

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 LESLIE A. WALDEN
Deputy Attorney General
4 State Bar No. 196882
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-3465
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 5524

11 **NATHAN HUNT LLC DBA JONATHAN'S**
12 **PHARMACY, JONATHAN HUNT BUDGE**
13 **19341 Bear Valley Rd. Ste. 103**
Apple Valley, CA 92308

A C C U S A T I O N

14 **Permit No. PHY 50941,**

15 **and**

16 **JONATHAN HUNT BUDGE**
17 **19341 Bear Valley Rd. Ste. 103**
Apple Valley, CA 92308

18 **Pharmacist License No. RPH 54616**

19 Respondent.

20
21 Complainant alleges:

22 **PARTIES**

23 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
24 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

25 2. On or about September 4, 2012, the Board of Pharmacy issued Permit Number PHY
26 50941 to Nathan Hunt LLC dba Jonathan's Pharmacy, Jonathan Hunt Budge. The Permit was in
27 full force and effect at all times relevant to the charges brought herein and will expires on
28 September 1, 2016, unless renewed.

1 "(5) Abstention from the use of alcohol or drugs.

2 "(6) Random fluid testing for alcohol or drugs.

3 "(7) Compliance with laws and regulations governing the practice of pharmacy.

4 "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary
5 certificate of licensure for any violation of the terms and conditions of probation. Upon
6 satisfactory completion of probation, the board shall convert the probationary certificate to a
7 regular certificate, free of conditions.

8 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
9 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
10 shall have all the powers granted therein. The action shall be final, except that the propriety of the
11 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil
12 Procedure."

13 6. Section 4301 of the Code states:

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

17 "...

18 "(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a)
19 of Section 11153 of the Health and Safety Code.

20 "...."

21 7. Section 4040 of the Code states:

22 (a) "Prescription" means an oral, written, or electronic transmission order that is both of the
23 following:

24 (1) Given individually for the person or persons for whom ordered that includes all of the
25 following:

26 (A) The name or names and address of the patient or patients.

27 (B) The name and quantity of the drug or device prescribed and the directions for use.

28 (C) The date of issue.

1 (D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and
2 telephone number of the prescriber, his or her license classification, and his or her federal registry
3 number, if a controlled substance is prescribed.

4 (E) A legible, clear notice of the condition or purpose for which the drug is being
5 prescribed, if requested by the patient or patients.

6 (F) If in writing, signed by the prescriber issuing the order, or the certified nurse-midwife,
7 nurse practitioner, physician assistant, or naturopathic doctor who issues a drug order pursuant to
8 Section 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist who issues a drug
9 order pursuant to either Section 4052.1 or 4052.2.

10 (2) Issued by a physician, dentist, optometrist, podiatrist, veterinarian, or naturopathic
11 doctor pursuant to Section 3640.7 or, if a drug order is issued pursuant to Section 2746.51,
12 2836.1, 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner, physician assistant, or
13 naturopathic doctor licensed in this state, or pursuant to either Section 4052.1 or 4052.2 by a
14 pharmacist licensed in this state.

15 (b) Notwithstanding subdivision (a), a written order of the prescriber for a dangerous drug,
16 except for any Schedule II controlled substance, that contains at least the name and signature of
17 the prescriber, the name and address of the patient in a manner consistent with paragraph (2) of
18 subdivision (a) of Section 11164 of the Health and Safety Code, the name and quantity of the drug
19 prescribed, directions for use, and the date of issue may be treated as a prescription by the
20 dispensing pharmacist as long as any additional information required by subdivision (a) is readily
21 retrievable in the pharmacy. In the event of a conflict between this subdivision and Section
22 11164 of the Health and Safety Code, Section 11164 of the Health and Safety Code shall prevail.

23 (c) "Electronic transmission prescription" includes both image and data prescriptions.
24 "Electronic image transmission prescription" means any prescription order for which a facsimile
25 of the order is received by a pharmacy from a licensed prescriber. "Electronic data transmission
26 prescription" means any prescription order, other than an electronic image transmission
27 prescription, that is electronically transmitted from a licensed prescriber to a pharmacy.
28

1 (d) The use of commonly used abbreviations shall not invalidate an otherwise valid
2 prescription.

3 (e) Nothing in the amendments made to this section (formerly Section 4036) at the 1969
4 Regular Session of the Legislature shall be construed as expanding or limiting the right that a
5 chiropractor, while acting within the scope of his or her license, may have to prescribe a device.

