

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

FAMILY LEGACY RESTAURANTS LLC
PETE'S BAR & GRILL
1360 SE BISHOP BLVD
PULLMAN, WA 99163

LICENSEE

LICENSE NO. 357538

LCB NO. 22,837
OAH NO. 2008-LCB-0027

FINAL ORDER OF THE BOARD

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

1. A formal hearing was held on October 15, 2008 at the licensee's timely request for a hearing on an administrative violation notice issued by the Liquor Control Board.
2. The Complaint alleged that on March 25, 2008 the Licensee or employee(s) thereof, allowed or permitted an apparently intoxicated person(s) to consume and/or possess alcohol on a licensed premises contrary to RCW 66.44.200 and WAC 314-16-150.
3. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Gordon Karg and the Licensee was represented by Ronald Shirley, Attorney at Law, Pullman, Washington.
4. On October 30, 2008 Administrative Law Judge Edward S. Steinmetz entered his Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the Complaint.
5. A Petition for Review of the Initial Order was filed timely by the Enforcement and

Education Division arguing that the factors noted by the ALJ do not rise to the level of mitigating and seeks to have the penalty section of the Initial Order overturned and replaced with the standard penalty.

6. A Reply to Enforcement Division's Petition for Review of the Initial Order was filed timely by the Licensee arguing that the mitigating factors found are appropriate factors to consider in mitigation and seeks to have the Initial Order adopted.

7. 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;

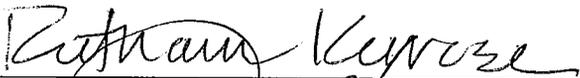
IT IS HEREBY ORDERED that that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order heretofore made and entered in this matter be, and the same hereby are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board and that the liquor license privileges granted to Family Legacy Restaurants LLC d/b/a Pete's Bar & Grill, 1360 SE Bishop Blvd, Pullman, Washington, License Number 357538, are hereby suspended for a term of three (3) days. In lieu of a license suspension, the Licensee may pay a monetary penalty in the amount of three-hundred dollars (\$300) due within 30 days of this order. If timely payment is not received, suspension will begin at 10:00 a.m. on February 20, 2009 until 10:00 a.m. on February 23, 2009. Failure to comply with the terms of this order will result in further disciplinary action.

Payment in reference to this order should be sent to:

Washington State Liquor Control Board
Enforcement and Education Division
1303 W Broadway
Spokane, WA 99201-2053

DATED at Olympia, Washington this 14th day of January, 2009.

WASHINGTON STATE LIQUOR CONTROL BOARD





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. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order or (b) there is specific material error of fact or law. 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 Martha P. Lantz, 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).

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

In the Matter of:

FAMILY LEGACY RESTAURANTS LLC
PETE'S BAR & GRILL
1360 SE BISHOP BLVD
PULLMAN, WA 99163

Licensee

LICENSE NO. 357538

OAH Docket No. 2008-LCB-0027
LCB Case No. 22,837

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND INITIAL ORDER**

STATEMENT OF THE CASE

On March 26, 2008, the Washington State Liquor Control Board (Board) issued an Administrative Violation Notice to Family Legacy Restaurants LLC, d/b/a Pete's Bar & Grill, 1360 S.E. Bishop Blvd., Pullman, Washington. In its Notice, the Board alleged that on or about March 25, 2008, the Licensee, or an employee thereof, violated the provisions of RCW 66.44.200(2) and WAC 314-16-150 by allowing an apparently intoxicated person to possess and consume alcohol on the licensed premises. The Licensee made a timely request for hearing.

On June 12, 2008, the Board issued a formal Complaint in which it alleged that on or about March 25, 2008, the Licensee, or an employee thereof, allowed or permitted an apparently intoxicated person to consume and/or possess alcohol on a licensed premises contrary to RCW 66.44.200 and WAC 314-16-150.

This matter came on for hearing before Edward S. Steinmetz, Administrative Law Judge, Washington State Office of Administrative Hearings, in Spokane, Washington, on

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**LIQUOR CONTROL BOARD
BOARD ADMINISTRATION**

October 15, 2008. At hearing, the Board's Education and Enforcement Division was represented by Gordon Karg, Assistant Attorney General. The Licensee appeared and was represented by Ronald Shirley, Attorney at Law, Pullman, Washington. Appearing as witnesses for the Board were Lt. Robert Reynolds, and Liquor Enforcement Officers Patrick Matthews and Robert M. Lucas. Appearing as a witness for the Licensee was Joseph Fairbanks, Owner and Operator of the Licensee's premises, and sole member of Family Legacy Restaurants LLC.

