



California State Board of Pharmacy
2720 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833
Phone: (916) 518-3100 Fax: (916) 574-8614
www.pharmacy.ca.gov

Business, Consumer Services and Housing Agency
Department of Consumer Affairs
Gavin Newsom, Governor



APPLICATION FOR VOLUNTARY SURRENDER OF PREMISES LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES:

Name: <u>Devos Ltd dba Guaranteed Returns</u>	Case No. <u>AC6252</u>
Address of Record: <u>100 Colin Dr.</u> <u>Holbrook, NY 11741</u>	

Pursuant to the terms and conditions of probation against my premises license with the California State Board of Pharmacy (Board) in Case No. AC6252, I hereby request to surrender my premises license, License No. QSD-4256. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, the premises will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of the premises license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my premises license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I shall, among other things, submit a completed Discontinuance of Business form according to board guidelines and shall notify the board of the records inventory transfer. I may not reapply for any new licensure from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

Paul Nick
Applicant's Signature

6/28/24
Date

Paul Nick
Applicant's Printed Name

OSD-4256
Applicant's License Number

Executive Officer's Approval

Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 518-3100, 2720 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**GUARANTEED RETURNS AND DEVOS LTD dba
GUARANTEED RETURNS;
DEAN VOLKES, PRESIDENT;
SUSAN VOLKES, SECRETARY;
DONNA FALLON, VICE PRESIDENT;
DARREN VOLKES, VICE PRESIDENT/SECRETARY;
JOHN FALLON, VICE PRESIDENT;
PAUL NICK, CEO,
Nonresident Wholesaler Out of State Distributor License No.
OSD 4256; and**

**DONNA M. FALLON,
Designated Representative Certificate No. EXC 18557,**

Respondents

Agency Case No. 6252

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on May 12, 2021.

It is so ORDERED on April 12, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg M. Lippe", is written over a horizontal line.

By

Greg Lippe
Board President

1 XAVIER BECERRA
Attorney General of California
2 KAREN R. DENVIR
Supervising Deputy Attorney General
3 KRISTINA T. JARVIS
Deputy Attorney General
4 State Bar No. 258229
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-6088
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12
13 In the Matter of the Accusation Against:

14 **GUARANTEED RETURNS AND DEVOS**
LTD DBA GUARANTEED RETURNS
15 **DEAN VOLKES, President**
SUSAN VOLKES, Secretary
16 **DONNA FALLON, Vice President**
DARREN VOLKES, Vice Pres./Secretary
17 **JOHN FALLON, Vice President**
PAUL NICK, CEO
18 **100 Colin Drive**
Holbrook, NY 11741-4308

19 **Nonresident Wholesaler Out of State**
20 **Distributor License No. OSD 4256,**

21 **and**

22 **DONNA M. FALLON**
100 Colin Drive
23 **Holbrook, NY 11741**

24 **Designated Representative Certificate No.**
25 **EXC 18557**

26 Respondents.

Case No. 6252

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

As to Respondent GUARANTEED
RETURNS AND DEVOS LTD DBA
GUARANTEED RETURNS Only

27 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
28 entitled proceedings that the following matters are true:

1 **PARTIES**

2 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
3 (Board). She brought this action solely in her official capacity and is represented in this matter by
4 Xavier Becerra, Attorney General of the State of California, by Kristina T. Jarvis, Deputy
5 Attorney General.

6 2. Respondent Guaranteed Returns and Devos LTD dba Guaranteed Returns
7 (Respondent) is represented in this proceeding by attorney Alissa Brice Castaneda at Quarles &
8 Brady.

9 3. On or about August 21, 2003, the Board of Pharmacy issued Nonresident Wholesaler
10 Out of State Distributor License Number OSD 4256 to Guaranteed Returns and Devos LTD dba
11 Guaranteed Returns (Respondent). At all times relevant to the charges brought here, Dean
12 Volkes was the President, Susan Volkes was the Secretary, Donna Fallon was a Vice President,
13 Darren Volkes was a Vice President and Secretary, John Fallon was a Vice President, and Paul
14 Nick was the CEO of Respondent OSD. The Nonresident Wholesaler Out of State Distributor
15 License was in full force and effect at all times relevant to the charges brought herein and will
16 expire on August 1, 2021, unless renewed.

17 **JURISDICTION**

18 4. Accusation No. 6252 was filed before the Board and is currently pending against
19 Respondent. The Accusation and all other statutorily required documents were properly served
20 on Respondent on March 4, 2020. Respondent timely filed its Notice of Defense contesting the
21 Accusation.

