

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

PICCADILLY CIRCUS LLC d/b/a  
PICCADILLY CIRCUS PUB,  
RESTAURANT  
1104 1<sup>st</sup> STREET  
SNOHOMISH, WA 98290

LICENSEE

LICENSE NO. 079464-3G  
AVN NO. 3F0030A

LCB NO. 23,631

OAH NO. 2010-LCB-0026

FINAL ORDER OF THE BOARD

The above entitled matter coming on regularly before the Board, and it appearing that:

1. The Liquor Control Board issued a complaint dated June 2, 2010, alleging that on about January 30, 2010, the Licensee, or an employee thereof, did consume liquor while working on the licensed premises contrary to WAC 314-11-015(3)(d).

2. The Licensee made a timely request for a hearing, which was held on October 4, 2010. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Timothy Ford, and the Licensee was represented by one of the LLC members, Geoffrey Wall.

4. On December 7, 2010, Administrative Law Judge Rynold C. Fleck entered his Findings of Fact, Conclusions of Law, and Initial Order dismissing the complaint.

5. The Education and Enforcement Division contacted the Board and indicated it intended to file a Petition for Review, but wanted a copy of the recording of the hearing. The Board issued an Order Extending the Time to File a Petition for Review on December 22, 2010, extending the time for filing until 20 days after the copy of the recording was provided to counsel for Enforcement. On January 26, 2011, Enforcement filed a Petition for Review, requesting the Board overturn the Initial Order and sustain

FINAL ORDER OF THE BOARD  
LCB NO. 23,631  
PICCADILLY CIRCUS PUB,  
RESTAURANT  
LICENSE 079464-3G

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Washington State Liquor Control Board  
3000 Pacific Ave, S.E.  
P.O. Box 43076  
Olympia, WA 98504- 3076  
Phone: 360-664-1602

the Complaint. The Licensee filed a response to Enforcement's Petition for Review dated February 8, 2011, received by the Board on February 14, 2011. This response was not timely.

6. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises; NOW THEREFORE; IT IS HEREBY ORDERED that the initial order for case 23,631 is adopted except for the following modifications:

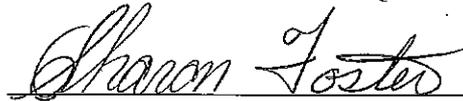
Conclusion of Law No. 7 is modified to read as follows:

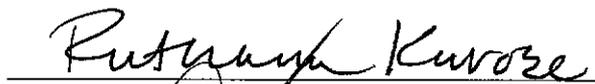
7. The rule does not say that employees cannot drink on the premises, but only that employees cannot drink alcoholic beverages while working. The Education and Enforcement Division policy is to advise licensees that they and their employees may consume alcohol while on a scheduled break, but not while working on the premises. When the employee in question is the licensee, who may not have scheduled breaks, it is more difficult to determine when the person is on a scheduled break. In no case may an employee or licensee be intoxicated on the premises while performing job duties. The facts of this case do not clearly establish that Mr. Wall consumed an alcoholic beverage while performing job duties, and no person alleged that he was intoxicated or impaired on the evening in question.

IT IS HEREBY FURTHER ORDERED that the Complaint filed in case 23,631, Piccadilly Circus, LLC is dismissed.

DATED at Olympia, Washington this 29<sup>th</sup> day of March, 2011.

WASHINGTON STATE LIQUOR CONTROL BOARD

  
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\_\_\_\_\_

FINAL ORDER OF THE BOARD  
LCB NO. 23,631  
PICCADILLY CIRCUS PUB,  
RESTAURANT  
LICENSE 079464-3G

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Washington State Liquor Control Board  
3000 Pacific Ave, S.E.  
P.O. Box 43076  
Olympia, WA 98504- 3076  
Phone: 360-664-1602

Reconsideration. Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a petition for reconsideration stating the specific grounds on which relief is requested. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to the Washington State Liquor Control Board, Attn: Kevin McCarroll, 3000 Pacific Avenue Southeast, PO Box 43076, Olympia, WA 98504-3076, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board's office. RCW 34.05.010(6). A copy shall also be sent to Mary M. Tennyson, Senior Assistant Attorney General, 1125 Washington St. SE, P.O. Box 40110, Olympia, WA 98504-0110. A timely petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition. An order denying reconsideration is not subject to judicial review. RCW 34.05.470(5). The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Stay of Effectiveness. The filing of a petition for reconsideration does not stay the effectiveness of this Order. The Board has determined not to consider a petition to stay the effectiveness of this Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW and RCW 34.05.550.

