

**STATE OF VERMONT
LIQUOR CONTROL BOARD**

**In Re: THE EDGEWATER, INC.
D/B/A TRAK-IN RESTAURANT
A/K/A TRAK-IN STEAK HOUSE
A/K/A FISHTAIL TAVERN
2551 VERMONT STATE ROUTE 30 NORTH
BOMOSEEN, VERMONT 05732**

BOARD DECISION AND ORDER

The Edgewater, Inc. d/b/a Trak-In Restaurant a/k/a Trak-In Steak House a/k/a Fishtail Tavern (“Licensee” and “Licensed Establishment”) appeared before the Liquor Control Board (“Board”) on October 26, 2016 in Montpelier for a Contested Case Hearing to consider sanctions against its First and Third Class liquor licenses for alleged violations of General Regulation Nos. 7, 17 (six counts: three alleged on March 18, 2016 and three alleged on March 19, 2016) and 17(a) (three counts: all alleged on March 19, 2016). Jacob A. Humbert, Esq., Assistant Attorney General, represented the Department of Liquor Control (“DLC”). Matthew Hart, Esq. appeared on behalf of Licensee. Both parties submitted Proposed Findings of Fact and Conclusions of Law. Member Cassarino did not participate in the hearing or this decision. The Board finds and concludes as follows:

FINDINGS OF FACT

1. At all relevant times, Licensee held First-Class and Third-Class liquor licenses, permitting the sale of beer, wine, fortified wine and spirits to the public for on-premises consumption at 2551 Vermont State Route 30 North, Bomoseen, Town of Castleton, Vermont.
2. Rosemary “Roz” Poremski Rogers is the co-owner (with her brother Bernard Poremski, Jr.) of the resort known as The Edgewater, which is adjacent to Lake Bomoseen. It has been in business since 1957. This resort contains lodging and licensed premises, which include a restaurant known as the Trak-In Steak House (opened in 1973) and a bar known as Fishtail Tavern (opened approximately 5 years ago). The alleged violations discussed herein occurred at Fishtail Tavern.

3. Based on Ms. Rogers' testimony, David Rogers, her son, is in charge of running all aspects of Fishtail Tavern. Ms. Rogers does not go to Fishtail Tavern very often due to mobility issues. She does not maintain records (including payroll) for Fishtail Tavern; there is a separate checking account for it controlled by Mr. Rogers. The Board takes notice that Mr. Rogers is not listed on any DLC license or application for a license. He is not on the establishment's payroll, but apparently takes a salary from the business. Although he was present throughout the duration of the hearing and assisted with answers given by Ms. Rogers during her testimony, Mr. Rogers did not testify.
4. In its August 25, 2016 Notice of Hearing, DLC alleged that Licensee violated the following General Regulations duly adopted by Board:
 - a. General Regulation No. 7: Licensees and licensee employees shall allow at any time, a member of the Liquor Control Board, the Commissioner, and/or any of their assistants or Investigators to examine the licensed premises as well as all records, papers, stock, merchandise or equipment in reference to the operation of the license, and shall retain such items for inspection. All licensees shall keep on their licensed premises for a period of two years a complete record covering the operation of their license, including all invoices covering the purchase of alcoholic beverages and/or tobacco, and all financial records including but not limited to daily receipts for the sale of alcohol and/or tobacco. If any licensee has more than one licensed location, the licensee may keep all records in one centralized business location in the State of Vermont and the Department shall be notified in writing, in advance, of the name, street address, and telephone number of such designated location. However, the licensee shall retain all training certificates and records, on the licensed premises where the individual in question works.
 - b. General Regulation No. 17: No licensee shall sell or furnish alcoholic beverages to any individual displaying signs of intoxication from alcoholic beverages or other drugs / substances. No licensee shall allow alcoholic beverages to be consumed on the licensed premises by any individual displaying such signs of intoxication. No licensee shall allow any individual displaying such signs of intoxication to stay on the licensed premises, except under direct personal supervision by a licensee or licensee employee in a segregated nonpublic area when the patron's immediate departure could be expected to pose a risk of bodily injury to the patron or any other individual.
 - c. General Regulation No. 17a. Licensees or licensees' employees shall not serve alcoholic beverages to any individual whom it would be reasonable

to expect would be under the influence as a result of the amount of alcohol served to that person. Under the influence, in this Regulation, shall mean that degree of intoxication that would render it unsafe or illegal for the patron to undertake normal and expected activities upon leaving the licensed premises.

5. The Board already sanctioned Licensee for its violation of General Regulation No. 7 in a separate *Order*, www.liquorcontrol.vermont.gov/sites/dlc/files/documents/BoardDecisions/2016_10_26_Edgewater_Inc.pdf, which is incorporated by reference as if set forth at length herein. Licensee has not appealed this *Order*. The time for taking an appeal has passed. The Board trusts that DLC will take appropriate action if it feels that Licensee has complied with the terms of our *Order*.
6. The remaining violations relating to Licensee's conduct allegedly occurred on two consecutive nights: March 17-18, 2016 and March 18-19, 2016. Regarding General Regulation No. 17, there are three alleged violations on March 18, 2016 and three alleged on March 19, 2016. Regarding General Regulation No. 17(a), there are three counts alleged on March 19, 2016.
7. The Board begins with the most recent night first, the evening of March 18, 2016 into the early morning hours of March 19, 2016.

