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

12 In the Matter of the Accusation Against:

Case No. 6850

13 **MCKESSON CORPORATION, DBA**
14 **MCKESSON DRUG COMPANY**
15 **9501 S. Norwalk**
Santa Fe Springs, CA 90670

ACCUSATION

16 **Wholesale Permit No. WLS 3076,**

17 **and**

18 **JOHN F. BOHLINGER**
19 **9501 Norwalk Blvd.**
Santa Fe Springs, CA 90670

20 **Designated Representative No. EXC 17318**

21 Respondents.

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23
24 **PARTIES**

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

27 2. On or about October 2, 1995, the Board of Pharmacy issued Wholesale Permit
28 Number WLS 3076 to McKesson Corporation, dba McKesson Drug Company (Respondent

1 McKesson). The Wholesale Permit was in full force and effect at all times relevant to the charges
2 brought herein and will expire on October 1, 2020, unless renewed.

3 3. On or about January 21, 2004, the Board of Pharmacy issued Original Certificate
4 Number EXC 17318 to John F. Bohlinger (Respondent Bohlinger) to act as a Designated
5 Representative. The certificate was in full force and effect at all times relevant to the charges
6 brought herein and will expire on January 1, 2021, unless renewed.

7 **JURISDICTION**

8 4. This Accusation is brought before the Board of Pharmacy (Board), Department of
9 Consumer Affairs, under the authority of the following laws. All section references are to the
10 Business and Professions Code (Code) unless otherwise indicated.

11 5. Section 4300 of the Code states:

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

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

15 (1) Suspending judgment.

16 (2) Placing him or her upon probation.

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

18 (4) Revoking his or her license.

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

21 6. Section 4307 of the Code states:

22 (a) Any person who has been denied a license or whose license has been
23 revoked or is under suspension, or who has failed to renew his or her license while
24 it was under suspension, or who has been a manager, administrator, owner,
25 member, officer, director, associate, partner, or any other person with management
or control of any partnership, corporation, trust, firm, or association whose
application for a license has been denied or revoked, is under suspension or has
been placed on probation, and while acting as the manager, administrator, owner,
member, officer, director, associate, partner

26 had knowledge of or knowingly participated in any conduct for which the
27 license was denied, revoked, suspended, or placed on probation, shall be prohibited
28 from serving as a manager, administrator, owner, member, officer, director,
associate, partner, or in any other position with management or control of a licensee
as follows:

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

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

5 (b) "Manager, administrator, owner, member, officer, director, associate,
6 partner, any other person with management or control of a license" as used in
this section and Section 4308, may refer to a pharmacist or to any other person who
serves in such capacity in or for a licensee.

7 (c) The provisions of subdivision (a) may be alleged in any pleading filed
8 pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
the Government Code. However, no order may be issued in that case except as to a
9 person who is named in the caption, as to whom the pleading alleges the
applicability of this section, and where the person has been given notice of the
10 proceeding as required by Chapter 5 (commencing with Section 11500) of Part 1 of
Division 3 of the Government Code. The authority to proceed as provided by this
11 subdivision shall be in addition to the board's authority to proceed under Section
4339 or any other provision of law.

12 **STATUTORY PROVISIONS**

13 7. Section 4301 of the Code states, in pertinent part:

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

16 ...

17 (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
18 considered in determining whether the furnishing of controlled substances is clearly
excessive shall include, but not be limited to, the amount of controlled substances
19 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
20 distributes its product.

21 8. California Health and Safety Code section 11153.5 states, in pertinent part:

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

24 ...

25 (c) Factors to be considered in determining whether a wholesaler or
manufacturer, or agent or employee of a wholesaler or manufacturer, furnished
26 controlled substances knowing or having a conscious disregard for the fact that the
controlled substances are for other than legitimate medical purposes shall include,
27 but not be limited to, whether the use of controlled substances was for purposes of
increasing athletic ability or performance, the amount of controlled substances
28 furnished, the previous ordering pattern of the customer (including size and

1 frequency of orders), the type and size of the customer, and where and to whom the
2 customer distributes the product.

3 9. Section 4169.1 of the Code (effective January 1, 2018), states:

4 A wholesaler, upon discovery, shall notify the board in writing of any suspicious
5 orders of controlled substances placed by a California-licensed pharmacy or
6 wholesaler by providing the board a copy of the information that the wholesaler
7 provides to the United States Drug Enforcement Administration. Suspicious orders
8 include, but are not limited to, orders of unusual size, orders deviating substantially
9 from a normal pattern, and orders of unusual frequency.

