

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

OFFENSE CHARGED

Count 1: Conspiracy (18 U.S.C. Section 371)
Count 2: Securities Fraud (15 U.S.C. Section 78j(b))
Count 3: False Statements to Accountant (15 C.F.R. Section 240.13b2-2)

Petty
 Minor
 Misdemeanor
 Felony

PENALTY:

Count 1: 5 years imprisonment, \$250,000 fine, 3 year supervised release, \$100 Special Assessment
Counts 2 and 3: 10 years imprisonment, \$1 million fine, 3 years supervised release, \$100 Special Assessment

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)
FEDERAL BUREAU OF INVESTIGATION

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

this is a reprosecution of charges previously dismissed which were dismissed on motion of:
 U.S. Att'y Defense } SHOW DOCKET NO.

this prosecution relates to a pending case involving this same defendant } MAGISTRATE CASE NO.
 prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person Furnishing Information on THIS FORM
KEVIN V. RYAN
 U.S. Att'y Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned)
WILLIAM H. KIMBALL

Name of District Court, and/or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA
NORTHERN DISTRICT OF CALIFORNIA

DEFENDANT - U.S.

RICHARD HAWKINS

DISTRICT COURT NUMBER

CR 04 0106

DEFENDANT

IS NOT IN CUSTODY

- 1) Has not been arrested, pending outcome this proceeding
 If not detained give date any prior summons was served on above charges
- 2) Is a Fugitive
- 3) Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) On this charge
- 5) On another conviction
- 6) Awaiting trial on other charges } Fed'l State
- If answer to (6) is "Yes", show name of institution

Has detainer been filed? Yes No } If "Yes" give date filed

DATE OF ARREST
Month/Day/Year

Or... if Arresting Agency & Warrant were not
Month/Day/Year

DATE TRANSFERRED TO U.S. CUSTODY

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS NO PROCESS* WARRANT Bail Amount: NO BAIL

If Summons, complete following:

Arraignment Initial Appearance

Defendant Address:

*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: _____

Before Judge: _____

Comments:

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KEVIN V. RYAN (CASBN 118321)
United States Attorney

FILED
04 MAR 30 PM 2:11
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
RICHARD H. HAWKINS,
Defendant.

CR 04 0106

VIOLATIONS: 18 U.S.C. § 371 –
Conspiracy; 15 U.S.C. §§ 78j(b) and 78ff
and 17 C.F.R. § 240.10b-5 – Securities
Fraud; 17 C.F.R. § 240.13b2-2 and 15
U.S.C. § 78ff; – False Statements to
Auditors; 18 U.S.C. § 2 – Aiding, Abetting
and Willfully Causing
SAN FRANCISCO VENUE

PJH

INDICTMENT

The Grand Jury charges:

I. BACKGROUND

A. The Companies

1. Prior to January 12, 1999, McKesson Corp. (“McKesson”) was a corporation headquartered in San Francisco, California. McKesson was the largest healthcare supply management company in the United States.

2. Prior to January 12, 1999, HBO & Company (“HBOC”) was a corporation headquartered in Alpharetta, Georgia, an Atlanta suburb. HBOC manufactured and sold information technology products, primarily software, to customers in the health care industry.

1 HBOC was the largest health care information technology company in the United States.

2 3. On January 12, 1999, McKesson acquired HBOC, and the merged company
3 became known as McKessonHBOC, Inc. (“McKessonHBOC” or the “Company”).

4 McKessonHBOC’s headquarters were in San Francisco, California. The portion of the Company
5 formerly known as HBOC became a wholly-owned subsidiary of McKessonHBOC, continued to
6 have its base in Alpharetta, Georgia, and operated as the Information Technology Business of
7 McKessonHBOC (the “HBOC subsidiary”).

8 4. Following the acquisition, shareholders of McKesson and HBOC became
9 shareholders of McKessonHBOC.

10 5. At all times relevant to this Indictment, McKessonHBOC was a publicly traded
11 company whose stock was listed on the New York Stock Exchange (“NYSE”). The Company
12 had shareholders located throughout the United States, including in the Northern District of
13 California. Executives and employees from McKessonHBOC regularly communicated with
14 Wall Street analysts throughout the United States, including in the Northern District of
15 California, regarding, among other things, the Company’s financial results and future prospects.

16 6. As a public company, McKessonHBOC was required to comply with the
17 regulations of the United States Securities and Exchange Commission (the “SEC”). Those
18 regulations are designed to protect members of the investing public by, among other things,
19 ensuring that a company’s financial results are accurately recorded and disclosed to the public.

