the written text or outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. Persons who wish to attend the public session should contact the Designated Federal Officer at NHQJBEA@IRS.GOV to obtain teleconference access instructions. Notifications of intent to make an oral statement or to attend the meeting must be sent electronically to the Designated Federal Officer by no later than December 31, 2021. In addition, any interested person may file a written statement for consideration by the Joint Board and the Advisory Committee by sending it to NHQJBEA@IRS.GOV.

Dated: December 2, 2021.

Thomas V. Curtin,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2021–26535 Filed 12–7–21; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Tamika Mayo, M.D.; Decision and Order

On July 23, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Tamika Mayo, M.D. (hereinafter, Respondent), of Baton Rouge, Louisiana. Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter RFAAX) A (OSC), at 1 and 5. The OSC proposed to revoke Respondent's DEA Certificate of Registration, Control No. BM7946835 and to deny any pending applications for a new registration or for renewal pursuant to 21 U.S.C. 824(a)(4) and 823(f), because Respondent had “committed acts which render [her] registration inconsistent with the public interest.” *Id.* at 1.

The OSC alleged that Respondent had issued thousands of prescriptions for controlled substances in Louisiana during periods when her Louisiana Controlled Dangerous Substance

(hereinafter, CDS) license was expired. *Id.* at 2–3. Specifically, the OSC alleged that between September 1, 2016, and January 17, 2017, Respondent issued over 1,850 prescriptions for controlled substances while her CDS license was expired; between September 1, 2017, and June 13, 2018, Respondent issued over 1,730 prescriptions for controlled substances while her CDS license was expired; and between September 1, 2018, and February 15, 2019, Respondent issued over 400 prescriptions for controlled substances while her CDS license was expired. *Id.* According to the OSC, because Respondent was not authorized to issue prescriptions for controlled substances during these periods, the prescriptions were issued in violation of state and federal law. *Id.* at 3 (citing La. Stat. §§ 40:967(A)(1)(a) & 40:973; La. Admin. Code tit. 46, §§ 2705 & 2707(B)(3)–(4); 21 U.S.C. 841(a)(1); 21 CFR 1306.03 & 1306.04). The OSC concluded that “[b]y issuing more than 3,900 prescriptions for controlled substances without state authorization, and therefore in violation of state and federal law, [Respondent has] committed such acts as would render [her] continued registration inconsistent with the public interest.” *Id.* (citing 21 U.S.C. 824(a)(4) & 823(f)(2) & (4)).

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. *Id.* at 4–5 (citing 21 U.S.C. 824(c)(2)(C)).

By letter dated August 17, 2019, Respondent offered an explanation in response to the allegations and stated that she was “not waving [sic] [her] right to a hearing.” RFAAX B. On August 20, 2019, Administrative Law Judge Mark M. Dowd (hereinafter, the ALJ) issued an Order Directing Clarification, in which the ALJ instructed Respondent, if she was seeking a hearing, to “submit a document affirmatively and unconditionally requesting a hearing” and stated that if the new document was timely filed, the initial filing would be deemed a timely hearing request. RFAAX C, at 3. By email dated August 27, 2019, Respondent requested a hearing. RFAAX D. On August 28, 2019, the ALJ issued an Order for Prehearing Statements. RFAAX E, at 1. The Government timely filed its prehearing statement on September 9, 2019. *Id.* at 2. On September 30, 2019, the ALJ

issued an Order Terminating Proceedings, in which the ALJ found that based on Respondent's failure to comply with the Order for Prehearing Statements, "Respondent has implicitly withdrawn her request for a hearing" and ordered the proceedings terminated. *Id.* at 4. The ALJ noted that Respondent had contacted the Office of Administrative Law Judges on September 20, 2019, and in response she had received: Specific instructions on where to call if she had questions, an additional copy of the Order for Prehearing Statements and an additional request for Respondent to provide a phone number where she could be reached for the conference, which she never provided. *Id.* at 2. On October 2, 2019, Respondent sent multiple emails to the Tribunal offering an explanation and requesting that the proceedings be reopened. ALJX 13–17. However, on October 2, 2019, the ALJ issued an Order Denying Respondent's Request to Reopen These Proceedings, in which the ALJ found that Respondent had not demonstrated sufficient good cause to reopen the matter. RFAAX F, at 4. I have reviewed and agree with the procedural rulings of the ALJ.

