

**BEFORE THE OREGON LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON**

In the Matter of the Full)	FINAL FINDINGS OF FACT
On-Premises Sales License Held By:)	CONCLUSIONS OF LAW
)	AND ORDER
)	
Robert Brown)	OLCC-11-V-065
dba SHENANIGAN’S IRISH PUB/)	
SHENANIGAN’S BAR & GRILL)	
17 S. Riverside)	
Medford, OR 97501)	

HISTORY OF THE CASE

On September 23, 2011, the Oregon Liquor Control Commission (OLCC or Commission) issued a Notice of Proposed License Cancellation to Robert Brown (Licensee), dba Shenanigan’s Irish Pub/Shenanigan’s Bar & Grill, located at 17 S. Riverside, Medford, Oregon. The Notice alleged a history of serious and persistent problems at the licensed premises under ORS 471.315(1)(c). Licensee timely requested a hearing. The Commission referred the hearing request to the Office of Administrative Hearings on October 7, 2011. The Office of Administrative Hearings assigned the matter to Senior Administrative Law Judge (ALJ) Alison Greene Webster.

On January 27, 2012, the Commission issued Licensee an Amended Notice of Proposed Cancellation, alleging additional serious incidents at the licensed premises. In February 2012, on Licensee’s request, ALJ Webster postponed the scheduled hearing until June 2012.

On April 20, 2012, the Commission issued Licensee a Second Amended Notice of Proposed Cancellation, alleging three additional violations, two violations of OAR 845-005-0355(5) (failing to comply with a license restriction) and a violation of OAR 845-006-0345(1) (employee drinking on duty).

On the Commission’s request, ALJ Webster postponed the hearing scheduled for June 12 through 15, 2012, and subsequently rescheduled the hearing for October 15 through 18, 2012.

ALJ Webster presided over the hearing held in Medford, Oregon October 15 through 18, 2012. Case Presenter Kelly Routt represented the OLCC. Licensee appeared without counsel.

The OLCC called the following witnesses: Medford Police Officer Daniel Ashworth; Medford Police Officer Logan Boyd; Medford Police Officer Patrick Dennis; Medford Police Officer Jeremiah Erskine; Medford Police Officer Levi Friend; Medford Police Corporal Stephen Furst; Medford Police Chief Tim George; Medford Police Sergeant Darrell Graham; Medford Police Sergeant Tom Ianieri; Medford Police Officer Randy Jewell; Medford Police Officer Robert Johnson; Medford Police Sergeant Don Lane; Medford Police Officer Kenneth Lehman; Medford Police Officer Jennifer Newell; Medford Police Officer Ashley Rydell; Medford Police Corporal Joshua Schilder; Medford Police Officer Arturo Vega; Medford Police Officer Tom

Venables; Medford Police Officer Rebecca Venables; OLCC Regional Manager Jeff Jett; OLCC Inspector Matt Roberts; OLCC Inspector Chad Gray; and OLCC Inspector Kent Oldham.

The following witnesses testified on Licensees' behalf: Manager Lorraine Petersen, Licensee Robert Brown; patron Will Macleoud; and employees Kimberly Wolfe and Edgar Mesta.

The record closed on October 18, 2012 following closing arguments.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed November 9, 2012.

No Exceptions to the Proposed Order were filed within the 15-day period specified in OAR 845-003-0590.

The Commission adopts the Proposed Order of the Administrative Law Judge as the Final Order of the Commission and enters the following based on the preponderance of the evidence:

EVIDENTIARY RULINGS

OLCC Exhibits A1 through A94 and Licensee's Exhibits B2 through B6 were admitted. Licensee did not offer Exhibit B1.

ISSUES

1. Whether there is a history of serious and persistent problems at Licensee's premises, based upon incidents occurring October 23, 2010 through December 31, 2011. ORS 471.315(1)(c).

2. Whether on the night of January 27, 2012, Licensee's employees allowed patrons to possess more than one container of alcohol at a time, in violation of a restriction on the license. OAR 835-005-0355(5).

3. Whether on the night of January 27, 2012, Licensee's employee served Long Island Iced Teas containing more than two ounces of distilled spirits in violation of a restriction on the license limiting the amount of alcohol served per container to 22 ounces of malt beverage, six ounces of wine or two ounces of distilled spirits. OAR 835-005-0355(5).

4. Whether on the night of January 27, 2012, Licensee's employee Christian Warren consumed an alcoholic beverage while on duty in violation of OAR 835-006-0345(1).

5. If any of the above violations are proven, what is the proper sanction?

FINDINGS OF FACT

1. Licensee Robert "Bruce" Brown, doing business as Shenanigan's Irish Pub/Shenanigan's Bar & Grill, was granted a Full On-Premises Sales license in October 2007.

(Ex. A1.) On October 27, 2007, Licensee opened Shenanigan's Irish Pub, located at 17 S. Riverside in Medford, Oregon. The pub had a capacity for 124 persons. In April 2008, Licensee opened a second licensed area around the corner at 404 W. Main Street. This premises had two stories, a sports bar on the street level and a second bar, referred to as the "Bomb Shelter" in the basement. The premises at 404 W. Main Street had the capacity for approximately 120 persons. It was connected to the Irish Pub through a common back patio area with additional seating for patrons. Ten months later, in January 2009, Licensee opened a third area, a martini bar, located at 410 Main Street. The martini bar had a capacity for about 98 persons. (Test. of Brown; Ex. A1.)

2. In March 2009, Licensee leased from the building's owner the remainder of a large back patio area connecting all three licensed locations. On March 17, 2009, Licensee opened up the patio area, with a capacity for approximately 600 persons, for a large St. Patrick's Day celebration. The St. Patrick's Day party was a huge success for Licensee, and he kept the patio open for business. He also leased a portion of the building immediately to the south of the Irish Pub on S. Riverside for additional patron restrooms. (Test. of Brown.)

3. Licensee eventually leased the entire building immediately to the south of the Irish Pub. After extensive remodeling, in October 2010, Licensee opened that premises as a dance club. The dance club had the capacity for an additional 600 persons, bringing the total capacity for all of Licensee's connected licensed areas (including the large back patio) to approximately 1600 persons. On holidays, such as Halloween 2010 and New Years Eve 2010, and for special events, such as the "Last Band Standing," a battle of the bands on the large patio area, Licensee had near capacity crowds at the licensed premises. (Test. of Brown.)

4. On October 23, 2010 at about 12:22 a.m., Medford police officers responded to the licensed premises to investigate a reported fight between patrons. Officers determined that one patron punched another in the face in one of the bar areas, and that one of Licensee's employee's was injured by an elbow to her eye in the scuffle. Officers arrested the aggressor, patron Matthew Stine, for assault. (Ex. A8; test. of Jewell.)

5. On November 13, 2010 at about 1:29 a.m., Medford police officers responded to the licensed premises regarding a reported fight. The patrons involved in the fight declined to press charges, but officers determined that one of the patrons involved, Casey Stadler, was still very agitated and intoxicated. Officers took Stadler into protective custody due to his intoxication level and disorderly conduct. At the detox center, Stadler submitted to a breath test, which disclosed a blood alcohol content of .192 percent. (Ex. A9.)

6. That same date, at about 2:25 a.m., a patron of the licensed premises contacted the police to report that her purse and jacket were stolen from the night club at some point that night. The patron reported that she left her purse under her jacket on a chair near the dance floor. She added that she took her eyes off the items for three to five minutes and when she looked back, they were gone. (Ex. A10; test. of Rydell.) Several hours later, at about 10:20 a.m., the patron's jacket, driver license and credit cards were found in the Evergreen parking structure located at 102 West 6th Street. An officer later returned these recovered items to the patron. (Ex. A10 at 5.)

7. On November 19, 2010 at about 11:30 p.m., Medford police officers responded to the licensed premises to investigate a report of a fight between two patrons. Officers determined that two female patrons, who knew each other and who were both involved with the same man at different times, got into a physical altercation at the premises. The physical fight involved punching, hair pulling and biting. Both women wanted to press charges against the other. An officer cited both women for assault under the Medford Municipal Code. (Ex. A11; test. of Jewell.)

8. On November 20, 2010 at about 11:20 p.m., Medford police officers responded to the licensed premises regarding a reported assault in the patio area. Officers determined that a female patron hit a male patron in the face because she did not like him. The male patron experienced pain in the area of his right ear. An officer cited the female patron for assault. (Ex. A12.)

9. On November 22, 2010 at about 11:20 a.m., a woman reported having items stolen from her purse the previous night while at the licensed premises. The patron stated that she had been to Shenanigan's from about 10:00 p.m. to 1:30 a.m., and sometime during her stay someone took her wallet and iPhone from her purse. (Ex. A13.)

10. On November 28, 2010 at about 2:25 a.m., a Medford police officer responded to a reported fight in the parking lot across the street from the licensed premises. The officer made contact with one of the persons involved in the fight, Jeffrey Lucas. Lucas had just left the licensed premises and was visibly intoxicated. The officer transported Lucas to detox, where he submitted to a breath test that showed a blood alcohol content of .117 percent. (Ex. A14; test. of Rydell.)

11. On December 2, 2010 at about 12:32 a.m., a Medford police officer responded to the licensed premises regarding a report of an intoxicated female staggering around on the sidewalk. The officer contacted the female, who was visibly intoxicated. The officer transported her to detox, where she submitted to a breath test that showed a blood alcohol content of .158 percent. (Ex. A15.)

