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7 Attorneys for Complainant

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

10
11 In the Matter of the Accusation Against:

Case No. 2304

12 BRIAN KIM HUNTER

13 Respondent.

**STIPULATED SETTLEMENT AND
PUBLIC REPROVAL**

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16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
17 above-entitled matter as follows:

18 1. Complainant Patricia Florian Harris is the Executive Officer of the Board
19 of Pharmacy, Department of Consumer Affairs, State of California (hereinafter referred to as the
20 "Board") and, at the time of executing and filing of the Accusation, performed said acts solely in
21 her official capacity.

22 2. Complainant is represented herein by Bill Lockyer, Attorney General of
23 the State of California, by and through Paul V. Bishop, Deputy Attorney General.

24 3. Brian Kim Hunter, Pharmacist (hereinafter referred to as "respondent") is
25 represented by his attorney, Robert J. Sullivan, 915 L Street, Suite 1000, Sacramento, California
26 95814.

27 4. At all times relevant herein, respondent was licensed by the Board of
28 Pharmacy under Pharmacist License No. RPH41612, which license is current and will expire on

1 March 31, 2002, unless renewed.

2 5. Accusation No. 2304 was filed on or about October 31, 2000, before the
3 Board of Pharmacy and is currently pending against respondent. The Accusation, together with
4 all other statutorily required documents, was duly served on the respondent and respondent
5 timely filed a Notice of Defense. A copy of Accusation No. 2304 is attached hereto as Exhibit
6 "A" and incorporated herein by reference.

7 6. Respondent has had the opportunity to and has in fact reviewed the nature
8 of the charges alleged in the Accusation and the terms and conditions set forth herein with his
9 attorney and enters into the stipulation with the advice of his attorney.

10 7. Respondent understands the nature of the charges alleged in the
11 Accusation and that said charges and allegations, if proved, would constitute cause for imposing
12 discipline upon respondent pharmacist license heretofore issued by the Board.

13 8. Respondent is fully aware of each of his legal rights and that, but for this
14 stipulation, he would be entitled: 10 to a hearing on the charges and allegations in the
15 Accusation; 20 to be represented by counsel, at his own expense, in all proceedings in this
16 matter; 30 to confront and cross-examine the witnesses testifying against him; 4) to present
17 evidence and call witnesses on his own behalf, or to testify himself, and to the issuance of
18 subpoenas to compel the attendance of witnesses and the production of documents. Respondent
19 is aware of his right to contest the charges and allegations and any other rights which may be
20 accorded to him pursuant to the California Administrative Procedure Act (Government Code §
21 11500 *et seq.*), as well as his right to petition for reconsideration or to appeal to the Superior
22 Court or any other court of review.

23 9. With these rights in mind, respondent hereby freely, voluntarily, and
24 knowingly waives and gives up each and every right set forth above including, but not limited to,
25 the right to a hearing on the charges and allegations contained in Accusation No. 2304 and the
26 right to reconsideration and judicial review, in order to enter into this stipulation. Respondent
27 understands that, in signing this stipulation rather than contesting the Accusation, he is enabling
28 the Board to impose disciplinary action upon his license without further process.

1 thirty (30) days of the effective date of this stipulation, respondent shall pay the amount of
2 \$1,000.00 to the Board.

3 15. Respondent specifically acknowledges and understands that the order for
4 public reproof as a resolution to the charges in Accusation No. 2304 is contingent upon
5 respondent's full compliance with the condition specified above in paragraph 14 of this
6 stipulation. If respondent fails to satisfy said condition, respondent stipulates and agrees that
7 such deficiency shall constitute unprofessional conduct and an independent basis for disciplinary
8 action pursuant to Business and Professions Code, section 2761. In that event, respondent
9 understands that the Board will be entitled to request a hearing on Accusation No. 2304, as well
10 as on a supplemental accusation alleging any failure of respondent to successfully complete the
11 condition precedent as set forth in paragraph 14.

