# BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD OF THE STATE OF CALIFORNIA

**AB-7606**

RENEE VICARY dba Angels Sport Bar
1650 East Sixth Street, Corona, CA 91719,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 48-275530 Reg: 99047236

Administrative Law Judge at the Dept. Hearing: John P. McCarthy

Appeals Board Hearing: April 5, 2001
Los Angeles, CA

**ISSUED AUGUST 16, 2001**

Renee Vicary, doing business as Angels Sport Bar, appeals from a decision of the Department of Alcoholic Beverage Control[1] which suspended her on-sale general public premises license for 30 days for permitting acts by entertainers found to have violated Department Rule 143.3(1)(b) and 143.3(2) (Title 4, Cal. Code Regs., §143.3, subd. (1)(b) and 143.3, subd. (2).)

Appearances on appeal include appellant Renee Vicary, appearing through her counsel, Roger Jon Diamond, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

DISCUSSION

The question presented by this appeal is whether the Department of Alcoholic Beverage Control may discipline a licensee for permitting conduct by topless dancers which, although violative of the provisions of Rule 143.3, were not found to be obscene.

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[1] The decision of the Department, dated March 23, 2000, is set forth in the appendix.

Or, stated another way, does the First Amendment's protection of speech and expression extend to topless dancers who, in the course of their performance, engage in activities which violate the literal prohibitions against certain kinds of touching set forth in the Department's Rule 143.3, but which the Department did not find to be obscene?

We approach the difficult issues in this case with thoughtful consideration, cognizant of the controversial nature of the type of entertainment involved, and aware of our responsibility to reconcile the obligations of the Department to protect the welfare and morals of the people of the State of California with the rights of speech and expression guaranteed by the First Amendment of the Constitution of the United States. In so doing, we have attempted to review the applicable law, as reflected in decisions of the California Supreme Court and the Supreme Court of the United States, and distill from these reported cases, the correct rule to be applied in this case. This has not been an easy task.[2]

Department Rule 143.3, the focus of this case, provides as follows:

> "Acts or conduct on licensed premises in violation of this rule are deemed contrary to public welfare and morals, and therefore no on-sale license shall be held at any premises where such acts or conduct are permitted.
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> "Live entertainment is permitted on any licensed premises, except that:

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[2] The liberty of speech clause of the California Constitution (article I, section 2, subdivision (a)) has been said to be broader and more protective than the free speech clause of the First Amendment. (See Los Angeles Alliance for Survival v. City of Los Angeles (2000) 22 Cal.4th 352, 365-367 [93 Cal.Rptr.2d 1]), and the cases cited therein. Although this constitutional provision has not been alluded to in the decisions of the California Supreme Court addressing the constitutional issues involved in regulating topless and nude dancing, its existence cannot be ignored. That being said, we think the result we reach is attainable without resort to this provision, and certainly not in conflict with it.

> "(1) No licensee shall permit any person to perform acts of or acts which simulate: ... "(b) The touching, caressing or fondling on the breast, buttocks, anus or genitals. ...
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> "(2) Subject to the provisions of subdivision (1) hereof, entertainers whose breasts and/or buttocks are exposed to view shall perform only on a stage at least 18 inches above the immediate floor level and removed at least six feet from the nearest patron."

Read literally, subdivision (1) of the rule applies to any person, including patrons, while subdivision (2) applies only to entertainers. This distinction probably does not matter in this case, since all of the questioned acts were by entertainers.

The Department found this rule to have been violated on two separate occasions by the conduct of a total of eight dancers, four on each of the two dates in question. The pertinent findings, based upon the testimony of one Department investigator, were as follows:

(a) Michele, while dancing topless on a raised stage, placed her hands on her exposed breasts, and, using her hands, moved her breasts about. Michelle touched her breasts with her hands five times during the dance, each separate touching lasting a matter of a second or two.[3]

(b) Brandi, while dancing topless on a raised stage, placed her hands on her exposed breasts and, using her hands, moved her breasts about. Brandi touched her breasts with her hands three times during the dance, each separate touching lasting a matter of a second or so.[4]

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[3] Finding of Fact III.

[4] Finding of Fact IV.

