

LIQUOR CONTROL ADJUDICATION BOARD  
DEPARTMENT OF LIQUOR CONTROL  
COUNTY OF MAUI, STATE OF HAWAII

TRANSCRIPT OF PROCEEDINGS  
REGULAR MEETING

Held at the Department of Liquor Control Conference Room, David K. Trask, Jr. Office Building, 2145 Kaohu Street, Room 108, Wailuku, Maui, Hawaii, commencing at 9:00 a.m., on Thursday, February 2, 2017.

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1 BOARD MEMBERS PRESENT:

2 Donald Fujii, Chairperson

3 Candace Ariaga, Member

4 Jerrybeth De Mello, Member

5 Zachary Helm, Member

6 Doris Tanaka, Member

7 Bruce U`u, Member

8 STAFF PRESENT:

9 Edward Kushi, Jr., First Deputy Corporation Counsel

10 Peter Hanano, Deputy Prosecuting Attorney

11 Glenn Mukai, Director

12 Mark Honda, Deputy Director

13 Kayle Matsushima, Senior Investigator

14 Sarah Cordeiro, Secretary to Boards/Commissions II

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1 (Thursday, February 2, 2017, 9:00 a.m.)

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3 CHAIR FUJII: (Gavel.) Good morning. The  
4 meeting of the Liquor Control Adjudication Board is now  
5 called to order pursuant to Section 281-91 of the Hawaii  
6 Revised Statutes and Section 8-13.3 of the Charter of the  
7 County of Maui to consider the matters and issues as  
8 posted on today's agenda. At this time, we would like the  
9 Board Members to introduce themselves, starting with our  
10 Secretary.

11 MS. CORDEIRO: Sarah Cordeiro, Liquor Control.

12 MEMBER DE MELLO: Jerrybeth De Mello from  
13 Lahaina.

14 MEMBER ARIAGA: Candace Ariaga, Lanai.

15 MEMBER TANAKA: Doris Tanaka from Wailuku.

16 MR. KUSHI: Ed Kushi, County.

17 CHAIR FUJII: Donald Fujii, Wailuku.

18 MEMBER HELM: Zach Helm, Molokai.

19 MEMBER U`U: Bruce U`u, Paia.

20 DIRECTOR MUKAI: Glenn Mukai, Liquor Control.

21 DEPUTY DIRECTOR HONDA: Mark Honda, Liquor  
22 Control.

23 MR. HANANO: Peter Hanano, Department of  
24 Prosecuting Attorney.

25 MS. MATSUSHIMA: Kayle Matsushima, Liquor

1 Control.

2 CHAIR FUJII: Thank you. Let the record show  
3 that Board Members Gwen Ueoka, Wayne Pagan and Ben Despina  
4 are excused for today's board meeting.

5 We will now hear Complaint and Accusation Number  
6 2017-3 against CMSB L.L.C. doing business as Kahului Ale  
7 House. Will the respondent or its representative please  
8 step forward and state your name and what capacity you  
9 represent the --

10 MR. SUNDIN: Hi. Brad Sundin, member.

11 CHAIR FUJII: Will you spell your last name,  
12 sir?

13 MR. SUNDIN: S-U-N-D-I-N. My legal name is  
14 James Bradley Sundin, but I go by Brad.

15 CHAIR FUJII: S-U-N-D -- D-I --

16 MR. SUNDIN: D-I-N.

17 CHAIR FUJII: Thank you, Mr. Sundin. At this  
18 time, Mr. Sundin, you have the option of having the  
19 charges publicly read or you can waive the reading.

20 MR. SUNDIN: Waive the reading.

21 CHAIR FUJII: Mr. Sundin, for the record, do you  
22 represent the Respondent involved?

23 MR. SUNDIN: Yes.

24 CHAIR FUJII: Do you have legal counsel?

25 MR. SUNDIN: No.

1 CHAIR FUJII: Do you understand that you have  
2 the right to have legal counsel present?

3 MR. SUNDIN: Yes, sir.

4 CHAIR FUJII: Do you understand the charges  
5 against you?

6 MR. SUNDIN: Yes, sir.

7 CHAIR FUJII: What is your plea to Count 1?

8 MR. SUNDIN: Not guilty.

9 CHAIR FUJII: Count 2?

10 MR. SUNDIN: Not guilty.

11 CHAIR FUJII: And Count 3?

12 MR. SUNDIN: Not guilty.

13 CHAIR FUJII: At this time, then, is the  
14 Department and the Respondent ready to proceed for a not  
15 guilty case?

16 MR. HANANO: Yes, Chair.

17 CHAIR FUJII: Mr. Hanano?

18 MR. HANANO: Yes, we are.

19 CHAIR FUJII: Mr. Sundin, are you ready to  
20 proceed?

21 MR. SUNDIN: Yes.

22 CHAIR FUJII: The hearing shall be taken in two  
23 phases. If the Board finds the Respondent guilty, the  
24 Department and Respondent will be given an opportunity to  
25 present arguments to the Board as to what the penalty

1 shall be.

2           The Board at this time will now invoke the  
3 exclusionary rule and ask any witnesses for this case to  
4 please wait outside until your turn to testify or be  
5 summoned.

6           MR. SUNDIN: Okay. Thank you.

7           CHAIR FUJII: We will begin with the  
8 Department's opening statement. Mr. Hanano.

9           MR. HANANO: Yes, Chair. Thank you.

10           On June 28, 2015, at about 10:00 to 11:00 p.m.  
11 at night, police officers receive a call of a allegation  
12 of road rage which occurred in the area of Kaahumanu  
13 Avenue and Wharf Street. When they responded to the call,  
14 they determined that the responsible person was located in  
15 the Ale House in Kahului, this is 33 [sic] Kamehameha  
16 Avenue in Kahului.

17           When they enter the Ale House, they made contact  
18 with a -- excuse me -- person by the name of Paul  
19 Skoverski -- John Douglas Skoverski. I'm sorry. And when  
20 they make contact with him, they speak to him about the  
21 road rage incident, but they also determined that he's  
22 highly intoxicated while in the Ale House. They don't  
23 arrest him. They know that he was driving because -- you  
24 know, because of the call of the road rage incident, but  
25 they don't arrest him. They warn him -- they tell him

1 don't drive because, you know, you're intoxicated. They  
2 leave.

3 About 10 minutes later, they're calling --  
4 called back to the Ale House again, but, this time, it's  
5 because they receive a call from the Ale House that this  
6 same person, Skoverski, is threatening and obnoxious and  
7 just out of control, and, basically, they wanted to kick  
8 him out of the bar. And -- and they did.

9 By the time the police get there, he's not in  
10 the bar, but one of the officers, Officer Jerry Barrera,  
11 was able to find Mr. Skoverski driving in the parking lot,  
12 coming from the Wendy's direction. He stops  
13 Mr. Skoverski, tells him to park the car. When  
14 Mr. Skoverski is trying to park the car, he hits the curb,  
15 he can't negotiate into the stall.

16 Police do their investigation and determine  
17 that, based on, you know, their observations of the  
18 defendant, Skoverski, and his performance on the field  
19 sobriety test, that he's -- basically, he can't drive.  
20 And because he was seen driving in the vehicle, they  
21 arrest him for OUI. He's arrested, taken to the Wailuku  
22 Police Station where he undergoes a breath test. And the  
23 test results in a .17 -- .177 -- I think .171 percent  
24 alcohol breath content, which is, basically, over twice  
25 the legal limit of .08.



1           Basically, what happens is, in response to that,  
2 the Department initiates an investigation. And,  
3 basically, determines that the Kahului Ale House, you  
4 know, was in violation of three counts that we're here  
5 today to adjudicate.

6           And, at the end of the case, I will ask you to  
7 find them guilty of all three counts. Thank you.

8           CHAIR FUJII: Thank you, Mr. Hanano.

9           Mr. Sundin, you also have an opportunity --  
10 opportunity for an opening statement.

11           MR. SUNDIN: Okay. Yes. The person, John  
12 Skoverski, I just found out a couple days ago -- there was  
13 another report referenced in the -- the package I got from  
14 Liquor Control. He was actually -- and the road rage  
15 incident that Mr. Hanano talked about, he had come to Ale  
16 House at approximately -- approximately 10:40. And we --  
17 I would like to say that we were not aware -- when the  
18 police came in and they asked if he was there, they saw  
19 him, they asked him to come outside. That's when he, I  
20 guess, basically, got -- just about got in a fight with  
21 the other person that was in the road rage incident. The  
22 police made no mention at all that anything was -- it  
23 could have been a burglary, for all we know. And when he  
24 came back in the door, at that point, we -- we said, "No,  
25 we're not gonna serve you." He had one drink and one

1 shot. And I -- I submitted that this morning. So in the  
2 opening statement, I guess this would have been really  
3 averted completely had the Police Department told us what  
4 they had pulled him over -- or what they were talking to  
5 him about outside. Because they arrived within five or 10  
6 minutes after he did. Yeah.

7 CHAIR FUJII: Is that your --

8 MR. SUNDIN: Yeah.

9 CHAIR FUJII: Okay. We'll get into other --

10 MR. SUNDIN: Okay.

11 CHAIR FUJII: -- opportunities later. At this  
12 time, I would like the Director [sic] to call their first  
13 witness.

14 MR. HANANO: Yes, Chair. We will call Officer  
15 Jerry Barrera as our first witness.

16 CHAIR FUJII: Mr. Barrera.

17 OFFICER BARRERA: Yes, sir.

18 CHAIR FUJII: I will be reciting the oath and I  
19 would like you to confirm the oath that I'll be reciting.  
20 Do you solemnly swear or affirm that the testimony that  
21 you are about to give before this Board in connection with  
22 this case will be the truth, the whole truth and nothing  
23 but the truth?

24 OFFICER BARRERA: I do.

25 CHAIR FUJII: Thank you. Mr. Hanano.

1 MR. HANANO: Thank you, Chair.

2 OFFICER JERRY BARRERA,  
3 was called as a witness on behalf of the Department; after  
4 having been first placed under oath, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HANANO:

7 Q Please state your name and occupation for the  
8 record.

9 A I'm Officer Jerry Barrera, I'm a police  
10 officer --

11 Q How long --

12 A -- with the Maui Police Department.

13 Q How long have you been employed as a police  
14 officer?

15 A Seven years.

16 Q What is your current assignment?

17 A I'm currently assigned the Vice Division.

18 Q Back in June of 2015, where were you assigned  
19 that day?

20 A I was assigned in Wailuku Patrol.

21 Q As a police officer, have you received any  
22 training with respect to recognizing any signs or symptoms  
23 of an impaired driver?

24 A Yes, sir.

25 Q Can you describe what those are?

1 A Well, during my --

2 Q Briefly, please.

3 A Okay. During my training, I was taught how to  
4 identify an impaired driver by -- by identifying cues  
5 during vehicle -- vehicle in motion, personal -- personal  
6 contact, and during our pre-arrest screening.

7 Q Okay. As far as the vehicle in motion, can you  
8 describe, basically, you know, based on your training,  
9 what signs would lead you to believe that someone may  
10 possibly be driving under the influence of liquor or  
11 drugs?

12 A Swerving, changing lanes without using their  
13 signal, less speed, too slow or too fast, over the speed  
14 limit or way below the speed limit.

15 Q Okay. And as far as personal contact, signs and  
16 symptoms of someone, you know, basically under the  
17 influence, what would those be?

18 A Slurred speech; red, bloodshot eyes on the  
19 person; swaying side to side and having hard time  
20 maintaining his balance; flush facial features; odor of  
21 liquor coming from his breath when you talk to him.

22 Q Okay. Now, have you -- in addition to  
23 recognizing those signs and symptoms, did you also receive  
24 any training with respect to administering the standard  
25 field sobriety tests to a possible arrestee?

1           A     Yes, sir.

2           Q     Okay.  And can you describe what those tests  
3 are?

4           A     Well, for the standardized field sobriety test,  
5 we were taught to administer walk and turn, horizontal  
6 gaze nystagmus or HGN, and the one-leg stand.

7           Q     Okay.  Can you explain, basically, what the  
8 horizontal gaze nystagmus test is or --

9           A     For the horizontal gaze nystagmus, we're looking  
10 for the nystagmus or the involuntary jerking of the eye.  
11 And during this test, we're, basically, looking for -- for  
12 clues for the -- looking for the lack of smooth pursuit,  
13 the distinct and sustained nystagmus of maximum deviation  
14 and onset of nystagmus prior to 45 degrees.

15          Q     Okay.  And can you describe just briefly how  
16 that's done, you know --

17          A     Well, first, you instruct the person to follow  
18 your pen or fingers approximately 12 to 15 inches away  
19 from his nose or her nose.  And then you instruct the  
20 person to follow the -- your finger or your pen with his  
21 or her eyes only.  And then for the lack of smooth  
22 pursuit, you start from the left eye -- you start from the  
23 left eye and then make two passes.  Then, at maximum  
24 deviation, when you -- when you start from the left --  
25 from the left eye, then you pass like -- you count one,

1 two, three, four. And then it's -- I'm sorry. For the  
2 lack of smooth pursuit -- for the lack of smooth pursuit,  
3 when you're doing -- when you're passing and counting one,  
4 two, three, four, making two passes, you're supposed to  
5 see the nystagmus while doing that.

6 Q Okay. So, basically, what you're doing is  
7 you're having the subject concentrate on your pen, let's  
8 say, and you're moving the pen around in different  
9 locations in front of 'em, and you're -- and you're  
10 looking at whether or not the --

11 A Yes.

12 Q -- eyes are tracking?

13 A When you see the bouncing.

14 Q Okay. So when you see the bouncing, what is  
15 that a sign of?

16 A It -- it means it's -- it means that the person  
17 is impaired.

18 Q Okay. Now, on the walk and turn, can you  
19 briefly describe -- describe how that -- how that works?

20 A For the walk -- walk and turn, you instruct the  
21 person to, basically, walk nine heel-to-toe steps back and  
22 forth. And then you look for the clue. If he -- during  
23 the instruction phase, if he starts too soon or if he  
24 cannot maintain balance, then that's -- those are the two  
25 clues. And then if he misses heel to toe, if he stops

1 walking, if he steps off line, if he raises his arms while  
2 walking and then, instead of taking nine heel-to-toe  
3 steps, he took like 10 or 12, or just six, because he  
4 thought that he did nine. And the actual turn, instead of  
5 going into the -- turning to the left, he would -- instead  
6 of turning to the left, he would turn towards the right.

