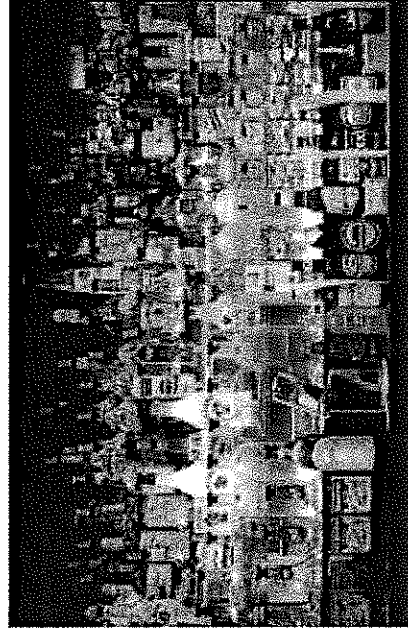


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## Temple American Inn of Court

January 2020



Bottoms Up: Alcohol and the Law(yers)

*With Special Guest - Laurie Besden*

## Summary

During this presentation, we explore: (1) the restrictions encountered by residents in Pennsylvania in purchasing alcohol inside and outside of the Commonwealth, (2) the liability when minors consume alcohol who are under the control of adult supervision, and (3) the dangers of alcohol dependency for attorneys.

## Team Members

Linda Alle-Murphy	Nancy Mancheski
Taj Amin	Tom Nardi
Lily Austin	Alan Nochumson
Steve Bertil	Jonathan Parrish
Jacqueline Campbell	Deone Powell
David Dzara	Liz Ray
Hon. Charles Hayden	Michael Romeo
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Ronald Kolla	Tamara Wible
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## Special Guest

Laurie Besden is the Executive Director of Lawyers Concerned for Lawyers of Pennsylvania, Inc. Since 2011, she has served as its Deputy Executive Director overseeing its Helpline operations and serving as the primary contact for intervention requests, expanding its law school outreach, and increasing its presence within the organized bench and bar. As the newly appointed Executive Director, she is now responsible for its administrative and financial operations as well as Judges Concerned for Judges (judges' assistance program).

She received her B.A. in Criminology and Criminal Justice from the University of Maryland, College Park, Maryland (1995) and her J.D. from The Dickinson School of Law of the Pennsylvania State University (1999).

She was the 2015 recipient of the Montgomery Bar Association's Henry Stuckert Miller Award for her dedication to public service in the legal profession.

§ 2:65.Liquor regulatory offenses (Title 47), 14 West's Pa. Prac., Crim. Offenses &...

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14 West's Pa. Prac., Crim. Offenses & Defenses § 2:65 (6th ed.)

West's(R) Pennsylvania Practice Series TM March 2019 Update

Crim. Offenses & Defenses

John M. Burkoff<sup>a0</sup>

Chapter 2. Noncrimes Code Offenses

I. Statutory Offenses

§ 2:65. Liquor regulatory offenses (Title 47)

**West's Key Number Digest**

- West's Key Number Digest, Intoxicating Liquors ☞131 to 176

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The manufacture, transportation, and sale of alcoholic beverages in Pennsylvania is heavily regulated under Title 47 of the Pennsylvania Statutes.

Licenses to sell, distribute, or manufacture alcoholic beverages are issued by the state Liquor Control Board, which is empowered, inter alia, to hold hearings, impose fines, and revoke licenses for any violation of the liquor laws. 47 P.S. § 4-471, as amended in 1998, 2000, 2002, 2005, 2006, and 2011. Notably, the Pennsylvania Supreme Court has ruled that the fact that

§ 2:65.Liquor regulatory offenses (Title 47), 14 West's Pa. Prac., Crim. Offenses &...

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a liquor license holder has been involved in conduct which has not produced criminal charges or convictions does not affect the Board's power to impose civil sanctions for such conduct.<sup>1</sup>

The Liquor Code, 47 P.S. §§ 1-101 et seq., makes unlawful any liquor sales within the Commonwealth which are not in accordance with its provisions or the regulations of the Liquor Control Board. 47 P.S. § 4-491(1). Violation is a misdemeanor and, in addition to the possible suspension or revocation of any license held by the violator, is punishable by a fine of \$2 per fluid ounce of each container of malt or brewed beverages and \$4 per fluid ounce for each container of wine or liquor found on the premises where the sale was made or attempted. 47 P.S. § 4-494(c), as amended in 1994 and 1999. Prior to its amendment in 1999, § 4-494(c) referred to "bottles" not "containers," but was interpreted by the Pennsylvania Superior Court as applying nonetheless to bottles and cans of beer found on subject premises.<sup>2</sup> It is also a misdemeanor under the Liquor Code for any person to intentionally make a false statement in a hotel, club, or restaurant liquor application. 47 P.S. § 4-403(h), as amended in 1994.

The Liquor Control Board is also empowered to fine out-of-state manufacturers of beer or ale who violate Pennsylvania liquor statutes or regulations. 47 P.S. § 4-444(e). Under 47 P.S. § 4-494(a), as amended in 1987, violations of 47 P.S. § 4-493(1), (10), (14), (16) or (21) or violations by the owner or operator of the licensed premises of the drug laws or Crimes Code § 5902 (relating to prostitution) or § 6801 (relating to corruption of minors) are punishable by a fine up to \$5,000 and/or imprisonment for a term no less than three months nor more than one year.

Section 4-491 of the Liquor Code contains a long list of offenses relating to liquor or alcohol and licensees. Similarly, § 4-492 contains a long list of offenses relating to malt or brewed beverages and licensees. Examples of liquor offenses which may be committed by individuals are: purchasing liquor from any source other than a state store ("Pennsylvania Liquor Store"), 47 P.S. § 4-491(3); possessing or transporting such liquor, 47 P.S. § 4-491(2), as amended in 2006 and 2012; and offering a gift to any member of the Liquor Control Board, 47 P.S. § 4-491(14). Offenses by licensees include: using decanters except for wine, 47 P.S. § 4-491(4); failing to break empty liquor containers (except decorative decanters) within 24 hours after the contents are removed, 47 P.S. § 4-491(5); selling liquor or beer to a person who is visibly intoxicated, 47 P.S. § 4-493(1); allowing minors to frequent licensed premises unless: (a) they are accompanied by a parent; (b) they are accompanied by a legal guardian; (c) they are under proper supervision; (d) they are attending a social gathering; or (e) the hotel, restaurant, or retail dispenser licensee has gross sales of food and nonalcoholic beverages equal to 50 per centum or more of its combined gross sales of both food and alcoholic beverages, 47 P.S. § 4-493(14), as amended in 2002 and 2003; further, if a minor is lawfully frequenting a hotel, restaurant, or retail dispenser licensee, then the minor may not sit at the bar section of the premises, nor may alcoholic beverages be served at the table or booth at which the minor is seated unless he or she is with a parent, legal guardian, or under proper supervision, 47 P.S. § 4-493(14), as amended in 2002 and 2003; selling liquor or beer on credit (with specified exceptions, including the use of credit cards) or in exchange for goods, 47 P.S. § 4-493(2), (3); serving liquor or beer during prohibited hours, 47 P.S. § 4-493(16); employing minors under 18 to serve alcoholic beverages or those under 16 to work on licensed premises (except ski resorts, golf courses, or amusement parks where 14- or 15-year-old minors may work in rooms where alcoholic beverages are not dispensed, served, or stored), 47 P.S. § 4-493(13), as amended in 1999, 2002, and 2007; permitting known criminals or prostitutes to frequent licensed premises, 47 P.S. § 4-493(14), as amended in 2002 and 2003; employing any person for the purpose of enticing customers, 47 P.S. § 4-493(25), as amended in 1987; and for any licensee that has obtained a license to conduct thoroughbred or harness horse race meetings respectively with pari-



§ 2:65.Liquor regulatory offenses (Title 47), 14 West's Pa. Prac., Crim. Offenses &...

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mutuel wagering, that has obtained a slot machine license, to give away free of charge or below cost any liquor or malt or brewed beverage as a customary practice, 47 P.S. § 4-493(29), enacted in 2003.

It is also an offense to “possess, purchase, sell, offer to sell or use powdered alcohol” except that this prohibition “shall not apply to a hospital that operates primarily for the purpose of conducting scientific research, a State institution conducting bona fide research, a private college or university conducting bona fide research or a pharmaceutical company conducting bona fide research.” 47 P.S. § 4-491(15), enacted in 2016. “Powdered alcohol” means “alcohol sold in a powder form for either direct use or reconstitution.” 47 P.S. § 1-102, as amended in 2016.

In 2005 the General Assembly legislated that it is unlawful “[f]or any licensee, his servants, agents or employes, to possess, furnish, sell, offer to sell, or purchase or receive, or aid and abet in the sale or purchase of any controlled substance or drug paraphernalia ....” 47 P.S. § 4-492(31).

In 2006 the General Assembly provided that it is unlawful for any licensee “to possess or permit an alcohol vaporizing device on licensed premises.” 47 P.S. § 4-493(32).

In 2011, the General Assembly provided that it is unlawful “[f]or any licensee, his servants, agents or employes to sell alcohol at a location other than its licensed premises, unless the sale is specifically authorized under this act, or unless the licensee receives a special permit from the board to do so. Only those licensees holding a current and valid restaurant, hotel or eating place license shall be allowed to apply for such a permit. All servers at the off-premises catered function shall be certified under the board's responsible alcohol management program ...” 47 P.S. § 4-492(33), enacted in 2011. “Catered function” is defined as “the furnishing of food prepared on the premises or brought onto the premises already prepared in conjunction with alcoholic beverages for the accommodation of a person or an identifiable group of people who made arrangements for the function at least forty-eight hours in advance.” 47 P.S. § 1-102, as amended in 2011.

In 2002 the General Assembly legislated that “no penalty shall be imposed on a licensee, licensee's employe[e] or Pennsylvania Liquor Store employe[e] for serving alcohol to a minor if the licensee or employe[e] can establish that the minor was required to produce an identification card as set forth in subsection (a), the identification card is identified as a valid card by a transaction scan device and the identification card and transaction scan results were relied upon in good faith. This defense shall apply to all civil and criminal prosecutions. For purposes of this section, a ‘transaction scan device’ is a device capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of an identification card ....” 47 P.S. § 4-495(g), enacted in 2002.

Similarly, in 47 P.S. § 4-495(h), also enacted in 2002, it is further provided that “[n]o licensee or licensee's agent or employe[e] shall sell or otherwise disseminate the information derived from a transaction scan to any third party, except to the board, the bureau or other law enforcement official, for any purpose, including, but not limited to, any marketing, advertising or promotional activities, except that a licensee or licensee's agent or employe[e] may release that information pursuant to a court order. Any person who violates this subsection commits a summary offense and shall, upon conviction, be sentenced to pay a fine not exceeding five hundred dollars (\$500) for the first offense and to pay a fine not exceeding one thousand dollars (\$1,000) for subsequent offenses.”

It is a criminal offense “[e]xcept as provided in subclause (ii), for any licensee under the provisions of this article, or the board or any manufacturer, or any employe or agent of a manufacturer, licensee or of the board, to offer to give anything of value or to solicit or receive anything of value as a premium for the return of caps, stoppers, corks, stamps or labels taken from any bottle,

§ 2:65. Liquor regulatory offenses (Title 47), 14 West's Pa. Prac., Crim. Offenses &...

case, barrel or package containing liquor or malt or brewed beverage, or to offer or give or solicit or receive anything of value as a premium or present to induce directly the purchase of liquor or malt or brewed beverage, or for any licensee, manufacturer or other person to offer or give to trade or consumer buyers any prize, premium, gift or other inducement to purchase liquor or malt or brewed beverages, except advertising novelties of nominal value which the board shall define. This section shall not prevent any manufacturer or any agent of a manufacturer from offering and honoring coupons which offer monetary rebates on purchases of wines and spirits through State Liquor Stores or purchases of malt or brewed beverages through distributors and importing distributors in accordance with conditions or regulations established by the board. The board may redeem coupons offered by a manufacturer or an agent of a manufacturer at the time of purchase. Coupons offered by a manufacturer or an agent of a manufacturer shall not be redeemed without proof of purchase. This section shall not apply to the return of any monies specifically deposited for the return of the original container to the owners thereof;] (ii) Notwithstanding subclause (i) or any other provision of law, a holder of a restaurant license that is also approved to hold a slot machine license or a conditional slot machine license under 4 Pa.C.S. Part II (relating to gaming) may give liquor and malt or brewed beverages free of charge to any person actively engaged in playing a slot machine.” 47 P.S. § 4-493(24), as amended in 2004, 2005, and 2006.

It is an offense “[f]or any licensee, his servants, agents or employes, except licensees where pyrotechnic displays are performed by a pyrotechnic operator licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives and are approved by a municipal fire official, to store, handle, use or display any pyrotechnics within a building on the licensed premises. For purposes of this clause, ‘pyrotechnics’ shall mean any chemical mixture, including pyrotechnic compositions, intended to produce a visible or audible effect by combustion, deflagration or detonation ...” 47 P.S. § 4-493(30), enacted in 2004.

The Supreme Court has reversed the convictions of 11 Penn State fraternities for furnishing beer to minors in violation of 75 Pa.C.S.A. § 4-493(1) on the ground that statements by undercover officers that they were supplied with a beverage that looked and tasted like beer and that individuals who were subsequently discovered to be minors were supplied with the same beverage did not establish beyond a reasonable doubt that the beverage in question contained one half of one percent or more of alcohol by volume.<sup>4</sup>

Manufacturers, importers, or distributors may be prosecuted for a number of offenses, including the following: selling to anyone in Pennsylvania other than the Liquor Control Board, 47 P.S. § 4-491(7), as amended in 2002; importing alcohol or manufacturing malt beverages without a license, 47 P.S. §§ 4-491(11), as amended in 2002, 4-492(1); transporting beer in other than its original containers or in vehicles without any name or address, 47 P.S. §§ 4-491(12), 4-492(8), as amended in 2002, and (9); selling to any person who illegally sells liquor or beer, 47 P.S. § 4-492(15); or coercing or persuading a licensee to set certain prices, 47 P.S. § 4-492(18). Violation of any of the provisions of §§ 4-491, 4-492, and 4-493 is a misdemeanor, 47 P.S. § 4-494(a). Licenses may also be suspended or revoked. 47 P.S. § 4-494(b).

The General Assembly has enacted several provisions aimed at preventing the conversion of industrial alcohol into alcohol suitable for drinking. Recovering alcohol from denatured alcohol by redistillation or any other process is prohibited. 47 P.S. § 5-518(c). No person may sell or use alcohol taken from a distillery or denaturing plant unless it has been rendered unfit to drink, 47 P.S. § 5-518(b), and neither may any denatured ethyl alcohol produced as fuel be sold or used by anyone other than the producer. 47 P.S. § 5-502.1. (See § 5-519 for penalties.) In addition, any manufacturer who produces denatured alcohol for industrial purposes must file an annual report with the Auditor General. 47 P.S. § 325. Failure to do so or inclusion of any false statement in such a report is a misdemeanor. 47 P.S. § 326.

§ 2:65.Liquor regulatory offenses (Title 47), 14 West's Pa. Prac., Crim. Offenses &...

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In 47 P.S. § 4-498, enacted in 1987 and amended in 2002, the General Assembly prohibited advertising (other than inside licensed premises or in trade journals) of the price of “any malt beverage, cordial, wine or distilled liquor.” Violation of this section is a misdemeanor punishable by a \$50 fine for the first violation and a \$100 fine thereafter.

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Footnotes

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Professor Of Law, University Of Pittsburgh School Of Law

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V. J. R. Bar Corp. v. Com., Liquor Control Bd., 480 Pa. 322, 390 A.2d 163 (1978).

2

Com. v. Tome, 737 A.2d 1239 (Pa. Super. Ct. 1999).

4

Com. v. Tau Kappa Epsilon, 530 Pa. 416, 609 A.2d 791, 76 Ed. Law Rep. 132 (1992).

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## 31 P.L.E. § 11

Pennsylvania Law Encyclopedia > 31-4 LIQUOR > CHAPTER 1 IN GENERAL

### **§ 11. Tort Liability**

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A licensee is not liable to third persons for damages inflicted by customers off the licensed premises, unless the customer who inflicts the damages was sold, furnished, or given liquor when he or she was visibly intoxicated.

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The Liquor Code makes it unlawful to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given, to any person visibly intoxicated, or to any insane person, or to any minor, or to habitual drunkards, or persons of known intemperate habits.<sup>2357</sup> Although violation of this statute constitutes negligence<sup>2358</sup> *per se*,<sup>2359</sup> the breach of the statutory duty to refrain from serving alcohol to visibly intoxicated persons does not, by itself, prove a defendant's liability; even if a patron has been served alcoholic beverages while visibly intoxicated, there will be no civil liability imposed upon the tavern keeper unless the injuries to the patron were proximately caused by his or her intoxication.<sup>2360</sup>

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<sup>2357</sup> 47 P.S. § 4-493(1).

#### **Bar owner not liable for murder**

Where a bar patron shot and killed another customer after the two of them left the bar and went to an American Legion post, defendant, the bar's owner and operator, was not liable under the Dram Shop Act; there was nothing whatsoever to indicate that the murderer was served alcohol while visibly intoxicated at defendant's establishment.—Estate of Mickens v. Stevenson, 57 Pa. D. & C.4th 287, 2002 Pa. Dist. & Cnty. Dec. LEXIS 131 (2002).

#### **Breach of statutory duty**

The breach of the statutory duty to refrain from serving alcohol to visibly intoxicated persons does not, by itself, prove a defendant's liability.—Miller v. Brass Rail Tavern, 702 A.2d 1072, 1997 Pa. Super. LEXIS 3373 (Pa. Super. Ct. 1997).

#### **Evidence properly admitted**

Evidence regarding bar owner's compliance with the Liquor Code responsible alcohol management provisions requirements for its employees, as well as evidence regarding internal policies for bar's employees with regard to service of alcohol to visibly intoxicated persons, was relevant and material to the issue to be determined at trial in negligence and survival action under Dram Shop Act, i.e. whether bar served alcohol to a visibly intoxicated person. Moreover, such evidence was appropriately admitted to rebut bar owner's assertions that its employees were trained in accordance with the Liquor Code. Finally, evidence regarding bar patron's blood alcohol content was relevant to establish patron's intoxication and any error resulting from introduction of testimony about the legal blood alcohol content limit for operating a vehicle was harmless considering extensive testimony regarding patron's conduct and behavior while at bar.—Schuenemann v. Dreemz, LLC, 34 A.3d 94, 2011 Pa. Super. LEXIS 3737 (Pa. Super. 2012).

#### **Insufficient evidence**

## 31 P.L.E. § 11

By statute, no licensee shall be liable to third persons on account of damages inflicted upon them off of the licensed premises by customers of the licensee, unless the customer who inflicts the damages was sold, furnished or given liquor or malt or brewed beverages by the said licensee or his or her agent, servant or employee when the said customer was visibly intoxicated.<sup>2361</sup> However, in interpreting the above statute, the Pennsylvania Supreme Court holds that alcoholic beverage distributors are not immune from liability for damages caused by serving alcohol to a minor, even where the minor who caused the injuries was not the minor served, and even where the minor served was not visibly intoxicated at the time of purchase.<sup>2362</sup> Moreover, as a matter of common law, a commercial licensee of alcoholic beverages can be held liable to a third person for damages proximately caused by the service of alcohol to a minor.<sup>2363</sup> Furthermore, it has been held that a breach of duty occurs with the service of any alcohol to a minor, not just an amount sufficient to intoxicate the minor,<sup>2364</sup> and that this duty extends beyond the minor to whom the liquor was served and encompasses those who may be affected by the illegal service.<sup>2365</sup>

**Punch-card system.** The statutory prohibition of the Dram Shop Act is not limited to sellers of alcohol beverages who are licensed by the Pennsylvania Liquor Control Board.<sup>2366</sup>

**Negligence.** A plaintiff may hold an establishment liable for negligence in serving a visibly intoxicated person. The Dram Shop Law does not bar all common-law negligence claims, but rather sets forth a duty to not serve a visibly intoxicated person. Whether the restriction in the Law limiting suits to those involving harm caused by the defendant's having served a visibly intoxicated person applies to the common law is the subject of conflicting decisions in the trial courts.<sup>2367</sup>

**Social host liability.** There is no common-law liability on the part of a social host for the service of intoxicants to his or her adult guests.<sup>2368</sup> Accordingly, a nonlicensed person who furnishes intoxicants to an intoxicated person for no remuneration cannot be held civilly liable for injuries to another allegedly caused by the intoxicated person.<sup>2369</sup> However, a federal district court has declared that under the statute making it unlawful for anyone to furnish liquor to a minor or visibly intoxicated person, a social fraternity, which allegedly served liquor to an intoxicated minor,

Evidence was insufficient to establish that defendant restaurant had violated the Dram Shop Act, 47 P.S. § 4-493, even though a police officer claimed that he was injured in an altercation with defendant's patrons, who became intoxicated while attending a New Year's Eve party on defendant's premises; whether any of the patrons had been intoxicated, or whether they had been served alcoholic beverages by defendant while visibly intoxicated, was not known and could not be proved.—Holpp v. Fez, Inc., 440 Pa. Super. 512, 656 A.2d 147 (1995).

### Police responding to call for assistance

A police officer who enters a property in his official capacity and in response to a call for assistance is considered a licensee, and the defendant bar owners were not liable to the plaintiff police officer for his injuries on his negligence claim because he knew he was going to join other officers at a bar where a disturbance was ongoing and knew and recognized the chance of confrontation and altercation and propensity for violence with patrons who were intoxicated.—Juszczyszyn v. Taiwo, 39 Pa. D. & C.5th 47 (C.P. Philadelphia 2014).

### Question for jury

Circumstantial evidence was sufficient to create a jury question as to whether decedent was served alcohol in a hotel when he was visibly intoxicated, in violation of 47 P.S. § 4-493 (1), where it showed that: (1) decedent drank the equivalent of 14 beers during a two-hour period; (2) immediately after he left, he was stumbling and could not identify where he lived; and (3) six hours later, his blood alcohol content was 0.214 percent; thus, a trial court improperly granted summary judgment to the hotel.—Fandozzi v. Kelly Hotel, Inc., 711 A.2d 524 (Pa. Super. Ct. 1998).

### Statute construed

The Pennsylvania Liquor Code (Dram Shop Act), 47 Pa. Stat. Ann. § 4-493, clearly imposes a duty on liquor licensees to refrain from selling liquor to a visibly intoxicated individual.—Schuenemann v. Dreemz, 2011 PA Super 236, 2011 Pa. Super. LEXIS 3737 (Pa. Super. Ct. 2011).

## 31 P.L.E. § 11

could be held civilly liable for injuries to another allegedly caused by the intoxicated person.<sup>2370</sup> Moreover, the cause of action against the social host for serving intoxicating liquors to the point of intoxication to persons under age 21 may be maintained by the minor himself or herself,<sup>2371</sup> but the host may assert as a defense to the minor's negligence action against him or her the minor's contributory negligence.<sup>2372</sup>

**Social host liability** extends only to persons who "knowingly furnish" alcohol to a minor.<sup>2373</sup> "Knowingly furnished" translates into the alleged negligent social host having had actual knowledge,<sup>2374</sup> as opposed to imputed knowledge imposed as a result of the relationship.<sup>2375</sup>

The test for determining whether a social host is civilly liable for injuries sustained by a minor as a result of consuming alcohol is whether the host intentionally rendered substantial assistance to the minor in his or her consumption of the alcohol, not whether the host actually and physically served the alcohol to the minor.<sup>2376</sup>

A minor may not be held liable as a social host for providing alcohol to another minor who is subsequently injured.<sup>2377</sup>

**Governmental immunity.** A volunteer fire company is entitled to governmental immunity for serving alcohol to a visibly intoxicated individual who is subsequently injured by a motor vehicle while walking home.<sup>2378</sup>

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Under the Liquor Code, 47 P.S. § 4-493, if a tavern keeper serves intoxicating liquor to anyone who is in a visible state of intoxication, he violates the law, and if, as a result of such intoxication, the consumer of the intoxicants injures someone else or himself, the tavern keeper is liable in tort.—Connelly v. Ziegler, 251 Pa. Super. 521, 380 A.2d 902 (1977).

<sup>2358</sup> Majors v. Brodhead Hotel, 416 Pa. 265, 205 A.2d 873 (1965).

Jardine v. Upper Darby Lodge, 413 Pa. 626, 198 A.2d 550 (1964).

Smith v. Clark, 411 Pa. 142, 190 A.2d 441 (1963).

Schuenemann v. Dreemz, 2011 PA Super 236, 2011 Pa. Super. LEXIS 3737 (Pa. Super. Ct. 2011).

Miller v. Brass Rail Tavern, 702 A.2d 1072, 1997 Pa. Super. LEXIS 3373 (Pa. Super. Ct. 1997).

Detwiler v. Brumbaugh, 441 Pa. Super. 110, 656 A.2d 944 (1995).

P.L.E.

**Burden of proof**

Although the mere sale of intoxicating beverages to a minor is illegal, and thus constitutes negligence in the event of injury to the minor, the burden of proving such negligence remains on the plaintiff.—Stolz v. Carroll, 32 Pa. D. & C.2d 653 (1963).

**Circumstantial evidence**

In a wrongful death and survival action which arose out of decedent's death in a drunk driving accident, there was no danger of prejudice in the admission of decedent's blood alcohol test results with regard to a restaurant's alleged violation of the Liquor Code, 47 P.S. § 4-493 (1); such test results were relevant circumstantial evidence bearing on the question of whether decedent was visibly intoxicated when he was served cocktails at the restaurant's bar.—Couts v. Ghion, 281 Pa. Super. 135, 421 A.2d 1184 (1980).

**In general**

The Pennsylvania Supreme Court has adopted a dram shop doctrine as a matter of common law negligence, namely, a licensee may be liable for injury caused by the sale of liquor to a visibly intoxicated patron. In abrogating the common law rule of non-liability for a liquor vendor. The Court recognizes that when a common law rule, in effect, would pervert justice and contravene legislative and societal needs, and it is not in the best interests of justice or public policy, a change by the court is mandated.—Rivero v. Timblin, 2010 Pa. Dist. & Cnty. Dec. LEXIS 149, 12 Pa. D. & C.5th 233 (2010).

<sup>2359</sup> Schuenemann v. Dreemz, 2011 PA Super 236, 2011 Pa. Super. LEXIS 3737 (Pa. Super. Ct. 2011).

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<sup>2360</sup> Jardine v. Upper Darby Lodge, 413 Pa. 626, 198 A.2d 550 (1964).

Miller v. Brass Rail Tavern, 702 A.2d 1072, 1997 Pa. Super. LEXIS 3373 (Pa. Super. Ct. 1997).

**Baseball team; stadium concessionaire**

A baseball team and stadium concessionaire were not liable under the Dram Shop Act, 47 P.S. § 4-493 (1), for injuries suffered by plaintiff in a traffic collision with a driver who was driving under the influence of alcohol after coming home from a baseball game.—Conner v. Duffy, 438 Pa. Super. 277, 652 A.2d 372, 1994 Pa. Super. LEXIS 3782 (1994).

**Inference**

Upon proof that a hotel, sued by a patron for injuries received when he jumped or fell from a ledge onto the hotel's kitchen roof, had served liquor to the patron while he was visibly intoxicated and that injury resulted from his intoxication, an inference that the illegal serving substantially caused the injury was authorized.—Majors v. Brodhead Hotel, 416 Pa. 265, 205 A.2d 873 (1965).

**Instructions**

A charge which left the jury with the impression that defendants would be liable for injuries sustained by plaintiff merely because they served him intoxicants, and he was a minor, was error; the charge did not make clear that the jury was required to find that negligence would have to be the proximate cause of plaintiff's injuries.—Smith v. Clark, 411 Pa. 142, 190 A.2d 441 (1963).

**No vicarious liability**

## 31 P.L.E. § 11

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A commercial tenant's violation of 47 P.S. § 4-493 (1) did not extend vicarious liability to the landlord in an injured plaintiff's dram shop action against the minor who had been served.—McCrery v. Scioli, 336 Pa. Super. 455, 485 A.2d 1170 (1984).

### Private statutory cause of action not created

The Pennsylvania Liquor Code (Dram Shop Act), 47 Pa. Stat. Ann. § 4-493, does not create a private statutory cause of action. Rather, the Liquor Code is a penal statute which contains a legislative standard of conduct for which civil liability may be imposed, by way of a common law tort action, upon a defendant. Section 4-493 imposes a duty upon the defendant-licensees, the violation of which is negligence *per se* and gives rise to an action in tort.—Schuenemann v. Dreemz, 2011 PA Super 236, 2011 Pa. Super. LEXIS 3737 (Pa. Super. Ct. 2011).

### Proximate cause

In case of an ordinary able-bodied man, it is the consumption of alcohol, rather than the furnishing of alcohol, which is the proximate cause of any subsequent occurrence.—Klein v. Raysinger, 504 Pa. 141, 470 A.2d 507 (1983).

A tavern keeper is liable in tort for injuries sustained by a minor to whom he served intoxicants if the minor's intoxication was the proximate cause of his injuries, notwithstanding that the minor's tender age might have made him more susceptible to the effects of alcohol than an adult.—Smith v. Evans, 421 Pa. 247, 219 A.2d 310 (1966).

An accident whereby a hotel patron, who had been served liquor at the hotel while allegedly visibly intoxicated, either jumped or fell from a hotel ledge onto the roof of the hotel's kitchen was not so freakish as to preclude the hotel's violation of a statute prohibiting the sale of liquor to one visibly intoxicated from being the proximate cause of the accident.—Majors v. Brodhead Hotel, 416 Pa. 265, 205 A.2d 873 (1965).

Although licensees breached their duty of care under the Dram Shop Act by serving alcohol to a minor, they were not liable for injuries the minor sustained when he was shot by police after threatening his father and the police with a knife while intoxicated; the minor's assault upon his father and the police, as well as his subsequent wounding by police, were not natural and probable results of the licensees' failure to comply with the Act, and so the licensees' negligence was not the proximate cause of the minor's injuries.—Reilly v. Tiergarten, Inc., 430 Pa. Super. 10, 633 A.2d 208 (1993).

### Required nexus not established

In order to recover in a civil action for violations of the Liquor Code regarding furnishing alcoholic beverages to a visibly intoxicated person, a plaintiff must prove that the customer was served alcohol while visibly intoxicated and that this alleged violation was the proximate cause of the customer's injuries. Where the plaintiff's only evidence consisted of (1) the fact that a decedent was found unconscious 50 yards from the defendant-bar at 3 A.M., and (2) the testimony of a witness who saw decedent drinking in the bar between 10:15 and 10:40 P.M. and slurring his speech (though the witness did not testify that any employee of the defendant sold, furnished, or gave the decedent alcohol), such evidence was insufficient to sustain the plaintiff's burden of proving a nexus between the defendant's acts and the decedent's injuries.—Warner v. Conestoga Bar Restaurant Inc., 37 Pa. D. & C.4th 387 (C.P. 1997).

<sup>2361</sup> 47 P.S. § 4-497.

DeAngelis v. KC's Pub, LLC (In re KC's Pub, LLC), 428 B.R. 612, 2010 Bankr. LEXIS 1664, 53 Bankr. Ct. Dec. (LRP) 95, 63 Collier Bankr. Cas. 2d (MB) 1463 (Bankr. M.D. Pa. 2010).

### Absence of direct eyewitness evidence

A plaintiff can prove dram shop liability in the absence of direct eyewitness evidence that an individual was served alcohol at a time when he or she was visibly intoxicated.—Fandozzi v. Kelly Hotel, Inc., 711 A.2d 524 (Pa. Super. Ct. 1998).

### Duty pursuant to Restatement (Second) of Torts



Plaintiff asserts that Defendant had a duty pursuant to the Restatement (Second) of Torts to prevent other Defendant from driving while intoxicated. There is a common-law rule that "there is no duty to control the conduct of a third party to protect another from harm, except where a defendant stands in some special relationship with either the person whose conduct needs to be controlled or in a relationship with the intended victim of the conduct which gives the intended victim a right to protection. To support Plaintiff's theory of liability, he asserts that Defendants were "specifically mindful of the precise dangers... posed to the general public" because the Pennsylvania Liquor Control Board had recently threatened to revoke a liquor license due to approximately twenty-three incidents of fights, public intoxication, assaults, and other disorderly conduct.—Druffner v. O'Neill, 2011 U.S. Dist. LEXIS 31146 (E.D. Pa. Mar. 23, 2011).

### **Employee liability**

Trial court's holding that 47 P.S. § 4-497 insulated a licensee's individual employees from civil liability to third persons for a Dram Shop violation was an erroneous interpretation of the statute, in that § 4-497 was clearly a limiting provision, designed to shield licensees from liability to third parties except in those instances where the patron served was visibly intoxicated; under 47 P.S. § 4-497, a duty was clearly placed on an employee of the licensee to refrain from selling liquor to a visibly intoxicated individual, a violation of the requirements of the statute was deemed negligence per se, and if the violation was the proximate cause of a plaintiff's injuries, then the employee was liable.—Detwiler v. Brumbaugh, 441 Pa. Super. 110, 656 A.2d 944 (1995).

### **Liability imposed**

Terwilliger v. Kitchen, 781 A.2d 1201, 2001 PA Super 215 (2001).

### **No liability imposed**

Johnson v. Harris, 419 Pa. Super. 541, 615 A.2d 771 (1992).

Simon v. Shirley, 269 Pa. Super. 364, 409 A.2d 1365 (1979).

### **Liquor Control Board not "licensee"**

State Liquor Control Board was not a "licensee" within the meaning of a Liquor Code provision shielding licensees from civil liability for the sale of liquor to customers who were not visibly intoxicated; hence, the Board could not rely on that provision to shield itself from liability to a third party for damages caused by the sale of liquor to a minor.—Reber v. Commonwealth, Pennsylvania Liquor Control Bd., 101 Pa. Commw. 397, 516 A.2d 440 (1986).

