



*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
Chelsea, Massachusetts 02150-2358*

**Jean M. Lorizio, Esq.**  
*Chairman*

AMENDED  
NOTICE OF SUSPENSION

January 9, 2024

**THE SPOKE LLC D/B/A THE SPOKE  
35 EAST PLEASANT STREET  
AMHERST, MA 01002  
LICENSE#: 03114-GP-0024  
VIOLATION DATE: 12/9/2022  
HEARD: 1/31/2023**

After a hearing on January 31, 2023, the Commission finds The Spoke LLC d/b/a The Spoke violated M.G.L. c. 138, § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count). The Commission **suspends the license for a period of one (1) day to be served.**

**The suspension shall be served on Monday, February 26, 2024.** The license will be delivered to the Local Licensing Board or its designee on Monday, February 26, 2024, at 9:00 A.M. It will be returned to the licensee on Tuesday, February 27, 2024.

You are advised that pursuant to the provisions of M.G.L. c.138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form which must be signed by the Licensee and a Massachusetts Licensed Accountant.

You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio  
Chairman

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这份文件是重要的，应立即进行翻译。  
यह दस्तावेज़ महत्वपूर्ण है और इसका तुरंत अनुवाद किया जाना चाहिए  
Dokiman sa a enpòtan epi li ta dwe tradwi touswit  
‘Đây là tài liệu quan trọng và cần được dịch ngay’  
ឯកសារនេះសំខាន់ណាស់ ហើយត្រូវបកប្រែជាបន្ទាន់។

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Nicole Terasconi, Investigator  
Melissa Anderson, Investigator  
Christopher Temple, Investigator  
Nicholas Velez, Investigator  
Kristi A. Bodin, Esq.  
Administration, File



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NOTICE OF SUSPENSION

January 5, 2024

**THE SPOKE LLC D/B/A THE SPOKE  
35 EAST PLEASANT STREET  
AMHERST, MA 01002  
LICENSE#: 03114-GP-0024  
VIOLATION DATE: 12/9/2022  
HEARD: 1/31/2023**

After a hearing on January 31, 2023, the Commission finds The Spoke LLC d/b/a The Spoke violated M.G.L. c. 138, § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count). The Commission **suspends the license for a period of one (1) day to be served.**

**The suspension shall be served on Monday, February 27, 2024.** The license will be delivered to the Local Licensing Board or its designee on Monday, February 27, 2024, at 9:00 A.M. It will be returned to the licensee on Tuesday, February 28, 2024.

You are advised that pursuant to the provisions of M.G.L. c.138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form which must be signed by the Licensee and a Massachusetts Licensed Accountant.

You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

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*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
Chelsea, Massachusetts 02150-2358*

**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**THE SPOKE LLC D/B/A THE SPOKE  
35 EAST PLEASANT STREET  
AMHERST, MA 01002  
LICENSE#: 03114-GP-0024  
VIOLATION DATE: 12/9/2022  
HEARD: 1/31/2023**

The Spoke LLC d/b/a The Spoke (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, January 31, 2023, regarding an alleged violation of M.G.L. c. 138, § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count).

The following documents are in evidence:

1. Investigator Terasconi's Report;
2. Licensee's Accela Summary, Transfer of License Approved, 2/17/2017.
- A. Statement of Katie Rozen;
- B. Statement of Ksharn Gilbert;
- C. Statement of Rich Luippold;
- D. TIPS Certification Card of K. Rozen.

There is one (1) audio recording of this hearing.

**FINDINGS OF FACT**

1. On Friday, December 9, 2022, Investigators Anderson, Temple, Velez, and Terasconi ("Investigators") inspected The Spoke LLC d/b/a The Spoke to determine the manner in which its business was being conducted. (Testimony, Exhibit 1)
2. At approximately 9:20 p.m., Investigators Anderson and Terasconi entered the licensed premises in an undercover capacity. Id.
3. At approximately 11:39 p.m., Investigators Anderson and Terasconi observed a tall unknown male individual ("UM") who appeared to be intoxicated. Investigators

observed UM was unsteady on his feet, swaying back and forth while near the bar and in the direct line of vision of a male bartender on duty. Id.

4. Investigators Anderson and Terasconi observed as UM ordered and was served a High Noon Hard Seltzer. Id.
5. At approximately 12:15 a.m., Investigators Anderson and Terasconi observed UM was unsteady on his feet and appeared to be leaning on the patio door for support. Investigators Anderson and Terasconi observed UM to be clumsy while fumbling for and dropping his cell phone. UM was observed to be uncoordinated as he struggled to bend over to retrieve his phone, until another patron handed the cell phone to him. Id.
6. At this point, based on their training and experience, Investigators Anderson and Terasconi determined that UM was intoxicated. Id.
7. UM waited for service at the bar, swaying back and forth, in the direct line of sight of a female bartender. Investigators Anderson and Terasconi observed UM's eyes were droopy and at times appeared to be shut. Again, UM was observed to be uncoordinated as he fumbled for his wallet. Id.
8. The female bartender asked UM what he would like, and he placed his order by holding his can of High Noon Hard Seltzer high in the air. Investigators Anderson and Terasconi heard the bartender ask UM if he was ok. UM nodded his head in the affirmative. The bartender delivered the alcoholic beverage to UM. Id.
9. Investigators Anderson and Terasconi contacted Investigators Temple and Velez who then entered the establishment to make their own observations. Id.
10. Investigators Temple and Velez entered the premises and observed that UM appeared to be intoxicated. They identified themselves to the manager on duty and informed him of the intoxicated individual. Investigators Temple and Velez asked for the owner and were informed the owner was away. (Exhibit 1)
11. Investigators Temple and Velez advised the manager on duty that a report would be filed with the Chief Investigator for further review. Id.
12. The Licensee has held a license under M.G.L. c. 138, § 12 since 2017 with no previous violations. (Testimony)

