



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

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

**NOTICE OF INDEFINITE SUSPENSION**

March 12, 2021

**DELISLE GOULET POST #92 AMERICAN LEGION  
69 WORCESTER STREET  
GRAFTON, MA 01519  
LICENSE#: 00010-CL-0456  
VIOLATION DATE: 1/08/2021  
HEARD: 2/10/2021**

After a hearing on February 10, 2021, the Commission finds Delisle Goulet Post #92 American Legion violated:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 37 (June 6, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 40 (June 19, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;
- 3) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 57 (Dec. 8, 2020);
- 4) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 58 (Dec. 8, 2020) – Failure to comply with rules applicable to Step 1 of Phase III of the Re-Opening Plan.

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of Delisle Goulet Post #92 American Legion **effective forthwith** until further written order of the 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**



Jean M. Lorizio  
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  
Kyle E. Gill, Esq., Associate General Counsel  
Jamie Binienda, Investigator  
Brian Gould, Investigator  
Michael Flanagan, Dept. of Labor Standards  
Administration, File



*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
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**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**DELISLE GOULET POST #92 AMERICAN LEGION  
69 WORCESTER STREET  
GRAFTON, MA 01519  
LICENSE#: 00010-CL-0456  
VIOLATION DATE: 1/08/2021  
HEARD: 2/10/2021**

Delisle Goulet Post #92 American Legion (the "Licensee") holds an alcoholic beverages 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 Wednesday, February 10, 2021, regarding alleged violations of:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 37 (June 6, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 40 (June 19, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;
- 3) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 57 (Dec. 8, 2020);
- 4) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 58 (Dec. 8, 2020) – Failure to comply with rules applicable to Step 1 of Phase III of the Re-Opening Plan.

The above-captioned occurred on January 8, 2021 according to Investigator Binienda's Report.

The following documents are in evidence:

1. Investigator Binienda's Report;
2. Form 43 License Approval, 3/11/1975;
3. Massachusetts Executive COVID-19 Order No. 37, 6/6/2020;
4. Massachusetts Executive COVID-19 Order No. 40, 6/19/2020;
5. Massachusetts Executive COVID-19 Order No. 57, 12/8/2020;
6. Massachusetts Executive COVID-19 Order No. 58, 12/8/2020;
7. Massachusetts Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 12/11/2020;
8. ABCC Enforcement Memorandum, 2/8/2021;
9. Massachusetts Sector Specific Workplace Safety Standards for Arcades and Other Indoor and Outdoor Game and Recreation Businesses to Address COVID-19, 12/11/2020.

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

#### FINDINGS OF FACT

1. On Friday, January 8, 2021, at approximately 6:25 p.m., Investigators Gould and Binienda ("Investigators") conducted an investigation of Delisle Goulet Post #92 American Legion to determine the manner in which its business was being conducted, and to ensure compliance with Massachusetts Governor Charles Baker's Executive COVID-19 Orders. (Testimony, Exhibit 1)
2. From the parking lot of the licensed premises, Investigator Binienda observed several patrons without any facial coverings, playing pool on the 2<sup>nd</sup> floor and consuming alcoholic beverages. Id.
3. Investigators entered the licensed premises and proceeded downstairs where they observed the bartender on duty, James Preston, without any facial covering, standing behind the bar. Id.
4. Investigators identified themselves to Mr. Preston and then attempted to enter the upstairs bar area, but found the door was locked. Investigators asked Mr. Preston to unlock the upstairs door. Id.
5. Mr. Preston went up a stairway located in the rear of the building to unlock the door and Investigators followed him. Mr. Preston instructed the patrons on the 2<sup>nd</sup> floor to put on their facial coverings. Id.
6. Investigators observed approximately six (6) patrons standing in the 2<sup>nd</sup> floor bar area, playing pool, while consuming alcoholic beverages. Id.
7. Investigators informed Mr. Preston of their observations and reviewed the COVID-19 guidelines and Sector Specific Safety Standards for Restaurants with him. Id.
8. Investigators informed Mr. Preston of the violations and that a report would be filed with the Chief Investigator for further review. Id.

