



*The Commonwealth of Massachusetts*  
*Department of the State Treasurer*  
*Alcoholic Beverages Control Commission*  
*Boston, Massachusetts 02114*

*Deborah B. Goldberg*  
*Treasurer and Receiver General*

*Kim S. Gainsboro, Esq.*  
*Chairman*

NOTICE OF SUSPENSION

September 10, 2015

**WILLIAM L. CONLIN JR. D/B/A CONLIN'S CORNER**  
**110 CLEGHORN STREET**  
**FITCHBURG, MASSACHUSETTS 01420**  
**LICENSE#: 039400009**  
**VIOLATION DATES: 04/01/2015 to 07/22/2015**  
**HEARD: 08/18/2015**

After a hearing on August 18, 2015, the Commission finds William L. Conlin Jr. d/b/a Conlin's Corner in violation of 204 CMR 2.05 (2): Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 94C Violation of the Controlled Substances Act (7 Counts).

The above-captioned Licensee's license is **SUSPENDED INDEFINITELY EFFECTIVE FORTHWITH** until further written order from this Commission.

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**

Kim S. Gainsboro  
Chairman

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Questo documento è importante e dovrebbe essere tradotto immediatamente.  
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.  
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Michael Teehan, Investigator  
Dennis Keefe, Investigator  
Joseph Di Cicco, Investigator  
Lisa Lordan, Investigator  
Administration, File



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**DECISION**

**WILLIAM L. CONLIN JR. D/B/A CONLIN'S CORNER**  
**110 CLEGHORN STREET**  
**FITCHBURG, MASSACHUSETTS 01420**  
**LICENSE#: 039400009**  
**VIOLATION DATES: 04/01/2015 to 07/22/2015**  
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William L. Conlin Jr. d/b/a Conlin's Corner (the "Licensee" or "Conlin's") holds an all-alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, August 18, 2014, regarding an alleged violation of 204 CMR 2.05 (2): Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 94C: Violation of the Controlled Substances Act (7 Counts). Prior to the commencement of the hearing, the Licensee stipulated to the violation alleged in Investigator Teehan's Report.

The following documents are in evidence:

1. Investigator Teehan's Investigative Report;
2. Licensee's Stipulation of Facts; and
3. "Affidavit" of Massachusetts State Trooper Shawn McIntyre.

The Commission took Administrative Notice of the Licensee's Commission files.

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

**FACTS**

1. On Wednesday, July 22, 2015, at approximately 10:30 a.m., Chief Investigator Mahony, along with Investigators Keefe, Lordan, DiCicco, and Teehan (the "Investigators") investigated the business operation of William L. Conlin Jr. d/b/a Conlin's Corner to determine the manner in which their business was being conducted. (Testimony, Exhibit 1)
2. At the same time, Troopers from the Massachusetts State Police executed a search warrant of the premises. The search warrant was issued based upon an affidavit of Trooper Shawn McIntyre. (Testimony, Exhibit 1, Exhibit 3)