Judicial Review. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542.

Service. This Order was served on you the day it was deposited in the United States mail. RCW

34.05.010(19).

FINAL ORDER OF THE BOARD  
LCB NO. 23,631  
PICCADILLY CIRCUS PUB,  
RESTAURANT  
LICENSE 079464-3G

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Washington State Liquor Control Board  
3000 Pacific Ave, S.E.  
P.O. Box 43076  
Olympia, WA 98504- 3076  
Phone: 360-664-1602



**Washington State  
Liquor Control Board**

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March 30, 2011

Piccadilly Circus, LLC  
d/b/a Piccadilly Circus Pub, Restaurant  
1104 1<sup>st</sup> St  
Snohomish, WA 98290-2911

Timothy D. Ford, AAG  
GCE Division, Office of Attorney General  
1125 Washington Street SE  
PO Box 40100  
Olympia, WA 98504-0100

**RE: Final Order of the Board**  
**LICENSEE: Piccadilly Circus, LLC**  
**TRADE NAME: Piccadilly Circus Pub, Restaurant**  
**LOCATION: 1104 1<sup>st</sup> St, Snohomish, WA 98290-2911**  
**LICENSE NO. 079464-3G**  
**AVN NO. 3F0030A**  
**LCB HEARING NO. 23,631**  
**OAH NO. 2010-LCB-0026**  
**UBI: 6025163930010001**

Dear Parties:

Enclosed please find a Declaration of Service by Mail and a copy of the Order for the above-captioned matter.

If you have any questions, please contact me at (360) 664-1602.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin McCarroll".

Kevin McCarroll  
Adjudicative Proceedings Coordinator

Enclosures (2)

CC: Mt Vernon Enforcement and Education Division, WSLCB  
Amber Harris, WSLCB

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3 **WASHINGTON STATE LIQUOR CONTROL BOARD**

4 IN THE MATTER OF:

5 PICCADILLY CIRCUS, LLC  
6 d/b/a PICCADILLY CIRCUS PUB,  
7 RESTAURANT  
8 1104 1<sup>ST</sup> ST  
9 SNOHOMISH, WA 98290-2911

10 LICENSEE

11 LICENSE NO. 079464-3G  
12 AVN NO. 3F0030A

LCB NO. 23,631  
OAH NO. 2010-LCB-0026

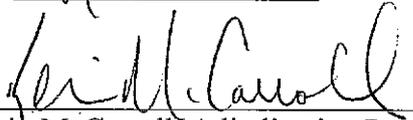
DECLARATION OF SERVICE BY  
MAIL

13 I certify that I caused a copy of the *FINAL ORDER OF THE BOARD* in the above-  
14 referenced matter to be served on all parties or their counsel of record by US Mail Postage  
15 Prepaid via Consolidated Mail Service for Licensees; by Campus Mail for the Office of  
16 Attorney General, on the date below to:

17 PICCADILLY CIRCUS, LLC  
18 d/b/a PICCADILLY CIRCUS PUB,  
19 RESTAURANT  
20 1104 1<sup>ST</sup> ST  
21 SNOHOMISH, WA 98290-2911

TIMOTHY D. FORD, ASSISTANT ATTORNEY  
GENERAL, GCE DIVISION  
OFFICE OF THE ATTORNEY GENERAL  
MAIL STOP 40100

22 DATED this 30<sup>th</sup> day of March, 2011, at Olympia, Washington.

23   
24 Kevin McCarroll, Adjudicative Proceedings Coordinator

25  
26  
DECLARATION OF SERVICE BY  
MAIL

1

Washington State Liquor Control Board  
3000 Pacific Avenue SE  
PO Box 43076  
Olympia, WA 98504-3076  
(360) 664-1602

STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE WASHINGTON STATE LIQUOR CONTROL BOARD

MAILED  
DEC 07 2010  
SEATTLE-OAH

IN THE MATTER OF:

