BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: THE SS HEADS LLC d/b/a THE INN SPORTS BAR & GRILL 16716 HWY 99 STE G LYNNWOOD, WA 98037-3100 LICENSEE LICENSE NO. 078027-3H AVN NO. 3H1049A	LCB NO. 23,820 OAH NO. 2011-LCB-0025 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 April 25, 2011, alleging that on February 19, 2011 the above-named Licensee, or employee(s) thereof, sold, served, gave, provided or otherwise supplied alcohol to an apparently intoxicated person(s) on a licensed premises, contrary to WAC 314-16-150(1).
2. The Licensee made a timely request for a hearing.
3. An administrative hearing was held on September 28, 2011 before Administrative Law Judge Jason H. Grover with the Office of Administrative Hearings in Olympia, Washington.
4. At the hearing, Assistant Attorney General Gordon Karg represented the Education and Enforcement Division of the Board, and Michael Preston, Managing Member, represented the Licensee.
5. On November 1, 2011, Administrative Law Judge Jason H. Grover entered his Findings of Fact, Conclusions of Law and Initial Order in this matter, which sustained the Complaint.
6. The Licensee filed a Petition for Review on November 21, 2011. Enforcement Division's Response to Licensee's Petition for Review was filed on December 12, 2011.

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

NOW THEREFORE; IT IS HEREBY ORDERED that that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order entered in this matter are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board.

IT IS HEREBY FURTHER ORDERED that the liquor license privileges granted to The SS Heads Sports Bar d/b/a The Inn Sports Bar & Grill, License No. 078027, are hereby suspended for a term of five (5) days. In lieu of a license suspension, the Licensee may pay a monetary penalty in the amount of five-hundred dollars ($500.00) due within 30 days of this order. If timely payment is not received, suspension will begin at 10:00 a.m. on February 22, 2012 until 10:00 a.m. on February 27, 2012. 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
Financial Division
PO Box 43085
Olympia, WA 98504-3085

DATED at Olympia, Washington this 27 day of December, 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

December 28, 2011

The S.S. Heads LLC, Licensee
d/b/a The Inn Sports Bar & Grill
16716 Hwy 99 Ste D
Lynnwood, WA 98037-3100

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***
LICENSEE: The S.S. Heads, LLC
TRADE NAME: The Inn Sports Bar & Grill
LOCATION: 16716 Hwy 99 Ste D, Lynnwood, WA 98037-3100
LICENSE NO. 078027
ADMINISTRATIVE VIOLATION NOTICE NO: 3H1049A
LCB HEARING NO. 23,820
OAH HEARING NO. 2011-LCB-0025
UBI: 6030101510010001

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.

The applicable monetary penalty is due by January 27, 2012. The address for payments is WSLCB, P.O. Box 43085, Olympia, WA 98504-3085. Please label the check with your License Number and Administrative Violation Notice Number listed above. If you have any questions, please contact me at (360) 664–1602.

Sincerely,

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)
cc: Mt. Vernon Enforcement and Education Division, WSLCB
Teresa Young, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: THE S.S. HEADS LLC d/b/a THE INN SPORTS BAR & GRILL 16716 HWY 99 STE D LYNNWOOD, WA 98037-3100 LICENSEE LICENSE NO. 078027 AVN NO. 3H1049A	LCB NO. 23,820 OAH NO. 2011-LCB-0025 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:

THE S.S. HEADS LLC, LICENSEE d/b/a THE INN SPORTS BAR & GRILL 16716 HWY 99 STE D LYNNWOOD, WA 98037-3100	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION GORDON KARG, ASSISTANT ATTORNEY GENERAL

DATED this 18th day of December, 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

NOV 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 SS HEADS LLC dba THE INN SPORTS BAR & GRILL 16716 HWY 99 STE G LYNNWOOD, WA 98037 Licensee. LICENSE NO. 078027	OAH DOCKET NO. 2011-LCB-0025 Agency Case No. 23,820 **PROPOSED** FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL ORDER

I. ISSUES

1.1 Whether the Licensee permitted an apparently intoxicated person to consume and/or possess alcohol on a licensed premises on or about February 19, 2011, in violation of WAC 314-16-150, as alleged in the Complaint filed April 25, 2011?