3. Over the course of the past several months, the Massachusetts State Police Gang Unit and the Fitchburg Police Department Drug Suppression Unit conducted an investigation into allegations of drug distribution and illegal gambling taking place within Conlin's. During the course of this investigation, a state trooper working in an undercover capacity (the "undercover trooper" or "UC") was tasked to purchase narcotics and participate in the illegal gambling. (Testimony, Exhibit 1, Exhibit 3)
4. On March 23, 2015, the UC obtained a phone number from Everett Carlson at Conlin's. Mr. Carlson advised the UC that he sold "perc-30s," which is a street name for Percocet®/Oxycodone. Mr. Carlson advised the UC that he should ask for the "old man" when he called so that Mr. Carlson would identify the call as coming from a customer wishing to purchase drugs. (Testimony, Exhibit 1, Exhibit 3)
5. On Wednesday, April 1, 2015, the UC arrived at the licensed premises and observed Mr. Carlson seated at the poker machine at the bar. The UC approached Mr. Carlson and they both walked down to the lower level of the bar where the UC had observed Mr. Carlson conduct "hand to hand" drug dealing in the past.<sup>1</sup> (Testimony, Exhibit 1, Exhibit 3)
6. Mr. Carlson asked the UC what he wanted and the UC responded "30s," short for "perc-30s". Mr. Carlson stated that he had "OP 30s". The UC asked for two pills and asked if the price was \$30.00 per pill. Mr. Carlson confirmed the price, the UC handed Mr. Carlson \$60.00 in U.S. currency and received two brown pills marked "OP 30s" which he observed Mr. Carlson remove from a small glass vial that he had on his person. (Testimony, Exhibit 1, Exhibit 3)
7. On Thursday, April 2, 2015, the UC arrived at the licensed premises and ordered a beer from the bartender on duty, Brenda Rivera. At one point the UC and Mr. Carlson exited the premises and stood outside on the sidewalk. The UC asked Mr. Carlson if he had any "30s". Mr. Carlson stated that he had only "20s and 40s". The UC attempted to purchase a "40" outside the bar but Mr. Carlson observed there was a pole camera mounted across the street, which he said had been installed by the State Police. Mr. Carlson and the UC re-entered the bar and went to the lower level to complete the transaction. Mr. Carlson pulls out a glass vial from his pocket but stated it was the wrong one. Mr. Carlson then pulled out another container, and handed the UC a pill marked "OP/40". The UC then paid Mr. Carlson \$40.00 in U.S. currency. (Testimony, Exhibit 1, Exhibit 3)
8. While both men were seated at the lower level bar, Ms. Rivera came over to them with an unidentified female patron. Ms. Rivera asked Mr. Carlson if he had any "30s" on him. Mr. Carlson told her that he had only OP "20s and 40s". Ms. Rivera explained the difference in the pills to the unidentified female patron. The female patron told Mr. Carlson that she wanted three "20s". Mr. Carlson pulled the glass vial from his pocket and handed the female patron three pills. The female patron then gave Mr. Carlson \$60.00 in U.S. currency. This transaction took place in plain view of the UC and Ms. Rivera. (Testimony, Exhibit 1, Exhibit 3)
9. On Tuesday, April 7, 2015, the UC arrived at the licensed premises, walked over to Mr. Carlson who was seated with Ms. Rivera, and asked him for a "30". Mr. Carlson handed the UC a round

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<sup>1</sup> An individual standing behind the main bar has a clear view of the lower level of the bar. (Testimony, Exhibit 1)

pink pill marked "OP/20" and the UC handed Mr. Carlson \$30.00 in U.S. currency.<sup>2</sup> This transaction took place in the open, at the bar with Ms. Rivera observing the transaction. (Testimony, Exhibit 1, Exhibit 3)