Evening of March 18, 2016 to the Early Morning Hours of March 19, 2016

8. Just after 4:00 a.m. on March 19, 2016, a passing motorist called police after spotting a heavily damaged, overturned 2006 Saab sedan in a large ditch on Drake Road, Bomoseen, Town of Castleton, Vermont. The vehicle contained the bodies of Andrew Laramie (driver), Caleb Kinney (front passenger) and Samantha Forrest (rear passenger). It is undisputed that all three of them had been patrons of Licensee's Establishment that evening.
9. In the 9:00 p.m. hour of March 18, 2016, Ms. Forrest and Jessica Spaulding, her best friend, arrived at Licensee's Establishment after attending a musical, "American Idiot," at Castleton University. Ms. Spaulding's boyfriend drove them to Licensee's Establishment.

10. Ms. Spaulding had worked for Licensee while attending Castleton State College (as it was then known) in 2013-2014. Ms. Forrest was employed by Fishtail Tavern, but not on duty that evening.
11. Ms. Spaulding testified that they ate dinner and Ms. Forrest ordered a Switchback beer. They paid their server and remained at Licensee's Establishment. Though they continued to drink; all further drinks were ordered directly from the bar.
12. Mr. Laramie and Mr. Kinney arrived at roughly the same time as Ms. Spaulding and Ms. Forrest.
13. Mr. Laramie, Mr. Kinney and Ms. Forrest were all over 21 years of age.
14. After paying, Ms. Spaulding played pool with other patrons including her boyfriend, Ms. Forrest, Mr. Kinney and Mr. Laramie. She continued to drink a few more hard ciders. They played pool for a "couple of hours."
15. According to Ms. Spaulding, while playing pool, Mr. Laramie and Mr. Kinney were drinking whiskey in a glass with ice; they also did shots of Jägermeister. Ms. Spaulding testified that Mr. Laramie had approximately two more glasses of whiskey, three beers and at least three shots. Ms. Forrest believes that Mr. Kinney had a beer or two after the whiskey.
16. Ms. Spaulding believed that Mr. Laramie was heavily intoxicated. He was sitting during the pool game between turns, stumbling off of his seat. When it was his turn, he had trouble standing. She first noticed that he was unsteady on his feet beginning around 11:00 p.m. These observations continued until the time she left, which was around midnight. Mr. Laramie also had a slight slur to his speech. Ms. Spaulding had seen Mr. Laramie when he was both sober and drunk, and testified that it was obvious to her that Mr. Laramie was drunk that night.
17. Ms. Spaulding offered Ms. Forrest a ride home. It was unclear if she knew that Ms. Forrest was going to be driven home by Mr. Laramie; the testimony was clear however that Ms.

Forrest planned on going to Mr. Laramie/Mr. Kinney's residence after leaving the Licensed Establishment that evening.

18. Peter Raymond Nardell of Castleton testified. Mr. Nardell is also a Rutland Regional Ambulance Service paramedic with 21 years of experience. He is a regular of Licensee's Establishment and has worked "under the table" for them as a barback and bouncer. Mr. Nardell admitted that he did not report his income from Licensee to the Vermont Department of Taxes or the United States Internal Revenue Service.
19. Mr. Nardell was at Licensee's Establishment on March 18, 2016 as a patron; he confirmed that he was not there to monitor other patrons' alcohol consumption. Though he reported expertise in determining whether a person is under the influence of alcohol, in all of the times he has been a patron of Licensee's establishment, he has never reported anyone who appeared to be under the influence of alcohol to Licensee's management or staff.
20. He had a "couple of beers" that evening and arrived between 9:00 p.m. and 10:00 p.m. He stayed at the bar for up to four and a half hours. He did not play pool or go over to the pool table area. He does not recall seeing Mr. Laramie or Mr. Kinney taking shots; instead, "every time" he saw Mr. Laramie, he had a pint of beer in his hands. He did describe the Jäger Bomb as a drink that contains a shot, but the drink itself is not a shot.
21. Mr. Nardell interacted with Ms. Forrest, who was there when he arrived. She hugged him, which he found to be unusual. He did not believe that Mr. Laramie was "overly intoxicated" and that he would have been below the legal limit. Mr. Kinney appeared "more intoxicated" to him. He left the Licensee's Establishment around 1:30 a.m. while Ms. Forrest, Mr. Laramie and Mr. Kinney remained there.
22. Mr. Nardell testified that a taxicab from "Chip's Taxi" often parked outside Licensee's Establishment, even without being called to that location, and that "Chip's Taxi" has a "working relationship" with Licensee.
23. The Licensee charges the following amounts for beverages:
 - soda: \$2.25;

- Bottled beer: \$3.50-\$4.00;
- Draft beer: \$2.50-\$5.00;
- Red Bull: \$3.00; well spirits \$4.00;
- Jäger Bombs (Red Bull mixed with Jägermeister): \$6.00; and
- Premium (back shelf) spirits: \$8.00.

24. Mr. Laramie and Mr. Kinney maintained bar tabs that night. The Licensee's bar tab sheet confirms that Mr. Kinney ordered seven \$8.00 drinks, two \$5.00 drinks and one \$4.00 drink, meaning he consumed at least seven whiskeys on the rocks, one draft beer and one bottom shelf shot, bottled beer or draft beer, respectively. The bar tab sheet further notes that Mr. Laramie consumed two \$8.00 drinks and three \$3.50 drinks, meaning that he likely consumed two whiskeys on the rocks and three bottled or draft beers, respectively. Ms. Forrest did not maintain a bar tab. Licensee asserts that she consumed three beers at Licensee's establishment that evening.

25. Licensee's bartender that evening was Mike Mamunes. He testified that Mr. Laramie, Mr. Kinney and Ms. Forrest were at the Licensed Establishment for five hours. He confirmed that each of the seven whiskeys on the rocks he served Mr. Kinney contained 1.5 ounces of whiskey, for a total of 10.5 ounces of whiskey.

26. Mr. Mamunes confirmed that Jason Brown was a patron that evening. Mr. Mamunes knows Mr. Brown as a tenant of the motel on The Edgewater property, and that he was apparently being evicted by Ms. Rogers. Mr. Mamunes confirms that he prepared and served one Jäger Bomb to Mr. Brown that evening. He denies serving more than one.

