

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

CUTTERCREST, LLC
d/b/a SPORTS PAGE GRILLE & BAR
907 FIRST STREET
SNOHOMISH, WA 98296-2906

LICENSEE

LICENSE NO. 356164-3G

LCB NO. 22,856

OAH NO. 2008-LCB-0050

FINAL ORDER SUSTAINING
COMPLAINT

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

I. PROCEDURAL HISTORY OF THE CASE

1.1. The Liquor Control Board issued a Complaint dated October 10, 2008, alleging that on July 18, 2008 the above-named Licensee, or employee(s) thereof, allowed or permitted an apparently intoxicated person to possess or consume liquor on the licensed premises in violation of WAC 314-16-150.

1.2. The Licensee made a timely request for hearing, and Administrative Law Judge Nicole A. Gaines was assigned to hear the case, and held a prehearing conference.

1.3. The parties agreed on Stipulated Facts, appended to the Initial Order as Attachment A. The licensee, through its attorney David Osgood, filed a Motion for Summary Judgment, asserting the WAC 314-16-150(2) is invalid and null; the Education and Enforcement Division filed a motion for summary judgment, asserting there is no genuine issue of material fact, and asking the Board's complaint be sustained.

1.4. The Administrative Law Judge issued an Initial Order on October 6, 2010, granting the Enforcement Division's Motion for Summary Judgment sustaining the Board's Complaint, and denying the Licensee's Motion for Summary Judgment.

1.5. The Licensee filed a timely Petition for Review to which the Education and Enforcement Division of the Board replied. The Licensee challenges the validity of the regulation under which the violation notice was issued, WAC 314-16-150, making it a violation when a licensee permits an apparently intoxicated person to consume and/or possess alcohol on a licensed premises.

II. FINDINGS OF FACT

2.1. The Board hereby adopts and incorporates by reference Findings of Fact Nos. 1 through 19 in Attachment A to the Initial Order, and Finding of Fact 2.a.) and b). of the Initial Order.

III. CONCLUSIONS OF LAW

3.1. The Board hereby adopts and incorporates by reference Conclusions of Law Nos. 1 through 7 of the Initial Order. The Board makes the following additional Conclusions:

3.2. The appropriate legal test for whether a Licensee has permitted an apparently intoxicated person to possess alcohol in violation of WAC 314-16-150 is contained in the case law of *Reeb Inc. v. Washington State Liquor Control Board*, 24 Wn. App. 349, 600 P.2d 578 (1979) and *Oscar's Inc. v. Washington State Liquor Control Board*, 101 Wn. App. 498, 3 P.3d 813 (2000). That test is whether the facts establish that a Licensee had at least constructive knowledge of circumstances that would foreseeably lead to the prohibited activity (possession and/or consumption of liquor by an intoxicated person) and acquiesced to or failed to prevent from occurring either the prohibited activity or the circumstances which could foreseeably lead to the prohibited activity.

3.3. In this case the undisputed facts establish the Licensee had at least constructive notice of the signs of intoxication displayed by Mr. Spencer, while possessing and consuming an alcoholic beverage on the premises. The Licensee in this case had an obligation to take appropriate steps to prevent already intoxicated patrons from being able to possess or consume additional liquor. Failure to do so is to permit an intoxicated person to possess liquor on the licensed premise in violation of WAC 314-16-150.

3.4. The Board has authority to issue violation notices to premises licensed to sell alcohol when an apparently intoxicated person is allowed to possess or consume liquor on the premises. RCW 66.44.200 and WAC 314-16-150.

3.5. WAC 314-16-150 states, in relevant part:

- (1) No retail licensee shall give or otherwise supply liquor toany person apparently under the influence of liquor; nor shall any licensee or employee thereof permit any person ...in said condition to consume liquor on his/her premises, or on any premises adjacent thereto and under his/her control.
- (2) No retail licensee shall permit any person apparently under the influence of liquor to physically possess liquor on the licensed premises.

A violation of this rule occurs when a licensee and/or an employee sells or supplies liquor to, or permits a person apparently under the influence of liquor to consume and/or possess liquor on the licensed premises.

3.6. The Licensee has challenged the validity of WAC 314-16-150, asserting that it is contrary to the authority of the Board and conflicts with legislative intent. In support of this argument, the Licensee cites to legislative history, asserting that the Legislature affirmatively chose to relieve licensees of certain responsibilities with regard to persons who appear to be intoxicated, and to impose the responsibility on the individual. The Board concludes that this argument is not valid. The Licensee's argument would have the Legislature removing liability from a Licensee, even if an obviously intoxicated person continued to consume alcohol on the licensed premises, so

long as the Licensee did not directly sell the product to the individual. Such an interpretation would allow the Licensee to observe (or even encourage) another person to purchase alcoholic beverages for an apparently intoxicated person, and observe the apparently intoxicated person consume them, so long as the Licensee did not sell or serve the beverage directly to the apparently intoxicated person. The Legislature could not have intended this result, and the Legislative history does not demonstrate such intent. By amending RCW 66.44.200 to impose a separate liability on the apparently intoxicated person, the Legislature did not demonstrate the intent to relieve the Licensee of the responsibility to control the consumption of alcohol on the licensed premise.

3.7. RCW 66.08.010 states that [Title 66 RCW] is “deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose.”

The Legislature has provided the Board with broad rulemaking authority to adopt rules

For the purpose of carrying into effect the provisions of this title [Title 66 RCW] according to their true intent *or of supplying any deficiency therein*, the board may make such regulations not inconsistent with the spirit of this title as are deemed necessary or advisable.

