

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

<b>In the Matter of the Full On-Premises</b>	)	<b>FINAL FINDING OF FACT</b>
	)	<b>CONCLUSION OF LAW</b>
	)	<b>AND ORDER</b>
<b>Sales License Held by:</b>	)	
	)	
<b>EMQU, INC.</b>	)	<b>OLCC-12-V-078</b>
<b>Kin Kwok Cho, Pres/Sec/Dir/ Stockholder</b>	)	<b>OLCC-12-V-078A</b>
	)	
<b>dba LIQUID CLUB &amp; LOUNGE</b>	)	
<b>70 NW Newport Avenue</b>	)	
<b>Bend, OR 97701</b>	)	

**HISTORY OF THE CASE**

On December 5, 2012, the Oregon Liquor Control Commission (OLCC or Commission) issued a Notice of Proposed License Cancellation to EMQU, Inc., Kin Kwok Cho, President/Secretary/Treasurer/Stockholder (collectively Licensee), dba Liquid Club & Lounge, located at 70 NW Newport Avenue, Bend, Oregon. The Notice charged Licensee with four violations of OAR 845-005-0355, alleging that Licensee failed to comply with a license restriction limiting each patron to possessing no more than one container of alcohol at a time and, on three separate dates, failed to comply with a license restriction requiring Licensee to patrol the parking lot area under Licensee’s control and the outside areas adjacent to the premises at least every five minutes on Friday and Saturday nights. Licensee timely requested a hearing.

The Commission referred Licensee’s hearing request to the Office of Administrative Hearings on January 17, 2013. The OAH assigned the case to Senior Administrative Law Judge Alison Greene Webster.

On February 5, 2013, the Commission issued an Amended Notice of Proposed Cancellation to Licensee, alleging an additional violation: that Licensee failed to comply with the license restriction limiting the amount of alcohol a patron could possess at one time.

Senior Administrative Law Judge Alison Greene Webster presided over a contested case in this matter in Bend, Oregon, on June 12, 2013. Paul Heatherman, Attorney at Law represented the Licensee. Becky Voelkel presented the case for the OLCC. Waiming Lee served as an interpreter for corporate principal Kin Kwok Cho.

OLCC Inspectors Larry Brown, Laura Shepard and Terry Hutton testified on the Commission’s behalf. Licensee called the following witnesses: Captain Cory Darling of the Bend Police Department; Tim Long; Cory Bailey; Donald Bowerman; and Corporate Principal Kin Kwok Cho. The hearing record remained open for testimony of an additional witness, rebuttal and written closing briefs. The hearing continued via telephone on June 19, 2013, and

the record closed on July 1, 2013, upon receipt of Staff's Rebuttal Argument.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed July 25, 2013.

Applicant filed Exceptions to the Proposed Order on August 19, 2013. The Administrative Law Judge responded to Licensee's Exceptions on August 23, 2013.

On October 24, 2013, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Administrative Law Judge, Licensees Exceptions to the Proposed Order and the Administrative Law Judge's Response to Licensees Exceptions. Based on this review and the preponderance of the evidence, the Commission enters the following:

### **EVIDENTIARY RULINGS**

OLCC Exhibits A1 through A19 and Licensee's Exhibits 101 through 105 were admitted at hearing.

### **ISSUES**

1. Whether, on October 6, 2012, Licensee failed to comply with a license restriction limiting each patron to possessing no more than one container of alcohol at a time in violation of OAR 845-005-0355(5).
2. Whether, on October 12, 2012, Licensee failed to comply with a license restriction requiring licensee to patrol the parking lot area under Licensee's control and the outside areas adjacent to the premises at least every five minutes on Friday and Saturday nights from 10:00 p.m. to 30 minutes past closure in violation of OAR 845-005-0355(5).
3. Whether, on October 19, 2012, Licensee failed to comply with the license restriction requiring Licensee to patrol the parking lot and outside area at least every five minutes on Friday and Saturday nights in violation of OAR 845-005-0355(5).
4. Whether, on November 10, 2012, Licensee failed to comply with the license restriction requiring Licensee to patrol the parking lot and outside area at least every five minutes on Friday and Saturday nights in violation of OAR 845-005-0355(5).
5. Whether, on January 19, 2013, Licensee failed to comply with a license restriction limiting each patron to no more than 1.5 ounces of distilled spirits at one time in violation of OAR 845-005-0355(5).
6. If one or more of the above restriction violations occurred, what is the proper sanction?

