

INDEX OF B. LICENSING/RENEWAL

B. LICENSING/RENEWAL

1. General Criteria for Licensing

a. Public Interest or Convenience

- 1.** Problems at Other Licensed Premises (OAR 845-005-0326(1))
- 2.** Proximity to Facilities (OAR 845-005-0326(2))
- 3.** Problem Areas (OAR 845-005-0326(3))
- 4.** Off-Premises Sales License (OAR 845-005-0326(4))
- 5.** Local Government Recommendation (ORS 471.166(1), OAR 845-005-0308)
- 6.** Public Opinion (OAR 845-005-0308(4))

b. Applicant's Personal Qualifications

- 1.** False Statements (ORS 471.313(4)(b), ORS 471.380(1)(b), OAR 845-005-0325(6))
- 2.** Tied-House (ORS 471.313(3), OAR 845-005-0320(1))
- 3.** Applicant is a Retail Sales Agent (OAR 845-005-0320(6))
- 4.** Failure to Complete Alcohol Server Education (OAR 845-005-0320(7))
- 5.** Insufficient Financial Responsibility (ORS 471.313(4)(i), OAR 845-005-0325(1))
- 6.** Unable to Communicate in English (ORS 471.313(4)(j), OAR 845-005-0325(3))
- 7.** Conviction History (ORS 471.313(4)(d), ORS 471.380(1)(d), OAR 845-005-0325(5), [OAR 845-005-0326(6)], ORS 670.280) (See also, C.1.i.)
- 8.** Alcohol/Controlled Substance History, Record, Habit of Use to Excess (ORS 471.313(4)(a), ORS 471.380(1)(a), OAR 845-005-0325(4))
- 9.** OLCC Compliance History (ORS 471.313(4)(g), OAR 845-005-0320(8), [OAR 845-005-0326(6)])
- 10.** Unfavorable Evaluation of Mental, Emotional or Physical Condition (OAR 845-005-0326(5))
- 11.** Lack of Good Repute and Moral Character (ORS 471.313(4)(f))

c. Operation or Location of Premises

- 1.** Hidden Ownership (ORS 471.313(4)(h), OAR 845-005-0311)
 - a.** Receipt of Profits (OAR 845-005-0311(3)(a))
 - b.** Compensation Out of the Ordinary (OAR 845-005-0311(3)(b))
 - c.** Contract to Manage (OAR 845-005-0311(3)(c))
 - d.** Investment in Licensed Business (OAR 845-005-0311(3)(d))
 - e.** Contract Purchaser (OAR 845-005-0311(3)(e))
 - f.** Unlicensable Person with a Financial Interest (OAR 845 005 0311(4))
- 2.** Failure to Operate as Proposed (ORS 471.405(1), OAR 845-005-0325(2), OAR 845-005-0355(5))

INDEX OF B. LICENSING/RENEWAL

- 3. Illegal Activities or Recent History of Altercations, Noisy Conduct or Disturbances ([ORS 471.295(4)(e)], [ORS 472.160(4)(e)], [OAR 845-05-025(10)])
 - 4. Lewd Establishment ([ORS 471.295(4)(e)], [ORS 472.160(4)(e)])
 - 5. Insanitary Establishment (ORS 471.313(4)(e))
 - 6. Insufficient Demand (ORS 471.313(1), OAR 845-005-0326))
 - 7. History of Serious and Persistent Problems (ORS 471.313(5))
- d. Incomplete Application (OAR 845-005-0314, OAR 845-005-0315)
2. Criteria Relating to Specific Licenses
- a. On-Premises Sales
 - 1. General Requirements for all Full and Limited On-Premises
 - a. Off-premises Use of License
 - b. Insurance
 - 2. Specific Requirements for Types of Full On-Premises
 - a. Food Service Requirements
 - b. Days and Hours of Operation
 - c. Outdoor Seating Areas
 - b. Off-Premises Sales
 - c. Temporary Sales
 - d. All Other License Types
 - 1. [PS Licenses]
 - 2. [RMB/Brewery-Public House]
 - 3. Wholesale Malt Beverage and Wine
3. Service Permits (SP)
- a. Miscellaneous SP Refusal Bases (ORS 471.380)
 - b. Failure to Complete Alcohol Server Education (ASE) (ORS 471.542; OAR 845-009-0100)
 - c. Service Permit Denial Criteria Rule (OAR 845-009-0020) and Revocations
4. Change of Operation
- a. Remodeling (OAR 845-006-0480(2), (3)(a))
 - b. Menu (OAR 845-006-0480(3)(c))
 - c. Hours (OAR 845-006-0480(3)(b))
5. Minor Postings (OAR 845-006-0340)
6. Conditions and Restrictions (OAR 845-005-0355)
7. Secured Party Authority to Operate (OAR 845-005-0450)

B.1. General Criteria for Licensing

B.1.a. Public Interest or Convenience

B.1.a.1. Problems at Other Licensed Premises (OAR 845-005-0326(1)) [(OAR 845-05-026(1))]

[\(return to index\)](#)

B.1.a.2. Proximity to Facilities (OAR 845-005-0326(2)) [Proximity to Facilities (OAR 845-05-026(2)(a); School Objections, [OAR 845-05-025(2)(a)]; Church Objections, (OAR 845-05-025(2)(b)); Hospital Objections, (OAR 845-05-025(c)]

[\(return to index\)](#)

Case: *Civic Food Mart*, OLCC-99-L-014, December 2000.

Facts: Applicant sought to locate the premises within 500 feet of a park and child-oriented facility.

Abstract: The Commission found that when the premises was previously licensed, there were problems in the park which included alcohol-related litter (broken glass), consumption of alcohol in the park, intoxicated men passed out in the park, loud music from cars illegally parked near tables in the park, panhandling, and people being confronted and disruptive in the park and around the community center. The Commission concluded that alcohol sales at the proposed premises would adversely affect the park, and that OAR 845-005-0026(2) provided a basis to deny the license. However, the Commission concluded that good cause to overcome the denial basis existed in that the proposed operation was consistent with the zoning where the proposed premises was to be located, the proposed operation was consistent with the general area, and the adverse impact would not unreasonably affect the park and community center. The finding that the adverse impact would not unreasonably affect the facility was based on the conclusion that the area where the premises and facility are located had changed due to factors other than the fact that liquor was no longer sold at this location, that the previous problems had been taken care of largely due to police and community involvement, and that there was a change in the character of the neighborhood. These changes, coupled with Applicant's responsible mode of operation, experience, and good compliance record at a previous premises also located next to a park, convinced the Commission that, if restrictions were placed on the license, the adverse impact of alcohol sales at the premises would not unreasonably affect the park and community center.

Case: *Fast Market*, OLCC-94-L-006, May 1995.

Facts: Package store applicant denied a license for premises within 500 feet of a public park and in an area with a history of serious and persistent problems involving unlawful activities and disturbances, including public drinking, minors in possession, gang and drug activity. Additionally there were several PS licensed premises in close proximity to applicant's premises. The premises had previously been licensed by prior owner, and license was cancelled due to applicant's poor moral character and problems around the premises. Applicant's argued, among other things, that the Commission was acting arbitrarily in not granting its application while it granted others in the same area with or without restrictions.

Abstract: The Commission is required to treat similarly situated licensees consistently unless the inconsistency can be reasonably explained. Here, there are reasonable explanations for why similar premises were treated differently in being licensed.

Key Words/Phrases: PS, package store, inconsistent treatment, problem area, arbitrary, adverse effect, "reasonable explanation," public interest or convenience, 500 feet, public park

Case: *Dekum Food Market*, OLCC-90-L-005, May 1991.

Facts: Package store applicant denied a license for premises within 500 feet of a public park and in an area with a history of serious and persistent problems involving unlawful activities and disturbances. Basis of the denial was the newly adopted OAR 845-05-026, which applied to all applications pending as of April 1, 1990. Applicants argued that the rule arbitrarily discriminated between them and similarly situated licensees, and that it was not fair to deny a license for reasons Applicants have no control over, such as youth gang activity in the area.

Abstract: OAR 845-05-026(2) did not provide a reason to deny the license where the evidence failed to show that the premises would have an adverse impact on the park. The fact that when the applicants had a temporary license to sell alcoholic liquor none of their customers consumed in the park or littered the park with alcoholic beverage containers was persuasive evidence that the premises would not adversely impact the park. And, even if the evidence had shown adverse impact, the applicant showed good cause to overcome any adverse impact because the operation was consistent with the zoning and the general character of the area, and the adverse impact would not unreasonably affect the park.

Key Words/Phrases: PS, package store, discriminatory, discrimination, adverse impact, adverse effect, problem area, public interest or convenience, 500 feet, public park

Case: *Plaid Pantry Market No. 144*, OLCC-85-L-042, September 1986

Abstract: Package Store license denied where license would significantly interfere with the treatment of resident alcoholic patients at hospital department located within 500 feet. (OAR 845-05-025(2)(c)).

Good cause found to overcome church objections where evidence did not prove that license issuance would interfere with any of the activities peculiar to churches that OAR 845-05-025(2)(b) is designed to address.

OAR 845-05-025(2)(c) applied where a hospital department that administered medical treatment to resident patients was located within 500 feet of the proposed outlet, even though the main hospital was located two miles from the proposed outlet.

Case: *7-Eleven Food Store*, OLCC-84-L-014, May 1985.

Abstract: Good cause was found for overcoming the objection of a church when the evidence did not show that the license would have an adverse effect on the functioning of the church, and because an existing licensee was near to the church. Southland Corporation,

Church objection that patrons of proposed licensed premises will engage in criminal acts must be supported by something more than speculation. (OAR 845-05-025(2)(b)).

Case: *Pogy's Pub*, April 1984.

Abstract: A church's objections showed unfavorable consideration where license issuance would be likely to increase noise and shouting and would be disturbing to the church and its parsonage. The Commission noted that the church had been at its location longer than the applicant, and that the church had objected to the granting of the original beer and wine license to the applicant. (OAR 845-05-025(2)(b))

Case: *Waylon & Willie's, Inc., Waylon & Willie's*, June 1983.

Abstract: Good cause shown to overcome church objection because peak hours at church and tavern do not conflict, because no specific interference with church activities shown, because tavern located in downtown area zoned appropriately for tavern, and because strong public support for tavern shown. (OAR 845-05-025(2)(b))

Case: *Mill Creek General Store*, January 1983.

Abstract: Application for a Package Store license was granted despite church opposition because the church facility operated only a small portion of the year and because the distance from the store to the church indicated that the actual effect of the license upon the church would be small. (OAR 845-05-025(2)(b))

Case: *Corbett Cow*, June 1984.

Facts: A Package Store application was denied where the store would be located immediately across the street from the local schools, where there was a teenage drinking problem in the community and where the next nearest PS outlet was only .25 miles away.

Abstract: Objections concerning the public health and safety found to be of greater weight than support based on public convenience.

Church objections held not to apply as refusal grounds where church's objections were not based on any anticipated conflict between the operations of the applicant and the church. (OAR 845-05-025(2)(b)).

B.1.a.3. Problem Areas (OAR 845-005-0326(3)) [OAR 845-05-026(3)]

[\(return to index\)](#)

Case: *B Complex*, OLCC-01-L-002, February 2002.

Abstract: Applicants failed to demonstrate that sale or service of alcoholic beverages at the premises would not substantially contribute to the problems in the area where: (1) applicants have no consistent track record of problem-controlled alcohol service at the premises; and (2) they have not demonstrated that the introduction into the problem area of large numbers of persons at music events 2-3 times a week, combined with alcohol service, will not contribute to existing problems associated with alcohol consumption (public drinking and drunkenness, public urination, and litter), the large number of additional automobiles parked on the street (car prowls), competition for parking spaces (trespass and potential assaults), and the exposure of large numbers of patrons to the dangers of the area while transiting between the premises and automobiles on unlit streets (panhandling, theft, and potential assaults).

Other uses to which a building may be put should a liquor license be refused is irrelevant to a determination of good cause. To find otherwise would, ultimately, require the Commission to explore and determine that there are alternative uses for a premises that would not have a greater adverse impact on the problem area before denying a liquor license under OAR 845-005-0326(3). Such an undertaking would be far outside the charge or expertise of the Commission.

To satisfy OAR 845-005-0326 (3)(b)(B), the plan must demonstrate a willingness and the ability to adequately control the proposed premises and patrons' behavior near the licensed premises. Willingness can, in many instances, be demonstrated by the existence of a reasonable compliance plan; ability cannot. To determine ability, the plan must be examined in the context of the dimensions of the business proposal as it relates to the sale or service of alcohol, the character of the problem area, and other facts that bear upon a determination of whether the plan and its agent are likely to succeed, in the context of the problem area and the business proposal, in the objective of controlling the proposed premises and the patrons' behavior near the premises.

While selecting out types of music entertainment that tend to attract problem crowds is relevant and indicative of a willingness to control the premises and the patron's behavior, an exclusive focus on the type of entertainment overlooks the impact of the sheer number of people, combined with the service of alcohol, who are being introduced into a problem area, with its particular characteristics and conditions. Such a narrow focus foregoes the inquiry into the impact that number of patrons, interacting with those conditions, will have on existing problems of the area and the consequent ability to control exacerbation of those problems, if any.

The specific license restrictions applicants offered to accept, and which the Commission considered under OAR 845-005-0355(1)(a), were insufficient to provide good cause to overcome the problem area refusal basis.

The Commission has considered the following factors as bearing on the willingness aspect of the good cause requirement: the willingness to have and operate under a compliance plan; the willingness to have restrictions placed on the license; cooperation with Regulatory staff, law enforcement personnel, and the community impacted, particularly in developing a plan and collaborative problem-solving commitments; financial investment; and membership in and commitment to the community. Factors bearing on ability have been: the nature and scope of the business proposal as it relates to the sale/service of alcohol; the contents of the plan to control the impact of alcohol service/sales; the acceptance of restrictions to the license that will ensure ability to control; applicant's compliance history; the current levels of problem activities in the problem area, without the addition of another liquor outlet; the character of the problem area, including unique conditions affecting the ability to control, such as history of the establishment, history of the area, type of population, etc.; and support or opposition by the community based upon perceived impact of alcohol sales/service.

The Commission concluded that applicants did not have a plan that demonstrated ability to control the premises

and the behavior of patrons near the premises where insufficient security staff have been committed to patrolling the extended area hundreds of patrons would have to traverse on foot between the premises and available parking, through an unlit area with identified existing problems and a high transient population; and where conditions specific to the location prevent applicants from having the ability to control problems that would arise if applicants' plan to serve alcohol and entertainment to 640 patrons 2-3 nights a week was allowed a license. These unique conditions include the physical constraints of the area; the persistence of high transient, homeless, and the alcohol and/or drug-impacted population in the area; the history of serious and persistent problems of the prior licensee at this premises; the neighborhood's history of serious and persistent problems; the persistence of identified problems, without the addition of large numbers of people several times a week with direct access to alcohol; and the exacerbation of the problems projected from that addition. Applicants' plan for the addition of crowds of patrons the size proposed, when coupled with the service of alcohol, and projected into the area near the premises, given its character and unique conditions, is not a plan demonstrating applicants' ability to adequately control patrons' behavior near the licensed premises.

Potential traffic congestion and shortage of parking spaces in the area do not, in themselves, constitute grounds for license refusal under OAR 845-005-0326(3) as unlawful activities, noise, or disturbances.

While the fact that a premises is located in an alcohol impact area is not, by itself, a basis to deny a license, the fact that an area has been so designated is evidence to show that the area has the kind of problems identified in the underlying criteria establishing the alcohol impact area designation.

Case: *Civic Food Mart*, OLCC-99-L-014, December 2000.

Abstract: The Commission found that the area where the premises will be located had a history of serious and persistent problems which provided a basis to deny a license to Applicant, as evidenced by: unlawful activities; noise, and disturbances, including loud and threatening behavior; drinking in public; public urination; panhandling; loud music; drug activity; arguments and fights; and excessive litter (broken glass). The Commission concluded there was good cause to overcome the denial basis where Applicant had a comprehensive plan, and agreed to restrictions, which, together, demonstrated a willingness and ability to adequately control the proposed premises and patrons' behavior near the licensed premises.

Case: *Lourdes Family Bakery*, OLCC-97-L-016, July 1998.

Abstract: The Commission concluded that the proposed premises would be located in an area that has a history of serious and persistent problems pursuant to OAR 845-005-0026(3), where the record showed the following: the Milton-Freewater Police Department received more calls for service to this area than other areas of town B approximately 1,000 calls for service concerning unlawful activities and disturbances within an approximately one and one-half year period; youth gangs, gang fights, graffiti, and vandalism had been reported in the area; and 18 incidents involving illegal controlled substances had been reported in the one year prior to the hearing at liquor establishments located across the street.

However, the Commission concluded that Applicants showed good cause to outweigh the problem area refusal basis because Applicants showed that they had a willingness and ability to control the premises. The Commission accepted as evidence of willingness, the Applicants' involvement in the community as demonstrated by his purchase of the real property the premises is located upon, the operation for a period of time of a bakery, his active participation in the local chamber of commerce, and providing jobs for others at his premises. The Commission accepted as evidence of ability to control the premises the fact that problem incidents have decreased at the premises at Applicants' initiative, and that Applicants have a plan for operating the premises that will enable them to control the premises in the future. The Commission granted a license with restrictions regarding how the premises are to be operated.

Case: *Fast Market*, OLCC-94-L-006, May 1995.

Abstract: Despite an applicant's willingness to control problems, the Commission denied package store license after concluding that the sale of alcohol will substantially contribute to the neighboring area's problems with disturbances and unlawful activities based upon: the market's proximity to a park and a parking lot, the history of problems in the park and parking lot when alcohol was sold at this market in the past, the absence of such problems near the store since after the preceding owner's license was canceled, and the current gatherings and gang activity near other alcohol outlets in the neighborhood that are associated with the sale of alcohol at those outlets.

Case: *Jammers West, Inc.*, OLCC-94-L-005, March 1995.

Abstract: The Commission concluded that the premises would be located in a problem area and, therefore, there was a basis to deny the license. In reaching this decision, the Commission determined to give more weight to the view of the city where the city's view was supported by facts in the record. Such facts included: business owners in the downtown area formed walking patrols to discourage drug activity in the area; the city council passed an ordinance in response to and for the purpose of controlling drug activity in the area; and law enforcement officials for surrounding jurisdictions identified the area as a main problem area for drug activity. The Commission concluded that there was not sufficient good cause to outweigh the problem areas refusal basis, in spite of the applicants' good compliance record at a premises they currently operate and where the applicants had a compliance plan for the proposed premises. The Commission concluded that the applicant did not have the ability to adequately control the premises because he had a record of using alcohol to excess and was involved in a gun incident at his other premises.

Case: *Dekum Food Market*, OLCC-90-L-005, May 1991.

Abstract: The Commission granted a license with restrictions where the applicants showed good cause to overcome the license denial basis of being located in an area with serious and persistent problems. Applicants were able to show that alcoholic beverage sales at the premises would not substantially contribute to the problem and that applicants had the willingness and ability to adequately control the premises and patron's behavior near the premises.

When the Commission adopted OAR 845-05-026(3) it intended to provide a reason for denial based solely on a premises' location in an area with serious and persistent problems. The problems do not need to be alcohol-related. The Commission determined that it did not want the conduct of the applicant to be a factor in proving a prima facie case for denial under this rule.

B.1.a.4. Off-Premises Sales License (OAR 845-005-0326(4)) [Package Stores (OAR 845-05-026(4))]

[\(return to index\)](#)

B.1.a.5. Local Government Recommendation (ORS 471.166(1), OAR 845-005 0308)[(ORS 471.210(3); [OAR 845-05-025(1))]

[\(return to index\)](#)

Case: *Balzer's Pub & Grill*, OLCC-99-V-019, March 2001.

Abstract: The Commission has previously determined that former ORS 471.210(3) (recommendation from local governing body) does not provide a separate basis for denying or canceling a liquor license. Similarly, chronic nuisance warning letters would not provide a basis for canceling a liquor license.

Case: *Pink Pearl East*, OLCC-89-L-004, December 1989. [Reversed and remanded on other grounds, *Martini v. OLCC*, 110 Or App 508 (1992)].

Abstract: ORS 471.210(3) (recommendation from local governing body) does not provide a separate basis for denying a license. Nevertheless, the Commission can examine the factual information provided by the local governing body.

Case: *Sandy Jug*, OLCC-88-L-010, October 1988.

Abstract: The Commission concluded that the City Council's negative recommendation was not a persuasive basis to refuse the license when weighed against the more fully developed facts in the record of the hearing. The record of the hearing contained information that was favorable to the licensee that was not considered by the City Council and there was no opportunity to question witnesses at the City Council meeting. (OAR 845-05-025(1)).

Case: *Seven Star Market*, OLCC-88-L-003, July 1988.

Abstract: Adverse city council recommendation was not entitled to weight as an indicator of public opinion because it could not be determined what information the city considered and, thus, whether the information the city considered was liquor-related. (OAR 845-05-025(1)).

Case: *ARCO AM/PM Mini-Market*, OLCC-85-L-048, October 1986

Abstract: Good cause may be shown to overcome a local government recommendation where the recommendation is founded on reasons which conflict with the Commission's own criteria on the same subjects. *Fleetwood Bar & Buffet*, OLCC-87-L-005, November 1987; *Brownsboro Tavern*, OLCC-85-L-009, December 1985. (OAR 845-05-025(1)).

Case: *El Paso*, OLCC-86-L-021, March 1987.

Abstract: City council's concern that licensees did not cooperate with the neighborhood organization was not a persuasive basis for a negative city recommendation because the lack of cooperation did not, in this case, involve the effects of a liquor license. (OAR 845-05-025(1)).

Case: *1,000 Friends of Oregon v. Wasco Co. Court*, 80 Or App 532, 723 P2d 1034 (1986).

Abstract: A local government official who makes a quasi-judicial decision must disclose a business relationship with one of the affected parties to the other affected parties. Failure to do so renders the local government's decision void. (OAR 845-05-025(1)).

Case: *ARCO AM/PM Mini-Market*, OLCC-85-L-048, October 1986

Abstract: Little weight should be given to local government recommendations against an application for reasons

that have little to do with the effects of the liquor license. (OAR 845-05-025(1)).

Case: *Dimitri's Grocery*, May 1985.

Abstract: Good cause is not shown to overcome a negative local endorsement where the applicants have corrected some of the problems cited by the local government body, but other important problems remain uncorrected.

A local government endorsement is based on due consideration where the local government's proceedings allowed the applicants and interested members of the public a thorough opportunity to present their views. (OAR 845-05-025(1)).

A local government's reasons for a refusal recommendation on a license application may be inferred from the discussion at the proceedings where the recommendation was made.

Case: *Rainbow Tavern*, November 1984.

Abstract: Although city council, in voting to deny application as reconsideration of its first action to deny, did not state reasons for second vote, Commission inferred that reasons stated at the first consideration were continuing basis for second vote. Commission also concluded that city council's finding of "sufficient outlets" was reasonable and that the applicant failed to show good cause to overcome this basis for the city council's negative endorsement. (OAR 845-05-025(1)).

Case: *Wapato Store*, January 1984.

Abstract: The Commission granted renewal of a license despite a negative local endorsement because applicants had no notice of the County Commission meeting and thus did not have a reasonable opportunity to be heard. (OAR 845-05-025(1)).

Case: *Rotten Roberts, Inc. v. OLCC*, 65 Or App 351, 671 P2d 753 (1983).

Abstract: Court affirmed denial of license based upon City Council recommendation although part of information considered by council was false. (OAR 845-05-025(1)).

Case: *Elk City Tavern*, April 1983.

Abstract: Unexplained city refusal recommendation held insufficient as basis for denial, citing *Morishige v. OLCC*, 29 Or App 651, 659, 564 P2d 1359 (1977). (OAR 845-05-025(1)).

Case: *Morishige v. OLCC*, 29 Or App 651, 564 P2d 1359 (1977).

Abstract: Specially concurring opinion argued that the Commission may not deny a license based solely on an unreasoned city recommendation. To do so would be an unqualified delegation of the Commission's licensing power and would, therefore, exceed the Commission's authority. (OAR 845-05-025(1)).

B.1.a.6. Public Opinion (OAR 845-005-0308(4)) [(OAR 845-05-035)]

[\(return to index\)](#)

Case: *Sandy Jug*, OLCC-88-L-010, October 1988.

Abstract: The Commission has held that it will not refuse an application because of public opinion based on reasons where the result under the Commission's criterion on those same reasons is that the license should be granted. Specifically, where public opinion opposed the license because of illegal activities and noisy activities at the premises, but where the Commission determined that the applicant had shown good cause to overcome illegal activities and noisy activities, the Commission concluded that the public opinion did not establish a basis to refuse the license.

Case: *Seven Star Market*, OLCC-88-L-003, July 1988.

Abstract: Adverse city council recommendation was not entitled to weight as an indicator of public opinion because it could not be determined what information the city considered and, thus, whether the information the city considered was liquor related.

Case: *ARCO AM/PM Mini-Market*, OLCC-85-L-048, October 1986

Abstract: The Commission should not deny an application due to public opinion on an aspect of an application, where the result under a Commission license criterion that deals with same subject is that the license should be granted. *Fleetwood Bar & Buffet*, OLCC-87-L-005, November 1987.

The smaller the minority of persons opposed, the more compelling their reasons must be to allow the conclusion that public opinion weighs against license issuance.

Case: *El Paso*, OLCC-86-L-021, March 1987.

Abstract: Local opposition to nude entertainment was not, in itself, a persuasive basis to deny a liquor license.

Local opposition to nude dancing was a potentially persuasive concern where the nude dancing could attract problems, such as crime, noise and other disturbances that directly affect the livability of a neighborhood. However, licensee had exerted strong management control to the extent that such problems were not pervasive and, consequently, were not a persuasive basis for denial.

Case: *Plaid Pantry Market No. 144*, OLCC-85-L-042, September 1986.

Abstract: The objection that competition from the applicant would financially hurt a nearby pharmacy was not given any weight because the Commission does not have any authority to regulate competition between licensees and non-licensees.

Opposition based on likely health and safety dangers related to effect of proposed outlet on nearby recovering alcoholics carried greater weight than support based on convenience.

Case: *Plaid Pantry Market No. 134*, April 1986.

Abstract: Telephone survey of public opinion held more reliable than mail survey.

Professional survey of 300 persons held more reliable evidence of public opinion than city council recommendation based on testimony of 20 persons because of the larger number of persons expressing opinion in the professional survey.

It is beyond the Commission's authority to deny an application based solely on public objections to the consumption of alcohol.

Case: *7-Eleven Food Store*, OLCC-84-L-014, May 1985

Abstract: Objections that license would cause traffic and parking problems were found to be within control of the city, and thus entitled to lesser weight.

Objections relating to the effect of the enterprise itself, rather than the effect of the liquor license, not considered by the Commission.

Objections based upon claim that patrons and employees of the licensed premises would engage in criminal or antisocial behavior found unpersuasive because based on speculation.

Case: *Dimitri's Grocery*, May 1985.

Abstract: A local government recommendation based on extensive public testimony is itself an indication of public opinion.

Public opinion that has little to do with the effects of a liquor license, such as concerns about the applicant's short changing customers, should be given little weight under OAR 845-05-035.

Case: *Dave's Cozy Corner*, July 1984.

Abstract: Adverse public opinion based on speculation is entitled to little weight.

Case: *Corbett Cow*, June 1984.

Abstract: Opposition based on health and safety dangers related to teenage drinking carried greater weight than support based on the convenience of having another place to buy beer and wine in the community when there was an existing Package Store outlet only .25 miles away.

Case: *Leaburg Tavern*, January 1983.

Abstract: Application was denied because protestors lived closer to the premises than the supporters, and because the bases for objection were entitled to more weight than the bases for support.

B.1.b. Applicant's Personal Qualifications

B.1.b.1. False Statements (ORS 471.313(4)(b), ORS 471.380(1)(b), OAR 845-005-0325(6)) [(ORS 471.295(4)(b), ORS 471.380(2), [ORS 472.160(4)(b)], OAR 845-05-025(6); [OAR 845-05-015(3)], ORS 471.425(1))]

[\(return to index\)](#)

Case: *el Jalisciense Night Club*, OLCC-11-L-005, January 2012. (FOD)

Facts: Applicant for an O license checked “no” on application question regarding convictions. Applicant had 16 separate traffic offenses including two misdemeanors in Idaho between June 1998 and April 2010. Applicant acknowledged having the violations to an investigator and did not adequately explain why he didn't disclose them. Applicant requested a hearing but did not appear.

Abstract: The Commission has grounds to refuse to grant Applicant a license because he provided false and misleading information on his application. OAR 845-005-0325(6). Applicant did not appear at hearing to show evidence of good cause to overcome the refusal.

Key Words/Phrases: license application, O license, refusal, false statement, applicant did not appear

Case: *El Paisano Superstore*, OLCC-10L-010, April 2011.

Facts: Co-Applicant was arrested for check fraud. Co-Applicant did not answer question on licensing application related to arrests. Co-Applicant did disclose the arrest for check fraud on a City of Portland form. Co-Applicant was subsequently convicted of felony Identity Theft. When questioned by an OLCC investigator about her failure to disclose the arrest, Co-Applicant stated that she forgot about it.

Abstract: A long line of Commission final orders establish that a false statement is material if it meets any of the following three tests: (1) the subject of the false statement is a basis for the Commission to refuse or cancel the license (*Trocadero Inn*, OLCC-90-V-055, February 1991); (2) the false statement inhibits the Commission's ability to investigate a person's eligibility for a license (*Punjab Tavern*, OLCC-91-L-015, April 1992); or (3) the false statement is intentional (*AM/PM Market No. 756*, OLCC-95-L-031, July 1996). Thus, a false statement that is intentional is a material false statement, but a material false statement under the first two tests does not also need to be intentional. The test for determining the intentionality of a false statement is whether the person making the statement intended to mislead the Commission when the statement was made. *Thomas Creek Steak and Seafood*, OLCC-00-L-008, April 2001. See also *Yesenia Bakery & Meat Market* (OLCC, Final Order, 97-L-011, March 1998) (the failure to provide information for several years on renewal applications showed a clear intent to mislead the Commission about applicant's conviction history).

Applicant's intentional false statements to the OLCC in her Individual History Form and to its investigator constitute material false statements and provide a basis to refuse the license application pursuant to OAR 845-005-0325(6). Separately, Applicant's false statements were also material because the subject of the false statement, the recent arrests for identity theft, provided a basis to refuse the license because of the nature of the crimes committed. See, e.g., ORS 471.313 (d).

Key Words/Phrases: false statement, nature of the crime, identity theft, check fraud, forgery, material, intentional, mislead, intent

Case: *Silver Lace Club, fka Stables Bar & Grill*, OLCC-10-L-001, February 2011.

Facts: Licensee did not list her son's arrest on renewal application because she didn't believe he had a financial interest in the business because he didn't own stock in the Licensee corporation. The son served as manager with no compensation, and was VP of the Licensee corporation.

Abstract: The renewal application does not ask for arrest and conviction evidence about all persons who have an interest in the business. Rather, it asked for such information about "anyone who holds a *financial* interest in the licensed business." According to ORS 471.757 and OAR 845-005-0311(4), Welch did not have a financial interest in the business. In OAR 845-005-0311(3) and (4), there is a distinction between having an "interest in the business" and having a "financial interest in the business." Although Welch has an interest in the business through exercising control over, and participating in, the business' management, he has not, according to the evidence presented, given any money or property for the licensed business. He has invested his time and energy serving as the premises' manager since January 2009, but has not rented or leased property to the business, invested or loaned money to the business or given money or property to the licensed business. Therefore, Welch does not meet the listed examples of persons having a "financial interest in the business" under OAR 845-005-0311(4).

Key Words/Phrases: arrest, disclose, false statement, financial interest

Case: *Baseline Market*, OLCC-07-L-002/002A, June 2008.

Facts: Licensees, husband and wife, submitted several renewal applications which did not list the husband's convictions for sale of cigarettes to a minor, DUIs, and sales of alcohol to a minor. Licensees did not speak good English, did not read English, and were separated during some of husband's arrests. Licensees claim the wife did not know of the convictions, and that husband did not intend to deceive the Commission.

Abstract: The Commission recognizes that English is not the first language of either Mr. or Mrs. Cho. However, that does not excuse their failure to disclose information that was required by OLCC when they applied to renew their license. Likewise, licensee wife's failure to comprehend written English well and lack of knowledge of her husband's legal problems does not provide evidence of good cause to overcome the refusal basis.

Applicants and Licensees are expected to provide truthful and complete answers to OLCC questions. That a licensee did not review the misinformation that was provided by a co-licensee does not provide an excuse for the misinformation. Reliance on another to fill out a form does not provide a licensee or applicant with a good cause excuse that will overcome a false statement. Moreover, co-licensees and co-applicants are responsible for the acts and omissions of each other.

Key Words/Phrases: renewal, refusal basis, false statement, convictions, English language difficulties

Case: *Zeba Bistro*, OLCC-05-L-003, June 2007.

Facts: Licensee and her husband were alleged to have misrepresented ownership in their restaurant business on license applications, and the license investigation reveals long histories of litigation against both husband and wife in their business dealings, false statements regarding the husband's lack of role in the licensed businesses, and indications that both used corporate forms to perpetrate fraud against others. Both had large amounts in uncollected judgments against their businesses.

Abstract: The OLCC is authorized to refuse to issue a license when any person with a financial interest in the business is unlicensable. After a lengthy analysis of the various alleged false statements by both applicant and her husband, the Commission concludes that numerous false statements were made and were a basis to refuse the application.

Where the license applicant intentionally misrepresents the true ownership of the business in order to secure the license, the Commission has held that such false statements demonstrate a lack of honesty in dealing with government that constitutes poor moral character.

When the corporate entity is used to accomplish fraud or injustice, the courts will disregard it and will look through the corporate form to the real actor or actors in the transaction.

Key Words/Phrases: application refusal, unlicensable person, financial interest, false statement, not of good repute and moral character, credibility determination

Case: *Longhorn Bar & Grill*, OLCC-06-L-001, October 2006.

Facts: Applicant for Full On-Premises/Off-Premises sales licenses was refused because of applicant's history of using alcohol and controlled substances to excess. Applicant failed to list several convictions, the name of his spouse, and all alcohol assessments and treatment. Applicant claimed he had not drunk since his last arrest, and although he made mistakes on his application he did not intend to deceive the Commission.

Abstract: Whether Applicant has a *recent* history of using alcohol to excess under the existing interpretation requiring use to excess within the past year is disputed and requires a credibility determination. In this case, testimony from others regarding more recent drinking by applicant was more credible than applicant's own testimony.

Filing for divorce is not the same as being divorced. In applying for a license while in the process of divorce, the applicant's negligent withholding of his wife's name is a material false statement because it may have impeded the investigation into the licensability of his wife.

Key Words/Phrases: credibility determination, license refusal, false statement, material, divorce, withholding, investigation, name of spouse

Case: *Shan Creek Café*, OLCC-05-L-005, February 2006.

Facts: Applicant intended to open a café in Grants Pass. Applicant's husband was a logger and was not intended to be a part of the business but was listed on the application because he is a spouse. He listed a theft conviction but forgot to list a probation violation and Assault IV misdemeanor conviction. The local sheriff's office and city recommended denial because of the omissions. The OLCC investigator spoke with applicant's husband about the omissions and was told that he didn't think the probation violation needed to be listed because it was all part of the theft conviction, and that he "plain forgot" about the assault conviction because it was a family dispute that he pled guilty to and paid a fine. The investigator recommended granting the license with or without a restriction, stating that she believed the omission was not intentional and regardless they wouldn't have been a basis to deny the license independently.

Abstract: Beginning with *Star Sushi*, OLCC-01-L-015, December, 2001, the Commission has, in the licensing context, effectively required only that a misrepresentation be material. Intentionality is just one means of proving materiality. In the violation context, in cases involving license cancellation or suspension, the Commission has consistently required only that a false statement be material. (See, e.g., *Mac Club*, OLCC 04-V-065, July 2005; *Trocadero Inn*, OLCC 90-V-055, February 1991; *Frenchies Tavern*, OLCC 88-ES-001, June 1988). A false statement is material if it relates to a matter that is a basis for license refusal (*Trocadero Inn, supra.*; OLCC 86-SP-017, October 1986), or if it inhibited the Commission's ability to investigate a person's eligibility for a license (*Punjab Tavern, supra.*, or if it was made with intent to mislead the Commission (*AM/PM Market No. 756, supra.*; *Thomas Creek Steak and Seafood, supra.*).

There was no evidence in this case that the applicant's failure to mention the misdemeanor conviction was intentional and it did not inhibit the investigation. A false statement regarding a misdemeanor is not a material misrepresentation, and therefore not a basis to refuse a license.

Key Words/Phrases: false statement, material, intentional, basis for license refusal

Case: *La Gran Cantina*, OLCC-00-V-024/-L-009/-L-010, June 2002.

Abstract: False statements by son of licensee denying the bank depository agreement, denying an ownership interest in the business, and denying his involvement in the management or control of the business were material false statements, providing a basis to refuse to renew the license.

Case: *Star Sushi*, OLCC-01-L-015, December 2001.

Abstract: Applicant denied cheating on the server education test. That denial is evidence of untruthfulness, but is not material to a license refusal basis. It is not a material false statement unless intentionally made. The statement was made with the intent of misleading OLCC into granting the license application, and is "material" on that basis.

Applicant provided false information on the application when he denied use of any other names. Applicant has used a different first name in the past, but OLCC did not establish that this omission inhibited its ability to investigate his eligibility for licensure, or would have resulted in evidence of another ground for license refusal, or that it was willful. It is not a material omission.

The false statement on the history form of Applicant's son (to become manager) was not made by Applicant and is not attributed to Applicant as to materiality or intent.

Applicant's omission of a prior misdemeanor conviction on his application and his denial of same when confronted are not material to a license denial basis and, consequently, not a material false statement unless intentionally made. Applicant's statement was deliberately made with the intention of misleading the Commission, and is "material" on that basis.

Applicant's denial that he had been drinking at the time of a prior crime (and the existence of a prior citation for drinking on duty while licensed in Hawaii), is material to a determination of whether Applicant is in the habit of drinking to excess, a refusal basis. This denial is a material false statement, independent of intentionality.

Applicant's denial of prior action taken against his license in Hawaii is not material to a license refusal basis. ORS 471.313(4)(g) does not include or refer to the license compliance history in another state. It is not a material false statement unless intentionally made. The statement was made with the intent of misleading OLCC into granting the license application, and is "material" on that basis.

Case: *Thomas Creek Steak and Seafood*, OLCC-00-L-008, April 2001.

Abstract: The Commission has concluded that the test for whether an intentional false statement has been made is whether the person making it intended to mislead the Commission when the statement was made. Where the applicant provided the Commission with his Oregon conviction records, which showed his more recent criminal and driving convictions, but failed to disclose five California convictions (the most recent of which was 16 years prior to the application), the failure to provide information about the California convictions did not prove an intent to mislead the Commission.

Case: *Yesenia Bakery*, OLCC-97-L-011, March 1998.

Abstract: Co-licensees, husband and wife, applied for renewal of their PS license. The Regulatory Program proposed to refuse to renew the license based upon the husband's false statements (omission of several of husband's convictions) on the current renewal application and prior renewal applications for the same premises. The Commission conclude that the omissions were material and intentional, even though the applications were filled out by his wife or bookkeeper and husband did not review the applications before they were submitted to OLCC. The Commission found an absence of good cause to outweigh the refusal basis in that: husband had been cautioned in the past about false statements with regard to convictions and was on notice to provide full and truthful disclosure; reliance on another to fill out the application does not provide a good cause excuse, particularly when filled out by a co-licensee or co-applicant; and husband was aware he had an extensive conviction record and should have made affirmative efforts to learn the extent of those convictions and to report them accurately as required by the Commission.

Case: *Two by Six*, OLCC-96-L-006, March 1997.

Abstract: OAR 845-05-025(6). The Commission concluded that the evidence failed to prove that licensee made a false statement when she denied that she was consuming a drink containing alcoholic liquor. In the case, the Regulatory staff charged that licensee made a false statement when she told them that she was drinking a non-alcoholic drink and the evidence failed to prove that her statement was false because the evidence failed to prove by a preponderance that she was drinking alcoholic liquor.

Case: *Royal Inn Restaurant*, OLCC-96-L-018, May 1997.

Abstract: The Commission decided to not deny applicants license for false statements, where the applicants material false statements were not intentional and were the result of applicants being illiterate in English and reasonably relying upon the good faith but flawed translation of their son.

Case: *AM/PM Market No. 756*, OLCC-95-L-031, July 1996.

Abstract: Applicants are husband and wife. Husband does not read or write English well and wife wrote answers to relevant Commission questions about husband's criminal background on husband's behalf. Husband contends he did not review the application before he signed it. Applicants claim the omissions were inadvertent and that they did not intend to mislead the Commission.

With respect to arrests and convictions, Applicants disclosed 2 traffic violations, but omitted 2 criminal convictions and an arrest resulting in diversion (Disorderly Conduct, Assault IV, and Patronizing a Prostitute (diversion)). The Commission concluded that Applicants intentionally omitted these convictions and arrest as wife was the victim of the assault and had personal knowledge of its existence; 2 traffic matters of little significance were listed, but serious charges relevant to assessing character were omitted. The Commission adopted an additional test of materiality, concluding that an intentional false statement is a material false statement. The Commission must be able to rely upon licensees' honesty in dealing with the Commission and enforcing alcoholic liquor laws and rules. An applicant who deliberately withholds information cannot reasonably be relied upon to effectively enforce Commission laws and rules as a licensee. An intentional false statement provides a basis to refuse this license because an intentional false statement is a material false statement.

