

Jay Misto
VIA EMAIL: jmisto@hotmail.com

RE: Visibly Intoxicated Patrons

Dear Mr. Misto:

ISSUE: This office is in receipt of your email of February 19, 2014, in which you note that you own a restaurant in Luzerne County. You advise that your servers are compliant with the Pennsylvania Liquor Control Board's ("Board") Responsible Alcohol Management Program ("RAMP"). You question the definition of a visibly intoxicated patron ("VIP"). You ask for a formal definition of VIP and ask how you can tell the difference between a VIP and another individual with a medical condition that has effects similar to intoxication.

Board records indicate that Butler Log Cabin, Inc. is the holder of Restaurant Liquor License No. R-4558 (LID 63028) for use by it at premises located at 3-5 South Main Street, Wilkes Barre, Pennsylvania.

OPINION: As you are aware, section 493(1) of the Liquor Code prohibits the service, furnishing or giving of any liquor or malt or brewed beverages to any person who is visibly intoxicated and imposes strict liability on a licensee for violating this section. [47 P.S. Section 4-493(1)].

Pennsylvania's courts have held that, "intoxication is a matter of common observation..." [Turner v. Pennsylvania Liquor Control Bd., 53 A.2d 849 (Pa. Super. 1947)]. The Pennsylvania Commonwealth Court further opined,

in defining the violation as the dispensation of alcoholic beverages to a person "visibly intoxicated," the statute displays considerable logic in placing stress upon what can be seen. The law does not hold a licensee or its agent responsible on any basis, such as the blood alcohol level of a patron, which would not be externally apparent; instead, the law decrees that the alcoholic beverage dispenser shall not provide more alcohol when the signs of intoxication are visible. The practical effect of the law is to insist that the licensee be governed by appearances, rather than by medical diagnoses. The wisdom of the legislative approach is plain.

[Laukemann v. Pennsylvania Liquor Control Bd., 475 A.2d 955, 956-57 (Pa. Cmwlth. 1984) (emphasis supplied)]...

Any licensee cited by the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") is entitled to a hearing before an administrative law judge ("ALJ"). [47 P.S. Section 4-464; 4-471]. At that hearing subject to evidentiary rulings by the ALJ, a licensee may present evidence for whatever defense it deems appropriate. This might include evidence that a patron suffered from a medical disorder different from intoxication; however, the ultimate decision on admissibility would be made by the ALJ.

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF CONDUCT OCCURRING PRIOR TO ITS ISSUANCE. THE PROPRIETY OF THE PROPOSED CONDUCT HAS BEEN ADDRESSED ONLY UNDER THE LIQUOR CODE AND REGULATIONS. THE LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD

Very truly yours,

FAITH S. DIEHL
CHIEF COUNSEL

cc: Pennsylvania State Police,
Bureau of Liquor Control Enforcement
Jerry W. Waters, Director of Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

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