

TABC DOCKET NO. 597139 & 597137

TEXAS ALCOHOLIC BEVERAGE
COMMISSION, **Petitioner**

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BEFORE THE TEXAS

VS.

ALICIA PERALES
D/B/A SHARKEY'S, **Respondent**

ALCOHOLIC

PERMIT NO(s). BG437205, BL
BEXAR COUNTY, TEXAS
(SOAH DOCKET NO. 458-11-3998)

BEVERAGE COMMISSION

AMENDED ORDER

CAME ON FOR CONSIDERATION on this 2nd day of August 2011 the above-styled and numbered cause.

This Amended Order is issued to reflect Exceptions filed by Petitioner and recommended changes from the Administrative Law Judge to the Proposal for Decision.

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Donald B. Dailey, presiding. The hearing convened on May 4, 2011 and the record was closed on the same date. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on June 7, 2011. Exceptions were filed by Petitioner on June 22, 2011. On July 25, 2011, the Administrative Law Judge responded to the Exceptions by letter recommending some changes.

The matter is before the Assistant Administrator, Texas Alcoholic Beverage Commission for review, consideration, and entry of the final agency decision.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exceptions adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal For Decision with the following exceptions:

Finding of Fact No. 10 will be substituted as follows:

Finding of Fact No. 10. On April 14, 2010, an aggravated breach of the peace occurred on the licensed premises and said breach was not reported to the Commission.

Conclusion of Law No. 4 will be substituted as follows:

Conclusion of Law No. 4. Respondent violated TEX. ALCO. BEV. CODE § 104.01 (9).

The Findings of Fact and Conclusions of Law set forth in the Proposal for Decision, as modified by this Order, are incorporated into this Order, as if such were fully set out and separately stated herein. All motions, requests for entry of Proposed Findings of Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

IT IS THEREFORE ORDERED by the Assistant Administrator of the Texas Alcoholic Beverage Commission, that Respondent's permits are herein **SUSPENDED** for **twenty-five (25) days or in lieu of the suspension a \$7,500.00 civil penalty.**

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$7,500.00** on or before the **30th day of August 2011**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **twenty-five (25) days beginning at 12:01 A.M. on the 7th day of September 2011.**

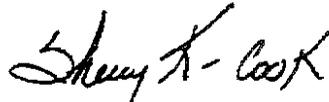
If this Order is appealed and judgment is issued affirming the Order, Respondent shall pay the civil penalty in the amount of **\$7,500.00** on or before the **tenth (10th) day** following the date the judgment is signed. If not paid by that date, the privileges granted by the Commission and activities authorized under the above permits by the Code will be **SUSPENDED beginning at 12:01 A.M. on the eighteenth (18th) day** following the date the judgment is signed and shall remain suspended for **twenty-five (25) consecutive days.**

This Order will become final and enforceable on August 26, 2011 unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

SIGNED this the 2nd day of August, 2011, at Austin, Texas.

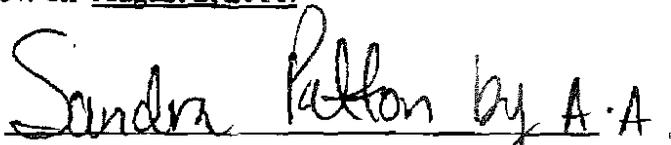
On Behalf of the Administrator,



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that each party or person with an interest in the above matter has been notified of the agency order in the manner indicated below on August 2, 2011.


Sandra K. Patton, Attorney
Texas Alcoholic Beverage Commission
Legal Division

Hon. Donald B. Dailey
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
10300 Heritage, Suite 250
San Antonio, Texas 78216
VIA FACSIMILE TO: (210) 308-6854

Gregory W. Canfield
ATTORNEY FOR RESPONDENT
888 Ison Road, Suite 203
San Antonio, Texas 78216
VIA U.S. FIRST CLASS MAIL

Alicia Perales
d/b/a Sharkey's
RESPONDENT
2101 W. Martin
San Antonio, TX 78207
VIA U.S. REGULAR MAIL