Based upon the record presented, the undersigned Administrative Law Judge makes the following Findings of Fact:

FINDINGS OF FACT

1. The Licensee, Family Legacy Restaurants LLC, d/b/a Pete's Bar & Grill, operates a restaurant and lounge located at 1360 S.E. Bishop Blvd., Pullman, Washington. The premises is licensed by the Board for the sale of spirits, beer, and wine for on-premises consumption pursuant to License No. 357538.
2. On the evening of March 25, 2008, Liquor Enforcement Officers Patrick Matthews and Robert M. Lucas were conducting undercover compliance checks with the assistance of Agent Sean Merritt from the Washington State Gambling Commission. At approximately 9:45 p.m. on the evening of March 25, Liquor Enforcement Officer Lucas and Agent Merritt entered the Licensee's premises for the purpose of conducting the undercover compliance check. Liquor Enforcement Officer Patrick Matthews was the "outside officer" and initially stayed located in a vehicle parked in close proximity to the Licensee's premises.

3. The credible testimony of Liquor Enforcement Officer Robert Lucas establishes that after entering the Licensee's premises, he and Agent Merritt situated themselves in a dining area within the licensed premises. Shortly thereafter, the attention of Officer Lucas was drawn to a patron of the establishment later identified as Ryan Jackson. Officer Lucas observed Mr. Jackson holding a distinctive shaped glass in his hand, and believed that the glass contained an alcoholic beverage known as a "Wiley" drink. Officer Lucas explained that based upon his knowledge of the operations of the licensed premises, a "Wiley" drink is served in a large goblet-shaped glass and contains a combination of liqueurs, spirits, and juices. Officer Lucas ultimately determined that in his view, Mr. Jackson was apparently intoxicated. This observation was subsequently communicated to Liquor Enforcement Officer Patrick Matthews who was waiting outside in a vehicle.

4. After receiving the call from Officer Lucas, Officer Matthews entered the Licensee's premises and approached a female bartender. Officer Matthews pointed out Mr. Jackson. While in the licensed premises, Officer Matthews observed that Mr. Jackson appeared to be swaying and at one point Mr. Jackson went to put his hand on the back of a booth, slipped, and spilled some of the contents of the large glass which he was holding. Officer Matthews advised the bartender to pull the drink from Mr. Jackson and to obtain Mr. Jackson's driver's license. The bartender complied. The driver's license obtained by the bartender confirmed that the male patron was indeed Ryan James Jackson. Exhibit 1. Officer Matthews subsequently took control of the glass which Mr. Jackson had been holding. Officer Matthews poured a small portion of the liquid from the glass into a plastic evidence bottle. This bottle was then sealed and transported back to the Spokane Office of the Liquor Control

Board. Upon the officers return to the Spokane Office of the Liquor Control Board, a case report was prepared by Officer Matthews. Exhibit 2. The bottle containing the liquid was then placed into a locked evidence locker, and the matter was forwarded on to Lt. Robert Reynolds.

5. At hearing, the Licensee agreed and stipulated that Ryan James Jackson was in fact in the Licensee's premises on the evening of March 25, 2008. The Licensee further agrees and stipulates that Mr. Jackson was in fact "apparently intoxicated." The Licensee further agreed and stipulated that Mr. Jackson was in fact holding a glass, but the Licensee contests the position of the liquor enforcement officers that the glass contained alcohol. Based upon the stipulation of the Licensee, the undersigned specifically finds that Ryan James Jackson was in fact in the Licensee's premises on the evening of March 25, 2008, and was in fact apparently intoxicated. This tribunal further finds that Mr. Jackson was in fact holding a glass which contained a liquid.

6. After the Licensee requested a hearing in this matter, Lt. Robert Reynolds of the Spokane Liquor Control Board office retrieved the bottle of liquid which Officer Matthews had placed into evidence on the evening of March 25, 2008. This bottle was then sent to the Washington State Patrol's Toxicology Laboratory for testing. Exhibit 8. On April 8, 2008, the Washington State Toxicology Laboratory issued a report noting that the sample was a liquid which tested positive for the presence of "ethanol" in an amount of 11%. Exhibit 9. Based upon this test result, the Board's Enforcement and Education Division argued at hearing that the evidence does in fact establish that the glass being held by Ryan Jackson on the evening of March 25, 2008 did in fact contain alcohol.

