



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

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

**NOTICE OF SUSPENSION**

February 4, 2025

**PAGA INC. D/B/A ICON  
100 B WARRENTON STREET  
BOSTON, MA 02116  
LICENSE#: 00442-GP-0116  
VIOLATION DATE: 10/13/2023  
HEARD: 4/09/2024**

After a hearing on April 9, 2024, the Commission finds Paga Inc. d/b/a Icon violated 204 CMR 2.05 (2) – Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138, § 34C – Possession of an alcoholic beverage by a person under twenty-one (21) years of age (1 count). The Commission **suspends the license for a period of one (1) day to be served.**

**The suspension shall be served on Monday, March 24, 2025.** The license will be delivered to the Local Licensing Board or its designee on Monday, March 24, 2025, at 9:00 A.M. It will be returned to the licensee on March 25, 2025.

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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2023-000278-ad-enf

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Nicole Smith, Investigator  
Robert Gardner, Investigator  
Christopher Temple, Investigator  
Nicholas Velez, Investigator  
William A. Kelley, Esq.  
Administration, File



*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
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**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**PAGA INC. D/B/A ICON  
100 B WARRENTON STREET  
BOSTON, MA 02116  
LICENSE#: 00442-GP-0116  
VIOLATION DATE: 10/13/2023  
HEARD: 4/09/2024**

Paga Inc. d/b/a Icon ("Licensee" or "Paga") holds an alcohol license issued pursuant to M.G.L. Ch. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, April 9, 2024, regarding alleged violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138, § 34C – Possession of an alcoholic beverage by a person under twenty-one (21) years of age (2 counts) which occurred October 13, 2023, according to Investigator Smith's Report.

The following documents are in evidence:

1. Investigative Report of N. Smith;
2. Photograph of Fraudulent Identifications;
3. ABCC Licensing Authority Certification, Change of Manager Approved 7/8/2019.

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

**FINDINGS OF FACT**

1. On Friday, October 13, 2023, at approximately 12:00 a.m., Investigators Gardner, Temple, Velez, and Smith ("Investigators") conducted an inspection of Paga Inc. d/b/a Icon ("Licensee" or "Paga") to determine the way its business was being conducted. (Testimony, Exhibit 1)
2. Investigators Smith and Gardner observed a youthful appearing male individual standing at the bar and in possession of what appeared to be an alcoholic beverage. Investigators identified themselves and requested proof of legal age to possess an alcoholic beverage. *Id.*
3. Underage #1, actual date of birth 2/16/2004 (age 19), was in possession of a vodka and cranberry mixed drink. He provided to Investigator Smith a fraudulent Republic of Colombia driver's license bearing his name but a different birth date and a false Republic of Colombia personal identification card. (Testimony, Exhibits 1, 2)

4. Investigator Smith's report details the interaction of Investigators Temple and Velez with another individual. Investigator Smith based her report on the 2<sup>nd</sup> individual on information provided by Investigator Temple. (Testimony, Exhibit 1)
5. Investigators spoke to the head of security, Kevin Montgomery, to advise him of the violations and that a report would be submitted to the Chief Investigator for further review. Id.
6. Mr. Montgomery appeared at the Commission hearing along with Shahrokh Reza. (Commission Records)
7. The Licensee holds a license under M.G.L. c. 138, § 12. Id.

### DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses and required conduct of licensees who sell alcoholic beverages is set out in Massachusetts General Laws, Chapter 138.

Chapter 138 gives the Commission the authority to grant, revoke and suspend licenses. Chapter 138 was "enacted ... to serve the public need and ... to protect the common good." M.G.L. c. 138, §23. "[T]he purpose of discipline is not retribution, but the protection of the public." Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981). The Commission is given "comprehensive powers of supervision over licensees." Connolly, 334 Mass. at 617.

The Licensee is charged with a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: chapter 138, §34C – Possession of an alcoholic beverage by a person under twenty-one (21) years of age. A Commission regulation promulgated at 204 CMR 2.05(2) provides in pertinent part, that "[n]o licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to the place in or on the licensed premises. The licensee shall be responsible therefore, whether present or not." The law is well-settled that "under the regulation, [204 C.M.R. 2.05(2)] the responsibility of the licensee is 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." Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 788 (1981); Commonwealth v. Gould, 158 Mass. 499, 507 (1893). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter. The licensee is responsible for illegalities that occur on the licensed premises. Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Comm'n, 19 Mass. App. Ct. 1026, 1027 (1985).

Massachusetts General Laws, Chapter 138, §34C states, in pertinent part, that: "Whoever, being under twenty-one years of age and not accompanied by a parent or legal guardian, knowingly possesses any alcohol or alcoholic beverages, shall be punished." M.G.L. c. 138, §34C.

Direct evidence was provided only through the eye-witness testimony of Investigator Smith who observed and interacted with 1 patron who was younger than twenty-one years of age and in possession of an alcoholic beverage on the licensed premises.

While Investigator Smith's report cites 1 additional count of a violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34C, the Investigative and Enforcement Division presented no direct evidence as to the 2<sup>nd</sup> count. As such, this information is hearsay. A decision of a board that rests entirely on hearsay evidence cannot be sustained. See Moran v. School Committee of Littleton, 317 Mass. 591, 596-597 (1945) (citations omitted); Braintree Brew House LLC d/b/a The Brew House (ABCC Decision March 27, 2013) (violation of § 69 disapproved where all of the evidence presented to the Commission constituted hearsay). The Investigators have the burden of proving that a violation occurred. In the present case, no direct evidence was offered to prove 1 of the 2 counts.

The Commission is persuaded and finds that the Licensee committed a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premise, to wit: M.G.L. c. 138, §34C- Possession of an alcoholic beverage by a person under twenty-one years of age (1 count).

The Commission finds NO VIOLATION regarding the additional count.

#### CONCLUSION

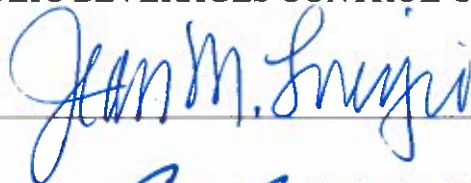
Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138, § 34C – Possession of an alcoholic beverage by a person under twenty-one (21) years of age (1 count).

The Commission finds **NO VIOLATION** of one (1) count of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34C occurred.

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: February 4, 2025

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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