10. On Thursday, April 9, 2015, the UC arrived at the licensed premises. While at the bar, he asked Mr. Carlson for a "30". He told Mr. Carlson that he sold him a "20" the other day although the UC had requested and paid for a "30". Mr. Carlson pulled a container from his pocket and handed the UC an off-yellow pill marked "OP/40". The UC handed Mr. Carlson \$30.00 in U.S. currency. (Testimony, Exhibit 1, Exhibit 3)
11. On Wednesday, May 6, 2015, the UC arrived at the licensed premises. The UC spoke to Ms. Rivera, who was working, and asked her if anyone was selling "30s". The UC observed Ms. Rivera approach three patrons in the bar and ask if they had any "30s" to sell. Ms. Rivera returned to the UC and said no one had any "30s" for sale. (Testimony, Exhibit 1, Exhibit 3)
12. On Monday, May 11, 2015, the UC arrived at the licensed premises and approached the bar. Ms. Rivera, who was working that day, asked the UC, "You still like percs right?" The UC replied "yes". Ms. Rivera then asked, "Do you want any "tens" (10mg)? I have three." The UC replied "yes". (Testimony, Exhibit 1, Exhibit 3)
13. Eddie McCloy, a male patron seated next to the UC at the bar, overheard this conversation. Mr. McCloy stated to the UC that he had one too. The UC then handed Mr. McCloy \$10.00 in U.S. currency and Mr. McCloy handed the UC a round pink pill marked "K 56," which was later determined to be 10 milligrams of Oxycodone. The UC secured the pill and then told Ms. Rivera that he would still take the three pills she offered him. (Testimony, Exhibit 1, Exhibit 3)
14. Ms. Rivera called a female patron, Bryttini Benoit, to cover to her at the bar. Ms. Rivera told Ms. Benoit that the UC wanted "three". Ms. Benoit walked away for a brief period and then returned to Ms. Rivera. In plain view of the UC, Ms. Benoit handed Ms. Rivera three round pink pills. Ms. Rivera then handed the three pills to the UC. The UC handed Ms. Rivera \$30.00 in U.S. currency. The UC secured the pills. (Testimony, Exhibit 1, Exhibit 3)
15. The owner and license manager, William L. Conlin Jr., denied knowing about the sale of drugs on the licensed premises. Mr. Conlin has indicated an interest in selling the license. (Testimony)

### 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 M.G.L. c. 138.

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<sup>2</sup> It was later discovered that Mr. Carlson had given the UC only a 20 milligram pill, not the 30 milligram pill which he requested and for which he paid. (Testimony, Exhibit 1, Exhibit 3)

M.G.L. c. 138 gives the Commission the authority to grant, revoke and suspend licenses and 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. Board of Registration in Medicine, 383 Mass. 299, 317 (1981) (Emphasis supplied). The Commission is given "comprehensive powers of supervision over licensees." Connolly, 334 Mass. at 617.

Commission regulation 204 CMR 2.05(2) provides that "[n]o licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take 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 CMR 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." Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Comm'n, 19 Mass. App. Ct. 1026, 1027 (1985). 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); Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 788 (1981). The Licensee violated this regulation by permitting the sale of controlled substances on its premises.

A licensee "need not have been a participant in the illegal conduct to have violated the regulation." DeMello v. Alcoholic Beverages Control Comm'n, 411 Mass. 1001 (1991) (affirming Commission's affirmation of local board's decision to revoke license because of illegal sales of controlled substances on the licensed premises). Moreover, the Commission is not restricted in only finding that the licensee actually knew that drug dealing was going on in their licensed premises. "It is . . . quite possible for a licensee to offend the regulatory scheme without scienter." Rico's of the Berkshire's, Inc., 19 Mass. App. Ct. at 1027; see New Palm Gardens, Inc. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 796-798 (1981) (licensee "permitted" a violation of law although neither the manager nor the person in charge of the licensed premises was present at the time of the violation); Rum Runners Inc. v. Alcoholic Beverages Control Comm'n, 43 Mass. App. Ct. 248 (1997) (licensee "permitted" a violation where bartender was aware of drug transaction and did not take positive action to stop the violation and prevent its recurrence). In Rum Runners, a patron was a drug dealer who sat next to a second patron at the bar and removed a folded three inch paper square in exchange for \$50.00 while the second patron made eye contact with the bartender. The Appeals Court in Rum Runners, noted that such conduct, "supports attribution of the bartender's knowledge to the licensee." See id. at 250-251. The Appeals Court then affirmed the licensee's suspension. See id.

There must be substantial evidence that a violation of 204 CMR 2.05(2) has occurred. "Substantial evidence of a violation is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938); accord Charlesbank Rest. Inc., v. Alcoholic Beverages Control Comm'n, 12 Mass. App. Ct. 879 (1981).

