

*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

September 4, 2020

**KCNB LLC D/B/A K C'S PUB AND GRILL  
1284 WASHINGTON STREET  
WEYMOUTH, MA 02189  
LICENSE#: 00089-RS-1458  
VIOLATION DATE: 8/14/2020  
HEARD: 9/01/2020**

After a hearing on September 1, 2020, the Commission finds KCN B LLC d/b/a K C's Pub and Grill 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 KCN B LLC d/b/a K C's Pub and Grill Inc. **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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Este documento é importante e deve ser traduzido imediatamente.  
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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  
Nicole Smith, Investigator  
Jamie Binienda, Investigator  
Michael Flanagan, Dept. of Labor Standards  
Administration, File



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

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

**DECISION**

**KCNB LLC D/B/A K C'S PUB AND GRILL  
1284 WASHINGTON STREET  
WEYMOUTH, MA 02189  
LICENSE#: 00089-RS-1458  
VIOLATION DATE: 8/14/2020  
HEARD: 9/01/2020**

KCNB LLC d/b/a K C's Pub and Grill (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 Tuesday, September 1, 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).

Prior to the commencement of the hearing, the Licensee partially stipulated to the facts alleged in Investigator Smith's Report.

The following documents are in evidence:

1. Investigator Smith's Report;
2. Licensee Partial Stipulation of Facts;
3. Copy of License Transfer Application approved 6/11/2002;
4. Copy of Alteration of Premises Application approved 10/15/2004;
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 COVID-19 Sector Specific Workplace Safety Standards, 8/10/2020;
9. ABCC Enforcement Memorandum, September 1, 2020.

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

### FINDINGS OF FACT

1. On Friday, August 14, 2020, at approximately 7:30 p.m., Investigators Binienda and Smith (“Investigators”) conducted an investigation of KCNB LLC d/b/a K C’s Pub and Grill 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, Exhibits 1, 5, 6, 7)
2. Investigators entered the licensed premises and observed eight (8) individuals seated at the bar consuming alcoholic beverages, with no indication of food service. Investigators observed that the bar area was not reconfigured to conform with the sector specific workplace standards which state that “Restaurants may not seat any customers at the bar.” (Testimony, Exhibit 1, 8)
3. Investigators observed a female bartender, without a facial covering, behind the bar serving customers. Another female staff member, also without a facial covering, stood near the bar. The sector specific workplace standards state that “face coverings are required for all customers and workers at all times.” (Testimony, Exhibits 1, 8)
4. Investigators observed approximately five (5) tables where individuals were consuming alcoholic beverages, with no indication of food service. The sector specific workplace standards state that “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.” (Testimony, Exhibits 1, 8)
5. Investigators observed the outdoor smoking area where they observed approximately six (6) individuals smoking cigarettes and consuming alcoholic beverages. There was no indication of food service in the outdoor area. Investigators observed at least two (2) individuals from the outdoor area walk through the establishment without wearing a facial covering. (Testimony, Exhibit 1)
6. Investigators approached the bartender and asked to speak to a manager. While they spoke to the bartender, investigators observed a male individual and a female employee exit the kitchen area, each without wearing a facial covering. The male employee identified himself to Investigators as the owner, Nick Akoury, and agreed to speak to them outside the establishment. (Testimony, Exhibit 1)
7. Investigator Binienda informed Mr. Akoury of their observations and informed him about the Governor’s Executive Orders regarding service of alcoholic beverages. (Testimony, Exhibit 1)
8. Mr. Akoury stated, “I am in violation of some of that yes but not all of it. I think coronavirus is a bunch of bullshit. I thought we were past all of this? I stopped watching the news a long time ago, to be honest I think it’s all bullshit.” (Testimony, Exhibit 1)
9. Mr. Akoury further stated to Investigators, “No government is going to tell me how to run my business.” The sector specific workplace standards state that “the operator of the

restaurant is accountable for adhering to all local, state and federal requirements. The operator of the restaurant is also responsible for staying abreast of any updates to these requirements.” (Testimony, Exhibit 1, 8)

10. Investigators advised Mr. Akoury of the violations and advised him that a report would be filed with the Chief Investigator for further action. (Testimony, Exhibit 1)
11. Mr. Akoury, the Licensee, appeared at the Commission hearing and stipulated to the facts in the investigator’s report, excluding the allegation that food service was not being provided. (Exhibit 2)
12. Mr. Akoury testified that food was being served on the night of August 14, 2020. (Testimony)
13. The Licensee has held a license under M.G.L. c. 138, § 12 since 2002 with no prior violations. (Exhibit 3)

### DISCUSSION

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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. Akoury testified that for a period of time he had followed the COVID-19 Orders (“Orders”) as issued by Governor Baker but acknowledged that, at some point, he chose not to do so. (Testimony) While Mr. Akoury may have had food service available for patrons, that is not sufficient for compliance with the Orders. Pursuant to the Executive COVID-19 Orders, “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 observed numerous patrons, both inside and outside, who were in possession of alcoholic beverages but saw no indication that the patrons had been served food or were waiting to be served food. 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;
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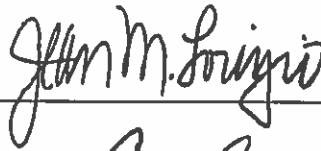
The Commission hereby **INDEFINITELY SUSPENDS** the license of KCNB LLC d/b/a K C's Pub and Grill **effective forthwith** until further written order of the Commission.

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

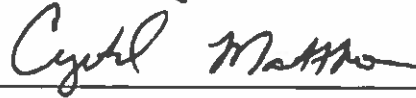
Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspension shall include, but not be limited to, the Licensee's receiving approval from the Massachusetts Department of Labor Standards ("DLS") as to a reopening plan. The Licensee must submit to the DLS a COVID Control Plan to reopen 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 Dozios ([mary.dozios@mass.gov](mailto:mary.dozios@mass.gov)) requesting review and approval.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

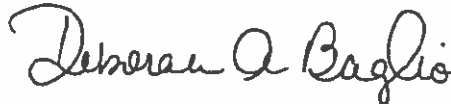
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: September 4, 2020

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