

**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation Against:**

**AMERISOURCEBERGEN DRUG CORP.,**

**Wholesaler Permit No. WLS 4383;**

**and**

**JOHN E. JESSEE,**

**Designated Representative-in-Charge Certificate No. EXC 13663,**

**Respondents**

**Agency Case No. 6443**

**OAH No. 2020010727**

## DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order for Public Repeval is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on July 29, 2020.

It is so ORDERED on June 29, 2020.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg M. Lippe", is written over a horizontal line.

By

Greg Lippe  
Board President

XAVIER BECERRA  
Attorney General of California  
DAVID E. BRICE  
Supervising Deputy Attorney General  
KAREN R. DENVIR  
Deputy Attorney General  
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*Attorneys for Complainant*

**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

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

**Wholesaler Permit No. WLS 4383**

**and**

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

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

Respondents.

Case No. 6443

OAH No. 2020010727

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER FOR PUBLIC  
REPROVAL (AS TO WHOLESALE  
PERMIT ONLY)**

**[Bus. & Prof. Code § 495]**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

**PARTIES**

1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy (Board). She brought this action solely in her official capacity and is represented in this matter by

1 Xavier Becerra, Attorney General of the State of California, by Karen R. Denvir, Deputy  
2 Attorney General.

3 2. Respondent AmerisourceBergen Drug Corp. is represented in this proceeding by  
4 attorneys Anne Marchant and Jonathan Allan Klein, of Klein, Hockel, Iezza & Patel, whose  
5 address is: 1981 North Broadway, Suite 220, Walnut Creek, CA 94596.

6 **JURISDICTION**

7 3. On or about February 2, 2004, the Board issued Wholesaler Permit No. WLS 4383 to  
8 Respondent AmerisourceBergen Drug Corp. The Wholesaler Permit was in full force and effect  
9 at all times relevant to the charges brought in First Amended Accusation No. 6443 and will expire  
10 on February 1, 2021, unless renewed.

11 4. First Amended Accusation No. 6443 was filed before the Board of Pharmacy (Board),  
12 Department of Consumer Affairs and is currently pending against Respondent. The First  
13 Amended Accusation and all other statutorily required documents were properly served on  
14 Respondent on August 6, 2019. Respondent timely filed its Notice of Defense contesting the  
15 Accusation. A copy of First Amended Accusation No. 6443 is attached as exhibit A and  
16 incorporated herein by reference.

17 **ADVISEMENT AND WAIVERS**

18 5. Respondent has carefully read, fully discussed with counsel, and understands the  
19 charges and allegations in First Amended Accusation No. 6443. Respondent has also carefully  
20 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
21 Disciplinary Order for Public Reprimand.

22 6. Respondent is fully aware of its legal rights in this matter, including the right to a  
23 hearing on the charges and allegations in the First Amended Accusation; the right to be  
24 represented by counsel at its own expense; the right to confront and cross-examine the witnesses  
25 against them; the right to present evidence and to testify on its own behalf; the right to the  
26 issuance of subpoenas to compel the attendance of witnesses and the production of documents;  
27 the right to reconsideration and court review of an adverse decision; and all other rights accorded  
28 by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## CULPABILITY

8. Nothing in this Agreement shall constitute or be construed as an admission of liability on behalf of AmerisourceBergen Drug Corp., its agents, affiliates, assigns, parents, subsidiaries, and/or successors, or an admission as to the validity of the allegations in the First Amended Accusation. However, for the purpose of resolving First Amended Accusation No. 6443 without the expense and uncertainty of further proceedings, Respondent hereby gives up its right to an evidentiary hearing on the causes in the First Amended Accusation and agrees that its Wholesaler Permit is subject to discipline (public reproof) and agrees to be bound by the Board's terms as set forth in the Disciplinary Order below.

## CONTINGENCY

9. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or its counsel. By signing the stipulation, Respondent understands and agrees that they may not withdraw its agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order for Public Reprimand shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

10. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order for Public Reprimand, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

11. This Stipulated Settlement and Disciplinary Order for Public Reproval is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment

1 of their agreement. It supersedes any and all prior or contemporaneous agreements,  
2 understandings, discussions, negotiations, and commitments (written or oral). This Stipulated  
3 Settlement and Disciplinary Order for Public Reproval may not be altered, amended, modified,  
4 supplemented, or otherwise changed except by a writing executed by an authorized representative  
5 of each of the parties.