7 Q Okay. So, basically, you're trying to see a  
8 number of things which --

9 A If he's following --

10 Q If he's following instructions?

11 A Instructions.

12 Q Balance and all those?

13 A Yes.

14 Q Okay. And for the one-leg stand, what does that  
15 consist of?

16 A For the one-leg stand, you instruct the person  
17 to, basically, raise any foot to right or left, and then  
18 you observe if he puts his foot down, if he's -- he's --  
19 if he sways side -- side to side or if he raises his arms  
20 during the execution.

21 Q Okay. Now, prior to administering these  
22 standardized tests, is it standard practice to ask the  
23 subject any particular questions regarding their medical  
24 history?

25 A Yes.

1 Q And what kind of questions --

2 A We ask if they're taking any medication, we ask  
3 if they had like brain injury or back problems, leg  
4 problems, if they're seeing any doctor for any -- any  
5 condition.

6 Q Okay. So it's, basically, to determine or rule  
7 out --

8 A If --

9 Q -- possible things that may contribute to their  
10 performance on the --

11 A Of the SFST.

12 Q Okay. Have you ever arrested someone for OUI or  
13 operating under the influence of an intoxicant?

14 A Yes.

15 Q About how many times, roughly?

16 A More than 10.

17 Q More than 10. And about how many times have you  
18 administered the standardized field sobriety tests to an  
19 individual?

20 A At least 10.

21 Q At least 10?

22 A Yes.

23 Q Okay. Probably more than the amount of times  
24 you arrest someone, right, because -- just because you --

25 A Yeah. Not all people you --



1 Q Some pass the test?

2 A Yeah, they pass the test.

3 Q Okay. Now I'm going to direct your attention to  
4 the June 28th, 2015 incident. Were you employed and on  
5 duty at that time?

6 A Yes.

7 Q Okay. And you're, I think earlier you said,  
8 Wailuku Patrol?

9 A Wailuku Patrol, I was working as 1 Alpha 20,  
10 which is assigned in Kahului area.

11 Q Okay. And that's what --

12 A It's the first watch.

13 Q First watch, okay. Okay. And at that time, do  
14 you recall being assigned to investigate a -- an incident  
15 involving a John Douglas Skoverski late in the evening?

16 A Yes. That is correct.

17 Q Okay. Do you remember what the nature of that  
18 investigation was?

19 A Initially, we were assigned there for a  
20 harassment call, a road rage incident.

21 Q All right.

22 A And I was assisting Officer Kusunoki during that  
23 time. And the caller was complaining about Mr. Skoverski  
24 yelling profanities at him. So he headed -- and then he  
25 found out that -- after that contact, he found out that

1 Mr. Skoverski went to Ale House. So we headed over there.  
2 And then we identified the vehicle. It was, actually,  
3 parked outside by the north -- north side parking lot of  
4 Ale House.

5 Q Okay. So you got a license plate number from  
6 the caller --

7 A Yes.

8 Q -- basically?

9 A Yes.

10 Q Okay. So you locate the -- the vehicle. And  
11 this is at 355 East Kamehameha Avenue in Kahului Maui,  
12 next to Wendy's, is that the --

13 A Yes.

14 Q -- Ale House?

15 A Yes.

16 Q Okay. And so were you able to locate this  
17 alleged responsible in -- in the road rage incident?

18 A Yes.

19 Q Okay. And can you explain how that happened?

20 A Well, when we went over there, inside the bar,  
21 where the -- the pool area, we made contact with Mr. --  
22 Mr. Kusunoki -- or Officer Kusunoki made contact with  
23 Mr. Skoverski.

24 Q Okay. Where --

25 A I was there as the backup, but I saw him.

1 Q Okay. Where were you when Officer Kusunoki was  
2 talking to --

3 A Approximately two feet away from Officer  
4 Kusunoki.

5 Q Okay. So you're just kind of on the side --

6 A Yes.

7 Q -- just accompanying Officer Kusunoki?

8 A Yes.

9 Q All right. And what -- when you -- when you  
10 guys first located Mr. Skoverski inside Ale House,  
11 where -- where was he? Was he sitting at the bar or at a  
12 table?

13 A He was by the billiards table area. Close to  
14 the billiards table.

15 Q But was he playing pool or --

16 A Yes, he was playing pool.

17 Q Okay. And did you observe if he was drinking  
18 any kind of liquor beverages?

19 A Yes.

20 Q What -- what did you observe?

21 A He was doing some shots and beer.

22 Q So he actually had the beer and the shots and  
23 was drinking it while you guys were there?

24 A No. While he was talking to us, he wasn't  
25 drinking those things, but the beer and the shots were in

1 close proximity and he admitted he was drinking.

2 Q Okay. At some point, Officer Kusunoki speaks to  
3 him and, basically, asks him about the incident regarding  
4 the road rage?

5 A Yes.

6 Q Correct?

7 A Yes, that is correct.

8 Q What did you observe as far as Mr. Skoverski's  
9 demeanor when you guys made contact with him?

10 A He -- he was observed to be intoxicated.

11 Q Okay. Can you -- can you describe what -- what  
12 you mean by that?

13 A He was unsteady on his feet, he was swaying side  
14 to side, I could smell --

15 Q About how far --

16 A -- odor.

17 Q How far away were you from him when you could  
18 smell the -- you could smell liquor?

19 A Be two, two to three feet --

20 Q You could --

21 A -- right in front of me.

22 Q -- smell the odor of liquor?

23 A Yes. And then red, bloodshot eyes.

24 Q Any slurred speech?

25 A Slurred speech, too, yes.

1 Q Flush face?

2 A Flush facial feature.

3 Q Okay. How was his demeanor as far as --

4 A He was very argumentative.

5 Q Then, eventually, what happened with that --  
6 with that road rage investigation? Was he arrested?

7 A No. He was warned and -- and reprimanded.

8 Q Okay.

9 A Advised not to make any contact with the  
10 reporting party.

11 Q Anything else that he was told as far as --

12 A That --

13 Q -- driving?

14 A He was advised not to drive.

15 Q Okay. Basically, I'm gonna ask you, on a -- on  
16 a scale of one to 10, with 10 being passed-out drunk, how  
17 would you rate Mr. Skoverski's level of intoxication?

18 A The initial contact?

19 Q Initial contact.

20 A Of the harassment case?

21 Q When he's by the --

22 A Seven to eight.

23 Q Seven to eight?

24 A Yeah.

25 Q So, I guess, after you guys talked to him and

1 you warn him, hey, don't make contact with the other  
2 driver and then don't drive, you guys leave, you guys left  
3 the Ale House?

4 A Yes.

5 Q Okay.

6 A We left Ale House.

7 Q Now -- now, while you were there the -- at that  
8 time, prior to leaving, did anybody from the Ale House ask  
9 you guys, ask the police, to kick Mr. Skoverski out of --  
10 out of the Ale House?

11 A Not that I can remember because we were there  
12 for the harassment.

13 Q Okay. But nobody from the Ale House asked you  
14 to kick -- kick Mr. Skoverski out?

15 A I do not recall.

16 Q Or -- or they didn't ask you to assist them in  
17 taking out -- in taking away his drinks?

18 A No.

19 Q Okay. So, later that night, were you assigned  
20 to respond again to the Ale House?

21 A After we left, about 10 minutes later, we were  
22 assigned again to go back. And dis -- dispatch related  
23 that it was the same person, but, this time, the caller is  
24 the -- is from the Ale House.

25 Q Okay. So it's an employee of Ale House --

1 A Yes.

2 Q -- calling the dispatch? And you guys  
3 responded?

4 A Yes.

5 Q And the same Mr. Skoverski that's --

6 A He was --

7 Q -- involved --

8 A -- refusing to leave.

9 Q Refusing to leave, okay. And so you guys  
10 respond there?

11 A Yes.

12 Q All right. And when you got there, were you  
13 able to -- to initially -- explain what happened when you  
14 got there.

15 A So when we got there, when we arrived on scene,  
16 I was informed by Officer Tau`a that he was informed by  
17 the employees of Ale House that Mr. Skoverski already left  
18 the establishment. And then since I -- I knew where the  
19 car was parked during the first contact, so I looked -- I  
20 looked outside the north side parking -- parking lot,  
21 parking area, the car wasn't -- the vehicle wasn't there  
22 anymore.

23 Q Okay. And did you make any checks anywhere else  
24 as for the vehicle?

25 A Yeah. So while Officer Tau`a was talking to the

1 caller, I checked outside again. And I stayed in front of  
2 the -- I checked the front -- the front parking lot, or  
3 the east side parking lot, facing Kamehameha Avenue. And  
4 then that's when I observed the vehicle NWT, or November  
5 Whiskey Tango, 534 driving northbound from Wendy's burger  
6 headed towards Hana Highway. He was driving on the  
7 parking -- parking lot area.

8 Q Okay. So what did you do when you saw the  
9 vehicle?

10 A So when I -- I saw the vehicle and then I flag  
11 it down. And when it was close enough, I observed  
12 Mr. Skoverski operating said vehicle. So I told him to  
13 park the vehicle so I could -- I could talk to him.

14 Q Okay. And what did you -- you observe with  
15 respect to Mr. Skoverski when he tried to park the  
16 vehicle?

17 A While he was parking, he hit the curb first  
18 before he could properly park the vehicle.

19 Q And so, I guess, eventually, you made contact  
20 with Mr. Skoverski?

21 A Yes.

22 Q And what did you observe as far as his  
23 intoxication level?

24 A During contact with Mr. Skoverski, he was  
25 observed to be intoxicated because he was showing signs of



1 impairment, such as red, bloodshot eyes, slurred speech,  
2 and an odor of liquor was coming from his --

3 Q Okay. So, basically, the same things you  
4 observed earlier?

5 A Yes.

6 Q Ten minutes earlier?

7 A Yes. That is correct.

8 Q Okay. And at this point, I mean, this is 10  
9 minutes later, but how would you rate his,  
10 Mr. Skoverski's, intoxication level on a scale of one to  
11 10 at this time?

12 A Well, the call was 10 minutes after -- 10  
13 minutes during the initial contact, but then, when I made  
14 contact with Mr. Skoverski, that's at least 15 to 20  
15 minutes. At that time, I could say it's between eight to  
16 nine.

17 Q Okay. So on a scale of one to 10, it went from  
18 a seven to eight to now eight to nine?

19 A Yes.

20 Q Okay. And at -- at that point, when you -- when  
21 you see him driving and his intoxication level is even  
22 higher, did you initiate a -- an OUI investigation?

23 A Yes.

24 Q And what did you do as far as the investigation  
25 at that point?

1           A     Well, I asked him to -- I asked if he would be  
2 willing to -- based on my initial observation of the -- of  
3 the flush facial features, slurred speech, and, upon  
4 exiting the vehicle, he was -- he leaned on his vehicle to  
5 maintain his balance and the red, bloodshot eyes. So I  
6 asked if he was willing to perform the field sobriety  
7 test, standardized field sobriety test.

8           Q     Okay. And these are the tests that you  
9 described earlier?

10          A     Yes, that is correct.

11          Q     And did he agree to do it voluntarily?

12          A     Yes.

13          Q     All right. And prior to administering the test,  
14 did you ask him those questions that you asked earlier  
15 about the medical --

16          A     Yes, the medical history.

17          Q     Did he indicate whether or not he was taking any  
18 kind of medications or anything?

19          A     No. He said he was in overall good health.

20          Q     So he had no -- I mean, he wasn't wearing any  
21 contact lenses?

22          A     No.

23          Q     Not --

24          A     Wasn't wearing any contact lenses, wasn't taking  
25 any medication, he wasn't seeing any doctor for any

1 medical condition.

2 Q Okay. Not suffered any recent head injuries?

3 A No.

4 Q Or had any back or leg problems?

5 A He -- he said that he never had any back or leg  
6 problem, no head injuries.

7 Q So then the next point is, I guess, you  
8 administered the test, correct?

9 A That is correct.

10 Q Okay. And then as far as the HGN, how did he  
11 perform on that?

12 A Oh. Failed. He showed all six clues.

13 Q Yeah. So that's like the maximum --

14 A Yes.

15 Q -- clue that he could --

16 A For HGN.

17 Q For HGN, okay. What about the walk and turn?

18 A He refused to -- he refused to perform walk --  
19 walk and turn and the one-leg stand because he said he was  
20 having difficulty maintaining his balance.

21 Q Okay. Do you know about what time the road rage  
22 complaint came in?

23 A Road rage, I have to review the report of  
24 Mr. Kusunoki for the details of the time.

25 Q What about -- let's see. About what time do you

1 remember contacting Mr. Skoverski in the Ale House,  
2 initially?

3 A Initially?

4 Q Yeah.

5 A I can't recall the time, but it was, actually,  
6 Officer Kusunoki who made contact. I was just there as a  
7 backup.

8 Q Okay.

9 A A few feet away from Officer Kusunoki.

10 Q Okay. Now, yeah, I'm gonna show you what's been  
11 marked as Department's Exhibit D-1 for identification. Do  
12 you recognize that?

13 A Yes. Yes.

14 Q And what is that, basically?

15 A This is the harassment case documented by  
16 Officer Kusunoki, Report Number 15-026390.

17 Q And that's also referenced in your report, I  
18 think?

19 A That is correct.

20 Q Which is 15-026394?

21 A Yes. That is correct.

22 Q Which is the OUI -- the OUI case number?

23 A That is correct.

24 Q And have you seen that report before?

25 A Yes.

1 Q Okay. Is that -- does that appear to be a fair  
2 and accurate copy of the official police report submitted  
3 to the Police Department?

4 A Yes.

5 MR. HANANO: At this time Department will move  
6 State's Exhibit D-1 for identification into evidence.

7 CHAIR FUJII: Mr. Sundin, do you have any  
8 objections as to --

9 MR. SUNDIN: Can I --

10 CHAIR FUJII: -- distribution of these?

11 MR. SUNDIN: No. No. Go ahead.

12 MR. KUSHI: Do you have any objections to  
13 entering into evidence? Have you seen it before?

14 MR. SUNDIN: I've seen it before, yeah. Yeah,  
15 it's the 390.

16 MR. HANANO: Yeah, 390, right.

17 Q (By Mr. Hanano) For the record, Officer Barrera,  
18 I'm showing you what's been marked as Department's Exhibit  
19 D-2. Do you recognize what that is?

20 A Yes. This is the CA form or the Citizen's  
21 Arrest form.

22 Q Okay. And that -- that's the form that someone  
23 had to fill out on the second call?

24 A Yes.

25 Q Okay. Can you describe what that is, basically?

1           A     Well, this is the form that the complainant  
2 usually fills out when they want to do a citizen's arrest.

