

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

In the Matter of:

**BILLY JOE GRACEY d/b/a
DAZZLING FUTURE DISPENSARY**

APPLICANT

**License Application No. 413556
UBI No. 603-355-994-001-0001**

**OAH No. 2014-LCB-0078
LCB No. M-25,108**

**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 – Corrected Order entered by Administrative Law Judge, Gina L. Hale on September 18, 2014, and served on the Applicant by mail on September 18, 2014. The Initial Order is attached and incorporated into this Order by this reference.

1.2 Petition for Review. The Licensing Division of the Board filed a Petition for Review on October 3, 2014, requesting the Board reverse the Initial Order. The Applicant filed no response to the Petition.

1.3 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. DECISION OF THE BOARD

The Board has determined that the Initial Order should be reversed. The Licensing Division properly calculated the applicant's criminal history points. The applicant did not reveal his full criminal history during the licensing process. Providing additional information during the hearing process does not negate the failure to disclose in the first instance. The Board adopts the Administrative Law Judge's Findings of Fact and Conclusions of Law as modified below, and enters its Final Order.

2. ORDER SUMMARY

The Statement of Intent to Deny Marijuana License is affirmed.

3. HEARING AND BOARD REVIEW

The Board adopts paragraphs 3.1 through 3.4 of the Initial Order, and revises paragraph 3.5 to read:

3.5. The Initial Order recites that the Administrative Law Judge reviewed the marijuana licensing records as listed in the Index of Marijuana Licensing Records for BAP. The Initial Order further reflects that the ALJ also reviewed and considered a handwritten note provided by Mr. Gracey along with his BAP request, in which Mr. Gracey admitted that he had forgotten to disclose his conviction in 2006 for resisting arrest. With the BAP request, Mr. Gracey also enclosed a copy of his background check that was not previously provided to the Licensing Division. *See Exhibit 6, Request for Brief Adjudicative Proceeding (BAP) Record Review and Attachments.*

4. FINDINGS OF FACT

The Board adopts Findings of Fact Nos. 4.1 through 4.6 of the Initial Order. The Board modifies Findings of Fact Nos. 4.7 and 4.8 as follows:

4.7 Even if Mr. Gracey is credited as reporting his conviction for Interfering with Reporting Domestic Violence, which he reported as occurring in 2006, instead of 2003, he still failed to disclose at least two convictions: (a) Domestic Violence Assault, 4th Degree, (2003) and Resisting Arrest (2006). These two failures to disclose add up to an assignment of eight criminal history points, disqualifying him for a marijuana license under the Board's rules.

4.8. Mr. Gracey had an obligation to present a full and accurate application to the Board, or to indicate why it was incomplete. In response to the part of the form which directs an applicant to reveal all criminal history, including arrests that did not lead to charges or convictions, Mr. Gracey listed numerous convictions, but did not disclose several serious offenses.

5. CONCLUSIONS OF LAW

The Board adopts Conclusions of Law Nos. 5.1, 5.2, 5.3, and 5.4 of the Initial Order. In lieu of Conclusion No. 5.5, the Board enters the following:

5.5. An applicant for a marijuana license must fully and accurately complete the criminal history portion of the application form. Mr. Gracey did not do this, but provided an incorrect year for one conviction, and failed to disclose two convictions. The Licensing Division appropriately assigned four points for each of these unreported convictions, resulting in an accrual of eight (8) criminal history points.

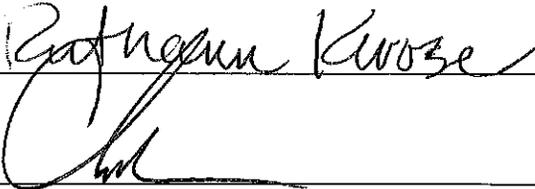
5.6 Based on the accrual of eight criminal history points, the Applicant exceeds the threshold for a negative criminal history. The Intent to Deny Marijuana License should be affirmed.

6. ORDER

IT IS HEREBY ORDERED that the Notice of Intent to Deny Marijuana License is affirmed. The Findings of Fact, Conclusions of Law and Initial Order, as modified above, are adopted as the Final Order of the Board. The application of Billy Joe Gracey, for a marijuana producer/processor license under the name of Dazzling Future Dispensary, is hereby DENIED.

DATED this 5TH day of NOVEMBER, 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

FINAL ORDER ON REVIEW FOLLOWING BRIEF ADJUDICATIVE PROCEEDING
IN THE MATTER OF
BILLY JOE GRACEY d/b/a DAZZLING FUTURE DISPENSARY
LICENSE APPLICATION NO. 413556, LCB NO. M-25,108

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 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

November 5, 2014

Billy Joe Gracey
d/b/a Dazzling Future Dispensary
PO Box 747
Goldendale, WA 98620-0747

Aryna Anderson, AAG
GCE Division, Office of Attorney General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

RE: FINAL ORDER ON REVIEW FOLLOWING BRIEF ADJUDICATIVE PROCEEDING
APPLICANT: Billy Gracey, Dazzling Future Dispensary LLC
TRADE NAME: Dazzling Future Dispensary
LOCATION: 650 Llama Lane, Goldendale, WA 98620-9140
LICENSE APPLICATION NO. 413556
LCB HEARING NO. M-25,108
UBI: 603 355 994 001 0001

