BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: PACIFIC N.W. CLUBS INC d/b/a CLUB ZOO BAR & GRILL 9310 NE 76TH STREET VANCOUVER, WA 98662 LICENSEE LICENSE NO. 364096-1L AVN 1L0042A	LCB NO. 23,639 OAH NO. 2010-LCB-0063 FINAL ORDER OF THE BOARD

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

1. The Liquor Control Board issued a complaint dated September 23, 2010, alleging that on or about January 23, 2010, the above-named Licensee failed to send written notice to the Liquor Control Board Enforcement and Education Division at least 48 hours prior to a contest or game where the Licensee's patrons are part of the entertainment, contrary to WAC 314-02-125(3).

2. The Licensee made a timely request for a hearing.

3. The case was consolidated for hearing with two the hearing on two other alleged violations, on the request of the parties. A hearing took place on January 6 and 7, 2011 before an administrative law judge with the Office of Administrative Hearings.

4. Pacific N.W. Clubs Inc. d/b/a Club Zoo Bar and Grill appeared and was represented by Larry E. Hazen, Attorney at Law. Assistant Attorney General Brian Considine represented the Education and Enforcement Division of the Board.

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

5. On May 16, 2011, Administrative Law Judge Steven C. Smith entered his Findings of Fact, Conclusions of Law, and Initial Order sustaining the complaint. The Initial Order combined the decision into one document, but made separate rulings on each of the consolidated cases.

The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises; NOW THEREFORE;

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Initial Order for Agency No. 23,639, OAH Docket No. 2010-LCB-0063, included in the Initial Order for the Consolidated Cases, issued on May 16, 2011, is adopted.

IT IS HEREBY FURTHER ORDERED that the liquor license privileges granted to Pacific N.W. Clubs Inc. are hereby suspended for a term of five days (5) days; HOWEVER, the suspension shall be vacated upon payment of a monetary penalty in the amount of one hundred dollars ($100). Since check number 8049 was received from the Licensee in the amount of $100.00 on May 24, 2011 regarding this violation, no additional penalty is due for this matter, and the suspension is vacated.

DATED at Olympia, Washington this 21 day of June, 2011.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

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

June 22, 2011

Larry E. Hazen, Attorney for Licensee
601 Main Street, Ste 201
Vancouver, WA 98660-3403

David Ross
Pacific NW Clubs Inc, Licensee
d/b/a Club Zoo Bar & Grill
9310 NE 76th St
Vancouver, WA 98662-3721

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

RE: ***FINAL ORDER OF THE BOARD***
LICENSEE: Pacific NW Clubs Inc
TRADE NAME: Club Zoo Bar & Grill
LOCATION: 9310 NE 76th St, Vancouver, WA 98662
LICENSE NO. 364096-1L
ADMINISTRATIVE VIOLATION NOTICE NO. 1L0042A
LCB HEARING NO. 23,639
OAH NO. 2010-LCB-0063
UBI: 601 059 205 001 0001

Dear Parties:

Please find the enclosed Declaration of Service by Mail and a copy of the Final Order of the Board in the above-referenced matter.

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

Sincerely,

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Tacoma and Vancouver Enforcement and Education Divisions, WSLCB
Amber Harris, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: PACIFIC NW CLUBS INC d/b/a CLUB ZOO BAR & GRILL 9310 NE 76TH ST VANCOUVER, WA 98662-3721 LICENSEE LICENSE NO. 364096-1L AVN NO. 1L0042A	LCB NO. 23,639 OAH NO. 2010-LCB-0063 DECLARATION OF SERVICE BY MAIL

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

LARRY E. HAZEN, ATTORNEY FOR LICENSEE 601 MAIN STREET, STE 201 VANCOUVER, WA 98660-3403	BRIAN CONSIDINE, ASSISTANT ATTORNEY GENERAL, GCE DIVISION OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100
DAVID ROSS PACIFIC NW CLUBS INC, LICENSEE d/b/a CLUB ZOO BAR & GRILL 9310 NE 76TH ST VANCOUVER, WA 98662-3721	

DATED this 23rd day of June, 2011, at Olympia, Washington.

Kevin McCarroll, Adjudicative Proceedings Coordinator

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

RECEIVED
MAY 23 2011
LIQUOR CONTROL BOARD
BOARD ADMINISTRATION

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

In The Matter Of The Hearing Of:	**CONSOLIDATED CASES:**
PACIFIC NW CLUBS, INC. DBA CLUB ZOO BAR AND GRILL,	**OAH Docket No. 2010-LCB- 0063** **Agency No. 23,639** **AVN NO. 1L0042A**
Licensee.	**OAH Docket No. 2010-LCB- 0064** **Agency No. 23,629** **AVN NO. 1L0005A**
	OAH Docket No. 2010-LCB- 0065 **Agency No. 23,694** **AVN NO. 1L0104A**
License Number 364096	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND INITIAL ORDER**

INTRODUCTION:

As more fully detailed below, these matters came on regularly for hearing January 6 and 7, 2011, at the Office of Administrative Hearings (OAH), Vancouver, Washington, before Administrative Law Judge (ALJ) Steven C. Smith. The hearing was electronically recorded. The record was held open for post-hearing submissions and oral argument. The record was ultimately closed March 16, 2010.

1. ORDER SUMMARY:

1.1 **OAH Docket No. 2010-LCB-0063:** On or about January 23, 2010, the Licensee failed to send written notice to the Liquor Control Board, Enforcement and Education Division, at least 48 hours prior to a game where the Licensee's patrons were to be part of the entertainment, contrary to WAC 314-02-125(3). Licensee shall incur the standard penalty assessment for the first event within the preceding two years of a five-day suspension of its liquor license or a $100 monetary penalty.

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1.2 **OAH Docket No. 2010-LCB-0064:** On or about November 28, 2009, the Licensee or an employee thereof engaged in or allowed behavior that provoked conduct which presented a threat to public safety, contrary to WAC 314-11-015(3)(c). Licensee shall incur the standard penalty assessment for the first event within the preceding two years of a five-day suspension of its liquor license or a $500 monetary penalty.

1.3 **OAH Docket No. 2010-LCB-0065:** On or about April 14, 2010, the Licensee or an employee thereof, did allow a person apparently under the influence of liquor to possess and/or consume liquor on the licensed premises, contrary to WAC 314-16-150. Licensee shall incur the standard penalty assessment for the first event within the preceding two years of a five-day suspension of its liquor license or a $500 monetary penalty.

