

**STATE OF WASHINGTON
WASHINGTON STATE LIQUOR CONTROL BOARD**

In the Matter of:

**SEAN T. PEREZ
d/b/a NW KUSH
135 NW 85TH #4
SEATTLE, WA 98117**

APPLICANT

**License Application No. 413313
UBI No. 602-337-696-001-0002**

LCB No. M-25,106

**FINAL ORDER ON REVIEW
FOLLOWING BRIEF
ADJUDICATIVE PROCEEDING**

I. REVIEWERS' CONSIDERATION

1.1 Review. This matter comes before the Members of the Liquor Control Board to review the Findings of Fact, Conclusions of Law and Initial Order of Brief Adjudicative Proceeding entered by Administrative Law Judge, Terry A. Schuh on September 19, 2014, and served on the Applicant by mail on September 19, 2014. The Initial Order is attached and incorporated into this Order by this reference.

1.2 Record of Proceeding. The entire record of this proceeding was presented to the Members of the Liquor Control Board for review and the entry of a final decision.

II. ORDER

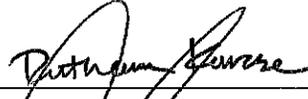
NOW THEREFORE, IT IS HEREBY ORDERED that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order are hereby adopted as the final decision of the Reviewing Officers, with the following correction: The Trade Name is corrected to read NW Kush, in the caption of the document and in paragraph 3.3 of the Initial Order.

2.1 The Liquor Control Board Licensing Division's decision to deny Mr. Perez's application for a marijuana retailer license is affirmed.

2.2 The Applicant's application for a marijuana retail license is denied.

DATED this 7th day of OCTOBER, 2014.

WASHINGTON STATE LIQUOR CONTROL BOARD





RIGHTS OF REVIEW

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, Sr. 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
FINAL ORDER ON REVIEW FOLLOWING BRIEF ADJUDICATIVE PROCEEDING
SEAN T. PEREZ d/b/a NW KUSH
LICENSE NO. 413313, LCB NO. M-25, 106

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

October 10, 2014

Sean T. Perez
d/b/a NW Kush
135 NW 85th St #4
Seattle, WA 98117-3056

Alan Rathbun,
Licensing Director
WSLCB
PO Box 43098
Olympia, WA 98504-3098

RE: FINAL ORDER ON REVIEW FOLLOWING BRIEF ADJUDICATIVE PROCEEDING

APPLICANT: Sean T. Perez

TRADE NAME: NW Kush

LOCATION: 135 NW 85th St #4, Seattle, WA 98117-3056

LICENSE NO. 413313

LCB HEARING NO. M-25,106

UBI: 602 337 696 001 0002

Dear Parties:

Please find the enclosed Final Order on Review Following Brief Adjudicative Proceeding 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 Manager, WSLCB
Kim Gabbard, Licensing Supervisor, WSLCB
Mary Henley, Administrative Assistant, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

In the Matter of:

SEAN T. PEREZ
d/b/a NW KUSH
135 NW 85TH ST #4
SEATTLE, WA 98117-3056

APPLICANT

License Application No. 413313
UBI No. 602 337 696 001 0002

LCB NO. M-25,106

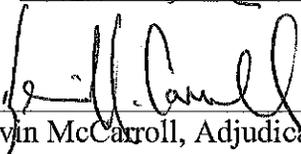
DECLARATION OF SERVICE BY
MAIL

I certify that I caused a copy of the FINAL ORDER ON REVIEW FOLLOWING BRIEF ADJUDICATIVE PROCEEDING 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:

SEAN T. PEREZ
d/b/a NW KUSH
135 NW 85TH ST #4
SEATTLE, WA 98117-3056

LIQUOR CONTROL BOARD
MAIL STOP 43098, LICENSING DIVISION
ALAN RATHBUN,
LICENSING DIRECTOR

DATED this 10th day of October, 2014, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

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

MAILED
2014
SEP 19 2014
OLYMPIA OAH

RECEIVED

SEP 22 2014
Liquor Control Board
Board Administration

In the Matter of the Denial of the
Marijuana license application for the
privileges of a Marijuana Retailer for:

Sean T. Perez dba
NW Krush,

Location Address:
135 NW 85th #4
Seattle, WA 98117,

Applicant.