10 **REGULATORY PROVISIONS**

11 10. Code of Federal Regulations, title 21, section 1301.74, subsection (b), states:

12 The registrant shall design and operate a system to disclose to the registrant
13 suspicious orders of controlled substances. The registrant shall inform the Field
14 Division Office of the Administration in his area of suspicious orders when
15 discovered by the registrant. Suspicious orders include orders of unusual size,
16 orders deviating substantially from a normal pattern, and orders of unusual
17 frequency.

18 **COST RECOVERY**

19 11. Section 125.3 of the Code states, in pertinent part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case.

23 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

24 12. Section 4021 of the Code states: “‘Controlled substance’ means any substance
25 listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety
26 Code.”

27 13. Section 4022 of the Code states: “‘Dangerous drug’ or ‘dangerous device’ means
28 any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and
includes the following:

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

...

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

1 14. Phenergan with Codeine Syrup 6.25 mg – 10 mg / 5 ml is the brand name for
2 promethazine with codeine syrup 6.25 mg-10 mg / 5 ml (P/C), a Schedule V controlled substance
3 designated by California Health and Safety Code section 11058(c)(1) and a dangerous drug
4 designated by California Business and Professions Code section 4022. It is used to treat
5 coughing.

6 15. Xanax is the brand name for alprazolam, a Schedule IV controlled substance
7 designated by California Health and Safety Code section 11057(d)(1) and a dangerous drug
8 designated by California Business and Professions Code section 4022. It is used to treat anxiety.

9 **FACTUAL ALLEGATIONS**

10 16. At all times relevant herein, the Children’s Medical Center Pharmacy, also known as
11 the Rady Children’s Outpatient Pharmacy (Pharmacy), was part of the Rady Children’s Hospital
12 of San Diego. According to its website, it is the only hospital in the San Diego area dedicated
13 exclusively to pediatric healthcare.

14 17. Between May 7, 2017 and June 26, 2018, the Pharmacy could not account for an
15 inventory shortage of approximately 119 pints of P/C and 5,300 tablets of alprazolam 2mg. A
16 pharmacy technician at the Pharmacy had stolen these dangerous drugs and controlled substances
17 for herself and her friends.

18 **Promethazine with codeine syrup 6.25 mg-10 mg / 5 ml (P/C)**

19 18. Based on Lexicomp Online, a collection of clinical database and clinical decision
20 support tools, P/C is not recommended in pediatrics due to risk of adverse effects, such as slowed
21 or difficult breathing, misuse, abuse, addiction, overdose, and death.

22 19. According to the pharmacy manager, the Pharmacy did not use or dispense P/C
23 because pediatric doctors did not prescribe P/C to children. On the rare occasion the doctor
24 prescribed P/C, it would be during the winter season according to the pharmacy manager.

25 20. According to Respondent McKesson’s sales records, Respondent McKesson sold, on
26 average, less than two 16-ounce bottles of P/C **per year** to the Pharmacy between January 2014
27 and August 2017. Beginning in September 2017, the sales of P/C displayed an irregular pattern
28 compared to the previous ordering pattern:

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P/C Sold from Respondent McKesson to the Pharmacy	
Date	Bottles (16oz) of P/C Sold
September 2017	11
October 2017	7
November 2017	7
December 2017	10
January 2018	14
February 2018	10
March 2018	15
April 2018	10
May 2018	18
June 2018	17

21. When calculating the monthly percentage change in sales, there were sales of P/C which varied from 40% to 80% more than the sale from the previous month.

22. The orders for P/C beginning in September 2017 were significantly larger and were shipped in consecutive months from September 2017 to June 2018, which totaled approximately 119 pints or 56,287 ml of P/C.

Alprazolam 2mg

23. Alprazolam is available in dosages of 0.25 mg, 0.5 mg, 1 mg, and 2mg.

24. According to Lexicomp Online, alprazolam should be titrated and used at the lowest effective dose. Lexicomp provided the following dosing information: “*Children ≥ 7 years and Adolescents < 18 years: Limited data available... Initial: 0.005 to 0.02 mg/kg/dose 3 times daily... maximum of 0.02 mg/kg/dose.*” For example, if a child is 40 kg (about 88 pounds), the dosing range is from 0.2 to 0.8 mg per dose.

25. According to Respondent McKesson’s sales records, Respondent McKesson sold, on average, one bottle of 100-count alprazolam 2mg **per year** between January 2014 and September 2017. Beginning in October 2017, the sales of alprazolam 2mg displayed an irregular pattern compared to the previous ordering pattern:

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Alprazolam 2mg Sold from Respondent McKesson to the Pharmacy	
Date	Bottles (100-count) of alprazolam 2mg Sold
October 2017	7
November 2017	9
December 2017	8
January 2018	4
February 2018	4
March 2018	4
April 2018	0
May 2018	15

26. When calculating the monthly percentage change in sales, there were sales of alprazolam 2mg which varied from 250% to 275% more than the sale from the previous month.

