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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

11 EM PHARMACY
12 12034 La Crosse Avenue A
Grand Terrace, CA 92313
13 Ernesto L. Andres, Sole Owner
Pharmacy Permit No. PHY 41605

14 and

15 JKE Pharmaceuticals
16 12034 La Crosse Avenue B
Grand Terrace, CA 92313
17 Ernesto L. Andres, Sole Owner
Wholesaler Permit No. WLS 3159

18 and

19 Cardinal Health Company
20 dba Whitmire Distribution Corp
1351 Doubleday
21 Ontario, CA 91761
Wholesaler Permit No. WLS 2788

22 and

23 Bindley Western Industries, Inc.
24 dba Bindley Western Drug
542 Covina Blvd.
25 San Dimas, CA 91773
Wholesaler Permit No. WLS 2351

26 and

27
28 ///

Case No. 2147

OAH No.

DEFAULT DECISION
AND ORDER AS TO
RESPONDENTS EM PHARMACY,
JKE PHARMACEUTICALS, AND
ERNESTO L. ANDRES ONLY

[Gov. Code, §11520]

1 Lucy Alvites McIntosh)
 P.O. Box 1456)
 2 Loma Linda, CA 92354)
 Pharmacist License No. RPH 40130)
 3)
 and)
 4)
 Ernesto L. Andres)
 5 12034 La Crosse Avenue A)
 Grand Terrace, CA 92313)
 6 (Non-licensed Owner at indicated locations))
 7)
 Respondents)
 8)

9
 10 **FINDINGS OF FACT**

11 1. On or about April 24, 2002, Complainant Patricia F. Harris, in her official
 12 capacity as Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State
 13 of California, filed Accusation No. 2147 against EM Pharmacy (Respondent EM Pharmacy),
 14 Ernesto L. Andres, sole owner, (Respondent Andres), JKE Pharmaceuticals (Respondent JKE
 15 Pharmaceuticals), Cardinal Health Company, d.b.a. Whitmire Distribution Corp. (Respondent
 16 Whitmire), Bindley Western Industries, Inc., d.b.a. Bindley Western Drug (Respondent Bindley
 17 Western), and Lucy Alvites McIntosh (Respondent McIntosh), before the Board of Pharmacy
 18 (Board).

19 **EM Pharmacy**

20 2. On or about November 8, 1996, the Board of Pharmacy issued Original
 21 Pharmacy Permit Number PHY 41605 to ERNESTO L. ANDRES, Sole Owner, to do business
 22 as EM PHARMACY (hereinafter referred to "Respondent EM PHARMACY"). The address of
 23 record is 12034 La Crosse Avenue A, Grand Terrace, California 92313. Said license was in full
 24 force and effect until November 1, 1997 and is currently delinquent. LUCY ALVITES
 25 McINTOSH (hereinafter "Respondent McINTOSH") was the Pharmacist-In-Charge for EM
 26 PHARMACY between November 9, 1996 and July 15, 1997.

27 **JKE Pharmaceuticals**

28 3. On or about November 8, 1996, the Board of Pharmacy issued Original

1 Wholesaler Permit Number WLS 3159 to ERNESTO L. ANDRES, Sole Owner, to do business
2 as JKE PHARMACEUTICALS (hereinafter referred to "Respondent JKE
3 PHARMACEUTICALS"). The address of record is 12034 La Crosse Avenue B, Grand Terrace,
4 California 92313. Said license was in full force and effect until September 18, 1997 at which
5 time the business was discontinued. Respondent McINTOSH was the Qualifying Pharmacist for
6 JKE PHARMACEUTICALS between November 9, 1996 and September 18, 1997.

7 **Ernesto L. Andres**

8 4. As set forth above in paragraphs 2 and 3, Ernesto L. Andres (hereinafter
9 "Respondent ANDRES") is the non-licensed owner of EM PHARMACY and JKE
10 PHARMACEUTICALS.

11 5. On or about May 15, 2002, G. McKenzie, an employee of the Department
12 of Justice, served by Certified (certified article number 7000 0520 0025 1944 1853) and First
13 Class Mail a copy of the Accusation No. 2147, Statement to Respondent, Notice of Defense,
14 Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to
15 Respondent EM Pharmacy's address of record with the Board, which was and is 12034 La Crosse
16 Avenue, #A, Grand Terrace, CA 92313. A copy of the Accusation, the related documents, and
17 Declaration of Service are incorporated herein by reference.

18 6. On or about May 24, 2002, the aforementioned documents (certified
19 article number 7000 0520 0025 1944 1853) were returned by the U.S. Postal Service marked
20 "Attempted Not Known." A copy of the postal returned documents are incorporated herein by
21 reference.

