

# Notice of Violation

(3AAC 304.525)

This form, all information provided and responses are public documents per Alaska Public Records ACT AS 40.25

Date: 4/15/19

License #/Type: Beverage Dispensary / #324

Licensee: Seward Alehouse, Inc.

Address: 215 4th Ave, Seward, Alaska

DBA: The Seward Alehouse

AMCO Case #: 19-0410

This is a notice to you as licensee that an alleged violation has occurred. If the Alcoholic Beverage Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

**Note: This is not an accusation or a criminal complaint.**

On 2-23-19, at about 2253 hours, Ryan Matthew Lewis entered your establishment and began consuming alcoholic beverages. Although Lewis had been drinking at another bar earlier, he did not display conduct of a drunken person. About an hour later, Lewis is displaying substantial impairment after consuming several alcoholic beverages given to him by the bartender and patrons. Lewis is leaning forward on the bar counter for support. At one point he has fallen off his stool and helped back up by friends. Once on his feet, he nearly falls backwards, friends help him sit back on the stool. At about 0017 hours, 2-24-19, friends escort and provide support for Lewis as they remove him from the bar. At no time does it appear that staff cut Lewis off or told him to leave the bar. Lewis was later found deceased at his residence. Consumption of alcoholic beverages contributed to his death.

Your attention is referred to AS 04.16.040: Access of drunken persons to licensed premises, AS 04.16.030: Prohibited conduct relating to a drunken person, AS 04.16.150: Licensee responsible for violations and AS 04.21.030: Responsibility of licensees, agents and employees

**You are directed to respond in writing to this Notice of Violation within 10 days of receipt to explain what action you have taken to prevent a re-occurrence of this violation. FAILURE TO RESPOND TO THIS NOTICE OF VIOLATION WITHIN 10 DAYS WILL RESULT IN YOUR APPEARANCE, EITHER IN PERSON OR TELEPHONICALLY, BEFORE THE ABC BOARD AT THEIR NEXT REGULARLY SCHEDULED BOARD MEETING.**

**\*Please send your response to the address below and include your alcohol license number in your response.**

3 AAC 304.525 (B) provides that upon receipt of a Notice of Violation, a licensee may request to appear before the Director and be heard regarding the Notice of Violation. The request must be made within ten days after receipt of the Notice and the Director must grant an appearance within ten days after receipt of a request. A Licensee shall respond, either orally or in writing, to the Notice.

**Alcohol & Marijuana Control Office**

**ATTN: Enforcement**

**550 W. 7<sup>th</sup> Ave, Suite 1600**

**Anchorage, Alaska 99501**

**[amco.enforcement@alaska.gov](mailto:amco.enforcement@alaska.gov)**

Issuing Investigator: J. Hamilton

Received by:

SIGNATURE:



SIGNATURE:

Delivered VIA: Mail

Date:

# **LAW OFFICES OF ERNOUF & COFFEY**

**A PROFESSIONAL CORPORATION**

**PO Box 212314**

**Anchorage, Ak 99521**

**Office Phone: (907) 274-3385**

**Coffey Cell Phone: (907) 306-6001**

**Coffey E mail: [dancoffey@gci.net](mailto:dancoffey@gci.net)**

## **MEMO TO ABC BOARD ENFORCEMENT**

**TO:** ABC Enforcement  
Alcohol Beverage Control Board  
**FROM:** Ernouf & Coffey, PC  
Attorneys for the Seward Alehouse  
**RE:** Response to Notice of Violation  
**DATE:** 4-24-2019

The purpose of this Memo is to address the Notice of Violation issued by the enforcement staff to the Seward Alehouse.

### **ERRORS IN THE NOTICE OF VIOLATION**

The Notice of Violation has at least two (2) factual errors which are discussed below. The actual facts and the NOV errors are as follows:

- 1) The bartender was the only staff person on premises. However, he never directly served alcohol to Mr. Lewis.
- 2) Julie Kim, a friend of Mr. Lewis, purchased a drink at 11:15 p.m. and delivered it to Mr. Lewis.
- 3) Subsequently Mr. Simon Swiderski purchased another drink at 11:25 p.m. which he apparently delivered to Mr. Lewis.
- 4) Two more drinks were purchased by Julie Kim and apparently delivered to Mr. Lewis at 11:36 and 11:57 p.m.

Because others purchased the alcohol and gave it to Mr. Lewis the bartender did not have the opportunity to observe him when the alcohol was purchased for him by two other individuals.

The second error is the statement in the NOV that a "At no time does it appear that staff cut Lewis off or told him to leave the bar."

