

BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the	)	
Application for a	)	
Retail Malt Beverage	)	
License by:	)	FINAL
	)	FINDINGS OF FACT,
James C. Pearson	)	CONCLUSIONS OF LAW,
and Thurman O. Martin	)	AND ORDER
dba HALE'S TAVERN	)	
174 E Main	)	OLCC-85-L-010
Hermiston, Oregon	)	
- - - - -	)	
Umatilla County	)	

A hearing in this matter was held on April 16, 1985, in Portland, Oregon, before Hearings Examiner Douglas Crumme'. The Applicants appeared and were represented by D. Michael Mills, Attorney at Law, Salem, Oregon. The Commission was not represented by legal counsel.

On June 24, 1985, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Hearings Examiner, and Exceptions to the Proposed Order of the Hearings Examiner. Based on this review, the Commission makes the following:

BACKGROUND

James Pearson and Thurman Martin have applied for a Retail Malt Beverage (RMB) license at HALE'S TAVERN, 174 E Main, Hermiston, Oregon. An RMB license is presently issued at the premises. Mr. Pearson and Mr. Martin seek approval as the new owners. The Applicants plan to upgrade the premises and to each work at the premises part-time.

## ISSUES

I. The Regulatory Staff argues the application should be denied because court or medical records indicate that Mr. Pearson has a record of abuse of alcoholic liquor or controlled substances. OAR 845-05-025(6).

II. The Regulatory Staff argues that the application should be denied because the Commission has issued Final Orders to Mr. Pearson finding a failure to comply with the liquor laws of Oregon when Mr. Pearson was formerly a licensee and permittee of the Commission. OAR 845-05-030(4).

III. The Regulatory Staff argues that the application should be denied because Mr. Pearson provided false or misleading information to the Commission concerning his conviction record and his violation history. OAR 845-05-015(3).

### I. RECORD OF ALCOHOL ABUSE

The following criteria will be given sufficient consideration so that a license will not be issued unless good cause which outweighs the criteria involved is shown by the applicant:

. . . . .

(6) Court or medical records indicate that the applicant has a record of abuse of alcoholic liquor or controlled substances. OAR 845-05-025.

### Findings of Fact:

1. Mr. Pearson was convicted of Driving Under the Influence of Intoxicants (DUII) in approximately 1973, 1979 and 1980. The penalty for all of these convictions included fines of \$305. In addition, the third DUII conviction led to a five-day jail sentence.

2. Mr. Pearson participated in an alcoholism treatment program at White Oaks Outpatient Treatment Center in McMinnville, Oregon, from January 5, 1981, to December 13, 1982. The treatment involved taking Antabuse three times a week throughout the program, monthly individual counseling, family interviews, and reading. Mr. Pearson satisfactorily completed the program. (Applicants' Exhibit 10.)

3. Mr. Pearson's consumption of alcohol during the last several years has been limited to drinking a total of about six beers.

4. Mr. Pearson held an RMB license from November 16, 1951, to February 18, 1953, in Portland. Mr. Pearson later held a dispenser license from June 15, 1965, to December 9, 1980, in Sheridan. Mr. Pearson worked as a bartender at his licensed establishments. Mr. Pearson was never cited by the Commission for drinking on duty while a licensee.

Conclusions of Law:

The Commission has found good cause to overcome a record of abuse of alcoholic liquor or controlled substances under OAR 845-05-025(6) where there is an indication that an applicant has overcome the problem through successfully completing a treatment program. OLCC Final Order, Robert D. Hoblit, Family Zoo Tavern, July 1984; OLCC Final Order, Norma Mae Gallagher, Crab Pot, February 1984. The length of time since the most recent conviction related to alcohol or controlled substance abuse is also a factor in determining good cause. In Family Zoo Tavern, supra, the Commission noted the length of time

since the offenses where the most recent offense occurred approximately two years before the applicant's hearing. In Crab Pot, supra, the Commission noted the length of time where the most recent offense occurred approximately three years before the applicant's hearing.

