

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
ALCOHOL AND TOBACCO COMMISSION
CAUSE NO: EX19012365

GRACE MCDONALD)
Permittee)
Permit No.: BR1810693)
)

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Comes now the Hearing Judge for the Indiana Alcohol and Tobacco Commission (“Commission”) and submits to the Commission, pursuant to 905 IAC 1-37-12, this Proposed Findings of Fact, Conclusions of Law, and Order against Grace McDonald (“Permittee.”)

Procedural History

1. Permittee applied for and was issued employee permit number BR1810693 (“Permit”) pursuant to IC 7.1-3-18-9 on July 29, 2015.
2. Permit expired July 30, 2018.
3. On July 1, 2019, Permittee applied for reinstatement of Permit.
4. Permit was reinstated on July 17, 2019.
5. Following the reinstatement of the permit on July 17, 2019, the Commission became aware of Permittee’s convictions for operating while intoxicated as defined by IC 7.1-1-3-13.5.
6. Permittee received notice of violation, including revocation, pursuant to IC 7.1-3-18-9(i).
7. A hearing was held on the matter of the notice of violation on October 24, 2019.
8. Prosecutor Josh Harrison represented the Commission. Attorney Andrew Maternowski represented the Permittee.

Findings of Fact

1. Permittee was convicted of IC 9-30-5-2(a), Operating a Vehicle While Intoxicated Endangering a Person, on September 16, 2015 under cause number 29D061502CM001538 (“First Conviction.”) ATC File, ATC Hearing.
2. Permittee was released from probation for the First Conviction on December 16, 2016. ATC File, ATC Hearing.
3. Permittee was convicted of IC 16-42-19-18(a), Unlawful Possession of a Syringe, and IC 9-30-5-2(a)(b), Operating a Vehicle while Intoxicated: Endangering a Person, on February 28, 2019 under cause number 49G091803F6009420 (“Second Conviction.”) ATC File, ATC Hearing.
4. For Second Conviction, Permittee was sentenced to 175 days community corrections on home detention with 69 days jail credit. Permittee was also sentenced to 365 days probation. Records indicate that permittee began probation on March 21, 2019. ATC File, ATC Hearing.
5. Permittee was convicted of IC 9-30-5-2(a), Operating a Vehicle While Intoxicated: Prior Conviction on March 15, 2019 under cause number 29D031802F5001073 (“Third Conviction.”) ATC File, ATC Hearing.
6. Permittee was ordered to serve 323 days probation for Third Conviction consecutive to the sentence issued for Second Conviction. ATC File, ATC Hearing.
7. Permittee’s convictions for operating while intoxicated were the result of controlled substances, not alcoholic beverages. ATC Hearing.

8. When asked on the employee permit application “Have you been convicted of operating a motor vehicle while intoxicated in Indiana...within the last 10 years?,” Permittee responded in the affirmative and listed one conviction date of 06/13 in Hamilton County. ATC File.
9. When asked on the employee permit application “Are you currently serving a sentence, including any term of probation for operating a motor vehicle while intoxicated in Indiana?,” permittee responded “N” for No. ATC File.
10. Permit was issued on July 17, 2019. ATC File.
11. Any finding of fact may be a conclusion of law.

Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to Indiana Code 7.1-1-2-2 and Indiana Code 7.1-2-3-9.
2. The Hearing Judge may take judicial notice of the Commission file relevant to a case. 905 IAC 1-37-11(d)(2).
3. The Commission may:
 - a. Fine or suspend or revoke the permit of; or
 - b. Fine and suspend or revoke the permit of;a permittee for the violation of a provision of this title or of a rule or regulation of the commission.
4. Except as provided under IC 7.1-3-18-9.5, the Commission shall revoke a permit issued to an employee if the employee is convicted of operating while intoxicated after the issuance of the permit. IC 7.1-3-18-9(i).

5. The commission may not issue an employee's permit to an applicant that has three (3) unrelated convictions for operating while intoxicated in the ten (10) years immediately preceding the date of the applicant's application for the permit. IC 7.1-3-18-9(h).
6. The commission may revoke the permit of a permittee if the permittee at any time ceases to possess any of the qualifications required for the issuance of that particular type of permit under Title 7.1. IC 7.1-3-23-12.
7. Conviction for operating while intoxicated means a conviction (as defined in IC 9-13-2-38) for a crime under IC 9-30-5-1 through IC 9-30-5-9. IC 7.1-1-3-13.5.
8. Permittee's First Conviction, Second Conviction, and Third Conviction were all convictions under IC 9-30-5-2, which is included in the definition of conviction for operating while intoxicated in IC 7.1-1-3-13.5.
9. IC 9-13-2-86 defines intoxicated as under the influence of, among other substances, alcohol and controlled substances.
10. IC 7.1-1-3-13.5 is not ambiguous.
11. IC 7.1-1-1-1 states that the general purposes of Title 7.1 include:
 - a. Protecting the economic welfare, health, peace, and morals of the people of Indiana; and
 - b. Regulating and limiting the manufacture, sale, possession, and use of alcohol and alcoholic beverages.
12. One way that the sale, possession, and use of alcoholic beverages is regulated by Title 7.1 is through the issuance of employee permits, including restrictions on who qualifies for employee permits.

