arrangement was both periodic and ongoing for multiple years, giving Respondent plenty of opportunity to correct course, but there is nothing in the record to indicate that he had any intention of ending the arrangement. After receiving 2 to 3 thousand dollars per month, *Id.* at 70, there must have been a point at which he was no longer ''financially pressed,'' and yet he continued.

Furthermore, the exclusion letter notes that HHS/OIG deemed Respondent's criminal misconduct egregious enough to warrant an exclusion period in excess of the statutory minimum. GX 2, at 2. The exclusion letter explains that HHS/OIG excluded Respondent for ten years instead of the statutory minimum of five years because (1) Respondent's misconduct caused or was intended to cause financial loss of more than $50,000 to a government agency or program; (2) Respondent committed the misconduct over a period of at least a year; and (3) Respondent's sentence included incarceration. *Id. See Michael Jones, M.D.,* 86 FR 20728, 20732 (2021) (considering the length of the HHS exclusion in assessing egregiousness).

D. Letters of Support

My final item of consideration is the collection of eighteen letters that Respondent submitted from patients, colleagues, friends, and family to demonstrate his high level of care as a physician and his commitment to the Hippocratic Oath. Respondent's Post-Hearing Brief, at 3–4;RX 1. Although I find the letters to be sincere, they can only be of limited weight in this proceeding because of the limited ability to assess the credibility of the letters given their written form. *See Michael S. Moore, M.D.,* 76 FR 45867, 45873 (2011) (evaluating the weight to be attached to letters provided by the respondent's hospital administrators and peers in light of the fact that the authors were not subjected to the rigors of cross examination). Furthermore, these letters were not written for the purposes of recommending that Respondent be granted a controlled substances registration and therefore offer little value in assessing the Respondent's suitability to discharge the duties of a DEA registrant. *William Ralph Kinkaid, M.D.,* 86 FR 40636, 40641 (2021). Instead, Respondent's letters were used by his criminal defense counsel prior to his sentencing, with most of the letters dated back to 2017. RX 1;Tr. 41. Additionally, almost all of the letters are unsigned, four are undated, and none of the letters are addressed to anyone at DEA. RX 1.

Finally, because Respondent has not demonstrated an unequivocal acceptance of responsibility, any value that the letters may have offered in evaluating my ability to trust Respondent with a DEA registration is nullified by the fact that he, himself, has not shown that he can be so entrusted. *Kinkaid, M.D.,* 86 FR 40641.

As discussed above, to receive a registration when grounds for denial exist, a respondent must convince the Administrator that his acceptance of responsibility is sufficiently credible to demonstrate that the misconduct will not occur and that he can be entrusted with a registration. Having reviewed the record in its entirety, I find that Respondent has not met this burden. Although Respondent expressed remorse and took some responsibility for his actions through his guilty plea and his efforts at remediation, his acceptance of responsibility was not unequivocal. Respondent's consistent focus on his own suffering and his minimization of his wrongdoings both raise concerns that he does not truly understand the severity of his misconduct. Further, Respondent's remediation efforts, though genuine, suggest to me that Respondent views the negative consequences he has faced as obstacles to overcome in restoring his career rather than the result of a serious lapse in ethics that calls for self-reflection. As such, I am not convinced that Respondent would not commit similar misconduct again in the future if he believed that it would not result in negative consequences, if he found himself in difficult financial times, or if he was persuaded by a friend or family member. Accordingly, I will order the denial of Respondent's application for a certificate of registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823, I hereby order that the pending application for a Certificate of Registration, Control Number W19115227C, submitted by Nicholas P. Roussis, M.D., is denied. This Order is effective November 26, 2021.

Anne Milgram,

Administrator.

[FR Doc. 2021–23263 Filed 10–25–21; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Maura Tuso, D.M.D.' Decision and Order

I. Procedural Background

On August 20, 2018, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Maura Tuso, D.M.D. (hereinafter, Applicant) of San Diego, California. OSC, at 1. The OSC proposed the denial of Applicant's application for DEA Certificate of Registration, Application Control No. W18011889C, because Applicant has ''been convicted of a felony relating to controlled substances and because [she has] committed acts which render [her] registration inconsistent with the public interest.'' *Id.* (citing 21 U.S.C. 824(a)(2) & (a)(4)).

