

**TENNESSEE BOARD OF PHARMACY  
JANUARY 11 - 12, 2009  
227 FRENCH LANDING - IRIS ROOM  
NASHVILLE, TN**

**BOARD MEMBERS PRESENT:**

Todd Bess, President  
Bettie Wilson, Vice President  
Monica Franklin, Consumer Member  
Larry Hill, Member  
Brenda Warren, Member  
Charles Stephens, Member  
Robert Mitchell, Member

**STAFF PRESENT:**

Kevin K. Eidson, Executive Director  
Alison Cleaves, Chief Deputy Legal Counsel  
Martha Agee, Board Administrator  
Tommy Chrisp, Pharmacist Investigator  
Terry Grinder, Pharmacist Investigator  
Richard Hadden, Pharmacist Investigator  
Ralph Staton, Pharmacist Investigator

The Tennessee Board of Pharmacy convened on Monday, January 12, 2009, in the Iris Room, 227 French Landing, Heritage Place - Metro Center, Nashville, Tennessee. A quorum of the members being present, the meeting was called to order at 9:00 a.m. CST, by President, Dr. Todd Bess. President, Dr. Todd Bess noted for the record Mrs. Monica Franklin was not present at roll call and arrived at 9:10 a.m.

**APPROVAL OF THE MINUTES**

***November 3 - 4, 2008 Board Meeting***

The minutes of the **November 3 - 4, 2008** board meeting were presented. Dr. Brenda Warren commented on page 14 under complaint #12, the word "Paxil" is misspelled. On page 33 under 2008 MALTAGON, Dr. Warren attended the meeting instead of Dr. Bettie Wilson. Dr. Bettie Wilson motioned to **approve** the minutes with the corrections noted; seconded by Dr. Brenda Warren. All were in favor and the motion carried.

***Telepharmacy Teleconference - October 10, 2008***

The minutes of the Telepharmacy Teleconference conducted on October 10, 2008 were presented and reviewed. President, Dr. Todd Bess noted on page 4, the sentence, "... a satisfaction survey comparison of a FQHC pharmacy vs. satellite *pharmacy*", should reflect

“satellite clinic” instead of pharmacy. Dr. Robert Mitchell motioned to **approve the minutes with the correction**, seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

***Charitable Clinic Pharmacy Teleconference - December 15, 2008***

The minutes of the Charitable Clinic Pharmacy Teleconference that was conducted on December 15, 2008, were presented and reviewed. Mrs. Monica Franklin motioned to **accept** the minutes; seconded by Dr. Benda Warren. All were in favor and the motion carried.

**FORMAL HEARINGS**

Mrs. Alison Cleaves, Chief Deputy Legal Counsel, presented to the Board five (5) Agreed Orders for the revocation of their pharmacy technician registration, due to theft and diversion of controlled substances from the pharmacy without authorization.

#1     **Docket #17.56-100854A** (Salyer)

Dr. Charles Stephens motioned to **accept** the Agreed Order; seconded by Dr. Brenda Warren. All were in favor and the motion carried.

#2     **Docket #17.56-100855A** (Young)

Dr. Robert Mitchell motioned to **accept** the Agreed Order; seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

#3     **Docket #17.56-100853A** (Smith)

Mrs. Monica Franklin motioned to **accept** the Agreed Order; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

#4     **Docket #17.56-101214A** (Davis)

Mrs. Monica Franklin motioned to **accept** the Agreed Order; seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

#5      **Docket #17.56-101215A**      (Sharp)

Dr. Bettie Wilson motioned to **accept** the Agreed Order; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

**TANJANIQUA WILLIAMS, RT**  
**MURFREESBORO, TN**

**Docket #17.56-100856A**

This matter came to be heard before the Tennessee Board of Pharmacy on the 12<sup>th</sup> day of January 2009, pursuant to the October 30, 2008 Notice of Hearing and Charges filed against the Respondent. Presiding at the hearing was the Honorable Marion Wall, Administrative Law Judge, assigned by the Secretary of State. Judge Wall inquired whether the members had any prior knowledge of this matter pertaining to Ms. Williams.

<b>MEMBER</b>	<b>RESPONSE</b>
Robert Mitchell	No
Charles Stephens	No
Brenda Warren	No
Larry Hill	No
Monica Franklin	No
Bettie Wilson	No
Todd Bess	No

The State of Tennessee was represented by Mrs. Alison Cleaves, Chief Deputy Legal Counsel for the Department of Health. The Notice of Hearing and Charges outlined the following violations of T.C.A. §53-10-104 (a); §53-10-104 (b); and §53-10-105 (a).

Mrs. Alison Cleaves, Chief Deputy Legal Counsel advised Judge Marion Wall that Ms. Tanjaniqua Williams is not present nor is she represented by counsel. Mrs. Cleaves is requesting to proceed with the formal hearing by default.

After being properly sworn in, Dr. Kevin Eidson acknowledged being the Executive Director and keeper of the records for the Board of Pharmacy. Dr. Eidson testified the registration number issued is 30254; first licensed on September 19, 2007 and she has an active registration. The last mailing address on file with the Board is 205 Empress Drive #A-11, Murfreesboro, Tennessee 37130. Dr. Eidson stated the Board has not received any correspondence relevant to Ms. Williams' mailing address.

Mrs. Cleaves called Dr. Terry Grinder, pharmacist investigator to the witness stand. After being duly sworn, Dr. Grinder stated his position with Board as being a pharmacist investigator and his job duties include investigating matter dealing with complaints and performing inspections. Dr. Grinder advised he was asked to personally serve the Notice of Hearing and Charges on November 5, 2008. Dr. Grinder stated on November 5, 2008, he attempted to contact Ms. Williams at the telephone number listed and the address listed in the board's computer system. The address was not valid but was able to obtain a cell number and spoke with Ms. Williams on November 5, 2008. Ms. Williams advised Dr. Grinder she was willing to sign an Agreed Order instead of attending the board meeting, but was currently out of the state and was unable to meet with him.

Ms. Williams stated that she would call when she returned to Tennessee from Alabama. She stated she was still living with her aunt on Porter Avenue in Nashville. Dr. Grinder checked the residence and the people living there said they had lived in the house for several months and did not know Ms. Williams. Since that time she has stopped answering her cell phone, but when we would call from different phone numbers, we would immediately get a call back. Once we identified ourselves, they would hang up. We have done public record searches and enlisted the help of the Alabama Board of Pharmacy with no response. She was informed of the date and

time via cell phone and Ms. Williams stated that she preferred an Agreed Order. Mrs. Cleaves called for a vote on the Motion for Default.

After instructions from Judge Wall, Mrs. Franklin made a Motion for Default Judgment, Dr. Brenda Warren seconded. There being no discussion, the Board voted unanimously for Default.

After the Board had time to review the documents, Mrs. Alison Cleaves stated the charges of unlawful, dishonorable, immoral, unethical or unprofessional conduct and undermines the public trust. She then called the first witness.

After being duly sworn, Mr. Christopher Morrison testified as to the investigation done on behalf of the Target Store at Hickory Hollow. A signed statement from Tanjanique Williams was made Exhibit 1; and DEA 106 Form was presented as Exhibit 2. Mr. Morrison answered questions from the Board and the State rested its case.

Judge Wall instructed the Board as to their obligations and turned the meeting over to President Bess for findings of fact and conclusions of law.

After a 5 minute recess, a Motion was made by Dr. Brenda Warren to accept the 'Allegations of Fact' as the Findings of Fact 1-6; seconded by Dr. Bettie Wilson. After further discussion, the Board voted in a Roll Call, as follows:

Mitchell	Yes
Stephens	Yes
Warren	Yes
Hill	Yes
Franklin	No
Wilson	Yes
Bess	Yes

There was a Motion by Dr. Larry Hill to amend #6 Finding of Fact, by striking “and consuming” and seconded by Dr. Brenda Warren. The Board voted unanimous to accept this change.

Mrs. Monica Franklin made a motion to accept Finding of Fact 2-3 as violations of 53-10-104(a)(b) under Conclusions of Law; seconded by Dr. Bettie Wilson.

Motion to Amend by Mrs. Monica Franklin, to include 63-10-305(4)&(6) and was seconded by Dr. Robert Mitchell. The Board voted unanimously to approve.

Dr. Charles Stephens asked that the Motion be further amended to include #6 in the accepted Conclusions of law which was seconded by Dr. Robert Mitchell. The Board voted unanimously to approve in a Roll Call vote.

With regards to the action which should be done, Dr. Brenda Warren made a motion to revoke Ms. Williams’ registration; seconded by Mrs. Monica Franklin. Approved unanimously by the Board.

The Board voted on a policy statement to include “Her violation of our rules and the law basically put her at risk to the public, to serve them in the capacity of pharmacy.” Motion to Accept was made by Dr. Brenda Warren, seconded by Mrs. Monica Franklin. Roll call vote was unanimous.

After a short recess, President Bess called the meeting to order. The meeting was turned over to Judge Wall who reminded the Board that they were still under oath; to adhere of his previous warnings of not discussing the case outside of the meeting; and that they are sitting as a jury in this matter.

**LAURHENDA MICHELLE POSS**  
**Mt. Juliet, Tennessee**

**Docket No. 17.56-100857A**

This matter came to be heard before the Tennessee Board of Pharmacy on the 12<sup>th</sup> day of January 2009, pursuant to the October 30, 2008 Notice of Hearing and Charges filed against the Respondent. Presiding at the hearing was the Honorable Marion Wall, Administrative Law Judge, assigned by the Secretary of State.

Judge Wall asked Mrs. Alison Cleaves to present the Motion for Default. She called Dr. Kevin Eidson and Dr. Terry Grinder as witnesses.

Dr. Eidson testified that as Executive Director of the Board of Pharmacy, he is the keeper of the records; that Laurhenda Michelle Poss has a current registration #31258 as a pharmacy tech which was issued 10-09-07; the address listed on her registration is 1648 Burton Road, Mt. Juliet, TN 37122; and that there have been no request for additions or corrections to this address.

Dr. Terry Grinder testified that as a Pharmacy Investigator for the Tennessee Board of Pharmacy, he was asked to personally serve a 'Notice of Hearing and Charges' on Ms. Poss. He also testified to the process he followed trying to locate and serve Ms. Poss.

Mrs. Cleaves stated that the State had nothing further.

Judge Wall instructed the Board that it had before it a Motion for Default, and if they chose to grant the motion, they would proceed with trial without the respondent. However, if the Board denied the motion, the matter would be reset for some future time.

President Bess asked for comments and discussion regarding the Motion for Default. There being none, Martha Franklin made a motion to grant the Motion for Default. The Motion was seconded by Dr. Charles Stephens. With no further discussion, the Board approved unanimously.

The Board having reviewed the charges, Mrs. Cleaves called Charles E. Palmer. After being duly sworn, he testified in his capacity as Loss Prevention Supervisor for Walgreens with regard to the steps taken after being notified that there was a loss of the drug Hydrocodone from the pharmacy. He also testified that he did indeed witness the signature on the written statement from respondent admitting guilt. This statement was made Exhibit 1. After answering questions from the Board, the State rested.