12 16. Upon full compliance with the condition precedent set forth in paragraph
13 14 of this stipulation, respondent's pharmacy license shall be publicly reproofed by way of a letter
14 from the Executive Officer of the Board of Pharmacy which shall be in the same form as
15 Exhibit "B" attached hereto.

16 17. In consideration for entering into this agreement, respondent hereby
17 waives any right to challenge the legal effect of this agreement, by way of petition for
18 reconsideration, petition for writ of mandamus, appeal, or otherwise, and further waives any
19 other legal claim or defense, which he may have asserted, including, but not limited to, any time-
20 based claim such as laches, in the event it is necessary to re-calendar an administrative hearing
21 based on any part of or all of Accusation No. 2304.

22 CONTINGENCY

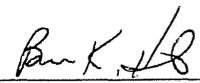
23 18. **IT IS FURTHER STIPULATED AND AGREED** that the terms set
24 forth herein constitute an offer in settlement to the Board. This stipulation shall be subject to the
25 approval of the Board. Respondent understands and agrees that Board staff and counsel for
26 complainant may communicate directly with the Board regarding this stipulated settlement,
27 without notice to or participation by respondent or his counsel. This stipulation is not effective
28 until adopted by the Board. If the Board fails to adopt this stipulation as its order, the stipulation

1 shall be of no force or effect, it shall be inadmissible in any legal action between the parties , and
2 the Board shall not be disqualified from further action in this matter by virtue of its consideration
3 of this stipulation. In the event that this stipulation is not adopted by the Board, nothing recited
4 herein shall be construed as a waiver of respondent's right to a hearing or as an admission of the
5 truth of any of the matters charged in the Accusation.

6
7 **ACCEPTANCE**

8 I have carefully read the above Stipulated Settlement. I understand the effect this
9 stipulation will have on my license fo practice pharmacy, license number 2304 and agree to be
10 bound thereby. I enter into this Stipulation Settlement knowingly, voluntarily, freely, and
11 intelligently.

12 DATED: 3-18-02



BRIAN KIM HUNTER
Respondent

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15 **ENDORSEMENT**

16 I have fully discussed with respondent Brian Kim Hunter, Pharmacist, the terms
17 and conditions and other matters contained in the above Stipulated Settlement and approve of its
18 form and content.

19 DATED: 3/22/2002



ROBERT J. SULLIVAN
Attorney for Respondent

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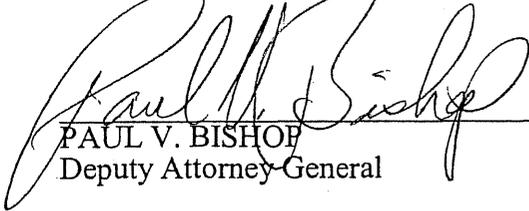
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ENDORSEMENT

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

DATED: 03/28/02.

BILL LOCKYER, Attorney General
of the State of California


PAUL V. BISHOP
Deputy Attorney General

Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 2304

BRIAN KIM HUNTER

Respondent.

**STIPULATED SETTLEMENT
and PUBLIC REPROVAL**

DECISION AND ORDER

The attached Stipulated Settlement and Public Reproval is hereby adopted by the Board of Pharmacy of the Department of Consumer Affairs, as its Decision in the above-entitled matter.

This decision shall become effective on the 14th of June 2002.

It is so ORDERED on May 15, 2002.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STEVE LITSEY
Board President

1 BILL LOCKYER, Attorney General
of the State of California
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3 California Department of Justice
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7 **Attorneys for Complainant**
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9 **BEFORE THE**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **BOARD OF PHARMACY**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 2304

14 BUTTE COUNTY PHARMACEUTICAL
SERVICES, INC.
15 771 Buschmann Road, Suite L
Paradise, Calif. 95969

ACCUSATION

16 Pharmacy Permit No. PHY43337,

17 BRIAN KIM HUNTER
6068 Guilford Circle
Magalia, CA 95954

18 Pharmacist No. RPH41612,

19 and

20 DALE E. ANDERSON
1300 Deodara Way
21 Paradise, CA 95965

22 Pharmacist No. RPH22133
23

Respondents
24

25 ///

26 ///

27 ///

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i.

