

PENNSYLVANIA LIQUOR CONTROL BOARD

MEETING MINUTES

WEDNESDAY, APRIL 15, 2020
TELEPHONE CONFERENCE MEETING

Tim Holden, Chairman
Mike Negra, Board Member
Mary Isenhour, Board Member
Charlie Mooney, Executive Director
John Stark, Board Secretary

[Office of Chief Counsel](#)
[Bureau of Licensing](#)
[Bureau of Human Resources](#)
[Bureau of Accounting & Purchasing](#)

[Office of Retail Operations](#)
[Bureau of Product Selection](#)
[Financial Report](#)
[Other Issues](#)

Notice: Anyone who wishes to comment on a printed agenda item prior to official action being taken must make that known to the Chairman or the Board Secretary in advance.

Details for the telephone conference Board Meeting on April 15, 2020 can be found on the PLCB public website.

PUBLIC MEETING – 11:00 A.M

Board Secretary John K. Stark indicated that a quorum of the Board was present and Chairman Holden called the meeting to order.

CALL TO ORDER Chairman Holden

Chairman Holden announced that this meeting was being recorded.

Pledge of Allegiance to the Flag

Chairman Holden made an opening statement thanking everyone for their hard work and cooperation. Chairman Holden explained that we are facing a very serious health issue, nearly 26,000 people in Pennsylvania have been infected and 584 have passed away. Chairman Holden again thanked everyone for their cooperation.

OLD BUSINESS.....Secretary Stark

A. Motion to approve previous Board Meeting Minutes of the April 8, 2020 meeting,

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve previous Board Minutes.

PUBLIC COMMENT ON AGENDA ITEMS

The Board has reserved 10 minutes for Public Comment on printed agenda items.

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There was one public comment from Patty Smith. Ms. Smith stated that the Sunshine law requires public deliberation, and she believed the last in-person Board Meeting lacked public deliberation prior to motions being made which means that deliberations are being done somewhere else outside of public view. Ms. Smith requested detailed information in order to learn how and why the Board has made the decisions they made. Ms. Smith used a prior public comment involving Mr. Capawanna as an example of why she felt the PLCB violated the Sunshine Act. Mr. Capawanna requested the status of IFB 260347 at the March 11, 2020 Board Meeting. Ms. Smith stated that a person sitting at the table responded to Mr. Capawanna's question that he wasn't sure of the status and indicated that he would let Mr. Capawanna know the status after the meeting. Ms. Smith stated that this response was a clear violation of the Sunshine Act and requested to know the specifics of what the gentleman told Mr. Capawanna after the last Board Meeting.

Chairman Holden assured Ms. Smith that the PLCB did not violate the Sunshine Act and asked Chief Counsel Rodrigo Diaz to further reiterate.

Mr. Diaz stated that while Ms. Smith may disagree, the PLCB is in compliance with the Sunshine Act. The PLCB allows the public to ask any questions regarding the agenda items the Board is voting on. If the public asks questions, those questions are always addressed. Mr. Diaz stated that Ms. Smith attended a meeting where there were no questions on agenda items. With regards to Mr. Capawanna's question involving a pending procurement that was not on the agenda, Mr. Diaz stated that at that time he did not have an answer, therefore Mr. Diaz had a PLCB attorney follow up with Mr. Capawanna on the status of the RFP.

Ms. Smith questioned why Mr. Diaz told Mr. Capawanna that he would tell him the status after the public meeting. Ms. Smith reiterated that the Sunshine Act clearly states that public deliberation happen and that the public has a right to know how the Board is coming to their decisions. Ms. Smith requested blanket approval to hear an explanation of all items on the Board Agenda.

Mr. Diaz stated that the PLCB has multiple procurements going on all the time and it took a moment to realize which action Mr. Capawanna was questioning. It wasn't on the Board Agenda to discuss. Mr Diaz further explained that since the procurement is active and pending, Mr. Capawanna was informed that no further information could be disclosed at that time. For purposes of today's meeting, Mr. Diaz agreed that he can provide an explanation of each item being considered and stated that Ms. Smith can ask further questions as well.

Ms. Terri Beirne of the Wine Institute thanked the Board for its hard work to maintain wine sales during this pandemic. She then inquired whether the PLCB is continuing its negotiations of pricing in light of the stores being closed. She also asked if there would be price changes for consumers or if any price increases would be delayed.

Director of Marketing, Dale Horst, stated that the PLCB is continuing the negotiations and are on pace to finish them up by April 30, 2020. Any such changes would not go into effect until August 2020. With regard to price changes for consumers, Mr. Horst explained that this is an executive and Board decision which has not been made yet.

Board Member Negra stated that, at the initiative of suppliers, between 50 and 60 SKUs have been requested and approved for price increases to be implemented in the next 30 days. Mr. Negra further stated that suppliers have their own reasons for requesting price increases, independent of the PLCB's business.