Judge Wall reminded the Board, in lieu of repeating all the previous charges, they need only consider the evidence presented today, and that the State had the burden of proving guilt.

President Bess asked the Board to look again at the Notice of Hearing and Charges in order to make a determination as to the Allegations of Fact. It was brought to the attention of the President that Allegation of Fact #1 had a different registration number than was on the Notice of Hearing and Charges.

Mrs. Monica Franklin made a Motion to Re-open Proof in order to clarify. Dr. Brenda Warren seconded. There being no discussion, Dr. Kevin Eidson was again called to verify the correct registration number, which he stated to be #31258 and that the first license effective date was 11-9-07 which opened further discussion about being able to discipline individuals who were licensed on the day after the offense. Judge Wall felt that the licensing process subjects the applicant to the jurisdiction of the Board

Motion was made by Dr. Larry Hill to accept the Allegations of Fact to be the Findings of Fact 1-6, along with the corrected registration number of 31258; seconded by Dr. Robert Mitchell.

There was a question from Dr. Brenda Warren about the word 'storage' in #4, but with no further discussion, the Board voted unanimously to approve.

Dr. Brenda Warren made a Motion that the Findings of Fact constitute a violation of the laws that are presented in the Alleged Conclusions of Law 1-6, with the modified registration number correction; seconded by Mrs. Monica Franklin. The Board voted unanimously to accept.

A Motion was then made to revoke the registration; seconded by Dr. Larry Hill. There being no further discussion, it was unanimously approved.

Policy Statement as stated by Dr. Brenda Warren and seconded by Monica Franklin states: The actions of this registrant are in violation of our laws and rules that regulate the possession of controlled substances and pose a threat to the public safety. There being no further discussion, all agreed.

Before Judge Wall concluded the Contested Case Docket, Mrs. Alison Cleaves requested the proper procedure to correct typographical errors and to modify the wordage of #4 of the Allegations of Fact. Since court was still in session, Judge Wall stated that the Board could still make modifications. There was a Motion by Dr. Charles Stephens to substitute the word 'shortage' for the word 'storage' in #4 in the Poss case and to end the sentence after the word 'drug'. The correct wordage of #4 should be "4. A subsequent inventory of Walgreen's stock of Hydrocodone also conducted on November 8, 2007 revealed shortage of this drug." With no further discussion, the Board approved with no opposition.

It was also agreed to substitute the word "shortage" for the word 'storage' in the previous case of Tanjaniqua Williams. Motion by Dr. Brenda Warren; seconded by Dr. Robert Mitchell; unanimously carried.

With that, Judge Wall concluded the Contested Case Docket of the Board of Pharmacy for January 12, 2009.

After a 5 minute recess, President Bess called the meeting back to order. Getting back to approving the Minutes, Ms. Franklin made a motion to accept the ones for Charitable Clinic Pharmacy Teleconference – Dec 15, 2008; Dr. Brenda Warren approved. With no discussion, all approved.

Mrs. Alison Cleaves was called to present the Consent Orders. She first introduced Attorney Chris Larkin to the Board of Pharmacy. He also works in the Office of General Council and is attorney for several other Boards.

### **Revocation of License/Registration**

Mrs. Cleaves stated that based on the blanket authority given to her by the Board, she would recommend that the following have their license placed on indefinite suspension: **Kirk Ethridge, DPH, Jan G. Horn, DPH, James McNally, DPH, and Alvis Simmons, DPH.** Motion to accept was made by Dr. Larry Hill with Dr. Brenda Warren's second. With no discussion or questions, and Board unanimously approved.

In the case of **Hillary Jackson, RT and Brandy Phillips, RT;** both took drugs from the pharmacy where they were employed without authorization. Both agreed to revocation. Motion to approve by Mrs. Monica Franklin; seconded by Dr. Brenda Warren. The Board unanimously approved.

### **Reinstatement of License**

Mrs. Cleaves presented the case of Martha **Bryant, DPH and Donna Clarkson, DPH;** both appeared at the last Board meeting in which they asked for reinstatement of their pharmacy license. The Board granted that request and placed them on probation. They both signed without additions or changes - Bryant for 10 year probation and Clarkson for 5 years probation. Mrs. Monica Franklin made motion to accept; seconded by Dr. Brenda Warren. With no further discussion, the Board unanimously approved.

### **Rule 1140-1-01(1)**

Mrs. Cleaves presented the case of **Stacey Barnes, DPH,** misfill of prescription resulting in a death. The Board authorized \$1000 civil penalty. Ms. Barnes signed the Order and paid the fee. Mrs. Monica Franklin made a motion to reinstate; Dr. Brenda Warren seconded; and with no further discussion, all approved.

**Rule 1140-2-.02(1) and (2) Unlicensed Pharmacy Technician**

Mrs. Cleaves presented the Consent Order of **Kenneth L. Baird, DPH**. Mr. Baird signed the order and paid the \$800 civil penalty. Motion to accept by Mrs. Monica Franklin and second by Dr. Brenda Warren was made. With no further discussion, the Board approved unanimously.

Mrs. Cleaves presented the Consent Order of **Kyndra Dove, DPH** for allowing unregistered individual to operate as a pharmacy technician, and the imbalance ratio of techs to pharmacists. Civil penalty set at \$2150. Dr. Dove signed the order and paid the fine. With no further discussion, Dr. Bettie Wilson made a motion with Dr. Brenda Warren's second that the Order be granted. With no opposition, it carried.

Mrs. Cleaves presented the Consent Order for **Alicia Gandee, DPH** which allowed an unregistered individual to operate as pharmacy technician with a \$400 civil penalty. Dr. Gandee signed the Order and paid the fine. Motion to Accept by Mrs. Monica Franklin and second by Dr. Brenda Warren was made. All members approved.

Mrs. Cleaves presented the Consent Order of **Robert Holland, DPH** who allowed unregistered individual to operate as a pharmacy technician. He signed and Order and paid the \$700 civil penalty. Motion to accept was made by Mrs. Monica Franklin with a second from Dr. Bettie Wilson. The Board unanimously approved.

Mrs. Cleaves presented a Consent Order of **Benjamin Rapp, DPH** which states that he allowed individuals to operate without registration as pharmacy tech. He was issued a \$100 civil penalty. He signed the Consent Order and paid the fine. The Motion to Approve was made by Dr. Bettie Wilson with Mrs. Monica Franklin giving the second. The Board unanimously approved.

Mrs. Cleaves presented a Consent Order for **Anne Whitehead, DPH** in which she allowed two individuals to operate as technicians without registration. She was issued a \$600 civil penalty, signed the Order and paid the fine. Motion was made by Dr. Bettie Wilson to approve and Order; Mrs. Monica Franklin seconded. The motion was unanimously approved by the Board.

Mrs. Cleaves presented the Consent Order on behalf of **Walgreens Pharmacy #3284** which allowed individuals to operate as technicians without registration. This was the same pharmacy where Dr. Gandee was employed as the pharmacist in charge. Walgreens signed the Order and paid the \$2400 civil penalty. Motion to Approve was made by Monica Franklin. Dr. Robert Mitchell seconded and the Board unanimously approved.

#### **Rule 1130-3-.01(1)(a)(f) Patient Counseling**

Mrs. Cleaves presented the following Consent Orders involving dispensing medications without performing or offering patient counseling.

**Joseph Cutler, DPH** – Signed and paid \$500 civil penalty.  
Motion – Dr. Brenda Warren; Second – Dr. Larry Hill; Board approved unanimously

**Larry Larkin, DPH** – Add Misspelled prescription; Signed and paid \$500 penalty  
Motion - Dr. Brenda Warren; Second – Mrs. Monica Franklin; Board unanimously approved.

**Randall Penland DPH** – Signed Order and paid \$500 civil penalty.  
Motion – Dr. Brenda Warren; Second – Dr. Larry Hill; Board unanimously approved.

**Allenhill Pharmacy & Medical Supply** – Signed Order and paid \$1000 civil penalty.  
Motion – Dr. Brenda Warren; Second – Mrs. Monica Franklin; Board unanimously approved.

**CVS Pharmacy #3721**  
**K-Mart Pharmacy #3348**  
**Pardue's Pharmacy**  
**Walgreens Pharmacy #4600**  
**Walgreens Pharmacy #9444**

**Walgreens Pharmacy #9907**  
**Wal-Mart Pharmacy #10-2065**

All these are for the same offense. They all signed the Consent Order and paid the \$1000 fine. Motion to Accept by Dr. Larry Hill; second by Dr. Brenda Warren; Board unanimously approved.

The President brought up for discussion concerns over certain pharmacies whose name appeared over and over for the same offenses and if the Board wanted to adopt some policies to open dialogue with the companies which own these pharmacies. It was stated that it would be hard to do since each individual pharmacy has its own pharmacist in charge at that location; and that already both the pharmacist and the pharmacy are cited for offenses even though they don't always show on the Agenda simultaneously. No motions were made, and the meeting proceeded.

**Rule 1140-3-.14(2)(b) PIC Absence**

Mrs. Cleaves presented a Consent Order involving **Rite Aid Pharmacy #11873** which exceeded thirty days for a pharmacist in charge absence. Pharmacy signed the Order and paid the \$250 civil penalty. Motion was made by Dr. Larry Hill to accept; Second by Dr. Brenda Warren; Board unanimously approved.

**TCA§53-10-106(a)(1)**

Mrs. Cleaves presented a Consent Order against **Randall Lee Allen, DPH** for having expired products on the shelves and not offering patient counseling. This one corresponds with Allenhill Pharmacy. He paid the \$5,900 civil penalty and agreed to a 2 year probation. Motion was made to approve by Dr. Brenda Warren; seconded by Dr. Larry Hill; and the Board unanimously approved.

**TCA §63-10-305**

Mrs. Cleaves presented a Consent Order on behalf of **Donald Nelson, DPH** for addiction. He had already placed himself in rehab and gone through everything when it came to our attention, so he agreed to a five year term of probation with the other usual terms. He signed the Order. A motion to approve the Consent Order by Mrs. Monica Franklin was made; Second by Dr. Brenda Warren; Board unanimously approved.

Mrs. Cleaves presented a Consent Order on behalf of **Andy Oxy Co., Inc.** wherein they engaged in the practice of manufacture, wholesale, distribution with an expired license from 2004 through 2008. They agreed to a \$5200 civil penalty which has been paid. Motion to accept by Dr. Bettie Wilson; Dr. Brenda Warren seconded; the entire Board approved.

**TCA §63-10-305© and (6)**

Mrs. Cleaves presented a Consent Order in the case of **William Sorrell, DPH**. This was previously approved through the Legal Report. He was disciplined by the Kentucky Board of Pharmacy and given 10 years probation for taking drugs from the pharmacy where he was employed. We have mirrored that discipline to run concurrent. He has signed the Order. Dr. Brenda Warren made the Motion to Approve; Dr. Larry Hill seconded; and the entire Board unanimously approved.

**TCA §63-10-305(6)**

Mrs. Cleaves presented a Consent Order in reference to **Julian Williams, DPH**. This case was previously approved through the Legal Report. Julian Williams was disciplined by the Missouri Board of Pharmacy for compounding potentially contaminated products. This Consent Order mirrors that discipline of three years probation to run concurrently with the same terms and

conditions. The Order was signed. Dr. Brenda Warren made a Motion to approve with Mrs. Monica Franklin giving a second. The Board unanimously approved.

