

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

AB-10016

File: 21-477913; Reg: 24094654

Garfield Beach CVS, LLC, and
Longs Drugs Stores California, LLC
dba CVS Pharmacy Store 9155
1005 Sutton Way
Grass Valley, CA,
Appellant/Licensee,

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent.

Administrative Law Judge at the Dept. Hearing: Hon. Alberto Roldan

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

ISSUED MAY 15, 2025

Appearances: Adam Koslin, as counsel for Garfield Beach CVS, LLC, and
Longs Drugs Stores California, LLC.

Bryan Rouse, as counsel for the Department of Alcoholic
Beverage Control.

OPINION

I. INTRODUCTION

This case involves a 25-day suspension of an off-sale general license issued to Garfield Beach CVS, LLC and Longs Drug Stores California, LLC, doing business as CVS Pharmacy Store 9155 (appellant). The Department of Alcoholic Beverage Control (Department) found that on June 27, 2024, Appellant's clerk sold an alcoholic beverage to a 19-year-old minor decoy during a law enforcement

compliance operation. The sale occurred despite the minor presenting a clearly marked vertical-format driver's license showing that he was under 21 years of age.

This was Appellant's second violation of Business and Professions Code section 25658, subdivision (a),¹ within 36 months. The Department imposed a 25-day suspension based on the penalty guidelines set forth in California Code of Regulations, title 4, section 144.² On appeal, Appellant contends that the penalty is excessive and punitive, and that the Department abused its discretion by imposing a suspension without evidence of broader compliance issues. After reviewing the entire record, including the administrative hearing transcript and the parties' briefs, the Board finds no reversible error, and the Department's decision is affirmed.

II. FACTS AND PROCEDURAL HISTORY

On June 27, 2024, the Department and the Nevada County Sheriff's Department conducted a joint minor decoy operation at Appellant's licensed premises. Nineteen-year-old Jesse Wagnecht, acting as a minor decoy, entered the premises with the intent of purchasing alcohol under the supervision of law

¹ All further statutory references are to the Business and Professions Code unless stated otherwise.

² The Department's decision, dated December 24, 2024, is set forth in the appendix.

enforcement officers. The decoy carried a valid California driver's license in vertical format, clearly indicating that he was under 21 years old.

Once inside the store, the decoy selected a can of White Claw hard seltzer from the cooler and approached the register. The clerk on duty, identified as Owen Messer, asked for identification. The decoy handed him his vertical driver's license. While holding and examining the license, Messer mumbled something unintelligible. The decoy responded, "No," and then, "Are you sure?" Despite the license clearly displaying that the decoy was underage, Messer proceeded to complete the sale without asking any further questions. The decoy paid with a \$20 bill, received change and a receipt, and left the premises with the alcoholic beverage.

Shortly thereafter, the decoy re-entered the store accompanied by law enforcement officers and identified Messer as the clerk who completed the sale. A photograph of the identification was taken, showing the decoy holding the alcoholic beverage and his identification while standing next to Messer. Nevada County Sheriff's Sergeant Timothy Highsmith, who had observed the transaction from approximately 12 to 15 feet away, confirmed that the sale had occurred and issued a citation to Messer.

The Department filed a single-count accusation against Appellant on August 13, 2024, alleging a violation of Business and Professions Code section 25658, subdivision (a), which prohibits the sale of alcohol to persons under 21. The Department also alleged one prior discipline for a similar violation that occurred

on April 25, 2022. That prior resulted in a five-day suspension, which had been resolved through a payment of penalty in lieu of suspension.

An administrative hearing was held on November 13, 2024, before Administrative Law Judge (ALJ) Alberto Roldan. At the hearing, the Department presented testimony from both the minor decoy and Sergeant Highsmith, along with seven documentary exhibits. Appellant offered no witnesses or exhibits. The ALJ sustained the accusation and found that the sale had occurred as alleged. He determined that the decoy displayed the appearance of a person under the age of 21. He also found that the face-to-face identification was conducted in compliance with Rule 141. The ALJ also found no mitigation and noted the prior violation within the relevant three-year period.

On December 18, 2024, the Department adopted the ALJ's proposed decision and imposed a 25-day suspension of the license. Appellant filed a timely appeal, arguing that the penalty was excessive, punitive, and unsupported by any showing of an ongoing compliance problem at the premises.

III. STANDARD OF REVIEW

The scope of the Appeals Board's review is limited by the California Constitution and the Business and Professions Code. The Board does not reweigh the evidence or substitute its own judgment for that of the Department. Rather, the Board determines whether the Department has proceeded according to law and whether its decision is supported by the record.

Under Business and Professions Code section 23084, the Board may only consider whether:

1. The Department has proceeded without or in excess of its jurisdiction;
2. The Department has proceeded in the manner required by law;
3. The Department's decision is supported by its findings;
4. The findings are supported by substantial evidence in light of the whole record; and
5. There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or was improperly excluded at the hearing.