PICCADILLY CIRCUS, LLC dba  
PICCADILLY CIRCUS PUB,  
RESTAURANT  
1104 FIRST ST.  
SNOHOMISH, WA 98290-2911

LICENSEE

LICENSE No. 079464

Docket No. 2010-LCB-0026  
Number: 23,631

FINDINGS OF FACT, CONCLUSIONS  
OF LAW and  
INITIAL ORDER

RECEIVED  
DEC 09 2010  
LIQUOR CONTROL BOARD  
BOARD ADMINISTRATION

RYNOLD C. FLECK, Administrative Law Judge (ALJ) conducted a hearing in the above-noted matter on October 4, 2010. The Appellant, Piccadilly Circus, LLC d/b/a Piccadilly Circus Pub, was represented by Geoffrey Maurice Wall. Tim Ford, Assistant Attorney General (AAG) represented the Liquor Control Board.

The following parties appeared as witnesses for the Liquor Control Board: Sergeant Troy McCallister, Officer Emma Davis, and Officer John Wilson. The following parties appeared as witnesses for the Appellant, Piccadilly Circus: Maurice Wall, Shawandy Marbery, Marian Wall, and Robert Sparks.

ISSUE

Whether or not Geoffrey Wall consumed liquor while working on a licensed premises?

RESULT

Geoffrey M. Wall did not violate Washington Administrative Code (WAC) 314-11-015(3)(d) on January 30, 2010 and the Administrative Notice dated January 31, 2010 citing said violation is hereby dismissed.

## FINDINGS OF FACT

1. Geoffrey M. Wall is a part owner and operator of Piccadilly Circus, LLC, d/b/a Piccadilly Circus Pub Restaurant. That Restaurant is located at 1104 First Street, Snohomish, Washington.

2. On January 30, 2010, at approximately 11:40 p.m., Liquor Control Officers for the State of Washington performed a random undercover operation to observe whether or not there were any violations of the Liquor Control Board rules and regulations at that establishment.

3. Prior to entering the Piccadilly Circus Pub, the Liquor Control Officers were all shown photographic identification for Geoffrey M. Wall. Geoffrey M. Wall is a 25.5% owner of Piccadilly Circus. Other owners include Marian L. Wall, 25.5%, Dean McDonald, 12.25%, Vivian McDonald, 12.25%, and Duncan Hizey, 24.5%. One of the officers, John Wilson, observed Geoffrey Wall walking in the establishment, picking up pint glasses at a table and returning them to the bar for cleaning. He observed him entering information into the bar's computer system. He observed Mr. Wall sipping on a Heineken and walking in the Pub. Officer Davis, also a Liquor Control Officer, observed Mr. Wall holding a half-full bottle of Heineken, but did not see him consume any of the beer. She also observed Mr. Wall serving drinks to customers from behind the bar.

4. Mr. Wall acknowledged that he works at Piccadilly Circus doing everything that it takes to keep the pub in operation and to attend to its customers. On January 30, 2010, he began his day at the pub at 9:00 a.m. He scheduled relief help at 8:00 p.m. that evening. The bartender who was to take over and to attend the bar and customers ask that he remain because there were a significant number of customers at the establishment.

5. At approximately 11:30 p.m., Mr. Wall informed the bartender who was then on duty that he would be taking a 15 minute break. He did take a Heineken which he normally and did on this occasion put in the freezer to get it extremely cold as that is the only beer that he cares to consume. Once the beer becomes warm, he will not drink it. He took a break, drank a portion of the beer, and talked with friends who were at the pub. He also took some time to

communicate the security personnel that was at the pub. Once his break was over, he picked up glasses and other items that needed to be bussed, either to the kitchen or back to the bar and continued to assist the then-bartender until approximately closing. Mr. Wall acknowledges that he did drink a portion of the Heineken, but only during his break time, and denies taking a sip once he had completed his break and had gone back to work. Neither Shawandy Marbery nor Marian Wall observed Mr. Wall drinking while he was providing services or working at the pub. Ms. Marbery acknowledges that Mr. Wall did take a break and took a Heineken with him to consume while he was on break. Mr. Robert Sparks, whose birthday it was on January 30, 2010, and who was at the pub at 11:30, remembers Mr. Wall sitting and having a beer and conversing with him. Mr. Sparks left the premises at approximately 1:30 a.m. Mr. Wall wished Mr. Sparks a happy birthday and probably spent five to ten minutes talking to him.

