

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

ODDYSEY ENTERPRISES, LLC  
d/b/a THE VAULT  
425 FRANKLIN STREET SE  
OLYMPIA, WA 98501-1119

LICENSEE

LICENSE NO. 081860 AVN 1F8242A

LCB NO. 22,867

OAH NO. 2008-LCB-0056

FINAL ORDER OF THE BOARD

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

1. An administrative hearing was held on February 18, 2009 at the licensee's timely request.
2. The Liquor Control Board's Complaint dated December 23, 2008, alleged that on August 30, 2008 the Licensee or employee(s) thereof did permit a person apparently under the influence of liquor to physically possess or consume liquor on the licensed premises, contrary to WAC 314-16-150.
3. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Brian Considine and the Licensee was represented by co-owner Todd Ruzicka.
4. On April 29, 2009 Administrative Law Judge James D. Stanford entered his Amended Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the Complaint.
5. No petitions for review were filed by the parties.

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 that the Administrative Law Judge's Amended 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 Odyssey Enterprises, LLC d/b/a The Vault at 425 Franklin Street in Olympia, Washington, License Number 081860, are hereby suspended for a term of five (5) days. In lieu of a license suspension, the Licensee may pay a monetary penalty in the amount of five-hundred dollars (\$500) due within 30 days of this order. If timely payment is not received, then suspension will take place from 10:00 a.m. on July 9, 2009 until 10:00 a.m. on July 14, 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**

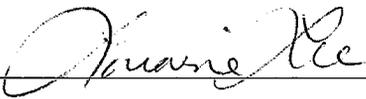
**Enforcement and Education Division**

**PO Box 43085**

**Olympia, WA 98504-3085**

DATED at Olympia, Washington this 27 day of ~~June~~<sup>May</sup>, 2009.

WASHINGTON STATE LIQUOR CONTROL BOARD

  
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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).

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

IN THE MATTER OF:	)	
	)	OAH No. 2008-LCB-0056
ODDYSEY ENTERPRISES, LLC	)	LCB No. 2 2, 8 6 7
dba THE VAULT	)	
425 FRANKLIN STREET	)	AMENDED FINDINGS OF FACT,
OLYMPIA, WA 98501-1119	)	CONCLUSIONS OF LAW AND
	)	INITIAL ORDER
LICENSEE	)	
	)	
LICENSE NO. 081860-1F	)	
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STATEMENT OF THE CASE

Pursuant to notice duly given, an administrative hearing was held before James D. Stanford, duly appointed administrative law judge, in the Office of Administrative Hearings, 2420 Bristol Court SW, Olympia, Washington, on the 18th day of February, 2009, in the matter of the suspension or monetary penalty assessment of the liquor license of Oddyssey Enterprises, LLC., doing business as The Vault, liquor license 081860-1F.

The Liquor Control Board (board) was represented by Brian J. Considine, assistant attorney general. Oddyssey Enterprises, LLC. was represented by Todd Ruzicka, co-owner.

Predicated upon an investigation and report by liquor enforcement sergeant Stacy A. Cutlip, the board, pursuant to RCW 66.24.010(3) and the revised rules and regulations of the board, WAC 314-29-005, caused a complaint under the date of December 23, 2008, to be issued and a hearing to be held. The board charged Oddyssey Enterprises, LLC, doing business as The Vault, at 425 Franklin Street, Olympia, Washington, to wit:

On or about August 30, 2008, the above-named Licensee, or employee(s) thereof, did permit a person apparently under the influence of liquor to possess and consume liquor on the licensed premises, contrary to WAC 314-16-150.

The administrative law judge, having considered the entire record of this proceeding, including the arguments of the respective representatives, now enters the following findings of fact:

## FINDINGS OF FACT

1. Odyssey Enterprises, LLC, (licensee), a Washington corporation, is the holder of a spirits, beer, wine, restaurant liquor license, number 081860-1F, issued by the board pursuant to chapter 66.24 RCW and does now and did on August 30, 2008, control and was responsible for the premises known as The Vault which is located at 425 Franklin Street, Olympia, Washington. The principal owners of The Vault are Todd Ruzicka and Roger Rahil.

2. The structure housing The Vault is generally divided into two principal sections. The area immediately inside the main entrance is a large room with table seating, the bar from which liquor is dispensed, a sidebar, and a dance floor. Beyond the large room is an enclosed patio garden area that has table seating.

3. During the period material hereto, the licensee had three bartenders, various servers and at least six security personal on duty. One of the security personnel was specifically assigned to float through the premises and to terminate liquor service to and any possession or consumption by any patron that appeared to be apparently under the influence of liquor. All employees of the licensee have authority to assess patrons for any signs of apparent intoxication. When a patron was observed displaying signs of apparent intoxication, the observing employee had authority to remove any alcoholic beverage in that patron's possession and to order the termination of any further liquor service to the patron.