1.2 Whether the assessment of a $500.00 penalty in lieu of a 5 day suspension by the Washington State Liquor Control Board is an appropriate penalty under WAC 314-29-020 for a first violation of WAC 315-16-150?

II. ORDER SUMMARY

2.1 The Licensee permitted an apparently intoxicated person to consume and/or possess alcohol on a licensed premises on or about February 19, 2011, in violation of WAC 314-16-150. The Board's Complaint issued April 25, 2011 is **SUSTAINED**.

2.2 On a date to be established in the Board's Final Order, the license privileges of The SS Heads LLC, under License No. 070827, shall be suspended for a period of five (5)

days. In lieu of a license suspension, the Licensee may pay a civil monetary penalty in the amount of Five Hundred Dollars ($500.00).

III. HEARING

3.1 **Administrative Law Judge:** Jason H. Grover

3.2 **Appellant:** The SS Heads LLC

3.2.1 **Appellant's Representative:** Michael Preston, Managing Member

3.2.2 **Appellant's Witnesses:** Lydsey Cupples Bartender; Brian Greer, Patron

3.3 **Agency:** Washington State Liquor Control Board's Education and Enforcement Division ("Board")

3.3.1 **Department Representative:** Gordon Karg, Assistant Attorney General

3.3.2 **Department Witnesses:** Lieutenant Kate Miyasato, Liquor Control Board; and, Officer Steve Telstad, Liquor Control Board

3.4 **Exhibits:** The Board's Exhibits 1 through 7 were admitted at the time of hearing.

3.5 **Date of Hearing:** September 28, 2011.

IV. FINDINGS OF FACT

I find the following facts more probable than not under the preponderance of the evidence standard:

Stipulated Facts

4.1 The Washington State Liquor Control Board regulates the conduct of licensees and their patrons to ensure compliance with applicable laws and administrative rules.

4.2 The Licensee, The SS Heads LLC (Licensee), operates a bar located at 16716 Hwy 99, Suite G, Lynnwood, WA 98037. The premises is licensed by the Board for the sale of beer, wine and liquor for on-premises consumption pursuant to License No. 070827.

4.3 On the evening of February 18 and 19, 2011, Lieutenant Kate Miyasato and Officer Steve Telstad conducted a premises check at the Licensee's premises. Lieutenant Miyasato and Officer Telstad are liquor enforcement officers with the Washington State Liquor Control Board Enforcement and Education Division.

4.4 At approximately 12:30 AM, Lieutenant Miyasato and Officer Telstad entered the Licensee's premises. After entering the Licensee's premises, Lieutenant Miyasato and Officer Telstad observed Mr. Brian Greer, DOB March 26, 1960 for approximately thirty (30) minutes.

4.5 Mr. Greer is or was a professional fisherman and he had returned from a long term fishing voyage sometime shortly before his being on the Licensee's premises on February 18 and 19, 2011.

4.6 During the time Lieutenant Miyasato and Officer Telstad were observing Mr. Greer, he swayed when he walked, occasionally held on to objects, and spoke loudly to others.

4.7 Lieutenant Miyasato and Officer Telstad observed that Mr. Greer was in possession of a "cocktail" style mixed drink and also observed him being served a "shot" of liquor by an employee of the Licensee. Both drinks were alcoholic beverages.

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4.8 The Licensee's employee who was on duty and interacting with Mr. Greer, Lynsey Cupples, DOB 10/22/1976, had waited on Mr. Greer and interacted with him as a customer on multiple occasions prior to the date in question.

4.9 Officer Telstad engaged Mr. Greer and Ms. Cupples in conversation after the approximately thirty minute period of observation. Lieutenant Miyasato confiscated both the mixed drink and the shot of liquor in Mr. Greer's possession at or about the same time Officer Telstad contacted Mr. Greer. Officer Telstad took samples of both drinks and the samples were sent to the Washington State Toxicology Laboratory. Both samples tested positive for ethanol. *See* Exhibit 7.

4.10 Lieutenant Miyasato prepared a narrative report setting forth her observations and actions from the compliance check. *See* Exhibit 3. Officer Telstad also prepared a narrative report setting forth his observations and actions from the compliance check. *See* Exhibit 2.