6 8. Section 4307 of the Code states:

7 "Individuals with Denied, Revoked, Suspended, etc. Licenses Prohibited From Pharmacy
8 Ownership or Association with Board Licensed Entities"

9 "(a) Any person who has been denied a license or whose license has been revoked or is
10 under suspension, or who has failed to renew his or her license while it was under suspension, or
11 who has been a manager, administrator, owner, member, officer, director, associate, or partner of
12 any partnership, corporation, firm, or association whose application for a license has been denied
13 or revoked, is under suspension or has been placed on probation, and while acting as the manager,
14 administrator, owner, member, officer, director, associate, or partner had knowledge of or
15 knowingly participated in any conduct for which the license was denied, revoked, suspended, or
16 placed on probation, shall be prohibited from serving as a manager, administrator, owner,
17 member, officer, director, associate, or partner of a licensee as follows:

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

20 "(2) Where the license is denied or revoked, the prohibition shall continue until the license
21 is issued or reinstated.

22 "(b) "Manager, administrator, owner, member, officer, director, associate, or partner," as
23 used in this section and Section 4308, may refer to a pharmacist or to any other person who serves
24 in that capacity in or for a licensee.

25 "(c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to
26 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code.
27 However, no order may be issued in that case except as to a person who is named in the caption,
28 as to whom the pleading alleges the applicability of this section, and where the person has been

1 given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part
2 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision
3 shall be in addition to the board's authority to proceed under Section 4339 or any other provision
4 of law.”

5 9. Section 11153 subdivision (a) of the Health and Safety Code states:

6 “(a) A prescription for a controlled substance shall only be issued for a legitimate medical
7 purpose by an individual practitioner acting in the usual course of his or her professional practice.
8 The responsibility for the proper prescribing and dispensing of controlled substances is upon the
9 prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the
10 prescription. Except as authorized by this division, the following are not legal prescriptions: (1)
11 an order purporting to be a prescription which is issued not in the usual course of professional
12 treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of
13 controlled substances, which is issued not in the course of professional treatment or as part of an
14 authorized narcotic treatment program, for the purpose of providing the user with controlled
15 substances, sufficient to keep him or her comfortable by maintaining customary use

16 “....”

17 REGULATIONS

18 10. Section 1761 of title 8 of the California Code of Regulations states:

19 “(a) No pharmacist shall compound or dispense any prescription which contains any
20 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any
21 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
22 validate the prescription.

23 “(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense
24 a controlled substance prescription where the pharmacist knows or has objective reason to know
25 that said prescription was not issued for a legitimate medical purpose.”

26 11. Section 1716 of title 2 of the California Code of Regulations states:
27
28

1 "Pharmacists shall not deviate from the requirements of a prescription except upon the prior
2 consent of the prescriber or to select the drug product in accordance with Section 4073 of the
3 Business and Professions Code."

4 "Nothing in this regulation is intended to prohibit a pharmacist from exercising commonly-
5 accepted pharmaceutical practice in the compounding or dispensing of a prescription."

6 12. Section 1304.11 subdivision (b) of the of title 21 of the Code of Federal Regulations
7 states:

8 "..."

9 "(b) Initial inventory date. Every person required to keep records shall take an inventory of
10 all stocks of controlled substances on hand on the date he/she first engages in the manufacture,
11 distribution, or dispensing of controlled substances, in accordance with paragraph (e) of this
12 section as applicable. In the event a person commences business with no controlled substances on
13 hand, he/she shall record this fact as the initial inventory.

14 "(c) Biennial inventory date. After the initial inventory is taken, the registrant shall take a
15 new inventory of all stocks of controlled substances on hand at least every two years. The biennial
16 inventory may be taken on any date which is within two years of the previous biennial inventory
17 date.

18 "..."

19 COSTS

20 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
21 administrative law judge to direct a licentiate found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
24 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
25 included in a stipulated settlement.

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1 **CONTROLLED SUBSTANCES**

2 14. Roxicodone is the brand name for Oxycodone 30 mg, it is a dangerous drug pursuant
3 to Business and Professions Code section 4022 and it a Schedule II controlled substance pursuant
4 to Health and Safety Code section 11055 subdivision (b)(1)M. It is typically used to treat pain.

5 15. Soma is the brand name for Carisoprodol 350 mg, it is a dangerous drug pursuant to
6 Business and Professions Code section 4022 and it a Schedule IV controlled substance. It is
7 typically used as a muscle relaxant.

8 16. Xanax is the brand name for Alprazolam 2 mg, it is a dangerous drug pursuant to
9 Business and Professions Code section 4022 and it a Schedule IV controlled substance pursuant
10 to Health and Safety Code section 11057 subdivision (d)(1). It is typically used to treat anxiety.