Mrs. Cleaves presented a Consent Order in reference to **Erica Gipson, RT** wherein while she was employed as a pharmacy tech, she used the pharmacy credit card without authorization to make personal purchases. The Board authorized a two year probation during which she has to abide by all laws and regulations. She signed the Order. Motion to Approve was made by Dr. Bettie Wilson; Mrs. Monica Franklin seconded. Dr. Brenda Warren asked to be recused from this case. The Board approved with one abstention.

**TCA §63-10-306(a)**

Mrs. Cleaves presented Consent Order for **Bernard Beuerlein, DPH**, wherein he allowed a pharmacy tech to perform compounding without the physical presence of pharmacist and violated the security of the pharmacy by allowing pharmacy tech to have key access. This was previously authorized by the Board for him to pay \$2000 civil penalty, cease being pharmacy in charge at two locations, and designate which location to the Board of Pharmacy within 30 days. He signed the Order and paid the penalty. Motion to Accept was made by Mrs. Monica Franklin and seconded by Dr. Brenda Warren. The Board unanimously approved.

Mrs. Cleaves presented a Consent Order for **Ben C. Lott, DPH/Four Way Prescription Shop** as unlicensed conduct of pharmacist in charge by allowing his son to engage in the practice of pharmacy prior to obtaining his license. Board previously authorized \$1000 civil penalty which has been paid. The Order is signed. Mrs. Monica Franklin made a Motion to Approve, Dr. Brenda Warren seconded. The entire Board approved.

**ALVIS SIMMONS, DPH – REQUEST FOR REINSTATEMENT OF LICENSE**

Alvis Simmons came before the Board to request reinstatement of his license. He gave a brief overview of his career and the circumstances leading up to the loss of his license and his drug abuse history. He currently has no charges pending and his probation period is over.

TPRN Advocate spoke on his behalf, stating that he feels Dr. Simmons has made the progress needed to handle the duties of being a pharmacist.

Mrs. Simmons also spoke on behalf of her husband and the progress he has made along with the support she is giving.

Mrs. Monica Franklin made a motion to **deny** the reinstatement of the license at this time. Dr. Bettie Wilson seconded the motion.

Discussion/Comments – Various members of the Board made suggestions such as having committed employment so the Board could see a specific work environment which they could be comfortable with or some type of internship after a specific period of times prior to stepping into a situation which could be his downfall.

**The Board unanimously agreed to deny the reinstatement of Dr. Simmons license at this time.** However, they suggested that he could possibly get them back sooner than one year if he could come back with a definite work schedule with strong oversight in a structured environment; or work as an intern in the mean time prior to re-entry as a full time pharmacist. Dr. Simmons indicated that he had no further questions or comments.

**SAMUEL SMITH, DPH – REQUEST FOR REINSTATEMENT OF LICENSE**

Mrs. Alison Cleaves asked that the Board accept the signed Consent Order for indefinite suspension of his license before hearing the Request for Reinstatement of License. Motion by Dr. Bettie Wilson; seconded by Dr. Brenda Warren; and Board unanimously agreed to accept.

Dr. Kevin Eidson stated that he had engaged in no in depth conversation with Dr. Smith. Chariman Bess questioned Dr. Smith about charges, to which he answered there were none and none were pending.

Dr. Samuel Smith gave the history of the events that lead up to his addiction and the history of his recovery and his wish to continue in the practice of pharmacy. He fielded questions from various members of the Board.

Mrs. Monica Franklin made a Motion to **deny** the request at this time and Dr. Brenda Warren seconded the Motion. All the Board approved. This decision was based on his history and the recent time span.

Dr. Kevin Eidson requested guidance from the Board as to prerequisites that the Board would request prior to Dr. Smith re-appearing before the Board. It was suggested that he needs to show a substantial length of time in recovery and sobriety and non-addiction. Also, he might well ease back into the work place by working as an intern which could help reduce stress and he would be subjected to oversight.

Dr. Smith indicated that he would accept the action of the Board and continue his counseling.

**WILLIAM MILTON, DPH – REQUEST FOR REINSTATEMENT OF LICENSE**

Dr. Kevin Eidson stated that Dr. Milton was here requesting reinstatement of his license. Ms. Mrs. Alison Cleaves, Council for the Board stated that at the September Board meeting, the Board approved a Consent Order revoking his pharmacy license. This case was not about impairment, it was about dispensing controlled drugs without authorization.

Dr. Milton gave a brief history of the events which lead up to his arrest and his reasoning behind dispensing (loaning) drugs to this one particular customer. Dr. Milton was represented by his attorney, Ron Buchanan, who also gave a statement of how the arrest was made with news cameras rolling and that in order to minimize the impact on his business and family, he accepted Judicial Diversion

After a lengthy discussion, Mrs. Monica Franklin made a motion to deny the reinstatement request until the Board could investigate further. The motion was seconded by Dr. Brenda Warren.

Mrs. Monica Franklin made a Motion to amend her previous motion by adding that the information should be brought before the Board at the March meeting; Dr. Brenda Warren seconded the Amended Motion. The Board unanimously approved.

The Board gave some directives to Dr. Kevin Eidson as to the type of information they expected to have presented at the March Meeting, which should include, but not be limited to, a copy of the original legal report, copy of the Minutes from previous Board decisions, and anything new which the investigator uncovered.

**GRADY SAXTON, DPH – REQUEST FOR REINSTATEMENT OF LICENSE**

Dr. Kevin Eidson stated that Dr. Grady was here to request reinstatement of his license. He has been through treatment, 90 meetings in 90 days, and has taken care of his court issues. His license was suspended at the March 2007 Board meeting. He has not been on probation and has no prior history for chemical impairment. There are no charges pending. He pleaded guilty to Theft of property under \$500, which is a misdemeanor, on November 5, 2008.

Dr. Saxton gave a brief history of his life and how he began drinking and smoking marijuana while in college and other events which lead up to his treatment at Cornerstone. He has been working as a treadmill technician recently. He requests reinstatement of his pharmacy license.

The advocate from TPRN stated that when he first talked with Dr. Grady in January 2007, Dr. Grady was not interested in talking. With time, Dr. Saxton contacted them and he has taken care of his criminal charges.

Motion was made by Mrs. Monica Franklin to grant the reinstatement of his license subject to execution of a Consent Order, which she read aloud to Dr. Grady; that he be placed on probation for 5 years from today's date; and that he work as an intern for 160 hours as a way of easing back into the work force. Dr. Stephens seconded the Motion. There was a discussion about changing two of the paragraphs for better clarification, but Ms. Franklin withdrew that Motion and the Board decided it will discuss that issue at a later date. All approved.

Dr. Black, TPRN program manager, urged the Board to limit any proposed changes to the Consent Order to specify 'violation of contract' rather than 'seeking treatment'. He gave

examples of several scenarios where a contract is not breached, but the individual did seek further treatment for other issues or to gain support.

## **LEGAL REPORT**

### **1. L08-PHR-RBS-2008001741**

Complainant alleges that her mother's prescription for Paxil® was misfiled with Plavix®. This is a new prescription.

PIC responded to the complaint indicating that the misfill did occur. Although he was the pharmacist who filled the Rx, he was not the pharmacist on duty when the Rx was picked up. The pharmacist who was on duty when the Rx was picked up denied the misfill and stated that she typically talks at great lengths to patients. The pharmacy technician who was on duty at the time indicates that the Complainant attempted to speak to the DPh, but she was speaking to another patient. Technician states that the DPh did not know that the Complainant was trying to reach her to ask questions about the medication.

**Recommendation: Letter of warning to dispensing DPh, who was the PIC in this instance and disciplinary action against the other DPh who failed to counsel – LOI to the PIC; \$500.00 civil penalty to the DPh; and \$2,000 civil penalty to the pharmacy)**

Motion – Mrs. Monica Franklin  
Second – Dr. Brenda Warren  
All in Favor – Motion Carried

### **2. Case No.: L08-PHR-RBS2008002301**

Complainant alleges that prescriptions are being left at a sundry shop located near or around a nursing home and assisted care living facility, faxed to a licensed pharmacy to be filled and then the filled Rx is sent back to the sundry shop to be picked up by the patient or caregiver. The location where the sundry shop is currently located used to be a licensed pharmacy that has since gone out of business. The sundry shop is not a licensed pharmacy practice site and there is no licensed pharmacist there. Upon interviewing the shop attendant, investigator determined that only employees or residents of the assisted care living facility could have prescriptions filled there. The shop attendant faxed the prescriptions to the licensed pharmacy in particular because she was an employee of that licensed pharmacy. The shop attendant indicated to the investigator that she received approximately 10-30 prescriptions a day. At the time the investigator conducted his investigation, there were no controlled substances prescriptions at the shop.

The pharmacist who fills these prescriptions acknowledges that he established this shop as an apothecary in which prescriptions were faxed to him from the shop, he filled them and then had the pharmacy delivery driver bring them to the resident. Should the resident not be at their apartment, then the delivery driver would leave it at the shop. Pharmacist now realizes that this practice is not in accordance with BOP Rules and has stopped doing it.

**Recommendation: Authorize formal hearing (\$1,000 civil penalty) for allowing an unlicensed practice site to accept a prescription order and then allowing that unlicensed practice site to deliver the filled prescriptions without patient counseling. Cease and Desist language.**

Motion – Dr. Bettie Wilson  
Second – Mrs. Monica Franklin  
All in favor – Motion Carried

**3. Case No.: L08-PHR-RBS-2008001541**

Complainant, patient's doctor, alleges that her patient's prescription written for Lorcet 7.5/500, #120 was filled with Hydrocodone 7.5/650.

PIC states that another pharmacist at the pharmacy filled the Rx. The other pharmacist documented that he spoke to someone at the doctor's office who approved the change. Notably, the prescriber had written a prescription for Hydrocodone 7.5/650 for the patient previously.

**Recommendation: Dismiss**

Motion – Dr. Bettie Wilson  
Second – Dr. Larry Hill  
All in Favor – Motion Carried

**4. Case No.: L08-PHR-RBS\_2008002201**

Complainant alleges that his prescription for Xanax was misfiled with Topamax. The patient alleges that he consumed the incorrect medication; the length of time that the patient consumed the incorrect medication is approximately ten (10) days (from November 27, 2007 to December 9, 2007). Patient further alleges that because he consumed the incorrect medication, it caused him to go blind.

PIC responded to the complaint and alleges that a misfill did occur. While the patient was prescribed Xanax and did receive Xanax, he also mistakenly received his girlfriend's Topamax. While the Rx was a refilled prescription for the girlfriend, because it was placed on the Complainant's profile and dispensed to him, it was a new prescription. Patient counseling was not performed on this new Rx in accordance with Board rules.

**Recommendation: Letter of Warning (LOI to PIC, \$500.00 civil penalty to dispensing DPh; and \$1,000.00 civil penalty to pharmacy)**

Motion: Mrs. Monica Franklin  
Second – Dr. Brenda Warren  
All in Favor – Motion Carried

**5. Case No.: L08-PHR-RBS-2008002631**

Complainant alleges that the Respondent, pharmacist keeps moonshine at the pharmacy that he uses in his compounding to make cough syrup. Complainant further alleges that the Respondent is allowing hisson, who is unlicensed, to engage in the practice of pharmacy.

