the Government in its RFAA,[1] which was received on December 5, 2022.[2]

Findings of Fact

On July 21, 2021, the Tennessee Board of Medical Examiners issued a Final Order suspending Registrant's Tennessee medical license. RFAAX 2, at 5, 8, 11.

According to Tennessee's online records, of which the Agency takes official notice, Registrant's license is still suspended.[3] Tennessee Department of Health License Verification, *https://apps.health.tn.gov/Licensure/default.aspx* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to engage in the practice of medicine in Tennessee, the state in which she is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978).[4]

According to Tennessee statute, ''dispense'' means ''to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.'' Tenn. Code Ann. § 39–17–402(7) (2022). Further, a ''practitioner'' means ''a physician . . . or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.'' *Id.* at § 39–17–402(23)(A).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice medicine in Tennessee. As discussed above, a physician must be a licensed practitioner to dispense a controlled substance in Tennessee. Thus, because Registrant lacks authority to practice medicine in Tennessee and, therefore, is not authorized to handle controlled substances in Tennessee, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

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. FA8056043 issued to Valerie L. Augustus, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending applications of Valerie L. Augustus, M.D., to renew or modify this registration, as well as any other pending application of Valerie L. Augustus, M.D., for additional registration in Tennessee. This Order is effective February 6, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 27, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–00009 Filed 1–5–23; 8:45 am]

BILLING CODE 4410–09–P

[1] The Government's RFAA is dated November 15, 2022. RFAA, at 5.

[2] Based on a Declaration from a DEA Diversion Investigator, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAAX 2, 2. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a written statement or corrective action plan and therefore has waived any such rights. RFAA, at 2; *see also* 21 CFR 1301.43 and 21 U.S.C. 824(c)(2).

[3] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.gov.*

[4] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton,* 43 FR at 27617.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Sohail Mamdani, M.D.; Decision and Order

I. Introduction

On July 8, 2021, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Sohail Mamdani, M.D. (Respondent), of Los Banos, California. Request for Final Agency Action (RFAA) Exhibit No. (RFAAX) 13, at 1, 8.[1] The OSC proposes the revocation of Respondent's DEA Registration No. FM2871564, pursuant to 21 U.S.C. 824(a)(4) and 823(f). *Id.* at 1. The OSC more specifically alleges that Respondent wrote ''fraudulent prescriptions for controlled substances'' for himself using the names of ''multiple fictitious patients,'' his wife, and his father on his own prescription pad. *Id.* at 2. The OSC further alleges that he wrote ''fraudulent prescriptions for controlled substances'' for himself using his name and the names of fictitious

[1] Also referred to as ''Sohail Mamdani, D.O.'' RFAAX 1, at 1.

patients on the prescription pads of other doctors.[2] *Id.* at 2.

Respondent submitted a written waiver of hearing with a written statement and a proposed corrective action plan (PCAP). RFAAX 16 and RFAAX 14; *see also* RFAAX 17, at 1–2.[3] The Government denied Respondent's request to discontinue or defer administrative proceedings and stated its determination that ''there is no potential modification'' of his PCAP ''that could or would alter . . . [the] decision in this regard.'' RFAAX 15, at 1. Given the seriousness and extent of Respondent's founded violations, *infra* sections II.C., III.B., and IV., the Agency agrees.

Having thoroughly analyzed the record and applicable law, the Agency summarizes its findings and conclusions: (1) the Government presented a *prima facie* case that Respondent violated federal and California law, (2) Respondent attempted, but failed, to rebut the Government's *prima facie* case, and (3) substantial record evidence, including Respondent's own written statement and the sworn declaration of a DEA Diversion Investigator (DI), shows that the extent of Respondent's legal violations calls for the revocation of his registration. Accordingly, the Agency will revoke Respondent's registration. *Infra* Order.

II. Findings of Fact

A. The Government's Case

The Agency finds that the RFAA includes the sworn declaration of the DI and about 400 pages of prescription and prescription-related exhibits, among other documentary evidence, the content of which is mostly unrebutted. *Infra* section II.B. The DI Declaration, among other things, certifies exhibits submitted with the RFAA and describes a meeting of Respondent, Respondent's attorney, a DEA Group Supervisor, and the DI at the office of Respondent's attorney on July 31, 2020. RFAAX 2, at 1.

