

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

AB-10015  
File: 21-479752; Reg: 24094583

Garfield Beach CVS, LLC & Longs Drug Stores CA, LLC,  
dba CVS Pharmacy 9633  
1382 N. Moorpark Road  
Thousand Oaks, CA,  
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the Department Hearing: Hon. Matthew G. Ainley

Appeals Board Hearing: May 9, 2025  
Sacramento, CA/Videoconference

**ISSUED MAY 15, 2025**

Appearances: Adam Koslin, of Solomon, Saltsman & Jamieson, as counsel for  
Appellants;

Andrea S. Maehara, as counsel for the Department of  
Alcoholic Beverage Control.

**OPINION**

Appellants appeal from a decision of the Department of Alcoholic  
Beverage Control.<sup>1</sup> (hereinafter referred to as the "Department") suspending  
their license for 25 days for selling an alcoholic beverage to a minor in violation

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<sup>1</sup> The Decision of the Department, dated December 17, 2024, is set forth in  
the appendix.

of Business and Professions Code section 25658(a).<sup>2</sup> For the following reasons, the Department's decision is affirmed.

### **I. FACTUAL BACKGROUND & PROCEDURAL HISTORY**

Appellants maintain an off-sale general license, which was issued by the Department on September 14, 2009. On March 22, 2024, Agent S. Tan entered the licensed premises, followed by Melanee Roman (hereinafter "Roman"). Roman was 18 years old on March 22, 2024, and participating in a minor decoy operation conducted by the Department.

Roman went to the alcoholic beverage section and selected a 24-ounce can of Modelo Chelada, an alcoholic beverage. Roman took the beer to the counter where the clerk, Barbara Allawos (hereinafter "the clerk"), rang her up. The clerk asked to see Roman's identification, and Roman handed the clerk her valid California driver's license, showing her to be 18 years old. (Exhibit 3.) The clerk looked at the identification and completed the sale. Roman left the licensed premises with the alcoholic beverage.

Roman then re-entered the licensed premises with Department agents. Roman identified the clerk as the person who sold her the alcoholic beverage and a photograph of Roman and the clerk were taken together. (Exh. 4.) The clerk stated that she believed Roman was older than 21 years. Department agents cited the clerk and left the licensed premises.

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<sup>2</sup> All statutory references are to the Business and Professions Code unless otherwise stated.

The Department filed its accusation on July 9, 2024. An administrative hearing was held on October 15, 2024 before administrative law judge (ALJ) Matthew G. Ainley. ALJ Ainley issued a proposed decision on October 27, 2024 sustaining the accusation and recommended a 25-day penalty.

The Department adopted the proposed decision on December 11, 2024. The Department issued a certificate of decision on December 17, 2024. Appellants filed a timely appeal contending the Department abused its discretion in determining the penalty. For the following reasons, the Board disagrees.

## **II. STANDARD OF REVIEW**

The scope of the Board's review is defined by section 23084. The Board is not a trier of fact, and it does not reweigh evidence, evaluate witness credibility, or substitute its judgment for that of the Department. The Board's review is limited to determining:

1. Whether the Department has proceeded without or in excess of its jurisdiction;
2. Whether the Department has proceeded in the manner required by law;
3. Whether the Department's decision is supported by its findings; and
4. Whether the findings are supported by substantial evidence in light of the whole record.

Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The Board does not reweigh

conflicting evidence but instead considers whether the Department's findings are supported by such evidence in light of the whole record. (*Martin v. Alcoholic Beverage Control Appeals Board* (1959) 52 Cal.2d 287, 291.)

The Board also considers whether any procedural error or evidentiary ruling prejudiced the appellant. Reversal is not warranted unless the appellant affirmatively demonstrates that an error resulted in prejudice. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475; *Reimel v. House* (1969) 268 Cal.App.2d 780, 787; *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 308.) The burden is on the party seeking reversal to show that it is reasonably probable a more favorable result would have been reached absent the alleged error. (*City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 51–52; *Thornbrough v. Western Placer Unified School Dist.* (2013) 223 Cal.App.4th 169, 200.)

This standard imposes a high threshold. The Board may not overturn a decision simply because different inferences could be drawn from the evidence. The question is not whether the Board would have reached the same result, but whether the Department's findings are supported by substantial evidence and whether appellant has shown prejudicial error.

