

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

CASPERS CORNER INC  
d/b/a THE SPOT BAR & GRILL  
7225 NE 4<sup>TH</sup> PLAIN  
VANCOUVER, WA 98662-7416

LICENSEE

LICENSE NO. 353965  
AVN NO. 1J3067A

LCB NO. 24,741  
OAH NO. 2013-LCB-0066

FINAL ORDER OF THE BOARD

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

1. The Liquor Control Board issued a complaint dated August 21, 2013, alleging that on or around March 8, 2013, the Licensee or an employee(s) thereof gave, sold and/or supplied liquor to an apparently intoxicated person, contrary to RCW 66.44.200(1) and WAC 314-16-150.
2. The Licensee timely submitted a request for an administrative hearing.
3. A hearing was held on March 10, 2014 before Administrative Law Judge Katherine A. Lewis. At the hearings, the Enforcement and Education Division of the Board was represented by Assistant Attorney General Jennifer Elias and the owner of Caspers Corner, Inc. d/b/a The Spot Bar & Grill, Alan DuBois, represented himself.
4. On May 6, 2014 Administrative Law Judge Katherine A. Lewis entered her Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the Complaint.

5. A petition for review was timely filed by the Enforcement and Education Division.
6. No reply to the petition was received from the Licensee.

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 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, except for the following changes:

- a. The Initial Order is modified to reflect that the penalty set forth in WAC 314-29-020 for the first Group 1 violation for service of alcohol to an apparently intoxicated person is a five (5) day license suspension or a monetary penalty of \$500.00 in lieu of suspension, not \$200.00 as stated in the Initial Order; and
- b. All references to Lt. Ordiway are changed to refer to Lt. Tinnerstet or Kandra Tinnerstet, to reflect her name as changed after her recent marriage.

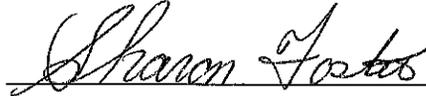
IT IS HEREBY ORDERED that the liquor license privileges granted to Caspers Corner Inc. d/b/a The Spot Bar & Grill at 7225 NE 4<sup>th</sup> Plain Blvd in Vancouver, Washington, License Number 356965, are hereby suspended for a term of five (5) days. In lieu of a license suspension, the Licensee may pay 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 take place from 3:00 p.m. on Thursday, July 24, 2014 until 3:00 p.m. on Tuesday, July 29, 2014. 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 10 day of June, 2014.

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.

FINAL ORDER OF THE BOARD  
CASPER'S CORNER INC d/b/a  
THE SPOT BAR & GRILL  
LICENSE NO. 353965  
LCB NO. 24,741

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

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

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



Washington State  
Liquor Control Board

---

June 11, 2014

Alan DuBois  
Caspers Corner, Inc.  
d/b/a The Spot Bar & Grill  
7225 NE 4<sup>th</sup> Plain Blvd  
Vancouver, WA 98662-7416

Jennifer Elias, 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: Caspers Corner, Inc.**  
**TRADE NAME: The Spot Bar & Grill**  
**LOCATION: 7225 NE 4<sup>th</sup> Plain, Vancouver, WA 98662-7416**  
**LICENSE NO. 353965**  
**LCB HEARING NO. 24,741**  
**OAH NO. 2013-LCB-0066**  
**AVN NO. 1J3067A**  
**UBI: 602-007-411-001-0001**

Dear Parties:

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

**The applicable monetary penalty is due by Friday, July 11, 2014. If payment is not received timely, then suspension will take place during the dates listed in the Final Order. 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  
Jamie Marshall, WSLCB Enforcement

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

CASPERS CORNER, INC.  
d/b/a THE SPOT BAR & GRILL  
7225 NE 4<sup>TH</sup> PLAIN BLVD  
VANCOUVER, WA 98662-7416

LICENSEE

LICENSE NO. 353965  
AVN NO. 1J3067A

LCB NO. 24,741  
OAH NO. 2013-LCB-0066

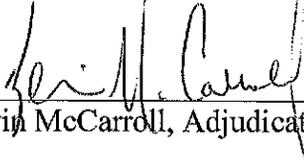
DECLARATION OF SERVICE BY  
MAIL

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:

ALAN DUBOIS  
CASPERS CORNER, INC.  
d/b/a THE SPOT BAR & GRILL  
7225 NE 4<sup>TH</sup> PLAIN BLVD  
VANCOUVER, WA 98662-7416

OFFICE OF THE ATTORNEY GENERAL  
MAIL STOP 40100, GCE DIVISION  
JENNIFER ELIAS,  
ASSISTANT ATTORNEY GENERAL

DATED this 11<sup>th</sup> day of JUNE, 2014, at Olympia, Washington.

  
Kevin McCarroll, Adjudicative Proceedings Coordinator

MAILED

MAY 06 2014

VANCOUVER OFFICE OF ADMINISTRATIVE HEARINGS

MAY 12 2014

Liquor Control Board Board Administration

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

In Re:

Docket No.: 2013-LCB-0066  
LCB NO.: 24,741

Caspers Corner, Inc., dba The Spot Bar & Grill

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND INITIAL ORDER**

Licensee

Liquor Control Board

License No. 353965-1J  
AVN No. 1J3067 A

**STATEMENT OF THE CASE**

On March 8, 2013, the Washington State Liquor Control Board (Enforcement or Board) issued an Administrative Violation Notice to Caspers Corner, Inc., dba The Spot Bar & Grill (Licensee), holder of Liquor License No. 1J3067A. In the Notice, the Board alleged that on that same day, the establishment served alcohol to an apparently intoxicated person in violation of RCW 66.44.200(1).

The assessed penalty was a 5-day suspension, or \$500 in lieu of suspension, for the alleged violation of RCW 66.44.200(1).

The Licensee's owner made a timely request for hearing.

This case was heard by Katherine A. Lewis, Administrative Law Judge on March 10, 2014. The Licensee's owner, Alan DuBois, represented himself, and the Liquor Control Board was represented by Jennifer Elias, Assistant Attorney General. Also appearing at the hearing were Liquor Control Board Enforcement officers Almir Karic, Kandra Tinnerstet, now Ordiway, and Susan Anderson; and Kody Taylor and Valerie Thomas, employees of The Spot Bar & Grill.

Having fully considered the entire record, the undersigned Administrative Law Judge enters the following Findings of Fact, Conclusions of Law and Initial Order:

**FINDINGS OF FACT**

1. The Licensee is Caspers Corner Inc., dba The Spot Bar & Grill ("The Spot"). The license number is 353965-J. This license was issued by the Washington State Liquor

Control Board ("Board") under the provisions of Revised Code of Washington (RCW) 66.20. The Spot is located at 722 NE 4<sup>th</sup> Plain, Vancouver, Wa 98662-7416. The owner is Alan L. DuBois.

2. The Washington State Liquor Control Board - Enforcement Division (Enforcement or Board) monitors and regulates the conduct of licensees and permit holders to ensure compliance with applicable laws and administrative rules through a continuing program of premises checks and compliance checks.

3. The Spot was open to the public and conducting business in its current location on March 8, 2013. Kody Taylor and Valerie Thomas were working as bartenders.

4. On the evening of March 8, 2013, at about 10:30 p.m., Liquor Control Officer, Lt. Kandra Ordiway (formerly "Tinnerstet") was conducting a premises check on a number of establishments in the Vancouver area, including The Spot. She and Susan Anderson, Liquor Enforcement Officer II, entered The Spot in an undercover capacity. Lt. Ordiway noticed that the establishment was well-lit, that there were about 40-50 people in the bar and that there were two bartenders working, one male and one female. The two officers approached the bar and ordered one beer and one Coke and then sat at the bar.

5. Both officers have had training and experience in recognizing the symptoms of alcohol intoxication.

6. The two officers noticed a man and a woman playing on a video game machine close to the bar and close to the officers. According to Lt. Ordiway, both people seemed intoxicated, both had problems with their speech and balance and both had "drooping and watery eyes". Lt. Ordiway did not see the couple's behavior as caused by fatigue, especially the impairment of balance.

7. Lt. Ordiway saw the male half of the couple, later identified as Alexander J. Salos Narciso (Mr. Salos), "swaying" while standing at the video machine, and then watched as he passed behind her on the way to an ordering area of the bar, which was two or three feet from Lt. Ordiway's location. Mr. Salos was carrying a beer can with him and "staggered a little" while walking. He then leaned on the bar as he ordered a beer from the female bartender, later identified as Valerie Thomas, and then stood "swaying" while his order was filled. He took his new beer and walked back by the officers toward his female companion. He put his beer on the bar and then told Lt. Ordiway and Office Anderson that his name was "Al" and asked if they would "watch my beer" while he went outside. Lt. Ordiway found his diction "slurred" and saw that he staggered as he headed out the door. She said the bartender had a "direct view" of him as he left.

8. Officer Anderson's account of the incident is consistent with Lt. Ordiway's. Additionally, she testified as to what she has been trained to see as signs of intoxication.

Officer Anderson requires of herself that the person who may be intoxicated exhibit at least three of the following behaviors and/or appearances: drooping, watery eyes, slow, deliberate and/or slurred speech, difficulty with balance and in walking, an "over focus" on trying to accomplish tasks, such as placing a drink on a bar, slowness in responding to stimuli, and trouble with motor skills.

9. Officer Anderson noticed Mr. Salos had difficulty grasping his beer bottle as if he had depth perception problems, that his speech was slurred and slow, that he swayed when standing, and that he leaned on the bar for balance while ordering. She stated these behaviors were "pretty extreme".

10. Lt. Ordiway texted Liquor Enforcement Officer Almir Karich, who was waiting outside, regarding what she had observed about Mr. Salos' behavior and described his clothing.

11. Officer Karich has also had training and experience in recognizing the symptoms of alcohol intoxication.

12. Mr. Salos returned to the bar and Officer Karich came into the establishment shortly thereafter and stood, observing Mr. Salos for a period of time. To Officer Karich, Mr. Salos seemed "obviously intoxicated". He was swaying, lost his balance at one point and had to hold onto the bar to keep from falling and to maintain his balance. Officer Karich watched Mr. Salos drink from a beer bottle.

13. Officer Karich, not knowing it was the female bartender who had served Mr. Salos, approached the male bartender, Kody Taylor, and advised him there had been a violation involving serving alcohol to an apparently intoxicated person.

14. Officer Karich then went to Mr. Salos, showed him his Liquor Control Officer's badge, took possession of an empty Coors Light beer bottle Mr. Salos was holding, and asked Mr. Salos to accompany him outside. As they walked out of The Spot, Officer Karich observed Mr. Salos unable to walk straight and stumbling as he walked. Once the two were outside, Officer Karich noted Mr. Salos "reeked of alcohol", had "droopy eyes" and was swaying. Officer Karich attempted to explain to Mr. Salos that he had been over-served, and had to repeat himself three times, and still believed Mr. Salos did not understand. Officer Karich wrote a statement based on what Mr. Salos told him and asked Mr. Salos to sign it. Mr. Salos could "barely place the pen on the right line on the statement". Mr. Salos admitted he was intoxicated but assured the officer he would not drive as he lived close by. Officer Karich released Mr. Salos, keeping the beer bottle.

15. Officer Karich then went back into The Spot and once again approached bartender Kody Taylor, asking for his Mandatory Alcohol Servers Training permit (MAST), and "read him his warning rights". Mr. Taylor said he had served no alcohol to Mr. Salos. It was

determined that the bartender who served Mr. Salos was Valerie Thomas. Officer Karich then spoke to Ms. Thomas about her over service of Mr. Salos.

16. Ms. Thomas' version of what happened on the night of March 8, 2013 is much different than the Liquor Control Board officers'. It is noted that, unlike the officers, each of whom wrote detailed reports on the incident within days, Ms. Thomas relied on her memory for her testimony at hearing.

17. She asserted that as a bartender for 12 years, she "know[s] intoxication when [I] see it." She has "cut off" customers, and taken alcohol away from customers she believes should not have any more.

18. Ms. Thomas stated she did not believe Mr. Salos was intoxicated. He is a regular at The Spot, is quiet and not a problem. She stated she served him two beers between 7:30 p.m. and 11:30 p.m. She did not see him staggering, stumbling, or off balance, nor hear him slurring his words. Aware of who Officer Karich is, when Ms. Thomas saw him come into the bar, she stated she did a "mental check" regarding the patrons and was satisfied there were no problems.

19. She did acknowledge The Spot was busy that night. It is possible that her busyness prevented her from spending any time observing Mr. Salos before serving him the beer.

20. Mr. Thomas stated that Mr. Salos did not walk from video machine to other area of bar to get second beer, that she served him at his seat.

21. On March 12, 2013, the Appellant was issued an Administrative Violation Notice citing him for Sale or Service to Apparently Intoxicated Person on March 8, 2013. The penalty was either a five-day suspension or a \$500.00 fine. (Exhibit 1).

22. On March 29, 2013, Mr. DuBois requested an administrative hearing.

23. This was the licensee's first violation of any liquor law or regulation.

### **CONCLUSIONS OF LAW**

1. The legislature delegated, to the Washington State Liquor Control Board, the authority to regulate and penalize licensees engaged in the business of selling alcohol to the public as part of the police power of the state. RCW 66.08.020. The Board acts as the administrator to protect the health, safety, and welfare of the public. The alcohol industry is a highly regulated industry, and the laws governing the industry shall be liberally construed in order to effectively protect the welfare, health, peace, morals and safety of the people of the state. RCW 66.08.010. The Board's dominion in exercising its regulatory authority is

"broad and extensive." See *Jow Sin Quan v. Washington State Liquor Control Board*, 69 Wn.2d 373, 418 P.2d 424 (1966).

2. The Washington State Liquor Control Board has jurisdiction over the Licensee pursuant to 66.24 Revised Code of Washington (RCW) and is subject to the provisions of RCW 66.20, RCW 66.44 and 314 Washington Administrative Code.
3. The license to operate in the liquor industry is a privilege and not a right. WAC 314-12-010.
4. "Licensee" means the hold of a retail liquor license issued by the Board, and includes an employee or agent of the license. RCW 66.20.160.
5. Every license issued under this section is subject to all conditions and restrictions imposed by this title or by rules adopted by the board. RCW 66.24.010.
6. The Board authorizes enforcement officers to conduct liquor compliance checks at any location where alcohol is sold, served or provided. WAC 314-31-005(1).
7. No person shall sell any liquor to any person apparently under the influence of liquor. RCW 66.44.200(1).
8. A violation of this act subjects the licensee, for a first violation, to a five-day suspension of his/her license or a \$500.00 fine. WAC 314-29-021.
9. It must be determined if Mr. Solas was "apparently under the influence of liquor".
10. "Apparently" means "readily perceptible to the senses" and "capable of being readily perceived by the sensibilities or understanding as certainly existent or present. Ensely v. Mollmann, 155 Wn. App. 744 (2010), citing Barrett v. Lucky Seven Saloon, Inc. 152 Wn.2d 259, 273-74, 96 P.3rd 386 (224), citing WEBSETER'S THIRD NEW INTERNATIONAL DICTIONARY 102 (2002).
11. "[A]pparently under the influence" means by "direct, observational evidence at the time of the alleged overservice. . ." Faust v. Albertson, 167 Wn.2d 531, 539, 222 P.3d 1208 (2009).
12. The standard of proof in an administrative proceeding is preponderance of the evidence except in cases involving professional licenses or where the statute specifically mandates a different standard. In this case the statute does not address the standard of proof nor is there a professional license involved. Therefore, the appropriate standard of proof in this matter is the preponderance of the evidence standard of proof.

13. The preponderance of the evidence in this case is that Mr. Solas was apparently under the influence of alcohol. The Board's officers are believed that he staggered, swayed, had trouble keeping his balance and with his motor skills. He was slow in responding to stimuli, had slow and slurred speech, as well as droopy, watery eyes.

14. It is understood that some of the evidence, particularly that of Officer Karich, refers to Mr. Salos' behavior after the service at issue. Nonetheless, it all happened very close in time and evidence of Mr. Salos' apparent intoxication within a few minutes after service is relevant to his conduct shortly before and after service of the beer.

15. Board officers Ordiway and Anderson watched Mr. Salos walk from the video machine over to an area of the bar where he could be served. Although Ms. Thomas says he did not walk to her but rather she served him at his seat, this is deemed a flawed memory on her part. It is not reasonable that she would remember such a detail from one night among many over a year ago. The officer's notes and reports are simply deemed more reliable. It is concluded Mr. Salos did walk to the bar, was staggering some, and had to hold onto the bar for support. What he said to Ms. Thomas while ordering his beer is not known, but it is believed no matter what he said, his slurring speech and droopy, watery, dilated eyes should have been apparent to her. Further, when he walked back to his seat at the bar, and then left the bar heading outside, his unsteadiness should have been obvious to her.

16. Ms. Thomas would have been aware of Mr. Salos' intoxication had she spent any time at with him at the time she served him the second beer. Whether she simply did not spend this minimal time, or did not want to react to the intoxication of a regular customer and an apparently nice man, is not clear. But it is concluded, by a preponderance of the evidence, that Ms. Thomas served alcohol to an apparently intoxicated person, in violation of RCW 66.44.200(1).

17. Pursuant to WAC 314-29.021, the licensee must choose between a five-day suspension of its/his license or a \$500.00 fine.

#### INITIAL ORDER

IT IS HEREBY ORDERED That the Board's Complaint is **sustained** and that the Licensee, shall, on a date to be set by the Board in its final order, be subject to a five-day suspension or a \$200 fine in lieu of suspension.

**Dated and Mailed** at Vancouver, Washington, this 6th day of May 2014.

WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS



Katherine A. Lewis  
Administrative Law Judge  
5300 MacArthur Blvd, Suite 100  
Vancouver, WA 98661  
Telephone: (360) 690-7189 or 1-800-243-3451  
FAX: (360) 696-6255

Mailed to:

Licensee:

Caspers Corner, Inc. Dba The Spot Bar & Grill  
7225 NE 4th Plain Blvd  
Vancouver, WA 98662-7146

Assistant Attorney General:

Jennifer Elias, AAG  
Office of the Attorney General  
Gov't Compliance & Enforcement Div.  
P.O. Box 40100  
Olympia, WA 98504-0100

Department Contact:

Kevin McCarroll  
Adjudicative Proceedings Coordinator  
Washington State Liquor Control Board  
PO Box 43076  
Olympia, WA 98504

Washington State Liquor Control Board  
PO Box 43076  
Olympia, WA 98504

## 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 and WAC 10-08-211 and 314-42-095(2)(a).

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 (10) ten 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 SE  
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).

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 Procedures Act).

**CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 2013-LCB-0066**

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

<p>Caspers Corner, Inc. dba The Spot Bar &amp; Grill 7225 NE 4<sup>th</sup> Plain Blvd Vancouver, WA 98662-7146</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Jennifer Elias, AAG Office of the Attorney General Gov't Compliance &amp; Enforcement Div. PO Box 40100 Olympia, WA 98504-0100</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Kevin Mc Carroll Adjudicative Proceedings Coordinator PO Box 43076 Olympia, WA 98504</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Tuesday, May 06, 2014

OFFICE OF ADMINISTRATIVE HEARINGS



Eydie Farrell  
Legal Secretary

RECEIVED

MAY 27 2014

Liquor Control Board  
Board Administration

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:  
CASPAR'S CORNER, INC., d/b/a  
THE SPOT BAR & GRILL  
7225 NE FOURTH PLAIN BLVD.  
VANCOUVER, WA 98662

OAH NO. 2013-LCB-0066  
LCB CASE NO. 24,741

ENFORCEMENT DIVISION'S  
PETITION FOR REVIEW OF THE  
INITIAL ORDER

LICENSEE

LICENSE NO. 353965-1J  
AVN NO. 1J3067A

COMES NOW, the Washington State Liquor Control Board's Education & Enforcement Division (Enforcement), by and through its attorneys, ROBERT W. FERGUSON, Attorney General, and JENNIFER ELIAS, Assistant Attorney General, and pursuant to RCW 34.05.464 and WAC 314-42-095(2)(a), provides the following exceptions to the Initial Order issued by Administrative Law Judge (ALJ) Katherine Lewis, on May 6, 2014, in the above-referenced case.

**I. BACKGROUND**

The Board issued a formal complaint dated August 21, 2013, to the Licensee, Casper's, Inc., d/b/a The Spot Bar and Grill, alleging that on or about March 8, 2013, the above-named Licensee, and/or employee(s) thereof, gave sold and/or supplied liquor to an apparently intoxicated person, contrary to RCW 66.44.200(1) and WAC 314-16-150.

1 This case was heard and considered by ALJ Lewis in Vancouver, Washington on  
2 March 10, 2014. After a full hearing on the alleged violation, the ALJ entered her Findings of  
3 Fact, Conclusions of Law, and Initial Order on May 6, 2014.

## 4 II. DISCUSSION

5 Any party, upon receipt of a proposed order, may file exceptions within twenty days of  
6 service of the order. WAC 314-42-095(2)(a). The reviewing officer (including the agency  
7 head reviewing an initial order) "shall exercise all the decision-making power that the  
8 reviewing officer would have had to decide and enter the final order had the reviewing officer  
9 presided over the hearing[.]" RCW 34.05.464(4). Thus, the Washington State Liquor Control  
10 Board is not bound by the ALJ's Conclusions of Law in the Initial Order.

### 11 A. Exceptions to the Penalty Imposed In the Initial Order.

12 The penalty imposed under the Initial Order is incorrectly stated as a five (5) day  
13 suspension or a two-hundred dollar monetary penalty (\$200.00). Finding of Fact Number 8  
14 and Conclusion of Law Number 17 both correctly state the penalty for a first time violation of  
15 RCW 66.44.200(1) and/or 314-16-150. The penalty for a first time violation for service to  
16 apparently intoxicated person under WAC 314-29-020 is a five (5) day suspension of the liquor  
17 license or a monetary fine of five hundred dollars (\$500.00)<sup>1</sup>. The imposition of a two-hundred  
18 dollar penalty appears to be the result of a typographical error, as the penalty is correctly  
19 asserted elsewhere in the Initial Order and ALJ Lewis has included no discussion of an intent  
20 to lower the penalty or a basis for such a reduction. The Order should be corrected to impose a  
21 five (5) day suspension of the liquor license or a five hundred dollar (\$500.00) monetary  
22 penalty.

23  
24  
25  
26 <sup>1</sup> There is a typographical error in Finding of Fact Number 8 and Conclusion of Law Number 17, the  
citation to the WAC containing the penalty matrix is WAC 314-29-020. There is no WAC 314-29-021.

1 **B. References to Lieutenant Ordiway**

2 Lieutenant Tinnerstet is referred to as Lt. Ordiway in the Initial Order. The Initial  
3 Order appears to reverse Lt. Tinnerstet's name change. Lt. Ordiway's name was changed to  
4 Kendra Tinnerstet after her recent marriage. All occurrences of Lt. Ordiway should read Lt.  
5 Tinnerstet.

6 **III. CONCLUSION**

7 Therefore, the Enforcement Division respectfully requests that the Initial Order be  
8 modified to impose the standard penalty for a first-time violation for service to an apparently  
9 intoxicated person as outlined above and to refer to Lt. Tinnerstet instead of Lt. Ordiway.

10 DATED this 23rd day of May 2014.

11 ROBERT W. FERGUSON  
12 Attorney General

13   
14 JENNIFER ELIAS, WSBA #36334  
15 Assistant Attorney General  
16 Attorneys for the Washington State Liquor  
17 Control Board Enforcement Division

18  
19  
20  
21  
22  
23  
24  
25  
26

1 **PROOF OF SERVICE**

2 I certify that I served a true and correct copy of this document on all parties or their  
3 counsel of record on the date below via electronic mail and by placing same in the U.S. mail  
4 and state Consolidated Mail Service with proper postage affixed to:

5 ALAN DUBOIS  
6 CASPER'S CORNER, INC. d/b/a  
7 THE SPOT BAR AND GRILL  
8 7225 NE 4TH PLAIN BLVD  
9 VANCOUVER, WA 98662  
10 alandubois@comcast.net

11 I declare under penalty of perjury under the laws of the state of Washington that the  
12 foregoing is true and correct.

13 DATED this 27th day of May, 2014, at Olympia, Washington.

14 

15 MARLENA MULKINS  
16 Legal Assistant  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26