3           Q     Okay. And who filled out that one?

4           A     This one, the complainant Lenore Cannon filled  
5 this out.

6           Q     Okay.

7           A     For the crime of disorderly conduct and  
8 terroristic threatening in the second degree.

9           Q     All right. And is that -- who is that? Is that  
10 an employee of Ale House?

11          A     Yes.

12          Q     Is that a fair and accurate copy of what -- I  
13 guess you received that from Ms. Cannon?

14          A     Yes.

15          Q     Is that a fair and accurate copy of the  
16 original --

17          A     Yes.

18          Q     -- C&A form?

19                MR. HANANO: Okay. At this time Department will  
20 move to admit Exhibit D-2 into evidence.

21                MR. SUNDIN: I disagree with that. She didn't  
22 fill the form out.

23          Q     (By Mr. Hanano) Officer Barrera, did you witness  
24 Ms. Cannon fill that out? I mean, you were there, right,  
25 when -- when --

1 A Yes, I was there.

2 Q Yeah.

3 A But I cannot recall if she actually filled this  
4 out or Officer Tau`a filled this out.

5 Q Oh, okay. All right.

6 A But -- because in some -- some cases, we help  
7 them --

8 Q Okay.

9 A -- help them fill out the form. But in this  
10 case, I can't recall if --

11 MR. SUNDIN: She had indicated she didn't know  
12 what it was, I mean, never signed -- never filled it out.

13 MR. KUSHI: Mr. Sundin, are you going to call  
14 her as a witness?

15 MR. SUNDIN: Yes, sir.

16 MR. KUSHI: Okay. Just hold up until then.

17 CHAIR FUJII: Okay. We can move from that,  
18 Mr. Hanano, if there is no further issue on that --

19 MR. HANANO: Yeah.

20 CHAIR FUJII: -- D-2.

21 MR. HANANO: We'll move to admit D-2 based on  
22 the Officer's testimony.

23 CHAIR FUJII: We will bring the issue on D-2  
24 when the witness appears.

25 MR. SUNDIN: That's great. Thank you. Okay.

1 CHAIR FUJII: Your -- licensee's witness  
2 appears.

3 Q (By Mr. Hanano) Okay. But, Officer Barrera, this  
4 is a fair and accurate copy of the Certificate of Citizen's  
5 Arrest --

6 A It is correct.

7 Q -- that was submitted --

8 A Yes.

9 Q -- in this case, correct?

10 A Yes.

11 Q All right. Now I'm gonna -- let's see -- refer  
12 you -- are you familiar with the definition of under the  
13 influence --

14 A Yes.

15 Q -- under -- under state law? You're familiar  
16 with that?

17 A Yes.

18 Q Okay. And that's under 291E-1, I believe?

19 A 61.

20 MR. HANANO: I'm going to ask the Board to take  
21 judicial notice of the definition of under the influence  
22 under 291E-1.

23 CHAIR FUJII: Proceed.

24 Q (By Mr. Hanano) So I'm gonna -- I'm gonna hand you  
25 a copy of the law on 291E-1, and I'm gonna ask you to read



1 to yourself where it says -- where it's highlighted under  
2 the influence.

3 A Under the influence means that the person,  
4 number, one is under the influence of alcohol in an amount  
5 sufficient to impair the person's normal mental faculties  
6 or ability to care for the person and guard against  
7 casualty. Number two is under the influence of any drug.

8 Q Okay. That's fine. I just wanted to -- okay.  
9 So as far as that first one that you read, basically, do  
10 you have an opinion as far as Mr. Skoverski's sobriety or  
11 impairment under that definition on the night of -- when  
12 you had him do the field sobriety tests?

13 A Based on my training and experience,  
14 Mr. Skoverski at that time was impaired and his -- his  
15 normal mental faculties are -- his normal mental faculties  
16 or ability to care for the person and guards against  
17 casualties is not sufficient.

18 Q Okay. And did you also form an opinion as to  
19 whether or not he could safely operate a motor vehicle on  
20 the road -- public roadways?

21 A No, he's not safe to operate any motor vehicle  
22 at that time.

23 Q Okay. So your opinion was that it wasn't safe  
24 for him to operate a --

25 A It wasn't safe for him to operate.

1 Q -- motor vehicle? And did everything you  
2 testify to occur within the County of Maui and the State  
3 of Hawaii?

4 A That is correct.

5 MR. HANANO: I have no further questions, Chair.

6 CHAIR FUJII: Thank you, Mr. Hanano.

7 Mr. Sundin, you can cross-examine the Director's witness.

8 MR. SUNDIN: Okay, thank you.

9 CROSS-EXAMINATION

10 BY MR. SUNDIN:

11 Q I want to go back to the beginning of testimony.  
12 The first question I had, the -- when you came into Ale  
13 House and asked where Mr. Skoverski was, you had walked  
14 over to the pool table with the other officer and then you  
15 had taken him outside. You did not stay in the restaurant  
16 to -- to question him. And when you came back in, we were  
17 told absolutely nothing, you just left.

18 MR. HANANO: I'm going to object to the form of  
19 the question.

20 Q (By Mr. Sundin) Okay. So my question is --

21 MR. HANANO: It has multiple questions in there.

22 MR. SUNDIN: Okay. Sorry. I'm not a  
23 professional, so I'm very sorry.

24 Q (By Mr. Sundin) If -- if you thought at that time  
25 he was -- he had operated a vehicle, obviously, to get to

1 Ale House, within 10 minutes or -- or so of this first  
2 report that you pulled him over in the parking lot, why  
3 wouldn't you have arrested him then or at least let us know  
4 why, you know, that you thought he was intoxicated at the  
5 time?

6 A Well, first, when we went there, we -- we  
7 responded based on the harassment call. And then when we  
8 arrived on scene, Mr. Skoverski was already inside the  
9 establishment. And we didn't see any driving pattern,  
10 which is part of our training that we need to see a  
11 driving pattern.

12 Q But in the -- in your statement on 15-026390,  
13 you said he challenged a fight to settle things. I mean,  
14 to me, I would have let the establishment know. He had  
15 just arrived at our place.

16 A Challenging somebody to a fight doesn't mean  
17 that he's intoxicated or --

18 Q But --

19 A -- impaired.

20 Q But it means we wouldn't serve him at all.

21 MR. HANANO: I want to object to being  
22 argumentative with the witness.

23 MR. SUNDIN: Okay. I'm not -- okay, I'm not  
24 trying to be argumentative.

25 MR. HANANO: If you have a question --

1 MR. SUNDIN: All right.

2 MR. HANANO: -- ask him a question.

3 Q (By Mr. Sundin) Okay. Okay. And then the  
4 vehicle -- you said the vehicle was parked in the north part  
5 of the parking lot?

6 A North side of the parking lot.

7 Q Okay. The north side is at the back of our  
8 building.

9 A Well, the north side is actually -- if this is  
10 Hana Highway, this is Kamehameha, this is Ale House, north  
11 side is over here, this parking lot over here.

12 Q Well, our --

13 A Facing Hana Highway.

14 Q The harbor is the north side, right?

15 A No.

16 Q Okay. Well, okay. Now, let's see. One second  
17 here. And you say you noticed his -- he had -- he had hit  
18 a curb when he -- when you saw him driving?

19 A That is correct.

20 Q Okay. Can you tell me where he was parked in  
21 front of the building?

22 A Well, he -- I couldn't say the exact parking  
23 stall, but it was in front or the east side of the  
24 establishment.

25 MR. SUNDIN: Okay. One second here. I'm sorry.

1 Okay. That's all the questions I have. Thank you.

2 CHAIR FUJII: Thank you, Mr. Sundin. Any  
3 questions by Members of the Board?

4 MR. HANANO: I have a couple follow-up  
5 questions --

6 CHAIR FUJII: Follow-up?

7 MR. HANANO: -- Mr. Chair.

8 CHAIR FUJII: Okay. Sure.

9 REDIRECT EXAMINATION

10 BY MR. HANANO:

11 Q Okay. Officer Barrera, you were asked some  
12 questions about taking Mr. Skoverski outside at some  
13 point. Is that -- did that happen, on the first visit?

14 A I do not recall. Like what I said, the initial  
15 contact was a harassment case. And it was Mr. -- or  
16 Officer Kusunoki's case. I was there for -- as a backup.

17 Q Okay. But, at any point, did you guys take  
18 Mr. Skoverski outside, do you recall that, on the first --  
19 on the first call?

20 A I don't recall.

21 Q Okay. But you do recall that he was playing  
22 pool in the Ale House, correct?

23 A Yes.

24 Q And you do recall seeing him drinking a beer or  
25 having a beer and a shot or something --

1 A Whiskey shots. Yes.

2 Q Whiskey shots with him, correct?

3 A That is correct.

4 Q Okay. And, also, on the first visit, can you  
5 explain to the Board the decision that was made not to  
6 arrest Mr. Skoverski for anything, including OUI?

7 A Well, for the OUI portion, we didn't see him  
8 driving. That's the reason why we didn't arrest for OUI.  
9 And the reason for that, too, is we didn't know if he was  
10 actually drinking prior to coming to Ale House. It could  
11 have been, you know, he was -- he was already -- yeah, he  
12 was drinking inside the establishment causing the  
13 impairment and not prior to coming to the establishment.

14 Q Okay. Do you know approximately how long it was  
15 from when you guys got the call to when you guys actually  
16 got to the Ale House?

17 A During the initial call or the second call?

18 Q The first call. So you guys get -- hear it on  
19 dispatch, right, respond to Ale House? Do you know about  
20 how long it took from getting the call to actually getting  
21 there, how long that was?

22 A I -- I don't recall, but it's usually minutes,  
23 several minutes.

24 MR. HANANO: Okay. I have no further questions.

25 CHAIR FUJII: Thank you. Any questions by

1 Members of the Board for the witness? If not,  
2 Mr. Barrera, thank you for coming.

3 OFFICER BARRERA: Thank you so much.

4 CHAIR FUJII: Mr. Hanano.

5 MR. HANANO: Yes, Department will call Officer  
6 Paul Pomainville.

7 CHAIR FUJII: How do you spell that, Mr. Hanano?

8 MR. HANANO: For the record,  
9 P-O-M-A-I-N-V-I-L-L-E.

10 CHAIR FUJII: Thank you.

11 MR. HANANO: You're welcome.

12 CHAIR FUJII: Mr. Hanano, did you say he was  
13 officer?

14 MR. HANANO: Yes.

15 CHAIR FUJII: Thank you.

16 OFFICER POMAINVILLE: Good morning.

17 CHAIR FUJII: Good morning. Officer  
18 Pomainville, there is an oath that I will recite that I'd  
19 like you to respond to. Officer, do you solemnly swear or  
20 affirm that the testimony that you are about to give  
21 before the Board in connection with this case will be the  
22 truth, the whole truth and nothing but the truth?

23 OFFICER POMAINVILLE: I do.

24 CHAIR FUJII: Thank you. Mr. Hanano.

25 MR. HANANO: Thank you, Chair.

1 OFFICER PAUL POMAINVILLE,  
2 was called as a witness on behalf of the Department; after  
3 having been first placed under oath, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. HANANO:

6 Q Please state your name and occupation for the  
7 record.

8 A My name is Officer Paul Pomainville with the  
9 Maui Police Department.

10 Q All right. How long have you been employed as a  
11 officer with the Maui Police Department?

12 A Since November 26, 2012.

13 Q What is your current assignment?

14 A I currently work in the Community Relations  
15 Section.

16 Q Back in June 28th, 2015, where were you assigned  
17 back then?

18 A The Wailuku Patrol Division.

19 Q All right. And on June 28th, 2015, at about  
20 11:30 to 12:00 midnight, do you recall being assigned to  
21 assist Officer Barrera with an OUI investigation?

22 A Yes, I do.

23 Q And how did you assist with the investigation?

24 A So I assisted with the -- the performance of  
25 doing the Intoxilyzer 8000.



1 Q Okay. And what is the Intoxilyzer 8000?

2 A It's to obtain a breath sample for someone who  
3 is arrested for a DUI.

4 Q And -- and so can you describe what your  
5 involvement was as far as that was concerned? Did you  
6 make contact with someone?

7 A Correct. I made contact with Officer Barrera's  
8 arrestee who, I believe, is John --

9 Q Skoverski?

10 A Skoverski. Yes, John Skoverski. I believe  
11 Officer Barrera arrived at the police station on the 28th,  
12 about -- I think it was 11:58, right before midnight. I  
13 made contact with John. He had red, watery eyes, slurred  
14 speech, some odor of liquor from his breath. I -- also,  
15 throughout the period I was in contact with him, he had  
16 big mood swings. He would be really nice at times, but  
17 then, like really quick, he'd change to become really  
18 aggressive and like -- verbally like, you know, start to  
19 confront us, but then he would apologize soon later, being  
20 very apologetic.

21 Q Okay. So, eventually, were you able to obtain a  
22 breath sample from Mr. Skoverski?

23 A Yes, I was.

24 Q Okay. And you said you used the Intoxilyzer  
25 8000?

1 A Yes.

2 Q Can you --

3 A That is correct.

4 Q Can you briefly describe for the Members of the  
5 Board the process of that real, real brief?

6 A Of the Intoxilyzer 8000 instrument?

7 Q Yes.

8 A It's --

9 Q How you go about --

10 A Okay.

11 Q -- doing the sample.

12 A So it's an instrument. Right before we do the  
13 test, we have a 15-minute observation period to make sure  
14 no one puts anything in their mouth, is chewing on  
15 anything. We want to make sure there's nothing that could  
16 influence or change the test. Okay. So with the test, we  
17 have someone blow in -- in a mouthpiece. It goes through  
18 a tube into a sample chamber in the -- in the instrument.  
19 In the -- in the chamber, the sample chamber, there's a  
20 little infrared laser that goes through and hits a -- a  
21 sensor. Okay. And if someone has alcohol concentration  
22 in their breath, it -- the -- the alcohol -- I can't think  
23 of the word -- not atoms -- the alcohol --

24 MR. SUNDIN: Atomization?

25 A What's that?

1 MR. SUNDIN: Atomization.

2 A No. The molecules. Alcohol molecules will  
3 absorb some of the infrared light which would indicate  
4 that you have been drinking.

5 Q (By Mr. Hanano) Okay. And that's how, I guess,  
6 they arrive at the -- the test result, correct?

7 A Correct. Yes.

8 Q Okay. Now, the result that you -- you do get,  
9 those are expressed in terms of grams of alcohol per 210  
10 liters of the person's breath?

11 A 210, yes, liters.

12 Q And the legal limit is, I think --

13 A .08.

14 Q -- .08. Okay. Now, are you certified to  
15 operate this Intoxilyzer 8000?

16 A Yes. I was certified on May 8th, 2015, by  
17 Officer Ibuya.

18 Q Okay. Now, can you explain basically -- well,  
19 let me ask you this: Does the instrument, as part of its  
20 testing of a subject have any kind of internal checks to  
21 make sure that the instrument is working properly before  
22 you take the test?