22 5. A copy of Accusation No. 6252 is attached as exhibit A and incorporated herein by
23 reference.

24 **ADVISEMENT AND WAIVERS**

25 6. Respondent has carefully read, fully discussed with counsel, and understands the
26 charges and allegations in Accusation No. 6252. Respondent has also carefully read, fully
27 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
28 Order.

7. Respondent is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 6252.

10. Respondent agrees that its Nonresident Wholesaler Out of State Distributor License is subject to discipline and they agree to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or its counsel. By signing the stipulation, Respondent understands and agrees that they may not withdraw its agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or

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effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Nonresident Wholesaler Out of State Distributor License No. OSD 4256 issued to Respondent Guaranteed Returns and Devos LTD dba Guaranteed Returns is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions:

1. Definition: Respondent

For the purposes of these terms and conditions, "respondent" shall refer to Guaranteed Returns and Devos LTD dba Guaranteed Returns. All terms and conditions stated herein shall bind and be applicable to the licensed premises and to all owners, managers, officers, administrators, members, directors, trustees, associates, or partners thereof. For purposes of compliance with any term or condition, any report, submission, filing, payment, or appearance required to be made by respondent to or before the board or its designee shall be made by an owner or executive officer with authority to act on behalf of and legally bind the licensed entity.

///

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime; or
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's Nonresident Wholesaler Out of State Distributor License or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distributing, billing, or charging for any dangerous drug, and/or dangerous device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

3. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

4. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its

1 designee. Failure to appear for any scheduled interview without prior notification to board staff,
2 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
3 the period of probation, shall be considered a violation of probation.

4 **5. Cooperate with Board Staff**

5 Respondent shall timely cooperate with the board's inspection program and with the board's
6 monitoring and investigation of respondent's compliance with the terms and conditions of the
7 probation, including but not limited to: timely responses to requests for information by board
8 staff; timely compliance with directives from board staff regarding requirements of any term or
9 condition of probation; and timely completion of documentation pertaining to a term or condition
10 of probation. Failure to timely cooperate shall be considered a violation of probation.

11 **6. Reimbursement of Board Costs**

12 As a condition precedent to successful completion of probation, respondent shall pay to the
13 board its costs of investigation and prosecution in the amount of \$5,014.75. Respondent shall be
14 permitted to pay these costs in a payment plan approved by the board or its designee, so long as
15 full payment is completed no later than one (1) year prior to the end date of probation.

16 There shall be no deviation from this schedule absent prior written approval by the board or
17 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
18 probation.

19 **7. Probation Monitoring Costs**

20 Respondent shall pay any costs associated with probation monitoring as determined by the
21 board each and every year of probation. Such costs shall be payable to the board on a schedule as
22 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
23 be considered a violation of probation.

24 **8. Status of License**

25 Respondent shall, at all times while on probation, maintain current Nonresident Wholesaler
26 Out of State Distributor License with the board. Failure to maintain current licensure shall be
27 considered a violation of probation.

28 If respondent's license expires or is cancelled by operation of law or otherwise at any time

1 during the period of probation, including any extensions thereof or otherwise, upon renewal or
2 reapplication respondent's license shall be subject to all terms and conditions of this probation not
3 previously satisfied.

4 **9. License Surrender While on Probation/Suspension**

5 Following the effective date of this decision, should respondent wish to discontinue
6 business, respondent may tender the premises license to the board for surrender. The board or its
7 designee shall have the discretion whether to grant the request for surrender or take any other
8 action it deems appropriate and reasonable.

9 Respondent further stipulates that it shall reimburse the board for its costs of investigation
10 and prosecution prior to the acceptance of the surrender.

11 Upon acceptance of the surrender, respondent shall relinquish the premises wall and
12 renewal license to the board within ten (10) days of notification by the board that the surrender is
13 accepted. Respondent shall further submit a completed Discontinuance of Business form
14 according to board guidelines and shall notify the board of the records inventory transfer within
15 five (5) days. Respondent shall further arrange for the transfer of all records of acquisition and
16 disposition of dangerous drugs and/or devices to premises licensed and approved by the board.

17 Respondent may not apply for any new license from the board for three (3) years from the
18 effective date of the surrender. Respondent shall meet all requirements applicable to the license
19 sought as of the date the application for that license is submitted to the board.

