BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: MARTIN PETELINZ 680 32ND STREET, APT 403 BELLINGHAM, WA 98225 PERMIT HOLDER MAST PERMIT NO. 120 388 518	LCB NO. 23,508 OAH NO. 2009-LCB-0019 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 December 3, 2009 at the Permit Holder's timely request for a hearing on the Administrative Violation Notice issued by the Liquor Control Board on February 10, 2009.

2. On May 5, 2009, the Board issued a Complaint alleging that on or about February 6, 2009 the MAST Permit Holder allowed or permitted an apparently intoxicated person(s) to consume and/or possess alcohol on a 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 Gordon Karg and the MAST Permit Holder, Martin Petelinz, represented himself.

4. On December 10, 2009 Administrative Law Judge Christy Gerhart Cufley entered her Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the Complaint.

5. No exceptions 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 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 Martin Petelinz, MAST Permit Number 120 388 518, are hereby suspended for a term of five (5) days. In lieu of a permit suspension, the Permit Holder may pay a monetary penalty in the amount of one hundred dollars ($100) due within 30 days of this order. If timely payment is not received, suspension will begin at 12:00 p.m. on February 25, 2010 until 12:00 p.m. on March 2, 2010. 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 5 day of January, 2010.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Ruthann Kurose

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).

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

IN THE MATTER OF : MARTIN PETELINZ 680 - 32nd Street, Apt 403 Bellingham, WA 98225 Permit Holder. Master Permit No. 120 388 518	OAH DOCKET NO. 2009-LCB-0019 Agency Case No. 23,508 **PROPOSED** FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL ORDER

STATEMENT OF THE CASE

On February 10, 2009, the Washington State Liquor Control Board (Board hereafter) issued an Administrative Violation Notice (AVN) to the MAST permit holder, Martin Petelinz, 680 - 32nd Street, Apt 403, Bellingham, Whatcom County, Washington, alleging that on or about February 6, 2009 Mr. Petelinz allowed an apparently intoxicated person to consume/possess alcohol in violation of WAC 314-16-150, and assessing as the civil penalty a five (5) day license suspension or a monetary penalty of one hundred dollars ($100.00) in lieu of suspension.

On May 8, 2009, the Board issued a formal written complaint alleging that "on or about February 6, 2009, the above-named MAST Permit Holder, allowed or permitted an apparently intoxicated person(s) to consume and/or possess alcohol on a licensed premises contrary to WAC 314-16-150." (Exhibit 7).

The permit holder filed a timely request for an administrative hearing, and a Pre-Hearing telephone conference was held on September 18, 2009.

The matter came on for hearing pursuant to due and proper notice at Bellingham, Washington, on December 3, 2009 before Christy Gerhart Cufley, Administrative Law Judge, Office of Administrative Hearings.

The MAST permit holder, Mr. Petelinz, appeared *pro se*.[1] The Education and Enforcement Division of the Washington State Liquor Control Board appeared and was

[1]Mr. Petelinz was previously advised at the pre-hearing telephone conference that he could retain legal counsel, but knowingly and voluntarily elected not to do so.

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represented by Gordon Karg, Assistant Attorney General. Liquor and Tobacco Enforcement Officers Darren Tinnerstet, (Sgt.) Rafael Lucatero, and (Lt.) Blair Smith appeared and presented testimony on behalf of the Board. Jaskarn Gill, (owner and licensee of the Slo Pitch Pub & Eatery), and employees Jessica Martin and Christopher Coulthurst, appeared and presented testimony on behalf of the permit holder.[2]

Based upon the evidence presented, the undersigned administrative law judge makes the following:

FINDINGS OF FACT

1. Martin Petelinz is the holder of a MAST (Mandatory Alcohol Server Training) permit (No. 120 388 518). He was employed by the Slo Pitch Pub & Eatery from approximately November 30, 2008 until July 1, 2009. The Slo Pitch Pub & Eatery, located in Bellingham, Whatcom County, Washington, is the subject premises in this matter, and is licensed to sell beer, wine, and spirits for on premises consumption.

2. The Board employs Liquor and Tobacco Enforcement Officers and assigns such officers to various geographical areas in the state of Washington. These officers are responsible for enforcing liquor and tobacco laws to ensure that licensees (and their employees) are in compliance with all applicable regulations governing alcohol and tobacco, and to prevent the misuse of these substances in licensed establishments. Such duties can entail conducting a premises check. A premises check involves an unannounced informal visit by LCB officers to generally gauge an establishment's conformity with applicable laws. Premises checks are usually conducted by more than one officer to ensure officer safety.