2. STATEMENT OF THE CASE:

2.1 **Consolidation of Cases:** Pursuant to the agreement of the parties at the Prehearing Conference (PHC) of November 8, 2010, these three cases were consolidated for all purposes through the close of record of the evidentiary hearing. WAC 10-08-085. Each numbered case retains its own, individual right of appeal. For convenience and continuity, although each case file shall receive an individual copy of the Initial Order for these matters, there shall be only one original, signed, Initial Order which shall apply to all three consolidated matters and which shall be filed in the case with the lowest docket number; specifically, 2010-LCB-0063. To the extent that either party provided exhibits specifically designated for inclusion in only one case, those exhibits shall be filed with that case. Any exhibits pertaining to two or more of the consolidated cases, or not specifically designated for inclusion in any single case, shall be filed in the lowest docket number case. Therefore, any party further appealing any, or all, of these consolidated cases may need to designate exhibits from another of the consolidated cases to have a complete record.

2.2 **Hearing:**

2.2.1 As to each of these consolidated cases, the Liquor Control Board (LCB or Agency) issued Administrative Violation Notices (AVN), in response to each of which Pacific NW Clubs, Inc., dba Club Zoo Bar And Grill (Licensee) provided a written request to the Agency for a formal administrative hearing. Accordingly, the Agency issued the following

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complaints against the Licensee:

(a) OAH Docket No. 2010-LCB-0063 (Agency No. 23639) Complaint dated September 23, 2010: "That on or about January 23, 2010, the ... Licensee failed to send written notice to the Liquor Control Board Enforcement and Education Division at least 48 hours prior to a contest or game where the Licensee's patrons are part of the entertainment, contrary to WAC 314-02-125(3)[1]."

(b) OAH Docket No. 2010-LCB-0064 (Agency No. 23629) Complaint dated September 21, 2010: "That on or about November 28, 2009, the Licensee or an employee thereof, allowed a criminal violation to occur, contrary to WAC 314-11-015(2) or the Licensee or employee thereof allowed behavior that provokes conduct which presents a threat to public safety, contrary to WAC 314-11-015 (3) (c)[2]."

(c) OAH Docket No. 2010-LCB-0065 (Agency No. 23694) Complaint dated September 21, 2010: "On or about April 14, 2010, the Licensee or an employee thereof, did allow a person apparently under the influence of liquor to possess and/or consume liquor on the licensed premises, contrary to WAC 314-16-150."

2.2.2 Based on the foregoing AVN's, the Licensee's requests for hearing, and the allegations of the Complaints, and pursuant to Title 66 RCW, Chapter 34.05 RCW and Title 314 WAC, OAH has jurisdiction over these matters. Accordingly, Administrative Law Judge Steven C. Smith conducted an administrative hearing in these matters on January 6 and 7, 2011, at the Office of Administrative Hearings, 5300 MacArthur Boulevard, Suite 100, Vancouver, Washington. The hearing was electronically recorded.

2.2.3 At the inception of the hearing, the ALJ granted the Agency's motion to amend the Complaint in 2010-LCB-0064 to conform the language of the Complaint to that of the relevant statute. In so doing, the ALJ found that the amendment was not prejudicial to the Licensee.

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[1] In the original AVN, the Agency alleged violation of WAC 314-11-050 (engaging in or allowing lewd conduct). However, this allegation was withdrawn when the Complaint was filed.

[2] At the inception of the evidentiary hearing, the Agency advised the ALJ that the allegation regarding criminal conduct had been withdrawn.

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2.2.4 At the conclusion of the hearing, the record was held open for post-hearing submissions through the close of business February 15, 2011.

2.2.5 On February 14, 2011, the ALJ received post-hearing briefing on behalf of the Agency. On February 15, 2011, the ALJ received post-hearing Notice of Appearance of Attorney Hazen and post-hearing briefing and closing argument on behalf of the Licensee. The hearing record was closed February 16, 2011.

2.2.6 Notwithstanding that pursuant to agreement of the parties the hearing record had been closed February 16, 2011, on February 22, 2011 the ALJ received the Agency's objection to the Licensee's written closing arguments. The Agency's objection included within it a motion to strike the Licensee's earlier-filed closing argument. Further, on February 24, 2011, the ALJ received the Licensee's response to the Agency's February 22, 2011 filing in which the Licensee moved that the ALJ "overrule and strike the [Washington State Liquor Control Board's] alleged objections to [Licensee's] closing argument memorandum."

2.2.7 Therefore, on March 1, 2011, the ALJ issued a Letter Order which stated in relevant part, "Upon due consideration, after reviewing the [above described documents] and taking note of the procedural and evidentiary history of these consolidated cases, I find good cause to reopen the record retroactively to February 15, 2011 to receive the foregoing documents filed after the record was originally closed. ... Further, I find good cause to hold the record open to allow for final briefing and oral arguments in these consolidated matters. Therefore, the parties shall be allowed until March 11, 2011 at 5:00 PM to file and serve final briefing and argument in these consolidated matters; ... Oral arguments [shall be held by telephone] March 16, 2011 ...."

2.2.8 On March 16, 2011, telephonic oral argument was held as scheduled with both parties represented by their respective attorneys of record: Assistant Attorney General Brian Considine for the Agency; and, Attorney Larry E. Hazen for the Licensee. The oral argument was electronically recorded. Following the oral argument, the hearing record was again, and permanently, closed March 16, 2011.

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2.3 **Appearances and Representation:**

2.3.3 At the inception of the hearing, the Licensee, through its principal, David Ross, and its then attorney of record, Larry E. Hazen, announced the withdrawal of Attorney Hazen from the case. From that point, through the end of hearing, the Licensee was represented solely by its principal, David Ross.

2.3.1 Following the evidentiary hearing, Attorney Hazen rejoined the matter as legal counsel to, and appeared for, the Licensee in post-hearing proceedings.

2.3.2 At hearing, the Agency appeared through Officer Almir Karic and was represented by Assistant Attorney General (AAG) Brian Considine. For all post-hearing proceedings, the Agency appeared solely through, and was represented solely by, AAG Considine.

