Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about August 16, 2013, the Board of Pharmacy, Department of Consumer Affairs received an application for a Nonresident Pharmacy Permit from Philidor Rx Services, LLC., Matthew S. Davenport, CEO, (Respondent). On or about August 15, 2013, Respondent submitted an application to the Board of Pharmacy which certified under penalty of perjury the truthfulness of all statements, answers, and representations in the application. The Board denied the application on May 16, 2014.
JURISDICTION

3. This Statement of Issues is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

BUSINESS AND PROFESSIONS CODE

4. Section 480 of the Code states in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

5. Section 4300 of the Code states in pertinent part:

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure.

6. Section 4301 of the Code states in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.
7. Section 4201 of the Code states in pertinent part:

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

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

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

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

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

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

   (e) Upon the approval of the application by the board and payment of the fee required by this chapter for each pharmacy, wholesaler, or veterinary food-animal drug retailer, the executive officer of the board shall issue a license to conduct a pharmacy, wholesaler, or veterinary food-animal drug retailer, if all of the provisions of this chapter have been complied with.
(f) Notwithstanding any other provision of law, the pharmacy license shall authorize the holder to conduct a pharmacy. The license shall be renewed annually and shall not be transferable.

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

8. Section 4112 of the Code states:

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

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

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

(d) All nonresident pharmacies shall comply with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.
(e) All nonresident pharmacies shall maintain records of controlled substances, dangerous
drugs, or dangerous devices dispensed to patients in this state so that the records are readily
retrievable from the records of other drugs dispensed.

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

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

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

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

CALIFORNIA CODE OF REGULATIONS

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

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

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

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

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

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FIRST CAUSE FOR DENIAL OF APPLICATION

(False Statements of Fact)

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

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

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

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

2. On or about May 21, 2013, Andrew Davenport signed a continuing financial transaction with Kinray, Inc., a drug wholesaler. On July 24, 2013, Matthew Davenport certified that he is the only authorized signatory for Respondent's financial transactions. On or
about February 11, 2014, on a revised application for licensure, Matthew Davenport stated again under penalty of perjury that Andrew Davenport is not an authorized signatory for Respondent’s financial transactions. In a letter dated June 13, 2014, Wells Fargo stated that Andrew Davenport is an authorized signatory for Respondent’s financial transactions.

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

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

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

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

(Failure to Comply with Pharmacy Laws)

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

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

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

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

d. Respondent stated on the “Financial Affidavit in Support of Application” that Kinray, Inc., is the primary wholesaler from which Respondent will purchase controlled substances, dangerous drugs, and dangerous devices. Respondent failed to submit a valid wholesaler credit application. The wholesaler credit application submitted by Respondent, including an authorization of electronic funds transfer form, is signed and authorized by Andrew Davenport on May 21, 2013. On or about July 24, 2013, in Respondent's application for licensure, Matthew Davenport certified under penalty of perjury that he is the only individual authorized to make financial transactions for Respondent. On or about February 11, 2014, on a revised application for licensure, Matthew Davenport certified under penalty of perjury that Andrew Davenport was not authorized to make financial transactions for Respondent.
e. Respondent failed to submit a valid lease agreement as defined by Cal. Code Regs., title 16, section 1714, subdivision (d), as further described in paragraph 14, below, and incorporated as though fully set forth herein.

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

THIRD CAUSE FOR DENIAL OF APPLICATION
(Failure to Prohibit Non-Licensees from Accessing Premises)

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

FOURTH CAUSE FOR DENIAL OF APPLICATION
(Failure to Provide Adequate Record-Keeping)

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