### **Sufficiency of evidence**

Findings that a motorist, whose automobile struck and injured a pedestrian, was intoxicated when he was sold liquor at defendant's establishment, and that the motorist's intoxication was the proximate cause of the pedestrian's injuries, were supported by competent and sufficient evidence.—Jardine v. Upper Darby Lodge, 413 Pa. 626, 198 A.2d 550 (1964).

<sup>2362</sup> Matthews v. Konieczny, 515 Pa. 106, 527 A.2d 508 (1987) (holding, however, that distributors have the right to rebut liability by showing comparative negligence).

Barrie v. Pennsylvania Liquor Control Bd., 137 Pa. Commw. 514, 586 A.2d 1017, 1991 Pa. Commw. LEXIS 73 (1991) (not a social host, but a licensee).

<sup>2363</sup> Matthews v. Konieczny, 515 Pa. 106, 527 A.2d 508 (1987).

### **Crimes code**

As a matter of common law, a commercial licensee of alcoholic beverages can be held liable to a third person for damages proximately caused by the service of alcohol to a minor. The existence of the common law cause of action is not limited by the Liquor Code to instances in which the minor was visibly intoxicated at the time of the sale because the Crimes Code prohibits

minors purchasing or consuming alcohol.—*Rivero v. Timblin*, 2010 Pa. Dist. & Cnty. Dec. LEXIS 149, 12 Pa. D. & C.5th 233 (2010).

<sup>2364</sup> *Omer v. Mallick*, 515 Pa. 132, 527 A.2d 521 (1987).

### Indirect sale

A beer distributor's duty to refrain from selling alcoholic beverages to minors can be breached by an indirect sale to minors through an adult intermediary, if it is known or should be known that the alcohol is being purchased for use by minors.—*Jardine v. Upper Darby Lodge*, 413 Pa. 626, 198 A.2d 550 (1964).

<sup>2365</sup> *Matthews v. Konieczny*, 515 Pa. 106, 527 A.2d 508 (1987).

### Injuries to third persons

A licensed beer distributor who unlawfully sells beer to a minor can be held liable to a third person for injuries caused by the minor's subsequent intoxication.—*McGaha v. Matter*, 365 Pa. Super. 6, 528 A.2d 988 (1987).

<sup>2366</sup> A snowmobile club sold liquor for purposes of the Pennsylvania Dram Shop Act by selling punch-cards for a fixed price and punching the card each time a member received an alcoholic drink upon request (47 P.S. § 4-493(1)).—*Hinebaugh v. Pa. Snowseekers Snowmobile Club*, 63 Pa. D. & C.4th 140, 2003 Pa. Dist. & Cnty. Dec. LEXIS 113 (2003).

<sup>2367</sup> Court ruled that other common-law negligence claims are viable (47 P.S. §§ 4-493(1), 4-497).—*Rivero v. Timblin*, 2010 Pa. Dist. & Cnty. Dec. LEXIS 149, 12 Pa. D. & C.5th 233 (2010).

### Burden of proof

In dismissing the claims against the restaurant for violation of the Dram Shop Act, the court noted that there was no direct testimony that the defendant/driver was visibly intoxicated while being served alcoholic beverages and the court concluded that the circumstantial evidence of his pre-accident alcohol consumption, the fact that ten minutes after leaving the restaurant he could not walk straight, had to hold onto his truck to stand, had slurred speech, bloodshot and glassy eyes and appeared obviously intoxicated to witnesses, was insufficient to overcome the evidence of his appearance when served.—*Jenkins v. Krivosh*, 45 Pa. D. & C.5th 290 (C.P. Lawrence 2015).

In order to sustain its burden of proof for a 47 Pa. Stat. Ann. § 4-493(1) claim, a decedent's estate has to prove not only that the decedent was served alcohol while she was visibly intoxicated, and that the intoxication was the proximate cause of her harm. In Pennsylvania, the bartender or server must not provide more alcohol to a patron when the signs of intoxication are visible. Civil liability is based on appearances rather than medical diagnosis.—*Schuenemann v. Dreemz, LLC*, 21 Pa. D. & C.5th 259, 2011 Phila. Ct. Com. Pl. LEXIS 33 (2011).

### Failing to protect members of the general public

Moving Defendants argue that the Dram Shop Act supplants all other common law remedies against licensees and their employees, and that "there is no cognizable claim under Pennsylvania law against a licensee or its employees for failing to protect members of the general public."—*Druffner v. O'Neill*, 2011 U.S. Dist. LEXIS 31146 (E.D. Pa. Mar. 23, 2011).

### Police officer

The trial court properly sustained a bar's preliminary objections in the nature of a demurrer to a police officer's complaint, alleging negligence as a result of being assaulted by an intoxicated patron while responding to a disturbance in the bar, because whether the officer was deemed a licensee or an invitee, the bar breached no duty to him under the fireman's rule. The bar only had a duty to use reasonable care to protect the officer from unknown or nonobvious dangers, and encountering an intoxicated patron was an obvious and known risk in the circumstances. The Dram Shop Act liability claims under 47 P.S. §§ 4-493 and 4-497 also failed because the officer was not within the class of individuals that the Act was designed to protect.—*Juszczyszyn v. Taiwo*, 113 A.3d 853 (Pa. Super. 2015).

## 31 P.L.E. § 11

<sup>2368</sup> C.C.H. v. Phila. Phillies, Inc., 596 Pa. 23, 940 A.2d 336, 2008 Pa. LEXIS 99 (2008).

Alumni Ass'n v. Sullivan, 524 Pa. 356, 572 A.2d 1209, 1990 Pa. LEXIS 90 (1990).

Congini v. Portersville Valve Co., 470 A.2d 515 (1983).

Winwood v. Bregman, 788 A.2d 983, 2001 PA Super 329, 2001 Pa. Super. LEXIS 3444 (Pa. Super. Ct. 2001).

Klein v. Ravsinger, 302 Pa. Super. 248, 448 A.2d 620 (1982), aff'd, remanded on other grounds, 504 Pa. 141, 470 A.2d 507 (1983) (cause of action does not exist against a nonlicensed, social host who furnishes alcoholic beverages to an intoxicated guest).

### **Liquor Code inapplicable**

Even if an employer had furnished intoxicating liquors to an employee when the employee was in a state of visible intoxication, another employee, injured in an automobile accident caused by the intoxicated employee, was not entitled to recover under the statute prohibiting a licensee from selling, furnishing or giving any liquor to a visibly intoxicated person.—Manning v. Andy, 454 Pa. 237, 310 A.2d 75 (1973).

The Liquor Code, which made liquor licensees civilly liable for injuries proximately caused by the unlawful sale of alcohol to visibly intoxicated customers, did not apply where defendant was not a licensee, but merely a social host.—Burkhart v. Brockway Glass Co., 352 Pa. Super. 204, 507 A.2d 844, 1986 Pa. Super. LEXIS 10179 (1986).

### **No social host liability**

The phrase "social host liability" designates a claim in negligence against a person who provides alcoholic beverages to another without remuneration. Accordingly, party promoters were not subject to social host liability for injuries sustained by passengers in a vehicle collision after leaving the party, at which the driver allegedly consumed alcohol and drugs, where the passengers (1) contended that the promoters encouraged drug use in flyers advertising the party, but (2) failed to allege that the promoters actually furnished drugs to the driver or that they were aware of the degree of consumption of drugs and alcohol at the party.—Looby v. Local 13 Prods., 2000 PA Super 124, 751 A.2d 220, 2000 Pa. Super. LEXIS 387 (Pa. Super. Ct. 2000).

<sup>2369</sup> Manning v. Andy, 454 Pa. 237, 310 A.2d 75 (1973).

Bemis v. Gumbeski, 369 Pa. Super. 101, 534 A.2d 1099, 1987 Pa. Super. LEXIS 9691 (1987).

Sites v. Cloonan, 328 Pa. Super. 481, 477 A.2d 547 (1984).

<sup>2370</sup> Giardina v. Solomon, 360 F. Supp. 262 (M.D. Pa. 1973).

### **Punitive damages**

Meyers v. Koman, 36 Pa. D. & C.3d 229, 1984 Pa. Dist. & Cnty. Dec. LEXIS 129 (1984).

<sup>2371</sup> Congini v. Portersville Valve Co., 504 Pa. 157, 470 A.2d 515 (1983).

### **Negligence per se**

Herr v. Booten, 398 Pa. Super. 166, 580 A.2d 1115 (1990), appeal granted, 528 Pa. 635, 598 A.2d 992 (1991) (day before 21st birthday).

<sup>2372</sup> Congini v. Portersville Valve Co., 504 Pa. 157, 470 A.2d 515 (1983).

Miller v. Brass Rail Tavern, 702 A.2d 1072, 1997 Pa. Super. LEXIS 3373 (Pa. Super. Ct. 1997).

## 31 P.L.E. § 11

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Burkhart v. Brockway Glass Co., 352 Pa. Super. 204, 507 A.2d 844, 1986 Pa. Super. LEXIS 10179 (1986).

Muntz v. DOT, 157 Pa. Commw. 514, 630 A.2d 524, 1993 Pa. Commw. LEXIS 484 (1993).

Barrie v. Pennsylvania Liquor Control Bd., 137 Pa. Commw. 514, 586 A.2d 1017, 1991 Pa. Commw. LEXIS 73 (1991).

<sup>2373</sup> Congini v. Portersville Valve Co., 504 Pa. 157, 470 A.2d 515 (1983).

Miller v. International Sigma Pi Fraternity, 41 Pa. D. & C.4th 282 (C.P. 1999).

Harry v. McNay, 17 Pa. D. & C.4th 158 (C.P. 1992).

### Breaching general duty imposed

**Social host liability** is intended for those persons who knowingly serve or furnish alcohol to **minors**, thereby breaching the general duty imposed on all persons not to place others at a foreseeable risk of harm.—Cleveland v. Remick, 58 Pa. D. & C.4th 570 (County Ct. 2000).

### Ascertaining meaning of social host

In ascertaining the meaning of the “social host” and in the context of the law’s concern with underage drinking, a fair definition will be a defendant who knowingly and intentionally allows premises over which he has control to be used for the purpose of consumption of alcohol by **minors**.—Cassaro v. Zodiac Tour & Travel, Inc., 4 Pa. D. & C.4th 132, 1989 Pa. Dist. & Cnty. Dec. LEXIS 111 (1989).

### Complaint legally sufficient to state claim based on **social host liability**

In plaintiff’s wrongful death and survival action arising from her son’s death as a result of a single gunshot wound to the head, which occurred at defendants’ residence during an unsupervised party, plaintiff claimed that the defendants were negligent in allowing **minors** to consume alcohol on their premises and in allowing **minors** to have dangerous instrumentalities, including firearms, on their premises. The combination of **social host liability** for allowing the use of alcohol, drugs and a gun without adult supervision, as alleged in plaintiff’s complaint, arguably created an unreasonably dangerous condition and therefore, this theory, as pled in plaintiff’s complaint, was legally sufficient to state a claim upon which relief could be granted, if believed by a jury.—Cleveland v. Remick, 58 Pa. D. & C.4th 570, 2000 Pa. Dist. & Cnty. Dec. LEXIS 193 (2000).

<sup>2374</sup> Novak v. Kilby, 167 Pa. Commw. 217, 647 A.2d 687 (1994).

Miller v. International Sigma Pi Fraternity, 41 Pa. D. & C.4th 282 (C.P. 1999).

### Condonation sufficient

Liability may be imposed on a college for furnishing alcoholic beverages to an intoxicated minor, where it does not actually furnish alcohol to the minor but permits, condones or facilitates the consumption of alcohol by students under its supervision and control.—Seig v. Wilkes College, 3 Pa. D. & C.4th 92, 1989 Pa. Dist. & Cnty. Dec. LEXIS 166 (1989).

### No actual knowledge

There was no indication in the record that the corporate appellee or any agent of appellee knowingly served intoxicants to decedent. An allegation that appellee should have known that alcohol was being served on its premises was insufficient to sustain a cause of action, as the appellee must have knowingly furnished intoxicants to a minor. As such, appellants failed to illustrate that they had a meritorious cause of action under Pa. R.C.P. No. 3051. Therefore, no relief was due.—Bartolomeo v. Marshall, 69 A.3d 610 (Pa. Super. 2013).

### Parents

Parents whose child's friends consumed alcohol stored in an unlocked area of the parents' home, without the parents' knowledge, were not liable under the theory of **social host liability** for death and injury suffered by two of the friends in a single-car automobile accident; there was no evidence that the parents agreed to an underage drinking party at their home, or that the alcohol was purchased for the purpose of consumption by **minors**.—*Winwood v. Bregman*, 788 A.2d 983, 2001 PA Super 329, 2001 Pa. Super. LEXIS 3444 (Pa. Super. Ct. 2001).

<sup>2375</sup> *Miller v. International Sigma Pi Fraternity*, 41 Pa. D. & C.4th 282 (C.P. 1999).

### College

A college, as landlord for a fraternity house, did not breach its duty to students and the decedent by allowing the fraternity to build a bar in its basement or by failing to monitor consumption of alcohol, where: (1) no representatives of the college were present when decedent was drinking at the fraternity house; (2) it was not shown that the college assisted in procuring or distributing alcohol in any way; and (3) alcohol was served to decedent in violation of the college's alcohol policy and before a scheduled party was to have begun.—*Millard v. Osborne*, 416 Pa. Super. 475, 611 A.2d 715 (1992).

### National chapter of fraternity

*Jefferis v. Commonwealth*, 371 Pa. Super. 12, 537 A.2d 355 (1988).

### Not stopping underage drinking

While plaintiff does not assert that Lehigh is liable for having "knowingly furnished" alcohol to her, she does argue that Lehigh was negligent for not stopping underage drinking as allegedly required by the Social Policy. We find the distinction, if any, minor since in either case the negligence upon which liability is predicated is that the adult failed in its alleged duty to prevent, or assisted, drinking by underage persons. Lehigh cannot be potentially liable for not stopping plaintiff's underage drinking of which it allegedly was aware.—*Booker v. Lehigh Univ.*, 800 F. Supp. 234, 1992 U.S. Dist. LEXIS 11610 (E.D. Pa. 1992).

### Owner of leased premises

As a matter of law, a landowner who did not actively furnish alcoholic beverages could not be held liable, where its premises were leased to a social host for the purpose of holding a graduation party, during which alcoholic beverages were furnished to a minor whose intoxicated state resulted in a fatal motor vehicle accident.—*Vigilante v. Knights of Columbus*, 4 Pa. D. & C.4th 668 (C.P. 1990).

<sup>2376</sup> *Miller v. International Sigma Pi Fraternity*, 41 Pa. D. & C.4th 282 (C.P. 1999).

<sup>2377</sup> *Kapres v. Heller*, 417 Pa. Super. 371, 612 A.2d 987 (1992), appeal granted, 533 Pa. 660, 625 A.2d 1193 (1993), aff'd, 536 Pa. 551, 640 A.2d 888 (1994).

*Muntz v. DOT*, 157 Pa. Commw. 514, 630 A.2d 524 (1993).

The plaintiff argued that two 20-year-old **minors** were liable as social hosts when they furnished alcohol to a 17-year-old minor who eventually drove the car in which she was injured in an accident and he died, but the court found that a minor cannot be liable as a social host to another minor and there was no distinction for **minors** 17 and under and those 18-to-21 years of age.—*Cicardo v. Manquai*, 45 Pa. D. & C.5th 254 (C.P. Monroe 2015).

Under the social host doctrine, a minor cannot be held liable for injuries sustained as a proximate result of furnishing alcohol to another minor.—*Currie v. Phillips*, 70 Pa. D. & C.4th 401, 2005 Pa. Dist. & Cnty. Dec. LEXIS 164 (2005).

*Harry v. McNay*, 17 Pa. D. & C.4th 158 (Pa. C.P. 1992).

2378

### Despite not being engaged in fire-fighting activities

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## 31 P.L.E. § 51

*Pennsylvania Law Encyclopedia* > 31-4 LIQUOR > CHAPTER 3 OFFENSES

### **§ 51. In General**

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Although the penalty provisions of the Liquor Code are to be strictly construed, they are not to be construed so as to defeat the intent of the Legislature.

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Violations of the Liquor Code must be followed by penalties which will effectually discourage their continuance.<sup>2778</sup> Although the penalty provisions of the Liquor Code are to be strictly construed, they are not to be construed so as to defeat the intent of the Legislature.<sup>2779</sup>

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<sup>2778</sup> Appeal of Martin's Grill, Inc., 149 Pa. Super. 185, 27 A.2d 293 (1942).

## 31 P.L.E. § 51

Offenses against the liquor laws are statutory crimes, not being indictable or punishable at common law, and it is therefore a general rule that if a sale of intoxicating liquor, or any other act with relation to liquors is made the basis of a prosecution, the act complained of must be shown to be within the terms of some valid and operative statute, which was in force before the commission of the alleged offense, and which made it a crime and prescribed a penalty or punishment.<sup>2780</sup>

The statutes broadly prohibit the importation and sale of alcohol<sup>2781</sup> or liquor<sup>2782</sup> or the possession thereof<sup>2783</sup> by any person except in accordance with the regulations of the Liquor Control Board, and it is expressly declared unlawful for any person to violate any rules and regulations adopted by the Board to insure the equitable wholesale and retail sale and distribution of liquor and alcohol through the Pennsylvania Liquor Stores.<sup>2784</sup>

It is expressly made unlawful for any person, except a manufacturer or the Liquor Control Board or the holder of a sacramental wine license or an importer's license, to possess or transport any liquor or alcohol within Pennsylvania which was not either lawfully acquired prior to January 1, 1934, or has been purchased from a Pennsylvania Liquor Store in accordance with the regulations of the Liquor Control Board,<sup>2785</sup> and the purchase of liquor or alcohol from any person or source other than a Pennsylvania Liquor Store, except in accordance with the provisions of the Liquor Code or the regulations of the Liquor Control Board, is unlawful.<sup>2786</sup> It is also unlawful to use decanters of alcoholic beverages except has provided by the Liquor Code,<sup>2787</sup> and to fail to break empty liquor containers, except those decanter packages that the board determines to be decorative, unless acting as a participant in a municipal or a voluntary recycling program.<sup>2788</sup>

The Code also makes it a punishable offense for restaurant and hotel liquor licensees to sell liquor at any place except on the licensed premises,<sup>2789</sup> for any manufacturer or licensed importer to sell liquor to anyone in the Commonwealth except the Liquor Control Board, and in the case of a manufacturer, to the holder of a sacramental wine license or an importer's license,<sup>2790</sup> for any licensee or his or her agent or employee to fortify, adulterate or contaminate liquor,<sup>2791</sup> for a liquor licensee permitted to deliver liquor to make any deliveries except in his or her

*Commonwealth, Pennsylvania Liquor Control Bd. v. Kehler, 114 Pa. Commw. 310, 538 A.2d 979 (1988)* (gambling on premises carrying liquor license).

*Revocation of License of Americus Hose Co., 16 Pa. D. & C.3d 578 (1980)* (Liquor Control Board exceeds scope of its authority under Liquor Code by levying fines against private, nonprofit licensee after criminal charges of illegal gambling have been dismissed against officers of licensee and further criminal prosecution has been enjoined).

*Mt. Summit Inn, Inc. License, 3 Pa. D. & C.3d 248 (1977)* (licensee is not guilty of violation of Liquor Code by reason of false statement in his application where falsification was unintentional).

<sup>2779</sup> *Commonwealth v. Mutual Union Brewing Co., 252 Pa. 168, 97 A. 206 (1916).*

### Legislative intent

Intent of legislature in enacting Liquor Code was to place high degree of responsibility upon holder of a liquor license to make certain that neither he nor anyone in his employ commit any of the prohibited acts upon the licensed premises; such a burden of care is imposed upon the licensee in order to protect public from potentially noxious effects of an inherently dangerous business.—*Pennsylvania State Police, Bureau of Liquor Control Enforcement v. La Caffè, Inc., 672 A.2d 849 (Pa. Commw. Ct. 1996).*

<sup>2780</sup> *Commonwealth v. Cooper, 28 Pa. D. & C.2d 737 (1962).*

<sup>2781</sup> 47 P.S. § 4-491(8).

<sup>2782</sup> 47 P.S. § 4-491(11).

### “Transfer” construed



## 31 P.L.E. § 51

own vehicles, or in the vehicle of another person duly authorized to transport liquor within this Commonwealth,<sup>2792</sup> and for anyone to offer commissions or gifts to members of the Liquor Control Board or to any other employee of the Commonwealth.<sup>2793</sup>

Additionally, the employment of persons for improper purposes is prohibited.<sup>2794</sup>

It shall be unlawful for any licensee, his or her servants, agents, or employees, to consume liquor or malt or brewed beverages while tending bar or otherwise serving liquor or malt or brewed beverages.<sup>2795</sup>

*Intent.* Ordinarily, under the common law of crimes, intent is a necessary ingredient of a criminal offense, but, generally speaking, it is not a necessary ingredient of violations of the police measures of the Liquor Code.<sup>2796</sup> For example, it has been held not necessary to prove a criminal intent for violations such as the sale of liquor without license,<sup>2797</sup> the unlicensed possession and transportation of liquor,<sup>2798</sup> or the unlicensed manufacture thereof.<sup>2799</sup> However, it has been held not to be a criminal offense for a carrier to deliver liquor to a purchaser where the carrier does not know the sale is unlawful.<sup>2800</sup>

The intoxicating quality of liquor has never been a criterion of statutes prohibiting the unlicensed possession and sale of distilled liquors and malt beverages,<sup>2801</sup> although fitness for beverage purposes is an essential attribute of "liquor" under the statutes.<sup>2802</sup>

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"Transfer" within statute providing that sale shall include any transfer of liquor for consideration includes transfer of possession as well as title and transfer of possession is not complete until customer's dominion over alcoholic beverage is sufficiently unfettered to enable him to consume beverage without necessity of any further action of seller.—*In re Hankin, 202 Pa. Super. 100, 195 A.2d 164 (1963).*

<sup>2783</sup> *47 P.S. § 4-491(9).*

<sup>2784</sup> *47 P.S. § 4-491(13).*

<sup>2785</sup> *47 P.S. § 4-491(2).*

#### **Distinction between corporation and officer**

Corporate liquor licensee, whose sole officer was arrested for bringing liquor into Pennsylvania from out of state, was not liable for resulting \$250 fine imposed under liquor code, where violation did not occur on licensee's premises and was not otherwise connected with officer's relationship to licensee, in that the liquor was purchased for a wedding and not for use by licensee, and where case for obliterating the legal distinction between officer and licensee was not made.—*Pennsylvania State Police, Bureau of Liquor Control Enforcement v. La Caffè, Inc., 672 A.2d 849 (Pa. Commw. Ct. 1996).*

<sup>2786</sup> 47 P.S. § 4-491(3).

<sup>2787</sup> 47 P.S. § 47-491(4).

<sup>2788</sup> 47 P.S. § 4-491(5).

<sup>2789</sup> 47 P.S. § 4-491(6).

<sup>2790</sup> 47 P.S. § 4-491(7).

47 P.S. § 4-411 (interlocking of manufacturing business and retail sale prohibited).

<sup>2791</sup> 47 P.S. § 4-491(10).

### **Strict liability**

Liquor licensee is strictly liable for violations of this section prohibiting adulteration and/or contamination of liquor and need not act affirmatively or intentionally to be found in violation.—Halter v. Commonwealth, Pennsylvania Liquor Control Bd., etc., 134 Pa. Commw. 3, 579 A.2d 983 (1990).

<sup>2792</sup> 47 P.S. § 4-491(12).

<sup>2793</sup> 47 P.S. § 4-491(14).

<sup>2794</sup> 47 P.S. § 4-493(25).

### **Topless go-go dancer**

Scarcia Appeal, 46 Pa. D. & C.2d 742 (1968).

<sup>2795</sup> 47 P.S. § 4-493(28).

<sup>2796</sup> Commonwealth v. Koczvara, 188 Pa. Super. 153, 146 A.2d 306 (1958).

### **Adulteration or contamination**

Halter v. Commonwealth, Pennsylvania Liquor Control Bd., etc., 134 Pa. Commw. 3, 579 A.2d 983 (1990) (strictly liable).

<sup>2797</sup> Commonwealth v. Holstine, 132 Pa. 357, 19 A. 273 (1890).

<sup>2798</sup> Commonwealth v. McGuire, 88 Pa. Super. 155 (1926).

<sup>2799</sup> Commonwealth v. Mango, 101 Pa. Super. 385 (1931).

<sup>2800</sup> Commonwealth v. Adler, 72 Pa. Super. 45 (1919).

### **Legality of manufacture**

Lawfulness or unlawfulness of the transportation is not dependent on the manner in which the liquor has been produced, nor by whom it has been produced, nor whether it was lawfully or unlawfully manufactured.—Commonwealth v. Saler, 84 Pa. Super. 281 (1925).

<sup>2801</sup> Commonwealth v. Reyburg, 122 Pa. 299, 16 A. 351 (1889).

Hatfield v. Commonwealth, 120 Pa. 395, 14 A. 151 (1888).

P.L.E.

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### Guilty knowledge

In prosecution for possessing and selling beer, it was no defense that defendant did not know beer contained unlawful amount of alcohol.—Commonwealth v. Noye, 95 Pa. Super. 493 (1928).

<sup>2802</sup> Commonwealth v. Gardner, 96 Pa. Super. 450 (1929).

# Adults who let minors drink in Pa. face jail time and thousands of dollars in fines

*Jasmine Vaughn-Hall, York Daily Record*

Published 6:00 a.m. ET Jan. 4, 2019 | Updated 10:20 a.m. ET Dec. 18, 2019

CLOSE 

## Think it's safer for your kids and their friends to drink in your house? Here's the risk you face.

On New Year's Day in 2019, police busted a drinking party in Jackson Township where at least nine people were under the age of 21.

The two adults in the home, including the homeowner, were charged with corruption of minors, endangering the welfare of children and selling or furnishing liquor to minors

Each year, excessive drinking kills more than 4,000 young people in America, according to the Centers for Disease Control and Prevention website.

And even though it's illegal, people between the ages of 12 and 20 account for 11 percent of all alcohol consumed in the United States.

Adults who provide that alcohol to minors face stiff penalties in Pennsylvania and regardless of how much "safer" it may seem to allow your child to consume alcohol under your watch, it does not receive a "pass" in the eyes of the law.

## Can a minor drink with a parent in Pennsylvania?

It is illegal for anyone under the age of 21 to consume alcohol in Pennsylvania.

In most situations, parents or legal guardians have the right to grant their children permission to do many things, but when it comes to alcohol consumption, it is completely out of the question.

In fact, even if the adult selling or furnishing alcohol to a minor has no relationship to them, they could still face charges, according to attorney Chris Ferro.

**More:** 'We exposed the truth:' Woman found guilty in Red Lion students' deaths

Underage drinking is nothing like accompanying someone who is younger than 17 to see an R-rated movie. Consent does not write off the law when it comes to underage drinking.

Even if you are in the comfort of your own home, it is illegal for you to knowingly allow your child, or any other minor, to consume alcohol.

## Penalty for parents who let minors drink alcohol

According to the Lancaster District Attorney's Office, a person who is convicted of selling or furnishing liquor or malt or brewed beverages to minors will have to pay a fine of \$1,000 for a first violation.

Every subsequent violation is \$2,500.

Keep in mind, that this is a case-by-case basis and there's no telling how many other charges could potentially be added onto the initial charge.

For example, if you are also charged with corruption of minors and/or endangering the welfare of children, you could be taken to jail.

In Pennsylvania, "a person under the age of 21 may be convicted for purchasing, attempting to purchase, possessing, consuming, or transporting liquor, beer, wine, and other alcoholic drinks," according to Martin Law Firm in Blue Bell, Pennsylvania.

Underage drinking is considered a "summary offense" for minors and depending on the number of prior offenses, penalties could involve months or years of a suspended driver's license and hundreds of dollars in fines.

Adults are also susceptible to being sued in civil court if they "provide alcohol to anyone under 21, and they, in turn, hurt someone, hurt themselves or damage property," according to the law firm's website.

**More: Underage drinking party busted in Jackson Twp. after girl livestreams it on Facebook, police say**

Read or Share this story: <https://www.ydr.com/story/news/2019/01/04/what-penalty-parents-pa-who-let-kids-consume-alcohol-underage-drinking-laws-pennsylvania-minors/2471159002/>

## Alumni Ass'n v. Sullivan

Supreme Court of Pennsylvania

May 4, 1989, Argued ; March 21, 1990, Decided

No. 45 M.D. Appeal Docket 1988

### Reporter

524 Pa. 356 \*; 572 A.2d 1209 \*\*; 1990 Pa. LEXIS 90 \*\*\*

ALUMNI ASSOCIATION, Delta Zeta Zeta of Lambda Chi Alpha Fraternity v. Van Kingsley SULLIVAN and Ronald C. Unterberger v. KAPPA CHAPTER OF SIGMA CHI FRATERNITY, Sigma Chi Fraternity and Bucknell University. Appeal of Ronald C. UNTERBERGER

**Prior History:** [\*\*\*1] Appeal from the Order of the Superior Court, entered on December 29, 1987, at No. 820 Harrisburg 1986, affirming in part and reversing in part the Order of the Court of Common Pleas of Union County, Civil Division dated November 20, 1986, at No. 407, 1985. 369 Pa. Super. 596, 535 A.2d 1095 (1987).

### Core Terms

social host, Fraternity, intoxication, alcohol, cause of action, knowingly, alcoholic beverage, allegations, parties, Liquor, intoxicants, furnish, minors, premised, host

### Case Summary

#### Procedural Posture

Appellant intoxicated minor sought review of the order the Superior Court of Pennsylvania, which determined appellee university and appellee fraternities were not negligent when appellant was furnished alcoholic beverages on appellees' premises. Appellant contended that the Superior Court erred when it did not sustain his action against appellees because they should have known that alcohol was being provided to minors on

their premises.

#### Overview

Appellant intoxicated minor sought review of the order that determined that appellee university and appellee fraternities were not negligent when he was furnished with alcoholic beverages while on property arguably owned by appellees. The court affirmed the order and held that there was no evidence appellees knowingly furnished alcoholic beverages to appellant. There were no allegations that appellees were involved in the planning of the party or in the serving, supplying, or purchasing of liquor. The fact that the functions were held on property, which arguably was owned by appellees, was of no consequence in light of appellees' detachment from the events in question. Appellees' conduct was insufficient to establish them as social hosts for the purpose of finding potential liability. The court held that there was no basis to expand the liability of a fraternity's national body to include responsibility for the conduct of one of its chapters. The court held that that the modern perception of the relationships between appellee university and its students was totally antithetical to the heightened duty appellant sought to invoke.

#### Outcome

The order that determined that appellee university and appellee fraternities were not negligent was affirmed. There were no allegations that appellees were involved in the planning of the party or in the serving, supplying, or purchasing of liquor. Absent evidence that appellees knowingly furnished alcoholic beverages to appellant

524 Pa. 356, \*356; 572 A.2d 1209, \*\*1209; 1990 Pa. LEXIS 90, \*\*\*1

intoxicated minor, appellees owed no duty to appellant.

Robert J. Menapace, Sunbury, for appellee Sigma Chi Fraternity.

David R. Bahl, Williamsport, for appellee Bucknell University.

## LexisNexis® Headnotes

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Torts > Negligence > Elements > Duty

### HN1 [v] Elements, Duty

It is a fundamental principle of tort law there cannot be a valid claim sounding in negligence unless there is a duty upon the defendant in favor of the plaintiff which has been breached.

Torts > ... > Types of Negligence Actions > Alcohol Providers > Dram Shop Acts

Torts > ... > Types of Negligence Actions > Alcohol Providers > General Overview

Torts > ... > Types of Negligence Actions > Alcohol Providers > Social Hosts

### HN2 [v] Alcohol Providers, Dram Shop Acts

The one exception to the general rule that liability under the Liquor Code will not be applied to the social host is that a social host is negligent per se in serving alcohol to the point of intoxication to a person less than twenty-one years of age, and they can be held liable for injuries proximately resulting from the minor's intoxication.

**Counsel:** F. Lee Shipman, James M. Sheehan, Harrisburg, for appellant.

David Lee Schwalm, Harrisburg, for appellee Alumni Ass'n, Delta Zeta Zeta of Lambda Chi Alpha Fraternity.

Jonathan E. Butterfield, Robert A. Seiferth, Williamsport, for appellee Kappa Chapter of Sigma Chi Fraternity.

**Judges:** Nix, C.J., and Larsen, Flaherty, McDermott, Zappala and Papadakos, JJ. Larsen and Papadakos, JJ., concur in the result.

**Opinion by:** NIX

## Opinion

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[\*358] [\*\*1209] OPINION

The instant question under consideration in this appeal is whether a cause of action for negligence may be maintained against instant appellees for recovery of damages caused by an intoxicated minor to third parties absent any allegation that appellees served or furnished the alcoholic beverages to the minor. [\*\*\*2] For the reasons that follow we agree that the complaint failed to set forth a valid cause of action against instant appellees and therefore affirm the order of the Superior Court.

On December 7, 1983, appellant Ronald C. Unterberger, an eighteen-year-old freshman at Bucknell University, attended a party held in his freshman dormitory, Trax Hall, and a second party hosted by the [\*\*1210] Kappa Chapter of Sigma Chi Fraternity at their fraternity house. At both parties alcohol was served and was consumed openly by Unterberger. The owner of the neighboring fraternity house, Lambda Chi Alpha Fraternity, subsequently filed a claim against Unterberger and a companion, Van Kingsley Sullivan, alleging that the two had negligently caused or failed to control a fire in the Lambda Chi Alpha house which resulted in over \$ 400,000 in property damage. Unterberger filed a complaint to join Bucknell University, the Kappa Chapter of Sigma Chi, and Sigma Chi Fraternity as additional defendants, alleging that they were negligent in providing him, a minor, with alcoholic beverages at the parties he attended. Appellant alleged

that this negligence proximately resulted in the conduct which caused [\*\*\*3] the fire.

