

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

In the Matter of:

**MARK LAVERGNE
d/b/a PURPLE RIDGE FARMS
620 93RD AVE SE
OLYMPIA, WA 98501**

APPLICANT

**License Application No. 415633
UBI No. 603-364-764-001-0002**

LCB No. M-25,122

**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, Gina L. Hale on September 25, 2014, and served on the Applicant by mail on September 25, 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. LaVergne'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

Jay Berneburg,
Attorney for Applicant
705 S 9th St, Ste 206
Tacoma, WA 98405-4622

Mark LaVergne
d/b/a Purple Ridge Farms
1314 169th St S
Spanaway, WA 98387-8998

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

RE: FINAL ORDER ON REVIEW FOLLOWING BRIEF ADJUDICATIVE PROCEEDING
APPLICANT: Mark LaVergne
TRADE NAME: Purple Ridge Farms
LOCATION: 620 93rd Ave SE, Olympia, WA 98501
LICENSE APPLICATION NO. 415633
LCB HEARING NO. M-25,122
UBI: 603-364-764-001-0002

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:

MARK LAVERGNE
d/b/a PURPLE RIDGE FARMS
620 93RD AVE SE
OLYMPIA, WA 98501

APPLICANT

License Application No. 415633
UBI No. 603-364-764-001-0002

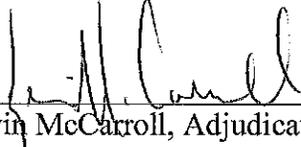
LCB NO. M-25,122

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:

JAY BERNEBURG, ATTORNEY FOR APPLICANT 705 S 9 TH ST, STE 206 TACOMA, WA 98405-4622	LIQUOR CONTROL BOARD MAIL STOP 43098, LICENSING DIVISION ALAN RATHBUN, LICENSING DIRECTOR
MARK LAVERGNE d/b/a PURPLE RIDGE FARMS 1314 169 TH ST S SPANAWAY, WA 98387-8998	

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


Kevin McCarroll, Adjudicative Proceedings Coordinator

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

RECEIVED
SEP 23 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:

Purple Ridge Farms

Mark LaVergne
d.b.a. Purple Ridge Farms
3608 – 7th Avenue, SW
Olympia, WA 98502

Applicant.

License Application No. 415633
UBI No. 6033647640010002

OAH Docket No. 2014-LCB-0077

LCB No. M-25,122

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

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 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:** Gina L. Hale

3.3. **Applicant:** Mark LaVergne

3.3.1. **Representative:** Jay Berneburg, Attorney at Law

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 the additional documents timely submitted by the Applicant through his attorney.

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 23, 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 23, 2014.
- 4.4. In the section "Criminal History Statement," the Applicant was asked:

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)?

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.** (Emphasis original.)

- 4.5. The Applicant answered "no" to the six questions, but also listed two "unknown" offenses from 2008, which were for Failure to Make a Required Payment.
- 4.6. The Applicant signed the application, under penalty of perjury, stating that it was "true, complete and correct."

4.7. As part of the application process, the Liquor Control Board (LCB) requested a criminal history background check from the Washington State Patrol (WSP). The WSP report, dated May 14, 2014, noted two license numbers for the Applicant: #415631 and #415633, the subject of this proceeding. The report also noted that between 1981 and 1988, the Applicant had been convicted of three Gross Misdemeanors and one Misdemeanor. The WSP report listed the following:

- Minor Possession and/or Consumption (1981)
- Minor Possession and/or Consumption (1983)
- Possession of Marijuana (1983)
- Theft (1988)

The LCB understood that none of these offenses had been disclosed by the Applicant and assigned each offense four (4) points for a total of sixteen (16) points on the LCB point scale. Tab 5, page 12.

4.8. The Applicant, through his attorney, submitted additional documentation to support his argument that he should be allowed to have a license. His arguments were that:

- Under the point system outlined in WAC 314-55-040(1), the only offenses for which the LCB could impose the four-point penalty would be specific convictions which occurred within the specifically noted timeframe (emphasis added), i.e., a *Gross Misdemeanor conviction within 3 years and/or Misdemeanor conviction within 3 years*. Therefore, if the unreported offense/conviction did not occur within the timeframe noted, LCB could not assess any points.
- Secondly, because all of the Applicant's unreported convictions were older than three years, they did not need to be reported and there should not be any assessment of points against the Applicant.
- Lastly, the Applicant argued that it is discretionary whether incomplete information results in a denial, suspension, or revocation of a license. Since, two of the convictions were when the Applicant was a juvenile, the discretion should be applied in favor of the Applicant.

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 four unreported convictions for a total of 16 points. Based on Findings of Fact 4.7, and WAC 314-55-040(1), the point total disqualifies the Applicant from receiving a license because it is over the 8-point threshold.
- 5.6. The LCB allows for exceptions to the point system based on certain convictions regarding marijuana. WAC 314-55-040(3). These exceptions are inapplicable to the Applicant because WAC 314-55-040(3)(a)(i) states "[r]egardless of applicability, failure to disclose full criminal history will result in point accumulation."
- 5.7. The Applicant's argument regarding WAC 314-55-040 fails because, for the purpose of a marijuana license background check, the section must be read in conjunction with the questions posed on the Criminal History Section of the Personal/Criminal History Statement. Finding 4.4. Where the section asks if any of the events noted in the six questions has **ever** occurred and then follows up by requiring information even on **juvenile** offenses, it is clear that the Applicant is to report **every** offense/conviction. (Emphasis added.) Failure to do so, will result in point accumulation as noted in WAC 314-55-040(3)(a)(i). Additionally, to require that juvenile convictions be reported indicates that such convictions could, in all likelihood, be outside of the timeframes noted in WAC 314-55-040(1). So, the timeframes listed do not limit what an applicant is to report. WAC 314-55-040(1), focuses more on whether an offense/conviction was **reported** at all, than it does on the nature or timeframe of the offense/conviction itself.
- 5.8. The undersigned concludes that the Applicant exceeds the regulatory threshold for a negative criminal history. The Washington State Liquor Control Board correctly denied the Applicant's request for a marijuana retail license.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

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

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 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-0077

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

<p>Mark LaVergne dba Purple Ridge Farms 1314 – 169th Street S Spanaway, WA 98387 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>Jay Berneburg Attorney at Law 705 S 9th St, Suite 206 Tacoma, WA 98405 Applicant 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>
<p>Washington State Liquor Control Board Attention: Kevin McCarroll PO Box 43076 Olympia, WA 98504-3076 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: Thursday, September 25, 2014

OFFICE OF ADMINISTRATIVE HEARINGS



Karen Williams
Legal Secretary