20 7. Under SEC regulations, McKessonHBOC’s officers had a duty: (a) not to use or
21 employ, in connection with the purchase or sale of the Company’s securities, any manipulative or
22 deceptive device or contrivance, including, but not limited to, the publication of materially false
23 and misleading statements and omissions concerning the Company’s financial results; (b) not to
24 make materially false and misleading statements and omissions to an accountant in connection
25 with an audit of the Company’s financial statements and with the preparation and filing of a
26 document or report required to be filed by the Company with the SEC; and (c) to file with the
27 SEC such reports as the SEC may prescribe, including, but not limited to, annual reports on Form
28 10-K.

1 (c) to maintain and promote the defendant's position in McKessonHBOC, and to
2 enrich himself and others through bonuses, salaries, and stock options.

3 13. The means by which HAWKINS and others achieved and attempted to achieve
4 the goals of the conspiracy and scheme included:

5 (a) recording software revenue that failed to comply with the requirements of
6 GAAP and SOP 97-2;

7 (b) making fraudulent entries to Company books and records;

8 (c) making false statements to outside auditors; and

9 (d) making materially false and misleading statements to the public about
10 McKessonHBOC's financial performance.

11 14. It was part of the conspiracy and scheme to defraud that HAWKINS and others
12 caused McKessonHBOC to improperly record software revenue of \$20 million in the quarter
13 ended March 31, 1999, in connection with a transaction with Data General Corporation ("Data
14 General"), a Westborough, Massachusetts-based manufacturer of computer hardware. As
15 HAWKINS and others knew, revenue from the transaction could not be recognized in accordance
16 with GAAP because the transaction was conceived, negotiated, and executed after the close of
17 quarter, was contingent upon a reciprocal agreement to buy \$25 million of hardware from Data
18 General hardware, and was subject to a provision that required McKessonHBOC to buy back any
19 software that Data General could not resell.

20 15. It was part of the conspiracy and scheme to defraud that HAWKINS and others
21 caused McKessonHBOC to announce to the public that the Company met or exceeded analysts'
22 earnings expectations for the quarter ended March 31, 1999, and that the HBOC subsidiary
23 increased software revenue by at least 20% over the prior quarter's results, when HAWKINS and
24 others knew that these statements were false and misleading in light of the \$20 million of
25 software revenue improperly recorded from the Data General transaction.

26 16. It was part of the conspiracy and scheme to defraud that HAWKINS and others
27 made materially false and misleading statements and omissions to Deloitte auditors in order to
28 ensure that revenue from the Data General transaction would be included in the results for the

1 quarter ended March 31, 1999.

2 Pressure To Meet Earnings Expectations For The March 31 Quarter

3 17. On or about January 25, 1999, McKessonHBOC announced results for the quarter
4 ended December 31, 1998. After the January 25 release, the price of the Company's common
5 stock dropped from its closing price of approximately \$81 per share on January 25, 1999, to a
6 closing price of approximately \$73.55 per share on January 26, 1999. The price of the
7 Company's common stock declined between January 26 and March 12, 1999.

8 18. On or about March 12, 1999, McKessonHBOC's President and Chief Executive
9 Officer ("McKessonHBOC's CEO"), and Charles McCall, McKessonHBOC's Chairman of the
10 Board of Directors, held a conference call with financial analysts. During the call,
11 McKessonHBOC's CEO and McCall reaffirmed that McKessonHBOC would meet analysts'
12 expectations for the quarter ending March 31, 1999, the first quarter of combined operations after
13 McKesson's acquisition of HBOC. After the conference call, the Company's stock price
14 increased.

15 19. In or about March 1999, the Chief Financial Officer of the HBOC subsidiary told
16 HAWKINS that he did not believe that the HBOC subsidiary would be able to achieve its
17 software revenue goals for the quarter.

18 The Failed Oracle Transaction

19 20. In or about March 1999, HAWKINS, the President and Chief Executive Officer of
20 the HBOC subsidiary, and others began to negotiate a reciprocal transaction with Oracle
21 Corporation, a Redwood Shores, California manufacturer of database products. According to a
22 term sheet for the proposed deal, Oracle would purchase and pay for \$25 million in
23 McKessonHBOC software by March 31, 1999, and McKessonHBOC would agree to buy \$30
24 million in Oracle products in the future, and to encourage customers to convert to Oracle's
25 product lines. The proposed Oracle transaction, if consummated, would have been critical to the
26 ability of the HBOC subsidiary to meet its revenue targets for the quarter ended March 31, 1999.