On March 30, 2020, the Government forwarded its RFAA, along with the evidentiary record for this matter, to my office. Having considered the record in its entirety, I find that the record established, by substantial evidence, that Respondent committed acts that render her continued registration inconsistent with the public interest. Accordingly, I conclude that the appropriate sanction is to revoke Respondent's DEA registration and to deny any pending applications for renewal or new registration in Louisiana. I make the following findings of fact.

I. Findings of Fact

A. Respondent's DEA Registration

Respondent is registered with the DEA as a practitioner authorized to handle controlled substances in schedules II–V under DEA registration number BM7946835 at 4336 North Blvd., Suite 101, Baton Rouge, LA 70806. RFAAX G–1. Respondent filed a renewal of her DEA registration "on or about December 5, 2019." RFAAX G, at 1.¹

¹ It appears from Agency records that Respondent's registration is in retired status, although it is unclear exactly what precipitated that status. Regardless, the fact that a registration has expired during the pendency of an OSC does not impact my jurisdiction or prerogative under the Controlled Substances Act (hereinafter, CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.*, 84 FR 68474 (2019). Adjudicating this matter

B. Government's Case

The Government's RFAA includes 18 attached exhibits consisting of copies of hearing procedural documents and orders, a declaration from a DEA Diversion Investigator (hereinafter, DI), a copy of Respondent's DEA certificate of registration, various documents pertaining to the status of Respondent's Louisiana CDS license, and various prescription records from Respondent. See RFAAX A–G–11.

In a Declaration dated February 27, 2020, a DI assigned to the New Orleans Field Division described the service of the OSC on Respondent as well as the investigation activities involved in the current matter, including the collection of the Government's exhibits. RFAAX G, at 1–4.

On November 3, 2016, the Louisiana Board of Pharmacy (hereinafter, the Board) provided Respondent with a Termination Notice, notifying her that her CDS license had been terminated because she had failed to renew her license within 30 days after its expiration on September 1, 2016. RFAAX G–3. Respondent's CDS license remained in an expired status until it was renewed, effective January 17, 2017. RFAAX G–2 (Expiration Summary Memo from the Louisiana Board of Pharmacy, dated June 27, 2019).² Nonetheless, from September 1, 2016, to January 17, 2017, Respondent issued approximately 1,850 prescriptions for controlled substances in the State of Louisiana. RFAAX G–6 and G–9.

On November 3, 2017, the Board provided Respondent with a second Termination Notice, notifying her that her CDS license had been terminated, because she had failed to renew her license within 30 days after its expiration on September 1, 2017. RFAAX G–4. Respondent's CDS license remained in an expired status until it was renewed, effective June 13, 2018. RFAAX G–2. Nonetheless, from

to finality will create an official record the Agency can use in any future interactions with Respondent. As additionally noted in *Olsen*, "a final adjudication is a public record of the Agency's expectations for current and prospective members of that community," and adjudications inform stakeholders, such as legislators and the public, about the Agency's work and allow them to provide feedback to the Agency, thereby helping shape how the Agency carries out its responsibilities under the CSA. *Id.* Adjudicating this matter to finality will create a public record to educate current and prospective registrants about the Agency's expectations regarding the responsibilities of registrants under the CSA and allow stakeholders to provide feedback regarding the Agency's enforcement priorities and practices.

² According to the Expiration Summary Memo, the Board was only able to verify periods of expiration after 2007 because prior to 2007, the CDS program was overseen by another agency. *Id.*

September 1, 2017, to June 13, 2018, Respondent issued approximately 1,730 prescriptions for controlled substances in the State of Louisiana. RFAAX G–7 and G–10.

