

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

WAH LONG, INC.
d/b/a WAH LONG SPORT BAR
RESTAURANT
15220 AMBAUM BLVD SW, STE A
BURIEN, WA 98166

LICENSEE

LICENSE NO. 074256-2L
AVN NO. 2L1042A

LCB NO. 23,838
OAH NO. 2011-LCB-0035

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 June 2, 2011, alleging that on February 11, 2011 the above-named Licensee, or employee(s) thereof, allowed or permitted a person under the age of twenty-one (21) to remain in the licensed premises classified as off limits to persons under twenty-one, in violation of RCW 66.11.310 and WAC 314-11-020(2).
2. The Licensee made a timely request for a hearing.
3. An administrative hearing was held on October 18, 2011 before Administrative Law Judge Jason H. Grover with the Office of Administrative Hearings.
4. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Timothy Ford, and Jimmy Tham, Owner, represented the Licensee.
5. On December 19, 2011 Administrative Law Judge Jason H. Grover entered his Proposed Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the Complaint.
6. No petitions for review were filed by the parties.

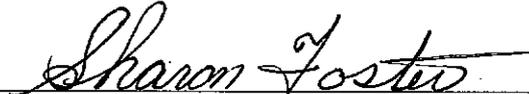
7. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises;

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

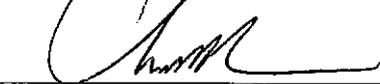
IT IS HEREBY ORDERED that the liquor license privileges granted to Wah Long, Inc. d/b/a Wah Long Sport Bar Restaurant, License No. 074256-2L, are hereby suspended for a term of thirty (30) days. Suspension will begin at 10:00 a.m. on March 23, 2012 until 10:00 a.m. on April 22, 2012. Failure to comply with the terms of this order will result in further disciplinary action.

DATED at Olympia, Washington this 24th day of JANUARY, 2012.

WASHINGTON STATE LIQUOR CONTROL BOARD







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**

January 25, 2012

Wah Long, Inc.
d/b/a Wah Long Sport Bar Restaurant
C/O Charlie Dang
1215 S Main Street
Seattle, WA 98144-2030

Timothy Ford, 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: Wah Long, Inc.

TRADE NAME: Wah Long Sport Bar Restaurant

LOCATION: 15220 Ambaum Blvd SW, Ste A, Burien, WA 98166

LICENSE NO. 074256-2L

ADMINISTRATIVE VIOLATION NOTICE NO: 2L1042A

LCB HEARING NO. 23,838

OAH NO. 2011-LCB-0035

UBI: 6018285700010001

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,

A handwritten signature in black ink, appearing to read "Kevin McCarroll".

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Tukwila Enforcement and Education Division, WSLCB
Teresa Young, WSLCB
Beth Lehman, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

WAH LONG, INC. d/b/a
WAH LONG SPORT BAR
RESTAURANT
15220 AMBAUM BLVD SW, STE A
BURIEN, WA 98166

LCB NO. 23,838
OAH NO. 2011-LCB-0035

DECLARATION OF SERVICE BY MAIL

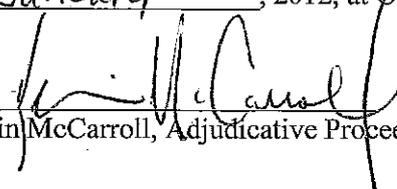
LICENSEE

LICENSE NO. 074256-2L
AVN NO. 2L1042A

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:

WAH LONG, INC. d/b/a WAH LONG SPORT BAR RESTAURANT C/O CHARLIE DANG 1215 S MAIN STREET SEATTLE, WA 98144-2030	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION TIMOTHY FORD, ASSISTANT ATTORNEY GENERAL
WAH LONG, INC. d/b/a WAH LONG SPORT BAR RESTAURANT 15220 AMBAUM BLVD SW, STE A BURIEN, WA 98166-2229	

DATED this 25th day of January, 2012, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

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

In Re:

**WAH LONG INC., dba WAH LONG
SPORT BAR RESTAURANT**

15220 AMBAUM BLVD SW STE A
BURIEN, WA 98166-2229

LICENSEE.

LICENSE NO. 074256
AVN NOS. 2L1042A

Docket No. 2011-LCB-0035

LCB NO. 23,838

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
INITIAL ORDER

The Mandarin Chinese Interpreter for the hearing was Steven Strausz. The interpreter can be reached at the number below:

World Language Services-- (253) 661-7922

I. PRELIMINARY MATTERS

Procedural History

1.1 The claimant requested and received a continuance of a July 19, 2011 prehearing conference so that it could obtain legal counsel. Following this continuance and a second unrelated continuance on August 11, 2011, a prehearing conference was held in this matter on August 19, 2011.