Investigator could not find any evidence of moonshine or unlicensed conduct as alleged.

**Recommendation: Dismiss**

Motion – Dr. Bettie Wilson  
Second – Dr. Larry Hill  
All in Favor – Motion Carried

**6. Case No.: L08-PHR-RBS-2008001311**

Complainant alleges that the Respondent, pharmacy technician, has been fired from two (2) pharmacies for stealing drugs.

Investigator could not substantiate the allegations against the technician, but found that there were shortages of Hydrocodone (11,000), Alprazolam (3,000), and Phentermine (1,000). Given the high volume at the store, these are very small percentages of loss.

**Recommendation: Dismiss this Complaint and authorize me to open a new complaint against the pharmacy so the investigator can do another audit.**

Motion – Mrs. Monica Franklin  
Second – Dr. Larry Hill  
All in Favor – Motion Carried

**MOTION TO ADJOURN by Mrs. Monica Franklin – All in favor – Reconvene 8:30 tomorrow morning.**

**RECONVENED:  
January 13, 2009  
8:30 A.M.**

President Todd Bess called the meeting to order at 8:30 a.m. Each board member introduced themselves and then members of the audience introduced themselves.

President Todd Bess made some opening remarks relative to a research project which the pharmacy students have been doing on his behalf. The research project started in November 2008, and included getting information from other states as to patient counseling and if there are

penalties in place for lack thereof, and quality improvement methodology to guide in discipline.

This will help us access where we are, how we compare to other states, and help us know where we need to be.

Each student presented a different part of the research results.

## **RULE MAKING HEARING**

There will be a hearing before the Tennessee Board of Pharmacy to consider the promulgation of rules pursuant to Chapter 1028 of the Public Acts of 2008 [effective immediately for the purposes of promulgating rules and effective on July 1, 2008 for all other purposes]. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204, and will take place in the Iris Room, 227 French Landing, Heritage Place, Nashville, Tennessee at 9:00AM (Central Time) on the 13th day of January 2009.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, 227 French Landing, Ste. 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

### Substance of Proposed Rules

#### New Rules

#### Chapter 1140-13 Telepharmacy

#### Table of Contents

1140-13-.01	Purpose
1140-13-.02	Definitions
1140-13-.03	Licensing and Renewal
1140-13-.04	Fees
1140-13-.05	Civil Penalties
1140-13-.06	Pharmacist Responsibilities
1140-13-.07	Pharmacy Technician Responsibilities
1140-13-.08	Recordkeeping and Inspections

1140-13-.01 Purpose.

The rules in this chapter implement a pilot program for the dispensing of prescription medications from federally qualified health centers through the use of telepharmacy pursuant to T.C.A. § 63-10-601, et seq.

Authority: Chapter 1028 of the Public Acts of 2008, § 2 and T.C.A. §§ 63-10-601 through 63-10-604. [effective July 1, 2008].

1140-13-.02 Definitions.

In addition to the definitions contained in T.C.A. § 63-10-601, the following definitions are applicable to this chapter:

- (1) "Board" means the Tennessee Board of Pharmacy;
- (2) "Central pharmacy" means the central pharmacy practice site licensed by the Tennessee Board of Pharmacy located within a federally qualified health center that is connected through computer link, videolink, and audiolink to one (1) or more satellite clinics;
- (3) "Dispense" shall have the same meaning as set forth in Tenn. Code Ann. § 63-10-204(12);
- (4) "Issue" means the delivery of drugs from the pharmacy technician employed by the federally qualified health center participating in this program to the patient or patient's agent;
- (4) "Person" means any individual, partnership, association, corporation, or entity;
- (5) "Pharmacist" shall have the same meaning as set forth in Tenn. Code Ann. § 63-10-204(30) and who is an employee of a federally qualified health center participating in this program.
- (6) "Pharmacist-in-charge" shall have the same meaning as set forth in Tenn. Code Ann. §63-10-204(31) and who is an employee of a federally qualified health center participating in this program;
- (7) "Pharmacy practice site" shall have the same meaning as set forth in Tenn. Comp. R. & Regs. Rule 1140-1-.01(23);
- (8) "Pharmacy technician" means an individual registered by the Board as a pharmacy technician who is an employee of a federally qualified health center participating in this program and is being supervised by a pharmacist at the central pharmacy;
- (9) "Program" means the pilot program established in T.C.A. §63-10-601 for the dispensing of medications (with the exception of controlled substances schedules

I, II, III, and IV) from federally qualified health centers through the use of telepharmacy;

- (10) "Satellite clinic" means a clinic location located within federally qualified health center where any prescription dispensed at the central pharmacy shall be issued to the patient or patient's agent through telepharmacy;
- (11) "Telepharmacy" means the method of providing pharmaceutical services through a remote site connection between a central pharmacy and a satellite clinic.

Authority: Chapter 1028 of the Public Acts of 2008, § 2 and T.C.A. §§ 63-10-601 through 63-10-604. [effective July 1, 2008].

1140-13-.03 Licensing and Renewal.

(1) Licensing.

(a) Beginning July 1, 2008, the central pharmacy that desires to participate in this pilot program shall obtain a pharmacy license for the central pharmacy to be issued by the Board by submitting an application to the Board, along with the required license fee, and shall comply with the pharmacy practice site licensure requirements established in Tenn. Comp. R. & Regs. Rule 1140-1-.08(3)(a).

(b) As a condition for licensure, the central pharmacy participating in this program shall meet all of the standards established in Tenn. Comp. R. & Regs. Rule 1140-1-.12(1), (2), and (3) and shall also meet the following minimal operating requirements:

1. shall be connected to the satellite clinic through computer link, videolink, and audiolink;
2. shall have a computer system that is connected to the satellite clinic's computer system that shares common electronic files;
3. shall have its own computer(s) that is/are not accessed by others employed by the federally qualified health center, scanner(s), printer(s), and fax machine(s); and
4. shall have a licensed pharmacist at the central pharmacy location.

(2) The central pharmacy license shall expire two (2) years from the date of issuance. All licenses shall be renewed on or before the last day of the two (2)- year license cycle.

(3) The central pharmacy may renew its license within six (6) months after the license expiration date with payment of the renewal fee and late renewal penalty fee. After the six (6) month grace period, the licensee may reapply for licensure.

Authority: Chapter 1028 of the Public Acts of 2008, § 2 and T.C.A. §§ 63-10-601 through 63-10-604. [effective July 1, 2008].

1140-13-.04 Fees.

- (1) Initial license fee.....\$168.00
- (3) Renewal fee.....\$168.00
- (3) Regulatory fee.....\$ 10.00
- (4) The late renewal penalty fee is ten dollars (\$10.00) per month for each month or fraction of a month that renewal is late.

Authority: Chapter 1028 of the Public Acts of 2008, § 2 and T.C.A. §§ 63-10-601 through 63-10-604. [effective July 1, 2008].

1140-13-.05 Civil Penalties.

- (1) With respect to any licensed central pharmacy, the Board may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a statute, rule, or Board's order pertaining to drugs or the practice of pharmacy, including, but not limited to telepharmacy, in accordance with the following schedule:

Violation	Penalty
T.C.A. §63-10-305	\$0- \$1,000
T.C.A. §63-10-601	\$0- \$1,000
Rule 1140-2-.01	\$0- \$1,000
Rule 1140-2-.02	\$0- \$1,000
Rule 1140-13-.06	\$0- \$1,000
Rule 1140-13-.07	\$0- \$1,000
Rule 1140-13-.08	\$0- \$1,000

- (2) Each day of continued violation may constitute a separate violation.
- (3) In determining the amount of any penalty to be assessed pursuant to this rule, the board may consider such factors as the following:
  - (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
  - (b) The circumstances leading to the violation;
  - (c) The severity of the violation and the risk of harm to the public;
  - (d) The economic benefits gained by the violator as a result of noncompliance;
  - (e) The interest of the public; and

- (f) The willfulness of the violation.

Authority: Chapter 1028 of the Public Acts of 2008, § 2 and T.C.A. §§ 63-10-601 through 63-10-604. [effective July 1, 2008].

1140-13-.06 Pharmacist Responsibilities.

- (1) Pharmacy Operations and Security.

- (a) The pharmacist-in-charge shall ensure that the central pharmacy's connection with the satellite clinic through computer, videolink, and audiolink is operational at all times that the satellite clinic is open.
- (b) In the event that the computer, videolink, or audiolink connection is not operational, the pharmacist-in-charge shall ensure that the satellite clinic shall cease to operate relative to the issuance of prescriptions supplied by the central pharmacy until the links are reconnected. Whenever an interruption of data, video, or audiolink occurs between the central pharmacy and the satellite clinic, no prescription shall be dispensed, and a sign shall be posted noting the closure with an estimated time until a resumption of services can be expected.
- (c) The pharmacist-in-charge shall ensure that prescriptions for controlled substances schedules I, II, III, or IV are not issued from the satellite clinic.
- (d) The pharmacist-in-charge shall ensure that only the pharmacists and pharmacy technicians employed by the federally qualified health center and working in the satellite clinic shall have keys to the satellite clinic.
- (e) The pharmacist-in-charge shall ensure that the security at the central pharmacy shall be performed in accordance with Tenn. Comp. R. & Regs. Rule 1140-1-.12.
- (f) The pharmacist-in-charge shall ensure the security of the storage of drugs at the central pharmacy and the satellite clinic.
- (g) The pharmacist-in-charge shall ensure that there are no other medications stored in the pharmacy room of the satellite clinic, other than those medications supplied by the central pharmacy.
- (h) The pharmacist-in-charge shall ensure that pharmacy technicians working at the central pharmacy are supervised by a pharmacist in accordance with Rule 1140-2-.02(8).
- (i) The pharmacist-in-charge shall ensure that pharmacy technicians working at the satellite clinic shall be supervised by a pharmacist without a pharmacist being physically present.