On November 6, 2018, the Board provided Respondent with a third Termination Notice, notifying her that her CDS license had been terminated because she had failed to renew her license within 30 days after its expiration on September 1, 2018. RFAAX G–5. Respondent's CDS license remained in an expired status until it was renewed, effective February 15, 2019. RFAAX G–2. Nonetheless, from September 1, 2018, to February 15, 2019, Respondent issued approximately 400 prescriptions for controlled substances in the State of Louisiana. RFAAX G–8 and G–11.

II. Discussion

A. Government's Position

In its RFAA, the Government sought to revoke Respondent's DEA registration and to deny any pending applications for renewal or modification of Respondent's DEA registration because Respondent "[had] committed acts which render her continued registration inconsistent with the public interest, in violation of 21 U.S.C. 824(a) and 823(f)." RFAA, at 1. Specifically, the Government argued that Respondent had repeatedly violated state and federal law by issuing thousands of prescriptions for controlled substances while she lacked the authority to do so due to the expiration of her Louisiana CDS license. *Id.* at 7–11. The Government concluded its RFAA by requesting that Respondent's DEA registration be revoked and that any pending applications for modification or renewal of Respondent's DEA registration be denied. *Id.* at 11.

B. Respondent's Position

The only statements from Respondent regarding the allegations appear in the initial letter that Respondent submitted in response to the OSC, which offers some explanation as to her misconduct, but offers no supporting evidence or ability for me to assess the credibility of her unsworn statements. See RFAAX B. In her letter, Respondent stated that, as to the first period when she was issuing prescriptions while her license was expired, she was under a lot of stress due to an ongoing divorce and from working two jobs. *Id.* Respondent stated that she did not know that her license was expired, and that "when [she] was notified in early 2017 that the license had expired, [she] immediately got it renewed." *Id.* As to the second period

when she was issuing prescriptions while her license was expired, Respondent stated that due to personal family issues, “[she] wasn’t even thinking about the CDS license since [she] knew [she] had just gotten it renewed in the early part of the year 2017.” *Id.* Respondent again stated that she did not realize her license was expired, and that as soon as she was notified in early 2018 that the license was expired, she immediately got it renewed. *Id.* Respondent did not offer an explanation as to the third period when she was issuing prescriptions while her license was expired. *Id.*

Respondent noted that she has practiced medicine in Louisiana for 20 years, she has never had a problem with her CDS license, her medical license has never expired, and her DEA license has never expired. *Id.* Respondent stated that her misconduct was unintentional and that because “[she] was commuting and not in the office every day, [she] missed the renewal dates.” *Id.* Respondent also noted that she was “under horrible levels of stress” and apologized for “the license having expired”, stating that it would “never happen again.” Respondent concluded her letter by describing corrective action that she had taken, specifically that she had “logged the expiration date in several places, even on [her] personal cell phone” and that she was “renewing on the date that [she receives] the renewal letter.” *Id.* Respondent also stated that she had already completed the most recent renewal in July 2019. *Id.* Finally, Respondent stated that she was “not waving [sic] [her] right to a hearing” and that “[i]f the DEA wish[ed] to pursue [the matter] after [her] explanation, [she] still would like to come to a hearing.” *Id.*

As for Respondent’s failure to comply with the Order for Prehearing Statements that led to the termination of the proceedings without a hearing, Respondent offered some explanation in her subsequent emails to the Tribunal, in which she requested that the proceedings be reopened. *See* ALJX 13–17. Specifically, Respondent stated that she did not realize that she had to provide additional documents, noting that she did not have a lawyer and was unfamiliar with the course of the proceedings. ALJX 17.