- 1) In fact, at 12:07 (some 50 minutes after Mr. Lewis entered the premises) the bartender told Mr. Lewis's friends that he (Mr. Lewis) "needs to go home" and offered to call a cab to take him home.
- 2) Mr. Lewis's friends told the bartender that they had already called a cab and it was on its way.
- 3) The cab arrived at 12:19 a.m. and his friends escorted Mr. Lewis out of the bar and into the cab.

### **RESPONSE TO THREE (3) STATUTORY REFERENCES IN THE NOV**

1) The NOV alleges a violation of AS 04.16.140 which states: "A drunken person may not knowingly enter or remain on premises licensed under this title." This provision applies to Mr. Lewis, but the conduct of the bartender is also in question in the NOV, so it is relevant to this matter.

Note the "knowingly" qualifier to this provision. The bartender did not "knowingly allow" Mr. Lewis to enter or to remain on the premises because initially Mr. Lewis appeared sober and when his intoxication became apparent, the bartender told Mr. Lewis's friends that he needed to go home.

2) The NOV further alleges a violation of AS 04.16.030 (a) which states: "A licensee, an agent or employee may not with **criminal negligence** (1) sell, give or barter alcoholic beverages to a drunken person; (2) allow another person to sell, give or barter an alcoholic beverage to a drunken person within licensed premises; (3) allow a drunken person to enter and remain within licensed premises or to consume an alcoholic beverage within licensed premises; (4) permit a drunken person to sell or serve alcoholic beverages".

Alaska Statute AS 11.81.900 defines criminal negligence as follows:

(a) (4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a **gross deviation** from the standard of care that a reasonable person would observe in the situation.

There is no evidence of a "gross deviation" from the standard of care that a reasonable person would observe in the situation. As noted in the NOV, Mr. Lewis did not, on his entry to the premises, "display conduct of a drunken person.

3) Finally, the NOV cites AS 04.21.030. Responsibility of Licensees, agents and employees. The Licensee was not on the premises at the same time that Mr. Lewis was on the premises

The standard applicable to licensee's is "...to exercise that degree of care that a reasonable person would observe to ensure that a business under the person's control is lawfully conducted".

Subsection (1) of AS 04.21.030 defines the licensee's duty to "...ensure the compliance by agents or employees with this title and regulations adopted under this title."

This subsection imposes a "reasonable diligence standard".

There is no evidence that the Licensee violated this standard in any way whatsoever. The bartender on duty was TAPS trained and performed as expected in the circumstances of this matter.

**NO ACTION SHOULD BE TAKEN AGAINST THE BARTENDER OR THE LICENSEE**

We concur with the statement in the NOV that when Mr. Lewis entered the licensed premises he "did not display conduct of a drunken person." Like many heavy drinkers, Mr. Lewis was able to maintain the appearance of sobriety when most people could not maintain that appearance.

When Mr. Lewis arrived at the bar at approximately 11:00 p.m., the on premises video clearly demonstrates that Mr. Lewis did not appear drunk. As the NOV states Mr. Lewis "did not display conduct of a drunken person" when he entered the premises.

Subsequently, according to the on premises video and as stated in the NOV, Mr. Lewis succumbed to the effects of the alcohol that he consumed on premises (and, apparently at other bars).

A short 52 minutes after Mr. Lewis entered the premises, in an apparently sober condition, the bartender observed Mr. Lewis's intoxicated condition and took action to have Mr. Lewis taken off premises and driven home in a cab.

Subsequently, Mr. Lewis was apparently injured after being taken home. When he was discovered the next morning there was a large gash on his head and he had vomited all over himself.

In short, when Mr. Lewis entered the premises the bartender observed what the house video depicted - a person who was not visibly intoxicated when he came on premises. Within a short period of time (52 minutes), it became apparent to the bartender that Mr. Lewis was intoxicated. At that time, the bartender told Mr. Lewis's friends that Mr. Lewis would have to leave the premises and offered

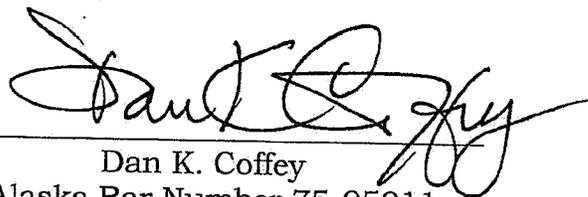
to call a cab. The bartender was advised by Mr. Lewis's that they had already called a cab.

**CONCLUSION**

In conclusion, there is no evidence to support an accusation that Mr. Lewis was allowed to remain on premises once his drunken condition was observed. Upon the bartender observing Mr. Lewis's condition, he immediately took action to have him taken off premise.