13. Although the Commission does not find a conflict between IC 7.1-1-1-1 and IC 7.1-3-18-9, to the extent that there may be a conflict it should be resolved in favor of the more specific provisions in IC 7.1-3-18-9.
14. The Commission finds that there is no exception to the specific definition of conviction for operating while intoxicated for convictions that are the result of a controlled substance.
15. IC 7.1-1-3-13.5 is not ambiguous and does not require or allow additional interpretation.
16. Permittee has three (3) prior convictions for operating while intoxicated.
17. Permittee failed to list all of her prior convictions for operating while intoxicated on her employee permit application.
18. Permittee may have been confused about whether conviction for operating while intoxicated included convictions for use of a controlled substance.
19. Regardless of whether Permittee's omission on the employee permit application was intentional or due to confusion, the omitted information significantly changes the outcome of the issuance of Permittee's Permit.
20. Although the Notice of Violation states "Indiana Code 7.1-3-18-9(i) states that the commission SHALL revoke a permit issued to an employee if the employee is convicted of operating while intoxicated after the issuance of the permit," there is not actual requirement in IC 7.1-3-18-9(i) that the conviction be prior to the issuance of the permit.
21. Even if there is a requirement that the conviction for operating while intoxicated be prior to the issuance of the permit, Permit BR1810693 was initially issued July 29, 2015.
22. Additionally, if there is a requirement that the conviction for operating while intoxicated be prior to the issuance of the permit, Permittee's omission of information relating to

prior convictions for operating while intoxicated significantly changes the outcome of the issuance of the permit.

23. The Commission finds that an employee permit shall not be issued to a permittee that does not otherwise qualify to hold this employee permit where the Permittee omitted significant information relating to the Permittee's qualification on the application.

24. On September 16, 2025, Permittee will only have two (2) unrelated convictions for operating while intoxicated and Permittee's eligibility date for an employee permit will be two years after the completion of the sentence on the most recent conviction for operating while intoxicated.

25. Any conclusion of law may be considered a finding of fact.

Proposed Order

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Permittee has three (3) unrelated convictions for operating while intoxicated, ceases to meet the qualifications to hold an employee permit, and employee permit BR1810693 shall be **REVOKED**.

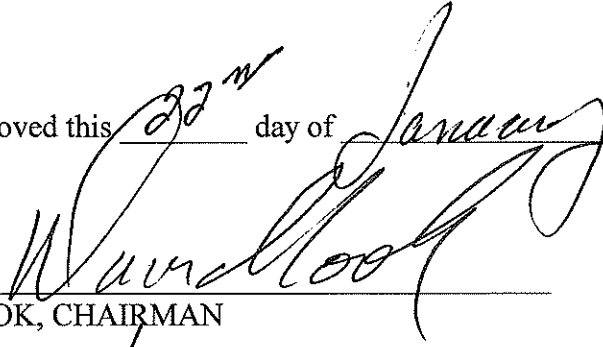


Jessica Allen
Hearing Judge
Indiana Alcohol and Tobacco Commission

This Proposed Findings of Fact and Order has been sent to:

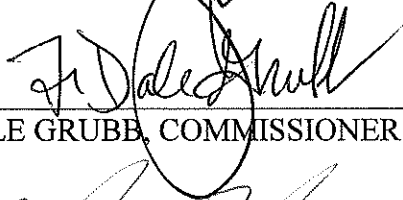
Andrew Maternowski
3601 N. Pennsylvania St.
Indianapolis, IN 46205

Approved this 22nd day of January, 2020.

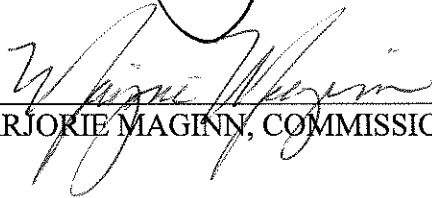


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