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

In the Matter of the Accusation Against:

TRILOGY PHARMACY INC.;
ANDREW JOSEPH BAUMILLER,
SEC./TREAS./CFO;
JEFFREY EUGENE FULLER,
CEO/PRESIDENT

2603 Oak Lawn Blvd., Ste. 101
Dallas, TX 75219

Non-Resident Pharmacy Permit License No.
1740

Respondent.

Case No. 6295

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 16, 2018, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), filed Accusation No. 6295 against Trilogy Pharmacy, Inc. (Respondent) before the Board. (Accusation attached as Exhibit A.)

2. On or about April 20, 2016, the Board issued Non-Resident Pharmacy Permit No. NRP 1740 to Respondent. The Non-Resident Pharmacy Permit expired on October 26, 2017, and has not been renewed. This lapse in licensure, however, pursuant to Business and Professions Code (Code) section 4300.1 does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

1 3. On or about April 30, 2018, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 6295, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to Code section 4100, is required to be reported
5 and maintained with the Board. Respondent's address of record was and is:
6 2603 Oak Lawn Blvd., Ste. 101
7 Dallas, TX 75219.

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

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

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

16 6. The Board takes official notice of its records and the fact that Respondent failed to
17 file a Notice of Defense within 15 days after service upon it of the Accusation, and therefore
18 waived its right to a hearing on the merits of Accusation No. 6295.

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

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

24 8. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on
28 file at the Board's offices regarding the allegations contained in Accusation No. 6295, finds that
the charges and allegations in Accusation No. 6295, are separately and severally, found to be true
and correct by clear and convincing evidence.

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ORDER

IT IS SO ORDERED that Non-Resident Pharmacy Permit No. NRP 1740, heretofore issued to Respondent Trilogy Pharmacy, Inc., 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 seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective at 5:00 p.m. on August 2, 2018.

It is so ORDERED on July 3, 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
Victor Law, R.Ph.
Board President

13093024.DOC
DOJ Matter ID:SA2018100027

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 XAVIER BECERRA
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 SETH A. CURTIS
Deputy Attorney General
4 State Bar No. 236263
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-6121
Facsimile: (916) 324-5567
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 6295

13 **TRILOGY PHARMACY INC.;**
14 **ANDREW JOSEPH BAUMILLER,**
15 **SEC./TREAS./CFO;**
16 **JEFFREY EUGENE FULLER,**
17 **CEO/PRESIDENT**

A C C U S A T I O N

18 **2603 Oak Lawn Blvd., Ste. 101**
19 **Dallas, TX 75219**

20 **Non-Resident Pharmacy Permit License No.**
21 **1740**

22 Respondent.

23 Complainant alleges:

24 **PARTIES**

- 25 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
26 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.
27 2. On or about April 20, 2016, the Board issued Non-Resident Pharmacy Permit
28 Number NRP 1740 to Trilogy Pharmacy, Inc. (Respondent), with Andrew Joseph Baumiller as
Secretary/Treasurer/Chief Financial Officer and Jeffrey Eugene Fuller as Chief Executive Officer
and President. The Non-Resident Pharmacy Permit expired on April 1, 2017, and was canceled on
October 26, 2017.

1 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.

2 (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
3 applicable federal and state laws and regulations governing pharmacy, including regulations
4 established by the board or by any other state or federal regulatory agency.

5 (p) Actions or conduct that would have warranted denial of a license.

6 ...

7 7. Section 4302 of the Code states:

8 The Board may deny, suspend or revoke any license where conditions exist in relation
to any person holding 10 percent or more of the ownership interest or where conditions
9 exist in relation to any officer, director, or other person with management or control of the
license that would constitute grounds for disciplinary action against a licensee.

10 8. Section 4307(a) of the Code states:

11 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
12 suspension, or who has been a manager, administrator, owner member, officer,
director, associate, partner, or any other person with management or control of any
13 partnership, corporation, firm, or association whose application for a license has been
denied or revoked, is under suspension or has been placed on probation, and while
14 acting as the manger, administrator, owner, member, officer, director, associate,
partner, or arty other person with management or control had knowledge or knowingly
15 participated in any conduct for which the license was denied, revoked, suspended, or
placed on probation, shall be prohibited from serving as a manger, administrator,
16 owner, member, officer, director, associate, partner, or any other person with
management or control of a licensee as follows:

17 (1) Where a probationary license is issued or where an existing license is placed on
18 probation, this prohibition shall remain in effect for a period not to exceed five years.

19 (2) Where the license is denied or revoked, the prohibition shall continue until the
20 license is issued or reinstated.

21 REGULATORY PROVISIONS

22 9. California Code of Regulations, title 16, section 1769, states:

23 ...

24 (b) When considering the suspension or revocation of a facility or a
personal license on the ground that the licensee or the registrant has been
25 convicted of a crime, the board, in evaluating the rehabilitation of such person and
his present eligibility for a license will consider the following criteria:

26 (1) Nature and severity of the act(s) or offense(s).

27 (2) Total criminal record.

1 (3) The time that has elapsed since commission of the act(s) or
offense(s).

