

**TENNESSEE BOARD OF PHARMACY
AUGUST 29 - 30, 2006
ROOM 160 – DAVY CROCKETT TOWER
NASHVILLE, TN**

BOARD MEMBERS PRESENT:

Julie Frazier, President
Sheila Mitchell, Vice President
Robert Mitchell, Member
Monica Franklin, Consumer Member
Todd Bess, Member
Bettie Wilson, Member
Reggie Dilliard, Member

STAFF PRESENT:

Terry Grinder, Interim Executive Director
Alison Z. Cleaves, Chief Legal Counsel
Martha Agee, Board Administrator
Terry Cannada, Pharmacist Investigator
Richard Hadden, Pharmacist Investigator
Ralph Staton, Pharmacist Investigator

The Tennessee Board of Pharmacy convened on Tuesday, August 29, 2006, in Room 160 of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. A quorum of the members being present, the meeting was called to order at 9:00 a.m. CDT, by Dr. Julie Frazier, President.

FORMAL HEARINGS

**TONI L. TIPPS, RT
COMPLAINT # 200501356**

Mrs. Alison Cleaves, chief legal counsel, noted the Respondent, a pharmacy technician, had allegations for theft of controlled substances. Pending action of this formal hearing, the registration had expired. An Agreed Order was filed and the State requests approval of the Agreed Order. Dr. Sheila Mitchell motioned to **approve** the Agreed Order; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

**AMBER BOYD-HOLLOWAY, RT
COMPLAINT #200503231**

The Honorable Marion Wall, Administrative Law Judge, presided at the hearing to consider the matter of Amber Boyd-Holloway. Mrs. Alison Cleaves, chief legal counsel for the Regulatory Boards Division, Department of Commerce and Insurance, represented the State of Tennessee. Mrs. Cleaves noted for the record that Ms. Boyd-Holloway was not present nor was she represented by counsel. The Board Members present for the hearing were Dr. Julie Frazier, Dr.

Sheila Mitchell, Dr. Robert Mitchell, Mrs. Monica Franklin, Dr. Todd Bess, Dr. Bettie Wilson and Dr. Reggie Dilliard. Administrative Law Judge Marion Wall inquired if any of the Board members had prior knowledge of the contested case and a roll call vote was taken.

ROLL CALL

Dr. Julie Frazier	No
Dr. Sheila Mitchell	No
Dr. Robert Mitchell	No
Mrs. Monica Franklin	No
Dr. Todd Bess	No
Dr. Bettie Wilson	No
Dr. Reggie Dilliard	No

Chief legal counsel, Mrs. Alison Cleaves proceeded with evidence for a Motion for Default. Mrs. Cleaves called Dr. Terry Grinder, Interim Executive Director for the Tennessee Board of Pharmacy and custodian of the records to testify. After being sworn-in, Dr. Grinder acknowledged Ms. Boyd-Holloway is a registered pharmacy technician in Tennessee, registration #23386, with an effective date of February 4, 2005 and is in an active status. Dr. Grinder verified the mailing address on file with the Board is listed as 7305 Appomattox Drive, Murfreesboro, Tennessee 37130. Mrs. Cleaves called Ms. Ashley Matzoll, an investigator with the Department of Commerce and Insurance to the witness stand and was sworn in. Ms. Matzoll stated she received notice to serve a Consent Order on Ms. Boyd-Holloway in January, 2005 and again in December, 2005. Ms. Matzoll testified she contacted Bell South and was advised there was no telephone number listing and was later advised service had been cancelled and there was no forwarding address. Ms. Matzoll stated she was not able to serve the Consent Order. In July, 2006, Ms. Matzoll attempted to serve the Notice of Hearing and Charges at the Respondent's address and was informed by the current homeowner that Ms. Boyd-Holloway no longer resided at this address and stated she had moved to Alabama to the best of her knowledge.

Judge Marion Wall stated the grounds presented do not constitute a Motion for Default as Ms. Boyd-Holloway has no knowledge of this hearing. Ms. Boyd-Holloway's registration does not expire until February 28, 2007.

Mrs. Monica Franklin motioned to **deny counsel's recommendation to Default**; seconded by Dr. Todd Bess. All were in favor and the motion carried. The Contested Case concluded at 9:25 a.m. CDT on Tuesday, August 29, 2006.

On Wednesday, August 30, 2006, chief legal counsel, Mrs. Alison Cleaves informed the Board she had received a telephone call from Ms. Boyd-Holloway's husband and he stated his wife would be willing to sign the Agreed Order. Dr. Todd Bess motioned to **accept** the Agreed Order; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

Dr. Julie Frazier advised the Board that she and Dr. Todd Bess were scheduled to attend a meeting called by the Governor's Office at 1:00 p.m. regarding the Executive Director's position and Dr. Sheila Mitchell will assume the chair position.

CONSENT ORDERS

Mrs. Alison Cleaves, chief legal counsel, presented three (3) Consent Orders for the indefinite suspension of license due to chemical dependency.

**WILLIAM A. BADGER, DPH
MT. JULIET, TN**

**DAVID H. DOUGLAS, DPH
MARYVILLE, TN**

**CHARLES M. JACKSON, DPH
MANCHESTER, TN**

Dr. Todd Bess motioned to **accept** the Consent Orders, seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

**JAMES T. LEWIS, DPH
CLEVELAND, TN**

Chief legal counsel, Mrs. Alison Cleaves, presented a Consent Order on behalf of Dr. James Lewis who admitted to filling prescriptions for controlled substances and non-controlled substances without authorization from the prescriber. Dr. Lewis has agreed to the revocation of his license. Mrs. Monica Franklin motioned to **accept** the Consent Order; seconded by Dr. Todd Bess. All were in favor and the motion carried.

REVOCAION OF REGISTRATION

Mrs. Alison Cleaves, chief legal counsel, presented Consent Orders for the Revocation of Registrations for the following three (3) pharmacy technicians due to theft or diversion of controlled substances. The Board authorized legal counsel to proceed with a formal hearing and/or issue a Consent Order, which the technicians signed.

**JAMES T. BISHOP, RT
HERMITAGE, TN**

**ROBERT W. HOWSE, RT
NASHVILLE, TN**

**MIRANDA E. PELFREY, RT
SEVIERVILLE, TN**

Dr. Todd Bess motioned to **accept** the Consent Orders for Revocation; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

REINSTATEMENT OF LICENSE

Chief legal counsel, Mrs. Alison Cleaves, presented the following three (3) Consent Orders for the Reinstatement of License.

**JAMES CATRON, DPH
MORRISTOWN, TN**

**JOHN FLANDERS, DPH
HARRIMAN, TN**

**LARRY LARKIN, DPH
KNOXVILLE, TN**

Dr. Sheila Mitchell motioned to **accept** the Consent Orders for Reinstatement of License; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

VIOLATED TERM OF PROBATION

**ROGER A. SMITHSON, DPH
WOODBURY, TN**

Mrs. Alison Cleaves, chief legal counsel, presented a Consent Order whereas Dr. Roger Smithson violated the terms and conditions of his probation, which he entered into with the Board on May 25 - 26, 2004, by testing positive for alcohol. Mrs. Monica Franklin motioned to **accept** the Consent Order; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

VIOLATIONS/UNPROFESSIONAL CONDUCT*

**RONALD BLOCKER, DPH
1350 Powell Lane
LEWISBURG, TN**

Chief legal counsel, Mrs. Alison Cleaves, presented a Consent Order whereas Dr. Ronald Blocker was in violation of Rule 1140-3-.01 (1) (a) and (f) for failure to provide patient counseling. Dr. Blocker was assessed a civil penalty of \$100.