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## FINDINGS OF FACT

1. On April 20, 2012, the Commission issued a temporary license to operate to EMQU, Inc. and Kin Kwok Cho, the corporation's president, secretary, director and sole stockholder, dba Liquid Club & Lounge, located at 70 NW Newport Avenue, Bend, Oregon. (Ex. A1.)

2. Because the premises had a recent history of serious and persistent problems<sup>1</sup> under the previous licensee and the previous licensee (Hao "Howie" Long) continued to maintain a financial interest in Licensee's business, the Commission added several restrictions to Licensee's temporary authority to operate. As pertinent to this case, one restriction limited the number of alcoholic beverages a patron could possess at one time and the amount of alcohol served per container. Another restriction required that Licensee's security personnel periodically patrol the parking lot and outside areas under its control to ensure that patrons were in compliance with the law. (Test. of Brown.)

3. At the time the Commission issued the temporary license, Inspector Brown met with Corporate Principal Cho to discuss the license restrictions. Mr. Cho brought the premises' manager, Tim Long, with him to the meeting. Because English is not Mr. Cho's primary language, Mr. Long also served as Mr. Cho's interpreter during the meeting. Mr. Cho acknowledged understanding each restriction and the reasons for which they were being imposed. (Ex. A1; Test. of Brown.)

4. A few weeks later, Mr. Cho requested that one of the restrictions be modified. Mr. Cho asked to change the time at which Licensee was required to stop the sale and service of alcohol and the times at which patrons could possess or consume alcohol. On or about June 6, 2012, Inspector Brown met with Mr. Cho to discuss the modifications. During this meeting, the hours of service restriction was modified. Inspector Brown and Mr. Cho also reviewed the other restrictions. Mr. Cho again acknowledged and agreed to each restriction. (Test. of Brown.)

5. On July 17, 2012, the Commission granted Licensee a Full On-Premises Sales license at the premises with eight restrictions. The following two restrictions (No. 3 and No. 7) are pertinent to this case:

3. Licensee shall limit each patron to possessing no more than one container of alcohol at one time and limit the amount of alcohol in a container to no more than 16 ounces of malt beverage, 6 ounces of wine, or 1.5 ounces of distilled spirits.

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7. Licensee shall ensure that the parking lot area under the

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<sup>1</sup> The Commission found that between August 21, 2010 and November 27, 2011, there were 67 serious incidents either inside or in the immediate vicinity of the licensed premises. The serious incidents included disturbances, lewd or unlawful activities and/or noise in the premises or involving patrons in the immediate vicinity of the premises. This history of serious and persistent problems at the premises resulted in a May 13, 2012 Final Order cancelling the prior owner's license. (Ex. A3 at 6.)

licensee's control and the outside areas adjacent to the premises are patrolled on Friday and Saturday at least every five minutes starting at 10:00 pm and continuing until 30 minutes after the close of business to discourage loitering and illegal activity.

(Ex. A2.)

6. The Commission's July 17, 2012 Grant License with Restrictions letter set out the eight restrictions and the basis and reasons for them. In addition, the letter advised that Licensee had a right to a hearing to contest the restrictions. Licensee did not request a hearing to challenge the restrictions. (Ex. A2; test. of Brown.)

7. At about 1:20 a.m. on October 6, 2012, Inspectors Brown and Shepard visited the premises for a compliance check. While there, the inspectors saw two different patrons with two bottles of beer in their hands. Inspector Brown spoke to Mr. Long, the premises' general manager, and advised that he saw patrons possessing more than one drink at a time. The Inspector Brown also asked security manager Don Bowerman to remind the servers that each patron could only have one drink at a time. (Test. of Brown; test. of Bowerman; Exs. A5, A6 and A7.)

8. A few minutes later, the inspectors saw a patron approach the bar and order two shots of Patrón tequila. Licensee's employee Shilo Poarch poured the two shots into shot glasses, assuming that that the patron had ordered one of the shots for another patron. As the patron paid for the two shots, Ms. Poarch asked him who the second shot was for. The patron motioned towards a male standing behind him. The patron then picked up both shots, turned and walked away from the bar to hand off one of the shots to the other patron. (Test. of Brown; test. of Bowerman; Exs. A5, A6 and A7.)

