

Uncovering Adult Entertainment Regulations

Recently, Operation ABC personnel have identified a growing trend toward employing freelance female dancers to entertain male patrons with sexually explicit performances inside bars and nightclubs. It has been observed that these performers will often work a specific circuit and may perform at multiple locations on a given night. When interviewed, involved licensees freely admit that the conduct of many entertainers is inappropriate, but is rationalized through increased patronage and related alcoholic beverage sales. Much confusion exists regarding proper methods of investigating and documenting adult entertainment violations inside these licensed ABC premises. To provide officers with additional investigative expertise and clarify misconceptions regarding enforcement action relating to these violations, this edition of the “back-bar inspection” will concentrate on proper investigative techniques relating to adult entertainment violations.



AN OPERATIONAL NECESSITY:

As 58 percent of the 83 Adult Café Entertainment locations within the City of Los Angeles are licensed to sell alcoholic beverages, it is imperative that vice officers have a thorough understanding of the rules regulating to employee conduct at these premises.

Officers typically involved in vice investigations realize that lewd conduct (Penal Code §647[a]) or a solicitation of prostitution (Penal Code §647[b]) are criminal violations and usually initiate immediate enforcement action. Although lewd conduct and prostitution are criminal, they may not always meet the level of an ABC administrative violation. Isolated incidents, beyond the control of the licensee, cannot be held against the operator of a licensed establishment. As with all ABC accusations, investigating officers must establish a nexus between the violation and the house. It is necessary to either prove direct licensee and/or employee involvement in the activity or that a series of such incidents occurred and were so open and notorious and of a continuing nature that the licensee should have known of the activity. When the activity falls short of criminal in nature, some officers experience difficulty in establishing a solid case and appropriately documenting the violation for ABC administrative review. A thorough understanding of the subsections of ABC Rule 143 will assist officers in conducting on-site investigations at locations that legally or illegally employ adult entertainers.

The conduct and attire of entertainers employed at ABC locations is specifically addressed in Sections 143.2 and 143.3 of Title 4 of the ABC Act. Sections of this portion of the Act are referred to as ABC Rules and are **administrative violations**. As such, officers **cannot** initiate an arrest or seek criminal filing against person(s) found in violation of these sections. Officers can initiate ABC administrative action, which could result in substantial penalties against the licensee of any on-sale premise for violating the provisions of these sections. To do so, officers must complete a thorough investigation and document all elements of the violation.

1) Age Appropriateness

Persons under the age of 18 years cannot be employed as adult entertainers. Any person who knowingly employs a person under the age of 18 years at an adult entertainment location would be contributing to the delinquency of a minor and be in violation of Penal Code §272(a)(1). Substantial criminal liability is also imposed through Labor Code §1308(a)(3) which prohibits knowingly employing any person under the age of 18 years for “any obscene, indecent, or immoral purposes, exhibition, or practice whatsoever.”

A vast majority of adult entertainment activity is conducted inside public premises (Type 42, 48 and 61 ABC licensed locations). Officers may enforce §25665 Business and Professions Code (BP), which prohibits allowing persons under the age of 21 years to remain inside the premise without lawful business. Minor musicians between the ages of 18 to 21 are permitted to be employed at the above locations; however, §25663.5 BP specifically prohibits employment of these individuals at public premises where topless or nude entertainment is present.

2) Attire

Topless entertainment is permitted inside ABC licensed locations, provided there are no conditions prohibiting such activity (see §23800 BP). The activity cannot take place in the immediate proximity of patrons as ABC Rule 143.3(2) delineates that entertainers whose breasts and/or buttocks are exposed to view shall perform on a stage at least 18 inches above the immediate floor and removed at least six feet from the nearest patron. Officers may observe a line painted on the stage around the pole used by topless dancers inside older clubs. This line typically designates the area where the dancer must remain while performing topless. This marker is not a requirement and may not be present inside all locations. Officers should be guided by the “spirit of the law” when enforcing this section. Infrequent violations of the six foot rule during a stage performance should not constitute a violation, as the section is primarily intended to prohibit dancer and patron contact.

Stage performers are the only female employees who shall be permitted to be topless inside an ABC location and shall not be permitted to sell alcoholic beverages while unclothed. All other employees must be clothed in prescribed minimum attire and to do otherwise, is deemed contrary to public welfare and morals. Rules regulating the attire of on-sale **employees** are covered under ABC Rule 143.2. The following acts are deemed to be in a violation of this section:

- (1) To employ or use any person in the sale or service of alcoholic beverages in or upon the licensed premise while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.
- (2) To employ or use the services of any hostess or other person to mingle with patrons while such hostess or person is unclothed or in such attire as described in paragraph (1) above.

3) Conduct

The conduct of employees and patrons inside on-sale locations is strictly regulated and designed to prohibit acts deemed contrary to public welfare and morals. While allowing stage performances involving topless dancers, ABC Rule 143.3 strictly prohibits any acts of a sexual nature, anywhere inside a licensed premise. The following subsections specifically address prohibited acts (performed or simulated) involving live entertainment:

- (a) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual act prohibited by law.
- (b) The touching, caressing or fondling on the breast, buttocks, anus or genitals.
- (c) The displaying of the pubic hair, anus, vulva or genitals.

Note: No licensee shall permit any person to remain in or upon the licensed premise who exposes to public view any portion of his or her genitals or anus (ABC Rule 143.3[2]).



SERVICE TO OUR COMMUNITIES: *Promoting compliance at locations catering to adult entertainment will prevent these premises from becoming public nuisances and will ensure that the public welfare and morals are protected.*

Physical contact, of a sexual nature is regulated and prohibited under ABC Rule 143.2 (3). Persons shall not be permitted to encourage or permit any person to caress or fondle the breast, buttocks, anus or genitals of any other person.