[\*359] The trial court sustained appellees' preliminary objections and dismissed appellant's complaint against all three parties. The trial court found that under our holding in *Congini v. Portersville Valve Co.*, 504 Pa. 157, 470 A.2d 515 (1983), appellees Sigma Chi and Bucknell were not social hosts who knowingly served intoxicants to a minor. The trial court further found that while Kappa Chapter may have been a social host, it was under no duty to protect against the unforeseeable risk of harm to the neighboring Lambda Chi Alpha house. *Alumni Association, Delta Zeta Zeta of Lambda Chi Alpha Fraternity v. Sullivan*, No. 407, 1985, slip op. at 2 (Court of Common Pleas, Civil Division, Union County 1987).

On appeal, the Superior Court affirmed the dismissal of the complaints against Bucknell and Sigma Chi. The court determined that an allegation that a defendant *should have known* alcohol was being served on its premises was insufficient to sustain a cause of action under *Congini, supra*, which hinges on the party having "knowingly furnished intoxicants to a [minor]." *Alumni Association, Delta Zeta Zeta of Lambda Chi Alpha Fraternity v. Sullivan*, 369 Pa.Super. 596, 535 A.2d 1095, 1099 [\*\*\*4] (Superior Court, December 29, 1987). However, the dismissal of the complaint against Kappa Chapter was reversed; the Superior Court held that although Kappa Chapter was a social host, the risk of damage to a neighboring property as a result of Unterberger's intoxication was a foreseeable risk of Kappa Chapter's having provided him with alcohol. *Id.* 535 A.2d at 1100-1101. Unterberger sought review by this Court.<sup>1</sup>

In this [\*\*\*5] appeal we are called upon to determine whether, under *Congini v. Portersville, supra*, and *Orner v. Mallick*, [\*360] 515 Pa. 132, 527 A.2d 521 (1987), authority exists for finding a cause of action against Bucknell University and/or Sigma Chi Fraternity.

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<sup>1</sup> Kappa Chapter is no longer a party to this appeal. It has not filed its own appeal of the Superior Court's decision and has notified the Court of its intention not to file a brief in this matter. Since Kappa Chapter is not a party to this matter at this point, the question as to whether the social host's liability should be extended to damages sustained by third parties as a result of the intoxicated minor's negligent actions need not be addressed. It is to be noted that the liability recognized in *Congini* related only to injury to the intoxicated minor.

Unterberger alleges that the Superior Court erred in refusing to extend the rationale of *Congini* to the instant case. He contends that the *Congini* requirement that an alleged defendant "knowingly furnished" intoxicants to a minor is to be accorded a broad interpretation. He therefore claims that the court should have sustained his cause of action against parties who allegedly *should have known* that alcohol was being provided for minors on their premises.

Bucknell and Sigma Chi, on the other hand, claim that the social host doctrine as established in *Congini* is no broader than is indicated by its plain language. They therefore submit that the lower courts were correct in finding no cause of action had been stated in appellant's allegation that appellees "should have known" alcohol was being provided for minors. For the following reasons, we agree [\*\*\*6] with appellees' position, and we affirm the order of the Superior Court.

HNT[†] It is a fundamental principle of tort law there cannot be a valid claim sounding in [\*\*1211] negligence unless there is a duty upon the defendant in favor of the plaintiff which has been breached. *Marshall v. Port Authority of Allegheny County*, 524 Pa. 1, 568 A.2d 931 (1990); *Morena v. South Hills Health System*, 501 Pa. 634, 462 A.2d 680 (1983); *Boyce v. United States Steel*, 446 Pa. 226, 285 A.2d 459 (1971). The allegations as they refer to the University simply state appellant resided in a campus dormitory designated for the occupancy of freshmen, and the University employed Resident Advisors and a Resident Director who knew, or should have known, of this activity. The allegations do not contend that any agent, servant, employee or other personnel of Bucknell was in any way responsible for supplying, serving, dispensing or otherwise furnishing alcoholic beverages to appellant. As to the allegations relating to Sigma Chi, it is asserted that the fraternity was the [\*361] reputed owner of the property where [\*\*\*7] the party was held.<sup>2</sup> There are no allegations the fraternity had actual knowledge of the activities allegedly occurring at the local chapter or of the ability of the national body to control said activities. Appellant herein would have us find Bucknell had a duty to supervise private social functions held on the University campus to ensure no one under the age of twenty-one consumed alcoholic beverages. They also contend the national fraternal organization should have a similar responsibility to monitor the activities of its Chapters.

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<sup>2</sup> This fact is hotly contested; however, for the purpose of this appeal, we will accept the facts as stated in the pleadings.



524 Pa. 356, \*361; 572 A.2d 1209, \*\*1211; 1990 Pa. LEXIS 90, \*\*\*7

Full appreciation of the impact of the step we are urged to take in this appeal requires a review of the development of this new cause of action. In Manning v. Andy, 454 Pa. 237, 310 A.2d 75 (1973), we expressly declined to use the provisions of the Liquor Code, 47 P.S. § 4-493(1), as creating a duty to support civil liability [\*\*\*8] against a social host. Therein we were requested to find liability against an employee who became intoxicated during a party hosted by his employer for the employees, during which the employer "did furnish or supply intoxicating liquors or beverages which were consumed by . . . [the employee] . . . when he was in a state of visible intoxication." Id., 454 Pa. at 239, 310 A.2d at 75. As a result of his state of intoxication, the employee was involved in an automobile accident resulting in injuries to the passenger in the employee's vehicle, a fellow employee. We dismissed this contention stating:

We find no error in the trial court's dismissal of appellant's complaint. Only licensed persons engaged in the sale of intoxicants have been held to be civilly liable to injured parties. Jardine v. Upper Darby Lodge No. 1973, 413 Pa. 626, 198 A.2d 550 (1964). Appellant asks us to impose civil liability on nonlicensed persons like appellees, who furnish intoxicants for no remuneration. We decline to do so. While appellant's proposal may have merit, we feel that a decision of this monumental nature is best left to the [\*\*\*9] legislature.

[\*362] Id., 454 Pa. at 239, 310 A.2d 76 (1973).

Our decision in Manning articulated a fundamental policy decision that the Court would not use the provisions of the Liquor Code as a basis for imposing civil liability on nonlicensed persons who furnish intoxicants without remuneration. This position was premised upon the view that such judgments are best left to the General Assembly.

In Klein v. Ravsinger, 504 Pa. 141, 470 A.2d 507 (1983), this Court refused to recognize a common law **social host liability** for serving alcohol to a visibly intoxicated person, whom the host knew, or should have known, intends to drive a motor vehicle. Notwithstanding the language of the majority opinion which premised the decision on the common law rule that it was the consumption of alcohol rather than the furnishing of it that is the proximate cause of any subsequent occurrence, the majority declined, in Klein, to premise a duty based upon section 493(1) of the Liquor Code, as urged by Chief Justice Roberts in his

dissent. Id., 504 Pa. at 149, 470 A.2d at 511.

**HN2** [\*\*\*1212] The [\*\*\*10] one exception to the general rule that liability under the Liquor Code will not be applied to the social host was first announced in Congini which was handed down on the same day as Klein. The basis for this exception has been explained by the Court in Orner v. Mallick, 515 Pa. 132, 527 A.2d 521 (1987). In that decision the Court stated:

[I]n Congini we held that a social host "was negligent *per se* in serving alcohol to the point of intoxication to a person less than twenty-one years of age, and that they can be held liable for injuries proximately resulting from the minor's intoxication." Id., 504 Pa. at 163, 470 A.2d at 518. In arriving at this conclusion we emphasized that in Pennsylvania "our legislature has made a legislative judgment that persons under twenty-one years of age are incompetent to handle alcohol," id., 504 Pa. at 161, 470 A.2d at 517; and we accepted that legislative judgment as defining a duty of care on the part of adults *vis-a-vis* their minor guests.

Id., 515 Pa. at 136, 527 A.2d 523 (1987).

[\*363] In Congini [\*\*\*11], an employee of Portersville 1 Valve Company, Mark Congini, became intoxicated at the company's Christmas party but was given his car keys by a Portersville agent despite his inebriated condition. He sustained severe permanent injuries in the resulting car accident, and he sued his employer for providing him with liquor in violation of the Crimes Code. The party was sponsored by the company and the alcohol was served by the agents and/or employees of the company. Under these facts, the Court found the company to be the host and deemed that it was negligent *per se* to serve alcohol to the point of intoxication to a person less than twenty-one years of age, thus justifying the imposition of liability for injuries proximately resulting from the minor's intoxication. Similarly, in Orner v. Mallick, *supra*, allegations were found to state a cause of action under the **social host liability** theory where the defendant was aware that **minors** would ingest the alcoholic beverages she provided at a high school graduation party in her home. In Congini and Orner the court employed the standard of "*knowingly furnishing*" intoxicating beverages to **minors**.

[\*\*\*12] In the instant appeal it is argued that the "knowingly furnished" standard is overly restrictive; that we should adopt the standard "knew or should have known." In support of this contention, appellant points to two decisions by the Third Circuit, Fassett v. Delta Kappa Epsilon, 807 F.2d 1150, (3d Cir.1986), and Macleary v. Hines, 817 F.2d 1081 (3d Cir.1987), which appellant argues are a more expansive interpretation of our holdings in *Congini* and *Orner*. Appellant insists that the standard of "substantial assistance," as developed by the federal court, supports a finding that appellees can be held liable as social hosts upon the instant facts. However, appellant's reliance on these cases is misplaced.

In Fassett, *supra*, the Third Circuit drew from our holding in *Congini* and from the Restatement of Torts, 2d, the requirement that a defendant in this type of case has rendered substantial assistance in the minor's consumption [\*364] of alcohol. Fassett, 807 F.2d at 1162-3. In Macleary v. Hines, that court reiterated the reasoning of Fassett and developed the rule that the social host [\*13] must have "intentionally and substantially aided and encouraged the consumption of alcohol by a minor guest . . . ." Macleary, 817 F.2d at 1084. We believe that that interpretation does not offend our case law but merely restates our position that a social host must have "knowingly furnished" alcoholic beverages to a minor. The "knowingly furnished" standard requires actual knowledge on the part of the social host as opposed to imputed knowledge imposed as a result of the relationship. In both cases the Third Circuit held as potential social hosts individuals who had participated in the planning and the funding of social events where alcohol was consumed by minors. In each instance the social host was aware of the degree of consumption by the minors. See Macleary and Fassett, *supra*. The Third Circuit correctly determined in both instances that we would not restrict the application of the social host theory to solely those instances [\*1213] where the defendant was alleged to have *physically handed* an alcoholic beverage to a minor. Macleary, 817 F.2d at 1081; Fassett, 807 F.2d at 1161. [\*14] Upon the facts presented, we, too, would have found that defendants met the "knowingly furnished" requirement.

To the contrary, the instant facts support no such conclusion. As previously stated, there are no allegations that either the fraternity or the University was involved in the planning of these events or the serving, supplying, or purchasing of liquor. The fact that the functions were held on property which arguably was

owned by appellees is of no consequence in light of appellees' detachment from the events in question. Appellees' conduct is insufficient to establish them as social hosts for the purpose of finding potential liability.

Appellant's view would have us impose upon appellees a custodial relationship with University students. Clearly, in modern times, it would be inappropriate to impose an *in loco parentis* duty upon a university. Instructive on this [\*365] point are the observations of Judge Aldisert in Bradshaw v. Rawlings, 612 F.2d 135 (1979):

[T]he statement that there is or is not a duty begs the essential question, which is whether the plaintiff's interests are entitled to legal protection against the defendant's conduct [\*\*\*15] . . . . Thus, we may perceive duty simply as an obligation to which the law will give recognition in order to require one person to conform to a particular standard of conduct with respect to another person. These abstract descriptions of duty cannot be helpful, however, unless they are directly related to the competing individual, public and social interests implicated in any case . . . .

Our beginning point is a recognition that the modern American college is not an insurer of the safety of its students. Whatever may have been its responsibility in an earlier era, the authoritarian role of today's college administrations has been notably diluted in recent decades. Trustees, administrators, and faculties have been required to yield to the expanding rights and privileges of their students.

Id. at 138.

It is equally clear appellee Sigma Chi fraternity is an inappropriate body from which to require the duty urged by appellant. By definition such organizations are based upon fraternal, not paternal relationships. National organizations do not have the ability to monitor the activities of their respective chapters which would justify imposing the duty appellant [\*16] seeks. The national organization in fraternal groups has only the power to discipline an errant chapter after the fact. It does not possess the resources to monitor the activities of its chapters contemporaneously with the event. Fraternal organizations are premised upon a fellowship of equals; it is not a relationship where one group is superior to the other and may be held responsible for the conduct of the other. From this factual matrix, there is no basis in the relationship to expand the liability of

524 Pa. 356, \*365; 572 A.2d 1209, \*\*1213; 1990 Pa. LEXIS 90, \*\*\*16

the [\*366] national body to include responsibility for the conduct of one of its chapters.

We thus conclude that the modern perception of the relationships between the University and their students, and the respective units of fraternal organizations is totally antithetical to the heightened duty we are here being importuned to accept. Moreover, the increased cost which would enure to such bodies could seriously impede the mission of these institutions which serve a vital role in the development of our youth. Neither are we persuaded these relatively rare, regrettable incidents require the dramatic response sought here. We empathize with the victims and their families [\*\*\*17] in these tragic situations, but experience 7 does not establish a statistical basis which justifies such a sweeping change of our existing law.

Accordingly, the Order of the Superior Court is affirmed.

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## Attorney Licensure and the Impaired Professional

with Tracy Kepler and Laurie Besden

Production Date: March 27, 2017

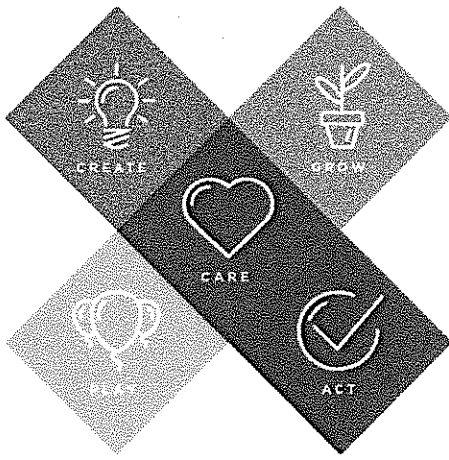
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**PLAY**

We have fun. We never take ourselves too seriously.

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<b>05</b>	Substance-Related and Addictive Disorders	<b>27</b>	Law Student Well-Being Survey
<b>06</b>	Mark Twain: Smoking	<b>30</b>	Cited Concerns about Using a LAP
<b>06</b>	Process Addictions	<b>31</b>	Summary of Findings
<b>07</b>	DSM V Criteria	<b>31</b>	What Have We Learned?
<b>10</b>	The Addicted Brain	<b>32</b>	Specific Recommendations
<b>11</b>	ABA/HBFF Study	<b>34</b>	Mission of LAPs
<b>12</b>	Importance of new data	<b>36</b>	Confidentiality
<b>15</b>	Substance Use Findings	<b>36</b>	Barriers to Treatment/Referral
<b>16</b>	Summary Statistics for Alcohol Use Disorders Identification Test (AUDIT)	<b>42</b>	Impairment Issues Addiction
<b>21</b>	Mental Health Findings	<b>44</b>	Discipline Procedures Regarding Impairment Issues
<b>22</b>	Anxiety/Stress		
<b>25</b>	Barriers to AODA Treatment		

## Attorney Licensure and the Impaired Professional

### Speakers

▶ **Laurie Besden**

- ▶ Executive Director of Lawyers Concerned for Lawyers of Pennsylvania, Inc.

▶ **Tracy Kepler**

- ▶ Director of the ABA Center for Professional Responsibility, former disciplinary/regulatory counsel with the USPTO and Illinois Attorney Registration and Disciplinary Commission

## Substance-Related and Addictive Disorders



### Addiction Defined:

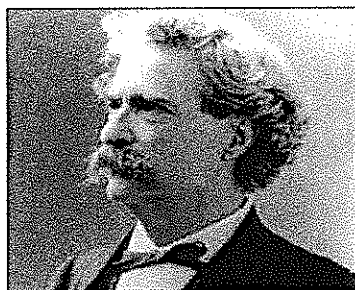
- ▶ A primary, indiscriminate, chronic, neurobiologic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations.
- ▶ Incurable but manageable, like diabetes or hypertension
- ▶ Characterized by one or more behaviors
  - ▶ Impaired control over use
  - ▶ Compulsive use
  - ▶ Continued use despite harm
  - ▶ Craving



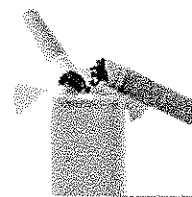


## Mark Twain: Smoking

“Stopping smoking is the easiest thing I have ever done – I have done it hundreds of times.”

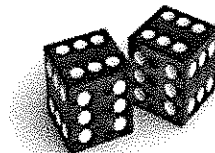


- Mark Twain  
(1835-1910)



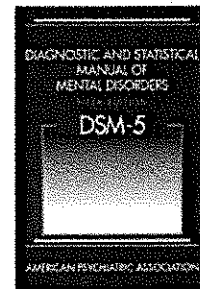
## Process Addictions

- ▶ Compulsive viewing of pornography
- ▶ Gambling
- ▶ Sexual addiction (texting and “sexting”)
- ▶ Shopping
- ▶ Binge eating
- ▶ Workaholism



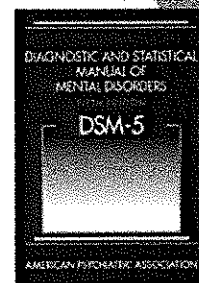
## DSM V Criteria

- ▶ Taking the substance in larger amounts or for longer than intended
- ▶ Wanting to cut down or stop using the substance but unsuccessful in doing so
- ▶ Spending a lot of time procuring, using, or recovering from use of the substance
- ▶ Cravings and urges to use the substance
- ▶ Not managing to do what you should at work, home or school, because of substance use



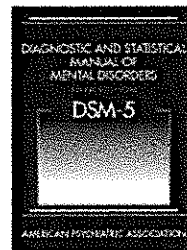
## DSM V Criteria (cont.)

- ▶ Continuing to use, even when it causes problems in relationships
- ▶ Giving up important social, occupational or recreational activities because of substance use
- ▶ Using substances again and again, even when it puts you in danger
- ▶ Continuing to use, even when the you know you have a physical or psychological problem that could have been caused or made worse by the substance



## DSM V (cont.)

- ▶ Needing more of the substance to get the effect you want (tolerance)
- ▶ Development of withdrawal symptoms, which can be relieved by taking more of the substance (dependence)



## The Brain: A Chemical Messaging System

- ▶ Serotonin regulates mood, appetite and sleep
- ▶ Adrenalin protects us in danger
- ▶ Endorphins protect us from pain
- ▶ Dopamine provides rewards:
  - ▶ Food
  - ▶ Sex
  - ▶ Drugs

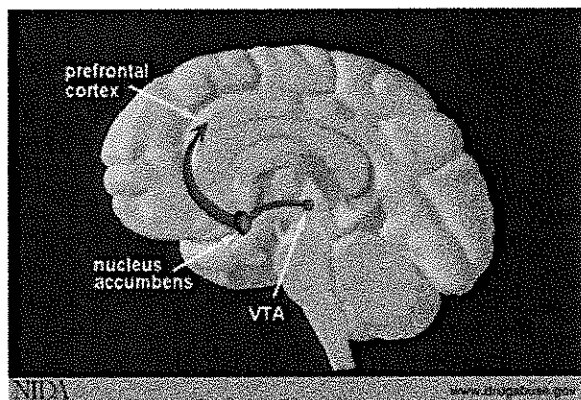


## *Why Me?*

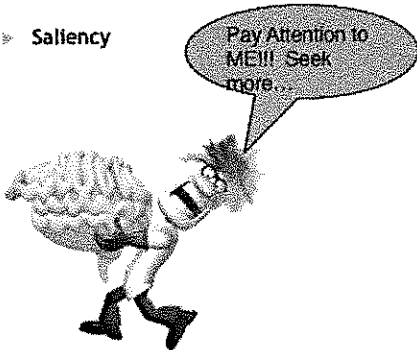



***Are Some People more Susceptible to Addiction than others?***

## **Dopamine Neurotransmission: Motivation, Drive, Pleasure, Addiction**



## The Addicted Brain

- ▶ Saliency

Pay Attention to ME!!! Seek more.
- ▶ Reward Center

I know I can feel good again!!!

Will I ever feel good again?

The Drive to Use Becomes Destructive

## Something is Going On if...

- ▶ You engage in compulsive use of a substance more than you want to...
- ▶ You have tried unsuccessfully to decrease or stop drinking/using drugs...
- ▶ You have cravings or strong desires to use...
- ▶ You spend a lot of time seeking or obtaining your substance...
- ▶ You continue to use despite negative consequences...legally, socially etc...

## Something is going on if...

- ▶ **When you stop using you experience physical symptoms such as tremors, shakes, nausea, aches etc.**
- ▶ **You continue to use despite evidence of physical or psychological problems caused by or exacerbated by your use...**
- ▶ **You drive when you are under the influence of alcohol or drugs....**
- ▶ **Markedly increased or decreased tolerance**



## ABA/HBFF Study

- ▶ **2013: Hazelden Betty Ford Foundation approaches the ABA to discuss potential for an innovative collaboration; both organizations recognize the critical need for reliable behavioral health data in the profession.**
- ▶ **2014: ABA/HBFF collaboration officially begins; project team is formed, study is designed and administered. Data collection begins.**
- ▶ **2015: Data collection concludes, data analysis commences, manuscript reporting key results is prepared and submitted for peer review at a scientific journal.**

## Historical efforts to understand the impact of behavioral health problems on the legal community

- ▶ Previous data was both limited and outdated.
- ▶ Attempts to address attorney addiction, depression and impairment were greatly handicapped by lack of current, reliable and persuasive data
- ▶ Rate of “problem drinking” among attorneys estimated to be 18% in 1990 study.
  - This study was based on data from roughly 1200 attorneys in 1 state (WA)
- ▶ Same study found approximately 19% of Washington lawyers experienced statistically significant elevated levels of depression.
- ▶ Limited studies have also demonstrated a strong link between substance abuse and malpractice/discipline. (60% of malpractice claims and disciplinary cases involved substance abuse; 85% of trust fund violations)

## Importance of new data

Data will help initiate, inform and guide important decision-making and policy development in the following key areas:

- ▶ Resource allocation for Lawyer Assistance Programs
- ▶ Bar examination and admission requirements
- ▶ Law school curriculum requirements;
- ▶ Continuing legal education requirements
- ▶ Discipline guidelines and regulatory association procedures
- ▶ Malpractice reduction strategies
- ▶ Monitoring
- ▶ Referral to treatment
- ▶ Delivery of treatment services
- ▶ Public awareness and stigma reduction
- ▶ Cultivating increased career satisfaction and longevity



## THE PUBLICATION

- ▶ The Prevalence Of Substance use and Other mental Health Concerns Among American Attorneys
- ▶ Authors: Krill, Patrick, Johnson, Ryan, Albert, Linda
- ▶ Journal of Addiction Medicine: January/February issue, 2016



## ABA, Hazelden Betty Ford Study

- ▶ 12,825 licensed employed attorneys & judges
- ▶ Males 53.4%
- ▶ Females 46.5%
- ▶ Transgender .1%
- ▶ Diversity of race
  - ▶ Asian 1.2%
  - ▶ Black/African American 2.5%
  - ▶ Caucasian/White 90.9%
  - ▶ Latino/Hispanic 2.6%
  - ▶ Native American .3%
  - ▶ Other .7%
  - ▶ Missing .5%



## Professional Characteristics

		<i>n</i>	(%)
<b>Total Sample:</b>		12,825	(100)
<b>Years in Field:</b>	0-10 years:	4,455	(34.8)
	11-20 years:	2,905	(22.7)
	21-30 years:	2,623	(20.5)
	31-40 years:	2,204	(17.2)
	41 or more years:	607	(4.7)
<b>Work Environment:</b>	Private firm:	5,226	(40.9)
	Sole practitioner, private practice:	2,678	(21.0)
	In-house: government, public, or non-profit:	2,500	(19.6)
	In-house: corporation or for-profit institution:	937	(7.3)
	Judicial chambers:	750	(7.3)
	Other law practice setting:	289	(2.3)
	College or law school:	191	(1.5)
	Other setting (not law practice):	144	(1.1)
	Bar Administration or LAP:	55	(0.4)

## Professional Characteristics

		<i>n</i>	(%)
<b>Firm Position:</b>	Clerk or Paralegal	128	(2.5)
	Junior associate:	1,063	(20.5)
	Senior associate:	1,052	(20.3)
	Junior partner:	608	(11.7)
	Managing partner:	738	(14.2)
	Senior partner:	1,294	(25.0)
<b>Hours per Week:</b>	Under 10 hours	238	(1.9)
	11 – 20	401	(3.2)
	21 – 30	595	(4.7)
	31 – 40	2,946	(23.2)
	41 – 50	5,624	(44.2)
	51 – 60	2,310	(18.2)
	61 – 70	474	(3.7)
	71 or more	136	(1.1)
<b>Any Litigation:</b>	Yes	9,611	(75.0)
	No	3,197	(25.0)

## SUBSTANCE USE FINDINGS

### Survey Instruments

- ▶ AUDIT 10-Alcohol Use Identification Test
  - ▶ Developed by World Health Organization
  - ▶ Widespread use by health workers and alcohol researchers
  - ▶ Screens for hazardous, harmful and possible alcohol dependence

### Alcohol Use- AUDIT 10

- ▶ 20.6 % scored at a level consistent with problematic drinking-Using Audit 10 = problem behaviors and levels of use
  - ▶ Problematic drinking = hazardous drinking and possible dependence
  - ▶ More males (25.1%) than females (15.5%) among lawyers
- ▶ Using the Audit 3 = levels of use
  - ▶ Physicians 15% problematic drinking
  - ▶ Lawyers 36.4%
  - ▶ More females than males among lawyers
- ▶ Position in the field
  - ▶ Higher scores for those working in private firms or
  - ▶ Bar Associations

### Summary Statistics for Alcohol Use Disorders Identification Test (AUDIT)

		AUDIT Statistics			Problematic Percentage*	P Value**
		n	M	SD		
Total Sample:		11,278	5.18	4.53	20.6%	
Gender:	Male:	6,012	5.75	4.88	25.1%	<.001
	Female:	5,217	4.52	4.00	15.5%	
Age Category:	30 or younger:	1,393	6.43	4.56	31.9%	<.001
	31-40:	2,877	5.84	4.86	25.1%	
	41-50:	2,345	4.99	4.65	19.1%	
	51-60:	2,548	4.63	4.38	16.2%	
	61-70:	1,753	4.33	3.80	14.4%	
	71 or older:	297	4.22	3.28	12.1%	
Years in Field:	0-10 years:	3,995	6.08	4.78	28.1%	<.001
	11-20 years:	2,523	5.02	4.66	19.2%	
	21-30 years:	2,272	4.65	4.43	15.6%	
	31-40 years:	1,938	4.39	3.87	15.0%	
	41 or more years:	524	4.18	3.29	13.2%	

### Summary Statistics for Alcohol Use Disorders Identification Test (AUDIT) (cont.)

<b>Work Environment:</b>	Private firm:	4,712	5.57	4.59	23.4%	
	Sole practitioner, private practice:	2,262	4.94	4.72	19.0%	
	In-house: government, public, or non-profit:	2,198	4.94	4.45	19.2%	
	In-house: corporation or for-profit institution:	828	4.91	4.15	17.8%	<.001
	Judicial chambers:	653	4.46	3.83	16.1%	
	College or law school:	163	4.90	4.66	17.2%	
	Bar Administration or LAP:	50	5.32	4.62	24.0%	
<b>Firm Position:</b>	Clerk or paralegal:	115	5.05	4.13	16.5%	
	Junior associate:	964	6.42	4.57	31.1%	
	Senior associate:	938	5.89	5.05	26.1%	<.001
	Junior partner:	552	5.76	4.85	23.6%	
	Managing partner:	671	5.22	4.53	21.0%	
	Senior partner:	1,159	4.99	4.26	18.5%	

\* The AUDIT cutoff for hazardous, harmful, or potential alcohol dependence was set at a score of 8

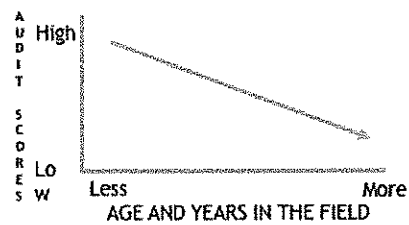
\*\*Comparisons were analyzed using Mann-Whitney U tests and Kruskal-Wallis tests

### Self Reporting-Concerns

- ▶ 22.6% felt their use of alcohol or substances was a problem sometime during their lives
- ▶ 27.6% reported problematic use prior to law school
- ▶ 14.2% reported problematic use started during law school
- ▶ **47.7 % reported problematic use started within the first 15 years following law school**
- ▶ 14.5% reported problematic use started more than 15 years after law school.