2 (4) Whether the licensee has complied with all terms of parole,
3 probation, restitution or any other sanctions lawfully imposed against the licensee.

4 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

6 For the purpose of denial, suspension, or revocation of a personal or
7 facility license pursuant to Division 1.5 (commencing with Section 475) of the
8 Business and Professions Code, a crime or act shall be considered substantially
9 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

10 COST RECOVERY

11 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
12 administrative law judge to direct a licentiate found to have committed a violation or violations of
13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
14 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
15 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
16 included in a stipulated settlement.

17 FACTUAL ALLEGATIONS

18 12. During all relevant times as set forth in paragraphs 12-24 below, Trilogy was
19 operated and under the control of Andrew Joseph Baumiller (Baumiller).

20 13. On or about October 4, 2016, the United States Attorney's Office filed a superseding
21 indictment against Baumiller and 11 co-defendants in the Northern District of Texas, Dallas
22 Division, Case #3:16-CR-060-M. The indictment alleges that CCMGRX, LLC, (CCMGRX) a
23 Texas-based company that primarily marketed compounded pain and scar creams, participated in
24 a fraudulent scheme to have physicians prescribe compounded drugs from CCMGRX to
25 TRICARE¹ beneficiaries and participated in a sham study designed to compensate patients and
26 CCMGRX as part of a kickback scheme.

27
28 ¹ TRICARE was a health care benefit program of the United States Department of
Defense (DoD) Military Health System that provided coverage for DoD beneficiaries.

1 14. Baumiller, Secretary/Treasurer/CFO of Respondent, was charged in Case #3:16-CR-
2 060-M with the following:

- 3 a. Felony Title 18 United States (U.S.) Code section 1349 - Conspiracy to
4 Commit Health Care Fraud
- 5 b. Felony Title 42 U.S. Code section 1320a-7b(b)(2) and Title 18 U.S. Code
6 section 2 - Payment of Illegal Remuneration and Aiding and Abetting Payment
7 of Illegal Remunerations

8 15. The superseding indictment alleges that Baumiller worked closely with other co-
9 defendants to disguise the kickbacks paid by Respondent to CCMGRX employees in exchange
10 for having prescriptions for compounded drugs referred to Respondent. Respondent agreed to pay
11 CCMGRX employees a percentage of the gross revenue received by Respondent for claims
12 submitted to TRICARE for prescriptions generated by CCMGRX.

13 16. On October 16, 2017, Baumiller pled guilty to count 1 of the superseding indictment,
14 Conspiracy to Commit Health Care Fraud. Pursuant to the stipulated plea agreement, Baumiller
15 admitted that he oversaw the day-to-day operations of Respondent's compounding business.
16 Baumiller admitted that on or around May 2014 through February 18, 2016, he knowingly and
17 willfully combined, conspired, confederated, and agreed with other co-defendants to devise and
18 execute a scheme and artifice to defraud a health care benefit program affecting commerce as
19 follows:

20 17. R.C., J.C. and W.S. approached Baumiller with a marketing strategy for Respondent's
21 compounded products. The initial idea involved W.S. talking to doctors who treated military
22 veterans because W.S. knew many veterans had dependency issues with opioids. As the concept
23 developed, R.C., J.C. and W.S. discussed with Baumiller how they could compensate the doctors
24 and patients through a study. They discussed paying patients to provide feedback about the
25 compounds and paying doctors to determine whether the compounds worked better than oral
26 medications. Baumiller knew that the study was a sham and was simply a pretext for paying
27 kickbacks to incentivize doctors to write the prescriptions and to incentivize patients to obtain the
28 prescriptions.

1 18. After working with R.C., J.C., and CCMGRX for approximately four months, R.C.,
2 J.C., and their marketing reps started bringing prescriptions for TRICARE beneficiaries to
3 Respondent in approximately September of 2014. Respondent submitted claims to TRICARE for
4 reimbursement for prescriptions for compounded drugs that R.C., J.C. and other CCMGRX
5 marketing reps brought to Respondent.

6 19. In approximately December of 2014, Baumiller learned that R.C. and J.C. were
7 paying TRICARE beneficiaries through their study when patients started calling Respondent to
8 inquire about the status of their checks and to complain that they had not been paid. Baumiller
9 admits that it was obvious at that point that R.C. and J.C. were paying patients. Baumiller
10 admitted to pretending not to know the truth because CCMGRX was generating so much business
11 and they were all making a lot of money.

12 20. At times, Respondent received prescriptions for patients who lived in states where
13 Respondent was not licensed to do business. Rather than refuse to fill these prescriptions, the
14 prescriptions were shipped to a local courier, marketing rep., or relative, who in turn shipped the
15 prescriptions to the patient. This fraudulent practice enabled Respondent to increase the number
16 of claims it could submit to TRICARE and other federal health care programs.

