

FINAL REPORT OF INSPECTION

**Department of Liquor Control:
Review of Management Controls
over Inspectors**

OIG Report Number 14-003

January 13, 2014



**Montgomery County, Maryland
Office of the Inspector General**

Office of the Inspector General

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Introduction

In March 2012, the Office of the Inspector General (OIG) received complaints from several owners of Hispanic restaurants in Montgomery County licensed to serve alcoholic beverages. The owners complained that during 2011 and early 2012 one inspector from the County Department of Liquor Control (DLC) had been visiting their establishments on a frequent basis and issuing or threatening to issue alcohol violation citations to them based on false findings. They also claimed that DLC and the County Board of License Commissioners demonstrated bias against them. At the time the OIG received the complaints, the inspector who was the subject of these complaints had been arrested for allegedly having extorted a Hispanic restaurant owner for \$1,000, in exchange for giving advance notice of future inspections and not submitting citations.

Objectives, Scope, and Methodology

This inquiry complements a broader review of DLC being conducted concurrently by the OIG. We looked into specific allegations we received regarding bias against certain licensees. We did not attempt to determine whether any of the citations issued by the former inspector were unwarranted, and we did not investigate the individual actions of any specific current or former inspector.

Our objectives in conducting this targeted inquiry were to:

- (1) understand what DLC controls over selected inspections existed prior to the arrest of an inspector in early 2012,
- (2) determine whether DLC has subsequently implemented improved controls,
- (3) evaluate the current controls to determine whether they could prevent and detect misconduct such as that of the former inspector, and
- (4) determine whether the complainants' allegations of bias on the part of DLC and the County Board of License Commissioners could be substantiated.

We interviewed DLC staff, analyzed alcohol licensee and violations data, observed County Board of License Commissioners hearings, met with owners of some Hispanic restaurants, and reviewed applicable laws and regulations.

We analyzed alcohol licensee and violations data to determine whether DLC disproportionately issued alcohol violation citations to owners of Hispanic establishments, as well as to determine whether the Board of License Commissioners has been finding a disproportionate number of Hispanic licensees guilty. We identified a licensee as Hispanic based on the name of the establishment.

Our inquiry was conducted from March 2012 through December 2013 in accordance with the standards contained in *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency (January 2012).

Legal and Institutional Background

Maryland law requires that sellers of alcohol be licensed (with some small exceptions that do not apply to restaurants and stores in the normal course of business)¹ and provides that county boards of license commissioners may issue licenses to sell alcohol², suspend or revoke licenses³, and impose fines⁴. Maryland law also provides that counties may have liquor control boards that purchase and sell alcoholic beverages⁵; however, most county governments in Maryland have only license-issuing authority and do not participate in the sale of alcohol.

Montgomery County is one of the few counties in Maryland that participates in the sale of alcohol. The Montgomery County DLC has the powers of the liquor control board for Montgomery County⁶. The County has a warehouse and 23 stores for wholesale and retail distribution of alcoholic beverages. DLC controls the wholesale distribution of all beverage alcohol in the County and the retail sale in the County of all distilled spirits for off-site consumption, subject to one grandfathered exception.

The County Board of License Commissioners consists of five members appointed by the County Executive and subject to confirmation by the County Council⁷. The County Board of License Commissioners holds hearings on the issuance, suspension, and revocation of licenses and on the issuance of fines.

Under Maryland law, the county boards of license commissioners may have inspectors and administrative staff⁸. In Montgomery County, the inspectors and administrative staff have been part of DLC since fiscal year 2007, when the County Executive moved them from the Board of License Commissioners to a newly-created Division of Licensure, Regulation, and Education within DLC.

There are approximately 1,000 establishments licensed to sell alcohol in Montgomery County, in addition to the County owned and operated retail liquor stores. These include restaurants and stores that sell wine and beer.

DLC has five inspectors who inspect licensees for compliance with laws governing underage alcohol sales, sales to intoxicated individuals, keg registration requirements, and requirements that receipts from sales of food in restaurants be equal to or greater than receipts from alcohol

¹ Maryland Code, Article 2B §1-201.

