

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

ESTEVAN GARCIA JR
d/b/a 4 EVERGREEN

6160 TURNKEY RD NE
MOSES LAKE, WA 98837-3311

APPLICANT

LICENSE APPLICATION NO. 415187
UBI: 603 362 612 001 0001

LCB NO. M-25,087
OAH NO. 10-2014-LCB-00045

FINAL ORDER OF THE BOARD

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

1. The Licensing Division of the Liquor Control Board issued a Statement of Intent to Deny Marijuana Retailer License dated July 18, 2014, asserting that the Applicant failed to submit all retail prescreening documents. At the hearing an Amended Statement of Intent to Deny Marijuana Retailer Licensee was submitted which specified that the Applicant failed to submit a required signed and completed Retail Prescreen Information Form and a signed Criminal History Form. The hearing was based on the original Statement of Intent to Deny Marijuana Retailer License, as the proposed Amended Statement of Intent to Deny had not been served on the Applicant.

2. The Applicant timely submitted a request for a hearing.

3. On April 14, 2015, a hearing was held before Administrative Law Judge Terry A. Schuh with the Office of Administrative Hearings.

4. At the hearing, the Applicant was represented by Attorney Roberto Castro.

Assistant Attorney General Kim O'Neal represented the Licensing Division of the Board.

5. On May 21, 2015, Administrative Law Judge Terry A. Schuh issued an Initial Order, affirming the decision to deny the Applicant's license application as expressed in the Statement of Intent to Deny Marijuana Retailer License.

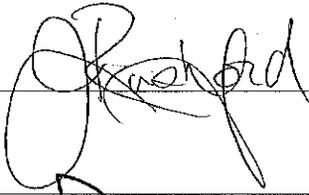
6. No Petition for Review was received.

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 marijuana retailer license application number 415187 for Estevan Garcia Jr d/b/a 4 Evergreen is DENIED.

DATED at Olympia, Washington this 7th day of July, 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**

July 7, 2015

Roberto H. Castro
Law Office of Roberto Castro, PLLC
210 W Highland Ave
Chelan, WA 98816-9704

Estevan Garcia Jr
d/b/a 4 Evergreen
6160 Turnkey Rd NE
Moses Lake, WA 98837-3311

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: Estevan Garcia Jr
TRADE NAME: 4 Evergreen
LOCATION: 6160 Turnkey Rd NE, Moses Lake, WA 98837-3311
LICENSE APPLICATION NO. 415187
LCB HEARING NO. M-25,087
OAH NO. 10-2014-LCB-00045
UBI: 603-362-612-001-0001

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, appearing to read "Kevin McCarroll".

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Becky Smith, Licensing Director, WSLCB
Frank O'Dell, Licensing Supervisor, WSLCB
Linda Thompson, Licensing Adjudication Coordinator, WSLCB

PO Box 43076, 3000 Pacific Ave. SE, Olympia WA 98504-3076, (360) 664-1602 www.liq.wa.gov

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

ESTEVAN GARCIA JR
d/b/a 4 EVERGREEN
6160 TURNKEY RD NE
MOSES LAKE, WA 98837-3311

APPLICANT

LICENSE APPLICATION NO. 415187

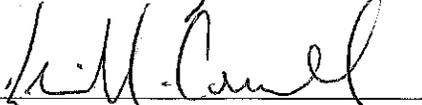
LCB NO. M-25,087
OAH NO. 10-2014-LCB-00045

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:

ROBERTO H. CASTRO LAW OFFICE OF ROBERTO CASTRO, PLLC 210 W HIGHLAND AVE CHELAN, WA 98816-9704	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION KIM O'NEAL, ASSISTANT ATTORNEY GENERAL
ESTEVAN GARCIA JR d/b/a 4 EVERGREEN 6160 TURNKEY RD NE MOSES LAKE, WA 98837-3311	

DATED this 7th day of July, 2015, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

RECEIVED

MAY 26 2015

Liquor Control Board
Board Administration

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of:

Estevan Garcia Jr. dba 4 Evergreen,

Location address:
6160 Turnkey Rd. NE
Moses Lake, WA 98837,

Applicant.

License Application No. 415187
UBI No. 603 362 612 001 0001

Docket No. 10-2014-LCB-00045

INITIAL ORDER

Agency: Liquor Control Board
Program: Marijuana Licensing
Agency No. M-25,087

1. ISSUES PRESENTED

- 1.1 Whether the Applicant failed to submit required documents.
- 1.2 If so, whether the Liquor Control Board was correct to deny the Applicant's application based on that failure, under RCW 69.50.331, WAC 314-55-020, and/or WAC 314-55-050.