**CVS PHARMACY #6421
814 Nashville Highway
Columbia, TN 38401**

Mrs. Alison Cleaves, chief legal counsel, presented a Consent Order on behalf of CVS Pharmacy #6421 who was in violation of Rule 1140-3-.01 (1) (a) and (f) whereas patient counseling was not being offered. CVS Pharmacy #6421 was assessed a civil penalty of \$500.

**AMY HESTER MUIZNIEKS, DPH
2929 Jim Johnson Road
Clarksville, TN 37040**

Chief Legal Counsel, Mrs. Alison Cleaves, presented a Consent Order whereas Dr. Amy Muiznieks was in violation of Rule 1140-3-.01 (1) (a) and (f) relevant to the failure to provide patient counseling. Dr. Muiznieks was assessed a civil penalty of \$100.

**K-MART PHARMACY #7461
2300 Madison Street
Clarksville, TN 37040**

Mrs. Alison Cleaves, chief legal counsel, presented a Consent Order whereas K-Mart Pharmacy #7461 was in violation of Rule 1140-3-.01 (1) (a) and (f) as patient counseling was not being offered. K-Mart Pharmacy #7461 was assessed a civil penalty of \$500.

**PAUL NEUN, DPH/PIC
CVS PHARMACY #6421
934 Cothran Road
Columbia, TN 38401**

Chief legal counsel, Mrs. Alison Cleaves, presented a Consent Oder whereas Dr. Paul Neun, pharmacist-in-charge at CVS Pharmacy #6421 was in violation of Rule 1140-2-.02 (1) in which a pharmacy technician was not properly registered by the Board. Dr. Neun was assessed a civil penalty of \$100.

**CHRISTI SECREST, DPH
1104 Dover Circle
Columbia, TN 38401**

A Consent Order was presented by chief legal counsel, Mrs. Alison Cleaves, whereas Dr. Christi Secrest was in violation of Rule 1140-3-.01 (1) (a) and (f) relevant to patient counseling not being offered. Dr. Secrest was assessed a civil penalty of \$100.

***Dr. Sheila Mitchell motioned to accept all of the above referenced
Consent Orders; seconded by Dr. Todd Bess. All were in favor and
the motion carried.**

**JOHN R. SWANN, DPH
3800 Walden Wood Lane
Signal Mountain, TN 37377**

A Consent Order was presented by Mrs. Alison Cleaves, chief legal counsel, whereas Dr. John Swann was convicted of Driving Under the Influence of alcohol/drugs (DUI), which was his second conviction. Dr. Swann agreed to a thirty (30) day suspension of his license to engage in

the practice of pharmacy effective upon the execution of the Consent Order dated August 16, 2006. Mrs. Monica Franklin motioned to **accept** the Consent Order; seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

PAULA HENDERSON, DPH
8158 Golf Club Road
Mt. Pleasant, TN 38474

Mrs. Alison Cleaves, chief legal counsel, presented a Consent Order whereas Dr. Paula Henderson was in violation of Rule 1140-3-.01 (1) (a) and (f) for failure to offer patient counseling. Dr. Henderson was assessed a civil penalty of \$100. Mrs. Monica Franklin motioned to **accept** the Consent Order; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

Dr. Sheila Mitchell commended the investigators on their observation of the patient counseling issue.

WAIVERS

STEVEN SMITH, DPH
384 Goodman Road East #310
Southaven, MS 38671

Chief legal counsel, Mrs. Alison Cleaves, noted at the July 13 - 14, 2006 board meeting, the Board requested additional information relevant to Dr. Steven Smith's waiver request of Rule 1140-1-.07 (3) (c) (5) (f) for the reinstatement of his pharmacist license. Dr. Smith stated he let his Tennessee license lapse in 1999 due to being enlisted in the Navy. Dr. Smith's original state of licensure which was obtained by examination is Tennessee. Dr. Reggie Dilliard motioned to **allow Dr. Smith to relicense and to waive the NAPLEX and internship hours**; seconded by Dr. Todd Bess. There was one (1) nay vote. The motion carried.

MEDLIFE PHARMACY OF TENNESSEE

Interim Executive Director, Dr. Terry Grinder, stated Medlife Pharmacy of Tennessee is requesting a waiver of Rule 1140-2-.01 (13) (b) relevant to a pharmacist performing the final

verification of the product prior to dispensing and Rule 1140-2-.02 (6) relevant to the technician ratio. OmniCare, Inc. is a leading institutional pharmacy provider. The medications are provided in sealed unit dose packages with barcodes that are used to verify the correct medications, patient label and delivery destination. OmniCare's operating system has workflow software that utilizes bar code technology. This is a process where each drug package has a unique NDC/GDC bar-code that must have a perfect match to each patient label. Medlife Pharmacy of Tennessee is requesting that a pharmacist technician be allowed to perform the final barcode scan functions in place of a pharmacist. The Board stated it is not able to approve a waiver for a rule that is not established. Dr. Julie Frazier asked if it is a rule that can not be waived, then it will be the end of the discussion. If it is a process, then an inspector can come to visit the site. The Board noted the "process" would be considered a policy and procedure issue that is approved by the medical staff. Chief legal counsel, Mrs. Alison Cleaves, stated if this is the final check, the Board rules state it must be performed by a pharmacist for the final check. The "process" described, in order for the product to be packaged, it must be done by a pharmacist and a bar code is affixed to the product. The pharmacist is verifying the product. The technician places the label on the product. When the label is affixed to the product, the technician scans the bar code. Chief legal counsel, Mrs. Alison Cleaves, clarified the "process" does not violate any of the Board rules.

CENTRAL FILL RULES - CHARITABLE CLINIC PHARMACY - PHARMACY TECHNICIAN RULES

Mrs. Alison Cleaves, chief legal counsel, advised the Board that the central fill rules are still pending in the Attorney General's office and are debating points.

Mrs. Cleaves stated the Board of Pharmacy, in cooperation with the Department of Health shall promulgate rules in regards to the Charitable Clinic Pharmacies. On or before March 1, 2007, a report must be submitted along with any recommendations or findings to the health committees

of the General Assembly regarding the status of the pilot program for the Charitable Clinics. A second report is due on or before January 1, 2008. Mrs. Cleaves, chief legal counsel, is requesting the Board's approval of the Charitable Clinic Pharmacy Rules, which have been mandated by law and are declared to be a public necessity. Dr. Sheila Mitchell motioned to include the pharmacy technician rules along with the Charitable Clinic Pharmacy Rules. The motion dies for the lack of a second.

After board discussion, President Julie Frazier requested the revisions be made and then conduct a teleconference with the Board to approve the rules.

Chief legal counsel, Mrs. Alison Cleaves, discussed general language for the pharmacy technicians. Dr. Julie Frazier asked this matter be referred to the Ad Hoc Rules Committee composed of Dr. Reggie Dilliard and Dr. Julie Frazier.

