

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

THE MONTEREY CAFÉ & PUB
SPOKANE, INC d/b/a
THE MONTEREY CAFÉ

9 N WASHINGTON ST
SPOKANE, WA 99201

LICENSEE

LICENSE NO. 086503-4R
AVN NO. 4O2098C

LCB NO. 24,080
OAH NO. 2012-LCB-0031

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 31, 2012, alleging that on or about April 7, 2012 the above-named Licensee, or employee(s) thereof, allowed consumption of liquor on the licensed premises between the hours of 2:00 a.m. and 6:00 a.m., in violation of WAC 314-11-070(e); and/or that on or about April 7, 2012, the Licensee or employee(s) thereof sold liquor between the hours of 2:00 a.m. and 6:00 a.m., in violation of WAC 314-11-070(a);
2. The Licensee made a timely request for a hearing;
3. An administrative hearing was held on January 25, 2013 before Administrative Law Judge Mark H. Kim with the Office of Administrative Hearings in Spokane, Washington;
4. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Isaac Williamson. The Licensee was represented by Jennifer C. Underwood, Attorney at Law;

5. On March 27, 2013 Administrative Law Judge Mark H. Kim entered his Findings of Fact, Conclusions of Law and Initial Order in this matter which dismissed 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 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;

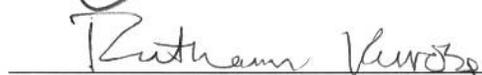
IT IS HEREBY FURTHER ORDERED that the charge in the Complaint filed in case 24,080 and its associated Administrative Violation Notice 4O2098C are DISMISSED.

DATED at Olympia, Washington this 1 day of May, 2013.

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

May 2, 2013

Jennifer C. Underwood,
Attorney for Licensee
313 West Riverside Ave
Spokane, WA 99201-0209

The Monterey Café & Pub Spokane, Inc.
d/b/a The Monterey Café
9 N Washington St
Spokane, WA 99201-0220

Isaac Williamson, 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 Monterey Café & Pub Spokane, Inc.
TRADE NAME: The Monterey Café
LOCATION: 9 N Washington St, Spokane, WA 99201-0220
LICENSE NO. 086503-4R
ADMINISTRATIVE VIOLATION NOTICE NO: 402098C
LCB HEARING NO. 24,080
OAH NO. 2012-LCB-0031
UBI: 602 804 953 001 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: Spokane Enforcement and Education Division, WSLCB
Lisa Red, WSLCB

1 **WASHINGTON STATE LIQUOR CONTROL BOARD**

2 IN THE MATTER OF:

LCB NO. 24,080
OAH NO. 2012-LCB-0031

3 THE MONTEREY CAFÉ & PUB
4 SPOKANE, INC. d/b/a
5 THE MONTEREY CAFÉ

DECLARATION OF SERVICE BY
MAIL

6 9 N WASHINGTON ST
7 SPOKANE, WA 99201-0220

8 LICENSEE

9 LICENSE NO. 086503-4R
AVN NO. 402098C

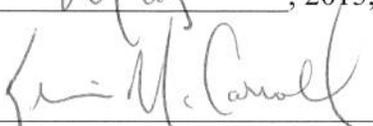
10 I certify that I caused a copy of the FINAL ORDER OF THE BOARD in the above-
11 referenced matter to be served on all parties or their counsel of record by US Mail Postage
12 Prepaid via Consolidated Mail Service for applicants and licensees, by campus mail for state
13 offices, on the date below to:

14 JENNIFER C. UNDERWOOD,
15 ATTORNEY FOR LICENSEE
16 313 WEST RIVERSIDE AVE
17 SPOKANE, WA 99201-0209

OFFICE OF THE ATTORNEY GENERAL
MAIL STOP 40100, GCE DIVISION
ISAAC WILLIAMSON,
ASSISTANT ATTORNEY GENERAL

18 THE MONTEREY CAFÉ & PUB SPOKANE,
19 INC d/b/a THE MONTEREY CAFÉ
20 9 N WASHINGTON ST
SPOKANE, WA 99201-0220

21 DATED this 2nd day of May, 2013, at Olympia, Washington.

22 
23
24 Kevin McCarroll, Adjudicative Proceedings Coordinator

25
26 DECLARATION OF SERVICE BY
MAIL

RECEIVED

APR 24 2013

Liquor Control Board
Board Administration

MAILED

MAR 27 2013

Office of Administrative Hearings
Spokane

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

In The Matter Of:

THE MONTEREY CAFÉ & PUB
SPOKANE, INC.,
dba THE MONTEREY CAFÉ

Licensee/Respondent.

