

1 XAVIER BECERRA
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KAREN R. DENVER
Deputy Attorney General
4 State Bar No. 197268
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7886
Facsimile: (916) 327-8643
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. 6443

13 **AMERISOURCEBERGEN DRUG CORP.**
14 **1325 W. Striker Avenue**
15 **Sacramento, California 95834**

FIRST AMENDED ACCUSATION

16 **Wholesaler Permit No. WLS 4383**

17 **and**

18 **JOHN E. JESSEE**
19 **1325 W. Striker Avenue**
20 **Sacramento, California 95834**

21 **Designated Representative-in-Charge**
22 **Certificate No. EXC 13663**

23 Respondents.

24 Complainant alleges:

25 **PARTIES**

26 1. Anne Sodergren (Complainant) brings this First Amended Accusation solely in her
27 official capacity as the Interim Executive Officer of the Board of Pharmacy (Board), Department
28 of Consumer Affairs. This First Amended Accusation replaces in its entirety Accusation No.
6443 filed on May 30, 2019.

2. On or about February 2, 2004, the Board issued Wholesaler Permit Number WLS
4383 to AmerisourceBergen Drug Corp. (Respondent AmerisourceBergen Drug Corp.). On and

1 between April 30, 2004 and March 1, 2015, John E. Jessee (Respondent Jessee) was the
2 designated representative-in-charge for Respondent AmerisourceBergen Drug Corp. On or about
3 March 1, 2015, Shawn Patrick McGuire replaced Respondent Jessee as the designated
4 representative-in-charge. The wholesaler permit was in full force and effect at all times relevant
5 to the charges brought in the Accusation and will expire on February 1, 2020, unless renewed.

6 3. On or about March 18, 1997, the Board issued Designated Representative-in-Charge
7 Certificate Number EXC 13663 to Respondent Jessee. The designated representative-in-charge
8 certificate was in full force and effect at all times relevant to the charges brought in the
9 Accusation and will expire on March 1, 2020, unless renewed.

10 **JURISDICTION**

11 4. This First Amended Accusation is brought before the Board under the authority of the
12 following laws. All section references are to the Business and Professions Code (Code) unless
13 otherwise indicated.

14 5. Code section 4011 provides that the Board shall administer and enforce both the
15 Pharmacy Law [Bus. & Prof. Code § 4000 et seq.] and the Uniform Controlled Substances Act
16 [Health & Safety Code § 11000 et seq.].

17 6. Code section 4300 provides that every license issued by the Board may be suspended
18 or revoked.

19 7. Code section 4301.1 provides that the expiration, cancellation, forfeiture or
20 suspension of a board-issued license by operation of law or by order or decision of the Board or a
21 court of law, the placement of a license on a retired status, or the voluntary surrender of a license
22 by a licensee shall not deprive the Board of jurisdiction to commence or proceed with any
23 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
24 suspending or revoking the license.

25 **STATUTORY AND REGULATORY PROVISIONS**

26 8. Code section 4300 states, in pertinent part:

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

28 (b) The board shall discipline the holder of any license issued by the

1 board, whose default has been entered or whose case has been heard by the board and
2 found guilty, by any of the following methods:

3 (1) Suspending judgment.

4 (2) Placing him or her upon probation.

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

7 (4) Revoking his or her license.

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

10 9. Code section 4301 states, in pertinent part:

11 The board shall take action against any holder of a license who is guilty
12 of unprofessional conduct or whose license has been procured by fraud or
13 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
14 not limited to, any of the following:

15 . . .

16 (e) The clearly excessive furnishing of controlled substances in violation
17 of subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be
18 considered in determining whether the furnishing of controlled substances is clearly
19 excessive shall include, but not be limited to, the amount of controlled substances
20 furnished, the previous ordering pattern of the customer (including size and frequency
21 of orders), the type and size of the customer, and where and to whom the customer
22 distributes its product.

23 . . .

24 (j) The violation of any of the statutes of this state . . . regulating
25 controlled substances and dangerous drugs . . .

26 10. Code section 4160, subdivision (d), provides that the designated representative-in-
27 charge shall be responsible for the wholesaler's compliance with state and federal laws governing
28 wholesalers.

11. Health and Safety Code section 11153.5 states:

12 (a) No wholesaler or manufacturer, or agent or employee of a wholesaler
13 or manufacturer, shall furnish controlled substances for other than legitimate medical
14 purposes.

15 (b) Anyone who violates this section knowing, or having a conscious
16 disregard for the fact, that the controlled substances are for other than a legitimate
17 medical purpose shall be punishable by imprisonment pursuant to subdivision (h) of
18 Section 1170 of the Penal Code, or in a county jail not exceeding one year, or by a
19 fine not exceeding twenty thousand dollars (\$20,000), or by both that fine and

1 imprisonment.

2 (c) Factors to be considered in determining whether a wholesaler or
3 manufacturer, or agent or employee of a wholesaler or manufacturer, furnished
4 controlled substances knowing or having a conscious disregard for the fact that the
5 controlled substances are for other than legitimate medical purposes shall include, but
6 not be limited to, whether the use of controlled substances was for purposes of
7 increasing athletic ability or performance, the amount of controlled substances
8 furnished, the previous ordering pattern of the customer (including size and frequency
9 of orders), the type and size of the customer, and where and to whom the customer
10 distributes the product.

11
12 **COST RECOVERY**

13 12. Code section 125.3 states, in pertinent part, that the Board may request the
14 administrative law judge to direct a licentiate found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case.

17 **DRUG CLASSIFICATIONS**

18 13. “Norco” is a brand name for a combination drug containing hydrocodone and
19 acetaminophen (APAP) and is used to treat pain. Norco was previously designated as a Schedule
20 III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), but
21 was reclassified as a Schedule II controlled substance pursuant to Title 21, Code of Federal
22 Regulations, section 1308.12, subdivision (b)(1)(vi), effective October 6, 2014. Norco is a
23 dangerous drug pursuant to Code section 4022.

24 14. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code
25 section 11055, subdivision (b)(1)(M), and is used to treat pain. Oxycodone is a dangerous drug
26 pursuant to Code section 4022. “Oxycodone IR” and “OxyContin” are brand names for
27 oxycodone.

28 15. Promethazine with codeine syrup is a Schedule V controlled substance pursuant to
Health and Safety Code section 11058, subdivision (c)(1), and is used as a cough suppressant.
Promethazine with codeine syrup is a dangerous drug pursuant to Code section 4022. “Phenergan
with Codeine Syrup” is a brand of promethazine with codeine syrup.

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1 compliance team then reviews the order and forwards the flagged order to their corporate
2 diversion team. The order is then accepted or rejected. ABDC will notify the DEA if they
3 suspend a customer's ordering privileges. If an order is flagged and accepted, they conduct
4 additional investigation, including performing a detailed review of the pharmacy if the evaluator
5 believes the customer is "high risk". ABDC also has an outside surveillance company (Pharma
6 Compliance) and/or their internal staff perform site visits if they are concerned about a particular
7 customer. If ABDC determines that a customer is a risk, they will notify the customer in writing
8 that their ordering privileges have been suspended.

