

SUMMARY SUSPENSIONS AND OTHER PUBLIC SAFETY CASES

2019 NABCA Legal Symposium



Issue Introduction

- Alcohol as economic development, but also community concern
- How do you enable businesses to succeed, but also protect public safety?
- Certain penalty frameworks allow rapid action, but how do you ensure fairness?

Review of ABC Enforcement

- Executive Order 40
 - Issued in 2015 following highly publicized arrest of University of Virginia student
 - Created an Expert Review Panel to study ABC Enforcement activities
 - Panel included community members, law enforcement, legislators and state representatives
 - Panel provided recommendations to the governor



Expert Panel Recommendations

- ABC should retain enforcement authority, but with appropriate focus
- Regulatory with law enforcement powers
- Consistent concern – how to bring enforcement resources to bear on establishments serving alcohol that have a disproportionate impact on the community

Enforcement Capabilities 2015

- [Virginia Code 4.1-222A2](#) – place to be occupied is “so located” as to:
 - Result in violations of laws of commonwealth or local ordinances related to peace and good order
 - Adversely interfere with operations of educational, state, local or federal facilities
 - Adversely affect residential property values or substantially interfere with usual quietude and tranquility

Enforcement Capabilities 2015

- Virginia Code 4.1-225(1) p or q – licensee has failed to take “reasonable measures”:
 - To prevent licensed premises, premises immediately adjacent thereto or any portion of public property immediately adjacent to premises from becoming a place where patrons commit certain criminal offenses AND such violations lead to arrests that are so frequent and serious to reasonably be deemed a continuing threat to public safety
 - To prevent an act of violence resulting in death or serious bodily injury, or recurrence of such acts from occurring on licensed premises, premises immediately adjacent thereto or any portion of immediately adjacent public property



Limitation on Capabilities

- Hearings processes – time intensive
 - Administrative hearings – [Virginia Code 4.1-103; 227](#)
 - Judicial review – [Virginia Code 4.1-227 \(A\)](#) – out of ABC control
 - Process can take up to 18 months
- Burden of proof
 - ABC must show a violation took place at the establishment AND there is some nexus between these violations and the location of the establishment
 - Atkinson v. ABC (336 SE2d 527 (1985))

Question for Panel



- What are appropriate capabilities for alcohol enforcement and other law enforcement agencies?
- Should there be unique powers that come with alcohol in particular?
- What other tools are you aware of in this area?

Summary Suspension of ABC License

(Effective July 1, 2016):

Virginia Code 4.1-225.1: *Allows the Board to summarily suspend any license or permit when:*

- There has been an act of violence resulting in death or serious bodily injury
- The act occurred on the licensed premises or immediately adjacent to the licensed premises

(continued)

Is This On/Adjacent to the Premises?



Summary Suspension of ABC License

(Effective July 1, 2016):

And:

The board finds that there exists a continuing threat to public safety and that summary suspension of the license or permit is justified to protect the health, safety, or welfare of the public.

Key Considerations In Preliminary Investigation

- Serious bodily injury or death
- On or adjacent to premises
- Continuing threat to public safety





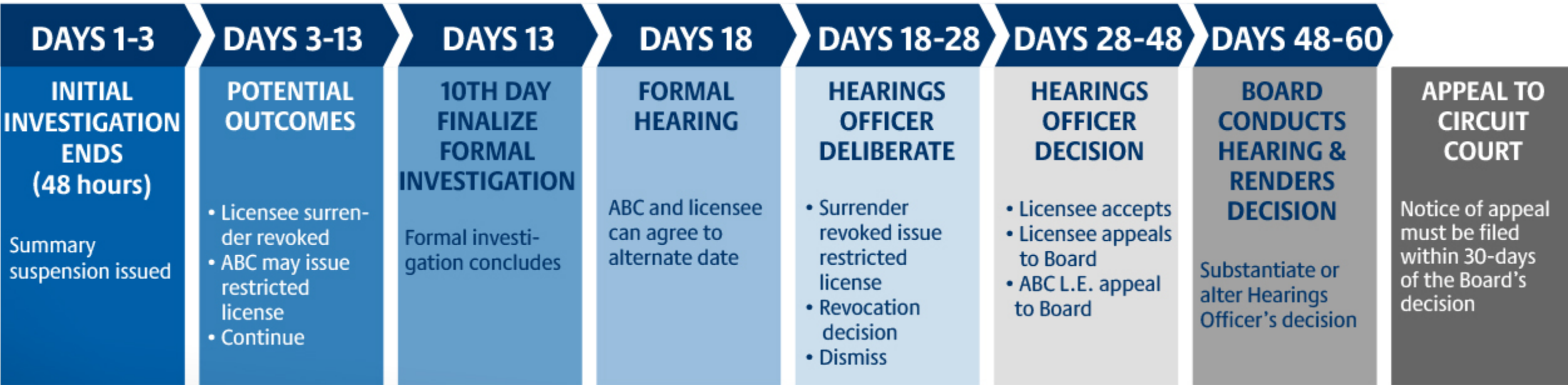
What About Due Process?

