

APPROVED/03/12/08
VIRGINIA BOARD OF PHARMACY
MINUTES OF A PANEL OF THE BOARD

Wednesday, February 13, 2008
Fifth Floor
Conference Room 2

Department of Health Professions
Perimeter Center
9960 Mayland Drive
Richmond, Virginia 23233

Orders/Consent Orders referred to in these minutes are available upon request

CALL TO ORDER: A meeting of a panel of the Board of Pharmacy ("Board") was called to order at 9:30 a.m.

PRESIDING: Bobby Ison, Chairman

MEMBERS PRESENT: John O. Beckner
Gerard Dabney
Jennifer H. Edwards
Leo H. Ross
Brandon K. Yi

STAFF PRESENT: Elizabeth Scott Russell, Executive Director
Cathy M. Reiniers-Day, Deputy Executive Director
Elizabeth M. Revere, Disciplinary Program Specialist
Howard Casway, Senior Assistant Attorney General

QUORUM: With six members of the Board present, a quorum was established.

FELICIA A. JONES
Registration # 0230-007065

A formal hearing was held in the matter of Felicia A. Jones following the summary suspension of her pharmacy technician registration on December 6, 2007, and to discuss allegations that she may have violated certain laws and regulations governing the practice of pharmacy technicians in Virginia.

Ms. Jones was not present at the hearing. The Panel proceeded in Ms. Jones' absence as the Notice of Formal Hearing dated December 6, 2007, was mailed to Ms. Jones' legal address of record, both regular and certified mail. Mr. Ison ruled that adequate notice was provided to Ms. Jones and the hearing proceeded in her absence.

James Schliessmann, Assistant Attorney General, prosecuted the case with the assistance of Mykl Egan, DHP Adjudication Specialist.

CLOSED MEETING:

Mr. Beckner moved, and the Panel voted 6-0, to convene a closed meeting pursuant to Section 2.2-3711(A)(28) of the Code of Virginia for the purpose to reach a decision in the matter of Felicia A. Jones. Additionally, he moved that Scotti Russell, Cathy Reiniers-Day, and Howard Casway attend the closed meeting.

RECONVENE:

Mr. Beckner moved, and the Panel voted 6-0, that only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion for closed meeting were heard, discussed or considered during the closed meeting.

DECISION:

Mr. Yi moved, and the Panel voted 6-0, to accept the Findings of Fact and Conclusions of Law as proposed by Mr. Schliessmann, and that Felicia A. Jones' right to renew her pharmacy technician's registration be revoked (Attachment #1).

ANGEL D. ROBESON
Registration # 0230-010971

A formal hearing was held in the matter of Angel D. Robeson following the summary suspension of her pharmacy technician registration on December 5, 2007, and to discuss allegations that she may have violated certain laws and regulations governing the practice of pharmacy technicians in Virginia.

Ms. Robeson was not present at the hearing. The Panel proceeded in Ms. Robeson's absence as the Notice of Formal Hearing dated December 5, 2007, was mailed to Ms. Robeson's legal address of record, both regular and certified mail. Mr. Ison ruled that adequate notice was provided to Ms. Robeson and the hearing proceeded in her absence.

William Clay Garrett, Assistant Attorney General, prosecuted the case with the assistance of Mr. Egan.

CLOSED MEETING:

Mr. Beckner moved, and the Panel voted 6-0, to convene a closed meeting pursuant to Section 2.2-3711(A)(28) of the Code of Virginia for the purpose to reach a decision in the matter of Angel D. Robeson. Additionally, he moved that Scotti Russell, Cathy Reiniers-Day, and Howard Casway attend the closed meeting.

RECONVENE:

Mr. Beckner moved, and the Panel voted 6-0, that only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion for closed meeting were heard, discussed or considered during the closed meeting.

DECISION:

Mr. Yi moved, and the Panel voted 6-0, to accept the Findings of Fact and Conclusions of Law as proposed by Mr. Garrett and amended by the Panel and read by Mr. Casway (Attachment 2).

Mr. Yi moved, and the Panel voted 6-0, that Angel D. Robeson's right to renew her pharmacy technician's registration be revoked.