27 21. In March 1999, HAWKINS had conversations with the Deloitte audit partner
28 primarily responsible for the McKesson engagement about the structure of the proposed Oracle

1 transaction and about the Company's ability to recognize revenue for the transaction under
2 GAAP. During these conversations, the Deloitte audit partner told HAWKINS that
3 McKessonHBOC could not recognize the \$25 million software sale to Oracle if the sale were
4 contingent upon McKessonHBOC's agreement to buy \$30 million of Oracle products in the
5 future.

6 22. In or about the evening of March 31, 1999, HAWKINS learned that Oracle had
7 declined to enter into the proposed \$25 million transaction. As a result, HAWKINS believed that
8 McKessonHBOC would not meet its software sales revenue goals for the quarter ended March
9 31, 1999.

10 The Data General Transaction

11 23. On or about April 1, 1999, after the close of the March 31 quarter, HAWKINS
12 learned that employees of the HBOC subsidiary were negotiating with employees of Data
13 General to determine if Data General would be willing to enter into a reseller transaction
14 involving approximately \$20 million of McKessonHBOC software that would be backdated to
15 March 31. HAWKINS understood that the \$20 million transaction with Data General, conceived
16 and negotiated after the close of the March 31 quarter, would replace the revenue lost in the
17 failed Oracle transaction.

18 24. HAWKINS and others at the HBOC subsidiary negotiated the transaction with
19 Data General throughout the weekend beginning Friday, April 2, 1999, finalizing the deal on or
20 about Monday, April 5, 1999. The negotiations resulted in the following agreement: Data
21 General would immediately purchase \$20 million in McKessonHBOC software products, for
22 resale to third parties, and McKessonHBOC would make \$25 million in future purchases of Data
23 General hardware, also for resale. Because Data General had no ability to resell
24 McKessonHBOC products, McKessonHBOC assumed that obligation and agreed to sell its own
25 software on Data General's behalf. If McKessonHBOC failed to resell half the software by July
26 22, 1999, it would pay Data General \$10 million, less the value of any resales. If it failed to
27 resell the remaining half by September 24, 1999, it would pay Data General another \$10 million,
28 again less the value of any resales, and Data General could return all unsold software.

1 25. HAWKINS and others purposefully designed the documentation for the Data
2 General transaction to conceal aspects of the deal that would preclude revenue recognition under
3 GAAP and SOP 97-2. Although executed in its entirety on or about April 5, 1999, the Data
4 General transaction was reflected in two separate documents with two different dates. The first
5 document, which was backdated to March 31, 1999, purported to be a reseller agreement under
6 which Data General bought \$20 million of McKessonHBOC software for resale (the "Reseller
7 Agreement"). The second document, called an "Amendment," was dated April 5, 1999 (the
8 "Amendment"). The Amendment contained McKessonHBOC's obligation to buy \$25 million in
9 Data General hardware, to resell its own software on behalf of Data General, and to repay Data
10 General if it failed to do so. The Amendment also included Data General's right to return all
11 unsold software that it purported to buy pursuant to the reseller agreement dated March 31, 1999.

12 26. These terms of the Amendment, when read together with the Reseller Agreement,
13 precluded revenue recognition for the Data General transaction in the March 31 quarter under
14 GAAP and SOP 97-2.

15 HAWKINS Misleads McKessonHBOC's Auditor

16 27. On or about April 6, 1999, HAWKINS spoke on the telephone with Deloitte's
17 audit partner about the Data General transaction. Specifically, HAWKINS sought the audit
18 partner's initial approval for recognizing \$20 million in revenue for the transaction during the
19 March 31 quarter. During this conversation, HAWKINS understood that the audit partner had
20 reviewed only the Reseller Agreement, not the Amendment, and, as a result, the auditor only
21 knew about one side of the transaction with Data General. During the conversation, HAWKINS
22 concealed the following material facts, among others, from the audit partner: that
23 McKessonHBOC had agreed to purchase Data General hardware as part of the transaction, that
24 McKessonHBOC had agreed to buy back unsold software from Data General, that the transaction
25 was memorialized in two separate documents, and that the transaction was negotiated and
26 completed after the close of the March 31 quarter.

27 28. During the conversation on or about April 6, 1999 between HAWKINS and the
28 Deloitte audit partner, the audit partner asked HAWKINS if he was aware of anything else that

1 related to the transaction in addition to the software purchase by Data General that was reflected
2 in the Reseller Agreement. HAWKINS falsely assured the audit partner that the Reseller
3 Agreement represented the entire transaction with Data General.