4.11 Officer Telstad issued an Administrative Violation Notice (AVN) to the Licensee on February 24, 2011, for a violation of WAC 314-16-150 - sale or service of alcohol to a person apparently under the influence of liquor on the licensed premises. *See* Exhibit 1.

4.12 This is the first AVN issued by the Board to this Licensee for a violation of WAC 314-16-150 - sale or service of alcohol to a person apparently under the influence of liquor on the licensed premises.

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4.13 On or about March 2, 2011, the Licensee had its staff engage in voluntary liquor service training, conducted by the Liquor Control Board Officers on the Licensee's premises.

Additional Findings

4.14 Lieutenant Miyasato has twenty years experience as an officer. She has encountered hundreds or thousands of apparently intoxicated persons. Officer Telstad has sixteen years experience as an officer. He has encountered hundreds of apparently intoxicated persons. Both officers have received training concerning the signs of apparent intoxication.

4.15 Signs of apparent intoxication include glassy eyes, staggering, swaying, slurred speech, mood swings, and being overly friendly or quiet and withdrawn.

4.16 Mr. Greer has been a commercial fisherman for thirty two (32) years. He is a deep sea crab fisherman in the Bering Sea. He works on a one hundred and seven (107) foot boat. When he returns to dry land, it takes several days for his equilibrium to return to normal. On a boat at sea, the crew hold on to things for stability when they move about. After he returns to shore, Mr. Greer uses the same technique to move about while his equilibrium adjusts. On February 18, 2011, Mr. Greer had just returned from a seven (7) week fishing assignment.

4.17 In their reports and in their testimony, the officers noted that Mr. Greer had slurred speech and bloodshot watery eyes. When playing pool and when retrieving his identification after a request by the officers, Mr. Greer had problems with his fine motor

skills. He was also observed to be extremely outgoing with other patrons and did not maintain customary physical distance when speaking to others. Based on their observations and their extensive professional experience, both officers believed that Mr. Greer was apparently under the influence of liquor.

V. CONCLUSIONS OF LAW

5.1 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.

5.2 As the holder of a liquor license, the licensee, The SS Heads LLC, 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 proceedings to an administrative law judge pursuant to chapter 34.12 RCW. A proper hearing was provided in this case.

5.3 WAC 314-16-150(b) provides, "No retail licensee shall permit any person apparently under the influence of liquor to physically possess liquor on the licensed premises."

5.4 The Licensee does not dispute that it has a liquor license issued by the Washington State Liquor Control Board or that Mr. Greer possessed and consumed liquor on the licensed premises. Therefore, those elements of the offense have been established.

5.5 The next issue to be determined is whether Mr. Greer was apparently under the influence while on the Licensee's premises. "Apparently under the influence" has been defined as being "seemingly drunk". Barrett v. Lucky Seven Saloon, Inc., 152 Wn.2d 259, 268, 96 P.3d 386 (2004).

5.6 In the present case, the Licensee argued that Mr. Greer's signs of apparent intoxication were due solely to the equilibrium problems associated with his seven (7) week fishing voyage. However, Mr. Greer's unsteadiness was not the only basis for the determination that he was apparently under the influence. In their reports and in their testimony, the officers noted that Mr. Greer had slurred speech and bloodshot watery eyes. When playing pool and when retrieving his identification after a request by the officers, Mr. Greer had problems with his fine motor skills. He was also observed to be extremely outgoing with other patrons and did not maintain customary physical distance when speaking to others. Based on their observations and their extensive professional experience, both officers believed that Mr. Greer was apparently under the influence of liquor.

5.7 Based on the evidence presented, I conclude by a preponderance, or more likely than not standard, that Mr. Greer was apparently under the influence of liquor during all relevant times.

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5.8 The next issue to be determined is whether the licensee permitted Mr. Greer to possess or consume liquor on the premises. In the present case, Mr. Greer was served liquor on the Licensee's premises. This element is not in dispute and has been established by the evidence.

5.9 Based on the foregoing analysis, the Department has established all elements of the violation. The Board's complaint should be sustained.