² Ibid., §15-112.

³ Ibid., §10-401(a)(2).

⁴ Ibid., §16-507(q).

⁵ Ibid., §15-205.

⁶ Ibid., §15-201(a)(2).

⁷ Ibid., §15-104(c)(1).

⁸ Ibid., §15-112(a).

sales. A police officer and a DLC inspector go together for most compliance checks. If an inspector deems that there has been a violation, the inspector issues a civil citation⁹ to the licensee, with a copy sent automatically to the DLC Division Chief.

After an inspector issues a citation, the DLC Division Chief does one of the following:

- sends a letter to the licensee offering the licensee the opportunity to (1) admit the violation, (2) pay a fine or have its license suspended, and (3) waive the right to a hearing before the Board of License Commissioners, or
- puts the case before the Board of License Commissioners.

Further, the Division Chief has informed us that if a business receives an alcohol awareness violation and is able to produce a certificate within 24 hours, the violation is downgraded to a warning.

Upon receiving an offer to admit the violation, the licensee may:

- accept the offer and agree to the fine or suspension, or
- have the case heard by the Board of License Commissioners.

The vast majority of the licensees who are offered the choice pay the fine.

After a hearing, the Board of License Commissioners may find a licensee not guilty, suspend or revoke a license¹⁰, or impose a fine of up to \$20,000¹¹. Three members of the Board must be present to conduct a hearing. Each party at the hearing has rights to cross examine witnesses and to be represented by an attorney.

Finding 1: DLC has improved internal controls over its inspections since 2011. However, management controls over the activities of inspectors remain weak.

The DLC inspector was arrested and charged with extortion on February 16, 2012. The inspector was alleged to have extorted a Hispanic restaurant owner for \$1,000, in exchange for giving advance notice of future inspections and not submitting citations. The inspector pleaded guilty to misconduct in office and was sentenced to two years in prison, which was suspended. He was fined \$2,000, which was also suspended, and he was placed on three years of supervised probation. Although this was the only prosecution involving this inspector, the OIG received numerous allegations of other inappropriate actions by this inspector. (As DLC did not have data on citations by inspectors before 2012, the OIG did not try to quantify the activities of this inspector). The inspector's last day of work for the County was the date on which he was arrested.

⁹ Ibid., §16-408.

¹⁰ Ibid., §10-403(a)(1).

¹¹ Ibid., §16-507(q).

A DLC staff member told the OIG that when the inspector was arrested, completed paper forms for citations of certain licensees were found in his possession. He had not turned these forms in to DLC, and DLC had not previously been aware of them. The presence of these forms indicates that there may have been unreported extortion and/or the County may have been defrauded out of legitimate revenue.

Controls over Citations

Prior to 2012, all citations were documented on unnumbered paper forms. Potential inspector misconduct was facilitated by the ability of an inspector to create citations without turning the forms in to DLC. An inspector could visit a licensee without a police officer present and threaten a licensee with turning in the citation form if the licensee did not comply with the inspector's demands.

DLC has taken steps to address this vulnerability. DLC put an iPad citation system into use in early 2012, after the inspector was arrested. Inspectors now carry iPads with them on inspections and enter inspection and citation information into them. An inspector's iPad records the licensee visited and the time a citation is written. When a citation form is filled out, it is automatically sent to the DLC Division Chief and the supervisor of the inspectors. An electronic copy is also filed in the central database. Once the citation is completed, it cannot be deleted by the inspector.

In July 2013, the OIG met with some of the restaurant owners who made the original complaints. The complainants seemed satisfied with the new procedures for inspections at DLC. The restaurant owners also reported positively on the new inspector.

By collecting this data and by switching from the paper form system to the electronic system, DLC has improved controls over citations, greatly diminishing the vulnerability noted above.