John Sedberry
ATTORNEY FOR PETITIONER
TABC Legal Section

Sandy Higdon
HQ Licensing Division

Lieutenant Craig Smith
San Antonio Enforcement Division

TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 597139 & 597137

REGISTER NUMBER:

NAME: ALICIA PERALES

TRADENAME: SHARKEY'S

ADDRESS: 2101 W MARTIN, SAN ANTONIO, TEXAS 78207

DUE DATE: AUGUST 30, 2011

PERMITS OR LICENSES: BG437203, BL

AMOUNT OF PENALTY: \$7,500.00

Amount remitted \$ _____ Date remitted _____
You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.

YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.

Mail this form with your payment to:

TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711
Overnight Delivery Address: 5806 Mesa Dr., Austin, Texas 78731

You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted. Your payment will be returned if anything is incorrect. You must pay the entire amount of the penalty assessed.

Attach this form and please make certain to include the Docket # on your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.

The hearing in this matter convened May 4, 2011, before ALJ Donald B. Dailey at the State Office of Administrative Hearings (SOAH), 10300 Heritage, Suite 250, San Antonio, Texas. John W. Sedberry, Legal Division Attorney, represented TABC. Attorney Gregory W. Canfield represented Respondent. The hearing concluded and the record closed that same day.

II. STAFF'S ALLEGATIONS AND APPLICABLE LAW

A. Allegations

1. Possession of narcotics equipment on licensed premises

Staff alleges that on or about August 27, 2010, Respondent, her agent, servant, or employee, possessed or permitted others to possess equipment used or designed for the administering of a narcotic on the licensed premises in violation of TEX. ALCO. BEV. CODE ANN. §§ 104.01(9) and 61.71(a)(1) and/or 16 TAC § 35.41.

2. Possession of narcotics on licensed premises

Staff further alleges that on or about August 27, 2010, Respondent or her agent, servant, or employee, possessed or permitted others to possess a narcotic on the licensed premises in violation of TEX. ALCO. BEV. CODE ANN. §§ 104.01(9), 61.71(a)(1), and/or 16 TAC § 35.41.

3. Place or manner violation

Staff also alleges that on or about August 27, 2010, Respondent or her agent, servant, or employee, conducted Respondent's business in a place or manner which warrants the cancelation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of

decency of the people in violation of TEX. ALCO. BEV. CODE ANN. § 61.71(a)(17), and/or 16 TAC § 35.31.

B. Applicable Law

1. Commission's authority to suspend or cancel a license

Under TEX. ALCO. BEV. CODE ANN. §§ 61.71(a)(1) and (17), the Commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that:

- (1) the licensee violated a provision of the [Texas Alcoholic Beverage] Code or a Commission rule during the existence of the license sought to be canceled or suspended;
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- (17) [the licensee] conducted his business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people.

2. Possession of narcotics or narcotics equipment on licensed premises

As set out in TEX. ALCO. BEV. CODE ANN. § 104.01(9), no person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including . . . possession of a narcotic or any equipment used or designed for the administering of a narcotic.

Under 16 TAC § 35.41(2), marijuana is a narcotic, as defined in the Texas Controlled Substances Act, HEALTH & SAFETY CODE ANN. § 481.002(26).

3. "Place or manner" rule

The Commission rule at 16 TAC § 35.31 states that a licensee or permittee violates TEX. ALCO. BEV. CODE ANN. § 61.71(a)(17) if any of the offenses listed in paragraph (c) of the rule are committed:

- (1) by the licensee or permittee in the course of conducting his/her alcoholic beverage business; or
- (2) by any person on the licensee or permittee's licensed premises; and
- (3) the licensee or permittee knew or, in the exercise of reasonable care, should have known of the offense or the likelihood of its occurrence and failed to take reasonable steps to prevent the offense.