27. Mr. Mamunes testified that "not everybody" is allowed to run a tab. Mr. Mamunes testified that Mr. Brown was among those not allowed to run a tab. Mr. Brown was required to pay cash for his drinks that evening.

28. Mr. Kinney and Mr. Laramie each also consumed as many as eight "Jäger Bombs," a mixed drink of Jägermeister and Red Bull, purchased for them by another patron, Jason Brown. Mr. Brown did not maintain a tab that evening and spent approximately \$200.00 cash on alcoholic beverages that night. Mr. Brown did not appear at the Hearing to testify, though he

was under subpoena. Here, the Board relies on the testimony of Investigator Davidson, who interviewed Mr. Brown.

29. Mr. Mamunes testified he purchased drinks for patrons using cash from the tip jar.
30. Mr. Mamunes testified that Mr. Kinney was “more intoxicated” than Mr. Laramie. Nevertheless, Mr. Mamunes testified that Mr. Laramie was not intoxicated.
31. Mr. Mamunes also offered Ms. Forrest a ride home that night as she was leaving, which suggests he was concerned about her traveling in Mr. Laramie’s vehicle.
32. Licensee’s doorman that evening, Ryan Lewis, testified. He arrived at 9:00 p.m. for his shift. There were 20-40 patrons there, with the number declining as the evening went on. Mr. Lewis also confirmed that Jason Brown was at the Licensee’s Establishment. He does not recall seeing Mr. Laramie and Mr. Brown interacting.
33. Mr. Lewis believed Ms. Forrest and Mr. Laramie were displaying no signs of intoxication, but did concede Mr. Kinney slurred his speech and stuttered his words a couple times, which Mr. Lewis understood to be a “little” sign of intoxication. He testified that he had a coherent conversation with Mr. Laramie about engineering at some point during the evening.
34. Licensee’s employees did not ask any of the three to leave that night nor did they segregate any of them in a supervised non-public area of the establishment.
35. Ms. Forrest, Mr. Laramie and Mr. Kinney left the Licensed Establishment together at 1:48 a.m. Mr. Mamunes recalled the time on the Comcast cable box as Ms. Forrest returned inside the Licensed Establishment to retrieve a belonging she left behind. They were the last patrons to leave. They walked towards Mr. Laramie’s vehicle, which was parked in the patrons’ parking lot, in front of the Licensed Establishment. There is also a parking lot for employees located behind the Licensed Establishment.
36. Mr. Lewis testified that he personally observed Mr. Laramie get into the driver’s seat of the 2006 Saab sedan. He saw Mr. Kinney get into the front passenger seat. He saw Ms. Forrest get into the rear passenger seat. Mr. Lewis then locked the front door of, and closed down,

the Licensed Establishment for the evening. Upon departing, he did not recall seeing any other vehicles, including Mr. Laramie's vehicle, parked at Licensee's Establishment either at the patrons' lot or employees' lot.

37. Mr. Lewis' vehicle was parked in the patrons' parking lot that evening, so his testimony that Mr. Laramie's car was no longer in that lot is deemed credible.

38. Jim Kean, whose residence abuts the employee parking lot, testified. Apparently, according to Mr. Kean, patrons frequently parked in the employees' lot after-hours to drink and were so disruptive on occasion that he would need to turn on his outside lights to disperse the crowd.

39. Mr. Kean testified that for about an hour until approximately 3:30 a.m. on March 19, 2016, he heard intermittent female and male voices (no more than 3 or 4 people in all) in the employee parking lot. He did not recognize any of the voices and did not get out of his bed, turn on his lights, look out of his window or go outside. He could not identify any of the peoples' voices he heard. Accordingly, there is no basis to conclude that any voices that might have been heard were that of Mr. Laramie, Mr. Kinney and/or Ms. Forrest.

40. Later that morning, he testified that he cleaned up 6 to 12 beer cans (so people would not think that he is a drunk) of an unknown brand that had been left in the employee parking lot. He was certain only that the cans were not Budweiser, his beer of choice.

41. On March 18-19, 2016, Carol Wasick was staying at the Licensee's resort as a personal guest, free of charge, while her house was being remodeled. Ms. Wasick is Ms. Rogers' business associate and family friend; they work together in some capacity on "fundraisers" and Ms. Wasick is paid for this work. Ms. Wasick has also worked at Fishtail Tavern.

42. Ms. Wasick testified that she awoke for a cigarette around 2:30 a.m. on March 19, 2016 and heard voices outside in the employee parking lot. She thought that someone was breaking into her car, so she went outside. She claims to have recognized one of three individuals outside to be Samantha Forrest. Ms. Wasick knew Ms. Forrest from a time when both worked for Licensee. Ms. Wasick believed Ms. Forrest was smoking marijuana. And while

Ms. Wasick also observed the three holding some sort of beverage containers, she could not identify the beverage(s). Ms. Wasick claims to have been outside for five to ten minutes.

43. DLC asserts there is “little explanation” for Mr. Laramie to have moved his car from the patrons’ parking lot in front of the Licensed Establishment to the employees’ parking lot behind it so that the three could stand outside in mid-March weather to smoke marijuana and drink beer for up to two hours, when his residence was just a few minutes down the road.

44. Michael Hamous, a resident of Drake Road, Bomoseen, testified for the Licensee. Mr. Hamous’ house is 100 yards from the crash site.

45. On March 19, 2016, he was returning to his home at roughly 3:15 a.m. in his “very large” four-door pick-up truck with a “four-inch lift in it,” which raised the height of the truck body and, therefore, its headlights. He passed the scene of the crash at approximately 3:15 a.m. He testified that he was “tired and wanted to go to sleep.”