Ms. Burns asked if the Board would be willing to make a list for the public denoting all price changes, whether due to negotiations or pursuant to supplier requests. Chairman Holden replied that the PLCB already does publish its prices. Board Member Negra stated that some of the information is proprietary.

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NEW BUSINESS

From the Office of Chief CounselRodrigo Diaz, Chief Counsel

- (1) **Borough of Milton** Municipal Petition for
Case No. 20-NE-03 Exemption from Liquor
Code Statute Regarding
Amplified Sound

Chief Counsel Rodrigo Diaz explained that, under the Liquor Code, a municipality has the right to petition the Board to exempt some or all businesses from statutory noise requirements. In this particular case, the Borough passed a resolution and a public hearing was held on March 10, 2020 before a Hearing Examiner. At that hearing, the Borough presented what is statutorily required and no one testified in opposition at the public hearing. Therefore, the matter at hand consists of an unopposed motion filed with the Board after public hearing.

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve Noise Exemption from April 15, 2020 to April 15, 2021.

- (2) **Advisory Notice No. 9 (7th Revision)** Revision of Advisory
Notice

Chief Counsel Rodrigo Diaz explained that Advisory Notices are neither statutes nor regulations, so these Notices do not have the force of law. Rather, Advisory Notices only provide guidance to the licensed community. Under the Liquor Code, if a Distributor or Importer Distributor wishes to sell something other than malt beverages, they need Board permission to do so. At the last public meeting the Board agreed to allow all Distributors and Importer Distributors to sell hand sanitizer not simply to the public but others in the licensed community. This Advisory Notice revision will reflect the vote that the Board took. If approved, this Advisory Notice will now list hand sanitizer as a type of item that Distributors and Importer Distributors may sell to the general public and to other licensees.

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Adopt the 7th Revision of Advisory Notice No. 9.

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(3) **Evan Pappas**
Tucker Arensberg, P.C.

Request to Sell Hand
Sanitizer by Retail Licensee

Chief Counsel Rodrigo Diaz explained that this is a request from counsel on behalf of a retail licensee (Jac-Jac, Inc. R-20688) for permission to sell hand sanitizer. If a retail licensee wants to sell something that is not part of their Retail business they would need permission to conduct other business under PLCB regulation. Attorney Pappas, on behalf of his client, has requested to sell hand sanitizer at their licensed premises. If the PLCB allows one Retail licensee to do this the PLCB should generally allow other Retail licensees to do it as well.

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve Attorney Pappas’ request on behalf of Jac-Jac Inc. to Sell Hand Sanitizer, and further to authorize all Retail Licensees to sell hand sanitizer.

*From the Bureau of LicensingTisha Albert, Director of Regulatory Affairs
Barbara Peifer, Director, Bureau of Licensing*

(1) **ABC Liquor, LLC**
R-10402 (LID No. 95348) Case No. 19-9082
1424-26 Potomac Avenue
Dormont Borough
Pittsburgh, Allegheny County

Hearing After the Administrative
Cancellation – Extension of
License & Request for Interior
Connection with Another
Business – Restaurant

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Chairman Holden stated that all Board members have 17 pages of testimony and recommendations on this request.

Chief Counsel Rodrigo Diaz explained that in all licensing matters, the Board is acting as the adjudicator. There has already been a public hearing in this and all following Licensing cases and the Board is in possession of the hearing transcript and the Hearing Examiner’s recommendation.

Board Decision: Unanimously agreed (3-0 vote) to Approve Extension of License and Request for Interior Connection with Another Business.

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Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve Renewal with Conditional Licensing Agreement.

(6) **Will's 2900 Bar, Inc.** Renewal – District 10
R-6590 (LID No. 12310) Case No. 2018-12310
2900 North 24th Street
Philadelphia, Philadelphia County

Motion Made: Board Member Negra refuse
Seconded: Board Member Isenhour

Chairman Holden asked if there was anyone present representing Will's 2900 Bar, Inc. There was no response.

Board Decision: Unanimously agreed (3-0 vote) to Refuse Renewal.

(7) **Fitz Co., Inc.** New Tavern Gaming License
t/a Red Fox Inn
R-10749 (LID No. 85534)
1222-24 East 38th Street
Erie, Erie County

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve New Tavern Gaming License.

Board Member Negra noted that this approval now makes 68 approved Tavern Gaming licensees in the Commonwealth.

*From the Bureau of Human Resources Jason Lutcavage, Director of Administration
Jennifer Haas, Director, Bureau of Human Resources*

There were 10 Personnel Actions submitted for consideration.