In the instant matter, Mr. Pearson's three DUII convictions indicate a record of abuse of alcoholic liquor. However, good cause is shown to overcome this record as a refusal ground under OAR 845-05-025(6) because Mr. Pearson has successfully completed an alcoholism treatment program and because of the length of time since the last DUII conviction. Mr. Pearson completed a two-year alcoholism treatment program in December 1982. It has been approximately five years since his last DUII conviction. This is a substantially longer period of time than Family Zoo Tavern, supra, and Crab Pot, supra. Although Mr. Pearson has consumed approximately six beers in the last few years, this amount of consumption is extremely limited and shows that Mr. Pearson is not likely to lose control and abuse alcohol in the future. Sufficient time has passed and there is sufficient evidence of reform to conclude that Mr. Pearson has successfully overcome his alcohol problem and could perform satisfactorily as an RMB licensee. Consequently, this application should not be denied under OAR 845-05-025(6).

## II. VIOLATION HISTORY AS A LICENSEE

The following criteria will weigh against issuing a license:

. . . . .

(4) There is a final order of a court or administrative agency in a criminal or civil proceeding finding a failure to comply with the liquor laws of this or any other state by the applicant or by any officer, director, or owner of more than ten percent of the voting stock of a corporate applicant, or any general partner, or any limited partner whose investment commitment is more than ten percent of the total investment commitment of a limited partnership. OAR 845-05-030(4).

Findings of Fact:

5. Mr. Pearson committed the following violations as a licensee or service permittee of the Commission:

<u>YEAR</u>	<u>VIOLATION</u>	<u>DISPOSITION</u>
1951	Sale to Minor	Seven-day suspension of service permit.
1971	Permitted intoxicated person to remain on licensed premises; improper food service.	10-day suspension of license or \$275 fine.
1975	Sale to visibly intoxicated person; operating during prohibited hours; permitting visibly intoxicated person to enter or remain; employe hindered enforcement by destroying evidence.	14-day suspension of license or \$200 fine.

6. Mr. Pearson was personally involved in his 1951 violation as a service permittee for sale to a minor.

7. Mr. Pearson's 1971 and 1975 violations arose through Mr. Pearson's responsibility for the acts of his employees. Mr. Pearson was not personally involved in these violations. Mr. Pearson fired the employe and barred the patrons involved in the 1975 violation.

8. The Commission has received 11 letters from acquaintances of Mr. Pearson who attest to Mr. Pearson's good character.

These acquaintances include the current mayor of Sheridan, J.A. Hebert, as well as the former mayor, Melvin Agee. (Applicant's Exhibits 1 through 9, 11, and 12.)

Conclusions of Law:

OAR 845-05-030(4) is not an absolute bar to license issuance. Rather, this regulation provides that liquor violations will "weigh" against licensure. Therefore, the Commission may examine whether good cause has been shown for license issuance in the face of a record of violation of the Commission's rules. OLCC Final Order, Scotty Ritner and Terry Ritner, Main-Stop Mini-Market, March 1983.

A primary goal of the Commission in applying OAR 845-05-030(4) is to protect the health and safety of the public by refusing liquor licenses where there is sufficient question whether an applicant will follow the liquor laws. ORS 471.030(1)(c). Main-Stop Mini-Market, supra, at 15.

In the instant matter, the record indicates good cause for issuance of an RMB license to the Applicants despite Mr. Pearson's violation history as a licensee and service permittee. Mr. Pearson was a licensee or permittee of the Commission for a total of approximately 17 years. He had only one violation (in 1975) during his last nine years as a licensee. See Finding of Fact 6. This violation was committed by his employees. Mr. Pearson was not personally involved. He took swift action to fire the employee and bar the customers involved in the violation. The nature and number of these violations are not such, therefore, to raise sufficient question

whether Mr. Pearson would follow the liquor laws as a licensee at Hale's Tavern. Consequently, OAR 845-05-030(4) should not weigh against license issuance in this matter.

III. FALSE STATEMENTS

The Commission may refuse to process or may deny an application if:

. . . . .

(3) The applicant provides false or misleading information to the Commission. . . .  
OAR 845-05-015(3).

Findings of Fact:

9. Question 10 on the Individual History form that James Pearson submitted to the Commission as part of his RMB license application at Hale's provided as follows:

NOTE: For your information, a criminal records check is made on all liquor license applicants in the normal processing of a license request. Fingerprints may be required.

10A. Have you been convicted (including probation, sentencing, or bail forfeiture) of any crime, violation, or infraction of any law? (Do not include minor traffic violations for which a fine or bail forfeiture of \$50 or less was imposed.) Yes \_\_\_\_\_  
No \_\_\_\_\_

. . . . .

10C. If you have answered 'Yes' to 10A . . . list below:

<u>Offense</u>	<u>Date</u>	<u>City and State</u>	<u>Result</u>
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(Attach additional sheet if necessary.)

