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**DOCKET NO. 501735**

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	
	§	
JANIE LEA TUCKER	§	
D/B/A CABARET 7	§	OF
PERMIT/LICENSE NO(s). MB219380	§	
BELL COUNTY, TEXAS	§	
(SOAH Docket No. 458-06-0953)	§	ADMINISTRATIVE HEARINGS

**ORDER**

**CAME ON FOR CONSIDERATION** this 20th day of June, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John H. Beeler. The hearing convened on February 22, 2006 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 15, 2006. The Proposal For Decision, attached as **Exhibit "A"**, was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, corrects the Texas Alcoholic Beverage Commission docket number in the caption, and amends the style of the case to read as follows:

**"DOCKET NO. 458-06-0953**

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CABARET 7	§	
PERMIT NO.MB219380	§	
BELL COUNTY, TEXAS	§	
TABC NO. 501735	§	ADMINISTRATIVE HEARINGS "

And adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, with the exception of correcting the Respondent's Mixed Beverage Permit Number referenced in Findings of Fact No. 1, to-wit:

"1. Janie Lea Tucker, d/b/a Cabaret, holds Mixed Beverage Permit MB219380 issued by the Texas Alcoholic Beverage Commission for the premises located at 213 N. Mary Jo Drive, Harker Heights, Bell County, Texas."

All other Findings of Fact and Conclusions of law which are contained in the Proposal For Decision are adopted and incorporates into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's permit(s) and/or license(s) be **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on **July 11, 2006**, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

**SIGNED** this 20th day of June, 2006, at Austin, Texas.

On Behalf of the Administrator,

  
\_\_\_\_\_  
Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

WMC\bc

The Honorable John H. Beeler  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FAX (512) 475-4994

Dustin H. Boyd  
**ATTORNEY FOR RESPONDENT**  
CORBIN & ASSOCIATES  
603 North Eighth Street  
Killeen, Texas 76541  
**VIA FAX (254) 526-6711**

JANIE LEA TUCKER  
**RESPONDENT**  
d/b/a CABARET 7  
1710 SOUTH ANN BLVD  
HARKER HEIGHTS, TX 76548  
**CERTIFIED MAIL NO. 7001 2510 0000 7274 1492**

W. Michael Cady  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Waco District Office

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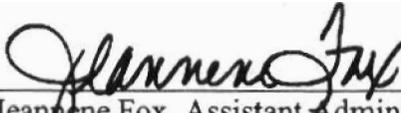
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's permit(s) and/or license(s) be **CANCELLED FOR CAUSE**.

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**SIGNED** this 20th day of June, 2006, at Austin, Texas.

On Behalf of the Administrator,

  
Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

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The Honorable John H. Beeler  
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BEFORE THE STATE OFFICE

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OF

JANIE L. TUCKER d/b/a  
CABARET 7  
PERMIT NO. MB219380  
BELL COUNTY, TEXAS  
TABC NO. ~~502754~~ 501735

ADMINISTRATIVE HEARINGS

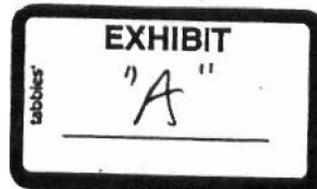
PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Janie L. Tucker, d/b/a Cabaret 7 (Respondent), for selling, dispensing, or delivering alcohol to a minor and for selling, dispensing, or delivering alcohol to an intoxicated person. The Administrative Law Judge (ALJ) finds that TABC proved its case and Respondent's permit should be cancelled.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. (CODE) ch. 5, §§ 11.61, 106.03, 61.71, and 106.13. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On January 9, 2006, TABC issued its notice of hearing, directed to Respondent. On February 22, 2006, a hearing convened before SOAH ALJ John H. Beeler in Waco, Texas. TABC was represented at the hearing by W. Michael Cady, TABC Staff Attorney. Respondent was present and represented at the hearing by Dustin H. Boyd, attorney. The record closed on March 16, 2005, after the parties filed written closing arguments.



## II. DISCUSSION

### A. Applicable Law

Sections 106.03, 106.13, and 101.63 of the Texas Alcoholic Beverage Code control this proceeding. Section 106.13 authorizes sanctions if a retailer acts with criminal negligence in selling an alcoholic beverage to a minor. Section 101.63 authorizes sanctions if a retailer acts with criminal negligence in selling an alcoholic beverage to an intoxicated person.

