

STATE OF NORTH CAROLINA
NORTH CAROLINA BOARD OF PHARMACY

IN THE MATTER OF)
)
JAMES HEINZ) **CONSENT ORDER**
)
License No. 7351)

THIS MATTER came on to be considered at a prehearing conference (hereinafter, "Conference") before a member of the North Carolina Board of Pharmacy (hereinafter, "Board") pursuant to 21 N.C.A.C. 46 .2008. This Conference was scheduled for October 20, 2008 and, after appropriate notice, was heard on that day by Board member Robert McLaughlin, Jr. at the offices of the Board. Respondent James Heinz ("Heinz") was present at the conference and represented by counsel, Douglas J. Brocker. Board Counsel Clinton R. Pinyan and members of the Board's investigative and legal staff were present at this conference.

Respondent Heinz has agreed to waive a formal hearing in the above-referenced matter. Both parties stipulate and agree to the findings of fact and conclusions of law recited herein and to the order of discipline imposed. By his consent, Respondent Heinz also stipulates that he waives his right to appeal this Consent Order or challenge in any way the sufficiency of the findings of this Order. Based upon the consent of the parties, the Board hereby enters the following:

FINDINGS OF FACT

1. Respondent James Heinz holds license number 7351. Between December 2006 and June 2007, Respondent Heinz was the pharmacist-manager at Eckerd Drugs, 244 Central Park Avenue, Pinehurst, North Carolina (Permit No. 8714), which became Rite Aid (Permit No. 9728).

2. As pharmacist-manager, Respondent was responsible for keeping all controlled substances secure within the pharmacy and for detecting and preventing diversion of controlled substances.

3. During the time that Respondent Heinz was pharmacist-manager, at least four pharmacy technicians and non-pharmacy employees diverted approximately 5,000 dosage units of schedule III controlled substances from the pharmacy.

4. Respondent Heinz failed to maintain adequate security in the pharmacy to prevent the diversion of controlled substances. At least some of the diversion occurred when management employees accessed the pharmacy keys in the manager's safe and then diverted controlled substances before and after business hours when no pharmacist was present.

5. As early as January 2007, Eckerd Loss Prevention determined that there were high levels of potential losses in Hydrocodone at the pharmacy. Respondent Heinz was unaware of the losses at that time. More than 2000 dosage units were diverted over the period of approximately the first two months that Respondent Heinz was a pharmacist-manager without his awareness of the diversion.

6. In March 2007, Respondent Heinz first became aware of losses from the pharmacy. Respondent Heinz promptly reported to Eckerd Loss Prevention that he had discovered variances with the pharmacy's Hydrocodone supply and he was doing regular inventories to attempt to keep track of the shortages. Respondent Heinz continued to have discussions with Eckerd Loss Prevention about the efforts to identify the source of the shortages or diversion.

7. Respondent Heinz subsequently caught a pharmacy technician attempting to divert 14 pills of Hydrocodone on Sunday April 1, 2007. In effort to uncover the other

individuals involved and the methods of the diversion, Respondent Heinz agreed not to report this attempted diversion by this pharmacy technician in exchange for obtaining information from her about the diversion. Respondent Heinz reported to Eckerd Loss Prevention the extensive information he received from the pharmacy technician about the persons involved and the methods of diversion, however he withheld from Eckerd's the information that he knew about the technician who had provided the information. Respondent Heinz further withheld information from the North Carolina Board of Pharmacy and the State Bureau of Investigation regarding the involvement of the pharmacy technician.

CONCLUSIONS OF LAW

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

1. Respondent Heinz violated N.C. Gen. Stat. §§ 90-85.38(a)(6) and (7) and 90-106, and 21 N.C. Admin. Code 46 .1804, 46 .1805 and 46 .2502(a) and (d).
2. Respondent Heinz admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on his license under N.C. Gen. Stat. § 90-85.38.

Based upon the foregoing, and with the consent of the parties, IT IS THEREFORE ORDERED that the license of Respondent Heinz, License No. 7351, is hereby SUSPENDED for twenty-five (25) days to be served as follows:

1. Twenty (20) days of the suspension must be served as an active suspension, which suspension shall be treated as having already been served during the period in which Respondent Heinz's license was summarily suspended.
2. The remainder of the suspension shall be stayed for a period of two (2) years, upon the following conditions:

- a. Respondent Heinz shall not act as a pharmacist-manager or as a preceptor of pharmacy students, unless he obtains prior approval from the Board's Executive Director;
- b. Respondent Heinz shall violate no laws governing the practice of pharmacy or the distribution of drugs, devices or medical equipment;
- c. Respondent Heinz shall violate no rules and regulations of the Board; and
- d. Respondent Heinz shall cooperate with the Board, its attorneys, investigators and other representatives in any investigation and compliance with the provisions of this Consent Order.

This the 21st day of October, 2008.

NORTH CAROLINA BOARD OF PHARMACY

By: _____

Jack W. Campbell, IV
Executive Director

James Heinz, the holder of license number 7351, has full knowledge that he has the right to a hearing on his request for termination of his summary suspension, at which he would have the right to be represented at his expense by counsel, in this matter. The undersigned freely, knowingly and voluntarily waives such right by entering into this Consent Order.

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 forth therein and relinquishes any right to judicial review of Board actions which may be taken concerning the request for termination of the summary suspension.

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.

The undersigned understands that he has the right to have counsel of his choice review and advise him with respect to his rights and this Consent Order, and represents that he enters this Consent Order after consultation with his counsel or after knowingly and voluntarily choosing not to consult with counsel.

CONSENTED TO BY:

James Heinz Date 10-16-2008
James Heinz
(License No. 7351)

NORTH CAROLINA

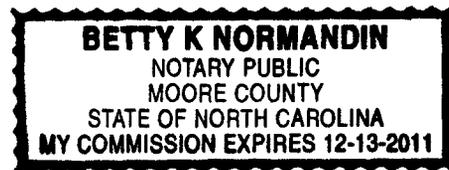
Moore COUNTY

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that the following person(s) personally appeared before me this day, and each acknowledged the due execution of the foregoing document: James Heinz.

Date: 10-16-08

Betty K. Normandin
Notary Public

My commission expires: 12-13-2011



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CONSENTED TO BY:

_____ Date _____
James Heinz
(License No. 7351)

NORTH CAROLINA

_____ COUNTY

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Date: _____

Notary Public

My commission expires: _____