I do not find this explanation regarding her noncompliance with the proceedings to be persuasive. As the ALJ noted in the Order Denying Respondent’s Request to Reopen These Proceedings, the Respondent was given clear instructions in the Order for Prehearing Statements to file a Prehearing Statement, as well as the

logistics and deadlines for doing so. RFAAX F, at 2–3; *see also* ALJX 5. Further, “the Respondent’s argument that she does not have a lawyer and is not familiar with these proceedings does not provide sufficient cause for her failure to file a Prehearing Statement.” RFAAX F, at 3; *see also* ALJX 17. There was also ample evidence that the instructions to provide a telephone number were clear and that the date to file a prehearing statement was clear. *See* ALJX 5, at 2–4. Respondent also was in receipt of the Government’s Prehearing Statement, so it would be difficult for her to credibly argue ignorance as to what a prehearing statement was. *See* ALJX 6 (Email: Government’s Pre-Hearing Statement).

Respondent’s statements in her hearing request notably do not refute the allegations in the OSC; therefore, I find that the facts in the record remain uncontested.

C. Analysis

Under Section 304 of the CSA, “[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts that would render his [or her] registration under section 823 of this title inconsistent with the public interest as determined by such section.” 21 U.S.C. 824(a)(4). In the case of a “practitioner,” defined in 21 U.S.C. 802(21) to include a “physician,” Congress directed the Attorney General to consider the following factors in making the public interest determination:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
- (2) The applicant’s experience in dispensing, or conducting research with respect to controlled substances.
- (3) The applicant’s conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
- (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
- (5) Such other conduct which may threaten the public health and safety. 21 U.S.C. 823(f).

The DEA considers these public interest factors in the disjunctive. *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *Morall v. Drug Enf’t Admin.*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.*, 58 FR 37507, 37508 (1993). Thus, there is no need to enter findings on

each of the factors. *Hoxie v. Drug Enf’t Admin.*, 419 F.3d 477, 482 (6th Cir. 2005). Furthermore, there is no requirement to consider a factor in any given level of detail. *Trawick v. Drug Enf’t Admin.*, 861 F.2d 72, 76–77 (4th Cir. 1988). The balancing of the public interest factors “is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest. . . .” *Jayam Krishna-Iyer, M.D.*, 74 FR 459, 462 (2009). When deciding whether registration is in the public interest, the DEA must consider the totality of the circumstances. *See generally Joseph Gaudio, M.D.*, 74 FR 10083, 10094–95 (2009) (basing sanction on all evidence on record).

The Government has the burden of proving that the requirements for revocation of a DEA registration in 21 U.S.C. 824(a) are satisfied. 21 CFR 1301.44(e). When the Government has met its *prima facie* case, the burden then shifts to the Respondent to show that revoking registration would not be appropriate, given the totality of the facts and circumstances on the record. *Med. Shoppe-Jonesborough*, 73 FR 364, 387 (2008).

While I have considered all of the public interest factors,³ the Government’s case invoking the public interest factors of 21 U.S.C. 823(f) seeks revocation of Respondent’s registration based solely under Public Interest Factors Two and Four. I find that the Government’s evidence with respect to Factors Two and Four satisfies its *prima*

³ As to Factor One, there is no evidence in the record of any recommendation from Respondent’s state licensing board or professional disciplinary authority. 21 U.S.C. 823(f)(1). “The fact that the record contains no evidence of a recommendation by a state licensing board does not weigh for or against a determination as to whether continuation of Respondent’s DEA certification is consistent with the public interest.” *Roni Dreszer, M.D.*, 76 FR 19434, 19444 (2011).