7. At hearing, the Licensee argued that the Washington State Toxicology Laboratory Report does not in fact conclusively establish what in fact was actually tested by the laboratory. The Licensee points out that the LCB Toxicology Report, Exhibit 9, does state that blood analysis was not performed and urine test results were not performed. However, the Licensee emphasizes a certification completed by Brittany Ball, Analyst, which states:

"Brittany Ball certifies under penalty of perjury that I performed the test on the blood or other tissues listed above. The document on which this certificate appears is a true and complete copy of my official report and the test was administered according to WAC 448-14-010 & 020. Such document is a report of the results of tests completed by the undersigned whose qualifications and experience are listed below their name in compliance with WAC 448-14-030. The person from whom the sample(s) was received is: Reynolds, R.W. First Class Mail (USPS)." Exhibit 9.

Under the signature of Brittany Ball and her typed name, and identification as "Analyst," is the following statement:

"BS Biology 2005
Blood Analyst Permit since 2007." Exhibit 9.

8. At hearing, the credible testimony of Lt. Robert Reynolds establishes that he handled the plastic bottle containing the liquid obtained by Officer Matthews from the Licensee's establishment on the evening of March 25, 2008, with normal care and attention to maintaining chain of custody. Lt. Reynolds obtained the plastic bottle from the evidence locker and before sending it to the Washington State Toxicology Laboratory, performed an unofficial "portable breath test" on the contents of the bottle to determine whether or not alcohol was present in the bottle. After performing this test, Lt. Reynolds then packaged the bottle for shipment to the toxicology laboratory. Lt. Reynolds' testimony establishes that the toxicology

report returned positive for the presence of ethanol/alcohol in an amount of 11%. Based upon the test result, Lt. Reynolds stated the Education and Enforcement Division's position that the glass being held by Ryan Jackson inside the Licensee's establishment on March 25, 2008 did in fact contain alcohol. Lt. Reynolds acknowledged that in handling the bottle of liquid obtained by Officer Matthews, there was no noted solid matter or blood in the sample bottle.

9. At hearing, the Licensee argued that because the toxicology report contains a statement referencing the testing of "blood or other tissues listed above," the toxicology report fails to establish that the liquid was tested properly for the presence of alcohol.

10. The credible testimony of Joseph Fairbanks establishes that he has been the sole owner and operator of the Licensee's establishment since January 1, 2008. Since that time, Mr. Fairbanks has instituted a number of actions and procedures to assist with the Licensee's compliance with the applicable statutes and regulations. Shortly after taking over ownership of the Licensee's establishment, Mr. Fairbanks contacted surrounding property owners to discuss their concerns and to solicit input as to what the Licensee could do better to minimize alcohol-related impact on the surrounding community. Mr. Fairbanks has also consulted with the commander of the Pullman Police Department, as well as the counseling service for Washington State University to solicit their input as to procedures or concerns which those entities may have. Mr. Fairbanks also instituted a rule under which no patron could purchase more than two "Wiley drinks" on a given evening. Mr. Fairbanks explained that the "Wiley drink" is a well-known drink served in a distinctive glass, and that approximately 85% of the patrons purchasing the Wiley drink indicate that they are doing so in order to obtain the large distinctive glass which the patron is allowed to keep. Mr. Fairbanks also has

requested additional training for staff from the liquor enforcement officers, and has himself posted more signs within the establishment and has conducted more training with staff regarding these signs of apparent intoxication. Mr. Fairbanks has also instituted a process for checking identification of all individuals entering the licensed premises even though the premises is divided into an all ages dining area as well as the restricted lounge area. Mr. Fairbanks explained at hearing that he has instituted this identification checking procedure to let minor individuals know that identification will be checked for everybody in an attempt to prohibit underage drinking. The Licensee argued at hearing that Mr. Fairbanks' steps since taking over the establishment constitutes mitigating factors.

11. At hearing, the Board's Education and Enforcement Division acknowledged that the violation asserted to exist herein would be the Licensee's first violation of this type within the prior two-year period. Accordingly, the Board argues that the appropriate penalty to be imposed in this matter is a five-day suspension of the Licensee's liquor license, or in lieu thereof, a civil monetary penalty in the amount of \$500.00.