9 20. D. M. stated that on September 30, 2013, Pharma Compliance conducted a site
10 inspection at JPP based on a review of the pharmacy's purchase history. D. M. claimed that
11 ABDC continued monitoring JPP's account until October 1, 2014, when they sent the pharmacy a
12 letter notifying them that their ordering privileges were being terminated effective October 6,
13 2014. At the conclusion of the interview, M. S. requested that ABDC provide her with records of
14 all Schedule II to V controlled substances sold to JPP and all credits issued to the pharmacy from
15 July 11, 2010 to July 11, 2013, and September 29, 2013 to September 29, 2014.

16 21. On or about October 6, 2014, ABDC provided M. S. with various documents,
17 including sales transaction information for controlled substances. M. S. determined based on the
18 data received from ABDC that the wholesaler had furnished the following amounts of
19 hydrocodone/APAP 10/325 mg and oxycodone 30 mg to JPP. The quantities of the controlled
20 substances ordered by JPP and the significant variances in the pharmacy's ordering pattern should
21 have prompted ABDC to conduct further inquiries into the legitimacy of the orders.

22 a. ABDC sold JPP a total of 203,500 tablets of hydrocodone/APAP 10/325 mg (Norco)
23 from July 11, 2010 to July 11, 2013. ABDC sold JPP a total of 40,100 tablets from September
24 29, 2013 to September 29, 2014.

25 b. ABDC sold JPP a total of 499,000 tablets of oxycodone 30 mg from July 11, 2010 to
26 July 11, 2013. ABDC sold JPP a total of 91,800 tablets of oxycodone 30 mg from September 29,
27 2013 to September 29, 2014.

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1 22. On or about October 7, 2014, M. S. received an email from D. M. D. M. stated that
2 after Pharma Compliance conducted the site inspection at JPP, there were a total of 125 orders
3 flagged for review by ABDC's OMP system for the pharmacy (an average of 1 flagged order
4 every three days from September 30, 2013 to October 1, 2014). D. M. also stated that ABDC
5 initiated their investigation of JPP due to the pharmacy's high volume of purchases of oxycodone
6 30 mg as identified through their monthly review process.

7 **Respondent AmerisourceBergen Drug Corp., Permit No. WLS 4383**

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Excessive Furnishing of Controlled Substances)**

10 23. Respondent AmerisourceBergen Drug Corp. is subject to disciplinary action for
11 unprofessional conduct pursuant to Code section 4301, subdivision (e), in that Respondent
12 furnished excessive amounts of the controlled substances hydrocodone/APAP 10/325 mg and
13 oxycodone 30 mg to Jefferson Plaza Pharmacy without determining whether they were being
14 purchased for a legitimate medical purpose, in violation of Health and Safety Code section
15 11153.5, subdivision (a), as set forth in paragraph 21 above. Further, Respondent failed to
16 terminate Jefferson Plaza Pharmacy's ordering privileges until October 6, 2014, despite the fact
17 that 125 of the pharmacy's orders were flagged for review by Respondent's OMP system from
18 September 30, 2013 to October 1, 2014.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Violation of State Statutes Regulating Controlled Substances)**

21 24. Respondent AmerisourceBergen Drug Corp. is subject to disciplinary action for
22 unprofessional conduct pursuant to Code section 4301, subdivision (j), in that Respondent
23 violated a state statute regulating controlled substances, Health and Safety Code section 11153.5,
24 subdivision (a), as set forth in paragraph 23 above.

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1 **Respondent John E. Jessee, Certificate No. EXC 13663**

2 **THIRD CAUSE FOR DISCIPLINE**

3 **(Excessive Furnishing of Controlled Substances)**

4 25. Respondent John E. Jessee is subject to disciplinary action for unprofessional conduct
5 pursuant to Code section 4301, subdivision (e), in that Respondent, as designated representative-
6 in-charge for Respondent AmerisourceBergen Drug Corp., furnished excessive amounts of the
7 controlled substances hydrocodone/APAP 10/325 mg and oxycodone 30 mg to Jefferson Plaza
8 Pharmacy without determining whether they were being purchased for a legitimate medical
9 purpose, in violation of Health and Safety Code section 11153.5, subdivision (a), as set forth in
10 paragraph 21 above. Further, Respondent failed to terminate Jefferson Plaza Pharmacy's
11 ordering privileges until October 6, 2014, despite the fact that 125 of the pharmacy's orders were
12 flagged for review by Respondent's OMP system from September 30, 2013 to October 1, 2014.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Violation of State Statutes Regulating Controlled Substances)**

15 26. Respondent John E. Jessee is subject to disciplinary action for unprofessional conduct
16 pursuant to Code section 4301, subdivision (j), in that Respondent, as designated representative-
17 in-charge for Respondent AmerisourceBergen Drug Corp., violated a state statute regulating
18 controlled substances, Health and Safety Code section 11153.5, as set forth in paragraph 25
19 above.

20 **WATERFRONT PHARMACY**

21 27. Complainant incorporates by reference as though fully set forth herein the allegations
22 contained in paragraph 19 above.

23 28. On or about December 1, 2014, Board Inspectors C. H. and J. F. conducted an
24 inspection and investigation at Waterfront Pharmacy (WP) located in Stockton, California. WP's
25 pharmacist-in-charge, Joseph Manuel Huante, told the inspectors that he ordered medication
26 almost exclusively from ABDC.

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1 29. On or about September 25, 2015, C. H. sent an email to ABDC, requesting purchase
2 records of all hydrocodone/APAP 10/325 mg and promethazine with codeine syrup sold to WP
3 for the time period from August 27, 2012 to December 1, 2014.

4 30. On or about October 8, 2015, C. H. received the purchase records from ABDC. C. H.
5 determined based on the data received from ABDC that the wholesaler had furnished the
6 following amounts of controlled substances to WP. The quantities of the controlled substances
7 ordered by WP and the significant variances in WP's ordering pattern should have prompted
8 ABDC to conduct further inquiries into the legitimacy of the orders.

9 a. ABDC sold WP a total of 78,500 tablets of hydrocodone/APAP 10/325 mg from
10 August 2012 to December 2012, an average of 19,625 tablets per month. ABDC sold WP a total
11 of 353,500 tablets of hydrocodone/APAP 10/325 mg in 2013, an average of 29,458 tablets per
12 month. ABDC sold WP a total of 450,500 tablets of hydrocodone/APAP 10/325 mg from
13 January to November 2014, an average of 40,954 tablets per month.

14 b. ABDC sold WP a total of 423 bottles of promethazine with codeine syrup from
15 September 2012 to December 2012, an average of 105.75 bottles per month. ABDC sold WP a
16 total of 1,564 bottles of promethazine with codeine syrup in 2013, an average of 130 bottles per
17 month. ABDC sold WP a total of 1,491 bottles of bottles of promethazine with codeine syrup
18 from January to November 2014, an average of 135.5 bottles per month.