Controls over Inspectors

Detection of inappropriate inspector conduct was made difficult in the past by the lack of information on individual inspectors' activities. Prior to 2012, inspectors were required to sign logs at the end of each work day, indicating their daily activities and businesses inspected. This system created vulnerability to the inspector's misconduct described above, as managers did not get information until after the inspector finished for the day, and analyzing information in many individual paper reports was not efficient.

Despite improvements, controls over inspectors remain weak. Although the iPad system gathers information on the times and places of inspections and citations, and the managers can see in real time when inspectors put information into the system, the data is not used to generate timely, useful management reports on the activities or performance of inspectors. The manager monitors inspectors' activities for each day from written messages that inspectors are required to send at the beginning and end of each day from their cell phones.

The OIG requested examples of reports from the iPad system and was emailed four spreadsheets, each for a different type of inspection. The inspector, licensee, and inspection result information appeared across multiple pages of each spreadsheet. Thus, it was very difficult to get an overall picture of individual inspector activity from the spreadsheets. After we told DLC that this was

our conclusion based on the spreadsheets, DLC provided us with an example report of an individual inspector's activity. We understand that DLC compiled this report from data in the iPad system. Since the compiled report identifies locations visited, but only selected activities and neither the dates nor the times visited, it does not adequately explain inspector activity and does not facilitate management. Accordingly, this did not change our conclusion.

A DLC staff member emailed the OIG that the iPad system is a "make shift solution," and the "RFP [Request for Proposals] for the new system has been held up in procurement." DLC has drafted an RFP for a database management system that would use data from the iPads. The County Procurement office has begun processing the RFP but has not put it in place.

Recommendation:

Data available from the iPad system should be used to develop management reports for monitoring and managing inspections:

- Supervisors of inspectors should regularly receive and review reports showing inspections, by type, conducted by each inspector daily, weekly, monthly, quarterly, and annually.
- The reports should identify the places each inspector has been and the nature of any violations found.
- The reports should measure compliance with all inspection requirements set by State law.

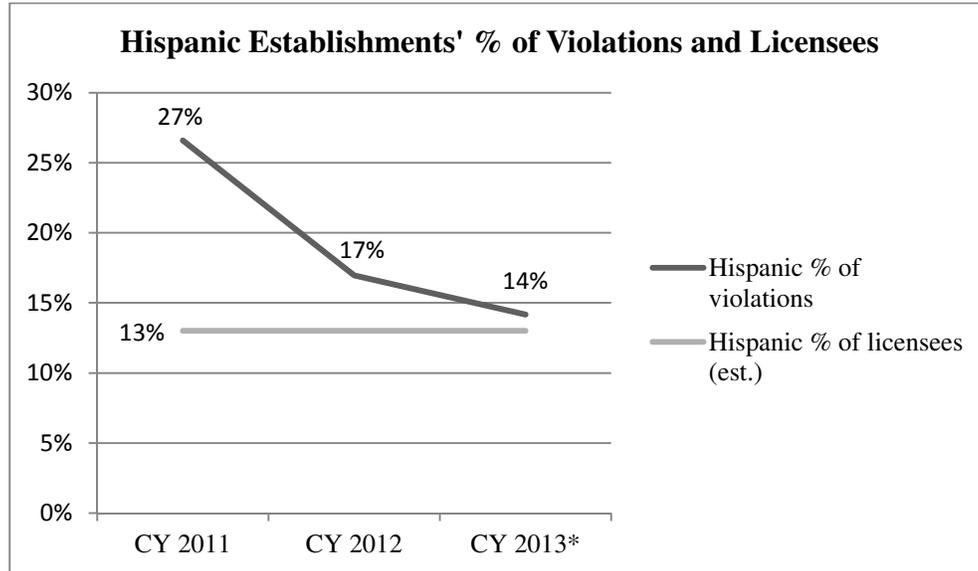
Finding 2: The data analyzed by the OIG indicate that there was a disproportionate number of violations by Hispanic establishments in 2011, but this did not occur in subsequent years.