OAH Docket No.: 2012-LCB-0031

Agency No.: 24,080

INITIAL ORDER

RECITALS

A hearing in the above-entitled matter was conducted on January 25, 2013, at Spokane, Washington, before Mark H. Kim, Administrative Law Judge with the Washington State Office of Administrative Hearings. The Licensee, The Monterey Café & Pub, Inc. dba The Monterey Café ("The Monterey Café"), was represented by Jennifer C. Underwood, Attorney at Law, with Groesbeck Ewers, P.S. The Washington State Liquor Control Board, Education and Enforcement Division ("LCB"), was represented by Isaac Williamson, Assistant Attorney General. The Board's Exhibits 1, 2, and 3, and the Licensee's Exhibits A through F were admitted into evidence. Sergeant Ryan Navrat, Liquor Enforcement Officer with the LCB, was called by the Board and offered testimony. Chris Skillman, Licensee's Bar Manager, and Ray Wilson, Owner of the Licensee, were called by the Licensee and offered testimony. The record closed on February 08, 2013. The Licensee's motion in limine and motion for summary judgment

were denied.

ISSUE

Whether the Licensee allowed liquor to be consumed on the premises between 2:00 a.m. and 6:00 a.m.

ORDER SUMMARY

The Licensee did not violate WAC 314-11-070(1)(e). The Liquor Control Board's Complaint No. 24,080 and its associated Administrative Violation Notice are dismissed.

BASED ON THE EVIDENCE IN THIS MATTER, THE UNDERSIGNED MAKES THE FOLLOWING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL ORDER:

FINDINGS OF FACT

1. The Licensee, The Monterey Café & Pub Inc. dba The Monterey Café (hereinafter referred as "The Monterey Café" or "Licensee") is the owner of a spirits, beer, and wine restaurant and lounge located in Spokane, Washington.
2. The Licensee operates under license no. 086503, issued by the Washington State Liquor Control Board (hereinafter referred as "Board" or "LCB").
3. Ray Wilson is the owner of The Monterey Café.
4. The Licensee's premises are restricted to persons twenty-one (21) years or older after 9:00 p.m.
5. The Licensee was open and operating in its current location on or about April 07, 2012.
6. The Monterey Café is split into two sides, with the restaurant on the north side consisting of a pizza counter and tables, and the lounge on the south side containing the bar counter, tables, and a karaoke area. The sides are split by a wall with an

approximately ten (10) foot opening between the sides. The square footage of the licensed premises is approximately 900 square feet.

7. The Monterey Café is adjacent to a convenience store.

8. On or about April 07, 2012, Sgt. Ryan Navrat, a Liquor Enforcement Officer with the LCB, was walking past the windows of The Monterey Café when he saw what appeared to be a reddish-pink drink on a table by the window.

9. Sgt. Navrat entered The Monterey Café after 2:00 a.m. in plain clothes and identified himself to the doorman. He spoke to the doorman and informed him that there appeared to be an alcoholic drink on a table in the southeast corner by the window.

10. Sgt. Navrat allowed the doorman to stay at his post and immediately proceeded to the bar to speak with the bartender on duty.

11. Sgt. Navrat walked directly to the bar counter, which is located at the back of the premises. Upon arriving at the bar counter, he spoke to Chris Skillman, the bartender on duty.

12. While Sgt. Navrat was informing Mr. Skillman of the possibility of an alcoholic drink being consumed on the premises after the cutoff time of 2:00 a.m., the doorman approached and informed him the drink had been removed and may have been Gatorade. The Licensee was not cited for this event.

13. When Sgt. Navrat arrived at The Monterey Café there were approximately 45-50 people in the premises. The capacity of The Monterey Café is 69 persons.

14. The Monterey Café follows approximately the same closing procedure each night. The "last call" for drinks is announced over the speaker system at approximately 1:20 a.m. – 1:30 a.m. and consists of informing patrons that it is the last chance to

purchase any alcohol. During this first "last call", at least one employee conducts a sweep to begin to clear tables of all empty glasses and bottles, as well as any trash. The next sweep of the premises happens approximately ten (10) minutes after "last call" and consists of collecting all empty glasses, bottles, and trash and informing all patrons that they must finish their alcoholic drinks. At least one employee conducts this sweep. The third and final sweep happens approximately five (5) minutes after the second sweep and consists of pulling all remaining glasses and bottles, regardless of their contents, and all remaining trash. Two employees conduct this sweep together, starting from the front of the premises and working their way to the back. The lights are turned up to a brighter level during the last two sweeps.

15. Prior to Sgt. Navrat's arrival at the Licensee's premises, the staff on duty had already conducted a "last call" sweep, and the two additional sweeps of the premises.

16. On the evening in question, the "last call" took place at approximately 1:25 a.m. and Mr. Skillman and the doorman separately walked through the premises collecting empty glasses and trash.