The offenses relevant to the "place or manner" allegation in this proceeding, as listed in 16 TAC § 35.31(c), are:

- (4) any assaultive offense described in Chapter 22 of the Texas Penal Code; . . .
- (15) any narcotics related offense described in Chapters 481 and 483 of the Texas Health and Safety Code; . . .²

III. DISCUSSION

A. Background

Respondent holds Wine & Beer Retailer's On Premise Permit BG437203, which includes a

² Homicide offenses are included in 16 TAC § 35.31(c)(2). Although Respondent's violation history includes a homicide offense, the ALJ finds the offense to be irrelevant to this proceeding, as discussed below, because the Commission found the offense did not occur on Respondent's licensed premises.

Retailer's On Premise Late Hours License, for Sharkey's, located at 2101 W. Martin, San Antonio, Texas 78207-2257.³ Respondent's administrative violation history shows 16 violations from May 1999 through August 2010,⁴ for which Respondent has received seven suspensions, four written warnings, and one civil penalty.

The violations include two breaches of the peace and the alleged narcotics violations that are at issue in this proceeding. The first breach of the peace is a homicide that was committed in the alley outside Respondent's bar—not on the licensed premises—on July 12, 2008. When Respondent filed a renewal application in July 2008, community members and the San Antonio Police Department protested on the grounds that the place or manner in which Respondent may conduct its business warranted a refusal of the license based on the general welfare, health, peace, morals, safety and sense of decency of the people. TABC did not join the protest. Following a May 2009 contested case hearing, Bexar County Justice of the Peace William E. Donovan recommended granting the application. The Commission adopted Judge Donovan's order and granted Respondent's renewal application on August 18, 2010. The Commission's order included Judge Donovan's finding that "[a]t the time of the shooting, neither the deceased nor the alleged shooter(s) were customers of Sharkey's nor were they physically located on the licensed premises."⁵ The breach of the peace is included in Respondent's violation history because she waived a hearing on the matter and signed a Settlement Agreement with TABC on September 16, 2008,⁶ before the hearing before Judge Donovan.

The second breach of the peace is an assault that occurred on Respondent's licensed premises on April 14, 2010.⁷ Respondent waived her right to a hearing and accepted a 29-day suspension or \$8,700 penalty for the violations of "Breach – Aggravated" and "Breach, Failure to Report."

³ TABC Ex. 1.

⁴ TABC Ex. 1.

⁵ TABC Ex. 1.

⁶ TABC Ex. 1.

⁷ TABC Ex. 1.

After the Commission renewed Respondent's license in August 2010, she was cited by TABC for the violations that are at issue in this proceeding.

B. Narcotics Violations

1. Testimony of Alfredo Alvarez

Alfredo Alvarez, TABC Enforcement Agent, testified that he inspected Sharkey's on August 27, 2010. As he walked through the front door, he made eye contact with the bartender, Jose Cisneros, who appeared to be hiding something. When Agent Alvarez walked over to the bar, he saw a cigarette containing tobacco and marijuana leaves and seeds. Mr. Cisneros admitted the cigarette, or "blunt," as he called it, was his. According to Agent Alvarez, Mr. Cisneros' cigarette lighter smelled like marijuana.

Agent Alvarez testified that he also found a green baggie in Mr. Cisneros' pocket. The green baggie, commonly used for the distribution of cocaine, contained a white, powdery residue. Agent Alvarez said Mr. Cisneros admitted he was "partying" the night before, a term Agent Alvarez understands to mean ingesting cocaine. Agent Alvarez did not test the powdery residue to confirm it was cocaine. Instead, he said he relied on Mr. Cisneros' admission that the items found were marijuana and cocaine, and on his training and experience.

Agent Alvarez suspected, based on his training and experience, that he might find additional evidence of marijuana or cocaine in the men's bathroom. He explained that most drug users will go into the bathroom to ingest cocaine. In the men's bathroom, he found green baggies in the trash can. On cross examination, Agent Alvarez admitted he does not know where the baggies in the bathroom came from. Finding the drug paraphernalia—the marijuana cigarette, the cigarette lighter that smelled like marijuana, and the green baggies—led Agent Alvarez to believe there is ongoing drug

activity at Sharkey's.⁸

As part of the August 27, 2010 inspection, Agent Alvarez called the San Antonio Police Department's canine unit to bring in a dog that can detect the presence of drugs. The dog searched behind the bar, in the men's bathroom, and in storage areas. The dog indicated for drugs in the bar area where Mr. Cisneros had been standing and in the men's bathroom.