DATED at Anchorage, Alaska this 24<sup>th</sup> day of April, 2019.

Respectfully Submitted



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Dan K. Coffey  
Alaska Bar Number 75-05011



Alaska Alcoholic Beverage Control Board

**Form AB-17: 2020/2021 Renewal License Application**

**What is this form?**

This renewal license application form is required for all individuals or entities seeking to apply for renewal of an existing liquor license that are due to renew by December 31, 2019. All fields of this form must be complete and correct, or the application will be returned to you in the manner in which it was received, per AS 04.11.270 and 3 AAC 304.105. The Community Council field only should be verified/completed by licensees whose establishments are located within the Municipality of Anchorage or outside of city limits within the Matanuska-Susitna Borough.

**This form must be completed and submitted to AMCO's main office before any license renewal application will be reviewed. Receipt and/or processing of renewal payments by AMCO staff neither indicates nor guarantees that an application will be considered complete, or that a license will be renewed.**

**Section 1 – Establishment and Contact Information**

Enter information for the business seeking to have its license renewed. If any populated information is incorrect, please contact AMCO.

Licensee:	Seward Alehouse, Inc.	License #:	324
License Type:	Beverage Dispensary		
Doing Business As:	The Seward Alehouse		
Premises Address:	215 Fourth Avenue		
Local Governing Body:	City of Seward (Kenai Peninsula Borough)		
Community Council:	None		
Mailing Address:	Po BOX 2442		
City:	Seward	State:	AK
		ZIP:	99664

Enter information for the individual who will be designated as the primary point of contact regarding this application. This individual **must be a licensee** who is required to be listed in and authorized to sign this application.

Contact Licensee:	Liz DeMoss	Contact Phone:	907-491-5035
Contact Email:	lizdemoss26@yahoo.com		

**Optional:** If you wish for AMCO staff to communicate with an individual who is not a licensee named on this form (eg: legal counsel) about this application and other matters pertaining to the license, please provide that person's contact information in the fields below.

Name of Contact:		Contact Phone:	
Contact Email:			



# Form AB-17: 2020/2021 Renewal License Application

## Section 2 – Entity or Community Ownership Information

Licensees who directly hold a license as an individual or individuals should skip to Section 3. General partnerships and local governments should skip to the second half of this page. All licensees that are **corporations** or **LLCs** must complete this section. Corporations and LLCs are required to be in good standing with the Alaska Division of Corporations, Business & Professional Licensing (CBPL). The CBPL Entity # below is **neither** your EIN/tax ID number, **nor** your business license number. **You may view your entity's status or find your CBPL entity number by visiting the following site: <https://www.commerce.alaska.gov/cbp/main/search/entities>**

Alaska CBPL Entity #:	<del>20-8501995</del> 1052679
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You must ensure that you are able to certify the following statement before signing your initials in the box to the right: Initials

I certify that this entity is in good standing with CBPL and that all current entity officials and stakeholders (listed below) are also currently and accurately listed with CBPL.



This subsection must be completed by any **community** or **entity**, including a corporation, limited liability company, partnership, or limited partnership, that is applying for renewal. If more space is needed, please attach additional completed copies of this page.

- If the applicant is a **corporation**, the following information must be completed for each **shareholder who owns 10% or more** of the stock in the corporation, and for each **president, vice-president, secretary, and managing officer**.
- If the applicant is a **limited liability organization**, the following information must be completed for each **member with an ownership interest of 10% or more**, and for each **manager**.
- If the applicant is a **partnership**, including a limited partnership, the following information must be completed for each **partner with an interest of 10% or more**, and for each **general partner**.

**Important Note:** The information provided in the below fields (including spelling of names, specific titles, and percentages held) must match that which is listed with CBPL. If one individual holds multiple titles mentioned in the bullets above, all titles must be listed for that individual on this application and with CBPL. Failure to list all required titles constitutes an incomplete application. **You must list ALL of your qualifying officials, additional copies of this page or a separate sheet of paper may be submitted if necessary.**

Name of Official:	Elizabeth DeMoss				
Title(s):	President	Phone:	491-5035	% Owned:	50
Mailing Address:	PO BOX 2442				
City:	Seward	State:	AK	ZIP:	99664

Name of Official:	Solomon DeMoss				
Title(s):	Vice President	Phone:	491-5035	% Owned:	50
Mailing Address:	PO BOX 2442				
City:	Seward	State:	AK	ZIP:	99664

Name of Official:					
Title(s):		Phone:		% Owned:	
Mailing Address:					
City:		State:		ZIP:	



# Form AB-17: 2020/2021 Renewal License Application

## Section 3 – Sole Proprietor Ownership Information

Entities, such as corporations or LLCs, should skip this section. This section must be completed by any licensee who directly holds the license as an **individual or multiple individuals** and is applying for license renewal. If more space is needed, please attach a separate sheet that includes all of the required information.