The Board may not disturb the Department's penalty unless it constitutes an abuse of discretion. (*Martin v. Alcoholic Bev. Control Appeals Bd.* (1961) 55 Cal.2d 867, 875; *Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594.) Discretion is abused only when the Department exercises it in an arbitrary, capricious, or patently absurd manner resulting in a manifest miscarriage of justice.

IV. ANALYSIS

Appellant raises a single issue on appeal: that the Department abused its discretion by imposing a 25-day suspension for a second violation of section 25658, subdivision (a). Appellant argues that the suspension is punitive in nature, not reasonably connected to public welfare, and unsupported by any evidence that the licensed premises pose an ongoing risk of future violations. Appellant does not dispute that the violation occurred or that it was its second offense within

a three-year period. Rather, Appellant's challenge is limited to the propriety of the penalty imposed.

1. The Department's Penalty Was Within the Range Set by Rule 144

California Code of Regulations, title 4, section 144 (Rule 144) establishes the Department's penalty guidelines for violations of the Alcoholic Beverage Control Act (ABC Act). For a second sale-to-minor violation within 36 months, Rule 144 recommends a penalty of 15 to 25 days of suspension. Here, the Department imposed a 25-day suspension, which is at the upper end of the guideline range but still squarely within it.

Under longstanding precedent, the Department is not required to explain or justify its selection of a penalty within the guideline range absent evidence of mitigation. (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594.) The burden falls on the appellant to affirmatively show that the Department abused its discretion by acting arbitrarily, capriciously, or without reason. (*Martin v. Alcoholic Bev. Control Appeals Bd.* (1961) 55 Cal.2d 867, 875.) Appellant presented no evidence of mitigation at the administrative hearing and offered no justification for a lesser penalty.

The ALJ considered the circumstances of the sale, noted the lack of mitigating evidence, and he reasonably concluded that a 25-day suspension was warranted given the recent prior violation. The Department adopted the proposed decision without modification, and nothing in the record indicates that the Department acted outside the bounds of its discretion.

2. The Penalty Is Not Unconstitutionally Punitive

Appellant argues that the suspension operates as a punitive sanction rather than a regulatory measure, citing *Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144 and other criminal-law authority. However, this argument misapprehends the nature of administrative licensing actions under California law.

Revocation or suspension of a liquor license is not considered punishment under criminal law. It is a civil, regulatory action intended to protect the public and encourage licensee compliance. (See *Lam v. Bureau of Security & Investigative Services* (1995) 34 Cal.App.4th 29, 38; *Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 540.) In the context of the ABC Act, penalties serve the broader statutory purpose of maintaining control over the distribution of alcohol in a manner consistent with public welfare. (See Bus. & Prof. Code, § 23001.)

Appellant's claim that the penalty lacks a "rational connection" to future compliance is unpersuasive. Suspensions are intended to promote diligence and deter future violations. The Department need not wait for evidence of widespread noncompliance or a pattern of harm before imposing discipline that falls within its established guidelines.

3. The Department Was Not Required to Find Ongoing Risk or Harm

Appellant suggests that the Department erred by imposing a suspension without making findings that the premises presented an ongoing threat to public safety. No such finding is required. Section 24200 authorizes suspension or

revocation of a license for any violation of the ABC Act or for conduct contrary to public welfare. Once a violation is established, the Department has broad discretion to impose discipline based on the circumstances of the case and the licensee's history.

Here, the Department found a second violation within 36 months and imposed the penalty authorized by its own regulations. No additional findings were necessary to support a suspension.

V. CONCLUSION

Appellant does not dispute that its clerk sold an alcoholic beverage to a minor during a decoy operation or that this was its second violation within a 36-month period. Instead, Appellant argues that the Department's 25-day suspension was excessive and punitive. But the record shows that the Department followed its established penalty guidelines, considered the relevant facts, and imposed a penalty well within its discretion. There is no evidence that the Department acted arbitrarily or capriciously in doing so.

Because Appellant has not shown that the Department committed an appealable error, the Department's decision is affirmed.

ORDER

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

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

³ 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.

**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 CALIFORNIA, LLC
CVS PHARMACY, STORE 9155
1005 SUTTON WAY
GRASS VALLEY, CA 95945

OFF-SALE GENERAL - LICENSE

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

SACRAMENTO DISTRICT OFFICE

File: 21-477913

Reg: 24094654

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 18, 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 February 3, 2025, a representative of the Department will contact you to arrange to pick up the license certificate.



https://abcab.ca.gov/abcab_resources/

Sacramento, California

Dated: December 24, 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 California, LLC
DBA: CVS Pharmacy, Store 9155
1005 Sutton Way
Grass Valley, California 95945

Respondent

Off-Sale General License

} File: 21-477913
}
} Registration: 24094654
}
} License Type: 21
}
} Word Count: 8,000
}
} Reporter:
} Jaclene Solis
} Kennedy Reporters
}

PROPOSED DECISION

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter, via videoconference, on November 13, 2024.

Bryan Rouse, Attorney, represented the Department of Alcoholic Beverage Control (Department).

