



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

December 15, 2020

MOORE MURPHY HOSPITALITY, LLC  
D/B/A IRON PIG SMOKE HOUSE  
143 W Main St,  
Gaylord, MI 49735-1345

RE: Complaint No. CV-508783

Dear Licensee:

Enclosed for your review, please find a copy of the Commission's Order regarding Complaint No. CV-508783.

If you elect to pay the fine indicated on Invoice No. CV-508783 the MLCC must receive either a money order or check made payable to the STATE OF MICHIGAN, or an authorized credit card payment, no later than January 29, 2021.

If you fail to submit payment by the above referenced date, the Michigan Liquor Control Commission (MLCC) shall enforce the alternative penalty by confiscating and suspending your LICENSE TYPE licenses and permits. Please understand it may take up to 3 business days for our office to receive verification of full payments of fines.

Any request to appeal this decision must conform to administrative rule R 436.1917, which, among other things, requires: (1) a written request detailing your reason for appeal, and (2) a \$25.00 check made payable to the STATE OF MICHIGAN within twenty (20) days from the mailing date of this order. **Again, please note, you must state your reason for requesting the appeal in order for the Commission to fully consider your request.**

If you have questions regarding this matter, please contact the Hearings and Appeals Section of the MLCC at (517) 284-6270.

Sincerely,

Julie Wendt, Executive Services Director  
Executive Services Division

JW: WS

Enclosures

cc: Atty. Delaney  
Inv. Ted Orm  
Inv. Brad Szatkowski  
Gaylord PD



STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LIQUOR CONTROL COMMISSION

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IN RE: MOORE MURPHY HOSPITALITY, LLC  
D/B/A IRON PIG SMOKE HOUSE  
143 W MAIN ST  
GAYLORD, MI 49735

HEARING: DECEMBER 11, 2020  
PLACE: ZOOM PLATFORM  
COMPLAINT NO. CV-508783  
BUSINESS ID NO. 248522

OTSEGO COUNTY

RESORT CLASSC SDM  
SS (AM & PM) OD-SERV(1)

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**CHARGES** – The licensee or the licensee's agent, clerk or employee:

- (1) On November 25, 2020, Moore Murphy Hospitality, LLC, and/or employees of the licensee engaged in an illegal occupation or illegal act upon the licensed premises, contrary to Rule 436.1011(1), specifically: allowing indoor gatherings at a food service establishment, contrary to sections 2(a)(2) and 3(b)(1) of the Michigan Department of Health and Human Services Gatherings and Face Mask Order dated November 15, 2020.
- (2) On November 25, 2020, Moore Murphy Hospitality, LLC, and/or employees of the licensee engaged in an illegal occupation or illegal act upon the licensed premises, contrary to Rule 436.1011(1), specifically: allowing persons to participate in indoor gatherings at the licensed premises without requiring them to wear face masks, contrary to section 7(c) of the Michigan Department of Health and Human Services Gatherings and Face Mask Order dated November 15, 2020.

**PROCEDURAL HISTORY**

On December 11, 2020, a hearing was held virtually on the zoom platform in the above-entitled case before a duly authorized agent of the Commission, Administrative Law Judge Michael J. St. John.

Petitioner, Michigan Liquor Control Commission (Petitioner, Commission, or MLCC), was represented by Daniel Felder, Assistant Attorney General. The Respondent Licensee (Respondent or Licensee) was represented by David Delaney, attorney at law.

**EXHIBITS**

The Petitioner offered the following exhibits which were admitted without objection unless otherwise noted:

1. Investigation Report
2. Facebook posts<sup>1</sup>
3. December 1, 2020 MDHHS Penalty Notice<sup>2</sup>
4. Complaint Violation Report<sup>3</sup>
5. Facebook posts<sup>4</sup>
6. Facebook posts<sup>5</sup>
7. November 25, 2020 Order to Cease and Desist Food Service Operations<sup>6</sup>
8. November 25, 2020 Body Camera Footage
9. December 2, 2020 Body Camera Footage

The Respondent offered the following exhibit which was admitted over the Petitioner's objections:

- A. September 2020 Ingham County Health Department Emergency Order<sup>7</sup>

#### FINDINGS OF FACT

Based on the testimony presented and the exhibits admitted at the hearing, the following facts are found:

1. Licensee was aware of the November 15, 2020 DHHS Emergency Order which prohibited indoor dining and indoor gatherings without masks.
2. Licensee allowed indoor gatherings at their licensed food service establishment on November 25, 2020.
3. Licensee allowed customers and staff to participate in indoor gatherings at their licensed establishment without requiring them to wear face masks on November 25, 2020.
4. Licensee continued to serve alcohol to patrons after their license was summarily suspended.