A permittee acts with criminal negligence when the permittee ought to have been aware of a substantial and justifiable risk that the circumstances exist or the result will occur. The failure to perceive the risk must constitute a gross deviation from the care that an ordinary person would exercise under the same circumstances. TEX. PENAL CODE ANN. §6.03(d).

### B. Evidence

#### 1. TABC's Evidence

##### Leslie Ann Wallace

Ms. Wallace testified that on May 14, 2005, she was 19 years old and was married to Tyrone Jenkins. On that date, she went to Cabaret 7 with her boyfriend, Adrian Stewart. She has never represented to anyone that she was married to Mr. Stewart. Prior to arriving at Cabaret 7, she bought a daiquiri and took it into Cabaret 7. She entered the club before Adrian and no one checked her ID. She was in the club for two or three hours where she ordered and was served 5 to 7 shots of 151 proof rum. She paid for some of the drinks and another person paid for others. She drank the shots until she became drunk. She also drank a mixed drink purchased on the premises as well as the daiquiri she brought in.

The waitress serving her the drinks that night was Alex Stewart, the sister-in-law of Adrian. Ms. Stewart knew she was 19 years old when serving her the drinks.

During time she was there she had an argument with Adrian and drove away by herself. She later returned and Adrian left with her. While driving, she collided with a guard rail, injuring Adrian. She and Adrian walked to call for help and, while walking, she was struck by a vehicle and was seriously injured.

She was unconscious for four days and was in the hospital for some time. While she was in the hospital, Ms. Stewart came to her and apologized for serving her alcohol and not cutting her off because she could tell that Leslie was getting too drunk. She still has problems as a result of the accident.

### **Agent Daniel Garcia**

Agent Garcia is employed by TABC and investigated the incident in question. During his investigation Alex Stewart made a statement that she served Leslie Wallace alcohol and knew that Leslie was underage and was intoxicated.

### **Documents**

Documents admitted showed Ms. Wallace's blood alcohol level to be 0.178. Other documents showed that Respondent violated the Code in 2001, for having an intoxicated employee on the premises.

## **2. Respondent's Evidence**

### **Adrian Stewart**

Mr. Stewart testified that Ms. Wallace is his ex-girlfriend. They were not married and he knew she was married to someone else on May 14, 2005. He has never told anyone that he and Ms. Wallace were married. While at the premises, he did not purchase any alcohol for Leslie, but did see Leslie buy drinks. Leslie was intoxicated while at the club.

**Alex Stewart**

Ms. Stewart testified that she was the waitress for Leslie's table on the night in question. She did not serve alcohol to Leslie, but Adrian bought drinks for Leslie. It was all right for Leslie to drink because Adrian was her common law husband. Leslie was not drunk at the club. Later at the hospital, she apologized because she was sorry she provided the alcohol to Adrian that he gave to Leslie. She served the 151 proof rum to the table where Leslie was sitting.

In a written statement she made just after the night in question, she referred to Leslie as Adrian's girlfriend, not his wife. She also told Adrian that Leslie was so drunk she would not remember an argument she was having that night.

**Charlie Stewart**

Mr. Stewart is married to Alex Stewart and was at the premises on the night in question. He testified that Leslie and Adrian are common law married and Leslie was not drunk that night at the club.

**Christiane Matlock**

Ms. Matlock testified that she has heard that Leslie and Adrian are married. She has also heard that sometimes Leslie lies. She has periodically worked for Respondent.

**James Jones**

Mr. Jones was at the premises on the night in question, and testified that he did not see Leslie drink alcohol or become intoxicated. Leslie has lied to him on occasion.

**Robert Tucker**

Mr. Tucker is the husband of Respondent and is the manager of Cabaret 7. He testified that he was on duty on the night in question but was not aware that Leslie was drinking alcohol. He was at the entrance to the premises when Leslie entered the club and was told that Adrian and Leslie were married. There were only a few customers in the club at the time Leslie was there.

