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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
Against:
12 **PHILIDOR RX SERVICES, LLC**
13 **MATTHEW S. DAVENPORT, CEO**
14 **Nonresident Pharmacy Permit Applicant**
15 Respondent.

Case No. 5246

STATEMENT OF ISSUES

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21 2. On or about August 16, 2013, the Board of Pharmacy, Department of Consumer
22 Affairs received an application for a Nonresident Pharmacy Permit from Philidor Rx Services,
23 LLC., Matthew S. Davenport, CEO, (Respondent). On or about August 15, 2013, Respondent
24 submitted an application to the Board of Pharmacy which certified under penalty of perjury the
25 truthfulness of all statements, answers, and representations in the application. The Board denied
26 the application on May 16, 2014.

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1 7. Section 4201 of the Code states in pertinent part:

2 (a) Each application to conduct a pharmacy, wholesaler, or veterinary food-animal drug
3 retailer, shall be made on a form furnished by the board, and shall state the name, address, usual
4 occupation, and professional qualifications, if any, of the applicant. If the applicant is other than a
5 natural person, the application shall state the information as to each person beneficially interested
6 therein.

7 (b) As used in this section, and subject to subdivision (c), the term "person beneficially
8 interested" means and includes:

9 (1) If the applicant is a partnership or other unincorporated association, each partner or
10 member.

11 (2) If the applicant is a corporation, each of its officers, directors, and stockholders,
12 provided that no natural person shall be deemed to be beneficially interested in a nonprofit
13 corporation.

14 (3) If the applicant is a limited liability company, each officer, manager, or member.

15 (c) In any case where the applicant is a partnership or other unincorporated association, is a
16 limited liability company, or is a corporation, and where the number of partners, members, or
17 stockholders, as the case may be, exceeds five, the application shall so state, and shall further
18 state the information required by subdivision (a) as to each of the five partners, members, or
19 stockholders who own the five largest interests in the applicant entity. Upon request by the
20 executive officer, the applicant shall furnish the board with the information required by
21 subdivision (a) as to partners, members, or stockholders not named in the application, or shall
22 refer the board to an appropriate source of that information.

23 (e) Upon the approval of the application by the board and payment of the fee required by
24 this chapter for each pharmacy, wholesaler, or veterinary food-animal drug retailer, the executive
25 officer of the board shall issue a license to conduct a pharmacy, wholesaler, or veterinary food-
26 animal drug retailer, if all of the provisions of this chapter have been complied with.

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1 (f) Notwithstanding any other provision of law, the pharmacy license shall authorize the
2 holder to conduct a pharmacy. The license shall be renewed annually and shall not be
3 transferable.

4 (i) For licenses referred to in subdivisions (f), (g), and (h), any change in the proposed
5 beneficial ownership interest shall be reported to the board within 30 days thereafter upon a form
6 to be furnished by the board.

7 8. Section 4112 of the Code states:

8 (a) Any pharmacy located outside this state that ships, mails, or delivers, in any manner,
9 controlled substances, dangerous drugs, or dangerous devices into this state shall be considered a
10 nonresident pharmacy.

11 (b) A person may not act as a nonresident pharmacy unless he or she has obtained a license
12 from the board. The board may register a nonresident pharmacy that is organized as a limited
13 liability company in the state in which it is licensed.

14 (c) A nonresident pharmacy shall disclose to the board the location, names, and titles of (1)
15 its agent for service of process in this state, (2) all principal corporate officers, if any, (3) all
16 general partners, if any, and (4) all pharmacists who are dispensing controlled substances,
17 dangerous drugs, or dangerous devices to residents of this state. A report containing this
18 information shall be made on an annual basis and within 30 days after any change of office,
19 corporate officer, partner, or pharmacist.

20 (d) All nonresident pharmacies shall comply with all lawful directions and requests for
21 information from the regulatory or licensing agency of the state in which it is licensed as well as
22 with all requests for information made by the board pursuant to this section. The nonresident
23 pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct
24 the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite
25 to registering with the board, the nonresident pharmacy shall submit a copy of the most recent
26 inspection report resulting from an inspection conducted by the regulatory or licensing agency of
27 the state in which it is located.

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1 (e) All nonresident pharmacies shall maintain records of controlled substances, dangerous
2 drugs, or dangerous devices dispensed to patients in this state so that the records are readily
3 retrievable from the records of other drugs dispensed.

4 9. Section 4022 of the Code states in pertinent part:

5 Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
6 humans or animals, and includes the following:

7 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
8 prescription," "Rx only," or words of similar import.

9 (c) Any other drug or device that by federal or state law can be lawfully dispensed only on
10 prescription or furnished pursuant to Section 4006."