ACCUSATION

1 Complainant alleges:

2 PARTIES

3 1. Patricia Florian Harris ("Complainant") brings this accusation solely in her
4 official capacity as the Executive Officer of the Board of Pharmacy.

5 2. On or about April 2, 1998, the Board of Pharmacy issued Pharmacy
6 Permit Number PHY43337 to Butte County Pharmaceutical Services, Inc. ("Respondent
7 BCPS"). The Pharmacy Permit was in full force and effect at all times relevant to the charges
8 brought herein.

9 3. On or about April 23, 1988, the Board of Pharmacy issued Pharmacist
10 License Number RPH41612 to Brian Kim Hunter ("Respondent Hunter"). The Pharmacist
11 license was in full force and effect at all times relevant to the charges brought herein and will
12 expire on March 31, 2002, unless renewed.

13 4. On or about August 10, 1961, the Board of Pharmacy issued Pharmacist
14 License Number RPH22133 to Dale E. Anderson ("Respondent Anderson"). The Pharmacist
15 license was in full force and effect at all times relevant to the charges brought herein and will
16 expire on September 30, 2000, unless renewed.

17 JURISDICTION

18 5. This Accusation is brought before the Board of Pharmacy ("Board"),
19 under the authority of the following sections of the Business and Professions Code ("Code").

20 6. Section 4301 of the Code states that the Board shall take action against
21 any holder of a license who is guilty of unprofessional conduct or whose license has been
22 procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall
23 include, but is not limited to, any of the following:

24 (a) Gross immorality.

25 (b) Incompetence.

26 (c) Gross negligence.

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

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

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

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

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

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

7. Section 4081 of the Code states that:

(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times, during business hours, open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, medical device retailer, veterinary food-animal drug retailer, physician, dentist, podiatrists, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and un-revoked certificate, license, permit, registration or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 3 (commencing with Section 1620) of Division 2 of, Chapter 2 (commencing with Section 2300)

1 of Division 3 of, or Part 2 (commencing with Section 5699) of Division 6 of, Welfare and
2 Institutions Code who maintains a stock of dangerous drugs or devices.

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

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

10 8. Section 4333 of the Code states, in pertinent part, that all prescriptions
11 filled by a pharmacy and all other records required by Section 4081 shall be maintained on the
12 premises and available for inspection by authorized officers of the law for a period of at least
13 three years. In cases where the pharmacy discontinues business, these records shall be
14 maintained in a board-licensed facility for at least three years.

15 9. Title 16, section 1718 of the California Code of Regulations states
16 "Current Inventory" as used in Section 4232 of the Business and Professions Code shall be
17 considered to include complete accountability for all dangerous drugs handled by every licensee
18 enumerated in Section 4232.

19 The controlled substances inventories required by Title 21, CFR, Section
20 1304 shall be available for inspection upon request for at least 3 years after the date of the
21 inventory.

22 10. Section 4051 of the Code states that:

23 (a) Except as otherwise provided in Chapter 9 (commencing with Section
24 4000) of the Business and Professions Code, it is unlawful for any person to manufacture,
25 compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to dispense or
26 compound any prescription pursuant to Section 4040 of a prescriber unless he or she is a
27 pharmacist under Chapter 9.

28

1 (b) Notwithstanding any other law, a pharmacist may authorize the initiation
2 of a prescription and otherwise provide clinical advice or information or patient consultation
3 from outside a pharmacy premises if all of the following conditions are met:

4 (1) The clinical advice or information or patient consultation is
5 provided either to a health care professional or to a patient of or resident in a licensed acute care
6 hospital, health care facility, home health agency, or hospice.