(c) Cynthia,[5] while dancing topless on a raised stage, placed her hands on her exposed breasts and, using her hands, moved her breasts about. It was not established how many times, if more than once, Cynthia touched her breasts with her hands. The finding included no reference to the duration of the touching.[6]

(d) "Baby Girl," while dancing topless on a raised stage, placed her hands on her exposed breasts and, using her hands, moved her breasts about. "Baby Girl" touched her breasts with her hands at least four times during the dance. The finding included no reference to the duration of the touching.[7]

(e) Cynthia,[8] during one of her dances, sat with her legs and feet extended, and while seated in that fashion, within two or three feet from some patrons, manipulated one cup of the bikini top she was wearing so that an entire breast became uncovered. The breast remained uncovered for about one minute. The exposure did not appear to the Department investigator to have been accidental.[9]

(f) Robyn, while dancing topless on a raised stage, placed her hands on her exposed breasts and rubbed her hands across her breasts. It was not established how many times, if more than once, Robyn touched her breasts with her hands. One touching, however, lasted about a second.[10]

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[5] Two of the dancers were named Cynthia. Each danced on a separate night.

[6] Finding of Fact V.

[7] Finding of Fact VI.

[8] The second of the two Cynthias.

[9] Finding of Fact VIII.

[10] Finding of Fact IX.

(g) Leticia, during one of her dances, sat on the floor of the stage with her legs and feet extended, and while seated in that fashion, rubbed her hands over her genitals. There was no finding as to how long this occurred. Leticia also rubbed her hands across her breasts once or twice for about a second or two each time.[11]

(h) Pamela, while dancing topless on a raised stage, used rings affixed to her pierced nipples to pull her breasts away from her body and then released the rings so the breasts snapped back. Pamela also used her hands to cup her breasts from beneath and used her hands to move her breasts up and down. The finding does not state the frequency or duration of this touching.[12]

The Department rejected appellant's contention that the rule, as applied, violated appellant's constitutional guarantees of free speech. It found that there was nothing in evidence concerning the communicative intent of any of the dancers involved, and that if appellant had known or been informed of the conduct in question, she would have disciplined the dancers involved.[13] Continuing, the Department stated:

> "*California* v. *LaRue* ... upheld the regulation 143.3(1)(b) on its face, against constitutional attack, saying states 'may sometimes proscribe expression that is directed to the accomplishment of an end that the State has declared to be illegal when such expression consists, in part, of 'conduct' or 'action.' ... In this tavern environment, the body exposure and the rubbing and touching by the dancers involved in this case appears intended to communicate only one thing, sexual arousal. The conduct need not be lewd or obscene to be lawfully prohibited." [Citations omitted.]

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[11] Finding of Fact X.

[12] Finding of Fact XI.

[13] This issue can be disposed of quickly. Appellant's standards for control of her dancers are irrelevant in the context of this appeal.

The task which now confronts this Board is to determine whether the Department's decision and its rationale comport with the law in this area as explained by the California Supreme Court and the United States Supreme Court. Given the number and complexity of the decisions in this continually evolving and highly controversial area of the law, our task is not an easy one. Nevertheless, we believe that we owe it to the appellate court which, in all likelihood, will sit in review of our decision, to set forth as best we can our rationale based on our understanding of the law. To do so, we begin with the earliest California Supreme Court decision addressing the subject of dance as expression protected by the First Amendment.

In In re Giannini (1968) 69 Cal.2d 563 [72 Cal.Rptr. 655, 656], Albert Giannini, a nightclub manager, and Kelly Iser, a topless dancer, were found guilty of violating Penal Code §314, subdivision (1) (wilful and lewd exposure), and §647, subdivision (a) (lewd and dissolute conduct), but successfully sought a writ of habeas corpus from the California Supreme Court, contending that the statutes under which they were convicted were unconstitutionally vague, and that the prosecution had failed to provide evidence of community standards relating to the conduct involved.[14] Justice Tobriner, writing for five justices of the court, began the court's opinion with the following

[14] Section 314 provided that "every person who wilfully and lewdly ... (1) exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby ... is guilty of a misdemeanor." Section 647, subdivision (a), provided that "every person who commits any of the following acts shall be guilty of disorderly conduct, a misdemeanor: (a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view."

observation:

> "Our ruling in this case rests on the simple proposition that a dance performed before an audience for entertainment cannot be held to violate the statutory prohibitions of indecent exposure and lewd or dissolute conduct in the absence of proof that the dance, tested in the context of contemporary community standards, appealed to the prurient interest of the audience and affronted standards of decency generally accepted in the community."

