

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

B.G.S. 00 LLC
d/b/a BOOMERS SPORTS BAR &
GRILL
611 MAIN ST
VANCOUVER, WA 98660-3129

LICENSEE

LICENSE NO. 080505-1J
AVN 1L8337D

LCB NO. 22,894
OAH NO. 2009-LCB-0006

FINAL ORDER OF THE BOARD

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

1. The Liquor Control Board issued a complaint dated February 11, 2009, alleging that on December 2, 2008, the above-named Licensee, or employee(s) thereof, gave, sold and/or supplied liquor to a person(s) under the age of twenty-one (21), in violation of RCW 66.44.270 and WAC 314-11-020(1).
2. The Licensee made a timely request for a hearing.
3. The Licensee was represented by Attorney at Law William Baumgartner. The Education and Enforcement Division of the Board was represented by Assistant Attorney General Brian Considine.
4. On July 2, 2010, Administrative Law Judge Janet L. Schneider entered her Findings of Fact, Conclusions of Law, and Initial Order sustaining the complaint.
5. The Licensee filed a Petition for Review and Enforcement filed a Reply to Licensee's Petition for Review.
6. 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 initial order for case 22,894 is adopted.

FINAL ORDER OF THE BOARD
LCB NO. 22,894
BOOMERS SPORTS BAR & GRILL
LICENSE 080505-1J

IT IS HEREBY FURTHER ORDERED that the Complaint filed in case 22,894 is sustained and that the liquor license privileges granted to B.G.S. 00 d/b/a Boomers Sports Bar & Grill at 611 Main Street in Vancouver, Washington, License 080505, are hereby suspended for a term of five (5) days. In lieu of a license suspension, the Licensee may pay a monetary penalty in the amount of five-hundred dollars (\$500.00) due within 30 days of this order. If timely payment is not received, suspension will take place from 10:00 a.m. on October 1, 2010 until 10:00 a.m. on October 6, 2010. 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

PO Box 43085

Olympia, WA 98504-3085

DATED at Olympia, Washington this 17 day of August, 2010.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Linda Bremer

Rebecca Lewis

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**

August 18, 2010

William Baumgartner
Attorney for Licensee
112 W 11th St Ste 150
Vancouver, WA 98660-3143

B.G.S.00 LLC
d/b/a Boomers Sports Bar & Grill
611 Main St
Vancouver, WA 98660-3129

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

**RE: FINAL ORDER OF THE BOARD
ADMINISTRATIVE VIOLATION NOTICE NO. 1L8337D
LICENSEE: B.G.S.00 LLC
TRADE NAME: Boomers Sports Bar & Grill
LOCATION: 611 Main St, Vancouver, WA 98660-3129
LICENSE NO. 080505
LCB HEARING NO. 22,894
OAH NO. 2009-LCB-0006
UBI: 602 066 671 001 0001**

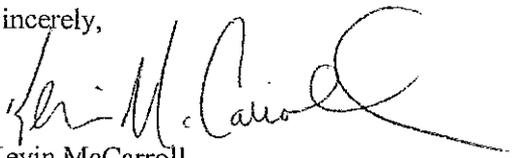
Dear Parties:

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 September 17, 2010.

Please mail payment to the Washington State Liquor Control Board at the address listed in the order 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,


Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Tacoma and Vancouver Enforcement and Education Divisions, WSLCB
Amber Harris, WSLCB

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

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WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

B.G.S.00 LLC
d/b/a BOOMERS SPORTS BAR &
GRILL
611 MAIN ST
VANCOUVER, WA 98660-3129

LICENSEE

LICENSE NO. 080505-1J
AVN 1L8337D

LCB NO. 22,894
OAH NO. 2009-LCB-0006

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 on the date below to:

WILLIAM BAUMGARTNER
ATTORNEY FOR LICENSEE
112 W 11TH ST STE 150
VANCOUVER, WA 98660-3143

BRIAN CONSIDINE, ASSISTANT
ATTORNEY GENERAL, GCE DIVISION
OFFICE OF THE ATTORNEY GENERAL
1125 WASHINGTON STREET SE
PO BOX 40100
OLYMPIA, WA 98504-0100