19 **Respondent AmerisourceBergen Drug Corp., Permit No. WLS 4383**

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Excessive Furnishing of Controlled Substances)**

22 31. Respondent AmerisourceBergen Drug Corp. is subject to disciplinary action for
23 unprofessional conduct pursuant to Code section 4301, subdivision (e), in that Respondent
24 furnished excessive amounts of the controlled substances hydrocodone/APAP 10/325 mg and
25 promethazine with codeine syrup to Waterfront Pharmacy without determining whether they were
26 being purchased for a legitimate medical purpose, in violation of Health and Safety Code section
27 11153.5, subdivision (a), as set forth in paragraph 30 above.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Violation of State Statutes Regulating Controlled Substances)**

3 32. Respondent AmerisourceBergen Drug Corp. is subject to disciplinary action for
4 unprofessional conduct pursuant to Code section 4301, subdivision (j), in that Respondent
5 violated a state statute regulating controlled substances, Health and Safety Code section 11153.5,
6 subdivision (a), as set forth in paragraph 31 above.

7 **Respondent John E. Jessee, Certificate No. EXC 13663**

8 **SEVENTH CAUSE FOR DISCIPLINE**

9 **(Excessive Furnishing of Controlled Substances)**

10 33. Respondent John E. Jessee is subject to disciplinary action for unprofessional conduct
11 pursuant to Code section 4301, subdivision (e), in that Respondent, as designated representative-
12 in-charge for Respondent AmerisourceBergen Drug Corp., furnished excessive amounts of the
13 controlled substances hydrocodone/APAP 10/325 mg and promethazine with codeine syrup to
14 Waterfront Pharmacy without determining whether they were being purchased for a legitimate
15 medical purpose, in violation of Health and Safety Code section 11153.5, subdivision (a), as set
16 forth in paragraph 30 above.

17 **EIGHTH CAUSE FOR DISCIPLINE**

18 **(Violation of State Statutes Regulating Controlled Substances)**

19 34. Respondent John E. Jessee is subject to disciplinary action for unprofessional conduct
20 pursuant to Code section 4301, subdivision (j), in that Respondent, as designated representative-
21 in-charge for Respondent AmerisourceBergen Drug Corp., violated a state statute regulating
22 controlled substances, Health and Safety Code section 11153.5, as set forth in paragraph 33
23 above.

24 **CITY CENTER PHARMACY**

25 35. Complainant incorporates by reference as though fully set forth herein the allegations
26 contained in paragraph 19 above.

27 36. On or about October 11, 2013, M. S. conducted an inspection of City Center
28 Pharmacy (CCP) located in Pittsburg, California, for suspicious purchasing of promethazine with

1 codeine syrup. CCP's pharmacist-in-charge, Steve Lee Boss (Boss), told M. S. during the
2 inspection that the pharmacy used wholesalers HD Smith (from 2009 to 2013), ABDC (from
3 2008 to 2013), McKesson (from 2012 to 2013), ParMed, and Valley Wholesale (from 2009 to
4 2013) for the purchase of controlled substances, and that ABDC and McKesson were their
5 primary vendors. M. S. obtained from CCP and their wholesalers the purchase summaries for
6 hydrocodone/APAP 10/325 mg, promethazine with codeine syrup, methadone 10 mg, and
7 oxycodone 30 mg. A large number of the controlled substances had been purchased from ABDC.
8 M. S. found based on the inspection and investigation that the pharmacy and Boss failed to
9 exercise their corresponding responsibility in ensuring that controlled substances were dispensed
10 for a legitimate medical purpose.²

11 37. On or about September 17, 2014, the Board initiated an investigation of ABDC.

12 38. M. S. determined based on the data received from CCP and ABDC that the
13 wholesaler had furnished the following amounts of controlled substances to CCP. The quantities
14 of the controlled substances ordered by CCP and the significant variances in CCP's ordering
15 pattern should have prompted ABDC to conduct further inquiries into the legitimacy of the
16 orders.

17 a. ABDC sold CCP a total of 108,500 tablets of hydrocodone/APAP 10/325 mg in 2011.
18 ABDC sold CCP a total of 55,500 tablets of hydrocodone/APAP 10/325 mg in 2012. ABDC sold
19 CCP a total of 80,500 tablets of hydrocodone/APAP 10/325 mg in 2013.

20 b. ABDC sold CCP a total of 146 bottles of promethazine with codeine syrup during the
21 last three months of 2010. 86 of those bottles were sold to CCP during the latter part of
22 December 2010. ABDC sold CCP a total of 530 bottles of promethazine with codeine syrup in
23 2011. ABDC sold CCP a total of 345 bottles of promethazine with codeine syrup in 2012.
24 ABDC sold CCP a total of 251 bottles of promethazine with codeine syrup in 2013.

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27 ² On November 15, 2017, in a disciplinary action titled "In the Matter of the Accusation
28 Against City Center Pharmacy, Inc.", Case No. 5245, the Board accepted the surrender of Boss' pharmacist license, Pharmacist License No. RPH 44467. The Board further ordered that Pharmacy Permit No. PHY 48981, issued to City Center Pharmacy, Inc., will be surrendered and accepted by the Board 75 days after the effective date of the Board's Decision and Order.

1 c. ABDC sold CCP a total of 82,800 tablets of methadone 10 mg from June 30, 2011 to
2 December 31, 2011. ABDC sold CCP a total of 99,200 tablet of methadone 10 mg in 2012.

3 d. ABDC sold CCP a total of 22,700 tablets of oxycodone 30 mg from July 2011 to
4 December 2011. ABDC sold CCP a total of 41,500 tablets of oxycodone 30 mg in 2012.

5 **Respondent AmerisourceBergen Drug Corp., Permit No. WLS 4383**

6 **NINTH CAUSE FOR DISCIPLINE**

7 **(Excessive Furnishing of Controlled Substances)**

8 39. Respondent AmerisourceBergen Drug Corp. is subject to disciplinary action for
9 unprofessional conduct pursuant to Code section 4301, subdivision (e), in that Respondent
10 furnished excessive amounts of the controlled substances hydrocodone/APAP 10/325 mg,
11 promethazine with codeine syrup, methadone 10 mg, and oxycodone 30 mg to City Center
12 Pharmacy without determining whether they were being purchased for a legitimate medical
13 purpose, in violation of Health and Safety Code section 11153.5, subdivision (a), as set forth in
14 paragraph 38 above.

15 **TENTH CAUSE FOR DISCIPLINE**

16 **(Violation of State Statutes Regulating Controlled Substances)**

17 40. Respondent AmerisourceBergen Drug Corp. is subject to disciplinary action for
18 unprofessional conduct pursuant to Code section 4301, subdivision (j), in that Respondent
19 violated a state statute regulating controlled substances, Health and Safety Code section 11153.5,
20 subdivision (a), as set forth in paragraph 39 above.

21 **Respondent John E. Jessee, Certificate No. EXC 13663**

22 **ELEVENTH CAUSE FOR DISCIPLINE**

23 **(Excessive Furnishing of Controlled Substances)**

24 41. Respondent John E. Jessee is subject to disciplinary action for unprofessional conduct
25 pursuant to Code section 4301, subdivision (e), in that Respondent, as designated representative-
26 in-charge for Respondent AmerisourceBergen Drug Corp., furnished excessive amounts of the
27 controlled substances hydrocodone/APAP 10/325 mg, promethazine with codeine syrup,
28 methadone 10 mg, and oxycodone 30 mg to City Center Pharmacy without determining whether

1 they were being purchased for a legitimate medical purpose, in violation of Health and Safety
2 Code section 11153.5, subdivision (a), as set forth in paragraph 38 above.