In reference to the technician ratios and bar coding, Dr. Sheila Mitchell motioned the Board cannot address ratios and bar coding as it is not covered in the rules. This does not require a waiver as it is covered by policy and procedure. Mrs. Monica Franklin seconded the motion. All were in favor and the motion carried.

APPROVAL OF THE MINUTES

Dr. Reggie Dilliard motioned to **approve the May 16 - 17, 2006 minutes**; seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

DIRECTOR'S REPORT

TENNESSEE BOARD OF PHARMACY 2007 BOARD CALENDAR

January	9	106th Tennessee General Assembly Convenes
	15	Martin Luther King, Jr. (Holiday)
	30 - 31	<u>Board Meeting</u>

February	10 - 11 17 - 18 19 26 - 27	Memphis Update Seminar Knoxville Update Seminar President's Day (Holiday) TPA Midyear Meeting
March	3 - 4 10 - 11 29 - 30	Jackson Update Seminar Chattanooga Update Seminar <u>Board Meeting</u>
April	() 6 14 - 15 21 - 22 28 - 29	NABP Annual Meeting - Good Friday (Holiday) Nashville Update Seminar Johnson City Update Seminar Cookeville Update Seminar
May	15 - 16 28	<u>Board Meeting</u> Memorial Day (Holiday)
July	4 17 - 18 31st - 8/3/07	Independence Day (Holiday) <u>Board Meeting</u> TPA 119 TH Annual Convention
August	()	District III - (Orlando, FL will host)
September	3 () 18 - 19	Labor Day (Holiday) MALTAGON – <u>Board Meeting</u>
October	()	Tripartite –
November	11 14 - 15 22 - 23	Veteran's Day (Holiday) <u>Board Meeting</u> Thanksgiving (Holiday)
December	25	Christmas (Happy Holidays!!)

**EAST TENNESSEE STATE UNIVERSITY
 ACCREDITATION COUNCIL FOR PHARMACY EDUCATION**

Interim Executive Director, Dr. Terry Grinder, advised the Board that the Accreditation Council for Pharmacy Education (ACPE) has extended an opportunity for the Board of Pharmacy to participate in evaluating the Doctor of Pharmacy program at East Tennessee State University College of Pharmacy on October 25 - 26, 2006. Interim Executive Director, Dr. Terry Grinder advised that a member of the Board would attend the visit for precandidate accreditation.

**NATIONAL ASSOCIATION OF BOARDS OF PHARMACY
2006 - 2007 COMMITTEE AND TASK FORCE APPOINTMENTS**

Dr. Terry Grinder, interim executive director, congratulated the following board members on their appointments to the NABP Committees and Task Forces for the 2006 - 2007 year.

Task Force on Standardizing Student Pharmacist Experiential Requirements

Dr. Todd Bess, Member

Committee on Law Enforcement / Legislation

Dr. Sheila Mitchell, Chair
Dr. Julie Frazier, Member

Committee on Constitution and Bylaws

Mrs. Monica Franklin, Member

**ACORDA THERAPEUTICS
120 Johnston Avenue
Jacksonville, FL 32211**

Interim executive Director, Dr. Terry Grinder, advised the Board he received an e-mail inquiry from Mr. Ford Nelson relevant to the improper generic substitutions for Acorda's non AB rated product Zanaflex Capsules. President, Dr. Julie Frazier stated the board laws are very specific as the product has to be AB rated.

**THE LETCO COMPANIES
1316 Commerce Drive, NW
Decatur, AL 35601**

Dr. Terry Grinder, interim executive director, stated he received a faxed inquiry from The Letco Companies questioning, "Is it legal for a compounding pharmacy to compound an OTC product for a customer in Tennessee or are they required to have a prescription for the product to be compounded?" President Julie Frazier noted this is an FDA issue.

**KEVIN L. JONES, DPH
PRESIDENT
QUALITY PHARMACY MANAGEMENT (qPM)**

Quality Pharmacy Management is a company that collaborates with hospitals that are unable to provide 24 hour-a-day pharmacy services. qPM services are provided through an integrated network of pharmacists working out of their home offices. Medication orders from the hospital are transmitted, generally via fax, to the qPM secured server. The qPM pharmacists access and review an electronic image of the original physician's order. Once the order has been reviewed for appropriateness and made any necessary interventions, the pharmacist accesses the client's pharmacy information system and enters the medication order into the system. At this point, the nurse is authorized to obtain and administer the medication. qPM is not licensed in Tennessee. The Board took no action.

RULE 1140-2-.01 (16) DISPLAYING PHARMACIST LICENSE

Dr. Sheila Mitchell requested the board's opinion on the issue of conspicuously displaying the pharmacist's license and certificate of registration for pharmacy technicians at the primary pharmacy practice site pursuant to Rule 1140-2-.01 (16). Due to insufficient wall space for displaying numerous pharmacist licenses and technician registrations, the board noted a xerox copy of the license/registration, which will reveal the word "void" when copied, may be maintained at the site. President Julie Frazier instructed the investigators to ensure that the pharmacists and technicians are properly licensed.

ADJOURNMENT FOR LUNCH

President Julie Frazier noted prior to adjourning for lunch on Tuesday, August 29, 2006, that Dr. Sheila Mitchell would be assuming the President's role and Dr. Robert Mitchell as Vice President. Dr. Frazier and Dr. Todd Bess will be attending a meeting with the Governor's office relevant to the vacant Executive Director's position.

**DAVID DOUGLAS, DPH - REQUEST FOR REINSTATEMENT OF LICENSE
MARYVILLE, TN**

Dr. David Douglas appeared before the Board to request the reinstatement of his pharmacist license. Advocating on his behalf were Dr. Janet Hicks and Dr. Edwin Bills with the Tennessee

Pharmacist Recovery Network. Mrs. Alison Cleaves, chief legal counsel, stated Dr. Douglas' license was summarily suspended due to chemical dependency. Dr. Douglas stated he entered treatment at Cornerstone in March, 2006, due to the consumption of alcohol. TPRN advocate, Dr. Bills, advised Dr. Douglas is willing to do what is asked of him and he is compliant with TPRN recommendations. Dr. Hicks advised Dr. Douglas is attending meetings and she is supporting him in his request to return to the practice of pharmacy. Dr. Douglas acknowledged there were no criminal charges pending. Dr. Douglas is appreciative of the support he has received from his wife during this process. After board discussion, Dr. Bettie Wilson motioned:

1. Respondent does hereby agree to the reinstatement of license number **920** with the following probationary conditions. Said probation shall remain in effect for a period of **five (5) years, from August 29, 2006 to August 29, 2011.**

- a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- b) Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Paul Miller, MD, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;
- c) The Respondent shall not obtain or attempt to obtain any prescriptions in the respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;

- d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove

the restrictions upon a show of good cause. The Respondent shall not work as a “floater” for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;

- i) If the license has been inactive, delinquent, suspended or revoked:
 - (i) **Less than one (1) year, the pharmacist shall:**
 - I. Provide written notice requesting an active license;
 - II. Satisfy all past due continuing pharmaceutical education; and
 - III. Pay all cumulative license renewal fees and any applicable penalties.

Dr. Robert Mitchell seconded the motion. All were in favor and the motion carried.