3. Liquor Enforcement Officer Darren Tinnerstet has been employed by the Board for approximately 2 years, Liquor Enforcement Officer (Sgt.) Rafael Lucatero has been employed by the Board for more than seven years, and Liquor Enforcement Officer (Lt.) Blair Smith has been employed by the Board for approximately 18 years (the last four as a supervisory Lieutenant). As part of their regular duties, these officers conduct premises checks by periodically visiting various licensed establishments to monitor compliance with applicable liquor and tobacco laws.

4. During their employment with the Board, each of these four LCB officers has received prior training in recognizing the signs of apparently intoxicated individuals. Their training

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[2]A companion case involving a notice of violation issued to Mr. Gill was originally consolidated with this matter for purposes of hearing only but settled prior to hearing. See OAH Docket No. 2009-LCB-0018 (Agency 23,507).

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includes, among other things, the procedure for identification of apparently intoxicated persons, and each officer is trained to recognize various signs of apparent intoxication. Prior to concluding that an individual is intoxicated or apparently intoxicated, officers look for the presence of several indications of apparent intoxication including, but not limited to the following: a demonstrated lack of coordination, lack of balance, walking with hesitation, stumbling or faltering, red or droopy or watery eyes, slurred speech, pronounced odor of alcohol, and/or other mannerisms suggestive that the person is not as fully cognizant as would be reasonably expected.

5. On February 6, 2009 Officers Tinnerstet , Lucatero, Smith, and Russom[3] conducted a premises check of the Slo Pitch Pub & Eatery, the licensed premises in this matter.[4] The four officers entered the subject premises at approximately 11:07 p.m. on that date.[5] Upon entering the premises, the officers alerted the security employee to their presence, then fanned out to various points of the establishment. There were approximately 15 patrons[6] in the lounge area of the establishment, music was playing (not overly loud), and the lighting was average.

6. Sgt. Lucatero went to the bar and immediately observed two male patrons, one of whom drew his attention due to his loud speech. As Sgt. Lucatero continued his observations, the male exhibited slurred speech, and his face was red. The patron picked up a glass believed to contain beer, drained it, then "slammed" it down on the bar. He swayed slightly, took out his wallet, fumbled it, dropping some of the contents, as well as his lighter, on the floor.

7. Lt. Smith was initially standing near the main entrance approximately 15-20 feet away from the bar when the subject patron also caught his attention and he moved closer. From approximately 10 feet away Lt. Smith observed the flushed face of the patron, and noted that

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[3]Officer Kevin Russom was observing in another part of the establishment, had no direct involvement with this incident, and did not appear at the administrative proceeding to provide testimony.

[4]The estimates of the number of premises checks conducted on February 6, 2009 differs slightly; Officer Tinnerstet estimates the number at 6-10, Sgt. Lucatero estimates the number at 5-10, and Lt. Smith estimates the number at 8-10.

[5]This visit was part of an emphasis patrol conducted during the weekend due to a high risk winter snow boarding event, and because the LCB had received a prior DUI report identifying the Slo Pitch Pub & Eatery as the last place allegedly visited by a defendant prior to a DUI arrest.

[6]Sgt. Lucatero estimates there were 6 -10 patrons present, Lt. Smith estimates there were 10-15 patrons present, and Officer Tinnerstet estimates there were 15-20 patrons present.

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his eyes were glassy, his facial features slack, his eyes were drooping and closing, he was leaning heavily on the bar, and he also observed the patron slam a glass down overly hard on the bar. Lt. Smith subsequently further observed the permit holder engage in a brief conversation with the patron, the patron partially refill his glass from the pitcher, and the fumbling and dropping of several items on the floor.

8. Lt. Smith approached the patron, identified himself as a Liquor Control Officer, and requested the patron's identification. The patron was argumentative, slow in responding, and exhibited an "overly upset demeanor." When Lt. Smith expressed concerns about the patron's sobriety (including concerns regarding the ability of the patron to safely operate a motor vehicle), the patron responded, "that's what happens when people drink a lot" and indicated he was not driving that evening. Sgt Lucatero was standing next to the patron and overheard this comment.

9. Both Sgt. Lucatero and Lt. Smith independently concluded that the subject patron (later identified by his Washington Driver Licence as Spencer Reed Thompson)[7] was apparently intoxicated based on his mannerisms, his slurred speech, his glassy eyes, flushed red face and exaggerated movements (e.g., "slamming" his glass on the bar).