6. The two undercover officers reported what they had observed to Sergeant McCallister. On January 31, 2010, Officer Troy McCallister prepared an Administrative Violation Notice citing the Piccadilly Circus Pub Restaurant and Mr. Wall for drinking on premises while performing a work function on January 30, 2010. The Washington Administrative Code (WAC) violation was WAC 314-11-015(3)(d). The sanction that was to apply was a suspension effective March 18, 2010 at 10:00 a.m. to March 23, 2010 at 10:00 a.m., or \$500.00 in lieu of suspension. Mr. Wall signed for the violation on February 2, 2010, the date when Troy McCallister provided the Administrative Violation Notice to him. On that same date, Mr. Wall requested a formal administrative hearing.

#### CONCLUSIONS OF LAW

1. There is jurisdiction to hear this matter pursuant to Chapter 66.04 through Chapter 66.98 of the Revised Code of Washington (RCW) and Chapter 314-11 of the Washington Administrative Code (WAC).

2. WAC 314-11-015(1)(d) and (3)(d) reads as follows: perhaps (3)(d)??

#### **What are my responsibilities as a liquor licensee?**

(1)(a) Liquor licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the board (Title

66 RCW and Title 314 WAC). Any violations committed or permitted by employees will be treated by the board as violations committed or permitted by the licensee.

(b) The penalties for violations of liquor laws or rules are in: WAC 314-29-015 through 314-29-035, as now or hereafter amended, for licensees; and WAC 314-17-105 and 314-17-110, as now or hereafter amended, for employees who hold mandatory alcohol server training permits. These rules also outline aggravating and mitigating circumstances that may affect what penalty is applied if a licensee or employee violates a liquor law or rule.

(3) Licensees have the responsibility to control their conduct and the conduct of employees and patrons on the premises at all times. Except as otherwise provided by law, licensees or employees may not:

(d) Consume liquor of any kind while working on the licensed premises; except that:

(i) Licensed beer manufacturers and their employees may sample beer of their own manufacture for manufacturing, evaluating or pricing product in areas where the public is not served, so long as the licensee or employee does not become apparently intoxicated;

(ii) Licensed wine manufacturers and their employees may:

(A) Sample wine for manufacturing, evaluating, or pricing product, so long as the licensee or employee does not become apparently intoxicated; and the licensee or employee who is sampling for these purposes is not also engaged in serving alcohol to the public; and

(B) Sample wine of their own manufacture for quality control or consumer education purposes, so long as the licensee or employee does not become apparently intoxicated.

3. WAC 314-01-005(3) defines "employee" as any person performing services on a licensed premises for the benefit of the licensee.

4. The evidence that Mr. Wall was an employee of Piccadilly Circus Pub on the evening of January 30, 2010 is uncontroverted. He was performing service on the licensed premises for the benefit of the licensee. Those services include bussing dirty dishes, making entry into the business computer system and serving customers. The evidence is also uncontroverted that Mr. Wall consumed a portion of an alcoholic beverage.

5. The issue is whether or not this occurred while he was working or on break. Mr. Wall was observed walking and sipping the beer. The question is whether he was on break or not. The undersigned cannot conclude or find that the observed sip occurred while he was working.

6. The burden of establishing that Mr. Wall consumed an alcoholic beverage while providing services to the licensed establishment rests with the Liquor Control Board (LCB).

7. The rule does not say that employee cannot drink on the premises, but only that he or she cannot drink alcoholic beverages while working. If the LCB is concerned about employees being affected by alcohol while providing service, the WAC should say so.

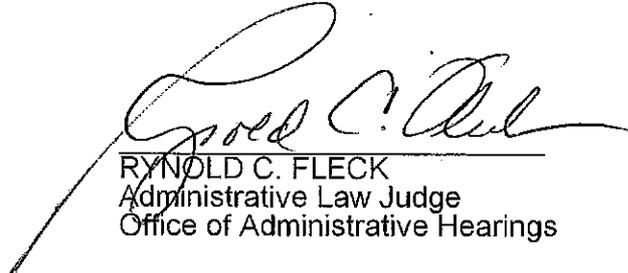
8. Based upon the foregoing, the undersigned can only concluded that the LCB has failed to provide facts sufficient to find that Mr. Wall "*consumed liquor of any kind while working on the licensed premises*" (emphasis added).