B.G.S.00 LLC
d/b/a BOOMERS SPORTS BAR & GRILL
611 MAIN ST
VANCOUVER, WA 98660-3129

DATED this 18th day of August, 2010, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

DECLARATION OF SERVICE BY
MAIL

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

RECEIVED

JUL 08 2010

LIQUOR CONTROL BOARD
BOARD ADMINISTRATION

In the Matter of:

B.G.S. OO, LLC
d/b/a BOOMERS SPORTS BAR & GRILL

611 MAIN STREET
VANCOUVER, WA 98660

LICENSEE

LICENSE NO. 080505

OAH No.: 2009-LCB-0006

LCB No.: 22,894

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND INITIAL ORDER

MAILED

JUL 2 - 2010

VANCOUVER OFFICE OF
ADMINISTRATIVE HEARINGS

STATEMENT OF THE CASE

On December 10, 2008, the Washington State Liquor Control Board (hereinafter Board) issued an Administrative Violation Notice to B. G. S. OO, LLC doing business as Boomers Sports Bar and Grill 611 Main Street, Vancouver, Washington. In its Notice, the Board alleged that on December 2, 2008, the Licensee, or an employee thereof, furnished liquor to a person under the age of 21 in violation of RCW 66.44.270(1). In its Notice, the Board proposed that the license of the Licensee be suspended for a period of five days, or that the Licensee pay a civil monetary penalty in the amount of five hundred dollars (\$500.00) in lieu of the suspension.

The Licensee made a timely request for hearing.

Pursuant to notice duly given, the parties provided stipulated Findings of Fact in this matter and presented briefs and oral arguments regarding the issues of collateral estoppel and suppression of evidence. The Washington State Liquor Control Board was represented by Brian Considine, Assistant Attorney General. William Baumgartner represented B. G. S. OO, LLC doing business as Boomers Sports Bar and Grill, Dublin Down, LLC and Top Shelf, LLC.

The parties stipulated to the following Findings of Facts.

FINDINGS OF FACT

1. The Washington State Liquor Control Board regulates the conduct of licensees to ensure compliance with applicable laws related to the serving of alcohol, including but not limited to ensuring the safety and protection of minors.
2. B.G.S. 00, L L C is the licensee and the owner of Boomers Sports Bar and Grill, the licensed premises at issue in this matter, located at 611 Main Street, Vancouver, 98660, in Clark County, Washington. The Licensee has been licensed to sell liquor at the licensed premises since December 2000.
3. The Licensee holds a spirits/beer/wine restaurant and lounge liquor license issued by the Washington State Liquor Control Board. The Licensee's entire premise is restricted to people over twenty-one (21) years of age.
4. On December 2, 2008, Lieutenant Marc Edmonds, Officer Almir Karic, Officer Kendra Ogren, and [REDACTED] conducted a compliance check at the Licensee's premises.
5. Lieutenant March Edmonds, Officer Almir Karic, Officer Kendra Ogren are liquor enforcement officers with the Washington State Liquor Control Board Enforcement and Education Division.
6. [REDACTED] is an agent of the Washington State Liquor Control Board Education and Enforcement Division. He assists Enforcement as a minor investigative aid. His date of birth is October 5, 1990 - eighteen (18) years of age. (See Exhibit 4).
7. Officer Karic searched [REDACTED] before he entered Boomers. [REDACTED] was given ten (\$10) dollars by Officer Karic to use in an attempt to purchase alcohol. [REDACTED] only had his Washington State issued driver's license and the issued ten dollars when he entered Boomers with Officer Ogren.

8. Upon entering the Boomer, Officer Ogren and [REDACTED] sat at a table and were waited on by Ms. Shawn Cavanaugh, an employee of the Licensee. [REDACTED] ordered two (2) bottles of Budweiser beer, one for Officer Ogren and one for himself. Ms. Cavanaugh took [REDACTED] order, without asking [REDACTED] for his identification, and served [REDACTED] one bottle of Budweiser beer. Office Ogren witnessed Ms. Canvanaugh serve [REDACTED] a bottle of Budweiser beer.

9. Ms. Cavanaugh, admits to serving beer to [REDACTED] and Officer Ogren. (See Exhibit 6).

10. The bottle of Budweiser beer served to [REDACTED] contained alcohol and is considered liquor pursuant to RCW 66.04.101(24).