Based upon the above Findings of Fact, the following Conclusions of Law are entered:

CONCLUSIONS OF LAW

1. As a holder of a retail liquor license, Family Legacy Restaurants LLC, d/b/a Pete's Bar & Grill, is subject to the jurisdiction of the Washington State Liquor Control Board. The Board has the authority, pursuant to RCW 66.24.010, to suspend or cancel a license so long as the Licensee is afforded an opportunity for a hearing. A proper hearing was provided in this case.

2. The provisions of WAC 314-16-150 are applicable and state as follows:

(1) No retail licensee shall give or otherwise supply liquor to any person under the age of twenty-one years, either for his/her own use or for the use of his/her parent or of any other person; or to any person apparently under the influence of liquor; nor shall any licensee or employee thereof permit any person under the said age or in said condition to consume liquor on his/her premises, or on any premises adjacent thereto and under his/her control.

(2) No retail licensee shall permit any person apparently under the influence of liquor to physically possess liquor on the licensed premises.

3. The facts in this matter establish by a preponderance of the evidence that on the evening of March 25, 2008, Ryan Jackson was present inside the Licensee's premises and was apparently intoxicated. The facts further establish without dispute that Mr. Jackson was holding a large glass which was identified as the type of glass issued in conjunction with a "Wiley drink." The only issue in contention is whether or not the glass being held by Mr. Jackson contained alcohol. While this tribunal understands that there may in fact be "boilerplate" language on the WSP Toxicology Report referencing the testing of blood or tissues as listed above, this tribunal notes that the Toxicology Report states that there was no blood analysis performed and no urine test analysis performed. The report does confirm, by a preponderance, that the test was performed on a liquid sample obtained from Lt. Robert Reynolds of the Spokane Liquor Control Board office. The report further confirms by a preponderance that the liquid did in fact test positive for the presence of ethanol/alcohol in an amount of 11%. Therefore, the undersigned tribunal concludes that on the evening of March 25, 2008, Mr. Jackson was in fact in possession of a glass containing alcohol. Accordingly, this tribunal concludes that the Licensee, or an employee thereof, did in fact permit a person

apparently under the influence of liquor to physically possess liquor on the licensed premises in violation of WAC 314-16-150. The Board's Complaint in this matter should therefore be sustained.

4. The Board has the authority to establish an appropriate penalty as a matter of its discretion. Under RCW 66.24.010, the Board has the authority to suspend or cancel the Licensee's liquor license. Effective May 5, 2003, the Board has adopted as rules a set of "standard penalties" which may be applied to certain offenses. WAC 314-29-015. This regulation states that the standard penalties are meant to serve as guidelines and that the Board retains broad discretion to impose a different penalty based upon the existence of mitigating or aggravating circumstances.

5. As set forth above, the violation found to exist herein is the Licensee's first violation of WAC 314-16-150 within the prior two-year period. Accordingly, the standard penalty for a first violation of WAC 314-16-150 is a five-day suspension of the Licensee's liquor license. In lieu of license suspension, the Licensee is afforded a civil monetary penalty option in the amount of \$500.00. WAC 314-29-020.

6. In the matter of penalties, the role of the Administrative Law Judge is to draw the Board's attention to those aggravating or mitigating circumstances which the Board may wish to consider in deciding whether to deviate from the standard penalty established by regulation. In determining whether or not aggravating or mitigating circumstances are present, WAC 314-29-015(4) sets forth certain types of examples of mitigating and aggravating circumstances. With regard to mitigating circumstances, examples include, but are not limited to, a Licensee having direct on-site supervision of employees, having an employee training

plan that includes annual training on liquor laws, and a Licensee's cooperation with local law enforcement.

7. The facts in this case establish that the present owner has owned the Licensee's premises for a relatively short period of time, since January 1, 2008. In that time, the Licensee's owner has taken steps to ensure that his staff is adequately trained on the signs of apparent intoxication, and has requested additional training by the liquor enforcement officers in this regard. The Licensee has also contacted local law enforcement and has shown a willingness to cooperate with local law enforcement. The Licensee has also instituted a rule with regard to the "Wiley drinks" which restricts patrons to only two Wiley drinks per evening. This tribunal concludes that the Licensee has in fact shown and demonstrated a desire and intent to comply with the Board's policies and laws. This tribunal concludes that these items constitute mitigating circumstances. Accordingly, this tribunal concludes that it is appropriate to recommend to the Board a mitigated penalty for the Licensee's first violation as set forth above. This tribunal concludes that the appropriate mitigated penalty is a three-day suspension of the Licensee's liquor license. In lieu of license suspension, the Licensee shall be afforded the opportunity to pay a civil monetary penalty in the amount of \$300.00.