#### DECISION

Based upon the foregoing, Geoffrey M. Wall did not violate WAC 314-11-015(3)(d) on January 30, 2010 and the Administrative Notice dated January 31, 2010 citing said violation is hereby dismissed.

SERVED on the date of mailing.

**MAILED**  
**DEC 07 2010**  
**SEATTLE-OAH**

  
RYNOLD C. FLECK  
Administrative Law Judge  
Office of Administrative Hearings

A copy was sent to:

Piccadilly Circus LLC DBA Piccadilly Circus Pub, Restaurant, Appellant  
Tim Ford, AAG, Department Representative  
Kevin McCarroll, Adjudicative Proceedings Coordinator, Washington State Liquor Control Bd.

## NOTICE TO PARTIES

Either the licensee or permit holder or the assistant attorney general may file a petition for review of the initial order with the liquor control board within twenty (20) days of the date of service of the initial order. RCW 34.05.464, WAC 10-08-211 and WAC 314-42-095.

The petition for review must:

- (i) Specify the portions of the initial order to which exception is taken;
- (ii) Refer to the evidence of record which is relied upon to support the petition; and
- (iii) Be filed with the liquor control board and within twenty (20) days of the date of service of the initial order.

A copy of the petition for review must be mailed to all of the other parties and their representatives at the time the petition is filed. Within (10) ten days after service of the petition for review, any of the other parties may file a response to that petition with the liquor control board. WAC 314-42-095(2) (a) and (b). Copies of the reply must be mailed to all other parties and their representatives at the time the reply is filed.

The administrative record, the initial order, any petitions for review, and any replies filed by the parties will be circulated to the board members for review. WAC 314-42-095(3).

Following this review, the board will enter a final order. WAC 314-42-095(4). Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. RCW 34.05.470 and WAC 10-08-215.

The final decision of the board is appealable to the Superior Court under the provisions of RCW 34.05.510 through 34.05.598 (Washington Administrative Procedure Act).

**MAILED**

**DEC 07 2010**

**SEATTLE-OAH**

**RECEIVED**

JAN 25 2011

**LIQUOR CONTROL BOARD  
BOARD ADMINISTRATION**

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

PICCADILLY CIRCUS, LLC d/b/a  
PICCADILLY CIRCUS PUB,  
RESTAURANT  
1104 FIRST ST.  
SNOHOMISH, WA 98290-2911

LICENSEE

LICENSE NO. 079464  
AVN 3F0030A

OAH NO. 2010-LCB-0026  
LCB NO. 23,631

ENFORCEMENT DIVISION'S  
PETITION FOR REVIEW OF THE  
INITIAL ORDER

The Washington State Liquor Control Board's Education & Enforcement Division (Enforcement), by and through its attorneys, ROBERT M. MCKENNA, Attorney General, and TIMOTHY FORD, Assistant Attorney General, and pursuant to RCW 34.05.464 and WAC 314-29-010, submits the following exceptions to the Initial Order issued by Administrative Law Judge RYNOLD C. FLECK, on December 7, 2010, in the above-captioned case.

**I. PROCEDURAL BACKGROUND**

On June 2, 2010, the Board issued a Complaint to the Licensee, Picadilly Circus, LLC, d/b/a Picadilly Circus Pub, Restaurant (Licensee), alleging that on or about January 30, 2010, the Licensee and/or an employee thereof, did consume liquor while working on the licensed premises contrary to WAC 314-11-015(3)(d). Two undercover Liquor Control Board Officers entered the premises of Piccadilly Circus Pub to conduct a premise check. Prior to entering the officers had been shown a photo of Mr. Geoffrey Wall, primary manager and company officer

1 for the Licensee. Officer Wilson observed Mr. Wall consume alcohol from a bottle of Heineken  
2 beer approximately half full while clearing glasses from tables. Mr. Wall continued to perform  
3 services for the Licensee, on the licensed premise, while holding the bottle of beer. The  
4 Licensee was subsequently served an Administrative Violation Notice (AVN) on February 2<sup>nd</sup>,  
5 2010.

