

D. EMERGENCY SUSPENSION

Case: *The Table*, OLCC-V-019-ES, July 2003.

Abstract: OLCC had probable cause to believe there were grounds to revoke, suspend or refuse to renew the license where police reports indicated police informants had made eight purchases of drugs at or outside the licensed premises, some of which were made by an employee of the premises; search of the premises resulted in confiscation of cocaine and methamphetamine from the kitchen; and Licensees had previously received verbal instructions and participated in an intervention meeting about illegal drug sales at the premises.

Licensee's actions or omissions posed a serious danger to health and safety because of the number and frequency of the drug activities indicate that Licensees are not able to control the serious problems involving unlawful drug activity. Further, the record shows that methamphetamine and cocaine, the drugs involved, pose a danger to the public health and safety because of both the drugs' effects on the user and the potential for violence and other crimes that the use and sale of drugs may bring. Additionally, there is evidence that, when used in combination, alcohol and either methamphetamine or cocaine, affect the user in an accelerated way. Finally, there is evidence that both methamphetamine and cocaine impair a user's judgment and tend to make users prone to violence and unpredictable behavior. Licensee's failure to prevent the sale of methamphetamine and cocaine poses a serious danger to the public's health and safety. *The Table*, OLCC-03-V-019-ES, July 2003.

Licensees' proposal to do criminal background checks and random drug testing of all employees, to remove a wall that prevents visibility between the restaurant and lounge, and to periodically search the premises for drugs would not result in sufficiently changed circumstances to warrant altering or removing the Immediate Suspension Order pending final order.

Case: *Taqueria Playa Azul*, OLCC-02-V-025-ES, October 2002.

Abstract: In an emergency suspension proceeding based on drug activity from the licensed premises, Co-Licensee asserted change of circumstances at the time of hearing justifying revocation of the immediate suspension order, in that her husband and employee were both in jail, would likely be deported, and would no longer be participating in the business. Co-Licensee claimed she was not involved in the drug sales and claimed she was unaware of drug activity by her husband or employee. The Commission rejected the claim of changed circumstances and confirmed the emergency suspension order because Co-Licensee benefitted financially from the unlawful drug sales (over \$60,000 from unexplained sources were found in cash and in the family bank account) and because she failed to ensure that no unlawful activities were taking place.

Case: *Cisco & Pancho's*, OLCC-99-V-080ES, September 2000.

Abstract: The Commission confirmed the Immediate Suspension Order where at the time the Order was issued there was probable cause to believe there was a basis to cancel the license under ORS 471.315(1)(c) (history of serious and persistent problems), the operation of the premises posed a serious threat to public health and safety, and the Licensees failed to show changed circumstances that would warrant lifting the Immediate Suspension Order.

Case: *Tequila Peppers Bar & Grill* and *Pepita Express*, OLCC-99-V-011-ES & OLCC-99-L-012, December 1999.

Abstract: Ten drug sales by patrons on the licensed premises to undercover police officers or informants during an 18-day period is sufficient to constitute a "history" of unlawful activities. The Commission concluded that no definition of the terms "history" or "a history" refer to a defined period of time. The Commission determined that persistence of the unlawful activities over 18 days is a sufficient period of time to constitute "a history." Consequently, at the time the Immediate Suspension Order was issued, the Commission had probable cause to believe from the evidence available to it that there were grounds to cancel or suspend the license under the Commission's

usual procedure.

Failure to give licensees the opportunity to present a plan to resolve the situation that creates the serious danger to public health and safety prior to an immediate suspension, as provided for in agency policy, does not result in a revocation of the Order of Immediate Suspension under the circumstances of the case for the following reasons: (1) The provision is not in an administrative rule or Commission order, the vehicles generally used to convey an agency's formal policy decisions to the affected public, but, instead, in a document directed inwardly, to Commission staff (therefore not binding on the Commission in its dealing with the public); (2) Licensee did not argue, and there is no basis in the record to find, that he was substantially prejudiced because he did not get an opportunity to present a plan; (3) Licensee did not put forth such a plan at hearing and gave no hint he wished to reopen the licensed premises at Tequila Peppers; and (4) The license at Tequila Peppers has lapsed and licensee has an application pending at Pepita Express, a premises at which licensee plans to work full-time, making it unlikely that licensee has any intention of reopening Tequila Peppers.

It also appears that strict adherence to the policy directive would be at odds in some instances with the inherent purpose of ORS 183.430(2), which is the protection of public health and safety against "a serious danger." Delaying the imposition of an Order of Immediate Suspension to await the presentation of a plan could create a risk of harm to the public which could occur in the meantime. The Commission concluded that by its policy, it did not intend that failure by staff to allow presentation of such a plan would necessarily require revocation of an Order of Immediate Suspension, but, instead, it intended that staff use its judgment in determining whether it would be in the public interest to provide the opportunity for presentation of a plan before taking action under ORS 183.430(2), which does not require such an opportunity to present a plan.

The Commission confirmed an Immediate Suspension Order for a former licensee and issued a letter of reprimand to a former licensee due to a history of serious and persistent problems with illegal drug sales.

Case: *Mulligan's*, OLCC-99-V-041-ES, August 1999.

Abstract: The Immediate Suspension Order was confirmed where, at the time the Order was issued, there was probable cause to believe there was a basis to cancel the license under ORS 471.315(1)(c) (history of serious and persistent problems), the operation of the premises posed a serious threat to public health and safety, and the Licensees failed to show changed circumstances that would warrant lifting the Immediate Suspension Order.

Case: *Red Willow v. CSD*, 152 Or App 710 (1998).