Based on the DI Declaration, the Agency finds substantial record evidence that the July 31, 2020 meeting took place as described in the DI Declaration and that Respondent, during the meeting, admitted to misconduct. *Id.* at 1–2. The Agency finds substantial record evidence that Respondent admitted that ''he fraudulently prescribed zolpidem tartrate (a Schedule IV controlled substance) to . . . [nine] fictitious patients to obtain controlled substances for personal use'' between 2015 and 2020, and that ''he fraudulently prescribed alprazolam (a Schedule IV controlled substance) to [two] fictitious patients'' between 2015 and 2020. *Id.* at 2. The Agency further finds substantial record evidence that Respondent admitted that ''he fraudulently issued prescriptions for zolpidem tartrate to his wife and . . . would use the medication for himself'' between 2016 and 2020, and that ''he fraudulently issued prescriptions for zolpidem tartrate to his father, but that his father never received the medication and that Respondent would consume the medication for his personal use'' between 2015 and 2020. *Id.* The Agency also finds that Respondent admitted that ''he issued prescriptions for his father and to his wife . . . without creating or maintaining medical records for any of those prescriptions, in violation of California law.''[4] *Id.* Additionally, the Agency finds substantial record evidence, based on the DI Declaration, that Respondent issued controlled substance prescriptions to himself and to two of his fictitious patients under the guise of three different doctors.[5] *Id.* at 2–3.

B. Respondent's Case

The Agency finds that the RFAA attaches Respondent's PCAP, Respondent's correspondence addressing his PCAP, his hearing waiver, and his written statement, and an email chain that includes an emailed version of Respondent's correspondence.[6] RFAAX 14; RFAAX 16; RFAAX 17. The Agency finds substantial record evidence that, in these documents, among other things, Respondent admits to writing controlled substance prescriptions ''to more than just [him]self in order to satisfy . . . [his] habits,'' does not ''attempt to make any . . . excuse for . . . [his] discreditable habit,'' acknowledges that he ''violate[d] the rules by which a physician should abide to maintain a DEA license,'' and ''take[s] full responsibility for the wrong . . . [he] ha[s] done.'' RFAAX 16, at 1; RFAAX 17, at 1–2.

The Agency finds that Respondent also states that he ''cannot accept responsibility for'' what he calls ''false additional accusations formally written by the DEA in their case'' against him. RFAAX 16, at 1; RFAAX 17, at 2. First, Respondent asserts that, ''When it first came to my attention that I was under investigation by the DEA, I acknowledged my wrong-doing, and not once from that point forward did I actually fill another wrongful prescription.'' RFAAX 16, at 1; RFAAX 17, at 2. Second, Respondent labels an ''utter fabrication'' that ''should be

[2] The OSC also alleges that Respondent ''filled prescriptions issued to . . . [him by his] father-in-law, despite knowing'' that his father-in-law's registration had previously been surrendered. OSC, at 2; *contra* RFAA, at 11 (''Given Respondent's status as a doctor and the highly regulated nature of controlled substance prescriptions, it is extremely unlikely Respondent was unaware of his father-in-law's surrendered registration at the time he accepted and filled those prescriptions.''); *see also infra* section II.C., n.9.

The OSC further alleges that Respondent lacked candor by assuring DEA investigators, on November 9, 2020, that he was no longer issuing controlled substance prescriptions to his wife ''as she had found a primary care physician,'' while continuing to do so. OSC, at 6–7. Given the seriousness and extent of Respondent's founded violations, as set out in this Decision, the Agency need not, and does not, adjudicate the OSC's lack of candor allegations.

The OSC also alleges violations of 21 U.S.C. 843(a)(2) and (3). OSC, at 3–6; *see also* RFAAX 6–12. Given the seriousness and extent of Respondent's violations of other federal legal requirements and his violations of California statute, the Agency need not, and does not, consider the OSC's 21 U.S.C. 843(a)(2) and (3) allegations.

[3] The Government argues that Respondent's hearing waiver with written statement was submitted untimely and improperly and, therefore, is inadmissible and ''should not be considered in adjudication . . . and issuance of a final order.'' RFAA, at 7. The Agency finds that on August 13, 2022, within 30 days of service of the OSC, Respondent sent an email to the Agency containing his hearing waiver with written statement; Respondent also mailed a copy of the hearing waiver with written statement which was received by the Agency on or about August 16, 2022. RFAAX 17, at 1; RFAAX 16, at 1. Because Respondent substantively complied with the OSC's instructions and because the Government did in fact receive the hearing waiver and written statement within 30 days, the Agency will consider Respondent's hearing waiver with written statement.