7 (2) The pharmacist has access to prescription, patient profile, or other
8 relevant medical information for purposes of patient and clinical consultation and advice.

9 (3) Access to the information described in paragraph (2) is secure from
10 unauthorized access and use.

11 11. Title 16, section 1718 of the California Code of Regulations states
12 "Current Inventory" as used in Section 4232 of the Business and Professions Code shall be
13 considered to include complete accountability for all dangerous drugs handled by every licensee
14 enumerated in Section 4232. The controlled substances inventories required by Title 21, CFR,
15 Section 1304 shall be available for inspection upon request for at least 3 years after the date of
16 the inventory.

17 12. Title 16 section 1709.1 states, in pertinent part, that the pharmacist-in-
18 charge of a pharmacy shall have responsibility for the daily operation of the pharmacy.

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

23 STATEMENT OF FACTS

24 14. On or about April 2, 1998 through March 17, 1999, respondent Hunter
25 was employed as the pharmacist-in-charge for respondent BCPS.

26 15. On or about November 1998 through March 17, 1999 respondent
27 Anderson was employed as the On Site Pharmacist for respondent BCPS.

28

1 (b) On or about March 1, 1999 the computer containing respondent BCPS'
2 confidential patients records was out side of the licensed area and was used in preparing
3 prescription labels when a pharmacist was not present in violation of Title 16 sections 1717.4(h)
4 and 1764.

5 SECOND CAUSE FOR DISCIPLINE

6 (Unprofessional Conduct)

7 21. Respondent Hunter is subject to disciplinary action under section 4301 in
8 that he allowed 103 deliveries of dangerous drugs to respondent BCPS to be signed for by non-
9 licensed personnel and allowed prescriptions to be filled or prepared without a pharmacist
10 present. The circumstances are as follows:

11 (a) On or about July 2 1998 through March 17, 1999, 103 out of 110
12 deliveries of dangerous drugs, that were delivered to respondent BCPS' pharmacy, were signed
13 for by non-licensed personnel in violation of section 4059.5(a).

14 (b) On or about March 1, 1999, two new prescriptions and four refill
15 prescriptions were prepared or filled when no pharmacist was present in violation of 4051.

16 THIRD CAUSE FOR DISCIPLINE

17 (Unprofessional Conduct)

18 22. Respondents Anderson and Hunter are subject to disciplinary action under
19 section 4301 in that they allowed prescription labels for dangerous drugs to be prepared with out
20 a licensed pharmacist present. The circumstances are as follows:

21 (a) On or about March 1, 1999, prescription labels for dangerous drugs were
22 prepared for respondent BCPS' patients without a licensed pharmacist present in violation of
23 sections 4115 and 4051 and Title 16 section 1764.

24 PRAYER

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

27 ///

- 1 1. Revoking or suspending Pharmacy Permit Number PHY43337, issued to
- 2 Butte County Pharmaceutical Services, Inc.;
- 3 2. Revoking or suspending Pharmacist License Number RPH41612, issued
- 4 to Brian Kim Hunter;
- 5 3. Revoking or suspending Pharmacist License Number RPH22133, issued
- 6 to Dale E. Anderson;
- 7 4. Ordering Butte County Pharmaceutical Services, Inc., Brian Kim Hunter
- 8 and Dale E. Anderson to pay the Board of Pharmacy the reasonable costs of the investigation and
- 9 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 10 5. Taking such other and further action as the Board of Pharmacy deems
- 11 necessary and proper.

12 DATED: 10/31/00.

13
14
15 *P. J. Harris*
16 _____
17 PATRICIA FLORIAN HARRIS
18 Executive Officer
19 Board of Pharmacy
20 State of California
21 Complainant
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28 C:\dat\Bishop\Butte County\BCPS accusation
cdo - October 23, 2000