Specifically, the OSC alleged that on August 25, 2015, Applicant entered a guilty plea to ''four felony counts related to unlawfully issuing controlled substance prescriptions in violation of California Health and Safety Code Section 11153(a), and related counts of conspiracy, prescription fraud, and insurance fraud. This guilty plea was accepted in the Superior Court of California, County of San Diego, as part of the Court's Finding and Order.'' *Id.* at 2.

The OSC also alleged that, ''[p]ursuant to a July 6, 2016 Stipulated Settlement and Disciplinary Order between [Applicant] and the Dental Board of California (the ''Board''), which was effective on September 16, 2016, [Applicant was] ordered to surrender a DEA Registration which [she] previously held and ordered not to reapply for a new DEA Registration without approval from the Board.'' *Id.*

Further, the OSC stated that, ''[o]n April 12, 2018 and April 13, 2018, the [DEA San Diego Field Division (hereinafter, SDFD)] attempted to provide'' Applicant with a proposed Memorandum of Agreement with conditions in order to grant her application. *Id.* During Applicant's visits to the SDFD, the OSC alleged that she used ''vulgar language and obscenities in an uncivilized display.'' *Id.*

The OSC continued to allege that since this encounter, Applicant has ''engaged in a pattern of sending many dozens of emails to various DEA personnel, including emails of a harassing nature.'' *Id.* It alleged that Applicant's actions constitute ''conduct

which may threaten the public health and safety within the meaning of 21 U.S.C. 823(f)(5) and [ ] acts that render [her] registration inconsistent with the public interest within the meaning of 21 U.S.C. 824(a)(4).'' *Id.*

The OSC notified Applicant of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 4 (citing 21 CFR 1301.43). The OSC also notified Applicant of the opportunity to submit a corrective action plan. OSC, at 4–5 (citing 21 U.S.C. 824(c)(2)(C)).

On October 2, 2018, Applicant, represented by counsel, filed a timely request for hearing, in which she disputed the allegations. Request for Final Agency Action (hereinafter, RFAA) Exhibit (hereinafter, RFAAX) 3. However, on October 25, 2018, Applicant withdrew her request for hearing. RFAAX 5. The Administrative Law Judge thereby entered an Order Terminating Proceedings on October 25, 2018. RFAAX 6.

The Government forwarded its RFAA, along with the evidentiary record, to this office on April 1, 2020. The Government requests denial of Applicant's application for a DEA Certificate of Registration, ''because of her previous state felony conviction related to controlled substances.'' [1] [2] *Id.* at 5.

I find that Applicant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.43(e).

II. Findings of Fact

A. Applicant's DEA Application

On February 8, 2018, Applicant submitted an application (Application Control No. W18011889C) for a DEA Certificate of Registration, at the proposed registered location of 4177 West Point Loma Blvd., San Diego, CA 92110, for the business activity of practitioner in drug schedule V. RFAAX 1 (Certification of Nonregistration), at 1. The application is in ''a new pending status.'' *Id.*

B. Applicant's Conviction

On August 25, 2015, Applicant [3] entered a guilty plea to one felony count related to unlawfully issuing controlled substance prescriptions in violation of California Health and Safety Code Section 11153(a), and one related count for obtaining a prescription by fraud under California Health and Safety Code Section 11173(a), and two other felony counts for conspiracy and insurance fraud related to the prescriptions. RFAAX 8, at 12–14.

On August 25, 2015, the Superior Court of California, County of San Diego (the ''state court'') accepted Applicant's guilty plea. *Id.* at 12–14. In her guilty plea, Applicant admitted that she ''knowingly and unlawfully obtained prescriptions for controlled substances . . . for reasons other than a medical purpose.'' *Id.* at 14.

In its Finding and Order, the state court held, it ''accepts the defendant's plea and admissions, and the defendant is convicted thereby.'' *Id.* On September 23, 2015, the state court ordered Applicant to receive five years of probation. *Id.* at 17–19. On October 2, 2017, the state court reduced the four felony counts to misdemeanors and ordered summary probation. *Id.* at 20–21.