10. After Mr. Thompson walked outside the premises to smoke a cigarette, Sgt. Lucatero obtained a sample of the amber colored liquid from the patron's glass, placing it into a sealed bottle. He personally delivered the sample to Officer Tinnerstet who labeled it, and then handed the sample directly to Lt. Smith who subsequently placed it in a locked evidence room. The sample was sent to the toxicology laboratory the following Monday, (February 9, 2009) where testing confirmed that the liquid was 3.8% ethanol (the alcohol content is consistent with that of light beer).[8]

11. The MAST permit holder, Martin Petelinz, was the bartender on duty, and was working at the licensed establishment from 9:30 p.m. on February 6, 2009 until 7:00 a.m. the following day (February 7, 2009). He was primarily responsible for the "pull tab" bar, and secondarily responsible for the adjoining bar area staffed by another waitress/bartender ("Stephanie") as well as performing other "bar back" duties.

12. After procuring the beer sample, Sgt. Lucatero requested Mr. Petelinz provide his MAST permit information to Officer Tinnerstet who recorded the MAST information. Sgt. Lucatero shared his observations and explained the violation to Mr. Petelinz. When he inquired as to what type of beer was in the glass and pitcher, Mr. Petelinz advised Sgt

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[7]See Exhibit 6.

[8]See Exhibit 4.

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Lucatero it was Coors Light beer and, further, that he had not noticed any of the signs of intoxication allegedly observed by Sgt Lucatero.

13. Sgt. Lucatero and Lt. Smith each personally observed Mr. Thompson both consume and possess alcohol while they were present at the subject premises on February 6, 2009. Officer Tinnerstet witnessed Mr. Thompson in possession of alcohol. Sgt. Lucatero testified he detected an odor of alcohol from Mr. Thompson, but did not include such in his written report.[9] When asked whether or not he smelled alcohol on Mr. Thompson's breath, Lt. Smith testified that he doesn't recall, and stated "I can't say I did;" however, in his written report Lt. Smith indicates he detected "... an odor of intoxicants on his (the patron's) breath."[10] Lt. Smith testified he did not inquire as to how much alcohol Mr. Thompson had consumed; there is an indication in Sgt. Lucatero's report that Lt. Smith asked Mr. Thompson how much alcohol he had consumed and that the response by Mr. Thompson was "a lot."[11]

14. The officers advised the owner they believed the circumstances constituted a violation of the applicable liquor laws, and advised that further contact would occur.

15. After directing Mr. Petelinz to remove the pitcher and beer, and receiving assurances that the patron would not be allowed to consume any more alcohol, all four officers exited the premises shortly before 11:30 p.m. estimating their total observation time within the subject premises to be approximately 15-20 minutes.

16. Sgt. Lucatero and Lt. Smith kept contemporaneous notes in their individual notebooks of their contact s that evening. Lt. Smith prepared a written WSLCB Property/Narrative Report on February 9, 2009;[12] Sgt Lucatero prepared a written Inter-Office Correspondence memo to Lt. Smith outlining the interaction.[13]

17. Based on his personal observations, those of Sgt. Lucatero, and a review of the permit holder's history, Lt. Smith concluded issuance of an Administrative Violation Notice (AVN) was appropriate. On February 10, 2009 Officer Tinnerstet and Lt. Smith served the AVN on the MAST permit holder, Martin Petelinz, who again expressed disagreement with the basis for its issuance.

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[9]See Exhibit 3.

[10]See Exhibit 2

[11]See Exhibit 2.

[12]See Exhibit 2.

[13]See Exhibit 3.

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18. Mr. Petelinz recalls that on February 6, 2009 the subject patron, Mr. Thompson, and another male ordered a pitcher of Coors Light beer from him. He checked their identification, and served them the beer in a pitcher along with two schooner glasses. The friend paid for the beer. Mr. Petelinz directly observed Mr. Thompson possess and consume the beer thereafter. He describes Mr. Thompson's demeanor and appearance as being the same as that exhibited on at least two other occasions (one between December 2008 and February 6, 2009 and another thereafter)--i.e., a flushed face, homely, and wearing dirty clothes. Mr. Petelinz subsequently served the patron food, and did not notice anything out of the ordinary; he did not notice overly loud conversation, did not notice glassy eyes or slurred speech, did not detect any odor of alcohol on Mr. Thompson's breath, and did not hear a glass slam loudly on the bar (although he acknowledges such behavior is a "dead ringer" that the individual may be intoxicated).