2.4 **Issues for Hearing:**

2.4.1 **OAH Docket Number 2010-LCB-0063 (Contest or Game Requiring Prior Notice to LCP):** Whether on or about January 23, 2010, the Licensee failed to send written notice to the Liquor Control Board, Enforcement and Education Division, at least 48 hours prior to a contest or game where the Licensee's patrons were to be part of the entertainment, contrary to WAC 314- 02-125(3).

2.4.2 If, on or about January 23, 2010, the Licensee failed to send written notice to the Liquor Control For Enforcement and Education Division at least 48 hours prior to a contest or game where the Licensee's patrons were to be part of the entertainment, contrary to WAC 314- 02-125(3), what penalties should apply?

2.4.3 **OAH Docket Number 2010-LCB-0064 (Threat to Public Safety):** Whether on or about November 28, 2009, the Licensee or an employee thereof, allowed a criminal violation to occur, contrary to WAC 314-11-015(2) or the Licensee or an employee thereof allowed behavior that provoked conduct which presented a threat to public safety, contrary to WAC 314-11-015(3)(c). (Note: At hearing Agency withdrew the portion of this issue related to any alleged criminal misconduct.)

2.4.4 If, on or about November 28, 2009, the Licensee or an employee thereof, allowed a criminal violation to occur, contrary to WAC 314-11-015(2) or the Licensee or an

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employee thereof allowed behavior that provoked conduct which presented a threat to public safety, contrary to WAC 314-11-015(3)(c), what penalties should apply?

2.4.5 **OAH Docket Number 2010-LCB-0065 (Possession or Service of Liquor to Apparently Intoxicated Person):** Whether on or about April 14, 2010, the Licensee or an employee thereof, did allow a person apparently under the influence of liquor to possess and/or consume liquor on the licensed premises, contrary to WAC 314-16-150.

2.4.6 If, on or about April 14, 2010, the Licensee or an employee thereof, did allow a person apparently under the influence of liquor to possess and/or consume liquor on the licensed premises, contrary to WAC 314-16-150, what penalties should apply?

2.5 **Witnesses:**

The following witnesses appeared, were sworn and testified in this matter; the testimony of each was considered by the ALJ:

(a) Officer Almir Karic – Liquor Control Board Enforcement Officer

(b) Lieutenant Mark Edmonds – Liquor Control Board Enforcement Officer

(c) Robert Schappert – Club Zoo Employee (Manager)

(d) David Ross – Principal of Licensee

(e) Koby J. Zarkovich – Former Club Zoo Employee

(f) Brandon Willis – Club Zoo Employee

(g) Theresa Lorraine Boswell – Former Club Zoo Employee

(h) Deputy Jason David Hafer – Clark County Deputy Sheriff

(i) Deputy Brian Ellithorpe – Clark County Deputy Sheriff

(j) Josh Ehrich – Club Zoo Patron

(k) Jack Madder – Club Zoo Employee (Security Manager)

(l) Brian McGuire – Club Zoo Employee

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2.6 **Exhibits:**

The following exhibits were admitted into evidence; each was considered by the ALJ:

2.6.1 **OAH Docket Number 2010-LCB-0063:**

Exhibit 1: Administrative Violation Notice to Licensee dated 2/18/2010. (This exhibit not considered as to alleged Violation 2 which was withdrawn by the Agency.)

Exhibit 2: WSLCB Property/Narrative Report.

Exhibit 3: Photographs related to "Foam & Glow" activity of January 23, 2010 at Licensee's Club Zoo establishment.

Exhibit A: Foam 'N Glow Posters

2.6.2 **OAH Docket Number 2010-LCB-0064:**

Exhibit 1: Administrative Violation Notice to Licensee dated 1/12/2010. (This exhibit not considered as to criminal conduct allegation withdrawn by Agency.)

Exhibit 2: WSLCB Property/Narrative Report.

Exhibit 3: Clark County Sheriff's Office Supplemental Incident Report dated 11/28/2009.

Exhibit 4: Clark County Sheriff's Office Incident Report dated 11/28/2009.

Exhibit 5: Form "Voluntary Statement" dated December 30, 2009.

Exhibit 6: Diagram of "Small Bar at Club Zoo" (Blue ink markings made by hearing witnesses during their respective testimonies).

2.6.3 **OAH Docket Number 2010-LCB-0065:**

Exhibit 1: Administrative Violation Notice to Licensee dated 4/16/2010.

Exhibit 2: WSLCB Property/Narrative Report.

Exhibit 3: Photograph of Train Sample.

Exhibit 4: Photograph of Joshua Ehrich.

Exhibit 5: Form "Voluntary Statement" dated April 14, 2010.

Exhibit 6: LCB Toxicology Report.

Exhibit C: Color Photographs marked C-1, C-3, C-6, C-7, C-8, C-13, C-14, C-15, C-17, C-20, C-21, C-22, C-24, C-25, C-27, C-28, C-29, and C-30.

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2.7 **Non-Evidentiary Documents:** The following non-evidentiary documents were filed with OAH and considered by the Administrative Law Judge: The hearing briefs and post-hearing submissions of the parties.

3. FINDINGS OF FACT:

Based on a preponderance of evidence, I make the following Findings of Fact:

Jurisdictional Facts

3.1 At all relevant times, Pacific NW Clubs, Inc., dba Club Zoo Bar And Grill (Club Zoo) operated a retail bar and grill establishment at 9310 NW 76th Street, Vancouver, WA 98662 and held Washington State Liquor Control Board issued License Number 364096.

3.2 On or about February 18, 2010, LCB issued Administrative Violation Notice (AVN) No. 1L0042A for alleged violation of WAC 314-02-125 and WAC 314-11-050 (the claimed violation of WAC 314-11-050 was withdrawn by LCB and was not considered in the hearing of this matter). The Licensee timely requested a formal administrative hearing of the alleged violations. In response, LCB issued a formal complaint (Complaint No. 23,639) on September 23, 2010. On September 29, 2010, LCB requested assignment by OAH of an administrative law judge to schedule and conduct the hearing in the matter.

3.3 On or about January 12, 2010, LCB issued Administrative Violation Notice (AVN) No. 1L0005A for alleged violation of WAC 314-11-015(2). The Licensee timely requested a formal administrative hearing of the alleged violations. In response, LCB issued a formal complaint (Complaint No. 23,629) on September 21, 2010. This Complaint added an allegation of violation of WAC 314-11-015(3)(c). On September 28, 2010, LCB requested assignment by OAH of an administrative law judge to schedule and conduct the hearing in the matter. (The original AVN allegation of violation of WAC 314-11-015(2) was withdrawn by the Agency and was not considered in the hearing of this matter.)

