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**BEFORE THE  
ATTORNEY GENERAL OF CALIFORNIA**

In the Matter of the Order to Cease and Desist and  
Assessment of Penalties Against:

Case No. 2018-13-5602319

**CATHOLIC MEDICAL MISSION BOARD,  
INC.,**

**1. FIRST AMENDED ORDER TO  
CEASE AND DESIST;  
2. NOTICE OF ASSESSMENT OF  
PENALTIES**

Respondent.

CATHOLIC MEDICAL MISSION BOARD, INC. ("CMMB"), is ordered to immediately CEASE AND DESIST from including in its solicitations to California donors percentages of combined cash and non-cash donations used for programs and/or dollar amounts of pharmaceuticals shipped by CMMB (if dollar amounts were calculated using United States market prices for pharmaceuticals that were restricted to overseas distribution and use), as referenced in paragraphs 12 through 15 of this Order/Notice. (Gov.Code, § 12591.1, subd. (b).) This order applies to CMMB, its officers, directors, employees and all persons or entities acting on its behalf and applies during the pending of any administrative action on this order requested by CMMB, until the order is final.

Further, as of April 11, 2018, unless a timely appeal is filed, CMMB, its officers, directors, employees, agents and all persons or entities acting on its behalf are prohibited from engaging in any solicitation of charitable assets in California due to the fact that CMMB fails to maintain its financial records on the basis of generally accepted accounting principles ("GAAP"), which is required of all charities soliciting in California. (Bus. & Prof. Code, § 17510.5.) Should CMMB

1 file a timely appeal, the Registrar of the Attorney General’s Registry of Charitable Trusts (“AG’s  
2 Registry”) intends to demonstrate that, since CMMB does not maintain its financial records  
3 according to GAAP, its solicitation of California donors must cease until it complies with  
4 Business and Professions Code section 17510.5.

5 **I.**

6 **FINDINGS**

7 **A. Jurisdiction**

8 1. The Attorney General, Xavier Becerra (“the Attorney General”), is the duly elected  
9 Attorney General of the State of California and is authorized to issue a cease and desist order and  
10 assess penalties for violating the provisions of the Supervision of Trustees and Fundraisers for  
11 Charitable Purposes Act (Gov. Code, § 12580 et seq.) (“the Charity Supervision Act”).

12 2. CMMB was incorporated in the State of New York in 1928 and is exempt from taxation  
13 under section 501(c)(3) of the Internal Revenue Code. Its principal place of business is New  
14 York, New York. Its charitable purposes include working in partnership globally “to deliver  
15 locally sustainable, quality health solutions to women, children and their communities.”

16 3. From October 1, 2012, through approximately June 20, 2017, CMMB conducted  
17 substantial charitable solicitation activity in California, collecting over \$4,773,748 in donations  
18 (total) from over 16,300 California donors. This activity normally would require CMMB to be  
19 registered with the AG’s Registry pursuant to the provisions of the Charity Supervision Act. But  
20 CMMB is exempt from the registration and annual reporting provisions of the Act because it is  
21 organized as a religious charity. (Gov. Code, § 12583.) However, as a charitable organization  
22 soliciting in California, CMMB was, and is, subject to the other provisions of the Charity  
23 Supervision Act, including those related to truthfulness in its charitable solicitations.

24 **B. Background**

25 4. Charities subject to the registration and reporting provisions of the Charity Supervision  
26 Act, file their annual financial report (Form RRF-1) along with a copy of their IRS informational  
27 return (Form 990) with the AG’s Registry. While CMMB was exempt from filing these  
28 documents with the AG’s Registry, it posted its IRS Forms 990 on its website. CMMB’s Forms

1 990 were also available on the charity informational website hosted by GuideStar, and through  
2 links on the websites of organizations that rate and/or accredit charities, like Charity Navigator.  
3 Additionally, CMMB's IRS Forms 990 were available to potential donors through links to  
4 CMMB's website in the Combined Federal (employee giving) Campaign and California's "Our  
5 Promise" state employee giving campaign. Charity regulators advise potential donors to do their  
6 due diligence and research charities before making donations. Donors are told to review a  
7 charity's IRS Form 990 to see how much is spent on charitable programs versus fundraising and  
8 overhead.

9 5. California law requires charities that solicit donations in California, including CMMB,  
10 to follow Generally Accepted Accounting Principles ("GAAP") in their financial reporting. (Bus.  
11 & Prof. Code, §17510.5, subd. (a).) GAAP refers to the set of accounting principles established  
12 by the Financial Accounting Standards Board ("FASB"). The FASB Accounting Standards  
13 Codification ("ASC") is the single authoritative source of GAAP for nongovernmental  
14 organizations in the United States.

