

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

ROSEMARY RICHEY
D/B/A WILLIES HI LEAD INN
456 MAPLE ST
HAMILTON, WA 98255

LICENSEE

LICENSE NO. 352385

LCB NO. 23,537
OAH NO. 2009-LCB-0047

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 April 20, 2010 at the Licensee's timely request for a hearing regarding an Administrative Violation Notice alleging that on February 14, 2009, the licensee allowed or permitted an apparently intoxicated person to consume and/or possess liquor on the licensed premises. A formal written complaint alleging that such actions occurred and the actions violated WAC 314-16-150 was issued on November 4, 2009.
2. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Gordon Karg, and Rosemary Richey represented the Licensee.
3. On June 9, 2010 Administrative Law Judge Christy Gerhart Cufley entered her Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the Complaint.
4. No petitions for review were filed by the parties.
5. 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

FINAL ORDER OF THE BOARD

1

Rosemary Richey d/b/a Willie's High Lead
Inn

LCB NO. 23,537

be, and the same hereby are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board, with the following changes and corrections:

The "Agency No." in the caption is corrected to read "LCB No. 23,537"

The reference to "Officer H.P. "Bud" Fish" on page 2 of the Initial Order, second paragraph shall be corrected to refer to him as "H.F. 'Bud' Fish.

In Finding of Fact Nos. 30 and 31, the spelling of Mr. Bergem's name should be "Bergem", not "Bergman".

In Finding of Fact 10, the last five words are modified to read: "due to officer safety issues".

The Board does not adopt Conclusion of Law No. 3, as it simply quotes the language of a statute that the licensee was not charged with violating.

The Board does not adopt Finding of Fact No. 29, as it consists mainly of hearsay and double hearsay. The facts contained in this finding do not add anything to the decision process.

In Conclusion of Law No. 9, the extra words "account for" in the last sentence is deleted, so that the sentence reads: "Medical conditions cited by Mr. Bergem do not negate the officers' credible observations and conclusions."

Having affirmed the Initial Order, with corrections, IT IS HEREBY ORDERED that the liquor license privileges granted to Rosemary Richie d/b/a High Lead Inn, License No. 352385, 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 two-thousand five-hundred dollars (\$2,500) due within 30 days of this order. If timely payment is not received, suspension will begin at 10:00 a.m. on September 9, 2010 until 10:00 a.m. on September 14, 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 3 day of August, 2010.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Richard Kuvoze

Linda V. Bremer

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).



Washington State
Liquor Control Board

August 4, 2010

Rosemary Richey, Licensee
d/b/a Willies Hi Lead Inn
PO Box 431
Hamilton, WA 98255-0431

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. 3D9045A
LICENSEE: Rosemary Richey
TRADE NAME: Willies Hi Lead Inn
LOCATION: 456 Maple St, Hamilton, WA 98255
LICENSE NO. 352385-3C
LCB HEARING NO. 23,537
OAH NO. 2009-LCB-0047
UBI: 602 049 825 001 0001

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 is due by September 3, 2010 or suspension will take place on the dates indicated in the Final Order.

When you are sending in payment, please use the mailing address indicated in the Final Order and label the check with your License 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
Amber Harris, WSLCB

PO Box 43076, 3000 Pacific Ave. SE, Olympia WA 98504-3076, (360) 664-1602 www.liq.wa.gov

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2
3 **WASHINGTON STATE LIQUOR CONTROL BOARD**

4 IN THE MATTER OF:

5 ROSEMARY RICHEY
6 d/b/a WILLIES HI LEAD INN
7 456 MAPLE ST
8 HAMILTON, WA 98255

LCB NO. 23,537
OAH NO. 2009-LCB-0047

DECLARATION OF SERVICE BY
MAIL

9 LICENSEE

10 LICENSE NO. 352385-3C

11 I declare under penalty of perjury under the laws of the state of Washington that on
12 August 4, 2010, I served a true and correct copy of the FINAL ORDER OF THE BOARD in the
13 above-referenced matter, by placing a copy of said documents in the U.S. mail, postage
14 prepaid, to all parties or their counsel of record.