3.4 On or about April 16, 2010, LCB issued Administrative Violation Notice (AVN) No. 1L0104A for alleged violation of WAC 314-16-150. The Licensee timely requested a formal administrative hearing of the alleged violations. In response, LCB issued a formal complaint (Complaint No. 23,694) on September 21, 2010. On September 28, 2010, LCB

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requested assignment by OAH of an administrative law judge to schedule and conduct the hearing in the matter.

3.5 The Licensee was given timely written notice as to all proceedings in this matter and appeared at each proceeding either through the Licensee's principal, David Ross, or the Licensee's intermittent attorney of record, Larry E. Hazen.

Licensee's Motion to Dismiss All Violations

3.6 Licensee's Written Closing Argument And Memorandum (Licensee's Closing), in relevant part presents Licensee's motion to dismiss all violations for "[denial of] due process procedural safeguards" (Dismissal Motion). The Dismissal Motion was made without citation to any authority. It's only underpinning is found in the following statements: (a) "...[Licensee] was denied due process procedural safeguards. The [LCB] had the burden of proof and should have been required to present its case and testimony first, but the opposite occurred. The defense was forced to go first. This is procedurally improper." (b) "... Officer Karic was allowed to be present and hear the entire defense case and witness testimony before the WSLCB put on its case. While, conversely, all defense witnesses were required to remain outside until they testified. No defense witness was allowed to hear another witness' testimony; however, Officer Karic was allowed to remain in the hearing room at all times. This is both unfair and unacceptable. An objective search for the truth was lost and the [Licensee's] procedural and substantive due process rights were violated."

3.7 During hearing, Licensee, through its representative and principal David Ross, who was present throughout the hearing, requested that it be allowed to interrupt the presentation of evidence by the LCB and to call several of its witnesses out of order, due to what the Licensee represented as uncertainty about whether the Licensee's witnesses would remain at hearing for their scheduled examination, or return if allowed to leave without having first testified. The ALJ granted the Licensee's request and allowed examination of various Licensee's witnesses ahead of some of the LCB's witnesses.

3.8 Throughout the hearing, Officer Almir Karic, an LCB Enforcement Officer, was the appointed representative of LCB and was present for the testimony of all witnesses.

3.9 At no time during the hearing did the Licensee object to either the taking of

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testimony from the Licensee's witnesses ahead of the case to be presented by the LCB, or the continuing presence of Officer Karic throughout the testimony of all other witnesses.

OAH Docket Number 2010-LCB-0063 (Contest or Game Requiring Prior Notice to LCB)

3.10 The Complaint for OAH Docket Number 2010-LCB-0063 alleges that, "[on] or about January 23, 2010, the ... Licensee failed to send written notice to the Liquor Control Board Enforcement and Education Division at least 48 hours prior to a contest or game where the Licensee's patrons are part of the entertainment, contrary to WAC 314-02-125."

3.11 The Licensee acknowledged that no prior written notice was given to the Liquor Control Board Enforcement and Education Division for the January 23, 2010 event, but contended that no notice was necessary because there was no "contest or game" where the Licensee's patrons were "part of the entertainment."

3.12 At all relevant times, Officer Karic was an LCB Enforcement Officer assigned to an LCB oversight area that included the Licensee's Club Zoo retail establishment. At the time, Officer Karic had been employed by the LCB as an enforcement officer for approximately 4 ½ years. He had been trained in, and was familiar with, the provisions of Title 66 RCW and Title 314 WAC, the major provisions of Washington law governing the control of alcoholic beverages and liquor licensees.

3.13 As part of Officer Karic's general oversight responsibilities regarding liquor licensees, he would periodically review Internet social sites such as MySpace.com and Flickr.com to determine whether liquor licensees within his geographic area of enforcement responsibility had posted any notices or photographs to such sites that might be of relevance to his oversight responsibilities.

3.14 During all relevant times, the Licensee maintained a presence on the Internet to promote Club Zoo.

3.15 On January 23, 2010, the Licensee held an event at Club Zoo called Foam 'N Glow, for which the Licensee arranged photography and thereby memorialized the event. The Licensee then posted the event photographs to MySpace.com and Flickr.com.

3.16 Shortly following the Foam 'N Glow event, Officer Karic observed the event photographs that had been posted on the Internet. He printed copies of the photographs

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directly from the Internet (Doc. No. 2010-LCB -0063; Exhibit 3). Within approximately 2 days following his discovery of the photographs, Officer Karic discussed the photographs with the Club Zoo manager Robert Schappert.

3.17 At the time of hearing, Mr. Schappert had been an employee of the Licensee's Club Zoo for approximately 3 ½ years; and, general manager since number 2009. When questioned by Officer Karic, Mr. Schappert affirmed that the photographs found on the Internet were of the Foam 'N Glow event of January 23, 2010 and primarily depicted Club Zoo patrons, not employees.

3.18 According to Mr. Schappert, the Foam 'N Glow event included music and entertainment led by a "disc jockey" or "DJ" whose job it was to interact with the patrons. Mr. Schappert identified the person in Exhibit 3, p. 35 (OAH Doc. No. 2010-LCB-0063) as Jeremy the DJ for the January 23, 2010 Foam 'N Glow. Jeremy's job, according to Mr. Schappert, included organizing games and contests whenever they occurred. However, this witness believed that there was no contest on January 23, 2010, because no prizes were given away.

3.19 Mr. Schappert identified several of the photographs as depicting "birthday shots." This is where all of the patrons who were identified as having a birthday on January 23, 2010 were brought to the dance floor as a group as part of the entertainment for the remaining patrons, a shot glass of an alcoholic beverage was placed between the legs of a seated partner, and the birthday patron would attempt to retrieve the drink from between the Lowercase legs of the partner. (See for example, OAH Doc. No. 2010-LCB-0063: Exhibits 18, 19, 24, 25, 26, and 27.) Mr. Schappert did not consider birthday shots to be either a contest or a game.

3.20 At all relevant times, David Ross was the principal of the Licensee with overall control of the entire operation of Club Zoo. His testimony paralleled that of Mr. Schappert's regarding the birthday shots. It was the contention of Mr. Ross during his testimony that although birthday shots might constitute entertainment, they were neither a contest nor a game. The weight of the evidence was that birthday shots were a quick gratuity to patrons as method of establishing good will and neither a game nor a contest in any real sense.

