BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: OUT-A-BOUNDS, INC. d/b/a OUT-A-BOUNDS SPORTS BAR & GRILL 14415 SE MILL PLAIN BLVD STE 103B VANCOUVER, WA 98684 LICENSEE LICENSE NO. 077030 AVN NO. 1J2090A	LCB NO. 24,071 OAH NO. 2012-LCB-0028 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 May 17, 2012, alleging that on or about March 30, 2012, the above-named Licensee, or an employee thereof, served and/or sold liquor to an apparently intoxicated person on the licensed premises, and/or allowed an apparently intoxicated person(s) to consume liquor on the licensed premises, contrary to RCW 66.44.200.
2. The Licensee made a timely request for a hearing.
3. An administrative hearing was held on February 15, 2013 before Administrative Law Judge Lisa N. W. Dublin with the Office of Administrative Hearings.
4. At the hearing, Assistant Attorney General Timothy D. Ford represented the Education and Enforcement Division of the Board, and William Baumgartner, Attorney at Law, represented the Licensee.

5. On April 12, 2013, Administrative Law Judge Lisa N.W. Dublin entered her Findings of Fact, Conclusions of Law and Initial Order in this matter, which did not sustain the Complaint.
6. The parties filed no petitions for review.
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 the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board, with the following correction:

The last sentence of Finding of Fact No. 4.9 is amended to read:

"Mr. Christensen later declined to take a PBT, allegedly because he was concerned about whether the testing device was sanitary."

IT IS HEREBY FURTHER ORDERED that the charge in the Complaint filed in case 24,071 is DISMISSED.

DATED at Olympia, Washington this 14 day of May, 2013.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Ruthann Kurose

Reconsideration. Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a petition for reconsideration stating the specific grounds on which relief is requested. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to the Washington State Liquor Control Board, Attn: Kevin McCarroll, 3000 Pacific Avenue Southeast, PO Box 43076, Olympia, WA 98504-3076, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board's office. RCW 34.05.010(6). A copy shall also be sent to Mary M. Tennyson, Senior Assistant Attorney General, 1125 Washington St. SE, P.O. Box 40110, Olympia, WA 98504-0110. A timely petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition. An order denying reconsideration is not subject to judicial review. RCW 34.05.470(5). The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Stay of Effectiveness. The filing of a petition for reconsideration does not stay the effectiveness of this Order. The Board has determined not to consider a petition to stay the effectiveness of this Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW and RCW 34.05.550.

Judicial Review. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

Washington State
Liquor Control Board

May 15, 2013

William Baumgartner,
Attorney for Licensee
112 W 11th St Ste 150
Vancouver, WA 98660-3359

Out-A-Bounds Inc, Licensee
d/b/a Out-A-Bounds Sports Bar & Grill
14415 SE Mill Plain Blvd #103B
Vancouver, WA 98684-6985

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: Out-A-Bounds, Inc.
TRADE NAME: Out-A-Bounds Sports Bar & Grill
LOCATION: 14415 SE Mill Plain Blvd #103B, Vancouver, WA 98684-6985
LICENSE NO. 077030-1J
ADMINISTRATIVE VIOLATION NOTICE NO: 1J2090A
LCB HEARING NO. 24,071
OAH NO. 2012-LCB-0028
UBI: 602 015 387 001 0001

Dear Parties:

Please find the enclosed Final Order of the Board and Declaration of Service by Mail 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
Lisa Red, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: OUT-A-BOUNDS INC d/b/a OUT-A-BOUNDS SPORTS BAR & GRILL 14415 SE MILL PLAIN BLVD #103B VANCOUVER, WA 98684-6985 LICENSEE LICENSE NO. 077030-1J AVN NO. 1J2090A	LCB NO. 24,071 OAH NO. 2012-LCB-0028 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 applicants and licensees, by campus mail for state offices, on the date below to:

WILLIAM BAUMGARTNER, ATTORNEY FOR LICENSEE 112 W 11TH ST STE 150 VANCOUVER, WA 98660-3359	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION TIMOTHY FORD, ASSISTANT ATTORNEY GENERAL
OUT-A-BOUNDS INC d/b/a OUT-A-BOUNDS SPORTS BAR & GRILL 14415 SE MILL PLAIN BLVD #103B VANCOUVER, WA 98684-6985	

DATED this 15th day of May, 2013, 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
APR 30 2013
Liquor Control Board
Board Administration

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

In The Matter Of: **OUT-A-BOUNDS, INC. d/b/a OUT-A-BOUNDS SPORTS BAR & GRILL** **14415 SE MILL PLAIN BLVD., SUITE 103B, VANCOUVER, WA 98684-6985** **LICENSE NO. 077030** **AVN NO.: 1J2090A** **Appellant.**	**OAH Docket No. 2012-LCB-0028** **LCB No. 24,071** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL ORDER**

I. ISSUES PRESENTED[1]

1.1 Whether, on March 30, 2012, the Appellant and/or it employee(s) served alcohol to an apparently intoxicated person on the licensed premises, in violation of RCW 66.44.200?

1.2 If so, what is the appropriate penalty?

II. ORDER SUMMARY

On March 30, 2012, the Appellant and/or its employees did not serve alcohol to an apparently intoxicated person on the licensed premises, and thus did not violate RCW 66.44.200. No penalty applies.

[1] At the outset of the hearing, the Appellant objected to the Liquor Control Board's Exhibit 6 (Complaint) and testimony relative thereto. This Complaint resulted from an unrelated incident in mid-March 2012 involving a different customer of the Appellant after that customer left the Appellant's establishment. This Complaint allegedly precipitated the compliance check on March 30, 2012, which is at issue in the present matter. The basis for the Appellant's objection was, in part, that evidence of prior bad acts was inadmissible. Because the Complaint is only tangentially relevant to the present matter, Exhibit 6 and testimony relative thereto are excluded under Evidentiary Rule 403.

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949 Market Street, Suite 500
Tacoma, WA 98402
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III. HEARING

3.1 **Hearing Date:** February 15, 2013

3.2 **Administrative Law Judge:** Lisa N. W. Dublin

3.3 **Appellant:** Out-A-Bounds, Inc. d/b/a Out-A-Bounds Sports Bar & Grill

3.3.1 **Representative:** William Baumgartner, Esq.

3.3.2 **Witnesses:**

3.3.2.1 Mary Rodriguez, owner

3.3.2.2 Dan Christensen, customer

3.3.2.3 Tiffany Rotta, employee (bartender/manager)

3.3.2.4 Dan Yoldi, employee (security)

3.3.2.5 Wendy Stolte, customer

3.4 **Agency:** Liquor Control Board

3.4.1 **Representative:** Timothy D. Ford, Assistant Attorney General

3.4.2 **Witness:** Almir Karic, Liquor Control Board

IV. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

4.1 On or around April 3, 2012, Liquor Enforcement Officer II Almir Karic served Administrative Violation Notice (AVN) No. 1J2090A on Mary Rodriguez, Owner of Appellant.

4.2 On or about April 4, 2012, Ms. Rodriguez requested an administrative hearing.

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Out-A-Bounds Sports Bar & Grill and Dan Christensen

4.3 Out-A-Bounds Sports Bar & Grill (Appellant) is a restaurant/lounge located in Vancouver, Washington that is licensed with the State of Washington to serve spirits, beer and wine. Prior to April 2012, the Appellant had not been cited for violation of State laws relative to serving spirits, beer and wine.

4.4 In approximately late 2010, Dan Christensen began to patronize the Appellant's establishment, and became a "regular". As of late 2011, Mr. Christensen was 53 years old, weighed approximately 220 pounds, and stood approximately six feet tall. Due to spine injuries, Mr. Christensen was unable to work as a mechanic, his former line of work. Mr. Christensen also suffered from knee spurs and a bad hip. The claimant's wife worked near the Appellant's establishment, and regularly transported Mr. Christensen there and back. Generally while at the Appellant's establishment, Mr. Christensen drank beer, played pool, and visited with other customers.

