

**TENNESSEE BOARD OF PHARMACY  
TELECONFERENCE  
FRIDAY, DECEMBER 14, 2007  
OFFICE OF GENERAL COUNSEL  
PLAZA 1 – SUITE 210  
220 ATHENS WAY  
NASHVILLE, TENNESSEE**

The Tennessee Board of Pharmacy conducted a teleconference meeting on Friday, December 14, 2007, at 9:00 a.m. CST in the Office of General Counsel, Plaza 1 – Suite 210, 220 Athens Way, Nashville, Tennessee, to consider possible disciplinary action against Dr. David Powell.

The following individuals announced participation in the meeting.

Dr. Sheila Mitchell, President, Jackson, Tennessee  
Dr. Robert Mitchell, Vice President, Crossville, Tennessee  
Mrs. Monica Franklin, Nashville, Tennessee  
Dr. Todd Bess, Nashville, Tennessee  
Dr. Larry Hill, Rockwood, Tennessee  
Dr. Bettie Wilson, Johnson City, Tennessee  
Dr. Brenda Warren, Memphis, Tennessee

Mrs. Alison Cleaves, Chief Legal Counsel, Nashville,  
Tennessee  
Ms. Rhonda Phillips, DEA, Nashville, Tennessee

Personally appearing for the meeting:

Dr. Kevin Eidson, Executive Director  
Ms. Bethany Heuer, Legal Counsel  
Mrs. Martha Agee, Board Administrator  
Dr. Terry W. Grinder  
Dr. Terry Cannada

Mr. Jay Slobey, Attorney representing  
Dr. David Powell

After a quorum of the members being established, President, Dr. Sheila Mitchell called the teleconference meeting to order at 9:00 a.m. CST.

Ms. Bethany Heuer, legal counsel, informed the members that pursuant to T.C.A. §8-44-108 (3). Participation by electronic or other means - a statement of necessity would be needed to determine if a teleconference is necessary.

Ms. Heuer noted the word “necessity” is defined as:

(3) "Necessity" means that the matters to be considered by the governing body at that meeting require timely action by the body, that physical presence by a quorum of the members is not practical within the period of time requiring action, and that participation by a quorum of the members by electronic or other means of communication is necessary.

Dr. Robert Mitchell motioned to **accept** the Necessity statement; seconded by Dr. Todd Bess. All were in favor and the motion carried.

Legal counsel, Ms. Bethany Heuer advised the Board that there have been several investigational reports regarding Dr. David Powell and there are numerous issues concerning Dr. Powell's behavior and mental state. Ms. Heuer noted Dr. Powell has been admitted to Parthenon (Centennial Medical Center).

Mrs. Alison Cleaves, chief legal counsel, stated the alleged violations warrant a summary of suspension in order to protect the health, safety and welfare of the general public. Dr. Powell has exhibited erratic behavior by leaving the pharmacy practice site open for business without a licensed pharmacist present; dispensing medications plus controlled substances to patients without having any labels on the bottle and handing the pills to the patient; and a non-pharmacist having keys to the pharmacy.

Chief legal counsel, Mrs. Cleaves stated Dr. Powell has been arrested for a DUI but there was no conviction and issues concerning disorderly conduct on December 4, 2007 and December 10, 2007, respectively. Attorney Jay Slobey advised Mrs. Cleaves these remarks are in dispute.

Legal counsel, Ms. Heuer advised the Board that Dr. Powell has agreed to a Consent Order for the Revocation of his pharmacist license #3283 and to allow Dr. Powell to keep White Bluff Drug Company as a licensed pharmacy. Dr. William B. Clement, license #178 has accepted the responsibilities as being the acting Pharmacist in Charge.

Dr. Brenda Warren questioned the type of facility is Parthenon and Mr. Slobey, attorney for Dr. Powell responded, it is a psychiatric institution as Dr. Powell has a bi-polar condition that is aggravated by a brain tumor.