### Regression Analysis-predictive validity of age, position and years in the field

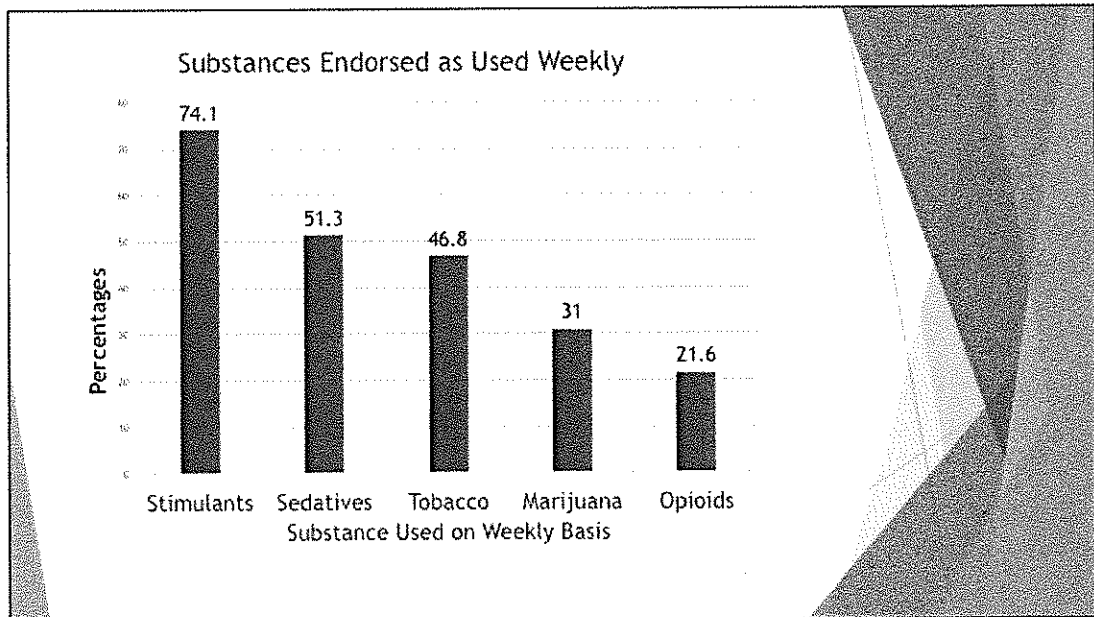
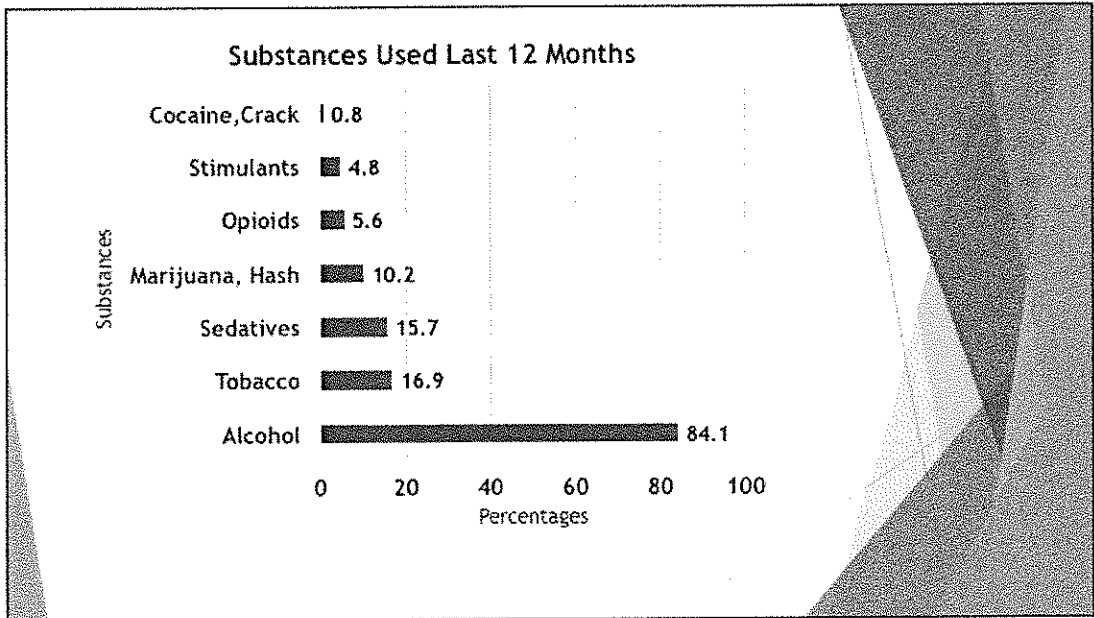
- ▶ Age 30 and under higher Audit and Audit C scores-more hazardous drinking
- ▶ Less years working in the field = higher Audit scores
- ▶ Working in a private firm or for a bar association yielded higher Audit scores

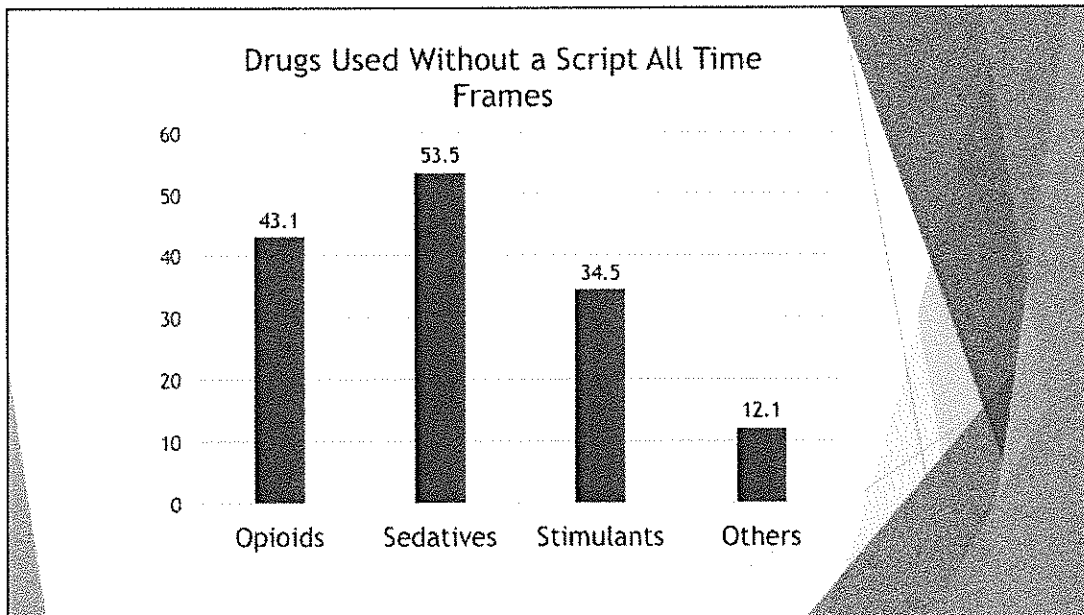
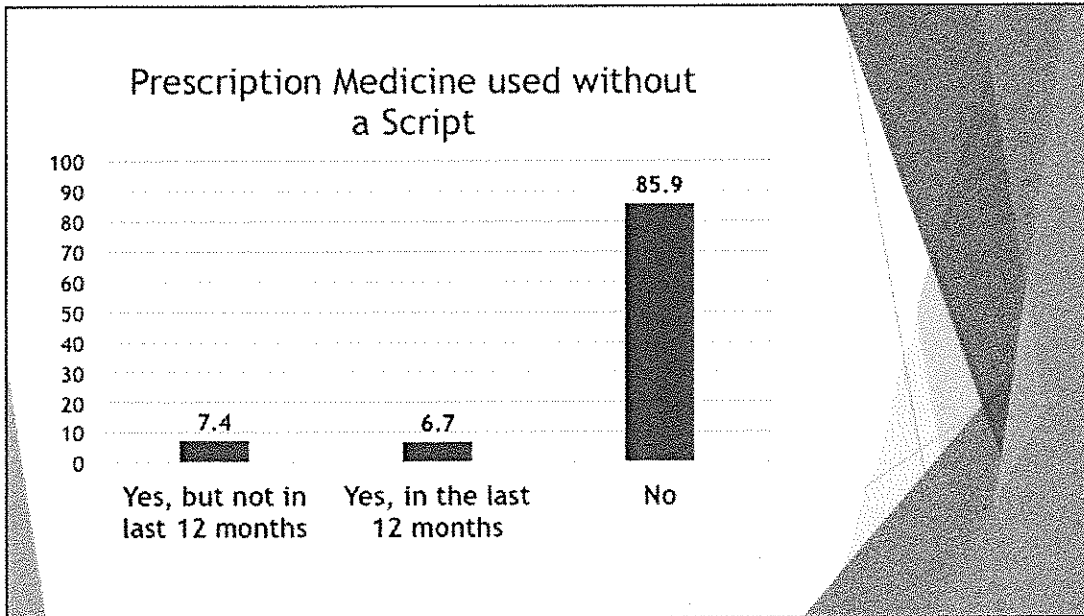


### DRUG USE-DAST

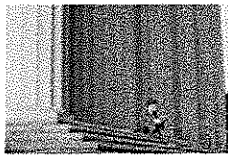
Smaller sample 26.7% completed the DAST  
n= 3419

- ▶ Low rates of abuse = 76%
- ▶ Intermediate = 20.9%
- ▶ Substantial = 3.0%
- ▶ Severe = .01%





## MENTAL HEALTH FINDINGS



### Depression, Anxiety and Stress Scale = DASS-21

- ▶ Depression 28%
- ▶ *Males higher levels of depression than females*
  - ▶ *Same inverse relationship*
  - ▶ Rates decreases as age increased
  - ▶ Junior positions = higher rates



## ANXIETY/STRESS

- ▶ Anxiety 19%
  - ▶ *Females higher than males*
- ▶ Stress 23%
- ▶ Higher scores on Audit correlated with higher scores on the DASS
- ▶ DASS scores decreased as age and years in the field increased-similar to Audit

## Self Reporting of Mental Health Concerns

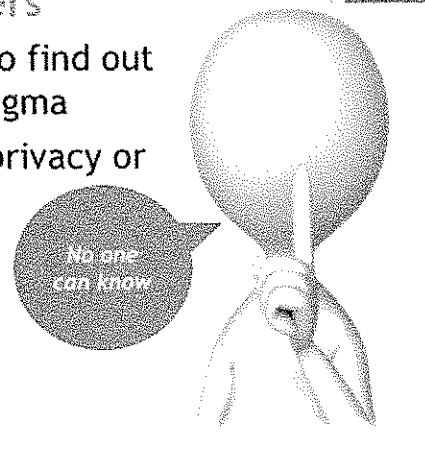
- ▶ Anxiety 61%
- ▶ Depression 45.7%
- ▶ Social Anxiety 16.1%
- ▶ ADHD 16.1%
- ▶ Panic Disorder 8.0%
- ▶ Bipolar Disorder 2.4%

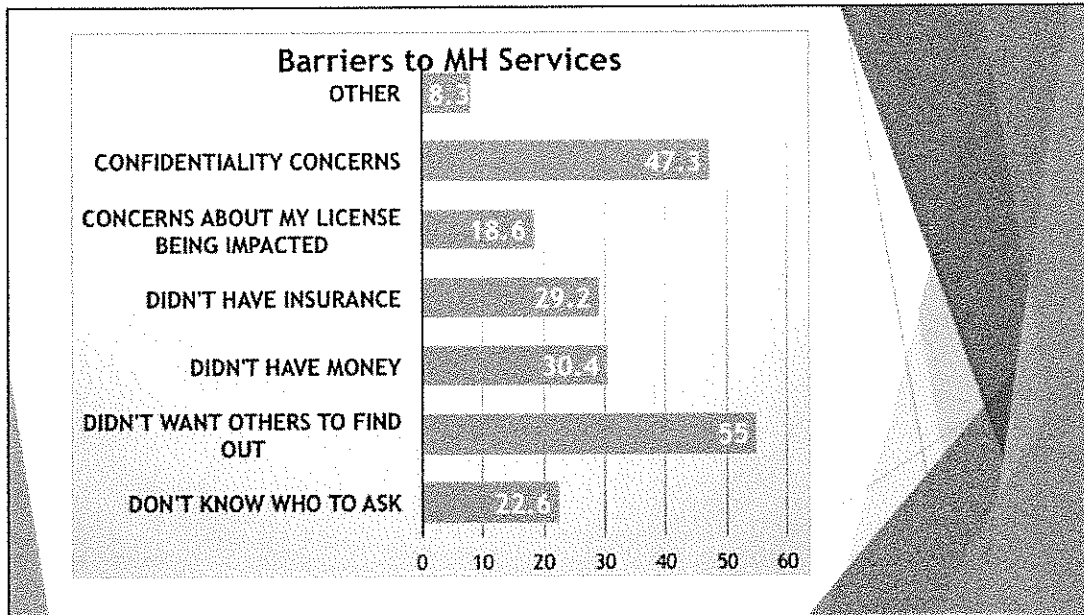
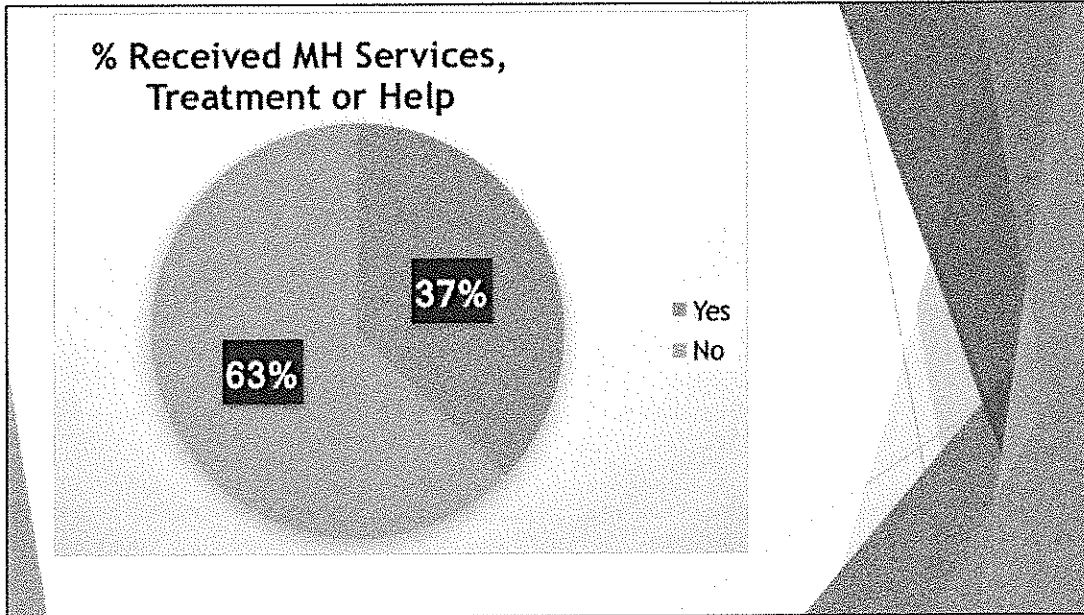
## Suicidal Thoughts and Self Harm

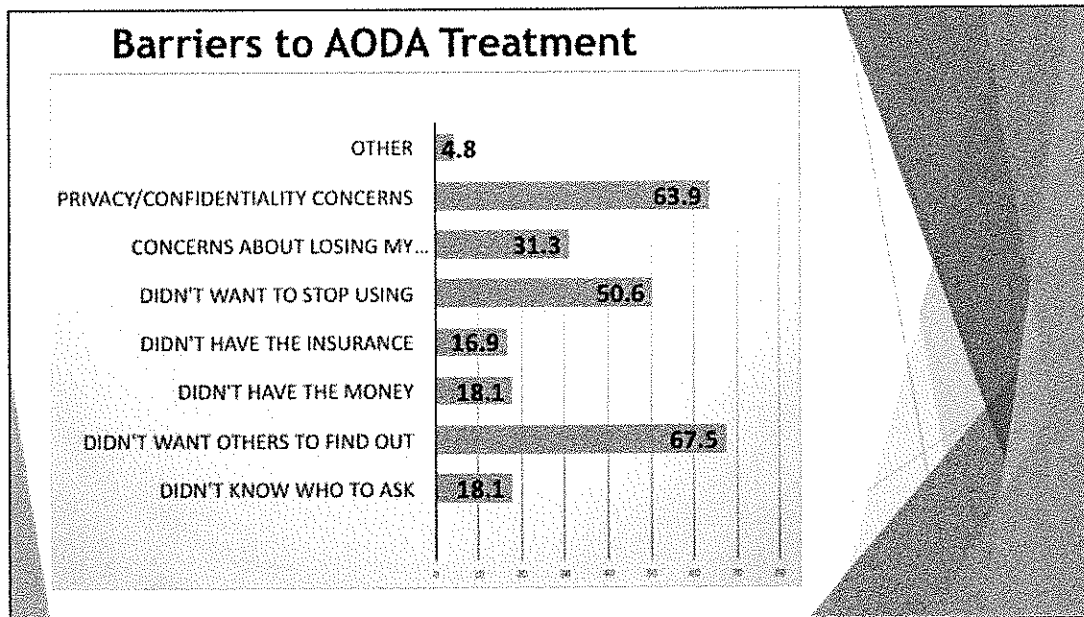
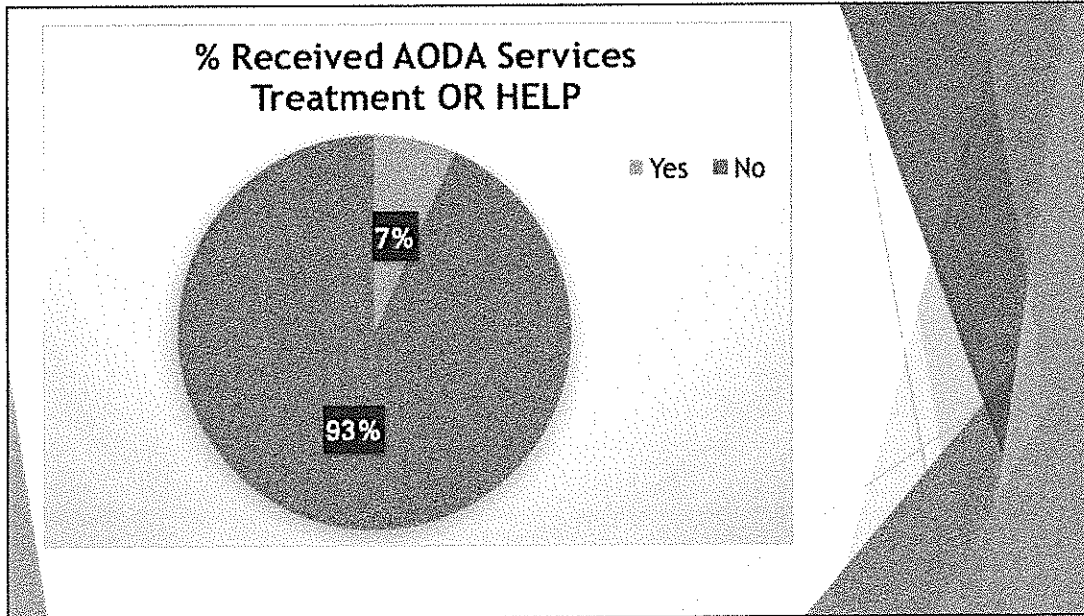
- ▶ 11.5% reported suicidal thoughts during their career
- ▶ 2.9% reported self injurious behaviors
- ▶ 0.7% reported at least one suicide attempt

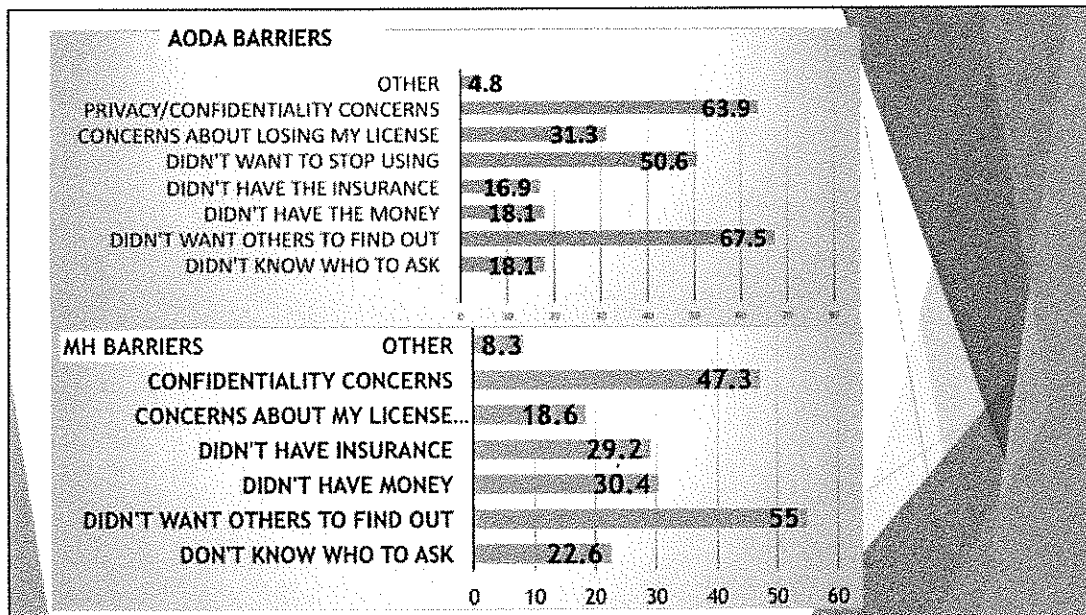
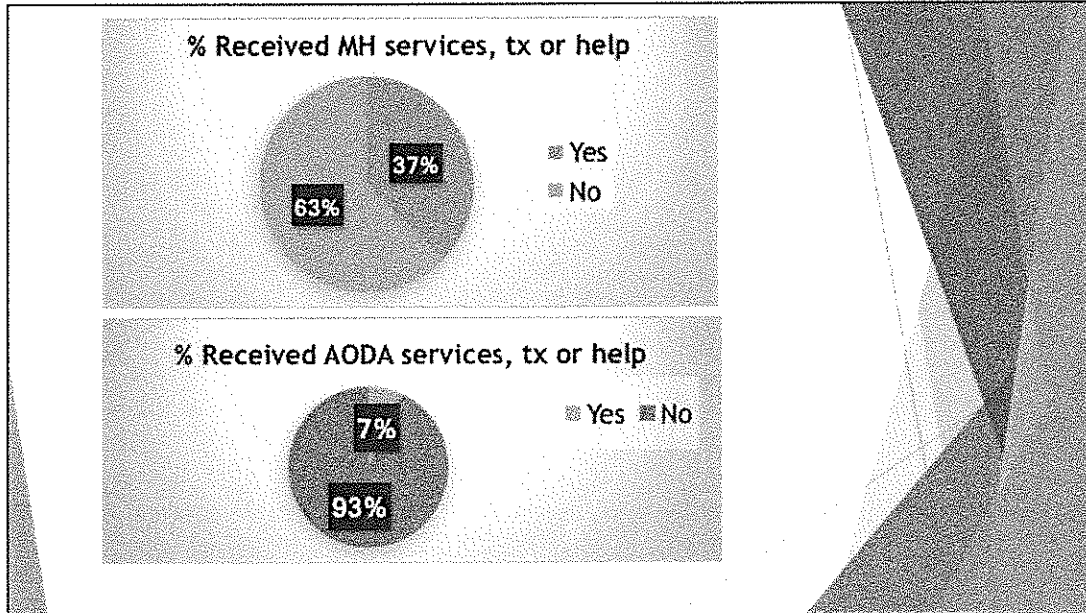
## Help Seeking Behaviors- Two Common Barriers

- ▶ Not wanting others to find out they needed help-Stigma
- ▶ Concerns regarding privacy or confidentiality





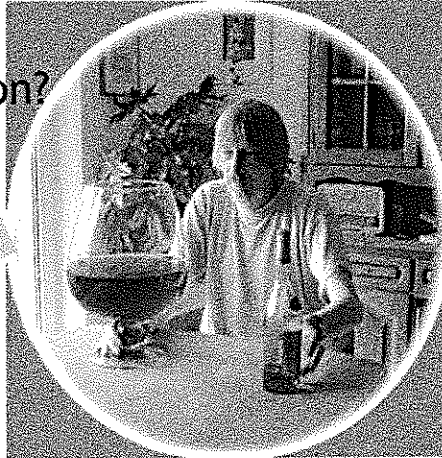




My Doctor said "Only 1 glass of alcohol a day". I can live with that.

Denial?  
Justification?

STIGMA




### Law Student Well-Being Survey

#### 2014 Multi-School Survey of Law Student Wellness

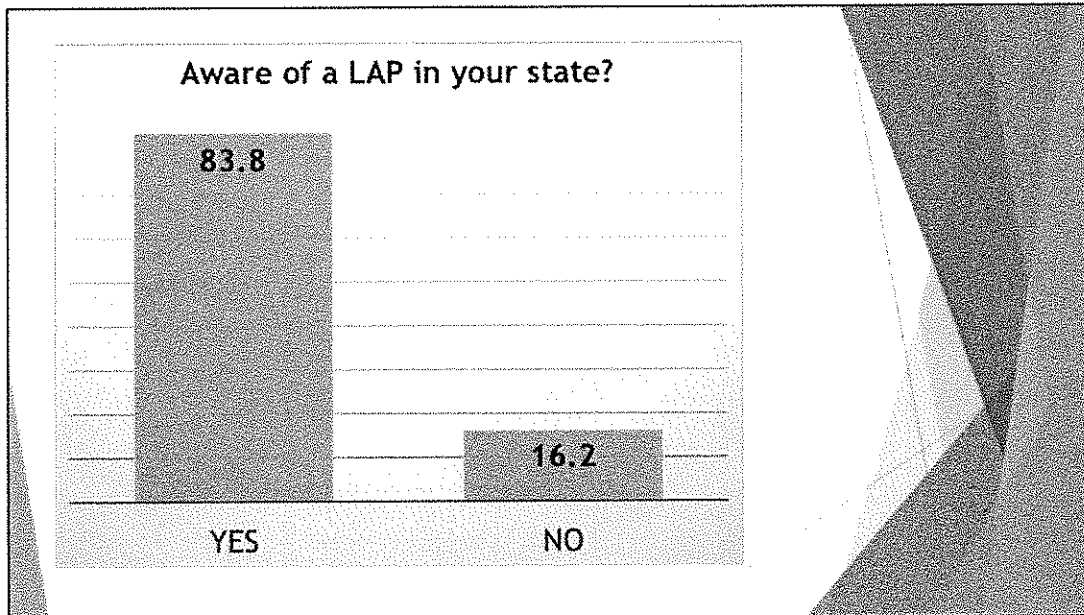
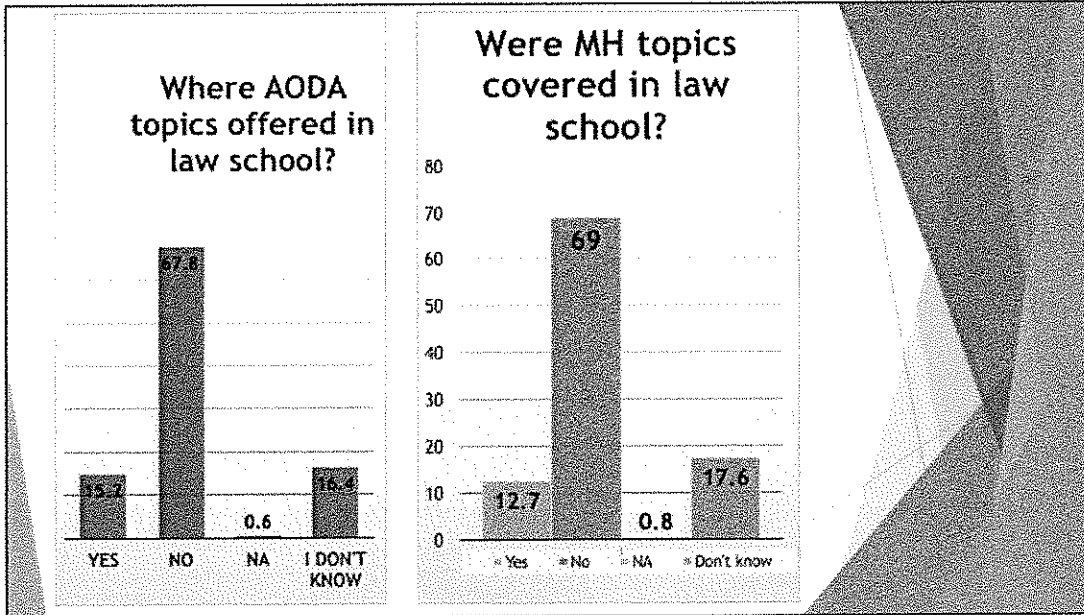
- ▶ 15 law schools from various regions of the country
- ▶ 11,300 law students
- ▶ 3400 respondents

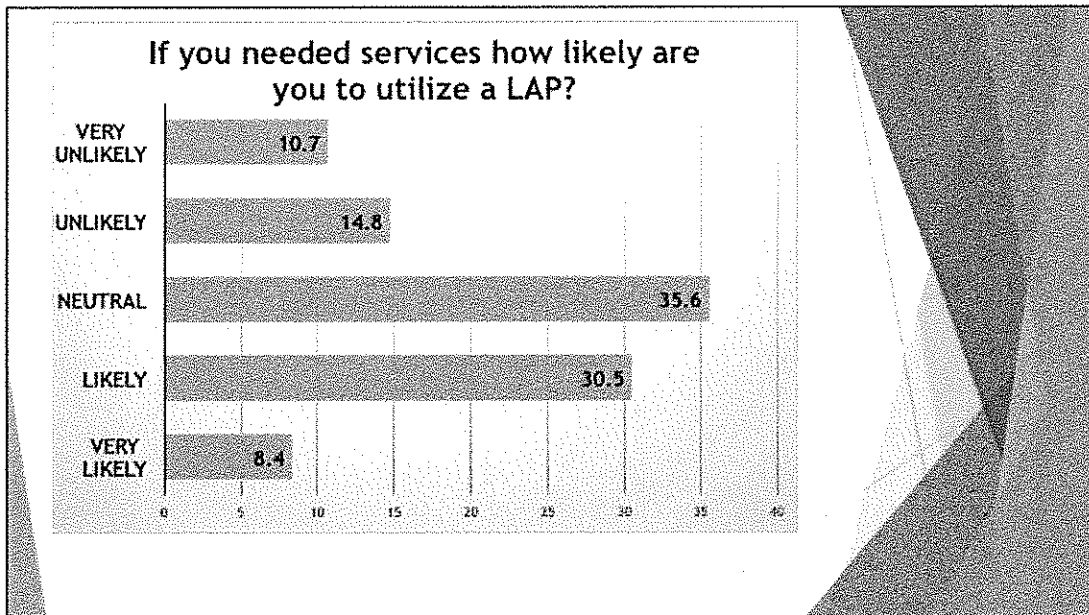
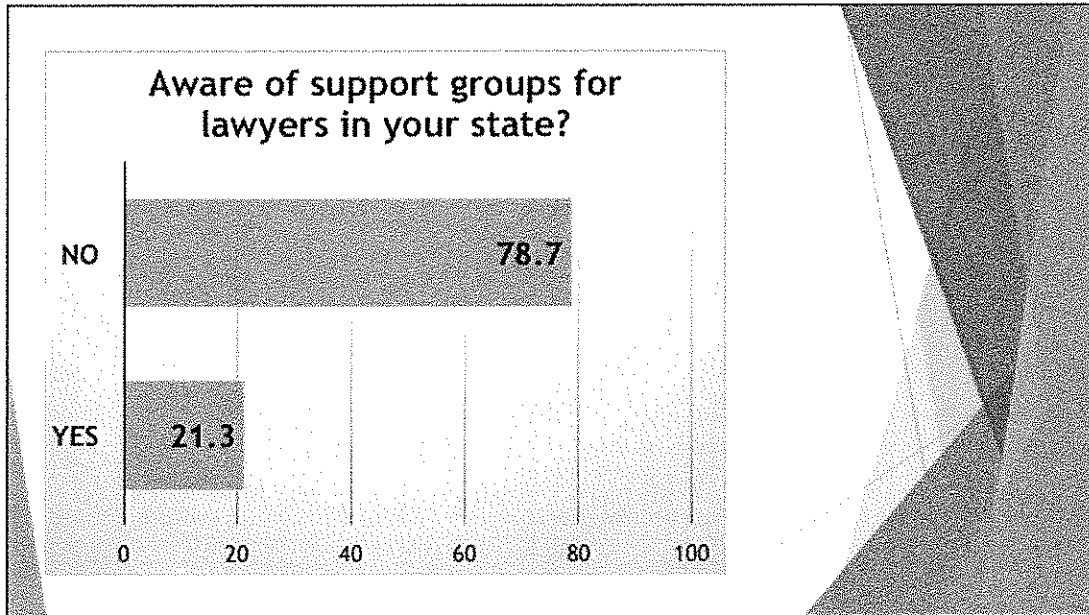
LAW STUDENTS DURING EXAMS



▶ [http://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/ts\\_col\\_ap\\_mental\\_health\\_toolkit\\_new.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ts_col_ap_mental_health_toolkit_new.authcheckdam.pdf)

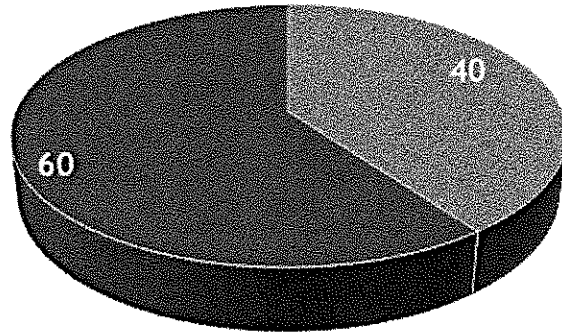






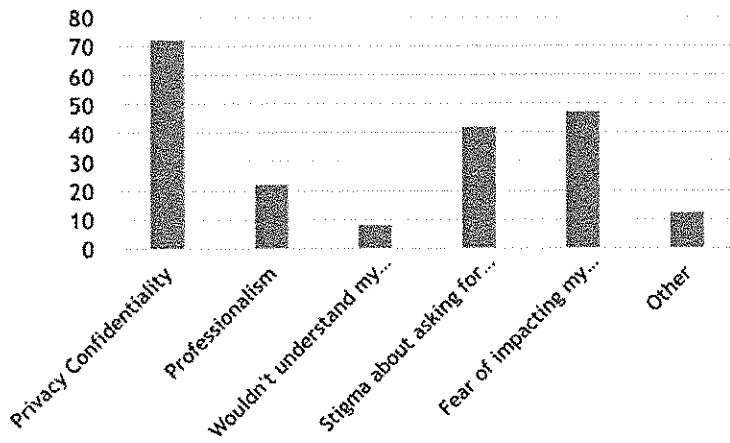


### How Likely to Use a LAP?



■ Likely-Very Likely   ■ Neutral - Very Unlikely

### Cited Concerns about Using a LAP



## SUMMARY OF FINDINGS

### AODA

- ▶ PROBLEMATIC USE OF ALCOHOL=20.6%
- ▶ DRUGS USE PROBLEMS-
  - ▶ Low rates of abuse = 76%
  - ▶ Intermediate = 20.9%
  - ▶ Substantial = 3.0%
  - ▶ Severe = .01%

### MENTAL HEALTH

- ▶ DEPRESSION = 28%
- ▶ ANXIETY = 19%
- ▶ STRESS = 23%

## What Have We Learned?

- ▶ Attorneys in the United States have significantly higher rates of problematic drinking and mental health problems than the general population. According to the Substance Abuse and Mental Health Services Administration 6.6% of adult Americans experienced a major depressive episode in 2014 and 6.4 had an alcohol use disorder.\*
- ▶ Younger, less experienced lawyers working in small firms or bar associations have higher levels of distress symptoms than their older, more experienced peers.
- ▶ Lawyers don't seek help for their behavioral health problems because they fear someone will find out and it will discredit them and possibly affect their license.

▶ \*See <https://www.samhsa.gov/2k14>

## What Have We Learned?...

- ▶ Law School research seems to demonstrate similar themes with higher levels of distress symptoms than the general population and limited help seeking behaviors.\*
- ▶ This research is a call for action. The numbers we uncovered are incompatible with a sustainable professional culture. Too many individuals are struggling and suffering, and the impact on the public is too great for the profession to ignore.

▶ \* Ergas, Jaffe and Bender, *Helping Law Students Get the Help They Need*, 2015.

## Specific Recommendations

- ▶ Mandatory law school classes on the importance of maintaining personal wellbeing, happiness and life satisfaction to insure fitness to practice, similar to other areas of professional responsibility.
- ▶ Comprehensive mentoring programs for new lawyers. It is imperative that these programs do not center on happy hours or other alcohol-related events to generate participation or facilitate networking
- ▶ Bar Examiners should make automatic referrals to local lawyer assistance programs when they receive at-risk applications or have concerns about an applicant.
- ▶ All states should have conditional admission which allows lawyers who are currently fit to practice (but otherwise have *conduct* in their past that might warrant denial) to be admitted and monitored by a lawyers assistance program.

## Recommendations continued..

- ▶ All regulatory agencies should evaluate the rules in their jurisdiction to ensure they have the means to refer to the lawyer assistance program when concerned about a lawyer prior to, during, or after discipline.
- ▶ The continuing legal education requirements of each jurisdiction should mandate a certain number of hours each reporting period on prevention of substance use and mental illness along with identification and referral information.
- ▶ State and local bar associations should form partnerships with local health organizations to learn about the best practices for increasing the health and wellbeing of their members.
- ▶ Lawyer assistance programs must be funded at a level that allows them to increase their services to provide more outreach, screenings, counseling, peer assistance, monitoring and preventive education.
- ▶ Profession-wide health and wellness summits should be organized to develop and implement comprehensive strategies and plans for improving the health and wellbeing of the legal profession. These summits should include key stakeholders from all sectors of the profession.