9. Immediately after observing the patron walk away from the bar with two shots in hand, Inspector Brown contacted Mr. Long, Mr. Bowerman and Ms. Poarch. During the conversation, Ms. Poarch admitted to Inspector Brown that she served two drinks to the patron. She explained that she thought it was okay to do so as long as she knew that the second drink was for another patron. Inspector Brown explained that the restriction prohibited a patron from possessing more than one drink at a time, even if the second drink was intended for someone else. (Test. of Brown; Ex. A5.)

10. On October 11, 2012, at the request of Mr. Long, Inspectors Brown, Hutton and Shepard met with Licensee's employees to discuss compliance with the license restrictions and Licensee's control plan. As to restriction No. 3, Inspector Brown again advised the employees that a patron could not possess or hold more than one drink at a time. In discussing the premises' security plan, Inspector Brown confirmed with Mr. Long and Mr. Bowerman that all of Licensee's outside security personnel would be wearing a bright orange reflective vest while on duty. (Test. of Brown; Ex. A5.)

11. On Friday night October 12, 2012 at about 10:40 p.m., Inspectors Hutton and Middleton went to the premises for a compliance check. They parked their vehicle in the

premises parking lot and monitored the parking lot and outside areas adjacent to the premises for approximately 50 minutes. During that time, they saw a security person wearing a reflective orange vest only once. This person exited the premises and walked across the driveway to what appeared to be his personal vehicle. The security person sat in the vehicle for about five minutes and then returned to the premises. The inspectors did not see security staff patrol the parking lot or walk the perimeter of the premises during their visit. (Test. of Hutton; Ex. A9.)

12. On October 17, 2012, the Commission issued a Final Order on Default granting Licensee a license with the eight enumerated restrictions. (Ex. A3.)

13. On Friday night, October 19, 2012 at about 11:23 p.m., Inspectors Hutton and Middleton returned to the premises' parking lot to check Licensee's compliance with restriction No. 7. The inspectors monitored the parking lot and outside areas adjacent to the premises for approximately 20 minutes. They saw patrons exiting and entering the premises, but did not see any security person patrolling the parking lot or walking the perimeter of the premises during this time. (Test. of Hutton; Ex. A10.)

14. On October 23, 2012, Inspector Brown spoke with Mr. Long to arrange a meeting with Mr. Cho regarding an unrelated matter. Inspector Brown asked Mr. Long about Licensee's patrolling of the parking lot and outside areas. Mr. Long advised that Licensee had a security person stationed at the northwest corner of the building at the handicapped parking area, and this person is the one responsible for patrolling the parking lot and back side of the building. Inspector Brown advised Mr. Long that Inspectors Hutton and Middleton had been to the parking lot on two previous occasions and had not seen any outside security person on patrol. Mr. Long assured Inspector Brown that he would talk with security staff to ensure they were checking the parking lot and outside areas as required. (Test. of Brown; Ex. A5.)

15. On October 25, 2012, Inspector Brown met with Mr. Long and Mr. Cho regarding the unrelated matter. During the meeting, Inspector Brown told the men that Licensee would be received a Notice of Violation for violating restrictions on the license. (Test. of Brown; Ex. A5)

16. On the afternoon of November 9, 2012, Inspector Hutton delivered to Mr. Long a Notice of Violation for a restriction violation. (Ex. A11.)

17. At about 12:23 a.m. on Saturday, November 10, 2012, Inspectors Brown, Hutton, Shepard and Middleton arrived at the premises for a compliance check. They parked in the north side parking lot, facing south toward the back of the premises. Inspector Middleton remained in the car to monitor activity in the parking lot while the three other inspectors entered the premises. Inspector Middleton observed activity in the parking lot for approximately 50 minutes. At 12:42 a.m., he saw a security person with a flashlight in hand walk the perimeter of the building. The security person patrolled the building's north perimeter for about five minutes, but did not walk through or check the rest of the parking lot. At 1:15 a.m., Inspector Middleton saw the same security person

walk from the west side door around the building to the driveway entrance on east side. The security person again did not walk through or check the back parking lot. The security person was still standing near the east side entrance when the inspectors exited the premises a few minutes later. (Exs. A12 and A13.)

18. On January 4, 2013, Inspector Hutton received a call from one of Licensee's employees who wished to remain anonymous. The caller expressed concern that Licensee was violating the license restrictions by not having adequate security staff on duty. The caller advised Inspector Hutton that security was not patrolling the parking lot as required and that staff was serving alcohol after 1:45 a.m. and allowing patrons to consume alcohol after 2:00 a.m. The caller also advised that there had been a fight resulting in injuries at the premises on New Year's Eve. (Test. of Hutton; Ex. A14.)