- (j) The pharmacist-in-charge may request a waiver of Tenn. Comp. R. & Regs. Rule 1140-3-.14(12) upon a showing of good cause.
- (2) Verification.
    - (a) The pharmacist shall perform all in-process and end-process verification of the pharmacy technician's activities, including, but not limited to: checking the contents of the prescription bottle; checking the bottle label; checking the prescription; performing a drug utilization review in accordance with Tenn. Comp. R. & Regs. Rule 1140-3-.01(3); and performing patient counseling.
  - (3) Patient Counseling.
    - (a) If a pharmacist is not physically present at the satellite clinic and the patient or patient's agent is being issued a new prescription, then the pharmacist shall counsel the patient or patient's caregiver by means of telepharmacy before the prescription is issued.
    - (b) If a pharmacist is not physically present at the satellite clinic and the patient or patient's agent is being issued a refilled prescription, then the pharmacy technician shall offer counseling to the patient or patient's caregiver by means of telepharmacy before the prescription is issued.
    - (c) Pharmacists shall counsel patients in accordance with Board of Pharmacy rules whether the medication is issued from the central pharmacy or the satellite clinic.
  - (4) Supervision.
    - (a) The pharmacist-in-charge shall ensure that each individual operating as a pharmacy technician while employed by a federally qualified health center at a central pharmacy or satellite clinic is properly registered with the Board at all times.
    - (b) The pharmacist-in-charge or a designee of the pharmacist-in-charge shall complete a weekly in-person inspection of the satellite clinics to ensure compliance with all applicable laws and rules relative to drugs and the practice of pharmacy outlined in the central pharmacy's policies and procedures.
    - (c) The pharmacists working at the federally qualified health center are not required to be physically present to verify the accuracy of all pharmacy technician functions performed at the satellite clinic while participating in this program; verification may be conducted by means of the computer link, videolink, and audiolink.
  - (5) Policies and Procedures.
    - (a) The pharmacist-in-charge shall ensure that the central pharmacy and satellite clinic have policies and procedures including, but not limited to the following:

1. when and how a pharmacy technician should contact a pharmacist to perform the issuing process;
2. how the pharmacy technician is to use the computer, videolink, and audiolink technology to communicate with the pharmacist;
3. delivery of the filled prescriptions to the satellite clinic to be issued to the patient or the patient's caregiver;
4. recordkeeping process to track the prescriptions filled or dispensed from either the central pharmacy and issued from the satellite clinic;
5. recordkeeping process to track the filled prescriptions received by the satellite clinic from the central pharmacy;
6. how to securely transport the filled prescriptions from the central pharmacy to the satellite clinic;
7. how to order prescriptions and refills for the central pharmacy;
8. how to ensure that patient counseling is performed in accordance with this chapter;
9. when and how unissued medications will be disposed of or sent back to the central pharmacy.

Chapter 1028 of the Public Acts of 2008, § 2 and T.C.A. §§ 63-10-601 through 63-10-604.  
[effective July 1, 2008].

1140-13-.07 Pharmacy Technician Responsibilities.

- (1) The pharmacy technician shall ensure that the central pharmacy's connection with the satellite clinic through computer, videolink, and audiolink is operational at all times that the satellite clinic is open.
- (2) In the event that the computer, videolink, and audiolink connection is not operational, the pharmacist-in-charge shall ensure that the satellite clinic shall cease to operate relative to the issuance of medications supplied by the central pharmacy until the links are reconnected. Whenever an interruption of data, video, or audio link occurs between the central pharmacy and the satellite clinic, no prescription shall be issued, and a sign shall be posted noting the closure of the clinic with an estimated time that a resumption of services can be expected.
- (3) While working at a satellite clinic, the pharmacy technician shall notify the pharmacist at the central pharmacy prior to any medication being issued in order to ensure that patient counseling is performed or offered.
- (4) The pharmacy technician shall only issue prescriptions dispensed by the central pharmacy.

Chapter 1028 of the Public Acts of 2008, § 2 and T.C.A. §§ 63-10-601 through 63-10-604.  
[effective July 1, 2008].

1140-13-.08 Recordkeeping and Inspections.

- (1) The pharmacist-in-charge, pharmacists, and pharmacy technicians employed by the federally qualified health center working at a central pharmacy or satellite clinic shall ensure that a record is maintained at each central pharmacy and satellite clinic containing the prescriptions dispensed or issued from each location, including but not limited to the date dispensed/issued; date dispensed from the central pharmacy; date received by the satellite clinic; the drug name; quantity, dosage; strength; and patient name.
- (2) All records of prescriptions dispensed from the central pharmacy and issued from the satellite clinic shall be retained for at least two (2) years from the date dispensed.
- (3) Board of Pharmacy investigators shall be able to inspect the central pharmacies and the satellite clinics to ensure compliance with the applicable laws and rules related to drugs and the practice of pharmacy.

Chapter 1028 of the Public Acts of 2008, § 2 and T.C.A. §§ 63-10-601 through 63-10-604.  
[effective July 1, 2008] and T.C.A. §63-10-307.

Mrs. Cleaves presided over the Rule Making Hearing and gave a brief overview of the rules. Mrs. Cleaves asked Dr. Kevin Eidson, "How was communication made to all potential parties of this Rule Making Hearing?" Dr. Eidson responded, this message was communicated to the District Managers within the chain pharmacies, the notice was posted on the Board of Pharmacy website and the Tennessee Pharmacist Association was made aware of this Rule Making Hearing.

Mrs. Cleaves acknowledged Dr. Karen Eschman with Cherokee Health to address some of the concerns that she had with the proposed rules. Dr. Eschman indicated that Rule 1140-13-.06 (g) the pharmacist-in-charge shall ensure that there are no other medications stored in the pharmacy room of the satellite clinic, other than those medications supplied by the central pharmacy. Dr. Eschman explained that there would be Patient Assistance Program medications stored in the room in a separate or segregated area. The Board after considerable discussion agreed to amend Rule 1140-13-.06 (g) The pharmacist-in-charge shall ensure that the prescriptions filled at the central pharmacy and stored in the satellite clinic to be issued to patients and caregivers by means of telepharmacy shall be segregated in a secure area in the pharmacy room from other medications stored in the pharmacy room that have not been filled and will not be issued through the telepharmacy program.

Dr. Eschman mentioned that she had an additional concern with Rule 1140-13-.06 (4) (b) the pharmacist-in-charge or a designee of the pharmacist-in-charge shall complete a weekly in-person inspection of the satellite clinics to ensure compliance with all applicable laws and rules relative to drugs and the practice of pharmacy outlined in the central pharmacy's policies and procedures. Dr. Eschman indicated that this rule was overwhelming with staff requirements and that the pharmacist would be accessing the satellite pharmacy by way of telepharmacy communications each day on numerous occasions. The Board after considerable discussion

agreed to amend Rule 1140-13-.06 (4) (b) The pharmacist-in-charge or a designee of the pharmacist-in-charge shall complete an in-person inspection twice a month of the satellite clinics to ensure compliance with all applicable laws and rules relative to drugs and the practice of pharmacy outlined in the central pharmacy's policies and procedures.

Mrs. Cleaves asked Dr. Baeteena Black with the Tennessee Pharmacist Association to address the Board with her concerns. Dr. Black mentioned that the Tennessee Pharmacist Association was in complete agreement with the rules and amendments.

Mrs. Cleaves asked if anyone else in the audience had any concerns or comments about the rules. Hearing none, Mrs. Cleaves asked the Board to vote on the rules.

Dr. Bettie Wilson motioned to approve the changes to the rules. The motion was seconded by Dr. Larry Hill. President Todd Bess asked for a role call vote:

<b>MEMBER</b>	<b>RESPONSE</b>
Robert Mitchell	Yes
Charles Stephens	Yes
Brenda Warren	Yes
Larry Hill	Yes
Monica Franklin	Yes
Bettie Wilson	Yes
Todd Bess	Yes

The motion carried.

Mrs. Monica Franklin motioned to allow Mrs. Cleaves to proceed with promulgating these rules and send them to the Attorney Generals office for approval. The motion was seconded by Dr. Robert Mitchell. President Todd Bess asked for a role call vote:

<b>MEMBER</b>	<b>RESPONSE</b>
Robert Mitchell	Yes
Charles Stephens	Yes
Brenda Warren	Yes
Larry Hill	Yes
Monica Franklin	Yes
Bettie Wilson	Yes
Todd Bess	Yes

The motion carried.

President Todd Bess called the Pharmacy Board Meeting back to order and asked Dr. Kevin

Eidson to introduce the next appointment. He introduced Dr. William Hamilton, and stated that he was here to ask for reinstatement of his license.

**WILLIAM HAMILTON, DPH – REQUEST FOR REINSTATEMENT OF LICENSE**

Mrs. Alison Cleaves, Council for the Board of Pharmacy, gave a brief overview of the case.

There was a trial in this matter wherein Dr. Hamilton's license was revoked in May, 2004. The Findings of Fact which were submitted in the case involved false insurance claims to be paid by the Kentucky Medical Assistance Program, theft of property valued at \$300, and charges of devise, scheme, and/or defraud Kentucky Medical Assistance Program. He surrendered his Kentucky license in 2003. He stated that Tennessee was his home state, and had Kentucky license by reciprocity. He was convicted of a felony with 5 years probation with restitution. He has paid the restitution and has court ordered release of probation 12/07. He still has an OIG exclusion against him, but is trying to get it lifted. He is working as a regional sales manager for a lighting company.

Dr. Kevin Eidson stated that Dr. Hamilton is off probation, that his license will have been suspended 5 years in May; and if the Board reinstates his license, he would be required to retake the NAPLEX and NPJE. His application will be treated like a new license.

Mrs. Monica Franklin made a motion that his Request for Reinstatement of License be denied until we get more information regarding the felony charge; if it is going to be expunged; if he is going to come off the OIG list; and ask him to obtain Kentucky license first before he comes back before the Board, even though we are the home state of his licensure, the motion was seconded by Dr. Brenda Warren.

Discussion – The Board asks that Dr. Hamilton clear up his Kentucky license before coming back before the Board, and then he can go for reciprocity or whatever.

All in Favor – Motion Carried.

**DIRECTOR'S REPORT – Jeffrey Miller**

Jeffrey Miller w/Hartwell Howard Hyne Gabbert & Manner, PC Institutional & Alternative or Alternative Infusion, Pharmacy Practice Sites representing New Day Pharmacy (Dick Wager, CEO, and Ellen Byrd, Pharmacist, also present). Requesting a legal interpretation of T.C.A. §140-4-15(1)(a) (2008) regarding restocking Automated Dispensing Machines (ADM) in Nursing Homes. Currently a Pharmacist does the restocking. They are asking that the Board clarify its regulation regarding the restocking of the ADM. Are non-pharmacists (nurses) allowed to restock the machines under the supervision of a licensed pharmacist?

Discussion – The Board would like to study the matter further before rendering a decision that could set a precedent. A motion was made to **defer** the issue to the next Board meeting.

All in Favor – Motion Carried

Chris Meulenberg w/Pharmacist Mutual Insurance Company gave a presentation regarding the rising number of claims, especially for losses through burglaries and robberies, that they are paying out in Tennessee and what they are doing to try to prevent them from occurring.

Dr. James W. Torr, PharmD, requested permission to serve as the Pharmacist-in-Charge (PIC) at two different pharmacies Walgreens Pharmacy #9778 and Lipscomb University College of Pharmacy. The request is for approximately six months. A motion was made to grant the waiver.

Dr. Larry Hill motioned to **approve** the waiver for six months; seconded by Dr. Brenda Warren.

All were in favor and the motion carried.

J. Robert Mitchell requested an extension on filing CEs for this year. Dr. Bettie Wilson motioned to **approve** the CE extension due to a hardship, seconded by Mrs. Monica Franklin. The motion carried, and Dr. Mitchell abstained from the vote.

Stephanie Loveless requested an extension in the matter of completing CE hours. A motion was made to grant a six month extension. Dr. Brenda Warren motioned to **approve** the CE extension due to a hardship, seconded by Dr. Larry Hill. All were in favor and the motion carried.