11 17. Phenergan with Codeine is the brand name for Promethazine with Codeine, it is a
12 dangerous drug pursuant to Business and Professions Code section 4022 and it a Schedule IV
13 controlled substance pursuant to Health and Safety Code section 11058 subdivision (c)(1). It is a
14 narcotic cough suppressant.

15 **FIRST CAUSE FOR DISCIPLINE**

16 (Corresponding Responsibility)

17 18. Respondents Nathan Hunt LLC, dba Jonathan's Pharmacy and Jonathan Hunt Budge
18 are subject to disciplinary action under section 4301 of the Code in conjunction with Health and
19 Safety Code section 11153 and title 8 of the California Code of Regulations section 1761 in that
20 Respondents excessively furnished controlled substances without exercising their corresponding
21 responsibility to demonstrate the legitimacy of its prescriptions and without verifying said
22 prescriptions for significant errors, omissions, irregularities, uncertainties, ambiguities or
23 alterations. The circumstances are as follows:

24 19. From on or about January 1, 2013 through July 14, 2014, Respondents failed to
25 assume their corresponding responsibility when they dispensed numerous prescriptions of
26 controlled substances despite multiple cues of irregularity and uncertainty related to patient and
27 prescriber factors. Such factors included the distance from the prescribing physician to each
28 patient's home, distance from the pharmacy to each patient's home, percentage of cash patients

1 specific to the prescribing physician, the pattern of patients willing to pay cash for highly
2 expensive prescriptions, early refills, and the same or similar prescribing patterns for individual
3 patients from the same prescribing physician. Respondents further failed to assume its
4 corresponding responsibility when it failed to appropriately scrutinize patients' drug therapy with
5 readily available tools such as the Controlled Substance Utilization Review and Evaluation
6 System (CURES) reports and its own pharmacy records.

7 20. From on or about January 1, 2013 through July 14, 2014, narcotic pain drugs and anti
8 anxiety drugs including Roxicodone, Soma, Xanax and Phenergan with Codeine were
9 continuously prescribed in large quantities as follows:

- 10 a. Respondents dispensed 4,557 prescriptions of controlled substances.
- 11 b. Of the 4,557 prescriptions, a disproportionate amount of 32.78% were paid for
12 in cash.
- 13 c. Of the 4,557 prescriptions , 166 were for oxycodone and of the 166
14 prescriptions for oxycodone, 93.37% were paid for in cash.
- 15 d. Of the 4,557 prescriptions, 442 prescriptions were dispensed for Dr. S.¹, when
16 none of the surrounding pharmacies dispensed for Dr. S.

17 21. A sample of 23 patients purchasing controlled substances from the Respondents from
18 on or about January 1, 2013 through July 14, 2014 shows the following:

- 19 a. The average distance traveled by these patients to purchase drugs from the
20 Respondents was 60.52 miles.
- 21 b. Of the 23 patients, seven (7) had the same home address and no addresses could
22 be located for six (6) of the patients.
- 23 c. Of the 23 patients, none lived in Apple Valley where the Respondent Pharmacy
24 was located.
- 25 d. All 23 of the patients paid cash for the controlled substances.
- 26 e. Of the 23 patients, 16 had the same or similar diagnosis.

27 ¹ The prescribing physician's initials are used in order to protect the privacy rights of that
28 individual.

1 f. Respondents failed to keep notes or files on any of the patients' pain
2 management drug therapy.

3 g. All 23 patients were using Dr. S. as one of their prescribing physicians to obtain
4 the controlled substances.

5 h. CURES reports were not requested by Respondents to determine the
6 appropriateness of the controlled substance prescriptions to these 23 patients.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Erroneous or Uncertain Prescriptions)

9 22. Respondents Nathan Hunt LLC, dba Jonathan's Pharmacy and Jonathan Hunt Budge
10 are subject to disciplinary action under title 8 of the California Code of Regulations section 1761
11 as it relates to section 4040 of the Code in that no pharmacists shall compound or dispense any
12 prescription which contains any significant error, omission, irregularity, uncertainty, ambiguity or
13 alterations. The circumstances are as follows:

14 23. Between November 19, 2012 and January 2, 2014, Respondents dispensed the
15 following prescriptions with errors:

16 a. 1/2/2014- RX# 2001092, 4003318, and 4003319- Date was not written in
17 prescriber's handwriting.

18 b. 10/2/2013- RX# 4002794, 4002795, 2000966- Date was not written in
19 prescriber's handwriting.

20 c. 11/19/2012- RX# 4000025 and 2000004- Date was not written in prescriber's
21 handwriting.