15 DATED this 4th day of August, 2010, at Olympia, Washington.

16 
17 Kevin McCarroll
18 Kevin McCarroll, Adjudicative Proceedings Coordinator

19 ROSEMARY RICHEY, LICENSEE
20 d/b/a WILLIES HI LEAD INN
21 PO BOX 431
22 HAMILTON, WA 98255-0431

GORDON KARG, ASSISTANT ATTORNEY
GENERAL, GCE DIVISION
OFFICE OF THE ATTORNEY GENERAL
1125 WASHINGTON STREET SE
PO BOX 40100
OLYMPIA, WA 98504-0100

23 ROSEMARY RICHEY
24 d/b/a WILLIES HI LEAD INN
456 MAPLE ST
HAMILTON, WA 98255

25
26
DECLARATION OF SERVICE BY
MAIL

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

ORIGINAL

IN THE MATTER OF :

Rosemary Richey
d/b/a Willie's High Lead Inn

Licensee.

License No. 352385

OAH No. 2009-LCB-0047
Agency No. 22,537

PROPOSED
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
INITIAL ORDER

LIQUOR CONTROL BOARD
BOARD ADMINISTRATION

JUN 22 2010

RECEIVED

STATEMENT OF THE CASE

On March 31, 2009 the Washington State Liquor Control Board, Education and Enforcement Division (Board hereafter) issued an Administrative Violation Notice (AVN) to the Licensee, Rosemary Richey, d/b/a Willie's High Lead Inn, 456 Maple Street, Hamilton, in Skagit County, Washington, alleging that on February 14, 2009 the licensee allowed or permitted an apparently intoxicated person to consume and/or possess liquor on the licensed premises in violation of WAC 314-16-150, and assessing as the civil penalty a five (5) day license suspension or a civil monetary penalty in the amount of two thousand five hundred dollars (\$2,500) in lieu of suspension.

On November 4, 2009, the Board issued a formal written complaint alleging that "on or about February 14, 2009, the above-named Licensee, or an employee(s) thereof, allowed a person apparently under the influence of liquor to possess liquor on the licensed premise in violation of WAC 314-16-150."¹

The licensee filed a timely request for an administrative hearing on April 13, 2009.²

¹Exhibit 8. It is noted that language contained in the Complaint does not reference consumption of liquor as does language contained in the AVN, and, further, that the Complaint does not include a full citation to WAC 314-16-150(2).

²Exhibit 2, p. 1.

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

Office of Administrative Hearings
600 University St., Suite 1500
Seattle, WA 98101-2376
(206) 389-3400 1-800-845-8830
FAX (206) 587-5135

The matter came on for hearing pursuant to due and proper notice at Bellingham, Washington, on April 20, 2010 before Christy Gerhart Cufley, Administrative Law Judge, Office of Administrative Hearings.

The licensee, Rosemary Richey, d/b/a Willie's High Lead Inn, appeared and was represented by Rosemary Richey, Owner. The Education and Enforcement Division of the Washington State Liquor Control Board appeared and was represented by Gordon Karg, Assistant Attorney General. Liquor Enforcement Officers H.P. "Bud" Fish and Sgt. Rafael Lucatero appeared and presented testimony on behalf of the Board. Jesse Curtis (former bartender), Richard Bergem, and Tom and Mary Zankich appeared and presented testimony on behalf of the licensee.

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

FINDINGS OF FACT

1. Rosemary Richey is the licensee and owner of Willie's High Lead Inn, located at 456 Maple Street, in Skagit County, Washington. Such establishment is the subject premises in this matter, and is licensed to sell beer, wine, and spirits for on premises consumption.
2. H. F. "Bud" Fish has been employed by the Washington State Liquor Control Board (WSCLB) for approximately 11 years. He has approximately 30 years of prior law enforcement experience with the Washington State Patrol both as a line trooper and detective. During his 40 years of law enforcement experience, he has observed "thousands" of apparently intoxicated individuals.
3. Rafael Lucatero has been employed by the Washington State Liquor Control Board (WSCLB) for more than seven years, and has had prior training in recognizing the signs of apparent intoxication. During his tenure with the Board, Sgt. Lucatero has observed "a few hundred" apparently intoxicated individuals in conjunction with his professional employment responsibilities.
4. Officer Fish received a telephone call at approximately 8:00 p.m. on February 14, 2009 from the Washington State Patrol advising that a one car fatality accident had occurred earlier in the evening just east of the subject premises, and that the driver and the (deceased) passenger were suspected of having previously consumed liquor at the licensed premises prior to the collision. Officer Fish subsequently contacted Sgt. Lucatero to request his assistance (after having first stopped at the hospital), then traveled to Sgt. Lucatero's residence, and the two drove to the area where the fatal collision had occurred.