Pursuant to Agent Alvarez' request, Mr. Cisneros provided a written statement that he had been Respondent's employee for three-and-a-half years and that the marijuana cigarette found by Agent Alvarez was his.⁹ Agent Alvarez issued a TABC citation and filed a criminal citation against Mr. Cisneros with the district attorney's office. He also confiscated the marijuana cigarette.

Agent Alvarez testified that he does not know if Respondent was aware that Mr. Cisneros possessed marijuana or cocaine on the premises.

2. Respondent's Testimony

Respondent testified that in keeping with her policy that no employee may possess or use narcotics on the licensed premises, she fired Mr. Cisneros immediately after meeting with Agent Alvarez to discuss the inspection results. She said the only time TABC has issued her a citation or warning regarding the presence of narcotics or drug paraphernalia on the licensed premises was after the August 27, 2010 inspection. She claimed that TABC and the San Antonio Police Department have brought drug-detecting dogs into Sharkey's on about three occasions and have never found contraband.

⁸ TABC Ex. 3.

⁹ TABC Ex. 6.

C. “Place or Manner” Violation

1. Agent Alvarez’ Testimony

Staff elicited testimony from Agent Alvarez that the April 2010 assault that occurred on the licensed premises could have been prevented by Respondent or her staff and that she did not report the breach of the peace as required. Agent Alvarez testified that Respondent was aware that she should have reported the April 2010 breach of the peace because she had received a suspension for failure to report the 2008 shooting to TABC. He did not explain what measures Respondent could have taken to prevent the assault.

2. Lieutenant Craig Smith’s Testimony

Lieutenant Craig Smith testified that TABC’s concerns regarding “place” are the continuing violations that have occurred on Respondent’s premises. He pointed out that violations occurred on Respondent’s premises even after the May 2009 “place or manner” protest hearing: an assault in April 2010 and the August 2010 narcotic violations at issue in this hearing. Regarding the narcotics violations, Lt. Smith questioned how a sole employee, using drugs on the licensed premises, could prevent patrons from using drugs on the premises. He also expressed concern about gang members being on the licensed premises.

He opined that after Respondent’s failure to report the 2008 homicide, for which TABC took enforcement action, her second failure to report a breach of the peace, following the assault in 2010, should not be overlooked. Lt. Smith stated that the importance of reporting breaches of the peace is that it allows TABC to help permittees prevent future breaches through suggestions and training. He said TABC seeks voluntary compliance with its rules and is not out to cancel permits. Lt. Smith testified that in his opinion, Respondent could have prevented both breaches of the peace because a permittee must maintain exclusive control of the licensed premises at all times. On cross

examination, Lt. Smith agreed that Judge Donovan's order as adopted by the Commission contains a finding that Respondent has a policy of ejecting troublemakers from the bar.

Lt. Smith also stated concern about Sharkey's being located close to a school, but admitted on cross examination that Sharkey's location in relation to the school does not violate any statute or law.

The "manner" in which Sharkey's has been operating is a danger to public health, Lt. Smith said, because the 2008 homicide began with an argument inside the bar that concluded with a shooting outside the bar, "obviously a danger," he concluded.

3. Respondent's Testimony

Respondent testified that she tries to comply with TABC regulations, does her best to keep troublemakers out of the bar, and attempts to correct violations. For instance, following a 2009 warning regarding her \$1,200 debt to the state for taxes, fees, or penalties, she immediately paid the outstanding amount, she said.

Respondent said she has operated Sharkey's for 12 years in a high-crime neighborhood that contains other bars, a convenience store that sells alcoholic beverages, and homeless shelters. Because most of her patrons reside nearby, Respondent mainly does a walk-in business. Few of her customers drive after drinking, Respondent said.