22 7. On or about May 15, 2002, G. McKenzie, an employee of the Department
23 of Justice, served by Certified (certified article number 7000 0520 0025 1944 1884) and First
24 Class Mail a copy of the Accusation No. 2147, Statement to Respondent, Notice of Defense,
25 Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to
26 Respondent JKE Pharmaceutical's address of record with the Board, which was and is 12034 La
27 Crosse Avenue, #A, Grand Terrace, CA 92313. A copy of the Accusation, the related
28 documents, and Declaration of Service are incorporated herein by reference.

1 8. On or about May 24, 2002, the aforementioned documents (certified
2 article number 7000 0520 0025 1944 1884) were returned by the U.S. Postal Service marked
3 "Attempted Not Known." A copy of the postal returned documents are incorporated herein by
4 reference.

5 9. On or about May 15, 2002, G. McKenzie, an employee of the Department
6 of Justice, served by Certified (certified article number 7000 0520 0025 1944 1907) and First
7 Class Mail a copy of the Accusation No. 2147, Statement to Respondent, Notice of Defense,
8 Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to
9 Respondent Andres's address of record with the Board, which was and is 12034 La Crosse
10 Avenue, #A, Grand Terrace, CA 92313. A copy of the Accusation, the related documents, and
11 Declaration of Service are incorporated herein by reference.

12 10. On or about May 24, 2002, the aforementioned documents (certified
13 article number 7000 0520 0025 1944 1907) were returned by the U.S. Postal Service marked
14 "Attempted Not Known." A copy of the postal returned documents are incorporated herein by
15 reference.

16 11. Service of the Accusation was effective as a matter of law under the
17 provisions of Government Code section 11505, subdivision (c).

18 12. Business and Professions Code section 118 states, in pertinent part:

19 "(b) The suspension, expiration, or forfeiture by operation of law of a license
20 issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the
21 board or by order of a court of law, or its surrender without the written consent of the board, shall
22 not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the
23 board of its authority to institute or continue a disciplinary proceeding against the licensee upon
24 any ground provided by law or to enter an order suspending or revoking the license or otherwise
25 taking disciplinary action against the license on any such ground."

26 13. Government Code section 11506 states, in pertinent part:

27 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
28 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the

1 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
2 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

3 14. Respondents EM Pharmacy, JKE Pharmaceuticals, and Ernesto L. Andres
4 failed to file a Notice of Defense within 15 days after service upon them of the Accusation, and
5 therefore waived their rights to a hearing on the merits of Accusation No. 2147.

6 15. California Government Code section 11520 states, in pertinent part:

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

10 16. Pursuant to its authority under Government Code section 11520, the Board
11 finds Respondents EM Pharmacy, JKE Pharmaceuticals, and Ernesto L. Andres are in default.
12 The Board will take action without further hearing and, based on Respondents' express
13 admissions by way of default and the evidence before it, finds that the allegations in Accusation
14 No. 2147 are true.

15 17. The total costs for investigation and enforcement are \$7,000.00 as of July
16 11, 2002. The sum of \$3,500 is hereby assessed against Respondent Andres and the sum of
17 \$3,500 is hereby assessed jointly and severally against Respondents EM Pharmacy and JKE
18 Pharmaceuticals.

19 DETERMINATION OF ISSUES

20 1. Based on the foregoing findings of fact, Respondents EM Pharmacy
21 (Original Pharmacy Permit No. PHY 41605), JKE Pharmaceuticals (Original Wholesaler Permit
22 No. WLS 3159), and Andres (non-licensed owner) have subjected their permits to discipline.

23 2. A copy of the Accusation and the related documents and Declaration of
24 Service are incorporated herein by reference.

25 3. The agency has jurisdiction to adjudicate this case by default.

26 4. The Board of Pharmacy is authorized to revoke Respondents' Original
27 permits based upon the following violations alleged in the Accusation:

28 Business and Professions Code

- 1 a. Section 4081 [failed to maintain accurate records of acquisition
2 and/or disposition of dangerous drugs];
- 3 b. Section 4160 [operated as a wholesaler pharmacy without a valid
4 permit];
- 5 c. Section 4201 [false statements to the Board and failed to timely
6 notify the Board of secured beneficial interest];
- 7 d. Section 4328 [furnished dangerous drugs without a pharmacist
8 present];
- 9 e. Section 4329 [furnished dangerous drugs without a pharmacist
10 present];
- 11 f. Section 4330 [furnished dangerous drugs without a pharmacist
12 present];
- 13 g. Section 4332 [failed to produce records of acquisition of dangerous
14 drugs];

15 California Code of Regulations, Title 16

- 16 a. California Code of Regulations, Title 16, section 1718 [failed to
17 maintain an accurate inventory];
- 18 b. California Code of Regulations, Title 16, section 1781(a) [JKE
19 Pharmaceuticals was not under the control of a pharmacist or exemptee at all times dangerous
20 drugs or devices were accessible or being furnished].