**MR. RONNIE MCNEIL
R. A. MCNEIL COMPANY
1150 Latta Street
Chattanooga, TN 37406**

Mr. Ronnie McNeil, President of R. A. McNeil Company, a licensed manufacturer, wholesale, distributor in the State of Tennessee appeared before the Board to discuss the substitution law, Public Chapter 434. Mr. McNeil stated R. A. McNeil Company markets a product called, Otozone, in a 12cc bottle with a dropper. The product dispensed in a generic form only comes in a 10cc bottle and the prescribing physicians are not familiar with the package sizes. Dr. Dilliard noted the pharmacist has to make a decision when the prescribing physician writes, “dispense as written”. Mr. McNeil questioned who determines the quantity of a legend drug and Dr. Sheila Mitchell responded the substitution law does not refer to quantity. Interim executive director, Dr. Terry Grinder, advised the Board’s rules allow for a partial fill pursuant to Rule 1140-3-.03. Chief legal counsel, Mrs. Alison Cleaves noted there is no violation of Public Chapter 434.

VACANCY OF THE EXECUTIVE DIRECTOR POSITION

Dr. Sheila Mitchell relinquished her duties as President upon the return of Dr. Julie Frazier. Dr. Frazier asked Dr. Reggie Dilliard to excuse himself from the discussions of the meeting held at the Governor's office. Dr. Frazier noted she and Dr. Todd Bess met with Mr. Robert Gowan, Senior Advisor for Policy and Legislation; Mr. Jim Shulman, with Department of Finance & Administration; Mr. Nat Johnson, Deputy Commissioner with Tennessee Department of Personnel; Ms. Paula A. Flowers, Commissioner of Department of Commerce and Insurance; and Ms. Meredith Sullivan, Assistant Commissioner for Regulatory Boards relevant to the pharmacist's salaries in the private and public sector. Dr. Frazier noted the pharmacist investigators salaries were discussed and how they were underpaid. Dr. Frazier advised the members that regardless of what the law states under Tenn. Code Ann. §63-10-303, the Board can make an offer of \$83,000 for the Executive Director position, and the salary will need to be approved from the Department of Personnel and Department of Commerce and Insurance. Dr. Frazier mentioned the salary requested by the Board will not be approved. The consensus of the meeting for the Executive Director's position noted the responsibilities were of a management-type, and not the practice of pharmacy. Dr. Frazier noted Commissioner Flowers is seeking a qualified pharmacist who is a good manager.

Ms. Meredith Sullivan, Assistant Commissioner for Regulatory Boards and Commissioner Paula Flowers met with the Board to discuss and clarify the Department's position relevant to the salary and equity issues within the Board of Pharmacy. After discussion, Dr. Robert Mitchell motioned to draft a letter to request a class compensation review of the pharmacist investigator position. Dr. Bettie Wilson seconded the motion. All were in favor and the motion carried. Assistant Commissioner Sullivan requested a copy of the Position Classification Questionnaire (PCQ) for the Pharmacist II and Executive Director positions. The Board thanked Commissioner Flowers and Assistant Commissioner Sullivan for their time.

COMPLAINTS

1. Case No.: L06-PHR-RBS-200602394

Complainant alleges that a pharmacy technician at the pharmacy is keeping a log book of the dates when patients pick up prescriptions and that the Complainant is taking the log book home with her. Complainant attached copies of the log that he obtained during the litigation process against the Complainant relative to a separate issue. The log that the Complainant attached is a copy of the Respondent's personal calendar that has her own personal notes on them, such as doctor's appointments and things she needs to do. Also on this calendar, she makes reference to when the Complainant picked up a prescription (no mention of the type of drug) and when his wife came into the store. Complainant also alleges that the Respondent is filling prescriptions.

PIC responded to the complaint and states that the Respondent is a licensed technician and has been employed by the pharmacy for 23 years and she was aware of HIPAA and her ethical obligations not to reveal confidential patient information. PIC also states that the Complainant was hired by the Respondent to build them a home and now they are now in litigation over the construction. Respondent indicated to PIC that the entries in her journal of when the Complainant came to pick up prescriptions were the days in which they spoke about the construction problems. PIC states that the Respondent only takes part in the prescription process under his supervision.

*Prior complaints: DPH & Pharmacy: 93341 - 11/1993 - Dismissed
19990876 - 9/1999 - Dismissed
199901964 - 11/2002 - C/O w/CP \$1,000 to
Pharmacy & \$500 to PIC*

Recommendation: Dismiss

Dr. Robert Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

2. Case No.: L06-PHR-RBS-2006029331 and 2006029331

Investigator conducted a compliance inspection on July 18, 2006 in which investigator observed that there was no patient counseling being performed and none offered when patients were picking up their prescriptions

In response, the pharmacist on duty at the time that the violation was observed states that she has taken the following steps towards improvement: (a) discussed with pharmacy staff about counseling at the point of sale; (b) deferring more order-related telephone calls to the technicians to free herself up to customers to provide the counseling; (c) continuing to get to know her patients on a personal level so that

she can counsel more thoughtfully and anticipate unusual drug directions or interactions with them.

Prior complaints:

PIC: None:

*Pharmacy: 200206252 - 5/2002 - Dismissed
200421124 - 3/2005 - Dismissed*

Recommendation: Consent Order with \$500.00 civil penalty to pharmacy, \$100.00 civil penalty to DPH on duty, and Letter of Instruction to the PIC

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

3. Case No.: L06-PHR-RBS-200602395

Complainant alleges that she has Medicare Summary Notices with claims by the pharmacy for items and services that she did not receive. Complainant also alleges that the pharmacy told her that her prescription for a skin rash medicine had not yet been called in by the doctor when Complainant claims that she heard the nurse call it in.

In response, pharmacist states that she cannot remember this particular incident because it was never brought to her attention until the filing of this complaint. Pharmacist denies purposely telling the Complainant or any patient for that matter, that a prescription has not been phoned in after it has. Pharmacist does recall the patient inquiring about his Medicare billing; however, pharmacist had difficulty understanding his specific concerns so she gave him a number to call for more information. She also sent him a printout of all his medications that he requested. Pharmacist denies billing Medicare for services that the patient did not receive.

Prior complaints:

PIC: None

Pharmacy: None

Recommendation: Dismiss

Dr. Todd Bess motioned to **accept counsel's recommendation**; seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

4. Case No.: L06-PHR-RBS-200501166

Complainant, physician office, alleges that the Respondent, pharmacist dispensed a generic Duragesic patch when the prescription was signed "dispense as written" and the pharmacy did not call for permission to dispense the generic. Complainant, however, did not provide the name of the patient for the pharmacist to respond to the

complaint. Complainant never responded to a letter from staff to the Complainant asking for this information.

Prior complaints:

PIC: 199901130- 9/1999-Dismissed

Pharmacy: 901635 -5/1991

948259-9/1997

199901130-9/1999-Dismissed

Recommendation: Dismiss

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

5. Case No.: L06-PHR-RBS-200602661

Complaint generated from a June 22, 2006 compliance inspection in which investigator observed a technician check out two (2) patients without having the pharmacist counsel or make an offer to counsel. Investigator then spoke to the PIC who verified that the previous patient did have a new prescription. When asked why counseling was not performed, the PIC stated that his policy is to have the technicians ask on all prescriptions that the technician must have been frazzled. Investigator then reviewed our patient counseling rule with him and PIC stated that he was unaware of the counseling requirement for new prescriptions. In a written response, PIC states that since the inspection, the pharmacy started to utilize a hanging bag system to distinguish new prescriptions from refills. The new prescriptions are placed in the hanging bag and then brought to the consultation window by the technician so that the pharmacist can counsel.