3 **TWELFTH CAUSE FOR DISCIPLINE**

4 **(Violation of State Statutes Regulating Controlled Substances)**

5 42. Respondent John E. Jessee is subject to disciplinary action for unprofessional conduct
6 pursuant to Code section 4301, subdivision (j), in that Respondent, as designated representative-
7 in-charge for Respondent AmerisourceBergen Drug Corp., violated a state statute regulating
8 controlled substances, Health and Safety Code section 11153.5, as set forth in paragraph 41
9 above.

10 **DRATE PHARMACY**

11 43. Complainant incorporates by reference as though fully set forth herein the allegations
12 contained in paragraph 19 above.

13 44. On or about January 6, 2014, January 13, 2014, and January 28, 2014, Board
14 Inspectors M. S. and P. P. conducted inspections of Drate Pharmacy (DP) located in Berkeley,
15 California, and identified potential issues relating to corresponding responsibility and record-
16 keeping requirements in addition to other violations.

17 45. In or about February 2014, M. S. received various documents from DP, including
18 purchase summaries for hydrocodone/APAP 10/325 mg and promethazine with codeine syrup.
19 DP had purchased the controlled substances from several vendors, including ABDC. M. S.
20 determined that on and between December 14, 2011 and October 1, 2012, DP had purchased a
21 total of 53,500 tablets of hydrocodone/APAP 10/325 mg and 299 pints of promethazine with
22 codeine syrup from ABDC.

23 46. On or about February 12, 2014, ABDC provided M. S. with sales transactional data
24 (purchase summaries) for D. P.

25 47. On or about September 17, 2014, the Board initiated an investigation of ABDC.

26 48. M. S. determined based on the data received from DP and ABDC that the wholesaler
27 had furnished the following amounts of controlled substances to DP. The quantities of the
28

1 controlled substances ordered by DP and the significant variances in DP's ordering pattern should
2 have prompted ABDC to conduct further inquiries into the legitimacy of the orders.

3 a. ABDC sold DP a total of 2,000 tablets of hydrocodone/APAP 10/325 mg from
4 February to April 2012. ABDC sold DP a total of 4,000 tablets of hydrocodone/APAP 10/325
5 mg in May 2012. ABDC sold DP a total of 45,500 tablets of hydrocodone/APAP 10/325 mg
6 from June to September 2012.

7 b. ABDC sold DP 4 pints of promethazine with codeine syrup in January 2012, 30 pints
8 of promethazine with codeine syrup in February 2012, 12 pints of promethazine with codeine
9 syrup in March 2012 (7 of which were returned by DP), 12 pints of promethazine with codeine
10 syrup in April 2012, 30 pints of promethazine with codeine syrup in May 2012, and 72 pints of
11 promethazine with codeine syrup in July 2012. ABDC sold DP a total of 248 pints of
12 promethazine with codeine syrup from May to September 2012.

13 **Respondent AmerisourceBergen Drug Corp., Permit No. WLS 4383**

14 **THIRTEENTH CAUSE FOR DISCIPLINE**

15 **(Excessive Furnishing of Controlled Substances)**

16 49. Respondent AmerisourceBergen Drug Corp. is subject to disciplinary action for
17 unprofessional conduct pursuant to Code section 4301, subdivision (e), in that Respondent
18 furnished excessive amounts of the controlled substances hydrocodone/APAP 10/325 mg and
19 promethazine with codeine syrup to Drate Pharmacy without determining whether they were
20 being purchased for a legitimate medical purpose, in violation of Health and Safety Code section
21 11153.5, subdivision (a), as set forth in paragraph 48 above.

22 **FOURTEENTH CAUSE FOR DISCIPLINE**

23 **(Violation of State Statutes Regulating Controlled Substances)**

24 50. Respondent AmerisourceBergen Drug Corp. is subject to disciplinary action for
25 unprofessional conduct pursuant to Code section 4301, subdivision (j), in that Respondent
26 violated a state statute regulating controlled substances, Health and Safety Code section 11153.5,
27 subdivision (a), as set forth in paragraph 49 above.

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1 **Respondent John E. Jessee, Certificate No. EXC 13663**

2 **FIFTEENTH CAUSE FOR DISCIPLINE**

3 **(Excessive Furnishing of Controlled Substances)**

4 51. Respondent John E. Jessee is subject to disciplinary action for unprofessional conduct
5 pursuant to Code section 4301, subdivision (e), in that Respondent, as designated representative-
6 in-charge for Respondent AmerisourceBergen Drug Corp., furnished excessive amounts of the
7 controlled substances hydrocodone/APAP 10/325 mg and promethazine with codeine syrup to
8 Drate Pharmacy without determining whether they were being purchased for a legitimate medical
9 purpose, in violation of Health and Safety Code section 11153.5, subdivision (a), as set forth in
10 paragraph 48 above.

11 **SIXTEENTH CAUSE FOR DISCIPLINE**

12 **(Violation of State Statutes Regulating Controlled Substances)**

13 52. Respondent John E. Jessee is subject to disciplinary action for unprofessional conduct
14 pursuant to Code section 4301, subdivision (j), in that Respondent, as designated representative-
15 in-charge for Respondent AmerisourceBergen Drug Corp., violated a state statute regulating
16 controlled substances, Health and Safety Code section 11153.5, as set forth in paragraph 51
17 above.

18 **DISCIPLINE CONSIDERATIONS**

19 53. To determine the degree of discipline, if any, to be imposed on Respondents,
20 Complainant alleges the following:

21 54. On or about May 24, 2018, in Accusation No. 5078, the Board of Pharmacy issued a
22 Letter of Public Reproval to Respondent AmerisourceBergen Drug Corp., and to Respondent
23 Jessee, as the designated representative-in- charge, for failing to ensure that a pharmacist sign for
24 and receive dangerous drug deliveries.


25
26 **PRAYER**

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

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1. Revoking or suspending Wholesaler Permit Number WLS 4383, issued to AmerisourceBergen Drug Corp.;
2. Revoking or suspending Designated Representative-in-Charge Number EXC 13663, issued to John E. Jessee;
3. Ordering AmerisourceBergen Drug Corp. and John E. Jessee to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
4. Taking such other and further action as deemed necessary and proper.

DATED: August 2, 2019 _____



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

SA2017307022

1 XAVIER BECERRA
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KAREN R. DENVER
Deputy Attorney General
4 State Bar No. 197268
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7886
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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Case No. 6443

13 **AMERISOURCEBERGEN DRUG CORP.**
14 **1325 W. Striker Avenue**
15 **Sacramento, California 95834**

A C C U S A T I O N

16 **Wholesaler Permit No. WLS 4383**

17 **and**

18 **JOHN E. JESSEE**
19 **1325 W. Striker Avenue**
20 **Sacramento, California 95834**

21 **Designated Representative-in-Charge**
22 **Certificate No. EXC 13663**

23 Respondents.

24 Complainant alleges:

25 **PARTIES**

26 1. Anne Sodergren (Complainant) brings this Accusation solely in her official capacity
27 as the Interim Executive Officer of the Board of Pharmacy (Board), Department of Consumer
28 Affairs.