21 ORDER

22 IT IS SO ORDERED that Original Pharmacy Permit No. PHY 41605, heretofore
23 issued to Respondent EM Pharmacy, is revoked.

24 IT IS SO ORDERED that Original Wholesaler Permit No. WLS 3159, heretofore
25 issued to Respondent JKE Pharmaceuticals, is revoked.

26 Pursuant to Government Code section 11520, subdivision (c), Respondents may
27 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
28 within seven (7) days after service of the Decision on Respondents. The agency in its discretion

1 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
2 statute.

3 This Decision shall become effective on March 5, 2003.

4
5 It is so ORDERED February 3, 2003

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7 BOARD OF PHARMACY
8 DEPARTMENT OF CONSUMER AFFAIRS
9 STATE OF CALIFORNIA

10
11 By 
12 JOHN D. JONES
13 Board President

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7 Attorneys for Complainant
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10 **BEFORE THE BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:) Case No. 2147
13 **EM PHARMACY**) **A C C U S A T I O N**
12034 La Crosse Avenue A)
14 Grand Terrace, CA 92313)
Ernesto L. Andres, Sole Owner)
15 **Pharmacy Permit No. PHY 41605**)
16 and)
17 **JKE Pharmaceuticals**)
12034 La Crosse Avenue B)
18 Grand Terrace, CA 92313)
Ernesto L. Andres, Sole Owner)
19 **Wholesaler Permit No. WLS 3159**)
20 and)
21 **Cardinal Health Company**)
dba Whitmire Distribution Corp)
22 1351 Doubleday)
Ontario, CA 91761)
23 **Wholesaler Permit No. WLS 2788**)
24 and)
25 **Bindley Western Industries, Inc.**)
dba Bindley Western Drug)
26 542 Covina Blvd.)
San Dimas, CA 91773)
27 **Wholesaler Permit No. WLS 2351**)
28 and)

1)
2)
3 **Lucy Alvites McIntosh**)
4 P.O. Box 1456)
5 Loma Linda, CA 92354)
6 **Pharmacist License No. RPH 40130**)

7 and)

8 **Ernesto L. Andres**)
9 12034 La Crosse Avenue A)
10 Grand Terrace, CA 92313)
11 (Non-licensed Owner at indicated)
12 locations))

13 Respondents.

14 Complainant alleges:

15 1. Patricia F. Harris ("Complainant") brings this accusation solely in her
16 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
17 Affairs.

18 **EM Pharmacy**

19 2. On or about November 8, 1996, the Board of Pharmacy issued Original
20 Pharmacy Permit Number PHY 41605 to **ERNESTO L. ANDRES**, Sole Owner, to do business
21 as **EM PHARMACY** (hereinafter referred to "**Respondent EM PHARMACY**"). The address
22 of record is 12034 La Crosse Avenue A, Grand Terrace, California 92313. Said license was in
23 full force and effect until November 1, 1997 and is currently delinquent.

24 3. **LUCY ALVITES McINTOSH** (hereinafter "**Respondent McINTOSH**")
25 was the Pharmacist-In-Charge for EM PHARMACY between November 9, 1996 and July 15,
26 1997.

27 **JKE Pharmaceuticals**

28 4. On or about November 8, 1996, the Board of Pharmacy issued Original
Wholesaler Permit Number WLS 3159 to **ERNESTO L. ANDRES**, Sole Owner, to do business
as **JKE PHARMACEUTICALS** (hereinafter referred to "**Respondent JKE
PHARMACEUTICALS**"). The address of record is 12034 La Crosse Avenue B, Grand
Terrace, California 92313. Said license was in full force and effect until September 18, 1997 at

1 which time the business was discontinued.

2 5. Respondent **McINTOSH** was the Qualifying Pharmacist for JKE
3 PHARMACEUTICALS between November 9, 1996 and September 18, 1997.

4 **Cardinal Health Company (dba Whitmire Distribution Corp)**

5 6. On or about January 11, 1994, the Board of Pharmacy issued Original
6 Wholesaler Permit Number WLS 2788 to **Cardinal Health Company**, to do business as
7 **WHITMIRE DISTRIBUTION CORP** (hereinafter referred to "**Respondent WHITMIRE**").
8 The address of record is 1351 Doubleday, Ontario, California 91761. Disciplinary action has
9 been taken against said license in Administrative Case Nos. 2007. Said license is in full force
10 and effect until January 1, 2002.