Abstract: Where an agency emergency suspended the license of a provider pursuant to ORS 183.430(2), but did not issue the final order upholding the suspension before the license expired, the case was not mooted by the expiration of the license because the suspension order was issued while the license was still in effect and the subsequent order concerned the validity of the suspension order. The court distinguished this case from the situation in *Schurman v. Bureau of Labor*, 36 Or App 841, 585 P2d 758 (1978). In that case, the court concluded that the agency did not have jurisdiction to issue an order after the license had expired.

Case: *W.M. Costless*, OLCC-96-V-063ES, March 1997.

Abstract: The Commission concluded that the emergency suspension should be confirmed where: there was probable cause to suspend; continued operation of the premises would pose a serious danger to the public health and safety; appropriate procedures were followed in imposing the emergency suspension; and licensee did not show a change of circumstances that would justify altering or revoking the suspension.

Case: *OLCC Agency No. 221*, OLCC-92-RO-007-ES, March 1993.

Abstract: The Commission confirmed the emergency suspension where the record showed that:

- a. at the time the Emergency Suspension Order was issued, there was probable cause to believe from the evidence available to the Commission that there were grounds to cancel the license, because of 50 alleged drug incidents at the premises;
- b. the acts and omissions of the licensees posed a serious danger to the public health and safety because the licensees were not able to control the drug activities in and around the premises; and
- c. the licensees were not able to prove at the time of the hearing that there had been a change in circumstances that would warrant lifting the Suspension Order.

Pastime Tavern, OLCC-96-V-019ES, June 1996. In this case, the Commission emergency suspended agent for an audit shortage of \$14,000. A Proposed Order was issued recommending that the Emergency Suspension Order be revoked. The Commission determined to postpone consideration of the Proposed Order Revoking the Emergency Suspension pending the outcome of the Proposed Order in the companion case involving the audit shortage. The emergency suspension was continued until the Proposed Order was issued in the case involving the shortage.

Case: *Sao-Mai Restaurant*, OLCC-91-V-136ES, January 1992.

Abstract: Emergency suspension was continued where the Commission concluded that licensees had failed to show a change in circumstances that would warrant lifting the suspension. Licensees offered to replace the manager who had been involved in the altercation with OLCC inspectors with the licensee, who was the manager's mother. The Commissioners were not persuaded that the licensees' proposed change warranted lifting the suspension because the record showed that the licensee had been present at the time of the altercation and did nothing to stop the altercation.

In determining whether the acts of the licensees posed a serious danger to the public, the Commission concluded that the violations alleged of permitting disorderly activities, interfering with enforcement, failure to call the police, and permitting a visibly intoxicated person to consume, were of a type that represents serious danger to the public. The Commission concluded that the following violations were not of a type that constitute a serious danger to the public health and safety: permitting open containers to leave the premises, service by underage employees, and permitting persons to serve without valid service permits.

Case: *El Mirador Mexican Restaurant*, OLCC-91-V-150(ES), December 1991.

Abstract: Emergency Suspension was continued where licensee permitted an ongoing criminal enterprise to sell illegal narcotics and licensee did not take reasonable steps to prevent or control the ongoing criminal enterprise. Unlawful activities involving illegal controlled substances are connected to the exercise of the license privileges because alcohol is a controlled substance and the person holding the license must demonstrate an ability to adequately deal with controlled substances.

Case: *Grand Stark Tavern*, OLCC-90-V-136, March 1991.

Abstract: In confirming an emergency suspension order, the Commission considered the following: 1) whether at the time of issuance of the emergency suspension order there was probable cause to believe from the evidence available to the agency that there were grounds for revocation, suspension, or refusal to renew the license under the agency's usual procedures; 2) whether the acts or omissions of the licensee pose a serious danger to the public's health and safety; 3) whether the agency followed the appropriate procedures in issuing the emergency suspension order; and 4) whether circumstances at the time of the hearing justify confirmation, alteration, or revocation of the emergency suspension order.

Case: *Marcoules v. OLCC*, 91 Or App 573, 756 P2d 661 (1988).

Abstract: The reason for a pre-hearing suspension under ORS 183.430(2) must be at least as substantial as those which would justify suspension under the general suspension statute, ORS 471.315.

The emergency suspension notice was deficient where the Commission failed to comply with its own rules regarding notice requirements for emergency suspension, OAR 845-03-025(2)(c) because it failed to refer "to the particular sections of the statutes and rules involved," which were ORS 471.315 and the sections of OAR 845-06-045 then applicable.

Case: *Frenchie's Tavern*, OLCC-88-ES-001, June 1988.

Abstract: The issue in an emergency suspension hearing is whether the Commission should lift the suspension prior to issuance of the Commission's Final Order in the underlying violation case. Once the Commission issues the Final Order in the violation case, that action supersedes the emergency suspension.

Where a licensee committed numerous violations in a short period, the premises constituted a serious danger to public health and safety until the license was suspended for a lengthy, cooling-off period and the license was subject to restrictions to address the causes of the violations.

Case: *Tacoma Cafe*, OLCC-86-ES-001, October 1986.

Abstract: The Commission acted within its authority to impose an emergency suspension where problems including assault, robberies, stabbings, shootings, killings and the use and sale of narcotics were associated with the sale and consumption of alcoholic beverages at the licensed premises.

Case: *Club 101*, OLCC-85-ES-001, February 1986.

Abstract: There must be a connection between the sale of liquor and the serious danger to the public health and safety in order to impose an emergency suspension.

Case: *Porterhouse*, October 1983.

Abstract: Emergency suspension pursuant to ORS 183.430(2) revoked when basis for suspension not supported by evidence offered at contested case hearing.