6 12. In consideration of the foregoing admissions and stipulations, the parties agree that  
7 the Board may, without further notice or formal proceeding, issue and enter the following  
8 Disciplinary Order:

9 **DISCIPLINARY ORDER**

10 IT IS HEREBY ORDERED that Wholesaler Permit No. WLS 4383 issued to Respondent  
11 AmerisourceBergen Drug Corp. shall be publicly reproved by the Board of Pharmacy under  
12 Business and Professions Code section 495 in resolution of First Amended Accusation No. 6443,  
13 attached as exhibit A.

14 **Cost Recovery.** Respondent shall pay \$10,000 to the Board for its costs associated with  
15 the investigation and enforcement of this matter. Respondent shall be permitted to pay these  
16 costs in a payment plan approved by the Board. If Respondent fails to pay the Board costs as  
17 ordered, Respondent shall not be allowed to renew their Wholesaler Permit until Respondent pays  
18 costs in full.

19 **Civil Penalty.** Respondent shall pay \$150,000 to the Board for the civil penalty associated  
20 with this matter. Respondent shall be permitted to pay this penalty in a payment plan approved  
21 by the Board. If Respondent fails to pay the Board civil penalty as ordered, Respondent shall not  
22 be allowed to renew their Wholesaler Permit until Respondent pays in full.

23 This decision constitutes a record of discipline and shall become part of Respondent's  
24 license history with the Board.

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28 ///

1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order for Public  
3 Reapproval and have fully discussed it with my attorney. I understand the stipulation and the effect  
4 it will have on my Wholesaler Permit. I enter into this Stipulated Settlement and Disciplinary  
5 Order for Public Reapproval voluntarily, knowingly, and intelligently, and agree to be bound by the  
6 Decision and Order of the Board of Pharmacy.

7 DATED: \_\_\_\_\_

8 4/30/2020

  
Elizabeth Campbell, SVP – Group General Counsel  
& Chief Litigation and Compliance Counsel  
AMERISOURCEBERGEN DRUG CORP.  
Respondent

11 I have read and fully discussed with Respondent AmerisourceBergen Drug Corp. the terms  
12 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
13 Order for Public Reapproval. I approve its form and content.

14 DATED: \_\_\_\_\_

5/1/2020

  
ANNE F. MARCHANT  
Attorney for Respondent

17 ENDORSEMENT


18 The foregoing Stipulated Settlement and Disciplinary Order for Public Reapproval is hereby  
19 respectfully submitted for consideration by the Board of Pharmacy of the Department of  
20 Consumer Affairs.

21 DATED: \_\_\_\_\_

5/5/20

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
DAVID E. BRICE  
Supervising Deputy Attorney General

  
KAREN R. DENVIR  
Deputy Attorney General  
Attorneys for Complainant

**Exhibit A**

**First Amended Accusation No. 6443**



1 XAVIER BECERRA  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 KAREN R. DENVIR  
Deputy Attorney General  
4 State Bar No. 197268  
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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:

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

27 (b) Anyone who violates this section knowing, or having a conscious  
28 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 controlled substances knowing or having a conscious disregard for the fact that the controlled substances are for other than legitimate medical purposes shall include, 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 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 the product.

### **COST RECOVERY**

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

### **DRUG CLASSIFICATIONS**

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

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

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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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.

**JEFFERSON PLAZA PHARMACY**

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

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

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

<sup>1</sup> On April 8, 2016, in a disciplinary action titled “In the Matter of the Accusation Against 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 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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22. On or about October 7, 2014, M. S. received an email from D. M. D. M. stated that after Pharma Compliance conducted the site inspection at JPP, there were a total of 125 orders flagged for review by ABDC's OMP system for the pharmacy (an average of 1 flagged order every three days from September 30, 2013 to October 1, 2014). D. M. also stated that ABDC initiated their investigation of JPP due to the pharmacy's high volume of purchases of oxycodone 30 mg as identified through their monthly review process.

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

**FIRST CAUSE FOR DISCIPLINE**

**(Excessive Furnishing of Controlled Substances)**

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

**SECOND CAUSE FOR DISCIPLINE**

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

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

27    ///

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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.<sup>2</sup>

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.

25  
26 <sup>2</sup> 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 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.

28 ///

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:

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

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

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

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

9  
10       DATED:     August 2, 2019



11           ANNE SODERGREN  
12           Interim Executive Officer  
13           Board of Pharmacy  
14           Department of Consumer Affairs  
15           State of California  
16           Complainant

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