11 **CALIFORNIA CODE OF REGULATIONS**

12 10. California Code of Regulations (Cal. Code Regs.), title 16, section 1709,
13 subdivision (a), states:

14 (a) Each permit to operate a pharmacy shall show the name and address of the pharmacy,
15 the form of ownership (individual, partnership or corporation) and the pharmacist-in-charge. Each
16 pharmacy shall, in its initial application on the annual renewal form, report the name of the
17 pharmacist-in-charge, the names of all owners and the names of the corporate officers (if a
18 corporation). Any changes in the pharmacist-in-charge, or the owners, or corporate officers shall
19 be reported to the Board within 30 days.

20 11. Cal. Code Regs., title 16, section 1714, states in pertinent part:

21 (d) Each pharmacist while on duty shall be responsible for the security of the prescription
22 department, including provisions for effective control against theft or diversion of dangerous
23 drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy
24 where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

25 (f) The board shall require an applicant for a licensed premise or for renewal of that license
26 to certify that it meets the requirements of this section at the time of licensure or renewal.

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(False Statements of Fact)**

3 12. Respondent's application is subject to denial under section 480, subdivision (a)(2),
4 and subdivision (c), and for unprofessional conduct under section 4301, subdivision (g), in that
5 Respondent made false statements of fact with the intent to substantially benefit itself or others on
6 its application for licensure. The circumstances are as follows:

7 a. On or about July 24, 2013, in Respondent's application for licensure, Matthew
8 Davenport, CEO, made a false statement of fact with the intent to benefit Respondent in that he
9 certified under penalty of perjury that Alan Gubernick is the Bookkeeper/Accountant for
10 Respondent. However, twenty-four (24) days previously, on or about July 1, 2013, Matthew
11 Davenport, in his position as the sole manager of Respondent, appointed Gregory W.
12 Blaszczyński as the Bookkeeper/Accountant of Respondent.

13 b. On or about July 24, 2013, in Respondent's application for licensure, Matthew
14 Davenport made a false statement of fact with the intent to benefit Respondent and failed to
15 disclose all authorized signatories for Respondent's financial transactions, in that he certified
16 under penalty of perjury that he is the sole authorized signatory for financial transactions on
17 Respondent's behalf. In fact, he is not the sole authorized signatory, as follows:

18 1. On or about July 1, 2013, twenty-four (24) days prior to the date of the
19 application for licensure, Matthew Davenport, in his position as the sole manager of Respondent,
20 appointed Gregory W. Blaszczyński as the Bookkeeper/Accountant of Respondent, and
21 designated him as an additional authorized signatory for Respondent's financial transactions. On
22 or about February 11, 2014, on a revised application for licensure, Matthew Davenport stated
23 under penalty of perjury that Gregory W. Blaszczyński is an authorized signatory for
24 Respondent's financial transactions. In a letter dated June 13, 2014, Wells Fargo confirmed that
25 Gregory W. Blaszczyński is an authorized signatory for Respondent's financial transactions.

26 2. On or about May 21, 2013, Andrew Davenport signed a continuing
27 financial transaction with Kinray, Inc., a drug wholesaler. On July 24, 2013, Matthew Davenport
28 certified that he is the only authorized signatory for Respondent's financial transactions. On or

1 about February 11, 2014, on a revised application for licensure, Matthew Davenport stated again
2 under penalty of perjury that Andrew Davenport is not an authorized signatory for Respondent's
3 financial transactions. In a letter dated June 13, 2014, Wells Fargo stated that Andrew Davenport
4 is an authorized signatory for Respondent's financial transactions.

5 d. On July 24, 2013, in Respondent's application for licensure, Respondent made
6 a false statement of fact with the intent to benefit Respondent, in that Matthew Davenport
7 certified under penalty of perjury in section "C" of the "Parent Corporation or Limited Liability
8 Company Ownership Information" application form that there were no owners or shareholders of
9 Respondent. In fact, at that time, there were sixteen (16) owners or shareholders of Respondent.

10 e. On July 24, 2013, in Respondent's application for licensure, Respondent made
11 a false statement of fact with the intent to benefit Respondent, in that Matthew Davenport
12 certified under penalty of perjury in section "D" of the "Parent Corporation or Limited Liability
13 Company Ownership Information" application form that there were no persons with a beneficial
14 interest in Respondent. In fact, at that time, there were sixteen (16) individuals or entities with a
15 beneficial interest in Respondent.

16 f. On July 24, 2013, in Respondent's application for licensure, Respondent made
17 a false statement of fact with the intent to benefit Respondent, in that Matthew Davenport
18 certified under penalty of perjury in section "E" of the "Parent Corporation or Limited Liability
19 Company Ownership Information" application form that there were no entities with 10% or more
20 ownership interest in Respondent. In fact, at that time, there was one (1) individual and one (1)
21 corporate entity with more than 10% ownership interest in Respondent.