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3.21 The evidence established that OAH Doc. No. 2010-LCB-0063: Exhibit 3, pp. 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 54, and 55, depicted patrons engaging in a dancing game based on the well-known, non-dancing, children's game Twister. Although Mr. Ross initially described the activity as a "game" built on Twister, he later contended that because the patrons were dancing as part of the Twister game, the activity was not really a game, but merely dancing for which prior notice to the LCB was unnecessary. The evidence was to the contrary.

3.22 The photographic exhibits revealed that this activity was simply an adult version of Twister by which the playing patrons entertained themselves and the other patrons by attempting to contort their bodies into seemingly impossible or salacious or sexually suggestive positions. (For example, see Exhibit 3, pp. 42, 57, 58 and 59). To the extent any dancing occurred, it was merely part of the game of Twister as played at Club Zoo on the date in question. The evidence was persuasive that Twister was intended to be, and actually was, part of the entertainment at the Licensee's establishment. The evidence was equally persuasive that one of the principal responsibilities of Jeremy the DJ was to encourage patrons to play Twister as entertainment for all who were present.

3.23 Similarly, the testimonial and photographic evidence established that Exhibit 3, pp. 60 and 61 depicted an adult version of the well-known, children's game of wheelbarrow walking, that was being played by patrons. By his gestures, it is clear that the man astride his female partner is "playing to the audience" and is providing entertainment to the other Club Zoo patrons, as was intended by the Licensee.

3.24 In its Hearing Brief, LCB acknowledged that, "the AVN reflects a 2-year violation history comprised of no previous violations of WAC 314-02-125, which is reflected in the proposed standard penalty of a five-day suspension for a $100 monetary penalties for the current violation."

OAH Docket Number 2010-LCB-0064 (Threat to Public Safety)

3.25 On or about November 28, 2009, Koby Zarkovich, then an employee of the Licensee, accidentally shot himself in the hand with his own firearm inside the Licensee's Club Zoo premises. As a result of his self-inflicted gunshot wound, Mr. Zarkovich suffered

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serious bodily injury which required hospitalization and surgery. Additionally, he suffered significant psychological harm and memory loss related to the event which was evident at hearing over a year later.

3.26 At the time Mr. Zarkovich fired his handgun, he had little if any training in the handling of firearms, although he was licensed to carry the firearm onto the premises in connection with his employment as security personnel for Club Zoo. Without checking to be sure that his handgun had no bullets in it, Mr. Zarkovich pointed the gun into his hand to demonstrate that it would not fire at that time; but, it did. No one else was injured by this conduct.

3.27 At the time Mr. Zarkovich shot himself, the establishment had closed and the employees were cleaning up the premises, but the evidence was uncertain as to whether all patrons had departed. In any event, at least five coworkers of Mr. Zarkovich were present. The bullet he fired went through his hand and hit a jukebox which had been behind him. To either side of the jukebox were windows leading out to the parking lot used by Club Zoo patrons. Had the bullet veered slightly right or left, it could have passed through one of the windows and injured or killed anyone who might have been on the other side of the window and in the line of fire. Thus, with one shot, Mr. Zarkovich seriously injured himself, endangered all who were within the Club Zoo premises at the time, and placed those people who might have still been in the parking lot following their visit to Club Zoo in grave danger.

3.28 Mr. Zarkovich brought the firearm onto the Club Zoo premises without the permission of any employee of the Licensee. However, once inside the premises with a firearm, at least two employees saw Mr. Zarkovich holding and displaying the handgun to another person. Each employee told Mr. Zarkovich to put the gun away, but neither followed through to make sure that he actually put the gun away or removed it from the premises. Instead, each went about other activities. Although the precise amount of elapsed time was unclear, the weight of the evidence was that Mr. Zarkovich fired his handgun within 5 to 10 minutes of having brought it into the Club Zoo facility. There was no credible evidence that prior to the shooting, anyone called on additional Licensee security, or the police, to escort Mr. Zarkovich out of the premises.

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3.29 The testimony of responding Clark County Sheriff's Office Deputies Brian Ellithorpe and Jason Hafer, each well-trained, experienced police officers with a professional understanding of firearms, established, to the extent not self-evident, that the conduct of Mr. Zarkovich in handling his firearm in the manner that he did, was reckless, dangerous, and potentially lethal to all people in the vicinity of Club Zoo.

3.30 LCB acknowledged that to the extent the foregoing conduct was in violation of WAC 314-11-015, it was the first such violation in the preceding two-years. *OAH Docket Number 2010-LCB-0065 (Possession or Service of Liquor to Apparently Intoxicated Person)*

3.31 In this matter, the Agency alleged in its Complaint: "On or about April 14, 2010, the Licensee or an employee thereof, did allow a person apparently under the influence of liquor to possess and/or consume liquor on the licensed premises, contrary to WAC 314-16-150." The Licensee denies the allegations.

3.32 In its hearing brief LCB states, "the AVN reflects the 2-your violation history comprised of no previous violations of WAC 314-16-150 [by the Licensee] ..."

3.33 The evidence established that the identity of the person referenced In the Complaint as apparently under the influence of liquor was Club Zoo patron Joshua Ehrich. Mr. Ehrich denied having been under the influence of liquor at the time in question. He acknowledged having had an estimated "two beers" at home before coming to Club Zoo, then having one mixed alcohol beverage (see discussion below regarding AMF).

3.34 Washington State Liquor Control Board Enforcement Officer Karic was on duty the evening of April 14, 2010. As part of his activities that evening, Officer Karic accompanied LCB Enforcement Officer Lieut. Mark Edmonds on a premises check of Club Zoo. The premises check was occasioned by concerns raised by Clark County, Washington Sheriff's Office deputies, based on the sense of the deputies that there had been a recent increase in the number of DUI (driving under the influence of an intoxicant) traffic stops involving patrons of Club Zoo. Both LCB Enforcement Officers were highly trained as to discerning signs of apparent intoxication. Officer Karic had approximately 4 ½ years experience as a liquor enforcement officer; and Lieut. Edmonds had approximately 35 years in law enforcement,

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including approximately 5 years as a liquor enforcement officer. Upon arrival at Club Zoo, both Enforcement Officers began observing the patrons for signs of intoxication. The Officers were also observing Club Zoo employees for an indication that the employees were aware of, and properly handling, any patrons who were exhibiting signs of apparent intoxication.