The following information must be completed for each licensee and each affiliate.

This individual is an:  applicant  affiliate

Name:				Contact Phone:		
Mailing Address:	N/A					
City:		State:		ZIP:		
Email:						

This individual is an:  applicant  affiliate

Name:				Contact Phone:		
Mailing Address:						
City:		State:		ZIP:		
Email:						

## Section 4 – Alcohol Server Education

This section must be completed only by the holder of a **beverage dispensary, club, or pub** license or **conditional contractor's permit**. The holders of all other license types should skip to Section 5.

Read the line below, and then sign your initials in the box to the right of the statement:

Initials

I certify that all licensees, agents, and employees who sell or serve alcoholic beverages or check identification of a patron have completed an alcohol server education course approved by the ABC Board and keep current, valid copies of their course completion cards on the licensed premises during all working hours, as set forth in AS 04.21.025 and 3 AAC 304.465.

## Section 5 – License Operation

Check a **single box** for each calendar year that best describes how this liquor license was operated:

2018    2019

The license was regularly operated continuously throughout each year.

The license was regularly operated during a specific season each year.

The license was only operated to meet the minimum requirement of 240 total hours each calendar year.

If this box is checked, a complete copy of Form AB-30: Proof of Minimum Operation Checklist, and all necessary documentation must be provided with this application.

The license was not operated at all or was not operated for at least the minimum requirement of 240 total hours each year, during one or both of the calendar years.

If this box is checked, a complete copy of Form AB-29: Waiver of Operation Application and corresponding fees must be submitted with this application for each calendar year during which the license was not operated for at least the minimum requirement, unless a complete copy of the form (including fees) has already been submitted for that year.



# Form AB-17: 2020/2021 Renewal License Application

## Section 6 – Violations and Convictions

Applicant violations and convictions in calendar years 2018 and 2019:

Yes No

Have any notices of violation (NOVs) been issued for this license in the calendar years 2018 or 2019?

Has any person or entity named in this application been convicted of a violation of Title 04, of 3 AAC 304, or a local ordinance adopted under AS 04.21.010 in the calendar years 2018 or 2019?

If "Yes" to either of the previous two questions, attach a separate page to this application listing all NOVs and/or convictions.

## Section 7 – Certifications

Read each line below, and then sign your initials in the box to the right of each statement:

Initials

I certify that all current licensees (as defined in AS 04.11.260) and affiliates have been listed on this application, and that in accordance with AS 04.11.450, no one other than the licensee(s) has a direct or indirect financial interest in the licensed business.

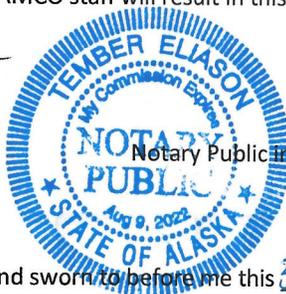
I certify that I have not altered the functional floor plan or reduced or expanded the area of the licensed premises, and I have not changed the business name or the ownership (including officers, managers, general partners, or stakeholders) from what is currently approved and on file with the Alcoholic Beverage Control Board.

I certify on behalf of myself or of the organized entity that I understand that providing a false statement on this form or any other form provided by AMCO is grounds for rejection or denial of this application or revocation of any license issued.

As an applicant for a liquor license renewal, I declare under penalty of perjury that I have read and am familiar with AS 04 and 3 AAC 304, and that this application, including all accompanying schedules and statements, is true, correct, and complete. I agree to provide all information required by the Alcoholic Beverage Control Board or AMCO staff in support of this application and understand that failure to do so by any deadline given to me by AMCO staff will result in this application being returned to me as incomplete.

Elizabeth Demoss  
Signature of licensee

Elizabeth Demoss  
Printed name of licensee



Tember Eliason  
Signature of Notary Public

Notary Public in and for the State of Alaska

My commission expires: Aug. 9<sup>th</sup> 2022

Subscribed and sworn to before me this 31<sup>st</sup> day of December, 2019.

Seasonal License?  Yes  No

If "Yes", write your six-month operating period: \_\_\_\_\_

License Fee:	\$ 2500.00	Application Fee:	\$ 300.00	TOTAL:	\$ 2800.00
Miscellaneous Fees:					
GRAND TOTAL (if different than TOTAL):					2800.00