23 A Correct. Before and after. So as a pre-system  
24 diagnostic check, it checks the -- the sample chamber  
25 three times before the person administers the test and one

1 -- one time after they administer the test to make sure  
2 there's zero breath alcohol concentration in there.

3 Q Okay. And in this case, did the instrument  
4 successfully pass those tests?

5 A Yes. All four times through the test, it was  
6 0.00.

7 Q Okay. And that would be indicated on the  
8 printout that you get?

9 A Correct. Yes.

10 Q And so I guess you had Mr. Skoverski blow into  
11 the tube like you described earlier?

12 A Yes.

13 Q Okay. And you were able to obtain a result?

14 A Yes.

15 Q And do you remember what that was?

16 A His -- his result was .171.

17 Q Okay. And that's --

18 A The breath alcohol concentration.

19 Q All right. And that's, I guess, a little bit  
20 over two times the legal limit of .08, correct?

21 A Yes.

22 Q I'm going to show you what's been marked as  
23 Department's Exhibit D-4 for identification. Do you  
24 recognize that what is? Actually, there two things on  
25 there.

1 A Yes. On the top -- do I pull it up?

2 Q Yeah.

3 A So this is the results of the test and this is  
4 my certification card --

5 Q Okay.

6 A -- on the bottom.

7 Q All right. And does that appear to be a fair  
8 and accurate copy of both of those items?

9 A Yes, a copy.

10 MR. HANANO: At this time, Department will move  
11 Exhibit D-4 for identification into evidence.

12 CHAIR FUJII: Okay.

13 MR. SUNDIN: Okay.

14 CHAIR FUJII: You may distribute.

15 MR. HANANO: Yeah, no further questions for  
16 Officer Pomainville.

17 CHAIR FUJII: Officer Pomainville, thank you for  
18 coming.

19 OFFICER POMAINVILLE: Thank you.

20 MR. HANANO: I think he's -- for Cross.

21 CHAIR FUJII: Oh, I'm sorry. Mr. Sundin,  
22 your -- your witness.

23 CROSS-EXAMINATION

24 BY MR. SUNDIN:

25 Q Oh, just one comment, I guess. You -- when you

1 guys talked to him as well, you thought he could be really  
2 nice and very aggressive?

3 A Correct. Yes.

4 Q Okay. Thanks.

5 CHAIR FUJII: Mr. Sundin, as this Exhibit D-4  
6 was distributed, did you have any objections to that?

7 MR. SUNDIN: No. No, sir.

8 CHAIR FUJII: It's the -- the cash receipt [sic]  
9 there.

10 MR. SUNDIN: Right.

11 CHAIR FUJII: Any -- no further questions,  
12 Mr. Sundin, for our -- for your -- for the witness here?

13 MR. SUNDIN: No, no questions.

14 CHAIR FUJII: What about you, Mr. Hanano, any --

15 MR. HANANO: No further questions.

16 CHAIR FUJII: Officer Sundin [sic], again, thank  
17 you for coming.

18 OFFICER POMAINVILLE: Thank you.

19 CHAIR FUJII: Mr. Hanano.

20 MR. HANANO: At this time, the Department would  
21 also move to admit Department's Exhibit D-4 which purports  
22 to be a copy of an order -- an amended order of the Court  
23 for Mr. John Skoverski under Report Number 15-026394.

24 CHAIR FUJII: Mr. Sundin, do you have any  
25 objections to that?

1 MR. SUNDIN: No. No.

2 MR. HANANO: Okay, Chair, the next witness the  
3 Department will call is Amy Martin.

4 CHAIR FUJII: Ms. Martin, stand there, please.  
5 Ms. Martin, I will be reciting the oath and I would like  
6 you to respond to it.

7 MS. MARTIN: Okay.

8 CHAIR FUJII: Do you solemnly swear or affirm  
9 that the testimony you are about to give before this Board  
10 in connection with this case will be the truth, the whole  
11 truth and nothing but the truth?

12 MS. MARTIN: Yes.

13 CHAIR FUJII: Thank you. Mr. Hanano.

14 AMY MARTIN

15 was called as a witness on behalf of the Department; after  
16 having been first placed under oath, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HANANO:

19 Q Please state your name and occupation for the  
20 record.

21 A Amy Martin, I'm a Sanitary Chemist for the  
22 Environmental Management for the County of Maui.

23 Q Where were you employed back in July of 2015?

24 A I was a Liquor Control Officer for the  
25 Department of Liquor Control.

1 Q All right. And while employed as a Liquor  
2 Control Officer back then, do you recall receiving an  
3 assignment to conduct an investigation into a possible  
4 liquor violation involving the Ale House back in July of  
5 2015?

6 A Yes, I do.

7 Q And for the record, this is the Kahului Ale  
8 House located at 355 East Kamehameha Avenue, Maui, Hawaii?

9 A Yes.

10 Q Now, can you describe generally what you did as  
11 far as your investigation was concerned?

12 A Gathered evidence such as employee time sheets  
13 and sales receipts, and, also, interviewed the arresting  
14 officer, John Skoverski, and, also, employees that were  
15 working at the Ale House that night.

16 Q All right. After your investigation was  
17 completed, were you able to prepare a report of your  
18 investigation?

19 A Yes.

20 Q Okay. I'm going to show you what's been marked  
21 as Department's Exhibit D-5 for identification. Do you  
22 recognize what that is?

23 A Yes.

24 Q And what is that?

25 A This is the report that I wrote.



1 Q Is that a fair and accurate copy of the original  
2 report that you submitted?

3 A Yes, it is.

4 Q Under 16-00116?

5 A Yes.

6 MR. HANANO: At this time, Department would move  
7 to move Exhibit D-5 into evidence.

8 CHAIR FUJII: Mr. Sundin, any objections?

9 MR. SUNDIN: No. No.

10 Q (By Mr. Hanano) Okay. Now, part -- as part of  
11 your investigation, you obtained a statement from a person  
12 by the name of John Douglas Skoverski?

13 A Yes.

14 Q Is that in your report?

15 A Yes.

16 Q And I'm gonna -- I'm gonna ask you to read his  
17 statement into the record as far as your -- what's in your  
18 report that's on Pages 4 and 5.

19 A So on September 9th, 2015, at 3:07 p.m., I  
20 interviewed John Douglas Skoverski. He stated that, on  
21 June 28th, 2015, he entered the Kahului Ale House around  
22 8:00 p.m. and left just prior to when he was pulled over  
23 at 11:07 p.m. He stated he had about four drinks at the  
24 Kahului Ale House which consisted of beer and Jack  
25 Daniel's on the rocks, which he paid for with cash.

1 Skoverski stated that he felt wasted. He said the female  
2 bartender, who he believed her name started with a G, was  
3 doing heavy pours and was surprised that the bartender was  
4 letting him drink that much. Skoverski stated that he was  
5 being cooperative and nice to the bartender. He claims  
6 the bartender accused him of not leaving her tips, while  
7 Skoverski claimed he had been tipping her well all night.  
8 Skoverski then started arguing with the bartender, who  
9 then called the cops on him. Skoverski stated he panicked  
10 and left the bar. He stated he felt very intoxicated when  
11 he left, but felt he would be okay driving, since he was  
12 only going a few blocks, to the Courtyard Marriott.  
13 Skoverski said he was stopped by the police as he was  
14 leaving the parking lot of the Kahului Ale House.

15 Q Okay. And is that pretty much it as far as the  
16 statement? Did you obtain any other statements?

17 A No. I tried contacting him at a later date, but  
18 I was unable to get in touch with him.

19 Q All right. And as part of your investigation,  
20 did you also obtain a statement from a person named Lenore  
21 Cannon?

22 A Yeah.

23 Q And is that included in your report?

24 A Yes, it is.

25 Q Can you please describe -- or read that

1 statement to the Board, please?

2           A       On October 5th, 2015, at about 9:50 p.m., while  
3 within the Kahului Ale House, I interviewed Lenore Cannon.  
4 I showed Cannon a picture of Skoverski and asked if she  
5 recognized him. She stated she did and remembered the  
6 incident he was involved in on June 28th, 2015, at Kahului  
7 Ale House. I mentioned to Cannon that Skoverski believed  
8 someone with a name that started with G served him. And  
9 she stated that she was the one who had served him.  
10 Cannon stated Skoverski seemed off and that she had never  
11 seen him before. She claimed he had two beers, which she  
12 believed were Longboards. She claimed he might have been  
13 drinking prior at another bar such as Hang Loose. She  
14 didn't think he was intoxicated, stated he didn't give off  
15 that vibe and suspects he might have been on some type of  
16 prescription medication and that it was reacting with the  
17 alcohol. During the time he was at Kahului Ale House,  
18 Cannon said Skoverski was playing pool and was also seated  
19 at the bar, where some local men seemed to be giving him  
20 trouble. Cannon stated Skoverski started getting louder  
21 and becoming more pissed off. At one point, Cannon said  
22 Skoverski threw the pool rack across the room and she  
23 asked him to leave. As Skoverski left, Cannon said that  
24 he was yelling obscenities at her and stated he was going  
25 to come back and kill her. Cannon stated she called the

1 police. And when the officers were talking to her,  
2 Skoverski came back into the bar. When asked about  
3 Skoverski's claim that she was fighting with him about  
4 tips, she denied it, stating that he had tipped her well  
5 on the first drink.

6 Q Okay. Thank you, Ms. Martin.

7 MR. HANANO: Department has no further questions  
8 of Ms. Martin. Thank you.

9 CHAIR FUJII: Mr. Sundin, do you have any --

10 MR. SUNDIN: No further questions.

11 CHAIR FUJII: -- questions for the witness? Any  
12 questions by Board Members? No questions. Thank you for  
13 being here.

14 Mr. Hanano, do you have any more witnesses?

15 MR. HANANO: I think that's pretty much it. The  
16 Department would rest at this point. The only thing is I  
17 would like to make a correction to the exhibit list. On  
18 D-5, it actually should read consisting of 33 pages.

19 CHAIR FUJII: We do have 33 pages.

20 MR. HANANO: I think, on my exhibit list, I put  
21 16, but it's 33.

22 CHAIR FUJII: Oh.

23 MR. HANANO: That's the only thing. The  
24 State -- Department would rest at this point. No further  
25 witnesses or evidence, Chair.

1 CHAIR FUJII: Board Members, anybody need to  
2 take a little break, a restroom break or anything? If  
3 not, we can proceed.

4 MR. SUNDIN: Yeah, she said -- yes.

5 CHAIR FUJII: Okay. We'll take about 10-minute  
6 -- 10-minute break, 10:15, we'll be back.

7 (Recess, 10:02 a.m. to 10:13 a.m.)

8 CHAIR FUJII: The Board is back in open session.  
9 Mr. Sundin, this is your opportunity to call your witness.

10 MR. SUNDIN: Okay. I would like to call Lenore  
11 Cannon.

12 CHAIR FUJII: Ms. Cannon, I'll be reciting the  
13 oath, and I'd like you to respond to it.

14 MS. CANNON: Okay.

15 CHAIR FUJII: Do you solemnly swear or affirm  
16 that the testimony you are about to give before this Board  
17 in connection with this case will be the truth, the whole  
18 truth and nothing but the truth?

19 MS. CANNON: Yes.

20 CHAIR FUJII: Thank you.

21 \*\*\*

22 \*\*\*

23 \*\*\*

24 \*\*\*

25 \*\*\*

1                                   LENORE CANNON,  
2 was called as a witness on behalf of the Respondent; after  
3 having been first placed under oath, testified as follows:

4                                   DIRECT EXAMINATION

5 BY MR. SUNDIN:

6           Q     Lenore, I really would like you to tell them the  
7 course of events that night, what time he came in, what he  
8 had to drink, everything you remember from the police  
9 officers coming in the first time, the second time. And  
10 that's, basically --

11          A     Okay. So it was a Sunday evening, approximately  
12 10:30'ish. A gentleman came in, sat at the bar. I walked  
13 over, asked him how he was doing. He said, "Fine," asked  
14 me how my night was going. I said, "Good." I asked him  
15 if he was there for food or drinks. He said he was in  
16 there for a few drinks and to play some pool. I then  
17 offered him -- asked him what he would like to drink. He  
18 ordered a shot of Jack Daniel's and a Coors Light. I went  
19 and got it, I brought it over. He introduced himself as  
20 John. I had never met him before or seen him before.  
21 I've worked in that bar for six years, so I know all the  
22 faces, typically. And he struck up a conversation with  
23 the gentleman next to him. And they decided to go over  
24 and play pool. That was the last that I saw him at the  
25 bar top. Then the police officers came in shortly after,

1 I would say approximately 15 to 20 minutes, at the most.  
2 They came up to me, they asked me if I had seen a  
3 gentleman fitting his description, and they said his name.  
4 So I said, "Yes. I think that's John. He's over there  
5 playing pool." They went over, they took him outside,  
6 questioned him for maybe five to 10 minutes. And then he  
7 came back in. When he walked in from our side door, he  
8 threw his hands up and cheered, "Yeah, they didn't want  
9 me." We had already decided previously, when Brad was  
10 inside the building, that, when he did come back in, we  
11 were not going to serve him, obviously, and ask him to  
12 leave. So when he came back in, Brad and I nodded at each  
13 other, as I've dealt with these situations many times over  
14 the years as far as handling asking a patron to leave. So  
15 Brad left. The gentleman went back over to the pool room.  
16 The man that he was playing pool with decided to bow out  
17 after the police had taken him outside. He came back to  
18 the bar. So John walked over and grabbed what was left of  
19 his beer. He walked up to the bar and started talking to  
20 the gentleman again. He was getting a little loud, a  
21 little rambunctious. He put his beer down. And I knew  
22 that was my time to go over and let him know that he was  
23 no longer allowed to be inside. So I walked over and I  
24 took what was left of his beer and told him,  
25 "Unfortunately, I'm not going to be allowed to serve you

1 any longer and I have to ask you to leave." He instantly  
2 got irate, started screaming and yelling, yelled  
3 profanities at me that I couldn't repeat in this  
4 courtroom. I asked him to please leave, I told him it  
5 wasn't an option, that he had to go immediately. He then  
6 threatened to come behind the bar and attack me. He  
7 threatened to come over the top of the bar. As I'm  
8 sitting there with a full bar, myself and the other  
9 bartender, trying to figure out what to do with this  
10 situation, I decided to call the police, because I have no  
11 security and I didn't know what else to do at that point.  
12 When my life is being threatened and my -- my safety is  
13 in -- in jeopardy, I'm going to go the highest route I can  
14 go. As I'm on the phone with the police officers, one of  
15 our employees, an elderly man, who shouldn't have had to  
16 do it, but there was nobody else to help, was trying to  
17 usher him out the front door. As he's ushering him out of  
18 the front door, the man is yelling more vulgarities and  
19 threatening to go out to his vehicle to retrieve a weapon,  
20 a gun, namely, to come back, "And let me have it," is what  
21 he said. So Bob Dill finally got him outside. And that's  
22 when the police had -- were already en route. They had  
23 already called -- I believe another employee, or maybe  
24 myself, called Brad immediately after. I don't think Brad  
25 even made it back to his home before he had to turn back



1 around and come into the bar to deal with this situation.