III. Discussion

A. Analysis of Applicant's Application for Registration

In this matter, the Government calls for my adjudication of the application for registration based on the charge that Applicant was convicted of a felony related to controlled substances, which is a basis for revocation or suspension under 21 U.S.C. 824(a)(2). OSC, at 1–2. The Government dropped the allegation that Applicant's application should be denied because her registration would be inconsistent with the public interest pursuant to section 823 in the OSC and did not advance any arguments or present any evidence under the public interest factors in its RFAA. *See supra* n.1. Accordingly, the remaining actionable substantive basis for proposing the denial of applicant's registration application is her felony conviction under 21 U.S.C. 824(a)(2).

Prior Agency decisions have addressed whether it is appropriate to consider a provision of 21 U.S.C. 824(a) when determining whether or not to grant a practitioner registration application. For over forty-five years, Agency decisions have concluded that it is. *Robert Wayne Locklear, M.D.,* 86 FR 33744–45 (collecting cases). In the recent decision *Robert Wayne Locklear, M.D.,* the former Acting Administrator stated his agreement with the results of these past decisions and reaffirmed that a provision of section 824 may be the basis for the denial of a practitioner registration application. 86 FR 33745. He also clarified that allegations related to section 823 remain relevant to the adjudication of a practitioner registration application when a provision of section 824 is involved. *Id.*

Accordingly, when considering an application for a registration, I will consider any actionable allegations related to the grounds for denial of an application under 823 and will also consider any allegations that the applicant meets one of the five grounds for revocation or suspension of a registration under section 824. *Id.; see also Dinorah Drug Store, Inc.,* 61 FR 15972, 15973–74 (1996).

1. 21 U.S.C. 823(f): The Five Public Interest Factors

Under Section 304 of the Controlled Substances Act, ''[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 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). Because the Government has not alleged that Applicant's registration is inconsistent with the public interest under section 823, I will not deny Applicant's application based on section 823, and although I have considered 823, I will not analyze Applicant's application under the public interest factors. Therefore, in accordance with prior agency decisions, I will move to assess whether the Government has proven by substantial evidence that a ground for revocation exists under 21 U.S.C. 824(a). *Supra* II.C.

[1] It is noted that the Government no longer requests denial of Applicant's DEA application based on the allegation in the OSC that her registration would be inconsistent with the public interest; therefore, I will not assess the allegations in the OSC related to the public interest grounds.

[2] In the RFAA, the Government also argued for revocation based on a ground that does not appear in the OSC—that the Applicant currently lacks a dental license in California, the state in which she is applying for a DEA registration, and that her application is thus also subject to denial pursuant to 21 U.S.C. 824(a)(3). Although state authority is a prerequisite to holding (or having) a DEA registration, *see* 21 U.S.C. 823, I see no evidence in the record that Applicant was notified of this additional charge and I am declining to consider it at this time. *See Shelton Barnes, M.D.,* 85 FR 5983 n.3 (2020).

[3] There is substantial record evidence to support a finding that Maura Cathleen O'Neill is the same person as Maura Tuso. The Government's Certification of Non Registration for Maura Tuso lists previous registrations ''assigned to Maura Tuso under the name of Maura C O'Neill DMD.'' RFAAX 1, at 2; *see also,* RFAAX 7a & b (Dental Board of California records naming Maura Tuso as an alias for Maura O'Neill). Therefore, I find that the substantial record evidence demonstrates that the conviction in RFAAX 8 for Maura O'Neill applies to Applicant.

2. Applicant's Felony Conviction

Pursuant to section 304(a)(2) of the CSA, the Attorney General is authorized to suspend or revoke a registration ''upon a finding that the registrant . . . has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance or a list I chemical.'' 21 U.S.C. 824(a)(2); *see also Edward A. Ridgill, M.D.,* 83 FR 58599, 58600 (2018) (denying application based on conviction under 21 U.S.C. 841 for unlawful prescribing of controlled substances). Each subsection of Section 824(a) provides an independent ground to impose a sanction. *Arnold E. Feldman, M.D.,* 82 FR 39614, 39617 (2017).