2. ORDER SUMMARY

- 2.1 The Applicant failed to submit the Retail Pre-screen Information form and the Personal/Criminal History Statement form.
- 2.2 Accordingly, the Liquor Control Board was correct to deny the Applicant's application based on that failure, under RCW 69.50.331, WAC 314-55-020, and/or WAC 314-55-050.

3. HEARING

- 3.1 Hearing Date: April 14, 2015
- 3.2 Administrative Law Judge: Terry A. Schuh
- 3.3 Applicant: Estevan Garcia, Jr. dba 4 Evergreen
 - 3.3.1 Representative: Roberto Castro, Attorney at Law

3.3.2 Witnesses: Estevan Garcia, Jr., Applicant
Maria Garcia, Applicant's Spouse

3.4 Agency: Liquor Control Board

3.4.1 Representative: Kim O'Neal, Senior Counsel, Attorney General's Office

3.4.2 Witnesses: Shadrach White, President, Cloud PWR, Inc.
Kim Gabbard, Marijuana Supervisor, Liquor Control Board

3.5 Exhibits: The administrative law judge admitted exhibits 1 through 5 and A through H.

3.6 Observer: Megan Shelfer, Office of Administrative Hearings, appeared as an observer.

3.7 Amended Statement of Intent to Deny Marijuana Retailer License: Near the beginning of the hearing, before opening statement and the presentation of evidence, Ms. O'Neal moved to amend the Statement of Intent to Deny Marijuana Retailer License. The Statement of Intent to Deny Marijuana Retailer License alleged that the Applicant failed to submit "all retail pre-screening documents". Ms. O'Neal said that the assertion was inaccurate and that the Applicant had filed some of the retail pre-screen documents. Therefore, the Liquor Control Board wished to amend the statement to allege that the Applicant had failed to submit some of the required documents. At that time, the Liquor Control Board had not prepared, much less filed and served, an amended document. Moreover, the amended document as suggested by Ms. O'Neal would not create a need to amend the issue statement. Accordingly, I declined to rule on the motion until such time as the Liquor Control Board filed an amended statement. Later on April 14, 2015, Ms. O'Neal filed an Amended Statement of Intent to Deny Marijuana Retailer License. The only change was to delete "all" and substitute "signed and completed Retail Prescreen Information Form and signed criminal history form". In effect, the Amended Statement of Intent to Deny Marijuana Retailer License implied that the Applicant's pre-screen submission was less deficient than originally plead. Nevertheless, the motion was never heard or ruled on. Because neither party was offered an opportunity to address the motion and because I believe that the amended statement does not materially affect this matter, I decline to rule on the motion now.

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4. FINDINGS OF FACT

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

Jurisdiction

4.1 On July 18, 2014, the Liquor Control Board (LCB) issued to the Applicant, Estevan Garcia, Jr. dba 4 Evergreen (Mr. Garcia), a Statement of Intent to Deny Marijuana Retailer License. Ex.1.

4.2 On August 7, 2014, Mr. Garcia filed a Request for Hearing. Ex.2.

Retail Pre-Screen Information Form and Personal/Criminal History Form

4.3 Mr. Garcia timely filed application number 415187 for a marijuana retailer license. Testimony of E. Garcia; Ex. F, pp. 19-26.

4.4 As a part of the license application process, LCB required Mr. Garcia to timely submit a Retail Pre-screen Information Form and a Personal/Criminal History Form and other materials. Ex. 3; Testimony of Gabbard.

4.5 LCB received some of the materials it requested of Mr. Garcia but LCB did not receive from him the Retail Pre-screen Information Form or the Personal/Criminal History Form. Ex. 3; Testimony of Gabbard. What LCB received were the documents that Mr. Garcia was unable to attach to his intended electronic submission and which he accordingly sent separately by e-mail. Testimony of Gabbard; Testimony of E. Garcia.

4.6 These two forms sought information from Mr. Garcia critical to LCB's ability to investigate Mr. Garcia's license application. Ex. 3, pp. 17-20; Testimony of Gabbard. Further, these two forms required Mr. Garcia to initial or sign in key places. See, Ex. 3, pp. 17-20.