The court grounded its decision squarely on First Amendment principles, seeing dance as a mode of expression analogous to other media of expression, such as motion pictures, which were held entitled to the protections of the First Amendment in Joseph Burstyn, Inc. v. Wilson (1952) 343 U.S. 495 [72 S.Ct. 777]. The state of the law in California, as of the time In re Giannini was decided, is seen in the following language of the opinion:

> "[T]he performance of the dance indubitably represents a medium of protected expression. To take but one example, the ballet obviously typifies a form of entertainment and expression that involves communication of ideas, impressions, and feelings. Similarly, Iser's dancing, however vulgar and tawdry in content, might well involve communication to her audience. In fact, the Attorney General basically argues that Iser's dance violated the statute because it communicated improper ideas to her audience.[15] This implicit admission of the Attorney General undermines his preliminary contention that the dance does not enjoy at least a prima facie protection of the guarantees of the First Amendment. Precisely because, as the Attorney General points out, the performed dance primarily constitutes a form of expression and communication, it potentially merits First Amendment protection.
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> "The prima facie applicability of the First Amendment to this medium of communication, the dance, does not fail merely because the particular form

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[15] We cannot help but note the similarity between the Attorney General's position, as described by the court, with the inconsistent observation in the Department's decision in the present case that, despite the fact that it found "nothing in evidence concerning the communicative intent of any of the dancers involved in this matter ... the body exposure and the rubbing and touching of the dancers involved in this case appears intended to communicate only one thing, sexual arousal."

> of its manifestation may be obnoxious to many persons. Although the Attorney General contends that 'topless dancing,' as performed in the instant case, cannot itself demonstrate any social value worthy of protection under the First Amendment, it is 'as much entitled to the protection of free speech as the best of [dance].' [Citation] 'The line ... is too elusive'... to allow for particularized judgments as to whether each individual example of expression possesses social values meriting First Amendment protection."

In re Giannini, 73 Cal.Rptr. at 660.]

Thus having established its premise that topless dancing enjoyed prima facie protection under the First Amendment, the court framed the central question of the case as whether Iser's performance lost its privileged status because it was obscene: "The proper issue here therefore turns on whether the alleged unlawful conduct, which is inextricably part of the dance, forfeits constitutional protection because of its obscene nature." Analyzing the requirements of California's obscenity statutes, the court reversed the convictions because the prosecution had failed to introduce expert evidence of community standards, either that Iser's conduct appealed to prurient interest or offended contemporary standards of decency.

Only five years later, in Crownover v. Musick (1973) 9 Cal.3d 405 [107 Cal.Rptr. 681], the court upheld against constitutional challenge ordinances which prohibited the service of food and drink and the providing of entertainment by "topless" women and "bottomless" persons of either sex in any establishment, as well as live acts and exhibitions by such persons in any public place other than theaters or similar establishments primarily devoted to theatrical performances. In so doing, the court deemed the ordinances directed at conduct, not words or speech, thus not presenting it with the problems raised in obscenity cases.

Drawing on the balancing test outlined in United States v. O'Brien (1968) 391 U.S. 367 [88 S.Ct. 1673], in which the United States Supreme Court upheld, against a First Amendment challenge, the conviction of a Viet Nam War protester who burned his draft registration card, the court concluded that the ordinances were within the power of the governmental entities to regulate conduct, and furthered an important or substantial interest, one unrelated to the suppression of free expression, which imposed no restriction greater than necessary to further that governmental interest.

The court concluded its opinion by overruling In re Giannini, supra, stating:

> "In the sum we hold that the ordinances deny neither freedom of speech and expression nor the equal protection of the laws but are in all respects valid and constitutional regulations of conduct. Sections 318.5 and 318.6 of the Penal Code authorizing such ordinances were enacted after our decision in *In re Giannini* ... . To the extent that it is inconsistent with the views expressed herein *Giannini* is overruled." (Crownover v. Musick, 9 Cal.3d at 431.)