Case: *Punjab Tavern*, OLCC-91-L-015, April 1992.

Abstract: The Commission determined to change its policy with regard to what it considers to be a material false statement. The Commission determined that an applicant's use of a false name indicates that he would not be a good risk for compliance with alcoholic liquor laws. The Commission determined that in the future it will consider as material those false statements which inhibit the Commission's ability to conduct an investigation into a person's eligibility for a license.

Case: OLCC-90-S-001, September 1990.

Abstract: A false statement with regard to a misdemeanor conviction was not material because a misdemeanor conviction is not a basis to refuse to grant the license under ORS 471.295(4)(d) unless it is a conviction of an alcoholic liquor law.

Case: *Junction Inn*, OLCC-89-L-009, December 1989.

Abstract: Public demand for a license and a lease agreement limiting the co-licensees' involvement in the licensed premises do not establish good cause to overcome intentional, material false statements made by the co-licensees.

Case: *Sparkles Tavern*, OLCC-88-V-107, September 1989.

Abstract: Licensee's false statement that his son was 21, when in fact he was under 21, was a basis to refuse to renew the license because the false statement was both material and intentional. The false statement was material because the statement was made to hide the presence of a minor on the premises. False statement was intentional because the licensee intended to mislead the Commission when he made the statement.

Case: *Kim Hong Restaurant*, OLCC-88-L-015, November 1988.

Abstract: A false statement that the applicant decided to make the evening before was intentional.

An applicant's family and financial hardships do not overcome intentional, material false statements as a refusal ground under OAR 845-05-015(3).

Case: OLCC-87-SP-011, August 1987.

Abstract: False statement on the application was not intentional and, thus, not a basis for service permit refusal where the applicant did not intend for her employer to submit the application to the Commission with the incomplete information. The five days between the Commission's receipt of the application and the mailing of the refusal letter was too short a period to infer that the applicant's failure to contact the Commission before they contacted her proved an intentional false statement.

Case: OLCC-87-SP-008, August 1987.

Abstract: An applicant's false statement was not material, although it was logically connected to an issue in the case, where the issue was insubstantial.

Case: OLCC-86-SP-019, March 1987.

Abstract: Applicant's failure to list convictions on his application was not the result of an intent to mislead the Commission and, thus, was not a basis for refusal. Applicant had informed the Commission on a previous application of some of the convictions. Applicant did not understand that he needed to list the remainder of the convictions because they were traffic offenses.

Case: OLCC-86-SP-001, December 1986.

Abstract: Commission concluded an applicant's false statement was not a material false statement and therefore not a basis to refuse to issue a license under the following circumstances. Applicant failed to list that he had been convicted two times of misdemeanor of Theft II. There is no Commission rule or statute which makes a conviction

of Theft II a basis for license denial. Staff did not identify the nature of the materiality of the convictions.

Case: OLCC-86-SP-024, February 1987.

Abstract: Applicant's failure to list non-alcohol-related driving convictions on her application was material where she did not to appear at her hearing to present evidence to outweigh the Commission staff's argument that the driving convictions showed a likelihood applicant would not follow the Commission's rules.

Case: *Jiggles*, OLCC-85-L-013, February 1987, *affirmed*, *7455 Inc. v. Oregon Liquor Control Commission*, 94 Or App 780, 767 P2d 116 (1989), *affirmed on other grounds*, 310 Or 477, 800 P2d 781 (1990).

Abstract: Material evidence is defined as that which has a "logical connection" with an issue in the case.

Cases: OLCC-86-SP-001, December 1986; OLCC-86-SP-017, October 1986.

Abstract: Where applicant failed to list all of her prior convictions, but did list her more recent and more serious convictions, the Commission concluded that applicant's failure to list all of her convictions did not prove an intent to mislead the Commission.

Case: OLCC-86-SP-017, October 1986.

Abstract: Failure to list a violation for which there is a separate statutory basis for license refusal is a material omission.

Cases: *Maynard's Place*, OLCC-85- L-012, November 1985; *Hale's Tavern*, OLCC-85-L-010, June 1985; OLCC-85-SP-002, May 1985; *Medford A's*, May 1984; *Applicant M.R.*, March 1984; *Applicant N.G.*, February 1984; *Porterhouse*, October 1983; *Applicant Y.B.*, June 1983.

Abstract: The Commission has commonly considered unintentional inaccuracies to be insufficient grounds to refuse a service permit or license application.

B.1.b.2. Tied-House (ORS 471.313(3), OAR 845-005-0320(1)) [(ORS 471.295(3), [ORS 472.160(3)], OAR 845-05-020(1))]

[\(return to index\)](#)

Case: *Clackamas Grocery Outlet*, OLCC-08-M-001, April 2010.

Facts: Local grocery chain Licensee (with off-premises retail sales license) used Clackamas location to warehouse wine for sale at other locations. Licensee did not have a wholesale malt beverage and wine license. Licensee had previously been advised by the OLCC that this practice was compliant with Oregon Liquor Act, but the agency later reversed its position. The Commission concluded that by using the Clackamas warehouse facility as a distribution hub for wine to its 31 Oregon locations, GOI is engaging in wholesale alcohol sales in violation of ORS 471.405 (selling alcohol in a manner “other than the license permits the licensee to sell”) and ORS 471.394 (prohibition on selling at both wholesale and retail).

Abstract: The holder of an O (off-premises retail sales) license may not store, transport, or distribute alcohol other than incidentally in connection with the exercise of their retail sales privileges.

The sale of alcoholic beverages under any license that authorizes retail sales is restricted to the premises described in the license. ORS 471.305.

ORS 471.406(3) defines the term “sale” for prohibited sales under the Oregon Liquor Control Act to include the delivery of “alcoholic beverages for value or in any way other than purely gratuitously.” ORS 471.406(3); *State v. Laughlin*, 148 Or 485, 488-89, 36 P2d 350 (1934) (“In thus defining the words ‘to sell’, it is believed that the Legislature intended to guard against illicit traffic in alcoholic liquors and to prevent subterfuge in sales or indirect methods of circumventing the law”); *Haeger v. Johnson*, 25 Or App 131, 135, 548 P2d 532 (1976) (“‘Sale’ is a word of precise legal meaning”) (citing *State v. Laughlin*).

Key Words/Phrases: wholesale, warehouse, summary determination, three tier system, tied-house

Case: *Speck Restaurant v. OLCC*, 24 Or App 337, 545 P2d 601 (1976).

Abstract: Franchisee of corporation owned by liquor manufacturer and distributor held to have prohibited relationship with the manufacturer, which justified non-renewal of franchisee's license.

B.1.b.3. Applicant is a Retail Sales Agent (OAR 845-005-0320(6)) [(OAR 845-05-020(6))]

[\(return to index\)](#)

Cases: *Applicants J.S., R.B., E.S., J.C.*, December 1984.

Abstract: Applications for Package Store licenses were denied under OAR 845-05-020(6) where applicants were exclusive liquor agents of the Commission.

B.1.b.4. Failure to Complete Alcohol Server Education (OAR 845-005-0320(7)) [(OAR 845-05-020(7))]

[\(return to index\)](#)

Case: OLCC-10-ASE-010, June 2010.

Facts: Applicant applied for service permit and was notified of the 45 days in which she was required to complete the ASE course. Applicant took and passed the ASE but not within the 45 days.

Abstract: The evidence shows that Applicant did not complete an ASE course and pass the examination within the time required by the rule. *See* OLCC-98-ASE-014, September 1998. Permit denied after Proposed and Final Order issued without hearing.

Key Words/Phrases: alcohol server education program, ASE, failure to complete, service permit, denial

Case: OLCC-89-SP-140, November 1989.

Abstract: Permittee's lengthy good compliance record, her knowledge and experience in responsible alcohol service, and the fact that she served only about eight drinks per week in her job were not persuasive reasons to waive the alcohol server education requirements.

Case: OLCC-89-SP-036, May 1989.

Abstract: A request for an extension to complete an ASE course and examination is untimely where the request is filed after the 45-day period and any extension has run, and the Commission has issued its proposed refusal letter.

Case: OLCC-89-SP-010, May 1989.

Abstract: When the applicant requested that the Commission reopen the record to add a statement that he had completed an ASE course and examination after the Proposed Order was issued, the Commission declined to reopen the record for this purpose.

Case: OLCC-89-SP-003, April 1989.

Abstract: A Service Permit application was granted when the applicant completed an Alcohol Server Education (ASE) course and examination after the end of the extension granted by the Service Permit Section, but prior to the applicant's hearing, based on Service Permit Section policy.

**B.1.b.5. Insufficient Financial Responsibility (ORS 471.313(4)(i),
OAR 845-005-0325(1)) [(ORS 471.295(4)(I), [ORS 472.160(4)(I)],
OAR 845-05-025(1) [OAR 845-05-025(3)]]]**

[\(return to index\)](#)

Case: *Bruce's Bar & Grille*, OLCC-85-L-052, October 1986.

Abstract: Applicant did not have sufficient financial responsibility under ORS 472.160(4)(I) where applicant recently commingled charitable church monies with his own personal funds. (OAR 845-05-025(3))

B.1.b.6. Unable to Communicate in English (ORS 471.313(4)(j)OAR 845-005-0325(3)) [(ORS 471.295(4)(j),[ORS 472.160(4)(j)], OAR 845-05-025(3), [OAR 845-05-025(5)]]

([return to index](#))

Case: *Rico's Groceries*, OLCC-13-V-045, April 2014.

Facts: Licensee Antonio was arrested and charged related to using the licensed premises to sell meth. Three weeks later Licensees' signed a License Renewal Application. Licensee Antonio did not answer the questions about any recent arrest/charges. Licensee Oliva does not speak or write English, but Antonio read it to her and she was aware of the recent arrest when she signed the form. OLCC inspectors went to the licensed premises to talk with Licensees. Only an employee who did not speak any English was present. The inspector met with Licensees about the application, and Licensees said they did not answer the question about arrests/charges because at the time they did not know what the charges from the arrest would be.

Abstract: Licensee must communicate effectively with customers and with Commission staff. Licensees' employees were unable to do so, violating the rule of OAR 845-006-0426.

Case: *Seven Star Market*, OLCC-88-L-003, July 1988.

Abstract: ORS 471.295(4)(j) will provide a basis to refuse a license because the applicant had substantial difficulty communicating in English without the aid of an interpreter; however, the statute should not provide a refusal basis if the license is conditioned upon the applicant having an English-speaking employee on duty at all times.

B.1.b.7. Conviction History (ORS 471.313(4)(d), ORS 471.380(1)(d), OAR 845-005-0325(5), ORS 670.280) [(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(5), OAR 845-05-030(3), [OAR 845-005-0326(6)], ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020]](See also, C.1.i.)

[\(return to index\)](#)

Case: OLCC-13-SPR-011, September 2013.

Facts: Permittee was revoked for three DUII and/or diversions within seven years, one within 18 months. Permittee's probation would conclude in 2017, and expects to complete treatment in November 2013. Permittee did not consider herself an alcoholic and had not been diagnosed with an alcohol or drug addiction. Permittee had no other skills, and was a student at PSU and funded her education by working as a server.

Abstract: The OLCC has established by case precedent that for a service permit denial or revocation, the relevant date for a diversion is the date diversion was completed. *See* OLCC-94-SPR-122, March 1995.

The OLCC relies on the good cause analysis of the denial criteria to evaluate whether good cause exists to overcome a proposed revocation. *See* OLCC-006-SPR-022, December 2006.

Key Words/Phrases: service permit, revoke, revocation, denial criteria, DUII, diversion, abstinence, treatment,

Case: OLCC-12-SPR-014, May 2013.

Facts: Permittee was issued a service permit in September 2011. Permitted was convicted of two counts of DUII in April 2012. Permittee entered treatment and completed it in June 2012, and has not used alcohol since February 2012.

Abstract: Permittee's service permit should be revoked because Permittee has two DUII convictions within three years, one of which was within the past 12 months. Permittee has not shown good cause to overcome the revocation basis because she has not had 24 months abstinence and is still on probation.

Key Words/Phrases: service permit, revocation, DUII, relevant conviction, good cause, abstinence, probation

Case: OLCC-10-SPR-023, June 2011.

Facts: Permittee was issued a service permit in April 2010. Permittee had a diversion from 2007, and DYII in March 2010. Permittee had to attend DUII rehabilitation class, and at the time of applying was nearly completed. He had not completed his probation.

Abstract: Permittee's service permit should be revoked because he has two driving under the influence of intoxicants (DUII) convictions or diversions within three years, at least one of which was within the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(7)(a)(A). Permittee has not shown good cause to overcome the revocation because he did not have 24 months of abstinence or complete his treatment or probation.

Key Words/Phrases: service permit, revocation, diversion, DUII, good cause, relevant conviction, treatment, probation, abstinence

Case: OLCC-10-SPR-029, December 2010 (FOD)

Facts: Permittee was issued a service permit in February 2008. Permittee received diversion in April 2010, and a DUII conviction in June 2010. Permittee requested a hearing but did not appear.

Abstract: Permittee's service permit should be revoked because he has two driving under the influence of intoxicants (DUII) convictions or diversions within three years, at least one of which was within the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(7)(a)(A). Permittee did not appear to present any evidence of good cause to overcome the revocation basis.

Key Words/Phrases: service permit, revocation, DUII, drug, meth, good cause, permittee did not appear

Case: OLCC-10-SPR-011, June 2010.

Facts: Permittee submitted a renewal application in April 2006, which was renewed. In May 2009 Permittee was arrested for DUII, and was also convicted of possession of meth. Permittee was convicted of one count of possession in November 2009, and started treatment counseling. Permittee has not consumed drugs or alcohol since May 2009, has not been diagnosed as drug/alcohol addicted, and is still on probation.

Abstract: Permittee's application for a service permit should be revoked because Permittee has had a controlled substance felony conviction within the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(4)(a)(A). Permittee has not shown good cause to overcome the revocation basis because she has not been diagnosed with an addiction and not completed her probation.

Key Words/Phrases: service permit, revocation, DUII, drug, meth, good cause, probation, addiction, treatment

Case: OLCC-09-SPR-017, October 2009.

Facts: Permittee issued a notice of revocation for a DUII conviction and DUII diversion in the past three years, one in the past 12 months. Permittee worked as a bartender for 15 years in several states, with no sanctions from any state related to sale/service of alcohol. Permittee argued that the DUII conviction and diversion did not bear on his fitness to hold a service permit or perform his job, relying on his years as a server with no violations. Commission disagreed and concluded the permit should be revoked.

Abstract: ORS 670.280 does not require a showing that a conviction directly affects an individual's professional duties. Rather, the statute requires the Commission to consider the relationship between the facts underlying the conviction and "the specific occupational or professional standards" of the profession. Thus, it is sufficient for the Commission to consider the general standards applicable to service permit holders; it need not consider whether the conviction directly affected the job performance of an individual permit holder.

DUII convictions are convictions for violations of alcoholic liquor laws and are relevant to a person's fitness to serve and sell alcoholic liquor. 03-SPR-036, December 2003; 98-SPR-050, January 1996.

It is appropriate to use denial criteria of OAR 845-009-0020 to revoke an existing permit. See 06-SPR-022, December 2006. It is appropriate to use the good cause criteria of OAR 845-009-0020(7) to overcome the denial basis.

Economic difficulties is not a basis for overcoming the Commission's denial criteria. The Commission's public duty would be frustrated if it did not act due to potential harmful economic consequences to an individual permittee.

Key Words/Phrases: service permit, revoke, revocation, good cause criteria, DUII, diversion, fitness to hold,

ORS 670.280, individual job performance, personal use of alcohol, public safety, economic difficulties, hardship

Case: *Center Market*, OLCC-08-V-104, October 2009.

Facts: Licensee was convicted of two felonies related to unlawful tobacco sales. Licensee had 3 premises, and Commission sought to cancel the licenses of all. Licensee argued that 1) the convictions weren't related to his fitness to sell alcohol; and 2) the relevant time period for considering "intervening circumstances" is between the date of criminal activity (not date of conviction) and agency action.

Abstract: Although the convictions in this case did not directly involve the sale or distribution of alcohol, the nature of the conviction does bear a relationship to Licensee's fitness to exercise his licenses. In a recent case, the Commission held that misdemeanor convictions for violating laws related to the handling of tobacco and cigarettes were related to a licensee's handling of alcohol and that such misconduct with regard to the sale of tobacco and cigarettes demonstrated a lack of fitness to exercise a liquor license. (citing *7-Eleven Store #2363-14504A* (OLCC, Final Order, 08-V-107, April 2009.))

The Commission will generally require at least one and a half years from the date of one conviction, and as long as three years in the case of multiple convictions, for the Commission to conclude that the licensee has reformed and is not a poor risk for future compliance. (See *Swan Mart*; OLCC-90-SP-189, May 1991; OLCC-87-SP-008, August 1987; *Thomas Creek Steak & Seafood*; *Garcia's Gas & Mini Mart*.

Where a substantial period of time has elapsed between the criminal conduct and the conviction, the Commission also considers the passage of time between the acts and the conviction. Passage of time without adverse intervening circumstances begins when the crime is committed and is a factor that constitutes good cause to overcome license refusal basis for a felony conviction.

Key Words/Phrases: conviction, felony, intervening circumstances, factor, criminal conduct, criminal act, passage of time, tobacco, poor risk, future compliance, multiple premises

Case: OLC-06-SPR-022, November 2006.

Facts: Permittee was issued a service permit in August 2005. In May 2006 Permittee submitted an OLCC Individual History form indicating she had committed several felonies in October/November 2005. Permittee was convicted of those felonies in February 2006. Permittee was not diagnosed with any addiction disability or dependency, but has completed drug and alcohol treatment. She has abstained from controlled substances since November 2005.

Abstract: Permittee's service permit should be revoked because Permittee has been convicted of a felony. ORS 471.385(1)(b). Permittee cannot show good cause to overcome the revocation because she has not been diagnosed as drug addicted.

Key Words/Phrases: service permit, revocation, good cause, relevant conviction, addiction, disability

Case: *Swan Mart*, OLCC-05-L-008, October 2006.

Facts: Applicant for off-premises sales license challenged restriction prohibiting Applicant's corporate principal's husband from being on the licensed premises or participating in management/operation of the business. Corporate principal's husband had been convicted of Intent to Distribute Pseudoephedrine, a felony. Corporate Principal argued that because the applicant was a corporation, her husband couldn't have a financial interest in the license. The ALJ determined that the husband did not have a financial interest in the business, but the Commission disagreed and reversed in its Final Order.

Abstract: ORS 471.757(2) allows the Commission to refuse a license when conditions exist such that the person having a financial interest in the business would not qualify for a license. The statute differentiates between the licensee or applicant themselves and the person who may have a financial interest. The sole limitation on the holders of financial interests the Commission may consider is when a cooperation holds the financial interest; then the Commission may only consider the financial interest of controlling members and managers. The ALJ's interpretation of ORS 471.757(2) to the contrary was erroneous. See *Sportservice Corp. v. OLCC*, 15 Or App 226 (1973).

A spouse is deemed to have a financial interest in their spouse's affairs.

It is reasonable to infer that an applicant who engages in illegal acts involving one controlled substance will be a poor risk for complying with laws concerning another controlled substance (alcoholic liquor). The conviction need not be for the use of the controlled substance.

The Commission will deny a license unless the applicant shows good cause that overcomes the criterion involved. In OLCC-90-SP-189, May 1991, the Commission explained that "the passage of time must be long enough to allow the Commission to conclude that the applicant has reformed and will not be a poor risk for compliance." The Commission has generally considered two years passage of time necessary to weigh in favor of good cause. See OLCC-92-SPR-056, September 1992. The Commission has found that one and one half years provided good cause where other favorable circumstances were present, such as completion of treatment and positive recommendations. See OLCC-90-SP-189, May 1991. However, where there are factors present that weigh against good cause, such as multiple convictions or the lack of a good compliance record, three years or more has been required. See *Thomas Creek Steak & Seafood*, OLCC-00-L-008, April 2001; *Garcia's Gas & Mini Mart*, OLCC-05-L-007, April 2006. The fact that a felony took place at a licensed premises is an aggravating factor that weighs against good cause. See *John Myshak*, OLCC-88-V-002, May 1988.

Key Words/Phrases: licensing restriction, unlicensable, financial interest, felony conviction, pseudoephedrine, licensee representation, reversal of Proposed Order, passage of time, spouse, good cause, aggravation

Case: *Garcia's Gas & Mini Mart*, OLCC-05-L-007, April 2006.

Facts: Applicant's wife was previously licensed on licensed premises, with restriction prohibiting Applicant from being on the licensed premises or working in the business. Licensee violated those restrictions, evidenced by her husband being caught selling to a minor and evidence of his training employees, and the licensed was cancelled. Applicant now applies for a new license, 4 years after his conviction.

Abstract: The commission has concluded there is a relationship between a felony conviction for a controlled substance and the license privilege. While the Commission has not established a specific amount of time necessary to show good cause, in past cases good cause for overcoming a refusal on this basis exists where there has been 3 years since the conviction and the applicant has a strong recommendation from an employer. See OLCC-91-SP-051, October 1991. Here, however, even though applicant has more than 3 years since his conviction, the evidence shows he deliberately violated the restrictions on his wife's liquor license at least three times, and more likely more. This shows applicant is a poor risk for compliance with OLCC laws and rules, and there was no good cause to overcome the refusal.

Key Words/Phrases: license restriction, unlicensable, good cause, husband and wife, interest in business

Case: *Under the Bridge Cigarettes*, OLCC-05-L-002, February 2006.

Facts: Applicant had criminal history including felony drug convictions, and rape and sodomy convictions related to a sexual relationship he had with a 15-year-old which resulted in a pregnancy. Applicant served his prison time for each conviction, and completed his probation requirements. Applicant had owned tobacco stores for 15 years.

The Commission concluded that Applicant's two controlled substance felony convictions, one conviction for attempting to elude police, and Rape III conviction over a 13 year period show a lack of respect for law that makes it likely the applicant is unlikely to fail to follow the laws regarding the sale of alcohol.

Abstract: The lack of good repute and lack of moral character are separate grounds, either of which provides a basis for license refusal. The Commission has held that "not of good moral character" may be proved by prior violations of the law which, based on their nature or number, indicate either "turpitude" or "disregard for law." *Thomas Creek Steak and Seafood* (OLCC, Final Order, OLCC-00-L-008, April 2001).

To find moral turpitude, the Commission requires that the acts at issue be knowing and intentional and involve two or more of the following elements: fraud, deceit or dishonesty; harm to a specific individual; or illegal activity undertaken for personal gain. *Tony's Tavern* (OLCC, Final Order, OLCC-86-L-012, February 1987); *Sparkles Tavern*, OLCC 88-L-021, 1989; *Punjab Tavern*, OLCC-91-L-015/016, April 1992.

Poor moral character may also be established where the applicant's prior law violations are of a sufficient magnitude or frequency to show a lack of "respect for the rights of others and for the laws of State and Nation." See OLCC-96-L-012, October 1996, citing *Campbell v. Bd. Of Medical Examiners*, 16 Or App 381 (1974) and *McCann v. OLCC*, 27 Or App 487 (1976).

Good cause to overcome a refusal basis based on poor moral character can be shown through a sufficient passage of time since the events establishing the poor moral character. An applicant's prison time does not count towards the passage of time since a relevant felony conviction because an applicant is not in the community.

Although the term "violent crime" is not specifically defined in the context of criteria for license refusal, it is reasonable to employ the same definition used in the context of service permits to determine whether a felony conviction involved violence or threat of violence to another person. The Commission has determined for service permits that rape is a violent crime, whether or not forcible compulsion is an element. In rape the act of penetration, even if consensual, causes or threatens to cause physical injury or harm to the victim. Conviction of Rape III is a violent crime that is related to the fitness to exercise license privileges.

In this case, Applicant's crimes, particularly the rape conviction, show moral turpitude. The nature and number of Applicant's crimes show a pattern of disregard for the law: four felonies over the course of 13 years shows such a lack of respect. Applicant spent much of the time since the last conviction in prison.

Key Words/Phrases: license denial, not of good repute, moral character, felony conviction, good cause, moral turpitude, pattern of disregard for the law, passage of time

Case: *Swan Song Inn*, OLCC-01-L-004, November 2001.

Abstract: Applicant had a recent felony conviction record of Carry/Use of a Dangerous Weapon and a Felon in Possession of Firearm. Both convictions involved a shotgun; the first involved the use of the weapon, the second involved prohibited possession within Applicant's home. The first felony involved violence and the threat of violence to another person, and, via prior precedent, is related to Applicant's fitness to hold a liquor license. The second felony shows Applicant's deliberate disregard for the terms of his probation and for law; it is related to Applicant's fitness to hold a liquor license because the Commission expects its licensees to follow statutes and rules.

Applicant was unable to show good cause to overcome the refusal basis where intervening circumstances since the commission of the crimes show repeated violation of liquor laws while previously licensed at the same establishment. Applicant is not an acceptable risk for future compliance.

Case: *Kimmel's Little Giant*, OLCC-95-V-028, June 1996.

Abstract: The Commission has concluded that it will not question or retry the underlying facts involved in a conviction.

Case: *The Peacock Tavern*, OLCC-95-L-024, August 1996.

Abstract: A licensee's compliance with a restriction (prohibiting the consumption of alcoholic beverages) is not determinative of whether or not a restriction should be removed. In order to make a case for eliminating the restriction, a licensee would have to establish that the reasons for establishing the restriction no longer exist or are less compelling.

Case: *Buff N' Brew*, OLCC-94-L-019, July 1995.

Abstract: A conviction of Felony in Possession of a Firearm where the record does not establish that the underlying incident involved any threat of violence or use of drugs or alcohol is not a relevant felony conviction for purposes of refusing a license based upon felony convictions.

Although every conviction and every failure to follow a court order demonstrates an unwillingness or inability to comply with the law, the Commission does not view every such infraction as relevant to an applicant's fitness to be licensed by the Commission. In the absence of any evidence that alcohol, drugs, or violence were involved in an applicant's failure to report to a probation officer or failure to appear in court concerning a traffic accident, the Commission gave no weight to such incidents.

Cases: OLCC-93-SPR-136, May 1994; OLCC-94-SPR-049, August 1994.

Abstract: The Commission of a violent crime and the resultant danger to public safety are related to and weigh against finding that an applicant is fit to serve and sell alcoholic liquor. OLCC-93-SPR-136, May 1994 (robbing a person at gunpoint and conspiring to assault another were violent crimes; OLCC-94-SPR-049, August 1994 (rape, was a violent crime).

Cases: *State v. Finn*, 79 Or App 439, 441, 719 P2d 898 (1986); OLCC-94-SPR-027, June 1994.

Abstract: Delivery and possession of a controlled substance which results from a single transaction should merge into one conviction for delivery of a controlled substance. Combining the two convictions into one is called "merger." The Oregon Courts have held that "merger exists 'when the completion of one offense necessarily includes commission of acts sufficient to constitute violation of another statute.'" (Citations omitted.) When there is a merger, a judgment of conviction on only one of the charges is proper." (Citation omitted.)

Case: OLCC-93-SPR-102, January 1994.

Abstract: The Commission granted applicant a service permit in spite of his one felony conviction, where applicant showed significant good cause and the permit was granted with a restriction that applicant abstain from using illegal controlled substances.

Case: OLCC-93-SPR-089, November 1993.

Abstract: Two of the applicant's felony convictions, Burglary II and Ex-Convict in Possession of a Firearm, were not a basis for refusing the service permit. The record did not indicate that these felony convictions involved the use of alcohol or illegal drugs. The applicant's other convictions were related to the use of alcohol and illegal drugs and provided a basis for service permit refusal.

Case: OLCC-93-SPR-020, July 1993.

Abstract: Although applicant had two recent alcoholic liquor law violations, there was good cause to grant a restricted permit because of applicant's participation in a treatment program and abstinence from drinking alcoholic liquor.

Case: OLCC-92-SPR-159, June 1993.

Abstract: The Commission determined that applicant's one felony conviction three years ago was not sufficient to deny a service permit. There was good cause to grant the permit because applicant had only one felony conviction, three years had passed without incident, and applicant had been abstinent from drugs for approximately four years.

Cases: OLCC-91-SP-112, February 1992; OLCC-90-SP-234, March 1991

Abstract: ORS 670.280's requirement that a felony conviction be related to an applicant's fitness to hold a service permit was met where a felony was:

- committed while applicant was under the influence of alcohol. (OLCC-87-SP-008, August 1987), and/or
 - committed to support an applicant's use of a controlled substance. (OLCC-90-SP-234, March 1991) (illegal drugs); (OLCC-91-SP-112, February 1992) (alcohol and illegal drugs).
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Case: OLCC-92-SPR-159, June 1993.

Abstract: The Commission concluded that, just as the underlying facts of a felony conviction must bear a relationship to the specific occupational standards which determine an applicant's fitness to hold a service permit, the intervening circumstances used to determine an applicant's eligibility must also bear a relationship to the specific occupational standards before those intervening circumstances may be used as a basis for denial. The Commission determined that the applicant's probation violation for failure to pay court ordered fees required as a condition of probation should not weigh against finding good cause because the failure to pay fees does not bear a relationship to the applicant's ability to serve or sell alcoholic liquor.

Case: *State v. Dintelman*, 112 Or App 350, 829 P2d 719 (1992).

Abstract: "Convicted of a felony" means not only a determination of guilt but also an entry of judgment.

Case: OLCC-91-SP-139, March 1992.

Abstract: Just as the underlying facts of a felony conviction must bear a relationship to the specific occupational standards which determine an applicant's fitness to hold a service permit, before those facts may form the basis for a denial of the permit, intervening circumstances must also bear a relationship to the specific occupational standards before those intervening circumstances may be used as a basis for denial.

Case: OLCC-90-SP-237, August 1991. (But see Stay of Final Order in Section A.2.q.)

Abstract: Applicant's two felony convictions provided a reason to refuse to issue a service permit. The applicant's drug-related felony conviction one year ago was too recent in time to be outweighed and the applicant's felony conviction for DWS, where the suspension was the result of a DUII conviction, showed that applicant voluntarily failed to follow instructions.

Cases: *A.J.'s Homestead Restaurant*, OLCC-90-V-021, December 1990; OLCC-90-SP-237, August 1991.

Abstract: The Commission has concluded that a person's felony conviction should be treated as a conviction until such time as it is reversed or set aside.

Case: OLCC-91-SP-002, July 1991.

Abstract: Where applicant had four alcoholic liquor law convictions, the Commission determined to grant a permit where the record showed applicant had ceased drinking over one and one-half years ago, and the permit was conditioned on applicant completing alcohol treatment and remaining abstinent.

Convictions of DUII and an open container in a motor vehicle are convictions of alcoholic liquor laws for purposes of ORS 471.380(4).

Case: OLCC-90-SP-087, June 1991.

Abstract: Where applicant had two drug-related felony convictions, the most recent of which was four years ago, and one drug-related probation violation occurring one and one-half years ago, the Commission concluded that with conditions and restrictions on the license, there was good cause to grant the service permit. The applicant in this case had a previous good record of compliance and recommendations from his employer.

Case: OLCC-90-SP-238, August 1991.

Abstract: The Commission concludes, based on the nature of the offense of Driving Under the Influence of Intoxicants, that the conviction is related to the applicant's fitness to dispense alcoholic liquor. The applicant's failure to follow laws related to the consumption of alcoholic liquor, such as Driving Under the Influence of Intoxicants, shows that the applicant fails to comply with alcoholic liquor laws, which are central to the license privileges.

Despite the applicant's 16 year history of compliance with alcoholic liquor laws and strong recommendations from her current and past employers, the Commission found that the applicant failed to show that she had reformed and was not a poor risk for compliance with alcoholic liquor laws. The applicant had three prior DUII convictions; she had not completed an alcohol treatment program; and she continued to consume alcoholic beverages despite a treatment program's recommendation that she abstain.

Case: OLCC-90-SP-211, July 1991.

Abstract: The Commission found that a felony conviction for robbery was related to the applicant's fitness to dispense alcoholic liquor due to the circumstances surrounding this particular conviction. The conviction involved the applicant hindering a fire inspector who came to his home during an investigation. A service permittee must be able to cooperate with Commission inspectors during the investigation of possible liquor law violations.

The passage of three and one-half years since the felony conviction did not weigh in favor of good cause where the applicant was not out in the community during much of this time period.

Case: OLCC-91-SP-051, October 1991.

Abstract: Applicant showed good cause to overcome felony drug conviction with strong recommendation from current employer and passage of nearly three years since applicant's conviction, probation violation, and flight from prosecution of the probation violation.

Case: OLCC-90-SP-189, May 1991.

Abstract: Particularly strong and well-articulated recommendations from applicant's employer and probation officer gave applicant sufficient good cause, despite probation violation within past year, to overcome denial based on felony drug conviction.

Case: OLCC-90-SP-009, June 1990.

Abstract: Felony conviction for sodomy of minor male was not related to service permit applicant's fitness to serve alcohol, where there was nothing in the record to indicate that the circumstances surrounding the crime involved the use of alcohol or drugs.

Case: OLCC-88-V-002, May 1988.

Abstract: The Commission must show a relationship between the felony conviction and the fitness of the person to dispense alcoholic liquor. ORS 670.280.

Case: OLCC-88-SP-002, September 1988.

Abstract: The Commission concluded that it was reasonable to infer that because the applicant had engaged in illegal acts involving one controlled substance (cocaine), the applicant would be a poor risk for complying with laws concerning another controlled substance (alcoholic liquor).

Case: *Sandy Jug*, OLCC-88-L-010, October 1988.

Abstract: the Commission concluded that the Commission's Final Order in a previous case against the same licensee did not provided a basis under OAR 845-05-025(3) for nonrenewal of the license because the Commission had already determined that the appropriate sanction for the violations committed in the Final Order was a fine or suspension of the license.

Case: OLCC-87-SP-008, August 1987.

Abstract: The applicant showed good cause to overcome a 1981 felony burglary conviction where the applicant voluntarily gained control over his alcohol problems and had a favorable report from the probation counselor who had known him for four years.

Case: *In re Sonderen*, 303 Or 129, 734 P2d 348 (1987).

Abstract: A felony conviction for driving while suspended that was later reduced to misdemeanor status was not considered a felony conviction for purposes of bar disciplinary proceedings. Misdemeanor driving while suspended is not a crime involving moral turpitude.

Case: *Alder Tree Inn*, OLCC-87-L-006, August 1987.

Abstract: Where licensee has a record of DUII convictions, good cause for license renewal may be shown if the renewal is subject to the condition that the licensee not serve, sell, or consume alcohol on the licensed premises.

Case: OLCC-87-SP-006, June 1987.

Abstract: Two misdemeanor convictions for negotiating bad checks are not a basis for license refusal under ORS 471.380(4), and should not be considered because they are not alcohol-related convictions or felony convictions under that statute.

Good cause for overcoming felony convictions consists of evidence that the service permit applicant will not be a

poor risk for complying with alcoholic beverage laws. Applicant was not a poor risk because, although she was convicted of two felonies, the felonies were not alcohol related and she had been a service permittee for 25 years, during which time she had never been cited for a liquor violation.

Case: OLCC-86-V-075, May 1987; *The Sportsman Club*, OLCC-87-V-002, June 1987.

Abstract: The Commission does not have authority to suspend or fine a service permittee who is off duty for actions that would be a violation of his service permit if he were on duty when the violations occurred.

Case: OLCC-86-SP-019, March 1987.

Abstract: Good cause was shown to overcome applicant's record of three felony convictions where the convictions were 27 years old and the applicant had held a service permit continuously from 1951 through 1984.

Case: OLCC-86-SP-026, February 1987.

Abstract: Applicant was considered a poor risk to comply with the laws forbidding sale of alcoholic beverages to minors, where applicant was still receiving mental health counseling for his sexual abuse problem that led to a felony conviction for sexual abuse of a minor.

Case: OLCC-86-SP-025, January 1987.

Abstract: The Commission concluded that applicant has shown good cause to overcome convictions for violating alcoholic beverage laws (ORS 471.380(4)) where: (1) there has been a sufficient length of time (three years), since applicant's last convictions, to conclude that he has changed his behavior; (2) applicant completed an alcohol treatment program and attended Alcoholics Anonymous meetings for one year thereafter; (3) applicant has a good work record; and (4) applicant occasionally consumes a drink, but no longer has a drinking problem.

Case: OLCC-85-SP-017, February 1986.

Abstract: The Commission will issue a service permit under ORS 471.380(4) despite a record of Oregon liquor law convictions where the applicant demonstrates good cause by showing that the applicant would not present "a poor risk as to compliance with alcoholic beverage laws."

Case: OLCC-85-SP-016, December 1985.

Abstract: Two DUII convictions should not prevent issuance of a service permit under ORS 471.380(4), where the convictions are four years old and there is evidence that applicant has worked responsibly as a bartender since the convictions.

Case: *Rip City Pub*, OLCC-85-L-023, October 1985.

Abstract: Application for RMB license granted despite applicant's recent conviction history. Commission found good cause to overcome three prior DUII convictions in spite of fact that they were recent where applicant showed that he successfully completed an alcohol treatment program and exhibited self-control by abstaining while tending bar at the premises.

Case: OLCC-85-SP-010, August 1985.

Abstract: Service permit granted despite conviction in the United Arab Emirates because the evidence established neither that the conviction was a felony in the U.A.E. nor that the crime involved would be a felony in Oregon.

Case: *Mt. Hood College Texaco*, OLCC-85-L-004, June 1985.

Abstract: Commission granted renewal of PS license in spite of applicant's recent conviction history for DUII and DWS where applicant agreed to condition restricting him from working on the licensed premises, had ceased alcohol consumption, and had participated in an alcohol treatment program.

Case: *Hale's Tavern*, OLCC-85-L-010, June 1985.

Abstract: Good cause may be shown to overcome history of alcohol convictions where the applicant has successfully completed a treatment program and where sufficient time has passed since the last conviction.

Case: OLCC-84-SP-002, September 1984.

Abstract: Applicant's participation in alcoholic treatment program did not prove good cause to overcome conviction history where convictions occurred after the participation in the treatment program.

Applicant's good record of compliance as a prior licensee did not show good cause to overcome extensive conviction history as refusal ground.

Case: *Family Zoo Tavern*, July 1984.

Abstract: Commission is not estopped from denying application because of past convictions, a list of which was submitted to License Division five years previously, even though applicant's license had been routinely renewed each year since the record was submitted.

Case: *Slabtown*, July 1984

Abstract: The Commission concluded that the application should be granted despite applicant's two felony convictions because one of the convictions is no longer a crime, because 11 years had passed since the convictions, and because the applicant had no other convictions.

B.1.b.8. Alcohol/Controlled Substance History, Record, Habit of Use to Excess (ORS 471.313(4)(a), ORS 471.380(1)(a), OAR 845-005-0325(4)) [(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(4), OAR 845-05-030(3), ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020]]]

[\(return to index\)](#)

Case: *Lehre's Gastro Pub*, OLCC-12-L-005, December 2012.

Facts: Applicant for Full On-Premises Sales license – managing member had five felony convictions in nine years, including a misdemeanor DUII/diversion and driving while suspended. Unfavorable recommendation from Washington County as a result. Applicant completed treatment but was not determined to have an alcohol dependency. Applicant argued, among other things, that a conviction for driving while suspended shouldn't be considered because he didn't know his license was suspended.

Abstract: With regards to applicant's argument that his conviction for driving while suspended shouldn't count, because he didn't know, as held in *Kimmel's Little Giant* (OLCC Final Order, 95-V-028, June 1996), the Commission will not question or retry the underlying facts involved in a conviction.

The passage of two years is not enough time to weigh in favor of good cause, especially considering the applicant's conviction record and the intervening citation and conviction for driving while suspended.

Key Words/Phrases: applicant, felony convictions, drug, diversion, DUII, passage of time, underlying facts, passage of two years, good cause

Case: *Paola's Corner*, OLCC-06-L-011/011A, December 2007.

Facts: Licensee had a history of DUII convictions and violating his terms of probation by drinking alcohol. He entered alcohol treatment where he was diagnosed with alcohol dependence, and it was noted that his "biggest triggers are the customers who drink often at his restaurants." Licensee ultimately had his parole revoked and served 160 days in jail. He completed his jail service in 2007 and was no longer subject to any probation or other restrictions on alcohol use. He currently considered himself as a "social drinker" and not alcohol dependent. OLCC proposed to refuse to renew his license.

Abstract: The terms "recent" and "to excess" are not defined in the rule. The same terms appear, however, in ORS 471.313(4)(a), which authorizes the Commission to refuse to license a person who "is in the habit of using alcoholic beverages, habit-forming drugs or controlled substances to excess." In *Bob's Seldom Inn* (OLCC, Final Order, 94-L-002, July 1994), the Commission found that because the situations are analogous, it is appropriate to adopt the same definitions in both contexts. In that case, in construing the term "to excess," in former ORS 471.295(4)(a) (now renumbered ORS 471.313(4)(a)), the Commission found that the licensee had a habit of using alcohol or controlled substances to excess when he used alcohol or controlled substances against the recommendation of treatment counselors and in violation of a specific condition of probation.