19. Mr. Petelinz viewed the surveillance video tape of the subject incident that evening with the current surveillance officer ("Patty"), and multiple times thereafter.[14] He kept notes in the bar book at the time of the incident, and later prepared a written statement incorporating those notes.[15]

20. Jessica Martin has been employed as a bartender by the Slo Pitch Pub & Eatery since September 2006, has approximately five years of prior employment experience as a bartender, and is herself the holder of a MAST permit. She was present as a patron at the subject premises on February 6, 2009 from approximately 6:00 p.m. until approximately 12:30 a.m. on February 7, 2009. She was not working, consumed no alcohol, and was present as the "designated driver" for her spouse and several of his friends. During the course of evening, she played pool and socialized with her spouse, his friends, and the owner.

21. Ms. Martin observed Mr. Thompson drink beer served to him by Mr. Petelinz, but does not otherwise recall making any direct observation of the patron until after the patron went outside following contact by the LCB officers. She followed Mr. Thompson outside and had a brief conversation with him wherein he indicated he was upset. She perceived him to be "completely coherent" (despite making some unclear reference to drugs being put into his beer), describes his eyes as "normal," did not observe any exhibition of slurred speech, and did not detect any odor of alcohol on his breath. She was approximately three feet from him during their conversation outside the establishment. She did not speak with the patron inside the establishment, but is familiar with him and indicates he is a "homely transient" who

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[14]Mr. Petelinz did not view the tape with Mr. Coulthurst present.

[15]See Exhibit 9.

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generally "looks the way he looked" on February 6, 2009. Following the conversation, Mr. Thompson reentered the establishment, and there was no further contact between the two. Ms. Martin acknowledges that the patron's comment about drugs in his beer was "not rationale." She did not hear Mr. Thompson slam a glass on the bar.

22. Christopher Coulthurst began employment with the Slo Pitch Pub & Eatery in 2001, and returned to employment with that business in May 2007. He remains employed as a surveillance room manager. He was present at the licensed premises on February 6, 2009 working his regularly scheduled shift that day from 9:00 a.m. until 9:00 p.m., and then remaining on the premises thereafter as a customer.

23. Mr. Coulthurst had no direct involvement with Mr. Thompson that evening, and recalls no specific observations made personally during the evening while in the premises. However, following the departure of the LCB Officers that evening, Jaskarn Gill (owner) requested he review the surveillance tape. In reviewing the tape, Mr. Coulthurst recognized Mr. Thompson, observed him drinking beer from a schooner glass, but did not observe any swaying or "wild mannerisms" nor did he observe Mr. Thompson drop any items. The tape is black and white, does not clearly show Mr. Thompson's eyes, and does not show any interaction between the LCB officers and Mr. Thompson.

24. Although a hard copy of the surveillance video was duplicated, good faith attempts to relocate that copy have been unsuccessful.

25. Jaskarn Gill is the president of Jaspar Holding and the licensee and owner of the Slo Pitch Pub & Eatery. He was present at the subject premises intermittently on February 6, 2009 and then continuously from approximately 8:00 p.m. until well after midnight. He spoke briefly with the officers on February 6, 2009 and again on February 10, 2009 when the AVN was served. He "was not really paying attention" to Mr. Thompson, but is familiar with the subject patron whom he describes as "just a loud guy... greasy haired, unclean... a transient like" individual with a "constant worn out" and "beat up look" to him. Mr. Gill is familiar with Mr. Thompson from prior contact at the establishment, and indicates his appearance on February 6, 2009 including slow moving and slurred speech is "just the way he is day or night."

26. Mr. Gill also reviewed the surveillance tape of the subject incident (which he believes was in color). He is uncertain whether his recollection is from personal observation at the premises or from the video, but he does not believe Mr. Thompson was intoxicated to any level at all, was not staggering, did not exhibit any imbalance when observed walking to/from the restroom, and that he did "absolutely not" display any signs of apparent intoxication. Mr. Gill observed Mr. Thompson drop items on the floor and consume beer. Mr. Gill does not believe Mr. Petelinz "did anything wrong,"and conducts thorough staff training regarding

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compliance with all liquor and tobacco laws, including emphasizing the importance of watching for signs of apparent intoxication and taking appropriate action.

27. The Board has issued no prior AVNs to the permit holder within the preceding three years.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter pursuant to chapters 66.44, 34.12, and 34.05 RCW, and chapters 10-08, 314-11, and 314-16, and 314-17 WAC.