20 Respondent further stipulates that it shall reimburse the board for its costs of investigation
21 and prosecution prior to the acceptance of the surrender.

22 **10. Sale or Discontinuance of Business**

23 During the period of probation, should respondent sell, trade or transfer all or part of the
24 ownership of the licensed entity, discontinue doing business under the license issued to
25 respondent, or should practice at that location be assumed by another full or partial owner,
26 person, firm, business, or entity, under the same or a different premises license number, the board
27 or its designee shall have the sole discretion to determine whether to exercise continuing
28 jurisdiction over the licensed location, under the current or new premises license number, and/or

1 carry the remaining period of probation forward to be applicable to the current or new premises
2 license number of the new owner.

3 **11. Notice to Employees**

4 Respondent shall, upon or before the effective date of this decision, ensure that all
5 employees involved in permit operations are made aware of all the terms and conditions of
6 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
7 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
8 remain posted throughout the probation period. Respondent shall ensure that any employees hired
9 or used after the effective date of this decision are made aware of the terms and conditions of
10 probation by posting a notice, circulating a notice, or both. Additionally, respondent shall submit
11 written notification to the board, within fifteen (15) days of the effective date of this decision, that
12 this term has been satisfied. Failure to timely provide such notification to employees, or to timely
13 submit such notification to the board shall be considered a violation of probation.

14 "Employees" as used in this provision includes all full-time, part-time,
15 volunteer, temporary and relief employees and independent contractors employed or
16 hired at any time during probation.

17 **12. Owners and Officers: Knowledge of the Law**

18 Respondent shall provide, within thirty (30) days after the effective date of this decision,
19 signed and dated statements from its owners, including any owner or holder of ten percent (10%)
20 or more of the interest in respondent or respondent's stock, and all of its officer, stating under
21 penalty of perjury that said individuals have read and are familiar with state and federal laws and
22 regulations governing the practice of pharmacy. The failure to timely provide said statements
23 under penalty of perjury shall be considered a violation of probation.

24 **13. Premises Open for Business**

25 Respondent shall remain open and engaged in its ordinary business as a Nonresident
26 Wholesaler Out of State Distributor License in California for a minimum of forty (40) hours per
27 calendar month. Any month during which this minimum is not met shall toll the period of
28 probation, i.e., the period of probation shall be extended by one month for each month during

1 with this minimum is not met. During any such period of tolling of probation, respondent must
2 nonetheless comply with all terms and conditions of probation, unless respondent is informed
3 otherwise in writing by the board or its designee. If respondent is not open and engaged in its
4 ordinary business as a Nonresident Wholesaler Out of State Distributor License for a minimum of
5 forty (40) hours in any calendar month, for any reason (including vacation), respondent shall
6 notify the board in writing within ten (10) days of the conclusion of that calendar month. This
7 notification shall include at minimum all of the following: the date(s) and hours respondent was
8 open; the reason(s) for the interruption or why business was not conducted; and the anticipated
9 date(s) on which respondent will resume business as required. Respondent shall further notify the
10 board in writing with ten (10) days following the next calendar month during which respondent is
11 open and engaged in its ordinary business as a Nonresident Wholesaler Out of State Distributor
12 License in California for a minimum of forty (40) hours. Any failure to timely provide such
13 notification(s) shall be considered a violation of probation.

14 **14. Posted Notice of Probation**

15 Respondent shall prominently post a probation notice provided by the board or its designee
16 in a place conspicuous to and readable by the public within two (2) days of receipt thereof from
17 the board or its designee. Failure to timely post such notice, or to maintain the posting during the
18 entire period of probation, shall be considered a violation of probation.

19 Respondent shall not, directly or indirectly, engage in any conduct or make any statement
20 which is intended to mislead or is likely to have the effect of misleading any patient, customer,
21 member of the public, or other person(s) as to the nature of and reason for the probation of the
22 licensed entity.

23 **15. Violation of Probation**

24 If a respondent has not complied with any term or condition of probation, the board shall
25 have continuing jurisdiction over respondent, and probation shall be automatically extended, until
26 all terms and conditions have been satisfied or the board has taken other action as deemed
27 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
28 to impose the penalty that was stayed.

1 If respondent violates probation in any respect, the board, after giving respondent notice
2 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
3 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
4 probation, the board shall have continuing jurisdiction and the period of probation shall be
5 automatically extended until the petition to revoke probation or accusation is heard and decided.