5.10 This violation constitutes a first violation in a twenty-four month period.

5.11 The Board has the authority to establish an appropriate penalty as a matter of its discretion. Under RCW 66.24.010, the Board has the authority to suspend the Licensee's liquor license. The Board has adopted as rules a set of "standard penalties" which may be applied to certain offenses. WAC 314-29-015. This regulatory provision states that the standard penalties are meant to serve as guidelines, and that the Board retains discretion to impose a different penalty based upon the existence of mitigating or aggravating circumstances. An escalating penalty scheme is adopted based upon the existence of any prior violations that the Licensee may have incurred within a prior two year period. WAC 314-29-015.

5.12 The standard penalty in this matter for a first violation of WAC 314-16-150, is a five day suspension of the Licensee's liquor license. In lieu of license suspension, the Licensee is afforded a monetary penalty option in the amount of $500.00. WAC 314-29-020.

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5.13 In the matter of penalties, the role of the Administrative Law Judge is to draw the Board's attention to those aggravating or mitigating circumstances which the Board may wish to consider in deciding whether to deviate from the standard penalty established by regulation. Examples of mitigating or aggravating circumstances are set forth at WAC 314-29-015(4).

5.14 WAC 314-29-015(4) provides that penalty schedules are meant to serve as guidelines. Based on mitigating or aggravating circumstances, the liquor control board may impose a different penalty than the standard penalties outlined in these schedules. Mitigating circumstances that may result in fewer days of suspension and/or a lower monetary option may include demonstrated business policies and/or practices that reduce the risk of future violations.

5.15 In the present case, as detailed in Finding of Fact 4.13, following the citation, On or about March 2, 2011, the Licensee had its staff engage in voluntary liquor service training, conducted by the Liquor Control Board Officers on the Licensee's premises. This voluntary training should be considered a mitigating factor and should be considered by the Board when imposing its penalty in accordance with WAC 314-29-020.

VI. INITIAL ORDER

From the foregoing Conclusions of Law, NOW THEREFORE:

6.1 The Licensee permitted an apparently intoxicated person to consume and/or possess alcohol on a licensed premises on or about February 19, 2011, in violation of WAC 314-16-150. The Board's Complaint issued April 25, 2011 is **SUSTAINED**.

6.2 On a date to be established in the Board's Final Order, the license privileges of The SS Heads LLC, under License No. 070827, shall be suspended for a period of five (5) days. In lieu of a license suspension, the Licensee may pay a civil monetary penalty in the amount of Five Hundred Dollars ($500.00).

SERVED on the 1st day of November 2011 at Olympia, Washington.

Jason H. Grover
Administrative Law Judge
Office of Administrative Hearings

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.

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).

Certificate of Service – OAH Docket No. 2011-LCB-0025

I certify that true copies of this document were served from Olympia, Washington on the following as indicated.

Address: The SS Heads, LLC dba The Inn Sports Bar & Grill 16716 Hwy 99, Ste G Lynnwood, WA 98037-3100	First Class Mail, Postage Prepaid
Address: Gordon Karg Assistant Attorney General Office of the Attorney General PO Box 40100 Olympia, WA 98504-0100	First Class Mail, Postage Prepaid
Address: Kevin McCarroll Adjudicative Proceedings Coordinator PO Box 43076 Olympia, WA 98504-3076	First Class Mail, Postage Prepaid
Address:	
Address:	
Address:	

Date November 1, 2011

Margaret Simmons

Margaret Simmons
Authorized Representative

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Liquor Control Board
Board Administration

Petition For Review

On behalf of The S.S. Heads LLC, I herby file a petition for review of the initial order in the matter of: Agency Case No. 23,820; OAH DOCKET NO. 2011-LCB-0025, IN THE MATTER OF: The S.S. Heads LLC dba THE INN SPORTS BAR AND GRILL, 16716 HWY 99 STE G, LYNNWOOD, WA 98037.

