BEFORE THE WASHINGTON STATE LIQUOR AND CANNABIS BOARD

IN THE MATTER OF: MARICAL VIEW RANCH, INC. d/b/a MARICAL VIEW RANCH 78 DAY ROAD WATERVILLE, WA 98858 APPLICANT LICENSE APPLICATION NO. 414048 UBI: 603 354 787 001 0002	LCB NO. M-25,285 OAH NO. 2014-LCB-0096 FINAL ORDER OF THE BOARD

The above-captioned matter coming on regularly before the Board, and it appearing that:

1. The Licensing Division of the Liquor and Cannabis Board issued a Statement of Intent to Deny Marijuana License dated July 11, 2014, asserting that the Applicant accrued a total of 20 criminal points:

   i. Applicant failed to disclose 2 gross misdemeanor convictions totaling 8 points:

      a. DUI (1996)

      b. Assault, 4th Degree (1991)

   ii. Applicant failed to disclose 3 misdemeanor convictions, totaling 12 points:

      a. Vessel Registration Required (2004)

      b. Possession of Marijuana (1996)

      c. No Valid Driver's License (1995)

2. The Applicant submitted a timely request for a hearing.

Washington State Liquor and Cannabis Board
3000 Pacific Ave, S.E.
P.O. Box 43076
Olympia, WA 98504-3076
Phone: 360-664-1602

3. On April 28, 2015 and June 8, 2015, hearings were held before Administrative Law Judge Joshua D. Sundt with the Office of Administrative Hearings.

4. At the hearing, the Applicant was represented by Attorney at Law Elizabeth Hallock. Assistant Attorney General Kim O'Neal represented the Licensing Division of the Board.

5. On June 15, 2015, Administrative Law Judge Joshua D. Sundt issued an Initial Order, affirming the decision to deny the Applicant's license application as expressed in the Statement of Intent to Deny Marijuana License.

6. No Petition for Review was received.

7. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board;

IT IS HEREBY FURTHER ORDERED that marijuana license application number 414048 for Marical View Ranch, Inc. d/b/a Marical View Ranch is DENIED.

DATED at Olympia, Washington this 4th day of AUGUST, 2015.

WASHINGTON STATE LIQUOR AND CANNABIS BOARD

Ruthann Kurose

Washington State Liquor and Cannabis Board
3000 Pacific Ave, S.E.
P.O. Box 43076
Olympia, WA 98504-3076
Phone: 360-664-1602

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 and Cannabis 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, Senior 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 and Cannabis Board
3000 Pacific Ave, S.E.
P.O. Box 43076
Olympia, WA 98504-3076
Phone: 360-664-1602

Washington State
Liquor and Cannabis Board

August 5, 2015

Elizabeth Hallock
Attorney for Applicant
2669 NW Kent St
Camas, WA 98607-9025

David Day
Marical View Ranch, Inc.
d/b/a Marical View Ranch
13717 2nd Ave NE
Tulalip, WA 98271-6714

Kim O'Neal, AAG
GCE Division, Office of Attorney General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

RE: FINAL ORDER OF THE BOARD
APPLICANT: Marical View Ranch, Inc.
TRADE NAME: Marical View Ranch
LOCATION: 78 Day Rd, Waterville, WA 98858
LICENSE APPLICATION NO. 414048
LCB HEARING NO. M-25,285
OAH NO. 2014-LCB-0096
UBI: 603-354-787-001-0002

Dear Parties:

Please find the enclosed Final Order of the Board 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 Director, WSLCB
Frank O'Dell, Licensing Supervisor, WLSCB
Linda Thompson, Licensing Adjudications Coordinator, WSLCB

WASHINGTON STATE LIQUOR AND CANNABIS BOARD

IN THE MATTER OF: MARICAL VIEW RANCH, INC. d/b/a MARICAL VIEW RANCH 78 DAY ROAD WATERVILLE, WA 98858 APPLICANT LICENSE APPLICATION NO. 414048 UBI: 603 354 787 001 0002	LCB NO. M-25,285 OAH NO. 2014-LCB-0096 DECLARATION OF SERVICE BY MAIL

I certify that I caused a copy of the FINAL ORDER OF THE BOARD 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 Services for state offices on the date below to:

ELIZABETH HALLOCK ATTORNEY FOR APPLICANT 2669 NW KENT ST CAMAS, WA 98607-9025	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION KIM O'NEAL, ASSISTANT ATTORNEY GENERAL
DAVID DAY MARICAL VIEW RANCH, INC. d/b/a MARICAL VIEW RANCH 13717 2ND AVE NE TULALIP, WA 98271-6714	

DATED this 5th day of August, 2015, at Olympia, Washington.