D. Closing Argument

1. Staff's Closing Argument

Staff argued that based on Respondent's violation history and continuing course of conduct, cancelation of her license is warranted. Staff pointed out that the April 2010 assault and August 2010 narcotics violations occurred after the May 2009 hearing in which citizens and the San Antonio Police Department protested Respondent's renewal application. Staff further averred that if the only employee on the licensed premises is using narcotics, he will not be able to control bar patrons.

2. Respondent's Closing Argument

Respondent has attempted to comply with all TABC policies and correct all violations. Respondent took immediate action to correct the narcotics violations by firing Mr. Cisneros, who had broken Respondent's policy against any employee possessing narcotics or paraphernalia on the licensed premises. In response to Staff's argument that a lone employee on drugs cannot control bar patrons, Respondent stated that no evidence was presented to demonstrate that Mr. Cisneros was unable to control the bar during Agent Alvarez' inspection.

Sharkey's, just as other bars in the neighborhood, is in a high-crime area, so there will be crime, such as the 2008 homicide, around the bar, Respondent argued. Yet the May 2009 hearing regarding means and manner of operation resulted in a finding by Judge Donovan that Respondent was operating within the confines of the law and posed no danger to the general welfare, health, morals, and safety of people. Respondent avers that the situation is unchanged, pointing out that there have been no reported violations since the August 2010 inspection.

IV. ANALYSIS

Staff proved through Agent Alvarez' testimony and Mr. Cisneros' written statement that Respondent's employee Mr. Cisneros, while on the licensed premises, possessed marijuana, a cigarette lighter that smelled like marijuana, and a baggie with cocaine residue. The evidence shows this to be Respondent's first violation of TEX. ALCO. BEV. CODE ANN. § 104.01. The Commission's

Standard Penalty Chart sets the sanction for the first violation of this health, safety, and welfare rule to be a 25-to-35 day suspension or a \$300 per day penalty. Therefore, the ALJ recommends either a 25-day suspension or a \$300 per day penalty in lieu of suspension, for a total of \$7,500, for this violation.

Staff did not prove that the place or manner in which Respondent conducts her business warrants cancelation of her permit. Staff relied on both the August 27, 2010 violations and Respondent's violation history to prove Respondent or her agent, servant, or employee, conducted Respondent's business in a place or manner which warrants the cancelation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people in violation of TEX. ALCO. BEV. CODE ANN. § 61.71(a)(17), and/or 16 TAC § 35.31. The types of offenses listed in 16 TAC § 35.31 include homicide, assault, and possession of narcotics. None of the other types of offenses in Respondent's violation history is listed in 16 TAC § 35.31. The ALJ will not consider the 2008 homicide as an offense because the Commission, in its August 2010 order, stated the offense did not occur on Respondent's licensed premises. The remaining violations to be considered are the April 2010 assault and the August 2010 narcotics violations.

To prove its "place or manner" allegation, Staff had to show, pursuant to 16 TAC § 35.31, that either Respondent or any person on the licensed premises committed the violations. Staff proved this prong of the rule, in that the assault occurred on the licensed premises and Mr. Cisneros was on the licensed premises as when he possessed narcotics and narcotics equipment.

The second prong of 16 TAC § 35.31(b) requires Staff to show that Respondent knew or, in the exercise of reasonable care, should have known of the offense or the likelihood of its occurrence and failed to take reasonable steps to prevent the offense. Staff presented no evidence that Respondent knew or should have known Mr. Cisneros possessed or was likely to possess narcotics and narcotics equipment on the licensed premises. Had the evidence shown that Mr. Cisneros had a history of drug abuse or that Respondent was aware he used marijuana and cocaine, then Staff might have proved Respondent should have been aware of the likelihood of the violation. But to prevail, Staff would have had to prove in addition that Respondent, knowing the likelihood of the violation,

failed to take reasonable steps to prevent the offense. The record is silent as to what steps Respondent did or did not take to enforce her policy against possession of narcotics on the licensed premises.