12. On December 11, 2010 at about 1:47 a.m., Medford police officers were dispatched to the licensed premises to investigate a report of two disorderly males threatening staff. A bartender reported that the two patrons had repeatedly tried to go behind the bar, and that they became increasingly angry, belligerent and threatening when he refused them further service. Officers contacted the two patrons, Jeremy Smith and Thomas Wall, who were visibly intoxicated and belligerent. An officer arrested both patrons for disorderly conduct and trespass, and transported them to the Jackson County Jail. (Ex. A16.)

13. On December 18, 2010 at about 1:08 a.m., Medford police officers were dispatched to the licensed premises to investigate a reported assault. Officers determined that a female patron, Kimberly Gershman, intentionally dumped a drink over the back of another patron's head. An officer cited Gershman for harassment under the Medford Municipal Code. (Ex. A17.)

14. On December 30, 2010 at about 2:03 a.m., a Medford police officer driving through the city parking lot across the street from the licensed premises heard someone yell an expletive at him. He stopped and contacted a group of about five persons loitering in the parking lot to determine who had yelled at him. One of the men, Travis Brummett, admitted yelling at the officer and apologized for doing so. Brummett was visibly intoxicated. He admitted patronizing both Shenanigan's and The Office, a nearby strip club, that night. Brummett submitted to a breath test on a hand-held breath tester, which disclosed a blood alcohol content of .21 percent. The officer transported Brummett to detox. (Ex. A18; test. of Furst.)

15. On December 31, 2010 at about 11:20 p.m., a member of Licensee's security staff flagged down a Medford police officer to report a disorderly patron who had refused to leave the bar, and then struck a security employee in the face as he was being escorted from the premises. Officers contacted the patron, Danny Goff, outside the premises. Goff was combative and verbally abusive to the officers. Officers arrested him for disorderly conduct, harassment, resisting arrest and interfering with a police officer. Goff remained violent and threatening throughout the arrest and intake process, and had to be physically restrained at the jail. He submitted to a breath test at the jail, which disclosed a blood alcohol content of .20 percent. (Ex. A19.)

16. On January 1, 2011 at about 1:29 a.m., a Medford police officer contacted a visibly intoxicated person on the sidewalk in front of the S. Riverside entrance to the licensed premises. The officer transported the person to detox, where he submitted to a breath test that disclosed a blood alcohol content of .19 percent. (Ex. A20; test. of Jewell.)

17. That same date, at about 2:19 a.m., another Medford police officer witnessed a disturbance at the dance club exit of the licensed premises. The officer saw a patron yelling and pushing other patrons. The officer learned that this patron, Oscar Baptist Francis Freedle, Jr., tried to punch a bartender after the bartender refused to serve him due to his intoxication level. Freedle resisted as the officer took him into custody. The officer transported Freedle to the Jackson County Jail, where he was lodged on counts of disorderly conduct and resisting arrest. At the jail, Freedle submitted to a breath test that disclosed a blood alcohol content of .11 percent. (Ex. A21.)

18. On January 8, 2011 at about 11:37 p.m., Medford police officers responded to the licensed premises regarding a report of a disorderly patron arguing with security staff. Officers determined that the patron, Kevin Goering, got angry when staff asked him to stop smoking his vapor cigarette. He refused to stop and was asked to leave. Goering was visibly intoxicated and agitated. Officers transported Goering to detox, where he provided a breath sample that disclosed a blood alcohol content of .126 percent. (Ex. A22; test. of Dennis.)

19. That same date, about 18 minutes later at 11:55 p.m., a member of Licensee's security staff flagged down a Medford police officer to report an assault inside the premises in the dance club area. Security directed the officer to the possible assailant, Rory Dodge, as he exited the premises. Officers investigated and determined that Dodge, who was visibly intoxicated, had punched another patron in the mouth, causing a large cut on the patron's lip. An officer cited Dodge for assault under the Medford Municipal Code, and then transported him to

detox. At detox, Dodge provided a breath sample which disclosed a blood alcohol content of .16 percent. (Ex. A23.)

20. On January 21, 2011 at about 2:16 a.m., a Medford police officer was dispatched to the licensed premises regarding a report of a disorderly female. The female, Mary Rains, had been inside the premises and had been refused alcohol after arguing with other patrons. When she refused to leave, security staff physically escorted her from the premises. Once outside, she demanded to be let back in to use the restroom. Security refused her re-admission, prompting her to urinate on the sidewalk in front of the bar. When an officer pulled up in front of the premises, Rains opened the patrol car's back door, and sat in the back seat. She told the officer she knew "the pigs were there to get her." (Ex. A24.) Officers arrested Rains for disorderly conduct and transported her to the Jackson County Jail. There, Rains provided a breath sample, which disclosed a blood alcohol content of .15 percent. (Ex. A24; test. of T. Venables.)

21. Also on January 21, 2011 at about 10:30 p.m., a female patron was assaulted by another female patron (Mona Padilla) in the parking lot across the street from the licensed premises. The two women, who had had a falling out several months earlier, came into contact inside the licensed premises. They exited the premises to talk outside, along with a third female (Clara Rodgers) who the victim did not know. Once outside in the parking lot across the street, Padilla and Rodgers began punching the victim in the head and face. Bystanders eventually broke up the fight. The victim reported the assault to the police the following morning, January 22, 2011. Officers investigated the incident, and eventually arrested Padilla for Assault III and Rodgers for Assault III and Harassment. (Ex. A25; test. of Erskine.)

22. On January 28, 2011 at about 11:26 p.m., a Medford police officer was dispatched to the licensed premises regarding a report of two disorderly males. Upon the officer's arrival, Licensee's security directed him to two men on bicycles in front of the premises. The security employee advised that the two men were asking patrons leaving the bar for money, and when patrons refused, the men became angry and belligerent. Officers contacted the men, who were both visibly intoxicated. Officers took them into custody for disorderly conduct under the Medford Municipal Code. At detox, both men provided breath samples. One had a blood alcohol content of .165 percent, and the other had a blood alcohol content of .155 percent. (Ex. A26.)

23. On January 29, 2011 at about 2:05 a.m., Medford police officers responded to the licensed premises to investigate a reported assault. Officers determined that one patron attacked another on the dance floor. The victim reported that he briefly lost consciousness after being repeatedly punched in the face. Officers noted cuts and bruising to the victim's face and head, but the victim refused to go to the hospital. Officers were unable to locate the assailant. (Ex. A27.)

24. On February 4, 2011 at about 12:51 a.m., Medford police officers responded to the licensed premises regarding a reported fight. Officers determined that two female patrons got into a fight on the patio near the dance club. Security staff and patrons broke up the fight, and security removed the patron who started the fight, Cassandra Bean. Bean then re-entered the premises about five minutes later, and started another altercation. Officers arrested Bean, who

was visibly intoxicated and agitated, for disorderly conduct, harassment and trespass. At the jail, Bean provided a breath sample, which disclosed a blood alcohol content of .16 percent. (Ex. A28; test. of Lehman.)

25. On February 10, 2011 at about 12:15 a.m., a Medford police officer was flagged down outside the premises and advised of an intoxicated and disorderly patron, later identified as Jeffrey Gibson, who had been trying to start a fight inside the premises. The officer located Gibson hiding behind a van parked on Riverside in front of the premises. Gibson was taken into protective custody and transported to detox, where he provided a breath sample indicating a blood alcohol content of .179 percent. (Ex. A29; test. of Furst.)

26. On February 12, 2011 at about 2:02 a.m., Medford police officers responded to the licensed premises regarding a reported assault. Officers determined that a patron, Robbie Burlington, "head-butted" another patron in the face on the premises dance floor, causing a cut above the patron's eye. Both Burlington and the victim were visibly intoxicated. An officer arrested Burlington for disorderly conduct under the Medford Municipal Code. At the jail, Burlington submitted to a breath test, which disclosed a blood alcohol content of .11 percent. (Ex. A30; test. of Friend.)

27. On February 13, 2011 at about 1:39 a.m., Medford police officers responded to the licensed premises to assist security with a disorderly female. The female, Jessica Candelaria, became angry and aggressive when denied entry to the premises due to her intoxication. Candelaria grabbed an employee's headset and ripped it off the employee's head. As officers took Candelaria into custody, her boyfriend became disorderly. Officers arrested both Candelaria and her boyfriend for disorderly conduct, and transported them to the Jackson County Jail. At the jail, Candelaria submitted to a breath test, which disclosed a blood alcohol content of .13 percent. (Ex. A31.)

28. That same date, at about 2:15 a.m., a Medford police officer observed a male urinating on the wall in the alley between the Irish Pub and the dance club. The male, who had exited from the licensed premises, was obviously intoxicated and refused to obey the officer's commands. The officer arrested the male for urinating in public, interfering with a police officer and resisting arrest. At the jail, the male submitted to a breath test, which disclosed a blood alcohol content of .26 percent. (Ex. A32; test. of Jewell.)

29. On February 26, 2011 at about 1:28 a.m., Medford police officers responded to the dance club area of the licensed premises on a reported assault. Officers determined that a patron, Justin Engle, pushed, shoved and punched another patron, giving the patron a bloody nose, cut lip and swollen eye. The scuffle also resulted in property damage to the premises. An officer subsequently arrested Engle for assault in the fourth degree. (Ex. A33; test. of Vega.)

30. On February 26, 2011 at about 11:54 p.m., Licensee's security manager flagged down an officer to report that an intoxicated person, Kyle Giron, was trying to climb over a fence to access the licensed premises. The officer contacted Giron and took him into custody on an outstanding arrest warrant. (Ex. A34; test. of Johnson.)

31. On March 2, 2011 at about 1:12 a.m., Medford police officers responded to the licensed premises to investigate a reported assault. Officers determined that a patron, Michael Olsen, punched another patron, knocking the patron to the ground. Olsen claimed he punched the patron in the face because the patron threw a drink on him. An officer cited Olsen for assault under the Medford Municipal Code. (Ex. A35.)