2 MR. KUSHI: Excuse me. Brad is Mr. Sundin?

3 MR. SUNDIN: Yeah.

4 A Mr. Sundin, the owner. And that is the -- that  
5 was the extent that I knew of what happened. What  
6 transpired in the parking lot I don't know as I was in the  
7 building in hysterics. Because in 20 years, I've never  
8 been that scared.

9 CHAIR FUJII: Thank you. Mr. Sundin, you would  
10 like to direct --

11 Q (By Mr. Sundin) Yes. One question I have is what  
12 timeframe did this happen?

13 A I would say he walked in right around 10:30,  
14 maybe a little after. By the time I served him his drinks  
15 and he went to play pool, the cops were in there very,  
16 very shortly, maybe 10 to 15 minutes after he had been  
17 there. And then after they took him outside, it was  
18 within -- within the five-minute frame of him coming back  
19 in that I knew that I had to ask him to leave. And then  
20 by the time the cops had got there, I think that span was  
21 10 minutes.

22 Q And did the police tell you what they were  
23 talking to him about?

24 A No. I think if anything concerns me the most  
25 about this is that I understand that these laws are in

1 place for public safety. I get that. I understand that.  
2 And as a occupational responsibility, I have to be aware  
3 of what I'm serving people. And for a uniformed officer  
4 to take a man who he had already known had erratic  
5 behavior and who he suspected was overly intoxicated, that  
6 he knew drove to our establishment --

7 MR. HANANO: I want to object.

8 CHAIR FUJII: Okay.

9 MR. HANANO: This is not --

10 A Well, my point is --

11 MR. HANANO: This is -- this is argument and --

12 A We should have been notified.

13 MR. HANANO: I'm sorry.

14 CHAIR FUJII: I think that's his --

15 MR. HANANO: Licensee will have an opportunity  
16 to make arguments. This is not testimony about the facts.

17 MR. SUNDIN: I agree. Okay.

18 Q (By Mr. Sundin) Is that all you have to say?

19 A Yeah. That's fine. We should have been  
20 notified.

21 Q Thank you.

22 CHAIR FUJII: Do you have any more questions or?

23 MR. SUNDIN: No. I just wanted her to recount  
24 the night, what her -- what her remembrance was of the  
25 night.

1 CHAIR FUJII: Uh-huh.

2 MR. SUNDIN: Yeah.

3 CHAIR FUJII: So we'll open it up to Mr. Hanano  
4 first, questions of the witness.

5 MR. HANANO: Yes. Thank you.

6 CROSS-EXAMINATION

7 BY MR. HANANO:

8 Q So, Ms. Cannon, that night -- well, let me ask  
9 you this: How long have you been in the -- in the  
10 industry of serving liquor?

11 A 20 years.

12 Q 20 years, okay. And so you have your card,  
13 obviously, right, from the --

14 A Yes.

15 Q -- Liquor Control Department? And you underwent  
16 training, right?

17 A Yes.

18 Q So you understand what the definition of under  
19 the influence of liquor is, correct?

20 A Correct.

21 Q All right. And you understand that -- and as  
22 part of your training, you're trained to look for signs  
23 and symptoms of someone who is under the influence of  
24 liquor, correct?

25 A Correct.

1 Q And -- and part of -- some of those signs are  
2 flush face, correct?

3 A Yes.

4 Q Slurred speech?

5 A Yes.

6 Q Red, watery eyes?

7 A Yes.

8 Q Bloodshot eyes?

9 A Uh-huh.

10 Q Right? Unable to maintain their balance?

11 A Right.

12 Q Things like that, correct? And, also, their  
13 demeanor. Sometimes they can be very argumentative,  
14 right?

15 A Uh-huh.

16 Q And so on this night in question, was there any  
17 bouncer there?

18 A No. Not on that night, no.

19 Q Okay. And there was no one to like check people  
20 coming into the door, someone -- anybody can just walk  
21 right in, right?

22 A Right. Like a regular restaurant and bar.

23 Q Okay. So -- and that's what we're assuming  
24 Mr. Skoverski did, he -- he walked into the establishment,  
25 correct?

1 A Uh-huh.

2 Q You have to say yes or no.

3 A Yes.

4 Q And so then how soon after he got there did  
5 you -- did you serve him the drinks?

6 A Well, just like any -- any protocol for service,  
7 when people sit down, you greet them and you serve them.

8 Q Okay. And -- and --

9 A So immediately.

10 Q And what did you serve him, basically?

11 A One shot of Jack Daniel's and a Coors Light  
12 draft.

13 Q And he was at the bar when he was served that?

14 A Uh-huh.

15 Q And did he leave the bar at some point or -- or  
16 not?

17 A Yes. After he was served and he started talking  
18 to the gentleman next to him, they decided to go play a  
19 game of pool together.

20 Q Okay. So he took his two drinks with him?

21 A No. He finished the shot at the bar. He took  
22 his beer with him.

23 Q He didn't take the shot or Jack Daniel's with  
24 him?

25 A No. He took it at the bar top.

1 Q And that's the only thing you served him that  
2 night?

3 A That's right.

4 MR. SUNDIN: I would like to -- I would like to  
5 add that this took place in 25, 30 minutes. This isn't  
6 two hours we're talking about, this is 25 minutes.

7 MR. HANANO: I'm going to object to Mr. Sundin  
8 interrupting my --

9 MR. SUNDIN: Sorry. Sorry.

10 MR. HANANO: If you want to have some questions  
11 after, you can --

12 MR. SUNDIN: Okay. Sorry.

13 Q (By Mr. Hanano) Okay. So, basically, your  
14 testimony is that you just served him the beer and the shot?

15 A Uh-huh.

16 Q Correct?

17 A Yes.

18 Q And at the time you served him the beer and the  
19 shot, did you notice any signs of intoxication?

20 A He was polite, he was friendly, he was cognitive  
21 enough to start up a conversation.

22 Q Okay. I'm just asking you, yes or no.

23 A And I'm answering.

24 Q Did you -- was there any signs of intoxication?

25 A No.

1 Q Yes or no?

2 A No.

3 Q None?

4 A No.

5 Q No flush face?

6 A No.

7 Q No slurred speech?

8 A No.

9 Q No red or watery eyes?

10 A No.

11 Q Nothing like that?

12 A No.

13 Q Wow.

14 A He was alert and aware and cognitively speaking  
15 and focused.

16 Q All right.

17 A He talked to me.

18 Q Okay. So at no time -- prior to the last -- the  
19 second call, where, obviously, you guys called to have him  
20 removed. Prior to that --

21 A I'm sorry. Second call? There was only one  
22 call made to the police from us.

23 Q Okay. Well, let me rephrase that. Prior to the  
24 second time that the police went to the Ale House that  
25 night, there's no ordering him out of the -- the

1 restaurant?

2 A No. He was there for 10 to 15 minutes.

3 Q And -- and -- and he was not refused any type of  
4 drink --

5 A Not initially.

6 Q -- during that time?

7 A No, not his first round.

8 Q And neither you nor any other employee asked the  
9 police to remove him?

10 A No. Because we didn't know why he was  
11 questioned by the police. They never came in to speak  
12 with us at any point. They released him to go.

13 Q Okay. And you never asked the police, why are  
14 you guys -- or why they were talking to him?

15 A They never came back into the building, sir.

16 Q Well, were there -- while they're there, did you  
17 go out and go talk to them and ask them?

18 A When a police officer is in my establishment,  
19 conducting business, it is not my place to disrupt that  
20 business. I would assume, as a -- as a professional  
21 officer, they would have come back in as a courtesy to let  
22 us know there was a potential problem here.

23 Q You understand that police investigations are  
24 confidential?

25 A Right, which is why I would not have asked him.



1 Q Right. And that they don't necessarily have to  
2 tell you, in fact sometimes they're -- they shouldn't be  
3 telling people not concerned with the investigation of the  
4 investigation, correct?

5 A See, I think that's where we run into some gray  
6 area and we're gonna disagree because I believe if this is  
7 a question of public safety, and if overservice is going  
8 to be an issue for public safety, and an officer spent  
9 more time with this gentleman who had already exhibited  
10 erratic behavior and who he concluded in his own report  
11 that he assumed to be --

12 MR. HANANO: I'm going to object.

13 A -- overly intoxicated --

14 MR. HANANO: I'm gonna object to --

15 CHAIR FUJII: I don't think --

16 A -- he should've been warned.

17 MR. HANANO: That's not responsive, Chair. I'm  
18 gonna move to strike all of that part that's not --

19 CHAIR FUJII: Should be a yes or no.

20 Q (By Mr. Hanano) Yeah, it's a yes or no -- yes or  
21 no question, ma'am. So you're, basically, the only employee  
22 there that night other than the dishwasher?

23 A No.

24 Q Okay.

25 A They're listed in the report as Krystle, Alex,

1 Kamaile. They all filled out a incident report --

2 Q All right.

3 A -- for the police.

4 Q And there's no bouncer?

5 A No bouncer. We don't typically have bouncers on  
6 Sunday nights.

7 Q No bouncer on Sundays.

8 MR. HANANO: No further questions, Chair.

9 CHAIR FUJII: Any questions by Members of the  
10 Board for the witness?

11 MR. KUSHI: Mr. Chair? Mr. Sundin --

12 CHAIR FUJII: Sundin.

13 MR. SUNDIN: Yes, sir.

14 MR. KUSHI: -- maybe now is the time to ask your  
15 witness about the Department's Exhibit D-2, which is the  
16 Certificate of Citizen's Arrest.

17 REDIRECT EXAMINATION

18 BY MR. SUNDIN:

19 Q Yeah. Lenore, we had just looked at this the  
20 other day, do you -- do you know what a citizen's arrest  
21 is?

22 A I don't even know what that is, honestly. I  
23 believe, when I was receiving this paperwork, I thought  
24 that that was my police incident report. You have to  
25 remember, I was -- I was not well.

1 Q She was pretty hysterical, yeah, when that  
2 happened that night. Thanks for bringing that up, though.

3 A I filled it out as a report.

4 MR. KUSHI: Did you fill it out or did the  
5 police?

6 A The top part was filled out by the police  
7 officer. I filled out the statement portion, as I thought  
8 that was the incident report.

9 MR. KUSHI: Is this your handwriting?

10 A Yes.

11 MR. KUSHI: You did fill it out.

12 A I filled out the bottom portion, as I thought  
13 that was the incident report.

14 MR. SUNDIN: She thought it was a police report,  
15 not a --

16 A I didn't --

17 MR. SUNDIN: Citizen's --

18 A -- realize that was a --

19 MR. SUNDIN: Arrest.

20 A -- citizen's arrest. I don't even know what  
21 that is.

22 MR. SUNDIN: She was -- it really upset most of  
23 us for -- for --

24 A I almost quit.

25 MR. SUNDIN: Yeah, some time after that.

1 MR. KUSHI: Department, you wanna make the  
2 request again to get it into evidence?

3 MR. HANANO: Yes, Chair. Department would move  
4 to admit Exhibit -- Exhibit D-2 into evidence based on the  
5 testimony of Ms. Cannon.

6 CHAIR FUJII: Accepted. We're accepting --  
7 we'll be accepting that. Okay. Again, I think no  
8 questions by Members of the Board or our attorney here,  
9 Director's rebuttal evidence.

10 MR. HANANO: We have none, Chair.

11 MR. KUSHI: Chair? Does he wanna --

12 MR. HANANO: I think, just for the record,  
13 Chair, I think Mr. Sundin had -- had an exhibit.

14 MR. SUNDIN: I've got the receipt from the --  
15 Mr. Skoverski.

16 MR. HANANO: I just want to make sure that gets  
17 formally admitted.

18 CHAIR FUJII: Mr. Sundin, you had something to  
19 distribute?

20 MR. SUNDIN: Yeah.

21 CHAIR FUJII: Any objection, Mr. Hanano?

22 MR. HANANO: No objection.

23 MR. SUNDIN: What's that?

24 MR. HANANO: No objection.

25 MR. SUNDIN: Oh.

1 CHAIR FUJII: You can --

2 MR. SUNDIN: It was -- it was the receipt from  
3 Mr. Skoverski that night. It's only a screenshot.  
4 There's a copy of it, yeah. Like I said, he arrived about  
5 10 -- somewhere between 10:30 and 10:40. And he was,  
6 basically, taken out by the police at 11:08. That's on an  
7 old -- older computer system. I can't print on it  
8 anymore, so I had to take a picture of the screen.

9 CHAIR FUJII: Any questions by Members of the  
10 Board regarding this sales slip there? It shows -- is  
11 there a time on it?

12 MR. SUNDIN: Yeah.

13 CHAIR FUJII: Okay. Yeah.

14 MEMBER DE MELLO: Don?

15 CHAIR FUJII: Yes.

16 MEMBER DE MELLO: I have a question about D-2  
17 that I wanted to ask Ms. Cannon. You stated that you had  
18 gave your statement as to what had -- you thought you were  
19 giving a police report.

20 A Right.

21 MEMBER DE MELLO: Now, when you did submit this,  
22 was the top portion of the Certificate of Citizen's  
23 Arrest, was that attached?

24 A No. No.

25 MEMBER DE MELLO: So it was separate?

1           A       I was just given -- I was just given the paper.  
2 I don't even know what was at the top.

3           MEMBER DE MELLO:   So this wasn't part of it?

4           A       He told me to fill it out.

5           MEMBER DE MELLO:   So this top portion --

6           A       It may have been, but I didn't even see it. I  
7 just assumed it was a police report.

8           MEMBER DE MELLO:   Because there's a line through  
9 here, that's why.

10          A       Yeah. I don't even know.

11          MEMBER DE MELLO:   Okay.

12          CHAIR FUJII:   Any other Board Member with  
13 questions for the witness?

14          MR. KUSHI:   Mr. Chair? So, Mr. Sundin --

15          MR. SUNDIN:   Yes, sir.

16          MR. KUSHI:   -- you want this to be entered into  
17 evidence?

18          MR. SUNDIN:   If possible, yes.

19          MR. KUSHI:   So for identification purposes,  
20 Licensee's Exhibit A, as in apple.

21          CHAIR FUJII:   Okay.

22          MR. KUSHI:   Let me ask you a question. Is this  
23 the only receipt you have? Is this the only thing that  
24 this guy bought?