Regarding the April 2010 assault, the ALJ finds Staff proved Respondent knew or should have known an assault could occur on the premises. The evidence shows Respondent had a policy of ejecting troublemakers and she testified that one of Mr. Cisneros' jobs was to act as the bar's bouncer, indicating an expectation that assaults could occur. The only evidence presented that Respondent could have prevented the assault were conclusory statements by Agent Alvarez and Lt. Smith. But no underlying facts were presented to show that Respondent failed to take reasonable steps to prevent the offense. Therefore, Staff did not prove the second prong of 16 TAC § 35.31(b) in relation to the assault.

Having found no evidence that Respondent knew or should have known Mr. Cisneros possessed or was likely to possess narcotics and narcotics equipment on the licensed premises, or that Respondent failed to take reasonable steps to prevent Mr. Cisneros' possession of narcotics or the April 2010 assault, the ALJ finds Staff did not meet the second prong of 16 TAC § 35.31(b) and did not prove its place or manner allegation. Therefore, the ALJ does not recommend cancelation of Respondent's permit.

V. FINDINGS OF FACT

1. On April 18, 2011, the Texas Alcoholic Beverage Commission (TABC) mailed a hearing notice to Alicia Perales d/b/a Sharkey's (Respondent) notifying her that this proceeding would be held on May 4, 2011, at the State Office of Administrative Hearings (SOAH) in San Antonio, Texas.
2. The hearing notice contained a statement of the legal authority and jurisdiction for the hearing, a reference to the particular sections of the statutes and rules involved, and a short, plain statement of the matters asserted.
3. On May 4, 2011, the hearing convened before Administrative Law Judge Donald B. Dailey at SOAH in San Antonio, Texas. John W. Sedberry, Legal Division Attorney, represented

- TABC. Attorney Gregory W. Canfield represented Respondent.
4. Respondent holds Wine and Beer Retailer's On Premise Permit BG437203, which includes a Retailer's On Premise Late Hours License, for Sharkey's, located at 2101 W. Martin, San Antonio, Texas 78207-2257.
 5. On August 27, 2010, Respondent's employee Jose Cisneros, while bartending on the licensed premises, possessed marijuana, a cigarette lighter that smelled like marijuana, and a baggie with a white, powdery residue that Mr. Cisneros admitted was cocaine.
 6. On August 27, 2010, Respondent did not know and did not have reason to know that Mr. Cisneros possessed narcotics and narcotics equipment on the licensed premises.
 7. After TABC Agent Alfredo Alvarez found Mr. Cisneros to be in possession of narcotics and narcotics equipment on the licensed premises, Respondent fired Mr. Cisneros.
 8. On July 12, 2008, a person was shot and killed in the alley outside Sharkey's.
 9. The shooting victim was not one of Respondent's customers and the alley outside Sharkey's is not part of Respondent's licensed premises.
 10. On April 14, 2010, an assault occurred on Respondent's licensed premises.
 11. Respondent has a policy of ejecting troublemakers from the bar.

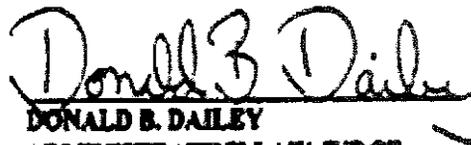
VI. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.31, 5.33, and 5.35.
2. SOAH has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.43 and 11.015 and TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Respondent violated TEX. ALCO. BEV. CODE § 104.01(9) for the first time on August 27, 2010.
5. Based on Conclusion of Law No. 4, the Commission should impose a 25-day suspension or in lieu of suspension, a \$300 per day penalty for a total of \$7,500, on Respondent for

violations of TEX. ALCO. BEV. CODE § 104.01(9), pursuant to TEX. ALCO. BEV. CODE § 61.71(a)(1), 16 TEX. ADMIN. CODE (TAC) § 35.41, and 16 TAC ch. 34.

6. Based on the above Findings of Fact, Respondent did not commit a "place or manner" violation for which her license should be canceled. TEX. ALCO. BEV. CODE § 61.71(a)(17) and 16 TAC § 35.31.

SIGNED June 7, 2011.



**DONALD B. DAILEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**