We did not find any DLC data categorizing licensees by ethnicity, and DLC advised us that they do not have this data. We identified each licensee as Hispanic or not, based on the name of the establishment.¹²

DLC's violations data demonstrate that Hispanic establishments were disproportionately issued citations in calendar year (CY) 2011. The data show that the percent of violations by Hispanic establishments was out of proportion to the percent of licensees that were Hispanic establishments in CY 2011, but not in later years. See Chart 1.

¹² We identified an establishment as Hispanic if the establishment's name contained Spanish, referred to Hispanic food, or referred to a location in a predominantly Spanish speaking country. We did not include national chain restaurants of which we were aware. We recognize that not all establishments that we identified as Hispanic necessarily were under Hispanic ownership.

Chart 1



*through June 2013

Sources: OIG compilation of violations and licensee data provided by DLC. The OIG identified Hispanic establishments and all other licensees, some of which received citations. The OIG identified the June 2013 Hispanic establishment % of licenses and used that as an estimate for prior years.

In 2011, Hispanic establishments accounted for 27% of the violations, but only 13% of the licensees. In 2012, the percent of violations by Hispanic establishments fell to 17%, and in 2013 it fell further to 14%, which is virtually the same as the Hispanic establishments' percent of licensees.

In 2011, there were in total 234 fines of licensees, for a total dollar amount of \$229,097. Hispanic establishments received 60 of these fines, for a total dollar amount of \$44,573. It is estimated that Hispanic establishments would have paid roughly half of that amount, had they been fined at the level expected based on their representation among all licensees (13%).

In allegedly extorting an owner of a Hispanic restaurant and targeting others, the inspector who pleaded guilty to misconduct (who was himself Hispanic) could take advantage of any lack of familiarity with the rules and any language barrier. We could not determine from available data the extent to which his activities accounted for the disproportionate effect on Hispanic establishments. However, when that inspector left DLC, the percent of violations by Hispanic establishments fell to the expected levels.

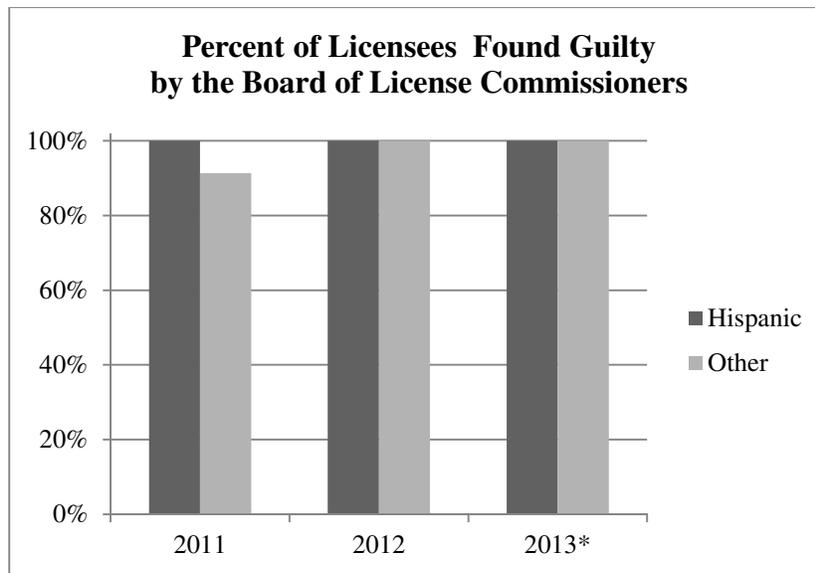
We make no recommendations regarding this finding. It does not appear that Hispanic establishments were cited disproportionately after 2011. Further, DLC does not collect information that would be necessary to monitor whether the ethnicity of licensees is a factor in the citations.

Finding 3: The acquittal rate of Hispanic establishments before the Board of License Commissioners was not significantly different from the acquittal rate for other licensees.

Almost all licensees whose citations were heard by the Board of License Commissioners were found guilty. Licensees were found not guilty in only 2 cases out of the 55 in total that were decided during calendar years 2011, 2012, and 2013 through June 20. While the data are consistent with the Hispanic restaurant owners' concerns that Hispanic licensees were very unlikely to succeed before the Board of License Commissioners, the data show that other licensees were equally unlikely to succeed. See Chart 2.