March 30, 2012

4.5 On the evening of March 30, 2012, Mr. Christensen's wife drove Mr. Christensen to the Appellant's establishment after dinner to stay while she went to work. Mr. Christensen arrived at approximately 8:15 p.m. Over the next approximately two hours, Mr. Christensen drank two 14-ounce glasses of beer, plus about one-third of a third 14-ounce glass of beer, all served by bartender and bar manager Tiffany Rotta. That evening, Mr. Christensen behaved as usual; he was friendly, loud, abrupt, and annoying.

4.6 Dan Yoldi, who worked for the employer as security officer, arrived at the Appellant's establishment at approximately 9:00 p.m. Mr. Yoldi, who was trained to spot signs of intoxication, was familiar with Mr. Christensen's behavior, and knew Mr. Christensen to always be loud and "in your space," not drunk. Mr. Yoldi observed Mr. Christensen at the Appellant's establishment on March 30, 2012, and did not believe he was drunk.

4.7 The evening of March 30, 2012, Mr. Christensen sat approximately two seats away from Ms. Stolte, another regular customer. In Ms. Stolte's experience, Mr. Christensen was a loud, overly friendly know-it-all. Mr. Christensen did not appear intoxicated to Ms. Stolte that evening.

4.8 Shortly before 10:00 p.m. on March 30, 2012, Liquor Enforcement Officer II Almir Karic arrived at the Appellant's establishment. By this time, Mr. Christensen had consumed approximately one-third of his third, 14-ounce beer that evening. Mr. Karic observed Mr. Christensen shooting pool, drinking beer,

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and talking loudly with other customers.[2] Mr. Karic also observed Mr. Christensen having trouble with his balance while standing at the bar, and trouble holding on to the bar. Mr. Karic saw that Mr. Christensen's eyes were glassy, he was overly friendly, and he was slurring his speech.

4.9 Mr. Karic approached Mr. Christensen, identified himself, and asked Mr. Christensen to hand him his drink. Mr. Christensen gave Mr. Karic his drink, which Mr. Karic then handed to Mr. Yoldi. Mr. Karic asked Mr. Christensen to step outside into the parking lot, where they could talk further. Mr. Christensen was argumentative, then calm, then argumentative again. Mr. Christensen told Mr. Karic he was not drunk, and accepted Mr. Karic's offer to take a portable breath test (PBT). Mr. Christensen later declined to take a PBT, allegedly because he was concerned about the sanity of the testing device.

4.10 Mr. Karic took a sample of the beverage Mr. Christensen had been drinking, and told Mr. Christensen he was violating State law by buying and drinking alcoholic beverages while drunk. Mr. Karic released Mr. Christensen, who returned to the bar, paid his tab, and waited for his wife to pick him up. Mr. Karic then spoke with Ms. Rotta, told her that Mr. Christensen was drunk, and advised her to cut off customers sooner. Ms. Rotta did not agree that Mr. Christensen was drunk. Ms. Rotta had been bartending for approximately eight years, had been trained on and understood the signs of drunkenness, and had observed Mr. Christensen on prior occasions when he was in fact drunk. She was the only one that served Mr. Christensen beer the night of March 30, 2012, and he did not appear to her to be drunk when she served him.

4.11 On April 3, 2012, Mr. Karic returned to the Appellant's establishment and served Ms. Rodriguez with an Administrative Violation Notice (AVN) for selling or serving alcohol to an apparently intoxicated person, in violation of RCW 66.44.200. Mr. Karic also served a Written Warning on Ms. Rotta for this same alleged violation.

V. CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I make the following Conclusions of Law:

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[2] Mr. Karic testified that he previously played pool with Mr. Christensen, both when Mr. Christensen was sober and drunk, at the Appellant's establishment in approximately early to mid-2006. However, both Mr. Christensen and Ms. Rotta credibly testified that Mr. Christensen started coming to the Appellant's establishment in approximately early 2010. Based on the weight of evidence, I resolve conflicting testimony in favor of the Appellant.

