

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

In The Matter Of the Hearing Of:

TREVOR G. NAUGLE
d/b/a THE LAZY EYE
1384 JADWIN AVE
RICHLAND, WA 99354-3404

Applicant

UBI NO: 602 920 424 001 0001

OAH NO. 2010-LCB-0081
LCB NO. T-524

FINAL ORDER OF THE BOARD

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

1. On September 1, 2010 the Board issued a Statement of Intent to Deny Retail Cigarette/Tobacco Products License to Trevor G. Naugle based on the results of a Criminal History Background Check that was performed by the agency.
2. The Applicant submitted a timely request for a hearing.
3. A hearing was held on January 26, 2011 before Administrative Law Judge Randolph F. Bolong with the Office of Administrative Hearings.
4. At the hearing, the Enforcement and Education Division of the Board was represented by Assistant Attorney General Ruth Ammons and the Applicant, Trevor G. Naugle, represented himself.
5. On March 28, 2011, Administrative Law Judge Randolph F. Bolong entered his Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the application denial.

6. No petition for review was filed.

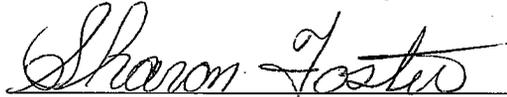
7. The entire record in this proceeding having been reviewed by the Board, and the Board having fully considered said record and being fully advised in the premises; NOW THEREFORE,

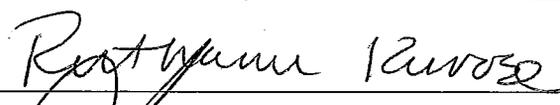
IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Initial Order for case T-524 is adopted.

IT IS HEREBY FURTHER ORDERED that the Retail Cigarette/Tobacco Products License application for Trevor G. Naugle d/b/a The Lazy Eye located at 1384 Jadwin Ave, in Richland, Washington, UBI 6029204240010001 is hereby DENIED.

DATED at Olympia, Washington this 26 day of April, 2011.

WASHINGTON STATE LIQUOR CONTROL BOARD







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**

April 27, 2011

Trevor G. Naugle, Applicant
d/b/a The Lazy Eye
1384 Jadwin Ave
Richland, WA 99354-3404

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

RE: Final Order of the Board

Applicant: Trevor G. Naugle

Trade Name: The Lazy Eye

Location: 1384 Jadwin Ave, Richland, WA 99354-3404

LCB NO. T-524

OAH NO. 2010-LCB-0081

Application No. (UBI): 602 920 424 001 0001

Dear Parties:

Enclosed please find a 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: Tim Thompson, Captain, WSLCB

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3 **WASHINGTON STATE LIQUOR CONTROL BOARD**

4 IN THE MATTER OF:

5 TREVOR G. NAUGLE
6 d/b/a THE LAZY EYE
7 1384 JADWIN AVE
8 RICHLAND, WA 99354-3404

9 **APPLICANT**

10 UBI NO. 602 920 424 001 0001

LCB NO. T-524
OAH NO. 2010-LCB-0081

**DECLARATION OF SERVICE BY
MAIL**

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 Licensees; by Campus Mail for the Office of
14 Attorney General, on the date below to:

16 TREVOR G. NAUGLE
17 d/b/a THE LAZY EYE
18 1384 JADWIN AVE
19 RICHLAND, WA 99354-3404

RUTH AMMONS, ASSISTANT ATTORNEY
GENERAL, GCE DIVISION
OFFICE OF THE ATTORNEY GENERAL
MAIL STOP 40100

20 DATED this 27th day of April, 2011, at Olympia, Washington.

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23 Kevin McCarron, Adjudicative Proceedings Coordinator
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**DECLARATION OF SERVICE BY
MAIL**

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

IN THE MATTER OF:

TREVOR G. NAUGLE,
d/b/a The Lazy Eye

Applicant.

License No. 602 920 424

OAH DOCKET NO. 2010-LCB-0081
Agency Case No. T-524

**AMENDED PROPOSED
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
INITIAL ORDER**

STATEMENT OF THE CASE

On or about September 1, 2010, the Washington State Liquor Control Board (Board) issued a Letter and Statement of Intent to Deny Retail Cigarette/Tobacco Products License Application by certified mail to Trevor G. Naugle. The Statement of Intent to Deny Retail Cigarette/Tobacco Products License Application (Statement) informed Mr. Naugle that the Board concluded that, based upon his Criminal History Background Check, Mr. Naugle would be recommended for denial of his application for a retail tobacco license for his business, The Lazy Eye. A Request for Hearing, Response to Statement of Intent to Deny was included with the Letter and Statement sent to Mr. Naugle.

Mr. Naugle made a timely request for hearing on September 9, 2010.

This matter came on for telephonic conference hearing before Randolph F. Bolong, Administrative Law Judge, Office of Administrative Hearings, in Yakima, Washington, on January 26, 2011.

At hearing, the Board was represented by Ruth Ammons, Assistant Attorney General. The Licensee appeared and represented himself. Captain Tim Thompson of the Enforcement Division of the Washington State Liquor Control Board appeared as a witness for the Board.

Based upon the evidence presented, the undersigned Administrative Law Judge enters the following Findings of Fact:

FINDINGS OF FACT

1. Trevor Naugle is a sole proprietor doing business as The Lazy Eye in Richland, Washington. He was born on July 18, 1989.
2. On or about June 21, 2010, the Liquor Control Board (Board) received from the Department of Licensing a Master Business Application from Mr. Naugle, as owner and sole proprietor, for a Cigarette and Tobacco Products License. As part of the licensing application process, Mr. Naugle was required to submit a Personal/Criminal History Statement (Criminal History Statement). The Criminal History Statement asks the applicant whether they have ever been arrested or cited, charged with a crime, convicted of a crime, jailed, been placed on probation, or forfeited bail or paid a fine over \$25. The History Statement informs the applicant that they must answer "yes" if any of the above had occurred, even if the charges were dismissed, deferred or changed. The applicant is informed that false or incomplete information may result in denial, suspension or revocation of a license, and that

the applicant must include events that occurred while the applicant was a juvenile. Mr. Naugle answered in the affirmative, and reported that he had offenses of DUI on November 26, 2009, and a DWLS 3rd degree on the same date, both charges pending at the time of application. He did not disclose any other pending charges or criminal convictions.

3. On April 7, 2006, Trevor G. Naugle was charged as a juvenile for the crime of Malicious Mischief in the First Degree by causing physical damage in excess of \$1,500 to property of another, in violation of Revised Code of Washington (RCW) 9A.48.070(1). On June 18, 2006, Mr. Naugle pled guilty to the crime of Malicious Mischief in the First Degree. On July 26, 2006, Benton/Franklin County Juvenile Court issued an Order of Deferred Disposition on this case; however, an Order to Revoke Deferred Disposition was issued by the Court on October 10, 2007 when Mr. Naugle failed to comply with the terms of the Order of Deferred Disposition. A dispositional hearing was held on October 10, 2007 in which Mr. Naugle was found guilty of Malicious Mischief in the First Degree.

4. On December 2, 2008, Mr. Naugle was charged with Possession of Marijuana and Possession of Paraphernalia in violation of Richland Municipal Code (RMC) 9.10.020 and RMC 9.11.020, respectively. On June 24, 2009, Mr. Naugle pled guilty to Minor in Possession of Marijuana; the charge of Possession of Paraphernalia was dismissed.

5. On February 8, 2009, Mr. Naugle was charged with Minor in Public After Consuming Intoxicants, in violation of RMC 9.24.070. On June 24, 2009, Mr. Naugle pled guilty to Minor in Possession/Consumption (MIP/C) in Benton County District Court.

6. On November 26, 2009, Mr. Naugle was charged with Driving while License Suspended in the Third Degree (DWLS 3), violating RCW 46.20.342, and Driving Under the Influence (DUI), violating RCW 46.61.502. Mr. Naugle pled guilty to DUI on August 4, 2010. The charge of DWLS 3 was dismissed.

7. On January 22, 2010, Mr. Naugle was charged with the offense of Assault in violation of RMC 9.04.010, and MIP/C in violation of RMC 9.24.070. On July 21, 2010, Mr. Naugle pled guilty to Assault in the Fourth Degree and MIP/C. He served 5 days in jail on the Assault conviction.

8. On May 4, 2010, Mr. Naugle was charged with violation of RCW 66.44.310, Minor Frequenting a Tavern. He plead guilty to this charge on August 4, 2010.

9. Lisa Red, Criminal History Records Investigation (CHRI) Coordinator for the Board, accessed Mr. Naugle's criminal record and noted the two convictions on June 24, 2009, and the January 25, 2008 conviction. She noted that Mr. Naugle had eight pending charges against him. Because he had convictions totaling 14 points, and the possibility of incurring an additional 14 to 52 points if convicted of the pending charges, Ms. Red recommended that the tobacco Product retailer license be denied. This recommendation was considered by the Board on or about July 27, 2010, at which time the Board agreed to deny the tobacco products retail license application.

10. At hearing, Mr. Naugle did not dispute the convictions or nondisclosure of the convictions or charges. He testified that he was ignorant of the paperwork and had had a

previous alcohol problem. He has stopped drinking and needs the license in order to have more products to sell at his store.

11. Based upon the above Findings of Fact, the following Conclusions of Law are entered:

CONCLUSIONS OF LAW

1. As an applicant for a retail tobacco license, Mr. Naugle., d/b/a The Lazy Eye, is subject to the jurisdiction of the Washington State Liquor Control Board pursuant to RCW 82.24.510, and 82.24.550. Proceedings involving agency action are considered adjudicative proceedings under the Administrative Procedures Act, Chapter 34.05 RCW. The Board has the authority to assign such proceedings to an Administrative Law Judge pursuant to Chapter 34.12 RCW. A proper hearing was provided in this case.

1. The Board has the authority to grant or deny Tobacco Product Retail License applications under RCW 82.24.510. In that statute, the Legislature has provided, in relevant part, as follows:

Application for the licenses shall be made through the master license system under chapter 19.02 RCW. The board shall adopt rules regarding the regulation of the licenses. The board may refrain from the issuance of any license under this chapter if the board has reasonable cause to believe that the applicant has wilfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the board has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a wholesaler's license or retailer's license and for considering the denial, suspension, or revocation of any

such license, the board may consider any prior criminal conduct of the applicant, including an administrative violation history record with the board and a criminal history record information check within the previous five years, in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW shall not apply to such cases. The board may, in its discretion, grant or refuse the wholesaler's license or retailer's license, subject to the provisions of RCW 82.24.550.

RCW 82.24.510(2).

2. Pursuant to the Legislative mandate, The Board has adopted as an administrative regulation Washington Administrative Code (WAC) 314-33-020. This regulation states as follows:

What criminal history might prevent an applicant from receiving or keeping a cigarette or tobacco products license?

- (1) For the purpose of reviewing an application for a license and for considering the denial, suspension, or revocation of any such license, the board may consider any prior criminal conduct of the applicant and criminal history record within the previous five years.
- (2) When the board processes a criminal history check on an applicant, it uses a point system to determine a person's qualification for a license. The board will not normally issue a cigarette and tobacco products license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned from date of conviction	Points assigned
Felony conviction	Five years	12 points
Gross misdemeanor conviction for violation of chapters 82.24 and 82.26 RCW	Five years	12 points
Other gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Nondisclosure of any of the above	n/a	4 points each

- (3) If a case is pending for an alleged offense that would earn eight or more points, the board will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the board may administratively close the application.

3. Malicious mischief in the first degree is a class B felony. RCW 9A.48.070. Possession of Marijuana is considered a misdemeanor, as is MIP/C. RMC 9.10.020 and 9.24.070. A DUI is a gross misdemeanor under RCW 46.61.502. Assault under RMC 9.24.010 is a misdemeanor. Minor Frequenting a Tavern is a misdemeanor. RCW 66.44.310.

4. The facts in this case clearly establish, and the Applicant does not disagree, he has had a significant criminal history. At the time of his application, the Applicant had at least 22 points based upon the table above and his convictions prior to June 21, 2010. He also had, at that time, pending charges totaling 21 points, notwithstanding the potential 24

points for nondisclosure on the application of six convictions and charges. Though it may be argued that one of the misdemeanor convictions should not be considered because more than three years have passed since the date of conviction, it is clear that the Applicant has more than the presumptive disqualifying eight points. Accordingly, this tribunal concludes that the Applicant, Mr. Naugle, does not qualify under the point system used to determine a person's qualification for a license in WAC 314-33-020.

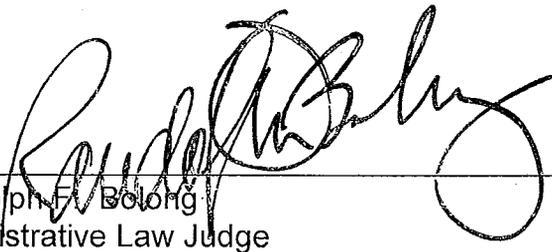
5. Pursuant to RCW 82.24.510, the Liquor Control Board may deny an application for a tobacco license, and they are given fairly broad discretion in reviewing and evaluating an applicant's criminal history. In this case, the Board has determined that Mr. Naugle should be denied a retail tobacco license. The undersigned concludes that this decision is consistent with their regulations and does not appear to be in error.

6. Based upon the foregoing Conclusions of Law, NOW THEREFORE,

INITIAL ORDER

IT IS HEREBY ORDERED, That the Board's Statement of Intent to Deny Tobacco License shall be SUSTAINED.

Dated at Yakima, Washington this 28th day of March, 2011.

By 
Randolph F. Bolong
Administrative Law Judge
Office of Administrative Hearings

A copy of this Proposed Findings of Fact, Conclusions of Law, and Initial Order was mailed regular and certified mail on the 28th day of March 2011 to the following parties and representatives:

Copies mailed to:

Trevor G. Naugle, Applicant
Ruth E. Ammons, AAG

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 be 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 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 (10) 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).

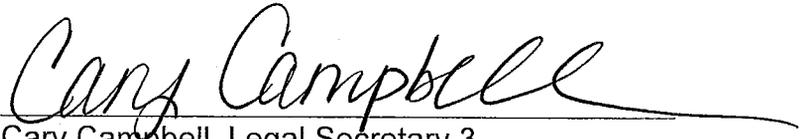
STATE OF WASHINGTON)

) ss.

COUNTY OF YAKIMA)

I hereby certify that I have this day served a copy of this document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent.

DATED at Yakima, Washington, this 28th day of March 2011.

A handwritten signature in cursive script that reads "Cary Campbell". The signature is written in black ink and extends across the width of the page.

Cary Campbell, Legal Secretary 3
Office of Administrative Hearings