Ms. Heuer, legal counsel, read the following Consent Order for Dr. David Powell to the board members which states:

**BEFORE THE TENNESSEE STATE BOARD OF PHARMACY**

**IN THE MATTER OF:** )  
 )  
**DAVID POWELL, (Lic. #: 3283)** ) **Case No. L07-PHR-RBS-2007062322**  
**WHITE BLUFF DRUG COMPANY, (Lic. #: 126)** )  
**P.O. Box 640** )  
**White Bluff, Tennessee 37187** )

---

CONSENTORDER

---

**WHEREAS**, Respondent, David Powell, individually and as the owner of the Respondent, White Bluff Drug Company executes this Consent Order for the purpose of avoiding further administrative action with respect to this cause;

**WHEREAS**, at all times pertinent hereto, the Respondent, David Powell was licensed to engage in the practice of pharmacy in the Tennessee by the State of Tennessee Board of Pharmacy, having been issued license number 3283;

**WHEREAS**, at all times pertinent hereto, the Respondent, White Bluff Drug Company was licensed as a pharmacy in the State of Tennessee located at 4514 Highway 70 East in White Bluff, Tennessee;

**WHEREAS**, at all times pertinent hereto, the Respondent, David Powell was the owner and pharmacist in charge at the Respondent, White Bluff Drug Company;

**WHEREAS**, from approximately November 30, 2007 to December, 2007, while the pharmacist in charge at the Respondent, White Bluff Drug Company and while engaging in the practice of pharmacy at this pharmacy practice site, the Respondent, David Powell has been leaving the pharmacy practice site, White Bluff Drug Company open for business without a licensed pharmacist present and thereby allowing prescriptions to be dispensed outside the presence and direct supervision of a licensed pharmacist, including the following dates: November 29, 2007, November 30, 2007, December 1, 2007, December 3, 2007, December 4, 2007, December 5, 2007 and December 6, 2007;

**WHEREAS**, also during the aforementioned period of time, the Respondent, David Powell allowed a non-pharmacist to have possession of a key to the Respondent, White Bluff Drug Company;

**WHEREAS**, Respondent, David Powell also dispensed controlled substances to a patient without any labels on the prescription bottles;

**WHEREAS**, Respondent, David Powell no longer has the capacity to engage in the practice of pharmacy with reasonable skill, confidence and safety to the public;

**WHEREAS**, according to Michelle Halbrooks who worked for Respondent for approximately nine years as a pharmacy technician, being "unable to focus on tasks necessary to fill prescriptions at the pharmacy;" further, Michelle Halbrooks states she was "unable to cope with this type of behavior or be responsible for the pharmacist on a daily basis;"

**WHEREAS**, Respondent's acts and conduct as described above constitute(s) violation(s) of Tenn. Comp. R. & Regs. Rule 1140-1-.12(7) [STANDARDS FOR PHARMACIES AND PRESCRIPTION DEPARTMENT SECURITY], the relevant portion of which reads as follows:

A pharmacy practice site where prescription drugs and devices and related materials are received, stored, compounded and dispensed shall not be opened for business or any other reason unless a licensed pharmacist is present. Furthermore, no medical or prescription order shall be dispensed except during the presence and under the direct supervision of a pharmacist;

**WHEREAS**, Respondent's acts and conduct as described above constitute(s) violation(s) of Tenn. Comp. R. & Regs. Rule 1140-1-.12(3)(g)(1), the relevant portion of which reads as follows:

- (3)(g)(1) Only pharmacists practicing at the pharmacy and pharmacists authorized by the pharmacist in charge shall be in possession of any keys or other access devices;

**WHEREAS**, Respondent's acts and conduct as described above constitute(s) violation(s) of Tenn. Comp. R. & Regs. Rule 1140-3-.06 [LABELING REQUIREMENTS], the relevant portion of which reads as follows:

The dispensing label for a medical or prescription order shall bear at least the following information: name and address and telephone number of pharmacy practice site, the medical or prescription order serial number; name of prescriber; name of patient; direction for use; date medical or prescription order originally dispensed, and/or refill date; "poison", "shake", "caution", or other appropriate advisory label, name of product (unless otherwise required by the prescriber); and expiration date of the product (if applicable);