11 **Bindley Western Industries, Inc.(dba Bindley Western Drug)**

12 7. On or about March 28, 1991, the Board of Pharmacy issued Original
13 Wholesaler Permit Number WLS 2351 to **Bindley Western Industries, Inc.**, to do business as
14 **BINDLEY WESTERN DRUG** (hereinafter referred to "**Respondent BINDLEY**
15 **WESTERN**"). The address of record is 542 Covina Blvd., San Dimas, California 91773.
16 Disciplinary action has been taken against said license in Administrative Case Nos. 2007, 2065,
17 and 2066. Said license was in full force and effect until March 1, 2001.

18 **Lucy Alvites McIntosh**

19 8. On or about June 20, 1986, the Board of Pharmacy issued Original
20 Pharmacist License Number RPH 40130 to **Lucy Alvites McIntosh** (hereinafter "**Respondent**
21 **McINTOSH**"). Respondent McIntosh's address of record is P.O. Box 1456, Loma Linda,
22 California 92354. Said license is in full force and effect until August 31, 2001.

23 **Ernesto L. Andres**

24 9. As set forth above in paragraphs 2 and 4, Ernesto L. Andres (hereinafter
25 "**Respondent ANDRES**") is the non-licensed owner of **EM PHARMACY** and **JKE**
26 **PHARMACEUTICALS**.

27 **APPLICABLE LAW**

28 10. This Accusation is brought before the Board of Pharmacy ("Board"),

1 under the authority of the following sections of the Business and Professions Code ("Code").

2 11. **Section 118(b)** of the Code provides that the suspension, expiration, or
3 forfeiture by operation of law of a certificate, license or registration does not deprive the Board
4 of authority or jurisdiction to institute or continue with disciplinary action against the certificate,
5 license or registration or to order suspension or revocation of the certificate, license or
6 registration, during the period within which the certificate, license or registration may be
7 renewed, restored, reissued or reinstated.

8 12. **Section 4300** of the Code states:

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

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

13 (1) Suspending judgment.

14 (2) Placing him or her upon probation.

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

16 (4) Revoking his or her license.

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

19 13. **Section 4301** of the Code states:

20 The Board shall take action against any holder of a license who is guilty of
21 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
22 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
23 following:

24 (c) Gross negligence.

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

28 (g) Knowingly making or signing any certificate or other document that falsely

1 represents the existence or nonexistence of a state of facts.

2 (j) The violation of any of the statutes of this state or of the United States
3 regulating controlled substances and dangerous drugs.

4 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
5 abetting the violation of or conspiring to violate any provision or term of Chapter 9
6 (commencing with Section 4000) of the Business and Professions Code or of the
7 applicable federal and state laws and regulations governing pharmacy, including
8 regulations established by the board.

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

10 14. **Section 4022** of the Code states:

11 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
12 self-use, except veterinary drugs that are labeled as such, and includes the following:

13 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
14 without prescription," "Rx only," or words of similar import.

15 (b) Any device that bears the statement: "Caution: federal law restricts this device
16 to sale by or on the order of a _____," "Rx only," or words of similar import, the
17 blank to be filled in with the designation of the practitioner licensed to use or order use of
18 the device.

19 (c) Any other drug or device that by federal or state law can be lawfully dispensed
20 only on prescription or furnished pursuant to Section 4006.

21 15. **Section 4081** of the Code states:

22 (a) All records of manufacture and of sale, acquisition, or disposition of dangerous
23 drugs or dangerous devices shall be at all times during business hours open to inspection
24 by authorized officers of the law, and shall be preserved for at least three years from the
25 date of making. A current inventory shall be kept by every manufacturer, wholesaler,
26 pharmacy, medical device retailer, veterinary food-animal drug retailer, physician,
27 dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment
28 holding a currently valid and unrevoked certificate, license, permit, registration, or

1 exemption under Division 2 (commencing with Section 1200) of the Health and Safety
2 Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
3 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

4 (b) The owner, officer, and partner of any pharmacy, wholesaler, veterinary
5 food-animal drug retailer, or medical device retailer shall be jointly responsible, with the
6 pharmacist-in-charge or exemptee, for maintaining the records and inventory described in
7 this section.

8 (c) The pharmacist-in-charge or exemptee shall not be criminally responsible for
9 acts of the owner, officer, partner, or employee that violate this section and of which the
10 pharmacist-in-charge or exemptee had no knowledge, or in which he or she did not
11 knowingly participate.