DANA L. POLSTON
Registration #0230-009673

A formal hearing was held in the matter of Dana L. Polston following the summary suspension of her pharmacy technician registration on August 24, 2007, and to discuss allegations that she may have violated certain laws and regulations governing the practice of pharmacy technicians in Virginia.

Mr. Garrett prosecuted the case with the assistance of Mr. Egan.

Nan Dunaway, DHP Pharmacy Inspector, and Karen Moore, Pharmacist, Bayview Pharmacy, testified on behalf of the Commonwealth.

Ms. Polston testified on her own behalf.

CLOSED MEETING:

Mr. Beckner moved, and the Panel voted 6-0, to convene a closed meeting pursuant to Section 2.2-3711(A)(28) of the Code of Virginia for the purpose to reach a decision in the matter of Dana L. Polston. Additionally, he moved that Scotti Russell, Cathy Reiniers-Day and Howard Casway attend the closed meeting.

RECONVENE:

Mr. Beckner moved, and the Panel voted 6-0, that only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion for closed meeting were heard, discussed or considered during the closed meeting.

DECISION:

Mr. Yi moved, and the Panel voted 6-0, to accept the Findings of Fact and Conclusions of Law as proposed by Mr. Garrett and amended by the Panel and read by Mr. Casway (Attachment 3).

Mr. Yi moved, and the Panel voted 6-0, to continue Ms. Polston's pharmacy technician's registration on indefinite suspension. Said suspension shall be stayed upon evidence that Ms. Polston has submitted the required application and fees for the renewal of her registration and upon evidence that she has signed a Recovery monitoring Contract with HPIP.

KIMBERLEE A. BROWN
License # 0202-204577

Mr. Garrett presented a signed Consent Order to the Board for consideration in lieu of proceeding to the formal hearing regarding this matter.

DECISION:

Mr. Yi moved, and the Panel voted 6-0 to modify standard language per board counsel, accept the amended Consent Order and authorize Ms. Russell to sign the Consent Order when received. The Consent Order made certain Findings of Fact and Conclusions of Law and reinstates Ms. Brown's pharmacist license with terms and conditions (Attachment 4).

CARLEEN C. PHILPOT
Registration # 0230-005520

Ms. Reiniers-Day presented a signed Consent Order to the Board for consideration in lieu of proceeding to the formal hearing regarding this matter.

DECISION:

Mr. Beckner moved, and the Panel voted 6-0 to accept the signed consent order for the indefinite suspension of Ms. Philpot's right to renew her registration (Attachment 5).

OTHER:

Ms. Russell and Ms. Reiniers-Day discussed Orders and Consent Orders that are already entered wherein respondents participate with the Health Practitioners' Intervention Program ("HPIP"), however, for a variety of reasons, there are additional terms and conditions. It was requested that the Panel authorize the sending of pre-hearing Consent Orders to these respondents wherein the only term requires their compliance with their HPIP contract.

Mr. Beckner moved, and the Panel voted 6-0 that pre-hearing Consent Orders be offered to certain respondents with existing Orders or Consent Orders wherein the only term requires their compliance with their HPIP contract. Further, the Panel gives the Executive Director the authority to enter the document on behalf of the Board.

ADJOURN:

With all business concluded, the meeting adjourned at 3:00 p.m.

Cathy M. Reiniers-Day
Deputy Executive Director

Bobby Ison, Chairman

Date

Attachment 1
Board of Pharmacy
Formal Hearings – Panel
February 13, 2008

Felicia A. Jones

Findings of Fact:

- Felicia A. Jones holds registration number 0230-007065 issued by the Board to practice as a pharmacy technician in the Commonwealth of Virginia, that was summarily suspended on December 6, 2007.
- Based upon the representations of James E. Schliessmann, Assistant Attorney General, and Commonwealth's Exhibits No 1, 2, 3 and 5, the presiding officer ruled there was adequate notice and the panel of the Board proceeded with the hearing in Ms. Jones' absence.
- By Ms. Jones' own admission, during the course of her employment as a pharmacy technician at Rite Aid Pharmacy #3362, Fredericksburg, Virginia, she diverted approximately 600 dosage units of Lortab (hydrocodone/APAP 10/500, Schedule III), 100 dosage units of Valium 10 mg (diazepam, Schedule IV), dosage units of Xanax 2 mg (alprazolam, Schedule IV), 20 dosage units of Lortab (hydrocodone/APAP 7.5/500, Schedule III) and two dosage units of Dilaudid (hydromorphone, Schedule II). As a result, she was terminated from her employment.