4. Liquor enforcement sergeant Stacy Cutlip is assigned to investigate and enforce liquor laws in Olympia and the surrounding area. During the course of his enforcement duties, sergeant Cutlip became concerned about possible recurring overservice at The Vault. Sergeant Cutlip arranged for an undercover investigation to be conducted by enforcement officers from other areas of the state who were not known to the owners or service personnel at The Vault. Also assisting sergeant Cutlip were two officers from the Olympia Police Department.

5. On or about August 30, 2008, at approximately 12:10 a.m., liquor enforcement sergeant Jackie Eliason and liquor enforcement officer Kendra Ogren, entered The Vault in an undercover capacity while posing as customers. Shortly after entering the licensed premises, sergeant Eliason and officer Ogren walked to a position near the main bar. The patronage of the licensed premises was noted as being fairly light. There were sufficient staff on duty to serve, observe and control the patrons. The lighting was adequate for sergeant Eliason and officer Ogren to see throughout the licensed premises.

6. Sergeant Eliason and officer Ogren initially observed a man walking toward the patio garden area of the premises while displaying a staggering gait. The man had a

plastic cup in his hand that contained a liquid that appeared to be a mixed drink. The man joined a group of other men who were seated at a table. While the man was in their view sergeant Eliason and officer Ogren observed a member of the licensee's staff approach him and engage him in a brief conversation. Sergeant Eliason and officer Ogren followed the man into the patio garden area and observed that he stumbled several times and had glassy unfocused eyes. Sergeant Eliason and officer Ogren assessed the subject man as being apparently intoxicated, but did not immediately approach him or determine what were the contents of the plastic cup he held.

7. At this point, the attention of sergeant Eliason and officer Ogren was distracted by a young female, later identified as Patricia Hughes, walking from the patio garden area who displayed an exaggerated staggering gait and had red and glassy eyes. As Patricia Hughes moved through the premises she periodically needed the physical support of her companions. Patricia Hughes went onto the dance floor and moved about while continuing to noticeably stagger. When she walked from the dance floor, Patricia Hughes periodically needed the support of chairs or other structures to maintain her balance. As she walked through the premises, Patricia Hughes would take an unattended beverage container from a table or the sidebar and consume from it. Patricia Hughes was speaking with extremely slurred speech pattern and some of her statements were unintelligible. At one point, Patricia Hughes contacted another female and embraced her while kissing her and fondling the female's breasts. The other female had a tall glass containing liquid in her hand from which she periodically consumed. At various times, Patricia Hughes would take the other female's tall glass and consume from it. While this activity was going on the liquor control officers observed the licensee's security personnel standing within a few feet of Patricia Hughes and the other female and appeared to be watching the activity. No intervention was taken by the security personnel.

8. Sergeant Eliason approached the other female and asked her, "Why do you get to drink from a glass? Maybe its what you are drinking! What are you drinking." The female responded, " Maybe they ran out of cups but I'm drinking Jack Daniels and coke." Sergeant Eliason later seized the glass from the female and Patricia Hughes had been drinking.

9. During the entire investigation, no member of the licensee's staff approached Patricia Hughes or made any effort to remove any alcoholic beverage from her. Sergeant Cutlip, who was outside of The Vault with two Olympia Police Officers, was advised of the observations of the undercover officers. Officer Cutlip entered the licensed premises with the police officers and observed Patricia Hughes. Sergeant Cutlip observed that her eyes were glassy, that she had a heavy odor of intoxicants about her person, that she periodically needed support while standing, and that she mumbled while speaking. While sergeant Cutlip was observing her identification, Patricia Hughes performed a staggering dance in from him.

10. Sergeant Elaison surrendered the glass of liquid that had been taken from the other female to sergeant Cutlip. This was the glass from which Patricia Hughes had been consuming while being observed by the licensee's security personnel. The liquid from the glass was later analyzed by a Washington State Patrol toxicologist and determined to contain 6.9 percent ethanol.

11. Sergeant Cutlip contacted a member of the security staff and explained what he had observed. The security staff member advised sergeant Cutlip that he had the job of cutting off apparently job patrons. Sergeant Cutlip showed the security staff member Patricia Hughes. The security staff member agreed that Patricia Hughes was apparently intoxicated and should have been cut off, but that he had missed her.