2. As the holder of a MAST permit, Mr. Petelinz is subject to the jurisdiction of the Washington State Liquor Control Board. The permit is subject to the conditions and restrictions imposed by Title 66 RCW, and chapters 314–11, 314-16, and 314-17 WAC. Proceedings involving agency action are adjudicative proceedings under chapter 34.05 RCW. The Board has authority to assign such proceedings to an administrative law judge pursuant to chapter 34.12 RCW. A proper hearing was provided in this case.

3. RCW 66.44.200(1) prohibits the sale of liquor to any person apparently under the influence of liquor. The definition of liquor includes spirits. RCW 66.04.010(23). RCW 66.44.200 further provides in relevant part as follows:

> (2)(a) No person who is apparently under the influence of liquor may purchase or consume liquor on any premises licensed by the board.
>
> (b) A violation of this subsection is an infraction punishable by a fine of not more than five hundred dollars.

4. Chapter 314-11 WAC sets forth general requirements for liquor licenses (WAC 314-11-005) and outlines the responsibilities of a liquor licensee and employees of a liquor licensee (WAC 314-11-015). Further, WAC 314-11-005(2) specifically references restrictions against alcohol service to apparently intoxicated persons.

5. WAC 314-11-035 further provides as follows:

> 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.

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6. The provisions of WAC 314-16-150 provide in relevant part 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.

7. As a seller of alcohol, individual permit holders are charged with the responsibility of preventing over service of alcohol to patrons. The question for resolution by the undersigned is whether or not the permit holder, Martin Petelinz, supplied liquor to an apparently intoxicated person and/or allowed an apparently intoxicated person to possess and/or consume liquor at the licensed premises on February 6, 2009.

8. There is no question that Mr. Thompson was both in possession of and actually consuming alcohol at the subject premises on February 6, 2009. There is no dispute that such was allowed by Mr. Petelinz (who candidly acknowledges he served a pitcher of Coors Light beer to Mr. Thompson and his friend). The sole remaining question is whether or not Mr. Thompson was an apparently intoxicated individual.

9. Resolution of the issues in this case depends in large part upon the credibility of the testimony presented by individuals at the hearing. The testimony provided by the permit holder and his witnesses disputes the testimony provided by the Board.

10. The sworn testimony presented by three experienced liquor enforcement officers is afforded a great deal of weight. Their conclusion that Mr. Petelinz had allowed an apparently intoxicated person to possess/consume alcohol was based on first-hand observations of the demeanor of Mr. Thompson; their observations were further supported by his verbal statements that "that's what happens when people drink too much." The LCB officers have prior training and experience in recognizing the symptoms of an apparently intoxicated person. Had they described only one or two indications of apparent intoxication, such might raise reasonable questions as to whether another valid explanation existed for the patron's behavior and demeanor, and the decision herein might otherwise be different. However, Sgt. Lucatero and Lt. Smith observed several mannerisms and behavior that, particularly when viewed collectively, are indicia of an apparently intoxicated individual. Their description of the patron's demeanor would be sufficient for any reasonable person, let alone a trained MAST permit holder, to have drawn same conclusion.

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11. As specifically noted during the administrative hearing, there is no requirement that an individual be actually intoxicated; the presence of the patron on the licensed premises in possession of and consuming alcohol coupled with the credible observations of the officers set forth above is sufficient to satisfy the necessary elements of proof. Thus, it is not now necessary to resolve the discrepancies in the testimony and reports as to whether or not there was an odor of intoxicants present on the breath of Mr. Thompson.

12. After careful review of the record, including consideration of the parties' demeanor, motivation, and logical persuasiveness of the testimony presented, the undersigned concludes the candid testimony presented by three trained and experienced officers based on their personal, direct observations of Mr. Thompson is deemed credible and establishes Mr. Thompson was apparently intoxicated at the subject premises on the evening of February 6, 2009.

13. Based upon careful consideration of the evidence, including the demeanor and motivation of the parties, the reasonableness of the testimony, and the totality of the circumstances presented, the undersigned concludes that the Board has established by a preponderance of credible evidence that the MAST permit holder, Martin Petelinz, on February 6, 2009 allowed an apparently intoxicated individual to possess/consume alcohol on the subject premises. Accordingly, the complaint issued by the Board on May 8, 2009 that the permit holder served alcohol to an apparently intoxicated individual on February 6, 2009 in violation of WAC 314-16-150 is AFFIRMED.