4 Announcement That Earnings Expectations Will Be Met

5 29. On or about April 19, 1999, McKessonHBOC's CEO was interviewed by a
6 reporter from a national news service. McKessonHBOC's CEO was later reported as saying,
7 among other things, that McKessonHBOC would soon announce that it had exceeded consensus
8 analysts' earnings expectations for the quarter ended March 31, 1999. McKessonHBOC's CEO
9 was also reported to have said that the Company's actual results for the quarter exceeded the
10 Company's forecast of 60 cents per share, as noted in the earlier conference call on March 12,
11 1999.

12 Deloitte Advises Against Recognizing Revenue For The Data General Transaction

13 30. On or about April 20, 1999, HAWKINS learned that Data General intended to
14 return an audit confirmation to Deloitte related to the \$20 million Data General receivable, which
15 would disclose to Deloitte the existence of the Amendment and its terms.

16 31. On or about the afternoon of April 21, 1999, HAWKINS met with two Deloitte
17 auditors to discuss the Amendment and its effect on revenue recognition for the Data General
18 transaction. HAWKINS made various arguments to the auditors in an effort to convince them
19 that revenue could be recognized on the Data General transaction, despite the terms contained in
20 the Amendment. During these discussions, HAWKINS falsely indicated that he first became
21 aware of existence of the Amendment and its terms on April 20, 1999.

22 32. Later in the day on April 21, 1999, the Deloitte auditors called HAWKINS and
23 told him that, in Deloitte's opinion, recognition of revenue from the Data General transaction
24 was an accounting error and that the Company should not recognize the revenue in the quarter
25 ended March 31, 1999.

26 33. On or about April 21, 1999, after the Deloitte auditors told HAWKINS that
27 McKessonHBOC should not recognize revenue from the Data General transaction,
28 McKessonHBOC's Controller, who reported to HAWKINS, urged him to postpone the

1 Company's scheduled earnings release in light of Deloitte's concerns about the Data General
2 transaction and the fact that revenue from the transaction was included in financial results
3 reported in the release. HAWKINS told the Controller that the Company would not delay its
4 earnings release.

5 McKessonHBOC's April 22 Earnings Release

6 34. On or about April 22, 1999, McKessonHBOC issued a press release announcing
7 its preliminary financial results for the reporting period ended March 31, 1999. The \$20 million
8 in revenue from the Data General transaction was included in the Company's results for the
9 quarter as software revenue for the HBOC subsidiary, allowing McKessonHBOC to report
10 earnings per share of 62 cents, an amount in excess of Wall Street forecasts of 60 to 61 cents.
11 Without the revenue from the Data General transaction, McKessonHBOC's earning per share for
12 the quarter would have been approximately 58.3 cents. The release falsely stated, among other
13 things, that "software revenues were up 21 percent in the quarter, to \$121.2 million" and falsely
14 touted the HBOC subsidiary's "21 percent quarter-over-quarter gain in software revenues."
15 Approximately 16% of the software revenue attributed to the HBOC subsidiary came from the
16 \$20 million transaction with Data General.

17 McKessonHBOC's Restatement of Financial Statements

18 35. On or about April 28, 1999, McKessonHBOC issued a press release announcing
19 that the Company was investigating accounting irregularities in HBOC-related software sales and
20 that it would restate its financial results (the "April 28 release"). Among other things, the
21 April 28 release stated that the Company had determined that software sales transactions totaling
22 \$26.2 million in the Company's quarter ended March 31 had been improperly recorded and had
23 been reversed. The \$20 million in Data General software revenue was part of this \$26.2 million
24 reversal of fourth quarter revenue announced in the April 28 release.

25 36. On the day of the April 28 release, the share price of McKessonHBOC stock fell
26 more than 40% from the prior day, from \$65.75 to \$34.50, on a volume of 41,625,900 shares. As
27 a result, the value of stock held by McKessonHBOC shareholders fell by more than \$9 billion.

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1 COUNT ONE: 18 U.S.C. § 371 (Conspiracy to Commit Securities and Wire Fraud)

2 37. Paragraphs 1 through 36 are realleged as if fully set forth here.

3 38. Beginning on or about April 1, 1999, and continuing up to on or about April 28,
4 1999, in the Northern District of California and elsewhere, the defendant

5 RICHARD H. HAWKINS

6 and others, did knowingly and willfully conspire to commit offenses against the United States,
7 namely, (a) fraud in connection with the purchase and sale of McKessonHBOC securities, in
8 violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal
9 Regulations, Section 240.10b-5; (b) making false and misleading statements and omissions of
10 material fact in reports and documents required to be filed under the Securities Exchange Act of
11 1934 and the rules and regulations thereunder, in violation of Title 15, United States Code,
12 Sections 78j(b) and 78ff; (c) making materially false and misleading statements and omissions to
13 accountants, in violation of Title 15, United States Code, Section 78ff, and Title 17, Code of
14 Federal Regulations, Section 240.13b2-2; and (d) wire fraud, in violation of United States Code,
15 Sections 1343 and 1346.