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<sup>1</sup> One post by a customer was withdrawn as part of Exhibit 2. The remainder of the exhibit is admitted over the Respondent Licensee's hearsay objection.

<sup>2</sup> Exhibit 3 was admitted over the Respondent's hearsay and relevance objections.

<sup>3</sup> Exhibit 4 was admitted over the Respondent's hearsay objection.

<sup>4</sup> Exhibit 5 was admitted over the Respondent's hearsay and foundation objections.

<sup>5</sup> Exhibit 6 was admitted over the Respondent's relevance objection.

<sup>6</sup> Exhibit 7 was admitted over the Respondent's foundation and relevance objections.

<sup>7</sup> Exhibit A was admitted over the Petitioner's foundation and relevance objections.

5. Licensee continues to allow indoor gatherings and allow customers and staff to not wear masks.

The following represents a summary of the testimony of the witnesses. Any opinion is that of the witness:

Bradley Szatkowski, Investigator for the Commission

6. Investigator Szatkowski has been an Investigator for the Commission for five years.
7. Investigator Szatkowski authored the violation report (Exhibit 1).
8. Investigator Szatkowski received numerous complaints that the Licensee was operating indoor dining contrary to the DHHS Emergency Order.
9. Investigator Szatkowski searched for and found the Licensee's and the owner's Facebook pages (Exhibit 2).
10. The Licensee was served a cease-and-desist order on November 25, 2020. Another investigator went to the Licensee that afternoon, after the cease-and-desist order was served, and the Licensee remained open for indoor dining. Gaylord police also went to the Licensee's establishment that evening and the Licensee remained open. (Exhibit 8).
11. The Licensee remained open on November 27, 28, 29, and 30, 2020.
12. Investigator Szatkowski went to the Licensee on December 2, 2020 and served the Summary Suspension Order (Exhibit 4). There were 50 to 60 customers in the establishment at that time. No customers or employees were wearing face masks.
13. Investigator Szatkowski attempted to remove the Licensee's liquor license but realized it was the prior year's (now expired) license. Investigator Szatkowski asked the bartender where the current license was but she did not know.
14. The Licensee's sole owner, Mr. Ian Murphy, was not cooperative. He was yelling and screaming and expressed his disgust with the investigator being in the establishment. Part of that conversation was recorded on the police officer's body camera footage (Exhibit 9).
15. Mr. Murphy indicated that he did not know where his current license was. Mr. Murphy was not wearing a face mask.
16. The Licensee remained open the remainder of the evening of December 2, 2020.
17. The Licensee's Facebook posts after Investigator Szatkowski left (Exhibit 5) indicated the Respondent Licensee remained open.
18. Investigator Szatkowski believes that the Licensee remains open for indoor dining as of the date of the hearing.
19. Investigator Szatkowski took screen shots of additional Facebook posts by the Licensee on December 2, 7, and 9, 2020 (Exhibit 6). These posts established that the Licensee intended to remain open.

20. Investigator Szatkowski believes that the Licensee violated the law by remaining open in violation of the MDHHS Emergency Order.
21. Investigator Szatkowski eventually recovered the Licensee's active license from Gaylord police who removed it from the Licensee's establishment.

Scott Kendzierski, Director of Environmental Health Services for the Health Department of Northwest Michigan

22. Mr. Kendzierski has been the Director for more than five years.
23. Mr. Kendzierski discussed the case with Investigator Szatkowski and issued a cease-and-desist order (Exhibit 7) to the Licensee at approximately 12 noon and again at about 2:30 p.m. on November 25, 2020.
24. The Licensee did not comply with the cease-and-desist order.
25. Mr. Kendzierski served the December 1, 2020 Penalty Notice on the Licensee at about 12 noon on December 2, 2020. Mr. Murphy was cordial in his December 2, 2020 conversation with Mr. Kendzierski.
26. The Licensee remained open on December 2, 2020. Employees were not wearing masks. Mr. Murphy was not wearing a mask.