PROPOSED
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5. The two officers then proceeded to the subject premises and entered the establishment at approximately 10:30 p.m. on February 14, 2009. Their intent was to conduct an investigation into whether or not any over service had occurred related to the fatal collision. The two were attired in casual civilian clothing with no indicators as to their status as law enforcement officers (other than a WSLCB Police cap worn by Officer Fish). Their sole intent was to follow up on the vehicular homicide investigation.

6. Upon entering the premises, the officers noted there were approximately 30 patrons present, the inside of the establishment was filled with smoke as many patrons were smoking cigarettes, and the lighting was dim (but such that a menu could be read unassisted), with it being "fairly light" behind the bar and darker in other areas of the establishment. Two employees were present: Jesse Curtis, bartender, and Rene Vance, waitress.

7. Officer Fish approached the bartender on duty, Jesse Curtis, and while the two were engaged in conversation Sgt. Lucatero "almost immediately" noticed an older white male, later identified as Richard Carl Bergem ("Hippy Rick") by his Washington Driver License.³ Sgt. Lucatero observed Mr. Bergem staggering toward the bar with a drink in his hand, stumbling through the crowd of patrons, bumping into them while seemingly oblivious to doing so, and sitting slowly and deliberately on a bar stool directly in front of Mr. Curtis while holding on to the bar for support. Sgt. Lucatero continued to observe Mr. Bergem as he consumed a beverage (later determined to be whisky and seven) and noticed that Mr. Bergem had the following signs of apparent intoxication: droopy/sleepy eyelids; red, blood shot eyes; was yelling loudly; had slurred speech; and swayed as he sat on the bar stool. Mr. Bergem was in plain view of both Mr. Curtis and Ms. Vance.

8. Officer Fish spoke with the bartender on duty, Jesse Curtis, initially advising him that the officers were there to investigate a traffic fatality. There was some general discussion regarding the topic of "apple pie" or "apple cider"⁴ based on suspicions that the individuals involved in the fatal motor vehicle accident may have been transporting illegal substances.

9. Although Officer Fish initially went behind the bar when he first approached Mr. Curtis, he and Mr. Curtis subsequently went into a nearby storage room/kitchen area to continue their discussion leaving the only other employee on duty, Rene Vance, present behind the bar.

³Exhibit 6.

⁴This is an undistilled (i., uncooked) alcoholic beverage made with Ever Clear and often commonly referred to as "moonshine."

10. Officer Fish is certain that no one other than Sgt. Lucatero was near enough to hear his conversation with Mr. Curtis and then subsequently with Mr. Curtis because Officer Fish would have noted anyone present within his immediate vicinity due to offer safety issues.

11. Based on his observations, Sgt. Lucatero believed the patron appeared to be apparently intoxicated, and informed Officer Fish of his observations. It was at this point that the officers indicate the focus of the investigation changed from a traffic fatality to that of a possible over service violation.

12. The officers assert Mr. Curtis agreed that Mr. Bergem was apparently intoxicated and that he expressed concern that he "didn't know how he could have missed it" except that the lighting was perhaps too low. Mr. Curtis advised the officers that Mr. Bergem was drinking a "whiskey and seven." Mr. Curtis complied with the request that he "pull" the drink and bring both the drink and Mr. Bergem to the officers in the kitchen. Sgt. Lucatero took a sample of the drink for further testing. The licensee stipulates to the drink containing alcohol.⁵

13. When Officer Fish initiated his contact with Mr. Bergem, Sgt. Lucatero further noticed the strong odor of intoxicants on Mr. Bergem's breath. Sgt. Lucatero was present and heard their conversation, but did not actively participate in it. During the conversation between Officer Fish and Mr. Bergem, Sgt. Lucatero did not hear Mr. Bergem comment to Officer Fish that even though he agreed he was apparently intoxicated, "it's okay, I'm not driving."⁶ When Sgt. Lucatero also advised Mr. Bergem of his belief that he was apparently intoxicated, Mr. Bergem expressed concerns that he did not want Mr. Curtis or the establishment to "get into trouble." Mr. Bergem did not indicate to the officers that he had any disability issues which would account for his apparently intoxicated appearance.