SPECIFIC PORTIONS WHICH EXCEPTION IS TAKEN:

In The Finding of Facts section 5.6 Administrative Law Judge Grover found that;

In the present case, the Licensee argued that Mr. Greer's signs of apparent intoxication were due solely to the equilibrium problems associated with his seven (7) week fishing voyage. However, Mr. Greer's unsteadiness was not the only basis for the determination that he was apparently under the influence. In their reports and in their testimony, the officers noted that Mr., Greer had slurred speech and bloodshot watery eyes. When playing pool and when retrieving his identification after a request by the officers, Mr. Greer had problems with his fine motor skills. He was also observed to be extremely outgoing with other patrons and did not maintain customary physical distance when speaking to others. Based on their observations and their extensive professional experience, both officers believed that Mr. Greer was apparently under the influence of liquor.

Evidence Relied on in the record:

As respondents we attempted to show the court that Mr. Greer is an honest hard working American who has for a very long time worked in a very difficult and physically challenging profession. In his testimony, Mr. Greer testified that he had not consumed any alcohol, or any other mood altering substance prior to coming to his favorite bar to socialize with people who he considered his friends. He further testified that while at the Licensee's premises he was served a total of three drinks and that two of them were confiscated by the agents prior to him being able to finish consuming them. If the Members of the Liquor Board would listen to the tape of the proceedings, Mr. Greer doesn't have a speech impediment but does speak slowly in sort of a Wilfred Brimley (the actor) way. If the officers had known Mr. Greer, he speaks this way all of the time.

I am not a lawyer but we think that Judge Grover either came to the wrong conclusion or thought Mr. Greer lied under oath. When Mr. Greer testified that he was a fisherman and told the number of years that he engaged in the profession that was included in the finding of fact. When Mr. Greer testified that he only finished one drink and had not had anything else to drink, that testimony was ignored in the courts findings.

Finally, we were not *arguing "that Mr. Greer's Signs of apparent intoxication were due solely to the equilibrium problems associated with his seven (7) week fishing voyage."* (section 5.6) We were arguing that Mr. Greer's normal behavior speech patterns and appearance could be interpreted as apparent intoxication. Anyone who has watched the TV series The Deadliest Catch knows that extended time at sea in sub-freezing temperatures will effect fine motor skills. Cold weather exposure affects your fine motor skills this is true for fishermen like Mr. Greer and also for Mountain Climbers. Mr. Greer has problems with his fine motor skills most of the time which is common among experienced deep sea fishermen. Mr. Greer has been working under these extreme conditions for 32 years. Below freezing temperatures, high wind speeds, huge sea swells, salt spray. As a result of years of working under these conditions, Mr. Greer's eyes are always a little bloodshot as a result.

I may not have asked Mr. Greer the correct questions when he was under oath, as I said I am not a lawyer. The record is clear however, Mr. Greer suffered embarrassment from the incident, he testified hoping the truth would clear his name. He knows that he told the truth, that he was not intoxicated and only finished one drink. The agents are honest had working public servants who were just trying to do their jobs which is to enforce the law. They just got it wrong this time.

In The Finding of Facts section 4.5 Administrative Law Judge Grover found that;

"Mr. Greer is or was a professional fisherman and he had returned from a long term fishing voyage sometime shortly before his being on the Licensee's premises on February 18 and 19, 2011.

In The Finding of Facts section 4.5 Administrative Law Judge Grover found that;

Mr. Greer has been a commercial fisherman for thirty two (32) years. He is a deep sea crab fisherman in the Bering Sea. He works on a one hundred and seven (107) foot boat. When he returns to dry land, it takes several days for his equilibrium to return to normal. On a boat at sea, the crew hold on to things for stability when they move about. After he returns to shore, Mr. Greer uses the same technique to move about while his equilibrium adjusts. On February 18, 2011, Mr. Greer had just returned from a seven (7) week fishing assignment.