4.7 For example, on the Retail Pre-screen Information Form, the applicant must initial or certify that the listed location address is the address selected for entry into the lottery. Ex. 3, p. 17. Accordingly, LCB did not receive from Mr. Garcia a certified statement that identified the location address he wanted placed in to the lottery.¹

¹ To be sure, LCB received from Mr. Garcia a letter of intent to lease the property, signed by the owner. Ex. 3, p. 30. But this document satisfied a different pre-screen requirement. It did not satisfy the certified statement requirement.

4.8 In addition, on the Retail Pre-screen Information Form, the applicant must sign a statement that failure to provide all required documentation may result in his or her application being administratively withdrawn. Ex. 3, p. 17. Therefore, LCB did not receive any such signed statement from Mr. Garcia.

4.9 Further, on the Personal/Criminal History Form, the applicant must sign a statement certifying that his or her answers and statements are accurate and complete, that inaccurate and/or incomplete answers can result in denial of a license, and that LCB was authorized to investigate the applicant's criminal history, financial records, and other necessary sources. Ex. 3, p. 20. Thus, LCB did not receive any such signed statement from Mr. Garcia.

4.10 Mr. Garcia did not start the pre-screen process until March 24, 2015, because he waited until he knew he could get the property that he intended to use to house his business. Testimony of E. Garcia.

4.11 In addition to electronic copies, LCB sent out hard copies. Testimony of Gabbard. However, Mr. Garcia never received them. Testimony of E. Garcia; Testimony of M. Garcia.

4.12 The parties dispute whether LCB told Mr. Garcia that he did not need to submit the information inherent in the contents of the criminal history form. Mr. Garcia testified that licensing investigator Jodi Davidson told him that he did not need to submit a complete criminal history, just the highlights, because LCB would automatically initiate a background check and get all material information that way. Testimony of E. Garcia. Moreover, LCB had a criminal history regarding Mr. Garcia that he did not provide. Testimony of Garcia; see Ex. E, pp. 17-26.² That implies that LCB was able to obtain his criminal history without his consent and without his assistance. Nevertheless, the record does not reflect, how, when, or why LCB had that history. Testimony of Gabbard. Moreover, the regulation that controls computation of criminal history points includes assignment of points to an applicant who fails completely and accurately disclose his/her criminal history. Accordingly, I am not persuaded that Ms. Davidson told Mr. Garcia that he did not need to submit a complete criminal history, regardless of what he understood her to mean.

4.13 LCB did not review any submissions for completeness until after the submission deadline had passed. Testimony of Gabbard. This was because LCB did not have

² Mr. Garcia provided LCB with a criminal history report from the Washington State Patrol sometime after LCB denied his application. Testimony of E. Garcia; see Ex. D.

sufficient staff to review all of the submissions before the deadline and it would have been unfair to review only some. Testimony of Gabbard. Accordingly, LCB staff was directed to only confirm receipt of an applicant's submission if an applicant called but not to review it or characterize its status. Testimony of Gabbard.

4.14 Mr. and Ms. Garcia struggled with using the online-submission system employed by LCB. Testimony of E. Garcia; Testimony of M. Garcia.

4.15 Mr. Garcia believed that he submitted a completed, signed, and initialed the Retail Pre-screen Information Form. Testimony of E. Garcia. Mr. Garcia does not remember seeing the Personal/Criminal History Form. Testimony of E. Garcia. However, the Personal/Criminal History Form is listed on the Retail Pre-screen Information Form as a required document. Ex. 3, p. 17. Further, when completing and submitting forms to LCB using the electronic process, Mr. Garcia selected the fax option and then did not complete the fax process. Testimony of White. This was an operator error, not a systems error. Testimony of White. When Mr. and Ms. Garcia finished the pre-screen documents electronic process, he selected "confirm signature". Testimony of E. Garcia. They thought that everything was sent properly, although they did not receive a confirmation. Testimony of E. Garcia. At the beginning of the process, he selected the paper option. Testimony of E. Garcia. When Mr. Garcia talked to Ms. Davison letter, she told him he had selected "fax" instead of "sign" and explained to him that is why his submission did not go through. Testimony of E. Garcia. Accordingly, although I am persuaded that Mr. Garcia intended to complete, sign, and submit all necessary forms, and he believed that he had done so, he nevertheless failed to do so.