Similarly, in *Staffords on Broadway* (OLCC, Final Order, 87-L-004, January 1988), the Commission found use to excess where the licensee had been diagnosed as an alcoholic, had been instructed to cease drinking and, in spite of this, continued to consume alcoholic liquor. In *Falls View Tavern*, (OLCC, Final Order, 85-L-015, September 1986), the Commission found a person was in the habit of using alcoholic beverages to excess when the person consumed alcoholic beverages with frequent repetition and was unwilling or unable to stop. The Commission has also held that two DUII convictions are sufficient to establish a record of excessive use. See, e.g., *Nemo's Pizza & Spaghetti House* (OLCC, Final Order, 85-L-028, December 1985) (also recognizing that admission to treatment for alcoholism is further evidence of a record of alcohol abuse); *K.C.'s* (OLCC, Final

Order, 93-L-007, March 1994) (applicant had two DUII convictions, one of which was within two years of the hearing).

More recently, in *Windy River Restaurant & Lounge* (OLCC, Final Order, OLCC-02-L-016 & 017, October 2003), the Commission confirmed its determination that a person has a record of using alcohol or controlled substances to excess when the person uses alcohol or a controlled substance against the recommendation of treatment providers and in violation of a specific condition of probation.

In interpreting the term "recent," the Commission has found that a history or record of excessive use is recent where that the person has used alcohol to excess over the past year. *See* OLCC-90-SP-189, May 1991; *cf.* OLCC-85-SP-005, April 1985 (no recent history where there is no evidence of use to excess over the past year). The Commission has also found that a DUII conviction that is two years old is "recent" under the rule. *K.C.'s*, Final Order at 9. In *Windy River Restaurant*, the Commission found a recent history of using alcohol to excess where the license applicant had a history of DUII convictions dating back several years and a probation violation for failing to abstain from the use of alcoholic beverages within months of the Commission's license refusal letter. *See also, Jammers West* (OLCC, Final Order, 94-L-005, March 1995) (applicant had two DUII convictions dating back several years, and an unresolved DUII arrest in the year prior to the hearing).

Consumption to excess is not automatically a blood alcohol content of 0.08. Regardless of blood alcohol content a person may be "under the influence of intoxicating liquor if his or her mental or physical abilities are affected to a perceptible degree." *State v. King*, 316 Or 437 (1993). Therefore, even if using alcohol to excess is the legal equivalent of being under the influence, the concept of "excess" would not necessarily be tied to a particular blood alcohol content.

While not legally required to be abstinent, licensee's choice not to do so, given his history, weighs against good cause. Licensee had seven incidents of using alcohol to excess in a thirteen year period including two incidents in the year of the license denial.

This case did not use the *Longhorn* presumption of continued use in accordance with a recent history or record of using alcohol to excess only because licensee's refusal was mailed at the same time as the final order in *Longhorn*. Had this case been decided using that presumption, this licensee would not have overcome the presumption either.

Key Words/Phrases: license renewal, refusal to renew, history of using to excess, DUII, diversion, alcohol dependency, alcohol treatment, recent history, using to excess, good cause, abstinence, severity of record

Case: *Longhorn Bar & Grill*, OLCC-06-L-001, October 2006.

Facts: Applicant for Full On-Premises/Off-Premises sales licenses was refused because of applicant's history of using alcohol and controlled substances to excess.

Abstract: Once it is established that an applicant has had a habit of using alcohol to excess, the Commission will presume that the applicant has continued to act according to his habit and continues through the present to have a habit of using alcohol to excess. An applicant can overcome this presumption by providing evidence that demonstrates that the applicant's habit is not current. In general, it will help the applicant's case when there is no evidence that the applicant has used alcohol to excess in the year preceding the applicant's hearing. Absence of evidence is not sufficient by itself to overcome the presumption.

The Commission will consider factors in the rule (including passage of time; jail time; severity of habit; successful completion of treatment; record of compliance; abstinence; dependence on Antabuse; participation in Alcoholics Anonymous; and recommendations of treatment counselors, probation officers, and employers who know and address the history or record of abuse) to determine whether the presumption of continuing use according to habit is overcome.

Key Words/Phrases: credibility determination, license refusal, presumption, habit, factors, alcohol, excess, abstinence, record of compliance, severity of habit, treatment, recommendations

Case: *Windy River Restaurant & Lounge & Fireside Inn*, OLCC-02-L-016/017, October 2003.

Abstract: Where Licensee has a record of 5 DUIIs, the most recent of which was 2 years before the hearing, and a probation violation for consuming alcohol in violation of a condition of probation on one occasion within 6 months of the hearing, Licensee has a recent record of using alcohol to excess.

Licensee has not demonstrated good cause to overcome the refusal basis of having a recent record of using alcohol to excess under the *Landmark Saloon* factors where he consumed a drink in violation of a probation condition, which represents a failure to abstain from consuming alcoholic liquor, unsuccessful participation in treatment programs, and a lack of passage of a year since the last relevant incident. Because applicant's record of DUIIs and probation violation was severe, factors weighing against good cause significantly outweighed neutral or favorable factors.

Case: *Lariat Lanes & Convenient Services*, OLCC-03-L-001, October 2003.

Abstract: An add-partner application was refused where partner had current record or history of using alcohol and controlled substances to excess and was unable to demonstrate good cause to overcome the refusal basis. In determining absence of good cause, the Commission applied the factors set out in *Landmark Saloon*, OLCC-91-L-005, January 1992:

- a. The applicant's abstinence from consuming alcoholic liquor;
- b. Successful participation in treatment programs;
- c. Severity of the applicant's record;
- d. The applicant's previous record of compliance with OLCC laws;
- e. Passage of time since the last relevant incident;
- f. Recommendations of counselor, employer or probation officer; and
- g. Conditions and restriction on the license (this factor to be used only if, after weighing a - f, presence or absence of good cause is closely balanced).

Case: *Goble Tavern*, OLCC-98-L-016, September 1999.

Abstract: The Commission concluded that the evidence failed to show Applicant had a current habit of using alcohol to excess where: Applicant drank only occasionally after completing an alcohol treatment program; there was no evidence that Applicant was expressly instructed to abstain from all alcohol consumption at the conclusion of treatment; Applicant signed no agreement to abstain from all alcohol consumption for life; and Applicant had not abused alcohol or drank alcohol to excess in the two years prior to hearing.

Case: *Two by Six*, OLCC-96-L-006, March 1997.

Abstract: The license was renewed where licensee had a record of using alcoholic liquor to excess (two DUII arrests which resulted in diversion agreements, one incident of being visibly intoxicated in a licensed premises, and an evaluation as a Level III drinker) but was able to show good cause to overcome her record. The good cause included completion of two alcohol treatment programs, the recommendation of her alcohol treatment counselor, a record of using alcohol that was not severe, and a good record of compliance at the premises with no warnings and no tickets since she obtained her license over ten years ago.

Case: *The Homestead*, OLCC-94-V-074, August 1996.

Abstract: For purposes of proving a violation of “being in the habit of using alcoholic liquor to excess,” the Commission concluded that the habit need not be present or current at the time of the hearing, as long as it existed at the time the licensee was licensed by the Commission. The Commission concluded that it has an interest in sanctioning a licensee for having a habit of using alcohol to excess while the licensee was licensed by the Commission. Otherwise, the Commission’s performance standards would be mere hollow threats.

Case: OLCC-96-V-009, June 1996.

Abstract: The Commission has previously held that participation in DUII diversion is evidence of using alcoholic liquor to excess which supports a revocation of a service permit.

Case: *Jammers West, Inc.*, OLCC-94-L-005, March 1995.

Abstract: The Commission concluded the applicant had a record of using alcohol to excess and denied the license where the applicant had two DUII convictions and one recent arrest for DUII within a 13 year period. The Commission concluded there was not good cause to outweigh the refusal basis and that applicant was not a good risk for compliance because the applicant failed to show that he was taking steps, such as participation in a treatment program, to control his drinking problem.

Case: *7-Eleven Store No. 14495*, OLCC-92-L-014, April 1994.

Abstract: The Federal Americans with Disabilities Act applies to the Commission's licensing activities. Alcoholism is a disability covered under the ADA. There are additional considerations under the ADA that the Commission's contested case precedent and the Commission's rules interpreting ORS 471.295(4)(a) do not address. The Commission should consider: 1. whether there are reasonable accommodations that can be made for the disabled applicant; and 2. whether the continued licensing of a licensee would constitute a direct threat to public health and safety. The Commission's determination must be based on an individualized assessment, based on reasonable judgment that relies on current medical evidence or on the best available objective evidence. The direct threat determination may not be based on generalizations or stereotypes about the effects of a particular disability.

Case: *K.C.'s*, OLCC-93-L-007, March 1994.

Abstract: Because the record did not establish that the applicant was diagnosed to be an alcoholic, the Commission concluded that the applicant did not have a current habit of using alcoholic liquor to excess. The record indicated that the applicant was diagnosed as a "problem drinker."

The Americans with Disabilities Act applies to the Commission's licensing activities. If the Commission bases a decision on a diagnosis of alcoholism, which is a protected disability, the Commission should consider the following: an individualized assessment of whether the particular applicant poses a direct threat to the public health and safety; and whether there are reasonable accommodations for the applicant.

There was good cause to overcome a record of abuse where the license was restricted to prohibit the applicant from serving alcoholic beverages at the licensed premises. The applicant was allowed to continue performing building and equipment maintenance work at the licensed premises.

Case: OLCC-92-SP-033, November 1992.

Abstract: The Commission concluded that applicant has a habit of using alcoholic liquor to excess and denied the application. Applicant was convicted of DUII on two occasions, was evaluated a problem drinker, and her treatment counselor recommended that she remain abstinent and attend support-group meetings. Even though applicant's employer gave her a strong recommendation and applicant's job involves only minimal service of

alcoholic liquor, applicant continues to consume alcoholic liquor on a regular basis, routinely consuming two to three drinks after work.

Case: OLCC-92-SP-022, October 1992.

Abstract: The fact that an applicant is currently taking Antabuse does not establish that the applicant has a current habit of using alcoholic beverages to excess where the applicant does not depend upon Antabuse to remain abstinent.

Case: OLCC-92-SP-019, June 1992.

Abstract: The Commission found there was no current habit of abuse where the applicant had no alcohol-related incidents for two years prior to the hearing, the applicant had not been diagnosed as an alcoholic, and the applicant's current alcohol consumption was not excessive.

Case: OLCC-91-SP-011, February 1992.

Abstract: Commission allowed applicant, who continued to drink up through the date of his hearing after his alcohol treatment counselor of two years prior had advised him to completely abstain, to supplement the record with current evidence of alcohol use, diagnosis, and treatment. Applicant showed good cause with a strong employer recommendation, good history of compliance, abstinence following his initial hearing, a favorable diagnosis and prognosis from his current treatment counselor, and a restriction that he abstain completely from drinking alcohol.

Case: *Landmark Saloon*, OLCC-91-L-005, January 1992.

Abstract: Applicant has a habit of using alcoholic liquor to excess where the evidence showed that applicant drinks until refused further service; over consumed and became involved in fights; had been "86ed" from premises in his town because of his behavior while drinking; disregarded his treatment counselor's recommendation that he cease consuming; denied that he has a drinking problem; and consumes alcoholic liquor at the present time.

The Commission concludes that a history of using alcohol to excess can be defined as a pattern of incidents showing excessive use of alcoholic liquor over a period of time. Applicant's nine incidents of excessive drinking constituted a recent history of using alcoholic liquor to excess pursuant to OAR 845-05-025(4)(a).

Licensee failed to show good cause to outweigh a recent history of using alcoholic liquor to excess where applicant continued to drink up to the present time and continued to drink in spite of the fact that both his psychiatrist and alcohol-treatment counselor recommended that he abstain.

Case: OLCC-91-SP-050, August 1991.

Abstract: Applicant's dependence on Methadone to abstain from using heroin demonstrated a present habit of using controlled substances to excess. Applicant's complying with probation conditions; abstaining completely from using alcohol and unauthorized controlled substances for the year and one-half preceding the hearing; participating successfully in Methadone treatment during that same period of time; and four years good compliance record were not sufficient good cause to outweigh denial based on past heroin addiction. Sufficient good cause was shown and a service permit granted after adding a restriction requiring continued Methadone treatment and regular reporting of urinalysis and breathalyzer tests to the Commission.

Case: OLCC-90-SP-237, August 1991.

Abstract: ORS 471.380(1) did not provide a basis to refuse to issue a service permit. Although the applicant

continues to drink one glass of beer or wine on occasion with meals, there was no evidence that applicant has abused alcohol by over consumption since 1986.

Case: OLCC-90-SP-087, June 1991.

Abstract: The evidence failed to establish that applicant had a current habit of using controlled substances to excess where the applicant had not used illegal controlled substances for one and one-half years.

Case: OLCC-90-SP-189, May 1991.

Abstract: Evidence which established that applicant had not used alcohol or illegal controlled substances in the year preceding her hearing proved that applicant did not have a current habit of using alcohol or illegal controlled substances to excess. That the test results of a twice-weekly, random, urinalysis over the past six months were all negative was particularly convincing evidence on this point.

Case: OLCC-90-SP-002, March 1991.

Abstract: The Commission granted a salesman's license in spite of applicant's record of abuse of alcoholic liquor where applicant showed good cause to outweigh the record of abuse. Applicant showed that he was unlikely to consume to excess in the future because he had ceased drinking, was doing well on his job and had the support of his employer, and agreed to have a restriction on the license that he would not drink.

Case: *The Hide Out*, OLCC-89-L-019, September 1990.

Abstract: The Commission concluded that licensee failed to show good cause to overcome a habit of use to excess where licensee: did not have a good record of compliance, had not sought treatment for her drinking, did not offer to abide by any conditions or restrictions, and continues to consume alcoholic liquor.

The Commission concluded that licensee had a habit of using alcoholic beverages to excess where licensee consumed alcoholic beverages to the point of intoxication on approximately eight occasions over three years, and each of these incidents resulted in disturbances to which the police responded.

The evidence failed to show a prima facie case that licensee had a record of abuse where the records showed that licensee had one diversion and one acquittal of DUII after jury verdict.

Case: *High Tech Cafe & Deli*, OLCC-89-L-014, March 1990.

Abstract: The preponderance of the evidence did not establish that the applicant had a current habit of using alcoholic liquor to excess where although the applicant had previously been diagnosed to be an alcoholic and currently consumes alcoholic beverages, the record did not indicate that the applicant was instructed to cease drinking alcoholic beverages by a treatment expert. The record did not indicate that an expert familiar with the applicant stated that he could not adequately control his drinking without remaining abstinent. There was no evidence that the applicant was currently using alcoholic liquor to excess.

Case: OLCC-88-S-001, December 1989.

Abstract: The Commission refused to renew a salesman's license when the applicant had a current habit of using alcohol to excess shown by his continuing to drink alcoholic liquor after he had been diagnosed as an alcoholic and had been advised to stop drinking by his treatment program. Applicant failed to show good cause to outweigh the denial criterion.

Case: *Log Cabin Restaurant & Lounge*, OLCC-88-L-020, May 1989.

Abstract: When a co-licensee resigned as a corporate officer, divested his stock and was no longer an applicant or licensee, the Commission could not impose a License restriction barring him from the licensed premises under ORS 471.295(4)(a) and OAR 845-05-025(6). Both establish a license refusal grounds based on the eligibility of an applicant, that is, the applicant's habit and record of abuse of alcoholic liquor. Neither lists as a refusal grounds the habit or record of abuse of other persons.

Case: *Point After*, OLCC-88-L-017, December 1988.

Abstract: Where the record presented a close call on whether there was good cause to overcome the applicant's record of abuse of alcohol, the Commission granted the license subject to the following restrictions: abstaining from alcohol; completion of any court-ordered alcohol treatment; make treatment results available to the Commission; comply with treatment program recommendations.

Case: *Lloyd's of Bandon Restaurant & Lounge*, OLCC-88-L-007, November 1988.

Abstract: Applicant had a present habit of consuming alcohol to excess where applicant was an alcoholic, applicant's attendance at treatment programs had not been effective in preventing further alcohol abuse, and applicant continued to drink as of the date of the hearing.

A licensee had not gained sufficient control of his drinking to be other than a poor compliance risk unless he was restricted from selling, serving, consuming, or being under the influence of alcoholic beverages on the licensed premises, or he agreed to obtain further alcohol treatment, abstain from consuming alcohol until completing such treatment, and follow any recommendations of the treatment program, including abstinence, that were reasonably necessary to maintain acceptable control of his alcohol consumption.

Case: *7-Eleven Food Store No. 144950*, OLCC-88-L-004, June 1988.

Abstract: There was good cause shown to overcome a licensee's record of abuse of alcohol where licensee had a 15-year record of good compliance with the Commission's rules, licensee's abuse of alcohol was intermittent, rather than chronic, and where licensee's alcohol problem could be overcome by further treatment. The Commission imposed conditions that the licensee abstain from alcohol until completion of an intensive treatment program, and that licensee continue to abstain if the treatment program so recommended in order for the licensee to maintain acceptable control of his drinking.

Case: *Oceanside Restaurant & Lounge*, OLCC-87-L-014, February 1988.

Abstract: The Commission has considered the following factors when determining whether there is good cause to outweigh a record of abuse:

1. Previous record of compliance;
2. Participation in alcohol treatment programs;
3. Whether person continues to drink or has stopped;
4. Recommendations from counselors, employers, probation officers;
5. Severity of person's record;
6. How much time has passed since last relevant incident.

The Commission concluded that applicant showed good cause where factors 1-5 above weighed in her favor and, in addition, applicant agreed to have conditions placed on the license.

The Commission concludes that in order for an applicant to show that he does not have a present habit, he must show that he is able to refrain from consumption of alcoholic liquor without the aid of substances such as Antabuse. The Commission overrules any cases that may have concluded that the use of Antabuse precludes a

present habit of using alcoholic beverages to excess.

Case: OLCC-87-SP-009, September 1987.

Abstract: Applicant was not shown to have a present habit of using alcoholic beverages to excess where there was no evidence to show the applicant became intoxicated or had alcohol-related problems in the preceding four years. Service permit was granted even though the applicant did not appear because the Commission failed to prove a prima facie case.

Case: OLCC-87-SP-011, August 1987.

Abstract: The evidence did not show a present habit where the applicant had three prior DUIs but only one instance of drinking in the preceding two-year period.

Case: *Stafford's on Broadway*, OLCC-86-SP-020, November 1986.

Abstract: The Commission has concluded that there is evidence of a habit of using alcoholic beverages to excess where the licensee has been diagnosed as an alcoholic; has been instructed to cease drinking, and in spite of this, continues to consume alcoholic liquor.

Case: OLCC-86-SP-020, November 1986.

Abstract: Evidence that applicant is unable or unwilling to cease drinking was found where applicant failed to complete an alcohol treatment program and failed to stop drinking, although he was under court order to do so.

Cases: *Beavers Inn*, OLCC-86-L-009, September 1986; *Falls View Tavern*, OLCC-85-L-015, September 1986.

Abstract: A habit is defined as a manner of behavior that a person does with frequent repetition and is unwilling or unable to stop. The mode of behavior may become nearly or completely involuntary.

Case: OLCC- 86-SP-002, July 1986.

Abstract: Good cause not shown to overcome record of alcohol abuse shown by liquor law convictions where applicant drank to excess up until six months before his hearing and where applicant had not completed all of his alcohol counseling.

Cases: OLCC-85-SP-024, March 1986; *Oceanside Restaurant & Lounge*, OLCC-87-L-014, February 1988; *7-Eleven Food Store No. 144950*, OLCC-88-L-004, June 1988.

Abstract: Good cause may be shown for issuance of a service permit under ORS 471.380(1) in spite of a habit of using alcoholic beverages to excess if evidence shows applicant would not present a poor risk of compliance with alcoholic beverage laws.

Case: *Nemo's Pizza & Spaghetti House*, OLCC-85-L-028, December 1985.

Abstract: ORS 471.295(4)(a) requires that the applicant have a present habit of using alcoholic beverages to excess. Applicant's use of Antabuse for the past five months precludes any present habit of using alcoholic beverages.

Good cause for overcoming a record of alcohol abuse consists of evidence that the applicant is not a poor risk as to compliance with alcoholic beverage laws. The purpose of OAR 845-05-025(6) is not to punish an applicant for wrongdoing but to prevent problems associated with the sale of alcoholic beverages.

Case: OLCC-85-SP-005, April 1985.

Abstract: The Commission must prove that the use of alcoholic beverages to excess is current in order to prove a habit of use to excess. *See* OLCC-85-SP-011, July 1985. The Commission has concluded that an applicant does not have a habit of using alcoholic beverages to excess where there was no evidence that the applicant had used alcohol to excess for the past year.

Case: *Applicant M.R.*, March 1984.

Abstract: Good cause proved for a grant of service permit where applicant's felony convictions were over ten years old and applicant had shown sufficient evidence of reform since the convictions.

B.1.b.9. OLCC Compliance History (ORS 471.313(4)(g), OAR 845-005-0320(8) [(ORS 471.295(4)(g), OAR 845-05-030(3), [OAR 845-005-0326(6))] [ORS 472.160(4)(g)]]

[\(return to index\)](#)

Case: *Mt. Angel Deli Market & Deli, LLC*, OLCC-13-V-034/043A/043B, November 2014.

Facts: Licensee had a history of several violations involving sales to minors. Past violations had resulted in Licensee purchasing AVE and license restrictions requiring Licensee to train employees on AVE use, and for employees to use AVE when selling alcohol. Licensee's employee sold to a minor decoy, after using AVE which indicated the sale was to a minor. The OLCC proposed to cancel Licensee's license for this violation (as a Category I-violation of a license restriction).

Abstract: No license restriction violation was proven when the evidence showed that Licensee's employee used AVE (although ineffectively), and Licensee required the employee to use it. Therefore, without this Category I violation, cancellation is inappropriate.

Contrary to the cases of *Hunter's RV Park* and *Lava Lanes*, in this case the employee did use AVE. Therefore there is no aggravation for failure to use AVE, making removal of Licensee from the Responsible Vendor Program inappropriate.

There is a basis to refuse to renew Licensee's license due to a poor record of compliance. Licensee's transformation into an LLC from a sole proprietorship does not preclude the Commission from considering violations which occurred under the sole proprietorship. Per OAR 845-006-0550(9), a licensee cannot avoid sanction or application of successive violations merely by adding or dropping partners or converting from one legal entity to another when the individuals who own, operate or control the business are substantially similar.

In regards to the factor "licensee's personal involvement," the fact that licensee was not personally involved in violations is a neutral factor, not one that weighs in favor of good cause to overcome a refusal to renew basis. See also *US Market #260*, OLCC-11-L-003, March 2013.

Because there is a basis to refuse to renew Licensee's license, there is no license to penalize for the sale to minor violation. Therefore a Letter of Reprimand is appropriate.

Key Words/Phrases: service permit, revocation, DUII, relevant conviction, good cause, abstinence, probation

Case: *US Market #260*, OLCC-11-L-003/003A, March 2013.

Facts: Applicant for new premises' license had multiple other premises in the State. OLCC determined Applicant's managing member did not have a good record of compliance, and proposed to deny grant of a new license due to other premises having multiple sale to minor decoy violations (all involving employees making the sale). Licensee argued that the OLCC could not consider certain violations in light of the recent Court of Appeals ruling that reversed the OLCC's order in *US Market #180, LLC v. OLCC*, 249 Or App 666 (2012). Applicant argued that the OLCC was erroneously interpreting the licensing restriction in the same manner that was overturned in *US Market #180*. Applicant also argues that the license restriction requiring employees to use the AVE resulted in significantly disproportionate penalties for sales to minors compared to other licensees without such a restriction. Applicant next argues that the OLCC has no objective standard to determine a poor record of compliance, which results in unjust and discriminatory treatment among managing member, Applicants and individuals.

Abstract: Commission case precedent has established that the scope of review for a new license application differs from that of a license renewal. In a license renewal context, the Commission reviews only the licensee's

compliance record for the premises seeking renewal. When, as here, the Commission receives an application for a new license, it reviews the aggregate compliance records of the applicant and of the individuals who own or have an interest in the business entity. *US Market #145* (OLCC-11-V-009, February 2012), *Center Market #18* (OLCC-10-L-011, April 2011).

The managing member's Category I violations arise from his failure to comply with a restriction on his license. The 2008 settlement agreement between the managing member and the Commission created a restriction on managing member's licenses that requires the licensee to install age verification equipment at all of the licensed locations, and obligates the licensee to require that all employees use this equipment when fulfilling the freestanding age-verification obligation under OAR 845-006-0335(1)(a). The Commission found that managing member violated that restriction on five separate occasions at four different licensed locations. Managing member appealed two of those determinations, against *US Market #180* (OLCC Final Order, 08-V-043, October 2009) and *US Market #109* (OLCC Final Order, 08-V-112, January 2010). In *US Market #180*, the Court of Appeals held that the agency did not interpret the restriction correctly and that Applicant's managing member did not, in fact, violate the restriction. *US Market #180, LLC v. OLCC*, 249 Or App 666 (2012). In *US Market #109*, the Court upheld the violation, but remanded the case to allow the OLCC to reconsider the imposed sanction. *US Market #109, LLC v. OLCC*, 250 Or App 335 (2012).

Applicant argues that the other Category I violations should not be considered, as they were based on the same agency interpretation of the license restriction that the court found to be erroneous in *US Market #180*. This argument is without merit. Applicant did not appeal the adjudication of these other violations and has cited no legal authority allowing reversal of these final determinations in this forum.

Applicant also argues that the license restriction requiring employees to use the AVE resulted in significantly disproportionate penalties for sales to minors compared to other licensees without such a restriction. This is correct and is, in fact, the rationale behind such license restrictions. The Commission imposes restrictions on the licenses to motivate licensees to comply with the liquor laws. In this case, managing member of Applicant agreed to the placement of a restriction on his licenses, and consequently to the more severe sanctions for lack of compliance. Applicant's managing member cannot now collaterally attack his prior stipulated settlement with the Commission.

As Applicant notes, Circle K Stores, Inc., Fred Meyer Stores, Inc., Safeway Stores, Inc. and Plaid Pantries, Inc. have never been denied licensing for a new location, despite having numerous Category III/IIIa violations on the corporations' records. Applicant argues that this demonstrates disparate treatment of Applicant's managing member. However, these corporate licensees have no Category I violations on their records, which is a clear distinction from Applicant's managing member and his corporate entities. Applicant argues that the underlying conduct involved in the violations is the same (*i.e.*, sales to a minor), but that assertion is incorrect. Managing member agreed to a restriction on his license, so the act of selling alcohol to a minor/failing to verify age not only violates the law, it also violates the restriction agreement. Under the OLCC's administrative rules, the failure to comply with a restriction results in a Category I violation for any licensee. Applicant has not shown disparate treatment because these corporations do not have similar compliance records, and therefore are not similarly situated.

Applicant next argues that the OLCC has no objective standard to determine a poor record of compliance, which results in unjust and discriminatory treatment among Licensee, Applicants and individuals. OLCC case precedent establishes that a Category I violation together with a Category III violation constitutes a poor record of compliance. See *US Market #109*, *US Market #145*, *City Center Food Mart*, (OLCC Final Order, OLCC-08-V-070, September 2009), *Cedars Restaurant & Lounge* (OLCC Final Order, OLCC-08-V-099, October 2009). A poor record of compliance determination is not invalidated where the violations do not result in cancellation or non-renewal due to a showing of good cause. *US Market #109*, *Downtown Deli and Greek Cuisina*, (OLCC-08-V-028, October 2009). ORS 471.313(4)(g) allows the OLCC discretion in refusing to license an applicant, requiring only a "reasonable ground to believe" that the applicant has a poor record of compliance. Case precedent cited above provides an objective standard of what constitutes a poor record of compliance.

Key Words/Phrases: renewal, compliance history, poor record of compliance, minor decoy, AVE, disparate treatment, objective standard, discriminatory treatment, good cause

Case: *US Market #145*, OLCC-11-V-009, February 2012.

Facts: Based on the record of violations for selling alcohol to minors at other premises owned by Licensee's managing member, Licensee was required to install AVE and train all employees to use it for every person attempting to purchase alcohol who reasonably appeared under the age of 26. Employee of licensee sold to a minor decoy without asking for ID in violation of the restriction. OLCC proposed to refuse renewal of the license.

Abstract: When only two of the four *Oceanside* factors are present, the presence of other aggravating or mitigating circumstances can be considered in determining whether or not a penalty of cancellation is warranted.

In the context of a license renewal, the Commission considered the individual licensee's compliance record at the particular premises to be renewed and declined to consider licensee's aggregate compliance record from other premises where the individual licensee is or has been licensed.

A Category I violation, together with a Category III violation is a poor record of compliance. Thus, in this case, Licensee has a poor record of compliance at this location.

Key Words/Phrases: license restriction, AVE, minor decoy, *Oceanside* factors, good cause, willful, substantial, compliance record, license renewal, record of compliance

Case: *Center Market #18*, OLCC-10-L-011, April 2011.

Facts: Licensee of multiple premises requested a new license for new store. Licensee's owner had previous convictions and OLCC had sought to cancel his other licenses, but ultimately sanctioned Licensee short of cancellation. Since then Licensee's owner had completed his probation requirements. His other premises had multiple previous violations, but none since *Center Market #1, #2, #5, #6, #9 and #12* (OLCC Final Order, 08-V-104, -105 and -106, October 2009) was decided. The Commission had renewed the licenses at all other premises, and Licensee's owner had taken steps to reduce violations in his stores.

Abstract: Considering the passage time since the crimes (nearly seven years) the passage of time since the convictions (three years), Licensee's owner's successful completion of all probation requirements and the Commission's renewal of all other licenses at the five other convenience store locations, Licensee's owner and Licensee/Applicant Raman Inc. have shown that they are an acceptable future compliance risk.

While violations at other convenience stores are part of Licensee's owner's compliance record, it is worth noting that Licensee's owner did not personally commit any of these violations. For this reason, this case is distinguishable from *City Center Food Mart* (OLCC Final Order, 08-V-070, September 2009).

Key Words/Phrases: renewal, new license application, good cause, compliance record, repeated violations

Case: *Lava Lanes of Medford*, OLC 10-V-018/018A/018B, February 2011.

Facts: Licensees had multiple violations through employees within 2 years.

Abstract: The Commission may count as evidence of a poor record of compliance charges that are proved for the first time during the license refusal contested case, as long as the Commission gives reasonable notice of the charges and provides the applicant an opportunity to contest the charges. See *Riverside Restaurant & Lounge* (OLCC, Final Order, 94-L-008, December 1996).

Case: *Cedars Restaurant & Lounge*, OLCC-08-V-009/009A, October 2009.

Facts: Licensee applied for a TAMU for the 2008 Lazy Lizard bike event in Detroit, and the city denied the application. Licensee's spouse then purchased alcohol for the event which was moved outside of Detroit city limits. Licensee's spouse worked for Licensee at the licensed premises. Licensee was told not to sell alcohol at the event, and Licensee claimed that his spouse bought the alcohol and gave it away.

Abstract: By making alcoholic beverages available at an unlicensed location for indirect financial consideration, Licensee sold or offered for sale alcoholic beverages in a manner other than the license permits. Given that this was Licensee's second Cat I violation, with a Cat III violation as well, cancellation was warranted.

The Commission may count as evidence of a poor record of compliance charges that are proved for the first time during the license refusal contested case, as long as the Commission gives reasonable notice of the charges and provides the applicant an opportunity to contest the charges. *Riverside Restaurant & Lounge* (OLCC, Final Order, 94-L-008, December 1996). In this case, a violation of ORS 471.405(1) is a Category I violation, one that renders the licensee ineligible for a license. Licensee has two Category I violations within two years. This second violation, as noted above, included aggravating circumstances. In addition, Licensee has one Category III violation, failing to verify the age of a minor. This constitutes a poor record of compliance while previously licensed, which entitles the Commission to refuse to renew Licensee's license.

The Commission has held that a prior record of violations may be overcome as a ground for refusal where the evidence shows that despite the violation record, the applicant would not be a poor risk for future compliance with the alcoholic beverage laws. *See, e.g., Crane Supply Tavern* (OLCC, Final Order, 85-L-019, August 1985); *Hale's Tavern* (OLCC, Final Order, 85-L-010, June 1985). Factors to be considered in determining the existence of good cause include the period of time without violations as a licensee, the nature and seriousness of the violations, whether the violations were mitigated or aggravated, and acceptance of responsibility for the violations. *See, e.g., Quincy Store* (OLCC Final Order, 02-V-008/L-001, December 2002.)

Key Words/Phrases: alcohol service outside permitted manner by license, TAMU, intentional, indirect financial consideration, sale, registration fee, aggravation, cancellation

Case: *JR's Convenience Store*, OLCC-06-V-084, OLCC-07-L-005, December 2007.

Facts: Applicant was new owner of convenience store, which had a restricted off-premises license. The restrictions included no sales of singles and items with higher alcohol content. Applicant was issued a 90-day temporary license, but inspectors found her selling restricted items multiple times. Inspectors tried to identify and address the restricted items, but the sales continued.

Abstract: Evidence fails to demonstrate that the applicant is a good candidate for future compliance because she 1) divides her time with another business she owns; 2) failed to appreciate the seriousness of the restrictions on her Temporary Letter of Authority; 3) is unfamiliar with liquor products and has difficulty identifying appropriate products; and 4) improperly relied on the former licensee and the distributor to stock the store in compliance with restrictions.

Key Words/Phrases: temporary license, restriction violations, singles, alcohol content, *Oceanside* factors

Case: *Dad's Restaurant & Lounge*, OLCC-06-V-029, December 2007.

Facts: Licensee purchased Dad's without knowing of problems between previous owner and the OLCC. Licensee proposed an extensive Chinese food menu, which was a large factor in the OLCC granting the license. Licensee was granted with several restrictions including sizes of drinks and no doubles. Subsequently Licensee substantially

reduced the menu without notifying the OLCC. Licensee's employee also sold doubles, larger mixed drinks and stacked drinks in violation of the license restrictions. Licensee argued she was unaware this occurred, and terminated the employee when she learned of his actions.

Abstract: Licensee's previous history of compliance at a different location is not worthy of as much weight in determining her risk for future compliance with liquor laws, including restrictions, where the previous history comes from a different type of operation, clientele, and location. Licensee had previously run a Chinese restaurant where alcoholic beverages were available but not a significant part of the business, and the new business was a bar in a different part of town.

Key Words/Phrases: credibility determination, termination of employee, cancellation, *Oceanside* factors, reduction in menu, selective enforcement, intervention meetings, settlements, mitigation factors

Case: *H2O Martini Bar & Restaurant*, OLCC-05-V-012, December 2005, *affirmed without opinion*, *Capital Asset Holdings, Inc., et al v. OLCC*, 213 Or App 240 (2007).

Facts: Licensee had a #1 minor posting. Licensee's minor sister was observed at the premises by OLCC inspectors, and receipts showing the sister had "comped" food and drink orders on other occasions was found. The OLCC also performed a minor decoy operation due to complaints of minors entering the premises, and Licensee's employees permitted the decoy to enter and be served. Licensee had prior violations for serving a minor and paying for alcohol with NSF checks. Since the violations Licensee installed an electronic ID scanner and hired DPSST certified security.

Abstract: The Commission properly proposed to refuse to renew Licensee's Full On-Premises Sales license because Licensee did not show good cause to overcome a poor record of compliance. Licensee has not shown that future violations are unlikely because although Licensee has offered explanations as to how or why some of the prior violations occurred, he did not demonstrate that he is a good risk for future compliance. Licensee's unwillingness to assist the inspectors in locating his minor sister after she fled the premises and his false claims in connection with the investigation show a disregard for the liquor laws. So does the fact that his minor sister was permitted on the premises, and retained a master key to access the premises, even after an OLCC inspector counseled Licensee in October and November 2004 about not allowing minors inside. Under these circumstances, Licensee's claim that he will comply with the law is not sufficient to establish good cause.

Key Words/Phrases: credibility determination, make available to minor, "comped", false statement

Case: *Cabana Club Café & Grill*, OLCC-03-L-010, April 2005.

Facts: Licensed premises was located in a popular area of McMinnville for young people, frequented as part of a "pub crawl." Licensee entered into a settlement with the OLCC for license restrictions due to a history of serious and persistent problems. The problems continued and the city requested the license not be renewed due to DUII arrests and significant amount of police time dedicated to problems created by the premises. Licensee had a number of policies in place to deal with problem situations and patrons.

Abstract: Serious and persistent problems that led to a prior settlement agreement with licensee were not a poor record of compliance for purposes of license renewal where there has been a de facto renewal since the settlement was reached. A February 2001 Proposed Refusal of License Renewal letter based on a history of serious and persistent problems was settled in December 2001 with resolution of violation and license issues. In April 2003 the Commission sent another Proposed Refusal of License Renewal letter based on more recent serious and persistent problems, an inability to control the premises, and a record of poor compliance when previously licensed. The history of serious and persistent problems was mitigated by the licensee's actions and the old history of serious and persistent problems was not treated as a record of poor compliance.

Case: *Quincy Store*, OLCC-02-V-008/L-001, February 2003, *affirmed*, *Ban v. OLCC*, 196 Or App 545, 102 P.3d 744 (2004).

Facts: Minor decoy took beer to the counter at Licensee's store. Licensee's nine-year-old daughter was at the register, told the decoy the price of the beer, pushed buttons on the register to ring up the sale, and gave the decoy change. Licensee was present when this occurred and told her daughter the price of the beer and helped recount the change given to the decoy.

Abstract: Where, during a 90-day temporary authority, Applicant was found to be responsible for a failure to verify the age of a minor and for permitting her nine-year-old daughter to sell alcohol, arising out of the same incident, the Commission concluded that Applicant's personal supervisory involvement in the two serious violations provided reasonable grounds to believe that Applicant did not have a good record of compliance during the term of her temporary license (90 day authority).

Applicant was unable to overcome a poor record of compliance by demonstrating she would not be a poor risk for future compliance with the alcoholic beverage laws where: (1) when confronted with the violation she displayed an intentional lack of candor and attempted to hide the violation by denying recognizing the minor, gave inaccurate and inconsistent explanation for her conduct and role in the sale; and (2) by her reluctance to bother her customers by asking for identification when she had previously done so, it is reasonable to conclude she would not be vigilant in verifying the age of persons who appear under age 26, particularly as she has demonstrated that her recall of those persons whose age she has, or has not, verified may not be reliable.

Remote location of a licensed premises, making it difficult for staff to monitor future compliance with the liquor laws is not a legitimate basis for license refusal and is not a factor that may be used to defeat good cause to overcome a poor record of compliance.

Key Words/Phrases: decoy, minor, age verification, sale by minor, sale to minor, interpreter at hearing, credibility, knowing, sale by others, definition of employee, license refusal, good cause exception

Case: *Lariat Lanes & Convenient Services*, OLCC-03-L-001, October 2003.

Abstract: The Commission did not refuse to renew Applicant's license based on ORS 471.313(4)(g) (poor record of compliance when previously licensed) where Applicant had held five OLCC licenses with a total of 3 NVTs in 7 years. Of the NVTs, one was a category I and two were Category V violations.

Case: *Ann's Grocery*, OLCC-02-L-008/V-024, December 2002.

Abstract: Where Applicant four times violated the restrictions of her temporary authority to operate (no sale of malt liquor in containers of 32 ounces or larger; no sale of single cans or bottles of malt liquor in 16-ounce size), had restricted products in her cooler available for purchase, and her employee sold alcohol to a minor without verifying age, such violations constitute a poor record of compliance with the alcoholic liquor laws and the Commission's rules when previously licensed, and justify refusing the application for a permanent Off-Premises Sales license by Applicant.

Standards interpreting the ORS 471.315 cancellation criteria may be applied by analogy to interpret refusal criteria. Consequently, the standards utilized to determine whether the violations of license conditions or restrictions are substantial enough to justify cancellation apply with equal force to refusals. Those standards were announced in *Oceanside Restaurant & Lounge*, OLCC-88-V-123, August 1989. Application of those standards to this case demonstrates that the violations were substantial:

- (a) The violations occurred within the first 12 weeks of the temporary authority to operate;
- (b) Even if the violation was unintentional, applicant should have known that she was restricted from

selling the products clearly marked as malt beverages;

(c) There were four sales of single 16-ounce cans of malt liquor made over the course of seven days and applicant had in her inventory the other category of products that she was restricted from selling;

(d) The violations established go directly to the heart of the restrictions placed on the temporary authority (the product restrictions were imposed for the specific purpose of mitigating street drinking and public intoxication in an area with an established history of such problems).

The violations of the restrictions placed on the temporary license were substantial and provide grounds for a license cancellation. They formed the basis for the revocation of Applicant's temporary authority. By analogy, these violations also provide grounds for refusing to issue a permanent license to Applicant. These substantial violations of the restrictions placed on the temporary authority, combined with the violation of sale to a minor constitute a poor record of compliance with the alcoholic liquor laws and the Commission's rules for purposes of ORS 471.313(4)(g).

Case: *Tequila Peppers Bar & Grill & Pepita Express*, OLCC-99-V-011-ES & OLCC-99-L-012, December 1999.

Abstract: The Commission granted an application for a new license with restrictions where the licensee had a prior license that had an immediate license suspension and letter of reprimand due to illegal drug sales, where it was determined that applicant would not be a poor risk for future compliance. That applicant would not be a poor risk was based on: (1) Applicant has a lengthy history of operation of 5 licensed premises over 10 years without a violation, suggesting that non-compliance for eighteen days at Tequila Peppers was an anomaly; and (2) the drug problems encountered at Tequila Peppers were the product of a set of circumstances unlikely to occur at Pepita Express (different locale with no history of drug sales, family style restaurant versus lounge, absentee management versus full-time involvement of licensee.)

Case: *Costless*, OLCC-99-L-015, November 1999.

Abstract: The Applicant's previous PS license was canceled because his agent violated a license restriction while the applicant was out of the country. The Commission determined that the Applicant had a poor record of compliance when previously licensed, but that the Applicant had shown good cause to overcome the refusal basis for a new license. Two years had passed since the Applicant's agent had violated the license restriction on the previous license and the Applicant did not commit the previous violations.