Sincerely,

Michael R. Preston, Managing Member

2011 Not Available Typical Temps. for Feb.

Date	Temper. F / C	Dew Point	Sea Level Pressure	Station Pressure	Visibility	Wind Speed	Maximum Sust. Wind Speed	Maximum Wind Gust	Maximum Temper. F / C	Minimum Temper. F / C	Total Precip.	Snow Depth	Ind.
01 February	32.7 / 0.4	26.4	1017.8	9999.9	999.9	14.6	17.5	999.9	34.2* / 1.2	31.1* / -0.5	0.00I	999.9	
02 February	35.1 / 1.7	32.9	981.4	9999.9	999.9	30.6	38.9	999.9	37.4* / 3	33.3* / 0.7	0.00I	999.9	
03 February	35.7 / 2.1	32.8	970.4	9999.9	999.9	21.6	27.2	999.9	36.3* / 2.4	35.1* / 1.7	0.00I	999.9	
04 February	33.2 / 0.7	30.9	973.9	9999.9	999.9	28.5	31.1	999.9	36.0* / 2.2	29.7* / -1.3	0.00I	999.9	
05 February	24.5 / -4.2	16.7	992.1	9999.9	999.9	19.9	25.3	999.9	29.1* / -1.6	20.7* / -6.3	0.00I	999.9	
06 February	22.9 / -5.1	11.2	1003.7	9999.9	999.9	16.9	23.3	999.9	25.5* / -3.6	19.4* / -7	0.00I	999.9	
08 February	34.6 / 1.4	33.2	985.2	9999.9	999.9	32.4	40.8	999.9	35.8* / 2.1	33.4* / 0.8	0.00I	999.9	
09 February	35.9 / 2.2	34.2	989.6	9999.9	999.9	14.6	25.3	999.9	36.7* / 2.6	34.2* / 1.2	0.00I	999.9	
12 February	32.1 / 0.1	30.9	981.0	9999.9	999.9	29.5	40.8	999.9	35.2* / 1.8	26.2* / -3.2	0.00I	999.9	
13 February	24.8 / -4	19.2	1000.8	9999.9	999.9	27.0	36.9	999.9	25.7* / -3.5	24.1* / -4.4	0.00I	999.9	
14 February	27.1 / -2.7	17.2	1010.3	9999.9	999.9	14.9	23.3	999.9	29.7* / -1.3	24.8* / -4	0.00I	999.9	
15 February	27.3 / -2.6	16.4	1007.2	9999.9	999.9	14.8	21.4	999.9	29.7* / -1.3	25.5* / -3.6	0.00I	999.9	
16 February	27.9 / -2.3	20.9	1006.2	9999.9	999.9	18.9	23.3	999.9	31.3* / -0.4	26.4* / -3.1	0.00I	999.9	
17 February	33.7 / 0.9	32.6	988.2	9999.9	999.9	23.6	31.1	999.9	34.7* / 1.5	32.5* / 0.3	0.00I	999.9	
18 February	34.7 / 1.5	9999.9	9999.9	9999.9	999.9	26.7	27.2	999.9	35.4* / 1.9	33.3* / 0.7	0.00I	999.9	
19 February	32.0 / 0	21.2	1006.0	9999.9	999.9	23.3	29.1	999.9	33.8* / 1	30.6* / -0.8	0.00I	999.9	
20 February	33.8 / 1	25.9	1021.2	9999.9	999.9	20.7	36.9	999.9	36.0* / 2.2	31.6* / -0.2	0.00I	999.9	
21 February	32.6 / 0.3	25.8	994.9	9999.9	999.9	21.7	27.2	999.9	33.6* / 0.9	31.8* / -0.1	0.00I	999.9	
23 February	32.3 / 0.2	24.5	1004.4	9999.9	999.9	21.9	31.1	999.9	34.2* / 1.2	30.2* / -1	0.00I	999.9	
24 February	30.6 / -0.8	20.9	1007.9	9999.9	999.9	10.9	15.5	999.9	33.1* / 0.6	29.1* / -1.6	0.00I	999.9	
25 February	29.5 / -1.4	20.9	1015.2	9999.9	999.9	18.4	27.2	999.9	32.0* / 0	27.5* / -2.5	0.00I	999.9	
26 February	35.1 / 1.7	30.5	1022.9	9999.9	999.9	21.7	35.0	999.9	37.9* / 3.3	31.8* / -0.1	0.00I	999.9	
27 February	33.9 / 1.1	24.9	1016.0	9999.9	999.9	21.1	27.2	999.9	46.6* / 8.1	28.9* / -1.7	0.00I	999.9	
28 February	35.2 / 1.8	28.4	9999.9	9999.9	999.9	19.1	27.2	999.9	35.4* / 1.9	35.1* / 1.7	0.00I	999.9	
Date	Temper. F / C	Dew Point	Sea Level Pressure	Station Pressure	Visibility	Wind Speed	Maximum Sust. Wind Speed	Maximum Wind Gust	Maximum Temper. F / C	Minimum Temper. F / C	Total Precip.	Snow Depth	Ind.