[4] The DI Declaration also states that during the July 31, 2020 meeting, DEA investigators told Respondent that he ''was violating the Controlled Substances Act'' each time he issued a fraudulent prescription to a fictitious patient or to his wife ''in order to obtain controlled substances for personal use.'' RFAAX 2, at 3.

[5] The DI Declaration includes substantial record evidence that each of the three doctors denied issuing these controlled substance prescriptions.

According to the DI Declaration, Dr. I.A. informed the DI that she worked with Respondent ''in the fall of 2019 where he shared a locked cabinet containing [her] prescription pads.'' RFAAX 2, at 3; *infra* Section II.B.

The DI Declaration states that pharmacy security footage shows Respondent picking up two of the allegedly illegal controlled substance prescriptions. The DI Declaration, however, neither attaches the security footage nor provides an evidentiary foundation for the assertion that it shows Respondent picking up the two prescriptions. Accordingly, this Decision gives no weight to security footage evidence.

[6] According to DEA regulations, a person who is entitled to a hearing may waive a hearing and submit a written statement regarding his position on the matters of fact and law involved. 21 CFR 1316.49. The written statement ''shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.'' *Id.* Accordingly, in this matter, when the content of Respondent's unsworn submission conflicts with the content of a sworn submission, the Agency gives the sworn submission greater weight than Respondent's unsworn submission.

abolished from . . . [DEA's] report'' that he wrote a ''prescription'' for himself under the name of a ''colleague'' with whom he shared a ''locker room'' (Dr. I.A.), and asserts that ''[t]here is not a single prescription in question regarding this matter, that was wrongfully obtained under [his] colleague's name.'' [7] RFAAX 16, at 1; RFAAX 17, at 2.

Based on the Agency's thorough review of all of the record evidence, the Agency finds that neither of these claims of Respondent is credible or creditable. First, the Agency finds substantial record evidence that Respondent filled a wrongful controlled substance prescription after he became aware of DEA's investigation. As already stated, the Agency finds that Respondent and his attorney met with a DEA investigative team on July 31, 2020. RFAAX 2, at 1. The Agency finds substantial record evidence that, on August 29, 2020, Respondent filled a controlled substance (alprazolam 2 mg (#30)) prescription purportedly issued to him by Dr. Z.A. on August 26, 2020.[8] RFAAX 6, at 2–3. The Agency further finds substantial record evidence that, as of September 24, 2020, Dr. Z.A. did not know Respondent, had not accepted Respondent as a patient, and had not examined Respondent. RFAAX 6, at 1; RFAAX 2, at 2. The Agency finds substantial record evidence that Dr. Z.A. did not write the August 26, 2020 alprazolam 2 mg (#30) prescription for Respondent and that the signature on this alprazolam prescription is not Dr. Z.A.'s. RFAAX 6, at 1; RFAAX 2, at 2. The Agency finds substantial record evidence that Respondent wrongfully wrote and, subsequently, filled this controlled substance prescription. RFAAX 2, at 2; RFAAX 6, at 3. Accordingly, the Agency does not find credible, and does not credit, Respondent's claim that, when DEA's investigation of him ''first came'' to his attention, ''not once from that point forward did . . . [he] actually fill another wrongful prescription.'' RFAAX 16, at 1; RFAAX 17, at 2.

Second, the Agency finds substantial record evidence that Respondent wrongfully wrote prescriptions under Dr. I.A.'s name. As already stated, the Agency finds that Respondent worked with Dr. I.A. in the fall of 2019, and that the two shared a locked cabinet containing Dr. I.A.'s prescription pads. RFAAX 2, at 3. The Agency finds substantial record evidence that Dr. I.A.'s prescription pads also list Respondent's name and the names of three other doctors. RFAAX 8, at 1, 3, 5, 7. The Agency further finds substantial record evidence that Dr. I.A.'s name is clearly checked as the issuer at the top of four controlled substance prescriptions written for ''Farida Mamdani'' and ''Farooq Mamdani,'' two of Respondent's admittedly fictitious patients, and that the fill labels for these prescriptions state that Dr. I.A. is the prescriber. RFAAX 8, at 1–8. The Agency also finds substantial record evidence that Dr. I.A. denied having these two individuals as patients, issuing controlled substance prescriptions for them, and signing four controlled substance prescriptions for them. RFAAX 2, at 2, 3. Accordingly, the Agency concludes, based on substantial record evidence, that Respondent wrote these controlled substance prescriptions for his fictitious patients under the name of Dr. I.A. Therefore, the Agency does not find credible, and does not credit, Respondent's ''utter fabrication'' claim that ''[t]here is not a single prescription in question regarding this matter, that was wrongfully obtained under my colleague's [Dr. I.A.] name.'' RFAAX 16, at 2; RFAAX 17, at 2.