Theodore Orm, Investigator for the Petitioner Commission

27. Investigator Orm has been an Investigator for the Commission for the last 15 years.
28. Investigator Orm went to the Licensee's establishment at approximately 1:00 p.m. on November 25, 2020. The Licensee was open for indoor service. The bartender was not wearing a mask but put one on after Investigator Orm identified himself. Patrons were also not wearing masks.
29. Investigator Orm spoke with Mr. Murphy and found him to be cordial and respectful.

Stefan Crane, Sergeant for the Gaylord City Police Department

30. Sergeant Crane has worked for the Gaylord Police Department for 18 years.
31. Sergeant Crane went to the Licensee's establishment on November 25, 2020 to see if they were still open. When he arrived that evening, the Licensee remained open.
32. Mr. Murphy was not wearing a face mask. Some patrons were not wearing face masks.
33. Mr. Murphy admitted to serving food and alcohol to Sergeant Crane in the November 25, 2020 body camera footage (Exhibit 8).
34. Sergeant Crane returned to the Licensee's establishment on December 4, and 9, 2020 and remained open for indoor service on both dates. Employees and patrons were not wearing masks on those dates.

Daniel Goertz, Officer for the Gaylord City Police Department

35. Office Goertz has been with the Gaylord Police Department for two years.

36. Office Goertz went to the Licensee at about 6:00 p.m. on December 2, 2020. The establishment was open. Patrons and staff were not wearing masks. Mr. Murphy was not wearing a mask.

### CONCLUSIONS OF LAW

The basic facts of this case are not in dispute. The Licensee allowed indoor dining on November 25, 2020 after the November 15, 2020 Public Health Emergency Order prohibited in person indoor dining. Neither the customers nor the staff wore masks. The credible and un rebutted testimony of the Investigators and police officers was supported by the Licensee's own Facebook posts (Exhibit 2, 5, and 6) and police officer body camera videos (Exhibits 8 and 9) which both show customers eating and drinking indoors and the owner and staff interacting with the public and customers; none are wearing masks.