17. At approximately 1:40 a.m. Mr. Skillman and the doorman again walked through the premises and collected all remaining drinks.

18. At approximately 1:50 a.m. both Mr. Skillman and the doorman did one last walkthrough for any remaining glasses, including checking in buckets on the tables.

19. After Sgt. Navrat's arrival on the premises and while he was standing at the bar counter area, Mr. Skillman and the doorman conducted a fourth sweep of the premises and found no remaining alcoholic beverages.

20. Sgt. Navrat observed this fourth sweep and also did not see any remaining

alcoholic beverages. Sgt. Navrat then began to exit the premises. As he was walking towards the exit, he observed a patron drink out of a sixteen (16) ounce can of Pabst Blue Ribbon beer and set it on a table located in the southeast corner of the premises. The patron then walked away from the table and left the beer can sitting on the table.

21. Sgt. Navrat approached the table, picked up the beer, and observed it was about half full. He smelled the odor of alcohol coming from the opening in the can.

22. Sgt. Navrat took the Pabst Blue Ribbon beer can back to the bar counter and informed Mr. Skillman that he had just found it on a table in the southeast corner. He gave it to Mr. Skillman to discard. Thereafter, Mr. Skillman kicked out the patron.

23. Sgt. Navrat then informed Mr. Skillman that he would think about whether he would be issuing a violation, and would contact the Licensee the following Monday. He then exited the premises.

24. The Monterey Café does not sell sixteen (16) ounce cans of Pabst Blue Ribbon beer.

25. Mr. Skillman was familiar with the patron who drank from the Pabst Blue Ribbon beer can because he was a repeat customer.

26. The patron did not arrive at the bar until after "last call" at approximately 1:30 a.m., before the second sweep. Mr. Skillman did not sell the patron any alcohol on the night in question.

27. On April 09, 2012, Sgt. Navrat issued to the Licensee an Administrative Violation Notice (AVN) no. 4O2098C. The AVN states the basis for the citation as: "Hours of service: Sales, Service, Removal, or Consumption of Alcohol Between 2:00 AM and 6:00 AM."

28. On April 25, 2012, the Licensee filed a request for hearing contesting the AVN.
29. On May 31, 2012, the LCB issued its Complaint No. 24,080, against the Licensee based on the AVN and the events in question. The Complaint charged the Licensee for violating the Washington State Liquor Act laws alleging the following:

That on or about April 7, 2012, the Licensee or employee(s) thereof allowed the consumption of liquor on the licensed premises between the hours of 2:00 a.m. and 6:00 a.m., in violation of WAC 314-11-070(e); and/or [sic]

That on or about April 7, 2012, the Licensee or employee(s) thereof sold liquor between the hours of 2:00 a.m. and 6:00 a.m., in violation of WAC 314-11-070(a). [sic]

30. The Board is not alleging the latter, i.e., sale of liquor after hours.

CONCLUSIONS OF LAW

1. The undersigned Tribunal has jurisdiction in this matter pursuant to Revised Code of Washington (RCW) 34.05 and Washington Administrative Codes (WAC) 314-42-051 and 314-42-095(1).
2. The administration of RCW Title 66 "is vested in the Liquor Control Board." RCW 66.08.020. Specifically, the Liquor Control Board is charged with the task of adopting rules to carry out the provisions of RCW Title 66. RCW 66.08.0501. To help ensure compliance with RCW Title 66, "all county and municipal peace officers are hereby charged with the duty of investigating and prosecuting all violations of this title, and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor...." RCW 66.44.010(1). Additionally, the Liquor Control Board may employ Enforcement Officers, who have the power to enforce the penal provisions of Title 66. RCW 66.44.010(4). Finally, the Board has the authority to suspend or revoke a license. RCW 66.24.010(3)(a).

3. Licensees are responsible for operating the licensed premises in compliance with all liquor laws and rules contained within Title 66 RCW and Title 314 WAC. WAC 314-11-015(1)(a). Licensees are responsible for the conduct of its employees and patrons at all times they are on the licensed premises. WAC 314-11-015(3). Any violations committed by the Licensee's employees will be considered as having been permitted or committed by the Licensee. WAC 314-11-015(1)(a).

4. WAC 314-11-070 provides in pertinent part:

During what hours can I sell or serve liquor?

(1) Between the hours of 2 a.m. and 6 a.m., licensees or employees may not:

...
(e) Allow liquor to be consumed on the premises; or
...

5. Thus, in order for a violation of WAC 314-11-070(1)(e) to occur, a determination must be made that the Licensee and/or its employees allowed liquor to be consumed on the premises after 2:00 a.m.