NOTE: The information listed in 1 through 10 above can protect you from an error in the criminal records check.

(Commission's Exhibit G.)

10. In answer to question 10 on his Individual History form, Mr. Pearson listed the following information:

<u>Offense</u>	<u>Date</u>	<u>City and State</u>	<u>Result</u>
DUII	1979	McMinnville, OR	Guilty

11. In addition to his three DUII convictions listed in Finding of Fact 1 above, Mr. Pearson was convicted of "conducting a gambling game" in the District Court for Yamhill County, Oregon, in 1964. Mr. Pearson was fined \$300 for this conviction. (Applicants' Exhibit 13.)

12. Question 14 on Mr. Pearson's Individual History form asked as follows:

Have you ever received a warning, a notice of violation, suspension, fine, or revocation as a licensee or permittee? Yes \_\_\_\_  
No \_\_\_\_ . Where & When? \_\_\_\_\_

(Commission's Exhibit G.)

13. In answer to question 14 on his Individual History form, Mr. Pearson checked "Yes." He indicated that the matter occurred in Sheridan, Oregon, in approximately 1979.

14. In addition to the three violations listed in Finding of Fact 6 above, Mr. Pearson has received warnings from the Commission in the following matters:

<u>Date</u>	<u>Nature of Violation</u>	<u>Type of Warning</u>
12-65	Sale to Minor; permitted visibly intoxicated person to enter or remain.	Letter of Warning
10-66	Failed to break empty liquor bottle.	Verbal Warning
06-69	Sanitation; borderline intoxication.	Verbal Warning
06-72	Minor in possession; failure to check identification.	Verbal Warning

(Commission's Exhibit I.)

15. The Individual History form that Mr. Pearson completed contained the following warning just above the space where Mr. Pearson signed the form:

CAUTION: FALSIFICATION OR INTENTIONAL  
OMISSIONS OF INFORMATION ON THIS FORM MAY  
BE GROUNDS TO DENY OR REVOKE YOUR APPLICA-  
TION FOR A LICENSE!

(Commission's Exhibit G.)

Mr. Pearson noticed and read the caution stated above when he completed his Individual History form.

16. Prior to meeting with Commission License Investigator Ben Eckles on January 24, 1985, Mr. Martin and Mr. Pearson had met with the Hermiston police chief to discuss obtaining the City's endorsement for the application. The chief told Mr. Martin and Mr. Pearson that the city endorsement process would include a check of Mr. Martin's and Mr. Pearson's criminal histories. Mr. Martin asked the chief whether the check included traffic violations. The chief replied that traffic violations did not count. Rather, the chief said the City would be looking for criminal matters such as narcotics convictions.

17. Mr. Pearson brought his Individual History form to the meeting with the Hermiston police chief. After the chief advised that the city would check their criminal histories, Mr. Pearson told the chief that the city would find a couple of DUII convictions that Mr. Pearson had not listed on the Individual History form. The chief responded that that did not matter because the DUII convictions were traffic matters.

18. Mr. Martin and Mr. Pearson met at Mr. Martin's home to complete their OLCC application forms. They discussed

whether to list all of Mr. Pearson's DUII convictions on question 10 of the Individual History form. Mr. Martin suggested that they should not bother to list more than one DUII conviction because the chief had not been interested in those and because the Commission would discover Mr. Pearson's DUII convictions when the Commission conducted its records check.

19. Mr. Martin and Mr. Pearson turned in their Individual History forms to Mr. Eckles at the meeting on January 24, 1985. There was no specific discussion of Mr. Pearson's answers to questions 10 and 14 concerning his criminal convictions and violation history with the Commission. Mr. Martin and Mr. Pearson did not ask Mr. Eckles whether Mr. Pearson should have listed any additional information in answer to questions 10 and 14.

20. Mr. Pearson listed only one DUII conviction on question 10 of his Individual History form, in part, because he did not want to make himself look too bad.

21. Mr. Pearson did not list his full record of violations and warnings in answer to question 14 on his Individual History form because his memory of his violation history was poor and because the violations that occurred while he was a licensee were committed by his employees, rather than by him personally.

22. Mr. Pearson did not recall his 1951 violation as a service permittee for sale to a minor when he completed question 14 on his Individual History form.