3.35 At some point, Officer Karic focused on Mr. Ehrich whom Officer Karic believed to have been intermittently "swaying" and "losing balance as he [attempted] to lean against the bar." At the time of his observations, Officer Karic saw Mr. Ehrich in possession of a blue colored drink, which evidence at hearing established was an alcoholic beverage obtained at Club Zoo, but not provided to Mr. Ehrich by any member of the Licensee's staff. The evidence was uncertain whether Mr. Ehrich had been provided the drink by a friend or acquaintance, or simply picked it up from the bar or a table.

3.36 During his observations of Mr. Ehrich, Officer Karic observed Jack Mader, Licensee's security manager, come within a few feet of Mr. Ehrich but seemingly overlook Mr. Ehrich. Officer Karic believed that Mr. Mader should have noticed what Officer Karic had observed of Mr. Ehrich, then taken steps to discontinue Mr. Ehrich's possession and consumption of liquor on the basis that Mr. Ehrich, by his observed swaying and imbalance was displaying signs of apparent intoxication.

3.37 Ofc. Karic testified that about the same time, he also observed a female server walk in front of Mr. Ehrich at least three times, but she made no contact with Mr. Ehrich to "cut him off" from further liquor possession or consumption.

3.38 Finally, Officer Karic testified that he also observed another security employee of Club Zoo, Brian McGuire, stand about 3 feet in front of Mr. Ehrich, occasionally turning around to observe the premises, but seemingly overlooking what Officer Karic believed to be obvious signs of the apparent intoxication of Mr. Ehrich.

3.39 After approximately 15 minutes of observation focused on Mr. Ehrich, Officer Karic requested that Mr. McGuire make contact with Mr. Ehrich and ask for his identification. Mr. McGuire complied. During this process, Officer Karic placed himself about 3 feet away from Mr. Ehrich. During this encounter, Officer Karic conversed with Mr. Ehrich and determined that Mr. Ehrich was drinking an alcoholic beverage known as an "AMF." Its

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ingredients included ½ ounce vodka, ½ ounce rum, ½ ounce tequila or triple sec, ½ ounce gin, one splash of blue Curacao, 2 ounces of sour mix, 2 ounces 7-Up.

3.40 During this encounter, Officer Karic observed that Mr. Ehrich "was unable to stand still and he was swaying." Further, it appeared to Officer Karic that Mr. Ehrich "was barely able to keep his eyes open." Officer Karic, based on discussion with Mr. Ehrich, ruled out medical infirmities, medication, and illegal drugs as the cause of Mr. Ehrich's "droopy" and "bloodshot" eyes and slurred speech.

3.41 Immediately following the exchange between Mr. Ehrich and Officer Karic, Officer Karic instructed Licensee staff to escort Mr. Ehrich out of the premises. Staff complied. Officer Karic testified that he and Lieut. Edmonds also escorted Mr. Ehrich out of Club Zoo. The Club Zoo staff testified that during the escorting process, Mr. Ehrich seemed to navigate reasonably well through the crowd of patrons who were present at the time. On the other hand, the testimony of Officer Karic and Lieut. Edmonds was to the effect that Mr. Ehrich had difficulty navigating his way out of the building, or walking without stumbling or swaying, even though Mr. Ehrich was being assisted by Licensee staff at the time.

3.42 Licensee staff contended that they observed the entire outside interaction between Mr. Ehrich and the enforcement officers and did not observe conduct by Mr. Ehrich during this interaction that would indicate to them that Mr. Ehrich was apparently intoxicated.

3.43 Lieut. Edmonds credibly testified to the effect that this was one of the worst cases of apparent (not actual) intoxication that he had seen in his liquor enforcement activities. He believed that anyone trained and interested would have determined that Mr. Ehrich was likely intoxicated. In that regard, he pointed to Mr. Ehrich not only stumbling as he left the Club Zoo premise, but also Mr. Ehrich seemingly falling onto Lieut. Edmonds' automobile. When that occurred, Mr. Ehrich remarked to Lieut. Edmonds that Mr. Ehrich had not realized until he came outside Club Zoo how affected he was by the alcohol he had consumed.

3.44 As the foregoing establishes, the testimony of the parties' witnesses conflicted on material points. The ALJ, carefully considered and weighed all of the evidence, including witness demeanor (as determined by posture, voice, attitude, straightforwardness, hesitancy

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or lack of hesitancy in responses), party motivations, the reasonableness and consistency of testimony as related to other witnesses and exhibits, whether the testimony was of first-hand knowledge or hearsay, and the totality of circumstances presented, and resolved the conflicting testimony in favor of the Agency.

3.45 Accordingly, the ALJ finds that the weight of the evidence established that during the relevant time, Mr. Ehrich was apparently intoxicated while in the Club Zoo premises and that from the signs of intoxication observed by Officer Karic and Lieut. Edmonds, the Licensee's staff either knew, or in the reasonable exercise of their duties, should have known that Mr. Ehrich was apparently intoxicated. Further, at the time of Mr. Ehrich's apparent intoxication while on the Licensee's premises, he was in open possession of, and consuming, an alcoholic beverage referred to by the parties as an AMF. Licensee's employees took no action to remove the alcohol from Mr. Ehrich's possession, or to otherwise restrict his consumption of alcohol.

4. CONCLUSIONS OF LAW:

Based on the above Findings of Fact, I make the following Conclusions of Law:

Jurisdiction

4.1 Based on the foregoing Findings of Fact, the LCB issued AVN's for each of which the Licensee timely requested a formal administrative hearing. Pursuant to the Licensee's request, LCB issued and filed the three instant Complaints. Therefore, OAH has jurisdiction over these cases pursuant to Title 66 RCW, Chapter 34.05 RCW and Title 314 WAC.

Licensee's Motion to Dismiss All Violations

4.2 The presiding Administrative Law Judge determines the order of proceedings. RCW 34.05.449. Here, without citation to authority, the Licensee moves to dismiss all violations in this case based on two premises: first, that Licensee was denied due process because the Licensee was required to put on evidence before the LCB had presented its entire case; and, second, that the presence of Officer Karic throughout the hearing gave him an unfair advantage on behalf of LCB over the Licensee because Officer Karic was able to hear the testimony of other witnesses before officer Kerry himself testified.