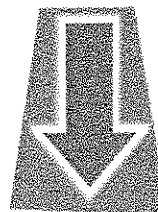
## Detection of Substance Abuse

- ▶ Vocational
  - ▶ Late for work
  - ▶ Disheveled appearing
  - ▶ Absent (not returning calls)
  - ▶ Absent (emotionally/psychologically)
  - ▶ Delinquent with deadlines/filings
  - ▶ Client complaints
  - ▶ Regulatory complaints



### Loss of Function Hierarchy for Addicted Attorneys

- ▶ Community
- ▶ Spiritual life
- ▶ Recreation and avocation
- ▶ Friends
- ▶ Peers
- ▶ Family
- ▶ Work\*\*



\*\*A Medical Emergency

### Mission of LAFs

- ▶ Assisting legal professionals with a broad range of challenges that impact their health and well being as well as their ability to practice
- ▶ Educating the Bench and Bar
- ▶ Reducing the potential harm caused by impairment to the individual, the public, the profession and the legal system
- ▶ “Broad Brush” approach



62

- ▶ **WHO: LAP Staff & Volunteers are Generalists**
  - ▶ JD, PhD/Social Worker/MFT
  - ▶ Other masters level clinician
  - ▶ Other profession entirely
  - ▶ Combination
  - ▶ May receive funding from a state bar, but NOT part of the discipline/regulatory office
  
- ▶ **WHAT: Services - Confidential Help**
  - ▶ Consultation, referral, education, intervention, support, monitoring, therapy, assessment, triage

63

## LAP Objectives

Discipline does not make an impaired professional well

- ▶ With peer assistance
  - ▶ Fewer professionals go “underground”
  - ▶ Confidential assessments by experts
  - ▶ More self-referrals
  - ▶ Earlier intervention
    - ▶ Get people into treatment
    - ▶ Preserve dignity, reduce shame/fear, protect public without disciplinary measures
    - ▶ Less harm to the public



## Confidentiality

- ▶ MOST LAPS ARE EXEMPT FROM REPORTING TO DISCIPLINE WHICH MEANS COMMUNICATIONS ARE CONFIDENTIAL AKIN TO THE LAWYER CLIENT RELATIONSHIP
- ▶ YOU CAN TRUST A LAP PROFESSIONAL TO KEEP YOUR INFORMATION CONFIDENTIAL

65

## Barriers to Treatment/Referral

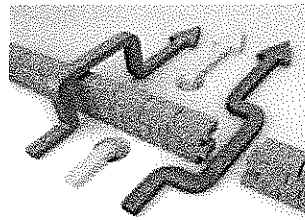
- ▶ Friendship and loyalty
- ▶ Denial
- ▶ True isolation or "work isolation"
- ▶ "Poker face"
- ▶ Enabling
- ▶ Fear - in the attorney or a third party
- ▶ Greed
- ▶ High reserve





## Barriers to Treatment/Referral

- ▶ Family & work collusion
  - Fear of loss
    - Practice, license, income, prestige, employment
- ▶ Hesitant to “betray” colleague
- ▶ Social stigma
- ▶ Respect or love



## What to Do: Approaching the Lawyer

- ▶ Remember that it is usually a process
  - Impaired attorneys initially resist attempts to discuss concerns
- ▶ Gather information, consult resources, contact local LAP and take action
- ▶ Approach the lawyer- LAP can help you
  - Partner with people the lawyer trusts & who have witnessed the behaviors of concern
  - Approach the lawyer as a respectful, concerned colleague (think how you would feel)
  - Good starters...



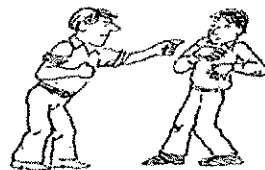
### What to Do: Approaching the Lawyer

- ▶ Aim to get the lawyer to talk
- ▶ Review the lawyer's strengths & accomplishments
- ▶ Provide kindness, dignity and privacy
- ▶ Suggest assessment with a professional & have name(s) handy
- ▶ Offer to stay involved
- ▶ Remember this is a process



### What to Do: Approaching the Lawyer

- | DO   | DON'T                  |
|--|------------------------|
| ▶ Be direct & specific                       | ▪ Threaten             |
| ▶ Be respectful                              | ▪ Ignore the situation |
| ▶ Suggest alternatives                       | ▪ Do nothing           |
| ▶ Suggest potential consequences of inaction |                        |



## How LAPs Can Help

- ▶ Preventative actions
- ▶ Work with a law firm/law office on how to approach the lawyer
- ▶ Refer judges and lawyers to counselors specializing in their particular issue
- ▶ Refer judges and lawyers to mentors who have experienced the same type of issue

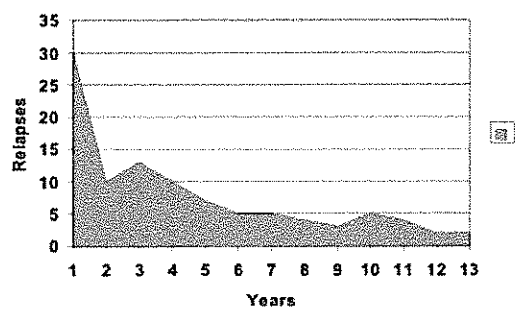
## LAP Monitoring

- ▶ Multiple Checks for Accountability
  - ▶ Face to face meetings w/ monitor
  - ▶ Telephone & email contact w/ monitor
  - ▶ Reports from any therapist or MD involved
  - ▶ Support group meetings
  - ▶ Meeting logs
  - ▶ Alcohol and drug screens
  - ▶ Contact with LAP staff
  - ▶ Feedback - LAP monitor, employers or local judges (with a release)
  - ▶ Provide objective evidence of stability



## Monitoring

90% Recovery rates observed in physicians at 5 years



## Outpatient Treatment

- ▶ Early in course of illness
  - ▶ Binge drinking vs dependence
- ▶ Adequate (sober) sources of support
- ▶ Family is not enabling
- ▶ High functioning
- ▶ Acceptance of illness (absence of denial)
- ▶ High motivation/compliance
- ▶ Absence of serious co morbid disorders



## Inpatient Treatment

### Specialized Residential Treatment for Professionals

- ▶ Professionals listen to other professionals (like addicts listen to addicts)
- ▶ Therapeutic confrontation of denial
- ▶ Stage of illness and lethality of drug of choice considered
- ▶ Efficacy observed w/ residential treatment
- ▶ Removed from:
  - ▶ Access to drugs
  - ▶ Stressful environment
  - ▶ Enabling environment
  - ▶ Temptation/urgency to return to work



## Disciplinary Statistics Relevant to Impairment Issues

- ▶ When untreated, the lawyer's capacity to practice law is almost always impacted
- ▶ Studies show that 25-30% of lawyers facing disciplinary charges suffer from some type of addiction or mental illness
- ▶ Many other attorneys belong in this category but are not listed because they default in the disciplinary proceeding or lose their licenses without ever appearing or answering



## Impairment Issues - Addiction

- ▶ Lawyers become so focused on the addiction that nothing else matters
- ▶ They spend more and more time and resources obtaining, using and recovering from using alcohol and drugs
- ▶ Addicts reduce or even give up entirely what they once considered important social, occupational or recreational activities in order to drink or use

## Impairment Issues - Addiction

- ▶ Impaired lawyers neglect cases
- ▶ They take retainers they will never earn and then take from client funds
- ▶ They lie to cover missed court dates, come to court late and unprepared and insult judges and opponents

### Warning Signs of an Impaired Lawyer

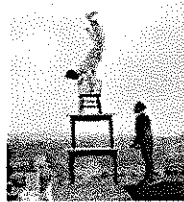
- Attendance Issues
  - ▶ Absent or Late
  - ▶ Improbable excuses
- Performance Problems
  - Misses deadlines
  - Poor work product
  - Inability to concentrate
- Personal Problems
  - ▶ Deteriorating relationships
  - ▶ Isolation from or avoidance of family, friends & colleagues
  - ▶ ethical, moral or behavioral transgressions
- Health Issues
  - Changes in appetite, weight or sleep patterns
  - Irritable and/or explosive
  - Frequent illnesses/injuries
- Financial Issues
  - ▶ personal & professional financial problems

### Reporting Professional Misconduct

- ▶ ABA Model Rule 8.3 - requires disclosure of conduct as to the lawyer's honesty, trustworthiness or fitness as a lawyer
  - Information otherwise protected by Rule 1.6 or gained by a lawyer participating in a LAP does not require reporting

### Impairment Cases Involving Lawyers

- ▶ How impairment cases are handled by discipline:
  - ▶ 1st goal - protect the public
  - ▶ 2nd goal - to get lawyer help/treatment



### Discipline Procedures Regarding Impairment Issues

- ▶ Options
  - ▶ Disability Suspension
    - ▶ Voluntary or court-ordered evaluation
  - ▶ Diversion Program
  - ▶ Disciplinary Judgment
    - ▶ Terms & Conditions included in judgments



## Discipline Procedures Regarding Impairment Issues

- ▶ Disability Suspension
  - ▶ Mental Illness, Incapacity, Substance Abuse
  - ▶ Voluntary or court-ordered evaluation
    - ▶ Failing to comply with order may be used as evidence
  - ▶ Provision for obtaining medical records
  - ▶ Order includes provisions for termination of suspension

## Discipline Procedures Regarding Impairment Issues

- ▶ Diversion Program
  - ▶ Misconduct is minor
  - ▶ No substantial harm or prejudice to client
  - ▶ No recent prior misconduct
  - ▶ Participation is likely to benefit lawyer & further the goal of protection of the public

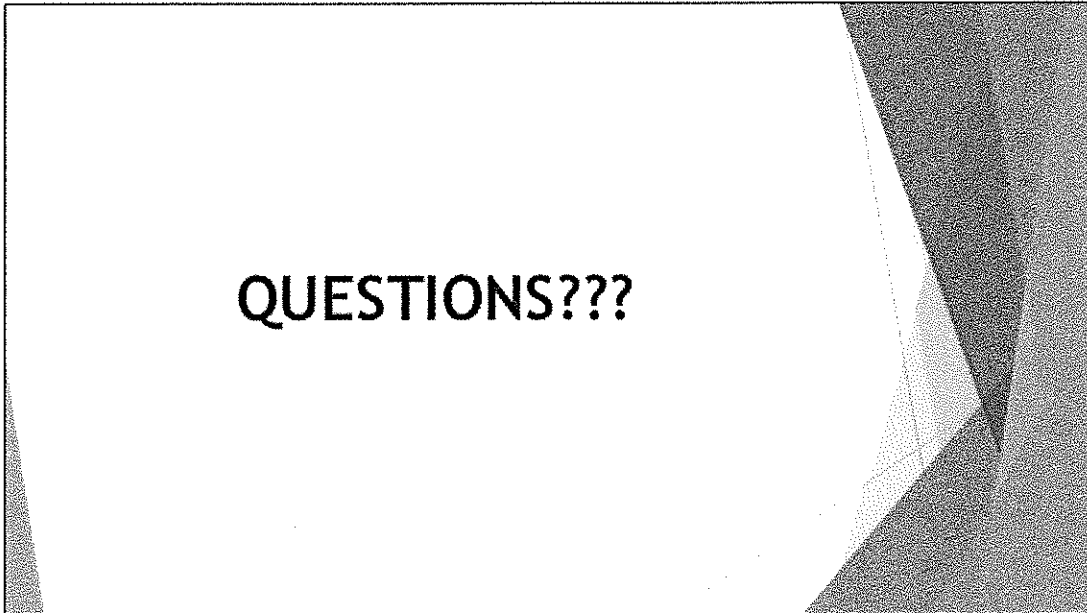


## Discipline Procedures Regarding Impairment Issues

- ▶ Disciplinary Proceedings
  - ▶ Mitigating factor only IF lawyer is in treatment program
  - ▶ Judgments should include terms and conditions requiring evaluation and treatment in order to continue practicing or before lawyer is allowed to resume practice after a period of suspension

## Resources

- ▶ **ABA Commission on Lawyer Assistance Programs : general info -**  
[http://www.americanbar.org/groups/lawyer\\_assistance.html](http://www.americanbar.org/groups/lawyer_assistance.html)
- ▶ **ABA Commission on Lawyer Assistance Programs : resources on alcohol abuse -**  
[http://www.americanbar.org/groups/lawyer\\_assistance/resources/alcohol\\_abuse\\_dependency.html](http://www.americanbar.org/groups/lawyer_assistance/resources/alcohol_abuse_dependency.html)
- ▶ **"Prescription Medication: Abuse, Addiction and Complicating Factors for Attorneys,"**  
Linda Albert, LCSW, CSAC, Wisconsin Defender, Winter /Spring 2009 -  
<https://www.ribar.com/UserFiles/File/Pages%20from%202014-10-09%20Wisconsin%20bar%20articles%20%26%29.pdf>
- ▶ **Substance Abuse and Mental Health Toolkit for Law School Students and Those Who Care About Them -**  
[http://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/is\\_colap\\_mental\\_health\\_toolkit\\_new\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/is_colap_mental_health_toolkit_new_authcheckdam.pdf)





Updated 05/2017

## **BARTENDER DRINKING WHILE TENDING BAR**

*Please be advised that it is the Pennsylvania State Police, Bureau of Liquor Control Enforcement (BLCE), and not the Pennsylvania Liquor Control Board (PLCB), which enforces the liquor laws in Pennsylvania. Further, information provided below is not binding on the BLCE and is offered for information and guidance only.*

Section 493(28) of the Liquor Code, 47 P.S. § 4-493(28), provides that it is unlawful for any licensee, his servants, agents or employees, to consume liquor or malt or brewed beverages while tending bar or otherwise serving alcohol.



Updated 05/2017

## **BRINGING LIQUOR INTO PENNSYLVANIA FROM OUTSIDE THE COUNTRY**

*Please be advised that it is the Pennsylvania State Police, Bureau of Liquor Control Enforcement (BLCE), and not the Pennsylvania Liquor Control Board (PLCB), which enforces the liquor laws in Pennsylvania. Further, information provided below is not binding on the BLCE and is offered for information and guidance only.*

Generally, bringing any liquor (including wine) into Pennsylvania is illegal, with limited exceptions. Section 491(11) of the Liquor Code prohibits any person other than the PLCB, the holder of a sacramental wine license, importer's license, or a direct wine shipper's license, from importing alcohol into Pennsylvania. 47 P.S. § 4-491(11).

Any individual may import into Pennsylvania up to one gallon of liquor or wine free of tax and mark-up, if that liquor or wine was purchased outside the United States. 47 P.S. § 4-491(2). The purchaser must produce, at the PLCB's request: (1) the ticket stub or receipt for passage or other satisfactory evidence to prove foreign travel, (2) a receipt evidencing purchase of the liquor in the foreign country, and (3) an affidavit indicating that the purchaser was allowed to bring the liquor in duty-free. 40 Pa. Code § 9.82.

Liquor or wine imported in excess of one gallon, in addition to the documentation and service charge requirements, is also subject to mark-up by the PLCB and state taxes to the extent that it can otherwise be lawfully imported. 40 Pa. Code § 9.83. Once the necessary documents are filed and charges paid, a consent certificate approving the importation would be issued. If you have any questions, please contact the Bureau of Product Selection at (717) 787-7965.

If the liquor an individual wishes to ship from a foreign country to Pennsylvania does not exceed one gallon in volume, it may be brought into Pennsylvania from overseas, pursuant to section 491(2) of the Liquor Code, 47 P.S. § 4-491(2). Because an individual must show that he/she purchased the liquor in a foreign country or United States territory, a receipt is required reflecting the purchase, plus the other information specified in section 9.82 of the PLCB's Regulations mentioned earlier. If the liquor is more than one gallon, an individual would have to comply with the general rules mentioned above.



Updated 10/21/2019

## **CONDUCTING SPECIAL EVENTS WHERE ALCOHOLIC BEVERAGES WILL BE MADE AVAILABLE TO ATTENDEES**

*Please be advised that it is the Pennsylvania State Police, Bureau of Liquor Control Enforcement (BLCE), and not the Pennsylvania Liquor Control Board (PLCB), which enforces the liquor laws in Pennsylvania. Further, information provided below is not binding on the BLCE and is offered for information and guidance only*

The PLCB is frequently contacted by organizations or groups interested in hosting festivals or similar special events at which alcoholic beverages will be made available to attendees. The following is offered as general guidance for how such festivals or events may be conducted lawfully under the Liquor Code and the PLCB's Regulations.

### ***I. Prohibition Against the Sale of Alcohol without a License or Permit***

In Pennsylvania, the sale of alcohol by anyone is prohibited, unless the seller holds a valid license or permit issued by the PLCB. 47 P.S. § 4-491(1). The Liquor Code broadly defines a "sale" as any transfer of liquor, alcohol or malt or brewed beverages for a consideration. 47 P.S. § 1-102.

There is nothing in the Liquor Code or the PLCB's Regulations that prohibits a non-licensed person or entity from giving away free alcohol, and there are no limitations as to the type or amount of alcohol that a non-licensed person or entity may give away. However, the alcohol provided must truly be free. In other words, the provision of alcohol cannot be predicated upon the purchase of a meal, an admission ticket, donation, payment of any other fee, etc.

Anyone who is twenty-one years of age or older and who is not visibly intoxicated must be able to request and receive the complimentary alcoholic beverages. Otherwise, the persons or entities providing the alcohol could be charged with selling alcohol without a license in violation of the Liquor Code. Thus, if the purchase of a meal, and admission ticket, donation, or payment of any other fee is necessary to obtain access to alcoholic beverages at your event, this would be considered a sale of alcohol and must be done pursuant to an applicable license or permit.

## *II. Options for Selling Alcohol*

There are several potential options to consider that would allow for alcohol sales to occur at your event.

### *A. Special Occasion Permit*

One option is to conduct the event pursuant to a special occasion permit (“SOP”). Section 408.4 of the Liquor Code authorizes the PLCB to issue SOPs to certain “eligible entities,” as defined in section 102 of the Liquor Code. 47 P.S. §§ 1-102, 4-408.4.

An SOP authorizes the holder thereof to sell liquor and/or malt or brewed beverages to persons of legal drinking age for consumption on or off the licensed premises during the hours of 7:00 a.m. until 2:00 a.m. of the following day on any day for which the SOP is issued. 47 P.S. § 4-408.4(k). The PLCB may issue SOPs for a period of not more than six consecutive or nonconsecutive days or ten consecutive days during a calendar year. 47 P.S. § 4-408.4(i).

The purpose of an SOP is to provide the eligible entity with a means of raising funds for itself. 47 P.S. § 4-408.4(m). An SOP may be used in conjunction with activities and events involving other entities; however, no one other than the holder of the SOP may acquire a pecuniary interest therein. *Id.* This office has interpreted this to require that all proceeds from the sale of alcohol pursuant to an SOP must be collected by the holder of the SOP. However, there is nothing that would prohibit the holder of an SOP from subsequently making a voluntary contribution to, or partnering with, third parties.

To state it differently, an eligible entity may obtain an SOP, use it to acquire and sell alcohol at an event being hosted by or in conjunction with a third party, retain the proceeds from the sale of alcohol, and then subsequently make a voluntary contribution of a portion of the proceeds from the sale of alcohol to the third party. This type of partnering arrangement is often suggested by this office as an alternative to organizations that are looking to obtain an SOP, but do not qualify as an eligible entity under the Liquor Code.

Only the named holder of the SOP would be authorized to sell alcoholic beverages under the authority of the SOP. The named holder of the SOP would also be responsible for lawfully procuring any alcoholic beverages to be sold under the authority of the SOP. Additionally, the named holder of the SOP would be held responsible for any violations of the Liquor Code, including service to minors or visibly intoxicated patrons.

The holder of an SOP would also be obligated to give the local police department, or the Pennsylvania State Police if there is no local police department, written notice at least forty-eight hours prior to each use of the special occasion permit. 47 P.S. § 4-408.4(j). Written

notice consists of notifying the police of the date, time and place of the impending sale of alcoholic beverages. Id.

Further, an SOP generally cannot be obtained for premises already licensed by the PLCB because the PLCB will not dual-license a location absent specific statutory authority; however, if the premises which is currently licensed is de-licensed for the day or days of the event, an SOP could be used at such premises.

Eligible entities may apply for an SOP using the PLCB's online regulatory system, PLCB+. The determination as to whether a particular organization qualifies for an SOP is made by the PLCB's Bureau of Licensing upon receipt of an application.

### ***B. Off-Premises Catering Permit***

An alternative option would be to approach a licensed entity about holding the event as a "catered function" off its licensed premises pursuant to an off-premises catering permit ("OPCP"). As its name suggests, an OPCP allows the holder thereof to conduct a "catered function" off its licensed premises and on otherwise unlicensed premises. 47 P.S. §§ 4-406(f), 4-442(f). A "catered function" is defined as "the furnishing of food prepared on the premises or brought onto the premises already prepared in conjunction with alcoholic beverages for the accommodation of a person or an identifiable group of people, not the general public, who made arrangements for the function at least thirty days in advance." 47 P.S. § 1-102. OPCPs are subject to the following limitations:

- (1) alcohol may be provided only during the days and hours that the license holder may otherwise sell alcohol;
- (2) all servers at the off premises catered function shall be in compliance with the responsible alcohol management provisions under section 471.1;
- (3) each catered function shall last no longer than one day and not more than fifty-two catered functions may be held each calendar year by each license holder for use with a particular license;
- (4) a catered function shall not be held at a location that is already subject to the applicant's or another licensee's license;
- (5) a permit shall not be issued to an applicant whose license is in safekeeping;
- (6) a permit shall not be issued to a location that is subject to a pending objection by the director of the Bureau of Licensing or the board under section 470(a.1);

(7) a permit shall not be issued to a location that is subject to a pending license suspension under section 471 or the one-year prohibition on the issuance or transfer of a license under section 471(b);

(8) no alcohol may be taken from the permitted location by any patron, but the applicant may transport alcohol to and from its licensed premises to the proposed premises;

(9) written notice of the catered function as enumerated in paragraph (10) shall be provided to the local police and the enforcement bureau at least seven days in advance of the event;

(10) written notice shall be provided to the board at least fourteen days prior to a catered function. Written notice must include the location of the function, time of the function, host of the function, general information regarding the guests expected at the function as well as any information the board shall from time to time prescribe. The board may, in its discretion, accept notice in an electronic format. The board may, in its discretion, waive the thirty-day notice period for a catered function if:

(i) the applicant has previously conducted functions that meet the requirements of this act;

(ii) the applicant is a licensee in good standing with the board;

(iii) notification was received at least seven days prior to the catered function; and

(iv) the applicant pays a late fee of one hundred dollars (\$100);

(11) the board shall, in its discretion, approve or disapprove a catered function if the applicant fails to provide timely notice of the catered function, does not intend to conduct a function that meets the requirements of this act or has previously conducted a function that did not meet the requirements of this act;

(12) if a catered function is scheduled to occur on private property, the owner of that property is deemed to have submitted to the jurisdiction of the enforcement bureau, and the warrant required by section 211(a)(2) of this act shall not be necessary for the enforcement bureau to enter and search the premises during the function or any activities related to the function;



(13) no catered function may be held for more than five hours per day and must end by midnight unless the catered function occurs on December 31 of any calendar year on which date the catered function must end by two o'clock antemeridian;

(14) neither the owner of the property nor the applicant may sell tickets to a catered function unless one of the following conditions is met:

(i) the applicant has contracted with an eligible entity for the function, and the function is being used to raise money for the eligible entity's organization;

(ii) the applicant has contracted with a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)), for an event which has the sole purpose of raising funds for that nonprofit organization; or

(iii) the applicant has contracted with an organization that holds tax exempt status under section 527 of the Internal Revenue Code of 1986;

(15) the catered function location shall be subject to section 493(34) of this act;

(16) catered functions may not be held in locations that are subject to a pending, protested transfer application;

(17) a permit may not be issued to a license holder whose license is subject to a pending objection by the director of the Bureau of Licensing or the board under section 470(a.1);

(18) a permit shall not be issued to a licensee for use in any location that is mobile; and

(19) a permit shall not be issued for use on any location used for parking at a sports event or concert event.

47 P.S. § 4-406(f), 4-442(f) (footnotes omitted).

Note that an OPCP would only authorize the holder of the OPCP to engage in the sale of alcohol during the event, and any alcohol sold would need to be lawfully procured in the same manner as any other alcohol that the OPCP holder uses in the regular course of its operations. It would not be permissible for your organization or any third party to sell

alcohol under the authority granted solely to the OPCP holder. Similarly, it would not be permissible for the OPCP holder to sell donated alcohol. However, there is nothing that would prohibit an OPCP holder from donating the proceeds generated from the sale of alcohol during a fundraising event to third parties after the event.

### *C. Catered Event*

Another alternative option would be to approach a licensed entity about holding the event as a “catered event” at its licensed premises. Section 13.102 of the PLCB’s Regulations prohibits the sale and/or service of an unlimited or indefinite amount of alcoholic beverages for a set price. 40 Pa. Code § 13.102(a)(3). However, section 13.102(b)(1) creates an exception which permits the sale and/or service of an unlimited or indefinite amount of alcoholic beverages for a fixed price for “catered events” which have been arranged at least twenty-four hours in advance. 40 Pa. Code § 13.102(b)(1).

Under this option, through a contractual agreement, you would arrange to use a retail licensee’s facility for the event and have the licensee furnish the alcohol and provide other services for the event. You would be permitted to sell tickets or otherwise impose fees on attendees of the catered event, but the retail licensee would technically be responsible for lawfully procuring and selling the alcohol used during the event pursuant to its license.

### *III. Participation by Manufacturers*

While manufacturers are permitted to participate in tasting events by pouring, serving, and providing information about their products, they are generally prohibited from engaging in any direct sales at such events unless they, themselves, have obtained a special permit from the PLCB.

Pennsylvania-licensed limited wineries may obtain a special permit to participate in alcoholic cider, fermented fruit beverage, mead, wine and food expositions off their licensed premises, at which they may engage in sales by the glass, by the bottle or in case lots of alcoholic cider, fermented fruit beverages, mead or wine produced under the authority of their license and provide tasting samples of wines that they have produced in individual portions not to exceed one fluid ounce, which may be sold or offered free of charge. 47 P.S. § 5-505.2(a)(4). “Alcoholic cider, fermented fruit beverage, mead, wine and food exposition” are defined as affairs held indoors or outdoors with the intent of promoting Pennsylvania products by educating those in attendance of the availability, nature and quality of Pennsylvania-produced alcoholic ciders, fermented fruit beverages, mead and wines in conjunction with suitable food displays, demonstrations and sales. Id. Alcoholic cider, fermented fruit beverage, mead, wine and food expositions may also include other activities, such as arts and crafts, musical activities, cultural exhibits, agricultural exhibits and farmers’ markets. Id.

Similarly, Pennsylvania-licensed breweries may obtain a special permit to participate in malt or brewed beverages and food expositions off their licensed premises, at which they may engage in sales by the glass, growler, bottle or package not to exceed 192 fluid ounces in a single sale of malt or brewed beverages produced under the authority of their license, and provide tasting samples of malt or brewed beverages that they have produced in individual portions not to exceed four fluid ounces, which may be sold or offered free of charge. 47 P.S. § 4-446(c)(1). “Malt or brewed beverages and food expositions” are defined as affairs held indoors or outdoors with the intent of educating those in attendance of the availability, nature and quality of malt or brewed beverages in conjunction with suitable food displays, demonstrations and sales. Id. Malt or brewed beverages and food expositions may also include other activities, such as arts and crafts, musical activities, cultural exhibits, agricultural exhibits and farmers’ markets. Id.

Also, Pennsylvania-licensed limited distilleries may obtain a special permit to participate in liquor and food expositions off their licensed premises, at which they may engage in sales by the glass, bottle, or case lots of liquor produced under the authority of their license, and provide tasting samples of liquor in individual portions not to exceed one and one-half fluid ounces, which may be sold or offered free of charge. 47 P.S. § 5-505.4(8). “Liquor and food expositions” are defined as affairs held indoors or outdoors with the intent of promoting Pennsylvania products by educating those in attendance of the availability, nature and quality of Pennsylvania-produced liquors in conjunction with suitable food displays, demonstrations and sales. Id. Liquor and food expositions may also include activities other than liquor and food displays, including arts and crafts, musical activities, cultural exhibits, agricultural exhibits and farmers markets. Id.

Limited wineries, breweries, or limited distilleries may apply for the aforementioned special permits using the PLCB’s online regulatory system, PLCB+. If an SOP or an OPCP is issued for an event, or if the event is being held on otherwise licensed premises, any special permits issued to manufacturers for the same event would need to be for separately designated (and correspondingly delicensed) areas at the event location.

Additionally, please note that if your organization or group will be charging an admission fee or selling tickets for your event, and payment of the admission fee or purchase of a ticket is made mandatory for attendees to obtain access to otherwise free tasting samples being offered by a manufacturer at an event, this would be considered a separate sale of alcohol. Such sales would need to be made pursuant to an SOP, OPCP, or a retail license in accordance with the limitations previously explained above. Further, each permit only authorizes that permit holder to sell alcohol, and only authorizes the permit holder to sell its alcohol. A permit holder holding an SOP, for example, cannot require payment of a fee to it, as a condition for allowing the customer to buy wine offered for sale by a limited winery selling under the authority of its exposition permit.

#### *IV. Potential Liability and Insurance*

Section 493(1) of the Liquor Code strictly prohibits anyone from selling, furnishing, or giving any liquor or malt or brewed beverages to any minor or visibly intoxicated person. 47 P.S. § 4-493(1). Persons violating this provision may be subject to potential fines or imprisonment. 47 P.S. § 4-494.

Potential civil or criminal liability would depend upon the particular facts as presented to a court of competent jurisdiction. It is recommended that you consult with a private attorney regarding such matters because the PLCB has no authority or expertise in the assessment of potential liability.

Finally, while there is nothing in the Liquor Code or the PLCB's Regulations that requires persons or businesses selling alcohol to maintain insurance, it is highly recommended that you seek the advice of a private attorney and/or an insurance agent regarding whether it would be advisable for you to obtain insurance coverage for your event.

## Congini v. Portersville Valve Co.

Supreme Court of Pennsylvania

October 26, 1983, Argued ; December 30, 1983, Decided

No Number in Original

### Reporter

504 Pa. 157 \*; 470 A.2d 515 \*\*; 1983 Pa. LEXIS 824 \*\*\*

Mark CONGINI, a minor by Carl J. CONGINI, his guardian, and Carl J. Congini and Sylvia Congini, Appellants, v. PORTERSVILLE VALVE COMPANY, a Corporation, Appellee

**Prior History:** [\*\*\*1] No. 53 Appeal Dkt. 1983, Appeal from the Order of the Superior Court dated April 22, 1983, at No. 842 Pittsburgh, 1980 affirming the Order of the Court of Common Pleas of Lawrence County, Civil Division, August Term, 1980, No. 1

### Core Terms

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alcohol, social host, intoxicated, guest, cause of action, minors, adult, liquor, third party, intoxicants, injuries, licensee, handle, incompetent, furnishing, proximate, drive, alcoholic beverage, public policy, consuming, visibly

### Case Summary

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#### Procedural Posture

Appellant guardian sought review of the order of the Superior Court (Pennsylvania), which affirmed the trial court's dismissal of the guardian's action against appellee, the ward's employer, for injuries sustained in an automobile accident following a party at which the ward, a minor employee, was served alcohol.

#### Overview

A minor employee, served alcohol at appellee employer's party, became intoxicated. The employer's agent knew the minor employee was intoxicated but gave him his car keys. The employee drove his car into another vehicle and was injured. The guardian filed an action in trespass for personal injuries. The trial court dismissed the complaint on demurrer for failure to state a cause of action. The guardian appealed the dismissal. On appeal, the court reversed the judgment and remanded the case. The court noted that persons under 21 were incompetent to handle alcohol under *18 Pa. Cons. Stat. § 6308*, and the minor employee's negligence existed in furnishing intoxicants in violation of *18 Pa. Cons. Stat. § 306*. The court found that although the guardian had a cause of action, the minor's contributory negligence was a defense, under the Comparative Negligence Act, *42 Pa. Cons. Stat. § 7102*. The cause was remanded for a determination of negligence and contributory negligence.

#### Outcome

The judgment dismissing the guardian's action against the ward's employer for damages sustained by the minor employee in an accident after a party at which the employee was served alcohol was reversed and remanded because the guardian had a cause of action against the ward's employer. Upon remand, the employer could raise the minor's negligence in drinking alcohol as a defense.

**LexisNexis® Headnotes**

Civil Procedure > Appeals > Standards of Review > General Overview

**HN1 Appeals, Standards of Review**

On appeal of a sustained demurrer the court must accept as true all well pleaded facts and the reasonable inference therefrom.

Criminal Law & Procedure > ... > Alcohol Related Offenses > Possession > Elements

Criminal Law & Procedure > Criminal Offenses > Alcohol Related Offenses > General Overview

Criminal Law & Procedure > ... > Alcohol Related Offenses > Distribution & Sale > General Overview

Criminal Law & Procedure > Criminal Offenses > Miscellaneous Offenses > General Overview

Torts > ... > Types of Negligence Actions > Alcohol Providers > General Overview

Torts > ... > Types of Negligence Actions > Alcohol Providers > Dram Shop Acts

**HN2 Possession, Elements**

Persons under 21 years of age are incompetent to handle alcohol. Under *18 Pa. Cons. Stat. § 6308*, a person less than 21 years of age commits a summary offense if he attempts to purchase, purchases, consumes, possesses or transports any alcohol, liquor or malt or brewed beverages. Furthermore, under *18 Pa. Cons. Stat. § 306*, an adult who furnishes liquor to a minor is liable as an accomplice to the same extent as the offending minor.

Torts > ... > Proof > Violations of Law > General Overview

**HN3 Proof, Violations of Law**

The court may adopt as the standard of conduct of a reasonable man the requirements of a legislative enactment or an administrative regulation whose purpose is found to be exclusively or in part, (a) to protect a class of persons which includes the one whose interest is invaded, and (b) to protect the particular interest which is invaded, and (c) to protect that interest against the kind of harm which has resulted, and (d) to protect that interest against the particular hazard from which the harm results.