Prior complaints:

PIC: None

Pharmacy: None

Recommendation: Consent Order with \$500.00 civil penalty to pharmacy, \$100.00 civil penalty to DPH on duty, and Letter of Instruction to the PIC

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

6. Case No.: L06-PHR-RBS-200421695

Complainant alleges that the Respondent, pharmacy technician, took Schedule III and Schedule IV controlled substances from the pharmacy without a prescription. Respondent's registration has since expired.

Recommendation: Close and re-open and reapplication

Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

7. Case No.: L06-PHR-RBS-200602602

PIC self-reported a medication error to the Board. PIC provides that a patient's prescription for Novolog Flexpen with Novolog Mix 70/30 Flexpen. The prescription was filled incorrectly on March 2, 2006 and then refilled incorrectly again on May 11, 2006. On June 6, 2006, the patient contacted the pharmacy and questioned the correctness of the prescription because he was experiencing problems keeping his blood sugar down. Pharmacist told the patient that she would correct the error and replace it with the correct insulin product. When the corrected product was prepared, the patient refused to pick up the prescription and indicated that he would be pursuing legal action.

Prior complaints:

PIC: None

Pharmacy: None

Recommendation: Letter of Warning to dispensing DPH

Dr. Sheila Mitchell motioned to **issue a Letter of Instruction and request the steps taken to prevent future errors from happening**; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

8. Case No.: L06-PHR-RBS-200602790

Complaint generated from a June 30, 2006 compliance inspection in which an investigator observed a patient bringing in a new prescription to be filled; however, prescription was released to the patient without any counseling being performed. Investigator then informed the pharmacist in duty of the patient counseling requirement and allowed her time to respond in writing.

Pharmacist states that she was unaware of the counseling requirement and that there is no excuse for it. Since this incident, she has spoken with her supervisor and partner and they have devised a plan so that counseling will occur for each patient with a new prescription. Pharmacist did not elaborate on the specifics of the plan.

Prior complaints:

PIC: None

Pharmacy: None

Recommendation: Consent Order with \$500.00 civil penalty to pharmacy, \$100.00 civil penalty to DPH on duty, and Letter of Instruction to the PIC

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Todd Bess. All were in favor and the motion carried.

9. Case No.: L06-PHR-RBS-200600454

Complainant, physician, alleges that on February 15, 2006, she received a phone call from a pharmacy technician requesting a refill for a Valtrex 500 mg. prescription. Complainant states that she had not seen the patient in years. Complainant contacted the pharmacist who said that he could not trace the script because he did not know who called it in.

Pharmacist states that June 19, 2005, the pharmacy received a phoned-in prescription from a clinic in South Carolina and the prescription was for 30 Valtrex 500 mg. with the Complainant as the prescribing physician. On February 15, 2006, the patient came back to the pharmacy and requested a refill on the prescription. Pharmacist then attempted to contact the physician (Complainant) who told the pharmacist that she did not know this patient. Pharmacist then contacted the patient; patient indicated that she was seen in a clinic where the Complainant worked, but could not remember the doctor's name. Complainant did state that she used to work at the clinic where the prescription originated. Given the length of time between the original prescription and the request for a refill, it would be impossible to trace it back to who called it in.

Prior complaints:

PIC: None

Pharmacy: None

Recommendation: Dismiss

Dr. Robert Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

10. Case No.: L06-PHR-RBS-200600561

Complainant, pharmacist, filed a complaint against the pharmacy where he was employed. Complainant states that he had to close the pharmacy drive-thru window during operating hours because he, as the only pharmacist on duty, could not fill prescriptions, supervise a technician as well as a new trainee and answer the phones and handle the drive-thru window. Complainant states that he felt it was his professional duty to shut down the drive-thru. As a result of this decision, the pharmacist was asked to either resign or be fired for violating company policy.

Company attorney responded to the complaint and stated that pharmacists are instructed in a busy situation to contact the front store manager to request assistance at the pharmacy register, but the Complainant never asked the manager or anyone at the front store for help. District Manager also states that the

pharmacist failed to contact his pharmacy supervisor or another individual in field management if they needed assistance or if they need to close the drive-thru. Attorney also states that this is a labor management issue and an economic matter that is beyond the purview of this Board.

Prior complaints:
Pharmacy:

Recommendation: Informal Conference

President Julie Frazier stated the Board has no purview with what the company did but the Board of Pharmacy's mission is to protect the public health, safety and welfare. The company should not place the pharmacist in these situations to make those decisions and jeopardize the health, safety and welfare of the patient.

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Todd Bess.

Legal counsel, Mrs. Alison Cleaves inquired is the full board to be present for the informal conference, and if so, then no disciplinary action can be taken.

Mrs. Franklin amended the motioned to **accept counsel's recommendation for an Informal Conference before the full board**; seconded by Dr. Todd Bess. All were in favor and the motion carried.

11. Case No.: L06-PHR-RBS-200602934

Investigator conducted a compliance inspection on July 24, 2006 at which time the investigator observed that there was no patient counseling offered or being performed for any patients; investigator observed for pharmacy for approximately 1 ½ hours. In response to the observed violation, the pharmacist on duty states that he has taken the following actions: (a) ensured that all current and future pharmacy personnel has/will read the rule concerning patient counseling; (b) noted all new prescriptions on the prescription bags; (c) instructed pharmacy personnel to extend an offer to counsel in refilled prescriptions; and (d) placed a reminder on the cash registers about the requirement to counsel on new prescriptions and the offer to counsel on refills.

Prior complaints:
PIC: None
Pharmacy: None

Recommendation: Letter of Instruction to PIC; Consent Order with \$100.00 civil penalty to pharmacist on duty; Consent Order with \$500.00 to pharmacy.

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

12. Case No.: L06-PHR-RBS-200602935

Investigator conducted a compliance inspection on July 19, 2006 at which time investigator observed that counseling was not performed or offered to two (2) patients picking up their medications. One of the pharmacists in charge responded to the investigation findings by stating that she has taken the following measures to prevent recurrence in the future: (a) discussed with all pharmacy personnel the rule about patient counseling; (b) will review the rule with all pharmacy personnel daily until she feels certain that it will be followed; (c) will counsel patients at the time she accepts prescriptions for processing. If she is unable to counsel at that time, then she will make a notation on the prescription bag that will indicate to the technician that at the pick-up time, they will need to call a pharmacist to administer counseling.

Prior complaints:

PIC: 199901666-1/2000-Dismissed

Pharmacy: None

Recommendation: Letter of Instruction to PIC; Consent Order with \$100.00 civil penalty to pharmacist on duty; Consent Order with \$500.00 to pharmacy.

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

13. Case No.: L06-PHR-RBS-200602882

Complainant alleges that he dropped off his prescription for 60 Hydrocodone 10 mg. but when he went to the pharmacy to pick it up he was told that his prescription was lost. Pharmacy referred the Complainant to the police department; Complainant does not state whether he ever contacted the police department about his prescription or not. Complainant states that the pharmacy submitted a claim for his prescription within minutes after they told him it was lost.