* * *

RCW 66.08.030(1). The Board’s authority to regulate the conduct of persons on licensed premises, and to hold the Licensee responsible for the conduct of persons on the licensed premises, was upheld in *Corral, Inc., v. Washington State Liquor Control Board*, 17 Wn. App. 753, 566 P.2d.214 (1977). Washington courts have long upheld the broad authority of the Board to regulate and control the dispensation of alcoholic beverages. *Cosro, Inc. v. Washington State Liquor Control Board*, 107 Wn.2d 754, 757, 733 P.2d 539 (1987); *Anderson, Leech & Morse, Inc., v. Washington State Liquor Control Board*, 89 Wn.2d 688, 575 P.2d 221 (1978); *Jow Sin Quan v. Washington*

State Liquor Control Board, 69 Wn.2d 373, 379, 418 P.2d 424 (1966); *Sukin v. Washington State Liquor Control Board*, 42 Wn. App 649, 653, 710 P.2d 814 (1985).

3.8. The regulation challenged by the Licensee is both necessary to carry into effect the provisions of Title 66 RCW and consistent with the spirit of the title. If a licensee is only prohibited from actively selling or supplying a person apparently under the influence of liquor, and not prohibited from allowing the person to continue to possess or consume liquor on the licensed premises, then a Licensee could “allow” or “permit” another person to purchase alcoholic beverages for a person, and observe the apparently intoxicated person consume them, with impunity, so long as the Licensee did not sell or serve the beverage directly to the apparently intoxicated person. Such a result would be contrary to the clear intent of the Legislature.

3.9. RCW 66.44.200(1) clearly imposes a duty on liquor licensees and their employees to make sure that alcohol is not supplied or distributed to apparently intoxicated persons. The challenged regulation furthers that purpose, and is not inconsistent with the intent of the Legislature. The addition of a civil infraction for the apparently intoxicated person to continue to consume alcohol [RCW 66.44.200(1)] and remain on a licensed premises does not diminish the criminal responsibility of the licensee (See RCW 66.44.200(1) and RCW 66.44.180)

3.10. This is the Licensee’s second sustained violation of this nature within a two-year period.

ORDER

IT IS HEREBY ORDERED that the Board’s Complaint in this matter is SUSTAINED.

IT IS FURTHER ORDERED that the license privileges of Cuttercrest LLC d/b/a Sports Page Grille & Bar, under License No. 356164-3F shall be suspended for a period of five (5) days. In lieu of a license suspension, the Licensee may pay a monetary penalty in the amount of \$2,500. Payment must be

made within 30 days of this order. Failure to comply with the terms of this order will result in further disciplinary action.

Payment in reference to this order should be sent to:

**Washington State Liquor Control Board
Enforcement and Education Division
PO Box 43085
Olympia, WA 98504-3085**

DATED at Olympia, Washington this 23 day of November, 2010.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster
Ruthann Kurose per telephonic approval Kevin McCarroll

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, 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 Control Board**

November 23, 2010

David Osgood, Attorney for Licensee
1411 4th Ave Ste 1506
Seattle, WA 98101-2247

Cuttercrest, LLC
d/b/a Sports Page Grille & Bar
6629 Cascade Dr SE
Snohomish, WA 98296-8945

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

RE: FINAL ORDER SUSTAINING COMPLAINT
LICENSEE: Cuttercrest, LLC
TRADE NAME: Sports Page Grille & Bar
LOCATION: 907 1st St, Snohomish, WA 98296-2906
LICENSE NO. 356164-3G
AVN NO. 3S8200A
LCB HEARING NO. 22,856
OAH NO. 2008-LCB-0050
UBI: 601 629 483 001 0002

Dear Parties:

Enclosed please find a Declaration of Service by Mail and a copy of the Final Order in the above referenced matter.

The applicable monetary penalty is due by December 23, 2010 or suspension will take place from 10:00 a.m. on January 7, 2011 until 10:00 a.m. on January 12, 2011.

When you are sending in payment, please mail it to **Washington State Liquor Control Board, PO Box 43085, Olympia, WA 98504-3085** and label the check with your License and Administrative Violation Notice numbers listed above. If you have any questions, please contact me at (360) 664-1602.

Sincerely,

A handwritten signature in black ink that reads "Kevin McCarroll".

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Amber Harris, WSLCB
Mt. Vernon Enforcement and Education Division, WSLCB

PO Box 43076, 3000 Pacific Ave. SE, Olympia WA 98504-3076, (360) 664-1602 www.liq.wa.gov

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3 **WASHINGTON STATE LIQUOR CONTROL BOARD**

4 IN THE MATTER OF:

LCB NOS. 22,856

5 CUTTERCREST, LLC
6 d/b/a SPORTS PAGE GRILLE & BAR
7 907 1ST ST
8 SNOHOMISH, WA 98296-2906

DECLARATION OF SERVICE BY
MAIL

LICENSEE

9 LICENSE NO. 356164-3
10 AVN NO. 3S8200A

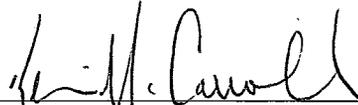
11 I certify that I caused a copy of the FINAL ORDER SUSTAINING COMPLAINT in
12 the above-referenced matter to be served on all parties or their counsel of record by US Mail
13 Postage Prepaid via Consolidated Mail Service for Licensees; by Campus Mail for the Office
14 of Attorney General, on the date below to:

