



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LIQUOR CONTROL COMMISSION

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In the matter of)	
Spanky's, Inc.)	
d/b/a Spanky's Tavern)	
1414 Michigan Ave. W.)	Complaint No. CV- 508818
Battle Creek, MI 49037-1928)	
)	Business ID No. 3538
Calhoun County)	
_____)	

EMERGENCY SUSPENSION ORDER PURSUANT TO MCL 24.292(2)
AND NOTICE OF HEARING

The Michigan Liquor Control Commission's Enforcement Division has submitted a request for an emergency suspension of the licenses and permits held by the above-named licensee based on its investigation conducted on December 7, 2020.

Article IV, § 40 of the Michigan Constitution authorized the Legislature to create the Michigan Liquor Control Commission. Implementing that authority, the Legislature enacted the Michigan Liquor Control Code, MCL 436.1101, et seq., and established the Michigan Liquor Control Commission, MCL 436.1209. The Code vests the Commission with plenary authority over Michigan's alcoholic liquor industry, including the manufacture, importation, possession, and sales thereof. See MCL 436.1203(2).

Pursuant to the Administrative Procedures Act, if an agency concludes that the health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever is later, and effective during the proceedings. See MCL 24.292(2). Further, MCL 436.1903(1) permits the Commission or any Commissioner or duly authorized agent of the Commission designated by the Chairperson to suspend or revoke any liquor license on a violation of the Liquor Control Code or the

Commission's administrative rules.

On March 10, 2020, Governor Whitmer issued Executive Order 2020-4 declaring a state of emergency due to the breakout of COVID-19 in the State of Michigan. COVID-19 is a respiratory disease that can result in serious illness or death. COVID-19 is caused by a new strain of coronavirus not previously identified in humans, and it easily spreads between persons. There is currently no vaccine or antiviral treatment for this disease available to the general public.

The Public Health Code gives the Michigan Department of Health and Human Services (MDHHS) "general supervision of the interests of health and life of people of this state," MCL 333.2221(2), and requires it to "endeavor to prevent disease, prolong life, and promote the public health," MCL 333.2221(1). The MDHHS may "[e]xercise authority and promulgate rules to safeguard properly the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law in the department." MCL 333.2226(d). Further, the MDHHS is authorized to issue emergency orders to address epidemics, pursuant to MCL 333.2253(1):

If the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws.

On November 15, 2020, the MDHHS issued a Gatherings and Face Mask Order, which took effect on November 18, 2020, and remained in effect when the investigation at issue here took place. See attached Ex. 1. That order stated that the recent "sharp rise in new [COVID-19] infections suggests that the state is entering the most challenging phase of the pandemic thus far." The order concluded that "the COVID-19 pandemic continues to constitute an epidemic in Michigan."

On December 7, 2020, the MDHHS issued an order that takes effect on December 9, 2020, and rescinds the November 15 Gathering and Face Mask Order on that date. The

December 7 MDHHS order, which rests on the same legal authority as the November 15 order, states that the seven-day average case rate in Michigan is currently five times higher than on October 1, 2020. The December 7 order also reports that there have now been over 395,000 confirmed cases of COVID-19 in the State of Michigan, resulting in over 6,000 confirmed deaths. Like the November 15 order, the December 7 order concludes that the COVID-19 pandemic continues to constitute an epidemic in Michigan. Thus, although the investigation at issue here occurred under the November 15, order, the December 7 order supports the continued need to control the epidemic to protect the public health.

The November 15 order generally prohibited indoor gatherings at non-residential venues. See 11/15/2020 Gatherings and Face Mask Order, section 2(a)(2). A “gathering” is “any occurrence, either indoor or outdoor, where two or more persons from more than one household are present in a shared space.” *Id.* at section 1(3). It also prohibited indoor gatherings at food service establishments except in “custodial settings, medical facilities, school and university cafeterias, shelters, and soup kitchens.” *Id.* at section 3(b)(1).