46. It was unusual for Mr. Hamous to return home at this late hour; his normal vocation requires him to work 8:00 a.m. to 6:00 or 7:00 p.m.

47. Mr. Hamous asserts that he did not see Mr. Laramie’s car in the ditch at that time. He believes that had the vehicle been there, he would have seen it. Licensee relies on this to support a contention that the crash occurred after 3:15 a.m. To get to his home, however, Mr. Hamous would have had to make a hairpin turn to the right to follow Drake Road as it curved slightly to the left, which would have turned his headlights away from the crash site on his right.

48. Mr. Hamous also stated that he did not hear any crash after he arrived home. Accordingly, if the crash happened after he arrived home, which is Licensee’s contention, he did not hear it. Mr. Hamous testified that he was not awakened or concerned by the noise of the police and first responders who were on the scene. He was not aware that anything had happened until nearly 8:00 a.m. that morning, when he noticed that the fire trucks responding to the crash were blocking his driveway. He was not concerned about this since, as he testified, his “house wasn’t on fire.”

49. At approximately 4:15 a.m. on March 19, 2016, Lucas Matthew Dewey Hall arrived at the scene of the crash. At the time, he worked for the Castleton First Response as an Advanced EMT. He is currently an Emergency Room Nurse at Springfield Hospital. He testified that the vehicle was resting in a ditch about 4-5 feet below road level. He noted that the vehicle was cold.
50. Mr. Hall went to the passenger side of the vehicle. The door was detached, a body was hanging out waist first. He testified that all three bodies were cold and covered with frost. He pronounced Ms. Forrest, Mr. Laramie and Mr. Kinney dead and that they had been so for “longer than probably an hour.” He observed that rigidity had set in; the bodies were hard to move. He testified that lividity, or pooling of blood, had set in. According to him, this takes “hours” after death to occur. He also testified that rigidity takes “hours to develop.” Despite these observations, he did not feel he was qualified to offer a conclusion on the exact time of death. He agreed that the temperature outside may have contributed to or hastened the condition under which the deceased patrons’ bodies were found. He placed a tarp over the vehicle out of respect for the deceased.
51. Detective Stephen John Dechen of the Castleton Police Department testified. He has been a law enforcement officer since February 2, 2001 and is certified as a death investigator. He arrived at the scene of the crash at 6:19 a.m. He took pictures of the scene, which were admitted as State’s Exhibits 4-7. He noted that the vehicle had come to rest in an unstable position against a tree and had to be propped up to prevent further damage to the bodies. He noted that the crash produced a wide debris field. He also noted that the injuries were not consistent with travel at the posted 35 mile-per-hour speed limit; the vehicle had been moving faster. There were no skid marks signifying an effort to slow down prior to the collision.
52. Detective Dechen concluded that Mr. Laramie’s vehicle had left the pavement and struck a tree, causing significant damage to the car and killing Ms. Forrest, Mr. Laramie and Mr. Kinney.

53. Detective Dechen noted a strong odor of intoxicants as he lifted the tarp off of the vehicle. He found two open empty Miller Lite beer cans and a third Miller Lite beer can which was unopened but punctured, in and around the car. Detective Dechen was adamant that the odor of intoxicants could not have been explained solely by those empty beer cans. He observed the odor coming primarily from the bodies themselves.
54. Detective Dechen could not testify to the exact time of the accident.
55. He believes that a passerby vehicle would have seen the vehicle. The vehicle, however, was inverted, meaning the underside of the vehicle faced the road. The underside of the vehicle does not have reflectors on it.
56. Detective Dechen believes that an airbag control module in the vehicle may have offered helpful data, including the time of airbag deployment. The Board left the evidence open until mid-November to allow for the consideration of this evidence, but none was provided nor additional time sought.
57. Detective Dechen conducted an investigation into the events leading to the crash. He testified that Mr. Laramie and Mr. Kinney were roommates at 138 Hempstead Circle, Bomoseen, where they had lived together for approximately one year. He concluded that Mr. Laramie, Mr. Kinney and Ms. Forrest left the Licensed Establishment at 1:48 a.m. on March 19, 2016. The crash occurred in the direction of and approximately one mile from their residence. The crash site was located roughly one mile from the Licensee's Establishment and was along the route that Mr. Laramie was expected to have taken to return to his residence.
58. Detective Dechen testified that there are no other establishments open near the Licensed Establishment at 1:48 a.m. As an officer who works nights, he testified credibly that the closest place to even get a cup of coffee at that hour would be at a Maplefields in Fair Haven, a distance farther than that between the Licensed Establishment and Messrs. Laramie and Kinney's residence.

59. Steven Shapiro, M.D., the State's Chief Medical Examiner testified. He has held that position since 2006. His training and experience is in forensic pathology. His office's main goal is to investigate sudden, unexplained or violent deaths. His office performed postmortem tests on the three deceased patrons to obtain diagnoses and toxicology information, which included an evaluation of blood from each. The reports of the Office of the Medical Examiner's reports, "Final Report Of Inspection" ("Forms") were admitted as State's Exhibits 1-3. The common thread among the three deceased patrons was that death was caused by blunt force trauma experienced during the crash. The injuries were severe and incompatible with life.
60. At the time of death, Mr. Laramie had a blood alcohol content ("BAC") of 0.180% and tested positive for caffeine; Mr. Kinney had a BAC of 0.226%, tested positive for caffeine and THC (from marijuana use); and Ms. Forrest had a BAC of 0.095% and tested positive for THC (from marijuana use). Dr. Shapiro explained that the BACs were accurate as of the time of death given that, once a person dies, metabolic activities such as the elimination of alcohol from the blood cease. Licensee did not challenge the BAC evidence.
61. There was no specific test performed to determine the quantity of caffeine in each patron's blood. Likewise, there was no specific evidence of when the caffeine was consumed. Caffeine consumption, per DLC, could be consistent with the Red Bull component of the "Jäger Bombs" and the absence of caffeine in Ms. Forrest's blood is explained by her not having any Jäger Bombs."
62. The Forms listed the time of death as estimated 1:30 a.m., but Dr. Shapiro did not have any personal knowledge or evidence to support that time of death.
63. DLC Investigator Michael Davidson's investigation of the events of March 18-19, 2016 included interviews of Mr. Mamunes, Mr. Nardell, Mr. Brown and Mr. Hamous. Licensee, in its findings, argues that Inv. Davidson's testimony was "unsupported hearsay." Licensee, however, did not raise any objections to Inv. Davidson's testimony, including those related to hearsay.