9. Carmen Paglione, Commander of the Licensee, attended the Commission hearing and took responsibility for Mr. Preston's failure to wear a mask behind the bar. Mr. Paglione testified that the entire bar has a Plexiglass barrier between the patrons and employees and he mistakenly believed staff could work behind the Plexiglass without a mask. Additionally, Mr. Paglione acknowledged that patrons standing, and consuming alcoholic beverages was in violation of the COVID-19 Orders. (Testimony)
10. Mr. Paglione detailed multiple precautions he had taken at the licensed establishment, prior to the Investigator's visit, in an effort to comply with all COVID-19 Orders. In addition, he testified that employees working behind the bar now wear masks. Id.
11. The Licensee has held a license under M.G.L. c. 138, § 12 since 1975, with no previous violations. (Exhibit 2, Commission Records)

### 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). "No 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." 204 CMR 2.05 (2). More specifically the Licensee is charged with permitting an illegality on the licensed premises, to wit:

Massachusetts Executive COVID-19 Order No. 37 (June 6, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;

Massachusetts Executive COVID-19 Order No. 40 (June 19, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;

Massachusetts Executive COVID-19 Order No. 57 (Dec. 8, 2020); and

Massachusetts Executive COVID-19 Order No. 58 (Dec. 8, 2020) – Failure to comply with rules applicable to Step 1 of Phase III of the Re-Opening Plan.

The Executive COVID-19 Orders require adherence to all applicable Sector Specific Rules.

The Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (December 11, 2020) mandates that restaurant owners and operators require:

All customers must be seated;

Face coverings for all customers and workers at all times, except where an individual is unable to wear a face covering due to medical condition or disability; and

Face coverings [must be worn by] all customers (unless in the actual act of eating and drinking) and workers at all times.

Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (December 11, 2020)

The Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (December 11, 2020) further mandates:

Recreation amenities which are allowed to open in Step 1 of Phase III (such as arcade games) may be open if adhering to all safety protocols in the Arcades & Other Indoor & Outdoor Game & Recreation Businesses.

Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (December 11, 2020)

The Massachusetts Sector Specific Workplace Safety Standards for Arcades and Other Indoor and Outdoor Game and Recreation Businesses to Address COVID-19 states that owners and operators must “[r]equire face coverings for all workers and customers, except where unsafe to due to medical condition or disability.” Massachusetts Sector Specific Workplace Safety Standards for Arcades and Other Indoor and Outdoor Game and Recreation Businesses to Address COVID-19 (12/11/2020).

Direct evidence was presented through the testimony of Investigator Binienda, and corroborated by the Licensee, as to the Licensee failing to ensure that all patrons and employees were wearing masks in the establishment. In addition, Investigator Binienda testified he observed numerous patrons standing in the licensed premise, consuming alcoholic beverages, which the Licensee acknowledged was in violation of the Executive COVID-19 orders. The Commission is persuaded by the evidence that a violation of 204 CMR 2.05(2), to wit: Massachusetts Executive Orders 37, 40, 57, and 58 did occur.

### CONCLUSION

Based on the evidence, the Commission finds the Licensee violated:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 37 (June 6, 2020) - Violation of Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19;
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 40 (June 19, 2020) - Violation of Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19;
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The Commission hereby **INDEFINITELY SUSPENDS** the license of Delisle Goulet Post #92 American Legion **effective forthwith** until further written order of the Commission.

The Commission will not issue any further order without a written request from the licensee showing good cause to reconsider this indefinite suspension.

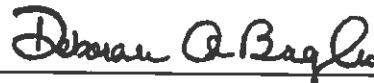
Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspension will include, but not be limited to the Licensee receives approval from the Massachusetts Department of Labor Standards (“DLS”) as to a reopening plan. The Licensee must submit to the DLS a COVID Control Plan to reopen (see link here: <https://www.mass.gov/doc/sector-specific-workplace-safety-standards-phase-iii-step-1-for-restaurants-to-address-covid-1/download>) and operate in compliance with COVID 19 Orders Nos. 33, 37, 40 and 43, and the Restaurant Sector Specific Standards. Said plan must be submitted to both Michael Flanagan ([michael.flanagan@mass.gov](mailto:michael.flanagan@mass.gov)) and Mary Dozois ([mary.dozois@mass.gov](mailto:mary.dozois@mass.gov)) requesting review and approval.

#### ALCOHOLIC BEVERAGES CONTROL COMMISSION

Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Jean M. Lorizio, Chairman



Dated: March 12, 2021

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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