



*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

October 22, 2020

**WPR 13 INC. D/B/A THE CLOVER PUB
104 HIGH STREET
HOLYOKE, MA 01040
LICENSE#: 00014-RS-0540
VIOLATION DATE: 8/27/2020
HEARD: 9/16/2020**

After a hearing on September 16, 2020, the Commission finds WPR 13 Inc. d/b/a The Clover Pub 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: Violation of Massachusetts Executive COVID-19 Order No. 46 (August 7, 2020).

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of WPR 13 Inc. d/b/a The Clover Pub **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.

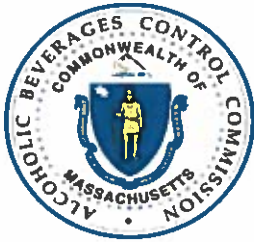
ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio
Chairman

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Dennis Keefe, Investigator
Robert Gardner, Investigator
Brian Gould, Investigator

Michael Flanagan, Dept. of Labor Standards
Administration, File



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DECISION

**WPR 13 INC. D/B/A THE CLOVER PUB
104 HIGH STREET
HOLYOKE, MA 01040
LICENSE#: 00014-RS-0540
VIOLATION DATE: 8/27/2020
HEARD: 9/16/2020**

WPR 13 Inc. d/b/a The Clover Pub (the "Licensee") holds an all alcoholic beverages license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a hearing on Wednesday, September 16, 2020, 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: Violation of Massachusetts Executive COVID-19 Order No. 46 (August 7, 2020).

The above-captioned occurred August 27, 2020 according to Investigator Keefe's report.

The following documents are in evidence:

1. Investigator Keefe's Report;
2. License Transfer Approval, 9/28/2001;
3. Alteration of Premises Approval, 6/9/2004;
4. Alteration of Premises Approval, 7/22/2008;
5. Massachusetts Executive COVID-19 Order No. 37;
6. Massachusetts Executive COVID-19 Order No. 40;
7. Massachusetts Executive COVID-19 Order No. 46;

8. Massachusetts Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 8/10/2020; and
 9. ABCC Enforcement Memorandum, 9/16/2020.
- A. Signs (3) from Premises; and
 - B. Copy of ServSafe Certification for T. Butler.

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

FINDINGS OF FACT

1. On Thursday, August 27, 2020, at approximately 7:30 p.m., Investigators Gardner, Gould, and Keefe (“Investigators”) conducted an investigation of WPR 13 Inc. d/b/a The Clover Pub 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. Investigators entered the licensed premises and observed six (6) patrons on the outside patio who were standing and drinking alcoholic beverages. These patrons were not wearing any facial coverings. There were 7 properly spaced picnic tables on the patio. (Testimony, Exhibit 1)
3. Investigators observed there was an outdoor grille on the side patio where food was being prepared. Investigators observed only limited food, if any, located on the tables on the side patio. (Testimony, Exhibit 1)
4. Investigator Keefe entered the establishment and spoke with the bartender on duty, Everly. While speaking with Everly, Investigator Keefe observed a female patron, without a facial covering, come inside from the outdoor patio and attempt to order an alcoholic beverage from the bartender. (Testimony, Exhibit 1)
5. Investigators encountered a male individual near the front door of the establishment who was not wearing any facial covering. He was observed to be holding an alcoholic beverage and walking throughout the establishment. (Testimony, Exhibit 1)
6. Investigator Gould approached this male individual and asked him how the food was. The mask-less male stated that he did not know because he was not eating. (Exhibit 1)
7. Investigators did not see anyone eating inside the establishment and did not observe any evidence of food service inside the premise. (Testimony)
8. There were approximately 15 to 17 people on premise. (Testimony)
9. Investigators advised the bartender Everly of the violations and that a report would be filed with the Chief Investigator for further action. (Testimony, Exhibit 1)
10. Thomas Butler, General Manager, appeared at the Commission hearing on behalf of the Licensee. Mr. Butler testified that the licensed premise is only open for a limited number of hours each day and closes at 8:30 P.M. Mr. Butler testified that Thursday has been “steak night” for the last 19 years and they have been offering that same concept each night

they are open. He stated that it had been very busy from 3:00 P.M. to 7:00 P.M. with people having finished eating prior to the Investigators' arrival. He testified that food had been served to every person who entered the establishment. He acknowledged that the patrons were standing on the patio and guessed they may have wanted to "stretch their legs" after eating.

11. Mr. Butler testified that masks are required. He explained that the male patron near the front door has come in before and uses an oxygen tank. He stated that he was hesitant to ask him to put on a mask. He testified that the woman who approached the bar without a mask had been outside and came inside without her mask but was instructed by the bartender that a mask was required.
12. The Licensee posted signage regarding remaining seated, wearing masks and practicing social distancing.
13. The Licensee has held a license under M.G.L. c. 138, § 12 since 2001 with no prior violations. (Exhibit 2)

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; and

Violation of Massachusetts Executive COVID-19 Order No. 46 (August 7, 2020).

Mr. Butler acknowledged that there were people without any facial coverings on the patio who were standing and consuming alcoholic beverages. While they may have been sitting to eat at some earlier point, that does not negate the fact that they were acting in such a manner as to violate

the Orders. In addition, a patron was allowed to leave her table on the patio without a facial covering and enter the establishment without a facial covering.

Pursuant to the Executive COVID-19 Orders, (1) “Restaurants may not seat customers at the bar.” (2) “All customers must be seated.” (3) “Face coverings [must be worn by] all customers (unless seated) and workers at all times. (4) [Licensee must] “ensure separation of 6 feet between all individuals.” and (5) “Alcoholic beverages may only be served for on-site consumption if accompanied by food prepared on-site. For each customer, an item of food must be ordered at the same time as the initial alcoholic beverage.”

The Commission is not persuaded that all patrons inside the licensed premises had been seated and served alcohol in conjunction with food service. The Investigators inquired of one male patron as to how he liked the food and he replied that he was not eating. The Investigators further observed, and the Licensee acknowledged, numerous patrons, both inside and outside, who were not wearing masks. These patrons were not seated and were in possession of alcoholic beverages. The Commission is persuaded by the evidence that a violation of 204 CMR 2.05(2) to wit Massachusetts Executive Orders 37, 40 and 46 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;
- 3) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Violation of Massachusetts Executive COVID-19 Order No. 46 (August 7, 2020).

The Commission hereby **INDEFINITELY SUSPENDS** the license of WPR 13 Inc. d/b/a The Clover Pub **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/phase-iii-step-1-restaurants-checklist-92220/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) and Mary Dozois (mary.dozois@mass.gov) requesting review and approval.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman

Jean M. Lorizio

Crystal Matthews, Commissioner

Crystal Matthews

Deborah A. Baglio, Commissioner

Deborah A. Baglio

Dated: October 22, 2020

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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