Discussion:

Mr. Pearson testified he did not list his 1964 conviction for conducting a gambling game (see Finding of Fact 11) on question 10 of his Individual History form in part because this conviction was a misdemeanor. He testified that he did not believe question 10 applied to misdemeanors. He also testified that he considered the gambling conviction to be too minor to list. The gambling conviction arose out of a card game that Mr. Pearson was licensed to operate. He considered the conviction to be minor because after his arrest, the card game in question resumed and continued to operate for a number of years without any further arrests or convictions.

The Commission does not find Mr. Pearson's explanation concerning the gambling conviction to be credible. Question 10 does not provide that misdemeanors need not be listed. The only exclusion under question 10 is for minor traffic matters involving fines of \$50 or less. Mr. Pearson's gambling conviction was not a traffic matter and involved a fine of \$300. Thus, question 10 did not provide a basis to conclude the gambling conviction was too minor to list.

Conclusions of Law:

James Pearson provided false information to the Commission on the Individual History form he submitted as part of his application. Mr. Pearson's answer to question 10 on the form was false because he failed to list two additional DUII convictions and a 1964 conviction for conducting a gambling game. Mr. Pearson's answer to question 14 was false because he failed

to list violations he committed in 1951, 1971 and 1975. Further, this answer was false because Mr. Pearson failed to list four warnings he received from the Commission between 1966 and 1972.

The false statements made by Mr. Pearson indicate that his application should be denied under OAR 845-05-015(3). Question 10 clearly required listing the two additional DUII convictions and the gambling conviction that he omitted. None of these convictions qualified for the provision under question 10 that excluded listing traffic matters involving a fine or bail forfeiture of \$50 or less. The Hermiston police chief's comments about what convictions the city was concerned about did not provide a reasonable basis for Mr. Pearson to omit the two DUII convictions and the gambling conviction. The Applicants had a ready opportunity to ask Mr. Eckles about any doubts they had concerning question 10 at their meeting with Mr. Eckles on January 24, 1985. Mr. Pearson has admitted that he did not list his entire conviction history, in part, because he did not want his application to look too bad.

Further, question 14 clearly required Mr. Pearson to list the three fines or suspensions and the four warnings that he received from the Commission. Question 14 contained nothing to suggest that violations committed by employees could be omitted. It is understandable that Mr. Pearson might forget his 1951 violation and his verbal warnings from the 1960's and early 1970's. However, the fact that he listed only one violation, when in fact he had three violations and four warnings,

indicates that he did not make even a half-serious attempt to list his true record of violations and warnings. The Applicants had a ready opportunity to ask Mr. Eckles at the meeting on January 24, 1985, about any doubts or questions they had concerning question 14. They failed to do so.

The Commission has granted applications in instances where false statements made on the application were unintentional. OLCC Final Order, Emilio Gutierrez, OLCC-85-SP-002, May, 1985. However, in light of the factors noted above, the Commission concludes that Mr. Pearson's false statements were intentional and designed, in part, to conceal required information from the Commission. Mr. Pearson saw and read the notice on the bottom of his Individual History form that falsification or intentional omissions of information could be grounds to deny the application.

The Commission should deny this application under OAR 845-05-015(3) because of Mr. Pearson's false statements.

#### ULTIMATE CONCLUSIONS OF LAW

The joint application by James Pearson and Thurman Martin for an RMB license at Hale's Tavern should be denied.<sup>1</sup> The Applicants have shown good cause to overcome Mr. Pearson's violation history with the Commission and his record of abuse of

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<sup>1</sup> The record did not indicate that Mr. Martin desires to pursue an application in the alternative as a sole applicant in the event the Commission determines a license should not be issued to Mr. Pearson. Therefore, the recommendation in this matter is made with respect to the joint application, despite the fact that none of the refusal grounds pertain to Mr. Martin.

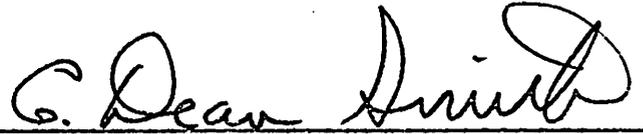
alcoholic beverages as refusal grounds. However, the Commission should deny the application because of the false statements that Mr. Pearson made on his application form.

FINAL ORDER

The Commission orders that the application by James Pearson and Thurman Martin for a Retail Malt Beverage license at Hale's Tavern, 174 E Main, Hermiston, Oregon, be DENIED.

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

Dated this 28th day of June, 1985.



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C. Dean Smith  
Administrator  
OREGON LIQUOR CONTROL COMMISSION

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