**Legal Report (continued):**

**7. Case No.: L08-PHR-RBS-2008002191**

Complainant alleges that he observed a pharmacy technician picking pills off of the floor and putting them into his prescription bottle. Complainant states that he insisted that the pills be thrown away and replaced with new ones. Complainant further alleges that he witnessed the same pharmacy technician picking up pills from the counter top with her bare hands and then putting them back into the pharmacy stock bottle.

PIC responded to the complaint stating that it is his understanding that pills were not picked up off of the floor, but were picked up off of the counter. PIC states that he has reviewed proper medication handling with all of the pharmacy staff.

**Recommendation: Letter of Warning to the technician.**

Motion – Mrs. Monica  
Second – Dr. Bettie Wilson  
All in Favor – Motion Carried

**8. Case No.: L08-PHR-RBS-2008001351**

Complainant, physician, alleges that the pharmacy has been refilling the patient's prescription for Metoprolol based on a prescription for Darvocet®.

PIC responded to the complaint that based on the unusual way that the prescriber's prescriptions are written; they refilled the Metoprolol based on the number of refills on the patient's prescription. Prescriber lists all of the patient's medications at the bottom of the prescription, included was a listing for Metoprolol and it indicated five (5) refills. Pharmacy staff used the number of refills listed on the Rx to refill the Metoprolol.

**Recommendation: Dismiss**

Motion – Dr. Larry Hill  
Second – Brenda  
All in Favor – Motion Carried

**9. Case No.: L07-PHR-RBS-2007080141**

Complainant alleges that the Respondent company is engaged in the unlicensed practice of manufacturing a product called Melanotan II. The FDA has issued the Respondent a warning letter for the illegal sale and marketing of the product, which was not FDA approved. The FDA contends that the product is being mislabeled, marketed and sold illegally to prevent skin cancer and as a tanning agent.

Board investigator attempted to determine if the Respondent was engaging in unlicensed activity, but the Respondent company is no longer located in Tennessee. The FDA is now pursuing this matter.

**Recommendation: Close**

Motion – Brenda  
Second – Mrs. Monica Franklin  
All in Favor – Motion Carried

**10. Case No.: L07-PHR-RBS-2007064541**

Complainant alleges that the Respondent pharmacist has stolen over \$17,000 worth of Schedule II controlled substances from the pharmacy.

Investigator conducted an audit of Schedule II CS and did not find any significant shortages.

**Recommendation: Dismiss**

Motion – Charles  
Second – Dr. Robert Mitchell  
All in Favor – Motion Carried

**11. Case No.: L08-PHR-RBS-2008000421**

Complainant alleges that the Respondent company was operating as a pharmacy without a license by selling pharmaceuticals out of trucks to cattle farmers.

Other agencies have been involved with the investigation of this Respondent that have not yielded any results.

**Recommendation: Close**

Motion – Dr. Robert Mitchell  
Second – Dr. Larry Hill  
All in Favor – Motion Carried

**12. Case No.: L08-PHR-RBS-2008000421**

Complainant alleges that the Respondent company was operating as a pharmacy without a license by selling pharmaceuticals out of trucks to cattle farmers.

Other agencies have been involved with the investigation of this Respondent that have not yielded any results.

**Recommendation: Close**

Motion – Mrs. Monica Franklin  
Second – Dr. Brenda Warren  
All in Favor – Motion Carried

**13. Case No.: L08-PHR-RBS-2008002061**

Complainant alleges that the Respondent, physician's clinic, is engaged in the unlicensed practice of pharmacy by dispensing medications to patients. Complainant further indicates that while physicians can dispense to their own patients, the dispensary was failing to account for refills on patient's prescriptions.

**Recommendation: Cease and Desist Letter and refer to the Board of Medical Examiners**

Motion – Dr. Larry Hill  
Second – Dr. Bettie Wilson  
All in Favor – Motion Carried

**14. Case No.: L08-PHR-RBS-2008002051**

Complainant alleges that the Respondent, physician's clinic, is engaged in the unlicensed practice of pharmacy by dispensing medications to patients. Complainant further indicates that the individual who is at the dispensary, who is not a licensed pharmacist or registered pharmacy technician, refers to herself as a pharmacy manager.

**Recommendation: Cease and Desist Letter and refer to the Board of Medical Examiners**

Motion – Dr. Bettie Wilson  
Second – Dr. Larry Hill  
All in Favor – Motion Carried

**15. Case No.: L08-PHR-RBS-2008002161**

Complainant, physician, alleges that the Respondent pharmacy refilled his patient's prescription for Lortab® 7.5/500 within seven (7) days, when the physician orders stated do not refill in thirty (30) days. Original Rx was filled on October 4, 2008 and the controlled substance monitoring database indicates that it was refilled by the same pharmacy on October 11, 2008.

PIC responded to the complaint and provided a copy of the pharmacy computer screen, which indicates that their pharmacy did not refill the Rx on October 11, 2008.

**Recommendation: Defer to next Board meeting**

Motion – Dr. Bettie Wilson  
Second – Dr. Brenda Warren  
All in Favor – Motion Carried

**16. Case No.: L08-PHR-RBS-2008002171**

Complainant alleges that her prescription for Gabapentin 300mg was partially filled with a three (3) day supply while the pharmacy waited to get more of the drug in. After the three (3) day supply, the Complainant went to the pharmacy to retrieve the rest of the medication, but was told that they were having trouble obtaining the medication. The pharmacist gave the complainant another three (3) day supply.

Pharmacist on duty stated that they did only partially fill the Rx. Pharmacist apologized to the Complainant when they only received one (1) 100 count bottle of the Gabapentin which as not enough to fill the balance of 174. Pharmacist told the Complainant that they were expecting another shipment the next day and dispensed another three (3) day supply so the Complainant would not be out of medication.

**Recommendation: Dismiss**

Motion – Dr. Larry Hill  
Second – Dr. Brenda Warren  
All in Favor – Motion Carried

**17. Case No.: L08-PHR-RBS-2008001341 Re-present**

This mater was presented to the Board at the last meeting. At that time, I made a recommendation that the Board authorize a formal hearing and offer a \$500.00 civil penalty for failing to perform a DUR.

Complainant, physician, alleges that the pharmacist did not abide by the prescriber directions by filling a Rx for Nabumetone in less than thirty (30) days. In response to the complaint, the pharmacist states that the prescription directions were entered into the computer by the pharmacy technician incorrectly. Upon further review it appears that this was an in-process error in that the pharmacist failed to verify the Rx direction which lead to a dispensing error in that the

pharmacist did not dispense in strict conformity with prescriber's directions. This does not appear to be a case in which the pharmacist failed to perform a DUR.

**Recommendation: Letter of Warning**

Motion – Mrs. Monica Franklin  
Second – Dr. Brenda Warren  
All in Favor – Motion Carried

**18. Case No.: L08-PHR-RBS-2008002491**

Pharmacy technician was terminated for theft of controlled substances from the pharmacy. At the time that I received the complaint, the Respondent was already expired and beyond the grace period to renew.

**Recommendation: Close and flag upon reapplication**

Motion – Dr. Larry Hill  
Second – Dr. Bettie Wilson  
All in Favor – Motion Carried

**19. Case No.: L08-PHR-RBS-2008002361**

Complainant generated from a period compliance inspection of the pharmacy which revealed that there was a violation of the pharmacist to pharmacy technician ratio (four (4) technicians were being supervised by one (1) pharmacist). Within thirty minutes after the investigator arrived, another pharmacist came on duty, which corrected the ratio imbalance. Also while investigator was at the pharmacy, he observed three (3) patients pick up new prescriptions, yet not patient counseling was performed.

PIC responded to the complaint. He was not at the pharmacy on the date of the compliance inspection, but did receive responses from the DPHs that were on duty that day. PIC admits the violations occurred. Relative to the ratio violation, the PIC states that he has scheduled technicians and clerks where the clerk has the register duty so many hours during the day so that clerks do not function as technicians and violate the ratio. PIC claims that the DPH on duty should have ensured that one of the clerks did not act as a technician.

**Recommendation: \$250 dispensing PIC-imbalance ratio, LOI PIC, \$500 Dispensing DPH,  
\$1000 to the pharmacy**

Motion – Dr. Larry Hill  
Second – Dr. Bettie Wilson  
All in Favor – Motion Carried

**20. Case No.: L08-PHR-RBS-2008002221**

Complainant alleges that her prescription for Paxil® was misfiled with Flexeril®. Complainant claims that she consumed the incorrect medication for ten (10) days and became lethargic and experienced aching in her arms, legs and back.

PIC, who was also the dispensing DPH, responded to the complaint. He admits that the misfill occurred. The drug name was entered by the technician incorrectly and he failed to catch the error. It was a new Rx and the Complainant was not counseled.

**Recommendation: Authorize formal hearing (LOI to the PIC; \$500.00 civil penalty to the PIC (who was the dispensing DPH); and \$1,000.00 civil penalty to the pharmacy). LOW to the PIC for the misfill.**

Motion – Mrs. Monica Franklin  
Second – Dr. Bettie Wilson  
All in Favor – Motion Carried

**21. Case No.: L08-PHR-RBS-2008002471**

Complaint generated from a periodic compliance inspection in which investigator observed several patients pick up refilled prescriptions without an offer to counsel. The pharmacist on duty responded to the violation stating that he was a floater pharmacist at this pharmacy and that at his regular pharmacy he would be notified by the technician to counsel the patient.

**Recommendation: Authorize formal hearing (LOI to the PIC; \$500.00 civil penalty to the dispensing pharmacist; and \$1,000.00 civil penalty to the pharmacy)**

Motion – Dr. Brenda Warren  
Second – Dr. Bettie Wilson  
All in Favor – Motion Carried

**22. Case No.: L08-PHR-RBS-2008002271**

Complainant alleges that his prescriptions had been misfiled at this pharmacy location, namely, that his Amoxicillin suspension was not mixed and that his prescription for Diovan® was shorted seven (7) tablets.

Based on the pharmacist's response, the pharmacist does not know if the Rx was shorted seven (7) tablets. PIC responded that he did not properly mix the suspension before putting it in the bag. Respondent stated that he received a phone call just as he was about to put the label on the bottle and put it down. After he finished the call, he finished putting the label on the bottle and placed it in the bag before mixing it.

**Recommendation: Letter of Warning**

Motion – Dr. Bettie Wilson  
Second – Dr. Larry Hill  
All in Favor – Motion Carried

**23. Case No.: L08-PHR-RBS-2008002081**

Complainant alleges that the pharmacist violated her patient confidentiality. When the Complainant went to pick up her medications (Celebrex® and Wellbutrin®), she wanted to know if there was any other Rx written for Celebrex® 200mg BID. As the pharmacist was looking in the computer, he told the Complainant that the only other Rx for BID was Alprazolam. Complainant indicates that he said “Alprazolam” quite loudly in the pharmacy.

**Recommendation: Dismiss**

Motion – Mrs. Monica Franklin  
Second – Dr. Bettie Wilson  
All in Favor – Motion Carried

**24. Case No.: L08-PHR-RBS-2008002341**

Complaint generated from a periodic compliance inspection in which the investigator found that the Respondent’s MWD license had expired on October 31, 2008. When the investigator brought it to the Respondent’s attention he had the license renewed by November 21, 2008.