32. On March 3, 2011 at about 11:46 p.m., Medford police officers responded to the licensed premises to assist with a patron who had passed out on the back patio. Officers determined that the patron, Dustin Bond, had just smoked heroin in a premises' restroom prior to passing out. Officers found Bond's drug paraphernalia in a nearby trash can. An officer cited Bond for unlawful possession of heroin. (Ex. A36; test. of Friend.)

33. On March 5, 2011, at about 2:08 a.m. Medford police officers responded to the licensed premises' Main St. entrance to assist security staff with a visibly intoxicated person who became angry after being denied entry to the premises due to his intoxication. Officers determined that the person, Justin Winner, grabbed the breast of a female employee when she denied him entry. An officer arrested Winner for harassment and sex abuse III. At the jail, Winner provided a breath sample, which disclosed a blood alcohol content of .170 percent. (Ex. A37.)

34. On March 17, 2011 at about 11:31 p.m., a patron of the licensed premises notified a Medford police officer who was at the premises on a bar check that she had just been "jumped" by another female patron. The officer investigated, and determined that a female patron, Christina Bennett, had approached the other patron from behind and pulled her hair. An officer cited Bennett for harassment. (Ex. A39.)

35. On March 27, 2011 at about 12:31 a.m., Licensee's security staff flagged down an officer to report an assault inside the premises. An officer investigated and determined that two female patrons, at least one of whom was very intoxicated, had engaged in an argument and physical fight. The intoxicated patron had numerous scratches and red marks on her face. (Ex. A40.)

36. On March 28, 2011 at about 3:33 a.m., a Medford police officer responded to the licensed premises regarding a report of a male passed out outside the north side of the building. The officer located the unconscious man, Christopher Chernoff, and woke him. Chernoff could not stand and smelled strongly of alcoholic beverages. The officer took Chernoff into protective custody and transported him to detox. Chernoff provided a breath sample, which disclosed a blood alcohol content of .207 percent. (Ex. A41.)

37. On March 31, 2011 at about 11:53 p.m., Medford police officers responded to the licensed premises to assist security staff with patrons who were fighting with security. Officers determined that a patron, out celebrating his 21st birthday, became angry with staff after the bartender refused him further service. The patron and others in his group physically fought with security staff. An employee was assaulted and injured in the scuffle. Officers arrested four male patrons, all of whom were visibly intoxicated, for assault III, harassment and disorderly conduct. At the jail, all four patrons provided breath samples as part of the lodging process. The breath

tests disclosed blood alcohol contents of .26 percent (patron Edgard Carranza), .11 percent (patron Michael Valencia), .12 percent (patron Richard Carranza) and .13 percent (patron David Kohart). (Ex. A42; test. of Jewell; test. of T. Venables.)

38. On April 1, 2011 at 11:44 p.m., Medford police officers responded to the licensed premises to investigate a reported fight involving several patrons. Prior to the officers' arrival, at least one of the patrons involved had fled the scene. Licensee's security staff directed the officers to those they had detained. Officers questioned those involved and witnesses, and received conflicting statements. Officers determined that an unidentified patron punched another patron in the face, causing a chipped tooth, and that another patron was hit in the face by a glass or bottle, also causing injury. All patrons interviewed who were involved in the fight were visibly intoxicated. (Ex. A43; test. of Friend.)

39. On April 2, 2011 at about 1:42 a.m., Medford police officers responded to the licensed premises regarding a report of a male threatening security staff. An officer determined that a patron, Traeville Hilliard, was asked to leave after he made inappropriate advances toward women patrons. Hilliard left, but attempted to reenter the premises, and then threatened to fight with security staff when he was refused re-entry. When Hilliard took a fighting stance, one of Licensee's security employees hit Hilliard, causing him to fall backwards into a vehicle parked in front of the establishment. Hilliard's fall dented the back side of the parked vehicle. An officer arrested Hilliard for harassment, disorderly conduct and menacing. (Ex. A44.)

40. On April 3, 2011 at about 2:48 a.m., Medford police officers were monitoring patrons leaving the licensed premises at closing time when they saw a group of four or five people acting disorderly as they crossed N. Riverside to the nearby parking lot. Officers approached the group, and asked that they calm down and move along. Everyone in the group appeared intoxicated, and person one threatened to fight with the officers. Another person in the group also advanced toward the officers in an aggressive and posturing manner. Officers arrested the two most volatile patrons (John Holien and Jordan Krawczyk) for disorderly conduct, resisting arrest and interfering with a peace officer. (Ex. A45; test. of T. Venables.)

41. On April 8, 2011 at about 11:55 p.m., Medford police officers responded to the licensed premises to assist security with an intoxicated person who was menacing with a knife. Officers determined that Taren Sharer, who was visibly intoxicated, became upset when he was denied entry to the premises due to his intoxication. Sharer pulled out a small "butterfly" folding pocket knife and threatened security staff and nearby patrons. An officer arrested Sharer on charges of menacing, carrying a concealed weapon and disorderly conduct. At the jail, Sharer provided a breath sample, which disclosed a blood alcohol content of .19 percent. (Ex. 46; test. of Jewell.)

42. On April 15, 2011 at about 2:04 a.m., Medford police officers responded to the licensed premises to assist security with a disorderly patron. The intoxicated patron pulled on the canopy of a yard swing on the premises patio, tearing the canopy fabric and bending a support bar. An officer cited the patron, Dasan Kuykendall, for disorderly conduct and mischief under the Medford Municipal Code. (Ex. A47.)

43. On April 16, 2011 at about 12:44 a.m., Medford police officers responded to the licensed premises regarding a report of one patron harassing another. Officers determined that a female patron, Tracy Dunn, struck her ex-boyfriend in the face. Both Dunn and the male patron, Jesse Trenton, were visibly intoxicated. An officer cited Dunn for domestic violence – harassment. (Ex. A48; test. of T. Venables.)

44. About 20 minutes later, at 1:04 a.m. on April 16, 2011, Medford police officers returned to the licensed premises to investigate a report of vandalism in the men’s bathroom. Officers determined that a patron, James Bennett, had broken the bathroom mirror. Bennett had cuts on his knuckles and blood on his hands, and officers noted fresh blood on the broken mirror. An officer cited Bennett for mischief. (Ex. A49; test. of Jewell.)

45. Later still that same morning, at 1:52 a.m. on April 16, 2012, a Medford police officer responded to a report of an intoxicated person punching a car parked in front of the licensed premises. The officer contacted the person, Lionel McCraney, who was highly intoxicated and agitated. McCraney admitted that he had been drinking at Shenanigan’s, that he was drunk, and that he was walking home. The officer cited McCraney for mischief and disorderly conduct, and transported him to detox. At detox, McCraney provided a breath sample, which disclosed a blood alcohol content of .22 percent. (Ex. A50; test. of Friend.)

46. On April 22, 2011 at about 11:05 p.m., a Medford police officer contacted a visibly intoxicated person outside the licensed premises on S. Riverside. The officer transported the person to detox, where the person provided a breath sample, which disclosed a blood alcohol content of .16 percent. (Ex. A51.)

47. On April 23, 2011 at about 2:04 a.m., one of Licensee’s employees flagged down a Medford police officer to report an unresponsive intoxicated female on the sidewalk in front of the licensed premises. The officer located the woman, who was intoxicated and unable to care for herself. The officer transported the woman to detox, where she provide a breath sample which disclosed a blood alcohol content of .149 percent. (Ex. A52.)

48. On April 24, 2011 at about 2:17 a.m., a Medford police officer on patrol outside the licensed premises saw a group of about 10 persons acting in a disorderly manner and preparing to fight. Licensee’s security manager advised the officer that the group had just left the premises and that he was unsure why they were fighting. The officer approached the group and asked that they disburse. One of the males (Jack Cosgrove), who was visibly intoxicated, was aggressive and threatening to the officer. The officer arrested Cosgrove for disorderly conduct, resisting arrest and interfering with a police officer. At the jail, Cosgrove provided a breath sample, which disclosed a blood alcohol content of .08 percent. Another intoxicated member of the group (Joshua Smith) was verbally abusive to the officer and refused to leave the area. Smith was arrested for disorderly conduct and interfering with a police officer. He provided a breath sample at the jail that disclosed a blood alcohol content of .11 percent. (Ex. A53; test. of T. Venables.)

49. On the night of April 30, 2011 into the early morning hours of May 1, 2011, Medford police officers in plain clothes were inside the licensed premises monitoring the points of sale in

the bars to determine if Licensee's staff was serving alcohol to intoxicated patrons. During the officers' visit, they saw two patrons exhibiting signs of intoxication, including bloodshot and watery eyes and slurred speech. The officers also saw these two patrons order, and be sold, alcoholic beverages. Both patrons agreed to provide breath samples on a portable breath tester. One patron (Chanel Doyle) had a blood alcohol content of .179 percent. The other patron (Nicole Goslin) had a blood alcohol content of .143 percent. At about 12:41 am on May 1, 2011, officers issued citations to three of Licensee's bartenders for furnishing alcohol to a visibly intoxicated person in violation of ORS 471.410(1). (Exs. A54, A55 and A56.) The citations were later dismissed by a Jackson County Circuit Court Judge. (Test. of George; test. of Petersen; test. of Wolfe; Ex. B3.)

50. Around the same time on May 1, 2011, a highly intoxicated male patron (Karl Smith) leaving the licensed premises yelled at and taunted a uniformed police officer who was at the premises assisting the other officers with their investigation. The officer advised Smith to stop yelling and move on, but Smith refused to do so. Smith also harassed a female walking near him. The officer arrested Smith for disorderly conduct and interfering with a peace officer. (Ex. A57; test. of Ianieri.)