**C. Discussion and Recommendation**

It is clear from the evidence that Respondent's employee served alcohol to an intoxicated minor. Although Respondent argues that the minor's husband purchased the alcohol for her, no such reasonable inference can be made from the evidence. In fact, Respondent's own witnesses contradict Respondent's arguments. Adrian Stewart testified that he and Leslie Wallace were not married and did not hold themselves out as such. Alex Stewart made statements that she was serving alcohol to Ms. Wallace although she knew that she was a minor and was intoxicated.

Pursuant to TEX. ALCO. BEV. CODE ANN. § 37.61, several factors may be considered in assessing a penalty for violations. Included is whether the violation resulted in serious bodily injury, as it did in this case. Moreover, this incident involved the sale of at least five shots of 151 proof alcohol to an obviously intoxicated minor. Also, Respondent provided no evidence that employees were trained or instructed not to sell to minors or intoxicated persons.

Respondent's husband and manager of the club was on the premises when the alcohol was being served to Leslie. It is clear that although Ms. Tucker's name is on the permit, she has allowed Mr. Tucker to be in charge of the premises. The actions of the employee are, therefore, attributable to the permittee. Based on these factors, TABC's recommendation of cancellation is warranted.

### III. FINDINGS OF FACT

1. Janie Lea Tucker, d/b/a Cabaret, holds Mixed Beverage Permit MB319380 issued by the Texas Alcoholic Beverage Commission for the premises located at 213 N. Mary Jo Drive, Harker Heights, Bell County, Texas. 219380
2. On May 15, 2005, Leslie Wallace was 19 years old and was intoxicated while at the premises and purchased alcoholic beverages.
3. Respondent's employee served alcohol to Ms. Wallace, knowing that she was a minor and was intoxicated.
4. Respondent did not ask for any identification from Ms. Wallace.
5. The minor suffered serious bodily injury as a result of Respondent's actions.
6. Respondent has a prior violation for having an intoxicated employee on the premises.
7. On January 9, 2006, Staff issued a notice containing the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; referenced the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
8. On February 22, 2006, a public hearing was held before Administrative Law Judge John H. Beeler, at the offices of the State Office of Administrative Hearings in Waco, Texas. Staff was represented by W. Michael Cady, attorney. Respondent was represented by Dustin H. Boyd, attorney. The record closed on March 16, 2006, after the parties filed written closing briefs.

### IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.61, 61.71, 106.03, and 106.13.
2. SOAH has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, 1 TEX. ADMIN. CODE (TAC) § 155.55 and 16 TAC § 37.3.

4. Respondent sold an alcoholic beverage to a minor with criminal negligence, as defined in TEX. PENAL CODE ANN §6.03(d), thereby violating TEX. ALCO. BEV. CODE ANN §§106.03.
5. Respondent sold an alcoholic beverage to an intoxicated person in violation of TEX. ALCO. BEV. CODE ANN §§101.63.
6. Respondent's permit should be cancelled pursuant to TEX. ALCO. BEV. CODE ANN. §§ 11.61, 61.71, and 106.13.

**SIGNED May 15, 2006.**



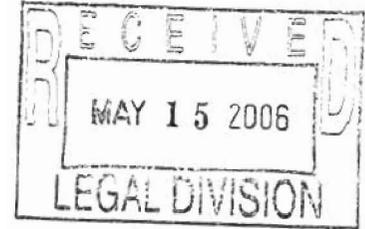
**JOHN H. BEELER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

# State Office of Administrative Hearings

*MCT  
hearing*



Shelia Bailey Taylor  
Chief Administrative Law Judge



May 15, 2006

Alan Steen  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

**HAND DELIVERY**

**RE: Docket No. 458-06-0953; Texas Alcoholic Beverage Commission v. Janie Lea Tucker d/b/a Cabaret & , Permit No. MB219380 Bell County, Texas TABC No. 502754**

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "John H. Beeler".

John H. Beeler  
Administrative Law Judge

JHB/sb  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA HAND DELIVERY**  
W. Michael Cady, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-  
**VIA HAND DELIVERY**  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-  
**VIA HAND DELIVERY**  
Dustin H. Boyd, Attorney, Corbin & Associates, 603 North Eighth Street, Killeen, Texas 76541-**VIA REGULAR MAIL**