22 g. On July 24, 2013, in Respondent's application for licensure, Respondent made
23 a false statement of fact with the intent to benefit Respondent, in that Matthew Davenport
24 certified under penalty of perjury that Andrew Davenport is not an owner of Respondent.
25 However, on or about June 18, 2013, Respondent filed an application for licensure as a pharmacy
26 with the Pennsylvania State Board of Pharmacy, certifying that all information provided within
27 the application was true and accurate under penalty of perjury. On the Pennsylvania application
28 for licensure, Andrew Davenport is identified as a 27% owner of Respondent.

1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 **(Failure to Comply with Pharmacy Laws)**

3 13. Respondent's application is subject to denial for unprofessional conduct under section
4 4300, section 480, subdivision (a)(3)(A), and section 4301, subdivision (o), for violating section
5 4201, in that Respondent failed to comply with Pharmacy Laws and failed to provide complete
6 information on its application for licensure. The circumstances are as stated in Paragraph 12 and
7 its subparagraphs, and as follows:

8 a. Respondent failed to submit Individual Financial Affidavits for four (4) of the
9 five (5) partners, members, or stockholders who hold the largest interests in the applicant entity as
10 required by section 4201, subdivision (c).

11 b. On or about July 24, 2013, in Respondent's application for licensure, Matthew
12 Davenport signed an Individual Financial Affidavit under penalty of perjury stating that he made
13 a financial contribution to Respondent in the amount of \$100.00. Matthew Davenport failed to
14 disclose the source of his financial contribution required by section 4201, subdivision (a).

15 c. On or about July 24, 2013, in Respondent's application for licensure, Fabien
16 Forrester-Charles signed an Individual Financial Affidavit under penalty of perjury stating that he
17 made a financial contribution to Respondent in the amount of \$100.00. Fabien Forrester-Charles
18 failed to disclose the source of his financial contribution required by section 4201, subdivision (a).

19 d. Respondent stated on the "Financial Affidavit in Support of Application" that
20 Kinray, Inc., is the primary wholesaler from which Respondent will purchase controlled
21 substances, dangerous drugs, and dangerous devices. Respondent failed to submit a valid
22 wholesaler credit application. The wholesaler credit application submitted by Respondent,
23 including an authorization of electronic funds transfer form, is signed and authorized by Andrew
24 Davenport on May 21, 2013. On or about July 24, 2013, in Respondent's application for
25 licensure, Matthew Davenport certified under penalty of perjury that he is the only individual
26 authorized to make financial transactions for Respondent. On or about February 11, 2014, on a
27 revised application for licensure, Matthew Davenport certified under penalty of perjury that
28 Andrew Davenport was not authorized to make financial transactions for Respondent.

1 e. Respondent failed to submit a valid lease agreement as defined by Cal. Code
2 Regs., title 16, section 1714, subdivision (d), as further described in paragraph 14, below, and
3 incorporated as though fully set forth herein.

4 f. Respondent failed to submit information regarding how it intends to separate
5 and maintain the records of controlled substances, dangerous drugs, or dangerous devices
6 dispensed to consumers within the State of California as required by section 4112, subdivision
7 (e), as further described in paragraph 15, below, and incorporated as though fully set forth herein.

8 **THIRD CAUSE FOR DENIAL OF APPLICATION**

9 **(Failure to Prohibit Non-Licensees from Accessing Premises)**

10 14. Respondent's application is subject to denial for unprofessional conduct under section
11 4300, section 480, subdivision (a)(3)(A), and section 4301, subdivision (o), in that Respondent's
12 lease agreement for the premises of the pharmacy fails to prohibit non-licensees from accessing
13 the Pharmacy. Respondent's lease agreement states that the landlord, who is not a licensed
14 pharmacist, will maintain possession of a key to the facility wherein controlled substances,
15 dangerous drugs, or dangerous devices are stored or dispensed, in violation of Cal. Code of
16 Regs., title 16, section 1714, subdivision (d),.

17 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

18 **(Failure to Provide Adequate Record-Keeping)**

19 15. Respondent's application is subject to denial for unprofessional conduct under section
20 4300 and section 4301, subdivision (o), for failing to provide or submit information regarding the
21 intended method for maintaining the records of controlled substances, dangerous drugs, or
22 dangerous devices dispensed to consumers within the State of California separate from the
23 records of controlled substances, dangerous drugs, or dangerous devices dispensed to consumers
24 outside of the State of California as required by section 4112, subdivision (e).

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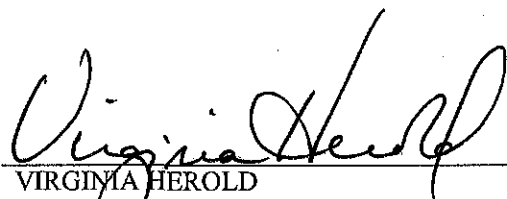
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Denying the application of Philidor Rx Services, LLC, Matthew S. Davenport, CEO, (Respondent) for a Nonresident Pharmacy;
2. Taking such other and further action as deemed necessary and proper.

DATED: 12/18/14



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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