51. At about 2:30 a.m. on May 1, 2011, a Medford police officer on patrol outside the licensed premises saw Licensee yelling at a patron (James Phillips) to leave. Licensee advised the officer that Phillips was drunk and refused to leave. Licensee also reported that Phillips had threatened female patrons inside the premises. As the officer approached Phillips, another patron (Chad Smith) intervened and blocked the officer's path. Smith refused the officer's commands to move out of the way, advising that he was protecting his friend. The officer arrested Smith for interfering with a peace officer and lodged him at the Jackson County Jail. The officer released Phillips to a sober friend because detox was full. (Ex. A58.)

52. At about 4:42 a.m. on May 3, 2011, a Medford police officer responded to the licensed premises to assist Licensee's security staff with a disorderly male. The officer determined that Marcus Fulton, who was intoxicated, had come to the premises and threatened Licensee's security employee (Edger Mesta) because he mistakenly believed that Mesta had beat up his friend, patron Cory Nelson. Officers located Fulton and Nelson down E. Main Street, and arrested Fulton for disorderly conduct and menacing. (Ex. A59; test. of Erskine.)

53. In early May 2011, then Medford Police Chief Randy Schoen and then Deputy Chief Tim George contacted OLCC Manager Jeff Jett with concerns regarding Licensee's over service of alcohol and Licensee's inability to control patrons' behavior. (Exs. A60 and A61.) In a May 5, 2011 letter, then Deputy Chief George wrote that there had been 30 DUII arrests attributed to the licensed premises in the first quarter of 2011, and that the business was number one in Oregon for DUII arrests in 2010. George also noted that the licensed premises had significantly more calls for service than other licensed establishments in the area. He added that the Medford police have tried to work with Licensee and Licensee's employees to combat the problems at the premises, but their efforts have not been successful. He also wrote that "the violence that comes at closing time in the parking lots around this business has become a problem, as well as a safety issue for our officers." (Ex. A61.)

54. On May 12, 2011 at about 12:16 a.m. Medford police officers on patrol near the licensed premises observed an intoxicated male yelling at security staff. Officers determined that the male, Steven Shelly, was angry about being evicted from the bar, and was refusing to leave the area. An officer took Shelly into protective custody due to his high level of intoxication. At 4:00 a.m., three hours after his arrival at detox, Shelly agreed to provide a breath sample, which disclosed a blood alcohol content of .109 percent. (Ex. A62; test. of Furst.)

55. On May 18, 2011 at about 10:48 a.m., Medford police officers responded to the licensed premises to investigate a report of a patron with a concealed firearm. Security staff advised the officers that another patron saw a gun in the patron's waistband when the patron raised his arms. Officers contacted the patron, and determined that he was carrying a firearm in his waistband and did not have a concealed weapons permit. Officers removed the firearm and arrested the patron for unlawful possession of a firearm. (Ex. A63.)

56. On May 21, 2011 at about 1:00 a.m., Medford police officers responded to the licensed premises regarding a report of an intoxicated patron who had just broken the window of a nearby business. Officers determined that the patron, Preston Whaley, had been involved in a fight inside the premises, that he was angry about being removed from the premises, and that once outside he punched out the window of New Trend Carpet just south of the licensed premises. Officers arrested Whaley for criminal mischief and disorderly conduct. At the jail, Whaley submitted to a breath test that disclosed a blood alcohol content of .22 percent. (Ex. A64.)

57. Around the same time on May 21, 2011, Licensee's security staff flagged down a Medford police officer for assistance with another disorderly patron, Jermaine Jenkins. Officers determined that Jenkins, who was highly intoxicated, was escorted from the premises after harassing and threatening female patrons. Jenkins threatened to punch the women in the jaw when they were not interested in talking to him. Once outside the premises, Jenkins refused to leave and instead yelled and taunted security staff. An officer arrested Jenkins for disorderly conduct under the Medford Municipal Code. (Ex. A65; test. of Johnson.)

58. Also at around 1:00 a.m. on May 21, 2011, a Medford police sergeant stopped a patron leaving the licensed premises after the patron failed to yield for a vehicle while crossing S. Riverside. While the sergeant had the patron stopped, another patron leaving the licensed premises, Ramonito Salvador, interjected himself into the situation. Salvador was visibly intoxicated. He challenged the sergeant's authority to make the stop and refused to comply with the sergeant's demand that he step back and leave the area. The sergeant arrested Salvador for interfering with a police officer. During the contact, Salvador admitted to drinking two "AMFs," a multi-shot drink, while at the licensed premises. (Ex. A66; test. of Lane.)

59. On May 26, 2011 at about 1:47 a.m., Medford officers witnessed a fight among patrons leaving the licensed premises on the sidewalk outside the Main Street entrance. The patrons did not respond to the officers' commands and continued fighting. One of the patrons, Shawn Aaron, actively resisted and scuffled with officers. Officers had to pin Aaron to the ground to take him into custody. Officers arrested Aaron for disorderly conduct, resisting arrest and harassment. Two other patrons involved in the fight, Joseph Thomas and Marcus

Karbowski, were also arrested for disorderly conduct. Thomas was also charged with unlawful possession of marijuana. While at the jail, all three men submitted to breath tests. Aaron had a blood alcohol content of .09 percent, Thomas of .16 percent and Karbowski of .05 percent. (Ex. A67.)

60. On May 28, 2011 at about 2:08 a.m., Medford officers responded to the licensed premises regarding a reported assault. Officers determined that a patron, Christopher Bray, had “sucker punched” another patron. Bray was highly intoxicated. An officer charged Bray with disorderly conduct and transported him to the Jackson County Jail. There, Bray submitted to a breath test which disclosed a blood alcohol content of .20 percent. (Ex. A68; test. of Friend.)

61. A short time later on May 28, 2011, another Medford officer heard a female patron, later identified as Karissa Camarillo, scream at and threaten another female patron as patrons left the premises at closing time. Camarillo began to charge at others on the sidewalk to push her way through the crowd of people. The officer arrested Camarillo for disorderly conduct and transported her to the Jackson County Jail. There, Camarillo provided a breath sample, which disclosed a blood alcohol content of .18 percent. (Ex. A69; test. of Dennis.)

62. Still later on the morning of May 28, 2011, at about 2:44 a.m., a Medford police sergeant posted in front of the licensed premises on S. Riverside assisted Licensee’s security with patrons who were fighting outside the Main Street entrance. Both patrons were highly intoxicated. The sergeant determined that one patron (Michael Althof) tackled another male (Christopher Cobb), causing Cobb to break through a window of the business. Officers cited Cobb for disorderly conduct and Althof for disorderly conduct and mischief. Officers cited a third male for disorderly conduct for running in front of traffic on Riverside and causing public alarm. (Ex. A70; test. of Ianieri.)

63. On June 12, 2011 at about 2:18 a.m., as Medford police officers were conducting a bar check inside the licensed premises, an intoxicated patron, Brandon Goodheart, approached an officer and grabbed the officer’s chest and badge. Goodheart became confrontational with the officer and refused to follow instructions to let go of the officer’s badge. Officers arrested Goodheart for harassment and interfering with a peace officer under the Medford Municipal Code. At detox, Goodheart provided a breath sample, which disclosed a blood alcohol content of .137 percent. (Ex. A71.)

64. On June 19, 2011 at about 1:54 a.m., Medford police officers observed a visibly intoxicated patron, Andrew Guy, exit the licensed premises and walk into traffic on S. Riverside. Officers cited Guy for disorderly conduct as he failed to yield to vehicles traveling north on Riverside. (Ex. A72; test. of Boyd.)

65. On June 28, 2011 at about 11:07 p.m., Medford police officers responded to a hit and run traffic crash on S. Central Avenue, where a vehicle had struck a power pole. Officers connected the hit and run call to a call 10 minutes earlier about a DUI driver leaving Shenanigan’s. Officers located the vehicle’s driver, Deena Collier, at the Circle K gas station, exiting from another vehicle. Collier was visibly intoxicated. She admitted to drinking at both Shenanigan’s and Beijing House that night. She was arrested for DUI, Reckless Driving and

Failing to Perform the Duties of a Driver. Collier submitted to a breath test following her arrest, which disclosed a blood alcohol content of .26 percent. (Ex. A73.)

66. On July 9, 2011 at about 2:14 a.m., a Medford police sergeant observed a vehicle fail to stop when exiting the parking lot across the street from the licensed premises, make an improper left turn onto S. Riverside and then fail to maintain its lane. The sergeant stopped the driver to investigate the observed violations. The driver, Derek Gerhard, appeared intoxicated and admitted to drinking alcoholic beverages at Shenanigan's. Following an investigation, an officer arrested Gerhard for DUII. Following the arrest, Gerhard submitted to a breath test, which disclosed a blood alcohol content of .09 percent. (Ex. A74; test. of Lane; test. of Ashworth.)

67. On July 10, 2011 at about 1:56 a.m., Medford police officers were conducting a bar check inside the licensed premises when an intoxicated patron, later identified as Gilberto Malfabon, pushed one of the officers as he was being escorted from the club. When the officer went to grab Malfabon to tell him he was under arrest, Malfabon lost his footing and he and the officer fell to the ground. Malfabon's brother Elvis jumped on the officer and got involved in the scuffle. Other officers intervened to take the Malfabon brothers into custody. Both brothers were arrested for disorderly conduct, harassment, resisting arrest and interfering with a peace officer. En route to the jail, Gilberto vomited in an officer's patrol vehicle. From jail, Gilberto was transported to the hospital due to his high level of intoxication. Hospital staff obtained a blood sample and advised that his blood alcohol content was .291 percent. (Ex. A75.)