Justice Tobriner, the author of In re Giannini, dissented. Joined by Justice Mosk, he sharply criticized the majority opinion:

> "The majority opinion, indeed, dangerously destroys long-held, laboriously built constitutional protections of the communicative arts. ... The majority's metaphysical severance of speech from 'conduct,' (or the extent of costumes) would permit the prohibition of such 'nude' dancing. ... The rationalization, the ruling, the holding, is that 'nude' conduct can be differentiated from speech or communication and, as such, subjected to regulation or prohibition. At one stroke of the pen the majority have thereby torn down the constitutional protections of the communicative arts, exposing the drama, the motion picture, the dance, the opera, the visual arts, sculpture, and communicative entertainment in general, to unbridled censorship. The careful delineation of constitutionally protected expressions as opposed to those that are obscene under the decisions is apparently no longer viable. The rulings are circumvented by the new conduct-communications fictitious dualism." (Crownover v. Musick, supra, 9 Cal.3d at page 437.)

The dissent took further issue with the majority's application of the four-prong test from United States v. O'Brien, supra, disagreeing with the majority as to each element of the test. To Justice Tobriner, it was doubtful that the government has an

inherent power to regulate nude entertainment in bars and restaurants. But, assuming for purpose of argument that the state does have such an interest, he did not consider it substantial, nor did he believe it is unrelated to the suppression of free expression. Finally, he was unconvinced the ordinances imposed no greater restriction than necessary to protect whatever legitimate governmental interest there might have been:

> "If compelled to describe the state's interest in regulating nude entertainment before voluntary adult audiences, I should be constrained to use the antonyms of the terms set out in *O'Brien*; I would describe that interest as 'non-compelling,' 'unimportant,' 'insignificant,' and 'dubious.' I would conclude that such an interest does not justify any restriction upon protected expression." (Id. at 443.)

In Pryor v. Municipal Court (1979) 25 Cal.3d 238 [158 Cal.Rptr. 330], the court denied a writ of prohibition halting a prosecution for a violation of Penal Code §647, subdivision (a) (solicitation of lewd or dissolute conduct), sought by a defendant who had solicited an undercover police officer for an act of oral copulation. In so doing, the court construed the term "lewd and dissolute" to prohibit only the solicitation or commission of conduct in a public place or one open to the public or exposed to public view, which involves the touching of the genitals, buttocks, or female breast, for purposes of sexual arousal, gratification, annoyance or offense, by a person who knows or should know of the presence of persons who may be offended by the conduct. By doing so, the court avoided holding the statute unconstitutionally vague.

The court noted that the vagueness issue had reached the court on only one prior occasion, in In re Giannini, where it expressly limited its interpretation of the statutory term "lewd or dissolute" to mean "obscene," for the purpose of determining the alleged obscenity of a dance performed before an audience for entertainment, "an activity which, we reasoned, involved 'communication of ideas, impressions and feelings.'" In re Giannini was not controlling because Pryor was charged with a lewd

and dissolute act, not a lewd and dissolute communication. The court also acknowledged that the reasoning which had led it to apply an obscenity test to reverse the conviction in In re Giannini was itself repudiated in Crownover v. Musick, supra.

In Morris v. Municipal Court (1982) 32 Cal.3d 553 [186 Cal.Rptr.494], the court again was confronted with a challenge to a county ordinance of the type upheld in Crownover. Morris, a dancer, had been arrested for exposing her buttocks during a performance. After reviewing various United States Supreme Court and lower court rulings involving nude entertainment, including California v. LaRue (1972) 409 U.S. 109 [93 S.Ct. 390], Doran v. Salem Inn, Inc. (1975) 422 U.S. 922 [95 S.Ct. 2561], and New York State Liquor Authority v. Bellanca (1981) 452 U.S. 714 [101 S.Ct. 2599], all of which drew upon the supposed authority derived from the Twenty-First Amendment, the court concluded that the ordinance was overbroad, since it extended to any establishment whether or not the establishment was one which served or sold alcoholic beverages. In so doing, the court overruled Crownover v. Musick, supra, stating:

> "From our review of the foregoing decisions, we draw vital conclusions. (1) A ban on nude dancing cannot be sustained on the theory that it regulates only conduct and does not impinge upon protected speech. Nonobscene nude dancing cannot be barred without, in some cases, infringing upon constitutional expression. [Ftnt. omitted] An enactment prohibiting nonobscene nude dancing which extends beyond establishments serving alcohol is presumptively overbroad. [Ftnt. omitted] Each of these conclusions is fundamentally at odds with the reasoning of the *Crownover* majority. We conclude that the *Crownover* analysis is no longer viable, and declare that, to the extent it is inconsistent with the present opinion, *Crownover* v. *Musick*, supra, ... is overruled." (Morris v. Municipal Court, supra, 32. Cal.3d at 564- 565.)

In the footnote omitted from the above, the court quoted extensively from In re Giannini's definition of dance as an expression of emotions and ideas.

Morris v. Municipal Court, supra, although the most recent pronouncement of

the California Supreme Court in the area of nude or topless dancing, may no longer represent the law. The United States Supreme Court cases which provided the underpinning for Morris's distinction between establishments which serve alcohol and those which do not - California v. LaRue and New York State Liquor Authority v. Bellanca, supra - have been stripped of any force, insofar as they had held that the Twenty-First Amendment permitted a state to prohibit speech or expression otherwise protected under the First Amendment.

In 44 Liquormart, Inc. v. Rhode Island (1996) 517 U.S. 481 [116 S.Ct. 1495], the Supreme Court held unconstitutional as violative of the First Amendment a state-wide ban on liquor price advertising. The decision marked an abandonment by the Supreme Court of its view that the Twenty-first Amendment empowered states to prohibit conduct otherwise entitled to protection under the First Amendment. In an opinion written by Justice Stevens, and reflecting his earlier dissent in New York State Liquor Authority v. Bellanca, supra, 452 U.S. at 723-724, the court, while not questioning the holding in California v. LaRue, expressly disavowed its reasoning to the extent based upon the Twenty-first Amendment, explaining:

> "In reaching its conclusion, the Court of Appeals relied on our decision in *California* v. *LaRue*, 409 U.S. 109 (1972). [Ftnt. omitted] In *LaRue*, five members of the Court relied on the Twenty-first Amendment to buttress the conclusion that the First Amendment did not invalidate California's prohibition of certain grossly sexual exhibitions in premises licensed to serve alcoholic beverages. Specifically, the opinion stated that the Twenty-first Amendment required that the prohibition be given an added presumption in favor of its validity. ... We are now persuaded that the Court's analysis in *LaRue* would have led to precisely the same result if it had placed no reliance on the Twenty-first Amendment.
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> "Entirely apart from the Twenty-first Amendment, the State has ample power to prohibit the sale of alcoholic beverages in inappropriate locations. Moreover, in subsequent cases, the Court has recognized that the States'

> inherent police powers provide ample authority to restrict the kind of 'bacchanalian revelries' described in the *LaRue* opinion regardless of whether alcoholic beverages are involved. ...
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> "Without questioning the holding in *LaRue*, we now disavow its reasoning insofar as it relied on the Twenty-first Amendment. ...
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> " ... Accordingly, we now hold that the Twenty-First Amendment does not qualify the constitutional prohibition against laws abridging the freedom of speech embodied in the First Amendment."
> 517 U.S. at 515-516.

Although the question goes somewhat beyond the issues in this case, we are, nonetheless, compelled to doubt that the Morris rationale for distinguishing between establishments which serve alcoholic beverages and those which do not would survive reexamination by the California Supreme Court, in light of the language in 44 Liquormart regarding California v. LaRue and the Twenty-first Amendment.

In Barnes v. Glen Theatre, Inc. (1991) 501 U.S. 560 [111S.Ct. 2456], the Court upheld an Indiana public indecency statute which required that dancers wear pasties and G-strings against a First Amendment challenge brought by two establishments seeking to offer totally nude entertainment. In so doing, the Court found support in its prior cases for the proposition that nude dancing of the kind sought to be performed here was expressive conduct within the outer perimeters of the First Amendment, but viewed it as "only marginally so." [501 U.S. 566.] Applying the four-prong test of United States v. O'Brien (1968) 391 U.S. 367 [88 S.Ct.1673], the Court upheld the statute "despite its incidental limitations on some expressive activity' [501 U.S. at 567] because "[p]ublic nudity is the evil the State seeks to prevent, whether or not it is combined with expressive activity." [501 U.S. 572.]