Kevin McCarroll, Adjudicative Proceedings Coordinator

RECEIVED
JUN 23 2015
Liquor Control Board
Board Administration

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of: Marical View Ranch, Inc., Applicant. Location address: 78 Day Road Waterville, WA 98858 License Application No. 414048 UBI No. 603 364 787 001 0002	Docket No. 2014-LCB-0096 **INITIAL ORDER** Agency: Liquor Control Board Program: Marijuana Licensing Agency No. M-25,285

1. ISSUES PRESENTED

1.1 Whether the criminal violation history of David Day, president of the Applicant, Marical View Ranch, Inc., subjects the Applicant to denial of its application for a marijuana producer license under RCW 69.50.331(1), WAC 314-55-040 and WAC 314-55-050(4).

1.2 Whether there were defects in the in the administrative adjudication process which entitle the Applicant to relief.

2. ORDER SUMMARY

2.1 The Applicant's failure to disclose Mr. Day's complete criminal history upon application subjects Applicant to denial of its application for a marijuana producer license under RCW 69.50.331(1), WAC 314-55-040 and WAC 314-55-050(4).

2.2 The Applicant did not show proof of any defects in the administrative adjudication process which would entitle the Applicant to relief.

2.3 The Liquor Control Board's denial of Applicant's marijuana producer license is AFFIRMED.

3. HEARING

3.1	Hearing Dates:	April 28, 2015 and June 8, 2015
3.2	Administrative Law Judge:	Joshua D. Sundt
3.3	Licensee/Applicant:	Marical View Ranch, Inc.
	3.3.1 Representative:	Elizabeth Hallock, Attorney at Law
	3.3.2 Witnesses:	David Day, president of Marical View Ranch, Inc., appeared and testified for Applicant. Mr. Day's wife,

		Julia Day, also appeared at the hearing but did not testify.
3.4	Agency:	Liquor Control Board (LCB)
	3.4.1 Representative:	Kim O'Neal, Senior Counsel, Office of the Attorney General
	3.4.2 Witnesses:	Kim Gabbard, Marijuana Supervisor Elisa Bob, former Marijuana Licensing Investigator
3.5	Exhibits:	The administrative law judge admitted exhibits 1 through 5, and A1 through A12.

4. FINDINGS OF FACT

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

4.1 The Applicant, Marical View Ranch, Inc., applied for a marijuana producer license in November 2013.

4.2 On February 25, 2014, a Marijuana Licensing Investigator at LCB, Elisa Bob, conducted an initial interview with David Day, Marical's president, to determine what documentation he would need to submit so that LCB could process the application.

4.3 One of the documents LCB required Mr. Day to complete—as with all applicants for a marijuana license—was the Personal/Criminal History Statement, so that LCB could submit the information for a criminal history check.

4.4 Mr. Day submitted a signed Personal/Criminal History Statement, including one additional attached sheet for further explanation, in late March 2014[1].

4.5 The Criminal History Statement portion of the Personal/Criminal History Statement 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.

[1] The record is somewhat unclear as to exactly when Mr. Day submitted his Personal/Criminal History Statement. Exhibit 3, page 14, indicates Mr. Day signed the Statement on March 29, 2014, but the Index of Marijuana Licensing records for BAP, at Exhibit 3, page 1, indicates the Statement was submitted by the applicant on March 19, 2014. In either case, LCB appears to have accepted the submittal as timely.

4.6 In response to the questions in the Criminal History Statement section of the form, Mr. Day checked the YES box and disclosed two offenses: an offense identified as "fail traffic light" in February 2014 and an offense identified as "op w/out Ins." in September 2013. Exhibit 3, page 13. On the one attached sheet, Mr. Day disclosed two additional offenses: an "Improper Tow" in August 2011 and a "speeding 10 over" in April 2010.

4.7 Further investigation by LCB revealed that Mr. Day had five additional convictions he did not disclose on his Criminal History Statement:

1. Vessel Registration Required – Misdemeanor, in 2004;
2. Possession of Marijuana – Misdemeanor, in 1996;
3. DUI – Gross Misdemeanor, in 1996;
4. No Valid Drivers License – Misdemeanor, in 1995; and
5. Assault, 4th Degree – Gross Misdemeanor, in 1991.