6 This case was heard and considered by an Administrative Law Judge (ALJ) in Everett,  
7 Washington on October 4, 2010. After a full evidentiary hearing, the ALJ entered Findings of  
8 Fact and Conclusions of Law, in its Initial Order issued on December 7, 2010. In the Initial  
9 Order, the ALJ dismissed the Board's Complaint. Enforcement respectfully takes exception to  
10 the Initial Order of the ALJ.

## 11 II. DISCUSSION

12 Pursuant to WAC 314-29-010(4)(b), any party, upon receipt of a proposed order, may file  
13 exceptions within twenty days of service of the order. The reviewing officer (including the  
14 agency head reviewing an initial order) "shall exercise all the decision-making power that the  
15 reviewing officer would have had to decide and enter the final order had the reviewing officer  
16 presided over the hearing [.]” RCW 34.05.464(4). Therefore, the Washington State Liquor  
17 Control Board is not bound by the ALJ's Conclusions of Law in the Initial Order.

### 18 A. The ALJ Erred in Identifying the Issue of Whether Mr. Wall "Was On a Break or 19 Not" as a Conclusion of Law

20 The ALJ correctly concluded as a matter of law that per WAC 314-11-015(1)(d)  
21 Employees may not "consume liquor of any kind while working on the licensed premise." Initial  
22 Order, Conclusion of Law ¶2. The ALJ also correctly concluded that per WAC 314-01-005(3)  
23 an "employee" is defined as "any person performing services on licensed premises for the benefit  
24 of the licensee." *Id.* at ¶3. However, the ALJ went on to incorrectly conclude as a matter of law  
25 that the legal question is whether Mr. Wall was "on a break or not" while he was consuming  
26 alcohol on the licensed premise. *Id.* at ¶5.

1 No statute or regulation defines a "break" or provides it as a defense to or an exception  
2 from WAC 314-11-015(1)(d).<sup>1</sup> If a person is performing services or expected to perform  
3 services on the licensed premise, for the benefit of the licensee, then they are working as an  
4 employee. Whether an employee (or a patron) subjectively believes themselves or another  
5 employee is "on break" is not a legal issue. Nor is a subjective belief in being "on break"  
6 relevant to the objective determination of whether or not a person was performing services for  
7 the benefit of the Licensee. The only legal conclusion the ALJ should have considered is  
8 whether Mr. Wall was an employee, as that term is defined by law, at the time he consumed  
9 alcohol.

10 **B. The ALJ Erred in Concluding an "Employee" is not prohibited from Drinking**  
11 **Alcohol Beverages**

12 The Board rules clearly prohibit licensees and employees from consuming liquor of any  
13 kind while working on the licensed premises. WAC 314-11-015. The Board rules also clearly  
14 define "employee" to be "any person performing services on a licensed premise for the benefit of  
15 the licensee". WAC 314-01-005. Based on that definition, a person who is acting as an  
16 employee is always working for the licensee. An employee who takes periodic breaks is still  
17 employed during the break, may be called upon to act for the licensee at any moment, and  
18 therefore is legally performing services for the benefit of the licensee. Moreover, the employee  
19 at issue here is Mr. Wall, who is also the primary manager and company officer of the Licensee,  
20 Piccadilly Circus L.L.C. Mr. Wall decides when the break is to start and end; the notion of  
21 Mr. Wall being "on a break" is fallacious as he is arguably always performing a service for the  
22 licensee in his capacity as primary manager and officer, even in deciding when employees take  
23 breaks. The Board's rule clearly makes the licensee responsible for the conduct of employees "at  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Officer McAllister's statements during the hearing demonstrate that the licensee was apprised that the  
Board's rules only prohibit consuming alcohol while working and that if the licensee was not working during a  
break that the consumption of alcohol would not violate the Board's rule.

1 all times” and the rule does not create an exception for breaks during employment. WAC 314-  
2 11-015(3).