12 16. **Section 4160** of the Code states:

13 (a) No person shall act as a wholesaler of any dangerous drug or dangerous device
14 unless he or she has obtained a license from the board. Upon approval by the board and
15 the payment of the required fee, the board shall issue a license to the applicant.

16 (b) No selling or distribution outlet, located in this state, of any out-of-state
17 manufacturer, that has not obtained a license from the board, that sells or distributes only
18 the dangerous drugs or the dangerous devices of that manufacturer, shall sell or distribute
19 any dangerous drug or dangerous device in this state without obtaining a wholesaler's
20 license from the board.

21 (c) A separate license shall be required for each place of business owned or
22 operated by a wholesaler. Each license shall be renewed annually and shall not be
23 transferable.

24 17. **Section 4328** of the Code states:

25 Except as otherwise provided in Chapter 9 (commencing with Section 4000) of
26 the Business and Professions Code, any person who permits the compounding or
27 dispensing of prescriptions, or the furnishing of dangerous drugs in his or her pharmacy,
28 except by a pharmacist, is guilty of a misdemeanor.

1 18. **Section 4330** of the Code states:

2 (a) Any person who has obtained a license to conduct a pharmacy, who fails to
3 place in charge of the pharmacy a pharmacist, or any person, who by himself or herself,
4 or by any other person, permits the compounding or dispensing of prescriptions, or the
5 furnishing of dangerous drugs, in his or her pharmacy, except by a pharmacist, or as
6 otherwise provided in Chapter 9 (commencing with Section 4000) of the Business and
7 Professions Code, is guilty of a misdemeanor.

8 (b) Any nonpharmacist owner who commits any act that would subvert or tend to
9 subvert the efforts of the pharmacist-in-charge to comply with the laws governing the
10 operation of the pharmacy is guilty of a misdemeanor.

11 19. **Section 4201** of the Code states, in pertinent part, that each application to
12 conduct a pharmacy or wholesaler shall state the name of the applicant and each person
13 beneficially interested therein. Section 4201 of the Code further provides that any change in the
14 beneficial ownership interest of a pharmacy shall be reported to the Board within 30 days.

15 20. **Section 4113(b)** of the Code states, in pertinent part, that the pharmacist-
16 in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and
17 regulations pertaining to the practice of pharmacy.

18 21. **Section 4163** of the Code states, in pertinent part, that no manufacturer or
19 wholesaler shall furnish any dangerous drugs or dangerous devices to any unauthorized persons.

20 22. **Section 4329** of the Code states, in pertinent part, that any nonpharmacist
21 who takes charge of or acts as manager of any pharmacy or who compounds or dispenses a
22 prescription or furnishes dangerous drugs except as otherwise provided by law is guilty of a
23 misdemeanor.

24 23. **Section 4332** of the Code states, in pertinent part, that any person who
25 fails, neglects, or refuses to maintain the records required by Section 4081 or who, when called
26 upon by any authorized representative of the Board, fails, neglects, or refuses to produce or
27 provide the records within a reasonable time, or who wilfully produces or furnishes records that
28 are false, is guilty of a misdemeanor.

1 employed. Respondent McINTOSH told the inspector that she was still the pharmacist-in-
2 charge for Respondent EM PHARMACY, that Respondent EM PHARMACY had not opened
3 for business, and that Respondent EM PHARMACY had not filled any prescriptions.
4 Respondent McINTOSH also informed the inspector that Respondent JKE
5 PHARMACEUTICALS was in operation and that the wholesaler had obtained drugs from
6 Respondents WHITMIRE and BINDLEY WESTERN and then resold drugs "to a pharmacy in
7 San Diego."

8 b. On or about July 3, 1997, a Board inspector contacted Respondents
9 BINDLEY WESTERN and WHITMIRE and requested copies of all drug invoices, proof of
10 delivery logs, statements, documents reflecting returns and credits, and purchase and guarantee
11 agreements, related to all sales of drugs to Respondent EM PHARMACY from November 8,
12 1996 to the present date.

13 c. On or about July 10, 1997, Board inspectors received documentation from
14 Respondent BINDLEY WESTERN. The documentation provided included sales invoices which
15 indicated that Respondent EM PHARMACY had purchased Transderm-Nitro, a dangerous drug,
16 from the wholesaler between May and July, 1997. The proof of delivery documents provided by
17 Respondent BINDLEY WESTERN also indicated that Respondent ANDRES had accepted
18 delivery of those drugs.