17 21. Baumiller admitted that Respondent paid commissions to R.C., J.C., J.S., L.R. and
18 M.K. through the end of January 2015, and these payments violated the Federal Anti-Kickback
19 Statute because they included commissions for prescriptions for patients with TRICARE and
20 other federal health care program coverage. Respondent did not make these payments directly to
21 the individuals. Rather Respondent paid CCMGRX as a 1099 independent contractor, and
22 Baumiller expected R.C. and J.C. to pay themselves and the other CCMGRX marketing
23 representatives from those funds.

24 22. In early 2015, Respondent changed the way it paid commissions to R.C., J.C., J.S.,
25 L.R., M.K. and other CCMGRX marketing reps. Beginning on or about February 25, 2015,
26 Respondent started paying R.C., J.C., J.S., L.R., M.K. and other CCMGRX marketing reps as W-2
27 employees of Respondent. As part of this changing procedure, Respondent made three payments
28

1 to CCMGRX totaling \$1,002,000 in order to compensate CCMGRX marketing representatives
2 for the additional taxes that would be withheld from their paychecks as W-2 wages.

3 23. Baumiller admitted that R.C., J.C., J.S., L.R., M.K., and the rest of CCMGRX's staff
4 were not *bona fide* employees of Respondent. Baumiller admitted that R.C., J.C., J.S., L.R., M.K.
5 were paid as W-2 employees of Respondent in order to give a false appearance of compliance
6 with the statutory and regulatory *bona fide* employee safe harbor provisions of the Anti-Kickback
7 Statute in order to defraud TRICARE and other federal health care programs.

8 24. Baumiller admitted that all of the payments Respondent made to CCMGRX, R.C.,
9 J.C., J.S., L.R., M.K., and the rest of CCMGRX's, J.S.'s and M.K.'s personnel were made for the
10 purpose of incentivizing them to send prescriptions to Respondent.

11 25. Baumiller admitted that TRICARE paid Respondent at least fifty million dollars
12 (\$50,000,000) for prescriptions for compounded drugs referred to Respondent by R.C., J.C., J.S.,
13 L.R., M.K., and other CCMGRX marketing reps. Baumiller admitted that he violated the Federal
14 Anti-Kickback Statute by offering to pay or by causing Respondent to pay remuneration, directly
15 or indirectly, to R.C., J.C., J.S., L.R., M.K. and others for these referrals.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct)**

18 26. Respondent has subjected its Non-Resident Pharmacy Permit to disciplinary action
19 under Code sections 4301, subdivision (d), and 4302, in that Respondent knowingly conspired
20 with a marketing company to execute an insurance fraud scheme for its own financial benefit as
21 more thoroughly set forth in paragraphs 12-25 above.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Dishonest Acts)**

24 27. Respondent has subjected its Non-Resident Pharmacy Permit to discipline under
25 Code sections 4302 and 4301, subdivision (f), in that Respondent committed acts of dishonesty,
26 fraud, or deceit by admittedly defrauding TRICARE, a federal health care program of the
27 Department of Defense military health system, of more than fifty-one million dollars
28 (\$51,000,000) as more thoroughly set forth in paragraphs 12-25 above.

1 and owner and had knowledge of or knowingly participated in any conduct for which the licensee
2 was disciplined, Joseph Fuller shall be prohibited from serving as a manager, administrator,
3 owner, member, officer, director, associate, or partner of a licensee for five years if Non-Resident
4 Pharmacy Permit Number 1740 is placed on probation or until Non-Resident Pharmacy Permit
5 Number 1740 is reinstated if it is revoked.

6 **PRAYER**

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

9 1. Revoking or suspending Non-Resident Pharmacy Permit Number 1740, issued to
10 Trilogy Pharmacy, Inc.

11 2. Prohibiting Trilogy Pharmacy Inc. from serving as a manager, administrator, owner,
12 member, officer, director, associate, or partner of a licensee for five years if Non-Resident
13 Pharmacy Permit Number 1740 is placed on probation or until Non-Resident Pharmacy Permit
14 Number 1740 is reinstated if it is revoked.

15 3. Prohibiting Andrew Baumiller from serving as a manager, administrator, owner,
16 member, officer, director, associate, or partner of a licensee for five years if Non-Resident
17 Pharmacy Permit Number 1740 is placed on probation or until Non-Resident Pharmacy Permit
18 Number 1740 is reinstated if it is revoked.

19 4. Prohibiting Joseph Fuller from serving as a manager, administrator, owner, member,
20 officer, director, associate, or partner of a licensee for five years if Non-Resident Pharmacy
21 Permit Number 1740 is placed on probation or until Non-Resident Pharmacy Permit Number
22 1740 is reinstated if it is revoked.

23 5. Ordering Trilogy Pharmacy Inc. to pay the Board of Pharmacy the reasonable costs of
24 the investigation and enforcement of this case, pursuant to Business and Professions Code section
25 125.3; and,

26 //

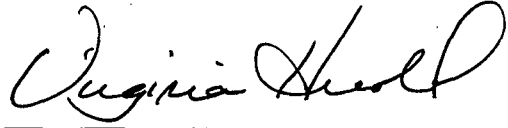
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6. Taking such other and further action as deemed necessary and proper.

DATED: 4/16/18



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

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