3 **C. The ALJ’s Order Errs. In Concluding The Facts Were Insufficient To Establish by a**  
4 **Preponderance of the Evidence that the Licensee Violated WAC 314-11-015(1)(d)**

5 Even if the Board interprets the rules to allow an employee to consume liquor while on a  
6 break, the uncontroverted evidence is that the licensee violated WAC 314-11-015(1)(d). The  
7 evidence shows that Mr. Wall started his break at 11:30 PM when he sat down with Mr. Sparks.  
8 See ALJ’s finding of fact #5; written statement of Shwandy Marbery; written statement of  
9 Robert Sparks. The written statement of Shwandy Marbery reads: “Geoff took a break at  
10 approximately 11:30 pm, he sat at table 105 . . .”, and the statement concludes, “If he has a beer  
11 it is when he is sitting down taking his break.” (Emphasis added). The written statement of  
12 Mr. Sparks reads: “At approximately 11:30 pm Mr. Wall, who had been working behind the bar  
13 all evening, took a break and came and sat down at my table . . .” and the statement concludes,  
14 “After about 5 minutes he finished his beer, picked up some empty glasses off my table and went  
15 back to work.” (Emphasis added). According to the evidence presented by the licensee’s own  
16 witnesses Mr. Wall’s break lasted only during the time he was seated with Mr. Sparks. There  
17 was no written or oral testimony that Mr. Wall’s break lasted beyond the time he was seated with  
18 Mr. Sparks. The oral testimony of Mr. Wall was that he began his break by sitting down, it took  
19 less than ten minutes, and ended when he got up. Audio of record at 42:35 minutes to 43:15  
20 minutes.

21 Officer Davis’ narrative report states the compliance check started at approximately  
22 11:40, “. . . and I observed the owner carrying the same marked bottle of Heineken while  
23 performing work duties”. Officer Davis’ narrative further described those work duties: “I  
24 observed Mr. Wall continue to do on-duty actions such as clear glasses, serve drinks from behind  
25 the bar, and enter information into the computer system . . .”. Officer Wilson’s narrative report  
26 states “I observed Wall take a sip from the Heineken bottle, walk over to a nearby table, and

1 proceed to clear an empty pint glass from a group of patrons sitting at the table.” These work  
2 activities are reflected in the ALJ’s findings of fact #3.

3 These work duties are further corroborated by Mr. Sparks written statement which reads,  
4 “After about 5 minutes he finished his beer, picked up some empty glasses off my table and went  
5 back to work”. The uncontroverted evidence shows that Mr. Walls was working by performing  
6 services on the licensed premise for the benefit of the licensee such as clearing glasses from  
7 Mr. Sparks’ table after his sit down break concluded.

8 The ALJ made a finding regarding Officer Wilson’s evidence, “He observed Mr. Wall  
9 sipping on a Heineken and walking in the Pub.” ALJ’s finding of fact #3. The ALJ also noted  
10 “Mr. Wall acknowledges that he did drink a portion of the Heineken, but only during his break  
11 time, and denies taking a sip once he had completed his break and gone back to work.” ALJ’s  
12 finding of fact #5. However, despite this conflicting testimony, the ALJ concluded, “Mr. Wall  
13 was observed walking and sipping the beer.” ALJ conclusion of law #5.

14 The ALJ’s conclusion of law #5 then states: “The question is whether he was on break or  
15 not.” Yet the evidence clearly supports the conclusion that he was only on break during the  
16 period that he was sitting with Mr. Sparks. There was no evidence offered to suggest that  
17 Mr. Wall was on a break while walking around the premises. Therefore, the ALJ erred by not  
18 concluding that the observed sip occurred while he was working.

### 19 III. CONCLUSION

20 A licensee or employee is prohibited from drinking alcohol while working on the  
21 licensed premise. The law does not recognize “taking a break” as exclusion to this rule, and is  
22 not a defense available to the Licensee in this matter. Furthermore, Enforcement has  
23 demonstrated by a preponderance of the evidence, through the sworn testimony of trained liquor  
24 enforcement officers that on January 30, 2010, Mr. Geoffrey Wall was consuming alcohol while  
25 performing services or work duties for the benefit of the licensee after his sit down break had  
26 concluded, in violation of WAC 314-11-015(3)(d). Therefore, the Enforcement Division

1 respectfully requests that the Initial Order not be adopted in this matter, that the complaint be  
2 sustained, and the standard penalty be imposed.