**Recommendation: Letter of Warning**

Motion – Mrs. Monica Franklin  
Second – Dr. Bettie Wilson  
All in Favor – Motion Carried

**25. Case No.: L08-PHR-RBS-2008001851**

Complainant alleges that his prescription for Xanax® was shorted tablets and that the pharmacy told him he did not have any refills left on the Rx when Complainant claims he had two (2) refills left.

PIC and dispensing DPH responded to the complaint. DPH states that the Complainant was shorted one (1) Alprazolam tablet. In term of the refills, DPH states that all refills were filled on the Xanax® Rx. The DPH provided the pharmacy computer screens showing when the Rx was originally filled and then refilled twice.

**Recommendation: Dismiss**

Motion – Dr. Larry Hill  
Second – Dr. Bettie Wilson  
All in Favor – Motion Carried

**26. Case No.: L08-PHR-RBS-2008001271**

Complaint generated from a periodic compliance inspection in which investigator found four (4) pharmacy technicians at the pharmacy with expired registrations. During the period of time in which the technicians were unregistered, there were two (2) PICs at the pharmacy. One PIC was at the location from December 31, 2007 to May 7, 2008 and the other PIC took over May 7, 2008 to the date of the inspection, June 9, 2008. The total number of months in which the technicians were unlicensed is eighteen (18) months.

**Recommendation: Authorize formal hearing (\$1,600.00 civil penalty to the first PIC). LOI to the current PIC.**

Motion – Mrs. Monica Franklin  
Second – Dr. Bettie Wilson  
All in Favor – Motion Carried

**27. Case No.: L08-PHR-RBS-2008002431**

Complaint generated from a routine compliance inspection conducted by the investigator who observed patients pick up new prescriptions for Lorazepam and Zantac without even an offer to counsel.

PIC responded to the complaint admitting to the failure to counsel in accordance with Board rules.

**Recommendation: Authorize formal hearing (LOI to the PIC; \$500.00 civil penalty to the dispensing DPH; and \$1,000.00 civil penalty to the pharmacy).**

Motion – Dr. Larry Hill  
Second – Dr. Bettie Wilson  
All in Favor – Motion Carried

**28. Case No.: L08-PHR-RBS-2008001211**

Complainant alleges that his prescription (refill) for Lisinopril was misfiled. Complainant presented the pharmacy with two(2) refilled prescriptions, one (1) for Lisinopril 40mg, thirty (30)

tablets and one for Hydrochlorothiazide 25mg, ninety (90) tablets. Complainant alleges that the pharmacy mistakenly put ninety (90) tablets of Lisinopril in the bottle labeled Hydrochlorothiazide.

PIC responded to the complaint admitting to the misfill. Lisinopril was inadvertently placed in two (2) prescription bottles. Both prescriptions were picked up by the patient's spouse, counseling was offered and rejected.

**Recommendation: Letter of Warning for Misfill**

Motion – Dr. Brenda Warren  
Second – Dr. Robert Mitchell  
All in Favor – Motion Carried

**29. Case No.: L08-PHR-RBS-2007080321**

Complainant alleges that the Respondent, pharmacist, failed to secure the pharmacy practice site in his absence and allowed pharmacy technicians to work behind the pharmacy counter in his absence.

DPH responded to the complaint stating that he left the pharmacy unattended for a little over one (1) hour with pharmacy technicians left at the store unattended. During the period during the Respondent's absence, technicians allowed patients to pick up their medication and also filled a Rx. Respondent left because he had asked for time off, but the pharmacy could not find a replacement pharmacist and he wanted to attend a function for his children.

**Recommendation: Authorize formal hearing (\$500.00 civil penalty for Security Violation;  
\$500.00 to the Dispensing DPH for counseling)**

Motion – Dr. Larry Hill  
Second – Dr. Robert Mitchell  
All in Favor – Motion Carried

**30. Case No.: L08-PHR-RBS-2008002371**

Complaint generated from a periodic compliance inspection conducted on November 20, 2008 in which investigator observed that the pharmacy license was expired since July 31, 2008. Also the current PIC was not reported to the Board.

Both PICs (the old and the new) responded stating that they assumed the reporting of the PIC to the Board was done by the DM.

**Recommendation: Letter of Warning to the pharmacy about reporting the change in PIC to the Board. Authorize formal hearing (\$400.00 civil penalty) for failing to renew pharmacy license.**

Motion – Mrs. Monica Franklin  
Second – Dr. Brenda Warren  
All in Favor – Motion Carried

**31. Case No.: L08-PHR-RBS-2008002381**

Complainant alleges that medications are being dispensed from this medical clinic by a pharmacy technician and calling the dispensary a pharmacy. The Complainant also alleges that the physicians at this clinic believe they can transfer a prescription since that is the same as a called in Rx.

**Recommendation: Cease and Desist Letter and refer to the Board of Medical Examiner**

Motion – Dr. Brenda Warren  
Second – Mrs. Monica Franklin  
All in Favor – Motion Carried

**32. Case No.: L08-PHR-RBS-2008002111**

Complainant alleges that he was the focus of a libelous newspaper article in which the Respondent pharmacist was quoted. Complainant further alleges that the Respondent has tarnished his reputation.

Respondent expressed his opinion in an article about the Respondent's practice as an insurance agent based on his observations of attempting to have certain patients' insurance cover their prescriptions.

**Recommendation: Dismiss**

Motion – Mrs. Monica Franklin  
Second – Dr. Brenda Warren  
All in Favor – Motion Carried

**33. Case No.: L08-PHR-RBS-2008002071**

Complainant alleges that the Respondent (unlicensed market) is storing and selling medications. Investigator went to the market and did not observe any prescription medications on the store shelves.

*Prior complaints: None*

**Recommendation: Dismiss**

Motion – Mrs. Monica Franklin  
Second – Dr. Robert Mitchell  
All in Favor – Motion Carried

**34. Case No.: L08-PHR-RBS-2008002181**

Complainant alleges the following: (1) that the pharmacist badgered her about payments for a prescription; (2) that the pharmacist violated HIPAA by presenting her with a list of individuals with their prescribed medications; and (3) that the pharmacy technician violated HIPAA by calling out the Complainant's husband's medications so that it was audible to other patients/caregivers picking up medications.

Pharmacist denies badgering the Complainant and denies providing the Complainant with a list of patients with drug names on it. Pharmacist states that there may have been a list or paper attached to the bag that may have been a signature log, but does not contain any patient or drug names on it. The pharmacist was not there when the second HIPAA violation allegedly occurred, but states that the PIC consulted with the employee in the Complainant's presence about possible HIPAA violations.

*Prior complaints:*

**Recommendation: Letter of Instruction to the pharmacy technician.**

Motion – Mrs. Monica Franklin  
Second – Dr. Robert Mitchell  
All in Favor – Motion Carried

**35. Case No.: L08-PHR-RBS-2008002031**

Complaint generated from a routine compliance inspection in which investigator observed four (4) individuals performing pharmacy technician functions with one (1) pharmacist present. Investigator also found that the all technician licenses were not posted, the pharmacy had not notified the Board office of the change in PIC, and that the pharmacy staff was not wearing name badges.

PIC responded to the complaint. PIC was not on duty at the time the violation occurred. PIC scheduled four (4) technicians for that day, but one of them was supposed to function as a cashier. The DPh on duty that day was a floater pharmacist and the PIC states that had the regular DPh been on duty, this may have been avoided. PIC admit there were no name badges and that since the inspection, she has ordered them. As of the date of the inspections, certifications and registrations have been posted in the pharmacy.

*Prior complaints:*

*Pharmacy: 2006, patient counseling, \$500.00 civil penalty;*

*PIC: None*

*DPh: 2001, medication shortage, dismissed; 2003, medication error, Letter of Warning.*

**Recommendation: Authorize formal hearing (\$250.00 civil penalty to the DPh). Letter of Warning to PIC about posting, change in PIC and name badges to PIC**

Motion – Dr. Brenda Warren  
Second – Mrs. Monica Franklin  
All in Favor – Motion Carried

**36. Case No.: L08-PHR-RBS-2008002311**

Complaint initiated from a routine compliance inspection in which the investigator found four (4) individuals working as pharmacy technicians with one (1) pharmacist on duty.

PIC provides that she threw off the pharmacist to pharmacy technician ratio because when the investigator arrived at the pharmacy, the PIC was at lunch. That day, the PIC took a late lunch, because she was speaking to a technician about a performance issue.

*Prior complaints:*  
*Pharmacy: None*  
*PIC: 2008, Rx Authorization (DUR), \$500.00 civil penalty*

**Recommendation: Letter of Instruction PIC**

Motion – Mrs. Monica Franklin  
Second – Dr. Brenda Warren  
All in Favor – Motion Carried

**37. Case No.: L08-PHR-RBS-2008002291**

Complaint generated from a prescription sent to the Board office indicating that it had been filled in Australia, but sent to a patient in Tennessee.

*Prior complaints: None*

**Recommendation: Refer the matter to the FDA**

Motion – Mrs. Monica Franklin  
Second – Dr. Robert Mitchell  
All in Favor – Motion Carried

**38. Case No.: L08-PHR-RBS-2008001881**

Complainant alleges that she received someone else's Rx. Complainant was prescribed Hydrocodone/APAP 7.5mg/650mg and instead received Acyclovir 400mg. Complainant consumed one (1) tablet of the incorrect medication. PIC admits that the medication error occurred and claims that the technician gave the wrong bag to the wrong patient. This complaint was presented at the last meeting and the Board wanted some additional information, whether the technician gave the wrong bag to the wrong person or if the medication error occurred at the verification process.

Investigator determined that there was no problem with how the prescription was filled. The prescriptions were filled correctly and put in the correct bags. The technician at the drive-thru window gave the wrong bag to the wrong patient.

*Prior complaints:*

*Pharmacy: 2001, Unprofessional conduct, LOI*

*PIC: None*

**Recommendation: Letter of Warning to the technician.**

Motion – Mrs. Monica Franklin

Second – Dr. Bettie Wilson

All in Favor – Motion Carried

**39. Case No.: L08-PHR-RBS-2008000941**

Respondent, pharmacy technician, took food from the deli at the pharmacy.

**Recommendation: Letter of Warning**

Motion – Dr. Brenda Warren

Second – Mrs. Monica Franklin

All in Favor – Motion Carried

**40. Case No.: L07-PHR-RBS-2007080371**

Respondent, pharmacy technician's employment was terminated for theft and diversion of controlled substances of controlled substances from the pharmacy where she was employed. Respondent's registration expired on August 31, 2008

*Prior complaints: None*

**Recommendation: Close and flag upon reapplication**

Motion – Dr. Brenda Warren

Second – Mrs. Monica Franklin

All in Favor – Motion Carried

**41. Case No.: L07-PHR-RBS-2007080911**

This matter is being re-presented to the Board and authorized a Letter of Warning. Complainant alleges that the Respondent, MWD placed labels on sample drugs and dispensed them to patients of mental health clinics in violation of Tenn. Code Ann. §63-10-209. The law provides that the manufacturers or their agents may distribute free samples of prescription drugs or controlled substances to practitioners or to pharmacies at the written request of a practitioner. When the Respondent received the Letter of Warning, it contacted Legal and the Board office and provided us with the written request from the practitioner in accordance with the law.