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

4.9 Upon receiving the results of the criminal history check on May 9, 2014, Marijuana License Investigator Elisa Bob wrote both an email and a letter to Mr. Day, explaining the effect of the findings from the criminal history report. Ms. Bob's email communication stated, in pertinent part, as follows:

> We received the results of your criminal background check. I have attached the results as well as our official letter explaining your options. Points were assigned due to failure to disclose various convictions. While all of these are from years ago, your failure to disclose them still results in a points accumulation. Your best bet – if you would like to move forward – is to provide a written explanation addressing the circumstances surrounding each conviction and a statement as to why you didn't disclose them. If you take this approach your application can move forward, and the Board will make a threshold decision regarding the criminal issue. If they decide your explanations are sufficient and of no major concern, they will then review the rest of your application to decide whether to issue you a license.

Exhibit 3, page 27.

4.10 Ms. Bob concluded her email by inviting Mr. Day to send her an email if he had any questions. Exhibit 3, page 27.

4.11 Like the email, the official letter which Ms. Bob attached to her email also informed Mr. Day that LCB had not yet decided whether to disqualify him based on his criminal history, and that he could submit a letter of explanation for LCB to

consider in making its decision. The letter further noted that, if LCB did approve the application, it may impose a restriction on Mr. Day's participation in the business. Exhibit A10, page 39.

4.12 Despite having notice that "the board will not normally issue a marijuana license to an applicant who has accumulated eight more points", and having received notice that LCB had not yet made its decision as to whether his criminal history would disqualify his application, Mr. Day chose to move forward with his application by preparing for final inspection. Specifically, Mr. Day worked to meet the fencing requirements, purchased an insurance policy, and bought seed-to-sale traceability software, at significant expense.

4.13 By letter dated May 12, 2014, Mr. Day did submit a letter in which he offered an explanation for his failure to disclose his complete criminal history. Essentially, Mr. Day's explanation was that he misinterpreted WAC 314-55-040 and believed that did not have to disclose any misdemeanors or gross misdemeanors older than three years.

4.14 Mr. Day's explanation for failure to disclose criminal history is not credible. First, his contention that he "paid close attention" to the administrative rule, as opposed to the instructions on the form, fails to satisfactorily explain how he missed the following language in WAC 314-55-040(3)(a): "All criminal history must be reported on the personal/criminal history form. (i) Regardless of applicability, failure to disclose full criminal history will result in point accumulation." If Mr. Day's decision was to rely on the regulation, even in face of what he interpreted to be contrary instructions on the form itself, it certainly would have been prudent to read the entire regulation. Second, if Mr. Day truly interpreted the rule to require disclosure of only those misdemeanors within the past three years, it is unclear why he disclosed a four-year-old speeding offense from April 2010. Third, if Mr. Day found the form's requirements to be contrary to his interpretation of the rule, it would have been prudent to ask for clarification from LCB. Mr. Day, however, chose to rely on his interpretation with obtaining such clarification.

4.15 In late June 2014, Marijuana Supervisor Kim Gabbard told Mr. Day that he was proceeding at his own risk in preparing his business for final inspection, because LCB had not yet made a decision as to whether his criminal history would disqualify him. Again, Mr. Day decided to continue preparing his site for his planned marijuana business despite the fact that LCB had not yet made a decision on the criminal history issue.

4.16 LCB issued a Statement of Intent to Deny Marijuana License to Mr. Day's business on July 11, 2014. Exhibit 1.

4.17 In response to the Statement of Intent to Deny, Mr. Day filed a request for a Brief Adjudicative Proceeding Record Review (BAP Review) on July 18, 2014. Exhibit A10, page 59.

4.18 By motion dated August 6, 2014, the Applicant requested the BAP Review be converted to a formal adjudicative proceeding, which request was granted by order issued September 17, 2014.

5. CONCLUSIONS OF LAW

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

5.1 The Office of Administrative Hearings has jurisdiction over the persons and subject matter of this case under Revised Code of Washington (RCW) 69.50.334, Washington Administrative Code (WAC) 314-55-070, chapter 34.12 RCW, chapter 34.05 RCW, and chapter 314-42 WAC.

5.2 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).

5.3 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).

5.4 In Mr. Day's case, he should be assigned a four points for each of the five offenses which he failed to disclose on his Personal/Criminal History Statement, for a total of 20 points.

