BEFORE THE
ATTORNEY GENERAL OF CALIFORNIA

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

CATHOLIC MEDICAL MISSION BOARD, INC.,

Respondent.

Case No. 2018-13-5602319

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

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

I.

FINDINGS

A. Jurisdiction

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

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

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

B. Background

4. Charities subject to the registration and reporting provisions of the Charity Supervision Act, file their annual financial report (Form RRF-1) along with a copy of their IRS informational return (Form 990) with the AG’s Registry. While CMMB was exempt from filing these documents with the AG’s Registry, it posted its IRS Forms 990 on its website. CMMB’s Forms
990 were also available on the charity informational website hosted by GuideStar, and through links on the websites of organizations that rate and/or accredit charities, like Charity Navigator. Additionally, CMMB’s IRS Forms 990 were available to potential donors through links to CMMB’s website in the Combined Federal (employee giving) Campaign and California’s “Our Promise” state employee giving campaign. Charity regulators advise potential donors to do their due diligence and research charities before making donations. Donors are told to review a charity’s IRS Form 990 to see how much is spent on charitable programs versus fundraising and overhead.

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

6. Under GAAP, charities can only claim the “fair market value” of gifts in kind, which is defined as “the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.” (FASB ASC 820-10-35-2.) GAAP also requires charities to use the “principal market” in valuing assets or, in the absence of a principal market, the “most advantageous market” for the asset. (FASB ASC 820-10-35-5.) Importantly, charities must have access to the principal or most advantageous market in valuing the asset. (FASB ASC 820-10-35-6A.) For example, if a charity receives a donation of pharmaceuticals from a U.S. pharmaceutical company that prohibits distribution in the U.S., then the U.S. is neither the principal nor the most advantageous market. The U.S. is the prohibited market. Finally, “in the absence of evidence to the contrary, the market in which the reporting entity normally would enter into a transaction to sell the asset or to transfer the liability is presumed to be the principal market or, in the absence of a principal market, the most advantageous market.”
C. CMMB's Overvaluation of Pharmaceutical Donations

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

- U.S. pharmaceutical company offered CMMB a donation of large quantities of pharmaceuticals, many of which were close to expiration;
- CMMB advised Food for the Poor or other charity partner of the available pharmaceuticals, quantities, and expiration dates after CMMB received them from the pharmaceutical company;
- Food for the Poor or other charity partner advised one of its foreign-organization “beneficiaries” of the available pharmaceuticals and the foreign organization accepted or rejected the offer;
- Food for the Poor or other charity partner notified CMMB of the foreign organization’s acceptance;
- The drugs were shipped from CMMB’s warehouse to the selected foreign-end recipient.

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

9. Even though CMMB’s pharmaceutical donations were prohibited from being distributed in the U.S., and thus CMMB had no access to the U.S. market, it nonetheless used the very high U.S. market prices to value the pharmaceutical donations it received (as revenue) and donations of pharmaceuticals it sent overseas in partnership with Food for the Poor and other charities (program expense) instead of the applicable, minimal international market prices. CMMB then publicly reported these overvalued donations year after year in its IRS Forms 990 on its website and in its charitable solicitations. This resulted in the public dissemination of materially false financial information.
10. The appropriate international prices for most of the pharmaceuticals at issue were a fraction of the values CMMB reported. Had CMMB used appropriate international market prices to value its pharmaceutical donations, its reported revenue and program expense figures would have been markedly decreased. This is illustrated by the following sample transactions:

- **CMMB 2012 shipment to Nicaragua:** CMMB valued the pharmaceutical Simvastatin at $924,671 (total) using U.S. prices; using appropriate international prices, the total value was less than $5,000.

- **CMMB 2015 shipment to Haiti:** CMMB valued the pharmaceuticals Enalapril (10 mg.) and Didanosine at $206,660 (total), using U.S. prices; using appropriate international prices, the total value was less than $75,000.