**WHEREAS**, Respondent's acts and conduct as described above constitute(s) violation(s) of Tenn. Comp. R. & Regs. Rule 1140-2-.01(11) (a) and (c), the relevant portion of which reads as follows:

- (11) A pharmacist shall provide pharmaceutical service:
- (a) which is as complete as the public may reasonably expect; and
  - (c) without compromising the kind and extent of services or facilities made available;

**WHEREAS**, The State of Tennessee Board of Pharmacy has the authority to revoke, suspend, fail to renew an individual's license to engage in the practice of pharmacy and a pharmacy license and/or impose a civil penalty for any violation of any laws relating to drugs or to the practice of pharmacy and/or the Board's rules pursuant to Tenn. Code Ann. §63-10-305, and Tenn. Comp. R. & Reg. Rule 1140-1-.08 [CIVIL PENALTIES];

**WHEREAS**, the Respondent, David Powell admits each and every one of the above-cited violations;

**NOW THEREFORE**, for the purpose of avoiding further administrative with respect to this cause, Respondent, David Powell agrees to the **REVOCATION** of his license to engage in the practice of pharmacy in the State of Tennessee (license number: 3283).

**FURTHERMORE**, the Respondents expressly waives all further procedural steps, including the opportunity for a hearing pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. Title 4, Chapter 5, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order.

**FURTHERMORE**, this Consent Order shall have no force or effect unless accepted by the State of Tennessee Board of Pharmacy. Should this Consent Order not be accepted by the Board, it is agreed that the presentation and consideration of this Consent Order shall not unfairly or illegally prejudice the Board or any of its members from further participation in or resolution of these proceedings, including a formal disciplinary hearing.

**Executed** this the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

---

**Jay Slobey**  
**Attorney for the Respondent**  
**On behalf of Respondent**

**APPROVED:**

---

Kevin Eidson, **With Express Consent**  
On behalf of Sheila Mitchell, Board of Pharmacy President  
State of Tennessee Board of Pharmacy

---

Alison G. Zane Cleaves, BPR # 021965  
Chief Deputy General Counsel  
Department of Health  
Office of General Counsel  
220 Athens Way, Suite 202  
Nashville, Tennessee 37243  
Telephone (615) 741-1611  
Facsimile (615)

---

Kevin Eidson, Executive Director  
State of Tennessee Board of Pharmacy

Ms. Heuer, legal counsel, noted Mr. Slobey, Attorney, has signed the Consent Order on behalf of his client, Dr. David Powell.

Mrs. Monica Franklin motioned to **accept** the Consent Order; seconded by Dr. Todd Bess.

A roll call vote was taken.

<u>BOARD MEMBER</u>	<u>VOTE</u>
Robert Mitchell	Yes
Monica Franklin	Yes
Todd Bess	Yes
Larry Hill	Yes
Bettie Wilson	Yes
Brenda Warren	Yes

All were in favor and the motion carried.

Dr. Robert Mitchell inquired if an audit was conducted and Dr. Terry Grinder noted the

audit was not in proper order.

Chief legal counsel, Mrs. Alison Cleaves requested approval from the Board to allow Dr. Kevin Eidson to sign the Consent Order on behalf of the President, Dr. Sheila Mitchell. Dr. Bettie Wilson motioned to **approve the request**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

Dr. Brenda Warren inquired as to the status of the pharmacy. Legal counsel, Ms. Heuer stated it will remain a licensed pharmacy and the PIC is in good standing. Dr. Grinder noted a Controlled Substance audit was conducted by the PIC on Thursday, December 13, 2007. Ms. Heuer, legal counsel, advised the Board the locks have been changed at the pharmacy in order to further secure the pharmacy.

Attorney Jay Slobey addressed the Board and noted that his client, Dr. David Powell, will be cooperating with the Board and the Department.

With no further business to discuss, President Sheila Mitchell entertained for a motion to adjourn. Mrs. Monica Franklin motioned to adjourn the teleconference at 9:30 a.m. CST; seconded by Dr. Todd Bess. All were in favor and the motion carried.

*The Board of Pharmacy approved the December 14, 2007 teleconference meeting minutes at the January 29 - 30, 2008 board meeting.*