11. [REDACTED] was under twenty-one (21) years of age when he was served liquor on the Licensee's premises.

12. Lieutenant Edmonds and Officer Karic waited outside of Boomers while Officer Ogren and [REDACTED] were inside the licensed premises. Officer Karic entered the premises and contacted Ms. Cavanaugh after she served a beer to [REDACTED]

13. After the sale, Officer Karic photographed [REDACTED] (See Exhibit 2) and [REDACTED] filled out a compliance check form describing the sale. (See Exhibit 3).

14. Officer Almir Karic prepared an Investigative Summary setting forth the observations and actions from the compliance check conducted on December 2, 2008. (See Exhibit 1). Officer Ogren prepared a supplemental report setting forth the observations and actions from the compliance check conducted on December 2, 2008. (See Exhibit 5).

15. Officer Karic returned to Boomers and issued an Administrative Violation Notice (AVN) to the Licensee on December 10, 2008, for a violation of RCW 66.44.270 - furnishing liquor to a minor. (See Exhibit 1).

16. This is the first Complaint issued by the Board to this Licensee for a violation of RCW 66.44.270 - furnishing liquor to a minor.

17. As a result of the same compliance check of the Boomers, on December 2, 2008, a criminal citation was issued to Ms. Cavanaugh for violation of RCW 66.44.270 - furnishing liquor to a minor. (See Exhibit 7). Criminal proceedings were then instituted against Ms. Cavanaugh based on this citation, those proceedings being Clark County, Washington, District Court Case No. 12454. This criminal action was then consolidated with a criminal action brought against the bartender at the Top Shelf, Anthony Colavecchio, Clark County District Court No. 12453, and a criminal action brought against the bartender at the Dublin Down, Cody Jones, Clark County District Court Case No. 12455, both of whom were also issued criminal citations as a result of compliance checks on the same day and using the same minor investigative aide, [REDACTED] as used in the compliance check that resulted in the issuance of the criminal citation to Ms. Cavanaugh.

18. Ms. Cavanaugh, Mr. Colavecchio, and Mr. Jones filed a motion to suppress and dismiss in this consolidated criminal proceeding. This motion was heard by the Clark County District court on March 16, 2009. At the hearing, the Court granted this motion, ordered all evidence gathered against the defendant bartenders suppressed, and dismissed the criminal actions against them. Findings of Fact and Conclusions of Law were entered by the Clark County District Court on March 23, 2009.

From the foregoing findings of fact, the administrative law judge now enters the following conclusions of law:

CONCLUSIONS OF LAW

1. The undersigned Administrative Law Judge has jurisdiction in this matter pursuant to Revised Code of Washington (RCW) 34.12, Chapter 34.05 and Washington Administrative Code (WAC) 10-08 and WAC 314-42.

2. The Licensee argues that this proceeding should be dismissed because the doctrine of collateral estoppel precludes the Liquor Control Board from relitigating the March 23, 2009, decision of the District Court that found that the compliance check of the Licensee's facility was unlawful because it was not authorized by either RCW 66.44.290 or WAC 314-21-025 and then suppressed all of the evidence gathered through the "unlawful" controlled purchase program and dismissed the criminal cases against the Licensee's employee. The District Court also found that the minor utilized in the compliance check was deceptively mature in appearance in violation of WAC 314-21-025(4). The Licensee further argued that if collateral estoppel does not apply this case should be dismissed because the Licensee is entitled to raise the defense of entrapment because the liquor enforcement officers used a deceptively mature minor investigative aide; and finally the Licensee argued that this administrative case be dismissed because all evidence obtained through the unlawful compliance check should be suppressed.

3. The doctrine of collateral estoppel precludes the relitigation of issues necessarily and finally determined in prior proceedings in which the party against whom the doctrine is asserted had a full and fair opportunity to litigate. *Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wn.2d 299, 307 (2004). The doctrine of collateral estoppel bars the relitigation of an issue if (1) the issue is identical to one adjudicated in a prior proceeding, (2) the prior adjudication resulted in a final judgment on the merits, (3) the party against whom the doctrine is asserted was a party or in privity with a party to the prior adjudication, and (4) application of the doctrine will not work an injustice on the party against whom it is asserted. *Id.* The requirement that the doctrine of collateral estoppel not work an injustice generally is satisfied if the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceeding. Applying collateral estoppel may be improper where the issue is first determined after an informal, expedited hearing with relaxed evidentiary standards. In

addition, the disparity of relief may be so great that a party would be unlikely to have vigorously litigated the crucial issues in the first forum, making it unfair to preclude relitigation of the issues in the second forum. *Id.* At 309. For purposes of determining whether the doctrine of collateral estoppel may be applied to preclude the relitigation of an issue decided in a prior proceeding, whether the decision in the prior proceeding was substantively correct is not a relevant consideration. *Id.* At 320.

4. The undersigned concludes that collateral estoppel is not appropriate in this case. The issue in this matter is whether or not the Licensee violated RCW 66.44.270 and WAC 314-11-0020(1) by selling liquor to a minor as alleged in the Administrative Violation Notice. The applicable regulations and rules were promulgated by the Liquor Control Board to protect the health, safety, and welfare of the general public and relate to the Licensee's privileges under their license not to the criminal charges filed against the Licensee's employee. In addition, there was no final decision on the merits of the case as the District Court judge suppressed the evidence and dismissed the charges.

5. Title 66 RCW covers the control of alcoholic beverages. The entire title is deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the state, and all of its provision shall be liberally construed for the accomplishment of the purpose. RCW 66.08.010.

6. RCW 66.44.010 (4) provides that the Liquor Control Board may appoint and employ, . . . , officers to be designated as liquor enforcement officers. Such liquor enforcement officers shall have the power, . . . , to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor.

7. RCW 66.44.270 is a penal provision that prohibits any person from selling, giving, or otherwise supplying liquor to a person under twenty-one (21) or from permitting any person under

twenty-one (21) from consuming liquor on his or her premises. The Liquor Control Board, through its designated liquor control enforcement officers, has the authority to enforce RCW 66.44.270 without promulgating additional rules allowing its officers to do so.

8. Liquor enforcement officers are authorized to inspect licensed premises at any time for violations of Washington's liquor statutes and regulations. RCW 66.28.090(1). Pursuant to RCW 66.28.090(1) when a Licensee accepts the privilege of their highly regulated liquor license the Licensee consents to warrantless inspections of the premises by liquor enforcement officers. When a liquor enforcement officer determines that a penal provision has been violated they may criminally or civilly cite the person with a violation. In addition to citing the individual who violated the penal provision, the liquor enforcement officer may also administratively cite the Licensee for an administrative violation against the Licensee's liquor license. WAC 314-29-005(1).

9. Liquor enforcement officers have the same authority as any other county or local law enforcement officer in their enforcement of state liquor laws. Their authority to utilize compliance checks to help them inspect and regulate Licensees in their interaction with minors is derived from the Liquor Control Board's broad regulatory authority along with its authorization to employ and use liquor enforcement officers. To conduct a compliance check, liquor enforcement officers employ minor investigative aides to act as decoys. The minor investigative aide is employed as an agent of the Enforcement and Education Division of the Liquor Control Board and only enters liquor establishments at the direction of a liquor enforcement officer. The minor investigative aides help the liquor enforcement officer simulate a typical scenario where a minor may try to enter an establishment that is off limits to persons under twenty-one years of age and purchase alcohol to determine if the Licensee, through its' employees, is complying with the law. It would be impossible for the liquor enforcement officers to check for violations of RCW 66.44.270 without the assistance

of a minor investigative aide because if the investigative aide was not a minor no violation could possibly occur.

10. The Licensee also argued that the use of a minor investigative aide in this compliance check is unlawful because the Liquor Control Board has not promulgated rules authorizing compliance checks by liquor enforcement officers as they have for in-house controlled purchases for Licensees. As outlined above liquor enforcement officers do not need rules to perform the duties they are authorized to perform. Furthermore, the plain language of RCW 66.44.290 and WAC 314-21-015 that the Licensee relies upon clearly shows that the cited rules apply to the Licensee/employer not to the Liquor Control Board or to the liquor enforcement officers. RCW 66.44.290 and WAC 314-21-015 were promulgated by the Liquor Control Board so that Licensees could conduct in-house controlled purchases authorized by the Liquor Control Board to train, educate and monitor their employees to be sure they knew and followed the rules in this highly regulated industry. Because the Liquor Control Board was allowing the Licensee to engage in an activity that is illegal and forbidden to the Licensee, i.e., allowing a minor to purchase alcohol, the Liquor Control Board had to promulgate rules that provided strict guidelines for the Licensee to protect both the Licensee and the minor engaging in a Liquor Control Board approved in-house purchase program from being criminally and/or administratively prosecuted.

11. As a licensed retail seller of liquor, B. G. S. OO, LLC doing business as Boomers Sports Bar and Grill, is subject to the jurisdiction of the Washington State Liquor Control Board. The license is subject to the conditions and restrictions imposed by Title 66 RCW. RCW 66.24.010.

12. A license is a privilege and not a vested right. WAC 314-12-010.

13. The Licensee of a liquor licensed premises is responsible for operation of the licensed premises in compliance with the liquor laws and rules of the Board. If the Licensee chooses to

employee others in the operation of the business, any violations committed, or permitted, by those employees shall be treated by the Board as violations committed or permitted by the licensee. WAC 314-11-015(1)(a). It is the duty and the responsibility of the Licensee to control the conduct of employee at all times. WAC 314-11-015(2).

14. RCW 66.44.270(1) states that it is a gross misdemeanor to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or to allow any person under that age to consume liquor on his or her premises or premises under his or her control. WAC 314-11-020(1) reiterates that statute as prohibiting licensees or their employees from supplying liquor to persons under twenty-one years of age, either for his or her own use or for the use of any other person. Neither of these rules state that liquor can be sold to somebody under twenty-one that appears deceptively mature. The Licensee is responsible for any sale of liquor to a minor regardless of their appearance and has the responsibility to make sure that they have procedures in place to ensure that a sale to a minor never occurs.

15. The undisputed evidence was that [REDACTED] an investigative aid for the Liquor Control Board and under twenty-one years of age in December 2008, was in the licensed premises with Officer Ogren. [REDACTED] purchased from and was served alcohol by Ms. Cavanaugh on December 2, 2008 in violation of RCW 66.44.270.

16. The Licensee was prohibited from selling liquor to anybody under twenty-one. The Licensee was aware of this prohibition. The Licensee violated RCW 66.44.270.

17. The Licensee is not entitled to the defense of entrapment in this administrative proceeding because they were charged with an administrative violation not a crime. Entrapment is a defense "in any prosecution for a crime." RCW 9A.16.070(1).

18. The remaining issue in this proceeding is the appropriate penalty for the violation of the above cited law. The Board has the authority to establish an appropriate penalty as a matter of discretion. Under WAC 314-29-020, sale or service to a minor has a standard 5-day suspension or \$500 monetary option for the first violation.

19. After careful review of this case, the undersigned finds that the Licensee committed this violation. The Licensee was aware of the restriction against sale or service of liquor to a minor. The statutory penalty is appropriate.

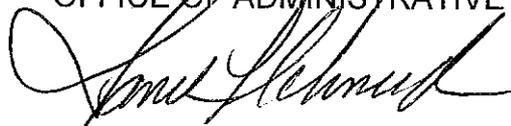
From the foregoing Conclusions of Law, NOW THEREFORE

INITIAL ORDER

IT IS HEREBY ORDERED That the Board's complaint be sustained and the liquor license privileges granted to B. G. S. OO, LLC doing business as Boomers Sports Bar and Grill, License number 080505, shall, on a date to be set by the Board in its final order, be suspended for five days or the Licensee may make a payment of a monetary civil penalty in the amount of five hundred dollars (\$500.00) in lieu of suspension.

DATED and mailed at Vancouver, Washington, this 2nd day of July, 2010.

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS



Janet L. Schneider
Administrative Law Judge
5300 MacArthur Blvd, Suite 100
Vancouver, WA 98661
Telephone: (360) 690-7189 or 1-800-243-3451
FAX: (360) 696-6255

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 and WAC 10-08-211, and 314-42-095(2)(a).

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). 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, and any exceptions 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 which is appealable under the provisions of RCW 34.05.501 through 34.05.598(4). The board may issue a final order that differs from the initial order even though no party has filed a petition for review or reply WAC 314-42-095(4).

