

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

PRIYANA, INC.  
d/b/a RENTON SHELL

300-320 RAINIER AVE S  
RENTON, WA 98055

LICENSEE

LICENSE NO. 080806-2M  
AVN NO. 2M1275E

LCB NO. 23,918  
OAH NO. 2011-LCB-0074

FINAL ORDER OF THE BOARD

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

1. The Liquor Control Board issued a complaint dated December 14, 2011, alleging that on October 2, 2011 the above-named Licensee, or employee(s) thereof, gave, sold and/or supplied liquor to a person under the age of twenty-one (21), contrary to RCW 66.44.270(1) and WAC 314-11-020(1).
2. The Licensee made a timely request for a hearing.
3. A hearing was held on June 27, 2012 before Administrative Law Judge Terry A. Schuh with the Office of Administrative Hearings.
4. At the hearing, the Licensee appeared and was represented by Patrick M. Hanis, Attorney at Law. The Education and Enforcement Division of the Board appeared and was represented by Assistant Attorney General Stephanie U. Happold.
5. On August 20, 2012 Administrative Law Judge Terry. A. Schuh entered his Findings of Fact, Conclusions of Law and Initial Order in this matter, which sustained the Complaint and modified the original penalty to a thirty (30) day license suspension.

6. The Education and Enforcement Division filed a Petition for Review of the Initial Order.

The Licensee filed a Response to the Petition for Review.

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, with the following changes and corrections:

The phrase "can of beer" in Findings of Fact 4.8, 4.13, 4.18 and 4.19 is amended to read "Four Loko malt beverage", and the word "beer" in Finding of Fact 4.17 is amended to read "Four Loko".

The Board amends Conclusion of Law No. 5.17 to read as follows:

5.17 Priyana argued that after October 2, 2011, Priyana changed its business practices in several ways that would enhance its ability to assure that Priyana did not sell alcohol to minors. However, in light of the violation history of the licensee, adoption of the business practices referenced in Findings of Fact 4.32, 4.33, 4.34 and 4.35 are not considered as mitigating circumstances. The Board is not persuaded that the 30-day suspension for a third violation within a 24-month period should be mitigated.

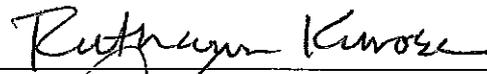
The Board adds Conclusion of Law No. 5.18, as follows:

5.18 The Board believes the intent and purpose of the Settlement Agreement and Final Order entered in LCB No. 23,613, effective December 1, 2010, (Exhibit 7) was that any further violation of the law by the licensee would result in cancellation of the liquor license. However, as the wording of the Settlement Agreement did not make it clear that the Licensee *agreed* that the penalty for any future violation would be cancellation, the Board feels it must abide by the published penalty schedule, in the absence of clear aggravating circumstances. However, the Board also believes that the Licensee's failure to adopt the business practices referenced in Findings of Fact 4.32, 4.33, 4.34 and 4.35 could be considered aggravating circumstances, as the licensee apparently took no steps to avoid committing additional violations until its liquor license was once again threatened with cancellation.

Having affirmed the Initial Order, as amended, IT IS HEREBY ORDERED that the liquor license privileges granted to Priyana, Inc., dba Renton Shell, License No. 080806, are hereby suspended for a term of thirty (30) days. The suspension will take place from 10:00 a.m. on Tuesday, October 30, 2012 until 10:00 a.m. on Thursday, November 29, 2012. Failure to comply with the terms of this order will result in further disciplinary action.

DATED at Olympia, Washington this 25<sup>th</sup> day of SEPTEMBER, 2012.

WASHINGTON STATE LIQUOR CONTROL BOARD

  
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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**

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September 26, 2012

Patrick M. Hanis  
Attorney for Licensee  
Hanis Irvine Prothero PLLC  
6703 S 234<sup>th</sup> St Ste 300  
Kent, WA 98032-2903

David Malik  
Priyana Inc, Licensee  
d/b/a Renton Shell  
26220 116<sup>TH</sup> Ave Ste 101  
Kent, WA 98030-8663

Stephanie U. Happold, AAG  
GCE Division, Office of Attorney General  
1125 Washington Street SE  
PO Box 40100  
Olympia, WA 98504-0100

**RE: FINAL ORDER OF THE BOARD**  
**LICENSEE: Priyana Inc.**  
**TRADE NAME: Renton Shell**  
**LOCATION: 300-320 Rainier Ave S, Renton, WA 98057**  
**LICENSE NO. 080806-2M**  
**ADMINISTRATIVE VIOLATION NOTICE NO: 2M1275E**  
**LCB HEARING NO. 23,918**  
**OAH NO. 2011-LCB-0074**  
**UBI: 601 516 103 001 0002**

Dear Parties:

Please find the enclosed Declaration of Service by Mail and a copy of the Final Order of the Board 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: Tukwila Enforcement and Education Division, WSLCB  
Teresa Young, WSLCB

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

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3 **WASHINGTON STATE LIQUOR CONTROL BOARD**

4 IN THE MATTER OF:

LCB HEARING NO. 23,918  
OAH NO. 2011-LCB-0074

5 PRIYANA INC.  
6 d/b/a RENTON SHELL  
7 300-320 RAINIER AVE S  
8 RENTON, WA 98057

DECLARATION OF SERVICE BY  
MAIL

LICENSEE

9 LICENSE NO. 080806-2M  
10 AVN NO. 2M1275E

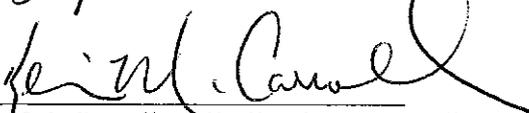
11 I certify that I caused a copy of the FINAL ORDER OF THE BOARD in the above-  
12 referenced matter to be served on all parties or their counsel of record by US Mail Postage  
13 Prepaid via Consolidated Mail Service for applicants and licensees, by campus mail for state  
14 offices, on the date below to:

16 PATRICK M. HANIS  
17 ATTORNEY FOR LICENSEE  
18 HANIS IRVINE PROTHERO PLLC  
19 6703 S 234<sup>TH</sup> ST STE 300  
KENT, WA 98032-2903

OFFICE OF THE ATTORNEY GENERAL  
MAIL STOP 40100, GCE DIVISION  
STEPHANIE U. HAPPOLD, ASSISTANT  
ATTORNEY GENERAL

20 DAVID MALIK  
21 PRIYANA INC, LICENSEE  
22 d/b/a RENTON SHELL  
26220 116<sup>TH</sup> AVE STE 101  
KENT, WA 98030-8663

23 DATED this 26<sup>th</sup> day of September, 2012, at Olympia, Washington.

24  
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

**RECEIVED**

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

AUG 22 2012

Liquor Control Board  
Board Administration

In The Matter Of:

PRIYANA, INC. dba RENTON SHELL,

300-320 Rainier Ave. South  
Renton, WA 98055,

Respondent.

License No. 080806  
AVN No. 2M1275E

OAH Docket No. 2011-LCB-0074  
LCB No. 23,918

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND  
INITIAL ORDER

**I. ISSUES PRESENTED**

- 1.1 Whether on or about October 2, 2011, Priyana, Inc. dba Renton Shell, or one of its employees, gave, sold and/or supplied liquor to a person under the age of twenty-one (21).
- 1.2 If so, whether that conduct violated RCW 66.44.270(1) and/or WAC 314-11-020(1).
- 1.3 If so, whether cancellation of the liquor license of Priyana, Inc. dba Renton Shell is proper.

**II. ORDER SUMMARY**

- 2.1 On October 2, 2011, Mahendra K. Rathnayaka, an employee of Priyana, Inc. dba Renton Shell, sold liquor to a person under the age of 21 years.
- 2.2 That sale violated RCW 66.44.270(1) and WAC 314-11-020(1).
- 2.3 The proper discipline is a 30-day suspension of the liquor license of Priyana Inc., dba Renton Shell.

**III. HEARING**

- 3.1 **Hearing Date:** June 27, 2012
- 3.2 **Administrative Law Judge:** Terry A. Schuh

3.3 **Respondent:** Priyana, Inc. dba Renton Shell

3.3.1 **Representative:** Patrick M. Hanis, Hanis Irvine Prothero, PLLC, Attorneys at Law

3.3.2 **Witnesses:**

3.3.2.1 Mahendra K. Rathnayaka, employee of Priyana, Inc. dba Renton Shell

3.3.2.2 David Malik, owner of Priyana, Inc. dba Renton Shell

3.4 **Agency:** Liquor Control Board

3.4.1 **Representative:** Stephanie U. Happold, Assistant Attorney General

3.4.2 **Witnesses:**

3.4.2.1 Officer Joshua Bolender, Enforcement Division, Liquor Control Board

3.4.2.2 **UnderAgeOp**, Investigative Aide, Enforcement Division, Liquor Control Board

3.5 **Exhibits:** Exhibits 1 through 9 were admitted.

#### IV. FINDINGS OF FACT

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

##### Jurisdiction

4.1 Officer Joshua L. Bolender served AVN No. 2M1275E on Mahendra K. Rathnayaka of Priyana, Inc. dba Renton Shell (hereafter, "Priyana") on October 17, 2011. Ex. 1, p. 1.

4.2 On or about November 1, 2011, David Malik requested a settlement conference and, if the settlement conference did not resolve the matter, an administrative hearing. Ex. 1, p. 3.

### Investigative practice

4.3 As a liquor and tobacco enforcement officer for the Liquor Control Board, one of Mr. Bolender's duties is to supervise compliance checks conducted by underage investigative aides. Testimony of Bolender.

4.4 Mr. Bolender instructs investigative aides to show their identification if and when asked by the sales clerk. Testimony of Bolender.

4.5 Mr. Bolender instructs investigative aides that they may lie about their age if questioned. Testimony of Bolender; Testimony of **UnderAgeOp**

### Sale of liquor to a person under the age of 21 years

4.6 On October 2, 2011, Mr. Bolender supervised investigative aide **UnderAgeOp** **UnderAgeOp** compliance check of Priyana. Testimony of Bolender; Ex. 2, p. 4.

4.7 When Mr. **UnderAgeOp** entered Priyana's premises, Mr. Bolender remained outside but near the store and observed. Testimony of Bolender; Ex. 2, p. 4.

4.8 Mr. **UnderAgeOp** entered the store operated by Priyana, selected a can of beer, and approached the cash register. Testimony of **UnderAgeOp**; Ex. 2, p. 5.

4.9 The only people present in the store at that time were Mr. **UnderAgeOp**, Mr. Rathnayaka (the store clerk), and another customer. Testimony of LeBaron.

4.10 The three men conversed and during that conversation Mr. **UnderAgeOp** told the customer that Mr. **UnderAgeOp** was 21. Ex. 3, p. 2.

4.11 Mr. **UnderAgeOp** was 19 years old on October 2, 2011. Testimony of LeBaron. He did not alter his appearance for the investigation. Testimony of LeBaron.

4.12 After the conversation, the other customer left the store. Testimony of **UnderAgeOp**

4.13 Mr. **UnderAgeOp** presented the can of beer he selected for purchase. Testimony of **UnderAgeOp**; Ex. 2, p. 5; Ex. 3, p. 2.

4.14 Mr. Rathnayaka asked to see Mr. **UnderAgeOp** identification and to present it so that that camera could see that Mr. Rathnayaka had checked Mr. **UnderAgeOp** identification. Testimony of **UnderAgeOp**; Testimony of Rathnayaka; Ex. 2, p. 5; Ex. 3, p. 2. Mr. Rathnayaka glanced at the license. Testimony of **UnderAgeOp**

4.15 Mr. Rathnayaka did not ask Mr. UnderAgeOp age. Testimony of UnderAgeOp. However, since Mr. Rathnayaka was present when Mr. UnderAgeOp sold the customer he was over the age of 21 years, there was likely no reason for Mr. Rathnayaka to ask. Testimony of UnderAgeOp

4.16 The identification that Mr. UnderAgeOp presented to Mr. Rathnayaka on October 2, 2011, was an Alaska Driver License with Mr. UnderAgeOp photograph on it, stating that his birthdate was October 28, 1991, and that Mr. UnderAgeOp does not turn 21 until October 28, 2012. Testimony of UnderAgeOp Ex. 2, p. 4; Ex. 8, p. 1. The statement that Mr. UnderAgeOp does not turn 21 until October 28, 2012, is blocked in red. Testimony of Bolender; Ex. 8, p. 1. The rest of the driver's license is predominantly blue. Ex. 8, p. 1.

4.17 Mr. Rathnayaka sold the beer to Mr. UnderAgeOp and Mr. UnderAgeOp at the store. Testimony of UnderAgeOp Ex. 2, p. 5; Ex. 3, p. 2.

4.18 After Mr. UnderAgeOp exited the store, Mr. UnderAgeOp gave the can of beer he bought to Mr. Bolender and described the sale. Testimony of Bolender; Testimony of LeBaron; Ex. 2, p. 5.

4.19 Mr. Bolender entered the store and approached Mr. Rathnayaka. Testimony of Bolender; Ex. 2, p. 5. Mr. Rathnayaka confirmed that he had sold the can of beer to Mr. UnderAgeOp Ex. 2, p. 5. Mr. Bolender showed Mr. Rathnayaka the identification that Mr. UnderAgeOp had shown to Mr. Rathnayaka. Testimony of Bolender; Ex. 2, p. 5.

4.20 Mr. Rathnayaka misread Mr. UnderAgeOp identification and thought that he was 21. Testimony of Rathnayaka; see Testimony of Bolender and Ex. 2, p. 5 (Mr. Rathnayaka told Mr. Bolender that he misread Mr. UnderAgeOp identification.)

#### Prior violations

4.21 The Liquor Control Board issued Administrative Violation Notice 2M9128B to Priyana, alleging that Priyana sold liquor to a minor on May 8, 2009. Ex. 9, p. 1. The resulting penalty was a \$350.00 monetary penalty. Ex. 9, p. 1.

4.22 The Liquor Control Board issued Administrative Violation Notice 2O9188C to Priyana, alleging the Priyana sold liquor to a minor on July 7, 2009. Ex. 9, p. 1. The resulting penalty for this second violation was a seven-day suspension of Priyana's liquor license. Ex. 9, p. 1.

4.23 The Liquor Control Board issued Administrative Violation Notice No. 2M9278H to Priyana, alleging that Priyana sold liquor to a minor on October 5, 2009. Ex. 9, p. 1.

4.24 The Liquor Control Board issued Administrative Violation Notice No. 2M0080D to Priyana, alleging the Priyana sold liquor to a minor on March 21, 2010. Ex. 9, p. 1. The resulting penalty for this violation was a 30-day suspension of Priyana's liquor license. Ex. 9, p. 1.

4.25 Accordingly, Priyana had four similar violations prior to the alleged violation at issue, including two violations within a two-year period prior to the violation at issue. Testimony of Bolender; Ex. 9, p. 1.

4.26 The March 21, 2010, violation and the October 5, 2009, violation were interposed because Priyana appealed the October 5, 2009, violation but did not respond to the March 21, 2010 violation. Ex. 9, p. 43. As a result, the March 21, 2010, violation was processed and penalized before the October 5, 2009, violation was. Ex. 9, p. 43.

#### Settlement agreement

4.27 As a result of the sale to a minor on October 5, 2009, and in view of the three other sales to a minor, under a settlement agreement with Priyaya regarding the October 5, 2009 violation, the Liquor Control Board suspended Priyana's liquor license for 50 days and fined it \$10,000.00. Testimony of Bolender; Ex. 7.

4.28 The settlement agreement included the following provision: "The Licensee acknowledges that Enforcement will seek cancellation of Licensee's liquor license should Licensee commit any further public safety violations within the two (2) years time period following entry of the Board's Final Order." Ex. 7, p. 6.

4.29 Mr. Malik, the owner of Priyana, was aware of this provision but did not agree that violations more than two years old would be considered when determining the penalty for future violations. Testimony of Malik.

4.30 Mr. Malik accepted the settlement agreement because it addressed the fourth violation and his business otherwise faced cancellation of its liquor license. Testimony of Malik.

4.31 The Board's Final Order was dated December 1, 2010, and referenced the settlement agreement. Ex. 7, p. 3.

#### Priyana's practices since October 2, 2011

4.32 Priyana now requires employees to sign a statement that Priyana's policy is to check identification if the customer appears to be under the age of 30 years.

Testimony of Malik.

4.33 Priyana requires its employees to view the video regarding underage sales produced by the Liquor Control Board. Testimony of Malik.

4.34 Priyana has purchased a card-reader to scan identifications presented by customers. Testimony of Malik.

4.35 Priyana now checks its employees for compliance with the law prohibiting sale of alcohol to underage persons. Testimony of Malik.

4.36 Priyana has had no violations since the October 2, 2011, incident. Testimony of Malik.

## V. CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I make the following Conclusions of Law:

### Jurisdiction

5.1 I have jurisdiction to hear and decide this matter under WAC 314-29-010(1)(c); chapter 34.05 RCW, and chapter 10-08 WAC.

The sale of liquor to a minor violated RCW 66.44.270(1) and WAC 314-11-020(1)

5.2 It is illegal to sell alcohol to any person under the age of 21 years. RCW 66.44.270(1); WAC 314-11-020(1).

5.3 Here, on October 2, 2011, Mahendra K. Rathnayaka sold alcohol to **UnderAgeOp** **UnderAgeOp**. On that date, Mr. **UnderAgeOp** was under the age of 21 years.

5.4 Accordingly, by selling alcohol to Mr. **UnderAgeOp** October 2, 2011, Mr. Rathnayaka violated RCW 66.44.270(1) and WAC 314-11-20(1).

5.5 On October 2, 2011, Mr. Rathnayak was employed by Priyana.

5.6 "Liquor licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the board (Title 66 RCW and Title 314 WAC). Any violations committed or permitted by employees will be treated by the board as violations committed or permitted by the licensee." WAC 314-11-015(1)(a).

5.7 Therefore, Mr. Rathnayaka's violation is attributable to Priyana. Thus,

Priyana violated RCW 66.44.270(1) and WAC 314-11-20(1) on October 2, 2011.

Whether Priyana behaved knowingly, intentionally, or recklessly is not relevant

5.8 Priyana argued that Mr. Rathnayaka simply made a mistake and did not knowingly, intentionally, or recklessly sell alcohol to a person under the age of 21 years. Priyana acknowledged that this standard does not strictly apply here but offered it as guidance and argued that other jurisdictions required a similar standard be met before cancellation of a liquor license. However, as I will discuss below, I hold that the proper penalty is a 30-day suspension, not a cancellation. Moreover, the legislature specifically forbade sales of alcohol to person under the age of 21; it did not suggest that such sales were unlawful only if conducted knowingly, intentionally, or recklessly. Priyana also argued that the law was unclear regarding what duty Priyana has to prevent minors from purchasing alcohol. That argument misrepresents Priyana's responsibility in the context at issue herein. Here, Priyana has no duty to prevent the minor from doing anything. Rather, Priyana has a duty as a licensed seller of liquor to refrain from selling alcohol to minors. Priyana is responsible for its own conduct. Thus, I am not persuaded by these arguments.

The Penalty for third violation within two years is a 30-day suspension

5.9 The penalty for a third violation within two years of sale or service of alcohol to a person under the age of 21 years is a 30-day suspension of the liquor license. WAC 314-29-020.

5.10 Here, Priyana committed prior violations on May 8, 2009, July 7, 2009, October 5, 2009, and March 21, 2010. Accordingly, Priyana's violation on October 2, 2009, was its third in a two-year period. Therefore, Priyana is liable for a 30-day suspension of its liquor license.

The settlement agreement does not provide for cancellation

5.11 Nevertheless, the Liquor Control Board argued that the Settlement Agreement it executed with Priyana and referenced in its Final Order effective December 1, 2010, provided for the cancellation of Priyana's liquor license. However, the provision at issue stated that Priyana acknowledged that the Liquor Control Board would seek cancellation of Priyana's liquor license if it had another violation within two years. But that provision does not state that Priyana agreed that its liquor license should be cancelled or that it waived its right to appeal any such cancellation. The Liquor Control Board argued that the provision represented an enforceable, unambiguous agreement between the parties. However, that provision does not represent an unambiguous agreement that another violation within two years would result in the Liquor Control Board

cancelling Priyana's liquor license but rather that the Liquor Control Board would seek cancellation, which it has done in this proceeding. Therefore, I decline to interpret that provision as argued by the Liquor Control Board.

The Liquor Control Board failed to establish aggravating circumstances sufficient to support enhancing the 30-day suspension to a cancellation

5.12 The Liquor Control Board may impose a penalty different from the standard penalty – in this case, a 30-day suspension of the liquor license – if aggravating circumstances existed. WAC 314-29-015(4).

5.13 “Aggravating circumstances that may result in increased days of suspension, and/or increased monetary option, and/or cancellation of a liquor license may include business operations or behaviors that create an increased risk for a violation and/or intentional commission of a violation.” WAC 314-29-015(4)(b).

5.14 Here, the Liquor Control Board did not argue that aggravating circumstances applied.

Priyana, Inc. dba Renton Shell failed to establish mitigating circumstances sufficient to support a reduction of the 30-day suspension

5.15 In addition, the Liquor Control Board may reduce the penalty if mitigating circumstances exist sufficient to support a reduction. WAC 314-29-015.

5.16 “Mitigating circumstances that may result in fewer days of suspension and/or lower monetary option may include demonstrated business policies and/or practices that reduce the risk of future violations.” WAC 314-29-015(4)(a).

5.17 Priyana argued that after October 2, 2011, Priyana changed its business practices in several ways that would enhance its ability to assure that Priyana did not sell alcohol to minors. However, Priyana presented this argument in an attempt to mitigate cancellation of its liquor license as opposed to mitigating a 30-day suspension of its liquor license. Its argument as to cancellation is moot, and I am not persuaded that the 30-day suspension should be mitigated.

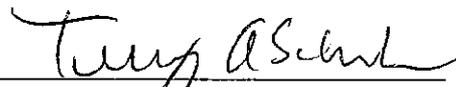
## INITIAL ORDER

IT IS HEREBY ORDERED THAT:

Priyana, Inc. dba Renton Shell's liquor license is suspended for 30 days

beginning on a date to be determined by the Liquor Control Board.

**Signed and Issued** at Tacoma, Washington, on the date of mailing.



Terry A. Schuh  
Administrative Law Judge  
Office of Administrative Hearings

**NOTICE OF APPEAL RIGHTS – PLEASE READ CAREFULLY**

**Petition for Review of Initial Order**

**Either the licensee or permit holder of 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; 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 ten (10) 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 the all other parties and their representatives at the time the reply 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 granted. RCW 34.05.470; 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).

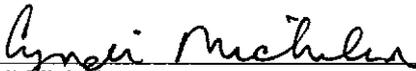
**CERTIFICATION OF MAILING IS ATTACHED**

**Certificate of Service – OAH Docket No. 2011-LCB-0074**

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

|   |                                      |
|---|--------------------------------------|
| Address:<br><b>David Malik</b><br><b>26220 116<sup>th</sup> Avenue Suite 201</b><br><b>Kent WA 98030</b>  | First Class US Mail, postage prepaid |
| Address:<br><b>Stephanie Happold</b><br><b>Assistant Attorney General</b><br><b>Office of the Attorney General</b><br><b>PO Box 40100</b><br><b>Olympia WA 98504-0100</b>         | First Class US Mail, postage prepaid |
| Address:<br><b>Patrick M Hanis</b><br><b>Attorney at Law</b><br><b>Hanis Irvine Prothero, PLLC</b><br><b>6703 South 234<sup>th</sup> Street Suite 300</b><br><b>Kent WA 98032</b> | First Class US Mail, postage prepaid |
| Address:  |                                      |
| Address:  |                                      |
| Address:  |                                      |

Date: August 20, 2012

  
\_\_\_\_\_  
Cyndi Michelena  
Office of Administrative Hearings

RECEIVED

SEP 10 2012

Liquor Control Board  
Board Administration

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**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

PRIYANA, INC d/b/a RENTON SHELL

300-320 RAINIER AVENUE SOUTH  
RENTON, WA 98055

LICENSEE

LICENSE NO. 080806  
AVN NO. 2M1275E

OAH NO. 2011-LCB-0074

LCB NO. 23,918

ENFORCEMENT DIVISION'S  
PETITION FOR REVIEW OF THE  
INITIAL ORDER

COMES NOW, the Washington State Liquor Control Board ("Board") Education & Enforcement Division ("Enforcement"), by and through its attorneys, ROBERT M. MCKENNA, Attorney General and STEPHANIE HAPPOLD, Assistant Attorney General, and pursuant to RCW 34.05.464 and WAC 314-42-095, provides the following exceptions to the Initial Order issued by Administrative Law Judge Terry A. Schuh, on August 20, 2012, in the above-referenced case.

**I. BACKGROUND**

On December 14, 2011, Enforcement issued a formal complaint to the Licensee, Priyana, Inc. d/b/a Renton Shell, alleging that on or about October 2, 2011, the above-named Licensee, or an employee thereof, gave, sold and/or supplied liquor to a person under the age of twenty-one (21), contrary to RCW 66.44.270(1) and WAC 314-11-020(1). Although this was Licensee's

ORIGINAL

1 third violation for sale of alcohol to a minor within a twenty-four months period<sup>1</sup>, Enforcement  
2 sought cancellation of the liquor license. Cancellation was based on the Licensee's violation of  
3 the December 1, 2010 stipulated settlement agreement ("settlement agreement") between  
4 Enforcement and the Licensee. The parties entered into the settlement agreement in lieu of  
5 continuing the administrative process seeking revocation of the Licensee's liquor license based  
6 on the Licensee's fourth sale of liquor to a minor within a twenty-four months period. By its  
7 terms, the settlement agreement provided that Enforcement would seek cancellation of the  
8 Licensee's license if the Licensee committed any further public safety violations within two  
9 years following entry of the Board's December 1, 2010 Final Order.

10 The present case was heard and considered by the Administrative Law Judge ("ALJ") in  
11 Tacoma on June 27, 2012. After a full hearing on the alleged violation, the ALJ entered his  
12 Findings of Fact, Conclusions of Law, and Initial Order on August 20, 2012. The ALJ sustained  
13 the complaint, but determined that the penalty should be a thirty day suspension of the liquor  
14 license based on the violation being the Licensee's third in two years. Enforcement respectfully  
15 takes exception to the Findings of Fact and Conclusions of Law and the Initial Order of the ALJ,  
16 as set forth below.

## 17 II. DISCUSSION

18 Any party, upon receipt of a proposed order, may file exceptions within twenty days of  
19 service of the order. WAC 314-42-095(2)(a). The reviewing officer (including the agency head  
20 reviewing an initial order) "shall exercise all the decision-making power that the reviewing  
21 officer would have had to decide and enter the final order had the reviewing officer presided over  
22 the hearing[.]" RCW 34.05.464(4). Thus, the Washington State Liquor Control Board is not  
23  
24

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25 <sup>1</sup> The standard penalty for a third sale to a minor within 24 months is a 30-day suspension of the liquor  
26 license.

1 bound by the ALJ's determinations of the appropriate penalty in this case and can substitute its  
2 determination for that of the ALJ.

3 **A. Exceptions to Findings of Fact 4.8, 4.13, 4.17, 4.18, and 4.19.**

4 In his Initial Order, ALJ Schuh stated in Findings of Fact 4.8, 4.13, 4.17, 4.18, and 4.19  
5 that the clerk sold the minor, Kody LeBaron, a can of beer. However, testimony provided at the  
6 hearing and exhibits entered into the record established that the Licensee sold the malt beverage  
7 Four Loko to Mr. LeBaron. Audio Recording, June 27, 2012, Priyana, Inc. d/b/a Renton Shell  
8 LCB No. 23, 918, Administrative Hearing (Audio Record), at 1:15:17-30; Exhibit 2 at p. 5;  
9 Exhibit 3 at p. 2; Exhibit 6 at p. 3. Enforcement respectfully requests that the Board amend those  
10 Findings of Fact to replace "beer" with "Four Loko."

11 **B. The ALJ Erred in Finding that the Appropriate Penalty for the Violation was a  
12 Thirty Day Suspension instead of Cancellation of the License.**

13 In his Initial Order, ALJ Schuh ruled that the October 2, 2011, sale to a minor violated  
14 RCW 66.44.270(1) and WAC 314-11-20(1). Initial Order at CL 5.7. He further held that the  
15 sale was a third violation within two years and therefore the appropriate penalty was a 30-day  
16 suspension of the liquor license. Initial Order at II.2.3, CL 5.9 – 5.10, pp. 8-9.

17 In holding that the standard penalty was appropriate, ALJ Schuh concluded that the  
18 settlement agreement did not provide for cancellation of the liquor license. Initial Order at CL  
19 5.11. He further concluded that Enforcement did not argue any aggravating circumstances to  
20 support cancellation. Initial Order at CL 5.12-5.14. For the reasons set forth below,  
21 Enforcement objects to the ALJ's Conclusions of Law 5.11, 5.12, 5.13 and 5.14.

22 **1. Enforcement argued the existence of aggravating circumstances meriting the  
23 penalty of license cancellation.**

24 In his Initial Order, ALJ Schuh concluded that the Board "did not argue that aggravating  
25 circumstances applied." Initial Order at CL 5.14. Contrary to the ALJ's conclusion,  
26 Enforcement did assert during closing argument that the Licensee's violation of the settlement

1 agreement was an aggravating circumstance meriting an aggravated penalty under WAC 314-29-  
2 015(4)<sup>2</sup>. Audio Record at 1:45:48 – 1:47:04.

3         During the hearing, Enforcement submitted evidence establishing that on December 1,  
4 2010, Enforcement and the Licensee entered into a stipulated settlement agreement for LCB  
5 Case No. 23,613 to resolve the administrative litigation arising from the Licensee's October 5,  
6 2009 sale of liquor to a minor. Exhibit 9 at pp. 56-60; Exhibit 7 at pp. 2-6. At the time the  
7 settlement agreement was executed, the pending administrative violation was the fourth of its type  
8 within a twenty-four month period.<sup>3</sup> Exhibit 9 at p. 1; Exhibit 7 at p. 5. The settlement  
9 agreement and the Board's Final Order were executed in lieu of continuing the administrative  
10 process seeking revocation of the Licensee's liquor license. Exhibit 7 at p.5; Exhibit 9 at p. 57.  
11 The settlement agreement provided, in pertinent part, that Enforcement would seek cancellation  
12 of the Licensee's liquor license if the Licensee committed any further public safety violations  
13 within the two year period following entry of the Board's December 1, 2010 Final Order.  
14 Exhibit 7 at p. 6; Exhibit 9 at p. 58. By entering into the December 2010 settlement agreement  
15 with Licensee to avoid the standard penalty of license cancellation, Enforcement afforded the  
16 Licensee one final chance to change its business practices that led to repeated sales of liquor to  
17 minors. The terms of the settlement included a significant period of suspension, substantial  
18 monetary fines and a very clear warning that Enforcement would seek license cancellation if the  
19 Licensee sold liquor to a minor within the following two year period. Notwithstanding what can  
20 only be characterized as a rarely afforded opportunity for reprieve from license cancellation, the  
21 Licensee *still* sold alcohol to a minor just ten months after entry of the settlement agreement.  
22

23 \_\_\_\_\_  
24 <sup>2</sup> Pursuant to WAC 314-29-015(4)(b), the liquor control board may impose a different penalty than the  
25 standard penalties outlined in the schedules based on mitigating or aggravating circumstances. The aggravating  
26 circumstances that may result in an increased penalty include, but are not limited to, business operations or  
behaviors that create an increased risk for a violation and/or intentional commission of a violation. *Id.*

<sup>3</sup> The other three were committed on May 8, 2009; July 7, 2009 and March 21, 2010. Exhibit 9 at p. 1.

1 The Licensee's violation of the terms of the settlement agreement is, by itself, an aggravating  
2 circumstance that merits cancellation of the Licensee's liquor license.

3 Moreover, review of the record establishes facts supporting an additional aggravating  
4 circumstance. Per WAC 314-29-015(4)(b), business operations or behaviors that create an  
5 increased risk for a violation may be an aggravating circumstance justifying an increased  
6 penalty. During the hearing, Mr. Malik testified that after the October 2, 2011, violation, the  
7 business installed a card-reader system and also began a self-check program that allegedly tested  
8 if Licensee's employees were in compliance with Washington State liquor laws. Audio Record  
9 at 1:37:44-1:38:24. Waiting until it committed another violation instead of implementing these  
10 checks immediately after entering into the settlement agreement, demonstrates that the Licensee  
11 is not fulfilling its duty in prohibiting the sale of liquor to minors.

12 Additionally, Mr. Malik testified the store had policies in place to prevent sales to  
13 minors. Audio Record at 1:36:33-1:37:34. The policies included having employees check the  
14 age of the customers. *Id.* However, the record established that the clerk just glanced at Mr.  
15 **UnderAgeOp** identification<sup>4</sup> and then later claimed to the Liquor Control Board officer that he had  
16 misread the driver's license<sup>5,6</sup>. Even though the clerk heard the previous conversation between  
17 the customer and Mr. **UnderAgeOp** was still obligated to ask and carefully check Mr. **UnderAgeOp**  
18 age. He did not follow through with this requirement.

19 The fact that the clerk did not ask Mr. **UnderAgeOp** age, did not follow alleged store  
20 policies, did not properly check Mr. **UnderAgeOp** identification, yet still holds his job with the  
21 Licensee, is proof that Licensee's business operations and behaviors create a risk that selling to a  
22 minor will happen again on the Licensee's premises.

23  
24 <sup>4</sup> Audio Record at 1:21:55-1:22:00.

<sup>5</sup> Exhibit 2 at p. 5.

25 <sup>6</sup> Mr. **UnderAgeOp** Washington driver's license states in a red banner above his photo that he is under twenty-one  
until October 28, 2012. Exhibit 8 at p.1.

26 <sup>7</sup> Audio Record at 1:08:52-1:24:09, 1:28:11-1:35:26.

1           **2.     The settlement agreement does provide for cancellation of the Licensee's**  
2           **liquor license.**

3           In his Initial Order, the ALJ took exception to the settlement agreement stating:

4           “... the provision at issue stated that [Licensee] acknowledged that the [Board]  
5           would seek cancellation of [Licensee's] liquor license if it had another violation  
6           within two years. But the provision does not state that [Licensee] agreed that its  
7           liquor license should be cancelled or that it waived its right to appeal any such  
8           cancellation.”

9           Initial Order at CL 5.11. The ALJ further determined that the provision was not an unambiguous  
10          agreement that another violation within two years would result in cancellation, but simply that  
11          the Board would seek cancellation. Initial Order at CL 5.11. Contrary to the ALJ's conclusion,  
12          the settlement agreement, by its very terms, provides for cancellation of the license for any  
13          additional sales to a minor within two years of the agreement.

14          Washington courts recognize settlement agreements as contracts and thus apply general  
15          principles of contract law. *Trotzer v. Vig*, 149 Wn. App. 594, 605, 203 P.3d 1056, *review*  
16          *denied*, 166 Wn.2d 1023, 217 P.3d 336 (2009). When construing a written contract, the  
17          following rules apply: (1) the intent of the parties' controls, (2) the intent is ascertained from  
18          reading the contract as a whole, and (3) the court will not read ambiguity into the contract that is  
19          otherwise clear and unambiguous. *Mayer v. Pierce Cy. Med. Bur., Inc.*, 80 Wn. App. 416, 420,  
20          909 P.2d 1323 (1995).

21          In determining the parties' intent, the court views “the contract as a whole, the subject  
22          matter and objective of the contract, all the circumstances surrounding the making of the  
23          contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of  
24          respective interpretations advocated by the parties.” *Berg v. Hudesman*, 115 Wn.2d 657, 667,  
25          801 P.2d 222 (1990), *quoting Stender v. Twin City Foods, Inc.*, 82 Wn.2d 250, 254, 510 P.2d 221  
26          (1973). A contract is ambiguous if its terms are uncertain or they are subject to more than one  
27          meaning. *Mayer*, 80 Wn. App. at 421. Words and provisions in a contract are not ambiguous  
28          simply because parties suggest opposing meanings. *Mayer*, 80 Wn. App. at 421. Interpretation

1 of an unambiguous contract is a question of law. *Absher Constr. Co. v. Kent School District No.*  
2 *415*, 77 Wn. App. 137, 141, 890 P.2d 1071 (1995).

3 The settlement agreement contains the language “seek cancellation of Licensee’s liquor  
4 license” because the Board cannot simply cancel the license if the Licensee commits a public  
5 safety violation. An administrative action must take place to affirm the violation before  
6 cancellation is proper. In an administrative action commenced by the Board, a licensee must be  
7 afforded the basic principles of due process. See *Mathews v. Eldridge*, 424 U.S. 319, 334, 96 S.  
8 Ct. 893, 896, 47 L. Ed. 2d 18 (1976); *Danielson v City of Seattle*, 108 Wn.2d 788, 797, 742 P.2d  
9 717 (1987). Procedural due process is a flexible concept, requiring “such procedural protections  
10 as the particular situation demands.” *Sherman v. Univ. of Washington*, 128 Wn.2d 164, 184, 905  
11 P.2d 355 (1995) (quoting *Mathews*, 424 U.S. at 334); See also *Christensen v Terrell*, 51 Wn.  
12 App. 621, 628, 754 P.2d 1009 (1988). The basic requirements of procedural due process are  
13 notice, and the opportunity to be heard. *Mathews*, 424 U.S. at 333; see also *Cuddy v. Dep’t of*  
14 *Pub. Assistance*, 74 Wn.2d 17, 19, 442 P.2d 617 (1968) (The basic requirements of procedural  
15 due process are notice, the opportunity to be heard, or defend before a competent tribunal, an  
16 opportunity to know the claims at issue, and a reasonable time for preparation of one’s case). If  
17 a party receives adequate notice and an opportunity to be heard, any procedural irregularities “do  
18 not undermine the fundamental fairness of the proceedings.” *Sherman*, 128 Wn.2d at 184.

19 During the June 27, 2012 hearing, the owner of the business, Mr. Malik, testified he was  
20 aware of the settlement agreement’s provision but did not agree that violations more than two  
21 years old would be considered when determining the penalty for future violations. Initial Order  
22 at FF 4.29. However, the Licensee accepted the settlement agreement because it faced  
23 cancellation of its liquor license. Initial Order at FF 4.30. The settlement agreement’s provisions  
24 are not ambiguous simply because parties suggest opposing meanings. It does not matter if Mr.  
25 Malik did not agree that the violations more than two years old would be considered in  
26

1 determining the penalty for future violations because that is not what the settlement agreement  
2 states. It states that any public safety violation occurring in two years from the Board's  
3 December 1, 2010 Final Order would result in the Board seeking cancellation of the license. So  
4 any new public safety violation, regardless of Licensee committing it within two years of any  
5 previous public safety violation, would result in the Board seeking cancellation of the license.

6 Enforcement objects to the ALJ's conclusions because the phrase "seek cancellation" as  
7 used in the settlement agreement is unambiguous on its face. The language puts the Licensee on  
8 notice that if it commits another public safety violation within two years of the Board's  
9 December 1, 2010 Final Order, the Board may seek cancellation of the license. Seeking  
10 cancellation includes satisfying Licensee's due process rights and holding a hearing to affirm the  
11 violation. Such a hearing was held and the ALJ sustained the violation in his Initial Order.  
12 Therefore, because a public safety violation was committed by the Licensee within two years of  
13 the Board's December 1, 2010, Final Order, the Licensee failed in its contractual obligations to  
14 the Board and the resulting penalty is cancellation of the license, not a thirty-day suspension.

### 15 III. CONCLUSION

16 Based on the foregoing, Enforcement respectfully requests that the Board amend the  
17 above-mentioned Findings of Fact as discussed, strike the penalty imposed by the ALJ, and  
18 impose the initial proposed penalty of cancellation of the liquor license in this matter.

19 DATED this 7<sup>th</sup> day of September, 2012.

20 ROBERT M. MCKENNA  
21 Attorney General

22 *Callie A. Castille* WSBA # 38214  
23 *on behalf of*  
24 STEPHANIE HAPPOLD, WSBA #38112  
25 Assistant Attorney General  
26 Attorneys for the Washington State Liquor  
Control Board Enforcement Division

**PROOF OF SERVICE**

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

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Patrick M. Hanis  
Hanis Irvine Prothero, PLLC  
6703 S. 234<sup>th</sup> St., Ste. 300  
Kent, WA 98032

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 7<sup>th</sup> day of September, 2012, at Olympia, WA.

*Candace Vervair*

\_\_\_\_\_  
Candace Vervair, Legal Assistant

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SEP 14 2012

Liquor Control Board  
Board Administration

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

|   |   |
|---|---|
| In re the Matter of: Priyana, Inc. dba) | OAH Docket No. 2011-LCB-0074  |
| RENTON SHELL )                          | LCB No. 23, 918   |
| 300-320 Rainier Ave South, Renton, WA ) | RESPONSE TO ENFORCEMENT DIVISION'S<br>PETITION FOR REVIEW OF THE INITIAL<br>ORDER |
| 98055, )                                |   |
| Respondent )                            |   |
| License No. 080806 )                    |   |
| AVN No. 2M1275E )                       |   |

**RESPONSE TO PETITION FOR REVIEW:**

**Background:**

Administrative Law Judge Terry A. Schuh (ALJ), held a hearing and based his decision on testimony and documents offered. The Findings of Fact clearly articulate the testimony and evidence offered at the hearing.

**Response to Exceptions to Findings of Fact 4.8, 4.13, 4.17, 4.18 and 4.19.**

The type of product sold is not relevant to the decision. There is no dispute that the product sold contained alcohol. "Four Loko" is simply a brand name. The statute contemplates the improper sale of "alcohol", and not the improper sale of a certain brand of

1 alcoholic beverage. If a change from the term "beer" is granted, the change should be from  
2 "the can of beer" to "the beverage can containing alcohol".

3 The ALJ did not error in instituting a thirty day suspension instead of cancellation.

4 While Enforcement may have argued during closing that there were aggravating  
5 circumstances, Enforcement did not offer any evidence of aggravating circumstances. *Initial*  
6 *Order, Section 5.11-5.12.* Rather, the ALJ found that: 1) Mr. **UnderAgeOp** the Clerk he was  
7 21 years of age; 2) the Clerk asked to see Mr. **UnderAgeOp** identification in a manner so that  
8 cameras could see that it was asked for; 3) Mr. **UnderAgeOp** used an out-of-state license from  
9 Alaska; and 4) the Clerk, believing Mr. **UnderAgeOp** was 21, informed the Officer that he sold the  
10 alcoholic beverage to Mr. **UnderAgeOp** when re-shown the license realized that he misread the  
11 out-of-state identification. *Initial Order at 4.10, 4.14, 4.15, 4.16, 4.19, and 4.20.* In sum, the  
12 Clerk erred in his reading of the out-of state identification and thought Mr. **UnderAgeOp** was 21  
13 given his size, mature look, and statement by Mr. **UnderAgeOp** he was 21. This was not a case  
14 of a Clerk intentionally selling alcohol to a minor, or making no effort to verify age. The Clerk  
15 also verified that this was the first time he has sold alcohol to a minor, and that he has not sold  
16 alcohol to a minor since then. *Audio Record.*

17  
18  
19 In determining whether or not to apply "Aggravating circumstances", the Code does not  
20 state that violation of a settlement agreement is an aggravating circumstance. *WAC 314-29-*  
21 *015.* Rather, the Code states, "Aggravating circumstances that may result in increased days of  
22 suspension, and/or increased monetary option, and/or cancellation of a liquor license may  
23 include business operations or behaviors that create an increased risk for a violation and/or  
24 intentional commission of a violation." *Id.* Enforcement offered no such evidence.  
25

1           The evidence established a third violation in the two years prior to October 2, 2011  
2 (October 5, 2009, and March 21, 2010). The Code specifically contemplates three violations  
3 as a possibility, for which a penalty of a thirty day suspension is provided. Under WAC 314-  
4 20-015, "a two year window for violations is measured from the date one violation occurred to  
5 the date a subsequent violation occurred." Nothing in the settlement agreement changed how  
6 violation dates were to be calculated.  
7

8           Enforcement essentially wants to read the settlement agreement as requiring  
9 cancellation since it reserved the right "to seek cancellation" if there was another violation.  
10 Enforcement exercised that right, but did not persuade the ALJ that was the appropriate  
11 penalty. Rather, the ALJ found that, "Mr. Malik, the owner of Priyana, was aware of this  
12 provision but did not agree that violations more than two years old would be considered when  
13 determining the penalty for future violations." *Initial Order at 4.29.* .  
14

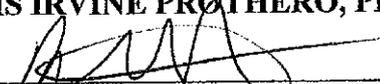
15           Priyana submitted evidence that it has made efforts to limit the potential for future  
16 violations. These acts demonstrate that Priyana takes the violations seriously and is attempting  
17 to mitigate the risk of future violations. The ALJ agreed, finding that Priyana requires  
18 employees to sign statements of its policy to check identifications of those under the age of  
19 thirty, training of employees in viewing the video regarding underage sales produced by the  
20 Liquor Control Board, use of a card-reader to scan identifications, and self-checks of  
21 employees for sale of alcohol. *Id. at 4.32-4.35.* Perhaps of most importance, there have been  
22 no further violations as of the date of the ALJ's Initial Order. The ALJ found these efforts  
23 serve as mitigating circumstances justifying a thirty day suspension rather than cancellation.  
24  
25



1 observe the witnesses." RCW 34.05.464(4). The Board should deny the request of  
2 Enforcement. There has been one violation in the two years prior to the ALJ issuance of his  
3 Initial Order on August 20, 2012. If any change to the penalty is warranted, it should be to  
4 reduce the penalty from a 30 day suspension to a 5 day suspension or \$500.00 monetary fine  
5 pursuant to WAC 314-29-020.

6 **DATED** this 11<sup>th</sup> day of September, 2012.

7  
8 **HANIS IRVINE PROTHERO, PLLC**

9   
10 \_\_\_\_\_  
Patrick M. Hanis, WSBA #31440  
Attorney for Priyana, Inc.

11 **PROOF OF SERVICE**

12 I certify that I served a copy of this document on all parties or their counsel of record  
13 on the date below as follows:

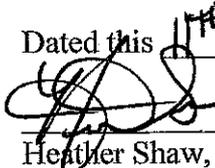
14 US Mail Postage Prepaid to:

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18 and:

19 Washington State Liquor Control Board  
20 Attention: Kevin McCarroll  
3000 Pacific Avenue, PO GBox 43076  
21 Olympia, Washington 98504-3076

22 Dated this 11<sup>th</sup> day of September, 2012, at Kent, Washington.

23   
24 \_\_\_\_\_  
Heather Shaw, Legal Assistant

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