19. At about 1:00 a.m. on January 19, 2013, Inspector Middleton visited the licensed premises in an undercover capacity for a compliance check. There were about eight patrons inside the premises. The lighting was dim and the music was loud. Inspector Middleton went to the bar and ordered a double shot straight up of Jameson Whiskey from the on duty bartender, Phillip Anderson. Anderson poured Inspector Middleton a double shot (3 ounces) of Jameson into a medium sized glass. Inspector Middleton paid for the drink and left a tip. He then contacted Inspector Brown to report that he had been served a double shot in violation of license restriction No. 3. (Exs. A16 and A17.)

20. A short time later, at about 1:28 a.m., Inspector Brown arrived at the premises to investigate the restriction violation. He spoke with Mr. Long and Mr. Anderson. Mr. Anderson admitted to serving a double shot of whiskey to Inspector Middleton. Mr. Anderson explained that although he was very familiar with the license restrictions, he did not think about them when Inspector Middleton ordered the double shot. Mr. Anderson added that he had been tending bar for more than 20 years, and the he served the double because that it what the customer ordered. Mr. Anderson also said that he took full responsibility for this restriction violation. (Test. of Brown; Ex. A16.)

21. Later that same day, Mr. Anderson sent an email to Inspector Brown and again explained that he simply made a mistake and took full responsibility for it. Mr. Anderson also stated that upon his hiring, both Mr. Long and bar manager Corey Bailey were very clear to him about the license restrictions and the need for compliance. (Ex. A18.)

22. Since Licensee took over ownership, remodeled inside the premises and changed the entertainment format in April 2012, there have been significantly fewer serious problems and calls for service at the location. According to statistics from the Bend Police Department, there has been an approximately 50 percent reduction in the number of calls for service at Liquid Club & Lounge as compared to the prior business at that location, Boondocks Bar & Grill. (Test. of Darling; Ex. 101.)

23. Licensee's original security plan called for at least four security personnel on

duty each night: one stationed at the front door responsible for monitoring the front sidewalk area; one stationed at or near the main bar also responsible for monitoring the side deck and stairs; one stationed outside the east side exit responsible for monitoring the exit and handicap access ramp; and one roamer responsible for monitoring various areas, including the outside. The roamer was to monitor the east side driveway area and parking lot. In late October 2012, after Mr. Long and Mr. Bowerman learned that the inspectors been watching the parking lot and had not observed any security staff patrolling it, Licensee added an extra security person whose only duty was to monitor the outside perimeter and parking lot. (Test. of Long; test. of Bowerman.)

## **CONCLUSIONS**

1. On October 6, 2012, Licensee's employee failed to comply with a license restriction limiting each patron to possessing no more than one container of alcohol at a time in violation of OAR 845-005-0355(5).

2. On October 12, 2012, Licensee failed to comply with a license restriction requiring licensee to patrol the parking lot area under licensee's control and the outside areas adjacent to the premises at least every five minutes on Friday and Saturday nights from 10:00 p.m. to 30 minutes past closure in violation of OAR 845-005-0355(5).

3. On October 19, 2012, Licensee failed to comply with the license restriction requiring licensee to patrol the parking lot and outside area at least every five minutes on Friday and Saturday nights in violation of OAR 845-005-0355(5).

4. On November 10, 2012, Licensee failed to comply with the license restriction requiring licensee to patrol the parking lot and outside area at least every five minutes on Friday and Saturday nights in violation of OAR 845-005-0355(5).

5. On January 19, 2013, Licensee's employee failed to comply with the license restriction limiting each patron to no more than 1.5 ounces of distilled spirits at one time in violation of OAR 845-005-0355(5).

6. The appropriate sanction for these five violations is cancellation of Licensee's license.

## **OPINION**

### **1. Violations**

The Commission asserts that Licensee violated OAR 845-005-0355(5) on five occasions, by allowing a patron to possess more than one drink at a time, by failing to patrol the parking lot and outside areas adjacent to the premises every five minutes on three separate occasions and by serving a patron a double shot (3 ounces of distilled spirits) in one container. 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).