As to Factor Three, there is no evidence in the record that Respondent has been convicted of an offense under either federal or state law “relating to the manufacture, distribution, or dispensing of controlled substances.” 21 U.S.C. 823(f)(3). However, as Agency cases have noted, there are a number of reasons why a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor, let alone prosecuted for one. *Dewey C. MacKay, M.D.*, 75 FR 49956, 49973 (2010). Agency cases have therefore found that “the absence of such a conviction is of considerably less consequence in the public interest inquiry” and is therefore not dispositive. *Id.*

As to Factor Five, the Government’s allegations fit squarely within the parameters of Factors Two and Four and do not raise “other conduct which may threaten the public health and safety.” 21 U.S.C. 823(f)(5). Accordingly, Factor Five does not weigh for or against Respondent.

facie burden of showing that Respondent's continued registration would be "inconsistent with the public interest." 21 U.S.C. 824(a)(4). Specifically, I find that the record contains substantial evidence that Respondent violated both Louisiana state law and federal law when she issued thousands of prescriptions for controlled substances in Louisiana during periods when she lacked state authorization to do so. I further find that Respondent failed to provide evidence to rebut the Government's *prima facie* case.

1. Factors Two and Four

The DEA often analyzes Factors Two and Four together. See, e.g., *Fred Samimi, M.D.*, 79 FR 18698, 18709 (2014); *John V. Scaleria, M.D.*, 78 FR 12092, 12098 (2013). Under Factor Two, the DEA analyzes a registrant's "experience in dispensing controlled substances." 21 U.S.C. 823(f)(2). Factor Two analysis focuses on a registrant's acts that are inconsistent with the public interest, rather than on a registrant's neutral or positive acts and experience. *Randall L. Wolff, M.D.*, 77 FR 5106, 5121 n.25 (2012) (explaining that "every registrant can undoubtedly point to an extensive body of legitimate prescribing over the course of [the registrant's] professional career" (quoting *Jayam Krishna-Iyer, M.D.*, 74 FR 459, 463 (2009))). Similarly, under Factor Four, the DEA analyzes an applicant's compliance with federal and state controlled substance laws. 21 U.S.C. 823(f)(4). The Factor Four analysis focuses on violations of state and federal laws and regulations concerning controlled substances. *Volkman v. Drug Enf't Admin.*, 567 F.3d 215, 223–24 (6th Cir. 2009) (citing *Gonzales v. Oregon*, 546 U.S. 243, 272, 274 (2006)); *Gaudio*, 74 FR 10090–91.

In this case, Respondent dispensed thousands of prescriptions without a controlled substance license in violation of both state and federal law. Although there are not specific allegations regarding the legitimacy of these prescriptions, I find that dispensing controlled substances without a license constitutes negative dispensing experience and weighs against Respondent's continued registration. In fact, during one year, Respondent's CDS had lapsed for 9 months—the majority of the year.

Regarding Factor Four, the Government alleged that Respondent repeatedly violated state and federal laws related to controlled substances by issuing thousands of prescriptions for controlled substances in Louisiana during periods when her Louisiana CDS

license was expired. OSC, at 2–3 (citing La. Stat. §§ 40:967(A)(1)(a) & 40:973; La. Admin. Code tit. 46, §§ 2705 & 2707(B)(3)–(4); 21 U.S.C. 841(a)(1); 21 CFR 1306.03 & 1306.04). According to Louisiana statute, "[e]very person who conducts research with, manufactures, distributes, procures, possesses, prescribes, or dispenses any controlled dangerous substance within this state . . . shall obtain a controlled dangerous substance license issued by the Louisiana Board of Pharmacy in accordance with the rules and regulations promulgated by the board prior to engaging in such activity." La. Stat. Ann. § 40:973(A)(1) (West 2021). Moreover, Louisiana law states that "[a] licensee shall not engage in any activity requiring a valid CDS license while his license is expired."⁴ La. Admin. Code tit. 46, § 2707(B)(3) (2021). As for federal law, "[a] prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 CFR 1306.04(a). Further, federal law defines an "individual practitioner" as "a physician . . . licensed, registered, or otherwise permitted by . . . the jurisdiction in which he/she practices, to dispense a controlled substance in the course of professional practice." 21 CFR 1300.01(b). Additionally, federal law states that "[a] prescription for a controlled substance may be issued only by an individual practitioner who is . . . authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession." 21 CFR 1306.03(a)(1).