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Liquor Control Board
Board Administration

1.2 On August 19, 2011, Jimmy Tham, owner of Wah Long, Inc., appeared at the prehearing conference on behalf of the Licensee. At that hearing, the Licensee had an opportunity to participate in choosing the hearing dates, and the dates were agreed to by the parties. Mr. Tham did not request additional time to obtain counsel.

1.3 Following the prehearing conference, a prehearing order was issued by the undersigned and served on the parties by First Class Mail. At hearing, Mr. Tham admitted that he received the Order on Prehearing Conference and Notice of Hearing.

1.4 The prehearing order provided, in relevant part::

3.3 **CONTINUANCES:** Any party may request a delay ("continuance") of the foregoing hearing date; however, no continuances will be granted except upon good cause shown. WAC 10-08-090(1). **DO NOT ASSUME** that your continuance request has been granted, until the Office of Administrative Hearings notifies you the hearing has been continued.

See Order on Prehearing Conference and Notice of Hearing attached to this Order.

1.5 By agreement of parties, the hearing was scheduled for October 18 & 19, 2011.

Motion to Continue

1.6 At approximately 5:01 PM on October 17, 2011, a fax was received by the Office of Administrative Hearings from Kirk "Chip" Mosley, Attorney at Law. In his fax, Mr. Mosely advised OAH that he was representing the Licensee. He requested a continuance of the hearing date based on his unavailability due to another trial set in Mason County. See October 17, 2011 Facsimile attached to this Order.

1.7 At the time the fax was received, staff had already left for the day. As a result, this facsimile was not received by the undersigned prior to the date of hearing. As of the date

of hearing, assistant attorney general Tim Ford had not received a copy of the continuance request.

1.8 On the morning of October 18, 2011, Mr. Tham appeared at the hearing and requested a continuance for counsel. The parties were permitted to present argument on the matter. During argument, Mr. Tham admitted that between July 19, 2011 and the date of hearing, and following his previous continuance for counsel, he consulted with only two or three attorneys. Mr. Tham also admitted that he did not retain Mr. Mosley until October 9, 2011.

1.9 Mr. Ford objected to the continuance, arguing that the Licensee had a previous continuance to obtain counsel, that he was not served with the Notice of Appearance and Motion to Continue prior to the hearing and that the Board's witnesses were all present and ready to proceed.

1.10 After considering the argument of the parties, the undersigned determined:

- a. that the Licensee had been granted a prior continuance to obtain counsel.
- b. that the Licensee had not been diligent in obtaining counsel following the previous continuance;
- c. that the motion for continuance was untimely, and was not properly served on opposing counsel prior to the hearing date;
- d. that the Board would be prejudiced if the motion were granted based on the fact that the board's counsel had prepared for the hearing, its

witnesses were present and prepared to proceed, and interpreter costs had been incurred.

1.11 Based on the foregoing, the Licensee's motion to continue was denied and the matter proceeded to hearing. The owner, Jimmy Tham, represented the Licensee at hearing.

II. ISSUES

2.1 Whether the Licensee violated WAC 314-11-020(2) by allowing or permitting a person under the age of twenty-one (21) to remain in the licensed premises classified as off limits to persons under twenty-one on or about February 11, 2011?

2.2 Whether the assessment of a thirty (30) day suspension penalty by the Washington State Liquor Control Board is an appropriate penalty for a third public safety violation within a two (2) year period?

III. ORDER SUMMARY

3.1 The Licensee violated WAC 314-11-0020(2) by allowing or permitting a person under the age of twenty-one (21) to remain in the licensed premises classified as off limits to persons under twenty-one on or about February 11, 2011. The Board's Complaint issued June 2, 2011 is **SUSTAINED**.

3.2 On a date to be established in the Board's Final Order, the license privileges of Wah Long, Inc., under License No. 074256, shall be suspended for a period of thirty (30) days.