The applicable regulation in this case is OAR 845-005-0355(5), which 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, the Commission has charged Licensee with violating the following two restrictions:

No. 3. Licensee shall limit each patron to possessing no more than one container of alcohol at one time and limit the amount of alcohol in a container to no more than 16 ounces of malt beverage, 6 ounces of wine, or 1.5 ounces of distilled spirits.

No. 7. Licensee shall ensure that the parking lot area under the licensee's control and the outside areas adjacent to the premises are patrolled on Friday and Saturday at least every five minutes starting at 10:00 pm and continuing until 30 minutes after the close of business to discourage loitering and illegal activity.

Each alleged restriction violation will be addressed in turn.

*October 6, 2012.* The evidence establishes that on a visit to the premises on this date, Inspectors Brown and Shepard observed patrons possessing more than one alcoholic beverage at a time. In addition, they saw Licensee's employee Shilo Poarch pour two shots of tequila for a patron. She charged the patron for both shots and allowed him to pick up both shots from the bar and carry them away. Though Ms. Poarch believed that she could serve a patron two alcoholic drinks at one time without violating the restriction if she knew that one of the two drinks was going to another patron, the fact remains that she allowed this patron to possess more than one container of alcohol at a time in violation of restriction No. 3.

*October 12, 2012.* The evidence establishes that on Friday night October 12, 2012, Licensee did not have a security person patrolling the parking lot and the outside areas adjacent to the premises at least every five minutes starting at 10:00 p.m. When Inspectors Hutton and Middleton monitored the premises' parking lot and outside areas for approximately 50 minutes between 10:40 p.m. and 11:30 p.m. on that night, they saw a security person only once. That security person wearing a reflective orange vest, but he was not patrolling the parking lot and areas adjacent to the premises. Instead, he sat in his car for about five minutes and then returned to the premises.

Licensee failed to comply with license restriction No. 7 on this night which constitutes second violation of OAR 845-005-0355(5).

*October 19, 2012.* The evidence also establishes that on Friday night October 19, 2012, Licensee did not have a security person patrolling the parking lot and the outside areas adjacent to the premises at least every five minutes starting at 10:00 p.m. From about 11:23 p.m. to 11:43 p.m. that night, Inspectors Hutton and Middleton monitored the premises' parking lot and did not see any security personnel patrolling the outside area. Had Licensee been in compliance with restriction No. 7 that night, the inspectors would have seen security on patrol at least three times.

Consequently, the Commission has established a third violation of OAR 845-005-0355(5) on the night of October 19, 2012.

*November 10, 2012.* The evidence further establishes that after midnight but prior to closing on Saturday morning November 10, 2012, Licensee did not have a security person patrolling the parking lot and the outside areas adjacent to the premises at least every five minutes. On that date, Inspector Middleton observed activity in the parking lot for approximately 50 minutes beginning at about 12:23 a.m. During that time, the inspector saw a security person walk the outside perimeter of the building on two occasions. Had Licensee been in compliance with the restriction, the inspector would have seen a security person making rounds at least every five minutes, and patrolling both the outside perimeter and the premises' parking lot.

Thus, the Commission has established that a fourth violation of OAR 845-005-0355(5) occurred on November 10, 2012.

*January 19, 2013.* Finally, as Licensee concedes, on January 19, 2013, Licensee's employee Phillip Anderson violated license restriction No. 3 by pouring and serving Inspector Middleton a patron a double shot (3 ounces) of distilled spirits. Because Licensee's restricted license requires Licensee to limit the amount of alcohol served in a container to no more than 16 ounces of malt beverage, 6 ounces of wine, or 1.5 ounces of distilled spirits, this fifth violation of OAR 845-005-0355(5) has been proven as well.

## **2. Penalty**

As set out above, pursuant to OAR 845-005-0355(5), a violation of a restriction on the license is a Category I violation. A Category I violation is a one that makes the licensee ineligible for a license. OAR 845-006-0500(7)(a)(A). Under the Commission's guidelines, the standard penalty for a first Category I violation is cancellation of the license. OAR 845-006-0500(7), Exhibit 1.