In sum, based on substantial record evidence, the Agency finds neither of Respondent's claims credible or creditable.

C. Allegation That Respondent Issued Controlled Substance Prescriptions Without a Legitimate Medical Purpose and Outside the Usual Course of Professional Practice

Having thoroughly analyzed all of the record evidence, including Respondent's submissions and admissions, the Agency finds substantial record evidence that Respondent wrote controlled substance prescriptions for himself using the names of multiple fictitious patients, of his wife, and of his father.[9] RFAAX 2, at 1–3; RFAAX 3–5.

[7] The Agency finds that Respondent also states that ''[t]he mere fact that . . . [my colleague's] name is printed on the same piece of paper should not translate to my unpermitted possession of her Rx pad and furthermore filling anything under her name. This multiple-practitioner sharing of a single Rx pad from a common location is a widely used practice in the medical field and I was surprised to see that the DEA was not only unaware of it but furthermore potentiated my 'guilt' by including these accusations that couldn't be further from the truth.'' RFAAX 16, at 2.

[8] The Agency notes that RFAAX 11, at 1 is a controlled substance prescription (zolpidem 10 mg (#30)) issued to ''Arif Hussain,'' one of Respondent's admittedly fictitious patients, by Respondent on November 5, 2020. RFAAX 11, at 1, in conjunction with RFAAX 2, at 2. The exhibit, though, does not show a ''fill'' date and, therefore, does not rebut Respondent's statement that he did not ''actually fill'' a wrongful controlled prescription after meeting with the DEA investigative team. RFAAX 16, at 1. Accordingly, this zolpidem 10 mg (#30) prescription is insufficient to rebut Respondent's ''actually fill[ed]'' denial.

[9] Respondent using his prescription pad to issue zolpidem tartrate prescriptions to Respondent's admittedly fictitious patients between 2015 and 2020: ''Arbazz Ali''—RFAAX 3, at 229–59; ''Arif Ali''—RFAAX 3, at 1–14; ''Ayaan Ali''—RFAAX 3, at 57–58, 65–66, 69–70, 75–76, 83–84, 93–94, 97–98, 103–04, 115–16, 123–24, 131–34; ''Salman Ali''—RFAAX 3, at 191–04; ''Arif Hussain''—RFAAX 3, at 15–28; ''Farida Mamdani''—RFAAX 3, at 139–42, 145–48, 153–54, 159–64; ''Farooq Mamdani''—RFAAX 3, at 167–68, 175–78; ''Sana Mamdani''—RFAAX 3, at 205–14; ''Ahmad Mameani''—RFAAX 3, at 215–18, 221–28.

Respondent using his prescription pad to issue alprazolam prescriptions to Respondent's admittedly fictitious patients between 2015 and 2020: ''Ayaan Ali''—RFAAX 3, at 29–30, 43–46, 49–56, 59–60, 63–64, 67–68, 71–74, 77–82, 85–92, 95–96, 99–100, 105–14, 117–22, 125–30, 135–38; ''Farida Mamdani''—RFAAX 3, at 143–44, 149–52, 155–58, 165–66; ''Farooq Mamdani''—RFAAX 3, at 171–74, 185–90.

Respondent using his prescription pad to issue zolpidem tartrate prescriptions to his wife between 2016 and 2020: RFAAX 4, at 273–74, 277–80, 285–86, 305–06, 311–12, 315–18, and 323–24.

Respondent using his prescription pad to issue alprazolam prescriptions to his wife between 2016 and 2020: RFAAX 4, at 269–72, 275–76, 281–84, 287–304, 307–10, 313–14, and 319–22.

Respondent using his prescription pad to issue zolpidem tartrate prescriptions to his father between 2015 and 2020: RFAAX 5, at 325–26, 333–34, 339–40, 345–48, 357–58, and 365–76.

Respondent using his prescription pad to issue alprazolam prescriptions to his father between 2015 and 2020: RFAAX 5, at 327–28, 331–32, 335–38, 341–44, 349–56, and 359–64.