Here, there is no dispute in the record that Applicant was convicted of felony counts related to unlawfully issuing controlled substance prescriptions in violation of California Health and Safety Code Section 11153(a), prescription fraud under California Health and Safety Code Section 11173(a), and related felony counts of conspiracy and insurance fraud. *See* RFAAX 8. Two of these state statutes specifically address controlled substance prescriptions and the underlying facts of the fraud and conspiracy counts were related to Applicant's unlawful prescribing and obtaining of controlled substances. *See* Cal. Health & Safety Code § 11153(a) (''A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice.''); Cal. Health & Safety Code § 11173(a) (''No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances . . . by fraud, deceit, misrepresentation, or subterfuge''). Therefore, I find that these provisions constitute state laws ''relating to'' controlled substances, as those terms are defined in 21 U.S.C. 824(a)(2). *See Uvienome Linda Sakor, N.P.,* 86 FR 50173, 50178 (2021).

Although the Government has noted in its RFAA that two years after Applicant's conviction, the state court reduced the four felony counts to misdemeanors and ordered summary probation, *see* RFAAX 8, at 20 and RFAA, at 6, the Agency established over thirty years ago, and has 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 60922, 60922 (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 30616, 30618 (2000)); *see also Erica N. Grant, M.D.,* 40,641, 40,650 (2021). Thus, in accordance with prior agency decisions, I find that the subsequent reduction of Applicant's charges, much like a subsequent deferral or dismissal, does not affect my finding that she was convicted of a felony related to controlled substances for purposes of 21 U.S.C. 824(a)(2).

Although the language of 21 U.S.C. 824(a)(2) discusses suspension and revocation of a registration, for the reasons discussed above in *supra* III.A, it may also serve as the basis for the denial of a DEA registration application. Applicant's felony conviction, therefore, serves as an independent basis for denying her application for a DEA registration. 21 U.S.C. 824(a)(2).

IV. Sanction

Where, as here, the Government has met its *prima facie* burden of showing that a ground for revocation exists, the burden shifts to the Applicant to show why she can be entrusted with a registration. *See Jeffrey Stein, M.D.,* 84 FR 46968, 46972 (2019). Applicant, as already discussed, waived her right to a hearing and failed to submit a written statement. *See* RFAA, at 6. Therefore, among other things, Applicant has not accepted responsibility for her criminality, shown any remorse for it, or provided any assurance that she would not repeat it. *See Jeffrey Stein, M.D.,* 84 FR 46972–74. Such silence weighs against granting the Applicant's registration. *Zvi H. Perper, M.D.,* 77 FR 64131, 64142 (2012) (citing *Medicine Shoppe-Jonesborough,* 73 FR 264, 387 (2008); *Samuel S. Jackson,* 72 FR 23848, 23853 (2007)); *see also Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F3d. 823, 831 (11th Cir. 2018) (''An agency rationally may conclude that past performance is the best predictor of future performance.'' (quoting *Alra Laboratories, Inc.* v. *Drug Enf't Admin.,* 54 F.3d 450, 452 (7th Cir. 1995))).

Further, the CSA authorizes the Attorney General to ''promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under this subchapter.'' 21 U.S.C. 871(b). This authority specifically relates ''to 'registration' and 'control,' and 'for the efficient execution of his functions' under the statute.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 259 (2006). A clear purpose of this authority is to ''bar[] doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking . . . .'' *Id.* at 270. In this case, Applicant pled guilty to counts directly related to issuing controlled substance prescriptions without a legitimate medical purpose. Applicant's unlawful activity is exactly the type of activity that the CSA was intended to prevent and she has given me no indication that she will not repeat her illicit behavior.

Based on the record before me, I conclude that Applicant's founded criminality makes her ineligible for a DEA registration. Accordingly, I 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. 823, I hereby order that the pending application for a Certificate of Registration, Control Number W18011889C, submitted by Maura Tuso, D.M.D., is denied. This Order is effective November 26, 2021.

Anne Milgram,

Administrator.

[FR Doc. 2021–23262 Filed 10–25–21; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–915]

Importer of Controlled Substances Application: Indigenous Peyote Conservation Initiative

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Indigenous Peyote Conservation Initiative has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before November 26, 2021. Such persons may also file a written request for a hearing on the application on or before November 26, 2021.