29 2. On or about February 2, 2004, the Board issued Wholesaler Permit Number WLS
30 4383 to AmerisourceBergen Drug Corp. (Respondent AmerisourceBergen Drug Corp.). On and
31 between April 30, 2004 and March 1, 2015, John E. Jessee (Respondent Jessee) was the

1 designated representative-in-charge for Respondent AmerisourceBergen Drug Corp. On or about
2 March 1, 2015, Shawn Patrick McGuire replaced Respondent Jessee as the designated
3 representative-in-charge. The wholesaler permit was in full force and effect at all times relevant
4 to the charges brought in the Accusation and will expire on February 1, 2020, unless renewed.

5 3. On or about March 18, 1997, the Board issued Designated Representative-in-Charge
6 Certificate Number EXC 13663 to Respondent Jessee. The designated representative-in-charge
7 certificate was in full force and effect at all times relevant to the charges brought in the
8 Accusation and will expire on March 1, 2020, unless renewed.

9 **JURISDICTION**

10 4. This Accusation is brought before the Board under the authority of the following
11 laws. All section references are to the Business and Professions Code (Code) unless otherwise
12 indicated.

13 5. Code section 4011 provides that the Board shall administer and enforce both the
14 Pharmacy Law [Bus. & Prof. Code § 4000 et seq.] and the Uniform Controlled Substances Act
15 [Health & Safety Code § 11000 et seq.].

16 6. Code section 4300 provides that every license issued by the Board may be suspended
17 or revoked.

18 7. Code section 4301.1 provides that the expiration, cancellation, forfeiture or
19 suspension of a board-issued license by operation of law or by order or decision of the Board or a
20 court of law, the placement of a license on a retired status, or the voluntary surrender of a license
21 by a licensee shall not deprive the Board of jurisdiction to commence or proceed with any
22 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
23 suspending or revoking the license.

24 **STATUTORY AND REGULATORY PROVISIONS**

25 8. Code section 4300 states, in pertinent part:

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

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

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(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

9. Code section 4301 states, in pertinent part:

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

. . .

(e) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining whether the furnishing of controlled substances is clearly excessive shall include, but not be limited to, the amount of controlled substances furnished, the previous ordering pattern of the customer (including size and frequency of orders), the type and size of the customer, and where and to whom the customer distributes its product.

. . .

(j) The violation of any of the statutes of this state . . . regulating controlled substances and dangerous drugs . . .

10. Code section 4160, subdivision (d), provides that the designated representative-in-charge shall be responsible for the wholesaler's compliance with state and federal laws governing wholesalers.

11. Health and Safety Code section 11153.5 states:

(a) No wholesaler or manufacturer, or agent or employee of a wholesaler or manufacturer, shall furnish controlled substances for other than legitimate medical purposes.

(b) Anyone who violates this section knowing, or having a conscious disregard for the fact, that the controlled substances are for other than a legitimate medical purpose shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail not exceeding one year, or by a fine not exceeding twenty thousand dollars (\$20,000), or by both that fine and imprisonment.

(c) Factors to be considered in determining whether a wholesaler or manufacturer, or agent or employee of a wholesaler or manufacturer, furnished

1 controlled substances knowing or having a conscious disregard for the fact that the
2 controlled substances are for other than legitimate medical purposes shall include, but
3 not be limited to, whether the use of controlled substances was for purposes of
4 increasing athletic ability or performance, the amount of controlled substances
5 furnished, the previous ordering pattern of the customer (including size and frequency
6 of orders), the type and size of the customer, and where and to whom the customer
7 distributes the product.

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10 **COST RECOVERY**

11 12. Code section 125.3 states, 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.

15 **DRUG CLASSIFICATIONS**

16 13. “Norco” is a brand name for a combination drug containing hydrocodone and
17 acetaminophen (APAP) and is used to treat pain. Norco was previously designated as a Schedule
18 III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), but
19 was reclassified as a Schedule II controlled substance pursuant to Title 21, Code of Federal
20 Regulations, section 1308.12, subdivision (b)(1)(vi), effective October 6, 2014. Norco is a
21 dangerous drug pursuant to Code section 4022.

22 14. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code
23 section 11055, subdivision (b)(1)(M), and is used to treat pain. Oxycodone is a dangerous drug
24 pursuant to Code section 4022. “Oxycodone IR” and “OxyContin” are brand names for
25 oxycodone.

26 15. Promethazine with codeine syrup is a Schedule V controlled substance pursuant to
27 Health and Safety Code section 11058, subdivision (c)(1), and is used as a cough suppressant.
28 Promethazine with codeine syrup is a dangerous drug pursuant to Code section 4022. “Phenergan
with Codeine Syrup” is a brand of promethazine with codeine syrup.

16. Methadone is a Schedule II controlled substance pursuant to Health and Safety Code
section 11055, subdivision (c)(14), and is used to treat pain. Methadone is a dangerous drug
pursuant to Code section 4022. “Methadose” and “Dolophine” are brand names for methadone.

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JEFFERSON PLAZA PHARMACY

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2 17. On or about July 12, 2013, Pharmacy Board Inspector M. S. conducted an inspection
3 of Jefferson Plaza Pharmacy (JPP) located in Redwood City, California. JPP’s pharmacist-in-
4 charge, Johnny Pinghon Chan (Chan), told M. S. during the inspection that Respondent
5 AmerisourceBergen Drug Corp. (ABDC) was the pharmacy’s primary wholesaler. M. S.
6 obtained purchase summaries from JPP for all controlled substances purchased from ABDC
7 between July 11, 2010 and July 11, 2013, including hydrocodone/APAP 10/325 mg and
8 oxycodone 30 mg. M. S. found based on her inspection and subsequent investigation of JPP that
9 the pharmacy and Chan had failed to exercise their corresponding responsibility in ensuring that
10 the above controlled substances were dispensed for a legitimate medical purpose.¹

11 18. On or about September 9, 2014, the Board initiated an investigation of ABDC.

12 19. On or about October 3, 2014, M. S. interviewed D. M., Senior Director of Corporate
13 Security at ABDC. D. M. stated that their “Order Monitoring Program” (OMP) detects controlled
14 substance orders by customers and is linked to their order receiving program “SAP”. The OMP
15 system monitors 79 different drug families and breaks them down further to individual drugs,
16 such as hydrocodone or oxycodone products, to establish thresholds. The thresholds are initially
17 based on the averages for the customer type and then adjusted based on the abuse potential for the
18 drug. Thresholds are also determined by the purchase size of the customers (small, medium,
19 large and extra-large) based on the volume of overall purchases made by the customer. The
20 customer is then grouped into the type of DEA license they hold (hospital, retail, etc.). The OMP
21 is alerted by SAP if a customer’s purchases of controlled substances exceed the thresholds within
22 a 30-day rolling calendar. The customer’s order is blocked and flagged for review. ABDC’s
23 compliance team then reviews the order and forwards the flagged order to their corporate
24 diversion team. The order is then accepted or rejected. ABDC will notify the DEA if they
25 suspend a customer’s ordering privileges. If an order is flagged and accepted, they conduct

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27 ¹ On April 8, 2016, in a disciplinary action titled “In the Matter of the Accusation Against
28 Jefferson Plaza Pharmacy”, Case No. 5113, Pharmacy Permit No. PHY 11062, issued to Medical
Center Pharmacies, Inc., doing business as Jefferson Plaza Pharmacy, and Pharmacist License
No. 32261, issued to Johnny Pinghon Chan, were revoked.

