

**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 Pres./Secretary
JOHN FALLON, Vice President
PAUL NICK, CEO
100 Colin Drive
Holbrook, NY 11741-4308**

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

and

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

**Designated Representative Certificate No.
EXC 18557**

Respondents.

Case No. 6252

DEFAULT DECISION AND ORDER

**As to Respondent DONNA M. FALLON
Only**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 2, 2020, Complainant Anne Sodergren, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 6252 against Guaranteed Returns and Devos LTD dba Guaranteed Returns (Respondent Pharmacy) and Donna M. Fallon (Respondent Fallon) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. 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. This lapse in licensure, however, pursuant to Business and Professions Code sections 118(b) and 4300.1 does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

3. On or about March 4, 2020, Respondent was served by Certified and First Class Mail copies of the Accusation No. 6252, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board. Respondent's address of record was and is: 100 Colin Drive, Holbrook, NY 11741-4308.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505(c) and/or Business and Professions Code section 124.

5. Government Code section 11506(c) states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense . . . and the notice shall be deemed a specific denial of all parts of the accusation . . . not expressly admitted. Failure to file a notice of defense . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

6. The Board takes official notice of its records and the fact that Respondent failed to file a Notice of Defense within 15 days after service upon them of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No. 6252.

7. California Government Code section 11520(a) states, in pertinent part:

(a) If the respondent either fails to file a notice of defense . . . or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained

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therein on file at the Board's offices regarding the allegations contained in Accusation No. 6252, finds that the charges and allegations in Accusation No. 6252, are separately and severally, found to be true and correct by clear and convincing evidence.

9. The Board finds that the actual costs for Investigation and Enforcement are \$6,609.75 as of September 2, 2020. The Board further finds that Respondent's apportionment of the total amount of costs is \$1,595.00.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Donna M. Fallon has subjected her Designated Representative Certificate No. EXC 18557 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Designated Representative Certificate based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

a. Business and Professions Code sections 4301, subdivision (l), and 490, subdivision (a), in that Respondent Fallon has been convicted of a crime substantially related to the practice of pharmacy due to her involvement with a scheme to commit mail fraud, conspiracy to launder money, obstruction of justice, and false statements to law enforcement.

b. Business and Professions Code section 4301, subdivision (f), in that Respondent Fallon committed acts of moral turpitude, dishonesty, fraud, deceit, or corruption due to her involvement in a scheme to steal more than \$95 million from client pharmacies by failing and refusing to return monies owed to them for returned medications. Additionally, Respondent Fallon conspired to and did obstruct justice once the relevant authorities discovered this scheme.

ORDER

IT IS SO ORDERED that Designated Representative Certificate No. EXC 18557, issued to Respondent Donna M. Fallon, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within

1 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
2 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

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4 This Decision shall become effective on November 25, 2020.

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6 It is so ORDERED on October 26, 2020.

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9 Greg Lippe
10 Board President
11 FOR THE BOARD OF PHARMACY
12 DEPARTMENT OF CONSUMER AFFAIRS
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23 34179471.DOCX
24 DOJ Matter ID:SA2017109063

25 Attachment:
26 Exhibit A: Accusation
27
28

Exhibit A

Accusation

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Supervising Deputy Attorney General
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7 *Attorneys for Complainant*

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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**
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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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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.

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6 DATED: March 2, 2020



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