Conclusions of Law:

- Finding of Fact #3 constitutes a violation of § 54.1-3322(2) and (6) of the Code [2006] between December 2006, and June 30, 2007, and § 54.1-3316(9) of the Code (effective July 1, 2007) between July 1, 2007, and August 3, 2007.

Sanction:

The privilege of Felicia A. Jones to renew her registration is REVOKED.

Attachment 2
Board of Pharmacy
Formal Hearings – Panel
February 13, 2008

Angel D. Robeson

Findings of Fact:

- Angel D. Robeson holds registration number 0230-010971 issued by the Board to practice as a pharmacy technician in the Commonwealth of Virginia, that was summarily suspended on December 5, 2007.
- Based upon the representations of William C. Garrett, Assistant Attorney General, and Commonwealth's Exhibit No. 3, the presiding officer ruled there was adequate notice and the panel of the Board proceeded with the hearing in Ms. Robeson's absence.
- By Ms. Robeson's own admission, during the course of her employment as a pharmacy technician at Walgreens #05217, Roanoke, Virginia, she diverted approximately 2000 dosage units of hydrocodone/APAP 10/500 (Schedule III), and 250 dosage units of Valium 10 mg (diazepam, Schedule IV). As a result, she was terminated from employment.
- On September 11, 2007, Ms. Robeson was indicted in the United States District Court of the Western District of Virginia on one count of possession of hydrocodone with the intent to distribute and one count of possession of diazepam with the intent to distribute.
- Pursuant to a letter to the Board dated January 18, 2008, Ms. Robeson stated that because of her being incarcerated, she was unable to attend the hearing but did not request a continuance. Ms. Robeson also recanted portions of her August 8, 2007, statement provided to her employer regarding the diversions.

Conclusions of Law:

- Finding of Fact #3 constitutes a violation of § 54.1-3322(2) and (6) of the Code [2006] between May 22, 2007, and June 30, 2007, and § 54.1-3316(9) of the Code (effective July 1, 2007) between July 1, 2007, and August 8, 2007.

Sanction:

The privilege of Angel D. Robeson to renew her registration is REVOKED.

Attachment 3
Board of Pharmacy
Formal Hearings – Panel
February 13, 2008

Dana L. Polston

Findings of Fact:

- Dana L. Polston holds registration number 0230-009673 issued by the Board to practice as a pharmacy technician in the Commonwealth of Virginia that was summarily suspended on August 24, 2007.
- In a written statement dated July 23, 2007, Ms. Polston admitted that during the course of her employment as a pharmacy technician at Bayview Plaza Pharmacy, Norfolk, Virginia, between April and July 23, 2007, she diverted between 25 and 30 bottles of butorphanol tartrate 10mg/ml, Schedule IV. During this time period, Ms. Polston had been prescribed butorphanol; however, when she diverted the drug on or about July 23, 2007, she had neither a prescription nor refills remaining for this drug. As a result, she was terminated from employment.
- Ms. Polston testified that she signed the statement admitting to the diversion under duress and at the direction of her employer with the promise that he would help her. Ms. Polston also testified that the pharmacists commonly permitted her to self-dispense the butorphanol with the expectation that an authorized prescription would be subsequently submitted. These statements were not confirmed by any of the pharmacists interviewed during the investigation.
- Ms. Polston was referred to the Health Practitioners' Intervention Program ("HPIP") and entered into a Participation Contract on August 3, 2007, for which she underwent an evaluation that recommended residential treatment or alternatively, intensive out-patient treatment. She was subsequently terminated from HPIP due to her failure to enter into treatment and to maintain communication with HPIP. Ms. Polston testified that she withdrew from HPIP because of financial considerations. She further denied that she was addicted at the time her employment was terminated.