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

**D. CMMB’s Misrepresentations in its Charitable Solicitations**

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

- “We Use Your Gifts Wisely,” with a pie chart showing 97% in programs and 3% in administration and fundraising. (2013 direct mail solicitations; also in 2014 [98% in programs].) This was misleading because the 97% included both cash and noncash donations (mostly overvalued pharmaceuticals). But noncash donations, including CMMB’s overvalued pharmaceuticals, did not pay for any overhead or fundraising; only 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 fundraising and salaries. That was false. In reality, only 68% of cash donations were left 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 to healthcare so every dollar makes a difference!” “Every dollar we receive enables us to ship nearly $100 worth of medicine to the sick and the poor.” (Telemarketing script March 2013; 2014 & 2015 scripts [$0.98 of every dollar received goes directly to healthcare]; 2016 telemarketing script and direct mail solicitation [every dollar of donations allows CMMB to send $195 worth of medicine].) These representations were false and the result of vastly overvalued pharmaceutical donations. Further, CMMB used only 60.5% of cash donations for healthcare programs during the fiscal year ended September 30, 2014.

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

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

<table>
<thead>
<tr>
<th>Year</th>
<th>Dollars</th>
<th>Individual Donors1</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>$1,026,048</td>
<td>3,799</td>
</tr>
<tr>
<td>2016</td>
<td>$934,984</td>
<td>3,950</td>
</tr>
<tr>
<td>2015</td>
<td>$910,114</td>
<td>3,806</td>
</tr>
<tr>
<td>2014</td>
<td>$915,790</td>
<td>4,467</td>
</tr>
<tr>
<td>2013</td>
<td>$986,812</td>
<td>4,160</td>
</tr>
</tbody>
</table>

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

1 This is the number of actual donations. It does not include the persons in California who received CMMB’s solicitations and did not donate.
campaign were prohibited by Government Code section 12599.6.

II.

GROUND FOR ISSUANCE OF THE CEASE AND DESIST ORDER

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

III

ASSESSMENT OF PENALTIES

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

<table>
<thead>
<tr>
<th>VIOLATION</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. CMMB violated the Charity Supervision Act by making representations in its solicitations to California donors that were false and deceptive, 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.</td>
<td>$409,575.00</td>
</tr>
</tbody>
</table>

TOTAL PENALTY: $409,575.00

CEASE AND DESIST ORDER

1. CATHOLIC MEDICAL MISSION BOARD, INC. (“CMMB”) shall 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 for distribution and use overseas), as referenced in paragraphs 12 through 15 of this Order/Notice. This order applies to CMMB, its officers, directors, employees and all persons or entities acting on its behalf, including commercial fundraisers for charitable purposes soliciting 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 GAAP, which is required of all charities soliciting in California. (Bus. & Prof. Code, § 17510.5.) Should CMMB file a timely appeal, the Registrar of the Attorney General’s Registry of Charitable Trusts (“AG’s Registry”) intends to demonstrate that, since CMMB does not maintain its financial records according to GAAP, its solicitation of California donors must cease until it complies with Business and Professions Code section 17510.5.

2. Within 10 days from the date of this order, CMMB will provide a copy of this order to:
   a. Every commercial fundraiser for charitable purposes and fundraising counsel for charitable purposes with which it currently contracts.
   b. Every officer, director and employee of CMMB;

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

4. CMMB is ordered to preserve and prevent destruction of all documents and information in its possession, custody, or control (including all electronically stored information) that was created, sent and/or received during the period of January 1, 2012, until the date the order on this administrative action becomes final (within the meaning of California Code of Regulations, title 8).
11, sections 999.6, subdivision (c) or 999.8, subdivision (c)), related to the following: recordings of solicitations, communications with cash and noncash donors (including donors of pharmaceuticals); communications with any and all accountants and auditors providing services to CMMB; communications with any and all members and employees of the Financial Accounting Standards Board, the Not-for-Profit Advisory Committee of FASB, and/or the American Institute of Certified Public Accountants related to any matter set forth herein; for each direct mail solicitation campaign conducted at least in part in California, samples of the complete direct mail package and reports, charts and/or graphs indicating the numbers of packages CMMB mailed to recipients located in California; and for each telephone solicitation made to someone in California, the telemarketing script used and reports, charts and/or graphs indicating the numbers of persons in California contacted.

5. All responses shall be sent to:

Sonja K. Berndt, Deputy Attorney General
California Department of Justice
Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
(213) 269-6553
(213) 897-7605 (fax)
Sonja.berndt@doj.ca.gov

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

ORDER ASSESSING PENALTIES

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

FIRST AMENDED ORDER TO CEASE AND DESIST/NOTICE OF ASSESSMENT OF PENALTIES (Case No. 2018-13-5602319)