Torts > ... > Proof > Violations of Law > General Overview

**HN4 Proof, Violations of Law**

A finding of negligence per se does no more than satisfy plaintiff's burden of establishing that a defendant's conduct is negligent. However, the burden remains upon plaintiff to establish that his complained of injuries are proximately caused by the statutory violations.

Criminal Law & Procedure > Criminal Offenses > Miscellaneous Offenses > General Overview

Torts > Negligence > General Overview

**HN5 Criminal Offenses, Miscellaneous Offenses**

An 18 year old person is presumptively capable of negligence. An 18 year old is liable as an adult for the offenses which he commits, and by knowingly consuming alcohol an 18 year old is also guilty of a summary offense. *18 Pa. Cons. Stat. § 6308*.

Torts > ... > Proof > Evidence > Inferences & Presumptions

Torts > Negligence > General Overview

**HN6 Evidence, Inferences & Presumptions**

The court places minors in three categories based on their ages. Minors under the age of seven years are conclusively presumed incapable of negligence. Minors over the age of 14 years are presumptively capable of

504 Pa. 157, \*157; 470 A.2d 515, \*\*515; 1983 Pa. LEXIS 824, \*\*\*1

negligence. The burden is placed on such minors to prove their incapacity. Minors between the ages of seven and 14 years are presumed incapable of negligence, but such presumption is rebuttable and grows weaker with each year until age 14 is reached.

Torts > ... > Types of Negligence Actions > Alcohol Providers > General Overview

Torts > ... > Defenses > Comparative Fault > General Overview

Torts > ... > Defenses > Contributory Negligence > General Overview

### HN7 [↓] **Types of Negligence Actions, Alcohol Providers**

An 18 year old minor may state a cause of action against an adult social host who has knowingly served him intoxicants. The social host in turn may assert as a defense the minor's contributory negligence. Thereafter, under our Comparative Negligence Act, 42 Pa. Cons. Stat. § 7102, the fact finder resolves whether the defendant's negligence is such as to allow recovery.

Torts > ... > Duties of Care > Duty On Premises > Licensees

Torts > Premises & Property Liability > General Premises Liability > General Overview

### HN8 [↓] **Duty On Premises, Licensees**

A possessor of land is subject to liability to his licensees for physical harm caused to them by his failure to carry on his activities with reasonable care for their safety if, but only if, (a) he should expect that they will not discover or realize the danger, and (b) they do not know or have reason to know of the possessor's activities and of the risk involved.

**Counsel:** Clyde T. MacVay, Pittsburgh, Gilbert D. Levine, New Castle, for appellants.

Herman C. Kimpel, Pittsburgh, for appellee.

**Judges:** Roberts, C.J., and Nix, Larsen, Flaherty, McDermott, Hutchinson and Zappala, JJ. Roberts, C.J., files a concurring opinion. Larsen, J., concurs in the result. Zappala, J., files a dissenting opinion.

**Opinion by:** McDERMOTT

## Opinion

### [\*159] [\*\*516] OPINION OF THE COURT

This appeal arises from an action in trespass for personal injuries sustained by Mark Congini in an automobile accident which occurred on December 22, 1978. His parents instituted suit on his behalf, and on their own behalf, in the Court of Common Pleas of Lawrence County against the Portersville Valve Company (Portersville). The defendant filed preliminary objections in the nature of demurrer. The trial judge, the Honorable William R. Balph, sustained the preliminary objections and the Conginis' complaint was dismissed on August 18, 1980.

On appeal the [\*\*\*2] Superior Court affirmed, relying in part on our decision in Manning v. Andy, 454 Pa. 237, 310 A.2d 75 (1973).<sup>1</sup> Appellants petitioned this Court for allowance of appeal and we granted allocatur.

HN1 [↑] On demurrer we must accept as true all well pleaded facts and the reasonable inference therefrom. Sinn v. Burd, 486 Pa. 146, 149, 404 A.2d 672, 674 (1979). Thus for purposes of this appeal we are confronted with the following facts.

[\*160] At the time of the accident in question Mark Congini was eighteen (18) years of age and an employee of Portersville. On December 22, 1978 Portersville held a Christmas party for its employees at which alcoholic beverages were served. Mark attended the party and, as a result of consuming an undisclosed amount of alcohol, became intoxicated.

<sup>1</sup> The opinion of the Superior Court appears at 312 Pa.Super. 461, 458 A.2d 1384 (1983).

504 Pa. 157, \*160; 470 A.2d 515, \*\*516; 1983 Pa. LEXIS 824, \*\*\*2

Mark's car was parked at Portersville plant, which was the scene of the party, and appellee, through one of its agents, had possession and [\*\*\*3] custody of the car keys. Although Portersville's agent was aware of Mark's intoxicated condition, the keys were given to Mark upon his request so that he could drive from the plant to his home.

While Mark was operating the car on the highway, he drove it into the rear of another vehicle which was proceeding in the same direction. As a result of this accident Mark suffered multiple fractures and brain damage which have left him totally and permanently disabled.

In their appeal appellants have alleged several grounds of liability: first, that defendant was negligent in providing Mark with alcoholic beverages to the point that [\*\*517] he became intoxicated; second, that defendant was negligent in surrendering the car keys to Mark, knowing that Mark was intoxicated and that he would drive; and third, that appellee, as a landowner, was negligent in breaching a duty owed to mark as an invitee. Appellants have not alleged that appellee was a licensee of the Pennsylvania Liquor Control Board.

The first issue before us is similar to that raised in *Klein v. Raysinger*, decided this day at 504 Pa. 141, 470 A.2d 507 (1983), i.e., the extent to which a social host can be held liable [\*\*\*4] for injuries sustained by his guest to whom he has served intoxicating liquors. This case, however, differs in two respects: that the guest here was a minor; and that the plaintiff here is the guest to whom the intoxicants were served, rather than a third person injured by a person who was served alcoholic beverages. See *Klein, id.*

[\*161] As we note in *Klein*, our sister state jurisdictions are virtually unanimous in refusing to extend common law liability to an adult social host serving intoxicants to his adult guests. *Id.*, 504 Pa. at 148, 470 A.2d at 510 (collected cases). However, there is no such unanimity in cases where an adult host has knowingly served intoxicants to a minor. See *Burke v. Superior Court*, 129 Cal.App.3d 570, 181 Cal.Rptr. 149 (1982); *Brockett v. Kitchen Boyd Motor Company*, 24 Cal.App.3d 87, 100 Cal.Rptr. 752 (1972); *Brattain v. Herron*, 159 Ind.App. 663, 309 N.E.2d 150 (1974); *Thaut v. Finley*, 50 Mich.App. 611, 213 N.W.2d 820 (1973); *Linn v. Rand*, 140 N.J.Super. 212, 356 A.2d 15 (App.Div. 1976).

In *Klein v. Raysinger, supra*, we held that there exists no common law liability on the part of a social host for the service [\*\*\*5] of intoxicants to his adult guests. In

arriving at this decision we relied upon the common law rule that in the case of an ordinary able bodied man, it is the consumption of alcohol rather than the furnishing thereof, that is the proximate cause of any subsequent damage.

However, our legislature has made a legislative judgment that HN2 persons under twenty-one years of age are incompetent to handle alcohol. Under *Section 6308* of the Crimes Code <sup>2</sup> 18 Pa.C.S. § 6308, a person "less than 21 years of age" commits a summary offense if he "attempts to purchase, purchases, consumes, possesses or transports any alcohol, liquor or malt or brewed beverages." Furthermore, under *Section 306* of the Crimes Code, 18 Pa.C.S.A. § 306, an adult who furnishes liquor to a minor would be liable as an accomplice to the same extent as the offending minor.

This legislative judgment compels a different result than *Klein*, for here we are not dealing with ordinary able bodied men. [\*\*\*6] Rather, we are confronted with persons who are, at least in the eyes of the law, incompetent to handle the affects of alcohol. Accord, *Burke v. Superior Court, supra*, 129 Cal.App.3d at 575, 18 Cal.Rptr. at 151; *Thaut v. Finley, supra* (1974); *Lover v. Sampson*, 44 Mich.App. 173, [\*162] 205 N.W.2d 69 (1972). See *Davis v. Shiappocosee*, 155 So.2d 365 (Fla. 1963); *Chausse v. Southland Corp., La.App. 400 So.2d 1199 (1981) cert. denied, La., 404 So.2d 497 (1981); *Munford, Inc. v. Peterson, Miss., 368 So.2d 213 (1979); *Wiener Gamma Phi Chapter of Alpha Tau Omega Fraternity*, 258 Or. 632, 485 P.2d 18 (1971). See also, *Cantor v. Anderson*, 126 Cal.App.3d 124, 178 Cal.Rptr. 540 (1981).**

Section 286 of the Restatement of Torts Second provides:

§ 286. When Standard of Conduct Defined by Legislation or Regulation Will Be Adopted

HN3 The court may adopt as the standard of conduct of a reasonable man the requirements of a legislative enactment or an administrative regulation whose purpose is found to be exclusively or in part

[\*\*518] (a) to protect a class of persons which includes the one whose interest is invaded, and

<sup>2</sup> Act of December 6, 1972, P.L. 1482, No. 334 § 1.



504 Pa. 157, \*162; 470 A.2d 515, \*\*518; 1983 Pa. LEXIS 824, \*\*\*6

(b) to protect [\*\*\*7] the particular interest which is invaded, and

(c) to protect that interest against the kind of harm which has resulted, and

(d) to protect that interest against the particular hazard from which the harm results.

We have previously relied upon this Section and accepted it as an accurate statement of the law. See Majors v. Brodhead Hotel, 416 Pa. 265, 268, 205 A.2d 875 (1965); Jardine v. Upper Darby Lodge, No. 1973, 413 Pa. 626, 198 A.2d 550 (1964). See also, Frederick L. v. Thomas, 578 F.2d 513 (3rd Cir. 1978).

Section 6308 of the Crimes Code represents an obvious legislative decision to protect both minors and the public at large from the perceived deleterious effects of serving alcohol to persons under twenty-one years of age. Thus, we find that defendants were negligent per se in serving alcohol to the point of intoxication to a person less [\*163] than twenty-one years of age,<sup>3</sup> [\*\*\*8] and that they can be held liable for injuries proximately resulting from the minor's intoxication.<sup>4</sup>

Our inquiry, however, can not stop here. As noted above the plaintiff here was not an unwitting third party to the actor's negligence, but the person to whom the intoxicants were allegedly served. Nevertheless, for the purpose of deciding whether a cause of action exists, we see no valid distinction which would warrant a limitation on the action to third parties alone. See Wilson v. Steinbach, *supra*.

<sup>3</sup>In Manning v. Andy, 454 Pa. 237, 310 A.2d 75 (1973) we held that a violation of the Liquor Code could not form the basis for a cause of action against a non-licensee. However, the Crimes Code is applicable to all the citizens of this Commonwealth. Thus, in finding that a cause of action exists under the facts of this case, we are not departing from our holding in Manning.

<sup>4</sup>HNG [\*\*\*] A finding of negligence per se does no more than satisfy plaintiff's burden of establishing that a defendant's conduct was negligent. See, Section 288 B of the Restatement of Torts Second; Prosser, Torts Ch. 5 § 36 pp. 200-201 (4th ed. 1971). However, the burden remains upon plaintiff to establish that his complained of injuries were proximately caused by the statutory violations. Kaplan v. Kaplan, 404 Pa. 147, 171 A.2d 166 (1961).

Under our analysis, an actor's negligence exists in furnishing intoxicants to a class of persons legislatively determined to be incompetent to handle its effects. It is the person's service which forms the basis of the cause of action, not whether [\*\*\*9] or not a putative plaintiff is entitled to recover. Resolution of this latter issue requires a fuller record than the one which we have on demurrer.

We note, however, that under the scheme set up by this Court in Kuhns v. Brugger, 390 Pa. 331, 135 A.2d 395 (1957) HNG [\*\*\*] an eighteen year old person is "presumptively capable of negligence."<sup>5</sup> We further note that an eighteen year [\*164] old is liable as an adult for the offenses which he commits, and that by knowingly consuming alcohol an eighteen year old is also guilty of a summary offense. See 18 Pa.C.S. § 6308.

[\*\*\*10] Thus, although we recognize that HNG [\*\*\*] an eighteen year old minor may state a cause of action against an adult social host who has knowingly served him intoxicants, the social host in turn may assert as a defense the minor's "contributory" negligence. Thereafter, under our Comparative Negligence [\*\*\*519] Act<sup>6</sup> 42 Pa.C.S. § 7102 it will remain for the fact finder to resolve whether the defendant's negligence was such as to allow recovery. Accord Munford v. Peterson, *supra*; Chausse v. Southland Corp., *supra*.

Appellants have also asserted two separate issues, neither of which do we find meritorious. The first involves the alleged negligent entrustment of an automobile to one who is intoxicated. However, this cause of action has been recognized only in those

<sup>5</sup>In Kuhns, *supra*, the Court enunciated the following standards:

... HNG [\*\*\*] we place minors in three categories based on their ages: minors under the age of seven years are conclusively presumed incapable of negligence; minors over the age of fourteen years are presumptively capable of negligence, the burden being placed on such minors to prove their incapacity; minors between the ages of seven and fourteen years are presumed incapable of negligence, but such presumption is rebuttable and grows weaker with each year until the fourteenth year is reached.

*Id.*, 390 Pa. at 340, 135 A.2d at 401.

<sup>6</sup>Act of April 28, 1978, P.L. 202, No. 53, § 10(89). As amended October 5, 1980, P.L. No. 142, § 222(a).

504 Pa. 157, \*164; 470 A.2d 515, \*\*519; 1983 Pa. LEXIS 824, \*\*\*10

situations where the person sought to be held liable was "the owner or other person responsible for its (automobile) use." See Anno.: [\*\*\*11] *Liability Based on Entrusting Automobile to One Who is Intoxicated or Known to be Excessive User of Intoxicants*. 19 *A.L.R.3d 1175 (1968)*. Appellants have cited no cases which extend this liability to persons who were not the owner or otherwise responsible for the automobile in question. See e.g., *Mills v. Continental Parking Corp.*, 86 *Nev. 724, 475 P.2d 673 (1970)* (holding parking lot attendant not liable for surrendering car to owner who was intoxicated). The appellee here had no right of control over Mark Congini's car, and we see no basis upon which to extend liability to the situation posited here.

Finally, appellants have argued that the defendants breached a duty as a landowner to Mark Congini. The [\*165] Superior Court refused to discuss this issue, as they found that it was not fairly raised by the pleadings.

Since there was nowhere pleaded that Mark Congini was required by his employer to attend the party in question, it appears at most that he was a gratuitous licensee. To such a person *Section 341 of the Restatement of Torts, Second* provides:

§ 341. Activities Dangerous to Licensees

**HNS** [↑] A possessor of land is subject to liability to his licensees [\*\*\*12] for physical harm caused to them by his failure to carry on his activities with reasonable care for their safety if, but only if,

- (a) he should expect that they will not discover or realize the danger, and
- (b) they do not know or have reason to know of the possessor's activities and of the risk involved.

Appellants did not plead that Mark Congini was without knowledge of the possessor's activities, or of the risks involved in consuming alcoholic beverages. Indeed, it would have been impossible to contend that Mark Congini was ignorant of the appellee's activities, since that was the reason for his presence.

Furthermore, appellant's injuries at most would seem to have resulted from "existent conditions upon the premises" (i.e., the availability of alcohol), as opposed to "any affirmative or 'active' negligence on [the defendant's] part." See *Potter Title and Trust Co. v. Young*, 367 *Pa. 239, 244, 80 A.2d 76, 79 (1951)*. In such a case a possessor of land is not liable to a

licensee in the absence of willful and wanton injury. *Kapp v. R.S. Noonan, Inc.*, 385 *Pa. 460, 123 A.2d 429 (1956)*; *Potter Title and Trust Co. v. Young, supra*. Such liability was not pleaded [\*\*\*13] by the appellants. We therefore, agree with the Superior Court that a cause of action under this theory was not stated.

In light of appellee's potential liability as a social host, we reverse the order of the Superior Court and remand this case to the court of common pleas for proceeding not [\*166] inconsistent with our opinion. As to appellants' other contentions, we affirm the order of the Superior Court.

**Concur by:** ROBERTS

## **Concur**

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[\*\*520] ROBERTS, Chief Justice, concurring.

I join in the mandate of the majority allowing the complaint in trespass, which seeks recovery for injuries allegedly caused by the serving of liquor by a social host to a visibly intoxicated minor guest, to proceed to trial. Section 493(1) of the Liquor Code mandates that it is "unlawful . . . for any licensee or the board, or any employe, servant or agent of such licensee, or the board, or any other person, to sell, furnish or give any liquor . . . or to permit any liquor . . . to be sold, furnished or given, to any person visibly intoxicated . . ." 47 *P.S. § 4-493(1)* (emphasis added). The use of the language "any person visibly intoxicated" clearly manifests the Legislature's intention to prohibit [\*\*\*14] the furnishing of alcoholic beverages to all visibly intoxicated persons, without regard to whether those persons are adults or minors. See *Klein v. Ravsinger*, 504 *Pa. 141, 470 A.2d 507 (1983)* (Roberts, C.J., dissenting). See also *Manning v. Andy*, 454 *Pa. 237, 310 A.2d 75 (1973)* (Manderino, J., dissenting, joined by Roberts, J.). Because the majority disregards this plain statutory language, I concur in the result only.

**Dissent by:** ZAPPALA

## **Dissent**

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ZAPPALA, Justice, dissenting.

In *Klein v. Raysinger*, 504 Pa. 141, 470 A.2d 507 (1983), we held that no duty exists under the common law which would impose liability upon a social host who serves alcohol to an adult guest for conduct of the guest which results in injury to himself or to a third party. We recognized that it is the consumption of alcohol, rather than the furnishing of alcohol to an individual, which is the proximate cause of any subsequent occurrence.

[\*167] In the instant case, however, the majority opinion concludes that liability of a social host may arise from the act of furnishing alcohol to a minor and that such liability may extend to harm suffered by the minor. By adopting this legal premise, the majority [\*\*\*15] today is effectively overruling *Klein*.<sup>1</sup> The analysis employed by the majority is clearly inconsistent with that enunciated in *Klein*, and for that reason I must dissent.

The majority attempts to reconcile the inconsistency based upon a perceived public policy to protect minors and the public from the potentially harmful effects of alcohol.<sup>2</sup> This public policy is gleaned from § 6308 of the Crimes Code which imposes criminal liability on a person under 21 who attempts to purchase, purchases, consumes, possesses or transports alcohol. Although the legislature may have determined that persons under 21 are incompetent to handle alcohol, as the majority suggests, it is evident that the legislature has defined the offense so as to render the minor culpable for his own conduct which violates the statute. [\*\*\*16] A minor

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<sup>1</sup>The majority has not determined that the duty arises under the factual circumstances presented in this case because of the employer-employee relationship which existed between the plaintiff and defendant.

<sup>2</sup>The public policy which the majority interprets as imposing a duty to a minor and innocent third parties upon a social host who furnishes alcohol to a person under 21 cannot be realistically distinguished from the public policy recognized by the legislative enactment of the "new drunk driving law", 75 Pa.C.S.A. § 3731(a)(4). The legislature has recognized that the public must be protected from operators of a motor vehicle who drive under the influence of alcohol. We did not interpret this legislation, however, as creating a duty upon a social host who has provided alcohol to one who he knows, or should know, is about to drive, for injuries sustained by the guest or a third party in an automobile accident. To the contrary, we held in *Klein* that no such duty exists. The reasoning applied in *Klein* should be applied to this case as well, rather than upon "public policy" which may be manipulated to support what the majority believes is a better result.

could not defend his conduct by demonstrating that an adult had furnished him with the alcohol. Thus, the statute which the majority interprets as evincing a policy to protect minors does not shield them from their acts which contravene the statute.

[\*\*\*17] [\*168] The majority attempts to distinguish underage drinkers from those over 21 years by stating that minors are deemed incompetent to handle the effects of alcohol. This [\*\*521] distinction is irrelevant, however, to the issue of whether a social host who furnishes alcohol to a minor may be held liable for injuries sustained by the minor or a third party as the result of the minor's actions.

It is not the knowledge of a social host of the ability or inability of a guest to handle the effects of alcohol, or knowledge of a person's condition, which would give rise to a duty not to furnish alcohol to the guest. We declined to impose liability on that basis in *Klein*, when we refused to recognize a cause of action, urged by the Appellants therein, against a social host who serves alcohol to a visibly intoxicated person who the host knows, or should know, intends to drive a motor vehicle. I cannot agree, therefore, that liability should be imposed on a social host serving alcohol to a person under 21 based upon the rationale that minors are incompetent to handle alcohol. If it is consumption by an adult guest, rather than the furnishing of alcohol by a host, which is [\*\*\*18] the proximate cause of subsequent occurrences, then it is not less compelling to conclude that it is a minor's voluntary consumption of alcohol which is the proximate cause of harm which results.

I find it inconceivable that a minor or an innocent third party who suffers harm under the factual circumstances alleged in the instant case may assert a cause of action against the social host who has dispensed the alcohol, yet an innocent third party who suffers harm under the factual circumstances set forth in *Klein* would be precluded from asserting a similar cause of action. These inapposite results arise solely from the fortuitous circumstance of the age of the tortfeasor, rather than the conduct of the social host. I would hold, consistent with *Klein*, that no cause of action exists against a social host for providing alcohol to a guest under the facts alleged in this action. This matter is better left to legislative action than to judicial gymnastics.

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## Former Marshall Dennehey Partner Reprimanded for Harassing Women at Bar Event

Timothy McMahon was already forced to resign from Marshall Dennehey because of his misconduct at a bar association event in 2017.

By Lizzy McLellan | October 03, 2019



***Pennsylvania State Capitol building in Harrisburg. Photo: Shutterstock***

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After pleading guilty to charges of harassment and disorderly conduct in Dauphin County, the former head of Marshall Dennehey Warner Coleman & Goggin's Harrisburg office will receive a public reprimand from the Pennsylvania Supreme Court.

Timothy McMahon was already forced to resign from Marshall Dennehey, Supreme Court documents said, following an incident at the Dauphin County Bench-Bar Conference in July 2017. The state Supreme Court entered a disciplinary decision Wednesday.

According a joint petition

(<http://www.pacourts.us/assets/opinions/DisciplinaryBoard/out/159DB2019-McMahon.pdf>) submitted to the Disciplinary Board, McMahon went to a bar on the first night of the conference, became intoxicated, and went on to make unwanted advances toward multiple women attorneys at the bar. He also "touched two of the female attorneys on sensitive areas of their bodies," court documents said. After resort staff denied him more alcohol, he "became belligerent" and was escorted to his room by four security staff members.

According to the joint petition, McMahon does not remember the events of that evening "due to his inebriation," but he did not contest that they occurred. In addition to his resignation from Marshall Dennehey, he was dismissed from the Dauphin County Bar Association, the petition noted.

In June 2018, the Bedford County District Attorney's Office charged McMahon with indecent assault, disorderly conduct and harassment. He entered the plea agreement in February and was sentenced in March to 90 days' probation for the harassment conviction and one year of probation for disorderly conduct. He was also ordered to pay fines and fees, and undergo a sex offender evaluation and a drug and alcohol evaluation.

The date of McMahon's resignation from Marshall Dennehey was March 31, according to a spokeswoman for the firm.

McMahon and the Pennsylvania Office of Disciplinary Counsel submitted the joint petition in support of discipline on consent in September. It argued that public reprimand would be a sufficient form of discipline, rather than suspension, because McMahon's conduct "did not involve ongoing inappropriate sexual behavior or multiple instances."

"Rather, respondent's misconduct was comprised of a single night of inappropriate actions that respondent asserts were prompted by his over-imbibing. Moreover, respondent was not in a position of power over any of the victims," the joint petition said.

The petition also noted that McMahon showed remorse for his actions and accepted responsibility for them, and that he "already faced significant consequences for his misconduct" because of his forced law firm resignation and dismissal from the county bar association.

McMahon was compliant throughout the disciplinary process, complied with the terms of his probation and paid his fines, and does not have other disciplinary history, the petition also said.

Pittsburgh attorney Craig Evan Simpson, who is representing McMahon in the disciplinary matter, could not be immediately reached for comment on the order Thursday.

Asked for comment Thursday, Marshall Dennehey president and CEO G. Mark Thompson said in an emailed statement: "We respect the judgement of the Disciplinary Board and will let the order speak for itself."

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Updated 05/2017

## LIABILITY FOR ACCIDENTS

*Please be advised that it is the Pennsylvania State Police, Bureau of Liquor Control Enforcement (BLCE), and not the Pennsylvania Liquor Control Board (PLCB), which enforces the liquor laws in Pennsylvania. Further, information provided below is not binding on the BLCE and is offered for information and guidance only.*

Section 493(1) of the Pennsylvania Liquor Code prohibits licensees from selling, furnishing or giving any liquor or malt or brewed beverages or to permit any liquor or malt or brewed beverages to be sold, furnished, or given to any person visibly intoxicated, or to any minor. 47 P.S. § 4-493(1). Licensees may be strictly liable for violations of the Liquor Code and/or PLCB's Regulations which occur on the licensed premises without regard to who provides the alcoholic beverages. Pennsylvania Liquor Control Bd. v. TLK, Inc., 518 Pa. 500, 544 A.2d 931 (1988); Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Goodfellas, 850 A.2d 868 (Pa. Cmwlth. 2004). The potential penalties for violations of the Liquor Code or the PLCB's Regulations range from a fine to license suspension or revocation, or both. 47 P.S. § 4-471(b).

However, civil liability is separate from liability under the Liquor Code. Section 497 of the Liquor Code provides that no licensee shall be liable to third person on account of damages inflicted upon them off of the licensed premises by customers of the licensee unless the customer who inflicts the damage was sold, furnished, or given liquor or malt or brewed beverages by the licensee or its agents, servants, or employees, when the customer was visibly intoxicated. 47 P.S. § 4-497. With respect to liability of the establishment in case of injuries or damages associated with service to a patron, this office is unable to provide any guidance and it is suggested that you contact a private attorney who specializes in civil liquor liability issues in order to assess the potential for liability.

## **MINORS ON THE LICENSED PREMISES**

*Please be advised that it is the Pennsylvania State Police, Bureau of Liquor Control Enforcement (BLCE), and not the Pennsylvania Liquor Control Board (PLCB), which enforces the liquor laws in Pennsylvania. Further, information provided below is not binding on the BLCE and is offered for information and guidance only.*

**Please note that Pennsylvania law defines a minor as a “person under the age of 21 years.” 1 Pa. C.S. § 1991.**

### **1) May a minor perform as an entertainer at a retail licensed premises?**

Generally, persons over the age of sixteen may be employed by licensees to work in licensed establishments. 47 P.S. § 4-493(13).

Persons over the age of eighteen are permitted to perform as entertainers in licensed establishments, Id.; whether a parent or guardian or someone over twenty-five years old who qualifies as a “proper supervisor” would need to also be present depends upon the situation.

For example, if the performers are considered employees of the licensee, no parent, guardian or proper supervisor would be necessary during the time they were performing their entertainment duties. If they are not considered employees, or are not at the time performing entertainment duties, they would have to abide by the general rules concerning minors on licensed premises.

A hotel, restaurant, club, or retail dispenser licensee may allow students receiving instruction in a performing art to perform an exhibition at the licensed premises if the students are not compensated and are under proper supervision (see response to Question # 4), and prior written notice of the performance is provided to the BLCE. Id.

### **2) May a minor be employed by a retail licensee?**

Generally, to be employed as a bartender or to serve or dispense alcohol in a licensed retail establishment, a person must be at least eighteen years of age. 47 P.S. § 4-493(13).

Sixteen and seventeen-year-olds may be employed on retail licensed premises to serve food, clear tables, and perform other similar duties—including the carrying of empty or partially full alcoholic beverages remaining on the table being cleared.



They are not permitted to dispense or serve alcoholic beverages. Minors under sixteen years of age cannot be employed on retail licensed premises, except under a narrow exception involving licenses located at ski resorts, golf courses, amusement parks and continuing care facilities. Id.

Be advised that there is a provision in the PLCB's Regulations that a seventeen-year-old minor can be treated as though he or she is eighteen years old for purposes of employment if he or she is a high school graduate, or if he or she has been declared to have attained his or her academic potential by the chief administrator of the school district where the minor resides. 40 Pa. Code § 5.14. In that case, the licensee must have in its possession on the licensed premises, to be produced on demand, a certified copy of the diploma or certificate of graduation or a letter on the official stationery of the minor's school district and over the signature of the chief administrator of the school district, declaring that the minor has attained his or her academic potential. Id.

Since employment of minors is primarily regulated by the state's Department of Labor and Industry, you may wish to contact that agency as well at (717) 787-5279.

3) **May an individual under the age of twenty-one be employed by a distributor ("D") or importing distributor ("ID") licensee?**

Section 493(27) of the Liquor Code, 47 P.S. § 4-493(27), makes it unlawful for any D or ID to employ minors under the age of eighteen. Persons eighteen and over may be employed to sell and deliver malt and brewed beverages. Id.

However, there is an exception found in the PLCB's Regulations which allows the employment of a seventeen-year-old minor who has graduated from high school or who, in the opinion of the chief administrator of the school district, has not graduated but has attained his academic potential. In that case, the minor will be deemed to be a minor of eighteen years for purposes of the Liquor Code. 40 Pa. Code § 5.14. If the D or ID has in its possession on the licensed premises, to be produced on demand, a certified copy of the diploma or certificate of graduation of the seventeen-year-old minor, or a letter from the chief administrator of the school district, on official school district stationery, stating that the seventeen-year-old minor has reached his academic potential, that minor may be employed by the distributorship.

Since employment of minors is primarily regulated by the state's Department of Labor and Industry, you may wish to contact that agency as well at (717) 787-5279.

4) **May an individual under the age of twenty-one ("minor") be present on the licensed premises?**

The general rule in Pennsylvania is that no one younger than age twenty-one may be present in an establishment licensed to sell alcoholic beverages. 47 P.S. § 493(14). There are, however, exceptions to the general rule. These five exceptions are as follows:

1. Minors with parents (“Parent exception”)

If a minor is with one or both of the minor’s parents, then the minor is permitted to be on the premises. The minor and parent(s) can sit anywhere on the premises, including the bar area, and alcoholic beverages can be served to the parent(s) or to any other adult with the minor.

2. Minors with legal guardians (“Guardian exception”)

If a minor is with a legal guardian, then the minor is permitted to be on the premises. The minor and the legal guardian can sit anywhere on the premises, including the bar area, and alcoholic beverages can be served to the guardian or to any other adult with the minor.

3. Minors under proper supervision (“Proper supervision exception”)

If a minor is present under proper supervision, then the minor is permitted to be on the premises. Section 102 of the Liquor Code defines proper supervision as someone who is at least twenty-five years of age, who is directly responsible for the care and conduct of the minor while on the premises, and who keeps the minor within his or her sight or hearing. Proper supervisors are generally unpaid volunteers. However, licensees or their employees are allowed to act as proper supervisors as long as they are not performing any other employment-related duties at the same time. 47 P.S. § 1-102.

If a minor is in the premises under proper supervision, the minor can sit anywhere on the premises, including the bar area, and alcoholic beverages can be served to any adults with the minor.

Proper supervisors can only supervise a limited number of minors. In Philadelphia, that number is five. In the rest of Pennsylvania, the number is twenty, i.e., one proper supervisor can supervise up to twenty minors. Notwithstanding the above limitations, if the minors are on the premises as part of a school-endorsed function, each proper supervisor can supervise up to fifty minors.

4. Minors attending a social gathering (“Social gathering exception”)

If a minor is attending a social gathering, then the minor is permitted to be on the premises. A social gathering is an event marketed to or catering to minors, in whole or in part, for which at least forty-eight hours advance notice has been given to the BLCE. No alcohol can be served to anyone, even adults, at a social gathering and all alcohol must be removed from or secured by lock and key at the licensed premises.

5. Minors at food-oriented establishments (“Pizza Hut exception”)

*Please note that this exception does not apply to club licensees.*

If a restaurant, hotel, or retail dispenser licensed premises has gross sales of food and non-alcoholic beverages equal to 50% or more of its combined gross sales of both food and alcoholic beverages, then minors are permitted on the premises. The presence of a parent, legal guardian, or proper supervisor is not necessary.

Minors present under the Pizza Hut exception are not permitted to sit in the bar section of the premises. Further, no alcoholic beverages can be served to any adult at the table or booth where the minor is seated (unless the minor is also there with a parent, legal guardian, or proper supervisor), without risk of citation by the BLCE for having minors frequent the premises. Pennsylvania law specifically defines a minor as a “person under the age of 21 years.” 1 Pa.C.S.A. § 1991. Minors are not permitted on licensed premises unless they fall under one of the above-listed exceptions. Be advised that it does not matter if a minor is age eighteen, nineteen, or twenty; the same rules apply. It should also be noted that an establishment is permitted to make house rules that place additional limits as to when minors are allowed on the premises.



Updated 05/2017

## NEW PENNSYLVANIA RESIDENTS

*Please be advised that it is the Pennsylvania State Police, Bureau of Liquor Control Enforcement (BLCE), and not the Pennsylvania Liquor Control Board (PLCB), which enforces the liquor laws in Pennsylvania. Further, information provided below is not binding on the BLCE and is offered for information and guidance only.*

Generally, bringing any liquor (including wine) into Pennsylvania is illegal, with limited exceptions. Section 491(11) of the Liquor Code prohibits any person other than the PLCB, the holder of a sacramental wine license, importer's license, or a direct wine shipper license, from bringing alcohol into Pennsylvania. 47 P.S. § 4-491(11). Similarly, section 491(2) of the Liquor Code prohibits any person other than the PLCB, a manufacturer, the holder of a sacramental wine license, or of an importer license, from possessing or transporting any liquor or wine within the Commonwealth of Pennsylvania which has not been purchased from the PLCB, a licensed limited winery, a licensed limited distillery, a licensed distillery, a licensed direct wine shipper, or a wine expanded permittee. 47 P.S. §§ 4-415, 4-488, 4-491(2), 5-505.2, 5-505.4.