Conclusions of Law:

- Finding of Fact #2 constitutes a violation of § 54.1-3322(2) and (6) of the Code [2006] between April 2007, and June 30, 2007, and § 54.1-3316(9) of the Code (effective July 1, 2007) between July 1, 2007, and 23, 2007.

Sanction:

- The privilege of Dana L. Polston to renew her registration is CONTINUED on INDEFINITE SUSPENSION. Said suspension shall be STAYED upon proof that Ms. Polston has submitted the required application and fees for the renewal of her registration and upon proof that she has entered into a Recovery Monitoring Contract with the Health Practitioners'

Intervention Program (“HPIP”) and upon the condition that she remain compliant with the terms of said Recovery Monitoring Contract and the following terms and conditions:

- Ms. Polston shall comply with all terms and conditions of HPIP contracts for the period specified in her HPIP contract.
- Any violation of these terms and conditions shall be reason for summarily rescinding the stay of indefinite suspension of the registration of Ms. Polston, and an administrative proceeding shall be held to decide whether her registration shall be revoked. The stay of indefinite suspension may be summarily rescinded at such time the Board is notified that:
 - Ms. Polston is not in compliance with the terms and conditions specified by HPIP, or has been terminated from participation in HPIP, or
 - There is a pending investigation or unresolved allegations against Ms. Polston involving a violation of law, regulation or any term or condition of this Order.

Attachment 4
Board of Pharmacy
Formal Hearings – Panel
February 13, 2008

VIRGINIA:

BEFORE THE BOARD OF PHARMACY

IN RE: **KIMBERLEE A. BROWN, PHARMACIST**
 License No. : 0202-204577

CONSENT ORDER

Now come the Virginia Board of Pharmacy ("Board") and Kimberlee A. Brown, as evidenced by their signatures affixed below, and enter into this Consent Order affecting the license of Ms. Brown to practice pharmacy in the Commonwealth of Virginia.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Kimberlee A. Brown held license number 0202-204577 issued by the Board to practice pharmacy in the Commonwealth of Virginia that was summarily suspended pursuant to an Order of the Board entered on August 24, 2007.
2. During the course of Ms. Brown's employment with Kroger #530, Newport News, Virginia:
 - a. Ms. Brown violated § 54.1-3316(4) and (7) and § 54.1-3410(A) and (B) of the Code in that between February 12, 2007 through April 13, 2007, she diverted various hydrocodone-containing controlled substances for her own personal and unauthorized use.
 - b. Ms. Brown violated § 54.1-3316(1), (4) and (7), § 54.1-3303(A) and § 54.1-3410(A)(1) of the Code in that on February 27, 2007, she wrote two fraudulent prescriptions in the names of other individuals for Lortab (hydrocodone/APAP, Schedule III) and Norco (hydrocodone/APAP, Schedule III), using a stolen prescription blank, and dispensed said medication for her personal use.
 - c. As a result of Ms. Brown's actions, her employment was terminated. Ms. Brown was also charged with one misdemeanor count of possession of prescription drugs, one misdemeanor count of unlawfully obtaining a prescription, and one felony count of obtaining prescriptions by fraud in Newport News General District Court. On August 9, 2007, Ms. Brown appeared in Court, and two counts were *nolle prossed*, and one matter was scheduled for deferred disposition.
3. On April 27, 2007, Ms. Brown entered into a Participation Contract with the Health Practitioners' Intervention Program ("HPIP"), pursuant to Chapter 25.1 of Title 54.1 of the Code and 18

K. Brown

VAC 76-10-10, et seq., of the Regulations Governing the HPIP. This was done with the understanding that the program is to assist those persons who have impairment, defined as “a physical or mental disability, including, but not limited to substance abuse, that substantially alters the ability of a practitioner to practice his profession with safety to his patients and the public.” On July 23, 2007, Ms. Brown was dismissed from HPIP for non-compliance with the terms of her contract in that she failed to complete a residential treatment program, leaving the program early without approval.

4. Ms. Brown violated § 54.1-3316(4) and (7) of the Code in that in July 2007, during an interview with a Department of Health Professions’ Inspector, Ms. Brown admitted to abusing hydrocodone-containing controlled substances, taking approximately 40 hydrocodone-containing tablets per day. She also reported receiving inpatient and residential substance abuse treatment.