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4.3 Based on the foregoing Findings of Fact, the Licensee requested to put on some of its testimonial evidence out of order and ahead of the LCB due to what the Licensee represented as uncertainty about whether the Licensee's witnesses would remain at hearing for their scheduled examination, or return if allowed to leave without having first testified. Having had its request to alter the order of witnesses granted, the Licensee cannot now successfully claim a denial of due process on that basis. RCW 34.05.449.

4.4 Based on the foregoing Findings of Fact, Officer Karic was present throughout the hearing as the representative of LCB, in just the same manner as Mr. Ross, the Licensee's representative, was present throughout the hearing. Further, Licensee made no objection throughout the hearing to the presence of Officer Karic. As a party to the matters for hearing, LCB had a right to attend the hearing through a representative. Absent an objection, supported by a showing of good cause, the exclusion of Officer Karic from a portion of the hearing would have been inappropriate. RCW 34.05.449 (5).

4.5 In light of the foregoing Findings of Fact and Conclusions of Law, the Licensee's motion to dismiss all violations is denied.

OAH Docket Number 2010-LCB-0063 (Contest or Game Requiring Prior Notice to LCB)

4.6 Liquor licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the board (Title 66 RCW and Title 314 WAC). Any violations committed or permitted by employees will be treated by the board as violations committed or permitted by the licensee. WAC 314-11-015.

4.7 Liquor licensees must notify their local enforcement office in writing at least 48 hours prior to conducting contests or games where patrons are part of the entertainment. WAC 314-02-125(3)[3].

4.8 Based on the foregoing Findings of Fact, on or about January 23, 2010, the Licensee, through its principal, David Ross, it's DJ and its general manager, conducted, or allowed the conduct of, games using patrons as players, including at least, an adult version of Twister and an adult version of wheelbarrow walking. It intentionally conducted these games such that the patrons who were playing the games were part of the entertainment program for

[3] This 48 hour prior written notification period was in effect at the time of the subject violation. However, effective January 21, 2011, the written notification period was extended to five days.

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the remaining patrons. The Licensee did so without prior notification to the LCB, contrary to the foregoing legal authorities. Contentions by the Licensee to the effect that these activities were not games, but merely dancing, and therefore required no prior notification to the LCB, were not credible. In fact, during his testimony, even Mr. Ross repeatedly described the Twister activity as a "game." The preponderance of evidence established that Licensee violated WAC 314-02-125.

4.9 This violation was acknowledged by the LCB to have been the first such violation within a two-year period. This violation is a "group 2-regulatory violation." WAC 314-29-025. The standard penalty for a first violation within a two-year period is a 5-day suspension of the liquor license or a $100 monetary penalty. WAC 314-29-025. No evidence or authority was presented to justify increasing or decreasing the standard penalty. Therefore, the Licensee shall be subject to the standard penalty for this violation of WAC 314-02-125.

OAH Docket Number 2010-LCB-0064 (Threat to Public Safety)

4.10 A liquor licensee is responsible for the wrongful actions of the licensee's employees on the licensed premises. WAC 314-11-015 (1) (a). Licensees and their employees may not engage in or allow behavior that provokes conduct which presents a threat to public safety. WAC 314-11-015 (3)(c). A violation of WAC 314-11-015 is a "group one - public safety violation." WAC 314-29-020.

4.11 Licensee contends that in this case it is not responsible for the conduct of Mr. Zarkovich who brought the handgun onto the Club Zoo premises without authority from management. Furthermore, the Licensee contends that Mr. Zarkovich endangered only himself and his coworkers because the facility was closed, therefore the "public" referenced in 314-11 WAC was not threatened. Accordingly, contends the Licensee, it cannot be deemed in violation of Washington law for Mr. Zarkovich's conduct.

4.12 The Licensee has presented no authority to support the position that by reason of being employees of the Licensee, those people have lost their status as members of the public and are therefore unprotected by 314-11 WAC. A fair reading of the law is to the contrary. The purpose of the liquor control laws, including 314-11 WAC is to provide

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comprehensive protection to all people within the state of Washington for circumstances related to the possession, sale and use of liquor, including employees of a liquor licensee. Therefore, the Licensee's contention is rejected as a matter of law. The employees who were present at the time Mr. Zarkovich fired his handgun are deemed to have been members of the public whose safety was threatened within the meaning of WAC 314-11-015.

4.13 Further, while the evidence was inadequate to establish that any nonemployee was present within the Club Zoo premises when the handgun was discharged, the evidence was persuasive that the public outside of the Club Zoo premises was endangered by Mr. Zarkovich's reckless actions because, with only a slight change in trajectory, the bullet that injured Mr. Zarkovich could have traveled through one of the windows of the facility and injured someone else. It is the threat to public safety that the law seeks to protect, not just actual harm. Accordingly, the discharge was a threat to the public safety of people outside the Club Zoo premises within the intent of WAC 314-11-015.

4.14 The foregoing does not to fully determine the Licensee's responsibility for this event, in light of the Licensee's contention that it gave no authority to Mr. Zarkovich to bring his handgun onto the premises and had no knowledge that he had. Accordingly, we must consider WAC 314-11-015 (1)(a) which states in relevant part, "any violations [of liquor laws] committed or permitted by employees will be treated by the board as violations committed or permitted by the licensee. WAC 314-11-015 states, "(3) Licensees have the responsibility to control their conduct and the conduct of employees and patrons on the premises at all times. Except as otherwise provided by law, licensees or employees may not: ... (c) Engage in or allow behavior that provokes conduct which presents a threat to public safety."

4.15 WAC 314-11-015, considered as a whole, assigned the Licensee responsibility to control the conduct of its employee, Mr. Zarkovich, while he was on the Club Zoo premises. There was no evidence that the Licensee or its employees took any genuine action toward eliminating the risk posed by Mr. Zarkovich and the handgun which he had displayed. For example, there was no evidence that anyone ordered Mr. Zarkovich off the premises, or attempted to lead him out, or called for police assistance to have him removed. The evidence established that the Licensee's other employees merely suggested that Mr. Zarkovich leave.

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Accordingly, those employees with knowledge of the circumstances essentially allowed the behavior which presented a threat to public safety.