3 DATED this 26th day of January, 2011.

4 ROBERT M. MCKENNA  
5 Attorney General

6 

7 TIMOTHY D. FORD, WSBA #29254  
8 Assistant Attorney General  
9 Attorneys for the Washington State Liquor  
10 Control Board Enforcement Division

RECEIVED

JAN 26 2011

LIQUOR CONTROL BOARD  
BOARD ADMINISTRATION

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BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

PICCADILLY CIRCUS, LLC d/b/a  
PICCADILLY CIRCUS PUB,  
RESTAURANT  
1104 FIRST STREET  
SNOHOMISH, WA 98290-2911

LICENSEE

LICENSE NO. 079464  
AVN NO. 3F0030A

OAH NO. 2010-LBC-0026

LCB NO. 23,631

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that on January 26, 2011, I served a true and correct copy of Enforcement Division's Petition For Review of the Initial Order, and this Declaration of Service by placing same in the U.S. mail, via state consolidated mail services, with proper postage affixed to:

GEOFFREY WALL AND MARION WALL  
PICCADILLY CIRCUS, LLC D/B/A  
PICCADILLY CIRCUS PUB, RESTAURANT  
1104 FIRST STREET  
SNOHOMISH, WA 98290-2911

DATED this 26th day of January, 2011, at Olympia, Washington.

  
MARLENA MULKINS  
Legal Assistant

# Piccadilly Circus



*British Tea Garden  
Imported Gifts & Collectibles*

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FEB 14 2011

LIQUOR CONTROL BOARD  
BOARD ADMINISTRATION

February 8, 2011

Kevin McCarroll  
Washington State Liquor Control Board  
P.O. Box 43075  
Olympia, WA 98504

RE: Piccadilly Circus, LLC d/b/a/ Piccadilly Circus Pub, Restaurant  
LCB No. 23, 631  
OAH No. 2010-LCB-0026

Dear Mr. McCarroll:

In regard to above referenced, I would like to respond by offering the following points:

1. Judge Rynold Fleck dismissed the Board's complaint, which I believe was a correct decision.
2. I have been told by Capt. Tom Dixon of your enforcement agency that I am entitled to have a drink when I am on my break.
3. Troy McAllister told me that even though I was entitled to drink on a break, it was a gray area.
4. According to Mr. Ford, I am supposed to decide when the break is to start and end. Please tell me who else would tell me when it starts and ends?
5. Mr. Ford stated that my break was over when I stood up. I actually stood up and moved to the other end of the table to eat some appetizers and carry on my conversation with Mr. Sparks and members of his party.
6. Officer Davis reports he observed me carrying a bottle of Heineken and several glasses from the table. In order to clear the tables, I have to carry them using both hands, and at no time after I left the table did I take a drink.
7. Troy McCallister stated that he showed the undercover officers a photograph of me because I was the owner, but he never showed a photograph of Marion Wall, who is also an owner. This gives cause to believe that I was being singled out and looking for something to pin on me.

8. Officer Davis could describe the shirt and slacks that I was wearing, probably because he was told by Troy McCallister that I always wear dark slacks and pink shirt, but he couldn't describe what color tie I was wearing. This shows to me he wasn't very observant, and if they saw me drinking, why didn't they document this with a photo (they do have such things as photo cameras now).
9. Officer Troy McCallister was caught in a lie while under oath. If he would lie then, who's to say that he wouldn't lie again.
10. The Agency is short of money, why are they wasting time and money on this matter after it's already been ruled in my favor?
11. Why wasn't I cited for this infraction immediately, after they supposedly caught me breaking the law, or did they need a couple of days to get their stories straight?
12. We do our best to make sure we don't over serve or serve to minors. We are not perfect, but we have been told by several of your enforcement officers that we are doing a very good job.

I conclude that you should deny Mr. Ford's appeal, as it has no merit, as he is the only one that believes that drinking on a break is illegal. If your own agents and Judge Fleck believe that I am entitled to drink on a break then I feel you should change the law so that there will be no question as to its meaning.

Sincerely,



Geoffrey Wall