4) Investigative Techniques

The investigation into adult entertainment activity is primarily the role of undercover personnel. Specific locations can offer adult entertainment inside legitimate venues such as bikini bars and adult cabarets. However, officers should remain cognizant that illegal activity can spontaneously occur as unscheduled events inside bars and nightclubs. Performers can be employees, freelance dancers working a scheduled route, or actual patrons with relaxed inhibitions due to alcohol use. It is the role of the undercover officer to ascertain the nature of the violation, gather evidential material and document the incident.

To eliminate claims of isolated incidents, which could be legitimately beyond the licensee's control, multiple visits are needed. It is recommended that three separate investigations, with violations, are completed prior to submitting an administrative accusation to the Department of ABC. During each investigation officers should gather as much information as possible regarding the identity of the entertainers. Notations should be made regarding the dancers' physical descriptions, costumes and stage names. Information can be obtained directly from the entertainers as to work schedules and employment agreements. Security personnel are also a valuable source of information and can be used to ascertain appearance schedules. Bar staff should be covertly interviewed to ascertain knowledge of the activity. Point personnel can be utilized to gather vehicle information, which is helpful in ascertaining the true identity of stage performers.

In substantiating a nexus between the activity and the house, officers must make mental notations as to the bar staffs reaction to possible violations. Duration of performances, lighting, type of music, proximity to bar staff, potential security precautions, size and demeanor of the audience, are all investigative details which should be identified.

5) Documentation

Should activity of a criminal nature occur inside an adult entertainment location (i.e. solicitation of prostitution or acts of lewd conduct), it is likely an arrest would be made. In the event of an arrest, the related arrest report should be forwarded to the Department of ABC for administrative action (§24202 B&P). All elements substantiating a criminal complaint would be incorporated into the arrest report narrative. There are several factors that could preclude an immediate physical arrest: the activity falls short of a criminal violation; the detention of involved parties would reveal the undercover status of investigative personnel thereby compromising future investigations; or the arrest of violators would compromise an investigation of greater significance.

In the event officers elect not to initiate an arrest, they have two options for documenting the incident: a Complaint Application (LAPD Form 5.15) filed with the City Attorney's Office or an Employee's Report (LAPD Form 15.7). A Complaint Application would be used when a misdemeanor crime has been committed, the suspect is not in custody, and the investigating officers possess knowledge as to the identity of the involved suspect. Should the conduct not reach the threshold of a misdemeanor criminal violation (i.e. ABC Rule 143.2/143.3 violations), officers can document the activity on an Employee's Report to their immediate supervisor.

Note: For outside agencies unfamiliar with LAPD reporting procedures, an Employee's Report is an internal form used to report events for which no other report form is provided. A review of your agency's reporting procedures should reveal similar documentation.

Regardless of the manner in which the incident is documented, the formula for a solid administrative ABC accusation is simple: officers should record the



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activities in a clear, concise, and chronological narrative that includes all elements of the violation(s). Date, time, involved personnel, reason for the investigation, and officer's detailed observations, will provide the Department of ABC with a clear understanding of what occurred and will be the basis for an administrative filing. A diagram of the premise will assist in determining locations of involved individuals. It is important investigating personnel document violations using the specific language articulated in the above sections. Officers should request administrative filing for specific charges (i.e. should a dancer fully expose her breasts in close proximity to the undercover officer while serving drinks, the related reports should document the activity and indicate the employee was in violation of ABC Rule 143.2[1]).

Photographs obviously provide the best evidence of illegal activity, however, they can be difficult to obtain and undercover officers must maintain the highest level of professionalism. During follow-up investigations, for the purpose of photographing violations relating to attire, entertainers should not be requested to remove clothing or dress in stage attire after they changed costumes, or dressed in street apparel. Additionally, staged, fully-nude photographs are unnecessary and lack a degree of professionalism. The fact an officer can document that an entertainer removed her clothing to the point she became nude, will suffice without further photographic evidence. Should the interior activities be recorded through video surveillance equipment, officers should seize the equipment pending administrative review.

Documenting any violation inside an ABC location should be completed as soon as practical. As time passes, specific details can be forgotten or inadvertently omitted from reports. Notes made immediately following individual investigations, will assist officers in recalling specific details, should delays in documenting the incident become necessary. Once reports are completed they should be submitted to the Department of ABC for administrative review. Copies of photographic evidence should accompany all reports. If officers are conducting a series of investigations and documenting violations on Employee's Reports, it is recommended reports are held until all investigations are completed. Telephonic notification regarding the pending investigations should be made to the respective Department of ABC District Office. Not only will this alert the Department of ABC to a pending administrative complaint, but it will also provide an additional level of officer safety and prevent a duplication of investigative action.

The use of Employee's Reports to document ABC Rule 143 violations can be an extremely effective tool in initiating ABC administrative action without compromising the identity of undercover personnel. As an example, in a recent administrative case made by Operation ABC personnel, the licensee of a West Valley Area bar (Evolutions, 7900 Woodley Avenue, Van Nuys) received a 45-day suspension of his ABC privileges and was placed on a three year stayed-revocation order as the result of inappropriate conduct on the part of female dancers. Violations were obtained during four undercover operations requiring minimal investigative time and documented on Employee's Reports submitted to the Department of ABC. At no time did the undercover officers identify themselves as law enforcement personnel and the administrative sanctions were agreed upon by the licensee and imposed without compromising the undercover status of the involved officers.

If left unchecked, inappropriate, or illegal activity, inside locations which cater to adult entertainment can have a deferential effect on our communities. Through a thorough understanding of the rules and regulations which govern the conduct of entertainers and the responsibilities of licensees, law enforcement can reduce the negative impact that irresponsible retailers have on our business and residential communities.