Early Morning Hours of March 18, 2016

64. At approximately 2:00 a.m. on March 18, 2016, Mr. Mamunes, who was working as the bouncer that evening, observed a patron named Steve Jensen leaving the Licensed Establishment at closing time. The Licensed Establishment's front door exits into a wooden fenced area, which extends approximately 25 feet to a gate, where Mr. Mamunes was stationed. As noted above, there are no other licensed establishments nearby. Mr. Mamunes first noticed Mr. Jensen within ten feet of such gate. Mr. Mamunes believed Mr. Jensen was too intoxicated to drive and saw him refuse a ride from a designated driver. For roughly ten minutes, Mr. Mamunes confronted Mr. Jensen and obstructed his efforts to drive away.
65. Mr. Jensen reacted aggressively, even threatening to "knock [Mr. Mamunes] out." At 2:22 a.m., Mr. Mamunes yelled to bartender Rachel Hubbard inside the bar to call 911. Ms. Hubbard typically stays inside at closing time because the male employees do not want female employees around intoxicated patrons outside.
66. At approximately 2:26 a.m., Castleton Police Department Officer Justin Szarejko, responded to the 911 call (received at 2:22 a.m.) for an intoxicated male that was trying to leave in a vehicle. He has served in law enforcement since 2009 and is a full-time law enforcement officer.
67. Officer Szarejko observed Mr. Jensen to be "substantially intoxicated." Mr. Jensen had some trouble speaking, and displayed a "very extreme sway and difficulty walking." He said that he was "going home." He had a friend to give him a ride, but Officer Szarejko determined that the friend's license was under suspension. Mr. Jensen was released to the custody of a sober friend. Officer Szarejko called his dispatcher to request a taxi to give them both a ride.
68. Approximately 30 minutes after the 911, Mr. Jensen went back inside the Licensed Establishment to use the restroom. At that time, Ms. Hubbard observed that Mr. Jensen had "glazed eyes."
69. Based on Investigator Davidson's testimony, Ms. Hubbard had served beer to Mr. Jensen during the evening, but did not cut him off, as she did not believe he was being a problem.

However, Ms. Hubbard assessed both Mr. Jensen's inability to drive and his level of intoxication that night to be an eight or nine on a scale of 10. Indeed, after Mr. Jensen was stopped from driving and went back inside to use the restroom (approximately 30 minutes after the 911 call), Ms. Hubbard observed Mr. Jensen's glazed eyes, a notable sign of intoxication.

70. Officer Szarejko also made observations of the Licensee's outside consumption area, which was well lit, fenced in, with a few picnic tables and a fire pit. He made his observations while leaning against the area's fence. There were approximately 10-15 patrons in the area. The majority were holding clear plastic cups containing brown liquid, which he could not specifically identify, and approximately six patrons appeared, by his training and experience, to be intoxicated.

71. Officer Szarejko observed and personally encountered two "extremely intoxicated females" carrying plastic cups walking in the parking lot. Testimony from Licensee confirmed that these plastic cups are the same type used by Licensee for service of beverages. Both females were extremely intoxicated and were having a very difficult time standing. They even confused Officer Szarejko (in full police uniform) for a taxi driver and his marked police cruiser with a light bar on top for a taxicab. They asked Officer Szarejko for a ride back to campus. They even tried to get into the cruiser. He informed them his police cruiser was not a taxi, but that a taxi from Chip's Taxi would be coming shortly.

72. Officer Szarejko also observed a young woman sitting nearby on a small hill between the Licensee's parking lot and Route 30. Once he approached her, Officer Szarejko noticed she was having a difficult time speaking to him due to her level of intoxication. He did not obtain her name.

73. Quinn O'Reilly testified. He is a Castleton University student who, as part of work-study, operates a safe-ride service. He was a driver on March 18, 2016. The majority of his calls he has received, historically, involve Licensee. He went back and forth between campus and Licensee until about 3:00 a.m. that night, an hour after closing time. It does not appear that he worked the following evening.