15 6. Under GAAP, charities can only claim the "fair market value" of gifts in kind, which is  
16 defined as "the price that would be received to sell an asset or paid to transfer a liability in an  
17 orderly transaction between market participants at the measurement date." (FASB ASC 820-10-  
18 35-2.) GAAP also requires charities to use the "principal market" in valuing assets or, in the  
19 absence of a principal market, the "most advantageous market" for the asset. (FASB ASC 820-  
20 10-35-5.) Importantly, charities must have *access* to the principal or most advantageous market  
21 in valuing the asset. (FASB ASC 820-10-35-6A.) For example, if a charity receives a donation  
22 of pharmaceuticals from a U.S. pharmaceutical company that prohibits distribution in the U.S.,  
23 then the U.S. is neither the principal nor the most advantageous market. The U.S. is *the*  
24 *prohibited market*. Finally, "in the absence of evidence to the contrary, the market in which the  
25 reporting entity normally would enter into a transaction to sell the asset or to transfer the liability  
26 is presumed to be the principal market or, in the absence of a principal market, the most  
27 advantageous market."  
28

1           **C. CMMB's Overvaluation of Pharmaceutical Donations**

2           7. From at least 2012 through 2015, CMMB and other United States charities (also referred  
3 to herein as "Charity A's") received pharmaceutical donations from U.S. pharmaceutical  
4 companies and then partnered with organizations such as Food for the Poor, Inc. to deliver them  
5 to developing countries overseas. Typically, the transactions occurred as follows:

- 6           • U.S. pharmaceutical company offered CMMB a donation of large quantities of  
7           pharmaceuticals, many of which were close to expiration;
- 8           • CMMB advised Food for the Poor or other charity partner of the available pharmaceuticals,  
9           quantities, and expiration dates after CMMB received them from the pharmaceutical  
10          company;
- 11          • Food for the Poor or other charity partner advised one of its foreign-organization  
12          "beneficiaries" of the available pharmaceuticals and the foreign organization accepted or  
13          rejected the offer;
- 14          • Food for the Poor or other charity partner notified CMMB of the foreign organization's  
15          acceptance;
- 16          • The drugs were shipped from CMMB's warehouse to the selected foreign-end recipient.

17          8. The U.S. pharmaceutical company donors to CMMB prohibited the pharmaceuticals  
18 from being distributed and used in the United States. According to Food for the Poor, "[i]t is  
19 known by our industry that the pharmaceutical donations should be exported outside of the  
20 United States as to not damage the manufacturers [sic] market."

21          9. Even though CMMB's pharmaceutical donations were prohibited from being distributed  
22 in the U.S., and thus CMMB had no access to the U.S. market, it nonetheless used the very high  
23 U.S. market prices to value the pharmaceutical donations it *received* (as revenue) and donations  
24 of pharmaceuticals it *sent* overseas in partnership with Food for the Poor and other charities  
25 (program expense) instead of the applicable, minimal international market prices. CMMB then  
26 publicly reported these overvalued donations year after year in its IRS Forms 990 on its website  
27 and in its charitable solicitations. This resulted in the public dissemination of materially false  
28 financial information.

1           10. The appropriate international prices for most of the pharmaceuticals at issue were  
2 a fraction of the values CMMB reported. Had CMMB used appropriate international market  
3 prices to value its pharmaceutical donations, its reported revenue and program expense figures  
4 would have been markedly decreased. This is illustrated by the following sample transactions:

- 5           • CMMB 2012 shipment to Nicaragua: CMMB valued the pharmaceutical Simvastatin  
6 at \$924,671 (total) using U.S. prices; using appropriate international prices, the total value  
7 was less than \$5,000.
- 8           • CMMB 2015 shipment to Haiti: CMMB valued the pharmaceuticals Enalapril (10  
9 mg.) and Didanosine at \$206,660 (total), using U.S. prices; using appropriate international  
10 prices, the total value was less than \$75,000.

11           11. The impact overvalued pharmaceuticals had on CMMB's public financial reporting  
12 was substantial given that pharmaceutical donations constituted the vast majority of its reported  
13 revenue and program expense. For fiscal years ended ("FYE") September 30, 2012 through  
14 September 30, 2015, CMMB reported annual revenue of \$270 million to \$527 million.  
15 Pharmaceuticals and medical supplies comprised 84-94% of revenue. For those same years,  
16 CMMB reported annual program expense of \$251 million to \$471 million, of which 87-94% was  
17 pharmaceuticals distributed overseas.