14. Officer Fish indicates his subsequent observations of Mr. Bergem were "absolutely not" colored by the fatal traffic accident, and that he drew his own conclusion regarding the apparent intoxication of Mr. Bergem based on his personal observation and prior experience.

⁵A toxicology report subsequently confirmed the presence of ethanol (4.3%). In light of the stipulation by the licensee that the drink in possession of Mr. Bergem on February 14, 2009 contained alcohol, evidentiary issues related to the chain of custody of the drink sample are not addressed further. (Exhibit 5, Exhibit 7).

⁶In fact, consumption of alcohol by apparently intoxicated patrons on licensed premises is prohibited irrespective of whether or not said individuals are driving.

**PROPOSED
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Office of Administrative Hearings
600 University St., Suite 1500
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15. The officers departed the subject premises at approximately 10:55 p.m. that evening.

16. Officer Fish prepared a written narrative report of the incident ;⁷ Sgt. Lucatero prepared a written summary of the events of the evening dated February 18, 2009.⁸

17. Based on the observations and a review of the licensee's prior AVN history, Officer Fish concluded it was appropriate to issue an Administrative Violation Notice (AVN) to the licensee for one count of over service (allegedly occurring on February 14, 2009).

18. No AVNs were issued to the individual employees (i.e., the bartender or the waitress) involved.⁹

19. On March 31, 2009 Sgt. Lucatero (accompanied by fellow Officer Kevin Russom) served the AVN at issue herein on the licensee at the subject premises, and explained the various options.¹⁰ Ms. Richey advised the officers that Mr. Bergem has medical issues, that he always stumbles, is loud, and always looks like he is apparently intoxicated.

20. On April 13, 2009 the licensee advised the Board of her request for a formal administrative hearing.¹¹

21. Rosemary Richey has been the owner and sole proprietor of the subject establishment since approximately 2000. The maximum occupancy for the establishment is 49, and she employs two individuals. She states Mr. Bergem always looks the same whether or not he has consumed alcohol, that he has several medical conditions which prevent him from sitting still or straight, that his eyes are always red, and that he "always looks intoxicated." She was not present on the evening in question, but does not believe

⁷Although not dated, Officer Fish indicates he "probably" completed the document on February 15, 2009 from notes he kept contemporaneously with the events of the evening. (Exhibit 3).

⁸Exhibit 4.

⁹It is not uncommon for the Board to issue AVNs to both the individual employee and the licensee based on the same incident.

¹⁰Although the AVN is signed by Officer Fish, he did not participate in its service on the licensee on March 31, 2009. (Exhibit 1, page 1).

¹¹Exhibit 2, p. 1.

Mr. Bergem was over served. She does not believe Sgt. Lucatero served her the AVN on March 31, 2009.

22. Jesse Aaron Curtis began employment for the licensee in approximately mid-December, 2008, and last worked in approximately December 2009. He is the holder of a Mandatory Alcohol Server Training (MAST) permit.

23. When Mr. Curtis arrived at work to begin his regularly scheduled shift at 6:00 p.m. on February 14, 2009, Mr. Bergem was already present in the establishment. Mr. Curtis estimates he served Mr. Bergem three or four drinks ("whisky and seven") between the time he arrived at work and the time the Officers arrived at approximately 10:30 p.m. Mr. Curtis is unaware whether or not Mr. Bergem had consumed alcohol prior to arriving for his scheduled shift, and if so, how much or where such consumption might have taken place.

24. Mr. Curtis indicates he cannot now recall with specificity the circumstances of that evening because "it was a year ago," but "from (his) recollection" he does not believe Mr. Bergem was intoxicated. He describes Mr. Bergem as being "relaxed," but does not recall him swaying or bumping into other patrons. He indicates Mr. Bergem "normally looks tired and has a limp." Mr. Curtis has "cut-off" (removed a drink from) Mr. Bergem on prior occasions when he was "drunk."