Pharmacy technician responded to the complaint stating that the Complainant came through the drive-thru to pick up a Lortab prescription; however, they searched through the computer system and did not find one ready or held on his profile. They also searched around all of the terminals and did not find the hard copy or any sign of the prescription he said he brought to the pharmacy. PIC called the physician and asked for a new prescription, which the physician would not authorize; PIC also put in for a refill request, which was denied.

Prior complaints:

DPh: None

Pharmacy: None

Recommendation: Dismiss

Dr. Todd Bess motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

14. Case No.: L06-PHR-RBS-200602733

Complainant alleges that she had her prescriptions for Xanax 30 mg. and Morphine filled at the pharmacy, but that the pharmacy allowed the prescriptions to be picked up by her husband's friend who is a known drug addict. Complainant provides that by the time they found the friend, he had taken 20 tablets of one of the medications. Complainant states that when she questioned the pharmacy about releasing the medication to the friend, she was told that they thought it was acceptable because they saw the Complainant come into the pharmacy with the friend's wife. Complainant states she called the police and the pharmacy told the police that the friend always picked up the Complainant's medication.

Pharmacist states that at the time the Complainant dropped off the prescriptions to be filled she was with the friend and the friend's wife and introduced the wife to the pharmacy staff as a close family friend. Pharmacist states that they filled her prescriptions and that the Complainant did not tell them that no one else could pick up her medications for her. Pharmacist states that the police officer indicated to them that the Complainant admitted to selling her prescriptions to the friend. Since this incident, they have made a note in the Complainant's file that no one else but the Complainant can pick up her medications.

Prior complaints:

PIC: None

Pharmacy: None

Recommendation: Dismiss

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Todd Bess. All were in favor and the motion carried.

15. Case No.: L06-PHR-RBS-200602654

Complainant alleges that the Respondent pharmacist misfilled a child's prescription for Depakote with Paxil. Respondent admits to mislabeling the mother's prescription by putting the child's name on the bottle. Respondent states that he received a phone call from the child's mother approximately one (1) month after stating that she had mistakenly given the child the incorrect medication for approximately one (1) month. Complainant also indicated to the Respondent that the child was not injured. Suit was brought by the Complainant which resulted in a money settlement and the insurance company forwarded the claim to us which resulted in the complaint with the Board. The insurance paperwork state that the description of the injury was

alleged uncontrollable nosebleeds, hallucinations, physical and emotional outbursts, anti-social behavior, loss of sleep, unreasonable fears, and shaking and quivering in a fetal position.

Prior complaints:

DPh: None

Recommendation: Discuss

Dr. Sheila Mitchell motioned to issued a **Consent Order with a \$500 civil penalty and advise the Board as to the measures taken to prevent this from happening in the future plus it is the PIC's responsibility for reporting serious injury**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

16. Case No.: L06-PHR-RBS-200602951

Complainant alleges that the Respondent, pharmacy technician, was terminated from her employment with the pharmacy where she was employed because of theft of Hydrocodone and other drugs. The Board office received the complaint in July, 2006, but a review of the Board records revealed that the Respondent's registration expired on August 31, 2005. Respondent is also well beyond the grace period for renewal.

Recommendation: Close and reopen upon reapplication

Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

17. Case No.: L06-PHR-RBS-200603929

Complainant alleges that the Respondent company is engaging in unlicensed conduct by selling or distributing medical oxygen to and from a location in Tennessee. Investigation into this matter revealed that the investigator could not find the location of the Respondent provided in the complaint and therefore could not determine if any unlicensed practice has occurred.

Recommendation: Close

Dr. Todd Bess motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

18. Case No.: L06-PHR-RBS-200603257

Complainant alleges that the pharmacist admitting to stealing merchandise and drugs from the pharmacy where he was employed, such as Zoloft 50 mg., #30 x 2; Lexapro 20mg., #30, Ambien 10mg., #10, Naproxen 500mg. #20 as well as DVDs, a printer cartridge, Hydrocortisone Cream and Sunmark Glucose.

Prior complaints: None

Recommendation: Discuss

The Board is requesting legal counsel to verify and obtain additional information as to whether these were actual prescriptions or if the pharmacist just stole the drugs.

19. Case No.: L06-PHR-RBS-200602526

Complainant alleges that numerous errors occurred at the pharmacy, such as:

- (1) Had to come back the next day to get her child's prescription for Duricef filled at the pharmacy; pharmacy indicated that they were out of the medication;
- (2) Received an expired cream from the pharmacy (Complainant did not identify the cream, the expiration date or when the incident allegedly occurred);
- (3) Received an expired Eippen, Jr. from the pharmacy. Complainant states she went back to the pharmacy immediately and was told that they could not take it back, but the pharmacy eventually took it back;
- (4) Received a liquid medication with the incorrect dose typed on it (Complainant did not identify the medication, the correct dosage, the incorrect dosage or the date of the alleged incident). Complainant states that someone from the pharmacy apologized about the dosage error; and,
- (5) Received a prescription for her child for Cefadroxil 250mg/5ml with directions that were five times the amount that the child should have been given. Complainant alleges that the directions provided "Give 4 ½ teaspoonfuls twice a day for 10 days."

Respondent states that in terms of the complaint stating that the antibiotic was out of stock, pharmacist states that the usual response is to ask the patient if they can wait overnight. If they can't wait, then they offer to call another pharmacy. Respondent cannot state if the Complainant ever received a cream that was out of date, but if so, it would have been promptly replaced. The response to the Eippen is usual in that the pharmacist cannot take drugs back once they have left the pharmacy, but upon realizing the entire situation, the Eippen was replaced with no complaints. Respondent has no way to respond to the allegation of incorrect dosage on the liquid prescription label.

Prior complaints:

PIC: None

Pharmacy: None

Recommendation: Dismiss

Dr. Robert Mitchell motioned to accept counsel's recommendation and then withdrew his motion due to the expired drug issue. After board discussion, Dr. Robert Mitchell motioned to **dismiss the complaint**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

20. Case No.: L06-PHR-RBS-200602388

Complainant alleges that her husband's prescription for Coreg Tab 6.25mg was mistakenly filled with Coreg Tab 25mg. Complainant's husband detected the error before any of the incorrect medication was consumed. Complainant and husband went back to the pharmacy the next day to get the prescription filled correctly.

Respondent admits that the misfill occurred. When the error was brought to the PIC's attention, it was reported to the risk management department. The patient was also given the correct medication and refunded the cost of the medication.

Prior complaints:

PIC & Pharmacy: 20050440 5/2005-Dismissed

Recommendation: Letter of Warning

Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

23. Case No.: L06-PHR-RBS-200603287

Complainant states that she stopped by the pharmacy to obtain information only about a prescription for Sanctura 20mg. Complainant did not ask to have the prescription filled, but wanted to know if it came in a generic (Oxybutynin) and asked the price. Complainant states that the pharmacist told her that it did and gave her a price and did tell the Complainant that she would have to bring in a new prescription.

Pharmacist states that she did speak with the Complainant and looked up the medication in the AARP formulary and told her how much the medication would cost. Pharmacist denies telling Complainant that Oxybutynin is the generic for Sanctura.