18           **D. CMMB's Misrepresentations in its Charitable Solicitations**

19           12. From September 30, 2012 through June 2017, CMMB used its substantially  
20 inflated pharmaceutical gift-in-kind values to bolster its statements about program size and  
21 efficiency on its website and in solicitation materials to potential donors in California. CMMB's  
22 misrepresentations included the following:

- 23           • "We Use Your Gifts Wisely," with a pie chart showing 97% in programs and 3% in  
24 administration and fundraising. (2013 direct mail solicitations; also in 2014 [98% in  
25 programs].) This was misleading because the 97% included both cash and noncash  
26 donations (mostly overvalued pharmaceuticals). But noncash donations, including  
27 CMMB's overvalued pharmaceuticals, did not pay for any overhead or fundraising; only  
28 the cash donations did. The 97% statement implies that 97% of cash and noncash

1        *donations* will be used for programs and only a mere 3% of donations will be used for  
2        fundraising and salaries. That was false. In reality, only 68% of cash donations were left  
3        over for CMMB's programs during the fiscal year ended September 30, 2013;

- 4        •        "I want to reassure you that more than \$0.97 of every dollar we receive goes directly  
5        to healthcare so every dollar makes a difference!" "Every dollar we receive enables us to  
6        ship nearly \$100 worth of medicine to the sick and the poor." (Telemarketing script  
7        March 2013; 2014 & 2015 scripts [\$0.98 of every dollar received goes directly to  
8        healthcare]; 2016 telemarketing script and direct mail solicitation [every dollar of  
9        donations allows CMMB to send \$195 worth of medicine].) These representations were  
10       false and the result of vastly overvalued pharmaceutical donations. Further, CMMB used  
11       only 60.5% of cash donations for healthcare programs during the fiscal year ended  
12       September 30, 2014.

13       13. True and correct copies of sample direct mail solicitations and telemarketing scripts  
14       that included the above-referenced misrepresentations that were produced by CMMB in the  
15       Attorney General's audit, are attached as Exhibits 1 and 2.

16       14. CMMB's cash donations from California for the fiscal years ending September  
17       30, 2013 through approximately June 20, 2017, are as follows:

<u>Year</u>	<u>Dollars</u>	<u>Individual Donors<sup>1</sup></u>
2017	\$1,026,048	3,799
2016	\$934,984	3,950
2015	\$910,114	3,806
2014	\$915,790	4,467
2013	\$986,812	4,160

23       15. In sum, CMMB sent solicitations with the misrepresentations discussed above to  
24       thousands of Californians. The misrepresentations were unfair and deceptive and created a  
25       likelihood of confusion or misunderstanding in the minds of potential donors who received  
26       solicitations with the offending statements. These misrepresentations in a charitable solicitation

27       <sup>1</sup> This is the number of actual donations. It does not include the persons in California who  
28       received CMMB's solicitations and did not donate.

1 campaign were prohibited by Government Code section 12599.6.

2 **II.**

3 **GROUNDS FOR ISSUANCE OF THE CEASE AND DESIST ORDER**

4 16. Grounds for the issuance of a cease and desist order exist pursuant to California  
5 Government Code section 12591.1, subdivision (b)(4) and California Code of Regulations, title  
6 11, section 314, subdivision (a)(4), because CMMB's misrepresentations in its solicitations, as  
7 discussed in paragraphs 1-15, above, constituted "unfair or deceptive acts or practices or engaging  
8 in any fraudulent conduct that creates a likelihood of confusion or misunderstanding," in violation  
9 of Government Code section 12599.6, subdivision (f)(2).

10 **III**

11 **ASSESSMENT OF PENALTIES**

12 17. Pursuant to Government Code section 12591.1, subdivision (c), and California Code of  
13 Regulations, title 11, sections 315 and 999.6, subdivision (a)(3), the Attorney General may assess  
14 a penalty of up to \$1,000 for each act or omission constituting a violation of the Charity  
15 Supervision Act or Chapter 4 of Division 1 of title 11 of the California Code of Regulations. The  
16 assessment of penalties is in addition to all other remedies available to the Attorney General and  
17 the Attorney General reserves the right to assert all other remedies. The Attorney General  
18 assesses the following penalties:

19

	<b>VIOLATION</b>	<b>AMOUNT</b>
21	a. CMMB violated the Charity Supervision Act by making representations 22 in its solicitations to California donors that were false and deceptive, 23 and created a likelihood of confusion or misunderstanding. (Gov. Code, §§ 12591.1, subd. (b)(4), 12599.6, subd. (f)(2).) Each misrepresentation constitutes a separate violation.	\$409,575.00
24		<b>TOTAL PENALTY:</b> \$409,575.00