25          MR. SUNDIN:   Yes. Well -- yeah. We went

1 through the receipts for that -- that night based on what  
2 she had told me that they had. And, yeah, that -- that's  
3 the receipt we had for him, yeah. We had -- like I said,  
4 we were busy that night so the other tickets we had  
5 were -- were groups of people.

6 MR. KUSHI: Okay. On your exhibits, the server  
7 is Krystle. Who is Krystle?

8 MR. SUNDIN: Right. So what happens in -- in  
9 the bar, we have -- lot of nights, we have two bartenders.  
10 And they -- wherever they're at in the bar, they'll just  
11 go enter the customer's drinks in. So Lenore had served  
12 him, but he was sitting in -- where Krystle's register is.  
13 So they just -- as long as it's cash sale, there's no  
14 money to keep track of, it goes in her drawer, it's okay.  
15 So we do that quite often.

16 MR. KUSHI: Okay. Mr. Chair, if I may continue?

17 CHAIR FUJII: Sure.

18 MR. KUSHI: Ms. Cannon --

19 A Yes.

20 MR. KUSHI: -- the Department's police report  
21 has a statement from Mr. --

22 CHAIR FUJII: Skoverski.

23 MR. KUSHI: Yeah, saying that he got there about  
24 8:00 at night.

25 A No.

1 MR. KUSHI: And he had four or five drinks.

2 A No, absolutely not true.

3 MR. KUSHI: But you -- you stated in your  
4 testimony that you saw him at about, what, 10:00?

5 A I might have said that in the testimony, but,  
6 again, that wasn't accurate.

7 MR. KUSHI: So when did you see him?

8 A Around 10:30.

9 MR. KUSHI: Not at 8:00?

10 A No.

11 MR. KUSHI: And you only served him one -- two  
12 drinks?

13 A One round. Yes. One -- one drink -- one beer,  
14 one shot, yes.

15 MR. KUSHI: Is he gonna testify himself?

16 CHAIR FUJII: Okay. Mr. Sundin, you can also  
17 testify.

18 MR. SUNDIN: Yeah. I would like to, yeah. I  
19 don't have as -- you know, as much knowledge as they do,  
20 but I was there for most of it.

21 CHAIR FUJII: Before we do, we'll -- yeah, we'll  
22 dismiss Ms. Cannon.

23 A Thank you.

24 CHAIR FUJII: No questions.

25 A Sorry for the tears.



1 CHAIR FUJII: Thank you for coming, Ms. Cannon.  
2 And I will -- before we begin with you, Mr. Sundin, we  
3 would like you to take the oath.

4 MR. SUNDIN: Yeah.

5 CHAIR FUJII: You can sit right there.  
6 Mr. Sundin, just as a witness, we will ask you to swear --  
7 do you solemnly swear or affirm that the testimony you're  
8 about to give before this Board in connection with the  
9 case will be the truth, the whole truth and nothing but  
10 the truth?

11 MR. SUNDIN: Yes, sir.

12 CHAIR FUJII: Okay. You are sworn in as a  
13 witness.

14 BRADLEY SUNDIN,  
15 was called as a witness on behalf of the Respondent; after  
16 having been first placed under oath, testified as follows:

17 DIRECT STATEMENT

18 MR. SUNDIN: Okay. Like I say, I was there  
19 getting ready for -- getting ready to leave the next day  
20 for vacation, but we had -- I -- I walked out -- I walked  
21 out front of the restaurant and was talking to the staff  
22 and -- and Mr. Skoverski. The police had come in right --  
23 right -- right after that. And they had walked over to  
24 the pool table where he was, asked him to come outside.  
25 And I'm thinking, okay. So we -- we didn't know what

1 happened. So he comes back in, I told Lenore, I said,  
2 "Don't serve him anything else, that's it," you know. And  
3 she had said at that time she had served him one beer and  
4 one shot. I'm like okay. And so I left at that point to  
5 go home. And within 10, 15 minutes, I didn't even get  
6 home, I'm back, I'm coming back down to the Ale House.  
7 When I -- when I had come back down there, his -- his  
8 truck was actually parked in the same spot for two days.  
9 It didn't leave after that. It was -- it was three stalls  
10 over. It wasn't near a curb. It was three stalls over,  
11 parked very nicely in the front of the building. And  
12 so -- because I parked out front as well that night,  
13 because I came in to get some stuff in the office, do some  
14 office stuff because I was leaving on vacation the next  
15 day. And then, really, after the police got there the  
16 second time, which was -- like I said, I left -- I was  
17 probably gone -- I live in Wailuku Heights. I was  
18 probably gone five, 10 minutes, you know, going towards  
19 home. And they called and said he -- he went crazy. And  
20 so I ran back down there. And the police were -- were  
21 there at that point, I think, and then took him out and  
22 did their test on him and stuff, yeah. That's, basically,  
23 what I saw.

24 CHAIR FUJIII: Mr. Sundin, I know, Mr. Sundin,  
25 that the officer did testify that the first witness we

1 have -- had at the podium there did say the guy had his  
2 car parked properly. So, again --

3 MR. SUNDIN: Uh-huh.

4 CHAIR FUJII: On the second attempt, or whatever  
5 it was. So you found it parked like you said?

6 MR. SUNDIN: Uh-huh.

7 CHAIR FUJII: Okay.

8 MR. SUNDIN: Yeah.

9 CHAIR FUJII: Okay. Any questions for -- for  
10 Mr. Sundin as a witness here?

11 MR. SUNDIN: That -- that course -- I'd like to  
12 add one thing. That course of -- the timeline we're  
13 really talking about is about 10:00, 10:35, 10:40 to  
14 11:08. All this transpired in that amount of time. And I  
15 wish there was a -- I wish there was a time on the -- the  
16 6 -- the 15-026390 because the police -- like I said, the  
17 police came there at -- yeah. They didn't put a time on  
18 that, but it was -- it literally was like 10:35, 10 --  
19 10:30. The (inaudible) must have happened like around  
20 10:30, which means he was operating his vehicle at that  
21 time. Yeah.

22 But I will tell you my staff was -- was,  
23 especially Lenore, was -- they were very, very -- I mean,  
24 that's the first time somebody -- you know, Hawaii is  
25 usually a place with a lot of aloha. And even if you have

1 trouble, which we've -- I'll go through what we've done,  
2 but I've never -- we've never had anybody threaten to --  
3 trying to be killed.

4 CHAIR FUJII: So have you beefed up your --

5 MR. SUNDIN: Well --

6 CHAIR FUJII: I mean --

7 MR. SUNDIN: We have changed the entire -- I've  
8 changed the entire restaurant. I've got -- I'll give you  
9 a document I've got, if you want to hand this out. When I  
10 bought the Ale House in 2010, August of 2010 -- you -- you  
11 come in -- you buy a business and you run it the way it's  
12 operating because that's -- that's how it's generating  
13 revenue.

14 CHAIR FUJII: Just a minute. Mr. Hanano, do you  
15 want to take a look at what --

16 MR. HANANO: Yes.

17 MR. SUNDIN: Yeah. This -- this will show you  
18 the changes we've made since 2010.

19 CHAIR FUJII: Any objection, Mr. Hanano?

20 MR. HANANO: No objection.

21 CHAIR FUJII: Let us -- give us a second.

22 MR. SUNDIN: Sure. Sure. Sure.

23 CHAIR FUJII: Mr. Sundin, you can continue.

24 MR. SUNDIN: When you -- when you buy any  
25 business, you tend to -- to not make too many drastic

1 changes initially. So at the end of 2010, we -- we -- we  
2 came out in August of 2010. By 20 -- I'd say 2011, 2012,  
3 we realized that -- that the -- the way the business had  
4 been operated was not in the best interest of -- of us or  
5 the community. And it's -- it's a different -- I will say  
6 Kahului is a little bit different environment than maybe  
7 other parts of the island are. So I started in April of  
8 '13, after being in a hearing here, to make a shift away  
9 from a bar to a restaurant.

10           If you look on there, we've been -- we -- we've  
11 taken -- so when I bought the Ale House in 2010, sales  
12 were 60 percent alcohol, 40 percent food. If you look at  
13 my reports we file now, we're at 60 percent food now,  
14 about 61 percent right now.

15           From 2013, we reduced the hours. You know,  
16 we're -- legally can stay open to 2:00 a.m., we close  
17 it -- we close now 11:00 p.m. We do last call at 10:30  
18 every day. And that's been going on since '16. We  
19 reduced hours to 12:30 in '13. 12 hours -- or 12:00 a.m.  
20 in '15, which means we do have call -- our last call a  
21 half hour before that.

22           So we've been trying to financially, you know,  
23 get the restaurant turned. When you -- when you -- when  
24 you have a venue that -- basically, when we bought it, it  
25 was a nightclub. It was a -- I've never seen anything

1 like it. I mean --

2 MR. HANANO: Judge -- I mean, Chair, I want to  
3 object to this.

4 CHAIR FUJIII: Okay. Let's kind of --

5 MR. SUNDIN: Okay. Let me succinctly. So,  
6 basically, I'll just give -- we stopped all night club and  
7 live band activity in April '13. I mean, that's been gone  
8 since '13. Our hours -- we do last call at 10:30, 10:30  
9 p.m., we're closed at 11:00 every day. Employees like it,  
10 I like it.

11 Stopped -- we monitor the MACC calendar. If  
12 they've got a concert that's ending, where it's reggae or  
13 something that's going to be violent, we close at 10:00.  
14 And I just put a sign on the front door that says "Closed  
15 for Maintenance." We've done that since 2015.

16 We -- in 2015, we refused service to 314 people.  
17 In '16, 245. So we've -- we've been trying to really not  
18 over-serve people for three or four years, almost four  
19 years now, four years in April. And it is a -- it's a  
20 job.

21 CHAIR FUJIII: Okay. Can you summarize  
22 everything? That kind of summarizes what you just  
23 distributed here.

24 MR. SUNDIN: That's why I was thinking earlier,  
25 as I was -- I was speaking out of tone, I would like to

1 see the police -- if they know something, it would be good  
2 if they could tell us because you -- you see somebody for  
3 four minutes, they walk up to your restaurant or bar and  
4 want a drink, you don't know what they've been on. I've  
5 had people go outside and come in so messed up from  
6 something else. I mean, I -- we do have security on  
7 Thursday, Friday, Saturday and Sunday now, every day. I  
8 mean, we don't have any trouble anymore, but what we see  
9 is people drink in the parking lot. So I have to have the  
10 parking lots patrolled to keep people from drinking in the  
11 parking lot. So we've done, I feel, you know, as much as  
12 we can to mitigate -- like I said, we -- the -- the  
13 clientele has changed. If you look at the number of  
14 people that we --

15 CHAIR FUJII: Can you summarize everything?

16 We --

17 MR. SUNDIN: Oh.

18 CHAIR FUJII: We need to move on.

19 MR. SUNDIN: Okay. Sorry. That's, basically,  
20 it.

21 CHAIR FUJII: Thank you. Mr. Hanano, you have  
22 any questions for the witness?

23 MR. HANANO: Yes. Just a couple, Chair.

24 \*\*\*

25 \*\*\*

CROSS-EXAMINATION

1  
2 BY MR. HANANO:

3 Q So, Mr. Sundin, are you disputing the fact that  
4 Mr. Skoverski was under the influence of liquor when the  
5 police first went there? Are you saying that he wasn't?

6 A We -- we could not tell that he was under the  
7 influence of liquor when they first got there, absolutely  
8 not. I -- I saw him myself.

9 Q Okay. So -- so you're disputing the fact that  
10 the police testified that --

11 A We --

12 Q -- the first visit -- wait. Let me finish.

13 A Sure.

14 Q When the police went there on the first visit,  
15 he was under the influence and a seven to eight on a scale  
16 of 10?

17 A No.

18 Q You dispute that fact?

19 A Yes. Yeah. I -- I personally was -- witnessed  
20 him -- the police take him outside.

21 Q Okay.

22 A And we --

23 Q Wait. Let me -- let me -- let me finish. And  
24 on the second visit, you're also disputing the fact that  
25 he was under the influence of liquor when the police



1 arrested him? You're disputing that, too?

2 A No, I'm not necessarily disputing that. We had  
3 not seen that side of him on the first visit. And that's  
4 exactly why -- when the police didn't come back in and  
5 tell us --

6 Q Okay. When you say "seen that side of him,"  
7 were there any indications of any intoxication, being  
8 under the influence, red, watery eyes, flush face, slurred  
9 speech? Nothing like that?

10 A No.

11 Q Is that what you're saying?

12 A This is 23 minutes.

13 Q Exactly. But he's in there, right?

14 A Right. But --

15 Q And -- and -- and you served him, right? You're  
16 not -- you're not disputing that he was served?

17 A I'm not -- we did serve him one drink and one  
18 shot. Yes, we did.

19 Q All right. So how do you explain the .17 breath  
20 result --

21 A Well --

22 Q -- that the police obtained from his breath when  
23 they were just at your bar, I don't know, what, half an  
24 hour, within an hour of -- of the test?

25 A I'd explain that as --

1 Q Where did that come from?

2 A -- Case Number 15-026390.

3 Q Right. Where does that come from?

4 A Where? I don't know. He wasn't at our place.  
5 He was out driving a car.

6 Q Where did the -- okay. But you were -- you  
7 served him, right?

8 A We -- but it's like off --

9 Q Right? Right before he got arrested, he got  
10 served, right? Is that what you're saying?

11 A Yes. Officer Pomainville did state today that,  
12 when he first met the person, he was very nice. And  
13 that's what -- that's what Lenore --

14 Q But he also said that he had red, watery eyes,  
15 flush face --

16 A We didn't --

17 Q -- slurred speech.

18 A We did not see that initially.

19 Q Isn't it your -- your duty --

20 A We do -- yes.

21 Q -- as a licensee to ascertain that?

22 A I wouldn't have made --

23 Q Yes, or no, is it --

24 A Yes.

25 Q Is it your duty?

1           A       Yeah, but I wouldn't have made the change we  
2 made in the venue over the last four years.

3           Q       Was there security on that night in question?

4           A       No.

5           Q       Was there a bouncer at the door?

6           A       No.

7           Q       Was anybody monitoring at the door for  
8 intoxicated persons entering your bar?

9           A       No. That's the job of the servers or the bar  
10 staff.

11          Q       Okay. And, obviously, they didn't do their job  
12 because this person was at your bar and got served, right?