In restriction violation cases, however, the Commission will consider the factors described in *Oceanside Restaurant & Lounge* (OLCC Final Order, 88-V-123, August 1989) to determine whether restriction violations are substantial and warrant cancellation. As the Commission noted in *Betty Ford's* (OLCC Final Order, 06-V-021/06-L-006, August 2007), the *Oceanside* factors are "not required elements but are examined as factors weighing in favor of or against a determination that a restriction violation is substantial enough to warrant the presumed penalty of cancellation." Final Order at 13, n. 5. The *Oceanside* factors are as follows:

- (a) the timing of the violation, with breaches early in the contract considered more likely to be substantial;
- (b) whether the violation was willful;
- (c) the number of violations;
- (d) whether the hardship on the licensee outweighs the importance of the conditions in ensuring compliance with the license condition.

In *Oceanside*, the Commission found that a restriction violation was substantial and merited cancellation where all four factors weighed against the licensee. In that case, the licensee's principal violated the restriction (requiring that she abstain from psychoactive substances during the duration of the license) three times during the first six weeks of licensure. The Commission found that her consumption of alcoholic beverages in contravention of the restriction was early in the contract, willful, repeated and that it struck at the very heart of the condition placed on the license. Final Order at 12-13.

Applying the *Oceanside Restaurant & Lounge* factors in this case similarly demonstrates that the restriction violations were substantial:

(a) *Timing of the Violation(s)*: The first three violations occurred in October 2012, six months after Licensee was granted authority to operate with restrictions and three months after Licensee was granted the restricted license in July 2012. The fourth violation occurred the following month, in November 2012. The fifth violation occurred two months after that, in January 2013. These five violations within the first seven months of operation weigh against Licensee. See, e.g., *Lotsa Luck* (OLCC Final Order, 08-V-054, April 2009) (timing factor weighed against the licensee where the violation occurred approximately six months after the restriction was placed on the license); *Dad's Restaurant & Lounge* (OLCC Final Order, 06-V-029, December 2007) (multiple repeated violations of the same restriction so early in the operation of the business weigh against the licensee).

(b) *Willfulness*: The Commission has held that where the a licensee or employee is aware of restrictions on the license and voluntarily acts in a manner contrary to the restriction, the violation was committed willfully. See e.g., *C.S. Convenient Services* (OLCC Final Order 09-V-059, June 2010); see also *Dad's Restaurant & Lounge*, Final Order at 14 (noting that "willful" means voluntary and intentional, but not necessarily malicious).

In this case, Licensee's management and employees were well aware of the license restrictions, including No. 3 limiting the number of drinks per patron and the amount of alcohol served per drink and No. 7 requiring that security patrol the outside perimeter and parking lot every five minutes on weekend nights. As for the first restriction violation on October 6, 2012, even though Ms. Poarch may have been operating under a misunderstanding of the restriction's requirements, the fact remains that she was aware of the restriction and allowed a patron to possess more than one drink at a time in contravention of that restriction. She voluntarily acted in a manner contrary to the restriction.

As to the three violations of restriction No. 7, the evidence demonstrates that each was committed willfully. It is undisputed that Mr. Cho, Mr. Long and Mr. Bowerman were aware of

the requirement that security patrol the outside areas and parking lots every five minutes on Friday and Saturday nights. Despite this, on the three dates at issue (October 12, October 19 and November 10, 2012) Licensee's management failed to ensure that security staff was in compliance with this requirement.

Finally, as to the fifth restriction violation, it is undisputed that Mr. Anderson had knowledge of the drink size limitation when he served the double shot of distilled spirits to Inspector Middleton. For these reasons, the restrictions were committed willfully. This factor also weighs against Licensee.

(c) *Number of Violations*: As discussed above, Licensee had five restriction violations in four months: two violations of restriction No. 3 and three violations of restriction No. 7. Because the violations were multiple and repeated, this factor weighs against Licensee as well.

(d) *Hardship on the Licensee vs. the Importance of the Conditions*: The fourth *Oceanside* factor counts against a licensee where "the breach strikes at the very heart of the restriction or condition placed on the licensee, as the licensee would not be a good risk for compliance with alcoholic beverage laws without the restriction." *Dad's Restaurant & Lounge*,<sup>2</sup> Final Order at 15, citing to *La Macarena* (OLCC Final Order, 00-V-116, August 2002) (describing the factor as "whether the hardship the restriction causes a licensee outweighs the importance the restriction has in ensuring licensee's compliance with alcoholic liquor laws").

In this case, the Commission placed the restrictions at issue on the license because of the premises' recent history of serious and persistent problems under the previous licensee. Because of this recent history of serious and persistent problems, the Commission had grounds to deny Licensee a license. In lieu of denying the license, the Commission placed these restrictions on the license to prevent serious problems in the future and to help Licensee control the premises and patrons' behavior. The Commission has previously determined that without these restrictions, Licensee would not be a good risk for compliance with the liquor laws.