1 additional investigation, including performing a detailed review of the pharmacy if the evaluator
2 believes the customer is “high risk”. ABDC also has an outside surveillance company (Pharma
3 Compliance) and/or their internal staff perform site visits if they are concerned about a particular
4 customer. If ABDC determines that a customer is a risk, they will notify the customer in writing
5 that their ordering privileges have been suspended.

6 20. D. M. stated that on September 30, 2013, Pharma Compliance conducted a site
7 inspection at JPP based on a review of the pharmacy’s purchase history. D. M. claimed that
8 ABDC continued monitoring JPP’s account until October 1, 2014, when they sent the pharmacy a
9 letter notifying them that their ordering privileges were being terminated effective October 6,
10 2014. At the conclusion of the interview, M. S. requested that ABDC provide her with records of
11 all Schedule II to V controlled substances sold to JPP and all credits issued to the pharmacy from
12 July 11, 2010 to July 11, 2013, and September 29, 2013 to September 29, 2014.

13 21. On or about October 6, 2014, ABDC provided M. S. with various documents,
14 including sales transaction information for controlled substances. M. S. determined based on the
15 data received from ABDC that the wholesaler had furnished the following amounts of
16 hydrocodone/APAP 10/325 mg and oxycodone 30 mg to JPP. The quantities of the controlled
17 substances ordered by JPP and the significant variances in the pharmacy’s ordering pattern should
18 have prompted ABDC to conduct further inquiries into the legitimacy of the orders.

19 a. ABDC sold JPP a total of 203,500 tablets of hydrocodone/APAP 10/325 mg (Norco)
20 from July 11, 2010 to July 11, 2013. ABDC sold JPP a total of 40,100 tablets from September
21 29, 2013 to September 29, 2014.

22 b. ABDC sold JPP a total of 499,000 tablets of oxycodone 30 mg from July 11, 2010 to
23 July 11, 2013. ABDC sold JPP a total of 91,800 tablets of oxycodone 30 mg from September 29,
24 2013 to September 29, 2014.

25 22. On or about October 7, 2014, M. S. received an email from D. M. D. M. stated that
26 after Pharma Compliance conducted the site inspection at JPP, there were a total of 125 orders
27 flagged for review by ABDC’s OMP system for the pharmacy (an average of 1 flagged order
28 every three days from September 30, 2013 to October 1, 2014). D. M. also stated that ABDC

1 initiated their investigation of JPP due to the pharmacy's high volume of purchases of oxycodone
2 30 mg as identified through their monthly review process.

3 **Respondent AmerisourceBergen Drug Corp., Permit No. WLS 4383**

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Excessive Furnishing of Controlled Substances)**

6 23. Respondent AmerisourceBergen Drug Corp. is subject to disciplinary action for
7 unprofessional conduct pursuant to Code section 4301, subdivision (e), in that Respondent
8 furnished excessive amounts of the controlled substances hydrocodone/APAP 10/325 mg and
9 oxycodone 30 mg to Jefferson Plaza Pharmacy without determining whether they were being
10 purchased for a legitimate medical purpose, in violation of Health and Safety Code section
11 11153.5, subdivision (a), as set forth in paragraph 21 above. Further, Respondent failed to
12 terminate Jefferson Plaza Pharmacy's ordering privileges until October 6, 2014, despite the fact
13 that 125 of the pharmacy's orders were flagged for review by Respondent's OMP system from
14 September 30, 2013 to October 1, 2014.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Violation of State Statutes Regulating Controlled Substances)**

17 24. Respondent AmerisourceBergen Drug Corp. is subject to disciplinary action for
18 unprofessional conduct pursuant to Code section 4301, subdivision (j), in that Respondent
19 violated a state statute regulating controlled substances, Health and Safety Code section 11153.5,
20 subdivision (a), as set forth in paragraph 23 above.

21 **Respondent John E. Jessee, Certificate No. EXC 13663**

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Excessive Furnishing of Controlled Substances)**

24 25. Respondent John E. Jessee is subject to disciplinary action for unprofessional conduct
25 pursuant to Code section 4301, subdivision (e), in that Respondent, as designated representative-
26 in-charge for Respondent AmerisourceBergen Drug Corp., furnished excessive amounts of the
27 controlled substances hydrocodone/APAP 10/325 mg and oxycodone 30 mg to Jefferson Plaza
28 Pharmacy without determining whether they were being purchased for a legitimate medical

1 purpose, in violation of Health and Safety Code section 11153.5, subdivision (a), as set forth in
2 paragraph 21 above. Further, Respondent failed to terminate Jefferson Plaza Pharmacy's
3 ordering privileges until October 6, 2014, despite the fact that 125 of the pharmacy's orders were
4 flagged for review by Respondent's OMP system from September 30, 2013 to October 1, 2014.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Violation of State Statutes Regulating Controlled Substances)**

7 26. Respondent John E. Jessee is subject to disciplinary action for unprofessional conduct
8 pursuant to Code section 4301, subdivision (j), in that Respondent, as designated representative-
9 in-charge for Respondent AmerisourceBergen Drug Corp., violated a state statute regulating
10 controlled substances, Health and Safety Code section 11153.5, as set forth in paragraph 25
11 above.

12 **WATERFRONT PHARMACY**

13 27. Complainant incorporates by reference as though fully set forth herein the allegations
14 contained in paragraph 19 above.

15 28. On or about December 1, 2014, Board Inspectors C. H. and J. F. conducted an
16 inspection and investigation at Waterfront Pharmacy (WP) located in Stockton, California. WP's
17 pharmacist-in-charge, Joseph Manuel Huante, told the inspectors that he ordered medication
18 almost exclusively from ABDC.

19 29. On or about September 25, 2015, C. H. sent an email to ABDC, requesting purchase
20 records of all hydrocodone/APAP 10/325 mg and promethazine with codeine syrup sold to WP
21 for the time period from August 27, 2012 to December 1, 2014.

22 30. On or about October 8, 2015, C. H. received the purchase records from ABDC. C. H.
23 determined based on the data received from ABDC that the wholesaler had furnished the
24 following amounts of controlled substances to WP. The quantities of the controlled substances
25 ordered by WP and the significant variances in WP's ordering pattern should have prompted
26 ABDC to conduct further inquiries into the legitimacy of the orders.

27 a. ABDC sold WP a total of 78,500 tablets of hydrocodone/APAP 10/325 mg from
28 August 2012 to December 2012, an average of 19,625 tablets per month. ABDC sold WP a total

1 of 353,500 tablets of hydrocodone/APAP 10/325 mg in 2013, an average of 29,458 tablets per
2 month. ABDC sold WP a total of 450,500 tablets of hydrocodone/APAP 10/325 mg from
3 January to November 2014, an average of 40,954 tablets per month.