14. The provisions of WAC 314-29-015 outline the penalties if a licensee or employee violates liquor laws or rules, and delineate penalties for violations into the following four categories:

(a) Group One – Public safety violations, WAC 314-29-020.
(b) Group Two – Conduct violations, WAC 314-29-025.
(c) Group Three – Regulatory violations, WAC 314-29-030.
(d) Group Four – Violations involving the manufacture, supply, and/or distribution of liquor by nonretail licensees and prohibited practices between nonretail licensees and retail licensees, WAC 314-29-035.

24. WAC 314-29-015 also specifies that for the purposes of chapter 314.29 WAC, a three-year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred. WAC 314-29-015(3). Based on mitigating or aggravating circumstances, the Board may impose a different penalty than the standards specified in the schedules.

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25. WAC 314-17-105 sets forth the standard penalties to be assessed if a permit holder violates a liquor law or rule. The sale or service of alcohol to, or permitting consumption or possession by, an apparently intoxicated person is classified as a Group 1 violation which provides for a five (5)-day license suspension or a $100 monetary option in lieu of license suspension for the first offense within a three-year window, a ten (10) day suspension or $200 monetary option fine in lieu of license suspension for a second violation within a three-year window, a thirty (30) day license suspension or a $400 monetary option in lieu of license suspension for a third violation within a three-year window, and revocation of the permit for a fourth violation within a three year period. WAC 314-17-1050.

26. The Board's proposed penalties are within the Board's authority under RCW 66.44.010 and reflect the standard penalties generally prescribed by chapter 314-17 WAC.

From the foregoing conclusions of law, NOW THEREFORE,

INITIAL ORDER

IT IS HEREBY ORDERED, that the Board's Complaint dated May 8, 2009 alleging that on or about February 6, 2009 the MAST permit holder, Martin Petelinz, MAST Permit No. 120 388 518, is subject to imposition of a five (5) day license suspension or payment of a civil monetary penalty in the amount of one hundred dollars ($100) in lieu of suspension to be determined on a date set by the Board in its final order.

Dated at Seattle, Washington this 10th day of December, 2009.

By Christy Gerhart Cufley
Christy Gerhart Cufley
Administrative Law Judge
Office of Administrative Hearings

A copy of the Proposed Findings of Fact, Conclusions of Law, and Initial Order was mailed on the ___ day of December, 2009 to the following parties and representatives:

Martin Petelinz
680 32nd Street, Apt 403
Bellingham, WA 98225

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STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

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 Seattle, Washington, this 10TH day of December, 2009.

L. Williams

Representative, Office
of Administrative Hearings

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Washington State
Liquor Control Board

January 8, 2010

Martin Petelinz
680 32nd Street, Apt 403
Bellingham, WA 98225

Gordon Karg, AAG
GCE Division, Office of Attorney General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

RE: ***FINAL ORDER OF THE BOARD***
ADMINISTRATIVE VIOLATION NOTICE NO. 3N9037B
MAST PERMIT NO. 120 388 518
LCB HEARING NO. 23,508
OAH NO. 2009-LCB-0019

Dear Parties:

Enclosed please find a Declaration of Service by Mail and a copy of the Final Order in the above referenced matter

The applicable monetary penalty option is due by 5:00 pm on February 8, 2010 or suspension will take place as indicated in the Final Order.

If you are sending in payment, please send it to the mailing address in the Final Order and label the check with your MAST Permit and Administrative Violation Notice numbers listed above. If you have any questions, please contact me at (360) 664–1602.

Sincerely,

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Bellingham Enforcement and Education Division, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: MARTIN PETELINZ 680 32ND STREET, APT 403 BELLINGHAM, WA 98225 PERMIT HOLDER MAST PERMIT NO. 120 388 518	LCB NO. 23,508 OAH NO. 2009-LCB-0019 DECLARATION OF SERVICE BY MAIL

I declare under penalty of perjury under the laws of the state of Washington that on January 8, 2010, I served a true and correct copy of the FINAL ORDER OF THE BOARD in the above-referenced matter, by placing a copy of said documents in the U.S. mail, postage prepaid, to all parties or their counsel of record.

DATED this 8th day of January, 2010, at Olympia, Washington.

Kevin McCarroll, Adjudicative Proceedings Coordinator

MARTIN PETELINZ 680 32ND STREET, APT 403 BELLINGHAM, WA 98225-6927	GORDON KARG, ASSISTANT ATTORNEY GENERAL, GCE DIVISION OFFICE OF THE ATTORNEY GENERAL 1125 WASHINGTON STREET SE PO BOX 40100 OLYMPIA, WA 98504-0100

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