25. Mr. Curtis denies making the statements to the officers that are attributed to him, but did prepare a written statement at approximately 3:30 a.m. on February 15, 2009 setting forth certain portions of his conversation with the officers. His written statement does not include any of the statements attributed to him by the officers (i.e., that he acknowledged Mr. Bergem's apparent intoxication, had not noticed such due to dim lighting, etc). Following completion of his written statement at the licensed premises, he departed the premises at approximately 4:00 a.m. on February 15, 2009,

26. Tony and Marcia Zankvich are personal friends of the licensee who assist her with certain aspects of her business operation. Mr. Zankvich performs miscellaneous repairs and maintenance; Ms. Zankvich assists with bookkeeping and occasional ordering of supplies. Neither serves alcohol nor does either have a MAST permit. While they do not supervise employees, they do "make suggestions."¹² They are frequently present in the establishment to help out as needed including "watching" patrons and resolving problems that may arise. They were both present in the subject establishment during the evening

¹²Such suggestions include advising employees if they are "pouring too heavy" and calling for the assistance of law enforcement "a few years back." Other evidence suggests employees regard them as managers (Mr. Curtis refers to Mr. and Mrs. Zankvich as his "supervisors").

of February 14, 2009 from approximately 9:00 pm until the early morning hours of February 15, 2009; they each assert they consumed no alcohol that evening.

27. Ms. Zankvich describes the subject premises as "the only local bar around." She confirms her observations of Mr. Bergem's eyes on February 14, 2009 as being "watering, and blood shot--more than usual", but states Mr. Bergem indicated he had been working with sawdust at his job as a carpenter earlier in the day.

28. Mr. Zankvich testified that he believes Mr. Bergem arrived at the premises at approximately 7:30 p.m. on February 14, 2009 based on his observations of Mr. Bergem's vehicle parked outside the establishment when Mr. Zankvich drove by earlier that evening.

29. Mr. Zankvich signed a written statement dated February 15, 2009 regarding some of his perceptions and observations from the evening at issue. He indicates that Mr. Bergem "always looks like he's stoned" and that Mr. Bergem advised Officer Fish that he (Mr. Bergem) had three to four drinks and dinner over a five-hour period.¹³ Mr. Zankvich does not know whether or not Mr. Bergem consumed any alcohol prior to arriving at the subject premises on February 14, 2009. He believes "most likely not" since he is familiar with Mr. Bergem, believes Mr. Bergem worked all that day, and knows Mr. Bergem doesn't drink on the job. Mr. Zankvich candidly acknowledges "people (do) get drunk out at home."

30. Mr. Bergem arrived at the subject premises at approximately 4:30 p.m. on February 14, 2009. He states he ordered one "whisky and seven" from the bartender then on duty (not Mr. Curtis) as well as dinner. He further indicates he was then served another approximately four drinks by Mr. Curtis.¹⁴ Mr. Bergem states he has never before been "cut off" by Mr. Curtis, denies the statement attributed to him by the officers (with the exception that he may have stated he did not want anyone to get into trouble but simply does not recall with certainty), that he "really don't remember all that much about it...it's been so long ago."

31. Following the events of the evening in question, Ms. Zankvich suggested to Mr. Bergem that he prepare a written statement. Ms. Zankvich typed up his handwritten notes several days later; although the statement is dated as being signed on February 15, 2009,

¹³Exhibit 13, p.2.

¹⁴The number of drinks per se is not determinative of alcohol impairment.

Mr. Bergem believes he actually signed it several days later after Ms. Zankvich typed it for him.¹⁵

32. Mr. Bergem indicates that due to injuries suffered in an accident in 1986 he is missing part of his left knee and ankle and is disabled due to back and neck injuries. None of his medical conditions would result in eye problems (such as red, bloodshot, watery eyes or droopy eyelids).

33. Both officers emphatically deny that the appearance of Mr. Bergem at the administrative hearing held on April 20, 2010 is at all the same as their observations of his appearance on February 14, 2009. Neither of the officers observed any sawdust on the clothes or person of Mr. Bergem on February 14, 2009. Neither of the officers had any direct contact with Tom or Marcia Zankvich on February 14, 2009.