16 DAVID R. OSGOOD, ATTORNEY FOR
17 LICENSEE
18 1411 4TH AVE STE 1506
19 SEATTLE, WA 98101-2247

GORDON P. KARG, ASSISTANT ATTORNEY
GENERAL, GCE DIVISION
OFFICE OF THE ATTORNEY GENERAL
MAIL STOP 40100

20 CUTTERCREST, LLC
21 d/b/a SPORTS PAGE GRILLE & BAR
22 6629 CASCADE DR SE
23 SNOHOMISH, WA 98296-8945

24 DATED this 23rd day of November, 2010, at Olympia, Washington.

25 
26 Kevin McCarroll, Adjudicative Proceedings Coordinator

DECLARATION OF SERVICE BY
MAIL

1

Washington State Liquor Control Board
3000 Pacific Avenue SE
PO Box 43076
Olympia, WA 98504-3076
(360) 664-1602

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

In the Matter of:

**Cuttercrest LLC
dba Sports Page Grille & Bar
907 1st Street
Snohomish, WA 98296-2906**

Licensee
License No.: 356164-3F

**OAH Docket No. 2008-LCB-0050
LCB No.: 22,856**

**INITIAL ORDER ON SUMMARY
JUDGMENT**

(LIQUOR CONTROL BOARD)

This matter came before the Honorable Nicole A. Gaines, Administrative Law Judge by and through the State of Washington State Liquor Control Board Education and Enforcement Division (Enforcement), by and through its attorneys, Robert M. McKenna, Attorney General and Gordon Karg, Assistant Attorney General, in the above captioned matter, for Summary Judgment finding there is no genuine issue of material fact and sustaining the Complaint issued to the Licensee by the Washington State Liquor Control Board (Board) and Sports Page Grille & Bar (Licensee) of Snohomish, Washington by and through its representative David Osgood, Attorney At Law, moves for Summary Judgment finding WAC 314-16-150(2) is invalid and null.

Having reviewed the record, including briefing as well as the parties' Proposed Findings of Fact, Conclusions of Law and Initial Orders, the undersigned now concludes:

1. This Tribunal has no authority to review the validity of administrative rules as set forth in the Licensee's Motion for Summary Judgment.
2. In viewing the evidence in the light most favorable to the nonmoving party (Licensee), no genuine issue of material fact remains in dispute.

FINDINGS OF FACT

1. The parties' joint stipulated facts 1 through 19 are hereby incorporated by reference and adopted as Findings of Fact. Attachment A.

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**LIQUOR CONTROL BOARD
BOARD ADMINISTRATION**

2. Additionally, the undersigned finds the following facts are also undisputed:
 - a.) On July 18, 2008 Mr. Clayton Spencer, DOB 12/02/1981, exhibited signs of being intoxicated while possessing a "plastic cup of beer." At the time Mr. Spencer was on the Licensee's premises. See generally Attachment A, Exhibits 1 through 3.
 - b.) Mr. Spencer acknowledged consuming "Coors Lite Beer" to Lieutenant Miyasato while on the Licensee's premises.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate if, viewed in the light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WAC 10-08-135. *Heron V. Tribune Publishing Co.*, 108 Wn.2d 162, 168 (1987). In *Pagnotta v. Beall Trailers*, 99 Wn.App. 28, at page 36, the Court stated: "We will grant summary judgment when reasonable people could reach but one conclusion from the evidence." A factual dispute is material if the outcome of the case depends upon it. *Hash v. Children's Orthopedic Hospital and Medical Center*, 110 Wn2d 912, 915 (1988). As the moving party, the government bears the burden of demonstrating the absence of genuine issues of material fact and that it is entitled to a favorable ruling as a matter of law. *Clements v. Traveller's Indemnity Co.*, 121 Wn.2d 243 (1993).

2. Administrative Tribunals are creatures of statutes, therefore their authority is limited to that which is expressly granted or necessarily implied by statute. *Anderson, Leech & Morse, Inc. v. Washington State Liquor Control Board*, 89 Wn.2d 688, 694, 575 P.2d 221 (1978); *Snohomish County v. State of Washington*, 89 Wn. App. 655, 663, 850 P.2d 546 (1993). The Administrative Procedures Act does not provide any general authority for quasi-judicial agencies or administrative tribunals to review or determine the validity of rules codified in the WAC. RCW 34.05.570(2); *Snohomish Co.*, 89 Wn. App. At 663.

3. The Legislature has provided no explicit statutory authority to the Office of Administrative Hearings (OAH) or its Administrative Law Judges (ALJ) to review rules promulgated by the Liquor Control Board. RCW 66.24.010(3)(c).

4. RCW 66.24.010(3)(c) provides that: "The board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, *under such rules and regulations as the board may adopt* (emphasis added). No liquor control rule or regulation providing Administrative Law Judge's the authority to determine the validity of Washington State Liquor Control Board rules has ever been promulgated.

5. As such, this Tribunal has no authority to rule on the validity of a rule promulgated by the Washington State Liquor Control Board under their lawful statutory authority. Therefore the Licensee's Motion for Summary Judgment is denied.

6. WAC 314-16-150(1) provides that "No retail licensee shall give or otherwise supply liquor to any person...apparently under the influence of liquor nor shall any licensee...thereof permit any person...in said condition to consume liquor on his premises. Additionally WAC 314-16-150(2) states, "No retail licensee shall permit any person apparently under the influence of liquor to physically possess liquor on the licensed premises."