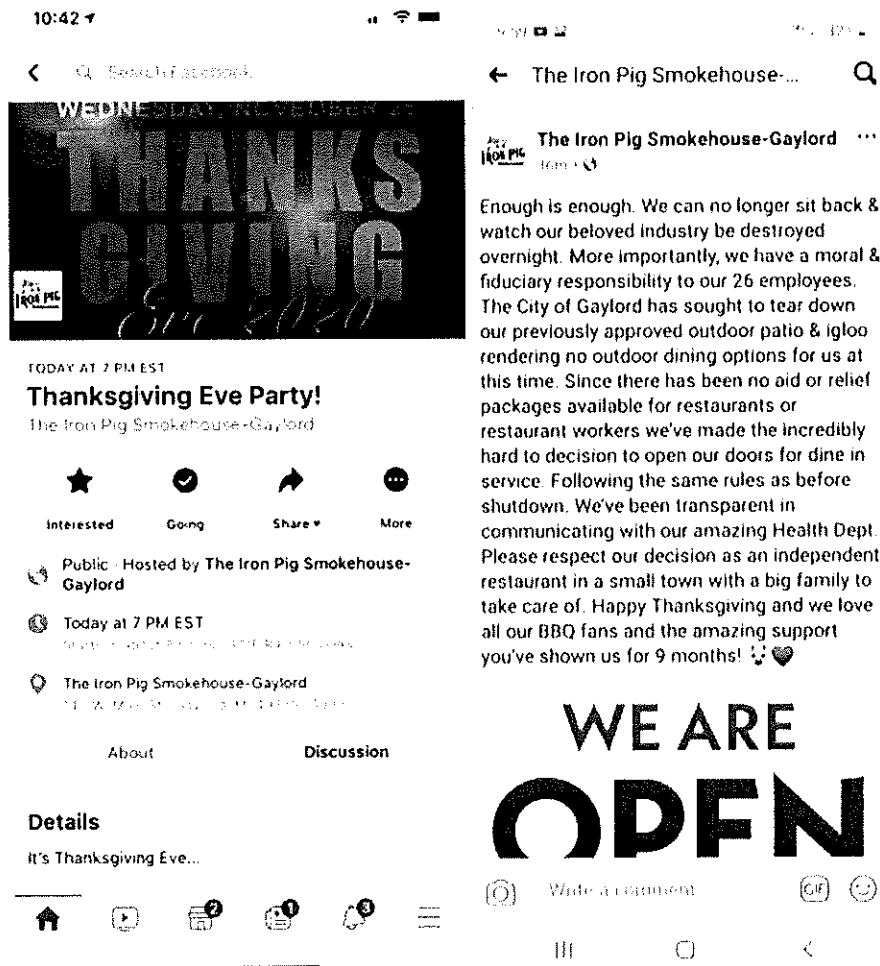


Exhibit 2

Allowing in person dining is contrary to the November 15, 2020 Public Health Order and therefore contrary to MCL 333.2226(d) and therefore contrary to MLCC Rule 436.1101(1).

The primary question raised at the hearing is whether the Commission has the authority to sanction a licensee for violating a non-liquor-related order or statute. They do.

Licensee was aware of the November 15, 2020 Emergency Order and the requirement to cease in person dining.

The Licensee argued that the Commission lacks the authority to sanction the Licensee for a violation of the Emergency Order because the Licensee was not specifically served with a copy of the November 15, 2020 Order. The Licensee, however, was repeatedly made aware of the November 15, 2020 Emergency Order starting with the November 25, 2020 Order to Cease and Desist Food Service Operations (Exhibit 7) which specifically references the Order. The Licensee's argument that they must be served with a copy of the Emergency Order before it can be enforced is without authority and is rejected. The Licensee was aware of the requirement to shut down indoor dining, told multiple officers and law enforcement that they were aware, and told the world that they were aware in their various Facebook posts.

Petitioner bears the burden of proof, by a preponderance of the evidence.

The burden of proof is on the Commission to show by a preponderance of the evidence that the Licensee 1) committed one or more of the acts that constitute the charges in this matter, and 2) constitutes a danger to the public's health, safety, and welfare. The standard of proof is a "preponderance of evidence", most frequently described as "that evidence which carries the greatest weight". A "preponderance of evidence" has been defined by the Michigan courts as: "proof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence." *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985).

The standard of proof is not the criminal standard of "beyond a reasonable doubt." This tribunal has no authority to try the Licensee for any crime but does have the responsibility to determine whether an illegal act occurred on the licensed premises. The standard for making that determination is a preponderance of the evidence. The case cited by the Commission, *In re MU*, 264 Mich.App. 270 (2005) is on point:

We emphasize that the respondent's liberty interest in these proceedings is the care and maintenance of his children. His right to due process in this case is not offended by determining, even in the absence of a criminal conviction, whether a preponderance of the evidence shows that he engaged in criminal behavior. ... Simply put, a trial to determine whether the respondent engaged in criminal behavior that supports jurisdiction over the minor children does not amount to a criminal trial with a lower burden of proof.

Here, the Licensee's right is the property interest in their liquor license. The Commission need not prove that the Licensee was convicted of violating the Michigan Public Health Code, only that their actions constituted an illegal act. Although the Commission has

established that the Licensee repeatedly and continuously committed these illegal acts beyond any doubt, they were only required to do so by a preponderance of the evidence. The Licensee is in violation of the November 15, 2020 Public Health Emergency Order and MCL 333.2253(1).

If the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code.  
MCL 333.2253(1)

On November 15, 2020, the Michigan Department of Health and Human Services Director determined that control of the COVID-19 epidemic was necessary to protect the public health and issued an emergency order prohibiting the gathering of people and establishing procedures to be followed. That Order specifically prohibited indoor gatherings at food establishments with certain exceptions that are not applicable here (Order 3(b)(1)) and required face masks (Order 7(a)). By allowing indoor dining and not requiring either patrons or staff to wear masks, the Licensee is in violation of the November 15, 2020 Order.

The MLCC Rules prohibit any illegal acts on the licensed premises.

The clerk, servant, agent, or employee of a licensee shall not engage in an illegal occupation or illegal act on the licensed premises. ...  
Rule 436.1101(1)

The Licensee engaged in illegal acts on the licensed premises by remaining open for in person dining despite the Public Health Emergency Order not to do so. By committing this illegal act, the Licensee is in violation of Rule 436.1101(1) and subject to discipline.