34. The Board has issued one prior AVN to the licensee within the preceding two years for service to an apparently intoxicated person (violation date of September 14, 2007); the licensee elected to serve a 10-day license suspension.¹⁶

35. The Washington State Liquor Control Board seeks to prevent the misuse of alcohol and tobacco and to promote public safety through controlled retail and wholesale distribution, licensing, regulation, enforcement, and education.

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, 314-16, and 314-29 WAC.

2. As the holder of a liquor license, the licensee, Rosemary Richey d/b/a Willie's High Lead Inn, is subject to the jurisdiction of the Washington State Liquor Control Board. The license is subject to the conditions and restrictions imposed by Title 66 RCW, and chapters 314-11, 314-16, and 314-29 WAC. Proceedings involving agency action are adjudicative proceedings under chapter 34.05 RCW. The Board has authority to assign such

¹⁵The written document repeatedly misspells Mr. Bergem's name as "Bergen" (including the signature line where Mr. Bergem affixed his signature). Such is deemed to be scrivener's error by the typist (Ms. Zankvich), and Mr. Berem adopted the statement as his own. Exhibit 12.

¹⁶AVN No. 3C7257A (Exhibit 10) The Board reduced the original proposed penalty from a 15- day license suspension to ten days or \$5,500 monetary penalty in lieu of suspension .

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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.

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 apparently under the influence of liquor; nor shall any licensee or employee thereof permit any person ... 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 the holder of a liquor license and a seller of alcohol, the licensee is charged with the responsibility to control the licensed premises at all times, and to ensure full compliance with all properly promulgated laws regarding the sale and service of liquor including the prevention of over service of alcohol to patrons. The licensee is further

charged with the responsibility for ensuring the actions of its employees comply with all applicable liquor laws.¹⁷

8. The question for resolution by the undersigned is whether or not an employee of the licensee allowed an apparently intoxicated person to possess liquor at the licensed premises on or about February 14, 2009 in violation of WAC 314-16-150(2).¹⁸

9. Two officers with prior training and experience in recognizing the symptoms of an apparently intoxicated person observed Mr. Bergem at the licensed premises on February 14, 2009 at approximately 10:30 p.m. Both Officer Fish and Sgt. Lucatero observed a variety of mannerisms and behavior that, particularly when viewed collectively, are indicia of an apparently intoxicated individual. Medical conditions cited by Mr. Bergem do not account for negate the officers' credible observations and conclusions.

10. The licensee and witnesses for the licensee do not present testimony which credibly rebuts that presented by Officer Fish and Sgt. Lucatero. Although the licensee disputes the testimony presented by these two officers, she candidly acknowledges she was not present at the licensed premises on the evening of February 14, 2009. Moreover, the testimony of the witnesses is at times internally inconsistent (for example when Mr. Curtis says he has "cut off" Mr. Bergem on prior occasions yet Mr. Bergem testifies he has never been "cut off" by Mr. Curtis; when Mr. Zankvich testifies that he believes Mr. Bergem arrived at the premises at 7:30 while Mr. Bergem states he arrived at 4:30; and so on). The witnesses take offense at the demeanor allegedly demonstrated by the officers and describe in negative terms the attitudes of the officers and their interaction with them. However, even assuming, *arguendo* that such perceptions are accurate, such is essentially irrelevant to the facts of this case.

11. Given the observations as credibly described by both Officer Fish and Sgt. Lucatero in their testimony and written reports, the undersigned concludes that the preponderance of credible evidence establishes that Mr. Bergem was apparently

¹⁷Operation of any premise licensed to sell alcohol admittedly presents inherent and ongoing challenges for achieving a balance between providing sufficient liquor to create satisfied customers while still obeying all relevant liquor laws prohibiting over service and unlawful conduct.

¹⁸Although as noted previously, the Complaint does not reference section (2) of WAC 314-16-150; such is deemed harmless scrivener's error and is not prejudicial to the due process rights of the licensee since the licensee has received full notice of the basis on which the AVN was issued.

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intoxicated.¹⁹ Their direct observation regarding his consumption and possession of alcohol (also acknowledged by the licensee) and his demeanor is sufficient to satisfy the necessary elements of proof.