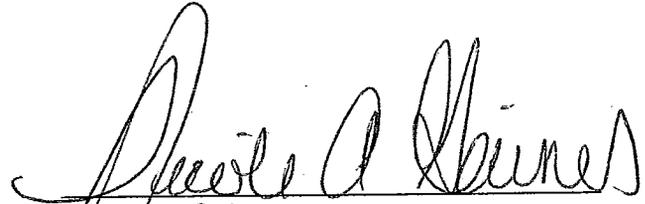
7. Pursuant to the above Findings of Facts, the parties have stipulated to material facts which resolve any possible dispute as to whether or not the licensee's conduct violates either one or both sections of WAC 314-16-150. As such, in viewing the facts in the light most favorable to the Licensee, the undersigned concludes no genuine issue of material fact remains in dispute. Therefore, the Board's request for Summary Judgment is **GRANTED**.

INITIAL ORDER

1. The undersigned does not have the authority to review the validity of administrative rules as set forth in the Licensee's Motion for Summary Judgment. Therefore, the Licensee's Motion for Summary Judgment is hereby **DISMISSED**.

2. In viewing the evidence in the light most favorable to the nonmoving party (Licensee), no genuine issue of material fact remains in dispute. Therefore, the Board's Motion for Summary Judgment is hereby **GRANTED**.

SERVED on the date of mailing.



Nicole A. Gaines
Administrative Law Judge
Office of Administrative Hearings

A copy was sent to:

Cuttercrest, LLC Sports Page Grille & Bar, Licensee
David Osgood, Licensee Representative
Gordon Karg, AAG
Kevin McCarroll, Liquor Control Board

NOTICE TO PARTIES

Either the licensee or permit holder 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 and within twenty (20) days of the date of service of the initial order.

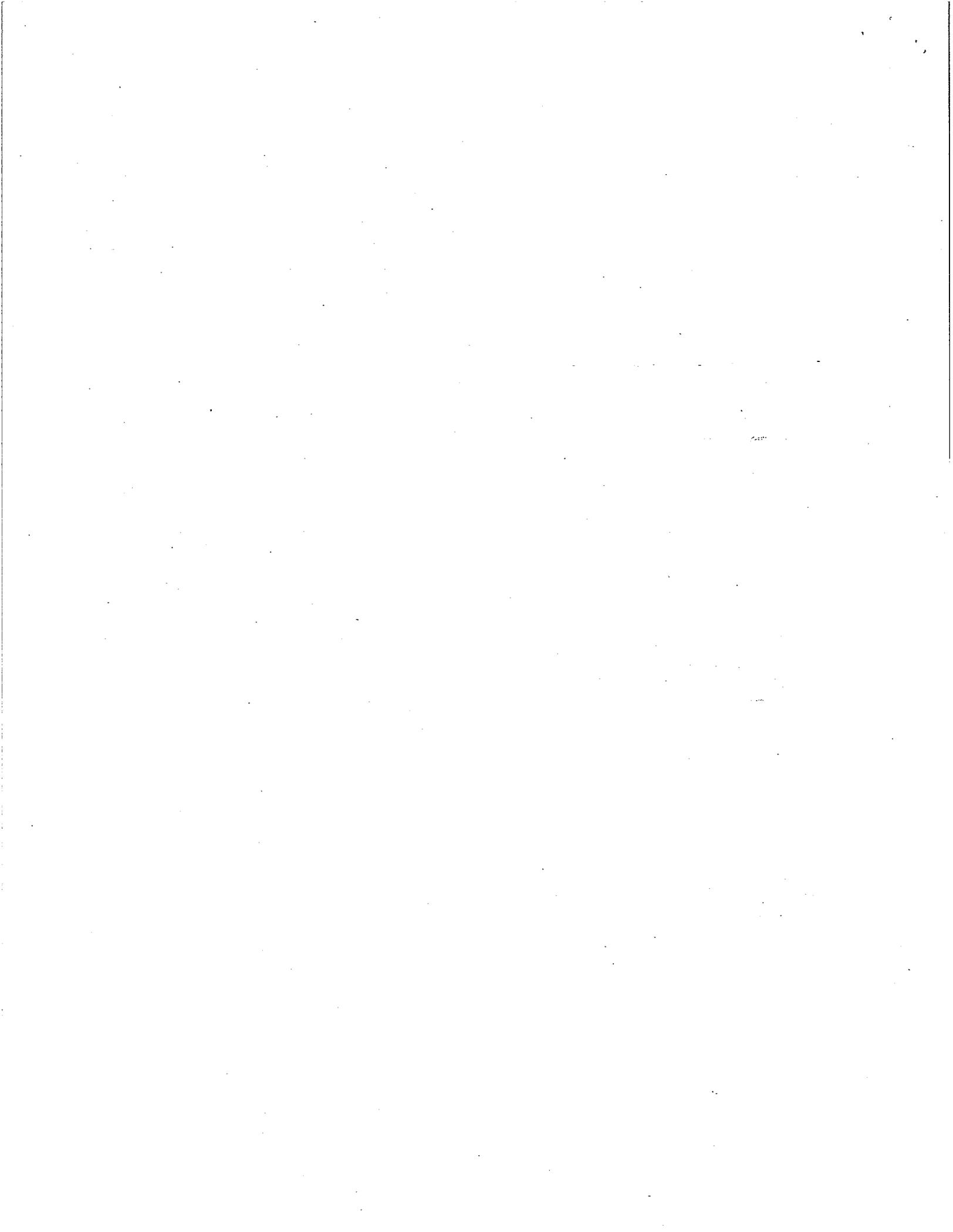
A copy of the petition for review must be mailed to all of the other parties and their representatives at the time the petition is filed. Within (10) ten days after service of the petition for review, any of the other parties may file a response to that petition with the liquor control board. WAC 314-42-095(2)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

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, 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).

