STATE OF WASHINGTON
WASHINGTON STATE LIQUOR CONTROL BOARD

In the Matter of: **KEVIN R. COYNE** **d/b/a KEYSTONE CREATIONS** **747 WATSON STREET NORTH** **ROY, WA 98022** **APPLICANT** **License Application No. 414091** **UBI No. 603-349-167-001-0003**	**LCB No. M-25,113** **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 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 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 and Conclusions of Law and Initial Order are hereby adopted as the final decision of the Reviewing Officer.

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

2.2 This Applicant's application for a marijuana retailer license was not properly denied based upon his criminal history. Therefore this matter is hereby remanded to the Licensing Division for further processing of the Marijuana Retailer license application for Keystone Creations.

DATED at Olympia, Washington this 1st day of October, 2014.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

William Kinnose

Chair

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 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 2, 2014

Hilary Bricken,
Attorney for Applicant
Harris & Moure PLLC
600 Stewart St Ste 1200
Seattle, WA 98101-1232

Kevin R. Coyne, Applicant
d/b/a Keystone Creations
PO Box 862
Spanaway, WA 98387-0862

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

RE: ***FINAL ORDER ON REVIEW FOLLOWING BRIEF ADJUDICATIVE PROCEEDING***
APPLICANT: Kevin R. Coyne
TRADE NAME: Keystone Creations
LOCATION: 747 Watson St N, Roy, WA 98022
LICENSE NO. 414091
LCB HEARING NO. M-25,113
UBI: 603 349 167 001 0003

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,

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: KEVIN R. COYNE d/b/a KEYSTONE CREATIONS 747 WATSON STREET NORTH ROY, WA 98022 APPLICANT License Application No. 414091 UBI No. 603-349-167-001-0003	LCB NO. M-25,113 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:

HILARY BRICKEN, ATTORNEY FOR APPLICANT HARRIS & MOURE PLLC 600 STEWART ST STE 1200 SEATTLE, WA 98101-1232	LIQUOR CONTROL BOARD MAIL STOP 43098, LICENSING DIVISION ALAN RATHBUN, LICENSING DIRECTOR
KEVIN R. COYNE, APPLICANT D/B/A KEYSTONE CREATIONS PO BOX 862 SPANAWAY, WA 98387-0862	

DATED this 2nd day of October, 2014, at Olympia, Washington.

Kevin McCarroll, Adjudicative Proceedings Coordinator

MAILED
BG SEP 18 2014
OLYMPIA OAH

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

In the Matter of the Denial of the Marijuana license application for the privileges of a Marijuana Retailer for: Kevin R. Coyne Keystone Creations 1311 – 286th St. E. Roy, WA 98580-9534, Location Address: 747 Watson Street North Enumclaw, WA 98022, Applicant. License Application No. 414091 UBI No. 603 349 167 001 0003	OAH Dkt. No. 2014-LCB-0087 LCB No. M-25,113 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL ORDER ON BRIEF ADJUDICATIVE PROCEEDING**

RECEIVED
SEP 19 2014
Liquor Control Board
Board Administration

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 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:** Terry A. Schuh

3.3. **Applicant:** Kevin R. Coyne, Managing Member, Keystone Creations, LLC

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 41 pages. The Administrative Law Judge also reviewed any additional documents submitted by the Applicant for this proceeding. The Applicant submitted the following documents for the brief adjudicative process: a criminal history report regarding Kevin R. Coyne in the form of a web search transcript from the Washington State Patrol, dated April 27, 2014. (Note: The Applicant's submission was filed 10 calendars after the deadline for doing so. However, the notice of the brief adjudicative proceeding was mailed to the Applicant's physical address instead of his mailing address and also was not mailed to his attorney. Thus, the Applicant did not receive notice until after the time for filing had passed. Accordingly, I find his submission to be timely.)

4. FINDINGS OF FACT

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

4.1. The Applicant ("Mr. Coyne") applied for a marijuana retail license on March 21, 2014.

4.2. A required content of that application was Mr. Coyne's Personal/Criminal History Statement.

4.3. Mr. Coyne submitted the Personal/Criminal History Statement on March 21, 2014. Mr. Coyne reported two felonies, one in 1981 and one in 1986. He reported no other convictions.

4.4. Investigation by the Liquor Control Board revealed that Mr. Coyne also had a conviction in 2006 for failing to register as a sex offender. Record, p. 13. The Liquor Control Board classified that conviction as a felony. Record, p. 13. Consequently, the Liquor Control Board calculated Mr. Coyne's criminal history points accumulation as 16, specifically 12 points for a felony conviction and four points or failing to disclose the conviction. Record, p. 13.

4.5. Mr. Coyne acknowledged the 2006 conviction in a letter to the Liquor Control Board dated April 25, 2014, (Record, p. 16) and in a cover letter dated September 15, 2014, that accompanied the criminal history report he filed for this proceeding. However, Mr. Coyne asserted that the 2006 conviction was a gross misdemeanor, not a felony. The criminal history report filed by Mr. Coyne corroborates his assertion and nothing in the Record supports the Liquor Control Board's classification of the conviction as a felony. Therefore, I find that Mr. Coyne's 2006 conviction for failing to register as a sex offender was a gross misdemeanor.

5. CONCLUSIONS OF LAW

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

5.1. I have 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. 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). A gross misdemeanor is assigned five points, but only if it occurred within three years of the application date. WAC 314-55-040(1). A felony is assigned points only if it occurred within 10 years of the application date. WAC 314-55-040(1).

5.6. Here, Mr. Coyne had felony convictions in 1981 and in 1986, and a gross misdemeanor conviction in 2006. He failed to report the latter. Therefore, given the foregoing authority, Mr. Coyne accumulated four criminal history points. Thus, the Liquor Control Board's calculation of 16 is in error.

5.7. 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. Coyne accumulated only four criminal history points. Thus, the Liquor Control Board may not deny his application for a marijuana retailer license based upon his criminal history.

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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 **REVERSED**.

6.2. The Applicant's application for a marijuana retailer license is not denied based upon his criminal history.

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-0087

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

Kevin R Coyne Keystone Creations 1311 – 286th St E Roy, WA 98590-9534 ***Applicant***	☒ First Class Mail, Postage Prepaid ☐ Certified Mail, Return Receipt ☐ Hand Delivery via Messenger ☐ Campus Mail ☐ Facsimile ☐ E-mail
Kevin R Coyne Keystone Creations PO Box 862 Spanaway, WA 98387 ***Applicant***	☒ First Class Mail, Postage Prepaid ☐ Certified Mail, Return Receipt ☐ Hand Delivery via Messenger ☐ Campus Mail ☐ Facsimile ☐ E-mail
Washington State Liquor Control Board Attention: Kevin McCarroll PO Box 43076 Olympia, WA 98504-3076 ***Agency Representative***	☒ First Class Mail, Postage Prepaid ☐ Certified Mail, Return Receipt ☐ Hand Delivery via Messenger ☐ Campus Mail ☐ Facsimile ☐ E-mail
Harris Moure, PLLC Attention: Hilary Bricken 600 Stewart Street, Suite 1200 Seattle, WA 98101 ***Applicant Representative***	☒ First Class Mail, Postage Prepaid ☐ Certified Mail, Return Receipt ☐ Hand Delivery via Messenger ☐ Campus Mail ☐ Facsimile ☐ E-mail

Date: Thursday, September 18, 2014

OFFICE OF ADMINISTRATIVE HEARINGS

Becky Gogan
Assistant Office Manager