Based upon the foregoing Conclusions of Law, NOW THEREFORE,

INITIAL ORDER

IT IS HEREBY ORDERED, That the Board's Complaint in this matter be SUSTAINED. On a date to be established in the Board's Final Order, the license privileges of Family Legacy Restaurants LLC, d/b/a Pete's Bar & Grill, under License No. 357538, shall be

suspended for a period of three (3) days. In lieu of a license suspension, the Licensee may pay a civil monetary penalty in the amount of three-hundred dollars (\$300.00).

DATED at Spokane, Washington, this 30th day of October, 2008.

WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS



Edward S. Steinmetz
Administrative Law Judge
Office of Administrative Hearings
221 N. Wall St., Suite 540
Spokane, WA 99201-0826
Phone: 509-456-3975 / 1-800-366-0655
Fax: 509-456-3980

ESS:sr

Copies Mailed to:

Family Legacy Restaurants LLC
Pete's Bar & Grill
1360 SE Bishop Blvd
Pullman, WA 99163

Gordon Karg
Assistant Attorney General
Office of the Attorney General, GCE Div
1125 Washington St SE
PO Box 40100
Olympia, WA 98504-0100

Ronald Shirley
Attorney at Law
PO Box 307
165 NE Kamiaken St Ste 210
Pullman, WA 99163

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

Office of Administrative Hearings
Spokane

In the Matter of:

Family Legacy Restaurants LLC
Pete's Bar & Grill
1360 SE Bishop Blvd
Pullman, WA 99163

LICENSEE

LICENSE NO. 357538

STATE OF WASHINGTON)
) ss.
COUNTY OF SPOKANE)

I hereby certify that I have this day served a copy of this document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent.

DATED at Spokane, Washington, this 30th day of Oct, 2008.

[Signature]
Representative, Office of Administrative Hearings

OAH NO. 2008-LCB-0027
LCB NO. 22,837

NOTICE TO PARTIES

The attached administrative law judge's findings of fact, conclusions of law and initial order are not effective until a final order of the Washington State Liquor Control Board is issued.

All parties hereto shall have twenty (20) days from the date of service of these proposals to file exceptions as provided by RCW 34.05.464 and WAC 314-29. Exceptions shall be filed in triplicate with the Liquor Control Board, 3000 Pacific Avenue S.E., P.O. Box 43076, Olympia, WA 98504-3076. Replies to exceptions shall be filed with the Board within ten (10) days of the date of service of exceptions as provided by WAC 314-29. The exceptions must be received on or before Nov 19th, 2008. One copy of the exceptions or replies must also be served upon all other parties of record, or their attorneys, with proof of service as required by WAC 314-29.

After reviewing the entire record including exceptions, replies, briefs and legal arguments, if any, the board will affirm, reverse or modify these proposals by a final order of the board.

The administrative law judge's proposed decision provides for suspension of your license with a provision that payment of a monetary penalty may be made in lieu of the suspension. The monetary penalty would be based upon the formula shown in the administrative law judge's proposed order.

DO NOT SEND PAYMENT AT THIS TIME. In the event the board adopts the administrative law judge's recommended monetary penalty, payment should be made at that time by cashier's or certified check only.

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BOARD ADMINISTRATION

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**LIQUOR CONTROL BOARD
BOARD ADMINISTRATION**

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

FAMILY LEGACY RESTUARANTS LLC
d/b/a PETE'S BAR AND GRILL
1360 BISHOP BLVD
PULLMAN, WA 99163

LICENSEE

LICENSE NO. 357538

OAH NO. 2008-LCB-0027
LCB CASE NO. 22, 837

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 GORDON KARG, 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 Edward S. Steinmetz, on October 30, 2008, in the above-captioned case.

I. PROCEDURAL BACKGROUND

On June 3, 2008, the Board issued a Complaint to the Licensee, Family Legacy Restaurants, LLC, d/b/a Pete's Bar and Grill, alleging that on or about March 25, 2008, the Licensee and/or an employee thereof, allowed an apparently intoxicated person (AIP) to possess and/or consume liquor on the licensed premises in violation of 314-16-150.

