

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

INFUSION LOUNGE LLC  
d/b/a INFUSION LOUNGE

Location Address:  
656 SE BAYSHORE DR STE 1  
OAK HARBOR, WA 98277-5739

Mailing Address:  
3024 RACCOON WAY  
OAK HARBOR WA 98277-9139

APPLICANT

LICENSE APPLICATION NO. 402149  
UBI: 603-317-878-001-0001

LCB NO. L-24,974  
OAH NO. 2014-LCB-0027

FINAL ORDER OF THE BOARD

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

- a. The Licensing Division of the Liquor Control Board issued a Statement of Intent to Deny Liquor License Application dated March 3, 2014.
- b. The Applicant submitted a request for a hearing.
- c. On September 22, 2014, Administrative Law Judge Donald R. Capp issued his Findings of Fact, Conclusions of Law and Initial Order, affirming the decision to deny the Applicant's license application as expressed in the Statement of Intent to Deny Liquor License Application.
- d. No Petition for Review was received.
- e. 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 Statement of Intent to Deny Liquor License for case L-24,974 in this matter is ADOPTED with the following corrections:

a. The LCB No. 24,947 on the Initial Order is corrected to read LCB No. L-24,974.

b. Finding of Fact 4.2 is revised to read:

4.2. Ms. Olson timely requested a hearing on the Statement of Intent to Deny Liquor License, and the Licensing and Education Division, through its attorneys, requested that the Office of Administrative Hearings schedule the matter for hearing.

c. Finding of Fact 4.3 is revised to read:

4.3. Ms. Olson has applied for a license to operate Infusion, LLC as a Spirits, Beer, Wine Restaurant Lounge at 656 Bayshore Drive, Ste. 1, in Oak Harbor, Washington, by assuming the license formerly held by Daddy's Money, Inc. d/b/a Element (Element).

d. Finding of Fact 4.8 is revised to read:

4.8. Prior to Ms. Olson applying to assume the liquor license previously held by Element, she worked at Element and its predecessor, Bayside Casino. The claimant began her employment there in June of 2007.

e. Finding of Fact 4.9 is revised to read:

4.9. Ms. Olson was the manager of Element. Ms. Olson claims she was not the manager of Element, because that position was held by Teresa Neims. Having carefully weighed all of the evidence, and the totality of the circumstances, I resolve conflicting testimony in favor of the Board and against the applicant. Ms. Olson admits in her September 2, 2014 emailed request for further review that "[m]y position the (sic) was held at Element was bar manager." The September 2, 2014 email never references Ms. Neims nor does the supporting August 30, 2014 email from Mr. Kummerfeldt, in which he refers to Ms. Olson as the bar manager. It is clear that Ms. Olson was the manager, at least of the bar operations, during the times when Element was having problems with the chronic illegal activities alleged by the Oak Harbor Police Department.

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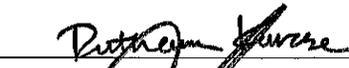
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IT IS HEREBY FURTHER ORDERED that liquor license application number 402149 for Infusion LLC d/b/a Infusion Lounge is DENIED.

DATED at Olympia, Washington this 23 day of December, 2014.

WASHINGTON STATE LIQUOR CONTROL BOARD

  
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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

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December 23, 2014

Jennifer Olson  
Infusion Lounge LLC  
d/b/a Infusion Lounge  
3024 Raccoon Way  
Oak Harbor, WA 98277-9139

Kim O'Neal, AAG  
GCE Division, Office of Attorney General  
1125 Washington Street SE  
PO Box 40100  
Olympia, WA 98504-0100

**RE: FINAL ORDER OF THE BOARD**  
**APPLICANT: Infusion Lounge LLC**  
**TRADE NAME: Infusion Lounge**  
**LOCATION: 656 SE Bayshore Dr Ste 1, Oak Harbor, WA 98277**  
**LICENSE APPLICATION NO. 402149**  
**LCB HEARING NO. L-24,974**  
**OAH NO. 2014-LCB-0027**  
**UBI: 603-317-878-001-0001**

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,

A handwritten signature in black ink that reads "Kevin McCarroll".

Kevin McCarroll  
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Scott Dudley, Mayor of Oak Harbor  
Randy Simmons, Deputy Director, WSLCB  
Dora Duval, Licensing Manager, WSLCB  
PK Dan, Licensing Administrative Assistant, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

INFUSION LOUNGE LLC  
d/b/a INFUSION LOUNGE  
656 SE BAYSHORE DR STE 1  
OAK HARBOR, WA 98277-5739

APPLICANT

LICENSE APPLICATION NO. 402149  
UBI: 603-317-878-001-0001

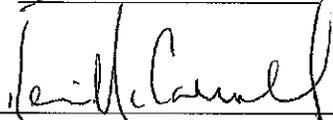
LCB NO. L-24,974  
OAH NO. 2014-LCB-0027

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 electronic mail for WSLCB offices, and Campus Mail via Consolidated Mail Services for state offices on the date below to:

JENNIFER OLSON INFUSION LOUNGE LLC d/b/a INFUSION LOUNGE 3024 RACCOON WAY OAK HARBOR, WA 98277-9139	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION KIM O'NEAL, ASSISTANT ATTORNEY GENERAL
JENNIFER OLSON INFUSION LOUNGE LLC d/b/a INFUSION LOUNGE 656 SE BAYSHORE DR STE 1 OAK HARBOR, WA 98277-5739	

DATED this 23<sup>rd</sup> day of December, 2014, at Olympia, Washington.

  
Kevin McCarroll, Adjudicative Proceedings Coordinator

RECEIVED

OCT 23 2014

Liquor Control Board  
Board Administration

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

In The Matter Of:

INFUSION LLC  
d/b/a Infusion Lounge

Appellant.

OAH Docket No. 2014-LCB-0027  
LCB No. 24,947

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND  
INITIAL ORDER

I. ISSUES PRESENTED

1.1 Whether the State of Washington's Liquor Control Board abused its discretion by issuing its Statement of Intent to deny a liquor license to the Appellant on March 3, 2014?

1.2 If so, what are the appropriate restriction(s)?

II. ORDER SUMMARY

2.1 No, the Liquor Control Board did not abuse its discretion.

2.2 Infusion's application to assume Element's liquor license is denied.

III. HEARING

3.1 **Hearing Date:** September 15, 2014

3.2 **Administrative Law Judge:** Donald R. Capp

3.3 **Appellant:** Infusion LLC d/b/a Infusion Lounge (herein "Infusion")

3.3.1 **Witnesses:**

3.3.1.1 Jennifer Olson, owner

3.4 **Agency:** Liquor Control Board ("Board")

3.4.1 **Representative:** Kim O'Neal, Assistant Attorney General

**3.4.2 Witnesses:**

- 3.4.2.1 Edgar Green, Chief of Police, Oak Harbor Police Department
- 3.4.2.2 Scott Dudley, Mayor of Oak Harbor
- 3.4.2.3 Licensing and Regulation Director Alan Rathbun, Liquor Control Board (Board)
- 3.4.2.4 Billie Cook, Oak Harbor Resident
- 3.4.2.5 Norman and Susan Myers, Oak Harbor Residents (Written Testimony)
- 3.4.2.6 Gray and Dee Giordan, Oak Harbor Residents (Written Testimony)
- 3.4.2.7 Steven and Mary Boughner, Oak Harbor Residents (Written Testimony)
- 3.4.2.8 Kathy Harbour, Oak Harbor Resident (Written Testimony)

**3.5 Exhibits:** Board Exhibits 1-9 were admitted into the record.

**IV. FINDINGS OF FACT**

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

Jurisdiction

4.1 On or around March 3, 2014, the Board issued Infusion a Notice of Intent to Deny Liquor License and served it by U.S. Mail on Jennifer Olsen, Owner of Infusion.

4.2 On or about April 28, 2014, Robert Ferguson, Attorney General of Washington requested an administrative hearing.

Infusion

4.3 Infusion is a tentative lounge attempting to locate at 656 Bayshore Drive,

Ste 1, in Oak Harbor, Washington by assuming the license of Daddy's Money, Inc. d/b/a Element (Element) with the State of Washington to serve spirits, beer and wine.

4.4 Element was an existing nightclub in Oak Harbor at the 656 Bayshore address which had a volatile atmosphere. The City of Oak Harbor put in place numerous conditions prior to the re-issuance of a license to Element.

4.5 Element had three civil infractions and a written warning issued after the imposition of the conditions.

4.6 On July 31, 2013 Element closed. On September 9, 2013, Element's liquor license was revoked.

4.7 The Oak Harbor Police Department submitted 53 pages of responses to incidents at Element which required police intervention. This intervention required the work of one to four officers at a time. No other nightclub in Oak Harbor commanded this much time and resources from the Department.

4.8 Prior to Ms. Olson attempting to assume Element's liquor license she worked at Element and its predecessor, Bayside Casino. The claimant began her employment in June of 2007.

4.9 Ms. Olson was the manager of Element. Ms. Olsen claims she was not the manager of Element because Teresa Nelms was the manager. Having carefully weighed all of the evidence, and the totality of the circumstances, I resolve conflicting testimony in favor of the Board and against Ms. Olson. Ms. Olson admits in her September 2, 2014 emailed request for further review that "[m]y position the (sic) was held at Element was bar manager." Further, the September 2, 2014 email never references Ms. Nelms nor does the supporting August 30, 2014 email from Mr. Kummerfeldt. In fact, Mr. Kummerfeldt refers to Ms. Olson as the bar manager. It is abundantly obvious Ms. Olson was the nightclub manager at all time when Element was having problems with its chronic illegal activities.

4.10 On December 30, 2012 Ms. Olson, while acting in her capacity as bar manager, was arrested by undercover Washington Liquor Control Board officers for violation of RCW 66.44.200(1), sale of liquor to an apparently intoxicated person. Ms. Olson pled guilty to the violation on May 8, 2013.

4.11 Ms. Olson reported having \$15,000.00 available to her for financing and operation of Infusion. However, Ms. Olson was never able to provide copies of the cashier's checks that she reported purchasing to replace the balance each time she used some of the \$15,000.

4.12 Ms. Olson has an agreement to purchase the contents of the bar, including the existing alcohol for \$125,000.00. This is a no interest agreement and the balance is payable in 31 months. This agreement is with the parents of Element's former owner, Mark Kummerfedt. The agreement is not reduced to writing.

4.13 Seven residents of a condo association protested Infusion's assumption of the Element's license and each resident detailed the noise that prevented them from sleeping, the fights between Element patrons, damage to personal property as well as condo association property, public urination on condo association property and public intoxication. All problems experienced by the association were on-going. The condo association is 60 feet from the Element property line.

4.14 The City of Oak Harbor, through its Mayor objected to the assumption of the Element license by Infusion on the basis that Ms. Olson was the bar manager during all times that problems with Element existed.

4.15 Ms. Olson has never submitted a business plan for her assumption of Element.

## V. CONCLUSIONS OF LAW

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

### Jurisdiction

5.1 I have jurisdiction to hear and decide this matter under Chapters 34.05 and 66.24 RCW, and chapter 10-08 WAC.

### Infusion's Request to Assume Element's Liquor License is Denied

5.2 For the purpose of considering the denial of a license, the Board may inquire into all matters in connection with the construction and operation of the premises, and may consider an administrative violation history record with the Board. RCW 66.24.010(2). The Board may, in its discretion, grant or deny the license renewal applied for. Denial may be based on, without limitation, the existence of documented, chronic illegal activity. *Id.*

5.3 "Chronic illegal activity" means, in part, a pervasive pattern of activity that threatens the public health, safety, and welfare of the city, town, or county

including, but not limited to, assaults, disturbances, disorderly conduct, or other criminal law violations. RCW 66.24.010(12).

5.4 In determining whether to deny a liquor license, the Board must give substantial weight to objections from an incorporated city or town based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed, or the conduct of the applicant's patrons inside or outside the licensed premises. *Id.*

5.5 Every liquor license issued is subject to all conditions and restrictions imposed by the Board. RCW 66.24.010(6).

5.6 Element has a documented history, since it obtained a license, of chronic illegal activity both on its premises, and outside its premises, by its patrons as documented by the inordinate amount of time the Oak Harbor police department was required to expend at Element.

5.7 A liquor license application may be denied if the source of the funds used for the acquisition, start up and operation of the business is questionable or unverified as well as if it would not be in the best interest of the welfare, health or safety of the people of the state. WAC 314-07-065(6)

5.8 There is no record of the \$15,000.00 in startup funds. While Ms. Olson contended the money was in the form of a check, no copy of such check was ever produced. Ms. Olson was also unable to provide copies of cashier's checks that she claimed to have used anytime she spent money from the funds.

5.9 The substantial objections from the public as well as from Oak Harbor's local authority clearly outweigh Ms. Olson's optimistic "let me show you by my actions" mantra when her past actions as nightclub manager have clearly defined her actions.

5.10 It is clearly in the best interest of the welfare, health and safety of the citizens of Oak Harbor that Ms. Olson's request to assume the license of Element be denied.

### INITIAL ORDER

IT IS HERBY ORDERED THAT:

Infusion's application to assume the liquor license of Element is denied. The Liquor Control Board did not abuse its discretion when it issued its Intent to Deny

a liquor license to the appellant on March 3, 2014.

**Signed and Issued** at Tacoma, Washington, on September 22, 2014.



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Donald R. Capp  
Administrative Law Judge  
Office of Administrative Hearing

**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.

**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**

**Certificate of Service – OAH Docket No. 2014-LCB-0027**

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

<b>Jennifer Olson</b> <b>dba Infusion Lounge</b> <b>3024 Racoon Way</b> <b>Oak Harbor WA 98277</b>	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid, Certified mail, return receipt
<b>Kim O'Neal, Senior Counsel</b> <b>Office of the Attorney General, GCE Division</b> <b>PO Box 40100</b> <b>Olympia, WA 98504-0100</b>	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid, Certified mail, return receipt
<b>Kevin Mc Carroll</b> <b>Washington State Liquor Control Board</b> <b>3000 Pacific Ave.</b> <b>PO Box 43076</b> <b>Olympia, WA 98504</b>	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid, Certified mail, return receipt

Date September 26, 2014

  
Authorized Representative  
Office of Administrative Hearings