- Timelines in [Virginia Code 4.1-225.1\(C\)](#):
 - 48 hours from the act to when initial investigation must be complete
 - After initial 48-hour suspension, licensee may petition for a restricted license
 - Formal investigation completed within 10 days of start of summary suspension
 - Hearing held within five days of completion of the formal investigation
 - Decision rendered 10 days following hearing
 - Appeal must be filed within 10 days of the decision
 - Appeal hearing held within 20 days of the decision
 - Board must render decision within 10 days of conclusion of hearing

Virginia Code 4.1-225.1.

Summary Suspension Timeline

POTENTIAL
SUMMARY
SUSPENSION
INCIDENT



DAYS 5-8

— Potential Restricted License Hearing —

- Licensee Surrender Revoked
- ABC may Issue Restricted License
- Continue

Summary Suspension of ABC License

Restrictions hearing held before a hearing examiner

- Limited to question on whether there are potential restrictions that would relieve concern for public safety
- Consider seriousness of the event
- Has licensee previously been asked to implement reasonable measures? Were they adopted?

Summary Suspension of ABC License

If the board determines that a restricted license is warranted, the board shall have discretion to impose appropriate restrictions based on the facts presented.

- Additional security
- Limited operating hours or days of operation
- Capacity restrictions

Summary Suspension Outcomes

	Summary Suspension Orders	Voluntary Surrenders	Negotiated Restricted Licenses	Sanctioned	Revocations	Pending
2016	4	3		1		
2017	4	2	2			
2018	8	6	1		1	
2019	3	2				1

* 75 investigations were conducted that did not result in summary suspension

Conducting the Investigation

A successful summary suspension investigation begins before the incident happens.



Conducting the Investigation

- Establish a good relationship with local law enforcement
- Have regular communication and/or a liaison
- Be familiar with the patrol commanders and violent crime detectives
- Have clarity on the role of an ABC agent

Questions for the Panel



- What should local law enforcement expect from alcohol enforcement agencies?
- Are there things a licensee could do to avert the incident in the first place or minimize the exposure when something does happen?
- In these investigations, how do you separate the “bad” actors from the “bad luck” actors?
- How should a licensee respond to these investigations?

Conducting the Investigation

How Virginia ABC Investigates a Summary Suspension Case



Conducting the Investigation

First, “Do No Harm”

- Local law enforcement will likely be processing a major felony crime scene.
- Coordinate activities with the local on-scene commander.

POLICE LINE DO NOT CROSS

POLICE LINE DO NOT CROSS

POLICE LINE DO NOT CROSS

Conducting the Investigation

Summary suspension investigations must comply with the “Two-Ten-Five” rule ([Virginia Code 4.1-225.1 B and C](#)):

- Two days (48 hours) to complete the initial investigation
- Ten days to complete the formal investigation
- Five days before a formal hearing must be convened

Conducting the Investigation

“The First 48”

