

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

Shannon J. Gilcrease)	
(License No. 17503))	
)	
Donald J. Pelz)	CONSENT ORDER
(License No. 12009))	
)	
Ingles Markets)	
(Permit Nos. 8426 & 8427))	

This matter came on for consideration at a prehearing conference (hereinafter "conference") pursuant to 21 N.C.A.C. 46 .2008 on November 30, 2005. Board member Wallace Nelson presided. Also present at the conference were the following: Amy Cook, Board Investigator; Steve Hudson, Director of Investigations and Inspections; Anna Baird Choi, Counsel for the Board; Shannon Gilcrease (Respondent Gilcrease); Donald Pelz (Respondent Pelz); and Steve Cucchi, Director of Pharmacy for Ingles Markets. Based upon the record in this proceeding and the statements and materials presented at the conference, the Board makes the following:

FINDINGS OF FACT

- Respondent Gilcrease is licensed to practice pharmacy by the Board and is the holder of license number 17503. Respondent Pelz is licensed to practice pharmacy by the Board and is the holder of license number 12009. Ingles Markets, the holder of permit number 8426 (Respondent Pharmacy 8426), is located at 3643 Howard Gap Road, Hendersonville, North Carolina. Ingles Markets, the holder of permit number 8427

(Respondent Pharmacy 8427), is located at 1980 Asheville Highway, Hendersonville, North Carolina. At all relevant times, Respondent Gilcrease was employed by Respondent Pharmacy 8427 as the Pharmacist Manager. At all relevant times, Respondent Pelz was employed by Respondent Pharmacy 8426 as the Pharmacist Manager.

2. In September of 2005, the Board received a complaint regarding the temporary closure of several Ingles Markets pharmacies.
3. The investigation produced evidence to show that in September of 2005, Respondent Pharmacy 8426 closed unexpectedly on approximately seven days on which it was not otherwise scheduled to be closed. The staff shortage which lead to the closures was due in part to Respondent Pelz's medical leave due to a foot injury.
4. On or about September 29, 2005, the Board Investigator observed an employee who was not registered with the Board performing pharmacy technician duties at Respondent Pharmacy 8426. At the prehearing conference, Respondent Pelz stated that while he was on medical leave, he was unaware that an unregistered employee was performing pharmacy technician duties.
5. The investigation also produced evidence to show that on three days in June and July of 2005, Respondent Pharmacy 8427 was unexpectedly closed on dates on which it was not otherwise scheduled to be closed.
6. On or about September 29, 2005, the Board Investigator observed three employees who were not registered with the Board who were performing pharmacy technician duties at Respondent Pharmacy 8427. On or about October 7, 2005, Respondent Gilcrease

submitted applications to the Board to register the three employees as pharmacy technicians.

Based on the above findings, the Board concludes as a matter of law:

CONCLUSIONS OF LAW

1. Respondent Gilcrease admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on his license under G.S. 90-85.38.
2. Respondent Pelz admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on his license under G.S. 90-85.38.
3. Respondent Pharmacies 8426 and 8427 acknowledge that the conduct in this matter could constitute grounds for disciplinary action on their permits under G.S. 90-85.38 and therefore consents to the Board's jurisdiction of this matter.
4. Respondents Gilcrease and Pelz violated the following statutes and rules when they failed to register pharmacy technicians and close the pharmacies according to Board rules:
 - a. G.S. 90-85.38(a)(6) and (7);
 - b. G.S. 90-85.40;
 - c. 21 N.C.A.C. 46 .1601; and
 - d. 21 N.C.A.C. 46 .2502.
5. Respondent Pharmacies 8426 and 8427 acknowledge that the conduct in this matter could be characterized as potential violations of the following statutes and rules when they failed to properly register pharmacy technicians and close the pharmacies according to Board rules:

- a. G.S. 90-85.38(a)(6) and (7);
- b. G.S. 90-85.40;
- c. 21 N.C.A.C. 46 .1601; and
- d. 21 N.C.A.C. 46 .2502.

Based on the foregoing, and with the consent of the parties, IT IS THEREFORE,

ORDERED, as follows:

1. Respondent Gilcrease, license number 17503, is hereby warned.
2. Respondent Pelz, license number 12009, is hereby warned.
3. Within six (6) months after signing this Consent Order, Respondents Gilcrease and Pelz shall take and pass the Board's jurisprudence exam. Within thirty (30) days after notification of the exam results, Respondents Gilcrease and Pelz shall each notify the Board's Executive Director of their exam results.
4. Respondent Pharmacies, permit numbers 8426 and 8426, are hereby reprimanded.
5. Within thirty (30) days after the Board's approval of this Consent Order, Respondent Pharmacies 8426 and 8427 shall complete the following:
 - a. Provide the Board's Executive Director with a copy of Respondent Pharmacies' policies and procedures manual for pharmacy operations which shall include such matters as temporary and permanent closure of permitted locations, staffing plans, technician registration, and Pharmacist Manager responsibilities; and
 - b. Submit a written report to Ingles Markets regarding the pharmacy closure and staffing issues raised in the Board's investigation, including corrective actions taken, and provide a copy of the report to the Board's Executive Director.

6. Respondents shall cooperate with the Board, its attorneys, investigators, and other representatives in any investigation of their practice and compliance with the provisions of this Consent Order.
7. Respondents shall violate no laws governing the practice of pharmacy or the distribution of drugs.
8. Respondents shall violate no rules and regulations of the Board.
9. If Respondents fail to comply with any terms or conditions of this Consent Order, Respondents may be subject to additional disciplinary action by the Board.

This the 12th day of April, 2006.

NORTH CAROLINA BOARD OF PHARMACY

By:


Jay Campbell
Executive Director

Donald J. Pelz, the holder of License #12009, has full knowledge that he has the right to a hearing and to be represented by counsel in this matter. He freely, knowingly, and voluntarily waives such right by entering into this Consent Order on behalf of License #12009. The undersigned understands and agrees that by entering into this Consent Order, he certifies that he has read the foregoing Consent Order and that he voluntarily consents to the terms and conditions set out therein and relinquishes any right to judicial review of Board actions which may be taken concerning this matter. The undersigned further understands that should he violate the terms and conditions of this Consent Order, the Board may take additional disciplinary action. The undersigned understands and agrees that this Consent Order will not become effective unless and until approved by the Board.

Donald J. Pelz, License #12009, accepts Board member Wallace Nelson's proposal in this matter.

CONSENTED TO BY: Donald J. Pelz 4/11/06
Donald J. Pelz Date
License No. 12009

State of North Carolina
Henderson County

I, Vivian B. Tolbert, a Notary Public for the above-named County and State, do hereby certify that Donald J. Pelz personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

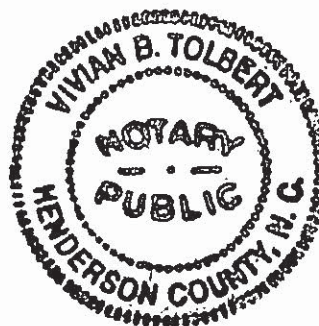
Witnessed my hand and official seal

This the 11th day of April, 2006, by Donald J. Pelz.

Vivian B. Tolbert
Notary Public

Vivian B. Tolbert
Typed or Printed Notary Name

My Commission Expires My Commission Expires 2-7-2009



Donald J. Pelz, License No. 12009, does not accept the proposed Consent Order in this matter.

By: _____
Donald J. Pelz Date
License No. 12009