25 **CEASE AND DESIST ORDER**

26  
27 1. CATHOLIC MEDICAL MISSION BOARD, INC. ("CMMB") shall immediately  
28

1 CEASE AND DESIST from including in its solicitations to California donors percentages of  
2 combined cash and non-cash donations used for programs and/or dollar amounts of  
3 pharmaceuticals shipped by CMMB (if dollar amounts were calculated using United States  
4 market prices for pharmaceuticals that were restricted for distribution and use overseas), as  
5 referenced in paragraphs 12 through 15 of this Order/Notice. This order applies to CMMB, its  
6 officers, directors, employees and all persons or entities acting on its behalf, including  
7 commercial fundraisers for charitable purposes soliciting on its behalf and applies during the  
8 pending of any administrative action on this order requested by CMMB, until the order is final.  
9 Further, as of April 11, 2018, unless a timely appeal is filed, CMMB, its officers, directors,  
10 employees, agents and all persons or entities acting on its behalf are prohibited from engaging in  
11 any solicitation of charitable assets in California due to the fact that CMMB fails to maintain its  
12 financial records on the basis of GAAP, which is required of all charities soliciting in California.  
13 (Bus. & Prof. Code, § 17510.5.) Should CMMB file a timely appeal, the Registrar of the  
14 Attorney General's Registry of Charitable Trusts ("AG's Registry") intends to demonstrate that,  
15 since CMMB does not maintain its financial records according to GAAP, its solicitation of  
16 California donors must cease until it complies with Business and Professions Code section  
17 17510.5.

18 2. Within 10 days from the date of this order, CMMB will provide a copy of this order to:

19 a. Every commercial fundraiser for charitable purposes and fundraising counsel for  
20 charitable purposes with which it currently contracts.

21 b. Every officer, director and employee of CMMB;

22 3. Within 15 days from the date of this order, CMMB shall: Provide written confirmation  
23 that it is in compliance with this order, including proof of service of the order as required by Item  
24 No. 2.

25 4. CMMB is ordered to preserve and prevent destruction of all documents and information  
26 in its possession, custody, or control (including all electronically stored information) that was  
27 created, sent and/or received during the period of January 1, 2012, until the date the order on this  
28 administrative action becomes final (within the meaning of California Code of Regulations, title

1 11, sections 999.6, subdivision (c) or 999.8, subdivision (c)), related to the following: recordings  
2 of solicitations, communications with cash and noncash donors (including donors of  
3 pharmaceuticals); communications with any and all accountants and auditors providing services  
4 to CMMB; communications with any and all members and employees of the Financial  
5 Accounting Standards Board, the Not-for-Profit Advisory Committee of FASB, and/or the  
6 American Institute of Certified Public Accountants related to any matter set forth herein; for each  
7 direct mail solicitation campaign conducted at least in part in California, samples of the complete  
8 direct mail package and reports, charts and/or graphs indicating the numbers of packages CMMB  
9 mailed to recipients located in California; and for each telephone solicitation made to someone in  
10 California, the telemarketing script used and reports, charts and/or graphs indicating the numbers  
11 of persons in California contacted.

12 5. All responses shall be sent to:

13 Sonja K. Berndt, Deputy Attorney General  
14 California Department of Justice  
15 Office of the Attorney General  
16 300 South Spring Street, Suite 1702  
17 Los Angeles, CA 90013  
18 (213) 269-6553  
19 (213) 897-7605 (fax)  
20 [Sonja.berndt@doj.ca.gov](mailto:Sonja.berndt@doj.ca.gov)

21 6. Failure to comply with the terms of this order constitutes disobedience or resistance to a  
22 lawful order pursuant to Government Code section 11455.10. The Attorney General may pursue  
23 a contempt sanction of violations pursuant to Government Code section 11455.20, in addition to  
24 all other remedies available to the Attorney General. The Attorney General is also entitled to  
25 pursue any relief specified in Government Code section 12591.1, subdivision (f).

#### 26 **ORDER ASSESSING PENALTIES**

27 1. Payment of the \$409,575.00 penalty is due within 30 days unless a timely written appeal  
28 of the assessment of penalty is received by the Attorney General. Payment shall be made payable  
to the California Attorney General.

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**RIGHT TO APPEAL/REQUEST FOR HEARING**

You have the opportunity to appeal this order and assessment of penalties by filing a written appeal and request for hearing within 30 calendar days of the date of this notice. The appeal procedures are found in California Code of Regulations, title 11, sections 999.6 through 999.8 and are available on the Attorney General’s website at: [oag.ca.gov/charities/laws](http://oag.ca.gov/charities/laws). Filing of an appeal does not stay the effect of the Cease and Desist Order.

Dated: March 12, 2018

Respectfully Submitted,

XAVIER BECERRA  
Attorney General of California



DAVID ELLER, Registrar  
*Registry of Charitable Trusts*

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APPEAL AND REQUEST FOR HEARING

\_\_\_\_\_ (name),  
\_\_\_\_\_ (title/affiliation to registrant) of  
\_\_\_\_\_ (organization),

requests a hearing of the Attorney General's:

- Order to Cease and Desist**
- Notice of Revocation of Charity Registration**
- Notice of Assessment of Penalties**

Appellant's address (required):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ telephone number (required).

Statement for basis of appeal (required):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

check this box if you are attaching additional information or documents.

\_\_\_\_\_ Date

\_\_\_\_\_ Signature