13          A       I mean, they did get served, but we didn't -- we  
14 didn't have any indication that he was intoxicated at the  
15 time.

16          Q       Okay. Would you agree or disagree with me --

17          A       Yes.

18          Q       -- that the service -- and I'm not saying --  
19 let's say, for the sake of argument, that all he was  
20 served was the Jack Daniel's and the Coors Light. Would  
21 you agree with me that Mr. Skoverski drinking those two  
22 drinks contributed to him being under the influence?

23          A       I'd say, at that point, probably not. I mean,  
24 he --

25          Q       So you're saying no?

1 A He still would have failed --

2 Q The two drinks that -- the two drinks that he --

3 A He still would've failed the field sobriety test  
4 back before he even got served here at our place.

5 Q Exactly.

6 A We didn't -- we didn't know that. I mean, I  
7 don't have a breathalyzer. I don't --

8 Q You didn't know or you didn't check?

9 A Check? Check what?

10 Q Check on his sobriety.

11 A Well, we -- we look at everyone.

12 Q Okay. You -- wait. Let me -- let me --

13 A Yeah.

14 Q You agree with me that you, as a licensee,  
15 right, I asked you this before, have a -- have a duty --

16 A Yes.

17 Q -- right, to exercise reasonable care to make  
18 sure that someone who is under the influence is not  
19 served, correct?

20 A Correct. And that's why --

21 MR. HANANO: Thank you. No further questions.

22 CHAIR FUJII: Okay. Any questions by Members of  
23 the Board for the witness because he's acting as a witness  
24 right now? Any questions? If not, let's dismiss you as a  
25 witness and -- and you will be acting as a licensee --

1 MR. SUNDIN: Okay.

2 CHAIR FUJII: -- from this point on.

3 MR. SUNDIN: Sure.

4 CHAIR FUJII: Mr. Hanano, Director's rebuttal to  
5 any evidence?

6 MR. HANANO: No rebuttal, Chair.

7 CHAIR FUJII: Mr. Sundin, you have any rebuttal  
8 as to what has transpired by all the witnesses that were  
9 here?

10 MR. SUNDIN: From Lenore's testimony?

11 CHAIR FUJII: So --

12 MR. SUNDIN: Oh.

13 CHAIR FUJII: So far, for the -- for the whole  
14 morning, whatever.

15 MR. SUNDIN: Yeah. I can just say that we -- we  
16 do not tolerate -- if we know somebody is even combative  
17 or doesn't act right, they are not allowed in the  
18 building. And these numbers probably don't do this  
19 justice. I mean, this is what we -- that's what we try to  
20 keep track of. But it's -- it's -- it's declining every  
21 year, but it -- it's still -- like I said, we've -- we've  
22 tried to eliminate the problem.

23 You know, homelessness was a -- was a major  
24 problem. We -- we've eliminated a lot of things to -- to  
25 stop that. There's just been -- that -- our location in

1 Kahului is a -- is a unique location. And, you know,  
2 we've spent a lot of effort to -- to make sure we don't  
3 have problems. That's why we close so early. That's --  
4 we -- we knew that -- we know that -- the clientele we  
5 have now, the 60 percent food and 40 percent liquor, that  
6 group goes home at 11:30 or 11:00 -- 11:00. But by 11:00,  
7 they're done. So we've been tapering our hours down since  
8 2013. I mean, I would like to close at 10:00, but it's --  
9 you know, we -- we've done what we -- what we can to -- to  
10 prevent issues.

11 CHAIR FUJII: Okay. Thank you. Mr. Hanano, for  
12 your final argument.

13 MR. HANANO: Okay. Thank you, Chair.

14 So as you can see, Board Members, there's three  
15 charges. And, basically, the first one, in Count 1, is --  
16 I'm not gonna read the whole thing -- it's, basically,  
17 that the Ale House either served or allowed the  
18 consumption of a person who was under the influence of  
19 liquor. The second one is knowingly permitting a patron  
20 who was under the influence of liquor, drugs, or a  
21 combination thereof, to remain on the licensed premises.  
22 The third one is, basically, fail -- they failed to  
23 exercise due care in determining whether a patron was  
24 under the influence of drugs or liquor combination  
25 thereof.

1           We're asking that the Board find the Kahului Ale  
2 House guilty of all three. And what -- what's at issue  
3 here is, like I asked Mr. Sundin, the -- the lack of due  
4 care or the -- the care that's required to -- for the  
5 licensee to determine whether or not someone is under the  
6 influence when they're served, or even allowing them to  
7 consume alcohol.

8           Obviously, in this case, Mr. Skoverski was very  
9 intoxicated, over two times the legal limit. He's -- on a  
10 scale of one to -- one to 10, he's like seven at first,  
11 seven to eight, and then eight to nine, on the second  
12 visit by the police. He's a .17, you know, breath alcohol  
13 content, which is, basically, two times the legal limit  
14 for someone who, you know, is allowed to even operate the  
15 vehicle on the roads.

16           And if you look at that definition, the one that  
17 I showed Mr. -- I mean Officer Barrera, it's almost  
18 exactly the same, in part, as the definition of the liquor  
19 rules. And, basically, it's -- you know, if you can't --  
20 if your -- if your normal mental faculties are impaired,  
21 you know, to a certain degree, then you shouldn't --  
22 then -- then you're considered under the influence. And  
23 that's what Mr. Skoverski was.

24           Mr. Sundin wouldn't even, you know, concede that  
25 point, but, obviously, based on the testimony that we have

1 is that Mr. Skoverski was under the influence. At the  
2 police station, he was a .17. And not too long before  
3 that, he was -- he was in the Ale House, drinking who  
4 knows what.

5           If you look at the reports, it's inconsistent as  
6 far as how much drinks were had. I know Mr. Skoverski  
7 made a couple statements, four beers, three shots or  
8 whatever, but what we -- what we do know, and there's no  
9 dispute, that he was served at least two drinks, a beer  
10 and a -- and a Jack Daniel's. And this is confirmed by  
11 Officer Barrera. How would he -- how would officer know  
12 that Mr. Skoverski was drinking beer and -- and a shot,  
13 you know. He didn't talk to Ms. Cannon, so the only way  
14 he could have put that in his report is he saw it. And  
15 it's kind of interesting that Ms. Cannon says, no, he only  
16 took his beer, then, somehow, Officer Barrera saw the shot  
17 and the beer by the pool table, you know. Surprise,  
18 surprise, you know, what's the truth. I mean, Mr. --  
19 Officer Barrera wouldn't make that up. And he put it in  
20 his report.

21           So who knows how much he had, but, really, it's  
22 irrelevant because, you know, whether or not Mr. Skoverski  
23 was already intoxicated there and then he was served or he  
24 got intoxicated there because of what he was served, it  
25 doesn't matter because, like I said earlier, you know, the



1 licensee has -- has to -- has a duty of care, a reasonable  
2 duty of care to ensure that people who are under the  
3 influence aren't served or aren't allowed -- even after  
4 they're served, allowed to consume the alcohol.  
5 Obviously, this guy was there up until the second call  
6 consuming alcohol, even after when the police left,  
7 Ms. Cannon said he still had his beer, he brought his beer  
8 up to the bar and that's when she cut him off. So he was  
9 still drinking after the police left.

10 But like I said, you know, it comes down to what  
11 is the duty of care. We don't have to prove that the Ale  
12 House, the licensee, intended to serve someone who is  
13 under the influence. We don't have to prove that they  
14 knowingly did it. It's a negligence standard, basically.  
15 It's, you know, did you exercise the reasonable duty of  
16 care that a reasonable person would in the situation.

17 He already said that there's no security, but  
18 now they're beefing up the security. Yeah, they should,  
19 there's no bouncer, nobody to monitor people coming in and  
20 out, you know. So he -- he's, basically, conceding that,  
21 yeah, the -- you know, the procedures that were in place  
22 at that time weren't sufficient. So now he's going to up  
23 it. You know, someone should be at the door checking  
24 people.

25 And, you know, Ms. Cannon's testimony, I don't

1 even know if, you know, you should even believe anything  
2 she says. I mean, if you look at her statement, you know,  
3 she wrote this out in her own handwriting, according to  
4 her, and she says the guy came in at 10:00, then she  
5 testified, 10:30, he had a few rounds of drinks, and then  
6 now it's only one round, you know, I don't know what to  
7 believe from her.

8           But, really, the bottom line is, and it's  
9 undisputed, that they were -- served the drinks to someone  
10 who was, obviously, very intoxicated and were allowed to  
11 drink. And, you know, by the time he's getting all irate  
12 and obnoxious, that's too late already. Like they said,  
13 it's public safety. You don't want to over-serve someone  
14 and wait until -- you don't want to serve someone and wait  
15 until they get all irate and obnoxious and then kick 'em  
16 out. It's too late. You know, you got to catch these  
17 guys that are under the influence before they get to that  
18 point. Because this guy could have very well walked out  
19 of there, get in his car and hurt somebody. Luckily, that  
20 didn't happen, but that's what the rules are for. Like  
21 they said, this is for public safety. So you got to  
22 exercise the due care to monitor, you know, these types of  
23 situations and refuse and -- and, basically, you know,  
24 kick out people who shouldn't be in there.

25           It's not the police's job to go tell them, eh,

1 you get one drunk guy in there, you better -- better take  
2 'em out. It's their job. They're the licensee, they have  
3 the license. They're the ones serving the liquor, you  
4 know, it's their responsibility. Nobody else's. That's  
5 why they get the license.

6 So what we're asking is that the Board hold them  
7 responsible to that duty of care that, you know, they  
8 agreed to when they got the license, find them guilty of  
9 all three counts. Thank you.

10 CHAIR FUJII: Thank you, Mr. Hanano.  
11 Mr. Sundin, you have an opportunity for final argument.

12 MR. SUNDIN: Okay. Yeah. In response to that,  
13 we are talking about 25 to 30 minutes. We did not know  
14 the person was intoxicated. His personality was fine  
15 until he was refused service. If we had been notified by  
16 the police that they thought he was intoxicated, he would  
17 never have been allowed back in.

18 I think we need to work more -- if that ends up  
19 being the case, we need to work more as a group. If they  
20 knew something we didn't, they didn't even -- they didn't  
21 even come back in and tell us anything. They didn't tell  
22 us anything at all. It would have been really helpful.

23 We -- we never knowingly serve anyone that we  
24 think is intoxicated or comes in -- it's just not our  
25 policy. We just don't do it. So we did not know, under

1 any circumstance, that he was -- he had not shown any  
2 aggressive or -- he didn't -- he seemed fine. And when he  
3 came back from the police, that's what Lenore was saying,  
4 he raised his hands and he said, "Woohoo, they didn't want  
5 me." And I'm like, oh, man, that's -- that's -- that's  
6 not good. We -- we didn't know if it was, like I said,  
7 for a burglary. It could be for anything. So we just  
8 said, well, we won't serve him anymore. Yeah, that's,  
9 basically, what it was.

10 CHAIR FUJII: Okay. Done?

11 MR. SUNDIN: Yeah.

12 CHAIR FUJII: Mr. Hanano, for the final argument  
13 in rebuttal.

14 MR. HANANO: Just the only thing is, like I  
15 said, you know, it's not our -- it's not the Government's  
16 burden to prove that they intentionally or knowingly  
17 served someone under the influence. It's their obligation  
18 and responsibility to exercise due care, which they didn't  
19 do, you know.

20 Of course, you know, they're not gonna say,  
21 yeah, I knowingly served someone that we felt was drunk,  
22 but the question is, you know, did they exercise -- did  
23 they take the reasonable steps to ensure that someone who  
24 was under the influence was not served. Just because you  
25 don't check doesn't mean you're not guilty. You need to

1 check, you need to exercise your due care as a licensee to  
2 make sure that these people are not under the influence.

3 Thank you.

4 CHAIR FUJII: Okay. Thank you, Mr. Hanano. Is  
5 there any other business relating to this case that needs  
6 to be taken care of? If not, Mr. Hanano --

7 MR. HANANO: Not from the --

8 CHAIR FUJII: -- we'll get into the deliberation  
9 in a couple of minutes, so what would be the penalty?

10 MR. HANANO: I think we'll discuss that after.

11 MR. KUSHI: Yeah. After you deliberate guilty  
12 or not. You don't do the penalty now.

13 MR. HANANO: If there's --

14 CHAIR FUJII: Oh, okay.

15 MR. HANANO: Depending on what the -- the  
16 Board's decision is.

17 CHAIR FUJII: Yeah. Okay. We'll backtrack on  
18 this, as Mr. Kushi has advised me. We'll go into  
19 deliberation, you know, and then you can make out the  
20 penalty -- express the penalty phase.

21 MR. HANANO: All right.

22 CHAIR FUJII: Okay. At this time, Board  
23 Members, we'll entertain a motion to go into deliberation.

24 MEMBER U`U: Motion to deliberate.

25 MEMBER HELM: Second.

1 MEMBER ARIAGA: Second.

2 CHAIR FUJII: Seconded by Zach. Any discussion?  
3 If not, all in favor, say "aye."

4 (Response.)

5 CHAIR FUJII: Okay, motion carried. We will be  
6 calling you back after deliberations.

7 MR. SUNDIN: Okay. Thank you.

8 (Recess, 10:57 a.m. to 11:23 a.m.)

9 CHAIR FUJII: The Board is back in open session.  
10 After deliberation, the Board has come to a decision on  
11 the three counts here. The Board, on Count 1, has found  
12 the licensee guilty. On Count 2, the Board has found the  
13 licensee not guilty. And, on Count 3, the Board has come  
14 to a decision of finding the licensee guilty. So Count 1,  
15 guilty; Count 2, not guilty; and Count 3, guilty. So,  
16 again, we're at the point where we have argument as to  
17 penalty. We'll start with the Respondent. We did find  
18 you -- the decisions on those three counts, you may make a  
19 argument as to the penalty.

20 MR. KUSHI: No. They do it first.

21 CHAIR FUJII: Oh, the Director's --

22 MR. KUSHI: The Department. Then he responds to  
23 that.

24 CHAIR FUJII: Okay. We'll let the -- the  
25 Department argument as to penalty and you can make a

1 response.

