

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

In the Matter of:

**KYLE CLEMENTZ
d/b/a THC4LESS
12543 TOTEM LAKE BLVD. NE
KIRKLAND, WA 98034**

APPLICANT

**License Application No. 414479
UBI No. 603-360-482-001-0001**

LCB No. M-25,114

**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, Joshua D. Sundt on September 23, 2014, and served on the Applicant by mail on September 23, 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.

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

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

DATED this 14 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 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 15, 2014

Kyle Clementz
d/b/a THC4Less
15373 129th Ave NE
Woodinville, WA 98072-5517

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

RE: FINAL ORDER ON REVIEW FOLLOWING BRIEF ADJUDICATIVE PROCEEDING

APPLICANT: Kyle Clementz

TRADE NAME: THC4Less

LOCATION: 12543 Totem Lake Blvd NE, Kirkland, WA 98034

LICENSE APPLICATION NO. 414479

LCB HEARING NO. M-25,114

UBI: 603 360 482 001 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: Becky Smith, Licensing Manager, WSLCB
Kim Gabbard, Licensing Supervisor, WSLCB
Mary Henley, Administrative Assistant, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

In the Matter of:

KYLE CLEMENTZ
d/b/a THC4LESS
12543 TOTEM LAKE BLVD NE
KIRKLAND, WA 98034

APPLICANT

License Application No. 414479
UBI No. 603-360-482-001-0001

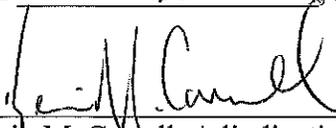
LCB NO. M-25,114

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:

| | |
|---|--|
| KYLE CLEMENTZ d/b/a THC4LESS 15373 129 TH AVE NE WOODINVILLE, WA 98072-5517 | LIQUOR CONTROL BOARD MAIL STOP 43098, LICENSING DIVISION ALAN RATHBUN, LICENSING DIRECTOR |
|---|--|

DATED this 15 day of October, 2014, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

**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:

Kyle Clementz
THC4LESS

12543 Totem Lake Blvd. NE
Kirkland, WA 98034

Applicant.

License Application No.414479
UBI: 603-360-482-001-0001

OAH Dkt. No. 2014-LCB-0079
LCB No. M-25,114

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

RECEIVED

SEP 24 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 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, Chapter 69.50 RCW, and Title 314 WAC.

3.2. **Administrative Law Judge:** Joshua D. Sundt

3.3. **Applicant:** Kyle Clementz, doing business as THC4LESS

3.4. **Agency:** Liquor Control Board

3.5. **Documents reviewed:** The Administrative Law Judge reviewed the marijuana licensing records listed in the "Index of Marijuana Licensing Records for BAP" attached to the scheduling letter for this proceeding and consisting of 37 pages. Mr. Clementz did not submit any additional documents for review.

4. FINDINGS OF FACT

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

- 4.1. The Applicant, Kyle Clementz, applied for a marijuana retail license, submitting documents for the retail license prescreen process on March 21, 2014, so that his application could be included in the lottery.
- 4.2. A required content of that application was Mr. Clementz's Personal/Criminal History Statement.
- 4.3. Mr. Clementz submitted the Personal/Criminal History Statement, including additional attached sheets for further explanation, on March 21, 2014. Record, pages 6 through 11. Mr. Clementz obtained and submitted a criminal history report as part of his Criminal History Statement. Record, page 11.
- 4.4. The Criminal History Statement portion of the Personal/Criminal History form asks: "Have you EVER: 1. Been arrested or cited? 2. Been charged with a crime? 3. Been convicted? 4. Been jailed? 5. Been placed on probation? 6. Forfeited bail or paid a fine over \$25 (include traffic fines)?" The instructions in that section go on to state as follows:

You must answer "YES" if any of the above have occurred, even if charges were dismissed, deferred or changed. Explain each charge fully below and attach additional sheets as needed. False or incomplete information may result in denial, suspension or revocation of a license. You must include events that occurred while you were a juvenile."
- 4.5. In response to the questions in the Criminal History Statement section of the form, Mr. Clementz checked the YES box and disclosed two offenses: a felony conviction for theft (2nd degree) in 2006 and a gross misdemeanor conviction for assault (4th degree) in 2002. Record, pages 6 and 11. On the criminal history section of the Personal/Criminal History form, Mr. Clementz characterized the theft offense as theft in the third degree, which would be classified as a gross misdemeanor under RCW 9A.56.050. However, on the criminal history report he submitted the same offense is characterized as 2nd degree theft, a Class C felony under RCW 9A.56.040. Faced with conflicting characterizations of the same crime, I find the report more credible and therefore find the theft conviction to have been a Class C felony for purposes of the criminal history point calculations in this matter.
- 4.6. Further investigation by the Liquor Control Board revealed that Mr. Clementz had 12 additional convictions he did not disclose on his Criminal History Statement:
 - a. DUI-Felony in 2014;
 - b. Cont Subs Schd I/II-NARC/IV-F in 2009;
 - c. DUI in 2007;

- d. Driving While License Suspended 2nd Degree in 2007;
- e. Physical Control in 2006;
- f. Reckless Driving in 2006;
- g. DUI in 2005;
- h. Negligent Driving 1st Degree in 1998;
- i. No Valid Operator License in 1998;
- j. Susp OL 3rd Degree in 1997;
- k. No Valid Driver's License in 1995; and
- l. DWLS 3rd Degree in 1997. Record, page 13.

4.7. Mr. Clementz did not dispute the existence or classification of the additional criminal history identified by the Liquor Control Board.

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. In Mr. Clementz's case, he should be assigned 12 points for his 2006 Class C felony conviction for 2nd degree theft because the offense is within the 10-year period during which points are assigned under WAC 314-55-040. He should be assigned 12 points for his 2014 felony DUI because the offense is within the 10-year period during which points are assigned. He should also be assigned 12 points for his 2009 felony conviction for violation of the Uniform Controlled Substances Act because the offense is within the 10-year period during which

points are assigned. In addition, he should be assigned 4 points for each of the 12 offenses which he failed to disclose on his Personal/Criminal History Statement, for a subtotal of 48 additional points. He should be assigned 84 points in total. Mr. Clementz did not submit any documentation explaining why he failed to disclose the 12 undisclosed offenses. However, the regulation does not distinguish between intentional and unintentional failure to disclose criminal history. Under its rules, the Liquor Control Board has authority to reject a marijuana license application even where the nondisclosure was accidental or unintentional. For an applicant with criminal history, the burden is on the applicant to determine his or her own criminal history completely and accurately and disclose that history on the Criminal History form.

5.6. Because Mr. Clementz accrued 84 points under WAC 314-55-040(1), the Liquor Control Board's decision to deny Mr. Clementz his application for a marijuana retailer license should be affirmed.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Liquor Control Board's decision to deny Mr. Clementz'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



Joshua D. Sundt
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-0079

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

| | |
|---|---|
| <p>THC4LESS Kyle Clementz 15373 – 129th Avenue NE Woodinville, WA 98072 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>Kevin McCarroll Washington State Liquor Control Board MS: 43076 Agency Representative</p> | <p><input type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p> |

Date: Tuesday, September 23, 2014

OFFICE OF ADMINISTRATIVE HEARINGS



Karen Williams
Legal Secretary