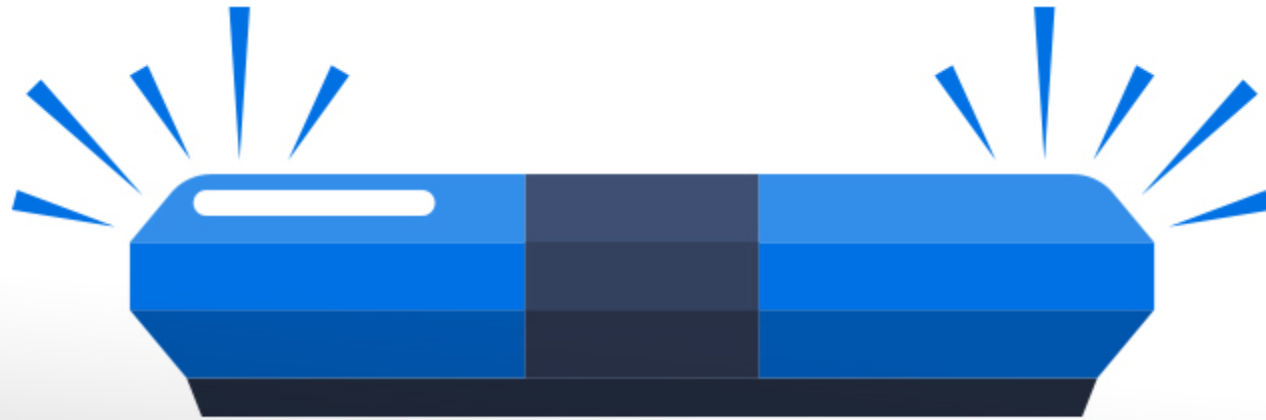
- Coordinate efforts with the agency responsible for the criminal investigation
- Interview licensee, employees, witnesses (if it will not interfere with the criminal investigation)



Conducting the Investigation

“The First 48”

Obtain recommendation from the local investigating agency,
if possible



Conducting the Investigation

“The First 48”

Finalize preliminary investigative report to include:

- Known details of incident
- Licensee history
- Locality recommendation and other pertinent details needed to help the board make a informed decision (i.e. licensee has surrendered their license)

Conducting the Investigation

“The First 48”

- Investigative team will determine whether there are sufficient investigative findings to establish the ***required elements to proceed with summary suspension have been met***; or
- The preliminary investigation ***did not substantiate*** the elements to proceed with summary suspension and the agent ***does not recommend*** proceeding with summary suspension.

Conducting the Investigation

The board has determined that sufficient evidence exists to suspend the license.

Now what?



Conducting the Investigation

If the board determines suspension is warranted, it shall immediately notify the licensee of its intention to temporarily suspend the license pending the outcome of a formal investigation.



Conducting the Investigation

Such temporary suspension shall remain effective for a minimum of 48 hours.

After the 48-hour period, the licensee may petition the board for a restricted license pending the results of the formal investigation and proceedings for disciplinary review.

Conducting the Investigation

Upon a determination to temporarily suspend a license, the board shall immediately commence a formal investigation.

The formal investigation shall be completed within 10 days of its commencement and the findings reported immediately to the Secretary of the Board.

Conducting the Investigation

In coordination with the local investigating agency, and within 10 days, agents will:

- Attain calls for service incident reports for licensee's address and investigate the calls for service (contact witnesses)
- Canvass affected businesses
- Canvass affected residents

Conducting the Investigation

- Request business records
- Review financial records to ensure they are selling the required amount of food



Conducting the Investigation

Create comparative data charts comparing calls for service/arrests attributed to the licensee address with surrounding establishments in the vicinity, as well as the rest of the city.





Conducting the Investigation

Create map to show the location of other licensees in the area.



Conducting the Investigation

Explore all violation options to include:

- Underage drinking
- Sale of alcohol to intoxicated persons
- Reasonable measures
- Peace and good order
- So located
- Cause exists

Conducting the Investigation

Prepare and complete the formal investigation report.

- Properly document each charge.
- All documents that will be used for the hearing will be furnished to the legal liaison, hearings office and the licensee.



Questions for the Panel



- How do you properly coordinate this type of administrative investigation in tandem with what could be an investigation into a serious violent crime?
- What can a licensee do in these circumstances to be cooperative, but still protect their rights?

Preparing for the Hearing

Following the formal investigation, if the Secretary of the Board determines that suspension of the license is warranted, a hearing shall be held within five days of the completion of the formal investigation.



Preparing for the Hearing

- Subpoenas will be served
- Pertinent agencies will be apprised of the hearing date
- Personnel whose testimony is critical to the case are identified
 - Depending on the number of law enforcement personnel needed to testify, this could strain the resources of that agency.