There was a small difference in the outcomes for Hispanic establishments and other licensees in calendar year 2011, when 100% of the Hispanic establishments were found guilty, compared to 91% of other licensees. However, the numbers of observations are small (8 Hispanic establishment and 23 other licensee hearings in 2011), and this difference is thus not significant. More recently, in calendar years 2012 and 2013 through June 20, there was no difference in the outcomes of the hearings: all licensees charged, Hispanic or not, were found guilty.

Chart 2



*through June 20, 2013

Source: OIG compilation of Board of License Commissioners hearing data provided by DLC. The OIG identified the Hispanic and other licensees.

We found no evidence of bias at the Board of License Commissioners.

We have no recommendations regarding this finding.

Summary of Chief Administrative Officer's Response

The response of the Chief Administrative Officer (CAO) to the final draft report is included in its entirety in Appendix A. The CAO concurred with our recommendation.

Appendix A



OFFICE OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

December 23, 2013

To: Edward L. Blansitt III, Inspector General
From: Timothy L. Firestine, Chief Administrative Officer
Subject: Final Draft Report, "Review of Department of Liquor Control's Management Controls Over Inspectors"

Timothy L. Firestine

I am in receipt of your memo dated December 5, 2013, regarding your inspection and review of practices in the County Department of Liquor Control relating to the conduct and management control of County Alcohol Inspectors. We thank you for your efforts in reviewing this issue.

The Office of Inspector General undertook this review in response to the unfortunate and unacceptable breach of trust exhibited by one former Alcohol Inspector. When the alleged misconduct by this individual was discovered, we acted quickly and decisively where he was arrested and immediately relieved of his duties, and subsequently dismissed from the County workforce and prosecuted. I am pleased that subsequent reviews of this incident, including yours, have confirmed that this abuse of office was confined to one individual DLC employee during a limited time period, and is not a systemic, more pervasive problem among County employees. I am also very pleased to know that your analysis indicates there is "no evidence of bias at the Board of Liquor Commissioners," and there is no evidence of discrimination by DLC employees toward minority-owned and operated licensed establishments.

Here is our response to the one Recommendation offered in your report.

IG Recommendation: Data available from the iPad system should be used to develop management reports for monitoring and managing inspections.

CAO Response to IG Recommendation: We concur with this recommendation, and have already begun to implement this improved level of management control. During 2012, DLC reviewed the operational practices of inspections and the management oversight protocols relating to inspectors. As a result, as highlighted in this report's IG finding, this effort instituted improved controls. In addition, DLC developed the requirements for an enhanced database management system and currently is working with the Office of Procurement to issue a "Request For Proposal (RFP)" for such a system.

Edward L. Blansitt III, Inspector General

October 23, 2013

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As a point of clarification regarding your Finding #2, where it is noted that *“there was a disproportionate number of violations by Hispanic establishments in 2011, but this did not occur in subsequent years.”*, please be advised that the higher level of activity involving Hispanic licensees in 2011 is directly related to an increased level of enforcement and regulatory activity in the Wheaton business district during that time frame. This increased level of activity was in direct response to specific requests from the community and the MCPD. As a result of the arrest of the former inspector (charged with illegal activity related to work in the Wheaton area), DLC inspectors were re-deployed to other markets in the County while the investigation and internal review took place. This reduced level of regulatory activity in Wheaton is the direct cause of the reduced number of citations issued to Hispanic licensees during this subsequent time period.

Thanks again for your fair and thorough review and report of Department of Liquor Control's Management Controls over Inspectors. If you have any questions or need additional information please contact Fariba Kassiri at 240-777-2512 or fariba.kassiri@montgomerycountymd.gov.

TLF:fk

cc: Fariba Kassiri, Assistant Chief Administrative Officer
George Griffin, Director, Department of Liquor Control