Further, subject to limited exceptions, the November 15 order stated that “[a]ll persons participating in gatherings are required to wear a face mask.” *Id.* at section 7(a). “Except as provided elsewhere in [the November 15] order, a person responsible for a business . . . must prohibit gatherings of any kind unless the person requires individuals in such gatherings (including employees) to wear a face mask and denies entry or service to all persons refusing to wear face masks while gathered.” *Id.* at section 7(c).

Violations of the November 15 Gatherings and Face Mask Order constitute misdemeanors and are punishable by up to six months imprisonment and certain fines. See *id.* at section 10(e), (h).

Based on the investigative report and exhibits received from the Commission’s Enforcement Division and the dictates of the MDHHS’s November 15, 2020 Gatherings and Face Mask Order, the Commissioner finds on behalf of the Commission that the public health, safety, and welfare requires emergency action, as contemplated by MCL 24.292(2). The Commissioner therefore issues an emergency suspension of the licenses and permits

held by Spanky's, Inc. A post-suspension hearing is scheduled for **December 14, 2020**, to determine whether this suspension should continue or other fines and penalties should be imposed.

I. Findings of Fact

Spanky's, Inc., (Licensee) currently holds Class C and Specially Designated Merchant licenses, as well as permits for Sunday sales (p.m.), dance, and direct connection. On December 7, 2020, Investigator [REDACTED] from the Michigan Liquor Control Commission's Enforcement Division investigated a complaint that the Licensee was allowing indoor gatherings contrary to the November 15 Gatherings and Face Mask Order.

According to Investigator [REDACTED] investigative report, on December 2, 2020, Investigator [REDACTED] received a complaint that the Licensee was allowing indoor service contrary to MDHHS's November 15, 2020 Gatherings and Face Mask Order. On December 7, 2020 Investigator [REDACTED] went to the licensed premises to investigate. Upon arrival at 11:55 a.m., he observed six cars in the parking lot. When he entered the licensed premises, he was seated at a table and ordered and was served a beverage. Additionally, Investigator [REDACTED] observed the following:

- Six patrons were seated at the bar and were drinking alcohol;
- One patron was seated at a table and was drinking; and
- Two patrons were playing pool and then later eating food at the bar with another patron.

Photographs submitted with the violation report show that the bartender and at least one patron who was not seated were not wearing masks.

The Licensee is a bar and a food service establishment that does not qualify for an exception to the indoor gathering prohibition in the November 15, 2020 MDHHS Gatherings and Face Mask Order. The continued operation of the licensed premises allowing indoor gatherings, as "gathering" is defined by that order, and allowing those gatherings without requiring individuals to wear face masks, poses an immediate threat to the health, safety, and welfare of the public and if allowed to continue is likely to result in additional significant outbreaks of COVID-19.

II. Conclusions of Law:

The Licensee violated the MDHHS Gatherings and Face Mask Order dated November 15, 2020, by allowing non-residential indoor gatherings contrary to sections 2(a)(2) and 3(b)(1). The Licensee also violated section 7(c) of that order by allowing individuals to gather without requiring them to wear face masks. Each of these violations also violates administrative rule Mich. Admin Code, R 436.1011(1).

For these reasons, the Commissioner orders the following, pursuant to MCL 24.292(2):

THEREFORE, IT IS ORDERED that:

- A. The Class C and Specially Designated Merchant licenses, and all permits, at the above-captioned licensed premises are hereby immediately suspended.
- B. Spanky's, Inc., shall appear before an Administrative Law Judge on **December 14, 2020**, at 3:00 p.m. for a virtual hearing via Zoom on the charges identified above and listed in Complaint No. CV-508818 in accordance with the Michigan Administrative Procedures Act, MCL 24.201, et. seq., and the Commission's Hearing and Appeals Practice administrative rules.

IT IS SO ORDERED.

MICHIGAN LIQUOR CONTROL COMMISSION



Lee Gonzales, Hearing Commissioner

Date Served: _____