### **III. ANALYSIS**

Appellants contend that the Department erred in suspending the license based on the error of a single employee. (Appellants' Opening Brief ("AOB") at pp. 6-8.) Appellants believe the actions of a single employee should not be

imputed to appellants, and suspending the license does not prevent harm to the public. (*Ibid.*)

This is not a new argument, and one that the Board has heard many, many times. Extensive caselaw makes abundantly clear that a licensee may be held liable for the actions of its agents or employees:

The owner of a liquor license has the responsibility to see to it that the license is not used in violation of law and as a matter of general law the knowledge and acts of the employee or agent are imputable to the licensee. [Citation.]

(*Harris v. Alcoholic Beverage Control Appeals Board* (1961) 197 Cal.App.2d 172, 180 [17 Cal.Rptr. 315].)

In *Laube v. Stroh*, the court noted:

A licensee has a general, affirmative duty to maintain a lawful establishment. Presumably this duty imposes upon the licensee the obligation to be diligent in anticipation of reasonably possible unlawful activity, and to instruct employees accordingly.

(*Laube v. Stroh* (1992) 2 Cal.App.4th 364, 367 [3 Cal.Rptr.2d 779].) Similarly, in

*Reimel v. Alcoholic Beverage Control Appeals Board*, the court stated:

[A] licensee can draw no protection from his lack of knowledge of violations committed by his employees or from the fact that he has taken reasonable precautions to prevent such violations. There is no requirement . . . that the licensee have knowledge or notice of the facts constituting its violation. [Citations.]

(*Reimel v. Alcoholic Bev. Control Appeals Bd.* (1967) 252 Cal.App.2d 520, 522 [60 Cal.Rptr. 641], internal quotations omitted.)

Here, regardless of whether appellants trained or encouraged their employees to follow the law, extensive legal authority makes it clear that they

can be held responsible nonetheless. Further, by finding that appellants' employee violated provisions of the Alcoholic Beverage Control Act, the Department found that appellants acted contrary to public welfare and morals. (*Mercurio v. Dept. Alcoholic etc. Control* (1956) 144 Cal. App. 2d 626, 631 [301 P.2d 474].) There is no additional requirement that the Department show its discipline was necessary to protect the public, as that it already implied by finding there is an underlying violation.

#### **IV. CONCLUSION**

For the above reasons, the appeal is denied, and the Department's decision is affirmed.

#### **ORDER**

Pursuant to Business and Professions Code section 23085, the decision of the Department is affirmed.<sup>3</sup>

SUSAN A. BONILLA, CHAIR  
MEGAN McGUINNESS, MEMBER  
SHARLYNE PALACIO, MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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<sup>3</sup> This final order is filed in accordance with Business and Professions Code section 23088, and it shall become effective 30 days following the date of the filing of this order as provided by section 23090.7.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code section 23090 et seq. Service on the Board pursuant to California Rules of Court (Rule 8.25) should be directed to: 400 R Street, Ste. 320, Sacramento, CA 95811 and/or electronically to: [abcboard@abcappeals.ca.gov](mailto:abcboard@abcappeals.ca.gov).

**BEFORE THE  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
OF THE STATE OF CALIFORNIA**

**IN THE MATTER OF THE ACCUSATION  
AGAINST:**

GARFIELD BEACH CVS, LLC & LONGS DRUG  
STORES CA, LLC  
CVS PHARMACY 9633  
1382 N. MOORPARK RD.  
THOUSAND OAKS, CA 91360-5224

OFF-SALE GENERAL - LICENSE

Respondent(s)/Licensee(s)  
Under the Alcoholic Beverage Control Act

VENTURA DISTRICT OFFICE

File: 21-479752

Reg: 24094583

**CERTIFICATE OF DECISION**

It is hereby certified that, having reviewed the findings of fact, determination of issues, and recommendation in the attached proposed decision, the Department of Alcoholic Beverage Control adopted said proposed decision as its decision in the case on December 11, 2024. Pursuant to Government Code section 11519, this decision shall become effective 30 days after it is delivered or mailed.

Any party may petition for reconsideration of this decision. Pursuant to Government Code section 11521(a), the Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or if an earlier effective date is stated above, upon such earlier effective date of the decision.