4.16 Mr. Garcia called Ms. Davidson the next day, March 25, 2014, to confirm she had received his submission. Testimony of Garcia. Ms. Davidson confirmed receipt. Testimony of E. Garcia. The parties dispute whether Ms. Davidson meant that LCB had received everything it needed or whether merely LCB has received a submission from Mr. Garcia. Mr. Garcia and Ms. Garcia each testified that Ms. Davidson told Mr. Garcia that his submission was complete and that he was in the lottery. However, LCB was not reviewing submissions for completion at that time and licensing staff was directed to tell applicants only whether their submission was received, nothing more. Testimony of Gabbard. Moreover, merely receiving a submission, even if complete, did not of itself assure inclusion in the lottery. Testimony of Gabbard. On March 25, 2014, no decisions had been reached on that account. Testimony of Gabbard. Therefore, I am persuaded that Ms. Davidson did not tell Mr. Garcia that his submission was complete, although Mr. Garcia understood her to say that. Further, I am not persuaded that any representation Ms. Davidson did or did not make on March 25, 2014, is material here. Mr. Garcia's deadline for submission was March 24, 2014. Testimony of E. Garcia;

Testimony of Gabbard. So, regardless of what Ms. Davidson told him on March 25, 2014, he could not amend or supplement his submission. In addition, there is no evidence in the record suggesting that LCB received submissions from Mr. Garcia that LCB subsequently misplaced.

4.17 Mr. Garcia's failure to submit completed forms, including signatures and initials, was the basis for which LCB issued the Statement of Intent to Deny Marijuana License. Ex. 3; Testimony of Gabbard.

5. CONCLUSIONS OF LAW

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

Jurisdiction

5.1 I have jurisdiction over the persons and subject matter of this case under RCW 69.50.334, Chapter 34.05 RCW, Chapter 34.12 RCW, and WAC 314-55-020(12).

Mr. Garcia's failure to submit and sign certain pre-screen documents constituted a basis for LCB to deny his application for a marijuana retailer license

5.2 LCB may submit a criminal history information check to the Washington State Patrol regarding a license applicant. RCW 69.50.331(1).

5.3 "Upon failure to respond to the board licensing and regulation division's requests for information within the timeline provided, the application may be administratively closed or denial of the application will be sought." WAC 314-55-020(12).

5.4 LCB may deny a marijuana application for "[f]ailure . . . to submit information or documentation requested by the board during the application process . . ." WAC 314-55-050(2) (in pertinent part).

5.5 Here, LCB sought information from Mr. Garcia, certified by his signature, so that it could determine whether he qualified for the marijuana retailer license for which he had applied. By failing to submit completed and signed forms required by LCB, Mr. Garcia effectively denied LCB the ability and permission to investigate him and his application. Mr. Garcia argued that his failure to submit completed and signed forms were errors, errors caused by a confusing, if not defective, computerized process for submission, and errors amplified by LCB's failure to review his submissions and inform him of any deficiencies. I am persuaded that Mr. Garcia's failure to submit completed

and signed forms was error. I am persuaded that Mr. Garcia was confused by the pre-screen process and that his confusion was reasonable. I am persuaded that Mr. Garcia would have supplemented his submission or-resubmitted it had he been allowed to do so. Nevertheless, I am not persuaded that LCB is responsible for Mr. Garcia's failure to properly submit all of his pre-screen documents or to timely rectify that failure. I realize that Mr. Garcia waited until the last day because it took that long to confirm he could use the property he had in mind. But that was his choice and his challenge and he had the same amount of time as did any other applicant and the same responsibility to provide information as did any other applicant. Mr. Garcia was responsible for timely submitting complete pre-screen documents. He failed to do so. LCB had authority to request the information it sought and to expect it to be submitted certified. Accordingly, based on the authority recited above, LCB was correct to close Mr. Garcia's application and deny him a license.

6. INITIAL ORDER

The Liquor Control Board's decision to deny application number 415187 for a marijuana retailer license, filed by Estevan Garcia, Jr. dba 4 Evergreen, as expressed in the Statement of Intent to Deny Marijuana Retailer License dated July 18, 2014, is **AFFIRMED**.

Dated: May 21, 2015.



Terry A. Schuh
Senior 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:

Kim O'Neal
Assistant Attorney General
PO Box 40100
Olympia, WA 98504-0100

Senior Counsel

Estevan Garcia Jr.
4 Evergreen
6160 Turnkey Road NE
Moses Lake, WA 98837-3311

Appellant

Roberto H Castro
210 W Highland Avenue
Chelan, WA 98816

Appellant Representative

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

Agency Contact

Becky Smith
Licensing Director
P.O. Box 43098
Olympia, WA 98504-3098

Agency Contact

Dated May 21, 2015, at Olympia, Washington.
(DATE OF MAILING)

Jamie Marshall

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