The evidence in this case passes the substantial evidence test. Not only is there more than a mere scintilla of evidence that these violations occurred, there is no dispute that a violation occurred. Over the course of almost two months, a Massachusetts State Trooper, while working in an undercover capacity, observed and engaged in numerous sales of narcotics on the licensed premises. Not only did the bartender know about sales of drugs on the premises, she herself engaged in some of the sales. While the Licensee denies knowledge of drug dealing at Conlin's, "the illegality committed by the licensee was not in allowing in persons who may have drugs in their possession because only a lawful body search can uncover the same. Rather, the liability is in not paying attention to the bar business and

making necessary observations about patrons who may use or dispense drugs once inside the licensed premises"; the licensee "must not only be present or have a qualified manager present but must also keep her (his) eyes open while present." Moonshine Pub, Inc., Fall River (ABCC Decision February 2, 2005). In any event, the Commission may infer a Licensee's knowledge of drug dealing when drugs are seen in plain view inside the licensed premises because a manager and licensee "who wanted to see would have seen" them. Rico's of the Berkshires, Inc., 19 Mass. App. Ct. at 1027; accord Moonshine Pub, Inc. Furthermore, the Commission may also attribute to the Licensee the knowledge of its bartender who was in charge of the business on the days in issue. Rum Runners, 43 Mass. App. Ct. at 251.

The Commission notes that the copy of Trooper McIntyre's "affidavit" entered as Exhibit 3 is not actually an affidavit, as it was not sworn to or signed under the penalties of perjury. O'Brion, Russell & Co v. LeMay, 370 Mass. 243, 245 (1976); McCauliff v. O'Sullivan, 2000 WL 33170919 \*1 (September 26, 2000) (Fecteau, J.) ("an affidavit is 'a statement under oath by a person having direct knowledge of the facts which he verifies, except as otherwise clearly stated in the affidavit itself'") (Emphasis added). While unsigned letters and documents usually are "not persuasive to the Commission," Metro Dining, Inc., Boston (September 13, 2012), Trooper McIntyre's unsigned "affidavit" bears sufficient indicia of reliability as it was the basis for a superior court judge to grant and issue a search warrant of the Licensee's premises. See, e.g., El Manahri The Hermit, Inc., Framingham (ABCC Decision September 9, 2014), and cases cited. Trooper McIntyre's "affidavit," combined with the other evidence and the Licensee's stipulation to violations, constitutes substantial evidence.

The Commission finds that the Licensee permitted a violation and knew or should have known that the sale of narcotics was taking place on the licensed premises. The Licensee is operating this business in a dangerous manner which jeopardizes public safety and is not in accordance with Chapter 138 and Commission Regulations.

### 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. c. 94C Violation of the Controlled Substances Act (7 Counts).

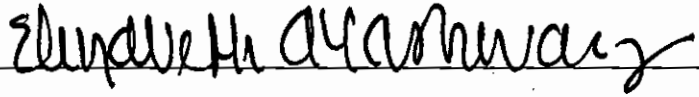
The Commission **INDEFINITELY SUSPENDS** the license of William L. Conlin Jr. d/b/a Conlin's Corner **effective forthwith** until further written order of the Commission.

Mr. Conlin testified that he would like to sell the license. The Commission will not issue any further order without a written request from the Licensee showing good cause to reconsider this indefinite suspension and a hearing before the Commission that the Licensee William L. Conlin Jr. d/b/a Conlin's Corner and the proposed transfer applicant attend.

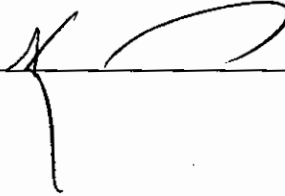
Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspension will include, but not be limited to: the proposed transfer applicant filing with both the Commission and the Local Licensing Authorities the appropriate license transfer application pursuant to M.G.L. c. 138, § 23, which must be approved by the local licensing authorities and by the Commission in the usual administrative process.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Kim S. Gainsboro, Chairman



Dated: September 10, 2015

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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