2 MR. SUNDIN: Okay. Thank you.

3 CHAIR FUJII: Mr. Hanano.

4 MR. HANANO: Thank you, Chair. This license for  
5 this licensee was issued back in November of 2010. Since  
6 then -- there have been convictions since that time. And  
7 I'll just, basically, read it off the record here. In --  
8 let's see -- February of 2012, licensee pled no contest to  
9 the charge of, basically, furnishing alcohol to a minor.  
10 In two thousand -- May of 2013, licensee was found guilty  
11 after pleading no contest to one count of overservice,  
12 which is also known as Section 8 -- 08-101-60(b)(1)(B) of  
13 the Rules of the Liquor Commission, which is similar to  
14 Count 1 on the calendar today. Also, in May of 2013, the  
15 licensee was found guilty after pleading no contest to  
16 Section 08-101-60(b)(5), which is knowingly permitting a  
17 patron to remain, and I think that's Count 2 -- similar to  
18 Count 2 on the calendar today. And those two, basically,  
19 were as a result of a incident that occurred on August  
20 20-21, 2011, but then the conviction occurred on May 2013.  
21 So those are within the past five years. In another case,  
22 but also on May of 2013, licensee was found guilty after  
23 pleading no contest to another count of overservice,  
24 Section 08-101-60(b)(1)(B), was given a five-day  
25 suspension at that time. And, also, in that same case,

1 which occurred on May 2013, was found guilty after  
2 pleading no contest to Section 08-101-60(b)(5) of the  
3 Rules of the Liquor Commission, which is allowing a person  
4 who is under the influence to remain, which is similar to  
5 Count 2 as well.

6           So this is, basically, as the Department can  
7 ascertain, the third offense for overservice within the  
8 past five years. And, you know, in light of that, and in  
9 light of the, I guess, testimony by both Mr. Sundin and --  
10 and Ms. Cannon, we have some serious concerns about this  
11 licensee. There's two priors, not including the service  
12 of a minor. And -- and this is after Mr. Sundin took  
13 ownership of this place. This is after he got, basically,  
14 a clean license in November of 2010. So it's very  
15 troubling, you know, even though he has all these  
16 procedures or whatever that he came up with since he  
17 opened the bar, to see this kind of pattern and  
18 repetitive, you know, nature of this type of conduct.  
19 We're talking about public safety. And it's troubling  
20 that, you know, they'll put the onus on the police to,  
21 basically, do their job, you know. And it's troubling  
22 that, you know, they, basically, don't want to take any  
23 responsibility; it's not our fault, we didn't know  
24 anything, you know, we're not guilty.

25           So in light of that, we're recommending, in



1 Count 1, a 30-day suspension because of the two priors and  
2 because of the concerns that the Department has. In Count  
3 3, we recommend a \$3,000 fine. Previously, licensee was  
4 fined \$2,000 for the same type of offense. So I think to  
5 give the same fine would not be -- it would actually be a  
6 disservice. I think the penalties need to escalate as,  
7 as, you know, the conduct keeps continuing. And I think  
8 that they need to take more responsibility, I think. So  
9 that's what the Department's recommendation is, Chair.

10 CHAIR FUJII: Thank you for your explanation.

11 DIRECTOR MUKAI: May I say something?

12 CHAIR FUJII: Yes.

13 DIRECTOR MUKAI: I believe the maximum penalty  
14 is \$2,000 fine according to State law. And the suspension  
15 is by 08-101-104, which states that if the licensee has  
16 been twice convicted of committing offense of section --  
17 in the section stated, that, within the previous five  
18 years, the minimum sentence shall be a suspension of  
19 license.

20 MR. KUSHI: Doesn't say 30 days, though?

21 DIRECTOR MUKAI: It doesn't say 30 --

22 MR. HANANO: Yeah. Correct.

23 DIRECTOR MUKAI: -- days. It's just suspension  
24 of license. It's up to the Board to determine the length  
25 of suspension.

1 CHAIR FUJII: Anything else, Mr. Hanano, or Mr.  
2 Mukai?

3 MR. HANANO: Just for the record, I stand  
4 corrected, based on that, then. We would --

5 CHAIR FUJII: Count 3.

6 MR. HANANO: Yeah, move to change it to \$2,000  
7 instead of \$3,000.

8 CHAIR FUJII: On Count 3?

9 MR. HANANO: Correct. But -- but like the  
10 Director stated, it is a mandatory suspension. And, you  
11 know, what -- what amount that is -- is up to the Board.  
12 And so we recommend 30 because of the reasons I stated on  
13 the record. Thank you.

14 CHAIR FUJII: Thank you. Mr. Sundin --

15 MR. SUNDIN: Yes.

16 CHAIR FUJII: -- you can --

17 MR. SUNDIN: If you look at the --

18 CHAIR FUJII: -- express your argument.

19 MR. SUNDIN: -- previous charges, those say May  
20 of '13 and February of '12, but they actually occurred  
21 back when we were doing nightclubs back from 2010 --  
22 August 2010 to -- to April of '13, so -- you know, because  
23 it takes about two years. So we have not operated that  
24 way for four year -- be four years in April. So I can  
25 tell you we -- we have changed. I mean, it's been four --

1 four years, four -- well, been -- yeah, April -- April  
2 this year be four years. It hasn't been -- it hasn't been  
3 status quo.

4 Like I said, we've moved the business from 60  
5 percent alcohol down to 40 percent alcohol. We close at  
6 10:30 at night. We have done what we can to mitigate the  
7 issues, you know, the over-serving or whatever you want to  
8 say it, you know. So I can tell you wholeheartedly that's  
9 what we've spent the last four years doing. So it  
10 isn't -- it isn't like it's concerning because we -- you  
11 know, we've had prior convictions.

12 Prior convictions, when you first move out to a  
13 place -- when you buy a business and you start it up, when  
14 60 percent of your revenue is from alcohol, you can't just  
15 change that like it's -- you -- you could be out of  
16 business. So it took some time to, basically, effect  
17 those changes. I mean, like I said, I spent almost \$1  
18 million in the last four years now getting the place to  
19 where it's -- it's a family place, where the food -- food  
20 mix is a lot higher. And like I said, we've -- we've  
21 honed our hours down where we think we're a lot safer  
22 place for the public.

23 That's -- that's all I got. Yeah.

24 CHAIR FUJIII: Okay. Done? Okay. We've heard  
25 from both the Prosecutor and the Licensee, so some -- we

1 would like to have the Board go in --

2 MR. KUSHI: Mr. Chair, question. Mr. Sundin,  
3 did you say you have security or a doorman or a bouncer  
4 there?

5 MR. SUNDIN: Yeah. What happens on Thursday  
6 through Sunday, it's really more for people -- they don't  
7 card anybody. It's a restaurant. So what they do is they  
8 patrol the parking lot. And if somebody were to get --  
9 somebody we do want not in the building, they're there to  
10 help get 'em out. But that -- it's really parking lot  
11 monitor, because especially before sporting events and  
12 stuff, a lot of people drinking, you know, in the parking  
13 lot.

14 MR. KUSHI: So the other days of the week, you  
15 don't have any?

16 MR. SUNDIN: No. No.

17 MR. KUSHI: So on this occasion, this -- this  
18 date --

19 MR. SUNDIN: Yeah. That was -- that was -- that  
20 was the --

21 MR. KUSHI: It was on a Sunday.

22 MR. SUNDIN: Was in '15 -- yeah, we didn't -- we  
23 didn't have -- at that time, we didn't have security  
24 really at night at all because we had stopped the  
25 nightclubs. When we did nightclubs back in 2010, '11 and

1 '12, we did have people checking IDs at the door, but now  
2 with 60 percent food service, we don't. You know, that's  
3 not been the problem. But -- yeah.

4 CHAIR FUJII: So would -- like this customer  
5 that came in, those gonna fall in the crack if you don't  
6 have anybody at the door.

7 MR. SUNDIN: Yeah. I mean -- yeah. I mean,  
8 it's possible. It's -- I mean, we can add somebody at the  
9 door, for sure.

10 CHAIR FUJII: Just a greeter that sits the  
11 customers or whatever, you know --

12 MR. SUNDIN: Yeah.

13 CHAIR FUJII: -- that might help.

14 MR. SUNDIN: Yeah. Yeah.

15 MEMBER HELM: I have a question.

16 CHAIR FUJII: Go ahead.

17 MEMBER HELM: What kind of a business on a  
18 regular basis do you have? Is it -- do you -- are you  
19 making profit --

20 MR. SUNDIN: Yes.

21 MEMBER HELM: -- at night?

22 MR. SUNDIN: You know, just to -- just to reduce  
23 from -- from -- the last change we made was from 11:00 --  
24 or 11:30 to 11:00. It's about \$700 a day in reduction.  
25 But if you look at the nightclubs, it was -- but -- but

1 there's a whole different mix there. You -- you lost a  
2 lot of customers because of the activities you did. So,  
3 you know, we realized that. And I said, okay, let's get  
4 outta that. We stopped it April of '13. And it's been an  
5 evolution to get it, you know, switched around. So we had  
6 a time where, actually, sales were lower and then came  
7 back up.

8 MEMBER HELM: So -- so now the capacity of your  
9 restaurant is what?

10 MR. SUNDIN: 160 -- 164.

11 MEMBER HELM: So your restaurant business, it's  
12 more a restaurant now --

13 MR. SUNDIN: Yeah.

14 MEMBER HELM: -- than a bar.

15 MR. SUNDIN: Yes, we are an ale house.

16 MEMBER HELM: 75, 80 percent full every night  
17 or --

18 MR. SUNDIN: I'd say Friday, Saturday and  
19 Sunday, yes. Especially when sporting events are going  
20 on.

21 MEMBER HELM: Full?

22 MR. SUNDIN: Yeah. Pretty full, yeah. Yeah.  
23 We're an ale house. It's kind of an unfortunate name for  
24 a --

25 CHAIR FUJII: Dining area. Yeah.

1 MR. SUNDIN: Well, I mean, it's kind of popular  
2 right now. I mean, if you look, there's a lot of places  
3 that focus on the -- the craft beer. And we did -- we did  
4 increase -- we did change our beer system to 38 draught  
5 beer instead of 16, more for the -- more for the craft  
6 experience, yeah. But that would be definitely --  
7 definitely harming to close us for 30 days.

8 MEMBER HELM: So is this the only establishment  
9 you own on Maui?

10 MR. SUNDIN: Yeah. Yeah.

11 MEMBER HELM: Thank you.

12 MR. SUNDIN: Yeah.

13 CHAIR FUJII: No further questions for the  
14 licensee or the Prosecutor? Then the Board will entertain  
15 a motion to go into deliberation to handle the penalty.

16 MEMBER TANAKA: I so move.

17 MEMBER U`U: Motion to deliberate.

18 CHAIR FUJII: Moved by Bruce.

19 MEMBER ARIAGA: Second.

20 CHAIR FUJII: Seconded by -- gotta bring her  
21 back into this because she's the new mother here.

22 Candace, gotta put her on the record here. Any  
23 discussion? If not, all in favor, say "aye."

24 (Response.)

25 CHAIR FUJII: Motion carried.

1 (Recess, 11:36 a.m. to 11:44 a.m.)

2 CHAIR FUJII: The Board is back in open session.  
3 Mr. Sundin, the Board has reviewed the counts, they've  
4 heard all the witnesses and the prosecutor's -- this is  
5 the only case we had today, so we spent a good deal of  
6 time focusing on this one --

7 MR. SUNDIN: I appreciate it.

8 CHAIR FUJII: -- one case here. But after  
9 doing -- looking at the penalty phase and looking at the  
10 records as far as what has transpired at the Ale House  
11 over the years, the Board is, on Count 1, issuing a 15-day  
12 suspension of the license, and, on Count 3, the Board is  
13 issuing a \$2,000 penalty. And the Department will notify  
14 you when payment is due. Again, we did review all past  
15 records.

16 MR. SUNDIN: Sure.

17 CHAIR FUJII: And that's the fairest we could  
18 come up with.

19 MR. SUNDIN: Okay. Okay.

20 CHAIR FUJII: So we appreciate you being here,  
21 explaining your portion of, you know, what -- what you do,  
22 so we fully understand what goes on there.

23 MR. SUNDIN: And I appreciate you guys taking  
24 the time to work on this today as well.

25 CHAIR FUJII: Okay.



1           DIRECTOR MUKAI: Clarification. So the 15-day  
2 penalty will be upon the issuance of the Decision and  
3 Order, right, the Findings of Facts?

4           MR. KUSHI: Yes. It's usually worked out  
5 between the Department and the licensee.

6           DIRECTOR MUKAI: Okay.

7           MR. KUSHI: As to when it will start.

8           DIRECTOR MUKAI: Okay. Thank you.

9           MR. KUSHI: Consecutive, not -- not split now.  
10 And that only applies to the liquor license.

11          DIRECTOR MUKAI: Yeah.

12          CHAIR FUJII: Food portion is still open, yeah.  
13 So, again -- yeah. So thank you, again, for being here.

14          MR. SUNDIN: Thank you very much. Thanks a lot.

15          CHAIR FUJII: Mr. Mukai, any other further  
16 business for today?

17          DIRECTOR MUKAI: I believe Sarah distribute the  
18 Financial Disclosure Statements. For those who are  
19 remaining aboard must fill it out. There's a deadline, so  
20 once we fill it out --

21          CHAIR FUJII: We'll drop it off here.

22          DIRECTOR MUKAI: -- forward it to Sarah, Sarah  
23 will process it and send it up to the proper authorities.

24          MS. CORDEIRO: The letter from Corp Counsel  
25 indicates the deadline is April 15th. So please get it to

1 me prior to that deadline so I can be sure to forward it  
2 on time.

3 CHAIR FUJII: Okay.

4 MS. CORDEIRO: And there's no -- there's no  
5 check box anymore as far as same as last year. That's no  
6 longer an option. You have to fill the whole thing out.

7 CHAIR FUJII: So go through the whole thing.

8 MS. CORDEIRO: Don't forget to sign it.

9 CHAIR FUJII: We do have a March meeting, remind  
10 us for those stragglers, but April we can do it. No  
11 further business, someone make a motion to adjourn.

12 MEMBER DE MELLO: So moved.

13 CHAIR FUJII: Okay. Moved by Zach [sic].

14 MEMBER ARIAGA: Second.

15 CHAIR FUJII: We are adjourned. Thank you and  
16 goodbye. (Gavel.)

17 (Meeting adjourned, 11:47 a.m.)

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CERTIFICATE

I, TONYA MCDADE, Certified Court Reporter of the State of Hawaii, do hereby certify that the proceedings contained herein were taken by me in machine shorthand and thereafter was reduced to print by means of computer-aided transcription; and that the foregoing represents, to the best of my ability, a true and accurate transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney nor an employee of any of the parties hereto, nor in any way concerned with the cause.

DATED this \_\_\_ day of March, 2017.

/s/ Tonya McDade

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Tonya McDade  
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