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: Alan Rathbun, Licensing Director, WSLCB
Becky Smith, Licensing Manager, WSLCB
Kim Gabbard, Licensing Supervisor, WSLCB
Mary Henley, Administrative Assistant, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

In the Matter of:

BILLY GRACEY, DAZZLING
FUTURE DISPENSARY LLC d/b/a
DAZZLING FUTURE DISPENSARY
650 LLAMA LANE
GOLDENDALE, WA 98620-9140

APPLICANT

License Application No. 413556
UBI No. 603-355-994-001-0001

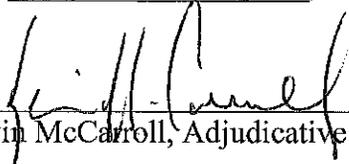
OAH NO. 2014-LCB-0078
LCB NO. M-25,108

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

BILLY JOE GRACEY D/B/A DAZZLING FUTURE DISPENSARY PO BOX 747 GOLDENDALE, WA 98620-0747	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION ARYNA ANDERSON, ASSISTANT ATTORNEY GENERAL
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DATED this 5th day of November, 2014, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

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

MAILED
85 SEP 18 2014
OLYMPIA OAH

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

Dazzling Future Dispensary,

Billy Joe Gracey
PO Box 747
Goldendale, WA 98620

Applicant.

License Application No. 413556
UBI No. 603-355-994-001-0001

OAH Docket No. 2014-LCB-0078

Agency No. M-25,108

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

RECEIVED

SEP 19 2014

Liquor Control Board
Board Administration

1. ISSUE PRESENTED

1.1. Whether the Liquor Control Board's Statement of Intent to Deny Marijuana License should be affirmed.

2. ORDER SUMMARY

2.1. The Liquor Control Board's Statement of Intent to Deny Marijuana License is reversed.

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:** Gina L. Hale

3.3. **Applicant:** Billy Joe Gracey

3.4. **Agency:** Washington State 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. 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 applied for a marijuana retail license on March 19, 2014.
- 4.2. A required element of that application was the Applicant's Personal/Criminal History Statement.
- 4.3. The Applicant submitted the Personal/Criminal History Statement on March 19, 2014, and checked "yes" on the criminal history section. The Applicant provided a handwritten list of offenses from 1975 through 2008. They were:
 - Joy Riding (a juvenile offense) (1975),
 - Burglary (1982),
 - DUI (1992),
 - Attempt to Elude (1994),
 - Possession of a Firearm (1994),
 - Disorderly Conduct (2004),
 - Recreation Fishing - 2nd Degree (2005),
 - Interference with Reporting Domestic Violence (2006), and
 - Speeding (2008).
- 4.4. The Applicant signed the application, under penalty of perjury, stating that it was "true, complete and correct."
- 4.5. As part of the application process, the Liquor Control Board (LCB) requested a criminal history background check from the Washington State Patrol (WSP), which was received on July 31, 2014. The WSP report indicated that between 2003, and 2006, the Applicant had been charged and found guilty of three Gross Misdemeanors and two Misdemeanors. The convictions were for:

- Interference with Reporting Domestic Violence (2003),
- Domestic Violence – 4th Degree Assault (2003),
- Disorderly Conduct (2004),
- Recreational Fishing - 2nd Degree (2005), and
- Resisting Arrest (2006).

The LCB understood that none of these offenses had been disclosed and assigned each offense four (4) points for a total of twenty (20) points on the LCB point scale.

4.6. Along with the Applicant's request for brief adjudicative proceeding, the Applicant provided another copy of the handwritten list of offenses. He noted with his request that he had forgotten to mention the 2006, conviction for Resisting Arrest.

4.7. Of the five convictions which the LCB identified, the Applicant disclosed:

- Interference with Reporting Domestic Violence (2003). (The Applicant noted the year as 2006. However, the WSP report does not indicate any charge of this nature for 2006),
- Disorderly Conduct (2004),
- Recreational Fishing 2nd Degree (2005), and
- Resisting Arrest (2006).

4.8. Through the license application and the brief adjudication processes, the Applicant has actually reported all of the offenses noted in the WSP criminal history report, except for one, Domestic Violence – 4th Degree Assault.

5. CONCLUSIONS OF LAW

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

5.1. The undersigned Administrative Law Judge has jurisdiction over the Applicant and 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. The Applicant must possess a criminal history which meets the standards outlined in WAC 314-55-040. An Applicant's failure to meet those standards 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. The Applicant's criminal history information, provided by the Washington State Patrol, identified five convictions. Because the LCB understood that none of these had been disclosed, each was assessed four points for a total of 20 points.
- 5.6. The undersigned concludes that the Applicant did report three of the offenses as part of the license application process and a fourth one was disclosed during the brief adjudication process. These four reported offenses reduce the Applicant's point total from 20 to 4 ($20 - 16 = 4$) putting the Applicant under the 8-point threshold of WAC 314-55-040(1).
- 5.7. The undersigned concludes that the Applicant does not exceed the regulatory threshold for a negative criminal history. The Applicant's request for a marijuana retail license shall be granted.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Liquor Control Board's Statement of Intent to Deny Marijuana License is **REVERSED**.
- 6.2. The Applicant's application for a marijuana retail license shall be Granted.

Issued from Olympia, Washington, on the date of mailing



Gina L. Hale, 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