68. On July 15, 2011 at about 2:17 a.m., Medford police officers responded to the licensed premises to investigate a reported assault. Officers determined that two patrons, Alapati Malu and William Mulipola Jr., attacked another patron, knocking the patron to the ground. Malu then stomped on the patron's head while the patron was on the ground. The patron sustained a severe mandibular fracture, several loose teeth and scratches and bruising on his face and head. He was transported to the hospital by ambulance. The two assailants fled the premises before the officers arrived. Mulipola was apprehended a short time later, and arrested for assault III, interfering with a police officer, disorderly conduct and resisting arrest. At the jail, he provided a breath sample that disclosed a blood alcohol content of .11 percent. Malu was located and arrested the following day for assault III, attempt to elude, interfering with a police officer, disorderly conduct and a parole violation. (Ex. A76; test. of Lehman.)

69. Also on July 15, 2011, based on the number and serious nature of incidents involving patrons of the licensed premises both inside and in the immediate vicinity of the premises, OLCC issued an Order of Immediate License Restrictions and Notice of Opportunity for Hearing to Licensee. Among other things, the restrictions prohibited the sale, service or consumption of alcohol on the premises after 1:30 a.m.; prohibited the sale or service or consumption of alcoholic beverages in the "Bomb Shelter" after 10:00 p.m.; prohibited the sale, service or consumption of alcoholic beverages in the "Night Club" area; prohibited re-entry until the following business day of patrons leaving the premises after 11:00 p.m.; required at least two DPSST-certified security personnel working the main entrance at 17 S. Riverside; required at least one alcohol monitor posted at each point of sale between 9:00 p.m. and closing; prohibited patrons from possessing more than one container at a time; limited the amount of alcohol served

per container to 16 ounces of malt beverage, six ounces of wine or two ounces of distilled spirits; and prohibited the sale and service of multi-shot beverages (such as Long Island Ice Teas) after 11:30 p.m. (Ex. A4; test. of Jett.)

70. That same day, Medford Police Chief George sent another letter to OLCC again outlining his concerns about over service of alcoholic beverages at the licensed premises. He enclosed police reports detailing the June 28, 2011 DUII arrest of a driver who had a blood alcohol content of .26 percent and who admitted she had just come from the licensed premises, and the July 10, 2011 incident involving the Malfabon brothers in which Gilberto Malfabon's hospital blood draw disclosed a .29 percent blood alcohol content. (Ex. A77.)

71. Licensee challenged the restrictions imposed as of July 15, 2011 as being unreasonably and unnecessarily restrictive on his business. Following a meeting with Licensee, on July 27, 2011, OLCC issued an Amended Order of Immediate License Restrictions and Notice of Opportunity for Hearing. Effective immediately, the OLCC imposed the following restrictions on Licensee's license:

1. There shall be no sale, service or consumption of alcohol on the entire licensed premises after 2:00 a.m. In the "Bomb Shelter" aka "Shot Bar" portion of the licensed premises * * * there shall be no sale, service or consumption after 1:30 a.m.
2. The sale, service and consumption of alcoholic beverages is allowed in the "Night Club" portion of the licensed premises only on Fridays and Saturdays until 1:30 a.m. The capacity of the area shall not exceed 500 people. There shall be no less than five DPSST-certified security staff on duty in the area from 10:00 p.m. until 1:30 a.m. Licensee may hold special events in this area only after receiving approval from the Commission and the City of Medford.
3. A patron leaving the premises after 12:00 a.m. shall not be allowed re-entry until the business opens on the following business day.
4. Licensee shall have at least two DPSST-certified personnel on duty at the primary entrance to the premises (17 S. Riverside) on Fridays and Saturdays and during special events from 9:00 p.m. until the close of business. One of these personnel shall evaluate each patron's level of intoxication. Licensee shall have at least one DPSST-certified security staff person on duty at the primary entrance at all other times the licensed premises is open.
5. Licensee shall have at least one on-duty Alcohol Monitor posted at each point of sale between 9:00 p.m. and the close of business on Fridays and Saturdays and during special events to monitor each patron's level of intoxication.
6. A patron may possess no more than one container of alcohol at a time. Each container of alcohol will contain no more than 22 ounces of malt beverage, 6

ounces of wine, or 2 ounces of distilled spirits. A pitcher of beer may be served to two or more patrons. Licensee shall not serve "Jell-O shot" beverages.

7. At closing, Licensee shall monitor the immediate vicinity of the premises to discourage loitering and shall provide a location within the premises for patrons waiting for transportation.

(Ex. A5; test. of Jett.)

72. On August 31, 2011 at about 11:15 p.m., Licensee flagged down a couple of Medford police officers on patrol near the licensed premises to report an unruly patron who was refusing to leave the premises. Licensee's security staff had asked the patron, Steven Martin, to leave because he had bandanas hanging from his back pocket, in violation of the premises' dress code. Martin refused to leave and instead yelled at and threatened security staff. When officers contacted him, Martin continued to act in a volatile manner and refused to leave the area. An officer arrested Martin for disorderly conduct and lodged him at the Jackson County Jail. (Ex. A78.)

73. About 20 minutes later on August 31, 2011, three Medford police officers were conducting a bar check on the premises back patio when they saw a large crowd form around two patrons involved in a physical fight. The officers had to assist Licensee's security staffers, who were having difficulty separating the two fighting patrons, Christopher McClain and Robert Baker. Even once security had a hold on McClain, he continued to resist. Officers had to use physical force to take him into custody. As the officers were dealing with McClain and Baker, the crowd appeared hostile. A patron poured a beer down an officer's back. A female patron, Debra Patterson, became unruly and interfered with the officers. Officers arrested McClain for disorderly conduct and resisting arrest, Baker for disorderly conduct, and Patterson for harassment, resisting arrest and interfering with a peace officer. At the jail, McClain submitted to a breath test which disclosed a .13 percent blood alcohol content. Patterson also provided a breath sample, which showed a .12 percent blood alcohol content. (Ex. A79; test. of Newell.)

74. On September 9, 2011 at about 11:38 p.m., Medford a police officer was flagged down at N. Riverside and Walnut St. by a limousine driver who reported intoxicated and unruly passengers in the back of his limousine. The limo driver advised the officer that he had just picked up a group of people from the licensed premises and one of the males in the party, later identified as Manuel Castro, was angry and acting violently because the limousine picked them up on Main Street rather than the Riverside Avenue entrance. The officer contacted Castro, who was still angry and acting violently. Castro threatened the officer and refused to exit the limousine. Two other males in the group were also yelling and acting violently, and the females in the group appeared frightened by Castro's behavior. When other officers arrived, they had to use physical force and deploy a taser to take Castro and the other disorderly males into custody. Officers arrested Castro for several crimes, including interfering with a police officer, resisting arrest, menacing, disorderly conduct and harassment. At the jail, Castro and the other two men provided breath samples. All three registered a blood alcohol content of approximately .15 percent. (Ex. A80; test. of Johnson.)

75. On September 24, 2011 at about 2:13 a.m., Medford police officers responded to the licensed premises regarding a reported fight. Officers determined that patron and former employee Carrie Davidson (who had been trespassed from the premises previously), attacked the premises manager, Lorraine Petersen, after Petersen directed Davidson to stop dancing on the bar. Security staff removed Davidson from the bar, and as they were escorting her from the premises, she lunged at Petersen, punched Petersen in the face and grabbed her by the throat, causing injury. Davidson was arrested for assault, harassment and disorderly conduct. At the jail, Davidson provided a breath sample, which disclosed a .14 percent blood alcohol content. (Ex. A81; test. of Petersen.)

76. On October 2, 2011 at about 1:30 a.m., Medford police officers responded to the licensed premises to assist security with a patron who had been involved in a fight at the premises and was being uncooperative. No charges were filed, and the patron was released to a sober friend. (Ex. A82.)

77. In September 2011, in part due to a significant drop in persons patronizing his business, Licensee asked the OLCC to modify restriction numbers 4 and 5. On October 25, 2011, the OLCC granted that request, and modified the two restrictions as follows:

4. Licensee shall have at least two DPSST-certified personnel on duty at the primary entrance to the premises (17 S. Riverside) on Fridays and Saturdays and during special events from 9:00 p.m. until the close of business. One of these personnel shall evaluate each patron's level of intoxication. Licensee shall have at least one DPSST-certified security staff person on at all other times the licensed premises is open to monitor access and intoxication levels of patrons.

5. Licensee shall have at least two on-duty alcohol monitors at each service point on the main patio and in the "Night Club" portion of the premises and shall have at least one on duty Alcohol Monitor posted at each bar for the remainder of the premises between 9:00 p.m. and the close of business on Fridays and Saturdays and during special events to monitor each patron's level of intoxication.

(Ex. A6; test. of Jett.)

78. On December 11, 2011 at about 1:41 a.m., Medford police officers responded to the licensed premises regarding a reported fight between two patrons. Officers determined that two female patrons argued and then engaged in a physical fight in the dance club. One patron sustained a cut above her left eyebrow in the fight. Officers cited both patrons for disorderly conduct. (Ex. A84; test. of R. Venables.)

79. On December 25, 2011 at about 11:38 a.m., a Medford police officer parked across the street from the premises on S. Riverside saw a male exit the premises and walk into the street without yielding for traffic. When the patron, John Simpson, saw the officer, he yelled an expletive at him. The officer cited Simpson for disorderly conduct and transported him to detox. At detox, Simpson provided a breath sample which disclosed a blood alcohol content of .20 percent. (Ex. A86; test. of Erskine.)