*Prior complaints: None*

**Recommendation: Rescind prior action and dismiss**

Motion – Dr. Larry Hill  
Second – Dr. Bettie Wilson  
All in Favor – Motion Carried

**42. Case No.: L08-PHR-RBS-2008001781**

Complainant alleges that the Respondent, pharmacy technician, may be involved with the theft and diversion of controlled substances. Investigation determined that the Respondent attempted to pick up a prescription that was determined to be fraudulent.

*Prior complaints: None*

**Recommendation: Authorize formal hearing (Revocation)**

Motion – Dr. Brenda Warren  
Second – Dr. Bettie Wilson  
All in Favor – Motion Carried

**43. Case No.: L08-PHR-RBS-2008001911**

Complainant alleges that the Respondent misfilled a patient's prescription for Diltiazem 30mg with Diltiazem 300mg. It was refilled prescription. Complainant alleges that the patient consumed the incorrect medication for 4 1/2 days (14 tablets) and as a result, suffered a stroke and ultimately passed away.

*Prior complaints: None*

**Recommendation: Defer to next Board meeting.**

Motion – Mrs. Monica Franklin  
Second – Dr. Robert Mitchell  
All in Favor – Motion Carried

**44. Case No.: L08-PHR-RBS-2008002091**

Complainant alleges that the Respondent is refilling Rx's that do not have anymore refills left on them.

Investigation revealed that while the Respondent's recordkeeping was not done in accordance with laws and rules (regenerating labels and calling it a new Rx; partially filling Rx's but not indicating how many refills are left), there are no shortages. Investigator found that of the Schedule III drugs, 595 were authorized, 590 were dispensed and on the last prescription, five (5) refills were left.

*Prior complaints: None*

**Recommendation: Letter of Warning to PIC about recordkeeping**

Motion – Dr. Larry Hill  
Second – Dr. Dr. Brenda Warren Warren  
All in Favor – Motion Carried

**45. Case No.: Case No.: L08-PHR-RBS-2008002401**

Complainant, mother of a patient who is a child, alleges that the compounded medication for Clonidine 0.1mg/ml was misfilled so that the child became very lethargic and fell into a deep sleep necessitating a hospitalization. When the child arrived at the hospital, the hospital lab determined that the compounded solution brought in by the child's mother was 0.25mg/ml Clonidine.

PIC denies any wrongdoing in the compounding process. Upon hearing about the child's hospitalization, the PIC put additional policies in place, such as if there is any weight less than 20 milligrams, then it requires that a triturate be made for that chemical so that a larger amount of the product is weighed to further reduce the room for error. Also, a two (2)-person check system is used anytime an active ingredient is a liquid. Either two (2) compounding technicians or a compounding technician and a pharmacist must check its measurement. The two (2)-person check system also applies to tablets or capsules that must be counted out to compound a Rx. The second person checking must initial next to each volume measurement or tablet count.

*Prior complaints:*

**Recommendation: Table to March meeting**

Motion – Mrs. Monica Franklin  
Second – Dr. Robert Mitchell  
All in Favor – Motion Carried

**46. Case No.: L08-PHR-RBS-2008002531**

Complaint generated from a routine compliance inspection in which the investigator observed two (2) pharmacy technicians were working with expired licenses.

PIC responded to the complaint admitting the error and said that he has sent in the technician applications.

*Prior complaints:*

*Pharmacy: 1999, medication error, closed*

*PIC: None*

**Recommendation: Authorize formal hearing (\$1,600.00 civil penalty to PIC)**

Motion – Dr. Dr. Brenda Warren Warren  
Second – Dr. Bettie Wilson  
All in Favor – Motion Carried

**47. Case No.: L08-PHR-RBS-2008002631**

Complainant alleges that the pharmacy staff sells syringes to a person.

Investigation could not substantiate the allegation.

*Prior complaints:*

*Pharmacy: None*

*PIC: None*

**Recommendation: Dismiss**

Motion – Mrs. Monica Franklin

Second – Dr. Robert Mitchell

All in Favor – Motion Carried

**Approval of Reciprocal Candidates**

William Baldwin, DPH request the Board to approve his reciprocal application for a pharmacist license. Dr. Baldwin was convicted of a felony in 1980 and surrendered his North Carolina license for a period of sixty days. He has practiced in Florida for the past twenty plus years. Dr. Larry Hill motioned to grant his application and was seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

Chad Braddock, DPH request the Board to approve his reciprocal application for a pharmacist license. Dr. Braddock was convicted of embezzlement in Mississippi and surrendered his Mississippi Pharmacist License. His license was reinstated in 2008 with a 10 year term of probation. Dr. Brenda Warren motioned to have Dr. Braddock to obtain Tennessee Pharmacist Recovery Network advocacy since he will be practicing in Tennessee, and he must appear before the Board. This motion was seconded by Dr. Larry Hill. All were in favor and the motion carried.

Deborah Condo, DPH request the Board to approve her reciprocal application for a pharmacist license. Dr. Condo has had disciplinary action by the Virginia Board of Pharmacy due to a misfill.

Dr. Larry Hill motioned to grant the application. The motion was seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

Thomas Mastanduono, DPH request the Board to approve his reciprocal application for a pharmacist. Dr. Mastanduono did not reveal that he had disciplinary action by the New York Board of Pharmacy; however, the NABP provided documentation where he had disciplinary action. Dr. Brenda Warren motioned to deny the application due to falsifying his application. Dr. Bettie Wilson seconded the motion. All were in favor and the motion carried.

Kenneth Navon, DPH request the Board to approve his reciprocal application for a pharmacist. Dr. Navon indicated on his application that he had case that was not pursued by a Florida court. Dr. Charles Stephens motioned to grant the application. Dr. Larry Hill seconded the motion. All were in favor and the motion carried.

Dehshid Nourian, DPH request the Board to approve his reciprocal application for a pharmacist. In 2003, Dr. Nourian was involved with a medication error in Texas. The Board of Pharmacy in Texas took disciplinary action. Dr. Brenda Warren motioned to grant the application upon clarification by the Executive Director with the Texas Board of Pharmacy that his license is in good standing. Dr. Bettie Wilson seconded the motion. All were in favor and the motion carried.

Babatunde Oyediran, DPH request the Board to approve his reciprocal application for a pharmacist. Dr. Oyediran was arrested for public intoxication in 2000 and disciplined in 2006 for a misfill by the Texas Board of Pharmacy. Dr. Charles Stephens motioned to grant the application. Dr. Brenda Warren seconded the motion. All were in favor and the motion carried.

Steve L. Wilson, DPH request the Board to approve his reciprocal application for a pharmacist license. Dr. Wilson surrendered his Mississippi and Louisiana pharmacist license in 1997 for an addiction problem. His license in Mississippi was reinstated in 2002. Dr. Brenda Warren made a motion for Dr. Wilson to obtain advocacy from the Tennessee Pharmacist Recovery Network and reappear before the Board. The motion was seconded by Dr. Larry Hill. All were in favor and the motion carried.

### **Approval of Pharmacy Technician Candidates**

Wesley Averett was convicted in 1998 of negotiating a worthless instrument. Mrs. Monica Franklin motioned to grant the application for pharmacy technician. The motion was seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

Anthony Dickenson was convicted of a DUI in 2003 and 2005. Dr. Brenda Warren motioned to grant the application for pharmacy technician. The motion was seconded by Dr. Larry Hill. All were in favor and the motion carried.

Angel Dominguez was convicted of a felony in March 2008 for illegal possession of hydrocodone. He was sentenced to a 60 day substance abuse program. Dr. Brenda Warren motioned to deny the application for pharmacy technician. Dr. Bettie Wilson seconded the motion. All were in favor and the motion carried.

Billy White was convicted of a felony for theft of \$10,000 to \$60,000 in 1989. Dr. Brenda Warren motioned to deny the application for pharmacy technician. Dr. Bettie Wilson seconded the motion. All were in favor and the motion carried.

Anthony Wesley was convicted of a DUI in 1988 in Georgia. Dr. Larry Hill motioned to grant the application for pharmacy technician. Dr. Bettie Wilson seconded the motion. All were in favor and the motion carried.

### **Modification of Consent Order**

Nancy Horn, DPH request modification of her January 30, 2007 consent order for 10 year term of probation and no PIC for 3 years. She is requesting modification to be PIC. Mrs. Monica Franklin motioned to deny the request to be PIC. Dr. Brenda Warren seconded the motion. All were in favor and the motion carried.

### **Mail Order Pharmacies**

Johnathan Borsodi, attorney is requesting an interpretation of Board Rule 1140-3-.01 since his client is operating a mail order pharmacy for Tennessee residents. They are requesting interpretation of alternate means of counseling that the current business model would be applicable to instate pharmacies that perform mail order to Tennesseans. Mrs. Monica Franklin motioned that alternate means of counseling met the Board rule for a mail order to Tennessee residents. The motion was seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

### **Director's Report**

Dr. Terry Cannada has retired and since his retirement we have seen twenty-two new opening inspections in the Nashville area. Our Pharmacist II position has been frozen indefinitely as our

Statistician II position has been. I request the Board to allow the Executive Director to assist with performing the new opening inspections. Dr. Brenda Warren motioned to allow the Executive Director to perform these duties. Dr. Bettie Wilson seconded the motion. All were in favor and the motion carried

New law books are available for \$10.00.

Organizational chart of the Board staff was made available for the Board's review.

Board minutes are posted on the website.

We are working on the Controlled Substance Monitoring Database report to the General Assembly.

Each year the Board of Pharmacy adopts Robert's Rule of Order as our formal mechanism of presiding over the Board meetings. Dr. Bettie Wilson motioned to adopt Robert's Rule of Order. Mrs. Monica Franklin seconded the motion. All were in favor and the motion carried.

Knoxville Community Pharmacy, PC request an interpretation of Board of Pharmacy Rule 1140-2-.02 of records of the pharmacy. They want to allow a pharmacy technician to access the pharmacy records for purposes of billing if the pharmacy is not open or the pharmacist is not on duty. Dr. Brenda Warren made the motion to not allow a pharmacy technician to have access to the pharmacy when the pharmacist is not available. Mrs. Monica Franklin seconded this motion. All were in favor and the motion carried.

Dr. Reggie Dilliard asked the Board to look at the DEA's policy on what changes a pharmacist may make to schedule II controlled substance. Mrs. Monica Franklin motioned to allow counsel to research the legal authority of the Board to go back to the rules that were in place by the DEA prior to December 19, 2007, and if counsel agrees then we set a policy statement as such. The motion was seconded by Dr. Brenda Warren. All were in favor and the motion carried.

Department of Health Conflict of Interest Statement was discussed. The Board expressed considerable reservation.

Mandatory Criminal Background Checks proposed rules were handed out for Board review.

### **ADJOURNED**

Mrs. Monica Franklin motioned to adjourn the Board of Pharmacy meeting on Tuesday, January 13, 2009 at 3:32 p.m. CST; seconded by Dr. Brenda Warren. All were in favor and the motion carried.

Ratified at the March 10 & 11, 2009 Board meeting.