More recently, in City of Erie v. Pap's (2000) 529 U.S. ___ [ ___ S.Ct. ___] (March 29, 2000),a divided United States Supreme Court upheld, against a First Amendment challenge, an ordinance of the City of Erie, Pennsylvania which banned public nudity. Four members of the Court (Chief Justice Rehnquist and Justices O'Connor, Kennedy, and Breyer, in an opinion written by Justice O'Connor), found the ordinance constitutional because (1) the city's efforts to protect public health and safety were clearly within its police powers; (2) it furthered an important government interest in regulating conduct through a total nudity ban and of combating the harmful secondary effects associated with nude dancing; (3) the ordinance was "content neutral," unrelated to the suppression of free expression; and (4) the restriction (that a dancer wear pasties and a G-string) was no greater than was essential to further the government interest, since it regulated conduct and had only a de minimus impact on the expressive element of nude dancing.

Any effect on the overall expression would be de minimus, Justice O'Connor wrote, because

> "even if Erie's public nudity ban has some minimal effect on the erotic message by muting that portion of the expression that occurs when the last stitch is dropped, the dancers ... are free to perform wearing pasties and G-strings." 529 U. S. at ___ (slip opinion, page 13).

Seeing the purpose of the ordinance as aimed at combating crime and other negative secondary effects caused by the presence of adult entertainment establishments, the Court concluded that the ordinance was not aimed

> "at suppressing the erotic message conveyed by this type of nude dancing. Put another way, the ordinance does not attempt to regulate the primary effects of the expression, *i.e.*, the effect on the audience of watching nude erotic dancing, but rather the secondary effects, such as the impacts on public health, safety, and welfare ... ." (Id. at page 10.)

Justices Scalia and Thomas concurred in the judgment of the Court. In an opinion written by Justice Scalia, he expressed the view that the law, being a general prohibition of public nudity, was not within the ambit of the First Amendment. Justice Souter concurred with the reasoning of the plurality opinion, but felt the city had not made a sufficient evidentiary showing to justify the ordinance. Justices Stephens and Ginsburg dissented, asserting that the Court had never before held that secondary effects could justify the total suppression of protected speech; prior decisions had only extended that approach to regulation of location.

Despite the fact that City of Erie v. Pap's is the most recent pronouncement by the United Supreme Court, it does not provide a clear answer to the issues in this case. There are three reasons why we think this. First, the Department's rule is not a total ban on nudity. Instead it is an attempt to regulate conduct by a performer who may or may not be nude. Second, by singling out specific elements of conduct, devoid of context, the rule threatens to inhibit expression more than a minimal amount. Indeed, the Department relies on a snapshot record of expressive conduct as the basis for its findings that the rule was violated. The record indicates that, from a total of 48 minutes of dance, the Department has culled touches which lasted only seconds. Third, it is inescapable that the content of the expression is what the Department found to be offensive.

It appears that the Department, in pursuing this matter, is largely, if not entirely, motivated by what it perceives as the primary effects of the expression, i.e., the effect on the audience - "sexual arousal" - of watching topless erotic dancing. There was no finding by the Department that the touchings said to violate Rule 143.3 were not part of the expressive element of the dance, nor any attempt to assess the impact the

prohibition might have had upon the expression reflected in the dance - nor could it. (See In re Giannini, supra, at page 8, citing Winters v. New York (1948) 333 U.S. 507, 510 [68 S.Ct. 665,667]. See also, dissenting opinion in Barnes, supra, at 2475, quoting from Cohen v. California (1971) 403 U.S. 15, 25 [91 S.Ct. 1780, 1788]. Without such findings, and without evidence to support such findings, we can only conclude that the application of Rule 143.3 to the dancers in appellant's employ, in the circumstances of this case, infringed upon the constitutional rights of expression enjoyed by appellant and the dancers in her establishment by virtue of the First Amendment.

ORDER

The decision of the Department is reversed.[16]

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

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[16] This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.