A person who is moving into Pennsylvania is allowed, under section 9.46 of the PLCB's Regulations, to bring with him or her liquor and wine owned and possessed by him or her in his or her out-of-state residence for personal use, so long as that liquor and wine will not be resold in Pennsylvania. Such importation must be approved in advance by and coordinated through the PLCB. 40 Pa. Code § 9.46. Similar exceptions exist for inherited liquor and gift liquor.

Please note that malt or brewed beverages are not covered by section 9.46 of the PLCB's Regulations. For importing malt or brewed beverages, see [Bringing Beer Into Pennsylvania](#).

[J-87-97]

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 233 Disciplinary Docket No. 3  
: :  
Petitioner : Disciplinary Board No. 132 DB 91  
: :  
v. : Attorney Registration No. 38975  
: :  
ROBERT D. MONSOUR, : (Allegheny County)  
: :  
Respondent : Argued: April 29, 1997

OPINION

MADAME JUSTICE NEWMAN

DECIDED: OCTOBER 23, 1997

Respondent Robert D. Monsour (Monsour) has filed exceptions to the Disciplinary Board's report recommending his disbarment.

On November 1, 1991, the Office of Disciplinary Counsel filed a Petition for Discipline against Monsour, alleging that he had violated the Rules of Professional Conduct by mishandling client funds. A three-member hearing committee held hearings on July 27, 1992 and November 18, 1992. Based on a Petition to Reopen the Record filed by Monsour, the committee held an additional hearing on September 12, 1994, for the limited purpose of allowing Monsour to present evidence regarding his alcoholism.

The hearing committee found that between June of 1988 and September of 1990, Monsour intentionally misappropriated funds from

his client trust account. At the hearing, Monsour stipulated to the accuracy of the spreadsheets prepared by the Office of Disciplinary Counsel that show serious deficiencies in his client trust accounts on specific dates. For example, the hearing committee found that on June 21, 1989, Monsour was entrusted with \$96,224.68, but that the client trust account balance was only \$31,326.29, thus representing a deficiency of \$64,989.39. Furthermore, on one occasion, Monsour used funds entrusted to him on behalf of one client to make a payment to another client. The hearing committee also found that Monsour deposited personal funds into the account, thus commingling personal funds with entrusted funds. In addition, the hearing committee found that he disobeyed a court order regarding the handling of funds for minor clients.

On October 20, 1995, the committee filed its report concluding that (1) Monsour's misappropriation of client funds was dishonest conduct in violation of Rule of Professional Conduct (RPC) 8.4(c); (2) Monsour's treatment of entrusted funds as his own was criminal conduct reflecting adversely on his fitness to practice law in violation of RPC 8.4(b); and (3) his failure to obey an order of the Court of Common Pleas of Westmoreland County to place the proceeds of a settlement on behalf of two minor children into an interest bearing account, and to withdraw funds from the account only with court approval was conduct prejudicial to the

administration of justice in violation of RPC 8.4(d).<sup>1</sup> The hearing committee recommended disbarment.

Monsour filed exceptions, and on January 29, 1996, a three-member panel of the Disciplinary Board heard oral argument. By report dated May 29, 1996, the Board adopted the hearing committee's findings, concluded that Monsour had violated RPC 8.4(b), (c) and (d), and recommended his disbarment. Monsour filed a Petition for Review with this Court, and we granted oral argument.<sup>2</sup>

"In attorney discipline matters we exercise de novo review, and we are not bound by the findings and recommendations of the hearing committee or the Board, though we give them substantial

---

<sup>1</sup> Rule 8.4 provides in relevant portion:

It is professional misconduct for a lawyer to:

. . . .

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

. . . .

<sup>2</sup> Monsour also sought to present additional evidence regarding mitigation. This Court denied the request by Order dated August 13, 1996.

deference." Office of Disciplinary Counsel v. Chung, \_\_\_ Pa. \_\_\_,  
\_\_\_, 695 A.2d 405 (1997). The record before us clearly reveals  
that Monsour engaged in a deliberate pattern of raiding his client  
trust account for personal use. At the hearing, Monsour admitted  
that before he began misusing entrusted funds, his office manager  
warned him not to do so. Misappropriation of client funds is a  
serious offense that may warrant disbarment. Office of  
Disciplinary Counsel v. Lucarini, 504 Pa. 271, 472 A.2d (1983);  
Office of Disciplinary Counsel v. Knepp, 497 Pa. 396, 441 A.2d 1197  
(1982); Office of Disciplinary Counsel v. Lewis, 439 Pa. 519, 426  
A.2d 1138 (1981). As this Court noted in Lewis:

A client must . . . rest assured that any financial  
transactions carried out on the client's behalf will be  
scrupulously honest, will be accounted for at the  
client's request, and will involve full and immediate  
payment of funds that are due and owing to the client.  
This public trust that an attorney owes his client is in  
the nature of a fiduciary relationship involving the  
highest standards of professional conduct.

Id. at 529, 426 A.2d at 1143. Although this Court has disbarred  
attorneys who have commingled or improperly shifted funds in escrow  
accounts, we have declined to adopt a per se rule requiring  
disbarment for specific acts of misconduct. Lucarini. Instead, we  
consider each case individually, evaluating all relevant facts.  
Chung.

At the hearing, Monsour testified that he was an alcoholic at  
the time of his misconduct, and that at the height of his problem  
he drank ten to twenty twelve-ounce beers a day, every day of the



week. He has a family history of alcoholism, and his first wife left him in 1985 because of his drinking. Alcohol interfered with his ability to work, causing his staff to cover for him when he missed appointments. He was arrested four times for driving while under the influence, and sought treatment when his health, career and second marriage began to deteriorate. In February of 1994, he entered an intensive outpatient counseling program at Gateway Rehabilitation Center (Gateway). He began attending Alcoholics Anonymous meetings as part of his treatment and continues to attend meetings approximately two times per week. He testified that he has been sober since entering Gateway.

Dr. Neil Capretto, Director of Treatment at Gateway, testified by way of deposition, that he met with Monsour for ninety minutes on October 7, 1994. He spoke with him by telephone several times for a total of one hour, and discussed Monsour's situation with his wife for thirty to forty-five minutes. He reviewed Monsour's treatment records and spoke to his therapist at Gateway and his Alcoholics Anonymous sponsor. Dr. Capretto testified that he believed that Monsour knew what he was doing was wrong at the time he engaged in misconduct. While Dr. Capretto opined that Monsour's alcoholism was directly related to his misconduct, he was not aware of the extent of Monsour's actions, and believed that he had misappropriated \$5,000.00 or \$10,000.00.

For alcohol abuse to be considered a mitigating factor in

disciplinary proceedings, the respondent must establish by clear and convincing evidence that alcoholism was a causal factor in his misconduct. Office of Disciplinary Counsel v. Braun, 520 Pa. 157, 553 A.2d 894 (1989). In its report, the Board determined that Dr. Capretto's testimony did not convincingly establish a causal nexus between Monsour's alcoholism and his misconduct. It concluded that Monsour failed to meet his burden of proof because of: (1) the short period of time Dr. Capretto spent with Monsour; (2) the lapse of eight months between the end of Monsour's treatment and his meeting with Dr. Capretto; and (3) the doctor's vague acquaintance with the details of the misconduct.<sup>3</sup> We note that nowhere in his deposition testimony does Dr. Capretto state how he determined that Monsour's conduct was related to his alcohol abuse.

This Court has not established a per se rule that only a treating health care professional can establish the causal link between a respondent's misconduct and his psychiatric disorder, including addiction. However, our review of Dr. Capretto's testimony leads us to conclude that he lacked sufficient familiarity with the instant case to establish the connection between Monsour's alcoholism and his misconduct. Braun.

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<sup>3</sup> Monsour argues that the Board erred by not including evidence of his alcoholism in its finding of facts. However, we note that in the Discussion section of its report the Board includes a summary of Respondent's testimony and that of Dr. Capretto on the issue of Respondent's alcohol abuse. When read in its totality, the Board's report is sufficient to aid the Court in its de novo review of the matter.

Monsour also asserts that he provided other evidence that mitigates the imposition of disbarment in this case. He states that he admitted his misconduct and cooperated with the Office of Disciplinary Counsel in its investigation, which may be considered a mitigating circumstance. Office of Disciplinary Counsel v. Christie, 536 Pa. 394, 639 A.2d 782 (1994). However, the transcripts of the investigatory hearings in this matter indicate that Monsour resisted complying with requests for bank records. As such, even though he later admitted the strength of the case against him, he did not show a willingness to cooperate that justifies mitigation.

Monsour also claims that during the time of his misconduct, he had the legal right to access bank accounts of his father and uncle containing more than one million dollars. He and his uncle both testified to this effect at the hearing. Nevertheless, in Office of Disciplinary Counsel v. Kanuck, 517 Pa. 160, 535 A.2d 69, this Court held that the fact that an attorney had money in other accounts to cover the amount he misappropriated from escrow accounts, is "not relevant either as a defense or in mitigation of the violations which were proven by clear and convincing evidence." Id. at 173, 535 A.2d at 76.

As a mitigating factor, Monsour also points to his payment in full of all funds to clients before the institution of the investigation. The Office of Disciplinary Counsel first notified

Monsour of allegations concerning the funds of his clients Mr. and Mrs. Cararini on November 7, 1989. However, he did not make payments to them until November 17, 1989 and April 11, 1990. Disciplinary Board's Finding of Fact No. 124. In Knepp, this Court held that restitution by an attorney who was aware of an investigation against him did not "sufficiently mitigate the severity of respondent's misconduct as to justify a lesser form of discipline." Id. at 404, 441 A.2d at 1201. Accordingly, this action does not qualify as a mitigating factor.

After disciplinary proceedings began, Monsour limited his practice to relatives and close friends. However, as we noted in Knepp, the fact that an attorney reduces his practice after the commencement of disciplinary proceedings is irrelevant, and accordingly should not be viewed by the Court as a mitigating action.

For these reasons, we adopt the recommendation of the Disciplinary Board and disbar Robert D. Monsour from the practice of law in the Commonwealth of Pennsylvania. It is further ordered that he shall comply with the provisions of Pa.R.D.E. 217 and that he shall pay costs, if any, to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

Mr. Chief Justice Flaherty files a dissenting opinion.

Judgment Entered October 23, 1997,

  
\_\_\_\_\_  
CHIEF CLERK

[J-087-97] - 8

[J-87-97]  
IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 233 Disciplinary Docket
	:	No. 3
Petitioner	:	
	:	Disciplinary Board No. 132
v.	:	DB 91
	:	
	:	Attorney Registration No. 38975
ROBERT D. MONSOUR,	:	(Allegheny County)
	:	
Respondent	:	ARGUED: APRIL 29, 1997

DISSENTING OPINION

MR. CHIEF JUSTICE FLAHERTY

DECIDED: OCTOBER 23, 1997

Inasmuch as the respondent has made payment in full to clients prior to or immediately upon institution of the investigation, I would, as an inducement to others in like circumstances suspend for five years rather than disbar. In all other respects, I join in the rationale employed by the majority.



Updated 05/2017

## **PRODUCTION OF BEER FOR PERSONAL USE**

*Please be advised that it is the Pennsylvania State Police, Bureau of Liquor Control Enforcement (BLCE), and not the Pennsylvania Liquor Control Board (PLCB), which enforces the liquor laws in Pennsylvania. Further, information provided below is not binding on the BLCE and is offered for information and guidance only.*

Section 492(1) of the Liquor Code allows individuals without a manufacturer's license to produce up to 200 gallons of malt or brewed beverages for personal use, which may be used at organized affairs, exhibitions, competitions, contests, tastings or judgments, provided it is not sold or offered for sale. 47 P.S. § 4-492(1).



Updated 05/2017

## PRODUCTION OF SPIRITS FOR PERSONAL USE

*Please be advised that it is the Pennsylvania State Police, Bureau of Liquor Control Enforcement (BLCE), and not the Pennsylvania Liquor Control Board (PLCB), which enforces the liquor laws in Pennsylvania. Further, information provided below is not binding on the BLCE and is offered for information and guidance only.*

Please note there is no exception permitting the production of spirits at home in the Pennsylvania Liquor Code.

The Liquor Code defines “alcohol” as “. . . ethyl alcohol of any degree of proof originally produced by the distillation of any fermented liquid, whether rectified or diluted with or without water, whatever may be the origin thereof, and shall include powered alcohol and synthetic ethyl alcohol but, shall not include ethyl alcohol, whether or not diluted, that has been denatured or otherwise rendered unfit for beverage purposes.” 47 P.S. § 1-102.

The Liquor Code defines “liquor” as “. . . any alcoholic, spirituous, vinous, fermented or other alcohol beverage, or combination of liquors and mixed liquor, a part of which is spirituous, vinous, fermented or otherwise alcoholic, including all drinks or drinkable liquids, preparations or mixtures, and reused, recovered or redistilled denatured alcohol usable or taxable for beverage purposes which contain more than one half of one percent (½%) of alcohol by volume, except pure ethyl alcohol and malt or brewed beverages.” Id.

If you produce alcohol that is potable (i.e., drinkable), and is not wine or a malt or brewed beverage, then you would need to obtain a distillery or limited distillery license from the PLCB in order to manufacture the alcohol.

Section 102 of the Liquor Code defines “distillery” to mean “any premises or plant wherein alcohol or liquor is manufactured, made and distilled from raw materials, blended or rectified, or any place wherein alcohol or liquor is produced by any method suitable for the production of alcohol.” 47 P.S. § 1-102. A limited distillery license allows a maximum production of 100,000 gallons of distilled spirits per year. 47 P.S. § 5-505.4(b)(1).

You may obtain additional information regarding obtaining a distillery or limited distillery license by contacting the Bureau of Licensing at (717) 783-8250, or at P.O. Box 8940, Harrisburg, PA 17105-8940.

Also, applications must be completed via PLCB+.



Updated 05/2017

## **PRODUCTION OF WINE FOR PERSONAL USE**

*Please be advised that it is the Pennsylvania State Police, Bureau of Liquor Control Enforcement (BLCE), and not the Pennsylvania Liquor Control Board (PLCB), which enforces the liquor laws in Pennsylvania. Further, information provided below is not binding on the BLCE and is offered for information and guidance only.*

Section 491(2) of the Liquor Code provides that wine may be produced by any person without a license, as long as the products are not for sale, and the total production does not exceed 200 gallons per calendar year. 47 P.S. § 4-491(2).

While a person may not sell or offer for sale the wine he or she produces, he or she may use it at organized affairs, exhibitions, competitions, contests, tastings or judgments. Id.



## RECEIVING A GIFT OF LIQUOR FROM OUTSIDE PENNSYLVANIA

*Please be advised that it is the Pennsylvania State Police, Bureau of Liquor Control Enforcement (BLCE), and not the Pennsylvania Liquor Control Board (PLCB), which enforces the liquor laws in Pennsylvania. Further, information provided below is not binding on the BLCE and is offered for information and guidance only.*

It is generally unlawful for anyone, other than the PLCB or the holder of a sacramental wine license, an importer's license, or a direct wine shipper license, to import any liquor (including wine) into Pennsylvania. 47 P.S. §§ 4-491(8), (11). It is also generally unlawful for anyone, other than a manufacturer, the PLCB, the holder of a sacramental wine license, or the holder of an importer license, to possess or transport any liquor or alcohol within the Commonwealth that was not lawfully acquired from the PLCB, a PLCB-licensed limited winery, a PLCB-licensed distillery, a PLCB-licensed limited distillery, a PLCB-licensed direct wine shipper, or a PLCB-licensed retailer holding a wine expanded permit. 47 P.S. §§ 4-415, 4-488, 4-491(2), 5-505.2, 5-505.4. There are several exceptions to these general prohibitions found in the Liquor Code and the PLCB's Regulations; however, such exceptions are very limited in scope. See 47 P.S. § 4-491(2); 40 Pa. Code §§ 9.41 – 9.47.

One of the exceptions found in the PLCB's Regulations allows for liquor given to persons residing in this Commonwealth by nonresidents to be imported into Pennsylvania at the discretion of the PLCB. 40 Pa. Code § 9.41. In order to lawfully import liquor into Pennsylvania pursuant to this exception, an application for importation and an application for the payment of tax on the liquor must be filed with the PLCB's Bureau of Product Selection by the intended gift recipient (i.e., the person importing the liquor). 40 Pa. Code § 9.51. In addition, a service charge must be paid to the PLCB and any state taxes must be paid. 40 Pa. Code §§ 9.52, 9.54. After receiving the application and the corresponding fees, and upon being satisfied as to the truth of the statements contained in the application, the PLCB may, in its discretion, grant and issue a consent certification permitting the importation of liquor. 40 Pa. Code § 9.53.

Applicants may contact the Bureau of Product Selection, at [ra-lbconsumeroffers@pa.gov](mailto:ra-lbconsumeroffers@pa.gov) or (717) 787-7965, to obtain the necessary forms and to determine what fees would be owed to the PLCB. Because the state taxes on the liquor would be levied by the Department of Revenue, applicants should contact that agency at (717) 783-9354 to determine the amount of taxes that would be owed on the gift, if any.

Any liquor imported pursuant to the gift liquor exception must be transported by a licensed transporter-for-hire authorized to transport liquor. 40 Pa. Code §§ 9.53-9.54. To view a list of the businesses licensed to transport alcoholic beverages in Pennsylvania, place your cursor over the "Licensing" menu tab, select "PLCB+," followed by "Search for Licenses,"

and then select the link for “CSV Download of All Licenses.” Once the list populates, you can alphabetically sort the license type column, and then scroll through the list until you reach the “Transporter for Hire” licensees. Please note that only “Transporter for Hire Class A” and Transporter for Hire Class C” licensees are authorized to transport liquor.

Furthermore, any liquor imported pursuant to the gift liquor exception must be for personal use only and may not be sold in the Commonwealth, except by the PLCB or in other rare circumstances as authorized by section 215 of the Liquor Code, 47 P.S. § 2-215. 40 Pa. Code § 9.72.

Finally, please note that the gift liquor exception described above only applies to liquor. The importation of malt or brewed beverages is governed by different sections of the Liquor Code, 47 P.S. §§ 4-431, 4-492(8), and no exception currently exists that would allow for the importation of gift malt or brewed beverages outside the otherwise authorized channels of distribution.



Updated 09/2017

## **RULES WITH REGARD TO SHIPPING ALCOHOL INTO PENNSYLVANIA FROM OTHER STATES**

*Please be advised that it is the Pennsylvania State Police, Bureau of Liquor Control Enforcement (BLCE), and not the Pennsylvania Liquor Control Board (PLCB), which enforces the liquor laws in Pennsylvania. Further, information provided below is not binding on the BLCE and is offered for information and guidance only.*

It is unlawful for any person to import alcohol into Pennsylvania except as permitted within the Liquor Code and the PLCB's Regulations. 47 P.S. § 4-491(8), (11). The law provides that:

It shall be unlawful [f]or any person, other than the board or the holder of a sacramental wine license, an importer's license or a direct wine shipper's license, to import any liquor whatsoever into this Commonwealth.

47 P.S. § 4-491 (11).

Therefore, unless the recipient of the liquor falls within one of the four exceptions provided in section 491(11) – the PLCB, a sacramental wine licensee, an importer, or a direct wine shipper – such importation of liquor is illegal.

Act 39 of 2016 (Act 39) created a direct wine shipper license (DWS license). 47 P.S. §§ 1-102, 4-488(a), 4-491(11). This license is available to any person licensed by the PLCB, another state, or another country as a *wine producer*. Limited wineries are specifically included in the definition of direct wine shipper. 47 P.S. §§ 1-102, 4-488(a).

The DWS license permits its holder to ship a maximum of thirty-six cases of wine, up to nine liters per case, in any calendar year, to a Pennsylvania resident for such resident's personal use. 47 P.S. § 4-488(b).

To obtain a DWS license, the applicant must file a written application, pay a \$250 fee, provide a copy of the applicant's current producer license, provide documentation that the applicant has obtained a sales tax number from the Department of Revenue, and other information as required by the PLCB. 47 P.S. § 4-488(c.1).

A DWS license holder must do all of the following:

- Report to the PLCB the total wine shipped in a calendar year.
- Permit auditing of the DWS license records by the PLCB, the BLCE, or the Department of Revenue.

- Require proof of age of the recipient of wine before the wine is shipped.
- Label boxes with the phrase “CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED FOR DELIVERY.”
- Pay sales tax and pay a \$2.50 per gallon wine excise tax to the Department of Revenue.
- Pay an annual renewal fee of \$250. 47 P.S. § 4-488(d), (j).

Any person who resells wine obtained from a DWS licensee commits a second degree misdemeanor and is subject to a fine of \$4 per fluid ounce for each container of wine found on the premises where the sale was made (in addition to other criminal penalties). This prohibition on reselling wine does not apply to licensees who acquire wine from licensed limited wineries acting under the authority of their limited winery licenses. 47 P.S. § 4-488(f).

All wine ordered under this section must be transported by a licensed transporter-for-hire. 47 P.S. § 4-488(l). Limited wineries must now obtain this license to directly ship wine to a Pennsylvania resident’s home. 47 P.S. § 4-488(b), 505.2(a)(2.1).

In addition, liquors and wines not listed for regular sale through the PLCB’s wine and spirits stores may be acquired by residents of the Commonwealth (including licensees of the PLCB) via special liquor order (“SLO”). 47 P.S. § 3-305. SLOs may be placed at any of the PLCB’s wine and spirits stores, or via the Bureau of Product Selection at (800) 332-7522, option # 1. SLOs placed by a consumer must be shipped to a wine and spirits store operated by the PLCB and may be either for personal use or, if purchased by a PLCB licensee, for resale in any licensed establishment. Such liquor is subject to taxes, a markup of 10% of the product, freight/shipping charges, and a handling fee.

Act 39 also allows the PLCB to accept SLOs placed by licensed importers or licensed vendors on behalf of customers, in addition to accepting SLOs placed directly by customers. However, delivery may only occur after payment has been forwarded to the PLCB and the PLCB has authorized delivery of the order. Liability for SLOs placed by licensed importers or licensed vendors on behalf of customers remain with the importer or vendor until the time of delivery to the customer.

The PLCB is permitted to refuse to process, or prohibit the processing of, SLOs for items that are substantially similar to items that appear on its monthly price lists, or if the PLCB believes demand for the items warrants them being made available generally. The PLCB has the discretion to determine the amount and manner for which any such item will be made available.

With regard to the direct shipment of wine, please be aware of the United States Supreme Court's decision in Granholm v. Heald, 544 U.S. 460, 125 S.Ct. 1885 161 L.Ed.2d 796 (2005). In Granholm, the Court declared unconstitutional state laws in New York and Michigan that prohibited residents of those states from buying directly from out-of-state wineries. The Court held that where a state permits in-state wineries to ship their products directly to consumers, while requiring out-of-state wineries to ship only through the three-tier system, such differential treatment violates the Commerce Clause of the United States Constitution.

A lawsuit, Cutner v. Newman, 398 F. Supp. 2d 389 (E.D. 2005), was filed in federal court challenging Pennsylvania's laws on direct shipping. On November 9, 2005, the United States District Court for the Eastern District of Pennsylvania issued an order enjoining enforcement of Pennsylvania's laws prohibiting out-of-state wineries from selling and shipping directly to consumers, hotels, and restaurants in a manner which treats in-state wineries differently than out-of-state wineries.

Thereafter, the Attorney General's office advised the PLCB that the provisions of the Liquor Code and PLCB's Regulations which, at the time, permitted in-state wineries to deliver directly to Pennsylvania licensees and consumers, while prohibiting out-of-state wineries from doing so, were unconstitutional. Therefore, the PLCB took measures to temporarily remedy the differential treatment until the Pennsylvania General Assembly has the opportunity to provide a legislative remedy addressing the issues raised by the Granholm case.

Regarding the importation of malt or brewed beverages, Act 166 of 2016 (Act 166) created a direct malt or brewed beverage shipper (DBS) license to allow out-of-state shipment of malt and brewed beverages to Pennsylvania residents. 47 P.S. § 4-448(a). Act 166 limited who may obtain this new license to any person licensed by another state or another country as a wholesaler or retailer of malt or brewed beverages. 47 P.S. § 4-448(b).

A DBS license permits its holder to ship a maximum of 192 fluid ounces per month of any malt or brewed beverage upon the order of any Pennsylvania resident twenty-one years old or older for such resident's personal use (not for resale). No more than 96 fluid ounces of a specific brand of malt or brewed beverages may be shipped to any one Pennsylvania resident within one calendar year. 47 P.S. § 4-448(b).

To obtain a DBS license, the applicant must file an application, pay a \$250 fee, provide a copy of the applicant's current alcohol beverage license, provide documentation that the applicant has obtained a sales tax number from the Department of Revenue, and provide other information as required by the PLCB. 47 P.S. § 4-448(c).

A DBS license holder must do all of the following:

- Report to the PLCB the total malt or brewed beverages shipped in a calendar year.
- Permit auditing of the DBS license records by the PLCB, the Pennsylvania State Police Bureau of Liquor Control Enforcement, or the Department of Revenue.
- Submit to the jurisdiction of the PLCB, any other Commonwealth agency, and the courts of this Commonwealth for purposes of enforcement.
- Require proof of age of the recipient of malt or brewed beverages in a manner approved by the PLCB before malt or brewed beverages are shipped.
- Label boxes with the phrase “CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED FOR DELIVERY.”
- Pay all taxes due on sales to the Department of Revenue (the amount of taxes shall be calculated as if the sales were in this Commonwealth at the locations where delivery was made).
- Pay an annual renewal fee of \$250. 47 P.S. § 4-448(d).

Any person who resells malt or brewed beverages obtained from a DBS licensee commits a second degree misdemeanor and is subject to a fine of \$4.00 per fluid ounce for each container of malt or brewed beverages found on the premises where the sale was made, in addition to other criminal penalties. 47 P.S. § 4-448(e).

All malt or brewed beverages ordered under this section must be transported by a licensed transporter-for-hire. 47 P.S. § 4-448(i).

Malt or brewed beverages sold by a DBS license holder will not be subject to the three-tier system, territorial rights, and brand registration requirements found in sections 431 and 445 of the Liquor Code. 47 P.S. § 4-448(j), (k).

# Sobering

# REALITY

The Way Forward on  
Substance Abuse and  
Mental Health Issues  
in the Legal Profession

By Larry Teitelbaum

*Last year, Penn Law Dean Ted Ruger huddled with senior staff to figure out how to help students navigate the shoals of law school and prosper during what can be a fraught time for some.*

*Those strategy sessions occurred amid a gathering storm in the legal profession, which had been buffeted by disturbing reports about a growing rate of depression and substance abuse among lawyers and law students, posing unprecedented challenges that called for a broad reassessment of the industry.*

*What Ruger and his team came up with was simple in design yet revolutionary in its potential impact on Penn Law and on other law schools: a plan to institute wellness into a required professional responsibility course for graduation.*

*If only such a program had existed when she went to Penn Law in the mid-2000s, maybe Joy Wilson (not her real name) would have had the tools to better cope with the emotional strain and avoid the eventual derailment she experienced during law school.*

*Wilson recently shared her story in unsparing detail in the hope that it would prove instructive and beneficial to current students and practicing attorneys who are struggling like she did.*

## **I T WAS 3L YEAR. HOMESTRETCH.**

It seemed like Wilson had law school nailed. Did well in the first two years despite a burgeoning drinking problem that she had managed to conceal.

But in the spring semester of year three this now-thirtysomething Penn Law alumna capsized.

Her consumption of alcohol and use of Adderall to combat fatigue began early in law school. At first, Wilson spent weekends alone in her apartment draining bottles of wine. She graduated to a box of wine every two days, followed by regular blackouts. By the end of her 2L year, she was going through a month's worth of Adderall in three weeks, using the stimulant to get sober or wake up so she could drink more.

By the summer after her 2L year, Wilson was drinking every night, knocking back six-packs of tall beers that she had purchased on her way home from her internship. As summer turned to fall, things got worse. Wilson was now going through a month's supply of Adderall in one or two weeks; she no longer met friends because she was drunk or wanted to hole up and drink by herself; and she failed to file weekly reports about her clinic externship.

It became unsustainable.

That's when Wilson's clinic supervisor called a meeting at which he warned her that she would have been fired from her job for that kind of behavior and performance. At which point Wilson broke down. "He was the only person who noticed that something was really wrong. And I started crying and I said, 'I'm totally miserable, I'm drinking all the time and I'm really depressed.' We spent an hour together and I sobbed through the whole thing," said the alumna, who requested anonymity to tell her story without having to worry about sully her reputation in the profession given the continued stigma attached to substance abuse and mental health issues.

The alumna said she stopped drinking and taking Adderall for a few weeks but folded under the pressure of finals and her approaching graduation. She went on a three-day bender, prompting her to text a classmate for help. They met in a study room, after which she walked up to the office of then-Dean of Students Gary Clinton, who recommended she take the rest of the semester off. Following the meeting, she called a rehab facility and took a medical leave.

It was a huge disappointment. A biochemistry major in college, Wilson had considered medical school but had changed her mind, in part due to the lure of Penn Law School. Wilson knew people who had gone to Penn Law, all of whom spoke glowingly of the school. Penn Law School was her top choice, and now she was squandering her golden opportunity.

Only in retrospect did she understand what had happened to her. Wilson's depression (she had been diagnosed in fourth grade), her lack of self-esteem, and her feeling of isolation in the early days of law school contributed to her descent into alcoholism.

"I was lonely. I didn't know anyone. I thought I was surrounded by all of these smart, successful people. I wasn't sure of my place and whether I belonged among them. My childhood dog was dying. There was a lot of stuff going on and I had not brought into adulthood a healthy set of coping skills, and so I started drinking to numb that feeling," said the alumna.

Unfortunately, addiction, depression and anxiety are becoming all too common in the legal profession and in law school. In 2016, the American Bar Association revealed the depth of the crisis when it released a worrisome report in conjunction with the Hazelden Betty Ford Foundation. The survey of nearly 15,000 attorneys found that as many as one-third qualified as problem drinkers, and up to a quarter suffered from depression, anxiety and stress — rates that are higher than the general population, according to the ABA. That same year, 15 law schools and more than 3,300 law students participated in a separate survey with similarly disheartening results. Forty-three percent of students said they had at least one episode of binge drinking in the prior two weeks, with one quarter at risk for alcoholism.

While the ABA is quick to point out that the majority of the nation's lawyers and law students do not have a mental health or substance abuse disorder, the statistics were of sufficient scope to ring alarm bells — and to get the attention of more than one hundred law firms and a growing number of law schools, including Penn Law, who have either pledged to address the problem or have created a range of wellness programs aimed at prevention or early intervention.

"This is not an abstract issue to us. These are issues that have in recent years hit us

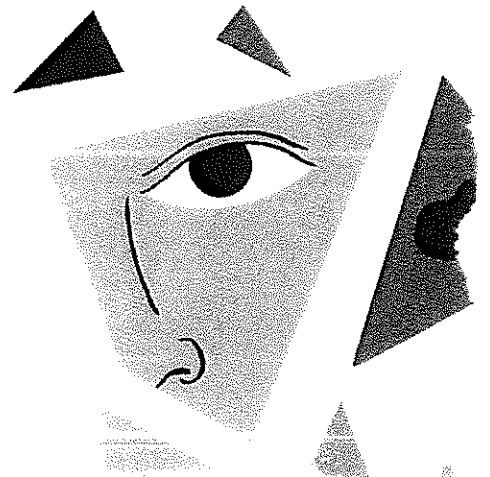
close to home and motivated us to do more," said Ted Ruger, dean of Penn Law School and Bernard G. Segal Professor of Law.

With the impetus of the ABA reports, Dean Ruger led an effort to formally integrate wellness programming into the curriculum, making Penn Law one of the first law schools to do so, just as the University of Pennsylvania was the first Ivy League school to hire a chief wellness officer.