The Licensee's actions constitute an imminent threat to the public's health, safety, and welfare. The Commission's summary suspension under the Administrative Procedures Act was appropriate. There need not be proof of an actual injury to support a threat to public health, safety, or welfare. The Licensee is not free to do as they please until a case of COVID-19 transmission is confirmed to the Licensee's establishment. To adopt this line of reasoning would allow a licensed establishment to flout any rule until there is a negative consequence including to serve alcohol to intoxicated persons until a patron goes out and harms a member of the public; licensees are always prohibited from overserving customers from day one of their licensure, not from some arbitrary point after a customer kills another person while driving drunk.

Circumstances for restaurants are dire but this does not allow the Licensee to pick and choose which orders, rules, and statutes to follow.



There is no dispute that the COVID-19 pandemic has hit some industries and groups harder than others. Restaurant owners and employees have been hit especially hard. Many restaurants have been forced to close; some of these restaurants will not reopen. Restaurant employees have lost wages and jobs.

The Licensee argues (but offered no evidence in support of their contention) that they cannot survive without continuing to offer in person dining. Economic necessity does not allow the Licensee to pick and choose which laws to comply with. Almost all restaurants in the state have complied with the Order despite the hardship that has resulted; only a very select few restaurants have deemed themselves above the law.

Further, this Licensee made no attempt to implement even the most basic and essential safety measure to combat this deadly disease: requiring wearing masks. It is necessarily difficult to have customers wear masks while eating and drinking, but it is entirely possible, reasonable, and essential to have staff wear masks while serving their customers. The Licensee did not require staff to wear masks, completely undermining restaurants' best argument that they should be allowed to remain open: that they can and will operate safely.

The Licensee notes in their Facebook post (Exhibit 2) that they are taking safety precautions, but it is unclear just what those precautions are since they were clearly not taking the most basic safety precaution: requiring masks of staff members.

The Licensee seems to take pride in flouting the Emergency Order.

The Licensee believes that they are standing up for a cause in defying the Emergency Order and putting their customers, staff, and the general public at risk. Their multiple Facebook posts bear this out. The Licensee has created their own logo to celebrate their flouting of the rules:



Exhibit 5

The Licensee's slogan, "RISK IT FOR THE BRISKET – BBQ WITH A SIDE OF FREEDOM" rhymes but downplays the incredibly serious nature of the COVID-19 virus. Unfortunately, a more appropriate slogan might be "Brisket to die for".

The Licensee is also laboring under the false impression that it should be up to each individual staff member and customer to decide for themselves whether to take the risk to dine indoors or continue working. However, that risk is not borne solely by the staff members and customers but rather by their families, friends, and others that they come into contact with. There could be reasonable debate about whether an individual customer should be able to decide for him or herself what risks to take with his or her own body. There is no question that individual customers do not get to decide what level of risk is acceptable for others that they will contaminate with a deadly virus.

The Licensee was unnecessarily hostile to the Investigator who served the summary suspension.

The police body camera footage from November 25, 2020 shows Mr. Murphy defiant but calm and in control. He was polite and respectful to local law enforcement. The footage and testimony from December 2, 2020 shows that Mr. Murphy was angry, belligerent, and out of control. That first emotion is understandable, but the second two are unacceptable.

The Licensee then aired his grievance with the Commission on Facebook incorrectly stating that the Investigator was attempting to intimidate <sic> and harass staff when it was staff

and patrons who were rude to the Investigator and unnecessarily escalated the situation. The post also inaccurately states that Mr. Murphy had the Investigator "escorted from the restaurant." He did not. Based on the police body camera footage, this quite simply did not happen. The Investigator, tired of Mr. Murphy yelling at him as he tried to explain the situation and answer questions, left of his own accord. The Investigator was not trespassing; the Licensee has a (now suspended) liquor license and is required to admit any MLCC Investigator at any time and is required to suspend his license upon the Commission's request.