### DISCUSSION

The Licensee is charged with service to an intoxicated person in violation of M.G.L. c. 138, § 69. "No alcoholic beverage shall be sold or delivered on any premises licensed under this chapter to an intoxicated person." M.G.L. c. 138, §69. "[A] tavern keeper does not owe a duty to refuse to serve liquor to an intoxicated patron unless the tavern keeper knows or reasonably should have known that the patron is intoxicated." Vickowski v. Polish Am. Citizens Club of Deerfield, Inc., 422 Mass. 606, 609 (1996) (quoting Cimino v. Milford Keg, Inc., 385 Mass. 323, 327 (1982)). "The negligence lies in serving alcohol to a person who already is showing discernible signs of intoxication." Id. at 610; see McGuiggan v. New England Tel. & Tel. Co., 398 Mass. 152, 161 (1986).

To substantiate a violation of M.G.L. c. 138, §69, there must be proof of the following elements: (1) that an individual was in or on the licensed premises; (2) that an employee of the licensed

premises knew or reasonably should have known that the individual was intoxicated; and (3) that after the employee knew or reasonably should have known the individual was intoxicated, the employee sold or delivered an alcoholic beverage to the intoxicated individual. See Vickowski, 422 Mass. at 609. “The imposition of liability on a commercial establishment for the service of alcohol to an intoxicated person ..., often has turned, in large part, on evidence of obvious intoxication at the time a patron was served.” *Id.*; see Cimino, 385 Mass. at 325, 328 (patron was “totally drunk”; “loud and vulgar”); Gottlin v. Graves, 40 Mass. App. Ct. 155, 158 (1996) (acquaintance testified patron who had accident displayed obvious intoxication one hour and twenty minutes before leaving bar); Hopping v. Whirlaway, Inc., 37 Mass. App. Ct. 121 (1994) (sufficient evidence for jury where acquaintance described patron who later had accident as appearing to feel “pretty good”). Contrast Makynen v. Mustakangas, 39 Mass. App. Ct. 309, 314 (1995) (commercial establishment could not be liable when there was no evidence of obvious intoxication while patron was at bar); Kirby v. Le Disco, Inc., 34 Mass. App. Ct. 630, 632 (1993) (affirming summary judgment for defendant in absence of any evidence of obvious intoxication); Wiska v. St. Stanislaus Social Club, Inc., 7 Mass. App. Ct. 813, 816-817 (1979) (directed verdict in favor of commercial establishment affirmed when there was no evidence that patron was served alcohol after he began exhibiting obvious signs of intoxication).

The Commission’s decision must be based on substantial evidence. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 528 (1988). “Substantial evidence” is “such evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* Evidence from which a rational mind might draw the desired inference is not enough. See Blue Cross and Blue Shield of Mass. Inc. v. Comm’r of Ins., 420 Mass. 707 (1995). Disbelief of any particular evidence does not constitute substantial evidence to the contrary. New Boston Garden Corp. v. Bd. of Assessor of Boston, 383 Mass. 456, 467 (1981).

To find a violation of M.G.L. c. 138, § 69 evidence must exist that “the patron in question was exhibiting outward signs of intoxication by the time he was served his last alcoholic drink.” Rivera v. Club Caravan, Inc., 77 Mass. App. Ct. 17, 20 (2010); see Vickowski, 422 Mass. at 610 (“The negligence lies in serving alcohol to a person who already is showing discernible signs of intoxication”). Direct or circumstantial evidence or a combination of the two may be used to prove that an individual is intoxicated. See Vickowski, 422 Mass. at 611 (direct evidence of obvious intoxication not required).

Investigators testified before the Commission that they were inside the licensed premises when they observed the patron at the bar, moving in an uncoordinated manner, swaying back and forth, and fumbling with his possessions while in the direct line of sight of the Licensee’s employee. Investigators further testified the patron’s eyes were droopy and at some point seemed to be closed. (Testimony) After Investigators formed the opinion the patron was intoxicated and while the patron was exhibiting visible signs of intoxication, they observed the Licensee’s employee take the patron’s order and then ask him if he was ok. The employee then served the patron an alcoholic beverage, a High Noon Hard Seltzer. (Testimony)

The law is well-settled that it is the responsibility of the licensee to exercise sufficiently close supervision so that there is compliance with the law on the premises. A vendor who sells alcohol is “bound at his own peril to keep within the condition of his license.” Commonwealth v. Gould, 158 Mass. 499, 507 (1893). See Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm’n, 7 Mass. App. Ct. 186, 190 (1979).