Questions for the Panel



- How does local law enforcement determine level of participation in a hearing?
- How does a licensee prepare for this type of hearing?
- What are key factors to consider?

In Summary...

Public Safety investigations are among the most important tasks that are required of an ABC special agent.



Case Studies

1. **Paris Inn** – September 10, 2016
2. **The Broadway** – September 30, 2018
3. **Daisy Dukes** – September 13, 2018
4. **Lounge Bar** – January 17, 2018
5. **Monsters** – September 4, 2016

Case Study 1: Paris Inn – Sept. 10, 2016

- Located in Burkeville – rural area in Central Virginia
- Multiple shots fired from multiple weapons
- Three individuals suffered gunshot wounds
- One fatality

Case Study 1: Paris Inn, *continued*

- Results of the investigation:
 - 35 calls for service over 2-year period, all related to public safety issues
 - Five calls for assistance to Nottoway County Sheriff by Burkeville Police. Blackstone Police also called to assist.
 - Local business (Fasmart) would close in order to avoid having Paris Inn patrons come onsite
 - Service underage, potential drug use, over service

Case Study 1: Paris Inn, *continued*

Timeline:

- Sept. 13, 2016 – Initial investigation served
- Sept. 18, 2016 – Restrictions/Continuance
- Sept. 23, 2016 – Formal investigation complete
- Nov. 2-4, 2016 – Formal hearing
- Nov. 14, 2016 – Decision entered

Case Study 1: Paris Inn, *continued*

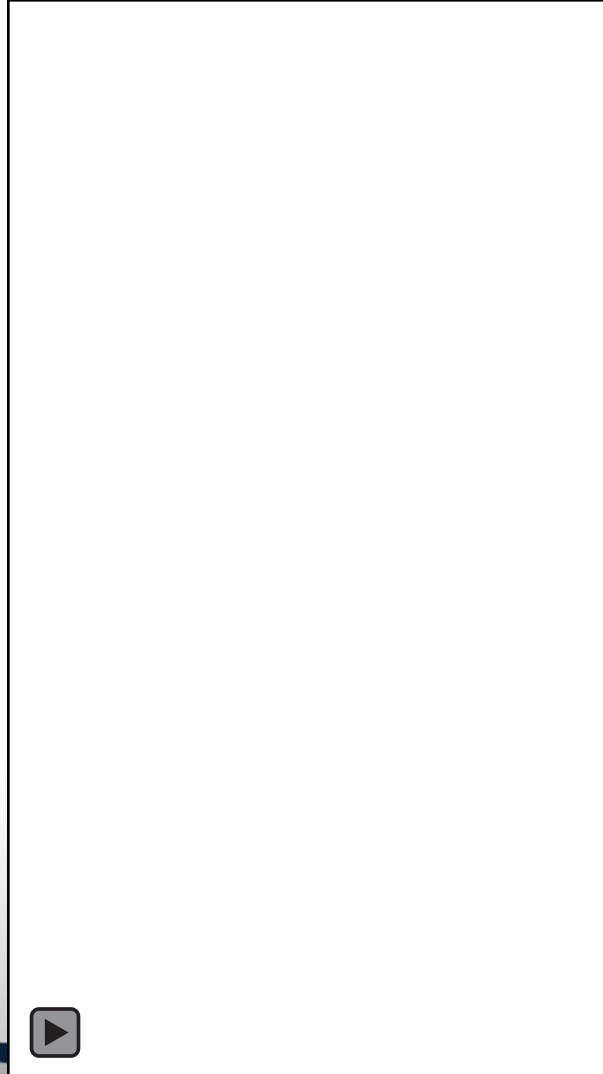
Outcome:

- Licensee received the following restricted license
 - 21+
 - Physical searches
 - Metal detectors
 - No weapons or large purses
 - Permanent ban following physical altercation and name reported to Burkeville Police
 - Last call at 1:30 a.m.

Case Study 2: The Broadway – Sept. 30, 2018

- Located in Norfolk – urban area in southeast Virginia
- Single shot fired – three men confronted one individual
- Victim sustained a gunshot wound to the upper chest – transported to hospital via Norfolk Police

Case Study 2: The Broadway, *continued*





Case Study 2: The Broadway, *continued*

Results of investigation:

- License issued in April 2017 – 92 calls for service in 18-month period
- Community canvas indicated tremendous disruption to the community in the last 18 months
- Previous shooting had occurred on the premises. ABC had not been notified.