License Application No.413313
UBI No. 602 337 696 001 0002

OAH Dkt. No.2014-LCB-0072
LCB No. M-25,106

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
INITIAL ORDER ON BRIEF
ADJUDICATIVE PROCEEDING**

1. ISSUE PRESENTED

1.1. Whether the Liquor Control Board's decision to deny the Applicant's application for a marijuana license should be affirmed.

2. ORDER SUMMARY

2.1. The Liquor Control Board's decision to deny the Applicant's application for a marijuana license is affirmed.

3. HEARING

3.1. Brief Adjudicative Proceeding: A Brief Adjudicative Proceeding was conducted in this matter by the Administrative Law Judge, as delegated by the Liquor Control Board. The proceeding was conducted under RCW 34.05.482 through .494, Title 66 RCW, and Title 314 WAC.

3.2. Administrative Law Judge: Terry A. Schuh

3.3. Applicant: Sean T. Perez dba NW Krush

3.4. Agency: Liquor Control Board

3.5. Documents reviewed: The Administrative Law Judge reviewed the marijuana licensing records as listed in the "Index of Marijuana Licensing Records for BAP" attached to the scheduling letter for this proceeding and consisting of 45 pages.

The Administrative Law Judge also reviewed any additional documents submitted by the Applicant for this proceeding. The applicant did not submit additional documents.

4. FINDINGS OF FACT

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

- 4.1. The Applicant ("Mr. Perez") applied for a marijuana retail license on March 20, 2014.
- 4.2. A required content of that application was Mr. Perez's Personal/Criminal History Statement.
- 4.3. Mr. Perez submitted the Personal/Criminal History Statement on March 20, 2014. Mr. Perez reported two offenses, a 2011 DUI and a 2010 Speeding in a school zone. He reported no other offenses.
- 4.4. Investigation by the Liquor Control Board revealed that Mr. Perez had eight criminal convictions that he did not disclose in his Criminal History Statement: No Interlock, gross misdemeanor, 2008; Physical Control, gross misdemeanor, 2007; Suspended Operator License, misdemeanor, 1991; Reckless Driving, gross misdemeanor, 1990; No Valid OP, misdemeanor, 1988; No Valid OP, misdemeanor, 1988; No Valid OP, misdemeanor, 1988; and No Valid OP, misdemeanor, 1987. Record, page 45.
- 4.5. In a letter that the Liquor Control Board received on or about May 22, 2014, Mr. Perez wrote that he listed only offenses from the last three years and that his driving record was a civil matter and not relevant. Record, page 16.
- 4.6. The instructions on the Criminal History Statement asked the Applicant if he or she had EVER been arrested, cited, convicted, placed on probation, charged with a crime, jailed, forfeited bail, or paid a fine over \$25 (including traffic fines), and to explain fully each charge, even juvenile events. Record, page 6.
- 4.7. Mr. Perez submitted a record review from the Washington State Patrol ("WSP") and an Abstract of Complete Driving Record from the Washington State Department of Licensing ("DOL"). Record, pp. 18-23. However, it is unclear what the WSP record review is designed to reveal. The driving record abstract reveals only selected tickets reported to it by the courts and action taken on the driver's license either directly by DOL or by DOL as directed by a court. It is not a criminal history record. Moreover, it does not look back any further than January 22, 2006. If Mr. Perez intended these documents to demonstrate that the criminal history recited in paragraph 4.4 above is inaccurate, it does not persuade me. Accordingly, I find that the criminal history recited in paragraph 4.4 above is accurate.
- 4.8. Based upon the foregoing criminal history, the Liquor Control Board determined that Mr. Perez had accumulated 32 points. Record, page 45.