4 b. ABDC sold WP a total of 423 bottles of promethazine with codeine syrup from
5 September 2012 to December 2012, an average of 105.75 bottles per month. ABDC sold WP a
6 total of 1,564 bottles of promethazine with codeine syrup in 2013, an average of 130 bottles per
7 month. ABDC sold WP a total of 1,491 bottles of bottles of promethazine with codeine syrup
8 from January to November 2014, an average of 135.5 bottles per month.

9 **Respondent AmerisourceBergen Drug Corp., Permit No. WLS 4383**

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Excessive Furnishing of Controlled Substances)**

12 31. Respondent AmerisourceBergen Drug Corp. is subject to disciplinary action for
13 unprofessional conduct pursuant to Code section 4301, subdivision (e), in that Respondent
14 furnished excessive amounts of the controlled substances hydrocodone/APAP 10/325 mg and
15 promethazine with codeine syrup to Waterfront Pharmacy without determining whether they were
16 being purchased for a legitimate medical purpose, in violation of Health and Safety Code section
17 11153.5, subdivision (a), as set forth in paragraph 30 above.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 **(Violation of State Statutes Regulating Controlled Substances)**

20 32. Respondent AmerisourceBergen Drug Corp. is subject to disciplinary action for
21 unprofessional conduct pursuant to Code section 4301, subdivision (j), in that Respondent
22 violated a state statute regulating controlled substances, Health and Safety Code section 11153.5,
23 subdivision (a), as set forth in paragraph 31 above.

24 **Respondent John E. Jessee, Certificate No. EXC 13663**

25 **SEVENTH CAUSE FOR DISCIPLINE**

26 **(Excessive Furnishing of Controlled Substances)**

27 33. Respondent John E. Jessee is subject to disciplinary action for unprofessional conduct
28 pursuant to Code section 4301, subdivision (e), in that Respondent, as designated representative-

1 in-charge for Respondent AmerisourceBergen Drug Corp., furnished excessive amounts of the
2 controlled substances hydrocodone/APAP 10/325 mg and promethazine with codeine syrup to
3 Waterfront Pharmacy without determining whether they were being purchased for a legitimate
4 medical purpose, in violation of Health and Safety Code section 11153.5, subdivision (a), as set
5 forth in paragraph 30 above.

6 **EIGHTH CAUSE FOR DISCIPLINE**

7 **(Violation of State Statutes Regulating Controlled Substances)**

8 34. Respondent John E. Jessee is subject to disciplinary action for unprofessional conduct
9 pursuant to Code section 4301, subdivision (j), in that Respondent, as designated representative-
10 in-charge for Respondent AmerisourceBergen Drug Corp., violated a state statute regulating
11 controlled substances, Health and Safety Code section 11153.5, as set forth in paragraph 33
12 above.

13 **CITY CENTER PHARMACY**

14 35. Complainant incorporates by reference as though fully set forth herein the allegations
15 contained in paragraph 19 above.

16 36. On or about October 11, 2013, M. S. conducted an inspection of City Center
17 Pharmacy (CCP) located in Pittsburg, California, for suspicious purchasing of promethazine with
18 codeine syrup. CCP's pharmacist-in-charge, Steve Lee Boss (Boss), told M. S. during the
19 inspection that the pharmacy used wholesalers HD Smith (from 2009 to 2013), ABDC (from
20 2008 to 2013), McKesson (from 2012 to 2013), ParMed, and Valley Wholesale (from 2009 to
21 2013) for the purchase of controlled substances, and that ABDC and McKesson were their
22 primary vendors. M. S. obtained from CCP and their wholesalers the purchase summaries for
23 hydrocodone/APAP 10/325 mg, promethazine with codeine syrup, methadone 10 mg, and
24 oxycodone 30 mg. A large number of the controlled substances had been purchased from ABDC.
25 M. S. found based on the inspection and investigation that the pharmacy and Boss failed to
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1 exercise their corresponding responsibility in ensuring that controlled substances were dispensed
2 for a legitimate medical purpose.²

3 37. On or about September 17, 2014, the Board initiated an investigation of ABDC.

4 38. M. S. determined based on the data received from CCP and ABDC that the
5 wholesaler had furnished the following amounts of controlled substances to CCP. The quantities
6 of the controlled substances ordered by CCP and the significant variances in CCP's ordering
7 pattern should have prompted ABDC to conduct further inquiries into the legitimacy of the
8 orders.

9 a. ABDC sold CCP a total of 108,500 tablets of hydrocodone/APAP 10/325 mg in 2011.
10 ABDC sold CCP a total of 55,500 tablets of hydrocodone/APAP 10/325 mg in 2012. ABDC sold
11 CCP a total of 80,500 tablets of hydrocodone/APAP 10/325 mg in 2013.

12 b. ABDC sold CCP a total of 146 bottles of promethazine with codeine syrup during the
13 last three months of 2010. 86 of those bottles were sold to CCP during the latter part of
14 December 2010. ABDC sold CCP a total of 530 bottles of promethazine with codeine syrup in
15 2011. ABDC sold CCP a total of 345 bottles of promethazine with codeine syrup in 2012.
16 ABDC sold CCP a total of 251 bottles of promethazine with codeine syrup in 2013.

17 c. ABDC sold CCP a total of 82,800 tablets of methadone 10 mg from June 30, 2011 to
18 December 31, 2011. ABDC sold CCP a total of 99,200 tablet of methadone 10 mg in 2012.

19 d. ABDC sold CCP a total of 22,700 tablets of oxycodone 30 mg from July 2011 to
20 December 2011. ABDC sold CCP a total of 41,500 tablets of oxycodone 30 mg in 2012.

21 **Respondent AmerisourceBergen Drug Corp., Permit No. WLS 4383**

22 **NINTH CAUSE FOR DISCIPLINE**

23 **(Excessive Furnishing of Controlled Substances)**

24 39. Respondent AmerisourceBergen Drug Corp. is subject to disciplinary action for
25 unprofessional conduct pursuant to Code section 4301, subdivision (e), in that Respondent

26 ² On November 15, 2017, in a disciplinary action titled "In the Matter of the Accusation
27 Against City Center Pharmacy, Inc.", Case No. 5245, the Board accepted the surrender of Boss'
28 pharmacist license, Pharmacist License No. RPH 44467. The Board further ordered that
Pharmacy Permit No. PHY 48981, issued to City Center Pharmacy, Inc., will be surrendered and
accepted by the Board 75 days after the effective date of the Board's Decision and Order.

1 furnished excessive amounts of the controlled substances hydrocodone/APAP 10/325 mg,
2 promethazine with codeine syrup, methadone 10 mg, and oxycodone 30 mg to City Center
3 Pharmacy without determining whether they were being purchased for a legitimate medical
4 purpose, in violation of Health and Safety Code section 11153.5, subdivision (a), as set forth in
5 paragraph 38 above.

6 **TENTH CAUSE FOR DISCIPLINE**

7 **(Violation of State Statutes Regulating Controlled Substances)**

8 40. Respondent AmerisourceBergen Drug Corp. is subject to disciplinary action for
9 unprofessional conduct pursuant to Code section 4301, subdivision (j), in that Respondent
10 violated a state statute regulating controlled substances, Health and Safety Code section 11153.5,
11 subdivision (a), as set forth in paragraph 39 above.