4.16 Further, under the cited Washington law, no other employee needed to have even seen or known of the possession of a handgun by Mr. Zarkovich, because WAC 314-11-015(3)(c) prohibited the type of reckless conduct in which he engaged. And, WAC 314-11-015(1)(a) and (3) places responsibility for Mr. Zarkovich's unlawful conduct on the Licensee, as though the Licensee itself had actually engaged in such reckless disregard of, and threat to, public safety.

4.17 Based on the foregoing Findings of Fact and Conclusions of Law, it has been established by a preponderance of the evidence that the Licensee violated WAC 314-11-015(3)(c). This was the first such violation in the preceding two-years. This violation is a "group 1-regulatory violation." WAC 314-29-020. The standard penalty for a first violation within a two-year period is a 5-day suspension of the liquor license or a $500 monetary penalty. WAC 314-29-020. No evidence or authority was presented to justify increasing or decreasing the standard penalty. Therefore, the Licensee shall be subject to the standard penalty for this violation of WAC 314-11-015(3)(c); specifically, Licensee shall incur the standard penalty assessment of a five-day suspension of its liquor license or a $500 monetary penalty.

OAH Docket Number 2010-LCB-0065 (Possession or Service of Liquor to Apparently Intoxicated Person)

4.18 The licensee is responsible for operating licensed premises in compliance with all liquor laws and rules contained within Title 66 RCW and Title 314 WAC. (See, WAC 314-11-015 (1) (a). Licensees are responsible for the conduct of their employees and patrons at all times that they are on the licensed premises. Violations of the liquor laws or administrative rules on the licensed premises that are committed or permitted by a licensee's employee are treated by the LCB as violations committed or permitted by the licensee. (See, WAC 314-11-015 (1) (a) and (3).)

4.19 Pursuant to WAC 314-16-150(1) and (2), no retail licensee shall give or otherwise supply liquor to any person apparently under the influence of liquor, nor shall any

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licensee or employee thereof permit any person in said condition to consume liquor on the licensee's premises, or on any premises adjacent thereto and under the licensee's control. Nor shall any retail licensee permit any person apparently under the influence of liquor to physically possess liquor on the licensed premises.

4.20 An administrative violation of WAC 314-16-150 is a "group one – public safety violation" pursuant to WAC 314-29-020. The standard penalty for a first such violation within a two-year period is a 5-day suspension of the liquor license or a $500 monetary penalty.

4.21 Based on the foregoing Findings of Fact, during the relevant time, Mr. Ehrich was an apparently intoxicated person and openly in possession of alcohol while on the Licensee's premises. The Licensee's employees failed to observe Mr. Ehrich's signs of apparent intoxication, or ignored them, and thereby permitted Mr. Ehrich to continue to physically possess and consume alcohol on the licensed premises in violation of WAC 314-16-150.

4.22 Therefore, pursuant to the foregoing legal authorities and the failure of the Licensee's employees to comply with WAC 314-16-150, the Licensee is also in violation of WAC 314-16-150. (See, WAC 314-11-015(1) (a) and (3).)

4.23 Further, based on the foregoing Finds of Fact, this is a first violation by the Licensee of WAC 314-16-150 within a two-year period. This violation is a "group one – public safety violation" pursuant to WAC 314-29-020. The Licensee shall be subject to the standard penalty for such first violation of a 5-day suspension of the Licensee's liquor license or a $500 monetary penalty. WAC 314-29-020.

5. ORDER:

NOW THEREFORE, IT IS ORDERED:

5.1 The Office of Administrative Hearings has jurisdiction over these consolidated cases.

5.2 The motion of the Licensee to dismiss each of these consolidated cases for denial of due process at hearing is denied.

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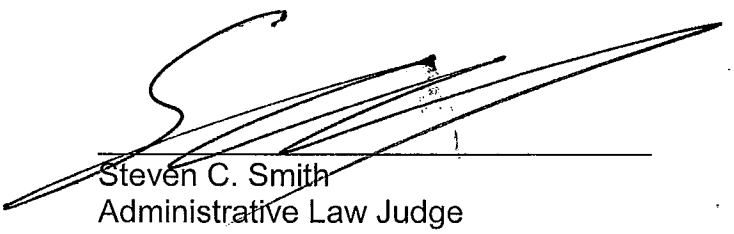
5.3 On or about January 23, 2010, the Licensee violated WAC 314-02-125 by failing to give the Liquor Control Board the prior written notice required therein, before conducting games where patrons were part of the entertainment. Pursuant to WAC 314-29-025, and subject to the Liquor Control Board's further determination, the Licensee's liquor license shall be suspended for 5 days, or the Licensee shall pay a monetary penalty of $100.00.

5.4 On or about November 28, 2009, by reason of its failure to control the conduct of its employees who violated WAC 314-11-015(3)(c) by engaging in or allowing behavior that provoked conduct which presented a threat to public safety, the Licensee, pursuant to WAC 314-11-015(1)(a) and (3), has violated WAC 314-11-015(3). Pursuant to WAC 314-29-020, and subject to the Liquor Control Board's further determination, the Licensee's liquor license shall be suspended for 5 days, or the Licensee shall pay a monetary penalty of $500.00.

5.5 On or about April 14, 2010, the Licensee violated WAC 314-16-150 by failing to control its employees to prohibit them from allowing an apparently intoxicated person to possess and consume liquor on the Licensee's premises. Pursuant to WAC 314-29-020, and subject to the Liquor Control Board's further determination, the Licensee's liquor license shall be suspended for 5 days, or the Licensee shall pay a monetary penalty of $500.00.

Signed and Issued this May 16, 2011 at Tacoma, Washington.



Steven C. Smith
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO PARTIES OF APPEAL RIGHTS FOLLOW ON NEXT PAGE

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NOTICE TO PARTIES OF APPEAL RIGHTS

Petition for Review of Initial Order

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

The petition for review must:

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

Address for filing a petition for review with the board:

Washington State Liquor Control Board
Attention: Kevin McCarroll,
3000 Pacific Avenue, PO Box 43076
Olympia, Washington 98504-3076.

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

Following this review, the board will enter a final order. WAC 314-42-095(4). Within ten days fo the service of a final order, any party may file a petition for reconsideration with the board, 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).

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Certificate of Service

I certify that true copies of the above Initial Order were mailed on the above date, first class US postage prepaid from Tacoma, Washington to the following addressees.

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Club Zoo Bar and Grill
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Vancouver, WA 98662

Diane Ross
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