5. CONCLUSIONS OF LAW

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

- 5.1. I have jurisdiction over Mr. Perez and the subject matter of this proceeding under RCW 69.50.334, RCW 34.05.485(1)(c), RCW 34.12.040, chapter 34.05, WAC 314-42-120(1), and chapter 314-42 WAC.
- 5.2. When the Liquor Control Board denies a marijuana license application based upon the Applicant's criminal history, an appeal of that denial is addressed with a brief adjudicative proceeding. WAC 314-42-110. Accordingly, this appeal is appropriately resolved by a brief adjudicative proceeding.
- 5.3. An Applicant's failure to meet the criminal history standards outlined in WAC 314-55-040 constitutes a basis for the Liquor Control Board to deny a marijuana license application. WAC 314-55-050(4).
- 5.4. More specifically, a criminal history accumulating eight or more points as described in WAC 314-55-040(1) is grounds for denying a marijuana license application. WAC 314-55-040(1), (3).
- 5.5. Failure to report any conviction for a felony, gross misdemeanor, or misdemeanor, regardless of when it occurred, accumulates four points for each such failure. WAC 314-55-040(1). Even if a conviction might have been excepted from criminal history point assignment, failure to report a conviction will result in point accumulation. WAC 314-55-040(3)(a)(i). Here, Mr. Perez failed to report the criminal history recited in paragraph 4.4 above. In his letter to the Liquor Control Board, Mr. Perez argued that he did not understand that he was supposed to report driving events. However, he reported a speeding ticket. Moreover, the instructions specifically included traffic fines over \$25. Mr. Perez argued that he did not understand that he was supposed to report matters older than three years. However, the instructions said to report if the Applicant had EVER been arrested, cited, convicted, etc. Therefore, I am not persuaded that Mr. Perez's failure to completely report his criminal history is somehow excusable. Thus, the Liquor Control Board correctly determined a criminal history points accumulation for Mr. Perez of 32.
- 5.6. The Liquor Control Board may decline to issue a marijuana retailer license to an Applicant who accumulates eight or more criminal history points. WAC 314-55-040(3). Mr. Perez accumulated 32 criminal history points. Accordingly, the Liquor Control Board may deny his application for a marijuana retailer license.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Liquor Control Board's decision to deny the Applicant's application for a marijuana retailer license is **AFFIRMED**.

6.2. The Applicant's application for a marijuana retailer license is denied.

Issued from Olympia, Washington, on the date of mailing



Terry A. Schuh
Senior Administrative Law Judge
Office of Administrative Hearings

RIGHTS OF REVIEW

Under RCW 34.05.488, RCW 34.05.491, and WAC 314-42-130, within twenty-one (21) days of the date of mailing of this order, the Applicant may request an administrative review of this order. The request must state the reasons for requesting an administrative review. The request must be received by the Washington State Liquor Control Board Reviewing Officer ("Reviewing Officer") within twenty-one (21) days from the date of the mailing of this order.

Address for filing a request for administrative review:
Washington State Liquor Control Board
Attention: Kevin McCarroll
3000 Pacific Avenue S.E.
PO Box 43076
Olympia, WA 98504-3076.

The Reviewing Officer will either uphold or overturn this initial order. The Reviewing Officer's decision will be the final agency decision and will be mailed to the last address the Applicant furnished to the Liquor Control Board. That order will include a description of any further appeal rights the Applicant may have.

CERTIFICATE OF SERVICE IS ATTACHED

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 2014-LCB-0072

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

<p>Sean T. Perez dba NW Krush 135 NW 85th St, #4 Seattle, WA 98117 Applicant</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>Washington State Liquor Control Board Attention: Kevin McCarroll PO Box 43076 Olympia, WA 98504-3076 Agency Representative</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: Friday, September 19, 2014

OFFICE OF ADMINISTRATIVE HEARINGS



Becky Gogan
Assistant Office Manager