[affirmed]



Attachment A

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

IN THE MATTER OF:

CUTTERCREST L.L.C.
d/b/a SPORTS PAGE GRILLE &
BAR
907 1ST STREET
SNOHOMISH, WA 98296-2906

LICENSEE

LICENSE NO. 356164-3F

OAH NO. 2009-LCB-0050
NO. 22,856

ENFORCEMENT AND LICENSEE'S
STIPULATED FACTS AND
EXHIBITS

The Washington State Liquor Control Board Education and Enforcement Division (Enforcement), by and through its attorneys, ROBERT M. MCKENNA, Attorney General and GORDON KARG, Assistant Attorney General and CUTTERCREST L.L.C. d/b/a SPORTS PAGE GRILLE & BAR (Licensee) of Snohomish, Washington, by and through DAVID OSGOOD (Attorney for Licensee), hereby stipulate to the following facts and exhibits in Liquor Control Board (LCB) case number 22,856, arising from Administrative Violation Notice (AVN) No. 3S8200A:

STIPULATED FACTS

1. The Washington State Liquor Control Board regulates the conduct of licensees and their patrons to ensure compliance with applicable laws and administrative rules.

Attachment A

- 1 2. Cuttercrest LLC is the licensee and owner of Sports Page Grille & Bar, the licensed
2 premises at issue in this matter, located at 907 1st Street, Snohomish, Washington
3 98296. The Licensee has been licensed to sell liquor at the licensed premises since
4 June 2004.
- 5 3. The Licensee holds a spirits/beer/wine restaurant license issued by the Washington
6 State Liquor Control Board.
- 7 4. On July 18, 2008, Lieutenant Kate Miyasato and Snohomish Police Officer Carl
8 Whalen conducted a premise check at the Licensee's premises.
- 9 5. Lieutenant Kate Miyasato is a liquor enforcement officer with the Washington State
10 Liquor Control Board Enforcement and Education Division.
- 11 6. Carl Whalen is a Police Officer with the City of Snohomish Police Department.
- 12 7. At approximately 10:58 p.m., on July 18, 2008 Lieutenant Miyasato and Officer
13 Whalen entered the Licensee's premises and moved into the "beer garden" area of the
14 Licensee's premise.
- 15 8. The "beer garden" was set up for the local "Kla Ha Na" festival, the premise was busy
16 and noisy and the "beer garden" had approximately thirty to forty people inside.
- 17 9. After entering the "beer garden" portion of the Licensee's premise, Lieutenant
18 Miyasato and Officer Whalen encountered and observed Mr. Clayton Spencer, DOB
19 12/02/1981, of Everett, Washington.
- 20 10. Lieutenant Miyasato and Officer Whalen together observed Mr. Spencer staggering
21 and bumping into objects; he had glassy, watery eyes, his speech was slurred, he
22 swayed when he stood and his movements were deliberate and slow.
- 23 11. Lieutenant Miyasato engaged Mr. Spencer in conversation. Mr. Spencer informed
24 Lieutenant Miyasato that he was drinking "Coors Light beer".
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26

- 1 12. Mr. Spencer was apparently under the influence of alcohol and was in physical
2 possession of a plastic cup of beer, an alcoholic beverage, while on the Licensee's
3 premise.
- 4 13. Lieutenant Miyasato asked Mr. Spencer to come outside with her and Officer Whalen.
5 A governing member of Cuttercrest LLC, Mr. William Wildrick, came outside with
6 them. Mr. Wildrick took the beer from Mr. Spencer at this time.
- 7 14. Mr. Spencer provided Lieutenant Miyasato with his driver's license upon her request.
8 When asked how many Coors Light beers he had, Mr. Spencer replied "six, at least
9 six."
- 10 15. While Mr. Spencer was speaking with Lieutenant Miyasato, Mr. Wildrick repeatedly
11 told Mr. Spencer he wanted to speak with him after Lieutenant Miyasato was finished
12 speaking with him.
- 13 16. Lieutenant Miyasato prepared an Investigative Summary setting forth her observations
14 and actions from the compliance check conducted on July 18, 2008. (See Exhibit 1).
15 Officer Whalen prepared a supplemental report setting forth his observations and
16 actions from the compliance check conducted on July 18, 2008. (See Exhibit 2).
- 17 17. Lieutenant Miyasato issued an AVN to the Licensee on July 25, 2008, for a violation
18 of WAC 314-16-150 – permitting a person apparently under the influence of liquor to
19 possess or consume liquor on the licensed premise. (See Exhibit 3).
- 20 18. This is the second AVN issued by the Board to this Licensee for a violation of WAC
21 314-16-150 – permitting a person apparently under the influence of liquor to possess
22 or consume liquor on the licensed premise within a two year period.
- 23 19. The first AVN was issued on February 15, 2008 and the Licensee paid a three-hundred
24 dollar (\$300) penalty.

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STIPULATED EXHIBITS

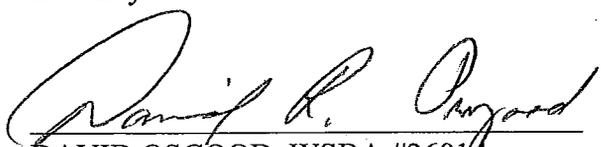
1. Administrative Violation Notice No. 3S8200A;
2. Snohomish Police Report of Officer Carl Whalen;
3. Full Case Report of Lieutenant Kate Miyasato.

ROBERT M. MCKENNA
Attorney General



GORDON KARG, WSBA #37178
Assistant Attorney General
Attorneys for LCB Enforcement

8/3/2009
DATE



DAVID OSGOOD, WSBA #26014
Attorney for Licensee

8/18/2009
DATE



Washington State
Liquor Control Board

22856

AUG 12 2008

WASHINGTON STATE
LIQUOR CONTROL BOARD

ADMINISTRATIVE VIOLATION PROCESS
for
Violations - Standard Penalty

Trade Name: <u>SPORTS PAGE GRILLE & BAR</u>	License/Permit No: <u>356164-3F</u>
Licensee/ Permit Holder: <u>CUTTERCREST L.L.C.</u>	Case Number: <u>3S8200A</u>
Location Address: <u>907 1ST STREET</u>	Phone No: <u>360-568-8202</u>
City & Zip: <u>SNOHOMISH WA 98296-2906</u>	License Class: <u>Spirits, Beer & Wine Lounge</u>

Mailing Address: 6629 Cascade Dr SE
City & Zip: Snohomish WA 98296-8945

Violation(s): Allowing a person apparently under the influence to consume liquor on the licensed premises Violation Date: 07/18/2008

WAC/RCW: WAC 314-16-150
Penalty: 5 Day Suspension, effective: 10:00am 09/17/08 through 10:00am 09/22/08
OR \$2,500 In lieu of suspension.

Officer: Lt. Kate Miyasato Badge Number 429
Date issued: _____ Phone Number 425-513-5113

Received By: *Amanda Hoops* Date: 07/29/2008
Print Name: Amanda Hoops

NOTICE:

The licensee/permit holder may select one of the following options by marking the appropriate box, signing and forwarding the document to the enforcement office at the address below. If licensee/permit holder requests an informal settlement conference and/or formal administrative hearing, the request must be received within 20 calendar days of the date of service. If the licensee/permit holder does not request an informal settlement conference and/or a formal administrative hearing within 20 calendar days the recommended penalty will go into effect.

- I choose to pay the monetary option. My check for \$ _____ dollars is enclosed. (NSF check will result in suspension of license.)
- I request an informal settlement conference to discuss resolution of this matter. You can reach me at (Licensee - insert your phone number.) (_____) _____.
- I request a formal administrative hearing. (If you select this option, you will be notified by mail of the date and time of the hearing.)

Signature of Licensee/Permit Holder: *William M Wildrick*
Print Name: William M Wildrick Date: 8/7/08

All payments, requests for informal settlement conferences or formal hearings and correspondence should be sent to:

Washington State Liquor Control Board
Everett Enforcement and Education Division
909 SE Everett Mall Way, #D-480
Everett, WA 98208-3757
FAX 425-338-3039



**Washington State
Liquor Control Board**

**ADMINISTRATIVE VIOLATION PROCESS
for
Violations - Standard Penalty**

Trade Name: <u>SPORTS PAGE GRILLE & BAR</u>	License/Permit No: <u>356164-3F</u>
Licensee/ Permit Holder: <u>CUTTERCREST L.L.C.</u>	Case Number: <u>3S8200A</u>
Location Address: <u>907 1ST STREET</u>	Phone No: <u>360-568-8202</u>
City & Zip: <u>SNOHOMISH WA 98296-2906</u>	License Class: <u>Spirits, Beer & Wine Lounge</u>

Mailing Address: 6629 Cascade Dr SE
City & Zip: Snohomish WA 98296-8945

Violation(s): Allowing a person apparently under the influence to consume liquor on the licensed premises Violation Date: 07/18/2008

WAC/RCW: WAC 314-16-150
Penalty: 5 Day Suspension, effective: 10:00am 09/17/08 through 10:00am 09/22/08
OR \$2,500 In lieu of suspension.

Officer: Lt. Kate Miyasato Badge Number 429
Date issued: 07/25/08 Emailed to Licensee Phone Number 425-513-5113

Received By: _____ Date: _____
Print Name: _____

NOTICE:

The licensee/permit holder may select one of the following options by marking the appropriate box, signing and forwarding the document to the enforcement office at the address below. If licensee/permit holder requests an informal settlement conference and/or formal administrative hearing, the request must be received within 20 calendar days of the date of service. If the licensee/permit holder does not request an informal settlement conference and/or a formal administrative hearing within 20 calendar days the recommended penalty will go into effect.

- I choose to pay the monetary option. My check for \$ _____ dollars is enclosed. (NSF check will result in suspension of license.)
- I request an informal settlement conference to discuss resolution of this matter. You can reach me at (Licensee - insert your phone number.) (_____) _____.
- I request a formal administrative hearing. (If you select this option, you will be notified by mail of the date and time of the hearing.)

Signature of Licensee/Permit Holder: _____ Date: _____
Print Name: _____

All payments, requests for informal settlement conferences or formal hearings and correspondence should be sent to:

Washington State Liquor Control Board
Everett Enforcement and Education Division
909 SE Everett Mall Way, #D-480
Everett, WA 98208-3757
FAX 425-338-3039

have an interpreter present at the hearing at no cost to you. If you desire an interpreter please check the block below and provide the requested information.

My primary language is: _____



Washington State Liquor Control Board

INVESTIGATIVE SUMMARY - CASE # 3S8200A

On 07/18/2008 I was working in the city of Snohomish. A local festival, Kla Ha Ya Days, was going on in the city and the liquor establishments were busy. I was teamed up with a city police officer, Officer C. Whalen. I met Whalen at 2200hrs, and Whalen and I worked the area of 1st St on foot to check the bars for compliance.

At 2258 hrs, Whalen and I entered the Sports Page Grille & Bar. It was very busy and noisy. We proceeded to the outside beer garden. There were about 30-40 people in the beer garden. As we looked around the area, our attention was drawn to a young man, holding a plastic cup of beer, who bumped into a table as he staggered past it. I stood next to the man and noted his eyes were very glassy and watery and his speech was loud and slurred. I decided to engage the man in conversation to confirm my suspicion that he was intoxicated. I asked the man, later identified as Clay Spencer, if this is "a bar my son who just turned 21 would like." Spencer immediately raised his right arm up in the air, as if he was giving me a 'high five' so I slapped his hand. Spencer told me my son would definitely love the Sports Page. Spencer was swaying and seemed off balance. He was drinking from a plastic cup of beer. I said it looked like he was having a good time and asked what he was drinking. He said "most definitely" and that he was drinking Coors Lite beer. Spencer offered me his cup, but I told him I'd get my own. Spencer's speech was very slurred. I asked him what other bars my son might like and he told me something to the effect of Mardini's used to be fun but now everyone gets in trouble there. At this point I asked Spencer his name and I asked him to come outside to talk with me. Bill Wildrick, the licensee, by this time had come out to the area, and saw what was going on. Wildrick took Spencer's beer.

Outside, Spencer gave me his WA St Driver's license so I could get the information I needed. I explained to Spencer that in WA, a person apparently under the influence cannot consume or purchase alcohol on licensed premises. I asked him if he was planning on driving and he assured me he was not. I asked him "how many of those Coors Lite beers have you had?" Spencer replied "Six ! at least six!" While I was talking with Spencer, Wildrick told Spencer several times he wanted to talk to when I was done with him.

History:

06/29/04		License approved and issued to Cuttercrest L.L.C.
02/06/07		AVN for Allowing a Minor to Frequent; \$250 paid upon settlement agreement
07/14/07		Verbal warning for inadequate food service / food not available
02/15/08		AVN for Allowing a person apparently under the influence to consume; \$300 paid

WAC 314-16-150

No Washington State Register filings since 2003

No sale of liquor to minors, intoxicated persons, etc.

(1) No retail licensee shall give or otherwise supply liquor to any person under the age of twenty-one years, either for his/her own use or for the use of his/her parent or of any other person; or to any person apparently under the influence of liquor; nor shall any licensee or employee thereof permit any person under the said age or in said condition to consume liquor on his/her premises, or on any premises adjacent thereto and under his/her control.

(2) No retail licensee shall permit any person apparently under the influence of liquor to physically possess liquor on the licensed premises.

COPY



Incident Report: 08001329

Juvenile Court.	County Pros.	City Pros.	Liquor Board	Computer Entry		
C.P.S.	Chief of Police	Detective	Followup	Entered by:	Cleared by:	
A.P.S.				Vehicle		
Evergreen Dist. Court				Property		
Other				Persons		

Assist Outside Agency / Assist Outside Agency

Case: 08001329
Date: 7/18/2008
Officer: ,

Rpt Date / Time: 7/18/2008 21:47 **Location:** 900 BK First St **Apt:**
Begin Date / Time: 7/18/2008 21:47 **CityState:** Snohomish WA
End Date / Time: 7/19/2008 2:47 **Grid:** 01

Persons Involved:

Inv.	Name Address	Offense	Citation#	SSN	DOB	Sex	Race	Eyes	Hair	Height	Weight	Home Phone	Work Phone
------	-----------------	---------	-----------	-----	-----	-----	------	------	------	--------	--------	------------	------------

A/Arrested B/Cited C/Complainant D/Dual-Vict. Compl. G/Passenger I/Involved/Not Contacted L/Legal Owner O/Operator P/Parent R/Reg. Owner S/Suspect T/Contacted V/Victim W/Witness X/Wanted Subject F/Firm Z/Person of Interest

LIQUOR CONTROL, Board
 909 SE Everett Mall Way STE D-480, Everett, WA 98201 425-513-5113
 Assist Outside Agency / Assist Outside Agency

F SPORTS PAGE,
 907 First St, Snohomish, WA 98290 360-568-8202
 Assist Outside Agency / Assist Outside Agency

RECEIVED
 EVERETT ENFORCEMENT
 AUG 12 2008
 WASHINGTON STATE
 LIQUOR CONTROL BOARD

CONFIDENTIAL

COPY

Case: 08001329

Date: 7/18/2008

Officer: ,

Supervisory Approval:

[Signature]

Date:

7/3/08

CONFIDENTIAL

COPY

Case: 08001329

Date: 7/18/2008

Officer: ,

Nature of Report

Assist Outside Agency.

Persons Involved

LIQUOR CONTROL, Board - FIRM

909 SE Everett Mall Way STE D-480 Everett WA 98201

Phone: 425-513-5113 DOB:

Employer: Washington State Emp Phone:

SPORTS PAGE, - FIRM

907 First St Snohomish WA 98290

Phone: 360-568-8202 DOB:

Employer: Emp Phone:

Narrative

On 7/18/08, I was working a plain clothes detail with Lieutenant Miyasato with the Liquor Control Board. At approximately 2258 hours, Lieutenant Miyasato and I performed a bar check at the Sport's Page located at 907 First Street.

Once inside the Sport's Page, Lieutenant Miyasato and I walked out to the outside beer garden. The beer garden was packed with people. However, one individual stood out as he made his way from inside the bar to the outside beer garden. Lieutenant Miyasato and I observed the male later identified as Clay Spencer stumble down the stairs and walk right into a table. Spencer had a plastic cup in his hand.

Lieutenant Miysasato began a conversation with Spencer. While Lieutenant Miysasato spoke with Spencer, I noticed his movements were slow and deliberate, and his manual dexterity appeared labored as he raised his arm up in the air for a 'high five' from Lieutenant Miysasato. I continued to watch Spencer as he swayed back and forth while speaking with Lieutenant Miysasato. I overheard Spencer state he was drinking beer. Spencer even offered the cup of beer to Lieutenant Miysasato. Spencer was talking loud and was slurring his words. It was apparent to me that Spencer was heavily intoxicated.

Lieutenant Miysasato asked Spencer to step outside to talk. Once outside, Spencer provided Lieutenant Miysasato with Washington State Driver's License. I also heard Spencer state he had at least six beers. The owner of the Sport's Page Bill Wildrick was also outside with us when we were talking with Spencer.

Statements

N/A.

Evidence/Property

CONFIDENTIAL

COPY

Case: 08001329

Date: 7/18/2008

Officer: ,

No Property Items

Action Recommended

Forward to Liquor Control Board-Everett Office.

Date/ID: 7/29/2008 4539

Incident: 08001329

I Certify (declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

(RCW 9A.72.085)

C. Will

1732

SNOHOMISH POLICE DEPARTMENT

OFFICER'S SIGNATURE

BADGE NUMBER

AGENCY

SNOHOMISH, WASHINGTON

7/30/08

PLACE SIGNED

DATE SIGNED

CONFIDENTIAL

**LIQUOR and TOBACCO ENFORCEMENT OFFICER
CASE REPORT**

Case # 3S8200A

Reporting Officer Lt. Kate Miyasato		Badge # 429	Ticket # 3S8200A
<input checked="" type="checkbox"/> Administrative Case Report	<input type="checkbox"/> Criminal/Infraction Case Report	<input type="checkbox"/> Supplemental Report	<input type="checkbox"/> Other
Date of Incident 07/18/2008	Time of Incident 2258 hrs	Location of Incident: Sports Page Grille & Bar	<input type="checkbox"/> State/Contract Store 907 1st St Snohomish WA
Charges (RCW or WAC # and TITLE) WAC 314-16-150 Allowing a Person Apparently Under the Influence to Possess / Consume Liquor on Licensed Premises			

Persons/Licensee Involved**Enter N/A if Not Applicable**

(1) Last Name Spencer		First Clayton	Middle R.	Date of Birth 12/02/81
Street Address 7105 20th SE		City Everett	State WA	Zip + 4 98205
Work Phone		Home Phone		Social Security #
Driver's License	Expires	License/Permit #		Expires
Employer/Occupation or School				
Physical Description WM 5'10" 175lbs. HAZ BRN				
Vehicle Description		License #	State	Odometer Reading
Business Name/Address		Trade Name (if different)		
License/UBI #				
Nature of Involvement Intoxicated Subject				
(2) Last Name Wildrick		First William	Middle	Date of Birth
Street Address c/o Sports Page Grille & Bar		City	State	Zip + 4
Work Phone 360-568-8202		Home Phone		Social Security #
Driver's License	Expires	License/Permit #		Expires
Employer/Occupation Or School				
Physical Description				
Vehicle Description		License #	State	Odometer Reading
Business Name/Address				
License/UBI #				
Nature of Involvement <input type="checkbox"/> Witness Licensee				
Other Officers Involved (Type of involvement)				

Officer's Signature <i>Kate Miyasato</i>	Date 8/12/08	Approving Supervisor's Signature <i>[Signature]</i>	Date 8/12/08
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 Evidence involved, see page 2

Last Name Whalen		First Carl	Middle	Date of Birth
Street Address c/o Snohomish Police Department		City Snohomish	State	Zip + 4
Work Phone		Home Phone		Social Security #
Driver's License	Expires	MAST Permit #		Expires
Employer/School/Occupation				
Physical Description				
Vehicle Description		License #	State	Odometer Reading
Business Name/Address				
License/UBI #				
Nature of Involvement <input type="checkbox"/> Witness Police officer / witness				
(4) Last Name		First	Middle	Date of Birth
Street Address		City	State	Zip + 4
Work Phone		Home Phone ()		Social Security #
Driver's License	Expires	MAST Permit #		Expires
Employer/School/Occupation				
Physical Description				
Vehicle Description		License #	State	Odometer Reading
Business Name/Address				
License/UBI #				
Nature of Involvement <input type="checkbox"/> Witness				

Evidence Check, if no evidence involved

(List of items with amounts and assigned evidence number)
No physical evidence retained

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See Page ___ for additional narrative. X See attached Witness Statement(s) Whalen's report attached

I certify under penalty of perjury, under the laws of the State of Washington that my report on this incident is true and correct.

Officer's Signature <i>Kate Miyasato</i>	Badge # 429	Date 8-12-2008
Location where report was completed Everett Enforcement Office	City Everett	County Snohomish

Compliance Check Case Report E-mail Distribution:

- Retail Director Retail Dist. Manager