Case Study 2: The Broadway, *continued*

Timeline:

- Sept. 4, 2018 – Initial investigation/suspension served
- Oct. 17, 2018 – Continuance/jurisdiction hearing
- Nov. 13, 2018 – Lack of jurisdiction decision
- Nov. 14, 2018 – ABC Board of Directors enters stay
- Nov. 19, 2018 – Negotiated settlement

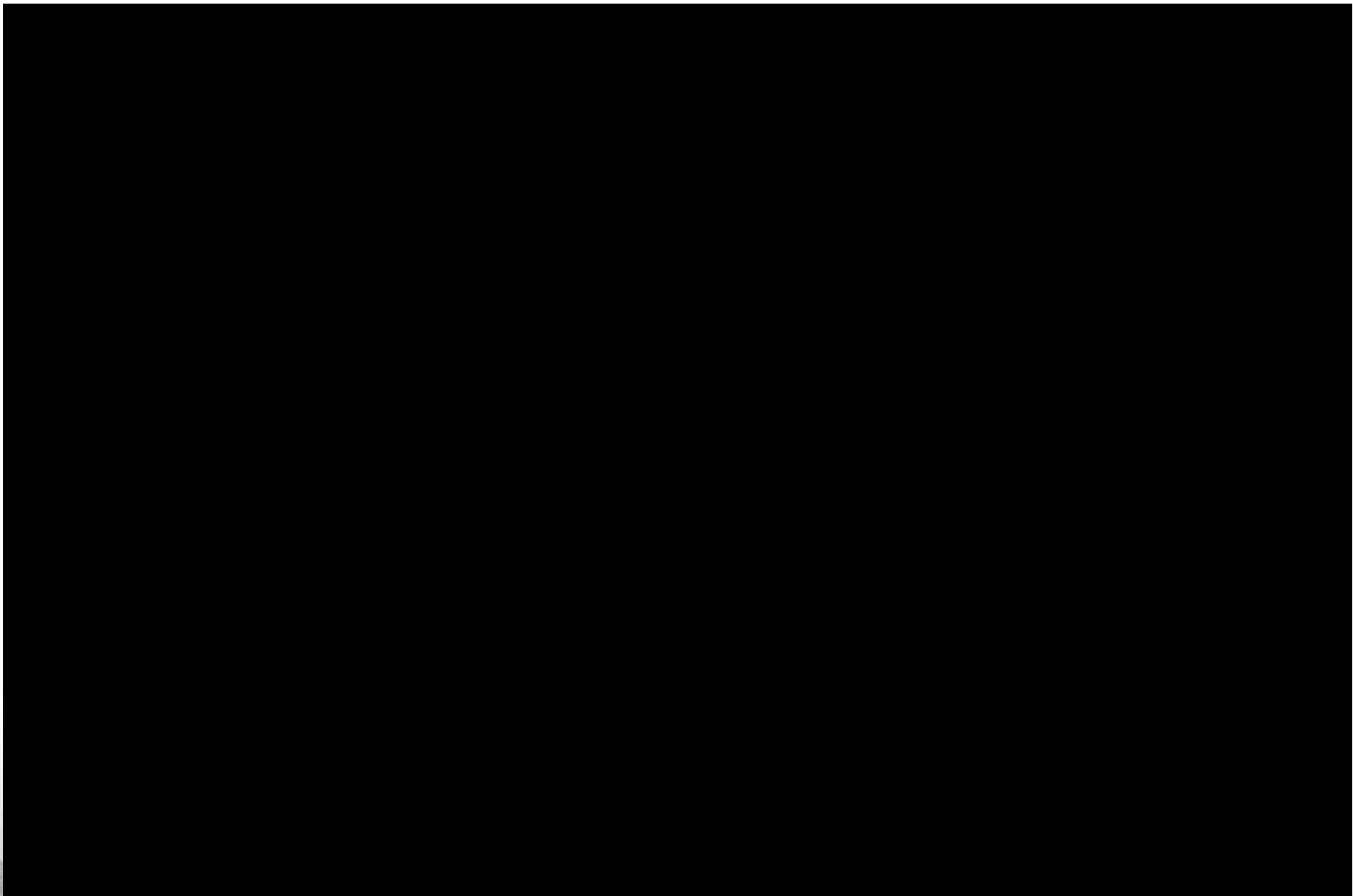
Case Study 2: The Broadway, *continued*

Outcome:

- Licensee received the following sanctions and restrictions
 - Identification scanner
 - 23 HD cameras
 - Walk through and hand-held metal detectors
 - Training for Intervention Procedures (TIPS) or Responsible Sellers & Servers (RSVP) training
 - 21+ after 9 p.m.
 - Last call at 1:30 a.m.
 - 4 Virginia Department of Criminal Justice Services (DCJS) certified security personnel per 100 patrons
 - 4 DCJS-certified security personnel patrolling parking lot 9 p.m. to closing
 - No third-party promoters

Case Study 3: Daisy Dukes – Sept. 13, 2018

- Located in Hopewell – urban area south of Richmond
- Malicious wounding
- Bartender confronted the patron regarding payment for beverages, which led to a confrontation
- Patron struck the bartender with a bottle as he was coming from behind the bar
- Bartender suffered deep lacerations across her face and shoulder, requiring 37 stitches





Case Study 3: Daisy Dukes, *continued*

Results of Investigation:

- Argument allowed to escalate over two minutes without intervention from other staff
- 25 calls for service (24 public safety related) over a 12-month span
- Nearby drugstore reported customers afraid to shop in the evenings
- Licensee's patrons were creating disturbances in the area

Case Study 3: Daisy Dukes, *continued*

Timeline:

- Sept. 25, 2018 - Initial investigation served
- Sept. 28, 2018 – Continuance/restrictions hearing
 - Restricted license issued until Oct. 29, 2018
- Oct. 29, 2018 – Formal hearing
- Nov. 7, 2018 – Decision rendered

Outcome:

- License revocation following hearing

Case Study 4: Lounge Bar – Jan. 17, 2018

- Licensee located in Virginia Beach
- Altercation between two groups started in the building, spilling out into the parking lot
- Approximately 26 shots fired
- Security worker struck in the leg
- Multiple vehicles struck by gunfire

Case Study 4: Lounge Bar, *continued*

Results of Investigation:

- Owner not closely engaged with business
- Use of “guest” bartenders who work one evening and never return
- Promoters appear to be running the business
- Licensee subject of “reasonable measures” letter on March 22, 2017 and failed to implement most of the agreed upon measures
- Licensee selling 10 times more liquor than food
- Virginia Beach Police received at least 14 calls for service in nine months

Case Study 4: Lounge Bar, *continued*

Timeline:

- Jan. 19, 2018 – Initial investigation/suspension served
- Jan. 29, 2018 – Agreed upon temporary, limited operating restrictions
- Jan. 29, 2018 – Formal investigative report served
- Jan. 30, 2018 – Continuance hearing setting formal hearing for March 12
- Feb. 23, 2018 – Agreement on permanent restricted license

Case Study 4: Lounge Bar, *continued*

Outcome:

- Last call at midnight
- No third party promoters
- 23+ after 9 p.m.
- Two Virginia Department of Criminal Justice Services certified security personnel monitor parking lot from 9 p.m. to midnight
- Handheld metal detectors and bag searches
- Identification scanner

Case Study 5: Monsters – Sept. 4, 2016

- Licensee located in Roanoke
- Altercation of unknown origin resulted in shots fired in the business and the parking lot
- 11 individuals were shot and one fatality inside the business



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Case Study 5: Monsters, *continued*

Results of Investigation:

- Alcohol was being served after hours
- Business video surveillance was disabled shortly before the shooting started
- On Sept. 13, 2016, another altercation and shooting had occurred at the licensed business
- 57 calls for service during previous 12 months
- There were multiple instances of over-service, assaults and group confrontations
- Neighborhood canvas showed negative impact on surrounding community

Case Study 5: Monsters, *continued*

Timeline:

- Sept. 7, 2016 – Initial investigation served
- Sept. 9, 2016 – Initial hearing date
- Sept. 16, 2016 – License surrendered

Outcome:

- License surrendered as revoked

Questions?