19 d. On or about July 11, 1997, Board inspectors conducted an inspection at
20 EM PHARMACY and JKE PHARMACEUTICALS. Respondent ANDRES was present and
21 informed the Board inspectors that Respondent EM PHARMACY had not opened for business or
22 filled any prescriptions for patients. Respondent ANDRES also stated that Respondent EM
23 PHARMACY had purchased drugs from Respondents WHITMIRE and BINDLEY WESTERN
24 and that the drugs were then "transferred" from EM PHARMACY by Respondent McINTOSH
25 to Respondent JKE PHARMACEUTICALS. Respondent JKE PHARMACEUTICALS then
26 sold the drugs to other wholesalers, Sunset Pharmaceuticals located in San Diego and
27 Professional Wholesale Inc., located in Baldwin Park. According to Respondent ANDRES,
28 Respondent JKE PHARMACEUTICALS had not purchased or received any drugs from any

1 other licensee other than from Respondent EM PHARMACY.

2 e. During the July 11, 1997 inspection of Respondents EM PHARMACY
3 and JKE PHARMACEUTICALS, Board inspectors requested copies of all records of acquisition
4 and disposition, including prescription records, "bid-contracts" and credit applications, pertaining
5 to the sale of drugs purchased by Respondents EM PHARMACY and JKE
6 PHARMACEUTICALS. The Board inspectors were provided with copies of invoices
7 pertaining to the sale by Respondent JKE PHARMACEUTICALS of approximately 1,638
8 quantities of dangerous drugs to Sunset Pharmaceuticals and Professional Wholesale Inc.
9 According to that documentation, the sale of the dangerous drugs occurred between April and
10 July, 1997.

11 f. During the aforementioned July 11, 1997 inspections, the Board inspectors
12 also observed a package containing dangerous drugs that were apparently purchased by
13 Respondent EM PHARMACY from Respondent WHITMIRE. The package of drugs was not in
14 a locked, licensed area of either pharmacy and there was no pharmacist present. Respondent
15 ANDRES informed the Board inspectors that Respondent McINTOSH had allegedly "just left
16 the pharmacy" and that Respondent ANDRES was planning to deliver the drugs to Professional
17 Wholesale Inc.

18 g. On or about July 11, 1997, Board inspectors received documentation from
19 Respondent WHITMIRE that was requested on July 3, 1997. The documentation included sales
20 invoices and other records which indicated that Respondent EM PHARMACY had purchased
21 dangerous drugs from the wholesaler between April and July, 1997. The dangerous drugs
22 acquired by Respondent EM PHARMACY included Accupril, Adalat, Amicar, Cholearyl, Fluor-
23 Op, Glynase, Golytelysolyn, Hydrea, Kantrex, Maxzide, Mutamycin, Novolin insulin, Nulytely,
24 Procanbid, Proctocream-HC, Theo-24, Trandate, Transderm-Nitro, Vantin, and Zarontin. The
25 proof of delivery documents provided by Respondent WHITMIRE also indicated that except for
26 a few deliveries, Respondent ANDRES had signed for and accepted delivery for most of the
27 dangerous drugs sold to Respondent EM PHARMACY. And, on at least one occasion, Kelley
28 Andres, Respondent ANDRES' daughter, signed for and accepted delivery of dangerous drugs

1 from the wholesaler.

2 h. According to the documentation (sales invoices) obtained by Board
3 inspectors from Respondents BINDLEY WESTERN and WHITMIRE, Respondent EM
4 PHARMACY purchased approximately 2,361 quantities of dangerous drugs from those
5 wholesalers between April and July 1997. The documentation obtained by the Board inspectors
6 also included credit invoices showing approximately 249 quantities of dangerous drugs that were
7 returned to Respondent WHITMIRE for credit.

8 i. According to information and documentation obtained by Board
9 inspectors during the investigation, Respondent EM PHARMACY obtained approximately 2,361
10 quantities of dangerous drugs from Respondents BINDLEY WESTERN and WHITMIRE,
11 Respondent JKE PHARMACEUTICALS acquired from Respondent EM PHARMACY
12 approximately 1,638 quantities of dangerous drugs and Respondent JKE PHARMACEUTICALS
13 then resold those dangerous drugs to Sunset Pharmaceuticals and Professional Wholesale Inc.
14 Thus, Respondents EM PHARMACY, ANDRES, and McINTOSH were not able to account for
15 approximately 474 quantities of dangerous drugs that were originally purchased by Respondent
16 EM PHARMACY from Respondents BINDLEY WESTERN and WHITMIRE.

17 j. On or about July 14, 1997, an inspector of the Board met with Respondent
18 McINTOSH again at SAC Health Care Systems Pharmacy. Respondent McINTOSH told the
19 inspector that she had not filled any prescriptions at EM PHARMACY and that she was not
20 aware of any deliveries of drugs that were made to EM PHARMACY.