80. On December 31, 2011 at about 2:07 p.m., a Medford police officer responded to Providence Hospital, where a male asserted that he had been the victim of an assault at the licensed premises' dance club the previous night. The male, who had sustained injuries to his face and mouth, claimed that someone "sucker punched" him in the face while he was dancing. The male reported that he advised Licensee's security about the incident, but they did not contact law enforcement at the time. The officer contacted the licensed premises, but was unable to find any surveillance video of the alleged assault. (Ex. A87; test. of Graham.)

81. On the night of January 27, 2012, OLCC Inspectors Chad Gray and Kent Oldham went to the licensed premises in an undercover capacity for a compliance check. At about 10:45 p.m., while the inspectors were seated at the bar in the martini bar area of the premises, they saw on-duty bartender Christian Warren consume an alcoholic beverage. After mixing a watermelon martini in a cocktail shaker and pouring a serving of the drink into a martini glass for each of the two females seated at the bar, Warren drank the remaining liquid from the shaker. (Test. of Gray; test. of Oldham; Ex. A89.)

82. During this same undercover operation, at about 11:40 p.m., the inspectors saw a female patron seated at the bar with a glass in each hand. One glass contained an amber colored clear liquid and the other contained a darker brown liquid. Neither glass had ice. The inspectors saw the patron drink from both glasses, and believed that both glasses contained distilled spirits.¹ (Test. of Gray; test. of Oldham; Exs. A89, A90 and A94-1.)

83. At about 11:50 p.m. on January 27, 2012, the inspectors moved to the dance club portion of the premises. Inspector Oldham walked to the balcony level, where he had a view of the bar. Inspector Gray approached the bar alone and ordered two Long Island Iced Tea drinks from the bartender. The inspectors watched the bartender free pour four shots of distilled spirits into each 16-ounce cup.² The inspectors estimated that each shot took three or four seconds to pour, which they estimated would constitute a total of approximately 3 to 3 ½ ounces of alcohol per drink. Inspector Gray paid for the two drinks and took them upstairs to where Inspector Oldham was standing. Inspector Gray then took a photograph of the two drinks, and disposed of them without tasting or testing them. (Exs. A89, A90 and A94-2.)

84. After the inspectors' visit in late January 2012, Licensee closed down the Sports Bar, Bomb Shelter and Martini Bar areas, but continued business at the Irish Pub, back patio area and the dance club. (Test. of Brown.)

¹ Using his cell phone's camera, Inspector Gray surreptitiously photographed the two glasses while they were on the bar in front of the patron. (Test. of Gray; Ex. 94-1.) In the opinion of Licensee's manager Petersen and former employee Kimberly Wolfe, the photograph showed not two alcoholic beverages, but rather a shot of distilled spirits in one glass with a "cola chaser" in the other. (Test. of Petersen; test. of Wolfe.)

² At Shenanigan's, bartenders were trained to make Long Island Iced Teas with a half shot of vodka, a half shot of gin, a half shot of triple sec, a half shot of rum, plus mixer and cola. (Test. of Petersen; test. of Wolfe.)

85. On March 10, 2012 at about 1:35 a.m., a Medford police officer on patrol in the parking lot across the street from the licensed premises observed a vehicle leave the parking lot, make an improper left turn onto S. Riverside, and park in front of the premises, hitting the curb as it did so. The officer contacted the driver, who was visibly intoxicated. Following an investigation, the officer arrested the driver for DUII. The driver admitted to drinking Red Bulls with vodka at the licensed premises. The driver submitted to a breath test following his arrest, which disclosed a blood alcohol content of .23 percent. (Ex. A91; test. of R. Venables.)

86. In approximately late June 2012, Licensee closed the remainder of his business. On August 16, 2012, he surrendered his liquor license to the OLCC. (Test. of Brown; Exs. A92 and A93.)

CONCLUSIONS OF LAW

1. There is a history of serious and persistent problems at Licensee's premises, based upon incidents occurring October 23, 2010 through December 31, 2011. ORS 471.315(1)(c).

2. On the night of January 27, 2012, Licensee's employees allowed a patron to possess more than one container of alcohol at a time, in violation of a restriction on the license. OAR 835-005-0355(5).

3. The evidence is insufficient to establish that Licensee's employee served Long Island Iced Teas containing more than two ounces of distilled spirits in violation of a restriction on the license on the night of January 27, 2012.

4. On the night of January 27, 2012, Licensee's employee Christian Warren consumed an alcoholic beverage while on duty in violation of OAR 835-006-0345(1).

5. Based on Licensee's surrender of his liquor license in August 2012, the proper sanction for Licensee's violation of ORS 471.315(1)(c), OAR 835-005-0355(5) and 835-006-0345(1) is a Letter of Reprimand.

OPINION

1. Violation One: History of Serious and Persistent Problems

The Commission has charged Licensee with a history of serious and persistent problems at the licensed premises pursuant to ORS 471.315(1)(c).³ In the Amended Notice, the

³ ORS 471.315(1)(c) states in relevant part:

(1) The Oregon Liquor Control Commission may cancel or suspend any license * * * if it finds or has reasonable ground to believe any of the following to be true:

* * *

(c) That there is a history of serious and persistent problems involving disturbances, lewd or unlawful activities or noise either in the premises proposed to be licensed or involving patrons of the establishment in the immediate vicinity of the

Commission alleged that there were at least 71 serious incidents at the licensed premises in a 14-month period, from October 23, 2010 to December 31, 2011. Commission Staff contends that these incidents included fights at the licensed premises resulting in injury or threat of injury to patrons, plus public drunkenness, altercations, harassments and public urination. As the proponent of these allegations, the Commission bears the burden to prove the violation. ORS 83.450(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).

In interpreting ORS 471.315(1)(c), the Commission has found that a history of serious and persistent problems is based on the nature and circumstances of the incidents in each case. Incidents inside the licensed premises count, whether or not they are related to the licensee's sale of alcohol. Incidents outside do not count unless the incident is related to the licensee's sale or service of alcohol. The Commission gives significant weight to severe crimes, such as those involving drugs, violence or the threat of violence to a patron or licensee, unless the incident was isolated and happenstance. Less severe crimes, such as shoplifting, will be given little weight, unless the crime is shown to be related to alcohol. *Handy Food Mart* (OLCC Amended Final Order, 91-L-020, March 1994). A licensee may overcome the history by showing that the problems are not serious or persistent or by demonstrating a willingness and ability to adequately control the premises and patrons' behavior.

In *La Brisa* (OLCC Final Order, 91-L-037, December 1992), the OLCC found that incidents involving persons intending to go into the licensed premises are related to the exercise of the license privilege and count regardless of whether the persons consumed alcoholic liquor on the premises. In that case, the OLCC found that the language "related to the sale or service of alcohol" does not require a showing that the patron involved purchased, was served or consumed alcohol in the licensed premises. The OLCC presumed that the persons are coming to the premises because the licensee has a license and for the purpose of consuming alcoholic liquor. *Id.*

In *Headless Horseman* (OLCC, Final Order, 92-L-016, June 1993), the OLCC found that the licensed premises had a history of serious and persistent problems where there were seven incidents over 13 months. Although the number of incidents was not large, most of the incidents involved fights. Similarly, in *Balzer's Pub & Grill* (OLCC, Final Order, 99-V-019, March 2001), the OLCC found a history of serious and persistent problems where there were five serious incidents within six months: two fights outside the premises, an assault on a security

premises if the activities in the immediate vicinity of the premises are related to the sale or service of alcohol under the exercise of the license privilege. Behavior which is grounds for cancellation or suspension of a license under this section, where so related to the sale or service of alcohol, includes, but is not limited to obtrusive or excessive noise, music or sound vibrations; public drunkenness; fights; altercations; harassment or unlawful drug sales; alcohol or related litter; trespassing on private property; and public urination. Mitigating factors include a showing by licensee that the problems are not serious or persistent or that licensee has demonstrated a willingness and ability to control adequately the licensed premises and patrons' behavior in the immediate vicinity of the premises which is related to licensee's sale or service of alcohol under licensee's exercise of the license privilege.

guard, the display of a gun by a patron who was denied entry to the premises, an assault and robbery upon a waitress by patrons inside the premises, and a very intoxicated person on the street outside the premises.

In *The Hydrant* (OLCC, Amended Final Order, 00-L-006, October 2001), the Commission held that incidents resulting from a licensee's appropriate steps to deal with problem persons by refusing service and/or by removing them from the premises would be counted among those comprising a history of serious and persistent problems. The Commission explained that it will weigh each incident according to its seriousness, as determined by the presence or absence of violence or the threat of violence directed toward persons (serious) or property (less serious). The Commission will consider the licensee's security staff's efforts in evaluating the licensee's willingness and ability to control the problems associated with the licensed premises.

In *Dr. Feelgood's Pub* (OLCC Final Order, 08-V-052 and 08-V-074, June 2009), the Commission found a history of serious and persistent problems when, over the course of 13 months, there were at least 11 disturbances involving violence or the threat of violence with patrons of the licensed premises inside, or in the immediate vicinity of, the premises. The Commission also noted that during this same time period, there were at least six other instances of visibly intoxicated patrons, public drunkenness and/or public urination related to the licensee's sale or service of alcohol. In *Mak's Old City Hall Lounge* (OLCC Final Order, 08-V-114, December 2009), the Commission found a history of serious and persistent problems where, over the course of 17 months, there were at least 39 documented disturbances involving violence or the threat of violence (fights, altercations, assaults and/or harassment), unlawful activities (DUIs) and violations involving minors at the licensed premises or in the immediate vicinity of the premises. And, in *Big Shots Bar & Broiler* (OLCC Final Order, 09-V-077, April 2010), the Commission found a violation of ORS 471.315(1)(c) where there were at least 20 disturbances involving violence or threat of violence, along with instances of visibly intoxicated patrons and public drunkenness, and several DUI arrests related to the licensed premises.