5. On November 8, 2007, Ms. Brown entered into a second Participation Contract with HPIP and signed Recovery Monitoring Contract #1 on December 31, 2007. As of February 4, 2008, Ms. Brown is in compliance with the terms of her contracts with HPIP.

CONSENT

Kimberlee A. Brown, by affixing her signature hereon, agrees to the following:

1. She has been advised specifically to seek the advice of counsel prior to signing this document and is represented by George Holton Yates, Esquire;
2. She is fully aware that without her consent, no legal action can be taken against her except pursuant to the Virginia Administrative Process Act, § 2.2-4000 et seq. of the Code;
3. She has the following rights, among others:
 - a. the right to a formal hearing before the Board;
 - b. the right to representation by counsel; and
 - c. the right to cross-examine witnesses against her.
4. She waives all rights to a formal hearing;
5. She admits the truth of the above Findings of Fact; and
6. She consents to the following Order affecting her license to practice pharmacy in the Commonwealth of Virginia.

K. Brown

ORDER

WHEREFORE, on the basis of the foregoing Findings of Fact, Conclusions of Law, and with the consent of the licensee, it is hereby ORDERED that the license of Kimberlee A. Brown be, and hereby is, REINSTATED, and further ORDERS that Ms. Brown be placed on the following terms and conditions:

1. Ms. Brown shall remain under these terms and conditions concurrently with the time that she is under contract with HPIP, and she shall comply with all terms and conditions of HPIP contracts for the period specified in her HPIP contract.

2. Any violation of these terms and conditions, or of any law or regulation affecting the practice of pharmacy in the Commonwealth of Virginia, shall constitute grounds for the suspension or revocation of her license and an administrative proceeding shall be convened to determine whether such license shall be suspended or revoked. Ms. Brown shall be noticed to appear at an administrative hearing at such time as the Board is notified that:

a. Ms. Brown is not in compliance with the terms and conditions specified by HPIP, or has been terminated from participation in HPIP, or

b. There is a pending investigation or unresolved allegations against Ms. Brown involving a violation of law, regulation or any term or condition of this Order, or,

c. Ms. Brown has successfully completed the above-referenced period of participation in HPIP. Upon receipt of evidence of Ms. Brown's participation in and compliance with HPIP, the Committee, at its discretion, may waive Ms. Brown's appearance before the Committee, and conduct an administrative review of this matter.

3. Ms. Brown shall maintain a course of conduct commensurate with the requirements of Chapters 33 and 34, Title 54.1 of the Code.

Pursuant to § 2.2-4023 and § 54.1-2400.2 of the Code, the signed original of this Consent Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public release, inspection and copying upon request.

K. Brown

FOR THE BOARD:

Elizabeth Scott Russell
Elizabeth Scott Russell
Executive Director

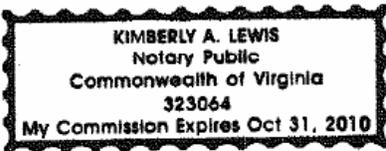
ENTERED: *March 10, 2008*

SEEN AND AGREED TO:

Kimberlee A. Brown
Kimberlee A. Brown

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF *Virginia Beach*

Subscribed and sworn to before me, a Notary Public in and for the Commonwealth of Virginia, at large, this *29th* day of *February*, 2008, by Kimberlee A. Brown. My commission expires the *31st* day of *October*, *2010* and my registration number is *323064*.



Kimberly A. Lewis
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Consent Order was mailed to Kimberlee A. Brown at 943 Lowry Place, Newport News, Virginia 23608, the address of record on file with the Board of Pharmacy, and to 111 Tidal Drive, Newport News, Virginia 23606 a secondary address, on this *10th* day of *March*, 2008.