22 d. 5/1/2013- RX# 2000558 and 4001524- There was no date on the prescription

23 e. 10/2/2013- RX# 4002797, 4002796 and 2000967- Date was not written in
24 prescriber's handwriting.

25 f. 12/30/2013- RX# 2001088, 4003303 and 4003302- Date was not written in
26 prescriber's handwriting.

27 g. 10/1/2013- RX# 2400278 and 4002787- Date was not written in prescriber's
28 handwriting.

1 **THIRD CAUSE FOR DISCIPLINE**

2 (Validation from Prescription)

3 24. Respondents Nathan Hunt LLC, dba Jonathan's Pharmacy and Jonathan Hunt Budge
4 are subject to disciplinary action under title 16 of the California Code of Regulations section 1716
5 in that Respondents deviated from the requirements of a prescription without prior consent of the
6 prescriber. The circumstances are as follows:

7 25. On or about June 26, 2013, Respondent's dispensed RX# 4002081 with incorrect
8 directions. Specifically, prescription # 4002081 stated "alprazolam 2mg, 1 tablet twice daily".
9 Instead, Respondents dispensed "alprazolam 2mg 2 tablets twice daily".

10 26. On or about November 26, 2013, Respondent's dispensed RX# 2001041 with
11 incorrect directions. Prescription # 2001041 stated, "oxycodone 30mg, 2 tablets three times
12 daily." Instead Respondents dispensed "oxycodone 30mg, 2 tablets four times daily."

13 **FOURTH CAUSE FOR DISCIPLINE**

14 (Controlled Substance Biennial Inventory)

15 27. Respondents Nathan Hunt LLC, dba Jonathan's Pharmacy and Jonathan Hunt Budge
16 are subject to disciplinary action under title 21 of the Code of Federal Regulations section
17 1304.11 subdivision (b) and (c) in that Respondents were required to keep records and take an
18 initial inventory of all controlled substances on the date they first engaged in the manufacture,
19 distribution or dispensing of controlled substance. Thereafter, Respondents were required to take
20 a new inventory of all controlled substances at least every two years. The circumstances are as
21 follows:

22 28. On or about January 14, 2015, Respondent Jonathan Hunt Budge, while pharmacist in
23 charge at Respondent Jonathan's Pharmacy failed to provide a current controlled substance
24 inventory and failed to provide an initial controlled substance inventory from when the pharmacy
25 first opened on November 1, 2012.

26 **OTHER MATTERS**

27 29. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
28 PHY 50941, issued to Nathan Hunt LLC dba Jonathan's Pharmacy, Jonathan Hunt Budge

1 (Budge) while acting as the manager, administrator, owner, member, officer, director, associate,
2 or partner of Nathan Hunt LLC dba Jonathan's Pharmacy had knowledge of or knowingly
3 participated in any conduct for which Pharmacy Permit Number PHY 50941, issued to Nathan
4 Hunt LLC dba Jonathan's Pharmacy was revoked, suspended or placed on probation, Budge
5 shall be prohibited from serving as a manager, administrator, owner, member, officer, director,
6 associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50941 issued
7 to Nathan Hunt LLC dba Jonathan's Pharmacy is placed on probation or until Pharmacy Permit
8 Number PHY 50941 issued to Nathan Hunt LLC dba Jonathan's Pharmacy is reinstated if it is
9 revoked.

10
11 **PRAYER**

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

14 1. Revoking or suspending Permit Number PHY 50941, issued to Nathan Hunt LLC dba
15 Jonathan's Pharmacy, Jonathan Hunt Budge;

16 2. Revoking or suspending Pharmacist License Number RPH 54616, issued to Jonathan
17 Hunt Budge;

18 3. Prohibiting Jonathan Hunt Budge from serving as a manager, administrator, owner,
19 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
20 Number 50941 issued to Nathan Hunt LLC dba Jonathan's Pharmacy is placed on probation or
21 until Pharmacy Permit Number 50941 issued to Nathan Hunt LLC dba Jonathan's Pharmacy is
22 reinstated if Pharmacy Permit Number 50941 issued to Nathan Hunt LLC dba Jonathan's
23 Pharmacy issued is revoked;

24 4. Ordering Jonathan's Pharmacy and Jonathan Hunt Budge to pay the Board of
25 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
26 Business and Professions Code section 125.3; and

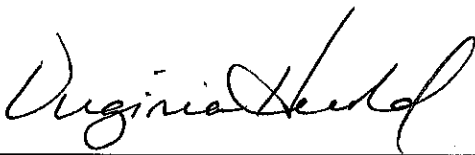
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5. Taking such other and further action as deemed necessary and proper.

DATED: 11/4/16



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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