CONCLUSIONS OF LAW

1. The Board is established as the paramount authority in the administration of Vermont's liquor statutes and regulations. *See Verrill, Jr. v. Daley, Jr.*, 126 Vt. 444, 446 (1967).
2. When passing upon the question whether a license shall be revoked or suspended for the violation of a liquor statute or regulation, the Board sits as a tribunal with a judicial function to perform and has statutory authority under 7 V.S.A. §236 to suspend or revoke any license for violating the provisions of Title 7 or any regulation. *See In Re: Wakefield*, 107 Vt. 180, 190 (1935).
3. Licensee holds First and Third-Class Liquor Licenses as defined by 7 V.S.A. §2(10) and §(22) and is, therefore, subject to this Board's jurisdiction.
4. Licensee was properly notified of the alleged violations and of its right to appear at a hearing to respond to these alleged violations consistent with 3 V.S.A. §809(a)-(c). Licensee appeared and contested the alleged violations.
5. DLC must prove all alleged violations by a preponderance of the evidence, which is the usual standard of proof in state administrative adjudications. *See Huddleston v. University of Vermont*, 719 A.2d 415 (1998); 3 V.S.A. §§ 801-849; *In re Muzzy*, 141 Vt. 463, 472, 449 A.2d 970, 974 (1982). This standard compels DLC to prove that, more likely than not, a violation occurred. If any violations are found, then the Board has concluded that DLC has met its burden.
6. An appropriate standard for establishing intoxication in the context of our liquor laws is that provided by 23 V.S.A. §1201(a), Vermont's Driving Under the Influence statute. That statute prohibits a person from operating a motor vehicle if his or her blood alcohol content is 0.08% or more. Other administrative bodies have so concluded that this is an appropriate benchmark for determining intoxication, including the Vermont Department of Labor, for cases of workplace intoxication. *See Cyr v. McDermott's, Inc.*, 2010 VT 19 (reversing decision of Commissioner on completely separate grounds).

Violations Committed During the Early Morning Hours of March 18, 2016

7. Licensee is alleged to have committed three violations of General Regulation No. 17 on March 18, 2016.
8. Under General Regulation No. 17, every liquor licensee has a duty to ensure that any individual intoxicated through alcohol and/or other drugs/substances is not served, or allowed to consume, any alcoholic beverages and, further, is immediately removed from the licensed premises, unless public safety justifies keeping the patron on the premises in a supervised, nonpublic area.
9. The Board concludes that, during the early morning hours of March 18, 2016, three patrons (Steve Jensen and two female patrons who attempted to board Szarejko's cruiser) displayed obvious signs of intoxication.
10. Licensee's staff, including Mr. Mamunes, confirmed that Mr. Jensen displayed signs of intoxication upon exiting the bar (10 minutes before the 911 call) and when he returned inside the establishment (30 minutes after the 911 call).
11. The Board concludes that the two females outside the Licensed Establishment were, more likely than not, patrons of the Licensee given the lack of other licensed establishments nearby and their possession of plastic cups which are consistent with those used in the Licensed Establishment.
12. The Board concludes that Licensee allowed these patrons to stay on the licensed premises while displaying signs of intoxication and failed to remove these patrons from the premises or, alternatively, segregate them in a supervised nonpublic area.
13. The obvious and significant signs of these patrons' intoxication around and after closing time are presumed to have been continuous for some period prior to walking out the front door into the parking lot. *See In Re Tweer*, 146 Vt. 36, 38 (1985) ("intoxication may be evidenced circumstantially by prior or subsequent condition of intoxication within such time that the condition may be supposed to be continuous") (citation omitted); *See also Ackerman v. Kogut*, 117 Vt. 40, 43-44 (1951).

14. Licensee argues that Officer Szarejko's testimony regarding Mr. Jensen should be rejected because he did not personally observe Mr. Jensen in the Licensee's Establishment while intoxicated. It is undisputed that Mr. Jensen was a patron of Licensee that evening. It is undisputed that Licensee served alcoholic beverages to Mr. Jensen that evening. It is also undisputed that Mr. Jensen's intoxication was the very reason that the Licensee called 911. It is that call that resulted in Officer Szarejko being called to the Licensee's Establishment that evening.
15. Though not necessary to find a violation of General Regulation No. 17, given our *Conclusions* in Paragraphs 9-12, above, the Board also finds that it is more likely than not that these three patrons' clear intoxicated state was the direct result of over service of alcoholic beverages at the Licensed Establishment that evening.
16. The Board is compelled to note that there were also six intoxicated patrons in the outdoor consumption area and one incoherent patron sitting on a small hill between the Licensee's parking lot and Route 30.
17. Overall, the credible evidence supports as many as ten (10) violations of General Regulation No. 17 during the early morning hours of March 18, 2016. This is a staggering number of concurrent violations. This Board is unable to recall an instance which involved such an egregious number of intoxicated patrons at one Licensee at one time. Licensee, however, was only cited for three (3) violations of General Regulation No. 17 for this date. Accordingly, the Board finds, by a preponderance of evidence, that three such violations of General Regulation No. 17 occurred. These include Mr. Jensen and the two female patrons who attempted to board Officer Szarejko's cruiser under the impression that it was a taxicab.
18. Unfortunately, the presence of police and a host of intoxicated patrons on that evening, did nothing to prevent the events of the following evening, discussed below:

**Violations Committed During the Evening of March 18 – Early Morning of March 19,
2016**

19. DLC alleges that Licensee violated General Regulations 17 and 17(a) with respect to Mr. Laramie, Mr. Kinney and Ms. Forrest. The Board concludes that DLC has met its burden on

all counts, except with respect to General Regulation No. 17 regarding Ms. Forrest as discussed below.

20. The Board concludes that into the early morning hours of March 19, 2016 and prior to leaving the Licensed Establishment at 1:48 a.m., Andrew Laramie and Caleb Kinney displayed obvious signs of intoxication while consuming alcoholic beverages. We base our conclusion on the whole of the evidence submitted, but particularly on (1) Ms. Spaulding's credible testimony regarding Mr. Laramie and (2) Mr. Lewis's credible testimony regarding Mr. Kinney.
21. Our conclusion is also based on the undisputed Blood Alcohol Content of each deceased patron found by the Office of Medical Examiner, which is consistent with significant intoxication over a substantial period of time. *See In Re Tweer*, discussed *supra*.
22. We conclude that Licensee did not remove these patrons from the premises or, alternatively, segregate them in a supervised nonpublic area. They were allowed to stay until closing time and were the last patrons to leave. That conduct constitutes two additional violations of General Regulation No. 17.
23. We lack sufficient evidence to conclude that Licensee served Ms. Forrest while "displaying signs of intoxication from alcoholic beverages or other drugs / substances" and therefore **DISMISS** one count of a General Regulation No. 17 violation.
24. With respect to the alleged violations of General Regulation No 17(a), the Board concludes that Licensee served Mr. Laramie and Mr. Kinney a quantity of alcoholic beverages that any reasonable person could understand would result in intoxication no matter what signs of intoxication they may have displayed based on the following:
 - Licensee admits that it served Mr. Kinney ten and one half (10.5) ounces of whiskey and two bottles of beer during the evening of March 18-19, 2016 (Licensee's Proposed Findings at ¶ 29).
 - Consistent with their significantly high BAC at the time of death and Ms. Spaulding's credible testimony regarding their consumption of alcoholic beverages that evening, Mr.