21 **SECOND CAUSE FOR DISCIPLINE**

22 (EM PHARMACY, JKE PHARMACEUTICALS, McINTOSH and ANDRES)

23 29. Respondents **EM PHARMACY, JKE PHARMACEUTICALS,**
24 **McINTOSH** and **ANDRES** are subject to disciplinary action by the Board pursuant to Code
25 Section 4300, for unprofessional conduct within the meaning of Code Section 4301 ("general
26 unprofessional conduct"), Code Section 4301, subdivisions (c), (f), (j), and (o), and by reason of
27 violating Code section 4081, as further defined by Title 16, CCR Section 1718, in that
28 respondents did not maintain accurate records of acquisition and/or disposition of dangerous

1 drugs nor did respondents maintain an accurate inventory as alleged in paragraph 28 above.

2 **THIRD CAUSE FOR DISCIPLINE**

3 (EM PHARMACY, JKE PHARMACEUTICALS, and ANDRES)

4 30. Respondents **EM PHARMACY, JKE PHARMACEUTICALS** and
5 **ANDRES** are subject to disciplinary action by the Board pursuant to Code Section 4300, for
6 unprofessional conduct within the meaning of Code Section 4301 ("general unprofessional
7 conduct"), Code Section 4301, subdivisions (f), (j), and (o), and by reason of violating Code
8 section 4332, in that respondents did not produce records of acquisition of dangerous drugs when
9 called upon by an officer of the Board as alleged in paragraph 28 above.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 (EM PHARMACY, JKE PHARMACEUTICALS and ANDRES)

12 31. Respondents **EM PHARMACY, JKE PHARMACEUTICALS** and
13 **ANDRES** are subject to disciplinary action by the Board pursuant to Code Section 4300, for
14 unprofessional conduct within the meaning of Code Section 4301 ("general unprofessional
15 conduct"), Code Section 4301, subdivisions (c), (f), (j), and (o), and by reason of violating Code
16 sections 4328 and 4330, in that respondents furnished dangerous drugs from EM PHARMACY
17 and JKE PHARMACEUTICALS without a pharmacist present as alleged in paragraph 28 above.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 (EM PHARMACY and ANDRES)

20 32. Respondents **EM PHARMACY** and **ANDRES** are subject to disciplinary
21 action by the Board pursuant to Code Section 4300, for unprofessional conduct within the
22 meaning of Code Section 4301 ("general unprofessional conduct"), Code Section 4301,
23 subdivisions (f), (j), and (o), and by reason of violating Code section 4329, in that Respondent
24 **ANDRES** took charge of EM PHARMACY and furnished dangerous drugs without a pharmacist
25 present as alleged in paragraph 28 above.

26 **SIXTH CAUSE FOR DISCIPLINE**

27 (JKE PHARMACEUTICALS and ANDRES)

28 33. Respondents **JKE PHARMACEUTICALS** and **ANDRES** are subject to

1 disciplinary action by the Board pursuant to Code Section 4300, for unprofessional conduct
2 within the meaning of Code Section 4301 ("general unprofessional conduct"), Code Section
3 4301, subdivisions (c), (f), (j), and (o), and by reason of violating Title 16, CCR Section 1781(a),
4 in that JKE PHARMACEUTICALS was not under the control of a pharmacist or exemptee at all
5 times dangerous drugs or devices were accessible or being furnished as alleged in paragraph 28
6 above.

7 **SEVENTH CAUSE FOR DISCIPLINE**

8 (McINTOSH)

9 34. Respondent **McINTOSH** is subject to disciplinary action by the Board
10 pursuant to Code Section 4300, for unprofessional conduct within the meaning of Code Section
11 4301 ("general unprofessional conduct"), Code Section 4301, subdivisions (c), (f), (j), and (o),
12 and by reason of violating Code Section 4113(b), in that Respondent McINTOSH did not
13 supervise EM PHARMACY or otherwise act responsibly as the pharmacist-in-charge of that
14 pharmacy as alleged in paragraph 28 above.

15 **EIGHTH CAUSE FOR DISCIPLINE**

16 (McINTOSH)

17 35. Respondent **McINTOSH** is subject to disciplinary action by the Board
18 pursuant to Code Section 4300, for unprofessional conduct within the meaning of Code Section
19 4301 ("general unprofessional conduct"), Code Section 4301, subdivisions (c), (f), (j), and (o),
20 and by reason of violating Code Section 4081 and Title 16, CCR Section 1781(a), in that
21 Respondent McINTOSH allowed a person other than a pharmacist or exemptee to have access to
22 JKE PHARMACEUTICALS and Respondent McINTOSH was not in control of the wholesaler
23 as alleged in paragraph 28 above.