16 OVERT ACTS

17 39. In furtherance of the conspiracy and to effect the objects thereof, in the Northern
18 District of California and elsewhere, the defendant and others committed the acts described in
19 paragraphs 12 through 35 of this Indictment, which are hereby realleged as if fully set forth here,
20 including:

- 21 • On or about April 1 and April 3, 1999, HAWKINS, while in the Northern District
22 of California, spoke by telephone, using the means and instrumentalities of
23 interstate commerce, to officers of the HBOC subsidiary about negotiating a
24 proposed transaction with Data General which would be recognized in the quarter
25 ended March 31, 1999;
- 26 • On or about April 6, 1999, HAWKINS, while in the Northern District of
27 California, spoke by telephone, using the means and instrumentalities of interstate
28 commerce, to a Deloitte audit partner regarding a transaction with Data General;

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- On or about April 19, 1999, a co-conspirator in the Northern District of California made statements to the financial press regarding the Company's financial results for the quarter ended March 31, 1999; and
- On or about April 22, 1999, Hawkins and a co-conspirator, while in the Northern District of California, caused McKessonHBOC to issue a press release describing the Company's preliminary financial results for the fiscal year ended March 31, 1999.

All in violation of Title 18, United States Code, Section 371.

1 COUNT TWO: 15 U.S.C. §§ 78j(b) and 78ff; 17 C.F.R. §240.10b-5, 18 U.S.C. § 2 (Fraud in
2 Connection with the Purchase or Sale of a Security)

3 40. Paragraphs 1 through 36 are realleged as if fully set forth here.

4 41. Beginning on or about April 1, 1999, and continuing up to on or about April 27,
5 1999, in the Northern District of California and elsewhere, the defendant

6 RICHARD H. HAWKINS

7 and others, did knowingly and willfully, directly and indirectly, by the use of the means and
8 instrumentalities of interstate commerce, the mails, and the facilities of national securities
9 exchanges, use and employ manipulative and deceptive devices and contrivances in connection
10 with the purchase and sale of securities issued by McKessonHBOC, in violation of Title 17,
11 Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and
12 artifices to defraud; (b) making and causing McKessonHBOC to make untrue statements of
13 material fact and omitting to state facts necessary in order to make the statements made, in light
14 of the circumstances under which they were made, not misleading; and (c) engaging in acts,
15 practices, and courses of business which operated and would operate as a fraud and deceit upon
16 purchasers of McKessonHBOC securities.

17 All in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code
18 of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

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1 COUNT THREE: 17 C.F.R. § 240.13b2-2; 15 U.S.C. 78ff; 18 U.S.C. § 2 (False Statement to
2 Accountant)

3 42. Paragraphs 1 through 36 are realleged as if fully set forth here.

4 43. On or about April 6, 1999, in the Northern District of California and elsewhere,
5 the defendant

6 RICHARD H. HAWKINS

7 an officer of McKessonHBOC, did knowingly and willfully make and cause to be made
8 materially false and misleading statements and omissions to an accountant in connection with (i)
9 an audit and examination of the financial statements of McKessonHBOC's required to be made
10 pursuant to the federal securities laws, and (ii) the preparation or filing of a document or report
11 required to be filed with the Securities and Exchange Commission pursuant to the federal
12 securities laws, namely an annual report required to be filed for the period ended March 31,
13 1999. Specifically, HAWKINS misrepresented and concealed aspects of the transaction with
14 Data General from a Deloitte audit partner that would have negated revenue recognition under
15 GAAP in order to ensure that revenue for the transaction was fraudulently recognized and
16 reported for the quarter ended March 31, 1999.

17 All in violation of Title 15, United States Code, Section 78ff; Title 17, Code of Federal
18 Regulations, Section 240.13b2-2; and Title 18, United States Code, Section 2.

19
20 DATED:

21 *March 30, 2004*

20 A TRUE BILL.

21 *Mary C. McKeon*
22 FOREPERSON

23 KEVIN V. RYAN
24 United States Attorney

25 *Ross W. Nadel*
26 ROSS W. NADEL
27 Chief, Criminal Division

28 (Approved as to form: *W. H. Kimball*)

AUSA William H. Kimball
AUSA Timothy Crudo
AUSA John Hemann

INDICTMENT