Kinney and Mr. Laramie consumed more drinks at Licensee's establishment than the bar tab indicates.

- Mr. Mamunes' offer of a ride to Ms. Forrest at closing time suggests concern with her traveling with Mr. Laramie.
- We conclude that Licensee's efforts to downplay Mr. Brown's involvement in purchasing beverages for Mr. Kinney and Mr. Laramie are not compelling. Mr. Mamunes and Mr. Kelly place Mr. Brown in the Licensed Establishment during the evening of March 18-19, 2016. Accordingly, he was there. Mr. Mamunes confirms preparing and serving at least one "Jäger Bomb" for Mr. Brown. Accordingly, he purchased and was served alcohol that night and, in fact, the exact type of drink that DLC contends he was ordering. Mr. Mamunes also confirms that Mr. Brown would not have been allowed to start a bar tab. These facts corroborate Investigator Davidson's testimony and the Board finds it credible that Mr. Brown did, in fact, purchase as many as eight Jäger Bombs for Mr. Kinney and Mr. Laramie, which they consumed, an amount of alcoholic beverages the Board reasonably concludes caused significant intoxication and the potential for serious harm.

25. Therefore, Licensee committed two additional violations of General Regulation No. 17(a). We conclude that there is insufficient evidence of a General Regulation No. 17(a) violation with respect to Ms. Forrest and **DISMISS** that alleged violation.

26. We reject Licensee's position, based on the testimony of Mr. Kean and Ms. Wasick that Mr. Laramie, Mr. Kinney and Ms. Forrest remained in the Licensee's employee parking lot after closing time as not credible.

27. The Board does not accept that these three individuals got into Mr. Laramie's vehicle solely to travel from the patrons' parking lot to the employees' parking lot, after the Licensee closed for the evening, in order to drink beer and smoke marijuana there for approximately two hours.¹

¹ Licensee advocates that the crash occurred after 3:15, or even 3:30 a.m., and that between 1:48 a.m. and at least 2:30 a.m., when Ms. Wasick allegedly spoke with Ms. Forrest, the three deceased patrons remained at the Licensee's employee parking lot and consumed 6-12 beers and smoked marijuana.

28. We find that, based on a preponderance of the credible evidence presented, Mr. Laramie, Mr. Kinney and Ms. Forrest departed the Licensee's Establishment at 1:48 a.m., walked towards and seated themselves in Mr. Laramie's 2006 Saab sedan and immediately departed for Messrs. Laramie and Kinney's residence when, on the way, they crashed and died for the following reasons:

- Ms. Forrest explicitly told Ms. Spaulding that she planned to go to Messrs. Laramie and Kinney's residence after leaving the Licensed Establishment that evening;
- Mr. Lewis' credible testimony that he saw Mr. Laramie, Mr. Kinney and Ms. Forrest get into Mr. Laramie's vehicle;
- Mr. Lewis' credible testimony that he parked his vehicle in the same lot as Mr. Laramie and when he departed after closing down the Licensed Establishment, Mr. Laramie's vehicle was gone;
- The close proximity of Messrs. Laramie and Kinney's residence to Licensee's Establishment, approximately two miles;
- The road upon which Mr. Laramie's vehicle was traveling and the direction that the vehicle was heading at the time of the crash, which is the route between the Licensed Establishment and Messrs. Laramie and Kinney's residence;
- It was in the early morning hours in mid-March making it unlikely that any reasonable person would have remained outdoors for upwards of two hours;
- The lack of any nearby, open commercial establishments at that time of the morning;
- Mr. Hamous did not hear a crash between his arrival home at 3:15 a.m. and the discovery of the vehicle around 4:00 a.m.;

The Board is compelled to note that had Licensee's account had been accepted as true, it agrees with DLC that it would have led to equally serious violations. Licensee had a duty to ensure that it does not conduct its business in a manner rendering the "premises or the streets, sidewalks, parking lots or highways adjacent thereto a public nuisance." *Vermont Liquor Control Board General Regulations*, No. 36. We agree that after-hours drinking and drug use in Licensee's employee parking lot immediately after the Licensed Establishment closed, if permitted or in any way fostered, would constitute a public nuisance that Licensee should have recognized and dealt with, especially as those activities may have been a common occurrence on weekends consistent with Mr. Kean's testimony. Had Mr. Laramie, Mr. Kinney and Ms. Forrest actually stayed and drank, Licensee's violation for over service and permitting drinking to continue "after hours" before the three departed in Mr. Laramie's vehicle would have been equally severe; it would not have resulted in a lighter sanction.

- Given the unusual time of night that Mr. Hamous was traveling (after finishing work at a much later hour than usual that left him tired and wanting to go to sleep), and given the height of his vehicle, the curve of the road near his home and the fact that he did not even notice the presence of numerous first responders on and around his property for nearly four full hours until 8:00 a.m. that morning, confirms to the Board's satisfaction that he simply failed to see the crashed vehicle as he passed it;
- The condition of Mr. Laramie, Mr. Kinney and Ms. Forrest's bodies is inconsistent with a crash having occurred approximately 45 minutes or fewer prior to the passing motorist's 4:00 a.m. call to police as Licensee suggests based on Mr. Hamous and Mr. Kean's testimony;
- Mr. Laramie, Mr. Kinney and Ms. Forrest's bodies were so cold that frost had formed on each of them; and
- Each body showed signs of rigidity and lividity Mr. Laramie's vehicle was cold when found.