6 **16. Completion of Probation**

7 Upon written notice by the board or its designee indicating successful completion of
8 probation, respondent's license will be fully restored.

9 **17. Administrative Fine**

10 Respondent shall pay an administrative fine to the Board in the amount of \$50,000.00.
11 Respondent shall have twenty-four (24) months from the effective date of this Decision and Order
12 to pay the administrative fine. Failure to pay the administrative fine as ordered, shall be
13 considered a violation of probation.

14 **18. Provide Proof of Ethics Training**

15 Within ninety (90) days of the effective date of this decision, Respondent shall provide
16 written proof that all employees have completed the Company-wide training on ethics and
17 compliance as set forth on page 2 of the letter of July 23, 2019, signed by CEO Paul Nicks and
18 delivered to the Board of Pharmacy.

19 **19. Provide Proof of Employee Reporting Hotline and Anti-Retaliation Policy**

20 Within ninety (90) days of the effective date of this decision, Respondent shall provide
21 written proof that it has adopted an Employee Reporting Hotline and Anti-Retaliation Policy that
22 governs communications to and from employees and that the Employee Reporting Hotline is and
23 remains active as set forth on page 2 of the letter of July 23, 2019, signed by CEO Paul Nicks and
24 delivered to the Board of Pharmacy.

25 **ACCEPTANCE**

26 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
27 discussed it with my attorney, Alissa Brice Castaneda. I understand the stipulation and the effect
28 it will have on my Nonresident Wholesaler Out of State Distributor License. I enter into this

1 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
2 to be bound by the Decision and Order of the Board of Pharmacy.

3
4 DATED: _____

PAUL NICK, CEO
For GUARANTEED RETURNS AND DEVOS LTD
DBA GUARANTEED RETURNS
Respondent

7 I have read and fully discussed with Respondent Guaranteed Returns and Devos LTD dba
8 Guaranteed Returns the terms and conditions and other matters contained in the above Stipulated
9 Settlement and Disciplinary Order. I approve its form and content.

10 DATED: _____

ALISSA BRICE CASTANEDA
Attorney for Respondent

13 **ENDORSEMENT**

14 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
15 submitted for consideration by the Board of Pharmacy.

16
17 DATED: _____

Respectfully submitted,

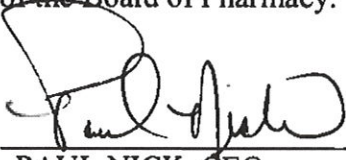
XAVIER BECERRA
Attorney General of California
KAREN R. DENVIR
Supervising Deputy Attorney General

KRISTINA T. JARVIS
Deputy Attorney General
Attorneys for Complainant

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1 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
2 to be bound by the Decision and Order of the Board of Pharmacy.

3
4 DATED: 2/12/2021


PAUL NICK, CEO
For GUARANTEED RETURNS AND DEVOS LTD
DBA GUARANTEED RETURNS
Respondent

7 I have read and fully discussed with Respondent Guaranteed Returns and Devos LTD dba
8 Guaranteed Returns the terms and conditions and other matters contained in the above Stipulated
9 Settlement and Disciplinary Order. I approve its form and content.

10 DATED: 2/19/2021


ALISSA BRICE CASTANEDA
Attorney for Respondent


13 **ENDORSEMENT**

14 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
15 submitted for consideration by the Board of Pharmacy.

16
17 DATED: 3/4/2021

Respectfully submitted,

18 XAVIER BECERRA
Attorney General of California
19 KAREN R. DENVIR
Supervising Deputy Attorney General

20
21 
KRISTINA T. JARVIS
22 Deputy Attorney General
23 *Attorneys for Complainant*

24
25
26
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Exhibit A

Accusation No. 6252

1 XAVIER BECERRA
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 KRISTINA T. JARVIS
Deputy Attorney General
4 State Bar No. 258229
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-6088
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 6252

13 **GUARANTEED RETURNS AND DEVOS**
LTD DBA GUARANTEED RETURNS
14 **DEAN VOLKES, President**
SUSAN VOLKES, Secretary
15 **DONNA FALLON, Vice President**
DARREN VOLKES, Vice Pres./Secretary
16 **JOHN FALLON, Vice President**
PAUL NICK, CEO
17 **100 Colin Drive**
Holbrook, NY 11741-4308

ACCUSATION

18 **Nonresident Wholesaler Out of State**
19 **Distributor License No. OSD 4256,**