12 **Respondent John E. Jessee, Certificate No. EXC 13663**

13 **ELEVENTH CAUSE FOR DISCIPLINE**

14 **(Excessive Furnishing of Controlled Substances)**

15 41. Respondent John E. Jessee is subject to disciplinary action for unprofessional conduct
16 pursuant to Code section 4301, subdivision (e), in that Respondent, as designated representative-
17 in-charge for Respondent AmerisourceBergen Drug Corp., furnished excessive amounts of the
18 controlled substances hydrocodone/APAP 10/325 mg, promethazine with codeine syrup,
19 methadone 10 mg, and oxycodone 30 mg to City Center Pharmacy without determining whether
20 they were being purchased for a legitimate medical purpose, in violation of Health and Safety
21 Code section 11153.5, subdivision (a), as set forth in paragraph 38 above.

22 **TWELFTH CAUSE FOR DISCIPLINE**

23 **(Violation of State Statutes Regulating Controlled Substances)**

24 42. Respondent John E. Jessee is subject to disciplinary action for unprofessional conduct
25 pursuant to Code section 4301, subdivision (j), in that Respondent, as designated representative-
26 in-charge for Respondent AmerisourceBergen Drug Corp., violated a state statute regulating
27 controlled substances, Health and Safety Code section 11153.5, as set forth in paragraph 41
28 above.

DRATE PHARMACY

43. Complainant incorporates by reference as though fully set forth herein the allegations contained in paragraph 19 above.

44. On or about January 6, 2014, January 13, 2014, and January 28, 2014, Board Inspectors M. S. and P. P. conducted inspections of Drate Pharmacy (DP) located in Berkeley, California, and identified potential issues relating to corresponding responsibility and record-keeping requirements in addition to other violations.

45. In or about February 2014, M. S. received various documents from DP, including purchase summaries for hydrocodone/APAP 10/325 mg and promethazine with codeine syrup. DP had purchased the controlled substances from several vendors, including ABDC. M. S. determined that on and between December 14, 2011 and October 1, 2012, DP had purchased a total of 53,500 tablets of hydrocodone/APAP 10/325 mg and 299 pints of promethazine with codeine syrup from ABDC.

46. On or about February 12, 2014, ABDC provided M. S. with sales transactional data (purchase summaries) for D. P.

47. On or about September 17, 2014, the Board initiated an investigation of ABDC.

48. M. S. determined based on the data received from DP and ABDC that the wholesaler had furnished the following amounts of controlled substances to DP. The quantities of the controlled substances ordered by DP and the significant variances in DP's ordering pattern should have prompted ABDC to conduct further inquiries into the legitimacy of the orders.

a. ABDC sold DP a total of 2,000 tablets of hydrocodone/APAP 10/325 mg from February to April 2012. ABDC sold DP a total of 4,000 tablets of hydrocodone/APAP 10/325 mg in May 2012. ABDC sold DP a total of 45,500 tablets of hydrocodone/APAP 10/325 mg from June to September 2012.

b. ABDC sold DP 4 pints of promethazine with codeine syrup in January 2012, 30 pints of promethazine with codeine syrup in February 2012, 12 pints of promethazine with codeine syrup in March 2012 (7 of which were returned by DP), 12 pints of promethazine with codeine syrup in April 2012, 30 pints of promethazine with codeine syrup in May 2012, and 72 pints of

1 promethazine with codeine syrup in July 2012. ABDC sold DP a total of 248 pints of
2 promethazine with codeine syrup from May to September 2012.

3 **Respondent AmerisourceBergen Drug Corp., Permit No. WLS 4383**

4 **THIRTEENTH CAUSE FOR DISCIPLINE**

5 **(Excessive Furnishing of Controlled Substances)**

6 49. Respondent AmerisourceBergen Drug Corp. is subject to disciplinary action for
7 unprofessional conduct pursuant to Code section 4301, subdivision (e), in that Respondent
8 furnished excessive amounts of the controlled substances hydrocodone/APAP 10/325 mg and
9 promethazine with codeine syrup to Drate Pharmacy without determining whether they were
10 being purchased for a legitimate medical purpose, in violation of Health and Safety Code section
11 11153.5, subdivision (a), as set forth in paragraph 48 above.

12 **FOURTEENTH CAUSE FOR DISCIPLINE**

13 **(Violation of State Statutes Regulating Controlled Substances)**

14 50. Respondent AmerisourceBergen Drug Corp. is subject to disciplinary action for
15 unprofessional conduct pursuant to Code section 4301, subdivision (j), in that Respondent
16 violated a state statute regulating controlled substances, Health and Safety Code section 11153.5,
17 subdivision (a), as set forth in paragraph 49 above.

18 **Respondent John E. Jessee, Certificate No. EXC 13663**

19 **FIFTEENTH CAUSE FOR DISCIPLINE**

20 **(Excessive Furnishing of Controlled Substances)**

21 51. Respondent John E. Jessee is subject to disciplinary action for unprofessional conduct
22 pursuant to Code section 4301, subdivision (e), in that Respondent, as designated representative-
23 in-charge for Respondent AmerisourceBergen Drug Corp., furnished excessive amounts of the
24 controlled substances hydrocodone/APAP 10/325 mg and promethazine with codeine syrup to
25 Drate Pharmacy without determining whether they were being purchased for a legitimate medical
26 purpose, in violation of Health and Safety Code section 11153.5, subdivision (a), as set forth in
27 paragraph 48 above.

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1 **SIXTEENTH CAUSE FOR DISCIPLINE**

2 **(Violation of State Statutes Regulating Controlled Substances)**

3 52. Respondent John E. Jessee is subject to disciplinary action for unprofessional conduct
4 pursuant to Code section 4301, subdivision (j), in that Respondent, as designated representative-
5 in-charge for Respondent AmerisourceBergen Drug Corp., violated a state statute regulating
6 controlled substances, Health and Safety Code section 11153.5, as set forth in paragraph 51
7 above.

8 **DISCIPLINE CONSIDERATIONS**

9 53. To determine the degree of discipline, if any, to be imposed on Respondents,
10 Complainant alleges the following:

11 54. On or about January 10, 2008, in a prior action, the Board issued Citation Number CI
12 2007 35280 to Respondent AmerisourceBergen Drug Corp. and ordered it to pay a \$2,500.00 fine
13 for, while under the supervision of the designated representative-in-charge John E. Jessee, failing
14 to establish procedures to ensure that dangerous drugs and devices are delivered only to
15 authorized premises, and received and signed for by a pharmacist. That Citation is now final and
16 is incorporated by reference as if fully set forth.

17 55. On or about June 25, 2014, the Board issued Letters of Admonishment to Respondent
18 AmerisourceBergen Drug Corp., and to Respondent Jessee, as the designated representative-in-
19 charge, for failing to ensure that a pharmacist sign for and receive a dangerous drug delivery.

20 **PRAAYER**

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

23 1. Revoking or suspending Wholesaler Permit Number WLS 4383, issued to
24 AmerisourceBergen Drug Corp.;

25 2. Revoking or suspending Designated Representative-in-Charge Number EXC 13663,
26 issued to John E. Jessee;

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3. Ordering AmerisourceBergen Drug Corp. and John E. Jessee to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: May 30, 2019



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

SA2017307022