Conclusion

29. The Board is shocked by the Licensee's culture of over service and utter lack of any meaningful managerial oversight. In addition to the seven (7) violations found above over a two-day period, the Board considered testimony that Castleton University "safe ride" trips primarily involve this Licensee and that a taxicab company specifically and regularly awaits intoxicated patrons at the Licensed Establishment without even being called. Accordingly, the Board does not believe that the events and violations of March 18-19, 2016 stand in isolation. Combined with Licensee's lack of cooperation with DLC and its failure to adhere to our Regulations as confirmed in our October 27, 2016 *Order*, the Board is convinced that, in the interest of public safety, immediate revocation of all liquor licenses is an appropriate sanction.
30. The Board, therefore, will revoke Licensee's first and third-class liquor licenses based on one violation of General Regulation No. 17.

31. With no valid liquor licenses remaining to suspend or revoke, for the remaining four (4) violations of General Regulation No. 17 and two (2) violations of General Regulation No. 17(a), the Board fines the Licensee the maximum permissible for each, \$2,500.00. *See* 7 V.S.A. §236(b) (“[a]s an alternative to and in lieu of the authority to suspend or revoke any permit or license, the liquor control board shall also have the power to impose an administrative penalty of up to \$2,500.00 per violation against a [...] holder of a first, second or third class license for a violation of the conditions under which the license was issued or of this title or of any rule or regulation adopted by the board. The administrative penalty may be imposed after a hearing before the board [.]”). The total fine imposed, therefore, is \$15,000.00.

32. In the event that any principal of The Edgewater, Inc., David Rogers, a successor entity or anyone acting on their behalf or at their direction, applies for any form of Vermont liquor license at any time in the future, DLC must refer the applicant to the Board for a hearing before the application can be considered. A “successor entity” for this purpose, is an entity that consists in whole or in part, some or all, of the same stockholders, directors, officers, partners and/or individuals as the revoked Licensee.

33. Given Mr. Mamunes’ involvement in the service of alcoholic beverages that gave rise to the violations found, the Board finds that he should be recertified by DLC should he wish to continue serving or selling alcoholic beverages for another licensee. Mike Mamunes is, accordingly, required to attend in-person DLC retraining and otherwise meet with DLC approval if he wishes to sell or serve alcohol on behalf of another licensed establishment.

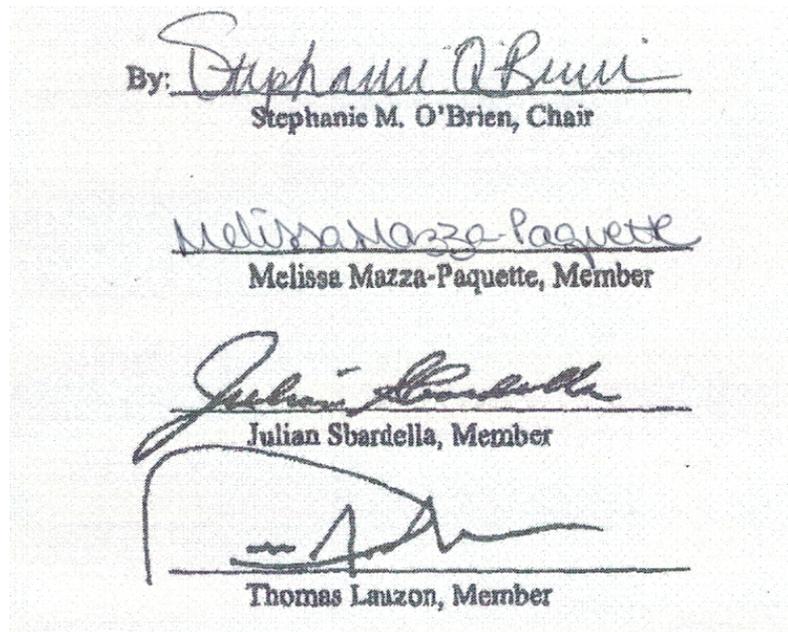
ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Board **REVOKES** the First and Third Class liquor licenses of The Edgewater, Inc. d/b/a Trak-In Restaurant a/k/a Trak-In Steak House a/k/a Fishtail Tavern and assesses an **ADMINISTRATIVE PENALTY** in the amount of \$15,000.00 to be paid to DLC within 45 days of this *Order*.

DLC is directed to proceed as outlined above.

DATED at Montpelier, Vermont this 1st day of December 2016.

VERMONT LIQUOR CONTROL BOARD

A rectangular area containing four handwritten signatures, each followed by a horizontal line and a printed name and title. The signatures are: 1. Stephanie M. O'Brien, Chair; 2. Melissa Mazza-Paquette, Member; 3. Julian Sbardella, Member; 4. Thomas Lauzon, Member.

By: Stephanie M. O'Brien
Stephanie M. O'Brien, Chair

Melissa Mazza-Paquette
Melissa Mazza-Paquette, Member

Julian Sbardella
Julian Sbardella, Member

Thomas Lauzon
Thomas Lauzon, Member

RIGHT TO APPEAL

Within 30 days after copies of this Order have been mailed, either party may appeal to the Vermont Supreme Court by filing a Notice of Appeal with the Department of Liquor Control and paying the requisite filing fee. See 3 V.S.A. § 815(a); V.R.A.P. 4 and 13(a).