

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

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

March 4, 2025

**ULSTER INC. D/B/A O'NEILL'S PUB & RESTAURANT
124-126 WASHINGTON STREET
SALEM, MA 01970
LICENSE#: 00035-RS-1064
VIOLATION DATE: 12/15/2023
HEARD: 7/09/2024**

After a hearing on July 9, 2024, the Commission finds Ulster Inc. d/b/a O'Neill's Pub & Restaurant violated M.G.L. Ch.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, April 22, 2025. The license will be delivered to the Local Licensing Board or its designee on Monday, April 22, 2025, at 9:00 A.M. It will be returned to the licensee on April 23, 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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2024-000004-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Katherine McCormick, Associate General Counsel
Christopher Temple, Investigator
David McDonough, Investigator
Administration, File



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Alcoholic Beverages Control Commission
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DECISION

**ULSTER INC. D/B/A O'NEILL'S PUB & RESTAURANT
124-126 WASHINGTON STREET
SALEM, MA 01970
LICENSE#: 00035-RS-1064
VIOLATION DATE: 12/15/2023
HEARD: 7/09/2024**

Ulster Inc. d/b/a O'Neill's Pub & Restaurant ("Licensee" or "O'Neill's Pub") 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, July 9, 2024, regarding an alleged violation of M.G.L. Ch.138 § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count).

The following documents are in evidence:

1. Investigative Report of C. Temple;
2. ABCC Form 43, Transfer of License Approval, 9/21/1999;
3. ABCC Decision, 1/9/2013;
4. ABCC Decision, 5/20/2014;

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

FINDINGS OF FACT

1. On Friday, December 15, 2023, at approximately 10:00 p.m., Investigators McDonough and Temple ("Investigators") while in an undercover capacity inspected the business operation of Ulster Inc. d/b/a O'Neill's Pub & Restaurant ("Licensee" or "O'Neill's Pub"). (Testimony, Exhibit 1)
2. Investigators observed a tall unidentified male individual ("UM") dressed in a blue suit and standing within approximately 5 to 7 feet of the bar who was showing signs of intoxication. At approximately 10:40 p.m., Investigators observed the UM had glassy eyes. He was swaying and stumbling and appeared to be overly affectionate with others in his group of friends and leaned on one of his friends. Id.
3. At approximately 10:50 p.m., Investigators observed the UM's eyes appeared to be closed or barely opened and he swayed back and forth. Investigators determined UM was intoxicated. Id.

4. The UM appeared to be taller than 6 feet 5 inches. He was within 5 feet of the bar and within a couple of feet of several staff members who walked between the Investigators and the UM. Id.
5. At approximately 11:10 p.m., Investigators approached the bar and positioned themselves next to the UM. The UM touched one the Investigators as he muttered unintelligibly. Id.
6. Investigators observed the UM lean on the bar as he spoke with slurred speech to two females. Id.
7. Investigators observed the UM ordered alcoholic beverages for himself and appeared to say something else that neither the bartender on duty nor the Investigators could understand. UM then pointed to the two females at the bar, who ordered two mixed drinks. Id.
8. At approximately 11:13 p.m., Investigators observed the bartender deliver four bottles of Bud Light beer to the UM. Id.
9. Investigators spoke with the bartender on duty and manager, Shannon Burke, and identified the UM. Investigators explained the signs of intoxication exhibited by the UM and their observations prior to the delivery of the alcoholic beverages. Id.
10. Investigators informed Ms. Burke that a report would be filed with the Chief Investigator for further review. Id.
11. Ronnie Brogan, Licensee, appeared at the Commission hearing with Ms. Burke and William Anderson. Mr. Brogan testified that all staff members are TIPS certified and within the next few weeks all employees will undergo additional training which will be provided by the Licensee's insurance company. (Testimony)
12. The Licensee has held a license under M.G.L. c. 138, § 12 since 1999. (Exhibit 2)

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.

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”).

The Commission must determine whether substantial evidence exists to find that the Licensee, its staff or employees, sold or delivered alcoholic beverages to an intoxicated person in violation of M.G.L. c. 138, § 69. Here, direct evidence was presented through the testimony of Investigator Temple who was inside the licensed premises when he observed the unknown male patron exhibiting signs of intoxication within the view of the bar and as employees walked by. Investigator Temple made the determination that the unknown male patron was intoxicated and after that determination was made, the unknown male was served alcoholic beverages, multiple bottles of Bud Light beer, by a bartender. (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).

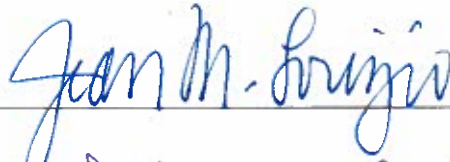
Based on the direct evidence presented in this matter, the Commission finds that the patron was served an alcoholic beverage after manifesting obvious and visible signs of intoxication while inside the licensed premises, in clear view of the bartender, who knew or should have known the patron was intoxicated.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

CONCLUSION

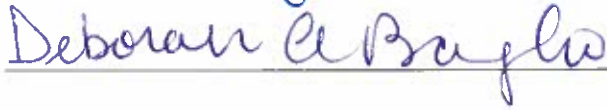
Based on the evidence, the Commission finds the Licensee violated M.G.L. Ch.138 § 69 – Sale or delivery of an alcoholic beverage to an intoxicated person (1 Count). Therefore, the Commission **suspends the license for a period of one (1) day to be served.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Deborah A. Baglio, Commissioner



Dated: March 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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