- (1) **Patricia Aguayo – Demotion**
- (2) **Afini Graham – Affirm Removal**
- (3) **Anthony Hall – Removal**

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- (4) **Ethan Madara – Affirm Removal**
- (5) **Jaden McCaskill – Affirm Removal**
- (6) **Robert Mozol - Affirm Removal**
- (7) **Natalie Ramos – Affirm Removal**
- (8) **Alex Shaffer – Affirm Removal**
- (9) **Katelyn Viola – Removal**
- (10) **Matthew Willinsky – Affirm Removal**

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve the 10 Personnel Actions.

*From the Bureau of Accounting & PurchasingMichael Demko, Director of Finance
Koppolu Ravindraraj, Director, Bureau of Accounting & Purchasing
Mike Freeman, Director, Bureau of Financial Management & Analysis*

Procurement Actions:

- (1) **Hearing Examiner Services Renewal** – Represent the Board in the capacity of a Hearing Examiner for administrative hearings conducted in the Commonwealth of Pennsylvania regarding matters which the Board shall adjudicate as required by law.

Procured via PO 63018857 Option Year – **VENDOR: Jodi Isenberg** – **TERM:** One year for period 6/14/2020 through 6/13/2021 – **\$150,000.00 estimated cost.**

Chief Counsel Rodrigo Diaz explained that administrative hearings for the PLCB are required by statute to be held in front of a Hearing Examiner. Hearing Examiners are appointed by the governor and then the Hearing Examiners enter into contracts with the PLCB. In this case, the PLCB is exercising the option to continue using the services of Hearing Examiner Jodi Isenberg.

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- (2) **Corrugated Cardboard Shipping Boxes and Inserts** – Funding increase needed due to FWGS store closure causing increased online sales and home deliveries.

Procured via Increase to BPA #63019628 – VENDOR: **Bell Containers** TERM: Through BPA expiration date of 1/31/2021 - **\$800,000.00 estimated cost.**

Director of Retail Operations Carl Jolly explained that this request for increased funding is due to the PLCB’s brick and mortar stores being closed; therefore, the PLCB is ramping up online activity to ship products, which requires packaging.

- (3) **Managed Print Services** - Single price maintenance contract for 160 standard Lexmark printers in Region #1 stores. Toner, maintenance parts, and labor are included in the fixed price and PLCB will only be responsible for paper. Printers will be monitored constantly, and toner will be sent to stores before it is needed. This monitoring will reduce downtime due to printer failure.

Procured via Contract #4400010872 -VENDOR: **Edwards Business Systems** -TERM: Twenty-four months for period 6/1/2020 through 5/31/2022 - **\$145,336.58 estimated cost.**

Acting Director of Information Technology Dee Mayer explained that this request is for the replacement of existing printers in stores for store employees to print out invoices and daily paperwork.

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve all Procurement Actions.

Inter-Agency Charges:

None

From the Office of Retail Operations..... Carl Jolly, Director of Retail Operations

None

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*From the Bureau of Product SelectionDale Horst, Director of Marketing & Merchandising
Tom Bowman, Director, Bureau of Product Selection*

VENDOR – ITEM NAME

BOARD ACTION REQUESTED

Various
Various
Various

1. Regular New Items Accepted
2. Regular PA New Items Accepted
3. Regular Recommended Delist

1. Regular New Items Accepted

BRAND NAME AND SIZE

REASON

Anheuser Busch LLC

Drinkworks Brunch Cocktails 12x50 mL	3
Drinkworks Lynchburg Lemonade Cocktails 12x50 mL	3

Capital Wine and Spirits

Ford’s Gin 90 Proof 750 mL	1
Hectic Sauvignon Blanc Marlborough 750 mL	18
Lodi Red 750 mL	18
Viola Rosa Berry 750 mL	18
Viola Rosa Black 750 mL	18
Viola Rosa Moscato d’ Asti 750 mL	18
Viola Rosa Peach 750 mL	18
Viola Rosa Rosso 750 mL	18
Waipapa Bay Rose 750 mL	18

Fetzer Vineyards

Concha y Toro Casillero del Diablo Rose 750 mL	2, 3, 5, 19
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Majestic Wine and Spirits

Creamery Chardonnay 750 mL	18
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Monsieur Touton Selection

Cole Cellars Cabernet Sauvignon 750 mL	18
Mimi En Provence Vieilles Vignes 750 mL	18
Vinedos Juegos Escoba Malbec 750 mL	18

Pernod Ricard USA

Campo Viejo Rose 750 mL	2, 3, 19
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Sazerac Company Inc

Fireball Cinnamon Whisky Party Bucket 20x50 mL	3, 9
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Treasury Wine Estates

19 Crimes Chardonnay 375 mL	2, 3, 5, 19
19 Crimes Uprising 375 mL	2, 3, 5, 19

Vivino Selections

Casa Santos Lima Red Blend Portugal 750 mL	18
II Casato Pinot Grigio Valdadige DOC 750 mL	18