From the foregoing findings of fact, the administrative law judge now enters the following conclusions of law:

#### CONCLUSIONS OF LAW

1. The Washington State Liquor Control Board has jurisdiction over the licensee who is the holder of a spirits, beer, wine restaurant liquor license issued by the board pursuant to chapter 66.24 RCW and is subject to the provisions of RCW 66.24.010.
2. Liquor licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the board. Any violations committed or permitted by employees will be treated by the board as violations committed or permitted by the licensee. WAC 314-11-015(1)(a).
3. Spirits is liquor. RCW 66.04.010(15) and (28).
4. Prior to supplying liquor to a patron or allowing that patron to possess or consume intoxicating liquor on the licensed premises, each licensee, or employee thereof, must use his or her normal powers of observation to see that which easily can be seen and hear that which easily can be heard under existing conditions and circumstances to determine if an individual customer is apparently intoxicated.
5. In determining if a person is apparently intoxicated, it is the person's demeanor, rather than the number of drinks served, that is the primary guide. A person is apparently intoxicated when the use of intoxicating liquors has affected her speech or caused it to become slurred, has caused her to display a lack of balance as indicated by swaying or staggering, or has caused her eyes to become glassy and bloodshot. Sergeant Eliason, officer Ogren, and sergeant Cutlip each testified that Patricia Hughes displayed these are signs of apparent intoxication. When a patron demonstrates a combination of these outward manifestations of apparent intoxication, the licensees, or their employees, are required to terminate both liquor service, possession and consumption.

6. During the early morning hours of August 30, 2008, Patricia Hughes was displaying numerous signs of apparent intoxication. Sergeant Eliason and officer Ogren, an experienced liquor control officers and a member of the security staff of the licensee observed these signs at close range. Each agreed that these signs of apparent intoxication were sufficiently manifest that Patricia Hughes should have been cut off from purchasing, consuming or possessing liquor on the licensed premises long before the liquor officers intervened.

7. No person shall sell any liquor to any person apparently under the influence of liquor. RCW 66.44.200(1). No person who is apparently under the influence of liquor may purchase or consume liquor on any premises licensed by the board. RCW 66.44.200(2)(a). Per RCW 66.44.200, licensees or employees may not supply liquor to any person apparently under the influence of liquor, or allow an apparently intoxicated person to possess or consume liquor on the licensed premises. WAC 314-11-035. Spirits is liquor. RCW 66.04.010(20) and (33) During the evening hours of January 28, 2006, and the early morning hours of August 30, 2008, Patricia Hughes was observed possessing a glass containing vodka, a spiritous beverage, and tonic while he was on the licensed premises in violation of RCW 66.44.200 and WAC 314-11-035.

8. 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. WAC 314-16-150(1). No retail licensee shall permit any person apparently under the influence of liquor to physically possess liquor on the licensed premises. WAC 314-16-150(2).

9. The Liquor Control Board may, in its discretion, suspend or cancel the liquor license and all rights of the licensee to keep and sell liquor thereunder, if the licensee has violated the provisions of RCW 66.44.200 or 314-11-035.

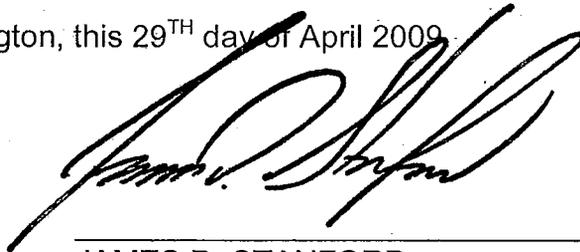
10. Violations of allowing the possession of liquor by persons under the influence of liquor on the licensed premises is a group 1 public safety violations. For a first violation of a group 1 violation the standard penalty adopted by the board is a five day liquor license suspension which may be vacated by the payment of a penalty of \$500. WAC 314-29-020. The board has established by a fair preponderance of the credible evidence that a group 1 public safety violation was committed by the licensee during the early morning hours August 30, 2008. For is violation, the spirits, beer, wine restaurant-lounge liquor license of the licensee may be suspended for a term of five (5) days, which may be vacated upon the payment of a monetary penalty of \$500.00.

From the foregoing conclusions of law, NOW THEREFORE,

INITIAL ORDER

IT IS HEREBY ORDERED That the board's complaint be sustained and that the liquor license privileges granted to Oddyssey Enterprises, LLC. doing business as The Vault, at 425 Franklin Street, Olympia, Washington, liquor license 081860-1F, be and the same are hereby suspended for a term of five (5) days, *Provided*, That the suspension of the license privileges may be vacated upon the payment of a monetary fine in the amount of five hundred dollars (\$500.00).

DATED at Olympia, Washington, this 29<sup>TH</sup> day of April 2009.

A handwritten signature in black ink, appearing to read "James D. Stanford", is written over a horizontal line.

JAMES D. STANFORD  
Administrative Law Judge  
Office of Administrative Hearings