27. The orders for alprazolam 2mg beginning in October 2017 were significantly larger and were shipped in consecutive months (except April 2018) from October 2017 to May 2018, which totaled approximately 5,100 tablets of alprazolam 2 mg.

CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

28. Respondents are subject to disciplinary action under Code section 4301, subsection (e), in that Respondents clearly and excessively furnished controlled substances in violation of California Health and Safety Code section 11153.5, subsection (a), as follows:

a. Respondents furnished the Pharmacy one to two pints of P/C in non-consecutive months from January 2014 to August 2017. Sales increased to seven to 18 pints ordered in consecutive months from September 2017 to June 2018.

b. Respondents furnished the Pharmacy 100 to 200 tablets of alprazolam 2mg in non-consecutive months from January 2014 to September 2017. Sales increased to 400 to 1,500 tablets ordered in consecutive months from October 2017 to May 2018 (except April 2018).

c. Respondents furnished the Pharmacy large quantities of controlled substances (P/C and alprazolam 2mg) that are not typically distributed to pediatric patients.

d. The P/C and alprazolam 2mg furnished by Respondents were not dispensed to patients for legitimate medical purposes but were diverted by a pharmacy technician.

Paragraphs 16 to 27 are re-alleged as if fully set forth herein.

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1 **DISCIPLINARY CONSIDERATIONS**

2 29. On April 5, 2018, the Board issued Citation No. CI 2014 63111 to Respondent
3 McKesson for violating California Health and Safety Code section 11153.5 [wholesaler
4 furnishing controlled substance other than for legitimate medical purposes] and assessed a fine of
5 \$5,000.00. Respondent McKesson has paid the fine.

6 30. On June 27, 2018, the Board issued a Letter of Admonishment to Respondent
7 McKesson for violating California Business and Professions Code sections 4163(a) [unauthorized
8 furnishing by wholesaler]; 4169(a)(1) [prohibited acts; purchase, trade, sell, or transfer dangerous
9 drugs to unlicensed person or entity]; and 4059.5 [who may order dangerous drugs or devices].

10 31. On September 21, 2018, the Board issued a Letter of Admonishment to Respondent
11 McKesson for violating California Business and Professions Code section 4059.5(a) [dangerous
12 drugs and devices may only be ordered by and shall be delivered to licensed premises and signed
13 for and received by a pharmacist].

14 32. On June 27, 2018, the Board issued a Letter of Admonishment to Respondent
15 Bohlinger for violating California Business and Professions Code sections 4163(a) [unauthorized
16 furnishing by wholesaler]; 4169(a)(1) [prohibited acts; purchase, trade, sell, or transfer dangerous
17 drugs to unlicensed person or entity]; and 4059.5 [who may order dangerous drugs or devices].

18 33. On September 21, 2018, the Board issued a Letter of Admonishment to Respondent
19 Bohlinger for violating California Business and Professions Code section 4059.5(a) [dangerous
20 drugs and devices may only be ordered by and shall be delivered to licensed premises and signed
21 for and received by a pharmacist].

22 **OTHER MATTERS**

23 34. Pursuant to Code section 4307, if discipline is imposed on Wholesale Permit Number
24 WLS 3076 issued to McKesson Corporation, McKesson Corporation shall be prohibited from
25 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a
26 licensee for five years if Wholesale Permit Number WLS 3076 is placed on probation or until
27 Wholesale Permit Number WLS 3076 is reinstated if it is revoked.

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1 **PRAYER**

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

4 1. Revoking or suspending Wholesale Permit Number WLS 3076, issued to McKesson
5 Corporation, dba McKesson Drug Company;

6 2. Revoking or suspending Designated Representative Number EXC 17318, issued to
7 John F. Bohlinger;

8 3. Prohibiting McKesson Corporation from serving as a manager, administrator, owner,
9 member, officer, director, associate, or partner of a licensee for five years if Wholesale Permit
10 Number WLS 3076 is placed on probation or until Wholesale Permit Number WLS 3076 is
11 reinstated if Wholesale Permit Number WLS 3076 issued to McKesson Corporation is revoked;

12 4. Ordering McKesson Corporation and John F. Bohlinger to pay the Board of
13 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
14 Business and Professions Code section 125.3; and,

15 5. Taking such other and further action as deemed necessary and proper.

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17 DATED: December 10, 2019



18 ANNE SODERGREN
19 Interim Executive Officer
20 Board of Pharmacy
21 Department of Consumer Affairs
22 State of California
23 *Complainant*

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