The Agency finds that some of the record evidence is irrelevant or illegible, as follows:

RFAAX 3, at 31–40 are too illegible to constitute evidence;

RFAAX 3, at 41–42 is a controlled substance prescription written by Respondent's father-in-law to ''Ayaan Ali,'' one of Respondent's fictitious patients. The OSC does not include an allegation to which these pages apply and, therefore, the Agency finds that these pages are not relevant to this adjudication;

RFAAX 3, at 47–48 and 61–62 are internally inconsistent about the prescriber of this controlled substance prescription and, therefore, these pages do not evidence a violation by Respondent;

RFAAX 3, at 101–02 is a controlled substance prescription written on Respondent's pad but, according to the face of the exhibit, the prescription was written by a different doctor. Accordingly, these pages do not evidence a violation by Respondent;

The contents of RFAAX 3, at 169–70 and 179–80 do not definitively identify the prescriber. Accordingly, there is insufficient record evidence that Respondent issued these controlled substance prescriptions;

RFAAX 3, at 181–82 and 219–20 do not clearly show the prescriptions' dates. Accordingly, there is insufficient record evidence that these pages evidence a noticed violation by Respondent;

RFAAX 3, at 183–84 is a prescription for Augmentin, not a controlled substance, issued by Respondent. Accordingly, these pages do not evidence a cognizable violation;

RFAAX 5, at 329–30 does not include clear evidence of the year of the prescription's issuance. Accordingly, there is insufficient record evidence that these pages evidence a noticed violation by Respondent; and

RFAAX 10, at 397–98 and 417–18 are alprazolam and zolpidem tartrate prescriptions issued to

Continued

III. Discussion

A. The Controlled Substances Act (CSA) and Implementing Regulations

Under Section 304 of the 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 . . . has committed such acts as would render his 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,'' such as Respondent, Congress directed the Attorney General to consider five factors in making the public interest determination. 21 U.S.C. 823(f)(1–5). The five factors are considered in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003).

According to Agency decisions, the Agency ''may rely on any one or a combination of factors and may give each factor the weight [it] deems appropriate in determining whether'' to revoke a registration. *Id.; see also Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018) (citing *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); *Volkman* v. *U.S. Drug Enf't Admin.,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while the Agency is required to consider each of the factors, it ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222); *see also Hoxie,* 419 F.3d at 482. ''In short, . . . 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; what matters is the seriousness of the registrant's misconduct.'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459462 (2009). Accordingly, as the Tenth Circuit has recognized, findings under a single factor can support the revocation of a registration. *MacKay,* 664 F.3d at 821. In this matter, while all of the 21 U.S.C. 823(f) factors have been considered, the Government's evidence is confined to Factor Two, Respondent's experience in dispensing controlled substances, and Factor Four, Respondent's compliance with applicable laws related to controlled substances.[10] OSC, at 2; RFAA, at 8–10.

The CSA's implementing regulations state that a lawful controlled substance order or prescription is one that is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). As the OSC is addressed to Respondent at his registered address in California, the Agency also evaluates Respondent's actions for conformance with California law.[11] During the period alleged in the OSC for Respondent's violations, California law specifically stated that ''[n]o person shall issue a prescription that is false or fictitious in any respect.'' Cal. Health & Safety Code § 11157. It also stated that ''[n]o person shall prescribe, administer, or furnish a controlled substance for himself.'' Cal. Health & Safety Code § 11170.

B. Factors Two and Four and the Public Interest

As already noted, the record, including the content of Respondent's submissions, contains substantial evidence that Respondent issued controlled substance prescriptions to fictitious individuals and to himself. *Supra* section II. Section 11157 of the California Health & Safety Code prohibits the issuance of prescriptions that are ''false or fictitious in any respect,'' which Respondent admits he did for a plethora of fictitious individuals. Further, section 11170 of the California Health & Safety Code prohibits a person from writing prescriptions for himself, which Respondent also admits he did. Respondent, therefore, wrote controlled substance prescriptions without a legitimate medical purpose and outside the usual course of professional practice, thus violating federal law. 21 CFR 1306.04(a); *Gonzales* v. *Oregon,* 546 U.S. at 269–71.

Accordingly, the Agency finds that there is substantial record evidence of Respondent's violations of applicable law, that the Government presented a *prima facie* case, that Respondent failed to rebut the Government's *prima facie* case, and that Respondent's continued registration is inconsistent with the public interest, supporting the revocation of his registration. 21 U.S.C. 824(a)(4).