Prior complaints: 199901745 - Closed

Recommendation: Dismiss

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

24. Case No.: L06-PHR-RBS-200603282

Complainant, physician, alleges that the pharmacy misfilled a prescription for a patient with Estrace 2.5mg and 2mg instead of Estrace 0.5mg. At the same time that the Complainant prescribed the Estrace, he also prescribed Provera 2.5mg. Pharmacist states that a prescription for Estrace 2.5mg was called into the pharmacy and that the pharmacist called the physician's office for verification which he received. Pharmacist states that he then refilled the prescription which was also phoned in with Estrace 2mg.

Prior complaints: None

Recommendation: Dismiss

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

25. Case No.: L05-PHR-RBS-200503040

Complainant alleges the theft and diversion of controlled substances by the pharmacy technician. Technician's registration has since expired.

Recommendation: Close and re-open upon reapplication

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

26. Case No.: L06-PHR-RBS-200602527

Complainant alleges that her prescription for Percocet 10/650 was misfilled with generic Vicodin 5/500; Complainant received two (2) prescriptions from the pharmacy, one (1) for Percocet and the other for Oxycotin 30mg. After taking the Percocet for three (3) days, the Complainant stated that the pain was not lessening. Complainant's husband contacted the hospital pharmacy and over the phone the pharmacist indicated that it was generic Vicodin 5/500. Complainant went back to the pharmacy to verify the contents of the bottle. Complainant indicates that the pharmacist did not even look at the bottle and indicated to the Complainant that someone had sold her pills and that he was going to report her to the DEA.

Pharmacist does not deny that he was rude to the Complainant, but does deny stating that he would report the Complainant to the DEA. Pharmacist states that he did attempt to apologize to the Complainant, but Complainant would not accept her apology. Pharmacist states that he did look at the bottle brought in by the Complainant and that it contained Hydrocodone 5/500, which was dispensed to the Complainant's husband approximately one (1) week earlier. Pharmacist also checked the pharmacy's Oxycodone and Hydrocodone counts which matched the inventory in the computer. Pharmacist gave the Complainant another prescription

for Oxycodone and then called Investigator, Ralph Staton to tell him that the counts of Oxycodone would be off.

Recommendation: Dismiss

Dr. Todd Bess motioned to **accept counsel's recommendation**; seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

27. Case No.: L06-PHR-RBS-200602605

Complainant alleges that the pharmacist charged her with two (2) brand name drugs when he was supposed to enter an override code when submitting the claim to TennCare so it will only be counted as one (1) brand name. Complainant was prescribed Effexor and Avinza. Complainant further alleges that when she brought the override code to the attention of the pharmacist, he became irate and made demeaning remarks about her mental health status.

Pharmacist states that when the Complainant brought the situation to his attention he contacted the physician about the override code. When it was explained to him he reversed the claim and resubmitted it. Pharmacist denies making demeaning remarks to the Complainant about her mental health status and indicated that the Complainant appeared frustrated with the TennCare system and vented her frustration at pharmacy staff.

Recommendation: Dismiss

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

28. Case No.: L06-PHR-RBS-200602604

Complainant alleges that the Respondent, pharmacy, misfilled her mother's prescriptions such that the mother was taking the incorrect medications, Mevacor and Rythmol from January, 2006 to May, 2006. The patient expired on June 4, 2006. Complainant indicates that the cause of death was not identified as consuming the misfilled medication; the patient was 85 years old.

PIC states that two misfills did occur. The Complainant's mother was given the medication for another patient with the same first and last name and different birth dates. This prescription was refilled four (4) subsequent times until the error was detected. PIC states that it is our practice to offer to counsel the patient by phone and answer questions for the one picking up the medication. The second prescription error was the incorrect prescription picked up by a third party for the patient. A caregiver for the Complainant's mother picked up a prescription for Propafenone 150 mg. that was for the other patient with the same first and last name. PIC states at that time, the technician did verify the patient DOB which

indicated that she was giving the medication to the correct caregiver. When they realized the error occurred, the Complainant's mother was contacted and told not to take any of the medication; patient had already consumed one (1) or two (2) tablets. At that time as well, patient counseling was not performed in accordance with Board of Pharmacy rules.

Recommendation: Authorize formal; Consent Order with \$500.00 civil penalty for failure to provide patient counseling and discussion about misfill.

Dr. Reggie Dilliard **motioned to authorize formal and/or issue a Consent Order with \$500 civil penalty to the pharmacy relevant to patient counseling and a Consent Order with \$100 civil penalty to the pharmacist for failure to provide patient counseling and to issue a Letter of Instruction to the PIC regarding patient counseling;** seconded by Mrs. Monica Franklin.

Dr. Reggie Dilliard **motioned to amend the motion to issue a Letter of Warning on the misfill and report to the Board on the revisions made to the policy and procedures. Dr. Todd Bess seconded the motion and stated to verify the name, date of birth and address and the measures taken to assure the Board to prevent this from occurring in the future.** All were in favor and the motion carried.

29. Case No.; L06-PHR-RBS-200602340

Complainant alleges that the Respondent, technician, is infecting unsuspecting individuals with the HIV virus. Complainant alleges that Respondent infects people by giving them a false sense of security as an individual in the health care field and then pursues intimate relationships with people.

Recommendation: Dismiss

Dr. Reggie Dilliard motioned to **accept counsel's recommendation;** seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

30. Case No.: L05-PHR-RBS-20050378

Complainant alleges that the Respondent, pharmacy technician, was terminated for theft and diversion of controlled substances. Formal charges were filed against the Respondent with the Board's authorization; however, service was never performed on the Respondent and during the pendency of the action, her registration expired.

Recommendation: Close and reopen upon reapplication.

Dr. Reggie Dilliard motioned to **accept counsel's recommendation;** seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

31. Case No.: L-05-PHR-RBS-200502817

Complainant alleges theft and diversion of controlled substances by the Respondent, pharmacy technician. While waiting for investigation results, the Respondent's registration expired.

Recommendation: Close and reopen upon reapplication.

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

32. Case No.: L-06-PHR-RBS-200602385

Respondent pharmacist pled guilty to Vehicular Homicide by intoxication and Vehicular Assault, a Class B and Class D Felony, respectively. Respondent was incarcerated for one (1) year and placed on a nine (9) year term of probation.

Recommendation: Discuss

Mrs. Monica Franklin motioned to revoke the pharmacist's license. The motion dies for the lack of a second. Dr. Reggie Dilliard motioned to **authorize a Formal Hearing or issue a Consent Order for revocation of license**; seconded by Dr. Robert Mitchell. Dr. Sheila Mitchell expressed concern on the felony conviction. All were in favor and the motion carried.

**RESCHEDULING OF BOARD MEETING TIME
WEDNESDAY, AUGUST 30, 2006**

Dr. Julie Frazier requested that the Board meeting for Wednesday, August 30, 2006, begin at 8:30 a.m. CDT, instead of 9:00 a.m. due to the number of items remaining on the agenda.

ADJOURNMENT

Dr. Julie Frazier adjourned the Board of Pharmacy meeting on Tuesday, August 29, 2006 at 4:50 CDT.

RECONVENED

The Board of Pharmacy reconvened on Wednesday, August 30, 2006 at 8:30 a.m. CDT in Room 160 of the Davy Crockett Tower, Nashville, Tennessee. A quorum of the member being present, President Julie Frazier called the meeting to order.

Dr. Robert Mitchell asked to be excused at 11:50 a.m.