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Jurisdiction

5.1 I have jurisdiction to hear and decide this matter under WAC 314-29-010(1)(c); chapter 34.05 RCW, and chapter 10-08 WAC.

The Appellant Did Not Overserve Mr. Christiansen in Violation of Washington State Law.

5.2 No person shall sell any liquor to any person *apparently* under the influence of liquor. RCW 66.44.200. Nor shall any licensee give or otherwise supply liquor to any person *apparently* under the influence of liquor. WAC 314-16-150. (Emphasis added) "Apparently" is defined as "in an apparent manner: *seemingly*, evidently," "readily perceptible to the senses," and capable of being readily perceived by the sensibilities or understanding as certainly existent or present." *Barrett v. Lucky Seven Saloon, Inc.,* 152 Wn.2d 259, 268, 96 P.3d 386 (2004).

5.3 "Licensee" means any person or entity that holds a liquor license or permit, or any person or entity who is a true party of interest in a liquor license or permit, as outlined in WAC 314-07-035. WAC 314-07-010.

5.4 On March 30, 2012, Mr. Karic observed Mr. Christensen at the Appellant's establishment looking and behaving in a manner that resembled intoxication. At that time, Mr. Christensen was in the middle of his third glass of beer, and his speech, balance, and eyes along with his responses to questioning led Mr. Karic to determine Mr. Christensen was drunk and had been overserved. Yet, Mr. Karic was not present when Mr. Christensen was served, and was not as familiar with Mr. Christensen's behavior as Ms. Rotta and others, who interacted with him at the Appellant's establishment on a regular basis. Mr. Christensen regularly displayed behaviors such as being overly friendly and loud, and had health conditions that impacted his balance and gait. To Ms. Rotta, who interacted with Mr. Christiansen regularly, Mr. Christiansen did not seem drunk to her on March 30, 2012, at the time she served him beer. Although Mr. Karic may have felt justified in citing the Appellant for overserving Mr. Christensen, the weight of evidence establishes that Mr. Christensen was not apparently intoxicated at the time Ms. Rotta served him beer, and that the Appellant thus did not violate RCW 66.44.200 on March 30, 2012, when serving Mr. Christiansen.

INITIAL ORDER

IT IS HERBY ORDERED THAT:

The Appellant did not violate RCW 66.44.200 in serving Mr. Christiansen alcohol on March 30, 2012. No penalty shall be assessed.

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Signed and Issued at Tacoma, Washington, on April 12, 2013.

L. Dublin

Lisa N. W. Dublin
Administrative Law Judge
Office of Administrative Hearings

NOTICE OF APPEAL RIGHTS – PLEASE READ CAREFULLY

Petition for Review of Initial Order

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; 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 the 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.

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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 of 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 granted. RCW 34.05.470; 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).

CERTIFICATION OF MAILING IS ATTACHED

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Certificate of Service – OAH Docket No. 2012-LCB-0028

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

Address: **Mary Rodriquez** **Out-A-Bounds Sports Bar & Grill** **14415 SE Mill Plain Blvd. # 103-B** **Vancouver, WA 98684**	First Class US Mail, postage prepaid
Address: **William V. Baumgartner** **Attorney at Law** **Baumgartner, Nelson & Price, PLLC** **112 West 11th Street, Suite 150** **Vancouver, WA 98660**	First Class US Mail, postage prepaid
Address: **Timothy Ford, AAG** **Office of the Attorney General** **PO Box 40100** **Olympia, WA 98504-0100**	First Class US Mail, postage prepaid
Address: **Kevin McCarroll** **Adjudicative Proceedings Coordinator** **Washington State Liquor Control Board** **PO Box 43076** **Olympia, WA 98504-3076**	First Class US Mail, postage prepaid

Date: April 15, 2013

Debbie Saulsman
Office of Administrative Hearings

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