24 **NINTH CAUSE FOR DISCIPLINE**

25 (WHITMIRE)

26 36. Respondent **WHITMIRE** is subject to disciplinary action by the Board
27 pursuant to Code Section 4300, for unprofessional conduct within the meaning of Code Section
28 4301 ("general unprofessional conduct"), Code Section 4301, subdivisions (f), (j), and (o), and

1 by reason of violating Code Section 4163, in that Respondent WHITMIRE furnished dangerous
2 drugs to unauthorized persons as alleged in paragraph 28 above.

3 **TENTH CAUSE FOR DISCIPLINE**

4 (WHITMIRE)

5 37. Respondent **WHITMIRE** is subject to disciplinary action by the Board
6 pursuant to Code Section 4300, for unprofessional conduct within the meaning of Code Section
7 4301 ("general unprofessional conduct"), Code Section 4301, subdivisions (f), (j), and (o), in that
8 Respondent WHITMIRE furnished unusual quantities of dangerous drugs to unauthorized
9 persons and Respondent WHITMIRE knew or should have known that the dangerous drugs were
10 for distribution for sale rather than for prescripts filled by Respondent EM PHARMACY as
11 further alleged in paragraph 28 above.

12 **ELEVENTH CAUSE FOR DISCIPLINE**

13 (EM PHARMACY and ANDRES)

14 38. Respondents **EM PHARMACY** and **ANDRES** are subject to disciplinary
15 action by the Board pursuant to Code Section 4300, for unprofessional conduct within the
16 meaning of Code Section 4301 ("general unprofessional conduct"), Code Section 4301,
17 subdivision (g), and by reason of violating Code section 4201 (a) and (f), in that Respondent
18 ANDRES made false statements to the Board. The circumstances are as follows:

19 a. On or about June 4, 1996, Respondent ANDRES represented to the Board
20 that Respondent EM PHARMACY would be servicing board and care facilities, nursing homes
21 and convalescent hospitals.

22 b. On or about June 4, 1996, Respondent ANDRES also represented to the
23 Board that Respondent JKE PHARMACEUTICALS would obtain drugs from manufacturers and
24 licensed wholesalers.

25 c. These statements, which were made in response to questions posed during
26 the investigation of Respondent ANDRES' license applications, were false as set forth in
27 paragraph 28 above.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

2 (EM PHARMACY, BINDLEY WESTERN, and ANDRES)

3 39. Respondents **EM PHARMACY, BINDLEY WESTERN** and **ANDRES**
4 are subject to disciplinary action by the Board pursuant to Code Section 4300, for unprofessional
5 conduct within the meaning of Code Section 4301 ("general unprofessional conduct"), and by
6 reason of violating Code section 4201, in that said respondents failed to timely notify the Board
7 of the secured beneficial interest Respondent BINDLEY WESTERN acquired in Respondent EM
8 PHARMACY. The circumstances are as follows:

9 a. On or about January 28, 1997, Respondent ANDRES granted Respondent
10 BINDLEY WESTERN a secured interest in certain property and assets owned by Respondent
11 EM PHARMACY, including "all cash, accounts receivable, inventory, supplies, customer lists,
12 prescription files, fixtures, and/or equipment, now in the Debtor's (EM PHARMACY'S)
13 possession or hereinafter acquired, whether tangible or intangible, including all products and
14 proceeds thereof, and all records pertaining to same."

15 **PRAYER**

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

- 18 1. Revoking or suspending Pharmacy Permit No. PHY 41605, issued to
19 Ernesto L. Andres, to do business as EM PHARMACY;
- 20 2. Revoking or suspending Wholesaler Permit No. WLS 3159, issued to
21 Ernesto L. Andres, to do business as JKE PHARMACEUTICALS;
- 22 3. Revoking or suspending Wholesaler Permit No. WLS 2788, issued to
23 Cardinal Health Company, to do business as WHITMIRE DISTRIBUTION CORP;
- 24 4. Revoking or suspending Wholesaler Permit No. WLS 2351, issued to
25 Bindley Western Industries, Inc., to do business as BINDLEY WESTERN DRUG;
- 26 5. Revoking or suspending Pharmacist License No. RPH 40130, issued to *
27 Lucy Alvites McIntosh;
- 28 6. Ordering the named respondents to pay the Board of Pharmacy the

1 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
2 Professions Code section 125.3; and

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

5 DATED: 4/24/02
6

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8 P. F. Harris
9 PATRICIA F. HARRIS
10 Executive Officer
11 Board of Pharmacy
12 Department of Consumer Affairs
13 State of California
14 Complainant
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