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Liquor Control Board
Board Administration

STATE OF WASHINGTON
WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: THE SS HEADS, LLC, d/b/a THE INN SPORTS BAR & GRILL 16716 HWY 99 STE G LYNNWOOD, WA 98037-3100 LICENSEE LICENSE NO. 078027	OAH NO. 2011-LCB-0025 LCB NO. 23,820 ENFORCEMENT DIVISION'S RESPONSE TO LICENSEE'S PETITION FOR REVIEW

COMES NOW, the Washington State Liquor Control Board (Board), Education and Enforcement Division (Enforcement), by and through its attorneys, ROBERT M. MCKENNA, Attorney General, and GORDON KARG, Assistant Attorney General, now responds to Licensee THE SS HEADS, LLC, d/b/a THE INN SPORTS BAR & GRILL (Licensee) Petition for Review (Petition).

I. STATEMENT OF THE CASE

The Licensee is the holder of a liquor license issued by the Board. On April 25, 2011, the Board issued a Complaint alleging that on or about February 18, 2011, the above named Licensee, or employee(s) thereof, sold, supplied or otherwise provided alcohol to a person apparently under the influence of liquor in violation of WAC 314-16-150. The issuance of the Complaint was based upon the reported observations of Liquor Enforcement officers.

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The Licensee served alcoholic beverages to a patron who was displaying signs and symptoms of being apparently under the influence of alcohol. Finding of Fact, Conclusion of Law and Initial Order (Initial Order) at 1, 7. The majority of the facts were stipulated to by the parties prior to hearing. *See generally* Enforcement and Licensee's Stipulated Facts and Exhibits (Stipulation). At hearing, the Licensee and Enforcement presented witness testimony. Initial Order at 2. The Administrative Law Judge (ALJ) issued an Initial Order sustaining the complaint, and endorsed a standard first-time penalty of a five (5) day suspension of the liquor license or a five hundred dollar ($500.00) penalty. *Id.* at 8. The ALJ also found that the Licensee voluntarily seeking liquor service training for its staff in response to the AVN was a mitigating factor. Initial Order at 9; Stipulation No. 17. The ALJ urged the Board to consider this when it issued the Final Order. *Id.* The Licensee petitioned the Board for review of the Initial Order, and Enforcement now responds.

II. RESPONSE TO PETITION

The evidence presented at hearing demonstrates by a preponderance of the evidence that a patron of the Licensee appeared to be under the influence of alcohol in the Licensee's establishment and was served alcohol. The record and the finding of fact support this conclusion.

The preponderance of the evidence standard is applied in administrative hearings in Washington absent statutory authority to the contrary. *See Thompson v. Department of Licensing*, 138 Wn.2d 783, 797, 982 P.2d 601 (1999). As there is no applicable statutory authority to the contrary here, the preponderance of the evidence standard was properly applied in this matter. The "preponderance of the evidence" means that considering all the evidence, the proposition asserted must be more probably true than not true. *State v. Otis,* 151 Wn. App. 572, 578, 213 P.3d 613 (2009).

In *Barrett v. Lucky Seven Saloon,* 152 Wn.2d 259, 96 P.3d 386 (2004) the Washington State Supreme Court analyzed the term "apparently under the influence of liquor" as it appears

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in RCW 66.44.200 and WAC 314-16-150.[1] Specifically, the Supreme Court compared "apparently under the influence" with "obviously intoxicated." *Id.* at 267. Something that is obvious is "certain" while something that is apparent "seems" to be the case, whether it is the truth or not. *Id.* To be "apparently under the influence of liquor," then, means that a person is "seemingly drunk" whether or not they are actually at some particular blood alcohol level. *Faust v. Albertson,* 143 Wn. App. 272, 280, 178 P.3d 358 (2008) *overturned on other grounds by Faust v. Albertson,* 167 Wn.2d 531, 222 P.3d 1208 (2009).