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IV. HEARING

- 4.1 **Administrative Law Judge:** Jason H. Grover
- 4.2 **Appellants:** Wah Long, Inc.
- 4.2.1 **Appellant's Representatives:** Kirk Mosely, attorney at law (did not appear at hearing); Jimmy Tham, owner
- 4.2.2 **Appellant's Witness:** Von Gaines
- 4.3 **Agency:** Washington State Liquor Control Board's Education and Enforcement Division ("Board")
- 3.3.1 **Department Representative:** Tim Ford, Assistant Attorney General
- 3.3.2 **Department Witnesses:** Officer John Wilson, Liquor Control Board; and, Officer John Jung, Liquor Control Board
- 4.4 **Exhibits:** The Board's Exhibits 1 through 10 were admitted at the time of hearing.
- 4.5 **Date of Hearing:** October 18, 2011.

V. FINDINGS OF FACT

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

- 5.1 The Washington State Liquor Control Board regulates the conduct of licensees and their patrons to ensure compliance with applicable laws and administrative rules.
- 5.2 The Licensee, Wah Long, Inc. dba Wah Long Sport Bar Restaurant (Licensee), operates a bar located at 15220 Ambaum Blvd SW, Suite A, Burien, WA 98166-2229. The premises is licensed by the Board for the sale of beer, wine and liquor for on-

premises consumption pursuant to License No. 074256. The entire premises is restricted by the Liquor Control Board to persons over the age of twenty-one.

5.3 On the evening of February 11, 2011 at approximately 10:53 PM, Liquor Control Board officers John Wilson and John Jung conducted a premises check at the Wah Long Sports Bar.

5.4 Both officers are liquor enforcement officers with the Washington State Liquor Control Board Enforcement and Education Division. The Licensee's premises is within their assigned enforcement area.

5.5 Officer Wilson has six years experience as an officer with the Liquor Control Board. He has a bachelor's degree in law and justice from Central Washington University. He completed a full police academy and had completed additional on the job training. He has conducted approximately two hundred compliance checks during his career as an enforcement officer.

5.6 Officer Jung has four years experience as an officer with the Liquor Control Board. He has a bachelor's degree in business administration from Seattle University. Officer Jung also worked for one year as a reserve police officer for the City of Dupont. He has conducted approximately four hundred compliance checks during his career as an enforcement officer.

5.7 Upon entering the premises, the two officers began to search for youthful looking patrons. They notice two youthful females sitting at the bar. They checked the patrons' identification and determined that they were both over the age of twenty-one.

5.8 Officer Jung noticed another youthful looking female, later identified as Anna Garza, sitting at a table in the main area, approximately twenty feet from the entrance. Ms. Garza made brief eye contact with Officer Jung and then abruptly stood and attempted to exit the premises. Officer Jung identified himself and asked Ms. Garza for identification. She told him that it was in her car. Officer Jung advised Officer Wilson that he was going to escort her to her car. Officer Wilson followed them outside.

5.9 Once they were outside, Ms. Garza stated that her car was gone and that her friend must have taken it. Officer Jung asked her for her name and date of birth. She provided a false name and date of birth. Officer Wilson called the information in to Washington State Patrol Dispatch and was advised that there was no record. Officer Jung asked Ms. Garza for her true name. Officer Wilson asked her if she had a Washington State Driver's license. Ms. Garza stated that she only had a Washington State ID card. She did not present it to the officers. Officer Wilson asked her for her Social Security number. She told him that she could not remember. After Officer Wilson told her he knew that she was not being truthful, Ms. Garza finally provided her true name and date of birth.

5.10 At hearing, Officer Jung testified that Exhibit 7 contains Ms. Garza's identification. Her date of birth was July 24, 1993 and she will not be twenty-one years of age until July 24, 2013. On the date of the incident, Ms. Garza was eighteen years old.

5.11 The officers confirmed Ms. Garza's ID. She was then mirandized and provided a voluntary statement. Exhibit 8.

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5.12 At hearing, owner Jimmy Tham testified that he was checking IDs at the back door closest to the parking lot. He could not remember Ms. Garza coming in. He was not sure whether she entered through the front or back door. The bartender usually checks the IDs of persons entering through the front door. Mr. Tham can't read English, but he can read numbers when checking a person's age on their identification.

5.13 Based on this incident, administrative violation notice number 2L1042A was issued to the Licensee on or about February 17, 2011 for allowing a minor to frequent the licensed premises in violation of WAC 314-11-020(2). Exhibit 1.

5.14 Wah Long, Inc. has two prior group 1 violations against public safety within a two year period that have become final. Those violations occurred on November 5, 2010 and July 19, 2011. See Exhibits 9 and 10.

5.15 The Licensee paid a \$500 fine in lieu of suspension for the November 5, 2010 violation. The Licensee did not appeal the July 19, 2011 violation and served a seven (7) day suspension of its liquor license in August 2011. The Licensee has one other violation pending. The violation in the present case is the second chronologically, but will be a third violation if sustained.