5.5 Although Mr. Day argued that his failure to disclose was unintentional and merely the result of an innocent misreading of the rule, 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. Furthermore, the language of the Personal/Criminal History Statement form makes it clear that there is no time limit or disclosure exception for old offenses. Not only does the form language emphasize the "EVER" in the criminal history questions, but also clarifies that even juvenile offenses must be disclosed.

5.6 Because Mr. Day accrued 20 points under WAC 314-55-040(1), the Liquor Control Board's decision to deny Marical View Ranch, Inc. its application for a marijuana producer license should be affirmed.

5.7 Mr. Day also argued that LCB employed a defective licensing processing procedure, which effectively encouraged him to continue spending money on his proposed premises in the interim while a determination on the criminal history issue was pending. As set forth in the findings of fact above, though, Mr. Day had ample notice that LCB's determination on the criminal history question was pending. Mr. Day's decisions to continue spending money on his premises were business risks taken in spite of and in full view of the outstanding determination as to whether his criminal history would disqualify Marical.

5.8 Although I do not doubt the seriousness or circumstances of Mr. Day's health issues, which he argued at hearing were a related to his license denial and the lost value of his investment in the enterprise, Mr. Day's medical condition following the application denial is not relevant to question of whether LCB properly denied the license application due to undisclosed criminal history.

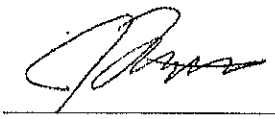
6. INITIAL ORDER

6.1 The Applicant's failure to disclose Mr. Day's complete criminal history upon its application subjects Applicant to denial of its application for a marijuana producer license under RCW 69.50.331(1), WAC 314-55-040 and WAC 314-55-050(4).

6.2 The Applicant did not show proof of any defects in the administrative adjudication process which would entitle the Applicant to relief.

6.3 The Liquor Control Board's denial of Applicant's marijuana producer license is AFFIRMED.

Dated: June 15, 2015



Joshua D. Sundt
Administrative Law Judge
Office of Administrative Hearings

NOTICE OF APPEAL RIGHTS – PLEASE READ CAREFULLY

Petition for Review of Initial Order: Either the applicant or the assistant attorney general may file a petition for review of the initial order with the liquor control board within twenty (20) days of the date of service of the initial order. RCW 34.05.464, WAC 10-08-211 and WAC 314-42-095.

The petition for review must:

(i) Specify the portions of the initial order to which exception is taken;

(ii) Refer to the evidence of record which is relied upon to support the petition; and

(iii) Be filed with the liquor control board within twenty (20) days of the date of service of the initial order.

A copy of the petition for review must be mailed to all of the other parties and their representatives at the time the petition is filed. **Within (10) ten days after service of the petition for review, any of the other parties may file a response to that petition with the liquor control board.** WAC 314-42-095(2) (a) and (b). Copies of the response must be mailed to all other parties and their representatives at the time the response is filed.

Address for filing a petition for review with the board: Washington State Liquor Control Board, Attention: Kevin McCarroll, 3000 Pacific Avenue, PO Box 43076, Olympia, Washington 98504-3076.

Final Order and Additional Appeal Rights:

The administrative record, the initial order, any petitions for review, and any replies filed by the parties will be circulated to the board members for review. WAC 314-42-095(3).

Following this review, the board will enter a final order. WAC 314-42-095(4). Within ten days of the service of a final order, any party may file a petition for reconsideration with the board, stating the specific grounds upon which relief is requested. RCW 34.05.470 and WAC 10-08-215.

The final decision of the board is appealable to the Superior Court under the provisions of RCW 34.05.510 through 34.05.598 (Washington Administrative Procedure Act).

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that today I served a copy of this document, by placing it in the mail with postage prepaid, addressed to the following parties of record:

Marical View Ranch, Inc c/o David Day 13717 2nd Avenue NE Tulalip, WA 98271	Applicant
Elizabeth Hallock 2669 NW Kent Street Camas, WA 98607-9025	Applicant Representative
Kim O'Neal Senior Counsel Office of the Attorney General PO Box 40100 Olympia, WA 98504-0100	Agency Representative
Kevin McCarroll Adjudicative Proceedings Coordinator P.O. Box 43076 Olympia, WA 98504-3076	Agency Contact
Becky Smith Licensing Director P.O. Box 43098 Olympia, WA 98504-3098	Agency Contact

Dated June 15, 2015, at Olympia, Washington.
(DATE OF MAILING)

Jamie Marshall

Representative
Office of Administrative Hearings
2420 Bristol Court SW
Olympia, WA 98502