6. The term "allow" is not defined in the applicable statutes or regulations. Where a regulation is clear and unambiguous, words in a regulation are given their plain and ordinary meaning. *Silverstreak, Inc. v. Wash. State Dep't of Labor and Indus.*, 159 Wn.2d 868, 881, 154 P.3d 891 (2007).

7. *Webster's II New Riverside University Dictionary* (1984) defines "allow" as: "1. To let do or happen : PERMIT. 2. To acknowledge or admit: CONCEDE...3. To permit to have . . ." Also, *Black's Law Dictionary* (5th ed.) defines "allow" as: "The word has no rigid or precise meaning, its import varying according to circumstances or context in connection with which it is used. It may mean to bestow or assign to any one as his

right or due. To approve of, accept as true, admit, concede, adopt, or fix. . . To sanction, either directly or indirectly, as opposed to merely suffering a thing to be done; to acquiesce in; to suffer; to tolerate.” It is clear that “allow” is synonymous with “permit”. See also *Moritz v. St. Paul Fire and Marine Ins. Co.*, 48 Wn. App 521, 524, 739 P.2d 731 (1987).

8. With respect to LCB regulations, the court in *Reeb, Inc. v. Wa. State Liquor Control Bd.*, 24 Wn. App. 349, 353, 600 P.2d 578 (1979), determined that permit “does not imply that the licensee must have permanently sanctioned the prohibited act; it refers to the licensee’s actual or constructive knowledge of the circumstances which would foreseeably lead to the prohibited activity.” Thus, when a licensee is in a position to foresee the occurrence of questionable conduct and fails to act, grounds for finding a violation has been committed are created. *Id.*

9. In the present matter, the Licensee did not have actual knowledge of the after hours consumption of alcohol. It is concluded that the Licensee also did not have constructive knowledge of the circumstances which would foreseeably lead to such prohibited activity. The Licensee’s actions are distinguishable from those described by the *Reeb* court. In *Reeb*, the licensee was already aware of the propensity of its employees to violate the laws in question, and despite that knowledge it continued its operations. Here, the Licensee was not aware of any conditions that would lead to the after hours consumption of alcohol. The Licensee had already taken reasonable precautions to ensure all alcohol was removed prior to 2:00 a.m. by conducting three sweeps of the bar. The Licensee conducted an additional sweep in the presence of Sgt. Navrat, who also did not see any other alcohol during that sweep. The Licensee did not

sell the patron any alcohol and the alcohol Sgt. Navrat found was not a kind sold by the Licensee. To avoid this situation, the Licensee would have had to continually do sweeps all through the night. This requirement would be unreasonable. Based on the reasonable actions taken by the Licensee in conducting multiple sweeps and the fact that the liquor found was not a kind that is sold by the Licensee, it was not in a position to foresee the occurrence of after hours alcohol consumption on its premises.

10. The preponderance of the evidence in this case leads this Tribunal to conclude that the Licensee did not allow the consumption of liquor between the hours of 2:00 a.m. and 6:00 a.m. In fact, the Licensee actively engaged in efforts to avoid allowing after hours consumption of alcohol. Therefore, it is concluded that the Licensee did not violate WAC 314-11-070(1)(e). Accordingly, the Liquor Control Board's Complaint number 24,080 and its associated Administrative Violation Notice 4O2098C should be dismissed.

ORDER

NOW THEREFORE, IT IS ORDERED that the Liquor Control Board's Complaint No. 24,080, dated May 31, 2012, and its associated Administrative Violation Notice No. 4O2098C, issued on April 07, 2012, are hereby dismissed.

DATED this 27th day of March, 2013.



MARK H. KIM
Administrative Law Judge

Appeal Rights

Petition for Review:

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 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 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).

CERTIFICATION OF MAILING IS ATTACHED

Certificate of Service

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

Address: The Monterey Cafe & Pub Spokane, Inc. dba The Monterey Cafe 9 N. Washington St. Spokane, WA 99201	<input checked="" type="checkbox"/> First Class US Mail, postage prepaid
Address: Jennifer C. Underwood, Attorney Groesbeck Ewers, P.S. 313 W. Riverside Ave. Spokane, WA 99201	<input checked="" type="checkbox"/> First Class US Mail, postage prepaid
Address: Isaac Williamson, AAG Office of the Attorney General P.O. Box 40100 Olympia, WA 98504-0100	<input checked="" type="checkbox"/> First Class US Mail, postage prepaid
Address: Kevin McCarroll Washington State Liquor Control Board 3000 Pacific Ave. SE, P.O. Box 43076 Olympia, WA 98504-3076	<input checked="" type="checkbox"/> First Class US Mail, postage prepaid

Date this 27th day of March, 2013.



Mark Kim
Office of Administrative Hearings