20 **and**

21 **DONNA M. FALLON**
100 Colin Drive
22 **Holbrook, NY 11741**

23 **Designated Representative Certificate No.**
24 **EXC 18557**

25 Respondents.

26 **PARTIES**

27 1. Anne Sodergren (Complainant) brings this Accusation solely in her official capacity
28 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about August 21, 2003, the Board of Pharmacy issued Nonresident Wholesaler Out of State Distributor License Number OSD 4256 to Guaranteed Returns and Devos LTD dba Guaranteed Returns (Respondent OSD). At all times relevant to the charges brought here, Dean Volkes was the President, Susan Volkes was the Secretary, Donna Fallon was a Vice President, Darren Volkes was a Vice President and Secretary, John Fallon was a Vice President, and Paul Nick was the CEO of Respondent OSD. The Nonresident Wholesaler Out of State Distributor License was in full force and effect at all times relevant to the charges brought herein and will expire on August 1, 2020, unless renewed.

3. On or about February 17, 2006, the Board of Pharmacy issued Designated Representative Certificate Number EXC 18557 to Donna M. Fallon (Respondent Fallon). The Designated Representative Certificate expired on February 1, 2015, and was cancelled on December 17, 2015.

JURISDICTION

4. This Accusation 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 (Code) unless otherwise indicated.

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

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

...

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the

Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

6. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

STATUTORY PROVISIONS

7. 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 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

...

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

...

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

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8. Section 490 of the Code states in pertinent part:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

...

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

9. Section 4307 of the Code states in pertinent part:

(a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of any partnership, corporation, trust, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1770, states:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

COST RECOVERY

11. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

BACKGROUND INFORMATION

12. From at least 1999 until at least on or about October 28, 2014, Respondents OSD and Fallon devised a scheme to defraud pharmacies by and through their licensure as a reverse distributor of pharmaceutical products for clients located throughout the United States including within the State of California.

13. Respondents' scheme focused on "indate" returns. Indate returns are returns of drug product from the pharmacy to the manufacturer that have not yet expired. Manufacturers will generally reimburse pharmacies for drug products that are expired, but will not always reimburse pharmacies for drug products that are not yet expired. Respondents, acting as a reverse distributor, would take these indate products, hold them until they expired, and then submit them to the manufacturer for reimbursement. While Respondents held possession of the product, legal ownership still belonged to the pharmacy.

14. Respondents had three (3) schemes to steal the product or funds from their client pharmacies.

15. In order to effectuate their scheme, Respondents created a company profile in their computer system, with which they could then falsely associate product inventory. When the refunds for those products were received, the funds were then diverted into Respondents' own bank accounts. In this way, and through the three schemes outlined below, Respondents stole both product and funds from their clients.

16. Respondents' first scheme, called the "unmanaged account" scheme, consisted of Respondents identifying client pharmacies who they believed did not pay careful attention to their returns and were unlikely to notice if they did not receive credit for their indate returns. Most if not all of the funds realized from these client pharmacies' indate returns were diverted to Respondents' accounts.

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1 17. Respondents' second scheme was known as G-13, for pharmacies that were not
2 classified as "unmanaged accounts" every thirteenth (13th) indate product that was to be returned
3 would be reviewed to see if it could be successfully diverted into Respondents' own accounts
4 without attracting the attention of the client pharmacy. If this 13th indate return amount was less
5 than \$3,000, Respondents would generally divert that product and refund into its own accounts.

6 18. Respondents' third scheme was for all indate returns where the drug had been in
7 Respondents' possession for more than three (3) years without the client pharmacy noticing they
8 had not received their reimbursement, those funds were diverted to Respondents' accounts.

9 19. Once Respondents were informed they were under investigation, they took
10 affirmative steps to conceal information from investigators, including physically concealing
11 computer hard drives in a locked safe and denying their existence, and purchasing and using
12 computer software in order to permanently delete all data relating to their schemes.

13 20. On or about March 22, 2017,¹ in a case titled *United States v. Devos LTD., d/b/a*
14 *Guaranteed Returns, Dean Volks, and Donna Fallon*, United States District Court for the Eastern
15 District of Pennsylvania case number 14CR000574, Respondents were convicted as follows:

16 a. Respondent OSD was convicted by a jury of sixty-five (65) counts of violating
17 Title 18 USC, sections 1343, 1341, 1349, 641, 2, 1956(h), 371, 1512(c)(1), 1519, and 1001(a)(1)
18 and (a)(2), which consisted of wire fraud, mail fraud, theft of government property, conspiracy to
19 launder money, conspiracy to obstruct justice, obstruction of justice, and false statements, as well
20 as aiding and abetting in many of these charges.