Respondent issued thousands of prescriptions for controlled substances in Louisiana during three separate periods when her Louisiana CDS license was expired. Thus, I find that Respondent violated both federal and Louisiana state law related to controlled substances. See *Lisa Hamilton, N.P.*, 84 FR 71465, 71472 (2019) (finding that prescriptions issued during the lapse of the respondent's Massachusetts Controlled Substances Registration violated state and federal law). In this case, given the repeated and extensive nature of Respondent's violations of federal and state law related to

⁴ The Government argues that under state law, the period of expiration during which a Louisiana practitioner cannot prescribe includes the 30 day renewal window because the license has technically expired. See RFAA, at 9. This position is supported by the plain language of the statute and the Louisiana Board of Pharmacy's memorandum to DEA, in which it included the initial 30-day window in the listed periods of expiration for Respondent's CDS. See RFAAX G–2.

controlled substances, I find that Factors Two and Four weigh against Respondent such that I find Respondent's continued registration to be inconsistent with the public interest and, therefore, that a ground for revocation exists under 21 U.S.C. 824(a)(4). Where, as here, the Government has met its *prima facie* burden of showing that a ground for revocation exists, the burden shifts to the Respondent to show why she can be entrusted with a registration. See *Jeffrey Stein, M.D.*, 84 FR 46968, 46972 (2019).

III. Sanction

The Government has established grounds to deny a registration; therefore, I will review any evidence and argument the Respondent submitted to determine whether or not the Respondent has presented "sufficient mitigating evidence to assure the Administrator that [she] can be trusted with the responsibility carried by such a registration." *Samuel S. Jackson, D.D.S.*, 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller, M.D.*, 53 FR 21931, 21932 (1988)). "Moreover, because "past performance is the best predictor of future performance," *ALRA Labs, Inc. v. Drug Enf't Admin.*, 54 F.3d 450, 452 (7th Cir. 1995), [the Agency] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [the registrant's] actions and demonstrate that [registrant] will not engage in future misconduct.'" *Jayam Krishna-Iyer*, 74 FR 459, 463 (2009) (quoting *Medicine Shoppe*, 73 FR 364, 387 (2008)); see also *Samuel S. Jackson, D.D.S.*, 72 FR 23853; *John H. Kennedey, M.D.*, 71 FR 35705, 35709 (2006); *Prince George Daniels, D.D.S.*, 60 FR 62884, 62887 (1995). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent; therefore, the Agency looks at factors, such as the acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations or behavior and the nature of the misconduct that forms the basis for sanction, while also considering the Agency's interest in deterring similar acts. See *Arvinder Singh, M.D.*, 81 FR 8247, 8248 (2016).

A. Acceptance of Responsibility

As previously discussed, Respondent effectively waived her right to a hearing and therefore there is no credible evidence on the record regarding acceptance of responsibility for me to consider. Even if I could consider the

initial letter she submitted in response to the OSC, it does not demonstrate sufficient acceptance of responsibility or remedial measures that would aid me in entrusting Respondent with a registration. See RFAAX B. In her letter, Respondent offers some explanation as to why she repeatedly failed to renew her Louisiana CDS license in a timely manner, and while the stressful circumstances that she described certainly garner sympathy, Respondent did not unequivocally acknowledge her own error in failing to keep track of the status of her CDS license, which was essential to her ability to lawfully prescribe controlled substances. *Id.*

Respondent stated in her letter that she had logged the expiration date for her CDS license in multiple places, that going forward, she would renew on the date she receives the renewal letter, and that she had already completed the most recent renewal in July 2019. RFAAX B. However, Respondent has not provided any supporting documentation as to these statements. The fact that she repeatedly allowed this lapse to happen year-after-year, does not demonstrate confidence in her future compliance. Moreover, Respondent's errors regarding the prehearing process—errors that ultimately led to the termination of the proceedings—do not inspire confidence that she has improved upon the underlying issue of responsibility regarding her professional licensure.