Any appeal of this decision must be made in accordance with Business and Professions Code sections 23080-23089. The appeal must be filed within 40 calendar days from the date of the decision, unless the decision states it is to be "effective immediately" in which case an appeal must be filed within 10 calendar days after the date of the decision. Mail your written appeal to the Alcoholic Beverage Control Appeals Board, 400 R St, Suite 320, Sacramento, CA 95811. For further information, and detailed instructions on filing an appeal with the Alcoholic Beverage Control Appeals Board, see: <https://abcab.ca.gov> or call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.

On or after January 27, 2025, a representative of the Department will contact you to arrange to pick up the license certificate.



[https://abcab.ca.gov/abcab\\_resources/](https://abcab.ca.gov/abcab_resources/)

Sacramento, California

Dated: December 17, 2024

Matthew D. Botting  
General Counsel

**BEFORE THE  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE ACCUSATION AGAINST:

Garfield Beach CVS, LLC & Longs Drug Stores	}	File: 21-479752
California, LLC	}	
dba CVS Pharmacy 9633	}	Reg.: 24094583
1382 N. Moorpark Rd.	}	
Thousand Oaks, California 91360-5224	}	License Type: 21
	}	
Respondents	}	Word Count: 7,000
	}	
	}	Reporter:
	}	Sheila McQueen
	}	Kennedy Court Reporters
	}	
<u>Off-Sale General License</u>	}	<b><u>PROPOSED DECISION</u></b>

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at by videoconference on October 15, 2024.

Andrea S. Maehara, Attorney, and Joseph J. Scolari, Assistant Chief Counsel, represented the Department of Alcoholic Beverage Control.

Adam N. Koslin, attorney-at-law, represented respondents Garfield Beach CVS, LLC and Longs Drug Stores California, LLC.

The Department seeks to discipline the Respondents' license on the grounds that, on or about March 22, 2024, the Respondents, through their agent or employee, sold, furnished, or gave alcoholic beverages to Melanee Roman, an individual under the age of 21, in violation of Business and Professions Code section 25658(a).<sup>1</sup> (Exhibit 1.)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on October 15, 2024.

**FINDINGS OF FACT**

1. The Department filed the accusation on July 9, 2024.

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<sup>1</sup> All statutory references are to the Business and Professions Code unless otherwise noted.

2. The Department issued a type 21, off-sale general license to the Respondents for the above-described location on September 14, 2009 (the Licensed Premises).

3. The Respondents' license has been the subject of the following discipline:

<u>Date Filed</u>	<u>Reg. No.</u>	<u>Violation</u>	<u>Penalty</u>
6/27/23	23093322	BP§25658(a)	10-day susp., all stayed

The foregoing disciplinary matter is final. (Exhibit 2.)

4. Melanee Roman was born on May 3, 2005. On March 22, 2024 she participated in a minor decoy operation conducted by the Department. On that date she was 18 years old.

5. Roman appeared and testified at the hearing. On March 22, 2024, she was 5'5" tall and weighed 175 pounds. She wore a black shirt, black pants, and tennis shoes. She wore a watch and had a small cross on a chain around her neck. (Exhibits 4-5.) Her appearance at the hearing was the same.

6. On March 22, 2024, Agent S. Tan entered the Licensed Premises. Roman entered a short time later. She went to the alcoholic beverage section and selected a 24-oz. can of Modelo Chelada. The can was labeled "cerveza."

7. She took the beer to the counter, where the clerk, Barbara Allowos, rang her up. Allowos asked to see Roman's ID; Roman handed her California driver license to Allowos. (Exhibit 3.) Allowos looked at the ID, then handed it back to Roman. Roman paid and Allowos completed the sale. Roman exited with the beer.

8. Roman re-entered the Licensed Premises with some agents. Agent Tan asked her to identify the person who sold her the alcohol. At a distance of approximately five feet, she identified Allowos. A photo of the two of them was taken (exhibit 4), after which Allowos was cited.

9. When questioned by the agents, Allowos stated that she thought that Roman was over the age of 21. She also said that a prompt on the register reminded her to check ID. She hit a button to clear the prompt.

10. Roman's appearance was consistent with her actual age, 18 years old. Based on her overall appearance, i.e., her physical appearance, dress, poise, demeanor, maturity, and mannerisms shown at the hearing, and her appearance and conduct in the Licensed Premises on March 22, 2024, Roman displayed the appearance which could generally be expected of a person under 21 years of age under the actual circumstances presented to Allowos.

11. Except as set forth in this decision, all other allegations in the accusation and all other contentions of the parties lack merit.

### CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution and section 24200(a) provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license would be contrary to public welfare or morals.

2. Section 24200(b) provides that a licensee's violation, or causing or permitting of a violation, of any penal provision of California law prohibiting or regulating the sale of alcoholic beverages is also a basis for the suspension or revocation of the license.

3. Section 25658(a) provides that every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

4. Cause for suspension or revocation of the Respondents' license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that, on March 22, 2024, the Respondents' employee, Barbara Allowos, inside the Licensed Premises, sold an alcoholic beverage to Melanee Roman, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 4-10.)

### PENALTY

The Department requested a 30-day suspension, arguing that this was the Respondents' second sale-to-minor violation in 15 months, that the clerk overrode the prompt on the register, and that there was no evidence the Respondents took any remedial steps after the first violation.

The standard penalty set forth in rule 144<sup>2</sup> for a second sale-to-minor violation within three years is a 25-day suspension. The Department analogized this case to *In re 7-Eleven Inc. & Gytari, Inc.*, 19-02E (2018), in which a 30-day suspension was imposed. That decision held that the Department had established aggravation on the basis

“that this second violation of section 25658(a) occurred only approximately 11 months after the first violation; that Respondent took few remedial steps following the first violation, and the limited actions taken were of minimal (if any)

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<sup>2</sup> All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

effectiveness; the selling clerk in this instance was allowed to continue to work for several months following the incident without any additional training or disciplinary action; lack of due diligence on the part of the clerk (no identification was requested nor was the decoy asked his age, and when he was prompted to input a birth date into the register, he simply entered a random date). Overall, the Department argues, the record establishes that Respondent failed to take any meaningful precautionary measures to prevent the sale of alcoholic beverages to minors, especially following a recent prior violation of the same provision of law. It is further noted that the licensee had only been licensed here for some 37 months prior to this second violation.”

The Department also cited *In re 7-Eleven Inc., Joanna So Ae Yi & Richard Shin Sung Yi*, 19-03E (2018) for the proposition that “[t]he complete failure to take any reasonable steps to prevent alcoholic beverages being sold to minors, despite having actual notice of a problem, is an aggravating factor that counter-balances any mitigation that may be had from a lengthy history of licensure without discipline.” In *Yi*, despite being aware of a prior sale of alcohol to a minor, the licensees “presented no evidence of any positive steps taken to insure compliance with the law since the previous alleged sale of an alcoholic beverage to a minor, which occurred only a little over one year prior to the sale in the instant case.”

The Respondents argued that the clerk made a mistake and that there is no evidence that the Licensed Premises poses a threat to public welfare or morals. The Respondents also noted that, because the prior sale-to-minor violation was resolved by a stipulation and waiver, there is no evidence of the circumstances giving rise to the prior violation.

*Gytari* is not directly on point. The evidence in that case established that the clerk acted intentionally (he did not ask to see ID, did not ask any age-related questions, and entered a random birthdate). The evidence in this case is clear that Barbara Allawos asked to see Melanee Roman’s ID and that she examined it. Her motivation in making the sale, however, can only be guessed at. It is possible that she realized Roman was a minor and proceeded with the sale anyway. It is also possible that she misread the ID and believed Roman to be over the age of 21. Since she did not testify, her self-serving statement to the agents on March 22, 2024 that she thought Roman was old enough is given little weight.

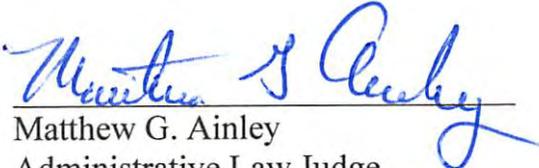
In *Yi*, the licensees presented evidence of their policies and procedures relating to sales to minors. These policies and procedures had not been changed since the previous sale to minor approximately 14 months earlier. In other words, there was “no evidence of any positive steps to insure compliance with the law” In this case, there is no evidence of the Respondents’ policies and procedures, much less whether they have changed or not. Accordingly, *Yi* is not on point—the absence of any changes was clear in *Yi* from the evidence presented, while here the Department has assumed it.

The penalty recommended herein complies with rule 144.

**ORDER**

The Respondents' off-sale general license is hereby suspended for a period of 25 days.

Dated: October 27, 2024

  
Matthew G. Ainley  
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: <u>J. McCallan</u>
Date: <u>12/11/24</u>