21 b. Respondent Fallon was convicted by a jury of nineteen (19) counts of violating
22 Title 18 USC, sections 1341, 1349, 2, 1956(h), 1512(c)(1), 1519, and 1001(a)(1) and (a)(2),
23 which consisted of mail fraud, conspiracy to launder money, obstruction of justice, and false
24 statements, as well as aiding and abetting in many of these charges.

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28 ¹ Respondents appealed their convictions, which were upheld on or about July 16, 2019.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Substantially Related Criminal Conviction)**

3 21. Respondent OSD is subject to disciplinary action for unprofessional conduct pursuant
4 to Code sections 4301, subdivision (l), and 490, subdivision (a), in that Respondent OSD has
5 been convicted of a crime substantially related to the practice of pharmacy as set forth in
6 paragraph 20(a), above. On or about July 16, 2019, Respondent OSD was sentenced to five (5)
7 years probation, and ordered to pay restitution in an amount in excess of \$95 million. The
8 underlying factual circumstances are as set forth in paragraphs 12 through 19, above.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)**

11 22. Respondent OSD is subject to disciplinary action for unprofessional conduct pursuant
12 to Code section 4301, subdivision (f), in that Respondent OSD engaged in a scheme to steal more
13 than \$95 million from client pharmacies, and conspired to and did obstruct justice once the
14 relevant authorities discovered the scheme. The circumstances are as set forth in paragraphs 12
15 through 19, above.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Substantially Related Criminal Conviction)**

18 23. Respondent Fallon is subject to disciplinary action for unprofessional conduct
19 pursuant to Code section 4301, subdivision (l), in that and 490, subdivision (a), in that
20 Respondent Fallon has been convicted of a crime substantially related to the practice of pharmacy
21 as set forth in paragraph 20(b), above. On or about July 16, 2019, Respondent Fallon was
22 sentenced to serve one (1) year and one (1) day in the Bureau of Prisons, followed by three (3)
23 years of probation, and ordered to pay approximately \$515,000 restitution. The underlying
24 factual circumstances are as set forth in paragraphs 12 through 19, above.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 **(Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)**

27 24. Respondent Fallon is subject to disciplinary action for unprofessional conduct
28 pursuant to Code section 4301, subdivision (f), in that Respondent Fallon engaged in a scheme to

1 steal more than \$95 million from client pharmacies, and conspired to and did obstruct justice once
2 the relevant authorities discovered their scheme. The circumstances are as set forth in paragraphs
3 12 through 19, above.

4 **PRAYER**

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

7 1. Revoking or suspending Nonresident Wholesaler Out of State Distributor License
8 Number OSD 4256, issued to Guaranteed Returns and Devos LTD dba Guaranteed Returns;

9 2. Revoking or suspending Designated Representative Certificate Number EXC 18557,
10 issued to Donna M. Fallon;

11 3. Prohibiting Dean Volkes from serving as a manager, administrator, owner, member,
12 officer, director, associate, partner, or in any other position with management or control of any
13 Pharmacy licensee;

14 4. Prohibiting Susan Volkes from serving as a manager, administrator, owner, member,
15 officer, director, associate, partner, or in any other position with management or control of any
16 Pharmacy licensee;

17 5. Prohibiting Donna M. Fallon from serving as a manager, administrator, owner,
18 member, officer, director, associate, partner, or in any other position with management or control
19 of any Pharmacy licensee;

20 6. Prohibiting Darren Volkes from serving as a manager, administrator, owner, member,
21 officer, director, associate, partner, or in any other position with management or control of any
22 Pharmacy licensee;

23 7. Prohibiting John Fallon from serving as a manager, administrator, owner, member,
24 officer, director, associate, partner, or in any other position with management or control of any
25 Pharmacy licensee;

26 8. Prohibiting Paul Nick from serving as a manager, administrator, owner, member,
27 officer, director, associate, partner, or in any other position with management or control of any
28 Pharmacy licensee;

1 9. Ordering Guaranteed Returns and Devos LTD dba Guaranteed Returns and Donna M.
2 Fallon to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of
3 this case, pursuant to Business and Professions Code section 125.3; and,

4 10. Taking such other and further action as deemed necessary and proper.

5
6 DATED: March 2, 2020



ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant