

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

DOUGLAS F TURNER
d/b/a TURNER'S
3201 S LAKE STEVENS RD
LAKE STEVENS, WA 98258-5632

LICENSEE

LICENSE NO. 357443
AVN NO. 3E4238A

LCB NO. L-25,362
OAH NO. 11-2014-LCB-00071

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 an amended complaint dated January 22, 2015 alleging that on or about August 26, 2014, the above-named Licensee, or employee thereof, sold liquor or allowed liquor to be sold to a person under the age of twenty-one (21) years in violation of WAC 314-11-020.
2. The Licensee made a timely request for a hearing.
3. An administrative hearing was held on January 30, 2015 before Administrative Law Judge Joshua Sundt with the Office of Administrative Hearings.
4. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Justin Kjolseth and Douglas F. Turner represented the Licensee.
5. On March 10, 2015 Administrative Law Judge Joshua Sundt entered an Initial Order in this matter which sustained the Complaint.
6. No petitions for review were filed by the parties.
7. The entire record in this proceeding was presented to the Board for final decision, and the

Board having fully considered said record and being fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED that 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.

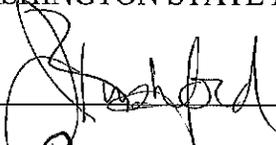
IT IS HEREBY FURTHER ORDERED that the liquor license privileges granted to Douglas F. Turner d/b/a Turner's, License No. 357443, are hereby suspended for a term of five (5) days. In lieu of a license suspension, the Licensee may pay a monetary penalty in the amount of five hundred dollars (\$500.00) due within 30 days of this order. If timely payment is not received, the suspension will take place from 11:00 a.m. on Thursday, July 9, 2015 until 11:00 a.m. on Tuesday, July 14, 2015. Failure to comply with the terms of this order will result in further disciplinary action.

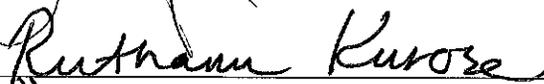
Payment in reference to this order should be sent to:

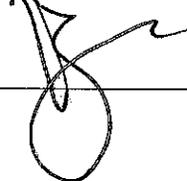
**Washington State Liquor Control Board
Financial Division
PO Box 43085
Olympia, WA 98504-3085**

DATED at Olympia, Washington this 12th day of May, 2015.

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 13, 2015

Douglas F. Turner
d/b/a Turner's
3201 S Lake Stevens Rd
Lake Stevens, WA 98258-5632

Justin Kjolseth, 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: Douglas F. Turner
TRADE NAME: Turner's
LOCATION: 3201 S Lake Stevens Rd, Lake Stevens, WA 98258-5632
LICENSE NO. 357443
LCB HEARING NO. L-25,362
OAH NO. 11-2014-LCB-00071
AVN NO. 3E4238A
UBI: 601-186-967-001-0001

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 of \$500.00 was received on March 16, 2015. If you have any questions, please contact me at (360) 664-1602.

Sincerely,

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

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Mt. Vernon Enforcement and Education Division, WSLCB
Kendra Boyd, Enforcement and Education Division, Headquarters, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

DOUGLAS F. TURNER
d/b/a TURNER'S
3201 S LAKE STEVENS RD
LAKE STEVENS, WA 98258-5632

LICENSEE

LICENSE NO. 357443
AVN NO. 3E4238A

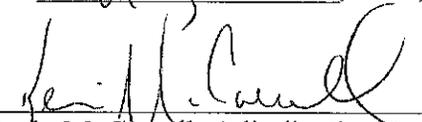
LCB NO. L-25,362
OAH NO. 11-2014-LCB-00071

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:

DOUGLAS F. TURNER d/b/a TURNER'S 3201 S LAKE STEVENS RD LAKE STEVENS, WA 98258-5632	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION JUSTIN KJOLSETH, ASSISTANT ATTORNEY GENERAL
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DATED this 13th day of May, 2015, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

RECEIVED
MAR 16 2015
Liquor Control Board
Board Administration

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

In the matter of:

Douglas F. Turner,

Licensee.

License No. 357443
AVN No. 3E4238A

Docket No. 11-2014-LCB-00071
Agency No. L-25,362

INITIAL ORDER

1. ISSUES PRESENTED

1.1 The issues in this matter are as follows:

- a) whether the Licensee, Douglas F. Turner, or his employee sold alcohol to a person under twenty-one years of age on August 26, 2014, as alleged in the Administrative Violation Notice dated August 29, 2014; and, if so, then
- b) whether the Licensee is subject to a five day suspension or \$500 fine in lieu of suspension for violation of RCW 66.44.270 and WAC 314-11-020.

2. ORDER SUMMARY

- 2.1 Mr. Turner's employee, Amy Cluphf, sold alcohol to a person under twenty-one years of age on August 26, 2014, as alleged in the Administrative Violation Notice dated August 29, 2014.
- 2.2 Mr. Turner is subject to a five day suspension of his liquor license, License No. 357443, or \$500 fine in lieu of suspension for violation of RCW 66.44.270 and WAC 314-11-020.
- 2.3 The Liquor Control Board's Administrative Violation Notice 3E4238A, dated August 29, 2014, is AFFIRMED.

3. HEARING

- 3.1 Hearing Date: January 30, 2015
- 3.2 Administrative Law Judge: Joshua Sundt
- 3.3 Licensee: Douglas F. Turner, doing business as Turner's
 - 3.3.1 Representative: Douglas F. Turner
 - 3.3.2 Witnesses: Douglas F. Turner

- 3.4 Agency: Liquor Control Board
- 3.4.1 Representative: Justin Kjolseth, Assistant Attorney General
- 3.4.2 Witnesses: Sabrina Brooks, Investigative Aide; Mark Shipman, Liquor Control Board Enforcement Officer; Roxanne Johnson, Liquor Control Board Enforcement Officer
- 3.5 Exhibits: The Administrative Law Judge admitted exhibits 1 through 9, which were offered by the Liquor Control Board, and Exhibits A through G, offered by Mr. Turner.
- 3.6 Motion to Dismiss: Mr. Turner filed a Motion to Dismiss the Liquor Control Board's Administrative Violation Notice on January 14, 2015. The written motion and accompanying memorandum was admitted as Exhibit A at the time of hearing. The Administrative Law Judge heard arguments on Mr. Turner's motion on January 30, 2015, immediately prior to the full hearing on the merits, and denied the motion by a ruling on the record. Set forth below is a more detailed explanation of the motion and the ruling denying the motion.
- 3.6.1 Mr. Turner based his motion in part on the allegation that, on the day of the violation at issue, although Officer Shipman assured him that Officer Johnson would call before delivering the Administrative Violation Notice to Turner's, Officer Johnson never did so. Instead, because Mr. Turner was not forewarned, the Administrative Violation Notice ended up being delivered to Doug Fletcher, one of Mr. Turner's employees. While this failure of communication may have been annoying and frustrating for Mr. Turner, he had no legal right to receive a telephone call prior to delivery of the Administrative Violation Notice. Therefore, the fact that Officer Johnson did not telephone before delivering the Administrative Violation Notice is not material to the question of whether Ms. Cluphf served alcohol to a person under 21 on August 26, 2014. If Mr. Turner's distress over the lack of a telephone call gives rise to any sort of legal claim against the Liquor Control Board, it is not a claim I have jurisdiction to address administratively.
- 3.6.2 Second, Mr. Turner based his motion on the fact that the Narrative/Evidence Report accompanying the Administrative Violation Notice delivered to Mr. Fletcher on August 30, 2014 did not correspond with the Administrative Violation Notice and was in fact intended for another licensee. Mr. Turner did not receive the correct Evidence/Narrative Reports until January 2, 2015. Mr. Turner did not request a continuance of the hearing due to the late-served Narrative/Evidence Reports or allege any prejudice as a result of the late service. Therefore, Mr.

Turner has not shown the late service resulted in any violation of his right to procedural due process.

- 3.6.3 Third, Mr. Turner alleged he suffered anguish because of his concern that the Narrative/Evidence Reports corresponding to his Administrative Violation Notice may have been served on some other licensee in error. However, even if Mr. Turner had offered proof of such mistaken service, this question—or any claim of a privacy violation—would not be material to the question of whether Ms. Cluphf served alcohol to a person under 21 on August 26, 2014. Again, if Mr. Turner had privacy rights that he could prove were violated by the Liquor Control Board, I would not have jurisdiction to address those claims administratively.
- 3.6.4 Fourth, Mr. Turner moved for dismissal on the basis that the original Complaint, dated November 13, 2014, incorrectly characterized his licensed business as one classified as off-limits to any person under the age of twenty-one years. While the original Complaint was indeed incorrect, the Liquor Control Board served an Amended Complaint, dated January 22, 2015, on Mr. Turner prior to the hearing. Mr. Turner did not request a continuance of the hearing or allege that he needed more time to prepare for the hearing because of the timing of the service of the Amended Complaint. Therefore, there is no showing of prejudice or violation of procedural due process due to the Liquor Control Board's amendment of the Complaint.
- 3.6.5 Fifth, Mr. Turner based his motion in part on the fact that Officer Johnson's evidence report falsely asserted she had entered Turner's on August 26, 2014. Officer Johnson testified that her report was indeed partially incorrect, as asserted by Mr. Turner. However, the partial falsity of Officer Johnson's report is merely a factor I must consider when weighing the credibility of the evidence in this case. It is no more a basis for dismissal than, for example, the question of whether a witness testified accurately or not. Therefore, while I agree with Mr. Turner that the version of events in Officer Johnson's report is less credible than the version offered by Mr. Turner, the weighing of the witnesses' credibility is something I must do in deciding the case on the merits, not when deciding a prehearing motion to dismiss.
- 3.6.6 Sixth, Mr. Turner alleged he was distressed over the misspelling of his name on various documents prepared by the Liquor Control Board, including on the envelope and cover letter for correspondence dated December 31, 2014. See, Exhibit G, pages 1 and 2. While I certainly do not take Mr. Turner's annoyance with the Liquor Control Board lightly, the misspelling of his name on some correspondence is not material to the question I must decide.

3.6.7 Therefore, for the reasons set forth above, Mr. Turner's Motion to Dismiss is denied.

4. FINDINGS OF FACT

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

- 4.1 At all times relevant to this action, Mr. Turner was the sole proprietor of Turner's, a neighborhood family convenience store operating at 3201 South Lake Stevens Road in Lake Stevens, Washington.
- 4.2 At all times relevant to this action, Turner's was licensed to sell beer and wine, under License Number 357443.
- 4.3 On August 26, 2014 Turner's clerk Amy Cluphf sold a 25 ounce can of Bud Light & Clamato beer to Investigative Aide Sabrina Brooks, who was 19 years old at the time.
- 4.4 Before making the sale, Ms. Cluphf looked at Ms. Brooks's Washington State driver's license, which indicated her date of birth was "09-12-1994". The license also indicated Ms. Brooks was "AGE 18 ON 09-12-2012". Exhibit 6, page 2.
- 4.5 Mr. Turner, who was present at the time Ms. Cluphf made the sale to Ms. Brooks, almost immediately suspected that Ms. Cluphf had made a sale to an investigative aide from the Liquor Control Board and so followed Ms. Brooks out of the store to have a conversation with Officers Shipman and Johnson.
- 4.6 On August 30, 2014, the Liquor Control Board served Turner's with Administrative Violation #3E4238A, which corresponded with the incident on August 26, 2014, but also served the business with an Evidence/Narrative Report corresponding to another licensee called Beverage Stop. Exhibit B, page 1. The Administrative Violation Notice informed Mr. Turner he was in violation of Washington Administrative Code (WAC) 314-11-020 and subject to a penalty consisting of a five day suspension or a \$500 fine in lieu of suspension. Exhibit 1.
- 4.7 On January 2, 2015, the Liquor Control Board served Mr. Turner with the Narrative/Evidence Reports which did correspond with the August 26, 2014 incident at Turner's. Exhibits 3-4.
- 4.8 On September 12, 2014 Mr. Turner filed an appeal by requesting a hearing of the Administrative Violation Notice, despite the fact he had not yet received the Evidence/Narrative Reports which corresponded with the August 26, 2014 incident.

5. CONCLUSIONS OF LAW

Based on the facts above, I make the following conclusions:

- 5.1 The Office of Administrative Hearings has jurisdiction over the persons and subject matter of this case under Revised Code of Washington (RCW) 66.08.150, Chapter 34.12 RCW, Chapter 34.05 RCW and under Washington Administrative Code (WAC) 314-42-051.
- 5.2 Under Chapter 66.08 RCW, the Liquor Control Board is charged with the responsibility and the authority to enforce the liquor laws of the state and regulate the issuance of liquor licenses.
- 5.3 RCW 66.44.270(1) provides that "It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control."
- 5.4 WAC 314-11-020 states: "Per RCW 66.44.270, licensees or employees may not supply liquor to any person under twenty-one years of age, either for his/her own use or for the use of any other person."
- 5.5 WAC 314-31-005 specifically authorizes the Liquor Control Board to use investigative aides working with enforcement officers to perform liquor compliance checks at any location where alcohol is sold, served or provided.
- 5.6 In this case, Mr. Turner's employee sold alcohol to a person under twenty-one, in violation of RCW 66.44.270 and WAC 314-31-005. Mr. Turner argued that Ms. Cluphf made a simple mistake, because she was confused, and did not intentionally violate the liquor control laws. And indeed, there is nothing in the record to indicate Ms. Cluphf intentionally sold alcohol to Ms. Brooks. However, Ms. Cluphf's intention is not relevant to this matter. Sale of alcohol to a person under twenty-one subjects a licensee to strict liability; that is, for the purposes of the administrative proceeding, both an intentional and an unintentional sale subject the licensee and the employee to the same penalty.
- 5.7 Violation of WAC 314-11-020 is a Group 1 public safety violation. WAC 314-29-020. Under WAC 314-29-020, a licensee's first Group 1 violation subjects the licensee to a penalty consisting of a five day suspension or a \$500 fine in lieu of suspension.
- 5.8 Because Ms. Cluphf's sale of alcohol to Ms. Brooks was Mr. Turner's first violation, he should be subject to a five day suspension or a \$500 fine in lieu of suspension. The Liquor Control Board's action in this matter was supported by law and the penalty applied was appropriate. LCB's action in this matter should be affirmed.

6. ORDER

- 6.1 The Liquor Control Board's Administrative Violation Notice 3E4238A, dated August 29, 2014, is AFFIRMED. Douglas F. Turner, doing business as Turner's, is subject to a five day suspension of his liquor license, License No. 357443, or a \$500 fine in lieu of suspension for violation of RCW 66.44.270 and WAC 314-11-020.

Dated: March 9, 2015



Joshua D. Sundt
Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

Petition for Review of Initial Order: 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)(b). Copies of the reply must be mailed to all other parties and their representatives at the time the reply is filed.

Mail the petition for review of initial order to:

Washington State Liquor Control Board
Attention: Kevin McCarroll
P.O. 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).

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that today I served a copy of this document, by placing it in the mail with postage prepaid, addressed to the following parties of record:

Douglas F Turner
d/b/a Turner's
3201 S Lake Stevens Road
Lake Stevens, WA 98258-5632

Licensee

Justin Kjolseth
PO Box 40100
Olympia, WA 98504-0100

Assistant Attorney General

Kevin McCarroll
Adjudicative Proceedings Coordinator
P.O. Box 43076
Olympia, WA 98504-3076

Agency Contact

Dated March 10, 2015, at Olympia, Washington.
(DATE OF MAILING)



Representative
Office of Administrative Hearings
2420 Bristol Court SW
Olympia, WA 98502