As was the case in *Dad's Restaurant & Lounge*, the two restrictions at issue are not onerous and could have been easily followed. Any hardship on the Licensee (for example, the cost of additional security personnel on Friday and Saturday nights) does not outweigh the importance of the restriction. For this reason, the final *Oceanside* factor also weighs against Licensee.

Despite the above analysis, Licensee argues that the five restriction violations are insubstantial. In doing so, Licensee contrasts the circumstances in this case to the conditions

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<sup>2</sup> In *Dad's Restaurant & Lounge*, the Commission placed restrictions on the license because the prior licensee had a history of serious and persistent problems and the licensee was continuing substantially the same type of operation as the prior licensee. Among other things, the restrictions prohibited the licensee from selling any doubles, selling any mixed drinks with more than one ounce of distilled spirits, stacking drinks or giving last call. The licensee's employees committed multiple restriction violations by serving drinks containing more than one ounce of distilled spirits and serving patrons more than one alcoholic drink at a time. The Commission found that any hardship on the licensee did not outweigh the importance of the restrictions in ensuring compliance with the laws, and that the licensee's breach struck at the very heart of the restrictions placed on the license. Final Order at 13-17.

giving rise to a license cancellation in the case of *La Macarena*, cited above. In *La Macarena*, the licensee had been charged previously with having history of serious and persistent problems and had entered into a settlement agreement with the OLCC to resolve the charges. About a year later, the Commission issued another notice of cancellation, charging the licensee with, among other things, a history of serious and persistent problems in violation of ORS 471.315(1)(c) and selling alcoholic beverages in a manner other than the license permits in violation of ORS 471.405(1).<sup>3</sup> Following a hearing, the Commission found that the nature and number of problems at the premises (including violence, unlawful drug activity and the sale of alcohol to visibly intoxicated patrons) showed a continuing history of serious and persistent problems. In addition, the Commission found that the licensee had violated ORS 471.405(1) in two instances by failing to comply with the terms of the settlement agreement. Specifically, the Commission found that licensee violated the settlement agreement's requirement that the licensee have four security guards on duty on the weekends and the requirement that the licensee maintain current service permits for all employees. The Commission noted that these two breaches of the settlement agreement were substantial violations. In a footnote, the Commission explained:

In this particular case, the conditions placed on the license through the Settlement Agreement were imposed in lieu of canceling the license at that time. The objective of elevating a standard requirement of law to a strict restriction or settlement agreement is to provide for strict accountability by introducing the possibility of license cancellation. The Commission believes strict liability is appropriate where failure to abide by the standard requirements of law bears a relationship to ongoing problems.

*La Macarena*, Final Order at 31-41 and n. 25.

Though the case at hand does not involve violence, unlawful drug activity and/or service to visibly intoxicated patrons, the lack of serious problems at Liquid since Licensee took over operations does not mean that the five restriction violations found above are insubstantial or merely technical in nature. In many respects, the circumstances of this case are akin to those at play in *Dad's Restaurant & Lounge*.

In *Dad's*, as here, the Commission placed restrictions on a new licensee because the prior licensee had a history of serious and persistent problems at the premises and the new licensee was continuing the same type of operation. The license restrictions prohibited the licensee from selling any doubles, selling any mixed drinks with more than one ounce of distilled spirits, stacking drinks (serving more than one alcoholic drink to a patron at one time) or giving last call. As in this case, OLCC inspectors visited the premises on multiple occasions to check for compliance. On several visits, they observed no violations. On one visit, however, the inspectors observed the bartender mix and serve drinks containing more than one ounce of

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<sup>3</sup> Prior to 2006, the Commission charged a licensee's failure to comply with a license restriction as a violation of OAR 471.405(1). See, e.g., *9 Ball Sports Bar* (OLCC Final Order, 05-V-020, June 2006.) At that time, OAR 845-005-0355(5) provided that the failure to comply with restriction(s) on the license "is a violation of ORS 471.405(1), and operating other than the permit or license permits." As set out above, however, OAR 845-005-0355(5) no longer refers to OAR 471.405(1). Rather, the rule requires a licensee to exercise the license privilege "only in compliance with the restriction(s)." The rule further states that "[f]ailure to comply with the restriction(s) is a Category I violation."