IV. Sanction

Where, as here, the Government has met its *prima facie* burden of showing that Respondent's continued registration is inconsistent with the public interest due to his issuance of controlled substance prescriptions without a legitimate medical purpose and outside the usual course of professional practice, the burden shifts to Respondent to show why he can be entrusted with a registration. *Garrett Howard Smith, M.D.,* 83 FR 18882 (2018). Moreover, as past performance is the best predictor of future performance, the Agency has required that a registrant who has committed acts inconsistent with the public interest must unequivocally accept responsibility for those acts and demonstrate that he will not engage in future misconduct. *Id.* In addition, a registrant's candor during the investigation and hearing has been an important factor in determining acceptance of responsibility and the appropriate sanction.[12] *Id.* In addition, the Agency has found that the egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction. *Id.* The Agency has also considered the need to deter similar acts by the respondent and by the community of registrants. *Id.*

Regarding these matters, Respondent, according to his written statement, ''take[s] full responsibility for the wrong . . . [he has] done,'' but ''cannot accept responsibility for some of the false additional accusations formally written by the DEA in their case against . . . [him].'' RFAAX 16, at 1; RFAAX 17, at 2. As already discussed, based on the substantial record evidence establishing the validity of the accusations Respondent labeled ''false,'' the Agency finds neither of Respondent's claims credible or creditable. *Supra* section II.B. Accordingly, the record is clear that Respondent has not unequivocally accepted responsibility for the acts inconsistent with the public interest that he committed.[13]

Respondent on the pad of Dr. C.S. in 2020 and 2019. The Government argues that these pages support the allegation that Respondent filled controlled substance prescriptions issued to him by his father-in-law knowing that this father-in-law previously voluntarily surrendered his registration. This evidence does not support that allegation because the prescriber is not Respondent's father-in-law. Accordingly, the Agency finds insufficient record evidence that these controlled substance prescriptions constitute a violation by Respondent.

[10] Neither Respondent nor the Government purports to offer evidence relevant to Factors One, Three, or Five. The Agency considered Factors One, Three, and Five and finds that none of them is relevant to this adjudication.

[11] *See Gonzales* v. *Oregon,* 546 U.S. 243, 269–71 (2006); *see also* OSC, at 2–3.

[12] As already discussed, given the seriousness and extent of Respondent's founded violations, as set out in this Decision, the Agency need not, and does not, consider the OSC's lack of candor allegations. *Supra* section I, n.2.

[13] Regarding Respondent's PCAP and remedial measures, remedial measures are insufficient without an unequivocal acceptance of responsibility. *Brenton D. Wynn, M.D.,* 87 FR 24228, 24261 (2022); *see also Michael T. Harris, M.D.,* 87 FR 30276, 30278 (2022) (collecting Agency decisions).

In sum, the record supports the imposition of a sanction because Respondent does not unequivocally accept responsibility for the founded violations inconsistent with the public interest that he committed and because Respondent, therefore, has not convinced the Agency that he can be entrusted with a registration.

The interests of specific and general deterrence weigh in favor of revocation. *See, e.g., Garrett Howard Smith, M.D.,* 83 FR at 18910 (collecting cases) (''The egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction.''). Given the seriousness and extent of Respondent's founded violations, a sanction less than revocation would send a message to the existing and prospective registrant community that compliance with the law is not a condition precedent to maintaining a registration.

Accordingly, the Agency shall order the sanction the Government requested, as contained in the Order below.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a)(4) and 21 U.S.C. 823(f), I hereby revoke DEA Certificate of Registration No. FM2871564 issued to Sohail Mamdani, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Sohail Mamdani, M.D., to renew or modify this registration, as well as any other pending application of Sohail Mamdani, M.D., for registration in California. This Order is effective February 6, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 27, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–00006 Filed 1–5–23; 8:45 am]

BILLING CODE 4410–09–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2022–39; CP2022–42; MC2023–105 and CP2023–106; MC2023–106 and CP2023–107; MC2023–107 and CP2023–108; MC2023–108 and CP2023–109]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 9, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2022–39; *Filing Title:* USPS Notice of Amendment to Priority Mail Contract 734, Filed Under Seal; *Filing Acceptance Date:* December 28, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* January 9, 2023.

2. *Docket No(s).:* CP2022–42; *Filing Title:* USPS Notice of Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Contract 78, Filed Under Seal; *Filing Acceptance Date:* December 28, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* January 9, 2023.

3. *Docket No(s).:* MC2023–105 and CP2023–106; *Filing Title:* USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 5 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 28, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* January 9, 2023.

4. *Docket No(s).:* MC2023–106 and CP2023–107; *Filing Title:* USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 6 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 28, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* January 9, 2023.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).