Case: *A Taste of Thai Restaurant*, OLCC-98-L-003, August 1998. [Criticized in *US Market #145*, OLCC-11-V-009, February 2012.]

Abstract: Husband and wife were originally co-licensed at the licensed premises in Salem, which the wife solely operated. Husband was removed from the license prior to the renewal application of wife (Applicant). Husband and wife had also been co-licensed at a premises in Eugene which husband solely operated. The Eugene license was cancelled by the Commission. The Regulatory Program proposed to refuse wife's Salem renewal application based upon poor compliance when licensed at the Eugene premises.

The Commission concluded that Applicant had a poor record of compliance in Eugene, when previously licensed, but concluded that Applicant had demonstrated good cause to overcome a poor record of compliance. Applicant showed that, despite the poor record, she would not be a poor risk for future compliance in that the types of businesses in Eugene and Salem differed significantly, husband solely operated the Eugene business and Applicant had no role in its operation, and Applicant was willing to accept a restriction that husband not be allowed to work in the Salem business. The Commission renewed the license of Applicant with the restriction.

Case: *Riverside Restaurant & Lounge*, OLCC-94-L-008, December 1996.

Abstract: The Commission decided that it can count as evidence of a poor record of compliance those charges

that are only charged and proved for the first time during the immediate contested case, as long as the Commission gives reasonable notice of the charges and gives the applicant an opportunity to contest the charge.

Case: *Reflections Bar & Grill*, OLCC-91-L-023, June 1992.

Abstract: Where licensee had three prior violations, the violations all had mitigating circumstances, and licensee had paid a fine or served a suspension for each, the Commission concluded that the violations were not sufficient in number or severity to constitute a basis to refuse to renew the license under ORS 472.160(4)(g) (poor record of compliance).

Case: *Wolf Den Tavern*, OLCC-89-L-005, November 1989.

Abstract: Where the Commission's penalty schedule recommended a fine or suspension for licensee's prior violations rather than license cancellation, and the licensees had already received a sanction of a fine or suspension for those violations, the Commission concluded that ORS 471.295(4)(g) did not provide a basis to refuse to renew the license.

Case: *214 Tavern*, OLCC-87-L-010, December 1987.

Abstract: ORS 471.295(4)(g), which provides for license refusal where applicant did not have a good record of compliance when previously licensed, does not pertain to a renewal applicant's violation record at the premises at which the applicant seeks renewal.

Case: *First Avenue Market*, OLCC-87-L-007, November 1987.

Abstract: In a request to remove a license restriction, good cause was not shown to overcome the licensee's poor record of compliance with the Commission's rules as the basis to refuse the request. The licensee had a number of recent violations on her record that showed a pattern of disobeying the liquor laws. This record proved that the licensee would be a poor risk for compliance with the alcoholic beverage laws.

An applicant may show good cause to overcome a poor record of compliance with Oregon's liquor laws and the Commission's rules where the applicant shows that, despite the poor record, the applicant would not be a poor risk for future compliance with the alcoholic beverage laws.

Case: OLCC-85-SP-013, September 1985.

Abstract: Commission noted, in granting an application, that the applicant's violation record, when formerly a licensee, arose through applicant's responsibility for the acts of his employees.

Case: *Crane Supply Tavern*, OLCC-85-L-019, August 1985.

Abstract: Prior record of violations may be overcome by evidence establishing that future violations not likely and that area had need for the license.

Case: *Hale's Tavern*, OLCC-85-L-010, June 1985.

Abstract: OAR 845-05-030(4) is not an absolute bar to license issuance. An application should be refused where the nature and number of the applicant's violations as a licensee create sufficient question whether applicant would follow the liquor laws if issued a license again.

Case: *Wes's Prime Rib*, September 1983.

Abstract: Violation history of corporate licensee not given substantial weight against former minority shareholders who were not active in the corporation and who now seek license as individuals.

B.1.b.10 Unfavorable Evaluation of Mental, Emotional or Physical Condition (OAR 845-005-0326(5))[(OAR 845-05-030(2))]

[\(return to index\)](#)

**B.1.b.11. Lack of Good Repute and Moral Character (ORS 471.313(4)(f))
[(ORS 471.295(4)(f), [ORS 472.160(4)(f))]**

[\(return to index\)](#)

Case: *El Paisano Superstore*, OLCC-10L-010, April 2011.

Facts: Applicant was arrested for check fraud. Applicant did not answer question on licensing application related to arrests. Applicant did disclose the arrest for check fraud on a City of Portland form filled out that same day. Applicant was subsequently convicted of felony Identity Theft. When questioned by an OLCC investigator about her failure to disclose the arrest, Applicant stated that she forgot about it.

Abstract: The Commission has held that "not of good moral character" may be proved by prior violations of the law which, based on their nature or number, indicate either "turpitude" or "disregard for law." *Thomas Creek Steak and Seafood* (OLCC, Final Order, 00-L-008, April 2001). Evidence of prior law violations of a sufficient magnitude or frequency to show a disregard for the law may show that an applicant or licensee is not of good moral character. *Campbell v. Bd. of Medical Examiners*, 16 Or App 381 (1974), cited in *McCann v. OLCC*, 27 Or App 487, 491 (1976).

In assessing "turpitude," the Commission uses the test for moral turpitude adopted by the court in *In re Chase*, 299 Or 391 (1985). In applying the *In re Chase* factors, the Commission determined that, to involve moral turpitude, the illegal activity must first be knowing and intentional and involve one or more of the following elements: fraud, deceit or dishonesty; harm to a specific individual; or illegal activity undertaken for personal gain. *Tony's Tavern* (OLCC, Final Order, 86-L-012, February 1987). The Commission later refined the test when it found that moral turpitude was not shown where only two *Chase* elements were present (one of which was the required knowing and intentional element). See also *Under the Bridge Cigarettes*, OLCC-05-L-002, February 2006; *Sparkles Tavern*, OLCC 88-L-021, 1989; *Punjab Tavern*, OLCC 91-L-015, April 1992.

A lack of good moral character can be shown by a lack of honesty in dealing with government in order to gain a benefit, such as a liquor license. This is a basis for poor moral character under the test described in *Schmitz v. OLCC*, 30 Or App 563 (1971).

Key Words/Phrases: good repute, moral character, moral turpitude, illegal activity, lack of honesty, poor moral character, disregard for law

Case: *Duke's Landing*, OLCC-10-L-006, April 2011.

Facts: Applicant had 26 convictions for various driving offenses since 1981. Applicant deemed to not have good moral character.

Abstract: When the OLCC seeks to deny a liquor license based on allegations that the applicant is not of good moral character, it must apply the term "good moral character" in a manner that is rationally related to the reason for the law. *Schmitz v. OLCC*, 30 Or App 563, 566 (1977). Further, when reviewing an applicant's moral character, the OLCC must look solely at those aspects of moral character that are related to the implementation of the liquor licensing statutes and rules. *Id.* ORS 471.313(4)(f) does not provide for a "good cause" exception to overcome a denial based on a lack of good moral character. However, the OLCC has previously considered such factors to determine whether an applicant can overcome a denial of a liquor license under this statute.

Corporations are required to be represented by an attorney in any action, suit, or proceeding, unless otherwise specifically provided for by law. There is no exception from this law for OLCC contested case matters.

Key Words/Phrases: moral character, repute, good cause, driving offense, corporations represented by attorney.

Case: *Zeba Bistro*, OLCC-05-L-003, June 2007.

Facts: Licensee and her husband alleged to have misrepresented ownership in their restaurant business on license applications, and license investigation reveals long histories of litigation against both husband and wife in their business dealings, false statements regarding the husband's role in the licensed businesses, and indications that both used corporate forms to perpetrate fraud against others. Both had large amounts in uncollected judgments against their businesses.

Abstract: A lack of good moral character can be shown by a lack of honesty in dealings with government in order to gain a benefit, such as a liquor license.

Where the license applicant intentionally misrepresents the true ownership of the business in order to secure the license, the Commission has held that such false statements demonstrate a lack of honesty in dealing with government that constitutes poor moral character.

When the corporate entity is used to accomplish fraud or injustice, the courts will disregard it and will look through the corporate form to the real actor or actors in the transaction.

The OLCC cannot lump all of the judgments together and then, based purely on the total number and amount of the judgments, conclude they demonstrate a disregard for the law. As previously stated, the Commission "must look only to those aspects of moral character which relate significantly to the proper exercise of the license involved." *Schmitz v. OLCC*, 30 Or App 563 (1971). The total amount or sheer number of judgments is not, alone, persuasive evidence of disregard for the law. The number of unpaid judgments may be evidence used in determining poor moral character based on a disregard for the law.

Key Words/Phrases: application refusal, unlicensable person, financial interest, false statement, not of good repute and moral character, credibility determination

Case: *Under the Bridge Cigarettes*, OLCC-05-L-002, February 2006.

Facts: Applicant had criminal history including felony drug convictions, and rape and sodomy convictions related to a sexual relationship he had with a 15-year-old which resulted in a pregnancy. Applicant served his prison time for each conviction, and completed his probation requirements. Applicant had owned tobacco stores for 15 years. The Commission concluded that Applicant's two controlled substance felony convictions, one conviction for attempting to elude police, and Rape III conviction over a 13 year period show a lack of respect for law that makes it likely the applicant is unlikely to fail to follow the laws regarding the sale of alcohol.

Abstract: The lack of good repute and lack of moral character are separate grounds, either of which provides a basis for license refusal. The Commission has held that "not of good moral character" may be proved by prior violations of the law which, based on their nature or number, indicate either "turpitude" or "disregard for law." *Thomas Creek Steak and Seafood* (OLCC, Final Order, OLCC-00-L-008, April 2001).

To find moral turpitude, the Commission requires that the acts at issue be knowing and intentional and involve two or more of the following elements: fraud, deceit or dishonesty; harm to a specific individual; or illegal activity undertaken for personal gain. *Tony's Tavern* (OLCC, Final Order, OLCC-86-L-012, February 1987); *Sparkles Tavern*, OLCC 88-L-021, 1989; *Punjab Tavern*, OLCC 91-L-015, April 1992. Applicant's rape of his 15 year old adopted daughter constitutes moral turpitude. He acknowledged the sex, he knew her age, and that the act was illegal therefore his action was knowing and intentional. The act of penetration caused or threatened to cause physical injury or harm to the daughter, and she could not consent. The applicant's acts were for personal gain. Fraud and deceit were not necessary.

Poor moral character may also be established where the applicant's prior law violations are of a sufficient magnitude or frequency to show a lack of "respect for the rights of others and for the laws of State and Nation." See OLCC-96-L-012, October 1996, citing *Campbell v. Bd. Of Medical Examiners*, 16 Or App 381 (1974) and *McCann v. OLCC*, 27 Or App 487 (1976).

In this case, Applicant's crimes, particularly the rape conviction, show moral turpitude. The nature and number of Applicant's crimes show a pattern of disregard for the law: four felonies over the course of 13 years shows such a lack of respect. Applicant spent much of the time since the last conviction in prison.

Key Words/Phrases: license denial, not of good repute, moral character, felony conviction, good cause, moral turpitude, pattern of disregard for the law, passage of time

Case: *Lariat Lanes & Convenient Services*, OLCC-03-L-001, October 2003.

Abstract: An add-partner application was denied based on ORS 471.313(4)(f) (poor moral character) where partner had a misdemeanor conviction for marijuana possession, two game violations, two incidents of harassment, six noise disturbances and admitted long-term illegal marijuana use. This history demonstrated to the Commission prior law violations of sufficient magnitude or frequency to show a lack of regard for the law.

Case: *Tollgate Mountain Chalet*, OLCC-02-L-004, September 2002.

Abstract: The nature of Applicant's four violations of laws governing professional conduct while licensed as a real estate agent, and her two periods as a non-complying employer by not providing workers' compensation coverage, establishes a pattern of disregard for law sufficient to establish a lack of good moral character. Applicant, however, demonstrated good cause to overcome the lack of good moral character in this instance where she showed she would be a good risk for compliance with OLCC laws in that: five years have elapsed since the Real Estate Agency order revoking Applicant's real estate license and seven years since the acts which violated the Real Estate Agency laws; Applicant held a liquor license for four and a half years subsequent to the real estate violations without incident; three years have elapsed since failing to comply with workers' compensation (a period more recent and of sufficient duration to predict that Applicant would be a good risk for compliance); and where Applicant has no criminal record.

Case: *T-Mini Mart*, OLCC-02-L-007, October 2002.

Abstract: Over the nine-year period preceding application, Applicant's driving record showed: four convictions for Driving While Suspended; one conviction for Driving Uninsured; a license suspension for failing a breath test; two license suspensions for failing to provide proof of insurance; and one license suspension for having an uninsured accident. The Commission determined that the number of prior law violations demonstrated disregard for law, resulting in denying the license based on poor moral character.

Case: *La Gran Cantina*, OLCC-00-V-024/-L-009/-L-010, June 2002.

Abstract: Licensee's and son's misrepresentations concerning son's entitlement to profits and concealment that son managed the licensed premises showed a lack of honesty in dealing with the Commission that constitutes a lack of good moral character, providing a basis to refuse to renew the license and to refuse to approve the son as manager.

Case: *Thomas Creek Steak and Seafood*, OLCC-00-L-008, April 2001.

Abstract: The Commission has used two different, but related, standards in evaluating whether an applicant is not of good repute and moral character under former ORS 471.295(4)(f). Stated in the aggregate, the Commission has concluded that "not of good moral character" may be proved by prior violations of the law, which, based on

their (a) “nature,” or (b) “number,” indicate either (1) “turpitude,” or (2) “disregard for law.” To determine whether a crime involves moral turpitude, the Commission has applied the elements adopted by the Oregon Supreme Court in *In re Chase*, 299 Or 391, 402 P 2d 1082 (1985): intent or knowledge; fraud, deceit, or dishonesty; harm to a specific victim; and illegal activity undertaken for personal gain.

The Commission concluded that conviction for attempted theft by receiving a stolen construction vehicle, located on applicant’s property and about which Applicant lied to police, was a crime of moral turpitude. The receipt of the stolen vehicle was intentional; it was dishonest of Applicant to aid the theft by concealing the vehicle on the property and deceitful to lie about how it came into his possession; there was harm to a specific victim, the owner of the vehicle; and this was illegal activity undertaken for personal gain.

Where three years had passed since applicant’s conviction of a crime involving moral turpitude, it was not a sufficient passage of time to weigh in favor of good cause, in light of applicant’s other convictions (multiple driving and criminal convictions spanning 20 years), which themselves show a disregard for the law. Weighing against good cause were applicant’s threat of harm to a grocery store clerk (who refused to sell applicant alcoholic beverages when applicant was intoxicated) and applicant’s receipt of stolen property and attendant lies to police. Applicant has not demonstrated that he would be a good risk for compliance with OLCC rules.

Case: *Bistro Gardens*, OLCC-96-L-003, February 1997.

Abstract: The Commission concluded that there were two separate reasonable grounds to refuse the applicant’s license for applicant not being of good moral character. Applicant demonstrated a lack of simple honest dealing (the *Schmitz v. OLCC*, 30 Or App 563, 567, 567 P2d 591 [1977] test for poor moral character) when he intentionally provided the Commission with two material false statements. Applicant also demonstrated a disrespect for the law with his numerous liquor law violations (serving alcohol to a minor, encouraging and allowing patrons to consume “b.y.o.” wine and beer on an unlicensed premises, and numerous instances of drinking on duty), which is the *McCann v. OLCC*, 27 Or App 487, 491, 556 P2d 973 (1976) test for poor moral character.

Case: OLCC-96-L-012, October 1996.

Abstract: The Commission concluded that an applicant’s convictions for theft, forgery, and fraudulent use of a credit card met the test for poor moral character (moral turpitude) where the crimes involved the use of money and a credit card stolen from a patron at an OLCC licensed premises.

The Commission concluded that an applicant’s two convictions (one a felony) for theft, two probation violations, and four Driving While Suspended infractions (not related to driving under the influence) met the test for poor moral character based upon a lack of respect for the rights of others and for the laws of the State and Nation.

The Commission concluded that an applicant’s multiple, intentional, material, false statements met the test for poor moral character based upon not dealing honestly with the Commission and attempting to thwart the Commission’s investigation of the application.

Case: *County Cork Public House*, OLCC-95-L-025, October 1996.

Abstract: The Commission concluded that repeated, knowing illegal sales of alcohol by an applicant met two separate tests for poor moral character: 1) intentional, deceitful, illegal activity undertaken for personal gain (the “moral turpitude” test under *In re Chase, supra*), and 2) prior law violations of a sufficient magnitude or frequency to show a lack of respect for the laws of the state (the test cited in *McCann v. OLCC, supra*).

Case: *Fast Market*, OLCC-90-L-004, May 1991.

Abstract: When the agency proposes an action under ORS 471.295(4)(f) based on fraud or misrepresentation, the standard of proof is proof by clear and convincing evidence.

Case: *Jammers West, Inc.*, OLCC-94-L-005, March 1995.

Abstract: The Commission and Oregon's Appellate Courts have developed several tests or standards for establishing that an applicant or licensee is not of good moral character. Poor moral character can be proved by any of the following circumstances:

- a. Statements of intent to commit a crime of dishonesty. *Schmitz v. OLCC*, 30 Or App 563, 567 P2d 591 (1977).
- b. Lack of simple honesty and fairness. *Campbell v. Bd. of Medical Examiners*, 16 Or App 381, 390, 518 P2d 1042, (1974), and *Schmitz v. OLCC, supra*.
- c. Prior law violations of a sufficient magnitude or frequency to show a lack of "respect for the rights of others and for the laws of State and Nation." *Campbell v. Bd. of Medical Exam., supra*, cited in *McCann v. OLCC*, 27 Or App 487, 491, 556 P2d 973,(1976).
- d. moral turpitude. *In re Chase*, 299 Or 391 (1985); *McCann v. OLCC, supra*; see, *Tony's Tavern*, OLCC-86-L-012, February 1987. The AG advised that in order to constitute a crime of moral turpitude under *In re Chase, supra*, the crime must be a knowing and intentional crime and involve one or more, but not necessarily all, of the following three elements:
 - (1) Fraud, deceit, or dishonesty.
 - (2) Harm to a specific individual.
 - (3) Illegal activity undertaken for personal gain.

The evidence failed to establish by clear and convincing evidence that applicant was not of good moral character as alleged, arising from an alleged fraudulent claim for unemployment benefits. In applying the standard used in *Tony's Tavern*, OLCC-86-L-012, February 1987, the Commission concluded that:

intent, or knowledge - proved
fraud, deceit, dishonesty - not proved
harm to a specific victim - not proved
illegal activity for personal gain - not proved.

Case: *Punjab Tavern*, OLCC-91-L-015, April 1992.

Abstract: The evidence failed to show that the applicant was not of good moral character where the applicant intentionally lied to the Commission about his use of an assumed name, but where the evidence failed to show that there was harm to a specific victim or that the act was an illegal activity undertaken for personal gain.

Case: *Sparkles Tavern*, OLCC-88-V-107, September 1989.

Abstract: Licensee acted with intent and was deceitful and dishonest when he misrepresented his identity and age to the Commission. However, because there was no harm shown to a specific victim and the activity was not undertaken for personal gain, the Commission concluded that there was not sufficient evidence to prove that licensee was not of good moral character.

Case: *Tony's Tavern*, OLCC-86-V-003, February 1987.

Abstract: Applicant did not have good moral character where he committed OLCC violations that were intentional, that caused harm to a specific victim, and that were undertaken for personal gain. The violations involved providing liquor to minors to gain sexual favors.

Case: *Jiggles*, OLCC-85-L-013, February 1987, *affirmed*, *7455 Inc. v. Oregon Liquor Control Commission*, 94 Or App 780, 767 P2d 116 (1989), *affirmed on other grounds*, 310 Or 477, 800 P2d 781 (1990).

Abstract: In *Tony's Tavern*, OLCC-86-L-012, February 1987, the Commission applied the test adopted by the court for moral turpitude in *In re Chase*, 299 Or 391, 402, 702 P2d 1082 (1985) to determine whether an applicant is not of good moral character. The Commission determined that there is evidence of poor moral character where commission of an offense includes the following elements: intent or knowledge, fraud, deceit, or dishonesty, harm to a specific victim, and illegal activity undertaken for personal gain.

Applicant's intentional false statements to the Commission that concealed a hidden owner showed a lack of honest dealing with the Commission that related significantly to the proper exercise of the license. Thus, Applicant lacked good moral character.

Case: *Bruce's Bar & Grille*, OLCC-85-L-052, October 1986.

Abstract: Applicant lacked good moral character because he established a charitable, nonprofit church as a sham for running a bingo game, and he misappropriated "church" funds for his personal use.

Case: *Schmitz v. OLCC*, 30 Or App 563, 567 P2d 591 (1977).

Abstract: Statements by applicant that he would "go under the table and buy a license" were evidence of immoral character.

Case: *McCann v. OLCC*, 27 Or App 487, 556 P2d 973 (1976).

Abstract: Proof of bad character based on foreign law violations must involve violations of a nature or number sufficient to show turpitude or disregard for law; the evidence must be specifically relevant to the issue of good character or some other statutory ground.

B.1.c. Operation or Location of Premises

B.1.c.1. Hidden Ownership (ORS 471.313(4)(h), OAR 845-005-0311) [(ORS 471.295(4)(h), [ORS 472.160(4)(h)], OAR 845-05-011(4)]

B.1.c.1.a. Receipt of Profits (OAR 845-005-0311(3)(a)) [(OAR 845-05-011(3)(a))] Note: see cases under C.1.g.1.

[\(return to index\)](#)

Case: *Lariat Lanes & Convenient Services*, OLCC-03-L-001, October 2003.

Abstract: Where Licensee personally filled out the business account authorization card and listed both her husband and herself as owners, Licensee admitted her husband's ownership interest. As an owner, husband was entitled to receive the profits of the business. Husband's ownership interest was also demonstrated by the fact he held himself out in the community as an owner; he spoke for and answered questions about the licensed business at a critical meeting with OLCC, despite his wife's presence; he performed work at this premises without compensation; employees contacted husband for instructions; he and Licensee are married, share joint finances, file income taxes jointly, and joint assets were used to purchase the business. Husband had an interest in the business because of his right to receive profits as an owner. Because Licensee allowed him to have an interest in the business without Commission approval, the Licensee's renewal application was denied.

Case: *La Gran Cantina*, OLCC-00-V-024/-L-009/-L-010, June 2002.

Abstract: Licensee's son obtained an interest in the business pursuant to OAR 845-005-0011(3)(a) (receipt of profits) where he was entitled to profits to be collected from the cover charge, as "entertainment consultant," over and above his entitlement to profits as a 5% shareholder. As "entertainment consultant," the son performed management or ownership functions which included hiring and firing employees, making decisions about premises' trade name and type of entertainment, conducting weekly employee meetings, supervising premises' managers, receiving all money collected at the premises, determining employee salaries, and incurring and paying the expenses of the business. The son performed more duties, had greater authority, and exercised greater control than someone with the status of a 5% shareholder would be entitled to exercise. His role at the business was much more consistent with that of a sole or majority owner. The Commission concluded the son had an interest in the business because he received or was entitled to receive profits for his management and control of the licensed premises over and above his entitlement to profits as a 5% shareholder. His entitlement to 5% of the profits as a shareholder was based on his investment of property and equipment, and was exclusive of any work performed on behalf of the business.

**B.1.c.1.b. Compensation Out of the Ordinary
(OAR 845-005-0311(3)(b)) [(OAR 845-05-011(3)(b))] Note:
see cases under C.1.g.2.**

B.1.c.1.c. Contract to Manage (OAR 845-005-0311(3)(c)) [(OAR 845-05-011(3)(c))] Note: see cases under C.1.g.3.

Case: *La Gran Cantina*, OLCC-00-V-024/-L-009/-L-010, June 2002.

Abstract: The requirement that there be evidence of an agreement or contract does not necessarily require a written contract. (See, e.g., *Woahink Landing*, OLCC-86-V-052, January 1987; *Columbia Caf  & 3C's Club*, OLCC-86-V-034, January 1987.)

B.1.c.1.d. Investment in Licensed Business (OAR 845-005-0311(3)(d)) [(OAR 845-05-011(3)(d)), (OAR 845-05-011(4)(b)] Note: see cases under C.1.g.4.

Case: *La Gran Cantina*, OLCC-00-V-024/-L-009/-L-010, June 2002.

Abstract: Where son of primary licensee invested equipment and property in order to become a 5% stockholder in the corporation holding the liquor license at the licensed business, he did not obtain an interest in the business which requires prior Commission approval.

Case: *County Cork Public House*, OLCC-95-L-025, October 1996.

Abstract: The Commission concluded that a person who is a co-signor on a loan to the licensed business and who is a guarantor of the licensed business's lease has a financial interest in the licensed business.

Case: *El Tumbleweed*, OLCC-95-L-004, January 1996.

Abstract: Where the cook at the applicant's premises was the son-in-law of the applicant and where the son-in-law, cook, provided approximately \$900 to the premises for the purpose of paying employee wages when the business did not have sufficient funds to pay employee wages and did not have the expectation of being repaid the money, the Commission concluded that this person had an interest in the business, and therefore, needed to qualify as an applicant before the Commission would grant a restaurant license to the applicant.

Case: *Rumors Cabaret*, OLCC-94-L-018, June 1995.

Abstract: The applicant's husband, who loaned money to the applicant to start the business, had a recent record of using alcohol to excess. The Commissioners restricted the license to limit the hours the husband could perform maintenance work at the licensed premises. The husband's DUII record was severe (7 DUII convictions, with the most recent conviction within the last year) and only 8 months had passed since the husband quit drinking.

B.1.c.1.e. Contract Purchaser (OAR 845-005-0311(3)(e)) [(OAR 845-05-011(3)(e))] Note: see cases under C.1.g.5.

Case: *Whaler Restaurant & Lounge*, OLCC-88-V-119, March 1989.

Abstract: The record did not prove that a change of ownership of a licensed business involved a contract purchase where the evidence did not prove either that the transaction involved a sale or was pursuant to a contract. (OAR 845-06-010(3)(e)).

B.1.c.1.f. Unlicensable Person with a Financial Interest (OAR 845 005 0311(4))

Case: *Zeba Bistro*, OLCC-05-L-003, June 2007.

Facts: Licensee and her husband alleged to have misrepresented ownership in their restaurant business on license applications, and license investigation reveals long histories of litigation against both husband and wife in their business dealings, and indications that both used corporate forms to perpetrate fraud against others. Both had large amounts in uncollected judgments against their businesses.

Abstract: As in *Swan Mart*, the Commission found the husband of an applicant to be a person with a financial interest where the application was filed on behalf of a corporation. The corporate exception to OAR 845-005-0311(4) refers to a corporation who has a financial interest, not situations in which the corporation is the applicant. (This case was heard before *Swan Mart*, but the final order was not adopted by the Commission until after *Swan Mart*). After a lengthy analysis of the various alleged false statements by both applicant and her husband, the Commission concludes that numerous false statements were made and were a basis to refuse the application.

Where the license applicant intentionally misrepresents the true ownership of the business in order to secure the license, the Commission has held that such false statements demonstrate a lack of honesty in dealing with government that constitutes poor moral character.

When the corporate entity is used to accomplish fraud or injustice, the courts will disregard it and will look through the corporate form to the real actor or actors in the transaction.

Key Words/Phrases: application refusal, unlicensable person, financial interest, false statement, not of good repute and moral character, credibility determination

Case: *Swan Mart*, OLCC-05-L-008, October 2006.

Facts: Applicant for off-premises sales license challenged restriction prohibiting Applicant's corporate principal's husband from being on the licensed premises or participating in management/operation of the business. Corporate principal's husband had been convicted of Intent to Distribute Pseudoephedrine, a felony. Corporate Principal argued that because the applicant was a corporation, her husband couldn't have a financial interest in the license. The ALJ determined that the husband did not have a financial interest in the business, but the Commission disagreed and reversed in its Final Order.

Abstract: The Commission can deny a license based on the unlicensability of someone who has a financial interest but is not an applicant or licensee under OAR 845-005-0311(4). If the "person" with the financial interest is a corporation then concern is only about officers, controlling owners, or managers. That exception did not apply where wife's corporation was the owner of the business and the Commission found the husband was unlicensable.

A spouse is deemed to have an interest in the other's financial affairs.

Key Words/Phrases: licensing restriction, unlicensable, financial interest, felony conviction, pseudoephedrine, licensee representation, reversal of Proposed Order, passage of time, spouse, good cause, aggravation

Case: *Garcia's Gas & Mini Mart*, OLCC-05-L-007, April 2006.

Facts: Applicant's wife was previously licensed on licensed premises, with restriction prohibiting Applicant from being on the licensed premises or working in the business. Licensee violated those restrictions, evidenced by her husband being caught selling to a minor and evidence of his training employees, and the licensed was cancelled. Applicant now applies for a new license, 4 years after his conviction.

Abstract: Applicant and his wife have debts and business assets in both of their names; they're both registrants of the assumed business name. They transferred ownership of the property without a financial exchange; therefore, even though they live separately they share an interest in the business and applicant's wife still is considered to have an interest in the business under ORS 471.757. Wife was unlicensable due to her poor record of compliance when she was previously licensed and her license was canceled after violating the license and its restrictions three times within the first six months of having the license.

Key Words/Phrases: license restriction, unlicensable, good cause, husband and wife, interest in business

**B.1.c.2. Failure to Operate as Proposed (ORS 471.405(1),
OAR 845-005-0325(2), OAR 845-005-0355(5)) [(OAR 845-05-025(1)
[OAR 845-05-025(3)]]]**

[\(return to index\)](#)

Case: *Lowell Market*, OLCC-99-L-019, August 2000.

Abstract: Where a fire destroyed the licensed premises, and the premises had not been restored for a period exceeding three years, the Commission declined to renew the license for failure to operate as proposed because it concluded that Licensee established a good cause to overcome the refusal basis in that the local government had refused to approve his remodeling plans and grant a building permit; Licensee was without funds to restore the building until a recent insurance settlement, and Licensee would be subjected to different and more difficult licensing criteria for a new license application than for a renewal application.

Case: *The Bank, Division Branch*, OLCC-96-L-005, March 1997.

Abstract: OAR 845-05-025(1). The Commission concluded that licensees failed to operate as proposed and denied license renewal where licensees: failed to achieve the dinner show format and the food sales percentages that they projected, and did not emphasize the sale of food as they said they would do in their proposal which included providing uniforms for servers and setting tables with tablecloths and utensils.

Case: *John E. Schuberg*, OLCC-94-V-064, April 1995.

Abstract: A permittee who consumes alcoholic liquor in violation of a restriction on his permit that he not consume commits a violation of ORS 471.405(1) for selling alcoholic liquor in a manner other than the license permits.

The Commission canceled the permit of a permittee who drank alcoholic liquor in violation of a restriction prohibiting him from consuming, in spite of significant good cause factors which included two years of abstinence and recommendation from his alcohol treatment counselor, employer and probation officer. In making the decision to cancel the permit, the Commission concluded that the violation was substantial because the service permit would not have been granted to permittee in the first place without the restriction that he abstain from consuming alcoholic liquor and that the requirement of abstinence went to the heart of the restriction. The Commission also considered the fact that persons were injured by permittee in a traffic accident that resulted when permittee drove after drinking the alcoholic liquor.

Case: *7-Eleven, Store No. 14495*, OLCC-92-L-014, April 1994.

Abstract: A previous Final Order imposed a condition on the license. There was no continuing restriction placed on the license. Because of this, the requirements expired at the end of the license year. There was no evidence that the licensee violated the condition while it was in effect.

Case: *Lung Fung*, OLCC-92-V-012, February 1993.

Abstract: The Commission refused to renew licensee's DA license based upon OAR 845-05-025(1) (not operating as proposed) after determining that licensee failed to show good cause to explain his violation of the restriction on 16 occasions that required him (or an approved manager) to be on the premises during the hours it was open to the public. Licensee did not show good cause where he claimed that he was too tired to be on the premises all of the time and that he was unable to trust or afford managers to take his place.

Case: *Reflections Bar & Grill*, OLCC-91-L-023, June 1992.

Abstract: Applicant failed to show good cause to outweigh the refusal basis of not operating as proposed because applicant failed to show that he searched for someone to provide lunch service or that he took any other steps to provide lunch service.

Applicant was not operating as proposed where premises was closed for business on 33 occasions over a nine-month period during hours when the premises was proposed to be open.

Case: *Hack's*, OLCC-85-L-029, February 1986.

Abstract: The Commission has found that the licensee showed good cause to outweigh the refusal basis of not operating as proposed where the licensee came into compliance with her proposals to operate as of the date of the hearing. The Commission concluded that although the licensee was tardy in completing some of her proposals with regard to hours of operation, seating, and menu, she eventually did follow through on them to the point where she was able to achieve a 25% food sales ratio.

Case: *Strawberry Fields*, OLCC-85-L-022, December 1985.

Abstract: OAR 845-05-025(3) provides a basis to deny a future renewal application if the applicants fail to comply with a condition imposed on the current renewal.

Case: *Maynard's Place*, OLCC-85-V-018, November 1985.

Abstract: Licensee has not failed to operate as proposed for failing to meet sales projections, where license issuance was not conditioned on licensee meeting these projections.

Case: *J.B.'s Paradise Room*, OLCC-85-L-005, July 1985.

Abstract: Renewal may be denied for failure to build or operate as proposed only for proposals that the applicant made when licensed or previously renewed.

Failure by licensee to add to menu items approved by Commission is not basis for denial of renewal under OAR 845-05-015(6), if licensee did not need Commission's approval to add the items under OAR 845-06-100(6).

Case: *Baxter's Corner*, June 1984.

Abstract: OAR 845-05-025(3) (failure to operate substantially as proposed) is not a proper refusal ground in a request for approval of a menu change where the request did not arise in a renewal application. OAR 845-05-025(3) only applies to renewal applications.

Case: *Willey's Restaurant and Dance Hall*, March 1984.

Abstract: Licensee failed to operate substantially as proposed because of the emphasis the outlet placed on the sale of alcohol in contrast to the licensee's original plans to emphasize food. The food sales percentage, the menu and the dining room hours were all substantially less than proposed. The licensee is responsible, even though the direction of the business was set to a degree by the preferences of the applicant's customers.

B.1.c.3. Illegal Activities or Recent History of Altercations, Noisy Conduct or Disturbances ([ORS 471.295(4)(e)], [ORS 472.160(4)(e)], [OAR 845-05-025(10)])

[\(return to index\)](#)

Case: *Don Juan's Mexican Cuisine*, OLCC-89-V-169, September 1990.

Abstract: The Commission concluded that a license should not be renewed under OAR 845-05-025(10) where there has been a persistent pattern of serious incidents. The Commission concluded that noisy conduct created by a live band was not serious compared to other types of incidents because no physical contact occurred, no violence was involved, and there was no danger to the public.

Case: *The Hide Out*, OLCC-89-L-019, September 1990.

Abstract: Where licensee had been licensed for less than three years, all incidents which occurred under licensee's ownership or control could be considered to show a recent history of disturbances. More recent incidents are entitled to more weight.

Licensee argued that the Commission should not be able to use prior OLCC violations as a basis for license refusal because the licensee had already been sanctioned for the violations. The Commission concluded that prior OLCC violations can be used to show a recent history of illegal activities as a refusal basis under OAR 845-05-025(10).

The Commission concluded that OAR 845-05-025 (10) provided a basis to refuse to renew the license because licensee failed to offer a corrective plan and did not present evidence to show how she will maintain reasonable control over the premises.

Case: *Goldie's*, OLCC-89-L-011, March 1990.

Abstract: Previous good faith efforts to control noise and to follow previous license restrictions, plus the fact that licensee was operating essentially the same business prior to the time that the complaining neighbors moved into the neighborhood, were all entitled to weight. However they were insufficient to find good cause, where substantial noise problems still existed. Good cause to renew the license was found only after adding restrictions related to the noise problems.

Case: *Portway Tavern*, OLCC-89-L-015, April 1990.

Abstract: Where two neighbors with property adjacent to the licensed premises were disturbed by noisy conduct of licensee's patrons on occasion and there were a few isolated instances of illegal activities, the problems did not rise to the level that the Commission had previously determined were sufficient to establish a denial basis under OAR 845-05-025(10).

Case: *Old Town Grocery*, OLCC-89-L-008, February 1990.

Abstract: The renewal of the license was not in the best interests of the community where there were numerous and persistent illegal activities around the licensed premises associated with the sale of alcoholic beverages at the licensed premises and the licensees' plan to control the premises and its patrons was inadequate.

Case: *Pink Pearl East*, OLCC-89-L-004, December 1989. [Reversed and remanded on other grounds, *Martini v. OLCC*, 110 Or App 508 (1992).]

Abstract: The Commission interprets ORS 471.295 (4)(e) to authorize it to refuse a license if a licensee has previously maintained a noisy or disorderly establishment at another licensed premises.

The Commission modified its interpretation of the good cause standard under OAR 845-05-025(10) and concluded that the persistent disturbing noisy conduct of patrons in the immediate vicinity of a licensed premises may be sufficiently serious to warrant license refusal. The Commission will not require that licensees eliminate all problems that patrons cause outside the licensed premises. The Commission will consider the number of neighbors affected, the frequency of the disturbances, and the extent to which the neighbors are disturbed. The Commission concluded that the licensee did not show good cause when despite licensee's efforts to control the premises and its patrons, neighbors from six households were awakened or disturbed as often as two or three times per week by the noisy conduct of licensee's patrons.

Case: *Wolf Den Tavern*, OLCC-89-L-005, November 1989.

Abstract: Where there were illegal activities, altercations, noisy conduct and other disturbances at the premises of a violent nature that caused apprehension and physical harm to numerous persons, and the licensees did not offer evidence of a plan to control these activities, the Commission found that licensing would not be in the best interests of the community.

There must be some nexus or connection between the activity complained about and the licensed premises. Where there was no connection shown to the licensed premises and no evidence that the incidents involved patrons of the premises or that the sale of alcoholic liquor at the premises played any role in attracting or contributing to the incidents, the Commission gave little weight to incidents of illegal activities occurring close to the licensed premises.

Case: *Sparkles Tavern*, OLCC-88-V-107, September 1989.

Abstract: Violations of Commission rules constitute "illegal activities" for purposes of OAR 845-05-025(10) (not in the best interests of the community because of illegal activities).

Case: *Redman Homes, Inc. v. Employment Div.*, 97 Or App 653, 777 P2d 414 (1989).

Abstract: The Division (Employment Division) may interpret the term "good cause" either by rulemaking or by issuing an order in a contested case.

Case: *State v. Strance*, 95 Or App 488, 769 P2d 793 (1989).

Abstract: ORS 471.770 confers automatic immunity from subsequent criminal prosecutions for witnesses who testify pursuant to an OLCC subpoena on a matter that is the subject of the criminal prosecution.

Case: *Handy Food Mart*, OLCC-88-L-018, March 1989.

Abstract: Applicant showed good cause to outweigh serious, numerous and persistent problems under the former licensee because applicant's experience and plan of operation would result in a significant change in the business and applicant could maintain reasonable control of the premises.

An illegal activity is relevant under OAR 845-05-025(10) even if it is not liquor-related and does not threaten or disturb the community. However, these issues affect the weight that the Commission gives the activities in determining whether a refusal basis exists.

An illegal activity is liquor-related if the sale of alcohol at the premises attracted or contributed to the activity or the activity involved the abuse of alcohol.

Shopliftings and robberies involving alcoholic beverages are entitled to significant weight in determining whether

an application should be refused under OAR 845-05-025(10), while shopliftings and robberies of non-alcoholic items are not entitled to significant weight.

Case: *Sandy Jug*, OLCC-88-L-010, October 1988.

Abstract: The Commission concluded that OAR 845-05-025(10) did not provide a basis for denying the license because the licensee has made a reasonable and effective effort to control problems at the premises which include implementing a compliance plan with the OLCC staff.

Case: *Sportsman Tavern*, OLCC-87-L-013, May 1988.

Abstract: The Commission renewed a license despite a history of disturbances at the premises where the licensee had taken successful efforts to control the problem. The Commission imposed a number of conditions on the renewal.

The Commission has not clearly identified what differences there are between the "best interests of the community" and "good cause" issues under OAR 845-05-025(10). The Commission's underlying standard under both issues has been whether the licensee will maintain reasonable control of the premises to prevent illegal activities, altercations, noisy conduct, and disturbances.

Case: *Fleetwood Bar & Buffet*, OLCC-87-L-005, November 1987.

Abstract: In a renewal case, the licensee proved good cause to overcome a record of illegal activities and disturbances because serious problems had not been typical of the overall operation, because the licensee made extensive, reasonable efforts to control the premises, and because many of the immediate neighbors who were disturbed by the premises moved into their homes after the license began in business there.

Unique entertainment was not a factor to be given any weight in determining whether good cause existed to overcome the application of OAR 845-05-025(10).

Case: *El Paso*, OLCC-86-L-021, March 1987.

Abstract: Application was granted because instances of illegal activities and disturbances were not as serious, substantial, numerous, or have as great an impact on the public interest, as with other premises that were denied liquor licenses under 845-05-025(10). Those other premises included *Mercedes Inn*, *Charlie's Tavern*, *The Pink Pearl Lounge*, and *Undecided Trade Name*.

Licensees demonstrated good cause to overcome a possible finding of disorderly premises because they hired additional employees and took other appropriate and effective measures to ensure that illegal activity, noise, and disturbances did not occur in and around the premises.

Case: *Tony's Tavern*, OLCC-86-V-003, February 1987.

Abstract: Renewal application was denied under OAR 845-05-025(10) where there was a history of OLCC violations involving minors at the premises and the applicant had a sexual disorder involving an attraction to minor youths, for which he was still under treatment.

Case: *Red Lantern Restaurant*, August 1984.

Abstract: History of altercations still considered recent even though last incident occurred one year before, when applicant's previous license terminated one year before.

Case: *Undecided Trade Name*, OLCC- 86-L-005, October 1986.

Abstract: The applicant did not show good cause to overcome a history of illegal activity and disturbances because she did not prove that her plan for operation and her experience would result in a significant change in the business.

Case: *The Pink Pearl Lounge*, OLCC-85-L-044, August 1986, *affirmed without opinion, Marracco, Inc. v. OLCC*, 85 Or App 648, *rev den.*, 304 Or 186 (1987).

Abstract: Reasonable inference may be drawn that noisy conduct was coming from area in or around licensed premises even though complaining witnesses did not actually see the persons making the noise exit the premises, where circumstances exist to connect the disturbance to the premise. Inference could be drawn from the direction the sound was coming from, the fact that the noises were not being made by neighborhood residents, the lack of any other likely source of the disturbing behavior, and the time that the disturbances occurred.

Case: *Charlie's Tavern*, OLCC-85-L-040, July 1986.

Abstract: Good cause for license issuance not shown where serious incidents had continued at the premises for at least 17 months, where the Commission and the police had given the applicant numerous warnings, and where applicant failed to hire reliable employees to address the problems.

Case: *Mercedes Inn*, OLCC-85-L-043, June 1986.

Abstract: Application was not in the best interests of the community because, when the premises was formerly in operation, there were numerous reports of drug dealing and related crimes, and because there were numerous confrontations between tavern patrons and area residents over drug dealing, illegal parking, noisy conduct, vandalism and trespass.

Case: *The Gangplank*, OLCC-84-L-030, June 1985.

Abstract: Whether illegal activities or recent history of disturbances and altercations make licensing not in the best interest of the community is determined by the circumstances of the activities, their frequency, their remoteness in time, and other factors.

Case: *Ace Hi Tavern*, February 1984.

Abstract: Eight incidents in which disturbances, altercations, or other illegal activities occurred inside the premises and two other incidents in which such activities occurred nearby, all within two years prior to the application for renewal, established a "recent history" of such activities.

B.1.c.4. Lewd Establishment ([ORS 471.295(4)(e)], [ORS 472.160(4)(e)])
[[([ORS 471.295(4)(e)], [ORS 472.160(4)(e))]] Note: see cases under C.1.k.

[\(return to index\)](#)

Case: *State v. Ciancanelli*, 339 Or 282, 121 P3d 613 (2005).

Abstract: Oregon law which makes it a crime to direct, manage, finance, or present a live public show in which participants engage in sexual conduct violates the free expression rights guaranteed by Article I, section 8 of the Oregon Constitution and does not fall under a well-established historical exception to the constitutional prohibition on enactment of such laws.

Case: *City of Nyssa v. Dufloth*, 339 Or 330, 121 P3d 639 (2005).

Abstract: A law is unconstitutional on its face if it is directed, by its terms and its actual focus, on restraining a particular variety of expression and does not fall within a well-established historical exception to the prohibition against such laws in Article I, section 8 of the Oregon Constitution. The court will continue to use the *Robertson* framework to analyze restrictions on expression. The city ordinance that was struck down in this case prohibited nude dancers from being within four feet of patrons.

Case: *Sparkles Tavern*, OLCC-88-L-021, September 1989.

Abstract: The Commission concluded that although licensees maintained a lewd establishment, this was not a basis to refuse the license because licensees showed that they were able to maintain reasonable control over the lewd activities.

**B.1.c.5. Insanitary Establishment (ORS 471.313(4)(e)) [(ORS 471.295(4)(e),
ORS 472.160(4)(e))]**

[*\(return to index\)*](#)

Case: *Taylor's Coffee Shop v. OLCC*, 28 Or App 701, 560 P2d 693 (1977).

Abstract: "Sanitary" and "insanitary" have a common and quite precise connotation when applied to an eating establishment. They give persons of common understanding adequate notice of what is proscribed. Thus, these terms were held not void for vagueness.

**B.1.c.6. Insufficient Demand (ORS 471.313(1), OAR 845-005-0326))
[(ORS 471.295(1), [ORS 472.160(1)], OAR 845-05-030(1))]**

[\(return to index\)](#)

Case: *Sun Ray Dairy v. OLCC*, 16 Or App 63, 517 P2d 289 (1973); *Paradise Bar Lodge*, OLCC-86-L-006, August 1986.

Abstract: ORS 471.295(1) alone does not provide a basis to refuse to issue a license because it fails to provide a standard against which the evidence is to be measured.

Case: *The Saucy Chicken*, OLCC-84-L-015, October 1984.

Abstract: The population and sales trends within ten miles of applicant's premises were not proved by population and sales trends in the surrounding four-county area, or in incorporated areas within ten miles.

Case: *Hershey's Place*, OLCC-84-L-010, September 1984.

Abstract: The record did not establish that there were sufficient licensed outlets in the community under OAR 845-05-030(1), where there was no evidence showing declining or static population, declining business or industrial development, or decreasing sales or patronage at other similarly licensed outlets in the applicant's community.

Case: *Chez Nous Restaurant*, August 1984.

Abstract: Sufficient outlets not a strong negative factor where applicants would be trading their existing DC license for the DA license applied for.

Case: *La Burrita - The Little Donkey*, August 1984.

Abstract: Simply counting the number of outlets in the city does not prove that the outlets are sufficient.

Case: *Edelweiss Restaurant*, July 1984.

Abstract: Sufficient outlets shown by the closure of two department stores, population decline and decline in sales at existing licensed outlets.

Case: *Cottrell v. OLCC*, 27 Or App 525, 556 P2d 982 (1976).

Abstract: Testimony that the residential and transient population in the general area of applicant's premises indicated a potential catchment of less than 2,000 people in the "trading community" at any given time constituted evidence of insufficient demand to justify denial of the license under the constraint of the statutory quota.

Case: *McCann v. OLCC*, 27 Or App 487, 556 P2d 973 (1976).

Abstract: Where a city was continuously oversubscribed in relation to the one-per-2,000 quota, and had nevertheless been issued additional licenses, the oversubscription becomes the Commission's policy. Thus, the oversubscription does not support a conclusion that the area contains sufficient outlets.

The Commission's conclusion that there were sufficient outlets was not rational. The Commission had reasoned there were sufficient outlets because the applicant had lower sales than the four nearest outlets and higher sales than the two farthest outlets.

Case: *Home Plate, Inc. v. OLCC*, 20 Or App 188, 530 P2d 862 (1975).

Abstract: Commission order was deficient because it said nothing as to why the existing outlets were sufficient for the area.

Case: *Howard v. Ore. Liquor Cont. Comm.*, 13 Or App 83, 508 P2d 819 (1973).

Abstract: The fact that a tavern's business declined is evidence of "insufficient need for such a license." The Commission has the power to issue a license to one establishment while denying a license to a nearby applicant on the grounds that the license would not be "demanded by public interest or convenience."

**B.1.c.7. History of Serious and Persistent Problems (ORS 471.313(5))
[(ORS 471.295(5); [ORS 472.160(5)]]**

[\(return to index\)](#)

Case: *Downtown Deli & Greek Cusina*, OLCC-08-V-028, August 2009.

Facts: Downtown Portland premises had multiple floors for dancing, night club, bar, restaurant and special events. Premises had operated for decades with very few problems, but started having significant number of issues once the second and third floors were opened. The OLCC had issued numerous warnings in the past.

Abstract: The Commission concluded that the proposed non-renewal based on history of serious and persistent problems was overcome when Licensee closed third floor of premises that was the source of the majority of serious and persistent problems and implemented significant changes to its operations, resulting in only one incident involving violence in a 10 month period immediately prior to Commission decision.

Key Words/Phrases: History of serious and persistent problems, restrictions, suspension versus cancellation, mitigation of Category I violation

Case: *Girtles Restaurant & Lounge*, 08-V-079, December 2009.

Facts: Licensees of established premises began experiencing a number of fights. OLCC inspector met with licensees to warn of the possible violation for serious and persistent problems, and offered to help create a control plan. Licensees declined and instead submitted a written statement that they would be remodeling to increase their dining area into the lounge area, and closing earlier on weekends to avoid the “late tavern crowd.” Licensees did close early for about 3 weeks, then went back to being open until 2:30 a.m., and problems continued.

Abstract: Although the premises had a history of serious and persistent problems, the licensee overcame the refusal basis because there was a recent significant decrease in serious problems at the premises. (see *Downtown Deli & Greek Cusina*, OLCC-08-V-028, August 2009)

Key Words/Phrases: history of serious and persistent problems, willingness and ability to control, DUII, unlawful activity, mitigation, mandatory suspension period, less serious incidents, deny renewal, risk for future compliance

Case: *Helena’s Place*, OLCC-04-V-024, June 2005.

Facts: Licensed premises had numerous incidents of violence/threats of violence, including a patron being stabbed to death. After the stabbing Licensee agreed to stop operating as a night club and close by midnight. Portland police requested immediate suspension of the license if those restrictions were not agreed to. Numerous DUII and intoxicated patron incidents occurred after those restrictions were imposed.

Abstract: Licensee had nine serious problems and one non-serious incident in a period of six and a half months. All of the incidents occurred after midnight, and licensee closed at 2:30 a.m. These serious problems establish a history of serious and persistent problems that led to license cancellation.

OLCC need not prove the combatants in an incident were actually drinking at the licensed premises to establish that the problems that occurred were serious. The licensee has some responsibility for controlling the behavior of non-drinking patrons when they threaten or harm other patrons. Furthermore, problems on the premises need not be “related to the sale or service of alcohol” as problems in the immediate vicinity must be.

The Commission’s presumption that problems caused by persons visiting a licensed premises are related to the service of alcoholic beverages is within its discretion and accepted, at least in regard to the specific problems listed in ORS 471.315(1)(c).

The Commission's involvement in wrongful death litigation in which the Commission is named as a defendant relates to the Commission's immunity for licensing and enforcement decisions and does not relate to the licensee's accountability for a history of serious and persistent problems. Both the Commission and the licensee had been sued following a stabbing on the licensed premises. The licensee claimed the lawsuit motivated enforcement action to cancel the license. The investigation of the history of serious and persistent problems predated the lawsuit and the Notice of Cancellation, so the claim of improper intent was rejected.

When the licensee did not implement all the measures of its compliance plan or implemented measures that were inadequate to control the problems that arose after midnight and there were serious problems still occurring while the compliance plan was in place the licensee demonstrates a lack of willingness and ability to control the premises. The licensee's failure to follow a compliance plan even after a threat of immediate suspension of the license further proves a lack of willingness to consistently control the premises. Licensee followed some parts of the compliance plan, but unilaterally decided others were too onerous despite continuing serious problems. Licensee also cannot establish that a serious incident was unavoidable when it was not providing the level of on-site security that was specified in the compliance plan.

Key Words/Phrases: serious and persistent problems, hearsay, double hearsay, authority to interpret, foreseeability, restrictions, persistent defined

Case: *Cabana Club Café & Grill*, OLCC-03-L-010, April 2005.

Facts: Licensed premises was located in a popular area of McMinnville for young people, frequented as part of a "pub crawl." Licensee entered into a settlement with the OLCC for license restrictions due to a history of serious and persistent problems. The problems continued and the city requested the license not be renewed due to DUII arrests and significant amount of police time dedicated to problems created by the premises. Licensee had a number of policies in place to deal with problem situations and patrons.

Abstract: Licensee had five serious incidents in one year as well as three non-serious incidents. The five serious incidents are a history of serious and persistent problems. The seriousness of the incidents is not determined by the degrees or extent of physical contact; where there is contact involving violence or a threat of violence the incident is serious.

Case: *The Hydrant* (amended Final Order), OLCC-00-L-006, October 2001.

Abstract: Where a license refusal or renewal refusal is premised on ORS 471.313(5), and the applicant/licensee has chosen not to attempt to overcome the alleged history by asserting a willingness and ability to adequately control the premises, the ALJ may exclude, as irrelevant, evidence offered by OLCC to show applicant/licensee is unwilling and/or unable to adequately control the premises..

The Commission further disavowed the rationale in *La Linda's*, OLCC-95-L-021ES, June 1996, to the extent the rationale relies upon precedent (i.e., *Dublin Pub*, OLCC-88-V-068, December 1988) related to the compliance violation of permitting disorderly activities, to determine which incidents should be counted to establish a history of serious and persistent problems.

Case: *Jammers West Inc.*, OLCC-94-L-005, March 1995.

Abstract: The Commission concluded that ORS 471.295(5) (history of serious and persistent problems) is not a basis to deny a license where the premises had approximately 44 problem incidents in a two year period, but the incident occurred under different ownership, over a year ago, and there was evidence in the record to show that the type of operation the applicants planned to have was different from the operation of the prior owner.

Case: *Gabi's Restaurant & Lounge*, OLCC-92-L-011, March 1994.

Abstract: An applicant's history of serious and persistent problems was established by:

- a prior settlement that acknowledged that over 50 incidents (more than two dozen involving physical harm or the threat of physical harm) in a 21-month period constituted a history of serious and persistent problems, and
- problems that continued in the following 17 months that included unilateral modification and non-compliance with restrictions, non-compliance with service permit requirements, and twelve additional disturbances or fights.

The continuing fights, licensee's poor compliance with service permit requirements, and licensee's unilateral modification and failure to comply with restrictions, demonstrated that licensee lacked the willingness and ability to adequately control serious problems.

Case: *C & A Place*, OLCC-93-L-005, December 1993.

Abstract: The application was refused because the premises was located in an area that has a history of serious and persistent problems as evidenced by the following: the two-block area around the premises averages 16 problem incidents a month; when the premises was previously licensed it was closed by emergency suspension because of drug-related problems and fights; the area is frequented by transients and persons with substance-abuse problems. Applicants were not able to prove that the sale of alcoholic beverages at their premises would not contribute to the problems in the area, nor were they able to show that they had the ability to adequately control the premises.

Case: *Headless Horseman*, OLCC-92-L-016, June 1993.

Abstract: The Commission found a history of serious problems where the number of incidents was not inordinately large but most of the incidents involved fights. The severity of the incidents distinguished this history from other contested cases where the Commission found there was no history of serious and persistent problems.

Case: *Lung Fung*, OLCC-92-V-012, February 1993.

Abstract: The willful and repeated violation of a restriction that was important to securing the licensee's compliance with alcoholic liquor laws, was a "serious" problem for purposes of ORS 472.160(5) (history of serious and persistent problems).

Licensee's DA renewal was refused under ORS 472.160(5) for history of serious and persistent problems and their inability and unwillingness to adequately control such problems in the future. The Commission considered the following as showing a basis for refusal: the licensee had entered a settlement agreement less than a year before that resolved a charge of serious and persistent problems, since the settlement the licensee committed 16 willful violations of a restriction (that he or his manager be on the premises) that was important to his compliance with alcoholic liquor laws, and since the settlement there had been six other incidents that were similar to the ones involved in the settlement.

Case: *La Brisa*, OLCC-91-L-037, December 1992.

Abstract: The Commission concluded that there was a history of serious and persistent problems where there were 24 incidents occurring over a two-year period of time including 12 fights, three thefts, four verbal disturbances, one car accident in the parking lot, three incidents of public urination, and one incident of shots fired in the parking lot.

Licensee showed good cause to grant the license in spite of a history of serious and persistent problems by showing that she had the willingness and ability to control the problems.

For purposes of determining whether there is a history of serious and persistent problems, the Commission will consider as being related to the exercise of the license privilege, those incidents where the Commission can tie the persons involved to their desire to go into the licensed premises so that the licensee can serve them. The Commission will count these incidents whether the persons consumed alcoholic liquor or not. The Commission will assume that the persons are coming to the premises for the purpose of consuming alcoholic liquor.

Case: *Handy Food Mart*, OLCC-91-L-020, December 1992.

Abstract: The Commission affirmed that, with the statute and the Commission's precedents as guides, it would continue to analyze the nature and circumstances of the incidents involved in each case to determine whether there was a history of serious and persistent problems and if so whether a licensee had demonstrated a willingness and ability to adequately control such problems in the future. The Commission rejected, as unwarranted, a licensee's argument that it should adopt a different standard for a history of serious and persistent problems that would look at such factors as: the premises' crime experience under prior owners, the level of crime one would expect given the demographics of the neighborhood, the background level of crime actually experienced in the neighborhood, the level of crime experienced by similar stores in the neighborhood, county, and state, the under reporting of relevant crime by store operators, and the tolerance of a neighborhood for crime which may vary from neighborhood to neighborhood and reflect issues of neighborhood livability and survival.

Thirty-four relevant (under the statute) problems over three years, where twelve of the problems were robberies or involved violence or the threat of violence, demonstrated a licensee's history of serious and persistent problems.

Licensee demonstrated a willingness to control future problems by inventing effective problem-control measures, implementing most of the reasonable measures suggested to him, and only rejecting a few of the suggestions after careful study and sincere disagreement over their benefit.

Since problems continued, licensee was only able to demonstrate an ability to adequately control future problems, after more restrictions were added to those already in place. The existing restrictions dealt with the store's physical layout, peak-hour staffing, locking the alcohol cooler's during off-hours, and the elimination of video games and a pay phone able to receive incoming calls. The additional restrictions required licensee to not sell wine with alcohol content greater than 13.8 percent, malt liquors with alcohol content greater than four percent, or beer in containers that were larger than 16 ounces; to maintain an "86" list; and to have a security guard present Monday through Saturday from 10:30 at night until 2:30 the following morning.

Where the charge was a history of serious and persistent problems, the Commission determined that incidents occurring inside the licensed premises did not have to be alcohol related to be relevant. In assessing a licensee's "history of serious and persistent problems" the Commission decided that it would not weigh all incidents occurring inside a licensed premises equally. The Commission stated that it would give significant weight to severe crimes, such as those involving violence or the threat of violence, unless the circumstances show that the incident was isolated and happenstance. The Commission added that it would give little weight to less severe crimes, such as shoplifting, unless they were shown to be alcohol related.

The Commission did not give much adverse weight in its evaluation of a licensee's history of serious and persistent problems to the purchase of alcohol by minor with convincing false ID, where such incidents were not a frequent problem.

Shoplifting of alcoholic beverages was not given much adverse weight in evaluating a licensee's history of serious and persistent problems, where the licensee's intervention resulted in the surrender of the alcohol before it was consumed and where the licensee's intervention did not raise the level of violence of the incident.

Case: *Good Times Cafe & Bar*, OLCC-91-L-019, February 1992.

Abstract: While two beer garden/rock concerts in the premises' parking lot that produced noise that interfered with the normal living activities (sleeping, conversing, reading) of the licensees' neighbors and four patrons publicly urinating associated with the second concert were serious problems for purposes of ORS 471.295(5), they did not constitute a "history of serious and persistent problems" under ORS 471.295(5) when the events were separated by a year.

Case: *Fast Market*, OLCC-90-L-004, May 1991.

Abstract: The applicant did not show good cause to overcome the refusal basis. Applicant failed to show that alcohol-related problems were no longer serious and persistent. There were three incidents of patrons drinking alcoholic beverages where prohibited and one alcohol-related assault within the two and one-half months just prior to the hearing. The applicant also failed to show she adequately controlled the premises and patrons' activity in the immediate area. The applicant and her employees committed crimes in the licensed premises. Adequate control of the premises includes not committing crimes there.

**B.1.d. Incomplete Application (OAR 845-005-0314, OAR 845-005-0315)
[(OAR 845-05-015(1))]**

[\(return to index\)](#)

Case: *Morchella Wine Cellars, LLC*, OLCC-06-L-003, December 2006.

Facts: Washington company applied for Wholesale Malt Beverage Wine (WMBW) license, and listed an Oregon law firm as a registered agent for a place of business. OLCC denied based on its status as an out-of-state entity.

Abstract: The Commission cannot issue an Oregon WMBW license to an entity not in Oregon. The plain wording of ORS 471.311 does not state that the physical “location” must be in Oregon, but it does require a “place of business to be operated under the license.” “Premises” in ORS 471.001(9) does not state that it requires an Oregon location. But after analyzing the remaining applicable statutes (ORS 471.060(1) and ORS 471.115(1)), the Commission determines that there must be a licensed premises to conduct the licensable activities – i.e., a licensable location in Oregon.

This limitation is hardly novel or controversial. It would be unusual indeed to interpret the Oregon Liquor Control Act in ORS Chapter 471 to permit the State of Oregon, through the Oregon Liquor Control Commission, to license wineries, breweries, distilleries, retailers or wholesalers to conduct business under an Oregon license from a location not in Oregon.

Key Words/Phrases: statutory interpretation, meaning, licensed premises location, out-of-state entity, physical location of licensed premises, motion for summary determination

Case: *Punjab Tavern*, OLCC-91-L-015, April 1992.

Abstract: The Regulatory staff failed to meet the burden of proving that the application was not complete because the reason given by staff for alleging the application is not complete does not fit the definition of an incomplete application as set forth in OAR 845-05-015(2).

Where applicants no longer had possession of the building in which the business was located and applicants did not intend to reopen the business at that address, the fact that the applicants no longer had possession of the building did not render the applicants' application "incomplete."

Case: *Cultus Lake Resort*, OLCC-84-L-038, February 1985.

Abstract: Where the applicant failed to provide information to the Commission, and subsequently furnishes the information at her hearing, the Commission should process and make a decision on the application.

Case: *Von Weidlein/N.W. Bottling v. OLCC*, 16 Or App 81, 96, 517 P2d 295 (1973).

Abstract: The phrase in ORS 471.290(1) that a person applying for a liquor license may be compelled to provide "such other pertinent information as the Commission may require" is not void for vagueness.

B.2. Criteria Relating to Specific Licenses

B.2.a. On-Premises Sales

B.2.a.1. General Requirements for all Full and Limited On-Premises

B.2.a.1.a. Off-premises Use of Licenses

B.2.a.1.b. Insurance

B.2.a.2. Specific Requirements for Types of Full On-Premises

B.2.a.2.a. Food Service Requirements

B.2.a.2.b. Days and Hours of Operation

[\(return to index\)](#)

B.2.a.2.c. Outdoor Seating Areas

[\(return to index\)](#)

Case: *Slim's Restaurant & Lounge*, 14-V-006/041, November 2014.

Facts: The OLCC alleged that Licensees' employee permitted patrons to take open containers of alcohol from the premises' licensed outdoor seating area. The agency proposed a sanction and revocation of Licensee's outdoor area under *former* OAR 845-005-0331(1) and (4) (effective until June 1, 2014). The license had been issued in 2008 following submission of a Control Plan outlining Licensee's efforts to control the outdoor café area. In 2012 Licensees were cited for patrons being outside the outdoor area and lack of monitoring by Licensees' staff. Subsequent inspections noted additional violations and lack of monitoring, despite multiple efforts to counsel Licensees. After receiving the warning notices and revocation notice, Licensees implemented new policies to control the outdoor area and installed surveillance cameras to monitor the outside area.

Abstract: To find that Licensees permitted patrons to take open containers of alcohol from the licensed premises, the evidence must prove knowledge of the proscribed activity and the failure to take reasonable steps to prevent or control the proscribed activity. *See, e.g., Don Juan's* (OLCC Final Order, 88-V-003, May 1988). The Commission found that Licensees' employee permitted patrons to take open containers of alcoholic beverages from the licensed premises, in violation of OAR 845-006-0345(5).

Grounds for aggravation of the penalty include: a prior warning about compliance problems; repeated failure to comply with laws; and the violation involved more than one patron or employee. The latter factor applied here, and the appropriate sanction is a nine day suspension or a civil penalty of \$1,485 in lieu of suspension.

The Commission has grounds under *former* OAR 845-005-0331(1) and (4) to revoke its approval for Licensees to sell and serve alcohol at Licensees' sidewalk café. The incidents observed by inspectors on multiple occasions establish that Licensees have failed to demonstrate adequate supervision of the sidewalk café so as to prevent violations of the liquor laws.

Pursuant to *former* OAR 845-005-0331(1), Licensees may overcome the revocation if they can show good cause to outweigh the revocation basis. The Commission's statutes and rules do not define what constitutes "good cause" in this context. The Commission applies the good cause analysis used in the license renewal context, considering the following factors:

- The nature/seriousness of the violation;
- Lengthy period(s) of time without violations as a licensee;
- Whether the licensee took immediate corrective steps following the violation;
- Time passage since latest violation;
- Whether the incident was isolated;
- Whether the violation is aggravated or mitigated; and
- Acceptance of responsibility versus evasion of responsibility for the violation.

US Market #145 (OLCC Final Order at 16-17, 11-V-009, February 2012) (identifying nine good cause factors the Commission will consider in determining whether there is good cause to overcome a poor record of compliance); *see also Mt. Angel Market & Deli* (OLCC Final Order, 12-V-003, July 2013 (same). In this case Licensees did not shown good cause to overcome the revocation.

Licensees' failure to adhere to the Commission's approval and its own Control Plan is akin to failing to comply with a restriction on the license. The failure to comply with a license restriction is a Category I violation, the most serious of violations.

Key Words/Phrases: outdoor area, open container, adequate supervision, revocation, control plan, good cause, multiple incidents, aggravation

B.2.b. Off-Premises Sales

B.2.c. Temporary Sales

B.2.d. All Other License Types

[\(return to index\)](#)

B.2.d.1. PS Licenses

[\(return to index\)](#)

Case: *Staff Jennings*, OLCC-87-L-009, February 1988.

Abstract: The Commission found good cause to grant a PS license even though the applicant did not have a "wide variety" of grocery items where the Commission had not applied the grocery requirement on a consistent basis and there was public demand shown for the PS license.

Applicant's desire to avoid risk of loss and a reduction of spoilage by storing part of the required \$5,000 inventory on dry land, away from the dock where the store is located, is reasonable and complies with OAR 845-05-025(9).

Where applicant had 240 items available to customers, but the items were less diverse than the inventory in *Wintz's*, and where the items consisted mostly of snack items, rather than basic food stuffs, applicant failed to meet the requirement of having a "wide variety" of grocery items.

Case: *The Logger*, OLCC-85-L-039, May 1986.

Abstract: The Commission found good cause for the issuance of a PS license to a DA outlet because applicant would serve late-night demand for PS services not met by other outlets nearby.

Case: *Your Party Shoppe*, OLCC-84-L-040, June 1985.

Abstract: RMB licenses should not be issued to PS outlets to allow the sale of kegs to go because of potential adverse impact on drinking drivers and drinking by minors.

Criteria concerning the public health and safety found to be of greater weight than criteria concerning public convenience.

Case: *Circle H Restaurant and Lounge*, February 1984.

Abstract: The Commission found good cause for the issuance of PS license at a DA outlet because of the short hours at the one existing PS outlet nearby and the great distance (ten miles) to the next nearest PS outlet.

Case: *Wirtz's Gifts & Sporting Goods*, April 1983.

Abstract: Although the licensees did not sell fresh meat or many dairy products, their selection of grocery items was extensive and constituted a wide variety under OAR 845-05-025(9). The licensees' dairy products included milk, cheese and cottage cheese. Other inventory included dried and canned meats, canned seafood, canned fruit, canned vegetables, stews, chili, soups, flour, shortening, margarine and personal and household goods. The licensees' food inventory was more than just a selection of snack items, which would be inadequate.

Case: *Bingo Gas*, November 1981.

Abstract: A "wide variety" of grocery items under OAR 845-05-025(9) means a wide variety of articles for human consumption which are customarily served as food or substances entering into the preparation of foods in the home. This includes foods that satisfy the ordinary eating habits of the general public, and not merely snack items for freeway travelers.

Case: *Sun Ray Drive-In Dairy v. OLCC*, 20 Or App 91, 530 P2d 887 (1975).

Abstract: Regulation which stated that "Package Store licenses shall not be issued . . . to an outlet which primarily

sells petroleum products if there are other outlets with package liquor privileges within a reasonable distance" held to be neither vague nor over broad.

B.2.d.2. RMB/Brewery - Public House

[\(return to index\)](#)

Case: *Viva La Pizza*, OLCC-98-L-004, December 1999.

Abstract: The Commission refused to grant an exemption from OAR 845-006-0028 (prohibits same day delivery of alcoholic beverages with food orders unless the price of food is at least 75% of the retail cost of the delivered order). Licensee sought exemption, as it wished to deliver expensive wines with the pizza, exceeding the 25% allowable expense for the alcohol. The Commission concluded that an exemption is allowable only if all 3 criteria of OAR 845-006-0028(4) are met. The Commission found that licensee, holder of a Retail Malt Beverage license, primarily offers pizza, a fast food, and was, therefore, ineligible for the exemption.

B.2.d.3. Wholesale Malt Beverage and Wine

[\(return to index\)](#)

Case: *Morchella Wine Cellars, LLC*, OLCC-06-L-003, December 2006.

Facts: Washington company applied for Wholesale Malt Beverage Wine (WMBW) license, and listed an Oregon law firm as a registered agent for a place of business. OLCC denied based on its status as an out-of-state entity.

Abstract: The Commission cannot process the application of a business for a WMBW license where the applicant has no Oregon premises. The applicant's status as a winery in its home state and/or the foreign business registration with Oregon's Secretary of State do not create a right to apply for and obtain an Oregon liquor license and then conduct the privileges of that license from outside of Oregon. While the plain wording of the statute authorizing WMBWs does not include the requirement for an Oregon location the Commission construes the statute and rules to require an Oregon premises. Because the applicant did not have an Oregon location to accept imported alcoholic beverages it would only be an exporter from Washington, and not an importer in Oregon. Retailers in Oregon do not have statutory authority to import, and thus could not receive the product from the Washington exporter.

Key Words/Phrases: statutory interpretation, meaning, licensed premises location, out-of-state entity, physical location of licensed premises, motion for summary determination

B.3. Service Permits (SP)

B.3.a. Miscellaneous SP Refusal Bases (ORS 471.380)

[\(return to index\)](#)

Case: OLCC-14-V-033, August 2014.

Facts: Permittee's service permit was revoked after a felony conviction for Unlawful Possession of Cocaine. Permittee was contacted by OLCC inspectors after a complaint. When his permit number was run through OLCC dispatch it showed he had a warrant from Washington County. OLCC inspectors then contacted Permittee and placed him under arrest for the warrant. Permittee attempted to reach into his pockets, and a bag of cocaine was discovered.

Abstract: Possession of a controlled substance while on duty relates to a permittee's fitness to hold a service permit. Admitting to an intent to deliver a controlled substance on a licensed premises does as well. Passage of nine months from the conviction is not enough to determine if the permittee has reformed to the extent that he/she would be a good risk for compliance. Further, commission of felonies on the licensed premises showed a lack of good judgment and a disregard for Commission rules and laws and therefore provides a basis to aggravate the penalty.

Case: OLCC-03-SPR-017, October 2003.

Abstract: Applicant failed to list a conviction for Burglary I on her application. The definition of Burglary I includes as a possible element that the perpetrator causes or attempts to cause harm to the victim or uses or threatens to use a dangerous weapon. If a conviction for Burglary I included one of these elements, then the conviction would qualify as a felony conviction for the commission of a violent crime and might qualify as a violent crime where alcohol or controlled substances were involved, which is a refusal basis under OAR 845-009-0020(5)(a)(A). Applicant's failure to list her felony Burglary I conviction inhibited the commission's investigation into whether it constituted a refusal basis. Consequently, failure to report that conviction constituted failure to report a material fact and is a basis to deny the application pursuant to ORS 471.380(1)(b).

Case: OLCC-01-SPR-017, August 2001.

Abstract: ORS 471.380(1)(b) does not require that a material false statement made in a service permit application be made intentionally in order to refuse the service permit.

Case: OLCC-86-SP-019, March 1987.

Abstract: Service permit application was refused where the application was endorsed by another licensee than the one at which applicant intended to work.

**B.3.b. Failure to Complete Alcohol Server Education (ASE)
(ORS 471.542; OAR 845-009-0100) [(ORS 471.542; OAR 845-09-100)]**

Case: OLCC-92-ASE-109, February 1993.

Abstract: Where applicant met ASE requirements by taking the class and passing the examination, but did so four days after the deadline stated in OAR 845-09-100(2), the Commission determined not to grant the service permit. The Commission concluded that it would not grant any extensions of time to meet ASE requirements beyond the 90 days allowed for in OAR 845-09-100(2).

Case: OLCC-91-SP-159, May 1992.

Abstract: Hardship or family illness did not provide a reason to extend the time allowed for meeting the alcohol server education requirement in OAR 845-05-100. The Commission concluded that this rule did not provide for an extension for any reason.

Case: OLCC-89-SP-168, March 1990.

Abstract: Commission granted a service permit applicant an extension of 360 days from the date of her application to take and pass the alcohol server education course, after she was prevented by injuries from taking the course within the period of time initially extended to her and thereafter until sometime after the hearing.

Case: OLCC-89-SP-010, May 1989.

Abstract: Commission denied application for a service permit application where in his exceptions to the Proposed Order, applicant requested that the Commission reopen the record to add a statement that he had completed an Alcohol Server Education course and examination after the hearing was held and the Proposed Order was issued. The Commission declined to reopen the record for this purpose.

Case: OLCC-89-SP-093, August 1989.

Abstract: Notwithstanding that ORS 471.542(1) and OAR 845-16-110(2) provide that the Commission may refuse a service permit application where the applicant does not complete an ASE course and examination within 45 days after signing the application or within the extension that the Commission grants, the Commission concludes that the application should be granted where the applicant subsequently completes a course and examination prior to the hearing.

Case: OLCC-89-SP-073, July 1989.

Abstract: Where the service permit applicant fails to complete an ASE course and examination within 45 days after signing the application, or within the extension that the Commission grants, the application should be denied. ORS 471.542(1); OAR 845-16-110(2).

B.3.c. Service Permit Denial Criteria Rule OAR 845-009-0020[(OAR 845-09-020)] and Revocations

[\(return to index\)](#)

Case: OLCC-14-SPR-027, March 2015.

Facts: Applicant had one diversion and one DUII arrest before applying for his service permit. The day after his application was made he was convicted of DUII and placed on probation, ending in November 2015

Abstract: Applicant's application for a service permit should be denied because he has one diversion and one conviction for DUII within three years, one of which was within 12 months. ORS 471.380(1)(d) and *former* OAR 845-009-0020(7)(a)(A). Applicant has not shown good cause to overcome the denial basis. *Former* OAR 845-009-0020(3) and (7)(b). Applicant could not show he'd been diagnosed with an alcohol or drug addiction, and although he'd last consumed in February 2014 he was within 24 months of the proposed denial. He had also not completed his probation requirements.

Key Words/Phrases: service permit, denial, DUII, diversion, good cause

Case: OLCC-14-SPR-043, March 2015.

Facts: Applicant committed the crime of Sexual Abuse in the Second Degree by a Coach, a class C felony, between September 2014 and March 2014. Applicant applied for a service permit on September 24, 2014.

Abstract: Applicant's application for a service permit should be denied because he has one felony conviction for a violent crime and the incident leading to the conviction occurred within two years of the date the OLCC received his service permit application. OAR 845-009-0020(3)(b). Applicant did not show good cause to overcome the denial basis.

At hearing, applicant asserted that the sexual contact was consensual and therefore his crime was not "violent" as defined by OAR 845-009-0020(3)(a)(B). However, the OLCC has concluded that Sexual Abuse in the Second Degree constitutes a violent crime as defined by the rule. *See* OLCC-08-SPR-022, November 2008.

Key Words/Phrases: service permit, denial, violent crime, sex abuse, consensual, good cause

Case: OLCC-14-SPR-041, March 2015.

Facts: Applicant was convicted of Unlawful Manufacturer of Heroin and Delivery within 1000 feet of a school. Applicant had not completed her probation and was not diagnosed with a drug addiction. Applicant last used illicit drugs in June 2012, and applied for a service permit in August 2014.

Abstract: Under *former* OAR 845-009-0020(4)(a)(D), Applicant's application for a service permit should be denied because she has three felony drug convictions within six years of the date the OLCC received the application. Applicant did not show good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, drug, addiction, good cause, meth, manufacture

Case: OLCC-14-SPR-028, January 2015.

Facts: Permittee was issued a service permit in May 2010. He had one prior diversion in 2008. He was arrested and convicted for DUII in May 2012 and February 2014. Permittee was diagnosed with a substance abuse addiction in April 2014 and completed treatment, and had not used or consumed alcohol since February 2014.

Abstract: Permittee's service permit should be revoked because Permittee has one DUII diversion and two DUII convictions within seven years, one of which was within the past 18 months. ORS 471.385(1)(b), *former* OAR 845-009-0020(7)(a)(B). Permittee did not show good cause to overcome the revocation. *Former* OAR 845-009-0020(3) and (7)(b).

Key Words/Phrases: service permit, revocation, DUII, diversion, good cause

Case: OLCC-14-SPR-016, December 2014.

Facts: Applicant's service permit application was denied because he had two controlled substance felony convictions for meth, one in the past three years. Applicant was diagnosed with a drug addiction disability in 1997, participated in several treatment programs. Last felony conviction was Dec. 2011, he completed his probation requirements in Dec. 2013, and not used since Sept. 2014. Application was in April 2014.

Abstract: While applicant has made significant positive changes in his life, the rule requires 24 months of abstinence to establish good cause.

Key Words/Phrases: service permit, felony, controlled substance, three years, 24 months, drug addiction, fitness to serve alcohol, treatment program, abstinence

Case: OLCC-14-SPR-030, December 2014 (FOD)

Facts: Applicant was convicted of Unlawful Possession of Heroin less than 12 months before the agency received his service permit application. Applicant requested a hearing but did not appear.

Abstract: Applicant's service permit application should be denied pursuant to ORS 471.380(1)(d) and *former* OAR 845-009-0020(4)(a)(A) because he had one controlled substance felony conviction within the past 12 months. Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, relevant conviction, drug, heroin, good cause, applicant did not appear

Case: OLCC-14-SPR-024, November 2014 (FOD)

Facts: Permittee was issued a service permit in May 2014. Subsequently Permittee pled guilty to Unlawful Delivery of a Controlled Substance, class A felony, for an offense committed in or around June 2013. Permittee requested a hearing on the agency's proposed revocation but did not appear.

Abstract: Pursuant to *former* OAR 845-009-0020(3) and (4), Permittee's service permit should be revoked based on her felony conviction for unlawful delivery of a controlled substance. Permittee did not appear to present any evidence of good cause to overcome the revocation basis.

Key Words/Phrases: service permit, revocation, relevant conviction, drug, good cause, permittee did not appear

Case: OLCC-14-SPR-020, November 2014 (FOD)

Facts: Applicant had two convictions for Unlawful Possession (heroin) and Unlawful Delivery (cocaine) within the past three years. Applicant requested a hearing but did not appear.

Abstract: Applicant's service permit should be denied because she has two controlled substance felony convictions, one of which was within the past three years. ORS 471.380(1)(d) and *former* OAR 845-009-0020(4)(a)(C). Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, relevant conviction, drug, heroin, cocaine, good cause, applicant did not appear

Case: OLCC-14-SPR-029, November 2014 (FOD)

Facts: Applicant had two felony drug-related convictions (marijuana, heroin) in 2011. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has two felony drug convictions which occurred within three years of the application. ORS 471.380(1)(d); *former* OAR 845-009-0020(4)(a)(C). Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, revocation, relevant conviction, drug, heroin, marijuana, good cause, applicant did not appear

Case: OLCC-14-SPR-002, November 2014.

Facts: Applicant's service permit application was denied because she was convicted of felony drug delivery within the past two years. Applicant was diagnosed with a drug addiction disability and completed treatment in August 2012, application was received November 2013.

Abstract: While applicant has made significant positive changes in his life, the rule requires 24 months of abstinence to establish good cause.

Key Words/Phrases: service permit, felony, controlled substance, three years, 24 months, drug addiction, fitness to serve alcohol, treatment program, abstinence

Case: OLCC-14-SPR-019, October 2014 (FOD)

Facts: Applicant had three felony drug-related convictions (heroin, cocaine) in 2012. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because he had three felony controlled substance convictions within six years of the date of his application. *See former* OAR 137-003-0670. Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, revocation, relevant conviction, drug, heroin, cocaine good cause, applicant did not appear

Case: OLCC-14-SPR-009, October 2014 (FOD)

Facts: Applicant had 5 convictions for drug possession (meth) in the time period of 2007-2012. Applicant requested a hearing but did not appear.

Abstract: Applicant had three or more relevant convictions within six years, and did not present any evidence of good cause to overcome the denial basis. Application was properly denied.

Key Words/Phrases: service permit, denial, relevant conviction, drug, meth, good cause, applicant did not appear

Case: OLCC-14-SPR-007, October 2014.

Facts: Applicant's service permit application was denied because of two controlled substance felony convictions, one in the past three years. Applicant attended a treatment program and believed it was state-certified, has not used since July 2012, and believes he has completed all probation requirements six months prior.

Abstract: Applicant has not shown abstinence of 24 months to establish good cause. Further, applicant has not shown evidence (sworn statements on OLCC-supplied forms or certificate of completion) that probation requirements or state-certified treatment was completed.

Key Words/Phrases: service permit, felony, controlled substance, three years, 24 months, drug addiction, fitness to serve alcohol, treatment program, abstinence, applicant belief

Case: OLCC-14-SPR-017, September 2014 (FOD)

Facts: Applicant had one felony drug-related conviction (meth) in January 2014, and applied for a service permit in March 2014. Applicant requested a hearing but did not appear.

Abstract: Applicant's service permit should be denied because she has one controlled substance felony conviction within the past 12 months. ORS 471.380(1)(d) and OAR 845-009-0020(4)(a)(A). Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, relevant conviction, drug, meth, good cause, applicant did not appear

Case: OLCC-14-SPR-014, September 2014 (FOD)

Facts: Applicant had two drug-related convictions (meth) from 2006-2013. Applicant's 12-month post-prison supervision was scheduled to begin in November 2013, and applicant submitted her application in March 2014. Applicant requested a hearing but did not appear.

Abstract: Applicant's service permit should be denied because she has two controlled substance felony convictions, one of which was within the past three years. ORS 471.380(1)(d) and OAR 845-009-0020(4)(a)(C). Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, relevant conviction, drug, meth, good cause, applicant did not appear

Case: OLCC-14-SPR-005, September 2014 (FOD)

Facts: Permittee had one diversion prior to receiving her service permit. After being issued a permit Permittee was convicted of DUII. Permittee requested a hearing on the agency's proposed revocation but did not appear.

Abstract: Permittee's service permit should be revoked because Permittee has one DUII diversion and one DUII conviction within three years, one of which was within the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(7)(a)(B). Permittee did not appear to present any evidence of good cause to overcome the revocation basis.

Key Words/Phrases: service permit, revocation, relevant conviction, DUII, diversion, good cause, permittee did not appear

Case: OLCC-14-SPR-003, August 2014 (FOD)

Facts: Applicant had three felony drug-related convictions (meth, heroin) from 2010-2011. Applicant submitted his application in December 2013. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because he had three felony controlled substance convictions within six years of the date of his application. Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, relevant conviction, drug, heroin, meth, good cause, applicant did not appear

Case: OLCC-13-SPR-030, August 2014.

Facts: Applicant for service permit had felony drug delivery charge for marijuana in March 2012. Applicant applied in July 2013. Applicant was diagnosed with a drug addiction disability and completed a substance abuse treatment program. Applicant has not used since March 2012.

Abstract: Applicant should be denied her service permit because the felony drug conviction occurred within two years of the application. Applicant's drug addiction disability qualifies her to overcome the denial with good cause, however she had not abstained from using controlled substances for the required 24 months. OLCC-13-SPR-030 (August 2014)

Key Words/Phrases: service permit, denial, two years, marijuana, good cause, abstinence, addiction disability

Case: OLCC-13-SPR-029, July 2014.

Facts: Applicant for service permit had felony drug possession conviction (meth) in the past 12 months. Applicant entered treatment program, not used since June 2013, and employed as a bartender for 8 years. Employer submitted letter saying applicant was an exemplary employee and valuable asset.

Abstract: Applicant should be denied because she has been convicted of a felony within the past twelve months, has not abstained for more than 24 months, and has not completed her probation/parole requirements. Further applicant did not submit evidence that she completed a state certified treatment program.

Key Words/Phrases: service permit, denial, meth, state certified treatment program

Case: OLCC-13-SPR-015, July 2014.

Facts: Permittee's service permit was revoked due to two diversion or convictions for DUII within 3 years. Commission held that it should be revoked because one was in the past 12 months. No good cause present to overcome the denial basis because it had not been 24 months since her last conviction.

Abstract: The OLCC may revoke a service permit if a permittee has been convicted of violating any of the liquor laws of the state. The agency must show a relationship between the conviction and the individual's fitness to hold a license. The OLCC has previously held that a conviction involving abuse of a controlled substance was related to an individual's fitness to sell and serve alcoholic beverages because it indicated poor judgment with respect to the controlled substance. A drug or alcohol addiction disability at the time of the conviction qualifies the applicant to show good to overcome the revocation/denial. Good cause exists if the permittee can provide a sworn statement that the applicant has not used or consumed controlled substances/alcohol within 24 months, and successfully completed a state certified treatment program, and completed all parole or probation requirements.

Key Words/Phrases: service permit, DUII, diversion, revoke, 24 months, drug addiction, alcohol addiction, disability, good cause, treatment program, sworn statement, abstinence

Case: OLCC-13-SPR-039, May 2014.

Facts: Applicant's service permit application was denied because of two felony drug convictions, one in the last three years. Applicant pled guilty to a felony in June 2012, anticipated completion of treatment in February 2014, anticipates completion of her parole/probation requirements in 2015, and was diagnosed as drug dependent. Applicant last used in January 2013. Application was received in Sept. 2013.

Abstract: Applicant does not meet all the criteria for overcoming the denial because she does not have 24 months of abstinence and has not completed all of her parole/probation requirements.

Key Words/Phrases: service permit, heroin, drug addiction, disability, treatment, abstinence, 24 months, probation, parole

Case: OLCC-13-SPR-026, May 2014.

Facts: Applicant for service permit had felony drug delivery charge for marijuana in July 2013. He applied for the permit in June 2013. He was not diagnosed with any drug or alcohol addiction disability, and had not undergone any substance abuse evaluation. He last used medical marijuana in early 2013.

Abstract: Applicant should be denied his service permit because his felony conviction related to a controlled substance, and he did not meet the standard for good cause to overcome the denial.

Key Words/Phrases: service permit, denial, two years, marijuana, good cause, abstinence

Case: OLCC-13-SPR-042, March 2014 (FOD)

Facts: Applicant had three DUII convictions from 2005-2012. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has had three DUII convictions within seven years, one of which was within the past 18 months. Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, DUII, relevant conviction, good cause, applicant did not appear

Case: OLCC-13-SPR-036, February 2014 (FOD)

Facts: Permittee was issued a service permit in 2009. Permittee had a DUII conviction from 2007, and subsequently was convicted of two DUIIs in 2013. Permittee requested a hearing on the agency's proposed revocation, but did not appear.

Abstract: Permittee's service permit should be revoked because Permittee has three DUII convictions within seven years, two of which were within the past 18 months. ORS 471.385(1)(b), OAR 845-009-0020(7)(a)(B). Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, revocation, DUII, diversion, relevant conviction, good cause, permittee did not appear

Case: OLCC-13-SPR-037, February 2014 (FOD)

Facts: Permittee had one diversion prior to being issued a service permit. Subsequently she was arrested and convicted for two DUIIs in 2013. Permittee requested a hearing on the agency's proposed revocation but did not appear.

Abstract: Permittee's service permit should be revoked because Permittee had one DUII diversion and two DUII convictions within seven years, two of which were within the past 18 months. Permittee did not present any evidence of good cause to overcome the revocation basis.

Key Words/Phrases: service permit, denial, revocation, DUII, diversion, good cause, permittee did not appear

Case: OLCC-13-SPR-032, January 2014 (FOD)

Facts: Applicant has a conviction of Assault III, class C felony, for driving under the influence and causing serious injury to another person. The incident was in March 2012, and applicant applied for a service permit in July 2013. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has a felony conviction for the commission of a violent crime within two years of her application where alcohol or controlled substances were involved. OAR 845-009-0020(5)(a)(A); ORS 471.380(1)(d). Applicant did not appear to present evidence of good cause to overcome the denial basis.

Case: *Lynda Henry*, OLCC-13-SPR-025, January 2014 (FOD)

Facts: Permittee was convicted of Unlawful Delivery of Heroin shortly after being issued a service permit. Permittee requested a hearing on the agency's proposed revocation but did not appear.

Abstract: Permittee's service permit should be revoked because she has a felony conviction for the manufacture, delivery, or distribution of a controlled substance within the last two years. Permittee did not appear to present any evidence of good cause to overcome the revocation basis.

Key Words/Phrases: service permit, revocation, relevant conviction, drug, heroin, good cause, permittee did not appear

Case: OLCC-13-SPR-033, January 2014 (FOD)

Facts: Applicant, under a previous name, had two DUII convictions within a year of applying for a service permit. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has had two DUII convictions within three years, both of which were within the past 12 months. ORS 471.380(1)(d), OAR 845-009-0020(7)(a)(A). Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, DUII, diversion, relevant conviction, good cause, applicant did not appear

Case: OLCC-13-SPR-034, January 2014 (FOD)

Facts: Applicant attended a party in which most attendees were drinking alcohol and/or consuming controlled substances. Applicant denied being under the influence, but engaged in two separate physical altercations with others under the influence. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has a felony conviction for the commission of a violent crime where alcohol or controlled substances were involved within two years of her application. OAR 845-009-0020(5)(a)(A); ORS 471.380(1)(d). Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, relevant conviction, violent crime, good cause, applicant did not appear

Case: OLCC-13-SPR-024, January 2014 (FOD)

Facts: Applicant had one diversion and one DUII prior to applying for a service permit. Applicant requested a hearing but did not appear.

Abstract: Applicant should be denied a service permit because Applicant has had two DUII convictions within three years, one of which was within the past 12 months. ORS 471.380(1)(d), OAR 845-009-0020(7)(a)(A). Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, DUII, diversion, relevant conviction, good cause, applicant did not appear

Case: OLCC-13-SPR-023, January 2014.

Facts: Applicant for service permit had six controlled substance felony convictions related to meth. Five were within six years of the application. She was convicted and sentenced to 25 months in 2011, plus 36 months post-prison supervision. Applicant was diagnosed as drug addicted in 2004 and completed a treatment program. Last use was in April 2011. Application was received in May 2013.

Abstract: The phrase "within six years" as used in the administrative rule means within six years of the date the OLCC receives the application. The diagnosis of a drug addiction disability entitles applicant to show good cause, and she had been abstinent for more than 24 months when making the application. But despite excellent progress, Applicant remains on parole and therefore does not meet all the criteria set forth in OAR 845-009-0020(4)(b) and cannot show good cause to overcome the denial.

Key Words/Phrases: service permit, meth, six years, parole, good cause, abstinence, 24 months, drug addiction

Case: OLCC 13-SPR-012, January 2014.

Facts: Applicant committed crime of Unlawful Delivery of Marijuana within 1000 Feet of a School in April 2011. Applicant pled guilty to a felony in Jan. 2012. OLCC received application in April 2013. Applicant participated in treatment, was in compliance with her probation, but had not been diagnosed as drug dependent.

Abstract: In order to show good cause, applicant must have had a drug addiction disability or an alcohol addiction disability at the time of the felony drug conviction. Applicant had not been diagnosed and therefore cannot establish good cause to overcome the denial.

Key Words/Phrases: service permit, felony, controlled substance, three years, 24 months, drug addiction, fitness to serve alcohol, treatment program, abstinence

Case: OLCC-13-SPR-014, January 2014

Facts: Applicant was convicted of Possession of Heroin in 2009, and Delivery of Heroin in 2012. Applicant was diagnosed with a drug addiction and participated in treatment but did not complete it. Applicant relapsed in July 2013, and has not consumed controlled substances since then. Applicant submitted his service permit application in April 2013.

Abstract: Applicant should be denied because he has two controlled substance felony convictions, one of which was within three years of the date the OLCC received the application. ORS 471.380(1)(d); OAR 845-009-0020(4)(a)(C). Applicant has not shown good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, drug conviction, heroin, addiction, good cause, relapse, probation, treatment

Case: OLCC-13-SPR-017, December 2013.

Facts: Service permit applicant had felony conviction for drug possession within the past 12 months. Applicant had been diagnosed with a drug dependence disability, completed state-certified treatment, had not used since November 2011, and was in compliance with her probation.

Abstract: Applicant must be denied because she does not yet have 24 months of abstinence/sobriety, and is still on probation.

Key Words/Phrases: service permit, felony drug conviction, meth, controlled substance, drug addiction, abstinence, sobriety, probation, treatment program

Case: OLCC-13-SPR-021, December 2013.

Facts: Service permit applicant had one diversion and one DUII within three years, one in the last 12 months.

Applicant has not completed drug and alcohol classes, and plans to complete them in the fall. He has not been diagnosed as drug or alcohol addicted.

Abstract: Service permit must be denied because applicant has not established good cause to overcome the denial, because he has not been diagnosed with a dependency disability, has not completed treatment, and has not been abstinent for 24 months.

Key Words/Phrases: service permit, denial , DUII, diversion, alcohol dependency, addiction, abstinence, state-certified treatment

Case: OLCC-13-SPR-006, December 2013.

Facts: Service permit applicant had two diversions/convictions for DUII within 3 years. Applicant was diagnosed with alcohol addiction and was attending state certified treatment, but not completed.

Abstract: Applicant should be denied because she has not completed state-certified treatment, and had not abstained from alcohol for 24 months.

Key Words/Phrases: service permit, DUII, alcohol dependency, addiction, abstinence, state-certified treatment

Case: OLCC-13-SPR-022, November 2013 (FOD)

Facts: Applicant was convicted of delivery of meth (three counts) in November 2011. In April 2012 Applicant failed a drug screen. In April 30 Applicant applied for a service permit, and in June 2013 Applicant's employer wrote a letter on her behalf stating Applicant was a valued employee. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has three delivery of a controlled substance felony convictions within six years of the application. OAR 845-009-0020(4)(a)(D); ORS 471.380(1)(d). Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, drug, meth, relevant conviction, good cause, applicant did not appear

Case: OLCC-13-SPR-031, November 2013 (FOD)

Facts: Applicant was convicted of Unlawful Delivery of Marijuana in March 2012. Applicant applied for a service permit in July 2013. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has a delivery of a controlled substance felony conviction within two years of the application. OAR 845-009-0020(4)(a)(B); ORS 471.380(1)(d). Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, drug, marijuana, relevant conviction, good cause, applicant did not appear

Case: OLCC-13-SPR-013, November 2013 (FOD)

Facts: Applicant was convicted of driving while suspended and DUII in 2004 and 2006. Applicant then was convicted of driving while revoked in 2012. Applicant completed a treatment program in 2007. Applicant applied for a service permit in April 2013. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has three felony convictions for DWS and DWR, one of which was within six years of the application. OAR 845-009-0020(6)(a)(C); ORS 471.380(1)(d). Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, DUII, driving while suspended, driving while revoked, relevant conviction, good cause, applicant did not appear

Case: OLCC-13-SPR-019, November 2013 (FOD)

Facts: Applicant had two DUII convictions from 2012 and 2013. Applicant submitted a service permit application in May 2012. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has had two DUII convictions within three years, one of which was within the past 12 months. ORS 471.380(1)(d), OAR 845-009-0020(7)(a)(A). Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, DUII, relevant conviction, good cause, applicant did not appear

Case: OLCC-13-SPR-001, October 2013.

Facts: Service permit applicant had three felony drug charges (heroin), one in the past six years. Probation will be completed in 2016, and applicant was diagnosed with drug dependency addiction and completed a substance abuse treatment program certified by the state of California. Last used 6 months before the application.

Abstract: Applicant's conviction for Unlawful Possession of Heroin was not considered in this decision, as it was part of the single criminal episode that resulted in his Unlawful Delivery of Heroin conviction. See OLCC-95-SPR-063, December 1995.

When considering good cause to overcome a denial, the period of abstinence is measured from the date of the applicant's last use to the date of the application. See OLCC-95-SPR-115, June 1996.

Key Words/Phrases: service permit, denial, heroin, drug dependency, addiction, abstinence, state-certified treatment, single criminal episode

Case: OLCC-13-SPR-007, October 2013.

Facts: Service permit applicant had two felony convictions for assault III, and one DUII, in 2011. Application received February 2013. Applicant was diagnosed with alcohol dependency addiction, has abstained since November 2011, completed treatment in September 2012, and would complete probation in October 2014.

Abstract: Applicant's assault convictions were "violent crimes" within the meaning of OAR 845-009-0020(5)(c) because they involved her reckless infliction of physical injury to other individuals.

Applicant should be denied because she has not abstained for 24 months and had not completed her probation.

Key Words/Phrases: service permit, felony, assault III, violent crime, physical injury, alcohol dependency, addiction, treatment program, abstinence

Case: OLCC-13-SPR-008, October 2013.

Facts: Applicant convicted of Class C Felony related to meth in August 2012. Application received February 2013. Applicant participated in substance abuse evaluation through CODA but was not diagnosed with a drug or alcohol disability.

Abstract: Applicant's permit application must be denied because the conviction was within 12 months from the date of application, and lack of diagnosis and completion of probation does not establish good cause to overcome the denial.

Key Words/Phrases: service permit, denial, meth, diagnosis, good cause

Case: OLCC-13-SPR-005, August 2013.

Facts: Service permit applicant had five felony drug convictions (meth and heroin), one within six years of her application. Probation would be completed in March 2014. She completed a drug treatment program and has abstained since July 2012.

Abstract: Service permit must be denied because applicant has not abstained for 24 months, and is still on probation.

Key Words/Phrases: service permit, denial, felony, drug, meth, heroin, good cause, abstinence, drug addiction, disability, drug dependence

Case: OLCC-13-SPR-003, August 2013.

Facts: Service permit applicant had more than three felony drug convictions related to cocaine and heroin within six years of application. He was diagnosed with a drug addiction disability and completed state-certified treatment. He expects to complete probation in June 2015 and has not used since January 2012.

Abstract: Applicant meets most of the criteria set forth in OAR 845-009-0020(3) and OAR 845-009-0020(4)(b), but must be denied because he has not abstained for 24 months and has not completed his probation.

Key Words/Phrases: service permit, denial, cocaine, heroin, good cause, abstinence, probation, drug addiction dependence

Case: OLCC-13-SPR-004, August 2013.

Facts: Service permit applicant had three felony convictions related to cocaine in March 2009. He served 30 months in prison and had 36 months of post-prison supervision. He completed a drug assessment and was determined to not need treatment. He does not use controlled substances.

Abstract: Applicant's applicant must be denied because he has three felony drug convictions within six years. Although he has not used controlled substances in the past 24 months, he has not completed any treatment and has not completed his parole.

Key Words/Phrases: service permit, felony drug conviction, non-user, parole

Case: OLCC-13-SPR-010, August 2013 (FOD)

Facts: Applicant had a conviction for Unlawful Delivery of Marijuana and two DUIIs from December 2012 and July 2013. Applicant applied for a service permit in March 2013. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because she had a felony conviction for the manufacture, delivery, or distribution of a controlled substance within two years of the date of her application. Applicant's service permit application should be denied because, within three years, she had two driving under the influence of intoxicants (DUII) convictions or diversions, one of which was within 12 months of the date of her application. Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, DUII, drug, marijuana, relevant conviction, good cause, applicant did not appear

Case: OLCC-12-SPR-016-R, July 2013.

Facts: Permittee was revoked for two diversions/convictions for DUII within three years, one within 12 months. Permittee was issued in July 2011. Permittee received a diversion in September 2010, and another DUII in February 2012. She was in treatment and had abstained from alcohol since March 2012.

Abstract: The OLCC also relies on its service permit denial rules to support the proposed revocation of Permittee's permit. *See* OLCC-006-SPR-022, December 2006 (holding that it is reasonable to apply service permit rules to determine whether revocation of a service permit is warranted).

In this case, Permittee had consumed alcohol within 24 months and had not completed treatment. Therefore she could not establish good cause to overcome the revocation.

Key Words/Phrases: service permit, revoke, revocation, denial criteria, DUII, diversion, abstinence, treatment, employer support

Case: OLCC-13-SPR-006, July 2013 (FOD)

Facts: In December 2011 Applicant was convicted of Coercion for a threat to kill another person, and Assault in the Fourth Degree. Applicant applied for a service permit in February 2013. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant was convicted of two felonies for violent crimes, one of which was within the past three years. OAR 845-009-0020(5)(a)(B); ORS 471.380(1)(d).

Key Words/Phrases: service permit, denial, violent crime, relevant conviction, applicant did not appear

Case: OLCC-12-SPR-014, May 2013.

Facts: Permittee was issued a service permit in September 2011. Permittee was convicted of two counts of DUII in April 2012. Permittee entered treatment and completed it in June 2012, and has not used alcohol since February 2012.

Abstract: Permittee's service permit should be revoked because Permittee has two DUII convictions within three years, one of which was within the past 12 months. Permittee has not shown good cause to overcome the revocation basis because she has not had 24 months abstinence and is still on probation.

Key Words/Phrases: service permit, revocation, DUII, relevant conviction, good cause, abstinence, probation

Case: OLCC-12-SPR-015, May 2013.

Facts: Permittee had two DUII diversions/convictions within three years. Applicant was not diagnosed with a drug or alcohol addiction disability.

Abstract: The OLCC can rely on its service permit denial rules to support the proposed revocation of Permittee's permit. *See* OLCC-006-SPR-022, December 2006 (holding that it is reasonable to apply service permit rules to determine whether revocation of a service permit is warranted).

Key Words/Phrases: service permit, revoke, revocation, service permit denial rules, DUII, disability diagnosis, fitness to sell and serve, good cause

Case: OLCC-13-SPR-002, April 2013 (FOD)

Facts: Applicant had two DUIIs in 2009 and May 2012. Applicant applied for a service permit in November 2012. Applicant requested a hearing but did not appear.

Abstract: Applicant's service permit application should be denied because, within three years, she had two driving under the influence of intoxicants (DUII) convictions or diversions, one of which was within 12 months of the date of her application. Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, DUII, relevant conviction, good cause, applicant did not appear

Case: OLCC-12-SPR-023, April 2013.

Facts: Service permit applicant had two controlled substance felony convictions (meth), one within three years of her application. Additionally, applicant's HR manager filled out the service permit application and didn't include her most recent convictions.

Abstract: Service permit must be denied because applicant had not abstained for 24 months and she had not completed her probation. Additionally, she did not list her two most recent convictions on her application. Apparently the applicant's HR manager filled out the form for her, but the applicant is responsible for ensuring the application is accurate and complete.

Key Words/Phrases: service permit, denial, felony, meth, false statement, good cause, failure to disclose.

Case: OLCC-12-SPR-022, April 2013.

Facts: Service permit applicant had two DUII convictions in March 2012. He had not consumed since June 2012, is still on probation, and was participating in treatment but was unable to continue/complete it because he lost his job. He attends AA meetings.

Abstract: Service permit must be denied because he was convicted of two DUII's within 12 months of his

application, applicant has not been diagnosed with an alcohol addiction disability, and he has not completed his probation or treatment program.

Key Words/Phrases: service permit, denial, DUII, alcohol addiction, alcohol dependence, disability, treatment program, probation

Case: OLCC-12-SPR-021, April 2013 (FOD)

Facts: Permittee was issued a service permit in December 2007. Permittee received diversion for a January 2010 incident, and was convicted of DUII in August 2012. Permittee requested a hearing but did not appear.

Abstract: Permittee's service permit should be revoked because Permittee has one DUII diversion and one DUII conviction within three years, one of which was within the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(7)(a)(A). Permittee did not appear to present any evidence of good cause to overcome the revocation basis.

Key Words/Phrases: service permit, revocation, DUII, diversion, relevant conviction, good cause, permittee did not appear

Case: OLCC-12-SPR-101, March 2013.

Facts: Service permit applicant had two felony convictions for cocaine and heroin possession. Applicant was diagnosed with drug addiction disability. While in state-certified treatment he relapsed and his probation was extended until August 2012. Currently he is in outpatient treatment, attends NA regularly but had used within the past 24 months.

Abstract: Applicant's application must be denied because he is still on probation and used controlled substances within the past 24 months. Applicant is very close to meeting the criteria set forth in OAR 845-009-0020(3) and OAR 845-009-0020(4)(b). Unfortunately the administrative rule does not allow for discretion in its application.

Key Words/Phrases: service permit, denial, felony, drug conviction, cocaine, heroin, drug addiction disability, relapse, probation, discretion

Case: OLCC-12-SPR-018, March 2013.

Facts: Service permit revoked due to three diversions/convictions for DUII within seven years. Permittee was in a state certified treatment program but was not diagnosed with a substance abuse addiction either before or as a result of her convictions.

Abstract: Diagnosis of a substance abuse addiction must be either before or as a result of a conviction.

The OLCC has consistently held in similar cases that DUII convictions are convictions of alcoholic liquor laws and are relevant to that individual's fitness to sell and serve alcoholic liquor. *See* OLCC-03-SPR-036, December 2003, citing OLCC 98-SPR-005, August 1999.

The OLCC can rely on its service permit denial rules to support the proposed revocation of Permittee's permit. *See* OLCC-006-SPR-022, December 2006 (holding that it is reasonable to apply service permit rules to determine whether revocation of a service permit is warranted).

Key Words/Phrases: DUII, service permit, revoke, revocation, fitness to sell and serve, good cause, disability diagnosis

Case: OLCC-12-SPR-006, March 2013.

Facts: Service permit applicant had felony drug delivery conviction within two years of applying. She had not been diagnosed with a disability or completed any treatment.

Abstract: Applicant should be denied and no good cause established to overcome the denial.

Key Words/Phrases: service permit, deny, denial criteria, marijuana, good cause

Case: OLCC-12-SPR-019, January 2013 (FOD)

Facts: Applicant was convicted of possession of meth in January 2012. Applicant applied for a service permit in July 2012. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has a possession of a controlled substance felony conviction within 12 months of the application. OAR 845-009-0020(4)(a)(A); ORS 471.380(1)(d). Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, drug, meth, relevant conviction, good cause, applicant did not appear

Case: OLCC-12-SPR-020, January 2013 (FOD)

Facts: Applicant had three convictions for rape in the third degree, class C felony, in June 2011. Applicant applied for a service permit in August 2012. Applicant requested a hearing but did not appear.

Abstract: Applicant's service permit application should be denied because he has three felony convictions for violent crimes, at least one of which was within the past six years. ORS 471.380(1)(d); OAR 845-009-0020(5)(a)(C). Applicant did not appear to present any evidence of good cause to overcome the denial basis. The OLCC has concluded that rape is a violent crime as that term is defined by ORS 845-009-0020(5)(c) and that a conviction for rape is related to an individual's fitness to sell and serve alcoholic beverages. *See* OLCC-12-SPR-049, August 1994; *Under the Bridge Cigarettes*, OLCC Final Order, OLCC-05-L-002, February 2006.

Key Words/Phrases: service permit, denial, relevant conviction, violent crime, good cause, applicant did not appear

Case: OLCC-12-SPR-017, January 2013.

Facts: Applicant for service permit had two DUII diversions/convictions within three years. Applicant was participating in a state certified treatment program but was not diagnosed with an alcohol addiction before or as a result of her DUII convictions.

Abstract: Service permit must be denied because applicant had two DUII convictions, one in Idaho and one in Oregon, within the past 12 months. Applicant could not show good cause to overcome the denial because she lacked a disability diagnosis, had not completed treatment, had not abstained for 24 months, and had not completed her probation requirements.

Key Words/Phrases: service permit, denial, DUII, diagnosis, treatment, good cause, probation, abstinence

Case: OLCC-12-SPR-013, November 2012.

Facts: Applicant had two convictions for delivery of marijuana for consideration, class B felonies, from 2007 and November 2010. Applicant applied for a service permit in April 2012. Applicant was diagnosed as drug addicted as a result of the 2007 conviction, and completed state certified treatment in 2007 and 2011. Applicant had not used or consumed controlled substances since December 2011.

Abstract: Applicant's application for a service permit should be denied because Applicant has two controlled substance felony convictions, one of which was within three years of the date the OLCC received the application. ORS 471.380(1)(d); OAR 845-009-0020(4)(a)(C). Applicant has not shown good cause to overcome the denial basis because applicant had not completed probation requirements and did not have 24 months of abstinence.

Key Words/Phrases: service permit, denial, drug, marijuana, relevant conviction, good cause, treatment, addiction, probation, abstinence

Case: OLCC-12-SPR-007, October 2012.

Facts: Applicant was convicted of 4 crimes of Unlawful Delivery or Possession of meth between 2007-2010. Applicant applied for a service permit in January 2012. Prior to his 2008 convictions, Applicant participated in a treatment program and was diagnosed as drug addicted. He qualified for a completion certificate for substance abuse treatment but did not request one. He later entered treatment following his 2010 conviction and completed the program. He had not used or consumed controlled substances since October 2008.

Abstract: Applicant's application for a service permit should be denied because Applicant has three or more controlled substance felony convictions, at least one of which was within six years of the date the OLCC received the application. ORS 471.380(1)(d), OAR 845-009-0020(4)(a)(D). Applicant has not shown good cause to overcome the denial basis. Although Applicant has met most of the criteria for good cause set forth in OAR 845-009-0020(4)(b), he had not completed his probation requirements, and therefore cannot overcome the denial basis.

Key Words/Phrases: service permit, denial, drug, relevant conviction, good cause, probation requirement, addiction, treatment

Case: OLCC-12-SPR-003, October 2012.

Facts: Applicant had a diversion in January 2011 and DUII conviction in September 2011. She had not consumed alcohol since August 2011, is still on probation, and completed treatment in February 2012. She applied for a service permit in November 2011.

Abstract: Applicant's application for a service permit should be denied because, within three years of the application for a service permit, Applicant has had two DUII convictions, at least one of which was within 12 months of the date of her application. OAR 845-009-0020(7)(a)(A); ORS 471.380(1)(d). Applicant does not meet the requirements set forth in rule to show good cause to overcome the denial. OAR 845-009-0020(3) and (7)(b).

Key Words/Phrases: service permit, denial, DUII, diversion, good cause, treatment, addiction, probation

Case: OLCC-21-SPR-004, August 2012.

Facts: Applicant was convicted of Unlawful Possession of a Controlled Substance in 2005 and April 2010. Applicant applied for a service permit in January 2012.

Abstract: Applicant's application for a service permit should be denied because he has two controlled substance felony convictions, one of which was within three years. ORS 471.380(1)(d), OAR 845-009-0020(4)(a)(C). Applicant did not established good cause to overcome the denial.

Key Words/Phrases: service permit, denial, drug, marijuana, relevant conviction, good cause

Case: OLCC-12-SPR-008, August 2012 (FOD)

Facts: Applicant had a conviction for possession of meth and heroin (two convictions) from August 2010. Applicant applied for a service permit in March 2012. Applicant requested a hearing but did not appear.

Abstract: Whether Applicant's application for a service permit should be denied because she has two controlled substance felony convictions, one of which was within three years of the application. OAR 845-009-0020(4)(a)(C); ORS 471.380(1)(d). Applicant did not appear and present any evidence supporting good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, drug, meth, relevant conviction, good cause, applicant did not appear

Case: OLCC-12-SPR-005, July 2012 (FOD)

Facts: Applicant had a conviction for unlawful possession of meth from April 2010, and unlawful delivery of marijuana for consideration from July 2011. Applicant applied for a service permit in February 2012. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has two controlled substance felony convictions, one of which was within three years of the application. OAR 845-009-0020(4)(a)(C); ORS 471.380(1)(d). Applicant did not appear and present any evidence supporting good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, drug, meth, marijuana, relevant conviction, good cause, applicant did not appear

Case: OLCC-11-SPR-019, June 2012.

Facts: Applicant had two DUII convictions from 2008 and 20011. He last consumed alcohol in March 2011, is still on probation and plans to begin treatment in December 2011. Applicant applied for a service permit in August 2011.

Abstract: Applicant's application for a service permit should be denied because, within three years of the application for a service permit, Applicant has had one DUII conviction and one diversion, at least one of which was within 12 months of the date of his application. OAR 845-009-0020(7)(a)(A); ORS 471.380(1)(d). Applicant does not meet the requirements set forth in rule to show good cause to overcome the denial. OAR 845-009-0020(3) and (7)(b).

Key Words/Phrases: service permit, denial, DUII, diversion, relevant conviction, good cause, addiction, treatment

Case: OLCC-11-SPR-023, June 2012.

Facts: Applicant had a diversion from 2007, DUII from March 2011, and Furnishing Alcohol to a Minor in July 2011. Applicant remained on probation until January 2014 as a result of the Furnishing conviction. She completed alcohol treatment in February 2012, and last consumed alcohol and drugs in July 2011. Applicant applied for a service permit in October 2011.

Abstract: Applicant's application for a service permit should be denied because, within seven years of the application for a service permit, Applicant has had a combination of three DUII convictions, diversions, or convictions for Furnishing Alcohol to a Minor, at least one of which was within 18 months of the date of her application. OAR 845-009-0020(7)(a)(B); ORS 471.380(1)(d). Applicant does not meet the requirements set forth in rule to show good cause to overcome the denial because she had not completed her probation requirements or have 24 months of abstinence. OAR 845-009-0020(3) and (7)(b).

Key Words/Phrases: service permit, denial, DUII, diversion, furnishing alcohol to a minor, good cause, treatment, addiction, probation, abstinence

Case: OLCC-11-SPR-024, May 2012.

Facts: Applicant had a diversion from March 2010, and DUII conviction in May 2011. Applicant tested positive for alcohol in June 2011, and entered treatment. He was diagnosed with an alcohol addiction, and completed treatment in November 2011. Applicant applied for a service permit in September 2011.

Abstract: Applicant's application for a service permit should be denied because Applicant has two DUII convictions within three years, both of which were within the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(7)(a)(A). Applicant has not shown good cause to overcome the denial. OAR 845-009-0020(3) and (7)(b).

Key Words/Phrases: service permit, denial, DUII, diversion, good cause, treatment, addiction, probation

Case: OLCC-11-SPR-014, December 2011.

Facts: Applicant applied for a service permit in May 2011. Applicant had four DUII convictions between 2006-2009. Applicant completed treatment.

Abstract: Applicant's application for a service permit should be denied because, within 10 years of the application for a service permit, Applicant had four DUII convictions, at least one of which was within three years of the date of her application. OAR 845-009-0020(7)(a)(C); ORS 471.380(1)(d). Applicant does not meet the requirements set forth in rule to show good cause to overcome the denial because Applicant has not established that she has an alcohol addiction disability.

Key Words/Phrases: service permit, denial, relevant conviction, DUII, good cause, addiction, disability

Case: OLCC-11-SPR-010, October 2011.

Facts: Applicant was convicted of unlawful possession of meth in March 2011. Applicant last used controlled substances in 2003, was evaluated and found not to have a substance abuse problem, and did not recommend Applicant enroll in treatment. Applicant was still on probation until September 2011. Applicant submitted her application for a service permit in March 2011.

Abstract: Applicant's application for a service permit should be denied because Applicant was convicted of felony possession of a controlled substance within 12 months of the date the OLCC received the application. ORS 471.385(1)(b), OAR 845-009-0020(4)(a)(A). Applicant has not shown good cause to overcome the denial basis because applicant did not have an addiction disability, had not engaged in treatment, and had not completed her probation.

Key Words/Phrases: service permit, denial, drug, meth, relevant conviction, treatment, probation, addiction, good cause

Case: OLCC1-11-SPR-002, September 2011.

Facts: Applicant had a diversion from January 2010, which was revoked for subsequent DUII in March 2010. Applicant applied for a service permit in February 2011. Applicant last consumed alcohol in August 2010, had completed two outpatient treatment programs, and was complying with her probation requirements.

Abstract: Applicant's application for a service permit should be denied because, within three years of the application for a service permit, she had two DUII convictions, at least one of which was within 12 months of the date of her application. OAR 845-009-0020(7)(a)(A), ORS 471.380(1)(d). Applicant has not established good cause to overcome the denial because she had not been abstinent for 24 months or completed her probation requirements. OAR 845-009-0020(3) and (7)(b).

Key Words/Phrases: service permit, denial, diversion, DUII, relevant conviction, treatment, probation, addiction, good cause, abstinence

Case: OLCC-10-SPR-024, June 2011.

Facts: Applicant had a diversion from August 2009, and a DUII from May 2010. Applicant submitted a service permit application in May 2010. Applicant had not completed her probation or completed alcohol treatment, and was not diagnosed with an addiction.

Abstract: Applicant's application for a service permit should be denied because Applicant has one DUII diversion and one DUII conviction within three years, one of which was within the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(7)(a)(A). Applicant has not shown good cause to overcome the denial. OAR 845-009-0020(3) and (7)(b).

Key Words/Phrases: service permit, denial, diversion, DUII, relevant conviction, treatment, probation, addiction, good cause

Case: OLCC-10-SPR-025, June 2011.

Facts: Applicant had a diversion from 2007, and a DUII conviction from March 2010. Applicant was diagnosed as alcohol addicted and completed treatment in July 2010. Applicant's probation concludes in May 2011. Applicant submitted her service permit application in June 2010.

Abstract: Applicant's application for a service permit should be denied because Applicant has one DUII diversion and one DUII conviction within three years, one of which was within the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(7)(a)(A). Applicant has not shown good cause to overcome the denial because she has not been abstinent for 24 months. OAR 845-009-0020(3) and (7)(b).

Key Words/Phrases: service permit, denial, diversion, DUII, relevant conviction, treatment, probation, addiction, good cause, abstinence

Case: OLCC-10-SPR-023, June 2011.

Facts: Permittee was issued a service permit in April 2010. Permittee had a diversion from 2007, and DUII in March 2010. Permittee had to attend DUII rehabilitation class, and at the time of applying was nearly completed. He had not completed his probation.

Abstract: Permittee's service permit should be revoked because he has two driving under the influence of intoxicants (DUII) convictions or diversions within three years, at least one of which was within the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(7)(a)(A). Permittee has not shown good cause to overcome the revocation because he did not have 24 months of abstinence or complete his treatment or probation.

Key Words/Phrases: service permit, revocation, diversion, DUII, good cause, relevant conviction, treatment, probation, abstinence

Case: OLCC-10-SPR-036, May 2011.

Facts: Applicant had a conviction for unlawful delivery of marijuana for consideration on October 2010. Applicant was on probation, attended weekly treatment classes and will complete treatment in May 2011. Applicant applied for a service permit in May 2010.

Abstract: Applicant's application for a service permit should be denied because Applicant has a felony conviction for delivery of a controlled substance within the past two years. ORS 471.380(1)(d), OAR 845-009-0020(4)(a)(B). Applicant has not shown good cause to overcome the denial basis because she has not been abstinent for 24 months, completed probation or treatment. OAR 845-009-0020(4)(b); OAR 845-009-0020(3).

Key Words/Phrases: service permit, denial, drug, marijuana, relevant conviction, treatment, probation, addiction, good cause, abstinence

Case: OLCC-10-SPR-031, January 2011 (FOD)

Facts: Applicant had a diversion and two convictions for DUII in 2009 and 2010. Applicant submitted a service permit application in August 2010. Applicant requested a hearing but did not appear.

Abstract: Applicant has had, within seven years, a combination of three diversions and convictions for driving under the influence of intoxicants, at least one of which was within 18 months. Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, diversion, DUII, relevant conviction, good cause, applicant did not appear

Case: OLCC-10-SPR-030, January 2011.

Facts: Applicant was convicted of unlawful possession of meth in July 2010. Applicant was on probation and enrolled in a treatment program, but not completed. Applicant last consumed alcohol in October 2010. Applicant submitted a service permit application in August 2010.

Abstract: Applicant's application for a service permit should be denied because Applicant was convicted of felony possession of a controlled substance within the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(4)(a)(A). Applicant has not shown good cause to overcome the denial basis because she did not have 24 months of abstinence, was still on probation and had not completed treatment.

Key Words/Phrases: service permit, denial, drug, meth, relevant conviction, treatment, probation, addiction, good cause, abstinence

Case: OLCC-10-SPR-011, June 2010.

Facts: Permittee submitted a renewal application in April 2006, which was renewed. In May 2009 Permittee was arrested for DUII, and was also convicted of possession of meth. Permittee was convicted of one count of possession in November 2009, and started treatment counseling. Permittee has not consumed drugs or alcohol since May 2009, has not been diagnosed as drug/alcohol addicted, and is still on probation.

Abstract: Permittee's application for a service permit should be revoked because Permittee has had a controlled substance felony conviction within the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(4)(a)(A). Permittee has not shown good cause to overcome the revocation basis because she has not been diagnosed with an addiction and not completed her probation.

Key Words/Phrases: service permit, revocation, DUII, drug, meth, good cause, probation, addiction, treatment

Case: OLCC-09-SPR-029, April 2010 (FOD)

Facts: Applicant submitted a service permit application in August 2009. Applicant was convicted of two counts of Delivery of Marijuana in July 2009. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has had two controlled substance felony convictions, one of which was within three years of the OLCC's receipt of the application. OAR 845-009-0020(4)(a)(C). Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, drug, relevant conviction, marijuana, good cause, applicant did not appear.

Case: OLCC-10-SPR-008, May 2010 (FOD)

Facts: Applicant was convicted of unlawful possession of meth in September 2009. Applicant applied for a service permit in February 2010. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant had a controlled substance felony conviction within 12 months of the OLCC's receipt of the application. OAR 845-009-0020(4)(a)(A). Applicant did not appear to present any evidence of good cause to overcome the revocation basis.

Key Words/Phrases: service permit, revocation, drug, meth, good cause, permittee did not appear

Case: OLCC-10-SPR-004, June 2010.

Facts: Applicant had a diversion in 2008, and conviction for DUII in November 2009. Applicant was diagnosed with an alcohol addiction disability in summer 2009, and last consumed in August 2009. Applicant completed a state-certified treatment program in November 2009. Applicant submitted a service permit application in December 2009.

Abstract: Applicant's application for a service permit should be denied because, within three years of the application for a service permit, she had two DUII convictions, at least one of which was within 12 months of the date of her application. OAR 845-009-0020(7)(a)(A); ORS 471.380(1)(d). Applicant has not shown good cause to overcome the denial because she had not been abstinent for 24 months or completed her probation requirements. OAR 845-009-0020(3) and (7)(b).

Key Words/Phrases: service permit, denial, diversion, DUII, good cause, probation, addiction, treatment, abstinence

Case: OLCC-09-SPR-033, June 2010.

Facts: Applicant received diversion in January 2009, and a DUII conviction in December 2009. Applicant last consumed alcohol in November 2009, was in a treatment program and on probation until December 2011. Applicant applied for a service permit in November 2009.

Abstract: Applicant's application for a service permit should be denied because, within three years of the application for a service permit, she had two DUII convictions, at least one of which was within 12 months of the date of her application. OAR 845-009-0020(7)(a)(A), ORS 471.380(1)(d). Applicant has not shown good cause to overcome the denial, because Applicant had not abstained for 24 months and had not completed her probation. OAR 845-009-0020(3) and (7)(b).

Key Words/Phrases: service permit, denial, diversion, DUII, good cause, probation, addiction, treatment, abstinence

Case: OLCC-10-SPR-006, July 2010.

Facts: Applicant had a diversion from 2008 which was revoked due to a DUII in May 2009. Applicant last consumed alcohol in May 2009, and attended a treatment program, and will remain on probation until June 2011. Applicant applied for a service permit in February 2010.

Abstract: Applicant's application for a service permit should be denied because, within three years of the application for a service permit, he had two DUII convictions, at least one of which was within 12 months of the date of his application. OAR 845-009-0020(7)(a)(A), ORS 471.380(1)(d). Applicant has not shown good cause to overcome the denial because applicant had not been abstinent for 24 months and had not completed probation requirements. OAR 845-009-0020(3) and (7)(b).

Key Words/Phrases: service permit, denial, diversion, DUII, good cause, probation, treatment, abstinent

Case: OLCC-10-SPR-021, September 2010 (FOD)

Facts: Applicant was convicted of two attempted assaults, both felonies, in September 2008. Applicant applied for a service permit in March 2010. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has had two felony convictions for the commission of violent crimes, one of which was within three years of the OLCC's receipt of the application. OAR 845-009-0020(5)(a)(B). Applicant did not appear to present any evidence of good cause to overcome the revocation basis.

Key Words/Phrases: service permit, denial, violent crime, assault, good cause, applicant did not appear

Case: OLCC-10-SPR-020, December 2010.

Facts: Applicant had been a medical marijuana patient since November 2008. He was arrested then for unlawful delivery of marijuana and pled guilty in April 2009. He participated in drug dependency treatment until January 2010. Applicant applied for a service permit in April 2010.

Abstract: Applicant's service permit application should be denied because he had a felony conviction within the past two years for delivery of a controlled substance. Applicant has not shown good cause to overcome the permit denial criteria because he had not been abstinent for 24 months and his probation has not ended.

Key Words/Phrases: service permit, denial, drug conviction, marijuana, good cause, abstinence, probation, treatment

Case: OLCC-10-SPR-029, December 2010 (FOD)

Facts: Permittee was issued a service permit in February 2008. Permittee received diversion in April 2010, and a DUII conviction in June 2010. Permittee requested a hearing but did not appear.

Abstract: Permittee's service permit should be revoked because he has two driving under the influence of intoxicants (DUII) convictions or diversions within three years, at least one of which was within the past 12 months. ORS 471.385(1)(b), OAR 845-009-0020(7)(a)(A). Permittee did not appear to present any evidence of good cause to overcome the revocation basis.

Key Words/Phrases: service permit, revocation, DUII, drug, meth, good cause, permittee did not appear

Case: OLCC-09-SPR-021, December 2009.

Facts: Applicant was convicted for marijuana manufacture in October 2008.

Abstract: Applicant's application for a service permit should be denied because, within the last two years, she received a felony conviction for manufacture of a controlled substance. Applicant has not shown good cause to overcome the denial.

Key Words/Phrases: service permit, denial, drug conviction, marijuana, good cause

Case: OLCC-09-SPR-008, August 2009.

Abstract: The Commission may apply the criteria of the service permit denial rule to determine whether revocation of a service permit is an appropriate sanction in a case.

Case: OLCC-09-SPR-011, July 2009.

Facts: Applicant applied for a service permit in February 2009. Applicant had a January 2008 diversion, and DUII conviction from February 2009. Applicant is currently in a treatment program, has abstained from alcohol since January 2009, and probation will last for two years.

Abstract: Applicant's application for a service permit should be denied because, within three years, he had a conviction and diversion for DUII, both of which were within 12 months of the Commission's receipt of his application. Applicant has not shown good cause to overcome the denial because he has not abstained for 24 months and had not completed his probation.

Key Words/Phrases: service permit, denial, diversion, DUII, good cause, abstinence, probation, treatment, addiction

Case: OLCC-08-SPR-057, May 2009.

Facts: Applicant had a conviction for unlawful possession of marijuana from October 2006, and unlawful possession of meth from July 2008. Applicant had not used or consumed since June 2008, had not been diagnosed with an addiction and was not required to go through treatment. Her probation was to be completed in October 2009. Applicant applied for a service permit in September 2008.

Abstract: Applicant's application for a service permit should be denied because Applicant has had two controlled substance felony convictions, one of which was within three years of the Commission's receipt of the application. OAR 845-009-0020(4)(a)(C). Applicant has not shown good cause to overcome the denial basis because she was not diagnosed with an addiction disability, has not completed a treatment program and is still on probation.

Key Words/Phrases: service permit, denial, drug conviction, meth, marijuana, good cause, abstinence, probation, treatment, addiction

Case: OLCC-09-SPR-003, May 2009.

Facts: Applicant applied for a service permit in October 2008. Applicant had a conviction for delivery (marijuana) in September 2008. Applicant is on probation for two years, last used in July 2008, and is participating in a treatment program.

Abstract: Applicant's application for a service permit should be denied pursuant to OAR 845-009-0020(4)(a)(B) because Applicant had a felony conviction for delivery of a controlled substance within two years of his application for a service permit. Applicant has not shown good cause to overcome the denial ground because he has not been abstinent for 24 months and has not completed probation.

Key Words/Phrases: service permit, denial, drug conviction, marijuana, good cause

Case: OLCC-09-SPR-001, April 2009.

Facts: Applicant applied in November 2008. Applicant had a conviction for possession (meth) in October 2008, was sentenced to probation for 18 months, and last used in September 2009. Applicant had been diagnosed as drug addicted.

Abstract: Applicant's application for a service permit should be denied pursuant to OAR 845-009-0020(4)(a)(C) because Applicant has two felony convictions for controlled substances and one conviction was within three years of the application for a service permit. Applicant cannot show good cause to overcome the denial because applicant had not been abstinent long enough, and had not completed her probation.

Key Words/Phrases: service permit, denial, drug conviction, meth, good cause, abstinence, probation, treatment, addiction

Case: OLCC-08-SPR-055, March 2009.

Facts: Applicant applied for a service permit in September 2008. Applicant had two convictions for possession of meth in December 2007 and April 2008. Applicant is still on probation and last used in March 2008.

Abstract: Applicant's application for a service permit should be denied pursuant to OAR 845-009-0020(4)(a)(C) because Applicant has two felony convictions for controlled substances and one conviction was within three years of the application for a service permit. Applicant cannot show good cause to overcome the denial grounds because she has not had 24 months of abstinence and she is still on probation.

Key Words/Phrases: service permit, denial, drug conviction, meth, good cause, abstinence, probation, treatment, addiction

Case: OLCC-08-SPR-040, February 2009.

Facts: Applicant applied for a service permit in June 2008. Applicant had three prior convictions (meth possession) between 2002 and 2005. Applicant had not used illicit drugs since 2005, did not under go any evaluation or treatment, and was not currently on probation.

Abstract: Applicant's application for a service permit should be denied pursuant to OAR 845-009-0020(4)(a)(D) because Applicant has three felony convictions for controlled substances within the past six years. Applicant cannot show good cause to overcome the denial ground because Applicant had not been diagnosed as drug dependent, and therefore did not meet the threshold requirement.

Key Words/Phrases: service permit, denial, drug conviction, meth, good cause, drug dependent, addiction

Case: OLCC-08-SPR-018, February 2009.

Facts: Applicant applied for a service permit in March 2008. Applicant was convicted of two DUIs in January 2008. Applicant completed a treatment program in May 2008, had not consumed since December 2007, and is on probation until January 2009.

Abstract: Applicant's application for a service permit should be denied because, within three years, she had two convictions for DUI, both of which were within 12 months of the Commission's receipt of her application. Applicant has not shown good cause to overcome the denial because she has not been abstinent for 24 months and has not completed her probation. OAR 845-009-0020(3) and (7)(b).

Key Words/Phrases: service permit, denial, diversion, DUI, good cause, abstinence, probation

Case: OLCC-08-SPR-048, January 2009 (FOD)

Facts: Applicant applied for a service permit in July 2008. Applicant was convicted of DUI in February 2003, November 2005 and February 2008. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has had three DUI diversions or convictions within the past seven years. OAR 845-009-0020(7)(a)(B). Applicant did not appear to show any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, relevant conviction, DUI, good cause, applicant did not appear

Case: OLCC-08-SPR-036, December 2008.

Facts: Applicant applied for a service permit in May 2008. Applicant had a diversion from December 2004, and there convictions for furnishing alcohol to a minor in July 2008. Applicant was not diagnosed as alcohol/drug dependent and has had no treatment, and completed probation.

Abstract: Applicant's application for a service permit should be denied because Applicant has a combination of four or more diversions and convictions for DUI or Furnishing Alcohol to Minors, at least one of which was within three years of his application for a service permit. Applicant cannot show good cause to overcome the denial ground because applicant is not drug or alcohol dependent

Key Words/Phrases: service permit, denial, drug, relevant conviction, diversion, furnishing alcohol, good cause, drug dependent, alcohol addiction

Case: OLCC-08-SPR-026, December 2008.

Facts: Applicant applied for a service permit in April 2008. Applicant was convicted of delivery of a controlled substance in January 1999, and three counts of manufacture/delivery of a controlled substance in January 2006. Applicant had not been diagnosed as drug or alcohol dependent and had no treatment, and will be on probation until January 2009.

Abstract: Applicant's application for a service permit should be denied pursuant to OAR 845-009-0020(4)(a)(D) because Applicant has three felony convictions for controlled substances within the past six years. Applicant cannot show good cause to overcome the denial ground because applicant has not been diagnosed as drug dependent.

Key Words/Phrases: service permit, denial, drug, relevant conviction, good cause, addiction disability

Case: OLCC-08-SPR-027, November 2008 (FOD)

Facts: Applicant was convicted of possession of cocaine (two counts) in 2008. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has had two felony convictions involving possession and/or delivery of a controlled substance within the past three years. OAR 845-009-0020(4)(a)(C). Applicant did not appear to show any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, drug, relevant conviction, cocaine, good cause, applicant did not appear

Case: OLCC-08-SPR-029, November 2008 (FOD)

Facts: Applicant applied for a service permit in April 2008. Applicant had two felony drug convictions in May 2005 and November 2007. Applicant was still on probation. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has had two felony convictions involving possession of a controlled substance within the past three years. OAR 845-009-0020(4)(a)(C). Applicant did not appear to show any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, drug, relevant conviction, cocaine, good cause, applicant did not appear

Case: OLCC-08-SPR-022, November 2008.

Facts: Applicant applied for a service permit in April 2008. Applicant had 4 counts of sexual assault, rape and sodomy convictions from 2005.

Abstract: Applicant's application for a service permit should be denied because he has had four felony convictions for the commission of violent crimes within six years of the OLCC's receipt of the application. OAR 845-009-0020(5)(a)(C). Applicant has not shown good cause to overcome the denial basis because applicant did not have a drug or alcohol addiction disability.

Key Words/Phrases: service permit, denial, violent crime, sexual assault, rape, sodomy, relevant conviction, good cause, addiction disability

Case: OLCC-08-SPR-025, October 2008.

Facts: Applicant applied for a service permit in April 2008. Applicant was convicted of meth possession in September 2006 and March 2007. Applicant was not diagnosed as alcohol or drug dependent.

Abstract: Applicant's application for a service permit should be denied pursuant to OAR 845-009-0020(4)(a)(C) because Applicant has two felony convictions for controlled substances and one conviction was within three years of the application for a service permit. Applicant cannot show good cause to overcome the denial ground because Applicant was not diagnosed with an addiction disability.

Key Words/Phrases: service permit, denial, drug, relevant conviction, meth, good cause, addiction disability

Case: OLCC-08-SPR-007, September 2008 (FOD)

Facts: Applicant applied for a service permit in January 2008. Applicant was convicted of assaulting a public safety officer and DUII in May 2006. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has had, within two years of the receipt of her application, a felony conviction for the commission of a violent crime where alcohol or controlled substances were involved. OAR 845-009-0020(5)(a)(A). Applicant did not appear to show any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, violent crime, DUII, relevant crime, good cause, applicant did not appear

Case: OLCC-08-SPR-030, September 2008 (FOD)

Facts: Applicant applied for a service permit in May 2008. Applicant had convictions for possession of meth (three) and ID theft (three) in 2006. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has had three felony convictions for possession a controlled substance within the past six years. OAR 845-009-0020(4)(a)(D). Applicant did not appear to show any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, drug, relevant conviction, meth, good cause, applicant did not appear

Case: OLCC-08-SPR-008, July 2008 (FOD)

Facts: Applicant applied in March 2008. Applicant was convicted of possession of marijuana in November 2007. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has had a felony conviction for possession of a controlled substance within twelve months of the receipt of her application. OAR 845-009-0020(4)(a)(B). Applicant did not appear to show any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, drug, relevant conviction, marijuana, good cause, applicant did not appear

Case: OLCC-07-SPR-061, July 2008.

Facts: Applicant applied for a service permit in October 2007. Applicant had two DUII convictions from December 2006 and March 2007. Applicant was still on probation and completed treatment, and last consumed alcohol in April 2007.

Abstract: OLCC properly denied Applicant's application for a service permit because Applicant has had two DUII convictions within three years, one of which is within 12 months of the date of receipt of her application. OAR 845-009-0020(7)(a)(A). Applicant has not established good cause to overcome the denial basis because she had not been abstinent for 24 months and was still on probation.

Key Words/Phrases: service permit, denial, DUII, relevant conviction, treatment, good cause, probation, abstinence

Case: OLCC-08-SPR-013, July 2008 (FOD)

Facts: Applicant applied for a service permit in March 2008. Applicant had 3 convictions for possession of meth from January 2007. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has had three controlled substance felony convictions, all of which are within six years of the receipt of her application. OAR 845-009-0020(4)(a)(D). Applicant did not appear to show any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, relevant conviction, drug, meth, good cause, applicant did not appear

Case: OLCC-08-SPR-011, July 2008.

Facts: Applicant applied for a service permit in March 2008. Applicant was convicted of delivery/manufacture of a controlled substance in January 2007. Applicant had not used for 18 months and was addicted to marijuana and alcohol.

Abstract: There is a basis for the denial of Applicant's service permit application because she has had a felony conviction for manufacture, delivery or distribution of a controlled substance within two years of the Commission's receipt of the application. OAR 845-009-0020(4)(a)(B). Applicant has not established good cause to overcome the denial of her service permit application because applicant had not completed her probation and had not been abstinent for 24 months. OAR 845-009-0020(3) and (4)(b).

Key Words/Phrases: service permit, denial, drug, relevant conviction, good cause, abstinence, probation

Case: OLCC-07-SPR-044, May 2008.

Facts: Applicant applied for a service permit in July 2007. Applicant had a conviction for possession of marijuana from April 2007. Applicant has been abstinent since conviction, is alcohol dependent, and completed treatment in July 2007. Applicant is still on probation.

Abstract: Applicant's application for a service permit should be denied because he was convicted of possession of a controlled substance within twelve months of the Commission's receipt of the application. OAR 845-009-0020(4)(a)(A). Applicant cannot show good cause to overcome the denial basis because he is still on probation.

Key Words/Phrases: service permit, denial, drug, relevant conviction, marijuana treatment, good cause, probation, drug addiction disability

Case: OLCC-07-SPR-060, April 2008. (FOD)

Abstract: Applicant was convicted of a Class C Felony for Assault in the Third Degree and Driving Under the Influence of Intoxicants stemming from an incident that occurred one year before he applied for a service permit. Applicant did not appear at the hearing. Thus, he did not establish good cause to overcome the denial criteria, but the case is noteworthy because applicant's felony assault involved his vehicle.

Case: OLCC-07-SPR-063, April 2008.

Facts: Applicant applied for a service permit in October 2007. Applicant was convicted of DUII in December 2005 and August 2007. Applicant is still on probation and in treatment.

Abstract: OLCC properly denied Applicant's application for a service permit because Applicant has had two DUII convictions within three years, one of which is within 12 months of the date of receipt of her application. OAR 845-009-0020(7)(a)(A). Applicant has not established good cause to overcome the denial basis because she is still in treatment and on probation.

Key Words/Phrases: service permit, denial, DUII, relevant conviction, treatment, good cause, probation

Case: OLCC-07-SPR-024, February 2008.

Facts: Applicant applied for a service permit in April 2007. Applicant had two prior DUIIs and possession of marijuana convictions. Applicant was diagnosed as alcohol and drug dependent and he completed treatment in May 2007. He is still on probation and last consumed alcohol and controlled substances in December 2006.

Abstract: Applicant's application for a service permit should be denied because within three years he had two convictions for DUII, both of which were within 12 months of the Commission's receipt of his application. Applicant's application for a service permit should be denied because he was convicted of possession of a controlled substance within 12 months of the Commission's receipt of the application. He has not shown good cause to overcome the denial basis because he last consumed alcohol within 24 months, and is still on probation.

Key Words/Phrases: service permit, denial, drug, relevant conviction, marijuana, DUII, good cause, abstinence, addiction disability

Case: OLCC-07-SPR-058, February 2008.

Facts: Applicant applied in September 2007. Applicant had a felony conviction related to meth from February 2007. Applicant was not diagnosed as drug or alcohol dependent but completed a treatment program.

Abstract: Applicant's application for a service permit should be denied because Applicant has had a felony conviction within two years for manufacture, delivery or distribution of a controlled substance. OAR 845-009-0020(4)(a)(B); ORS 670.280. Applicant has not shown good cause to overcome the denial basis because Applicant did not have a drug addiction disability.

Key Words/Phrases: service permit, denial, drug, relevant conviction, meth, good cause, addiction disability

Case: OLCC-07-SPR-042, February 2008.

Facts: Applicant applied for a service permit in July 2007. Applicant had convictions for unlawful possession of meth (2 counts) in December 2004, and unlawful delivery of meth in August 2006. Applicant is still on probation, has not used since July 2006, and participated in treatment.

Abstract: There is a basis for the denial of Applicant's service permit application because he has had three controlled substance felony convictions within six years of the Commission's receipt of his application. OAR 845-009-0020(4)(a)(D). Applicant has not established good cause to overcome the denial of his service permit application because he has not been abstinent for 24 months and has not completed his probation. OAR 845-009-0020(3) and (4)(b).

Key Words/Phrases: service permit, denial, drug, relevant conviction, meth, good cause, probation, abstinence

Case: OLCC-07-SPR-052, February 2008 (FOD)

Facts: Applicant applied for a service permit in August 2007. Applicant was convicted of delivery of cocaine in April 2007. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has had a felony conviction for delivery of a controlled substance within two years of the receipt of her application. OAR 845-009-0020(4)(a)(B). Applicant did not appear to show any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, drug, relevant conviction, cocaine, good cause, applicant did not appear

Case: OLCC-07-SPR-017, January 2008.

Facts: Applicant applied for a service permit in March 2007. Applicant was convicted of possession of meth in December 2996. Applicant is still on probation and last consumed illegal substances four years ago.

Abstract: OLCC properly denied Applicant's application for a service permit because he has had a felony conviction for possession of a controlled substance within twelve months of the receipt of his application. OAR 845-009-0020(4)(a)(A). Applicant has not established good cause to overcome the denial of his service permit application because he had not completed his probation.

Key Words/Phrases: service permit, denial, drug, relevant conviction, meth, good cause, probation

Case: OLCC-07-SPR-031, January 2008.

Facts: Applicant had two prior felony convictions for drug-related crimes. At the time of application she had completed her probation, attended NA on her own, and still owed court fees and fines.

Abstract: In order to qualify for the good cause exception to a felony conviction service permit disqualification the applicant must establish that she had a drug or alcohol addiction disability. Applicant had an evaluation as part of probation and was not ordered to attend rehabilitation; therefore, an addiction disability was not established and the applicant did not qualify for the good cause exception.

Key Words/Phrases: service permit, denial, drug, relevant conviction, good cause, probation, addiction, disability

Case: OLCC-07-SPR-053, January 2008 (FOD)

Facts: Applicant applied for a service permit in August 2007. Applicant was convicted of manufacture/delivery of a controlled substance in July 2006. Applicant requested a hearing but did not appear.

Abstract: Applicant's application should be denied because Applicant has had a felony conviction for manufacture/delivery of a controlled substance within two years of the application for a service permit. Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, good cause, drug, relevant conviction, applicant did not appear

Case: OLCC-07-SPR-018, December 2007.

Facts: Applicant applied for a service permit in March 2007. Applicant was convicted of felony marijuana delivery charges in February 2006. Applicant was determined to have an alcohol addiction, has not used controlled substances in 4 years, but is still on probation and has not yet paid all court fees and assessments.

Abstract: There is a basis for the denial of Applicant's service permit application because he has had a felony conviction for manufacture, delivery or distribution of a controlled substance within two years of the Commission's receipt of the application. OAR 845-009-0020(4)(a)(B). Applicant has not established good cause to overcome the denial of his service permit application because he has not completed all probation requirements. OAR 845-009-0020(3) and (4)(b).

Key Words/Phrases: service permit, denial, good cause, drug, relevant conviction, marijuana, probation

Case: OLCC-07-SPR-023, December 2007.

Facts: Applicant applied for a service permit in April 2007. Applicant was convicted of felony drug charges in June 2004 and September 2005. Applicant last used drugs in January 2007 and is still on probation.

Abstract: OLCC properly denied Applicant's application for a service permit because Applicant has two felony controlled substance convictions within three years of the date of receipt of his application. OAR 845-009-0020(4)(a)(C). Applicant has not established good cause to overcome the denial basis because it has not been 24 months since he last used controlled substances and is still on probation.

Key Words/Phrases: service permit, denial, good cause, drug, relevant conviction, probation, abstinence

Case: OLCC-07-SPR-026, December 2007.

Facts: Applicant applied for a service permit in April 2007. Applicant was convicted of felony manufacture of marijuana in August 2006, and last used 18 months prior to the hearing. He had a drug evaluation that determined he was not addicted or dependent on drugs.

Abstract: Applicant's application for a service permit should be denied because Applicant has had a felony conviction within two years for manufacture, delivery or distribution of a controlled substance. OAR 845-009-0020(4)(a)(B). Applicant has not shown good cause to overcome the denial basis because he does not have an addiction disability.

Key Words/Phrases: service permit, denial, drug, marijuana, relevant conviction, good cause, drug addiction disability

Case: OLCC-07-SPR-041, November 2007.

Facts: Applicant applied for a service permit in June 2007. Applicant had two DUII convictions in March 2007. She was not diagnosed as alcohol dependent and is on probation.

Abstract: Applicant's application for a service permit should be denied because within three years, Applicant has two convictions for DUII and one conviction was within 12 months of the Commission's receipt of her application for a service permit. OAR 845-009-0020(7)(a)(A). Applicant has not shown good cause to overcome the denial.

Key Words/Phrases: service permit, denial, good cause, DUII

Case: OLCC-07-SPR-010, October 2007.

Facts: Applicant applied for a service permit in January 2007. Applicant was convicted of possession of a controlled substance in September 2006, and was not diagnosed as drug addicted.

Abstract: Applicant's application for a service permit should be denied because he was convicted of possession of a controlled substance within twelve months of the Commission's receipt of the application. OAR 845-009-0020(4)(a)(A). Applicant cannot show good cause to overcome the denial basis because he is not diagnosed with a drug or alcohol addiction disability.

Key Words/Phrases: service permit, denial, drug, relevant conviction, good cause, addiction, disability

Case: OLCC-07-SPR-006, October 2007.

Facts: Applicant applied for a service permit in December 2006. Applicant was convicted of felony drug charges in August 2004 and October 2005. Applicant last used in September 2005, completed treatment and is no longer on probation.

Abstract: OLCC properly denied Applicant's application for a service permit because Applicant has two felony controlled substance convictions within three years of the date of receipt of her application. OAR 845-009-0020(4)(a)(C). The application should be granted, however, because she meets the elements for good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, good cause, drug conviction, abstinence, probation

Case: OLCC-07-SPR-020, September 2007.

Facts: Applicant applied for a service permit in March 2007. Applicant was convicted of felony meth possession in October 2006, but stated on her application that she had never been convicted of a felony because she didn't realize it was a felony. Applicant completed treatment and last used in August 2006.

Abstract: OLCC properly denied Applicant's application for a service permit because she made false statements to the Commission in the permit application. ORS 471.380(1)(b). The false statement, regardless of her intent, was material as the felony conviction provided a separate statutory basis for the denial of her application. See OLCC-86-SP-017, October 1986. The denial of Applicant's service permit application was proper based on her material, false statement contained therein.

OLCC properly denied Applicant's application for a service permit because she has had a felony conviction for possession of a controlled substance within twelve months of the receipt of her application. OAR 845-009-0020(4)(a)(A). Applicant has not established good cause to overcome the denial of her service permit application.

Key Words/Phrases: service permit, denial, false statement, good cause, drug conviction, meth

Case: OLCC-07-SPR-003, August 2007.

Facts: Applicant applied for a service permit in December 2006. Applicant was convicted of DUII in May and August 2006.

Abstract: Applicant's application for a service permit should be denied because, within three years, she had two convictions for DUII, both of which were within 12 months of the Commission's receipt of her application. Applicant has not shown good cause to overcome the denial because she is on probation and it hasn't been 24 months since she abstained from alcohol. OAR 845-009-0020(3) and (7)(b).

Key Words/Phrases: service permit, denial, DUII, good cause, abstinence, probation

Case: OLCC-07-SPR-019, July 2007.

Facts: Applicant applied for a service permit in March 2007. Applicant was convicted of two drug felonies in January 2007. She was diagnosed as drug dependent, participates in treatment which will complete in June 2007, and is still on probation.

Abstract: Applicant's application for a service permit should be denied because she has had two controlled substance felony convictions and one conviction was within three years of the OLCC's receipt of the application. OAR 845-009-0020(4)(a)(C). Applicant cannot show good cause to overcome the denial basis because she has not been abstinent for 24 months and is still on probation.

Key Words/Phrases: service permit, denial, drug, relevant conviction, meth, marijuana, good cause, probation, abstinence

Case: OLCC-07-SPR-002, May 2007.

Facts: Applicant applied for a service permit in November 2006. Applicant was convicted of felony drug charges in June 2006. She last consumed illegal drugs in November 2005, was evaluated as not needing a drug treatment program.

Abstract: Applicant's application for a service permit should be denied because Applicant has had a felony conviction within two years for manufacture, delivery or distribution of a controlled substance. OAR 845-009-0020(4)(a)(B). Applicant has not shown good cause to overcome the denial basis because she does not have a drug addiction disability.

Key Words/Phrases: service permit, denial, good cause, marijuana, relevant conviction, drug addiction disability

Case: OLCC-06-SPR-039, March 2007.

Facts: Applicant applied for a service permit in September 2006. Applicant was convicted of possession of controlled substances in May 2006. She is diagnosed as drug addicted and has not used drugs in 20 months, and has less than a year of probation remaining.

Abstract: Applicant's application for a service permit should be denied because she was convicted of possession of a controlled substance within twelve months of the Commission's receipt of the application. OAR 845-009-0020(4)(a)(A). Applicant cannot show good cause to overcome the denial basis because it has not been 24 months abstinence and she is still on probation.

Key Words/Phrases: service permit, denial, good cause, drug, relevant conviction, probation, abstinence

Case: OLCC-06-SPR-019, March 2007.

Facts: Applicant applied for a service permit in May 2006. Applicant had two DUII convictions in February 2006, believes she was diagnosed with alcohol dependence, and completed treatment. She last consumed alcohol in November 2005.

Abstract: Applicant's application for a service permit should be denied because within three years, Applicant has two convictions for DUII and one conviction was within 12 months of the Commission's receipt of her application for a service permit. OAR 845-009-0020(7)(a)(A). Applicant has not shown good cause to overcome the denial because she has not had been abstinent for 24 months, and because she is still on probation.

The Commission has previously decided that the requirement that applicants complete all probation or parole requirements is strict and includes inactive supervision or bench probation. (OLCC-01-SPR-018, July 2001).

Key Words/Phrases: service permit, denial, good cause, DUII, relevant conviction, probation, abstinence

Case: OLCC-06-SPR-035, January 2007.

Facts: Applicant applied for a service permit in August 2006. Applicant was convicted of felony drug charges in August 2004 and January 2006. Applicant has not used since March 2006, was diagnosed as drug addicted, engaged in treatment and is still on probation.

Abstract: Applicant's application for a service permit should be denied pursuant to OAR 845-009-0020(4)(a)(C) because Applicant has two felony convictions for controlled substances and one conviction was within three years of the application for a service permit. Applicant cannot show good cause to overcome the denial ground.

Key Words/Phrases: service permit, denial, good cause, drug, relevant conviction, addiction, probation

Case: OLCC-06-SPR-037, January 2007 (FOD)

Facts: Applicant applied for a service permit in August 2006. Applicant was convicted of four counts of felony drug charges (meth) and gun possession. Applicant requested a hearing but did not appear.

Abstract: Applicant's service permit application should be denied because Applicant had three controlled substance felony convictions, at least one of which was within six years of the Commission's receipt of the application. OAR 845-009-0020(4)(a)(D). Applicant did not appear to present any evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, relevant conviction, good cause, applicant did not appear

Case: OLCC-06-SPR-024, December 2006.

Facts: Applicant applied for a service permit in June 2006. Applicant had two DUIIs in December 2005 and February 2006. Applicant completed treatment and is on probation.

Abstract: Applicant's application for a service permit should be denied because within three years he had two convictions for DUII, both of which were within 12 months of the Commission's receipt of his application.

Applicant has not shown good cause to overcome the denial because he has not abstained for 24 months and is still on probation.

Key Words/Phrases: service permit, denial, relevant conviction, good cause, DUII, abstinence, probation

Case: OLC-06-SPR-022, November 2006.

Facts: Permittee was issued a service permit in August 2005. In May 2006 Permittee submitted an OLCC Individual History form indicating she had committed several felonies in October/November 2005. Permittee was convicted of those felonies in February 2006. Permittee was not diagnosed with any addiction disability or dependency, but has completed drug and alcohol treatment. She has abstained from controlled substances since November 2005.

Abstract: Permittee's service permit should be revoked because Permittee has been convicted of a felony. ORS 471.385(1)(b). Permittee cannot show good cause to overcome the revocation because she has not been diagnosed as drug addicted.

Key Words/Phrases: service permit, revocation, good cause, relevant conviction, addiction, disability

Case: OLCC-06-SPR-025, November 2006 (FOD)

Facts: Applicant applied for a service permit in June 2006. Applicant was convicted of possession (heroin and marijuana) in February 2005. Applicant requested a hearing but did not appear.

Abstract: Applicant's service permit application should be denied because Applicant has had two controlled substance felony convictions within three years of the Commission's receipt of the application. OAR 845-009-0020(4)(a)(C). Applicant did not appear to present evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, relevant conviction, drug, marijuana, heroin, applicant did not appear

Case: OLCC-06-SPR-016, September 2006.

Facts: Applicant applied for a service permit in April 2006. Applicant was convicted of three DUIIs in December 2005. Applicant has not been diagnosed with an addiction disability

Abstract: Applicant's application for a service permit should be denied because, within seven years of the application, Applicant had three DUII convictions, one of which was within 18 months of the date the Commission received the application. OAR 845-009-0020(7)(a)(B). Applicant has not shown good cause to overcome the denial basis because she has not been diagnosed with an alcohol or drug addiction dependency. OAR 845-009-0020(3)(a)(D) and (7)(b).

Key Words/Phrases: service permit, denial, relevant conviction, good cause, DUII, addiction, disability

Case: OLCC-06-SPR-010, August 2006.

Facts: Applicant applied for a service permit in March 2006. Applicant was convicted on felony possession charges in February 2006. He has not consumed drugs or alcohol since November 2005, and completed treatment in February 2006. He is on probation until January 2009.

Abstract: Applicant's application for a service permit should be denied because he was convicted of possession of a controlled substance within twelve months of the Commission's receipt of the application. OAR 845-009-

0020(4)(a)(A). Applicant cannot show good cause to overcome the denial basis because he has not completed his probation requirements.

Key Words/Phrases: service permit, denial, relevant conviction, good cause, probation

Case: OLCC-05-SPR-048, April 2006.

Facts: Applicant applied for a service permit in November 2005. Applicant was convicted of two felony drug charges in April 2005. Applicant was diagnosed as drug dependent and had not used since August 2005. Applicant is on probation.

Abstract: Applicant's application for a service permit should be denied because she has had two controlled substance felony convictions and one conviction was within three years of the OLCC's receipt of the application. OAR 845-009-0020(4)(a)(C). Applicant cannot show good cause to overcome the denial basis because it has not been 24 months since she abstained from illegal substances and she is still on probation.

Key Words/Phrases: service permit, denial, relevant conviction, good cause, probation, abstinence

Case: OLCC-05-SPR-051, April 2006.

Facts: Applicant applied for a service permit in November 2005. Applicant had three prior convictions for felony assault, and attempted felony assault, two involving serious injury and a firearm.

Abstract: Applicant's application for a service permit should be denied because she has had three felony convictions for the commission of violent crimes and one conviction was within six years of the OLCC's receipt of the application. OAR 845-009-0020(5)(a)(C). Applicant has not shown good cause to overcome the denial basis because she was not diagnosed with a drug or alcohol addiction disability.

Key Words/Phrases: service permit, denial, violent crime, gun, injury, good cause, disability, addiction

Case: OLCC-05-SPR-023, January 2006.

Facts: Applicant applied for a service permit in April 2005. Applicant was convicted of possession (meth and cocaine) (two counts) in June 2004. Applicant has not used drugs since December 2004, and will be on probation until December 2005.

Abstract: Applicant's application for a service permit should be denied pursuant to OAR 845-009-0020(4)(a)(C) because Applicant has two felony convictions for controlled substances and both convictions were within three years of the application for a service permit. Applicant cannot show good cause to overcome the denial ground because she is still on probation and has not been abstinent for 24 months.

Key Words/Phrases: service permit, denial, good cause, relevant conviction, cocaine, meth, probation, abstinence

Case: OLCC-05-SPR-042, December 2005 (FOD)

Facts: Applicant applied for a service permit in September 2005. Applicant had two DUII convictions in 2005. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because within three years, Applicant has two convictions for DUII and one conviction was within 12 months of the Commission's receipt of her application

for a service permit. OAR 845-009-0020(7)(a)(A). Applicant did not appear to present evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denied, relevant conviction, DUII, good cause, applicant did not appear

Case: OLCC-05-SPR-039, December 2005.

Facts: Applicant applied for a service permit in August 2005. Applicant was convicted of possession of controlled substances in February 2005. Applicant was still on probation and had been diagnosed as drug dependent. He participated in treatment but did not complete it.

Abstract: Applicant's application for a service permit should be denied because Applicant had a felony conviction for possession of a controlled substance within 12 months of the Commission's receipt of the application. OAR 845-009-0020(4)(a)(A). Applicant has not shown good cause to overcome the denial basis because he was on probation and had not completed treatment.

Key Words/Phrases: service permit, denied, relevant conviction, drug, good cause, probation, treatment

Case: OLCC-05-SPR-040, December 2005.

Facts: Applicant applied for a service permit in August 2005. Applicant was convicted on three counts of delivery of meth in October 1996, and again convicted on one count of delivery of meth in January 2001. Applicant went to drug treatment in 2001 but then relapsed, and in May 2005 was convicted of possession of meth. She last used controlled substances (marijuana) in April 2005. A drug counselor determined that Applicant did not need further drug treatment, and she was on probation at the time of hearing.

Abstract: Applicant's application for a service permit should be denied because Applicant has had three controlled substance felony convictions, one of which was within six years of the Commission's receipt of the application. OAR 845-009-0020(4)(a)(D). Applicant has not shown good cause to overcome the denial basis because she is still on probation and has not abstained from controlled substances for 24 months.

Key Words/Phrases: service permit, denied, relevant conviction, drug, meth, good cause, probation, abstinence

Case: OLCC-05-SPR-020, December 2005.

Facts: Applicant applied for a service permit in May 2005. Applicant was convicted of possession of a controlled substance in January 2004 and February 2004. Applicant had not used since November 2003, had completed treatment, and was granted early release from his probation.

Abstract: Applicant's application for a service permit should be denied because Applicant has had two controlled substance felony convictions, one of which was within three years of the Commission's receipt of the application. OAR 845-009-0020(4)(a)(C). Applicant has not shown good cause to overcome the denial basis because Applicant had not abstained from controlled substances for 24 months.

Key Words/Phrases: service permit, denied, relevant conviction, drug, good cause, abstinence, probation

Case: OLCC-05-SPR-027, November 2005.

Facts: Applicant applied for a service permit in May 2005. Applicant had a conviction for possession of a controlled substance in April 2005. Applicant has not been diagnosed with any addiction disability.

Abstract: Applicant's application for a service permit should be denied because she was convicted of possession of a controlled substance within twelve months of the Commission's receipt of the application. OAR 845-009-0020(4)(a)(A). Applicant cannot show good cause to overcome the denial basis because she has not been diagnosed as addicted or dependent upon controlled substances.

Key Words/Phrases: service permit, denied, relevant conviction, drug, good cause, disability, addiction

Case: OLCC-05-SPR-011, October 2005.

Facts: Applicant applied for a service permit in January 2005. Applicant had convictions for assault (two events) and DUII in July 2004. Applicant was in treatment and was abstaining but was still on probation.

Abstract: Applicant's application for a service permit should be denied because Applicant has two felony convictions for the commission of violent crimes within three years of OLCC's receipt of her application for a service permit. OAR 845-009-0020(5)(a)(B). Applicant has not shown good cause to overcome the denial because applicant is still on probation and had not been abstinent for 24 months. OAR 845-009-0020(5)(b).

Key Words/Phrases: service permit, denied, relevant conviction, violent crime, DUII, good cause, probation, abstinence

Case: OLCC-05-SPR-014, October 2005.

Facts: Applicant applied for a service permit in May 2005. Applicant had a felony conviction for assault III in May 2004, due to a car accident where Applicant was driving unlawfully and recklessly and caused injury to two other people. Applicant was alleged to be on meth at the time of the accident.

Abstract: Applicant's application for a service permit should be denied because within two years of the Commission's receipt of the application, Applicant had a felony conviction for the commission of a violent crime where alcohol or controlled substances were involved. OAR 845-009-0020(5)(a)(A). Applicant has not shown good cause to overcome the denial basis because he is still on probation

Key Words/Phrases: service permit, denied, relevant conviction, violent crime, drug, meth, good cause, probation

Case: OLCC-05-SPR-008, October 2005.

Facts: Applicant applied for a service permit in February 2005. Applicant was convicted of manufacturing controlled substances in January 2004. Applicant attends outpatient treatment and will be on probation until 2007, however he will be off direct supervision in May 2005.

Abstract: Applicant application for a service permit should be denied because he was convicted of manufacture or delivery of a controlled substance within two years of the Commission's receipt of the application. OAR 845-009-0020(4)(a)(B). Applicant cannot show sufficient good cause to overcome the denial basis because he is still on probation.

Key Words/Phrases: service permit, denied, relevant conviction, drug, good cause, probation

Case: OLCC-05-SPR-031, October 2005.

Facts: Applicant applied for a service permit in June 2005. Applicant received diversion in December 2003, and a DUII in March 2005.

Abstract: Applicant's application for a service permit should be denied because Applicant has had one DUII conviction and one diversion, at least one of which was within 12 months of the Commission's receipt of the application. OAR 845-009-0020(7)(a)(A). Applicant has not shown good cause to overcome the denial basis because applicant has not abstained for 24 months, and applicant is still on probation.

Key Words/Phrases: service permit, denied, relevant conviction, DUII, good cause, abstinence, probation

Case: OLCC-05-SPR-018, September 2005.

Facts: Applicant applied for a service permit in April 2005. Applicant had convictions for drug related offenses from 2001, 2003 and 2005. Applicant was attending drug treatment and on probation.

Abstract: Applicant's application for a service permit should be denied because Applicant has two controlled substance felony convictions, one of which was within three years of OLCC's receipt of her application for a service permit. OAR 845-009-0020(4)(a)(C). Applicant has not shown good cause to overcome the denial because Applicant cannot show 24 months of abstinence, and is still on probation and in treatment. OAR 845-009-0020(4)(b).

Key Words/Phrases: service permit, denied, relevant conviction, drug, good cause, probation, abstinent

Case: OLCC-05-SPR-011, September 2005.

Facts: Applicant applied for a service permit in April 2005. Applicant had a conviction for possession of a controlled substance from December 2004. Applicant was attending alcohol treatment at the time of hearing and was on probation.

Abstract: Applicant's application for a service permit should be denied because Applicant has a felony conviction for possession of a controlled substance within twelve months of OLCC's receipt of her application for a service permit. OAR 845-009-0020(4)(a)(A). Applicant has not shown good cause to overcome the denial because she was still on probation. OAR 845-009-0020(3) and (4)(b).

Key Words/Phrases: service permit, denial, relevant conviction, DUII, good cause, probation

Case: OLCC-05-SPR-019, August 2005 (FOD)

Facts: Applicant applied for a service permit in April 2005. Applicant had two DUII convictions in January and March 2005. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has had two DUII convictions, at least one of which was within 12 months of the Commission's receipt of the application. OAR 845-009-0020(7)(a)(A). Applicant did not appear to show evidence of good cause to overcome the denial.

Key Words/Phrases: service permit, denial, relevant conviction, DUII, good cause, applicant did not appear

Case: OLCC-05-SPR-010, August 2005 (FOD)

Facts: Applicant applied for a service permit in February 2005. Applicant had a conviction for felony distribution of controlled substances in January 2004, and a conviction for manufacture/delivery of a controlled substance from November 2004. Applicant requested a hearing but did not appear.

Abstract: Applicant's application for a service permit should be denied because Applicant has had two controlled substance felony convictions, one of which was within three years of the Commission's receipt of the application. OAR 845-009-0020(4)(a)(C). Applicant did not appear to show evidence of good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, relevant conviction, drug, good cause, applicant did not appear

Case: 05-SPR-002, July 2005 (FOD)

Facts: Applicant applied for a service permit in November 2004. Applicant had two prior relevant DUIIs from 2004. Applicant requested a hearing but did not appear.

Abstract: Applicant has two DUII convictions during the three years prior to his application for a service permit. Applicant did not appear to show good cause to overcome the denial basis.

Key Words/Phrases: service permit, denial, relevant conviction, DUII, good cause, applicant did not appear

Case: OLCC-04-SPR-022, June 2005.

Facts: Applicant applied for a service permit in June 2004. Applicant was convicted of manufacture of a controlled substance in May 2003, due to her husband growing marijuana. Applicant did not know about the grow and was “convicted by association” with her husband. Applicant completed treatment programs but was not diagnosed as dependent on controlled substances.

Abstract: Applicant's application for a service permit should be denied because Applicant has a controlled substance felony conviction within two years of the Commission's receipt of her application for a service permit. OAR 845-009-0020(4)(a)(B). Applicant has not shown good cause to overcome the denial because applicant was still on probation.

Key Words/Phrases: service permit, denial, relevant conviction, drug, good cause, probation

Case: OLCC-04-SPR-025, April 2005.

Facts: Applicant applied for a service permit in August 2004. Applicant was twice convicted for DUII in February 2004. Applicant was not diagnosed as alcohol dependent and was still on probation.

Abstract: Applicant's application for a service permit should be denied because within three years, Applicant has two convictions for DUII and one conviction was within 12 months of the Commission's receipt of her application for a service permit. OAR 845-009-0020(7)(a)(A). Applicant has not shown good cause to overcome the denial because applicant was still on probation.

Key Words/Phrases: service permit, denial, relevant conviction, DUII, good cause, probation

Case: OLCC-04-SPR-010, April 2005.

Facts: Applicant applied for a service permit in April 2004. Applicant had six prior convictions for possession of a controlled substance between 1990 and 2003. Applicant's last use was in September 2002, she completed treatment and was in compliance with her probation.

Abstract: Applicant's application for a service permit should be denied because she has had three or more controlled substance felony convictions and one conviction was within six years of the Commission's receipt of the application. Applicant has not shown good cause to overcome the denial basis because she is still on probation.

Key Words/Phrases: service permit, denied, relevant conviction, drug, good cause, probation

Case: OLCC-04-SPR-031, January 2005.

Facts: Applicant applied for a service permit in October 2004. Applicant had a conviction for delivery of a controlled substance from October 2003. Applicant was on probation and completed drug treatment.

Abstract: Applicant's application for a service permit should be denied because she has a felony conviction for delivery of a controlled substance within two years of the Commission's receipt of the application. Applicant has not shown good cause to overcome the denial basis because Applicant was still on probation.

Key Words/Phrases: service permit, denied, relevant conviction, drug, good cause, abstinence, probation

Case: OLCC-01-V-073, June 2002.

Abstract: Commission's conclusion in two prior contested cases that convictions for DWR were similar enough to DWS convictions to be considered the same for purposes of service permit refusal under OAR 845-009-0020(6), was not improper rulemaking. Permittee argued that because the Commission was changing the clear language of the rule, it could not do so through a contested case final order, but was required to do so by amending the rule through the rulemaking process. The Commission determined that OLCC could interpret its validly promulgated rules through the contested case process and had properly done so.

Case: OLCC-01-SPR-051, April 2002.

Abstract: Sexual Abuse in the First Degree is not a violent crime for purposes of OAR 845-009-0020(5)(c) unless it involves the element of sexual touching resulting from forcible compulsion (as defined in ORS 163.305(2)) of the victim. OAR 845-009-0020(5)(c) defines "violent crime" as crimes that cause, attempt to cause, or threaten physical injury or harm to another person.

Case: OLCC-01-SPR-029, December 2001.

Abstract: Applicant argued that conviction of two counts of Delivery of Controlled Substance were not two convictions, but one conviction of two counts. The Commission concluded there were two convictions. The deliveries alleged in the two counts occurred on different dates and no other recognized basis for merging the convictions existed.

Case: OLCC-01-SPR-018, July 2001.

Abstract: One of the requirements for establishing good cause to overcome denial of a permit under OAR 845-009-0020 is completion of all parole and probation requirements. This requirement is strict and includes inactive supervision or bench probation.

Case: OLCC-00-SPR-002, October 2000.

Abstract: In order to establish good cause to overcome the refusal basis of OAR 845-009-0020(4) (felony drug conviction), as amended November 3, 1999, an Applicant must have completed the parole or probationary term or have been discharged from parole or probation pursuant to the language, "completed all parole or probation

requirements” of OAR 845-009-0020(4)(b)(C).

Case: OLCC-99-SPR-061, May 2000.

Abstract: Applicant was denied a service permit due to having three or more felony drug convictions, at least one of which was within 6 years of the application. The Commission concluded good cause to overcome the refusal basis had not been established where Applicant had repeatedly violated the terms of probation for the drug convictions, thereby not complying with all probation requirements for purposes of OAR-845-009-0020(4)(b)(C). [Temporary rule in effect from 4/26/99 through 10/22/99].

Case: OLCC-99-SPR-009, March 2000.

Abstract: Where two counts of a Robbery III indictment merged into a third count, Applicant was convicted of one felony for the commission of violent crime. Because the permit refusal rule requires two convictions of this type to refuse a permit, the Commission granted the application for a service permit.

Case: OLCC-99-V-013, September 1999.

Abstract: The Commission found that permittee had violated ORS 471.385(1)(b) in that she had been simultaneously convicted of three felonies for delivery of controlled substances. Commission rules provide that the service permit should be cancelled unless permittee shows circumstances in her favor that would weigh in favor of mitigating the penalty to less than cancellation (OAR 845-006-0200(7)(c)). The Commission used the criteria set out in OAR 845-009-0020 for weighing good cause for service permit applicants who have had felony drug convictions, to determine that permittee had not shown factors in her favor that would outweigh cancellation of the service permit.

Case: OLCC-98-SPR-025, July 1999.

Abstract: Under the temporary amendment to OAR 845-009-0020(4)(a)(D) effective April 26, 1999, through October 22, 1999, applicant demonstrated good cause reasons to outweigh the drug conviction refusal basis for a service permit where she proved she had a drug addiction disability at the time of the felony drug convictions, that she had not used controlled substances within eighteen months, that she was actively involved in or had successfully completed a drug treatment program, and that she had complied with or was complying with all parole or probation requirements.

Case: OLCC-97-SPR-80, June 1998.

Abstract: Where Applicant provided documentary evidence that one of two controlled substance felony convictions was ordered to be treated as a misdemeanor on the successful completion of probation, and ultimately was so treated, the Commission granted a service permit to Applicant, concluding that Applicant had not been convicted of two controlled substance felonies for purposes of OAR 845-009-0020(3)(c).

Case: OLCC-97-SPR-059, January 1998.

Abstract: The Commission has concluded that OAR 845-09-020(5)(b) (two felony DWS convictions, one within 3 years) also applies to convictions for felony driving while revoked. The Commission denied a permit to an applicant who had one conviction for felony driving while suspended and another conviction for felony driving while revoked.

Case: OLCC-97-SPR-024, December 1997.

Abstract: The Commission concluded that there was a basis to deny the Applicant a service permit pursuant to OAR 845-09-020(3)(b) (one drug-related felony conviction within two years) where the Applicant had a drug related felony conviction 13 months prior to applying for a service permit. The Commission further concluded that the Applicant failed to show good cause to outweigh the denial basis because, although the Applicant submitted a sworn statement on a Commission supplied form saying that she had abstained from using controlled substances for 18 months, had completed a drug treatment program, and was complying with all parole or probation requirements, the record showed that the Applicant had provided conflicting information to Regulatory staff prior to submitting the sworn statement. The Commission concluded that there was a reason to doubt the veracity of the Applicants' sworn statement and concluded that the Applicant failed to show good cause. The service permit was denied.

Case: OLCC-96-SPR-115, July 1997.

Abstract: OAR 845-09-020(2) defines the relevant time period for convictions as ending on the date the Commission receives the application. The Commission may also consider any felony convictions occurring between the date the application is received and the date the Commission makes a determination on the application.

Case: OLCC-96-SPR-102, April 1997.

Abstract: OAR 845-09-020(3)(a). The Commission denied applicant a service permit where the applicant had a drug related felony conviction within 12 months of the application.

Case: OLCC-96-SPR-091, April 1997.

Abstract: OAR 845-09-020(3)(d) provided a basis to deny the applicant a service permit where the applicant had three controlled substance felony convictions, one of which was within six years, and the applicant's good cause reasons did not outweigh the reason to refuse the permit.

Case: OLCC-96-SPR-031, March 1997.

Abstract: OAR 845-09-020(3)(c). The Commission denied a service permit where the applicant had two controlled substance felony convictions, one of which was within three years. The Commission was not persuaded by applicant's arguments that she was being denied equal protection under the law because the rule allows some applicants to show good cause, but does not consider good cause under this particular section of the rule. The Commission also concluded that applicant's arguments that denying her a service permit based on her felony conviction is unconstitutional because it contravenes Article I, sections 15 and 20 of the Oregon constitution which prohibit vindictive justice and double jeopardy respectively, were not persuasive. The Commission concluded that the service permit criteria is to assure that only qualified individuals are allowed to serve alcoholic beverages to the public and, therefore, denial was not a punishment.

Case: OLCC-95-SPR-115, June 1996.

Abstract: The Commission denied the service permit where the applicant had been abstinent for 12 months, but the rule required, among other things, 18 months of abstinence to show good cause sufficient to outweigh the refusal basis.

Case: OLCC-95-SPR-117, May 1996.

Abstract: The Commission denied a service permit where the applicant had been convicted of two controlled substance felonies and one of the convictions was within three years of the date the Commission received the

application.

Case: OLCC-95-SPR-074, February 1996.

Abstract: The Commission denied a service permit where the applicant had a combination of three diversions or DUII convictions within 7 years and one of the diversions/convictions was within 18 months. OAR 845-09-020(6)(b).

Case: OLCC-95-SPR-046, January 1996.

Abstract: The Commission denied a service permit to the applicant who had three felony convictions for driving while suspended (DWS), one of which was within six years. OAR 845-09-020(5)(c). The Commission concluded that an applicant's failure to abide by the rules and regulations with regard to driver's license privileges may result in similar disregard for following liquor license rules and regulations and, therefore, for purposes of ORS 670.280, the Commission finds that there is a relationship between a felony conviction for felony DWS and an applicant's fitness to serve and sell alcoholic liquor.

Case: OLCC-95-SPR-063, December 1995.

Abstract: The Commission clarified its interpretation of OAR 845-09-020(3)(c). The Commission will treat two felonies as a single conviction for the purposes of OAR 845-09-020(3)(c) when the applicant can show there is a single incident that includes more than one controlled substance. Examples are possession of one "speed ball" including both cocaine and heroin and both possession and sale of a single controlled substance.

Case: OLCC-94-SPR-112, November 1995.

Abstract: Out-of-state DUII convictions count against service permit applicants under OAR 845-09-020(6).

Case: OLCC-94-SPR-122, March 1995.

Abstract: The relevance of a diversion is the successful completion of it rather than the act of entering into such an agreement. Therefore, for purposes of the service permit refusal rule OAR 845-09-020(6)(a), the relevant date for diversion is the date the applicant completed diversion, not the date on which she entered it.

Case: OLCC-94-SPR-044, August 1994.

Abstract: OAR 845-09-010(6)(a) was applied to deny a service permit to the applicant where, within three years, the applicant had one diversion and one DUII conviction, one of which was within 12 months of the application for a service permit.

Case: OLCC-94-SPR-037, August 1994.

Abstract: The Commission denied a service permit where the applicant had a felony conviction for Driving While Revoked within 12 months of the date of his application for a permit. The applicant's license was revoked as the result of prior DUII convictions. OAR 845-09-020(5)(a).

Case: OLCC-93-SPR-136, May 1994.

Abstract: The Commission concluded that applicant should not be granted a service permit because applicant committed felonies involving "violent crimes" where applicant robbed one person at gunpoint and conspired to assault another. OAR 845-09-020(4)(b).

Case: OLCC-93-SPR-149, April 1994.

Abstract: The Commission declined to create an exception for extenuating circumstances or other good cause where the rule, OAR 845-09-020(3)(a), does not specifically provide for exceptions to refusing a service permit application when the applicant has a felony drug conviction for possession of a controlled substance during the 12 months preceding the Commission's receipt of the application.

Case: OLCC-93-SPR-097, March 1994.

Abstract: A cancellation of a service permit for liquor law violations involving illegal drug activity, committed by the applicant when she was on duty as a bartender, disqualified her for five years from holding another service permit because such violations involved a threat to public safety and demonstrated that the applicant would be a poor compliance risk. OAR 845-09-020(6)(d).

Case: OLCC-93-SPR-101, January 1994.

Abstract: The service permit was denied where the applicant had a total of two DUII convictions or diversions within the last three years and where one of these was within the last 12 months of the Commission's receipt of the application. OAR 845-09-020(6)(a).

B.4. Change of Operation

B.4.a. Remodeling (OAR 845-006-0480(2), (3)(a)) [(OAR 845-06-100(2), (3)(a))]

[\(return to index\)](#)

Case: *Westward Ho*, OLCC-89-L-016, January 1990.

Abstract: Commission approved remodeling that would result in no net change in two licensing criteria (the overall emphasis on the sale of alcoholic beverages, and the menu or atmosphere was unique compared to other dispenser outlets within 20 mile radius), but would lead to an improvement in a third criterion (greater services: sales, seating, banquet facilities and amenities), with the overall effect being a net improvement in the licensee's qualifications.

Case: *El Toucan*, OLCC-88-L-019, March 1989.

Abstract: OAR 845-06-100(3) provides that a dispenser licensee must request and receive approval before the licensee changes the number of seats by ten percent or more. Where licensee showed that proposed increase in seating would be less than a ten percent increase from seating originally approved, the rule did not provide a basis to refuse the licensee's request to remodel.

Case: *Captain Ankeny's Well*, OLCC-87-L-008, December 1987.

Abstract: The Commission denied a licensee's request to take down a rope that defined an exterior portion of the licensed premises where there had been a recent history of patrons unlawfully leaving the licensed premises with open containers.

Case: *Lyman's Purple Clown*, OLCC-85-L-036, December 1985.

Abstract: OAR 845-05-040(3)(e)(A)(B) may be applied to remodeling requests.

Case: *Zack's Restaurant*, OLCC-84-L-026, December 1984.

Abstract: Where Commission policy was to approve remodeling that improved a licensed premises' qualifications under the Commission's license criteria, the applicant's request for remodeling leading to improvements was granted in the absence of precedent or reasoning for any exception in the applicant's case.

Case: *Medford A's*, May 1984.

Abstract: Extension of RMB privileges into ballpark stands granted to ball club when there was no evidence that the extension would result in sales to minors and applicant had adequate plan to control against alcohol-related offenses.

Case: *The Abbey, Inc., The Abbey*, April 1983.

Abstract: Dispenser licensee's request to remodel part of restaurant into a gift shop was approved because the remodeling was not likely to affect dining service or food sales since the restaurant business was slow and space not needed for restaurant purposes.

Case: *Red Robin Enterprises v. OLCC*, 55 Or App 720, 639 P2d 710 (1982).

Abstract: The Commission may apply its criteria for the issuance and maintenance of licenses to a request for expansion of licensed premises.

Case: *The Chase Restaurant & Lounge*, August 1981.

Abstract: Application to extend a licensed premises was denied where the additional area to be licensed was in a different building and was not physically connected to the existing licensed premises, except by a long, sidewalk.

B.4.b. Menu (OAR 845-006-0480(3)(c)) [(OAR 845-06-100(3)(d))]

[\(return to index\)](#)

Case: *Baxter's Corner*, June 1984.

Abstract: The licensee's proposed menu change constituted a substantial change requiring approval under OAR 845-06-100(6) where the licensee proposed to change from a varied menu of standard American entrees plus specialty items to a limited menu of prime rib and four seafood and barbeque entree specials.

The criteria for issuance and maintenance of licenses may be used to decide whether to approve or deny menu change requests under OAR 845-06-100. G

A failure to operate substantially as proposed is not a proper refusal ground of a request for approval of a menu change where the request did not arise in a renewal application. OAR 845-05-025(3) only applies to renewal applications.

The Commission approved the licensee's request to reduce the number of items on its menu despite the issue of lesser services. The issue of lesser services was outweighed because the menu change would help strengthen the business, would make the premises into more of a dinner house, would boost average monthly sales at the premises, would increase the food percentage at the premises, and because the licensee had operated for a considerable time with the more extensive menu and had suffered significant losses.

B.4.c. Hours (OAR 845-006-0480(3)(b)) [(OAR 845-06-100(3)(c))]

[\(return to index\)](#)

Case: *El Paso*, OLCC-87-L-011, February 1988.

Abstract: The Commission may apply its criteria for licensing and maintenance of licenses to request for change of hours of operation.

Where licensee requested change of operation to eliminate lunch service, the Commission gave licensee unfavorable consideration based on the one meal a day rule because licensee failed to show that he had taken reasonable steps to continue lunch service.

Case: *Crab Pot*, OLCC-85-L-003, June 1985.

Abstract: Licensees' argument to discontinue lunch operations because of unprofitability was unpersuasive where the licensees failed to show that there was no reasonable lunch presentation that would have been profitable.

The Commission is not estopped from disapproving a change in hours, even where the licensee has operated with the unapproved hours for two years and the Commission has renewed the license since the unapproved hours took effect, where there is no evidence that the Commission was specifically aware of, considered and approved the change in hours.

B.5. Minor Postings (OAR 845-006-0340) [(OAR 845-06-040)]

[\(return to index\)](#)

Case: *Satyricon*, OLCC-85-L-032, May 1986.

Abstract: The "primary activity" at a premises is not the sale and consumption of alcoholic beverages under OAR 845-06-040(6)(d) where 62 percent of the floor space is prohibited to drinking.

Evidence did not prove that licensee failed to comply with Oregon's liquor laws and rules under OAR 845-06-040(6)(h), even though a minor was convicted of possession of marijuana at the premises, where the evidence did not show that the licensee "permitted" these illegal activities.

Substantial public demand shown for minor posting change under OAR 845-06-040(6)(f), where several hundred minors desired to see the unique type of musical entertainment featured by the licensee.

Good cause shown for allowing a temporary change in minor posting under OAR 845-06-040(2) where the temporary nature of the posting change would not cause any special administrative or enforcement burdens for the Commission.

Case: *Molatore's Motel, Inc., Molatore's Restaurant*, September 1984.

Abstract: Commission approved extension of a No. IV-A Minor Posting by one hour to 11 p.m. in a partially separated portion of licensee's lounge. The approval was based on four issues: a) maximizing the opportunity for minors to dine; b) conduciveness to family dining; c) adequate separation of minors from areas primarily used for drinking; and d) sufficient control to prevent abuses and violations. Citing these same issues, the Commission denied the licensee's additional request to expand the No. IV posted area to seats directly across from the bar.

Case: *Red Lion Inn/Lloyd Center*, February 1984.

Abstract: The Commission denied a No. IV Minor Posting for a lunch buffet in a lounge where the primary activity in the lounge during the buffet was drinking. Commission approved a No. IV Minor Posting in a lounge for Sunday brunch. The primary activity in the lounge during the brunch was the consumption of food. In addition, there were a number of other features which reduced the lounge orientation during the Sunday brunch.

B.6. Conditions and Restrictions (OAR 845-005-0355)

[\(return to index\)](#)

Case: *Slim's Restaurant & Lounge*, 14-V-006/041, November 2014.

Facts: The OLCC alleged that Licensees' employee permitted patrons to take open containers of alcohol from the premises' licensed outdoor seating area. The agency proposed a sanction and revocation of Licensee's outdoor area under *former* OAR 845-005-0331(1) and (4) (effective until June 1, 2014). The license had been issued in 2008 following submission of a Control Plan outlining Licensee's efforts to control the outdoor café area. In 2012 Licensees were cited for patrons being outside the outdoor area and lack of monitoring by Licensees' staff. Subsequent inspections noted additional violations and lack of monitoring, despite multiple efforts to counsel Licensees. After receiving the warning notices and revocation notice, Licensees implemented new policies to control the outdoor area and installed surveillance cameras to monitor the outside area.

Abstract: The Commission has grounds under *former* OAR 845-005-0331(1) and (4) to revoke its approval for Licensees to sell and serve alcohol at Licensees' sidewalk café. The incidents observed by inspectors on multiple occasions establish that Licensees have failed to demonstrate adequate supervision of the sidewalk café so as to prevent violations of the liquor laws.

Licensees' failure to adhere to the Commission's approval and its own Control Plan is akin to failing to comply with a restriction on the license. The failure to comply with a license restriction is a Category I violation, the most serious of violations.

Key Words/Phrases: outdoor area, open container, adequate supervision, revocation, control plan, good cause, multiple incidents, aggravation

Case: *US Market #145*, OLCC-11-V-009, February 2012.

Facts: Based on the record of violations for selling alcohol to minors at other premises owned by Licensee's managing member, Licensee was required to install AVE and train all employees to use it for every person attempting to purchase alcohol who reasonably appeared under the age of 26. Employee of licensee sold to a minor decoy without asking for ID in violation of the restriction. The OLCC proposed to refuse renewal of the license.

Abstract: When only two of the four *Oceanside* factors are present, the presence of other aggravating or mitigating circumstances can be considered in determining whether or not a penalty of cancellation is warranted.

With the exception of *A Taste of Thai Restaurant* (OLCC Final Order, 98-L-003, August 1998), the Commission's recent case precedent in the license renewal context considers the licensee's compliance record only at the premises being renewed when determining whether the licensee has a poor record of compliance

A Category I violation, together with a Category III violation is a poor record of compliance. Thus, in this case, Licensee has a poor record of compliance at this location.

Key Words/Phrases: license restriction, AVE, minor decoy, *Oceanside* factors, good cause, willful, substantial, compliance record, license renewal, record of compliance

Case: *Foster Waterhole*, OLCC-10-L-012, August 2011.

Facts: Licensee's husband had a financial interest in the business, and was unlicensable due to his felony

marijuana conviction. Licensee contested the restriction.

Abstract: Licensee's husband's actions after his conviction are likely to improve Licensee's ability to overcome the denial criteria when more time has passed, but it had not been two years yet since the conviction.

Key Words/Phrases: denial criteria, financial interest, restriction, passage of time

Case: *Dad's Restaurant & Lounge*, OLCC-06-V-029, December 2007.

Facts: Licensee purchased Dad's without knowing of problems between previous owner and the OLCC. Licensee proposed an extensive Chinese food menu, which was a large factor in the OLCC granting the license. Licensee was granted with several restrictions including sizes of drinks and no doubles. Subsequently Licensee substantially reduced the menu without notifying the OLCC. Licensee's employee also sold doubles, larger mixed drinks and stacked drinks in violation of the license restrictions. Licensee argued she was unaware this occurred, and terminated the employee when she learned of his actions.

Abstract: Where there are two separate violations charged, *Oceanside* factors must be applied to each violation because the substantiality of the separate restriction violation directly impacts the penalty to be imposed.

Key Words/Phrases: credibility determination, termination of employee, cancellation, *Oceanside* factors, reduction in menu, selective enforcement, intervention meetings, settlements, mitigation factors

Case: *JR's Convenience Store*, OLCC-06-V-084, December 2007.

Facts: Applicant was new owner of convenience store, which had a restricted off-premises license. The restrictions included no sales of singles and items with higher alcohol content. Applicant was issued a 90-day temporary license, but inspectors found her selling restricted items multiple times. Inspectors tried to identify and address the restricted items, but the sales continued.

Abstract: Where restrictions prohibited license applicant from selling certain products and licensee removed those products from the cooler and shelves but left them in boxes on the floor and customers were allowed to take them out of the boxes and purchase them license applicant made the products available for purchase. Keeping the items in the store was a willful act as was making them available for sale. While license applicant did not intentionally and knowingly sell the products in violation of the restriction, she willfully failed to prohibit those sales from taking place. The violation of the restriction was then willful in the analysis of factors described in *Oceanside Restaurant & Lounge*, OLCC-87-L-014, February 1988.

Key Words/Phrases: temporary license, restriction violations, singles, alcohol content, *Oceanside* factors

Case: *Bettie Ford's*, OLCC-06-V-021, OLCC-06-L-006, August 2007. (Amended Final Order on Reconsideration)

Facts: OLCC inspectors conducted undercover compliance checks of licensed premises on three occasions. On each occasion different permittees served over-sized and double shots of alcohol in violation of licensee's restrictions.

Abstract: In applying the *Oceanside* factors to determine whether a violation is substantial, the violation of restrictions, even if they were the result of negligence rather than willful conduct, would still weigh against licensee and cancellation would be the appropriate penalty. Here the violation occurred after licensee received notice of prior violations which goes towards willfulness.

One change by a licensee (changed practices to require employees to use shot glasses for shots instead of rocks glasses) after multiple violations is insufficient to establish that future violations would be unlikely.

Because all *Oceanside* factors weighed against licensee, and licensee did not establish sufficient good cause to overcome its poor record of compliance, the Commission determined Licensee was not a good risk for compliance and cancellation/refusal to renew was appropriate.

Case: *Morchella Wine Cellars, LLC*, OLCC-06-L-003, December 2006.

Facts: Washington company applied for Wholesale Malt Beverage Wine (WMBW) license, and listed an Oregon law firm as a registered agent for a place of business. OLCC denied based on its status as an out-of-state entity.

Abstract: The Commission cannot issue a license with restrictions if it does not have the authority to issue any license or even to process the application.

Key Words/Phrases: statutory interpretation, meaning, licensed premises location, out-of-state entity, physical location of licensed premises, motion for summary determination

Case: *Cabana Club Café & Grill*, OLCC-03-L-010, April 2005.

Facts: Licensed premises was located in a popular area of McMinnville for young people, frequented as part of a “pub crawl.” Licensee entered into a settlement with the OLCC for license restrictions due to a history of serious and persistent problems. The problems continued and the city requested the license not be renewed due to DUII arrests and significant amount of police time dedicated to problems created by the premises. Licensee had a number of policies in place to deal with problem situations and patrons.

Abstract: Potential sanctions and further restrictions described in a settlement agreement are not a condition precedent to cancellation or non-renewal of a license. The potential sanctions and further restrictions are merely one of the tools at the Commission’s disposal. The licensee had filed a motion to dismiss the Proposed Refusal of License Renewal because the settlement of a previous Proposed Refusal of License Renewal included potential sanctions and further restrictions if the serious and persistent problems continued. The motion to dismiss was denied and the new history of serious and persistent problems was litigated.

Case: *Cheers*, OLCC-03-L-011/03-V-023, December 2003.

Abstract: Agreement to Defer: Licensees were issued a license with three restrictions. One restriction was deferred on the condition that no category III or higher violation was committed within nine months. Within nine months, Licensees committed a category I violation through violation of another of their restrictions (pursuant to ORS 471.405(1)). Licensees’ category I violation gave OLCC the authority to cancel the Agreement to Defer Enforcement of Restriction because Licensees did not meet the conditions in the Agreement.

Case: *Café Thivu*, OLCC-02-L-005, October 2002.

Abstract: When challenged at imposition, the Commission has the burden of justifying the imposition of a restriction. Where a justified restriction or one unchallenged at imposition is sought to be removed, the Commission has concluded that in order for a licensee to make a case to eliminate a restriction, the licensee has to demonstrate that the reasons for establishing the restriction no longer exist or are less compelling. *Peacock Tavern*, OLCC-95-L-024, August 1996. In that instance, licensee has the burden of proving the reasons why the restriction should be removed.

In determining public interest or convenience reasons to restrict a license, the Commission considers factors that include, but are not limited to, the need to eliminate or prevent conditions that have contributed to, or that the Commission reasonably believes will contribute to, liquor or criminal law violations by the licensee, patrons of the licensed premises, or the public. The restrictions in this case were imposed because there was a fight that the Commission considered serious and for the reason that the Licensee is new to operating with a liquor license.

Based on these reasons, imposition of restrictions one through five were justified under 845-006-0355 (2)(b) to prevent conditions that will contribute to liquor or criminal law violations by the licensee, patrons or the public. The Commission concluded that imposition of Restriction 6, prohibiting a named individual from participating in the management or ownership of the business, could not be justified under 845-006-0355 (2)(b), as the condition to be prevented (management of the business by a manager with two bank fraud convictions) is not a condition that will contribute to the liquor or criminal law violations feared (managing patrons and liquor law violations) where financial fraud was expressly excluded as a basis for concern and the individual was not restricted from handling money or performing the bookkeeping functions related to management.

Case: *New Star*, OLCC-01-L-007/V-075, June 2002.

Abstract: The Commission determined that one year without problems related to the basis of a restriction is a sufficient interval to demonstrate that prior problems which justified imposing the restriction are no longer problems and that the reasons for imposition of the restriction no longer exist. Removal of the restriction for good cause was allowed.

Case: *B Complex*, OLCC-01-L-002, February 2002.

Abstract: The specific license restrictions applicants offered to accept, and which the Commission considered under OAR 845-005-0355(1)(a), were insufficient to provide good cause to overcome the problem area refusal basis.

Case: *The Table*, OLCC-96-L-011, June 1997.

Abstract: Licensee challenged the Commission's ability to impose a 35% food restriction on the license. Licensee argued that the Commission had no authority to impose the restriction without first adopting a rule, and because the Commission had not followed proper rulemaking procedures, the restriction could not be placed on the license.

Case: *Bushwackers*, OLCC-96-L-016, March 1997.

Abstract: The Commission granted a DA license on the condition that licensees construct a wall separating the game machines from a dining room seating at least 40 persons.

Case: *County Cork Public House*, OLCC-95-L-025, October 1996.

Abstract: Based upon the advice of the AG, the Commission restricted an initial license to deal with an unlicensable person who had an interest in the business to be licensed even though the rule authorizing license restrictions only provides that the Commission may restrict a license when in the absence of a restriction, the Commission has a basis to cancel, suspend, fine, or deny the license. The AG advised that if an unlicensable person had an interest in the business, as soon as an initial license was issued the Commission would immediately have grounds to cancel or suspend the license pursuant to ORS 471.757 and OAR 845-05-011(4). The AG Advised that although the Commission could take two steps, first to issue the license and then secondly to immediately commence a proceeding to cancel, suspend, or restrict the license, it would be much more efficient, and the Commission would be authorized, to impose the restriction upon initially issuing the license.

Case: *The Peacock Tavern*, OLCC-95-L-024, August 1996.

Abstract: A licensee's compliance with a restriction (prohibiting the consumption of alcoholic beverages) is not determinative of whether or not a restriction should be removed. In order to make a case for eliminating the restriction, a licensee would have to establish that the reasons for establishing the restriction no longer exist or are less compelling.

Case: *Idle Hour Tavern*, OLCC-94-V-085, January 1996.

Abstract: Licensee challenged the Commission's authority to impose a restriction prohibiting him from consuming alcoholic liquor while a licensee of the Commission. Licensee argued that, while the Commission might have authority to regulate whether he drank while on duty, serving, selling and supervising the sale of alcoholic liquor, the Commission did not have authority to restrict him from drinking while he was not on duty. The Commission's authority over licensees is not limited only to on-duty, on-premises activities. Therefore, the Commission does have authority to restrict a licensee from consuming alcoholic liquor even while off duty.

Cases: OLCC-93-SPR-020, July 1993; OLCC-92-SPR-155, July 1993.

Abstract: The Commission concluded that with a restriction (that applicant work in a premises where food service is emphasized), there was good cause to issue a service permit to an applicant who had a felony conviction. Similarly, the Commission concluded that with a restriction (that applicant abstain from consuming alcoholic liquor), there was good cause to issue a service permit to applicant who had alcoholic liquor law convictions.

Case: *Club Cabos*, OLCC-93-L-004, October 1993.

Abstract: Where the prior licensee at this location closed early (10 to 11:30 at night) during the last six years, the Commission concluded that a restriction that required licensees to stop the sale, service, and consumption of alcohol at 11 p.m., except for Friday and Saturday nights, was in the public interest or convenience based upon the character and environment of the neighborhood in which the licensed premises operates. OAR 845-05-055(2)(a).

Case: *The Peacock Tavern*, OLCC-93-L-001, July 1993.

Abstract: Commission concluded that it was in the public interest or convenience to impose a restriction that applicant abstain entirely from drinking alcohol where applicant had a record of alcohol problems and applicant's drug treatment programs recommended that he never drink alcohol again. OAR 845-05-055(3)(d).

Case: *T. J.'s Venture Inn*, OLCC-93-L-002, July 1993.

Abstract: Licensees requested that a restriction imposed pursuant to OAR 845-05-055(2)(a)(character or environment of the neighborhood) be modified. The Commission modified the restriction by requiring licensees to request that their patrons park in the off-street mall parking lot and that licensee make reasonable efforts to inform their patrons of the requirement.

Case: *Sao-Mai Restaurant*, OLCC-91-V-136, August 1992.

Abstract: Where licensees' manager was involved in an altercation with OLCC inspectors and licensee was present and did not intervene, the Commission imposed a restriction on the license prohibiting the manager from working on the premises and prohibiting the licensee from being the new manager.

Case: *Prime Country*, OLCC-91-L-012, December 1991.

Abstract: Although applicant agreed to a restriction proposed by the Regulatory staff, the Commission concluded that it could not impose any restrictions when it did not have a basis to deny the application. OAR 845-05-055(1)(a).

Case: OLCC-90-SP-087, June 1991; OLCC-91-SP-002, July 1991.

Abstract: The Commission concluded that applicant's showing of good cause was not adequate to overcome the felony convictions and alcoholic liquor law violations as a reason to deny the permit. However, with conditions and restrictions on the license mandating alcohol treatment, aftercare, and abstinence, there is good cause to

outweigh the refusal basis.

Case: *Dekum Food Market*, OLCC-90-L-005, May 1991.

Abstract: The Commission concluded that with restrictions on the license, applicants showed good cause to overcome a history of serious and persistent problems as a refusal basis. The restrictions included no fortified wine, no containers larger than 16-oz., no sale after 7 p.m., and that applicants would have a security guard on duty.

Case: *A. J.'s Homestead Restaurant*, OLCC-90-V-021, December 1990.

Abstract: The Commission concluded that the licensee should not be restricted from employing a former licensee as a chef on the premises, where the former licensee had lost his license due to a felony conviction, but the felony was not connected to the licensed premises, and the job as chef would not involve the sale or service of alcoholic liquor.

Case: *P.G. Enterprises, Inc. v. OLCC*, 103 Or App 132, 796 P2d 1212 (1990).

Abstract: Where the Commission granted a license subject to conditions including applicant's abstinence from alcohol for the duration of the license and subject to license cancellation upon a violation of the conditions, violation of the conditions warrants license cancellation.

Case: *Oceanside Restaurant & Lounge*, OLCC-88-V-123, August 1989, *affirmed*, *P.G. Enterprises, Inc. v. OLCC*, 103 Or App 132, 796 P2d 1212 (1990).

Abstract: The Commission has authority to impose conditions on a license. The authority comes from the Commission's broad authority under ORS 472.060 to grant, refuse, suspend or cancel licenses. If the Commission "may" refuse to grant a license, it can also place conditions on the issuance of the license.

The Commission has authority to cancel a license due to the breach of a condition on the license. The authority lies in the Commission's authority to grant, refuse, suspend, or cancel liquor licenses under ORS 472.060.

Contract law applies to license conditions. The violation of a contractual condition, if substantial, may render the granting of the license void from its inception. Where there is a material breach of a condition subsequent to the issuance of a license, the Commission actually denies, rather than cancels, the application.

The Commission has authority to enforce restrictions on a license and the licensee is bound by the terms of an agreement imposing the restrictions where the terms are clear and the licensee voluntarily agreed to the agreement. This is true whether or not the licensee read or understood the agreement.

Case: *Oceanside Restaurant & Lounge*, OLCC-88-V-123, August 1989.

Abstract: In determining whether a licensee has substantially complied with a condition placed on the issuance of the license, the Commission considered the following factors: the timing of the violation; whether the violation was willful; the number of violations; and whether the hardship on the licensee outweighs the importance of the conditions in ensuring completion of the agreement.

Case: *Wolf Den*, OLCC-89-V-021, July 1989.

Abstract: A prior Final Order imposed a "condition" on the license and not a "restriction." Therefore, the licensee did not violate ORS 471.405(1) because the condition prohibiting licensee from bartending at the premises had expired at the end of the license year in which it was imposed.

The Final Order imposed a "condition" and not a "restriction" where the Final Order referred to the requirement as a "condition" and the Commission did not follow any of the procedures that it normally follows where a restriction has been imposed, such as notifying the licensee at license renewal of the existence of a restriction.

Case: *Log Cabin Restaurant & Lounge*, OLCC-88-L-020, May 1989.

Abstract: The Commission concluded it does not have authority to impose a restriction barring a former licensee from working on the licensed premises in a job that does not involve the sale or service of alcoholic liquor when the former licensee has divested himself of interest in the licensed corporation and is no longer a licensee.

Cases: *Strawberry Fields*, OLCC-85-L-022, December 1985; *Lloyd's of Bandon Restaurant & Lounge*, OLCC-88-L-007, November 1988. *Union Gap Tavern*, OLCC-89-V-005, April 1989.

Abstract: A licensee's failure to comply with restrictions constitutes the sale of alcohol in a manner other than the license permits, in violation of ORS 471.405(1).

Case: *Union Gap Tavern*, OLCC-89-V-005, April 1989.

Abstract: Licensee violated ORS 471.405(1) by selling or offering for sale alcoholic liquor in a manner other than the license permits because at a time when the premises was open for business, licensee was performing an act that was prohibited by a restriction on the license. The restriction prohibited licensee from drinking alcoholic beverages on the premises.

Case: *Lloyd's of Bandon Restaurant & Lounge*, OLCC-88-L-007, November 1988.

Abstract: OAR 845-05-055 allows the Commission to impose license restrictions at any time during a license year, and not just at the time of issuance or renewal of a license. Consequently, the Commission's unconditional issuance of a license did not constitute a decision that the Commission would not impose restrictions during the course of the license year.

The Commission applied the licensing criteria in determining whether to impose license restrictions during the course of a license year.

The issuance of a license subject to a "condition" means that the Commission grants a license subject to compliance with a specified requirement. A condition is in effect until the license expires at the end of the license year. The imposition of a "restriction" on a license means that the Commission places a limitation on the license privileges. A restriction may be effective until the Commission lifts it.

Case: *Frenchie's Tavern*, OLCC-88-V-015, June 1988.

Abstract: In determining whether cancellation was appropriate in a violation case, the Commission imposed restrictions along with a lesser penalty than cancellation where the restrictions saved the licensee from being a poor risk for compliance.

Case: *First Avenue Market*, OLCC-87-L-007, November 1987.

Abstract: The Commission may consider its licensing criteria in deciding requests to modify license restrictions.

Case: OLCC-85-SP-027, June 1986.

Abstract: Where an applicant who had a recent habit of excessive use of alcoholic liquor was able to show strong support from his endorsing employer, the Commission granted a service permit on the condition that the permit was good only with the endorsing employer.

Cases: OLCC-85-SP-022, February 1986; *Applicant V.B.*, February 1983.

Abstract: Where service permit applicant made false statements on application, Commission granted permit subject to restrictions that the permit's use be limited to applicant's present employer.

Cases: OLCC-85-SP-022, February 1986; *Applicant A.G.*, April 1984.

Abstract: Since the Commission has discretion to deny an application for false statements, the Commission may choose instead to grant with restrictions.

Case: *Strawberry Fields*, OLCC-85-L-022, December 1985.

Abstract: In setting a condition on grant of an application, the Commission specified that the licensee would have to make written application to the Regulatory staff to seek removal of the condition, and that the licensee would have an opportunity for a contested case hearing should the Regulatory staff deny the request.

Case: *Applicant V.B.*, February 1983.

Abstract: In declining to place a condition on a service permit that it be automatically or immediately canceled if the applicant is arrested on any charge, the Commission held that arrests are of no significance under liquor laws or regulations and that a service permittee cannot be denied the usual right to contest a proposed penalty through a hearing.

Case: *Stop Inn Dine & Dance*, OLCC-84-L-025, April 1985.

Abstract: Determining a reasonable period for an authority to operate must consider the effect of terminating the authority on a particular date, as well as the notice provided to the authorized party of the termination date.

The purpose of ORS 472.141(2)(b) is to protect those with interests in licensed outlets where the licensees have died or become insolvent.

B.7. Secured Party Authority to Operate (OAR 845-005-0450)

[\(return to index\)](#)

Case: *Stop Inn Dine & Dance*, OLCC-84-L-025, April 1985.

Abstract: Determining a reasonable period for an authority to operate must consider the effect of terminating the authority on a particular date, as well as the notice provided to the authorized party of the termination date.

The purpose of ORS 472.141(2)(b) is to protect those with interests in licensed outlets where the licensees have died or become insolvent.