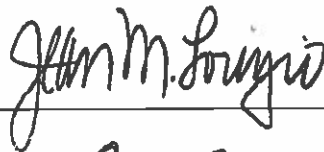
Based on the direct evidence in this matter, the Commission finds that the patron was served an alcoholic beverage after he manifested obvious and visible signs of intoxication while inside the licensed premises, in clear view of the Licensee's employee, who knew or should have known that the patron was intoxicated. The Commission finds that there was a violation of M.G.L. c. 138, § 69.

### CONCLUSION

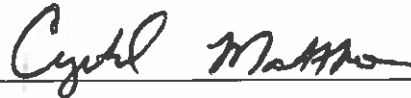
Based on the evidence, the Commission finds the Licensee violated M.G.L. c. 138, § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count). As a result, the Commission **suspends the license for a period of one (1) day.**

### ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: January 5, 2024

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

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2022-000206-ad-enf

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*Commonwealth of Massachusetts*  
*Department of the State Treasurer*  
*Alcoholic Beverages Control Commission*  
*95 Fourth Street, Suite 3*  
*Chelsea, MA 02150-2358*  
*Telephone: (617) 727-3040 Fax: (617) 727-1510*

Jean M. Lorizio, Esq.  
*Chairman*

OFFER IN COMPROMISE IN LIEU OF SUSPENSION

**Licensee Information:**

License Number:

Licensee Name:

DBA(if any):

Address of Licensed Premises:

City/Town:

State:

Zip:

Business Phone:

Cell Phone:

Type of License:

Email:

(Restaurant, Package Store, Club, Hotel, Tavern, General on Premises, Veterans Club)

**Offer in Compromise Information:**

1. The above referenced licensee is submitting this Offer to the Alcoholic Beverages Control Commission in reference to a recent decision, resulting a suspension:

a. Violation Date:

b. Number of Days Suspended:

c. Hearing Date:

2. The licensee certifies that this offer is calculated according to the formula set forth in M.G.L. Chapter 138, §23. The amounts on the following line items (Item 4 and Item 5) may be from either the twelve (12) months immediately preceding the date of this violation (Item 1a above) or, for licensees that have been in business for more than one (1) year, from the licensee's most recent full fiscal (income tax) year.

3. State the Period Covered by the amounts on Item 5 and 6:

4. Total annual **receipts** from the sale of ONLY alcoholic beverages:

\$

5. Total annual **invoiced costs** of ONLY alcoholic beverages sold:

\$

6. Gross annual alcoholic beverage profit:

\$

(Item 4 (receipts) minus Item 5 (invoiced costs))

7. Annual Number of Days in Operation (365, 313 or \*):

*\*If the business has not been open a full year, please enter number of days the premises has been open along with an affidavit.*

Seven (7) Day Annual Operation = 365

Six (6) Day Annual Operation = 313

All others (Special Licenses/Seasonal Licenses) Enter actual days of operation during the year preceding the violation date (Line 9b.).

8. Daily Gross Alcoholic Beverage Profit: (Item 6 divided by Item 7)

\$

9. Enter 50% of Amount Indicated on Item 8:

\$

10. Daily Fine (If Item 9 is less than \$40.00, enter \$40.00):

\$

11. Enter the Number of Days the License is Suspended: (From Item 1b.)

12. Offer in Compromise Amount: (Multiply Item 10 by Item 11)

\$

Signed Under the Penalties of Perjury,

Signature of Licensee (If Licensee is a Corporation, Manager of Record signs)

**Accountant Certification:**

MA License Number (Licensed Public Accountant):

Print Name Clearly (Licensed Public Accountant):

Print Address Clearly (Licensed Public Accountant):

*I swear under the pains and penalties of perjury that the figures contained in the petition are correct based on the books and records of the above referenced licensee.*

Signature of MA Licensed Accountant

**Important Information:**

- \*Offer MUST be received by the ABCC within twenty (20) calendar days after Licensee's receipt of Commission's Decision. No offer will be accepted if it is late.**
- \*Offer MUST be examined and certified by a Massachusetts Licensed Accountant. If the Accountant is not licensed in MA, it will not be accepted.**
- \*Offer will be returned if any of the fields/amounts are calculated incorrectly.**
- \*Offer MUST be accompanied by a Bank or Certified check, made payable to the Commonwealth of Massachusetts ABCC, for the full amount on Line 12.**

**IF THIS OFFER IS ACCEPTED, THE LICENSEE WAIVES ALL RIGHTS TO APPEAL  
AND WAIVES JUDICIAL REVIEW OF THE COMMISSION'S DECISION  
PURSUANT TO MGL C. 138, § 23, AND 204 CMR 20.02.**