To meet this standard, Enforcement needed to present evidence that a person appeared intoxicated to those around him or her at the time he or she was served or possessed an alcoholic beverage. *See Faust v. Albertson,* 143 Wn. App. at 282. The Supreme Court has held that the apparently intoxicated standard "revolves around appearance" and evidence of blood alcohol content is insufficient to establish whether a person "appeared drunk." *Faust,* 167 Wn.2d at 541. Furthermore, evidence of the amount of alcohol consumed also does not establish whether a person appears to be intoxicated. *Ensley v. Mollman,* 155 Wn. App. 744, 756, 230 P.3d 599 (2010). Instead, examples of the type of evidence which would establish that a person appeared intoxicated are, among other factors: observations of slurred speech; speaking loudly; glassy eyes; flushed cheeks; and difficulty walking, talking, drinking or other motor skills. *See e.g. Ensley,* 155 Wn. App. at 756-57.

There is no dispute that the Licensee has a liquor license; that its patron, Mr. Greer, was on the licensed premise on the date in question; and that he was served an alcoholic beverage. Stipulation Nos. 2-3, 6-7, 10, 13. The ALJ found the Licensee's patron, Mr. Greer, was exhibiting the following signs while Enforcement officers and the Licensee's staff observed and interacted with him: swaying when he walked; having bloodshot eyes; slurring his speech; having difficulty with fine motor skills; and being extremely outgoing and not

[1] In *Barrett, Faust,* and *Ensley* the court was applying liquor laws and rules in the context of tort liability for sale of alcohol to a person "apparently under the influence of liquor."

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maintaining customary physical distance when speaking to others. Initial Order at 3-6. All of which indicate Mr. Greer appeared to be intoxicated or was "seemingly drunk." *Barrett*, 152 Wn.2d at 268-69.

The Licensee contends that Mr. Greer had a limited number of alcoholic beverages. Petition at 1. The number of drinks Mr. Greer did or did not consume is not a determinative factor in assessing whether he appeared intoxicated. *Ensley,* 155 Wn. App. at 756-57. The Licensee also asserts that Mr. Greer's appearance can be entirely ascribed to the effects of being a commercial fisherman. Petition at 2. While the parties stipulated that Mr. Greer was a commercial fisherman and had recently returned from a long term fishing voyage this does not establish why he was exhibiting multiple signs of intoxication. *See* Initial Order at 7. Nor was their any finding that Mr. Greer's profession caused him to have slurred speech, trouble with basic motor-skill functions, such as retrieving his identification from his wallet, or be unable to "maintain customary physical distance" when speaking to others. *Id.* 5-7.

Enforcement does not challenge the ALJ's apparent conclusion that part of the basis for the patron's unsteadiness may have been the result of his profession.[2] Initial Order at 5. Nor does Enforcement contest the mitigating factor found by the ALJ. However, the evidence in its totality demonstrates by a preponderance of the evidence that the Licensee's patron had the appearance of being intoxicated while in the Licensee's premises and was permitted to possess and consume alcohol.

III. CONCLUSION

The preponderance of the evidence demonstrates the Licensee served a patron alcohol and allowed him to possess and consume alcohol, when he was apparently intoxicated. Accordingly, Enforcement respectfully requests the Board adopt the ALJ's Initial Order and

[2] Attached to the Licensee's petition for review is a document relating to weather patterns in the Bering Sea. Enforcement respects and understands the Licensee is acting pro-se in this case. However, the Licensee cannot now rely on new evidence which was not presented at hearing. WAC 10-08-211. Moreover, the ALJ did find that it takes several days for Mr. Greer to regain equilibrium after being at sea, indicating a basic judicial recognition of the unstable environment of the Bering Sea.

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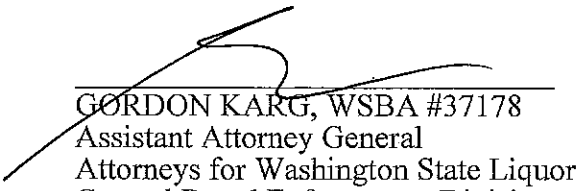
impose a five (5) day suspension of the Licensee's liquor license or impose a five hundred dollar ($500.00) penalty or any other penalty the Board finds appropriate under the facts as found.

Dated this 12 day of December, 2011.

ROBERT M. MCKENNA
Attorney General



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