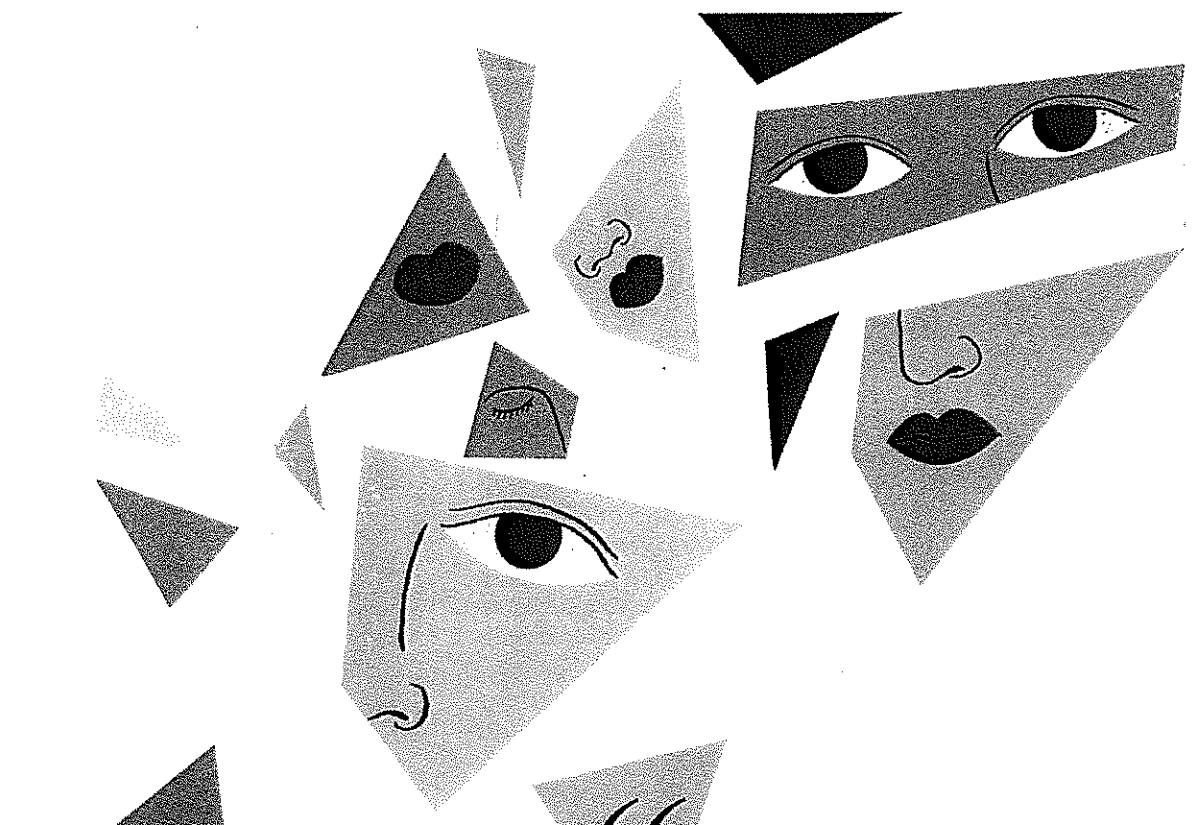
Penn Law's pilot program, which is continuing in the 2019–20 academic year, puts in place a wellness component within professional responsibility courses, the only required upper-level course in the law school curriculum. Its main aim, organizers said, is to teach students how to manage and reframe stress in law school and on the job after graduation.

Jennifer Leonard L'04, associate dean of Professional Engagement, developed the class with John Hollway C'92, LPS'18, associate dean and executive director of Penn Law's Quattrone Center for the Fair Administration of Justice. Hollway recently earned his masters at Penn in applied positive psychology, and around the release of the ABA report, he and Leonard had been working on a module for first-year students on the positive reframing of stress.

"Positive reframing of stress is all about realizing that stress does not have to be perceived as this soul-crushing thing," Hollway said. "Stress is a signal from our bodies that something that we care about

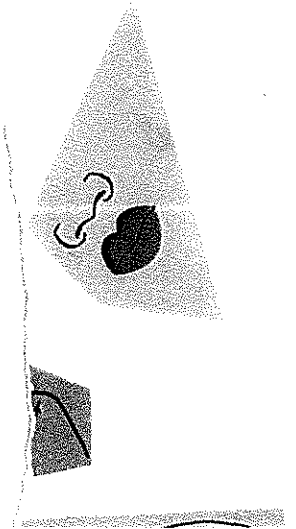






“  
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of these smart,  
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I wasn't sure of  
my place and  
whether I belonged  
among them.”

JOY WILSON



## FOR ONE FORMER LAWYER, THE EVIDENCE IS IN: MINDFULNESS REDUCES STRESS

**B**ack in August, Elizabeth J. Coleman '74 was teaching a class on mindfulness at Columbia Law School. After the class, a student came up to her and asked, "How do I get more of this?"

It is the same question Coleman asked herself nearly twenty years ago during her recovery from cancer. In 2001, she had studied mindfulness and Mindfulness-Based Stress Reduction (MBSR), a meditative practice which teaches people, among other things, to focus on the present moment. The daily practice, she said, promoted healing and made her initial diagnosis less terrifying. Eventually, Coleman became a teacher of MBSR and mindfulness.

Since 2005, Coleman has been teaching lawyers, among others, to, as she put it, get what she has without having "to get what she got."

Coleman, who practiced public interest law for more than twenty years, has taught mindfulness to approximately one thousand lawyers. An impressive feat considering that there was virtually zero interest when she started.

Still, some lawyers, she said, continue to roll their eyes and dismiss the whole thing. None of which deters Coleman, who said she speaks in terms lawyers can understand, couching the practice as a practical skill for which there is ample evidence.

"I think it stands up to scrutiny and cross-examination," Coleman said. "There have been many studies of mindful meditation and particularly of the Mindfulness-Based Stress Reduction course, and there is evidence that mindful meditation and other mindful practices help address anxiety, anger and depression, and help improve satisfaction with life. Secondly, I think it stands up to scrutiny in the practice itself. I find that when I lead even short meditations, participants feel greater calm and equanimity. In a sense, the proof is in the pudding."

Clearly, the tide has shifted in recent years as interest in mediation has grown throughout the culture and among lawyers. Coleman has taught mindfulness at law schools, bar associations,

nonprofit organizations and law firms, from which she has received many referrals for group courses or individual instruction. She did one presentation for trial lawyers that several hundred attended.

"Often lawyers do this (take the course) because they're miserable," said Coleman, adding that some attorneys are so busy that they can hardly find the time to take a class that's one night a week for eight weeks.

Despite their initial qualms, Coleman said she's had success helping lawyers and others in trouble. She said a judge came to her for anger management and managed to retain her place on the bench due to the training.

Coleman's counsel to lawyers:

breathe before you say something in anger, and try to remain centered in a meeting, in the courtroom and with colleagues.

Serious depression and addiction are another matter. In those instances, Coleman takes a conservative—and complementary—approach. "I would never let people bank on this," she said. "I insist that people always go to therapy whenever it's called for."

That said, in her estimation mindfulness, with its intense focus on the present moment, offers a safe harbor for lawyers in distress. "The future is the source of our anxiety; the past is where our regret and depression live; and ninety-nine percent of the time the present moment is okay."

For more information on mindfulness training, go to: [mindfulnessmeditationnyc.com/mbsr-nyc-teachers/elizabeth-j-coleman](http://mindfulnessmeditationnyc.com/mbsr-nyc-teachers/elizabeth-j-coleman)



**"I find that when I lead even short meditations, participants feel greater calm and equanimity. In a sense, the proof is in the pudding."**

needs our attention, and that we can affect it in ways that are good for us. We can view stress as an opportunity, a chance for me to do something that matters to me, to do it well, and to look at how I manage my reactions and optimize my outcomes.

"Think about somebody who messes up on a cold call in class," he continued. "One response is, 'I'm just no good at the law, all my classmates think I'm a moron, I just can't do this.' A more productive way of thinking is to say, 'Hmm, I didn't do very well on that question, but I learned some things there. I know what I need to work on to do better next time. I've seen other people not do well on questions, and I don't think they're morons, so let's chalk this up to an imperfect moment and grow from it.'"

Penn Law has made the new wellness material a part of the Professional Responsibility course that all upper-level students are required to take before graduation. The class includes a discussion of the connection between attorney well-being and attorney professional responsibility, an overview of some of the well-being challenges facing the profession, a discussion of the ABA task force report, an explanation of positive psychology concepts, a video highlighting research on the subject, exercises on meditation, and a character survey that helps students understand their personality and how to take advantage of their strengths and minimize their weaknesses.

Jordana Alter Confino took an in-depth look at law school wellness programming as detailed by the ABA COLAP Law School Assistance Committee, which surveyed half of the nation's law schools. Her findings will be published this fall in the *Journal of Legal Education*.

In an email, Confino, the director of professionalism and special projects at Fordham University School of Law, noted the sweep of Penn Law's new wellness program, with its holistic approach that includes a focus on resilience and mindfulness, a meditative practice that emphasizes putting attention on the present moment.

“  
What we should be asking is ...  
What are we doing that  
makes people feel depressed or  
anxious? What are we doing  
that makes them feel like they  
need to narcotize themselves  
with drugs or alcohol?”

LARRY RICHARD L'72

She said the program highlights "the important fact that it is not possible for lawyers to fulfill their ethical responsibilities to their clients if they do not also tend to their own mental health and well-being."

In her piece, she called Penn Law's program "the gold standard" among U.S. law schools.

In 2018, the *Harvard Business Review* created a stir when it published a cross-industry study measuring loneliness in the professional world. Topping the list as the loneliest profession: law. The article cited research on isolation in the workplace, concluding that loneliness can be as debilitating and threatening to health as smoking half a pack of cigarettes per day.

The finding tracked with the high prevalence of depression among lawyers, but it begged the question:

Why are lawyers so susceptible to depression and substance abuse?

Dr. Larry Richard L'72 is a lawyer turned psychologist who understands the dynamics of attorney behavior through long

years of study and work with law firms, where he teaches leadership how to build teams and foster greater collaboration and how to innovate.

Picking up where the *Harvard Business Review* article left off, Richard said "the research in the last 20 years shows that social connection is the single most powerful engine that drives all of the outcomes that human beings want: life satisfaction, work satisfaction, physical longevity, a good immune system, and healthy relationships."

Richard argued that in-bred skepticism, fault-finding, problem-seeking and motive-questioning—prized attributes of a skilled lawyer—do not necessarily equate to happiness, or connection. When you add the pressures of globalization and the ubiquity of technology, both of which drive a 24/7 culture, you've got a recipe for anxiety and depression, according to Richard.

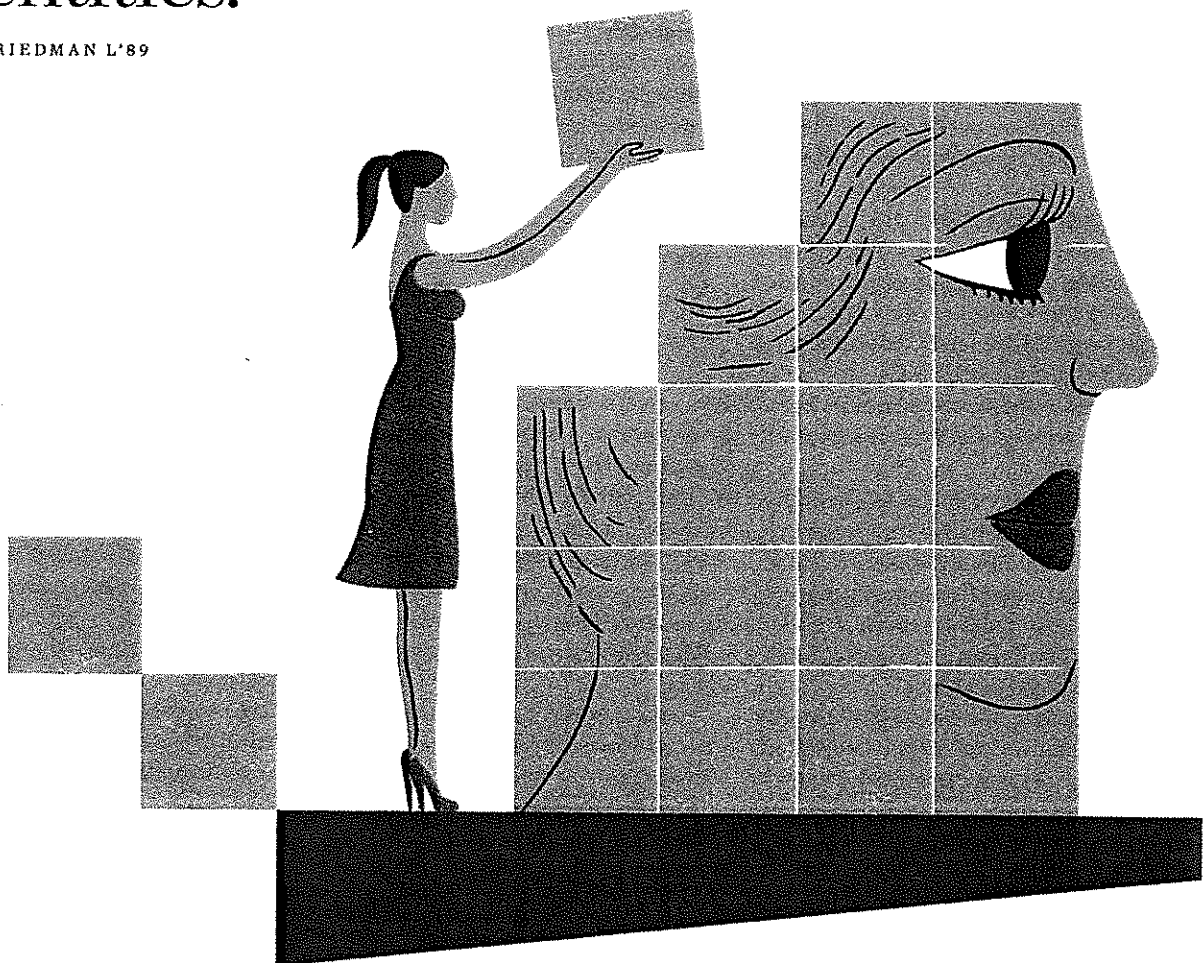
"What we should be doing is asking what it is about the way that we practice law that creates the conditions that make people suicidal in the first place?" said Richard, founder of LawyerBrain LLC, a management consulting firm that serves the legal profession. "What are we doing that makes people feel depressed or anxious? What

“

People are looking  
for tools to improve  
their well-being...

They want environments  
that support their whole  
selves, not just  
their professional  
identities.”

ERIC FRIEDMAN L'89



are we doing that makes them feel like they need to narcotize themselves with drugs or alcohol?"

While acknowledging how hard it is to change cultural norms in large institutions, Richard offered prescriptions for change, drawing on his work with corporations.

He said the profession should stress positivity and do more research on how people thrive; should issue a moratorium on the use of social media, barring cell phones from meetings; should encourage employees to meet colleagues they don't know; should train partners not to micromanage; and should develop the strengths of young lawyers rather than focus on their flaws and weaknesses.

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**P**enn's Counseling and Psychological Services (CAPS) has seen would-be lawyers up close. In the last fiscal year, CAPS saw more than 160 law students. Three years ago, the University started a pilot program in which it placed a counselor at the Law School and at other professional schools on campus. Dr. Kyra Selwyn, a clinical psychologist at Penn, spends Tuesday and Thursday nights at the Law School.

Selwyn noticed similar trends at Penn Law as those noted in the wider law school community. These include navigating the law school environment, and balancing law school demands (such as a desire to perform well) with maintaining personal relationships. Selwyn said it is important that students recognize a problem and utilize the sources of support available to them such as campus resources, law school advisors, and CAPS.

The ABA itself began to recognize the occupational hazards a few years ago. It was inescapable after the organization collaborated with the Hazelden Betty Ford Foundation on a comprehensive study of addiction and mental health in the world of law. Shocked by the numbers,

the ABA sprang into action, creating a task force that came back with numerous recommendations for stakeholders including encouraging people to seek help, reducing the stigma surrounding substance abuse and mental illness (a few weeks ago, the organization posted the first in a series of anti-stigma videos on its website featuring law students, lawyers, and judges who overcame alcoholism and depression), monitoring employee recovery from substance abuse problems and beginning a dialogue on suicide prevention. Most of all, the task force prevailed upon organizations to commit to establishing well-being programs through a pledge.

The subject of well-being resonates with Bob Carlson, immediate past president of the ABA. Addiction and depression have struck his own family with unusual force. He lost a brother and a brother-in-law to suicide and watched two brothers and a brother-in-law struggle with addiction.

During his tenure, which ended in August, Carlson said he would go to law schools and attorney gatherings and inevitably people would approach him and confide that they had a problem themselves.

It is for them and for the next generation of lawyers that the ABA feels an obligation to provide a better future, he said. "I'm not sure we can continue the (existing) model," said Carlson, a shareholder at Corette Black Carlson & Mickelson, P.C., in Butte, Montana. "We need to be healthy to do our job effectively. Because the ABA is the national voice of the profession, we felt that we couldn't sit back and ignore this problem."

As a result, the ABA's National Task Force on Lawyer Well-Being has called on legal employers, regulators, law schools and judges (who often preside in contentious environments and who face threats to their safety) to immediately address the underlying issues that are plaguing the industry.

Skadden Arps, an influential law firm with 22 offices on three continents, supported the ABA's efforts early on, signing

a pledge to do all it can to emphasize wellness in the workplace. To that end, it created a comprehensive program last year called Live Well Work Well that explores emotional, financial, physical and social well-being. The program focuses on areas such as stress management, drug and alcohol awareness, work/life balance, fitness, nutrition, and interpersonal relationships.

As part of its multipronged approach, in the spring Skadden invited Yale professor Laurie Santos to present a version of her popular course on happiness. She drew a crowd of 200 lawyers and professional staff that practically spilled out of a large conference room in the New York office. According to executive partner Eric Friedman L'89, it was the largest turnout for a voluntary program in memory.

There was a similar response to a mindfulness program for summer associates and to a meditation app that attorneys could access whenever they wanted. Friedman said the app drew more than 200 downloads in the first few weeks.

"People are looking for tools to improve their well-being... They want environments that support their whole selves, not just their professional identities," Friedman said. "We want to respond to that interest, because we know that when people feel supported as individuals, happiness, performance and collaboration all improve. It's a win-win-win."

Friedman said Skadden is currently rolling out a firm-wide live meditation series where up to 50 people can gather in a room as an instructor guides them through a 30-minute session. Additionally, the firm is planning to work with Penn Law to identify ways to include Penn Law's wellness module into its summer associate mentoring program, in which firm lawyers prepare students for the transition to legal practice.



The new Christy Parker Wellness Suite provides a welcoming space for students to relax and recharge.

“  
I really appreciate that Penn recognizes that yes, stress is part of the initiation process, but it doesn't have to be. We're going to do what we can to try to make it less so.”

GRACE GREENE 3L

**W**hen Dean Ruger announced the wellness initiative, practicing lawyers flooded Jennifer Leonard's inbox in praise of the effort, a far cry from when Leonard went to law school in the early 2000s. Back then, alcoholism and depression were taboo subjects, at least in law school.

“I never heard anyone talk about health and wellness as it relates directly to being a law student or lawyer,” recalled Leonard, who focuses on Penn Law's innovation initiatives. “When I graduated into practice, very few of my colleagues discussed the issues openly, either.”

Times change. Now she's leading the discussion with her colleague, John Hollway. In the maiden year of Penn Law's wellness program, Leonard and Hollway delivered two-hour lectures to each class on the dangers facing lawyers and on ways they can maintain mental health. They covered the landscape, speaking about how lawyers who are trained to look for problems can be their own worst critics and about how the daily grind of deadlines



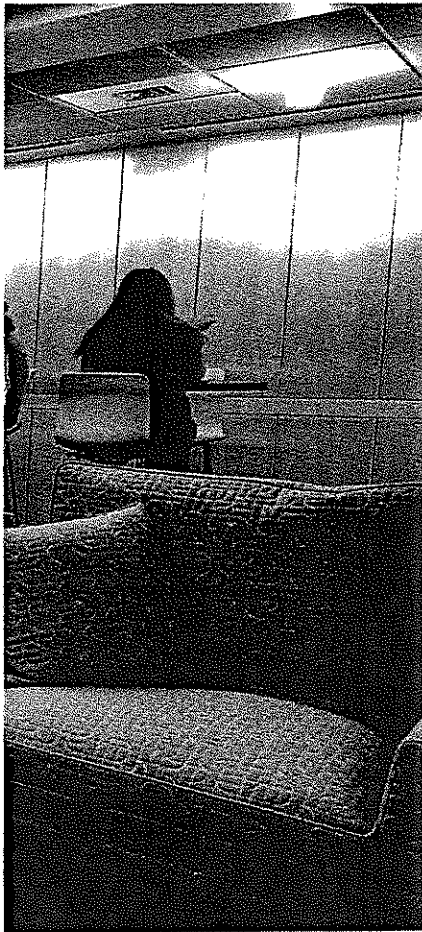


PHOTO: CHARLES SHAN CERRONE

can leave little time for the development of healthy habits.

Kendall Torpey 3L, who took the module last school year, called it a worthwhile effort to teach future lawyers how to “cope not only with the typical ups and downs of life but some of the more acute mental health problems that crop up based on stressful work schedules or the pressures of the industry.”

Added Grace Greene 3L, another student in the first cohort: “Everybody in law school knows what a trying experience it can be. And a lot of times [students will accept it] as just part of the initiation process into the profession. I really appreciate that Penn recognizes that yes, stress is part of the initiation process, but it doesn’t have to be. We’re going to do what we can to try to make it less so.”

Since trial and error are a part of any experiment, Ruger said the Law School solicited feedback from students and will incorporate some of their suggestions. For example, students want more focus on how they can use their strengths to

improve their lives and would like more discussion on how to make law school itself healthier. In their replies to a survey, they also wrote that the Law School could better promote student well-being by having a permanent counselor on site, by taking steps to make the Law School environment less competitive, and by incorporating more wellness activities into the first year.

Ruger said Penn Law plans to share its module with interested law schools so they can replicate the program. “It’s now past time to focus on these issues and demonstrate with our words and our institutional actions that we’re a leader on wellness programming,” Ruger said. “To flourish in the law, as in life, we lawyers must be attentive to our own physical and mental health and aim to develop awareness of risk factors that threaten our well-being as well as of solutions and techniques that can help.”

During the fall semester, the Penn Law Student Affairs Office has sponsored workshops on sleep and nutrition, hosted physical fitness classes, and brought in a cognitive behavioral therapist. The events largely took place in the new Clinton/Parker Wellness Suite, a multipurpose student room with student meeting spaces that complements the new Living Room, a student lounge of sorts which includes a kitchen, televisions and comfortable lounge furniture. Located in the basement of Silverman Hall, it will be a place for students to relax in a quiet environment and take a break from their studies, according to Penn Law Dean of Students Felicia Lin. These new spaces opened in October.

The suite and Penn Law’s wellness program overall are meant to provide a buoy to students like the alumna who ran aground during her 3L year earlier this decade.

The alumna’s road to recovery began after she spent 30 days in rehab, worked with a therapist who helped her understand the sources of her anxiety, and enlisted the aid of a support group for alcoholics. She returned to law school in

the fall and graduated in December. She hasn’t had a drop to drink or swallowed a single drug ever since.

“The decision to leave law school was the scariest decision I ever made,” she said. “It really felt like I was derailing my life and losing time I could never make up.” But in retrospect, she said, it prevented a catastrophe. “The decision to get help and get sober is the thing I am most proud of in my life.”

Today she works in public service and counsels bar applicants who seek advice on how to disclose drug and alcohol problems. Reflecting on her good fortune, she said: “I work in a job I dreamed of having... I dreamed of the life I have now. There’s a whole beautiful life on the other side.” ▾

## WHERE TO TURN FOR HELP

### STUDENTS

**University of Pennsylvania Counseling and Psychological Services (CAPS)**  
215-898-7021

**Penn Law Student Affairs**  
215-898-7482  
stuaffairs@law.upenn.edu

**National Suicide Prevention Lifeline**  
1-800-273-TALK (8255)

### PRACTICING LAWYERS

**ABA Commission on Lawyer Assistance Programs (coLAP)**  
[www.americanbar.org/groups/lawyer\\_assistance/resources/lap\\_programs\\_by\\_state/](http://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state/)

*There is a directory of lawyer assistance programs for every state in the country.*

**Suicide Prevention Resource Center**  
[www.sprc.org](http://www.sprc.org)

**Alcoholics Anonymous**  
212-870-3400  
[www.aa.org](http://www.aa.org)

**Start Your Recovery**  
[www.startyourrecovery.org](http://www.startyourrecovery.org)

**Lawyers with Depression**  
[www.lawyerswithdepression.com](http://www.lawyerswithdepression.com)



Cited  
As of: January 12, 2020 7:17 PM Z

## Winwood v. Bregman

Superior Court of Pennsylvania

October 2, 2001, Argued ; November 20, 2001, Filed

No. 1950 WDA 2000, No. 1951 WDA 2000

### Reporter

2001 PA Super 329 \*; 788 A.2d 983 \*\*; 2001 Pa. Super. LEXIS 3444 \*\*\*

BRIAN WINWOOD, Appellant v. CHARLES BREGMAN and CAROL BREGMAN, Appellees; PATRICK M. WINWOOD and BARBARA WINWOOD, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF TIMOTHY WINWOOD, A MINOR, DECEASED, Appellants v. CHARLES BREGMAN and CAROL BREGMAN, Appellees

### Procedural Posture

Plaintiffs, an injured party and his parents, filed separate actions against defendants, a husband and wife. The Court of Common Pleas of Allegheny County (Pennsylvania) granted summary judgment for the husband and wife in both cases and the injured party and his parents appealed.

**Prior History:** [\*\*\*1] Appeal from the Order entered October 12, 2000 in the Court of Common Pleas of Allegheny County, Civil Division, at No. GD 98-7598. Appeal from the Order entered October 12, 2000 in the Court of Common Pleas of Allegheny County, Civil Division, at No. GD 98-7599. Before BALDWIN, J.

**Disposition:** Summary judgment orders were affirmed.

### Core Terms

alcohol, trial court, social host, minors, prima facie case, summary judgment, no evidence, grant of summary judgment, grant summary judgment, moving party, consumption, liquor, adult, genuine issue of material fact, summary judgment motion, light most favorable, improperly granted, present evidence, oral testimony, Nanty-Glo Rule, deposition, non-moving, knowingly, daughter, supplied, driving, planned, Orders

### Overview

One of two brothers consumed alcohol while both brothers were visiting a friend at her parents' home. The parents were not home at the time of the visit, and, although they had purchased the alcohol and kept it in their home in an area that was accessible to anyone who visited the home, they had no knowledge that their daughter had invited the brothers to visit their home. After the brothers left their friend's home, they were involved in a one-car accident that was caused by the brother who consumed the alcohol. That brother was injured in the accident and his brother, who was a passenger in the car, was killed. The appellate court held that the trial court properly granted summary judgment in favor of the friend's parents because neither the injured brother nor did his parents present evidence which showed that the friend's parents purchased alcohol for consumption by minors, that they planned the event where the brothers drank, or that they agreed to underage-drinking during that event.

### Outcome

The trial court's judgment was affirmed.

### Case Summary



## LexisNexis® Headnotes

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Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Judgments > Summary Judgment > General Overview

Civil Procedure > Appeals > Summary Judgment Review > General Overview

Civil Procedure > Appeals > Summary Judgment Review > Standards of Review

### [HN1](#) Standards of Review, Abuse of Discretion

On an appeal from a grant of summary judgment, a reviewing court must examine the record in a light most favorable to the non-moving party, accepting as true all well-pleaded facts and giving that party benefit of all reasonable inferences which can be drawn from those facts. The Superior Court of Pennsylvania will reverse a grant of summary judgment only when a trial court has committed an error of law or abused its discretion.

Torts > Vicarious Liability > Family Members > General Overview

Torts > ... > Types of Negligence Actions > Alcohol Providers > General Overview

Torts > ... > Types of Negligence Actions > Alcohol Providers > Knowledge Requirements

Torts > ... > Types of Negligence Actions > Alcohol Providers > Social Hosts

### [HN2](#) Vicarious Liability, Family Members

In its Congini opinion, the Supreme Court of Pennsylvania has established social host liability for an adult who knowingly serves a minor intoxicants. In its Alumni Association opinion, the state supreme court has refused to extend the Congini standard to impute liability to an adult who knew or should have known alcohol was

being served to a minor on the adult's property. Rather, the supreme court found no social host liability where a defendant was not involved in the planning of an event or the serving, supplying, or purchasing of the liquor.

Civil Procedure > ... > Summary Judgment > Opposing Materials > General Overview

Civil Procedure > ... > Summary Judgment > Burdens of Proof > General Overview

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Genuine Disputes

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Materiality of Facts

### [HN3](#) Summary Judgment, Opposing Materials

Summary judgment may not be entered where a moving party relies exclusively on oral testimony, either through testimonial affidavits or deposition testimony, to establish the absence of a genuine issue of material fact except where the moving party supports the motion by using admissions of an opposing party.

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Appropriateness

Civil Procedure > ... > Summary Judgment > Burdens of Proof > General Overview

### [HN4](#) Entitlement as Matter of Law, Appropriateness

If a non-moving party has failed, in the first instance, to allege facts sufficient to make out a prima facie case, then summary judgment may be granted properly, even if the moving party has only set forth the pleadings and depositions of his witnesses in support thereof. *Pa. R. Civ. P. 1035.2(2)*.

**Counsel:** Robert W. Doty, Pittsburgh, for appellants.

Brian W. Delvecchio, Pittsburgh, for appellees.

**Judges:** Before DEL SOLE, P.J., LALLY-GREEN and TAMILIA, JJ. OPINION BY DEL SOLE, P.J.

**Opinion by:** DEL SOLE

## Opinion

[\*\*983] OPINION BY DEL SOLE, P.J.:

[\*P1] These are appeals from orders granting summary judgment in favor of Appellees. Appellants claim to have a viable suit against Appellees, who they allege are liable for injuries to Brian Winwood and the death of Timothy Winwood pursuant to the "social host" doctrine. The trial court found Appellants failed to establish a *prima facie* case, and thus granted summary judgment to Appellees.

[\*P2] Appellants raise two issues for our review: (1) whether the trial court improperly granted Appellees' motion for summary judgment when Appellants presented sufficient evidence to establish a [\*\*984] genuine issue of material fact regarding Appellees' social host liability, and (2) whether the trial court improperly granted Appellees' motion for summary judgment in violation [\*\*\*2] of the "*Nanty-Glo* Rule." We affirm.

[\*P3] We first note our standard of review. HN1 On an appeal from a grant of summary judgment, a reviewing court must examine the record in a light most favorable to the nonmoving party, accepting as true all well-pleaded facts and giving that party benefit of all reasonable inferences which can be drawn from those facts. Hoffman v. Brandywine Hosp., 443 Pa. Super. 245, 661 A.2d 397 (Pa. Super. 1995). The Superior Court will reverse a grant of summary judgment only when the trial court has committed an error of law or abused its discretion. Butterfield v. Giuntoli, 448 Pa. Super. 1, 670 A.2d 646 (Pa. Super. 1995).

[\*P4] The facts, viewed in the light most favorable to

Appellants are as follows. Timothy Winwood died and Brian Winwood was injured in a single-car accident in which Brian was driving following his consumption of alcoholic beverages at Appellees' home. The Winwoods, who were minors, were visiting Appellees' daughter along with several other minors. Appellees were not home at the time of the Winwoods' approximately 1 1/2 hour visit, but had received notice that their daughter [\*\*\*3] was entertaining her friends at the home, including one friend in whom Appellees did not have a high level of trust. Appellees had no specific knowledge of the Winwoods' presence in their home that evening. Appellees kept liquor in an accessible area of their home. Brian consumed liquor from the Appellees' supply on the night in question. His driving was thus impaired, resulting in the tragic accident.

[\*P5] HN2 In Congini v. Portersville Valve Co., 504 Pa. 157, 470 A.2d 515 (Pa. 1983), our Supreme Court established social host liability for an adult who "knowingly served" a minor intoxicants. 470 A.2d at 518. In Alumni Ass'n v. Sullivan, 524 Pa. 356, 572 A.2d 1209 (Pa. 1990), the Pennsylvania Supreme Court refused to extend the Congini standard to impute liability to an adult who "knew or should have known" alcohol was being served to a minor on the adult's property. 572 A.2d at 1212. Rather, the court found no social host liability where the defendant was not "involved in the planning of [the] event[] or the serving, supplying or the purchasing of the liquor." 572 A.2d at 1213.

[\*P6] The trial court [\*\*\*4] determined, as a matter of law, Appellants failed to establish Appellees knowingly furnished alcohol to the minors in this case. We agree. Appellees' argument centers on the following assertion: "[Appellees], knowing that there was a substantial risk of consumption of alcohol, allowed a group of [possibly untrustworthy] minors to gather at their home without supervision and with unfettered access to alcohol." Appellants' Brief at 13. This argument, while purportedly based on the holding in Alumni Ass'n, is essentially an argument for the precise holding the Supreme Court rejected in that case. Appellants argue Appellees should have known unsupervised underage drinking would occur at their home. However, Appellants presented no evidence Appellees agreed to an underage-drinking event at their home, much less planned one. Further, Appellants presented no evidence Appellees purchased alcohol for the purpose of consumption by minors. Appellants misinterpreted this point, originally made by the trial court. There was evidence presented that Appellees purchased the alcohol, but no evidence it was

purchased for this event, which is an implicit part of the *Alumni Ass'n* [\*\*\*5] holding. Finally, Appellants presented no evidence Appellees supplied alcohol to the *minors*, other than the perfectly mundane event of storing alcohol in their home in an unlocked [\*\*985] area. For this activity, we will not attribute **social host liability**.

[\*P7] We find no error in the trial court's grant of summary judgment to Appellees in this case. Appellants did not present evidence sufficient to establish a *prima facie* case of **social host liability**.

[\*P8] Appellants' next argument is without merit based upon the above-stated holding. Appellants claim the trial court violated the "*Nanty-Glo* Rule" in its grant of summary judgment. This rule, stemming from our Supreme Court's holding in *Nanty-Glo v. American Surety Co.*, 309 Pa. 236, 163 A. 523 (Pa. 1932), may be summarized as follows: HN3 [↑] summary judgment may not be entered where the moving party relies exclusively on oral testimony, either through testimonial affidavits or deposition testimony, to establish the absence of a genuine issue of material fact except where the moving party supports the motion by using admissions of the opposing party.

[\*P9] Appellants assert the trial court [\*\*\*6] granted summary judgment improperly because its decision was based solely on oral testimony. However, because Appellants failed to establish a *prima facie* case, no *Nanty-Glo* issue arises. As held by this Court in *Dudley v. USX Corp.*, 414 Pa. Super. 160, 606 A.2d 916 (Pa. Super. 1992): HN4 [↑] "if the non-moving party has failed, in the first instance, to allege facts sufficient to make out a *prima facie* case, then summary judgment may be granted properly, even if the moving party has only set forth the pleadings and depositions of his witnesses in support thereof." 606 A.2d at 920. Accordingly, because Appellants failed to produce evidence to establish a *prima facie* case, summary judgment was proper. *Pa.R.C.P. 1035.2(2)*

[\*P10] Orders affirmed.

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