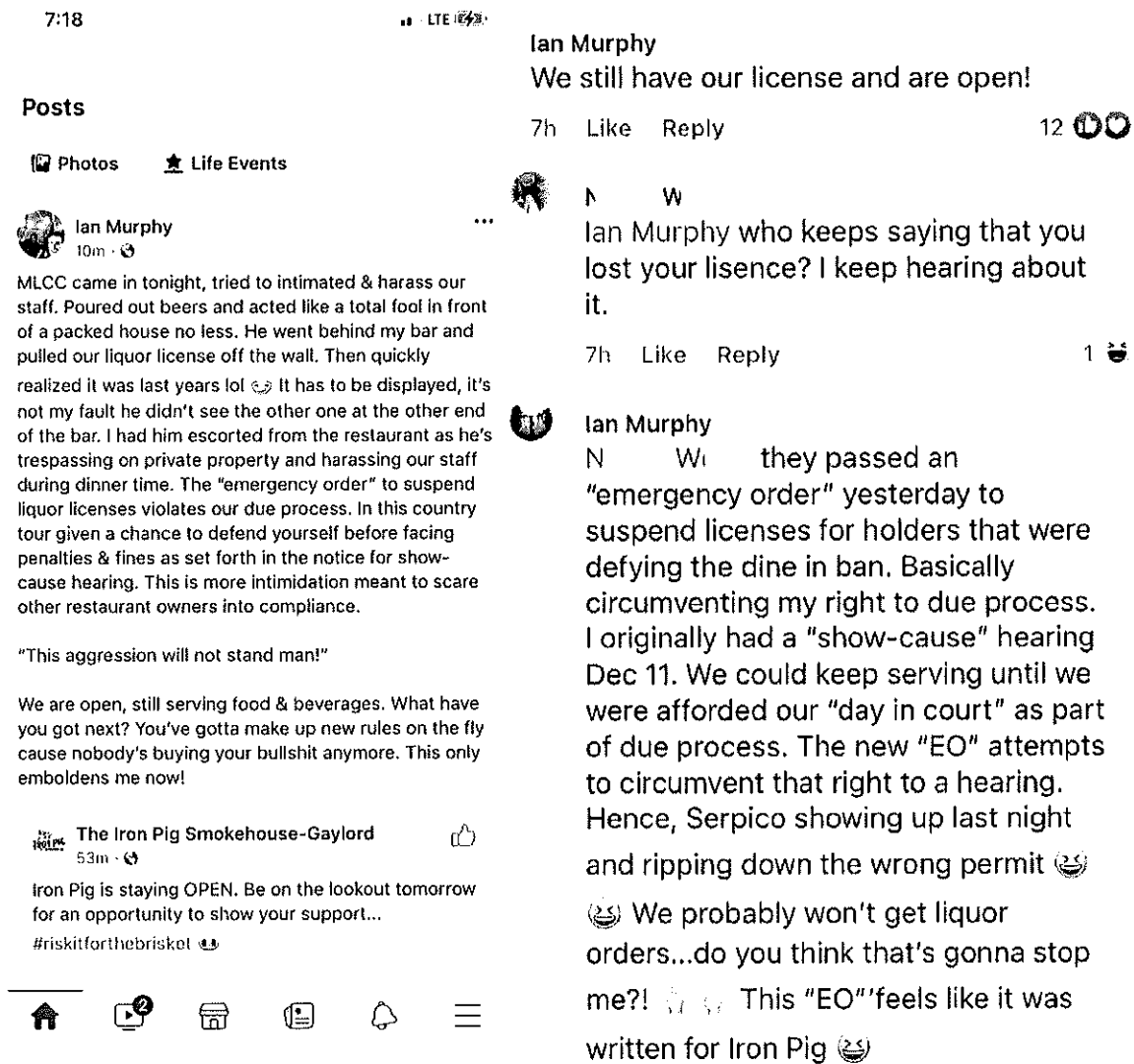


Exhibit 6<sup>8</sup>

<sup>8</sup> "This aggression will not stand man!" appears to be a reference to a quote by 'The Dude' from the Coen brothers' classic movie, *The Big Lebowski*. The Licensee's hostility toward the Investigator and subsequent Facebook post, however, was very un-dude-like: "The Dude abides, man!". Instead, the Licensee's conduct was far more akin to one of Walter Sobchak's rants. Much like Walter's rants, the Licensee's conduct is unsafe

If the Licensee chooses to come into compliance, the Licensee may file a request for reconsideration.

Based on the evidence presented at the hearing, and particularly the Licensee's own Facebook posts, it appears that the Licensee is intent on defying the Emergency Public Health Order. "This only emboldens me now!" (Exhibit 6). The Licensee was given ample warning by law enforcement, the health department, and the Commission that there would be consequences for continuing to unsafely operate in person dining. The Licensee understood that continuing in person dining put their license at risk which is exactly what has happened here. However, given the nature of the violations and the fact that they remain ongoing, the 90 day suspension requested by the Commission is appropriate.