12. 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 the Board has established by a preponderance of credible evidence that an employee of the licensee allowed an apparently intoxicated person to possess and /or consume alcohol on the licensed premises on or about February 14, 2009. Accordingly, the allegation in the Complaint issued by the Board on November 4, 2009 that the above-named Licensee, or an employee(s) thereof, supplied liquor to a person apparently under the influence of liquor on the licensed premise in violation of WAC 314-16-150 is affirmed.

13. The actions of a licensee's employees are attributed to the licensee, and the licensee is held responsible for the actions of its employees. In this case, the licensee is liable for the alleged violation at issue herein: supplying liquor to, and allowing an apparently intoxicated person to possess and consume liquor on the licensed premises.

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 two- 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

¹⁹Bartenders (and licensees) are charged with the responsibility of ascertaining and being aware of each patron's condition, and refraining from serving alcohol to any person who is apparently intoxicated. The undersigned further notes, parenthetically, that the seriousness of restricting alcohol consumption by patrons to appropriate levels to ensure public safety and preventing any adverse impacts is underscored by the tragic traffic fatality (allegedly involving alcohol) which occurred earlier in the evening.

aggravating circumstances, the Board may impose a different penalty than the standards specified in the schedules.

24. 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 \$500 monetary option in lieu of license suspension for the first offense within a two-year window, a five (5) day suspension or \$2,500 monetary option fine in lieu of license suspension for a second violation within a two-year window, a ten (10) day license suspension or a \$5,000 monetary option in lieu of license suspension for a third violation within a two-year window, and cancellation of the license for a fourth violation within a two-year window. WAC 314-29-020.

25. Based on the above findings and conclusions, the preponderance of credible evidence establishes the service of alcohol to an apparently intoxicated person on February 14, 2010 is the second violation incurred by the licensee within a two-year period. Therefore, the appropriate penalty is a five (5) day license suspension or a civil monetary penalty in the amount of two thousand five hundred dollars (\$2,500) in lieu of suspension.

26. The undersigned has considered all arguments made by the parties. Arguments that are not specifically addressed herein have been duly considered but are found to have no merit or to not substantially affect a party's rights.

From the foregoing conclusions of law, NOW THEREFORE,

INITIAL ORDER

IT IS HEREBY ORDERED, that the Board's Complaint dated November 4, 2009 alleging that on February 14, 2009 the licensee, Rosemary Richey, d/b/a Willie's High Lead Inn, Hamilton, in Skagit County, Washington, License No. 352385, allowed an apparently intoxicated person to possess liquor in violation of WAC 314-16-150 and RCW 66.44.200 is **AFFIRMED**.

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 314-29 WAC. The licensee, Rosemary Richey d/b/a Willie's High Lead Inn, License No. 352385, is subject to imposition of a total sanction of a five (5) day license suspension to commence on a date to be set by the Board in its final order OR the licensee may pay a civil monetary penalty in the total amount of two thousand five hundred fifty dollars (\$2,500) in lieu of suspension on a date to be determined by the Board in its final order.

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

Dated at Seattle, Washington this 9th day of June, 2010.

Christy Gerhart Cufley

By _____
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 June 9, 2010 to the following parties and representatives:

Rosemary Richey
d/b/a Willie's High Lead Inn
456 Maple Street
Hamilton, WA 98255

Rosemary Richey
PO Box 431
Hamilton, WA 98255

Gordon Karg
Assistant Attorney General
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Frances Munez Carter
Washington State Liquor Control Board
PO Box 43076
Olympia WA 98504-3076

Kevin McCarroll
Adjudicative Proceedings Coordinator
Liquor Control Board
3000 Pacific Avenue
PO Box--(Mail Stop) 43076
Olympia, WA 98504-3076

NOTICE TO PARTIES

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

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

Office of Administrative Hearings
600 University St., Suite 1500
Seattle, WA 98101-2376
(206) 389-3400 1-800-845-8830
FAX (206) 587-5135

The petition for review must:

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

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

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

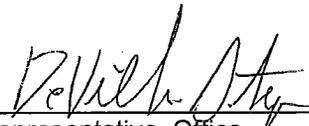
Following this review, the board will enter a final order. WAC 314-42-095(4). Within ten (10) days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. RCW 34.05.470 and WAC 10-08-215.

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

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 9th day of June, 2010.



 Representative, Office
 of Administrative Hearings

PROPOSED
FINDINGS OF FACT,
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