**TERRY STEVENS, DPH
VICE PRESIDENT OF PHARMACY SERVICES
HILLCREST HEALTHCARE COMMUNITIES
5321 Beverly Park Circle
Knoxville, TN 37918**

Dr. Terry Stevens submitted a proposal to the Board in regards to a certified pharmacy technician in LTC facilities to be able to input pharmacy orders into the computer at the facility. The orders would print out in the pharmacy and then the tech would fax the orders over to the pharmacy for the pharmacist to insure the orders were entered correctly. The orders would then be filled and sent to the facilities. A pharmacist would check every step of the filling process. This process would improve the overall quality of patient care provided by the pharmacy. President Julie Frazier stated this process does not fall within the Board of Pharmacy rules. Chief legal counsel, Mrs. Alison Cleaves, stated there is nothing that allows the Board to waive the request. The Board referenced Rule 1140-2-.02 (8) which states, "All pharmacy technician functions shall be performed under the supervision of a pharmacist, who shall direct and verify the accuracy of all pharmacy technician functions", and stated the certified technician would not be in the physical presence of the pharmacist when inputting pharmacy orders into the computer at the facility. The Board could not approve the request.

LEGAL REPORT

**KEVIN STAPF, DPH
POWELL, TN**

Mrs. Alison Cleaves stated at the May 16 - 17, 2006 board meeting, the board deferred Dr. Kevin Stapf's request for the reinstatement of his pharmacist license until the criminal charges against him had been resolved. Mrs. Cleaves noted she received a

letter from Dr. Kevin Stapf's attorney relevant to the Pre-trial diversion which is set for September 11, 2006. Dr. Stapf's attorney is asking for a "conditional" license. Mrs. Cleaves asked the board if everything is OK, could the staff proceed to reinstate the license. Dr. Robert Mitchell motioned that Dr. Stapf must appear before the Board if the Pre-trial diversion is authorized; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

STATE AUDIT COMMITTEE ACT OF 2005

Mrs. Alison Cleaves, chief legal counsel, advised the Comptroller of the Treasury approved Commissioner's Paula Flowers' request for an exemption from the requirement to create an audit committee for the Board of Pharmacy.

RESEARCHER AFFILIATE RULE 1140-1-.10 (14)

Interim Executive Director, Dr. Terry Grinder, noted pursuant to Rule 1140-1-.10 (14), the Board has the authority to collect a \$5 fee for a researcher affiliate, which has not been established under the present Regulatory Boards System (RBS). With the implementation of the new MARS systems, the board office is requesting this field be set up and to establish an effective date for implementation. The Board took no action.

JAMES PICKLE, DPH - REQUEST FOR MODIFICATION TO CONSENT ORDER OLD HICKORY, TN

Chief legal counsel, Mrs. Alison Cleaves, presented a request for a Modification to Consent Order from Dr. James Pickle, which he entered into with the Board on March 16 - 17, 2004, to allow him to be the PIC. Dr. Sheila Mitchell motioned to **approve** the Modification; seconded by Dr. Bettie Wilson. A roll call vote was taken.

Sheila Mitchell	Yes
Robert Mitchell	No

Monica Franklin	No
Todd Bess	Yes
Bettie Wilson	Yes
Reggie Dilliard	Recused

The motion carried.

**KELLY HOWARD GERRARD, JR., DPH - REQUEST FOR APPROVAL OF
RECIPROCITY APPLICATION
HANCEVILLE, AL**

Mrs. Alison Cleaves, chief legal counsel, presented a request for the approval of Dr. Kelly Howard Gerrard, Jr., reciprocal application for licensure in the State of Tennessee. Dr. Gerrard was disciplined by the Arkansas Board of Pharmacy for failure to provide documentation of completing the continuing education hours. Dr. Gerrard was assessed a civil penalty of \$250 plus complete an additional 7.5 CE hours. Dr. Sheila Mitchell motioned to **grant** the reciprocal application; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

**ZLB BEHRING - REQUEST FOR APPROVAL OF MWD APPLICATION
BRADLEY, IL**

Chief legal counsel, Mrs. Alison Cleaves, advised the Board that ZLB Behring has been operating under an FDA Consent Decree since 1997. The Board **deferred the approval of the application.**

**MATTHEW SHAW, NAPLEX CANDIDATE
KNOXVILLE, TN**

Mr. Matthew Shaw personally appeared before the Board in regards to his initial Tennessee application for licensure. Mrs. Alison Cleaves, chief legal counsel, noted the matter was deferred from the July 13 -14, 2006 board meeting pending clarification of the term "OMUI", which Mr. Shaw had indicated under the "violations" section of the application. Mr. Shaw provided court documents for the board's review relevant to the

DUI, which occurred in February 2004. Mrs. Monica Franklin motioned to **grant** approval for licensure; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

**MICHAEL HAILE, NAPLEX CANDIDATE
MEMPHIS, TN**

Mr. Michael Haile personally appeared at the request of the Board to discuss a violation he indicated on his application for licensure. Chief legal counsel, Mrs. Alison Cleaves, stated Mr. Haile's application was presented at the July 13 -14, 2006 whereas Mr. Haile indicated he was driving in the mountains and recognized a patient from the hospital and gave him a ride home. The patient began smoking marijuana in Mr. Haile's car and was instructed to throw it out the window. As Mr. Haile was driving through the mountains, he was pulled over by the police due to weather conditions. The park patrol smelt the odor of marijuana, searched the vehicle and found a small marijuana cigarette on the floor. Mr. Haile received a ticket, pled no contest, paid his fines and the case was closed. Dr. Reggie Dilliard advised Mr. Haile to be more protective of your license. After board discussion, Mrs. Monica Franklin motioned to **grant approval** of the license; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

CHARITABLE CLINIC PHARMACY RULES

Mrs. Alison Cleaves, chief legal counsel, discussed and make the necessary corrections to the draft copy of the Charitable Clinic Pharmacy rules. Dr. Sheila Mitchell motioned to accept the Charitable Clinic Pharmacy Rules with the changes noted and to send to the Department of Health for their review and comments. Dr. Todd Bess seconded the motion. All were in favor and the motion carried.

BOARD OF PHARMACY RULES

Chief legal counsel, Mrs. Alison Cleaves, discussed some addition/deletion changes to the following sections of the Rules: 1140-1-.01 Definitions; 1140-1-.09 Renewal of Licenses; 1140-2-.02 Pharmacy Technicians; and 1140-1-.14 Prescription Drugs Dispensed by Health Departments. The rulemaking hearing notice must be published in the Tennessee Administrative Register, at least 45 days before the hearing can be conducted.

FAREWELLS

Dr. Reggie Dilliard expressed his appreciation to the Board for their work efforts and the times shared with one another. President Julie Frazier, speaking on behalf of the Board, wished Dr. Dilliard the best and feel honored to have you serve on our Board. Dr. Sheila Mitchell thanked Interim Executive Director, Dr. Terry Grinder and the pharmacy inspectors for their endeavors and that the Board appreciates their efforts. Dr. Terry Grinder reminded the Board members to review the information provided on the Executive Director position and to be prepared to discuss this matter at a future board meeting or via teleconference.

ADJOURNMENT

Dr. Julie Frazier adjourned the Board of Pharmacy meeting at 1:50 p.m. CDT on Wednesday, August 30, 2006.

Respectfully submitted,

Julie Frazier, President

Terry W. Grinder, DPH
Interim Executive Director