This case was heard and considered by the Administrative Law Judge ("ALJ") in Spokane, Washington on October 15, 2008. After a full evidentiary hearing, the ALJ entered Findings of Fact, Conclusions of Law, and Initial Order on October 30, 2008. In the Initial

1 Order, the ALJ sustained the Board's Complaint, but concluded that mitigating factors, pursuant
2 to WAC 314-29-015, existed such that the ALJ's recommendation to the Board was to impose a
3 reduced penalty. Enforcement respectfully takes exception to the Initial Order of the ALJ.

4 II. DISCUSSION

5 The initial order held that, in this case, the standard penalty of a five day suspension of
6 the liquor license, or in lieu of suspension a five hundred dollar monetary penalty, should be
7 reduced to a three day suspension or a three hundred dollar monetary penalty, in light of the
8 mitigating circumstances adduced at hearing. (Conclusion of Law 7). The ALJ concluded that
9 the following factors constitute mitigating circumstances: that the Licensee had taken steps to
10 adequately train his staff on the signs of apparent intoxication and has requested additional LCB
11 training; that the Licensee had contacted and shown a willingness to work with local law
12 enforcement prior to the evening in question; and that the Licensee had instituted a rule limiting
13 all patron's to only two "Wiley" drinks per evening¹. (Conclusions of Law 7).

14 Enforcement argues the factors noted above are not mitigating. The evidence adduced at
15 hearing indicates the Licensee did not adequately train staff members to recognize the signs of
16 intoxication. In this case, an individual was found in the dining area of the licensed premise,
17 who, while apparently intoxicated and possessing alcohol was swaying and spilling his drink.
18 (Finding of Fact 3-6). While it is was found that the Licensee contacted local law enforcement
19 after taking ownership of the establishment, there is no finding of that the Licensee actually acted
20 on the concerns of local authorities in any substantial way. (Finding of Fact 10). There is no
21 finding that the Licensee's rule of limiting two "Wiley" drinks per customer would prohibit a
22 patron from obtaining other alcoholic beverages after having already consumed two "Wiley"
23 drinks, thus rendering the rule meaningless. (Finding of Fact 10). Furthermore, there is no
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26 ¹ It was adduced at hearing that a "Wiley" drink is an alcoholic beverage served in a large goblet-like glass
(Finding of Fact 3).

1 specific finding that this rule was in effect on March 25, 2008 when this violation occurred.
2 (Finding of Fact 10).

3 Nothing indicates that the Licensee's actions, described by the ALJ as mitigating factors,
4 significantly decreased the risk to public safety or made the violation found in this case to be rare
5 or unusually. Factors posited above do not rise to the level of mitigating factors and should not
6 affect the penalty imposed upon the licensee. Enforcement respectfully requests the Board
7 impose the standard penalty in this matter: a five day suspension or in lieu of suspension a five
8 hundred dollar penalty. WAC 314-29-020.

9 **III. CONCLUSION**

10 At hearing, Enforcement demonstrated by a preponderance of the evidence that an AIP
11 was allowed to possess and consume alcohol on the licensed premises on March 25, 2008. The
12 factors outlined by the ALJ do not rise to the level of mitigating factors. Accordingly, the
13 Enforcement Division respectfully requests that the penalty section of the Initial Order not be
14 adopted in this matter, that the complaint be sustained, and that the standard penalty be imposed.

15 DATED this 18th day of November, 2008.

16 ROBERT M. MCKENNA
17 Attorney General

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19 
20 GORDON KARG, WSBA #37178
21 Assistant Attorney General
22 Attorneys for the Washington State Liquor
23 Control Board Enforcement Division
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25
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LIQUOR CONTROL BOARD
BOARD ADMINISTRATION

BEFORE THE WASHINGTON LIQUOR CONTROL BOARD

IN THE MATTER OF:)	OAH NO. 2008-LCB-0027
)	LCB CASE NO. 22,837
FAMILY LEGACY RESTAURANTS LLC)	
d/b/a/ PETE'S BAR & GRILL)	LICENSEE'S REPLY TO
1360 BISHOP BLVD.)	ENFORCEMENT DIVISION'S PETITION
PULLMAN WA 99163)	FOR REVIEW OF THE INITIAL ORDER
LICENSEE.)	
)	
LICENSE NO 357538)	

Family Legacy Restaurants LLC, Licensee, by and through it's attorney, Ronald Shirley, hereby replies to the exceptions filed by the Education & Enforcement Division concerning the Initial Order issued by the Administrative Law Judge Edward S. Steinmetz on October 30, 2008, in the above entitled action.