In this case, as set out below, the evidence establishes that, during the 14-month period in issue, Licensee had more than 30 documented disturbances involving violence or threat of violence (fights, assaults, altercations and/or harassment) inside the premises, many of which involved patrons who were visibly intoxicated. During this same time period, there were more than 20 documented disturbances in the immediate vicinity of the licensed premises involving patrons of the licensed premises. In addition, the evidence establishes several instances of unlawful activity in, or related to, the licensed premises (two reported thefts, an instance of illicit drug use, the unlawful possession of a firearm, and two DUIs), plus instances of public drunkenness and public urination by patrons of the licensed premises.⁴

⁴ Although the Commission considers problems involving public drunkenness and public urination as "less serious" than those involving violence or threat of violence, such incidents nevertheless count in determining whether a licensee has a history of serious and persistent problems. *Girtle's Restaurant & Lounge* (OLCC Final Order, 08-V-079, December 2009); *DiMarco's Restaurant* (OLCC Final Order, 04-V-043/04-V-062, October 2005).

Disturbances inside the licensed premises:

- (1) October 23, 2010: A patron punched another in the face.
- (2) November 13, 2010: Patrons engaged in a physical fight. One of the patrons involved had a blood alcohol content of .192 percent.
- (3) November 19, 2010: Physical altercation between two female patrons.
- (4) November 20, 2010: A female patron hit a male patron in the face.
- (5) December 11, 2010: Two visibly intoxicated patrons became angry, belligerent and threatening to staff when refused service.
- (6) December 18, 2010: A female patron intentionally dumped a drink on another patron's head.
- (7) December 31, 2010: A patron refused service due to visible intoxication struck a security employee in the face while being escorted from the premises.
- (8) January 1, 2011: An intoxicated patron (.11 blood alcohol content) tried to punch a bartender after the bartender cut him off due to his visible intoxication.
- (9) January 8, 2011: An intoxicated patron punched another patron in the mouth, causing a large cut.
- (10) January 29, 2011: A patron physically attacked another patron on the dance floor, causing cuts and bruising to the other patron's face and head.
- (11) February 4, 2011: Two female patrons physically fought on the patio. One of the patrons re-entered the premises after being removed and started another altercation.
- (12) February 12, 2011: An intoxicated patron "head-butted" another patron in the face, causing a cut above the other patron's eye.
- (13) February 26, 2011: A patron shoved and punched another patron in the face, giving the other patron a bloody nose, cut lip and swollen eye.
- (14) March 2, 2011: A patron punched another patron, knocking the other patron to the ground.
- (15) March 17, 2011: A female patron approached another female patron from behind and pulled her hair.

- (16) March 27, 2011: Two female patrons, at least one of whom was intoxicated, engaged in an argument and physical fight.
- (17) March 31, 2011: A group of patrons, out celebrating one patron's 21st birthday, physically fought with security staff after the birthday patron was cut off from alcohol. An employee was assaulted and injured in the scuffle.
- (18) April 1, 2011: Several patrons fought inside the premises. One patron was punched in the face and sustained a chipped tooth. Another patron was hit in the face with a glass or bottle. All patrons involved in the fight were intoxicated.
- (19) April 15, 2011: An intoxicated patron pulled on the patio furniture, tearing the fabric of a canopy and bending a support bar.
- (20) April 16, 2011: A female patron struck a male patron, an ex-boyfriend, in the face. Both patrons were intoxicated.
- (21) April 16, 2011: A male patron broke a mirror in the men's bathroom, causing cuts to his knuckles.
- (22) May 21, 2011: An intoxicated patron (.22 percent blood alcohol content) was involved in a fight inside the premises. After being removed from the premises, he punched out a window of a nearby business.
- (23) May 21, 2011: An intoxicated patron threatened to punch female patrons in the jaw. After being removed from the premises, the patron yelled and taunted security staff.
- (24) May 28, 2011: An intoxicated patron (.20 percent blood alcohol content) "sucker punched" another patron.
- (25) June 12, 2011: An intoxicated patron (.137 percent blood alcohol content) grabbed an officer's badge as the officer conducted a bar check of the premises. The patron was confrontational and refused the officer's instructions to let go of the badge.
- (26) July 10, 2011: While being escorted from the premises, an intoxicated patron (.291 blood alcohol content) pushed a police officer who was at the premises for a bar check. When the officer tried to grab the patron, the patron fell to the ground, taking the officer with him. Another patron jumped on the officer, causing a scuffle.
- (27) July 15, 2011: Two male patrons attacked a third patron by knocking him to the ground and then stomping on his head. The victim sustained a severe mandibular fracture, loose teeth, and scratches and bruising to his face and head.

(28) August 31, 2011: Two intoxicated male patrons engaged in a physical fight on the premises' back patio while police officers were present for a bar check. Officers had to use force to take one of the combatants into custody. An intoxicated female patron (.12 percent blood alcohol content) harassed and interfered with the officers. Another patron poured a beer down an officer's back.

(29) September 24, 2011: An intoxicated patron (.14 percent blood alcohol content), who had been previously trespassed from the premises assaulted the premises manager as she was being escorted from the premises. The patron punched the premises' manager in the face and grabbed her by the throat.

(30) October 2, 2011: An intoxicated patron fought with another patron and refused to leave the premises.

(31) December 11, 2011: Two female patrons argued and then physically fought in the dance club. One patron sustained a cut above her left eyebrow.

*Disturbances and disorderly behavior in the immediate vicinity of the licensed premises involving patrons of the premises.*⁵

(1) November 28, 2010: Upon leaving the licensed premises, an intoxicated patron (.117 percent blood alcohol content) fought with others in the parking lot across the street.

(2) December 30, 2010: An intoxicated patron (.21 percent blood alcohol content) loitered in the parking lot across from the licensed premises and verbally harassed a police officer.

(3) January 21, 2011: An intoxicated patron (.15 percent blood alcohol content) argued with security after being physically removed from the premises, and then urinated on the sidewalk in front of the premises when she was refused re-entry.

(4) January 21, 2011: Two female patrons of the licensed premises assaulted a third patron in the parking lot across the street.

(5) February 13, 2011: An intoxicated female seeking entry to the licensed premises ripped the headset off an employee's head after she was denied entry due to her visible intoxication.

⁵ As set out in the findings above, there were other documented disturbances and reports of intoxicated persons in the immediate vicinity of the premises during the relevant time period, but these incidents are not included on this list because of insufficient evidence in the record linking the incident to the licensed premises and Licensee's sale of alcohol. See *The Rainbow Market* (OLCC Final Order, 09-V-122, February 2011) (recognizing that proximity alone does not create a relationship between problem incidents outside the premises and the licensee's sale of alcohol).

- (6) March 5, 2011: An intoxicated male seeking entry to the licensed premises grabbed the breast of a female employee after she denied him entry due to his visible intoxication.
- (7) April 2, 2011: A male patron, asked to leave after making inappropriate advances toward female patrons, threatened to fight with security staff when he was refused re-entry. When the patron took a fighting stance, a security employee hit him, causing the patron to fall backwards and dent the back side of a vehicle parked in front of the premises.
- (8) April 3, 2011: An intoxicated and unruly patron leaving the licensed premises threatened to fight with a uniformed police officer. Another intoxicated patron in the same group advanced toward the officer in an aggressive and posturing manner.
- (9) April 8, 2011: An intoxicated male seeking entry to the licensed premises became angry and threatened security staff and nearby persons with a folding pocket knife, when denied entry due to his visible intoxication.
- (10) April 16, 2011: An intoxicated patron (.22 percent blood alcohol content) punched a car parked in front of the licensed premises upon leaving the premises.
- (11) April 24, 2011: An intoxicated patron leaving the licensed premises was aggressive and threatening towards a police officer, when the officer approached a group standing outside the premises and asked that they disburse. Another intoxicated patron was verbally abusive to the officer and refused to leave the area.
- (12) May 1, 2011: An intoxicated male patron leaving the licensed premises yelled and taunted a uniformed police officer who was at the premises to assist other officers with an investigation. The patron also harassed a female walking near him.
- (13) May 1, 2011: A patron leaving the licensed premises interfered with a police stop, advising that he was protecting his friend, and refused the officer's commands to move out of the way.
- (14) May 3, 2011: An intoxicated male came to the premises and threatened security staff, mistakenly believing that security had beat up his friend earlier in the night.
- (15) May 12, 2011: An intoxicated patron (.109 percent blood alcohol content) harassed security staff and refused to leave the area after being evicted from the premises.

(16) May 21, 2011: An intoxicated patron leaving the licensed premises interfered with a police stop and refused to comply with the officer's demand that he step back and leave the area.

(17) May 26, 2011: Three male patrons engaged in a fight on the sidewalk outside the premises after leaving the premises. One of the patrons actively resisted arrest, and officers had to pin him to the ground to take him into custody.

(18) May 28, 2011: An intoxicated female patron (.18 percent blood alcohol content) engaged in disorderly conduct upon leaving the licensed premises. A short time later, an intoxicated male patron tackled another male, causing the male to break through the window of a nearby business.

(19) June 19, 2011: An intoxicated patron engaged in disorderly conduct by walking into traffic on S. Riverside upon leaving the licensed premises.

(20) August 31, 2011: A male patron asked to leave the premises due to a dress code violation yelled and threatened security staff and refused to leave the area.

(21) September 9, 2011: An intoxicated male patron (.15 percent blood alcohol content) engaged in violent and threatening behavior in the back of a limousine upon leaving the licensed premises. Officers had to use physical force and deploy a taser to take the patron into custody.

