

1 BILL LOCKYER, Attorney General
of the State of California
2 PAUL V. BISHOP, State Bar No. 50133
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 324-4618
Facsimile: (916) 327-8643

6 Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:	Case No. 2304
12 BUTTE COUNTY PHARMACEUTICAL	OAH No.
13 SERVICES, INC.	DEFAULT DECISION
14 771 Buschmann Road, Suite L	AND ORDER
15 Paradise, CA 95969	[Gov. Code, §11520]
Respondent.	

16 FINDINGS OF FACT

- 17 1. On or about October 31, 2000, Complainant Patricia F. Harris, in her
18 official capacity as Executive Officer of the Board of Pharmacy, Department of Consumer
19 Affairs, State of California, filed Accusation No. 2304 against Butte County Pharmaceutical
20 Services, Inc. (Respondent) before the Board of Pharmacy (Board).
- 21 2. On or about April 2, 1998, the Board of Pharmacy issued Pharmacy Permit
22 Number PHY43337 to Respondent. The Pharmacy Permit was in full force and effect at all
23 times relevant to the charges brought herein.
- 24 3. On or about November 7, 2000, Christina D. Bush, an employee of the
25 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
26 2304, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
27 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
28 which was 771 Buschmann Road, Suite L, Paradise, CA 95969. A copy of the Accusation, the

1 related documents, and Declaration of Service are attached as exhibit A, and are incorporated
2 herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the
4 provisions of Government Code section 11505, subdivision (c).

5 5. On or about November 9, 2000, the aforementioned documents were
6 returned by the U.S. Postal Service marked "Moved Left No Address - Unable to Forward -
7 Return to Sender." A copy of the postal returned documents are attached hereto as exhibit B, and
8 are incorporated herein by reference.

9 6. Government Code section 11506 states, in pertinent part:

10 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
11 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
12 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
13 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

14 7. Respondent failed to file a Notice of Defense within 15 days after service
15 upon it of the Accusation, and therefore Respondent waived its right to a hearing on the merits of
16 Accusation No. 2304.

17 8. California Government Code section 11520 states, in pertinent part:

18 "(a) If the respondent either fails to file a notice of defense or to appear at the
19 hearing, the agency may take action based upon the respondent's express admissions or
20 upon other evidence and affidavits may be used as evidence without any notice to
21 respondent."

22 9. Pursuant to its authority under Government Code section 11520, the Board
23 finds Respondent is in default. The Board will take action without further hearing and, based on
24 Respondent's express admissions by way of default and the evidence before it contained in
25 exhibits A and B finds that the allegations in Accusation No. 2304 are true.

26 10. The total costs for investigation and enforcement are \$14,600 as of
27 April 12, 2002.

28 ///

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent BUTTE COUNTY
3 PHARMACEUTICAL SERVICES, INC. has subjected its Pharmacy Permit No. PHY 43337 to
4 discipline.

5 2. A copy of the Accusation and the related documents and Declaration of
6 Service are attached.

7 3. The agency has jurisdiction to adjudicate this case by default.

8 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy
9 Permit No. PHY43337 based upon the allegations set forth in the Accusation.

10 ORDER

11 IT IS SO ORDERED Pharmacy Permit No. PHY43337, heretofore issued to
12 Respondent BUTTE COUNTY PHARMACEUTICAL SERVICES, INC., is revoked.

13 Pursuant to Government Code section 11520, subdivision (c), Respondent may
14 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
15 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
16 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
17 statute.

18 This Decision shall become effective on June 14, 2002.

19 It is so ORDERED May 15, 2002

20
21 BOARD OF PHARMACY
22 DEPARTMENT OF CONSUMER AFFAIRS
23 STATE OF CALIFORNIA

24 By: 
25 STEVE LITSEY
26 Board President

1 BILL LOCKYER, Attorney General
of the State of California
2 PAUL V. BISHOP, State Bar No. 50133
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, California 94244-2550
5 Telephone: (916) 324-4618
Facsimile: (916) 324-5567
6

7 **Attorneys for Complainant**

8
9
10
11

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

12 In the Matter of the Accusation Against:

Case No. 2304

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

ACCUSATION

15 Pharmacy Permit No. PHY43337,

16 BRIAN KIM HUNTER
17 6068 Guilford Circle
Magalia, CA 95954

18 Pharmacist No. RPH41612,

19 and

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

22 Pharmacist No. RPH22133

23 Respondents
24

25 ///
26 ///
27 ///

28

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.

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(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 PATRICIA FLORIAN HARRIS
17 Executive Officer
18 Board of Pharmacy
19 State of California
20 Complainant

21
22
23
24
25
26
27 03583110sa2000ad0581
28 C:\dat\Bishop\Butte County\BCPS accusation
cdo - October 23, 2000