If the Licensee chooses to cease in person dining and comply with the Emergency Order, this would constitute a change in circumstances and would likely warrant reexamining the length of the Licensee's suspension. The goal is not (at least solely) to punish the Licensee, but rather to have the Licensee comply with the November 15, 2020 Emergency Order as extended and keep their staff, patrons, and the public safe. If, within the next 14 days, the Licensee chooses to comply with the Emergency Order by ceasing in person dining and requiring staff to wear face masks, the Licensee may file a request for reconsideration under Rule 792.10135. Any such request should be accompanied by the Licensee's affidavit establishing the date that the establishment came into compliance and the Licensee's intention to remain in compliance.

### ORDER

With the issuance of this Order, the summary suspension is dissolved.

In determining penalty, the Administrative Law Judge considered the Licensee's total record, which shows no previous violations since being licensed on July 25, 2017, at the above-named location under the current ownership.

The Administrative Law Judge also considers the Licensee's serious disregard for the health and safety of their staff and patrons by not requiring staff to wear masks while working. Finally, the Licensee has, to date, not complied with the Public Health Emergency Order and continues to dangerously operate indoor dining.

Because of the extremely serious nature of the violations, the failure to operate safely, the disregard shown for the Emergency Order, the considerable hostility and antagonism shown toward Commission staff, the apparent continued service of alcohol after being served with the summary suspension, and the continued and ongoing failure to comply with the Public Health Emergency Order, as a penalty, the Administrative Law Judge Orders the following fines and suspensions:

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and innocent people are unnecessarily put in harm's way. Theodore Donald 'Donny' Kerabatsos in the movie; Iron Pig customers, staff, and their loved ones in the real world.

Count 1: a fine of \$300 and a suspension of the license for ninety (90) continuous days from the date of the entry of this Order; and,

Count 2: a \$300 fine and a suspension of the license for ninety (90) continuous days from the date of the entry of this Order.

The two fines are consecutive: the total fine is \$600. The two ninety (90) day suspensions shall be served concurrently, not consecutively, for a total suspension of the license for ninety (90) continuous days from the date of the entry of this Order

Further, if the fine is not paid within forty-five (45) days from the mailing date of this Order, the Administrative Law Judge Orders that an additional suspension of thirty (30) continuous days, with this suspension to run consecutively and not concurrently with the 90 day suspension or any other suspension Ordered by the Commission.

The Licensee is warned that further fines, suspensions, or a revocation of the Licensee's liquor license could result if the Licensee continues to operate in violation of the law or violates the Order of the Commission.

MICHIGAN LIQUOR CONTROL COMMISSION



Michael J. St. John, Administrative Law Judge

Date Signed: December 14, 2020

Date Mailed: ~~DEC 15 2020~~ **DEC 15 2020**

Daniel Felder  
Assistant Attorney General  
25680 W. 8 Mile Rd.  
Southfield, MI 48033

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113 N. Illinois Ave.  
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Gaylord, MI 49734

MJSJ: CV-508783/AL/jw



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

# INVOICE

(Authorized by Act 58, P.A. of 1998)

MOORE MURPHY HOSPITALITY, LLC  
d/b/a IRON PIG SMOKE HOUSE  
143 W Main St,  
Gaylord, MI 49735-1345

Invoice Number: CV-508783

Date: 12/15/2020

Due Date: 1/29/2021

Business ID: 248522

Fine/Cost Amount: \$600.00

Total Amount Due: \$600.00

A copy of the Commission Order is attached. Any questions or concerns, please contact Hearings and Appeals at 517-284- 6270.

## PAYMENT AUTHORIZATION FORM

Payment Amount: \$600.00

Account No. 4020

This payment is for Invoice: CV-508783

Pay by: Check  -OR- Master Card  Visa  Discover

Credit Card Number: \_\_\_\_\_

Exp. Date: \_\_\_\_\_ CVV/Security Code on back of card: \_\_\_\_\_

Signature: \_\_\_\_\_ Contact Phone Number: \_\_\_\_\_

Complete Address of Cardholder: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Complete this form with credit card information and FAX to secure number: 517-284-8557 -OR-  
Make check or money order payable to **State of Michigan** -AND-  
Mail to **Michigan Liquor Control Commission, PO Box 30005, Lansing, MI 48909**

WS