Cathy M. Rimmers-Day
Cathy M. Rimmers-Day
Deputy Executive Director

Attachment 5
Board of Pharmacy
Formal Hearings – Panel
February 13, 2008

VIRGINIA:

BEFORE THE BOARD OF PHARMACY

IN RE: CARLEEN C. PHILPOT, PHARMACY TECHNICIAN
Registration No. : 0230-005520

CONSENT ORDER

In lieu of a formal administrative hearing, the Virginia Board of Pharmacy ("Board") and Carleen C. Philpot, as evidenced by their signatures affixed below, agree to enter into this Consent Order affecting the registration of Ms. Philpot to practice as a pharmacy technician in Virginia.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Carleen C. Philpot held registration number 0230-005520 issued by the Board to practice as a pharmacy technician in the Commonwealth of Virginia, which expired on December 31, 2007.
2. Ms. Philpot violated § 54.1-3316(5) and (7) of the Code [formerly § 54.1-3322(2) and (6)] in that on December 5, 2006, during the course of her employment as a pharmacy technician with CVS/pharmacy #7589, Fredericksburg, Virginia, she diverted a 100 dosage unit bottle of Vicodin 7.5/650 (hydrocodone bitartrate with Acetaminophen, Schedule III) and her actions were recorded on the pharmacy's security camera. While being questioned by the Loss Prevention Supervisor about this shortage, Ms. Philpot resigned her position.
3. Subsequent to Ms. Philpot's diverting the Vicodin, on May 2, 2007, she entered into a plea agreement in the Circuit Court of Spotsylvania County, Virginia, wherein she pled guilty to one count of Prescription Fraud, a felony. The Court withheld finding Ms. Philpot guilty of the felony and continued the case for 12 months with terms. Should Ms. Philpot successfully complete the terms of her probation within the time period, the charge will be reduced to a misdemeanor.

CONSENT

Carleen C. Philpot, by affixing her signature hereon, agrees to the following:

1. She has been advised specifically to seek the advice of counsel prior to signing this document and is represented by Michael L. Goodman, Esquire;
2. She is fully aware that without her consent, no legal action can be taken against her except pursuant to the Virginia Administrative Process Act, § 2.2-4000(A), *et seq.*, of the Code;

C. Philpot

3. She has the following rights, among others:
 - a. the right to a formal administrative hearing before the Board;
 - b. the right to representation by counsel; and
 - c. the right to cross-examine witnesses against her.
4. She waives all rights to a formal hearing;
5. She neither admits nor denies the truth of the above Findings of Fact; however, she waives her right to contest the foregoing Findings of Fact in any subsequent proceeding before the Board; and
6. She consents to the following Order affecting her registration to practice as a pharmacy technician in the Commonwealth of Virginia.

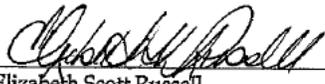
ORDER

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law, and with the consent of Ms. Philpot, it is hereby ORDERED that the privilege of Carleen C. Philpot to renew her registration to practice as a pharmacy technician is INDEFINITELY SUSPENDED. At such time as Ms. Philpot is able to resume the competent practice as a pharmacy technician with reasonable skill and safety to the public, she may petition for the reinstatement of her registration.

Upon entry of this Consent Order, the registration of Ms. Philpot will be recorded as suspended and no longer current. Consistent with the terms of this Consent Order, in the event that Ms. Philpot seeks reinstatement of her registration, she shall be responsible for any fees that may be required for the reinstatement and renewal of her registration prior to issuance of her registration to resume practice.

Pursuant to § 2.2-4023 and § 54.1-2400.2 of the Code of Virginia, the signed original of this Consent Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public release, inspection and copying upon request.

FOR THE BOARD:



Elizabeth Scott Russell
Executive Director

ENTERED: February 13, 2008

C. Philpot

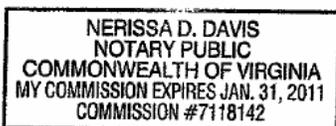
ENTERED: _____

SEEN AND AGREED TO:

Carleen C. Philpot
Carleen C. Philpot

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Spotsylvania

Subscribed and sworn to before me, a Notary Public in and for the city/county of
Spotsylvania, this 4th day of February, 2008, by Carleen C. Philpot. My
commission expires the 31st day of January, 2011.



Nerissa D. Davis
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Consent Order was mailed to Carleen C. Philpot,
11210 Forest Walk Drive, Spotsylvania, Virginia 22533 on this 14th day of February 2008.

Cathy M. Reihers-Day
Cathy M. Reihers-Day
Deputy Executive Director