B. Specific and General Deterrence

In addition to acceptance of responsibility, the Agency considers both specific and general deterrence when determining an appropriate sanction. *Daniel A. Glick, D.D.S.*, 80 FR 74800, 74810 (2015). Specific deterrence is the DEA's interest in ensuring that a registrant complies with the laws and regulations governing controlled substances in the future. *Id.* General deterrence concerns the DEA's responsibility to deter conduct similar to the proven allegations against the respondent for the protection of the public at large. *Id.* In this case, I believe revocation of her DEA registration would deter Respondent and the general registrant community from ignoring the serious state and federal requirements to have specific licensure in order to be entrusted with the responsibility of issuing prescriptions for controlled substances.

C. Egregiousness

The Agency also looks to the egregiousness and the extent of the misconduct as significant factors in determining the appropriate sanction. *Garrett Howard Smith, M.D.*, 83 FR

18910 (collecting cases). Although Respondent's actions in failing to renew her CDS might seem minor or transactional, the extent of the misconduct was not. She issued thousands of prescriptions for controlled substances in Louisiana during three separate periods when her Louisiana CDS license was expired, with these three separate periods occurring successively and each ranging from 4 to 9 months. The record evidence demonstrates that Respondent had been given timely notice via letter that her license was terminated because she had failed to renew it within 30 days after its expiration date, and Respondent did not provide any documentation or explanation to support her claim that she was not made aware until much later. See RFAAX B and G-2-G-11. Moreover, the multiple and successive occurrences suggest that Respondent did not take sufficient measures to ensure that her mistake would not be repeated.

As discussed above, to maintain a registration when grounds for revocation exist, a respondent must convince the Administrator that her acceptance of responsibility is sufficiently credible to demonstrate that the misconduct will not reoccur and that she can be entrusted with a registration. I find that Respondent has not met this burden. Respondent has not offered any credible evidence on the record to rebut the Government's case for revocation. Further, Respondent's description of corrective measures was unsupported by evidence, and given Respondent's subsequent errors regarding the prehearing process, Respondent has not demonstrated that she can be trusted with the responsibility of registration at this time. Accordingly, I will order the revocation of Respondent's certificate of registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(f), I hereby revoke DEA Certificate of Registration No. BM7946835 issued to Tamika Mayo, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(f), I hereby deny any pending application of Tamika Mayo, M.D. to renew or modify this registration, as well as any other pending application of Tamika

Mayo, M.D. for registration in Louisiana. This Order is effective January 7, 2022.

Anne Milgram,
Administrator.

[FR Doc. 2021-26533 Filed 12-7-21; 8:45 am]

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DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Third Amendment To Consent Decree Under the Clean Air Act

On December 2, 2021, the Department of Justice lodged a proposed Third Amendment to Consent Decree ("Amendment") with the United States District Court for the Northern District of Indiana in the lawsuit entitled *United States and the State of Indiana v. BP Products North America Inc.*, Civil Action No. 2:12-CV-207.

The Amendment relates to alleged violations of a 2012 Consent Decree ("Decree") by BP Products North America Inc., ("BP Products") at its refinery in Whiting, Indiana ("Whiting Refinery").

The Amendment will resolve BP Products' violations of particulate matter ("PM") limits contained in the Decree and at 40 CFR part 60, subpart Ja that are applicable to two fluidized catalytic cracking units ("FCCUs") at the Whiting Refinery, and a motion to enforce the Decree filed by several Plaintiff-Intervenors.

The Amendment requires more frequent PM testing, revised PM testing parameters, operating parameters for emissions and opacity monitors and for electrostatic precipitators ("ESPs"), a PM emissions control technology, and the installation of various process analyzers. BP Products will also undertake a study to evaluate stack testing and ESP operation during unit startup and shutdown. BP Products will pay \$512,450 in stipulated penalties after the Amendment is entered.

The publication of this notice opens a period for public comment on the Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of Indiana v. BP Products North America Inc.*, D.J. Ref. No. 90-5-2-1-09244. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail: