BEFORE THE OREGON LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the Full On-Premises Sales License Held by:	**)**	**FINAL FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER**
MS Bar, Inc. **Michael Stafford, Pres./Dir./Stockholder** **Samuel Stafford, Sec./Dir./Stockholder** **dba CINNABAR** **121 NE 3rd Street** **Prineville, OR 97754**	**)**	**OLCC-11-V-060** **OLCC-11-V-060A** **OLCC-11-V-060B**

HISTORY OF THE CASE

On August 9, 2011, the Oregon Liquor Control Commission (OLCC or Commission) issued a Notice of Removal from Responsible Vendor Program and Proposed License Suspension/Civil Penalty to MS Bar, Inc., Michael Stafford, President/Director/Stockholder and Samuel Stafford, Secretary/Director/Stockholder (collectively Licensee), dba Cinnabar, located at 121 NE 3rd Street, Prineville, Oregon. The Notice charged Licensee with three violations: (1) that corporate principal Michael Stafford denied entrance to the licensed premises during regular business hours to a Prineville Police Officer who wanted to enter the premises to conduct a reasonable search to ensure compliance with the liquor laws, in violation of OAR 845-006-0345(4)(a); (2) that corporate principal Michael Stafford was under the influence of intoxicants on duty at the licensed premises in violation of OAR 845-006-0345(1); and (3) that Licensees employees permitted a minor to drink alcoholic beverages on the premises in violation of OAR 845-006-0335(3)(a) or, alternatively, be on the licensed premises in violation of OAR 845-006-0335(3)(b). Licensees timely requested a hearing.

The Commission referred Licensee's hearing request to the Office of Administrative Hearings on September 9, 2011.

On February 10, 2012, the Commission issued an Amended Notice of Removal from Responsible Vendor Program and Proposed License Suspension/Civil Penalty to Licensees adding a fourth alleged violation, that on December 9, 2011, Licensee's employees failed to verify the age of a minor before allowing the minor to buy or be served an alcoholic beverage when the minor reasonably appeared to be under 26 years of age, in violation of OAR 845-006-0335(1)(a),(b) and (c).

A contested case hearing was held in this matter in Prineville, Oregon, on May 16 and 17, 2012, before Senior Administrative Law Judge Alison Greene Webster. Licensees were represented by William Buchanan, Attorney at Law. Anna Davis presented the case for the OLCC.

The following witnesses testified at the hearing: City of Prineville Police Officer James Peterson; Prineville Police Officer Jordan Zamora; Prineville Police Officer Bryan Burton;

Prineville Police Officer Robert Gray; Prineville Police Sergeant Ray Cuellar; Crook County Sheriff's Deputy Travis Lambert; OLCC Inspector Larry Brown; Anthony Barros; James Nunez; Jose "Joey" Nunez; Miriam Nunez; Nicole Lopez; and corporate principal Michael Stafford.

The evidentiary and hearing record closed at the conclusion of the hearing on May 17, 2012.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed June 8, 2012.

Licensee filed Exceptions to the Proposed Order on July 2, 2012. Staff filed Comments on the Proposed Order on July 2, 2012. The Administrative Law Judge responded to Licensee's Exceptions and Staff's Comments on July 9, 2012.

On August 10, 2012, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Administrative Law Judge, Licensee's Exceptions to the Proposed Order, Staff's Comments on the Proposed Order and the Administrative Law Judge's Response to Licensee's Exceptions and Staff's Comments. Based on this review and the preponderance of the evidence, the Commission enters the following:

ISSUES

1. Whether on March 31, 2011, corporate principal Michael Stafford denied entrance to the licensed premises during regular business hours to a Prineville Police Department officer who wanted to enter the premises to conduct a reasonable search to ensure compliance with the liquor laws, in violation of OAR 845-006-0345(4)(a).

2. Whether, on March 31, 2011, corporate principal Michael Stafford was under the influence of intoxicants while on duty at the licensed premises in violation of OAR 845-006-0345(1).

3. Whether on the night of February 19, 2011 and the early morning hours of February 20, 2011, Licensee's employee permitted a minor to drink alcoholic beverages on the licensed premises in violation or OAR 845-006-0335(3)(a) or, alternatively, whether Licensee's employee permitted the minor to be in the premises in violation of OAR 845-006-0335(3)(b).

4. Whether, on December 9, 2011, one or more of Licensee's employees failed to verify the age of a minor before allowing the minor to buy or be served an alcoholic beverage when the minor reasonably appeared to be under the age of 26, in violation of OAR 845-006-0335(1)(a)(b)(c).

5. If one or more of the above violations are proven, what is the appropriate sanction?

6. If one or more of the above violations are established, whether Licensees shall be removed from the Responsible Vendor Program. *Former* OAR 845-009-0135(8)(d) and (e).[1]

[1] Subsequent to the issuance of the Notice of Removal from Responsible Vendor Program and Proposed

EVIDENTIARY RULINGS

OLCC Exhibits A1 through A30 were admitted into the record. Licensee's Exhibits P13 through 19 were also admitted.

CREDIBILITY DETERMINATION

The record contains conflicting information concerning Officer Peterson's contact with Corporate Principal Stafford (Stafford) at the licensed premises on the night of March 31, 2011. Officer Peterson, Sgt. Cuellar and Stafford all testified about the exchange. Each witness' recollection is different, but Stafford's recollection cannot be reconciled with the testimony of Officer Peterson or that of Sgt. Cuellar. Both officers testified that Stafford was visibly intoxicated and that he attempted to block Officer Peterson's entry into the licensed premises. Because Stafford denies that he tried to block Officer Peterson's entry, and denies that he placed himself on duty after consuming alcoholic beverages, a credibility assessment is necessary.

Officer Peterson reported and testified, in pertinent part, as follows: He and other law enforcement officers responded to a reported brawl outside Cinnabar. Upon his arrival, he saw no one fighting outside. He saw a Crook County Sheriff's Office patrol vehicle parked outside the premises and, as he approached the entry, he saw Deputy Madden entering the premises. As he attempted to follow the deputy into the premises, he was met at the inside entry door by Stafford, who blocked the doorway and slurred "Everything's fine." Officer Peterson told Stafford to move. Officer Peterson could see Deputy Madden inside talking with a group of patrons who were standing near the entrance to the video poker room. Stafford put his hands on the officer's chest as if to stop the officer from entering the premises and again said, "Everything's fine." Officer Peterson again told Stafford to move. When Stafford did not do so, Officer Peterson moved Stafford to the left, out of his way. Officer Peterson then entered the premises and caught up with the deputy, who at the time was speaking with the victim of an assault inside the premises.

Sgt. Cuellar reported and testified, in pertinent part, as follows: He arrived at the licensed premises after Officer Peterson. He parked his patrol car in front of the outside entry door, where he could see into the foyer. He saw Officer Peterson and Stafford engaged in what looked like a brief "dance" in front of the inside entry door. He saw Officer Peterson trying to get around Stafford to gain entry into the lounge. Sgt. Cuellar then exited his patrol car, and contacted Stafford. He asked Stafford to step outside the building and speak to him. Sgt. Cuellar asked Stafford what had taken place, and Stafford repeatedly asserted that everything was fine. As they were talking, Officer Peterson exited the premises, escorting the assault victim. The victim was holding his face, and it was apparent to the sergeant that the victim had been in a fight. Sgt. Cuellar then asked Stafford that, if everything was "fine," why was there a patron holding his face coming out of the bar with Officer Peterson. Like Officer Peterson, Sgt. Cuellar detected the odor of alcoholic beverages on Stafford's breath. He believed Stafford was under the influence of intoxicants.

License Suspension, *former* OAR 845-009-0135(8) was renumbered OAR 845-009-0135(7) without significant substantive changes.

Stafford testified, in pertinent part, as follows: Prior to arriving at the licensed premises that night, he consumed alcoholic beverages. He had been at the premises about an hour or hour and a half when a fight broke out among patrons in the lottery room. When Officer Peterson arrived, there were already at least three other law enforcement officers inside the premises. Stafford saw Officer Peterson walk in, and he tried to get the officer's attention to explain that two patrons possibly involved in the fight had just left the bar. He and Officer Peterson had a brief exchange or "dance" (as Sgt. Cuellar described it), but this exchange happened several steps inside the premises and not at the entry door. Stafford touched Officer Peterson on the shoulder. He did so not with the intention of blocking the officer's passage, but to direct the officer to patrons who had just exited. Officer Peterson pushed past him. Stafford remained inside the bar for a few more minutes, and did not walk outside and speak with Sgt. Cuellar until after Officer Peterson and the other officers escorted the assault victim outside.

In testifying about this incident, Stafford specifically disputed certain aspects of Sgt. Cuellar's testimony. Stafford disputed where the sergeant claimed to have parked his patrol vehicle, whether the sergeant observed the exchange between Stafford and Officer Peterson, and whether Stafford was speaking with the sergeant outside when Officer Peterson escorted the assault victim from the premises.

In *Lewis and Clark College v. Bureau of Labor*, 43 Or App 245 (1979) *rev den* 288 Or 667 (1980), Judge Richardson addressed considerations that may, in a given case, bear on the weight given to a witness's statements. He wrote:

> [C]redibility (more properly weight) is determinable from a number of factors other than witness demeanor. The credibility, i.e., weight, that attaches to testimony can be determined in terms of the inherent probability, or improbability of the testimony, the possible internal inconsistencies, the fact it is or is not corroborated, that it is contradicted by other testimony or evidence and finally that human experience demonstrates it is logically incredible." (Richardson, J., concurring in part, dissenting in part).

In *Tew v. DMV*, 179 Or App 443 (2002), citing to the above passage from *Lewis and Clark College*, the court cited to several factors that a fact finder may rely upon in assessing the credibility and reliability of various witnesses. As relevant to this matter, the court in *Tew* noted that, in assessing credibility, a fact finder may take note that police officers, as trained observers with the benefit of written reports completed shortly after the incident to refresh their memories of the events in question, are often reliable witnesses. 179 Or App at 449. The court also held that it is appropriate to take into account the well-known fact that alcohol consumption can affect a person's ability to perceive and remember events. 179 Or App at 450.

After considering the conflicting testimony regarding the exchange between Officer Peterson and Stafford as well as the subsequent conversation between Stafford and Sgt. Cuellar, I give Stafford's testimony less weight than that of Officer Peterson and Sgt. Cuellar. First, by his own admission at hearing, Stafford had consumed alcoholic beverages earlier in the night. Both officers noted signs of intoxication on Stafford during their contact with him. Stafford's consumption of alcoholic beverages likely adversely impacted his perception and recollection of the events in issue. Second, both Officer Peterson and Sgt. Cuellar are trained observers, who

completed written reports to document what occurred when they responded to a reported fight at Cinnabar that night. To accept Stafford's version of events, one must find that both officers fabricated information regarding their contact with Stafford and that both officers wrote false police reports. I am unwilling to so find. Consequently, in making findings about the events of the night of March 31, 2011 set out below, I rely primarily on the written reports and testimony of Officer Peterson and Sgt. Cuellar. Specifically, I find that the exchange between Officer Peterson and Stafford occurred in the foyer, in front of the inside entry door, and within Sgt. Cuellar's line of sight.

FINDINGS OF FACT

1. At all times pertinent to this action, MS Bar, Inc., Michael Stafford, President, Director and Stockholder and Samuel Stafford, Secretary, Director and Stockholder, dba Cinnabar, have held a Full On-Premises sales license for the premises located at 121 NE 3rd Street in Prineville, Oregon.[2] (Ex. A1.) The licensed premises has a Number 1 minor posting, meaning that minors are prohibited on the premises at all times. (Ex. A20.)

2. Licensee has been a member of the Responsible Vendor Program since July 10, 2008. (Ex. A11, A21, and A29).[3]

February 19-20, 2011.

3. On the night of February 19, 2011, a group of three people, including then 18-year-old Jose "Joey" Nunez,[4] entered the licensed premises. There was an employee standing at the inside entrance doorway who greeted the group, although she did not ask to see the identification of anyone in the group, including Nunez. Members of this group, including Nunez, had been consuming alcoholic beverages at a birthday gathering earlier in the day. Nunez and his friends remained in the licensed premises for at least two hours. Others, including Nunez's older brother James and James' girlfriend, eventually joined the group inside the bar. Nunez was intoxicated upon his arrival at Cinnabar, and he consumed additional alcoholic beverages while there. He consumed beers purchased for him by others in the group. At one point, he used his Chase Bank card to purchase an alcoholic beverage for himself and an acquaintance. The bartender on duty, Kristina Martin, sold and served alcoholic beverages to Nunez. She did not check his identification prior to serving him, as she believed that the door staff would not allow anyone under the age of 21 into the premises. (Test. of Joey Nunez; test. of James Nunez; test. of N. Lopez; Ex. A11.)

4. At around 1:00 a.m. on February 20, 2011, Nunez was involved in a disturbance at the premises. An anonymous caller notified the police about the disturbance. Nunez took off on

---

[2] In Staff's Comments on the Proposed Order, it was pointed out that the correct location of the licensed premises is NE 3rd Street, rather than East 3rd Street as reflected in the Proposed Order. In her Response to Comments and Exceptions to the Proposed Order, Administrative Law Judge (ALJ) Alison Greene Webster agreed to this change.
[3] In Staff's Comments on the Proposed Order, staff requested an additional finding of fact reflecting Licensee's membership in the Responsible Vendor Program. In her Response to Comments and Exceptions to the Proposed Order, ALJ Greene Webster agreed to this change. Insertion of this FOF requires renumbering of subsequent FOFs.
[4] Jose "Joey" Nunez was born January 1, 1993. (Ex. A10; test. of J. Nunez.)

foot from the premises. As officers were responding to the premises, they saw Nunez running south on NE Belknap Street near NE Second St., about a block from the premises. Suspecting that Nunez had been involved in the disturbance, officers stopped him. Nunez was intoxicated, angry and belligerent. He resisted as the officers took him into custody. Nunez denied that he was coming from Cinnabar, but officers subsequently learned (from others he had been with and employee Kristina Martin) that Nunez had been inside and had consumed alcoholic beverages at the premises. Officers arrested Nunez for Disorderly Conduct and Interfering with a Peace Officer, and cited him for Minor In Possession of Alcohol. At the jail, Nunez submitted to a breath test, which disclosed a blood alcohol content of .19 percent. (Ex. A3; test. of Zamora; test. of Burton.)

March 31, 2011.

5. On the night of March 31, 2011, Stafford came to the licensed premises to see his son, who was working as the disc jockey. Prior to arriving at the licensed premises that night, Stafford consumed alcoholic beverages. (Test. of Stafford.)

6. Later that same night, while Stafford was still at the premises, there was a fight between patrons in or near the lottery room. (Test. of Stafford.) At about 11:18 p.m., Prineville Police received a call about a "brawl" outside Cinnabar. Within seconds, officers were dispatched to the licensed premises. (Ex. A14 at 1.) When Officer Peterson responded to the location, he saw no one fighting outside. He saw a Crook County Sheriff's Office patrol vehicle parked outside and, as he approached the entry, saw Crook County Deputy Madden entering the premises. (Ex. A15 at 5; test. of Peterson.)

7. As Officer Peterson attempted to follow the deputy into the premises, he was met at the inside entry door by Stafford, who blocked the doorway and slurred "Everything's fine." Officer Peterson told Stafford to move. Officer Peterson looked past Stafford and saw Deputy Madden inside, talking with a group of patrons who were standing near the entrance to the video poker room. Officer Peterson heard yelling and saw patrons pointing.[5] He was concerned about a spillover fight occurring.[6] Officer Peterson did not see any other law enforcement officers in the room. Stafford put his hands on the officer's chest as if to stop the officer from entering the premises and again said, "Everything's fine." Officer Peterson again directed Stafford to move out of the way. When Stafford did not do so, Officer Peterson moved Stafford to the left, out of his way. Officer Peterson then entered the premises and caught up with Deputy Madden, who was speaking with patron Kevin Cholin, the victim of an assault inside the premises. (Ex. A15; Ex. A19; test. of Peterson.)

8. During this brief exchange with Stafford at the entry door, Officer Peterson detected the strong odor of alcoholic beverages on Stafford's breath. Officer Peterson also noted that Stafford's eyes were red, glassy and droopy. Based on Stafford's slurred speech, breath odor and appearance, Officer Peterson believed Stafford was intoxicated. (Ex. A15; Ex. A19; test. of Peterson.)

---

[5] In her Response to Comments and Exceptions to the Proposed Order, ALJ Greene Webster had no objection to this addition, based upon the testimony of Officer Peterson.

[6] In her Response to Comments and Exceptions to the Proposed Order, ALJ Greene Webster had no objection to this addition, based upon the testimony of Officer Peterson.

9. Sgt. Cuellar arrived at the licensed premises shortly after Officer Peterson. As he pulled up and parked his patrol car in front of the outside entry door, he saw Officer Peterson and Stafford engaged in what looked like a brief "dance" in the foyer, in front of the inside entry door. Sgt. Cuellar saw Officer Peterson trying to get around Stafford to gain entry into lounge. Sgt. Cuellar then exited his patrol car. He contacted Stafford in the foyer and asked him to step outside the building and speak with him. Stafford did so. (Ex. A16; test. of Cuellar.)

10. Sgt. Cuellar asked Stafford what had happened. Stafford told Sgt. Cuellar that everything was "fine." As the two men were talking, Officer Peterson and Deputy Madden exited the premises with Mr. Cholin and another patron, Corina Wright. Mr. Cholin had his hands to his face and it appeared to Sgt. Cuellar that Mr. Cholin had just been involved in a fight. Sgt. Cuellar then asked Stafford if everything was "fine" inside the premises, why was the patron (Cholin) holding his face. While talking with Stafford, Sgt. Cuellar noted the odor of alcoholic beverages on Stafford's breath. Stafford also kept repeating himself and continued to assert that nothing was amiss in the premises. Based on Stafford's breath odor and demeanor, Sgt. Cuellar also believed Stafford was under the influence of intoxicants. (Ex. A16; Ex. A17; test. of Cuellar.)

11. Officer Peterson had another brief conversation with Stafford just outside the front door. Officer Peterson advised Stafford that he had no right to block the officer's entry and that his earlier actions constituted harassment and interfering with a peace officer. Officer Peterson also told Stafford that he was in violation of the liquor laws because he was under the influence of intoxicants on duty. Stafford claimed that he had not had anything to drink. Stafford also asserted that this was just a misunderstanding, as he did not try to deny entry to the officer. During this discussion, Stafford did not attempt to explain what had happened with regard to the disturbance, nor did he identify any other patrons involved in the incident. (Ex. A15 at 5; test. of Peterson.)

12. Sgt. Cuellar and Stafford spoke again as Officer Peterson and Deputy Madden interviewed Mr. Cholin, Ms. Wright and other witnesses to the disturbance. Stafford maintained that everything was fine and there was nothing going on inside the premises. Stafford asserted at one point that the camera would show that nothing happened. When Sgt. Cuellar pressed the matter and asked to see the surveillance video, Stafford acknowledged that the surveillance cameras were not working. (Test. of Cuellar.)

13. Meanwhile, after interviewing Mr. Cholin, Ms. Wright and other witnesses, Officer Peterson determined that Ms. Wright had punched Mr. Cholin, causing him a bloody nose. Even though Mr. Cholin did not want to press charges, Officer Peterson arrested Ms. Wright for Disorderly Conduct and Harassment. Officer Peterson also suggested to Mr. Cholin that he call it a night and go home. Mr. Cholin agreed. (Ex. A15 at 5-6; test. of Peterson.)

14. Before leaving the premises that night, Officer Peterson also interviewed employee Kristina Martin about the fight between Ms. Wright and Mr. Cholin and about Stafford's apparently intoxicated condition. Ms. Martin reported that she saw Ms. Wright hit Mr. Cholin, and that Mr. Cholin did not hit back. As for Stafford's condition, Ms. Martin reported that he had not had anything to drink at Cinnabar, explaining that he had arrived at the premises "like that." When Officer Peterson commented to her that Stafford was, in his opinion, obviously

intoxicated, Ms. Martin raised her hands to indicate (in Officer Peterson's assessment) that she did not want to get involved, and stated "that's how he showed up." (Ex. A15 at 5; Ex. A18; test. of Peterson.)

15. A short time later, as Officer Peterson and Sgt. Cuellar were booking Ms. Wright into the jail, another fight occurred near the licensed premises. Sgt. Cuellar responded, along with Crook County Deputies and a State Trooper. Officers on scene determined that Robin Wright (Corina Wright's husband) and his brother, Roy Wright, had chased down Mr. Cholin as he walked home from Cinnabar. Officers found Mr. Cholin with blood running down his face. He reported that Robin Wright had punched him in the face and stole his baseball hat. Officers located the brothers near NE 4th and N. Main Street. They arrested Robin Wright for Disorderly Conduct, Harassment, Assault and Theft, and Roy Wright for Disorderly Conduct. (Ex. A15; A16; test. of Cuellar.)

16. On April 12, 2011, OLCC Inspector Larry Brown interviewed Stafford about the events of March 31, 2011. Stafford denied that he had been drinking that night. He stated that he was in the bar when patrons started fighting, and explained that he was trying to escort one of the patrons involved in the fight out of the bar when he saw the police coming in. Stafford maintained that he was not trying to deny entry to the police, but was trying to get the officer's attention so that he could hand off the problem patron to the officer. (Ex. A21 at 4; test. of Brown.)

December 9, 2011.

17. On December 9, 2011, OLCC Inspector Brown conducted a Minor Decoy Operation in Prineville with the assistance of the Prineville Police Department. The licensed premises was one of the premises randomly selected for investigation. During this operation, the OLCC used two minor decoys, one of which was Anthony Barros, who at that time was 19 years of age.[7]

18. Inspector Brown took a photograph of minor Barros on the evening of December 9, 2011, just before the minor decoy operation began. The photograph depicts minor Barros's appearance on that date. He was dressed casually, in a tee shirt and light jacket. Minor Barros appeared to be his true age. The photograph depicts his youthful, unlined facial features and short cropped hair. (Ex. A27.)

19. At about 9:19 p.m. on December 9, 2011, minor Barros entered the licensed premises. He walked past an employee, Shelley Raymond, who he assumed was working the door. She was looking at the television and did not stop him or ask to see his identification at that point. Minor Barros took a seat at the bar. Ms. Raymond then approached him and asked to see his identification. Minor Barros handed her his Oregon driver license, which showed his birth date (05-01-1992) and a red border around his photograph with the words "Under 21 Until 05-01-2013." Ms. Raymond looked at minor Barros' driver license and said it was "okay." (Test. of Barros; Ex. A25; Ex. A26.)

[7] Minor decoy Barros was born May 1, 1992. (Ex. A26; test. of Barros.)

20. After Ms. Raymond looked at minor Barros' identification, Minor Barros ordered a Bud Light from the on duty bartender, Cindy Wheeler. Ms. Wheeler sold and served a beer to minor Barros. (Test. of Barros; Ex. A28.)

21. Following the sale, Barros contacted Prineville Police Officer Zamora to report that he had been served an alcoholic beverage at the licensed premises. Officer Zamora, Officer Gray and Inspector Brown then entered the premises. Officer Zamora interviewed Ms. Wheeler about the sale to minor Barros while Officer Gray and Inspector Brown interviewed Ms. Raymond. (Test. of Zamora; test. of Gray; test. of Brown; Exs. A24 and A29.)

22. Bartender Wheeler admitted that she served an alcoholic beverage to minor Barros without checking his identification. She admitted that minor Barros "looked young," but she relied on the fact that Ms. Raymond had checked his identification. Ms. Wheeler told Officer Zamora that before serving minor Barros, she asked Ms. Raymond if Ms. Raymond had checked his age. Officer Zamora cited Ms. Wheeler for Furnishing Alcohol to a Minor. (Test. of Zamora; Ex. A23 at 3.)

23. Employee Raymond told Officer Gray and Inspector Brown that her job was to check identification at the door. She asserted that she checked minor Barros's identification, and she read his birth year as 1982. Inspector Brown explained that minor Barros was born in 1992, and not 1982. Officer Gray then asked if she had noticed the red border around minor Barros's picture on the driver license. Ms. Raymond advised that she did not see it. Ms. Raymond was hesitant to provide additional information, and maintained that she had done nothing wrong. When the inspector asked to see Ms. Raymond's service permit or DPSST (Department of Public Safety Standards and Training) security card, she responded that she did not know what those were and did not have either one. (Test. of Gray; test. of Brown; Ex. A24; Ex. A29 at 4.)

CONCLUSIONS

1. On March 31, 2011, corporate principal Michael Stafford did not deny Officer Peterson entrance to the licensed premises during regular business hours in violation of OAR 845-006-0345(4)(a).

2. On March 31, 2011, corporate principal Michael Stafford violated OAR 845-006-0345(1) by placing himself on duty when he was under the influence of intoxicants.

3. On the night of February 19, 2011 and the early morning hours of February 20, 2011, Licensee's employee violated OAR 845-006-0335(3)(a) by permitting a minor to drink alcoholic beverages on the licensed premises. The alternative allegation under OAR 845-006-0335(3)(b) should be dismissed.

4. On December 9, 2011, one or more of Licensee's employees violated OAR 845-006-0335(1) by failing to verify the age of a minor before allowing the minor to buy or be served an alcoholic beverage when the minor reasonably appeared to be under the age of 26.

5. The appropriate sanction is a 76 day license suspension *or* a 32 day suspension and a penalty of $7,260 in lieu of 34 days suspension.

6. Licensees shall be removed from the Responsible Vendor Program. OAR 845-009-0135(7)(b) and (d).

OPINION

As set out above, the Commission alleges four violations: (1) that corporate principal Michael Stafford violated OAR 845-006-0345(4)(a) by denying a police officer entrance to the licensed premises during regular business hours; (2) that corporate principal Michael Stafford violated OAR 845-006-0345(1) by placing himself on duty when he was under the influence of intoxicants; (3) that Licensees violated OAR 845-006-0335(3)(a) by permitting a minor to drink on the licensed premises or, alternatively violated OAR 845-006-0335(3)(b) by allowing a minor on the premises; and (4) that Licensee's employees violated OAR 845-006-0335(1) by failing to verify the age of a minor before allowing the minor to buy or be served an alcoholic beverage. As the proponent of these contentions, the Commission bears the burden of proof. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position).

1. Denying Entry to the Licensed Premises (Violation One).

The Commission alleges Stafford "denied entrance to the licensed premises during regular business hours to a Prineville Police Department officer who wanted to enter to conduct a reasonable search to ensure compliance with the liquor laws" in violation of OAR 845-006-0345(4)(*a*).[8] Specifically, Commission Staff alleges that Stafford met Officer Peterson at the inside doorway and attempted to block the officer's entry into the premises. Staff contends that the circumstances in this case are similar to those in *Lucky Jade Chinese Restaurant* (OLCC Final Order, 09-V-055, February 2010), where the Commission found a violation of OAR 845-006-0345(4)(*b*)..

OAR 845-006-0345(4) provides as follows:

(4) Access to Premises:

(a) No licensee or permittee *will deny entrance* to the licensed premises *during regular business hours* to a Commission regulatory employee or police officer who enters or wants to enter to conduct reasonable search to ensure compliance with alcoholic beverage law. Once the regulatory employee or police officer is on the licensed premises, no licensee or permittee will ask the regulatory employee or officer to leave until the regulatory employee or officer has had an opportunity to conduct a reasonable search to ensure compliance with the alcoholic beverage laws;

(b) Examination of premises *that are or appear closed* occurs only when there is reason to believe an alcoholic beverage law violation is occurring. No licensee or permittee *will refuse or fail to promptly* admit a Commission regulatory employee or police officer to the licensed premises when the regulatory employee or officer

[8] The Commission did not charge Stafford with a violation of ORS 471.675 (resisting arrest or interfering with enforcement).

identifies him/herself and asks to enter to conduct a reasonable search to ensure compliance with the alcoholic beverage laws.

(Emphasis added.)

In *Lucky Jade Chinese Restaurant* (OLCC Final Order, 09-V-055, February 2010), a police officer arrived at the licensed premises at around 5:00 a.m. on a welfare check. He could see people drinking inside through a crack in the window covering. Some of the people inside appeared under the age of 21. The officer banged on the door for about three minutes before an employee came to the door and opened it. The employee, a permittee, represented that he was in charge of the premises. The employee advised the officer that the business was closed and the persons inside were his friends. The officer sought to enter the premises to investigate possible alcohol violations. The employee blocked the doorway and told the officer that the police could not enter without a warrant. The officer had to physically move the employee out of the way before he could enter the premises. The Commission concluded that the employee had "refused, or failed to promptly admit" the officer into the premises in violation of OAR 845-006-0345(4)(b). Final Order at 6.

In this case, unlike *Lucky Jade*, the police officer sought to enter the premises to conduct a reasonable search to ensure compliance with alcoholic beverage law during *regular business hours*. Thus, the question is not whether Stafford "refused or failed to promptly admit" the officer under OAR 845-006-0345(4)(b), but rather whether Stafford "denied" Officer Peterson entrance to the licensed premises under the provisions of OAR 845-006-0345(4)(a). Because of the difference in wording between subsections (4)(a) and (4)(b), Staff's reliance on the Commission's determination in *Lucky Jade* is somewhat misplaced.

Here, as found above, as Officer Peterson approached the inside entry door, Stafford met him at the doorway and slurred "Everything's fine." Officer Peterson told Stafford to move, but Stafford remained in the doorway. Stafford then placed his hands on the officer's chest and repeated "Everything's fine." Officer Peterson had to move Stafford out of the way to enter the premises. Although Stafford placed his hands on Officer Peterson's chest as if to stop or slow the officer's entry, the evidence fails to establish that Stafford "denied" Officer Peterson entry into the premises. Indeed, Stafford did not tell the officer he could not enter, nor did Stafford actually prevent the officer's entry. He also did not assert that the officer could not enter without a warrant. At best, Stafford's conduct (physically blocking the doorway) delayed the officer's entry by several seconds. While Stafford's actions may constitute interfering with an investigation or failing to promptly admit a police officer into the premises, that is not the applicable standard under OAR 845-006-0345(4)(a). Briefly delaying the officer's entry is not the same as denying entrance.[9] Consequently, insofar as the evidence fails to show that Stafford denied entrance to the police officer wanting to enter the premises during regular business hours, the alleged violation of OAR 845-006-0345(4)(a) has not been proven.

---

[9] Based on the language of OAR 845-006-0345(4)(a) ("No licensee or permittee will deny entrance to the licensed premises during regular business hours * * *"), it appears that a violation occurs only when licensee or permittee actually denies entry to a police officer or Commission regulatory employee. The rule, as written, does not contemplate a licensee's or permittee's *attempt* to deny entrance to a police officer or Commission employee, nor does this subsection address conduct that momentarily slows or delays law enforcement's entry into the premises.

2. Under the Influence of Intoxicants While on Duty (Violation Two).

The Commission also alleges that on March 31, 2011, Corporate Principal Stafford was under the influence of intoxicants while on duty at Cinnabar. Specifically, Staff alleges that while under the influence of intoxicants that night, Stafford placed himself on duty by attempting to control conduct on the premises.

OAR 845-005-0345(1) provides as follows:

> Drinking on Duty: No licensee, permittee, employee or agent will drink or be under the influence of intoxicants while on duty. "On duty" means from the beginning of a work shift that involves *the sale or service of alcoholic beverages, checking identification or controlling conduct on the premises*, to the end of the shift including coffee and meal breaks. "A work shift that involves the sale and service of alcoholic beverages" includes supervising those who sell or serve, check identification or control the premises.
> (Emphasis added.)

The Commission has held that a person is "under the influence of intoxicating liquor" when that person:

> displays not only all well-known and easily-recognized conditions and degrees of intoxication, but any abnormal mental or physical condition which is the result of indulging in any degree in intoxicating liquors, which tends to deprive one of that clearness of intellect and control of himself which he would otherwise possess.

Bill's Place (OLCC Final Order, 88-V-001, July 1988); *Voodoo Lounge Bar & Grill* (OLCC Final Order, 06-V-041, February 2007).

The Commission has also held that a person is "on duty," when the person has the authority to put him or herself on duty and does so by performing acts on behalf of the licensee. *See Cactus Bar & Grill* (OLCC Final Order, 03-V-014, June 2004); *The Sportsman Club* (OLCC Final Order, 87-V-002, June 1987).

In this case, the evidence demonstrates that Stafford was under the influence of intoxicating liquor when Officer Peterson, Sgt. Cuellar and other law enforcement officers responded to the licensed premises on the night of March 31, 2011. Officer Peterson noted well-known signs of intoxication on Stafford, including slurred speech, red, glassy and droopy eyes, and the strong odor of alcoholic beverages on Stafford's breath. Sgt. Cuellar also smelled the odor of alcoholic beverages on Stafford's breath and noted that Stafford kept repeating himself. At hearing, Stafford admitted that he had consumed alcoholic beverages earlier in the night, prior to his arrival at Cinnabar. Also, Stafford's conduct with the officers that night (including standing in the entry door, repeatedly assuring the officers that everything was fine when a patron was injured inside, not explaining to the officers what had transpired in the disturbance and who all was involved) demonstrates a lack of clear intellect and a lack of self control, which is likely attributable to his consumption of intoxicating liquor that night.

Having found, more likely than not, that Stafford was under the influence of intoxicants at the licensed premises that night, the next inquiry is whether he placed himself on duty by attempting to control conduct on the premises. As a corporate principal, Stafford has the inherent authority to place himself on duty. *See, e.g., Spot 79* (OLCC Final Order, 08-V-045, January 2010).

In *Cascade West Grub & Ale House* (OLCC Final Order, 01-V-71, 2002), the Commission found a corporate principal was intoxicated when he physically prevented an underage person from entering the premises. The corporate principal was at the premises drinking and socializing. When a minor, who had been turned away at the door previously, attempted to enter the premises, the corporate principal stepped between the minor and the door and told the minor to leave. The minor pushed against the corporate principal in an attempt to get past him, prompting the corporate principal to swing his elbow and hit the minor in the mouth. Noting that the definition of "on duty" specifically includes attempts to control conduct at the premises, the Commission held that the corporate principal put himself on duty when he physically prevented the minor from entering the premises. Final Order at 13.

In *Cactus Bar & Grill*, the licensee remained at the premises after his shift and consumed several alcoholic beverages. He drank at the bar so that he would be available to the bartender, who was a trainee. When a fight broke out inside the premises, the licensee assisted the bartender and other employees in ejecting patrons from the premises. The licensee represented himself as the owner to patrons and got into a scuffle with a patron while escorting him from the premises. The Commission held that the licensee placed himself on duty by monitoring the bartender, helping the bartender break up the fight and escort a patron out and ejecting other unruly patrons.

Similarly, in *Mac Club* (OLCC Final Order, 99-V-110, December 2000), the Commission found that the licensee placed himself on duty after drinking alcoholic beverages at the licensed premises by deciding the cost of a drink and overruling the bartender's decision not to serve a patron a double serving of wine in a beer glass. The Commission noted, however, that the act of signaling to the bartender that a customer wanted a drink was consistent with something any customer might do and did not amount to controlling conduct on the premises. Final Order at 7.

In *Spot 79* (OLCC Final Order, 08-V-045, January 2010), the Commission confirmed that actions taken by a corporate principal, even those not directly tied to mixing, sale or service of alcoholic beverages, can amount to controlling conduct on the premises. There, after finishing his shift, the corporate principal remained at the premises drinking and socializing with others. At some point, he noticed that an ATM machine on the premises was out of cash. He undertook to refill it with cash from the business office. At another point, a visibly intoxicated and unruly patron approached the corporate principal and complained that his friend Cindy, who had tended bar at the premises a few days earlier, had not been paid for her shift. The unruly patron ignored requests from Cindy and others to stop. To resolve the issue, the corporate principal directed the on-duty bartender to pay Cindy for her shift. The Commission found the corporate principal violated OAR 845-006-0345(1) by interacting directly with the intoxicated patron and resolving the dispute by directing an employee to pay Cindy for her shift. Final Order at 6.

Here, as discussed above, when Officer Peterson approached the inside entry door intending to follow Deputy Madden into the premises, Stafford met Officer Peterson at the doorway and slurred "Everything's fine." Stafford remained in the doorway despite Officer Peterson telling him to move. Stafford also placed his hands on the officer's chest, and again asserted that "Everything's fine." Officer Peterson had to move Stafford out of the way to enter the premises. Although Stafford did not physically prevent Officer Peterson from entering the premises and only delayed the officer's entry by several seconds, Stafford's conduct constitutes attempting to control conduct on the premises. Officer Peterson knew that Stafford was an owner of the premises and he reasonably interpreted Stafford's actions during this brief exchange in the entryway as Stafford acting in his capacity of authority over the premises.

Consequently, the evidence persuasively demonstrates that, on the night of March 31, 2011, while under the influence of intoxicants, Stafford placed himself on duty by attempting to control conduct on the premises and delay Officer Peterson's entry inside the premises. The violation of OAR 845-005-0345(1) has been proven.

3. Permitting a Minor to Consume Alcoholic Beverages on the Licensed Premises (Violation Three).

The Commission next alleges that on February 19 and 20, 2011, Licensee's employee Kristina Martin permitted a minor, Jose Nunez, to drink on the licensed premises in violation of OAR 845-006-0335(3)(a) or, alternatively that the employee permitted the minor to be on the licensed premises or in an area of the premises prohibited to minors in violation of OAR 845-006-0335(3)(b).

OAR 845-006-0335(3)(a) provides: "No licensee, permittee, or licensee's employee will permit a minor: (a) To buy, be served or drink any alcoholic beverage on licensed premises." The evidence persuasively establishes that on the night of February 19, 2011 and into the early morning of February 20, 2011, Jose Nunez, who was at the time 18 years of age, was at the licensed premises where he consumed several alcoholic beverages. The evidence further establishes that no employee asked minor Nunez for his identification when he entered the premises or when he ordered, paid for and consumed alcoholic beverages at the premises. Bartender Martin admitted to Inspector Brown that she sold and served alcoholic beverages to Nunez without checking his identification, as she believed that the door staff would not allow anyone under the age of 21 into the premises. Thus, this violation of OAR 845-006-0335(3)(a) has been proven.

Because the violation of OAR 845-006-0335(3)(a) has been proven, the alternative violation alleged under OAR 845-006-0335(3)(b) is dismissed.

4. Failing to Verify the Age of a Minor (Violation Four).

The Commission alleges that on December 9, 2011, two of Licensee's employees, Shelley Raymond and Cindy Wheeler, failed to verify the age of minor Anthony Barros before allowing him to buy or be served an alcoholic beverage when he reasonably appeared to be under 26 years of age in violation of OAR 845-006-0335(1)(a)(b)(c).[10]

[10] OAR 835-006-0335(1) provides:

Pursuant to ORS 471.130 a licensee or permittee must verify the age of a person who wants to buy or be served alcoholic beverages when there is "any reasonable doubt" that the person is at least 21 years old. OAR 845-006-0335(1)(a). By rule, "reasonable doubt" exists if the person appears to be under the age of 26. *Id.*

In this case, the record establishes that on the date in question, minor Barros appeared less than 26 years of age and therefore reasonable doubt existed as to whether he was at least 21 years old. Indeed, after the sale, employee Wheeler admitted to Officer Zamora that minor Barros "looked young." The evidence further establishes that before employee Wheeler sold the beer to minor Barros, employee Raymond asked to see minor Barros's identification. Ms. Raymond checked minor Barros's date of birth, but did not register or recognize that he was less than 21 years of age. She did not notice the red border around his photo stating that he was a minor until 05-01-2013. Despite recognizing that minor Barros looked young, Ms. Wheeler sold an alcoholic beverage to him believing that Ms. Raymond had checked his age and verified that he was at least 21 years old.

The fact that Ms. Raymond checked the minor's identification is no defense to the violation. In *Texaco Star Mart* (OLCC Final Order, 97-V-051, April 1998), the Commission interpreted the language "verify the age of the person" to require that the seller verify that the person is at least 21 years of age. Thus, the Commission will find a violation "even if the seller requested identification before the sale, where the minor produced his valid identification showing that he is a minor." Final Order at 7. In other words, an employee's mistake in reading an identification card or in calculating a person's age does not excuse the violation where the person presents valid identification showing that he or she is not yet 21 years of age.

Additionally, the Commission has held that those who serve alcoholic beverages will generally be held responsible for independently verifying the age of a patron of questionable age regardless of whether a co-worker should have already verified the patron's age. *Benjamin Soto Lopez* (OLCC Final Order, 01-V-008, August 2001). Here, considering that the server (Ms. Wheeler) recognized that minor Barros "looked young," she should have independently verified his age before selling and serving him an alcoholic beverage.

---

(1) Age Verification:

(a) ORS 471.130 requires a licensee or permittee to verify the age of a person who wants to buy or be served alcoholic beverages when there is "any reasonable doubt" that the person is at least 21 years old. The Commission requires a licensee or permittee to verify the age of anyone who wants to drink alcoholic beverages, or is in an area prohibited to minors, if there is reasonable doubt that the person is at least 21 years old. "Reasonable doubt" exists if the person appears to be under the age of 26;

(b) Whenever a licensee or permittee verifies age, he/she must verify it as ORS 471.130 requires (statement of age card or the specified items of identification) and must reject any obviously altered document or one which obviously does not identify the person offering it;

(c) Licensees must require all their employees who sell, serve, oversee or control the sale or service of alcoholic beverages to verify age as subsection (a) of this section requires.

Based on the Commission's interpretation of OAR 845-006-0335(1)(a)(b)(c), Licensee's employees violated the rule by selling alcoholic liquor to minor Barros without verifying that he was at least 21 years of age. Based on OAR 845-006-0362, Licensee is responsible for the employees' violation.

5. Sanction.

Three of the four violations alleged in the Amended Notice have been proven. The record establishes that on March 31, 2011, Corporate Principal Stafford was under the influence of intoxicants while on duty in violation of OAR 845-006-0345(1); that on February 19-20, 2011, Licensee's employee permitted a minor to drink alcoholic beverages on the licensed premises in violation of OAR 845-006-0335(3)(a); and that on December 9, 2011, Licensee's employees failed to verify the age of a minor in violation of OAR 845-006-0335(1)(a)(b)(c).

A violation of OAR 845-006-0345(1) (under the influence on duty) is a Category II violation. The standard penalty for a Category II violation is a 30 day suspension. OAR 845-006-0500(7). A violation of OAR 845-006-0335(3)(a) is a Category III violation, as is a violation of 845-006-0335(1). The standard penalty for a first Category III violation is a 10 day suspension or a $1,650 civil penalty. The standard penalty for a second Category III violation within two years is a 30 day suspension or a $4,950 civil penalty. OAR 845-006-0500(7)(a)(D) and 7(b) and Exhibit 1 to OAR 845-006-0500(7).

Pursuant to OAR 845-006-0500(7)(c), the Commission also has the discretion to take into account the particular circumstances of each case, and increase or decrease the sanction where there are aggravating or mitigating circumstances. Grounds for mitigation include good faith efforts to prevent a violation and extraordinary cooperation in the Commission's violation investigation. Grounds for aggravation include, but are not limited to, prior warnings about compliance problems, repeated failure to comply with laws, and efforts to conceal the violation. *Id.*

Here, the Commission seeks to aggravate the sanction for Violation Two (under the influence on duty) for an additional two days because Corporate Principal Stafford was personally involved in the violation. *See, e.g., P-Mart* (OLCC, Final Order, OLCC-92-V-098, April 1993) (holding there is a basis for aggravation where the licensee personally committed the violation). The Commission also seeks to aggravate the sanction for Violation Three (permitting a minor to drink alcoholic beverages) for an additional two days because minor Nunez drank multiple alcoholic beverages at the premises that night. As to Violation Four (failing to verify age), the Commission proposes to aggravate the standard sanction for an additional two days because there were two employees involved in the violation. OAR 845-006-0500(7)(c).

Licensee argues that the proposed sanction is harsh, but has not established grounds for mitigation. And, even though the civil penalty and license suspension may cause Licensee significant financial loss, there is nothing unconstitutional about the sanction. *See OLCC Agency 183* (OLCC Final Order, 03-R0-002, 2003) (noting that constitutional prohibitions against "excessive punishment" apply only in the criminal context and not civil administrative actions.)

In short, the Commission has proven three violations (one Category II and two Category IIIs) and has established grounds to aggravate the sanction on each. Accordingly, for Violation Two (under the influence on duty), Licensee is subject to a 32 day license suspension. For Violation Three (permitting a minor to drink alcoholic beverages), Licensee is subject to a 12 day license suspension or a civil penalty of $1,980. For Violation Four (failing to verify age), Licensee is subject to a 32 day suspension or a civil penalty of $4, 950 plus a two day license suspension. All totaled, Licensee is subject to a 76 day suspension *or* a 34 day suspension plus a penalty of $6,930.[11]

6. Removal from Responsible Vendor Program.

Finally, the Commission seeks to remove Licensee from the Responsible Vendor Program pursuant to *former* OAR 845-009-0135(8)(d) and (e), the rule in effect at the time of the violations at issue.[12] Under *former* OAR 845-009-0135(8)(d), a licensee must be removed from the program for a Category II violation committed by the licensee personally. Because Stafford was personally involved in a Category II violation (under the influence on duty), removal from the program is warranted under this section. Furthermore, under *former* OAR 845-009-0135(8)(e), a licensee must be removed from the program if aggravating circumstances are involved in a sale to a minor or failure to properly verify identification. Here, because two employees were involved in the failure to verify minor Barros's age on December 9, 2011, removal from the program is also warranted under this latter section.

/ / / /

/ / / /

/ / / /

---

[11] In Staff's Comments on the Proposed Order, staff requested correction of the penalty for Violation Four to 32 days suspension or a civil penalty of $4,950 plus 2 days license suspension. This correction is based on the limitation of ORS 471.322 and case law interpreting application of that statute. In her Response to Comments and Exceptions to the Proposed Order, ALJ Greene Webster agreed to this change.

[12] *Former* OAR 845-009-0135(8)(d) and (e) provided as follows:

> (8) Removal from Program and Reinstatement:
>
> * * * * *
>
> (d) For a Category I or II violation by the licensee personally, the licensee is removed from the program. The licensee may not reapply for the program. For a Category I or II violation by an employee, the licensee is removed from the program, but may reapply for the program in one year.
>
> (e) If aggravating circumstances are involved in a sale to a minor or failure to properly verify identification by the licensee personally or by an employee, the licensee is removed from the program. The licensee may reapply for the program in one year.

FINAL ORDER

The Commission orders that the charge that Corporate Principal Michael Stafford denied entrance to a police officer on March 31, 2011 in violation OAR 845-006-0345(4)(a) be DISMISSED.

It is ordered that for Corporate Principal Michael Stafford's violation of OAR 845-006-0345(1), the Full On-Premises Sales License held by MS Bar, Inc., and Principals Michael Stafford and Samuel Stafford, doing business as Cinnabar, located at 121 NE 3rd Street, Prineville, Oregon, be SUSPENDED for 32 days.

It is further ordered that for the violation of OAR 845-006-0335(3)(a), the Full On-Premises Sales License held by MS Bar, Inc., and principals Michael Stafford and Samuel Stafford, doing business as Cinnabar, located at 121 NE 3rd Street, Prineville, Oregon, be SUSPENDED for 12 days or that Licensee be FINED $1,980 in lieu of suspension.

It is further ordered that for the violation of OAR 845-006-0335(1)(a)(b)(c), the Full On-Premises Sales License held by MS Bar, Inc., and principals Michael Stafford and Samuel Stafford, doing business as Cinnabar, located at 121 NE 3rd Street, Prineville, Oregon, be SUSPENDED for 32 days or that Licensee be FINED $4,950 plus a two day license suspension.

It is also ordered that Licensee be removed from the Responsible Vendor Program for the Category II violation by Corporate Principal Stafford personally, and the sale to a minor violation with aggravating circumstances.

If you choose to pay the fine, it must be paid within ten (10) days of the date of this Order; otherwise, the suspension must be served.

It is further ordered that notice of this action, including the reasons for it, be given.

Dated this 15th day of August, 2012

/s/ Stephen A Pharo
Stephen A. Pharo
Executive Director
OREGON LIQUOR CONTROL COMMISSION

Mailed this 15th day of August 2012

THIS ORDER IS EFFECTIVE ON THE DATE MAILED. Any monetary fine or civil penalty set out in the order shall be due and payable 10 days after the date of mailing.

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for judicial review within 60 days from the service of this Order. Judicial review is pursuant to the provisions of ORS Chapter 183.