1. PROCEDURAL BACKGROUND

Licensee concurs with the procedural facts as presented by the Education & Enforcement Division, however, disagrees with the exceptions therein stated.

2. DISCUSSION

The Education & Enforcement Division's only asserted exception to the ruling in this matter concerns the finding of mitigating factors from which the Honorable Judge Steinmetz concluded that a reduction in penalty was warranted.¹

¹ The decision reduced the standard penalty of a 5 day suspension or \$500 to a 3 day suspension or \$300.

Aitken, Schauble, Patrick, Neill, Ruff & Shirley
165 NE Kamiaken, Suite 210
PO Box 307
Pullman WA 99163
(509) 334-3505

Education & Enforcement Division first asserts that the mitigating factors found are “not mitigating” but then fails to attempt any analysis as to why the three factors as found are not factors allowed to be considered as mitigating factors. Of course this is do to the fact that the three found factors are reasonably within the example factors suggested in WAC 314-29-015(4)(a), to wit in comparison:

Found Mitigation (Find of Fact 10, Conclusion of Law 6 &7)	WAC 314-29-015 Mitigating Circumstance
1. Licensee had trained staff adequately and requested additional training by LCB	“Having an employee training plan that includes annual training on liquor laws.”
2. Licensee had contacted and showed a willingness to work with local law enforcement	“Showing cooperation with local law enforcement.”
3. Licensee had a rule limiting patron’s to only two “Wiley” drinks per evening	“Having in place policies and practices such as [to reduce the likelihood of over service of alcohol].”

Clearly the mitigation factors found are in fact appropriate factors to consider in mitigation.

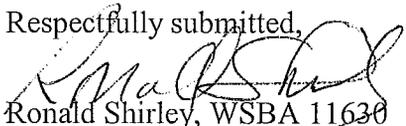
There does not appear to be any statutory or common law definition for what fact or factor can or should be consider in mitigation. Black’s Law Dictionary, however, describes “Mitigating Circumstances” as: “Such as do not constitute a justification or excuse of the offense in question, but which, in fairness and mercy may be considered as extenuating or reducing the degree of moral culpability. Those that affect basis for award of exemplary damages, or reduce actual damages by showing, not that they were never suffered, but that they have been partially extinguished.” (Black’s Law Dictionary, p 1153, Revised 4th Ed.)

Education & Enforcement Division’s only other exceptions are nothing more than mere statements of opinion. There is no challenge to the factual basis for each mitigation factor as found

Aitken, Schauble, Patrick, Neill, Ruff & Shirley
165 NE Kamiaken, Suite 210
PO Box 307
Pullman WA 99163
(509) 334-3505

but only assertions that other issues were not found. It does not point to any part of the record wherein there is any evidence that the Licensee had not taken steps to adequately train his staff. When in fact the staff were all properly permitted by the LCB, had undergone the LCB training and additionally the Licensee had requested additional training by the LCB. It does not point to any part of the record that after consulting with local law enforcement and WSU authorities, that their concerns were disregarded by the Licensee. The Licensee took the initiative to contact these authorities, as well as neighbors, to find out what their concerns were and seek advice from them. Finally as for the drink limit policy, there was testimony by Mr. Fairbanks that this policy was in effect when this incident occurred.

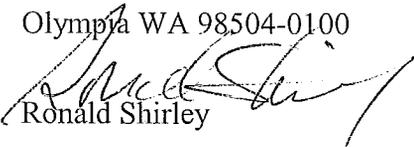
Licensee asks that the Honorable Judge Steinmetz's Initial Order be given due consideration and adopted by the Board.

Respectfully submitted,

Ronald Shirley, WSBA 11630
Attorney for Licensee
This 25th day of November 2008.

Declaration of Mailing

I Ronald Shirley declare under penalty of perjury under the laws of the state of Washington that on this 25th day of November, 2008, I placed in the US mail, postage prepaid, a true and correct copy of this document addressed to:

Gordon Karg, AAG
PO Box 40100
Olympia WA 98504-0100


Ronald Shirley

Aitken, Schauble, Patrick, Neill, Ruff & Shirley
165 NE Kamiaken, Suite 210
PO Box 307
Pullman WA 99163
(509) 334-3505