(22) December 25, 2011: An intoxicated male patron (.20 percent blood alcohol content) engaged in disorderly conduct by walking into traffic on S. Riverside and yelling an expletive at police officer upon leaving the licensed premises.

Given this history, the Commission has proven that the licensed premises had a history of serious and persistent problems in the 14 month period between October 23, 2010 and December 31, 2011. In other cases, the Commission has found a history of serious and persistent problems where there were significantly fewer problems at the licensed premises. *See, e.g., Balzer's Pub & Grill* (five serious incidents within six months constitutes a history of serious and persistent problems); *Rastafarian Private Club* (OLCC, Final Order, 90-V-059, April 1991) (eight serious incidents during a one year period); *Headless Horseman* (seven serious incidents within 13 months); *New Copper Penny Restaurant* (OLCC, Final Order, 04-V-040, October 2005) (eight incidents involving violence or threat of violence in less than seven months).

Ordinarily, having found that a licensee has a history of serious and persistent problems, the next question would be whether the licensee has demonstrated a willingness and ability to control adequately the premises. Pursuant to ORS 471.315(1)(c), making such a showing can mitigate the violation.⁶ In this case, however, it is unnecessary to address mitigation because

⁶ For example, in *Girtle's Restaurant & Lounge* (OLCC Final Order, 08-V-079, December 2009), the Commission mitigated the penalty from cancellation to suspension and restrictions on the license where, following a series of frequent serious incidents, the licensee demonstrated a willingness and ability to control the premises. Similarly, in *Downtown Deli & Greek Cusina* (OLCC Final Order, 08-V-028,

Licensee has closed the premises and surrendered his liquor license. When a license is no longer in existence, the Commission only has jurisdiction to issue a Letter of Reprimand to the former licensee to establish the licensee's record of compliance. *Rod's Old Town* (OLCC Final Order, 92-V-073, February 1993).

It is worth noting, however, that despite Licensee's stated willingness to do so, the record fails to demonstrate that Licensee had the ability to control adequately the licensed premises and patrons' behavior in the immediate vicinity of the premises. Indeed, even after the Commission imposed immediate restrictions on Licensee's license in July 2011, Licensee continued to have serious problems at the premises, albeit somewhat less frequently. For example, in March 2012, after Licensee closed the Sports Bar, Bomb Shelter and Martini Bar areas, a patron was arrested for DUII upon leaving the premises. That patron admitted to drinking Red Bulls with vodka at the licensed premises, and his breath test disclosed a blood alcohol content of .23 percent. Furthermore, as discussed below, the fact that Licensee's employees were not strictly complying with the license restrictions also militates against a determination that Licensee had the willingness and ability to control the premises.

2. Violation Two: Allowing a Patron to Have More Than One Container of Alcohol At One Time

Commission Staff asserts that Licensee's employee violated OAR 845-005-0355(5) on the night of January 27, 2012 by serving two containers containing alcoholic beverages to one person in violation of a restriction on the license.

OAR 845-005-0355(5) provides as follows:

A licensee or permittee who has a restricted license or permit must exercise license or permit privileges only in compliance with the restriction(s). Failure to comply with the restriction(s) is a Category I violation.

As set out above, restriction 6 on Licensee's license limits the number of alcoholic beverages a patron may possess at one time. It states, in pertinent part, as follows:

A patron may possess no more than one container of alcohol at a time. Each container of alcohol will contain no more than 22 ounces of malt beverage, 6 ounces of wine, or 2 ounces of distilled spirits.

Commission Staff asserts that Licensee's employee(s) violated this restriction on two occasions: (1) when a female patron was allowed to possess two glasses containing distilled spirits at the same time; and (2) when a bartender served Inspector Gray two Long Island Iced Teas at the same time.

August 2009), the Commission imposed a mandatory suspension in lieu of cancellation where, following the history of serious and persistent problems, the license demonstrated a willingness and ability to control the premises.

a. Allowing the female patron to possess two beverage containers at the same time. The evidence establishes that the inspectors saw a female patron seated at the bar with two beverage containers in hand. One glass contained an amber-colored liquid and the other contained a darker brown liquid. Neither glass had ice. Based on the color of the liquids and the absence of ice, the inspectors believed that both glasses contained distilled spirits. Other evidence in the record, namely the opinions of the premises' manager and a former employee/bartender, indicated that the female patron had a shot of distilled spirits in one glass and a cola chaser in the other.

There is no direct proof that both beverage containers in this patron's possession contained distilled spirits. The inspectors did not see the two beverages being poured, nor did they test or taste the contents of either glass. Under these circumstances, the inspectors' belief that both glasses in the patron's possession contained distilled spirits does not constitute a preponderance of the evidence, and does not establish a violation of the restriction. This is especially true in light of the countervailing evidence suggesting that this patron was drinking a shot of distilled spirits with a soda chaser.

b. Allowing Inspector Gray to possess two Long Island Iced Teas at one time. On this second count, the evidence persuasively establishes that Inspector Gray approached the bar alone and ordered two Long Island Ice Teas from the on-duty bartender. The inspector watched the bartender mix the drinks, and saw the bartender free pour distilled spirits into both cups. Inspector Gray paid for the two drinks and took them with him upstairs.

In short, because the bartender permitted Inspector Gray to possess two containers of alcohol at the same time, this violation of the restriction has been established.

3. Violation Three: Allowing a Patron to Have More Than Two Ounces of Distilled Spirits at a Time

The Commission Staff also asserts that Licensee violated OAR 845-005-0355(5) on the night of January 27, 2012 when Licensee's employee served Inspector Gray the two Long Island Iced Teas because the drinks contained more than two ounces of distilled spirits. As noted above, Licensee's restriction number 6 states that "each container of alcohol will contain no more than 22 ounces of malt beverage, 6 ounces of wine, or 2 ounces of distilled spirits."

The inspectors watched as the on-duty bartender free poured four different distilled spirits into each cup. The inspectors testified that each pour lasted three or four seconds, which they estimated amounted to a total of approximately 3 to 3 ½ ounces of alcohol per container. The inspectors' estimation that each plastic cup contained 3 or more ounces of distilled spirits is based solely on their count of the aggregate length of the free pours. The inspectors did not otherwise measure the amount of alcohol poured into the two drinks. There is also no evidence in the record regarding the size of the pour spouts on the liquor bottles from which the bartender poured.

Without a more precise measurement of the amount of alcohol poured into the two Long Island Iced Teas, the inspectors' estimation that each cup contained three or more ounces of

distilled spirits does not constitute a preponderance of the evidence, and does not establish a violation of the restriction. *Cf. Exotica International Club for Men* (OLCC Final Order, 08-V-077, April 2010) (a violation of the “one drink” per patron at a time restriction was established based on the inspector’s testimony and demonstrative evidence – marked specimen cups – showing that the total amount of distilled spirits served to the inspector exceeded 2 ounces). This charged violation should therefore be dismissed.

4. Violation Four: Employee Drinking on Duty

The Commission further asserts that Licensee violated OAR 845-006-0345(1) on January when his employee, bartender Christian Warren, consumed an alcoholic beverage while on duty.

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.)

On this charge, the evidence persuasively establishes that while on duty on the night of January 27, 2012, Licensee’s bartender Warren drank the remains of an alcoholic beverage, a watermelon martini, from a cocktail shaker after pouring servings of the drink for two patrons at the bar. It is undisputed that Warren was on duty and selling and serving alcoholic beverages that night. The inspectors saw him mix the martini, pour a serving into a glass for each patron, and then drink the remaining liquid in the shaker. The violation of OAR 845-005-0345(1) has been established.

5. Sanction

The Commission has established a violation of ORS 471.315(1)(c) (history of serious and persistent problems), a violation of OAR 845-005-0355(5) (restriction violation) and a violation of OAR 845-005-0345(1) (employee drinking on duty). A violation of ORS 471.315(1)(c) is a Category I violation, as is the violation of OAR 845-005-0355(5).⁷ An employee drinking on duty is a Category III violation.

⁷ In prior cases, the Commission has held that, in the context of a restriction violation, cancellation of the license may only result when the violation is substantial enough to warrant cancellation. *See Oceanside Restaurant & Lounge* (OLCC Final Order, 88-V-123, August 1989) (setting out the four factors used to determine whether a restriction violation is substantial). In this case, however, because the license is no longer in existence, there is no need to address the *Oceanside* factors to determine whether the restriction violation was substantial enough to warrant cancellation.

Even though the Commission has proven three of the four violations alleged in the Second Amended Notice, it has no jurisdiction to cancel or suspend the license or impose a fine because the license is no longer in existence. As discussed above, Licensee has closed the licensed premises and surrendered his liquor license. Thus, the appropriate sanction is a Letter of Reprimand to establish Licensee's record of compliance. *Rod's Old Town*, Final Order at 12; *300 Liberty Place* (OLCC Final Order 97-V-23, March 1998).

FINAL ORDER

Licensee Robert Brown, dba Shenanigan's Irish Pub/Shenanigan's Bar and Grill, 17 S. Riverside, Medford, Oregon, violated ORS 471.315(1)(c), OAR 845-005-0355(5) and OAR 845-006-0345(1).

The Commission orders Licensee Robert Brown be issued a LETTER OF REPRIMAND for the violations of ORS 471.315(1)(c), OAR 845-005-0355(5) and OAR 845-006-0345(1).

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

Dated this 11th day of December, 2012

/s/ Merle Lindsey

Merle Lindsey

Interim Executive Director

OREGON LIQUOR CONTROL COMMISSION

Mailed this 12th day of December, 2012

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.