Mitigating Facts:

5.16 The Licensee has posted signs warning that persons under the age of twenty-one are not permitted on the premises. The Licensee has also warned employees to be especially cautious about preventing minors from coming into the premises. The Licensee has also placed video cameras to help keep track of persons entering the premises.

VI. CONCLUSIONS OF LAW

6.1 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.

6.2 WAC 314-11-020 provides:

(1) Per RCW 66.44.270, licensees or employees may not supply liquor to any person under twenty-one years of age, either for his/her own use or for the use of any other person.

(2) *Per RCW 66.44.310, licensees or employees may not allow persons under twenty-one years of age to remain in any premises or area of a premises classified as off-limits to persons under twenty-one. (See RCW 66.44.310 (1)(b) regarding nonprofit, private club licensees.)*

(3) Per RCW 66.20.180, at the request of any law enforcement officer, a holder of a card of identification must present his/her card of identification if the person is on a portion of a premises that is restricted to persons over twenty-one years of age, or if the person is purchasing liquor, attempting to purchase liquor, consuming liquor, or in the possession of liquor. If the person fails or refuses to present a card of identification it may be considered a violation of Title 66 RCW and:

(a) The person may not remain on the licensed premises after being asked to leave by a law enforcement officer; and

(b) The person may be detained by a law enforcement officer for a reasonable period of time and in such a reasonable manner as is necessary to determine the person's true identity and date of birth.

[Emphasis added].

6.3 Based on the evidence presented, I conclude by a preponderance, or more likely than not standard, that on or about February 11, 2011, the Licensee allowed or permitted Anna Garza, a person under the age of twenty-one (21), to remain in the licensed

premises, which is classified as off limits to persons under twenty-one.

6.4 Based on the foregoing Findings of Fact and Conclusions of Law, the Board has established all elements of the violation of WAC 314-11-020(2). The Board's complaint should be sustained.

6.5 The evidence presented establishes that this violation constitutes a third violation in a twenty-four month period.

6.6 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 or cancel 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.

6.7 Violations of WAC 314-11-020 are considered group 1 violations of public safety under WAC 314-290-020. The standard penalty for a third group 1 violation of public safety within a two year period is a thirty day suspension of the Licensee's liquor license. WAC 314-29-020.

6.8 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).

6.9 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.

6.10 In the present case, the Licensee has posted signs warning that persons under the age of twenty-one are not permitted on the premises. The Licensee has also warned employees to be especially cautious about preventing minors from coming into the premises. The Licensee has also placed video cameras to help keep track of persons entering the premises.

6.11 These facts should be considered mitigating factors and should be considered by the Board when imposing its penalty in accordance with WAC 314-29-020.

VII. INITIAL ORDER

From the foregoing Conclusions of Law, NOW THEREFORE:

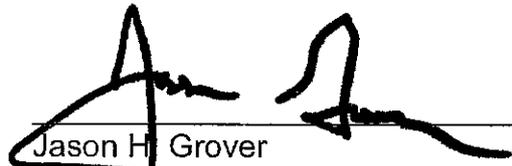
7.1 The Licensee violated WAC 314-11-0020(2) by allowing or permitting a person under the age of twenty-one (21) to remain in the licensed premises classified as off limits

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to persons under twenty-one on or about February 11, 2011. The Board's Complaint issued June 2, 2011 is **SUSTAINED**.

7.2 On a date to be established in the Board's Final Order, the license privileges of Wah Long, Inc., under License No. 074256, shall be suspended for a period of thirty (30) days.

SERVED on the date of mailing.



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-0035 and 0047

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

Address: Wah Long, Inc. dba Wah Long Sport Bar and Restaurant 15220 Ambaum Blvd SW Suite A Burien, WA 98166-2229	First Class Mail, Postage Prepaid
Address: Wah Tham 15220 Ambaum Blvd SW Suite A Burien, WA 98166-2229	First Class Mail, Postage Prepaid
Address: Timothy Ford Assistant Attorney General Office of the Attorney General PO Box 40100 Olympia, WA 98504-0100	First Class Mail, Postage Prepaid
Address: World Language Service PO Box 1716 Milton, WA 98354	First Class Mail, Postage Prepaid
Address: Kevin McCarroll Adjudicative Proceedings Coordinator PO Box 43076 Olympia, WA 98504-3076	First Class Mail, Postage Prepaid
Address:	

Date December 19, 2011



Andrea Bernard
Authorized Representative