W J Deutsch Sons LTD

Yellow Tail Rose 750 mL	2, 3, 19
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RECOMMENDED ACTION: We recommend the Board approve this action

2. Regular PA New Item Accepted

BRAND NAME AND SIZE

REASON

C and D Brewing Ventures Inc

Otto's Pub and Brewery Ginger Beer Nonalcoholic 6x355 mL	16
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RECOMMENDED ACTION: We recommend the Board approve this action

New Items – Recommended Listings

Reason Codes

1. Strong marketing support
2. High brand recognition
3. Line/Size extension of successful brand
4. Trade up opportunity
5. Growing category
6. Growing segment
7. National rollout
8. Niche item / Limited distribution
9. High dollar profit potential
10. Trade out
11. High quality for the value
12. Innovative product/flavor
13. High sales through other PLCB channels (Luxury, Online, SLO)
14. Underrepresented category/segment
15. Hole in selection – consumer/store requests
16. PA Spirits
17. PA Wines
18. Licensee only
19. Probationary listing

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3. Regular Recommended Delist

<u>BRAND NAME AND SIZE</u>	<u>CODE</u>
<u>Majestic W S USA Inc</u>	
Casa Ferreirinha Esteva 750 mL	2489
<u>North Wales Wines</u>	
Prophecy Pinot Noir 2 x 250 mL Cans	37956
Prophecy Rose 2 x 250ml	26000
Prophecy Sauvignon Blanc Marlborough 2 x 250 mL	26005
Starborough Sauvignon Blanc Marlborough 2 x 250 mL Cans	510
<u>Southern Glazers Wine and Spirits of PA</u>	
Luna di Luna Chardonnay Pinot Grigio 1.5 L	8875

EFFECTIVE DATE: The transference to closeout will become effective May 18, 2020

Motion Made: Board Member Negra
 Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve all Product Selection Actions.

FINANCIAL REPORT *Michael J. Burns, Comptroller Operations, Office of Budget*

None

OTHER ISSUES

None

CITIZEN COMMENT/BUSINESS FROM THE FLOOR

Chairman Holden asked if anyone on the call had any additional comments or questions.

There was additional commentary from Patty Smith. Ms. Smith indicated that she appreciated the expanded information at today’s meeting. Ms. Smith stated that the hearing testimony that the Bureau of Licensing is using to make their decision is not available for the public in advance of the Board meeting. Ms. Smith stated that she has requested hearing testimony before and was told by Chief Counsel Rodrigo Diaz that a Right-to-Know request would need to be sent in and, once received, the PLCB would make a decision. Ms. Smith asked if the PLCB would make hearing testimony available on the official PLCB website, offer it to the public with the Board Agenda, or otherwise explain in detail what information is in front of the Board members that prompted the decision.

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Chief Counsel Rodrigo Diaz explained that in the seven Licensing matters on today's agenda, the Board is acting as an adjudicator. The pre-decisional information one uses as a "judge" is privileged. If an appeal is taken in any of these matters, the PLCB is required to write an opinion to the Court of Common Pleas or Commonwealth Court to explain the PLCB's decision. The PLCB has always done that. In addition, once a decision is made, some of the information is no longer pre-decisional. Therefore, if any member of the public wants more information, they can ask for it under the Right-to-Know Law. The PLCB evaluates each Right to Know Law request as required under that law.

Board Member Negra noted that, to the extent Ms. Smith is requesting "trial testimony" to be made publicly available prior to a Licensing matter being before the Board for adjudication, that would be like the public asking a judge for testimony before a trial.

Ms. Smith further asked if she will need to submit a Right-to-Know request for each of the seven Bureau of Licensing items.

Chief Counsel Diaz explained that all of the Bureau of Licensing cases included a public hearing. If any member of the public wants a copy of the transcript, they can call the court reporter and request a copy. Mr. Diaz further explained that if there is particular information that Ms. Smith wants after the Board makes a decision, depending on what the request is, the PLCB can make it available.

Ms. Smith questioned if she would have to pay for the transcript from the court reporter. Mr. Diaz explained that would be a matter between the court reporter and the requesting party. He further noted that the public licensing hearings are free and open to the public. The state's contracted court reporter is Sargent's, but Mr. Diaz does not have a telephone number for that vendor at this moment. Ms. Smith commented that she believes that information is available on the Board's website.

NEXT BOARD MEETING

The next meeting of the PLCB will be a formal meeting on Wednesday, April 29, 2020 beginning at 11:00 A.M. Prior to the public meeting, there will be an Executive Session to discuss matters of personnel and to engage in non-deliberative informational discussions, some of which are regarding actions and matters which have been approved at previous public meetings.

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ADJOURNMENT

On a motion by Board Member Negra, seconded by Board Member Isenhour, the meeting was adjourned.

The foregoing actions are hereby officially approved.

Chairman

Member

Member

ATTEST:

Secretary