Adam Koslin, Attorney, represented Respondents Garfield Beach CVS, LLC and Longs Drug Stores California, LLC. (Respondents)

In the Accusation, the Department seeks to discipline the Respondents' license on the grounds that, on or about June 27, 2024, the Respondents' agent or employee, Owen Messer, at said premises, sold, furnished, or gave an alcoholic beverage to Jesse Wagnecht, an individual under the age of 21 in violation of Business and Professions Code section 25658(a).¹ (Exhibit D-1)

The Department further alleged that there is cause for suspension or revocation of the license of the Respondents in accordance with section 24200 and sections 24200(a) and (b). The Department further alleged that the continuance of the license of the Respondents would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution and sections 24200(a) and (b). (Exhibit D-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 November 13, 2024.

¹ All statutory references are to the Business and Professions Code unless otherwise noted.

FINDINGS OF FACT

1. The Department filed the Accusation on August 13, 2024. (Exhibit D-1)
2. On June 22, 2009, the Department issued a type 21, off-sale general license to the Respondents for the above-described location (the Licensed Premises). The following is the record of prior Department discipline against the Respondents' license as established by official records introduced by the Department (Exhibit D-2):

Violation Date	Violation	Registration Date	Registration Number	Penalty
4/25/2022	B&P section 25658(a)	07/21/2022	22092390	5-day suspension (POIC)

3. Jesse Wagnecht (Wagnecht) was born on February 22, 2005, and was 19 years old on June 27, 2024. On that date, Wagnecht served as a minor decoy in an operation conducted by the Nevada County Sheriff's Department (NCSA) and the Department at various locations, including the Licensed Premises.
4. Wagnecht appeared, via videoconference, and testified at the hearing. At the hearing, his appearance was generally as depicted in images taken during the operation on June 27, 2024. (Exhibits D-3, D-4, and D-7) His face was also as depicted in an image of his California driver's license that was submitted into evidence. (Exhibit D-5) During the operation on June 27, 2024, Wagnecht wore a grey, short sleeved t-shirt and dark grey trousers. He wore no visible jewelry. His longer hair was combed back so that his face was fully exposed. Wagnecht wore clear prescription glasses. Wagnecht was clean shaven during the operation. (Exhibit D-3) Wagnecht was approximately 5 feet, 6 inches tall and 135 pounds at the hearing. Wagnecht credibly testified that his size and appearance on the date of the operation were essentially the same. The only difference in his appearance at the hearing was that his hair was cut shorter on the sides of his head with a longer length on top.
5. On June 27, 2024, Wagnecht went to the Licensed Premises with a detective sergeant from the NCSA and an agent from the Department for the purpose of trying to buy alcohol. Wagnecht was carrying his California driver's license to produce if asked. NCSA Sergeant T. Highsmith (Highsmith) entered the Licensed Premises prior to Wagnecht so that Highsmith could watch the transaction.
6. Wagnecht entered the Licensed Premises on June 27, 2024, during its regular business hours. After entering, he went to a cooler that had alcoholic beverages on display. Wagnecht selected an individual can of White Claw hard seltzer (White Claw), an alcoholic beverage, to purchase. Wagnecht took the White Claw to the line for the register. There were no customers in front of him, so Wagnecht approached the register and presented the White Claw to the clerk for purchase.

7. This clerk was the same individual in the image that was later taken of Wagnecht standing next to the clerk that sold the White Claw to him. (Exhibit D-7) The clerk took the White Claw and scanned it. The scan triggered an alcohol sale protocol. The clerk then asked Wagnecht for his identification. Wagnecht presented his California driver's license to the clerk. While holding and examining Wagnecht's license, the clerk mumbled something unintelligible to Wagnecht. Wagnecht first said "no" and then said, "are you sure?" in response. The clerk did not respond further or ask any follow up questions. The license Wagnecht presented was in portrait, rather than landscape, format because he was 19 years old. Below his date of birth was a blue box that said he was 18 years old in 2023. Above this was a red box that said he would not be 21 years old until 2026. Despite this information, which was on the license that the clerk held and scrutinized, the clerk processed the purchase of the White Claw. Wagnecht paid the clerk for the White Claw with a \$20 bill he had been provided by the law enforcement officers. Wagnecht then took possession of the White Claw, the change, and a receipt the clerk handed to him. (Exhibit D-6) Wagnecht then left the Licensed Premises with these items and approached the vehicle where Highsmith and the Department agent had dropped him off for the operation.

8. Wagnecht reviewed with the law enforcement officers what just happened in the Licensed Premises. Highsmith had also watched and listened to the transaction from where he had stood in the Licensed Premises in an undercover capacity. He was aware of who the clerk was that made the sale to Wagnecht because he stood approximately 12-15 feet away from the sale as it occurred. A few moments later, Highsmith and Wagnecht went into the Licensed Premises along with the Department agent and another NCSD deputy. Highsmith approached the clerk to identify himself and why they were there. Wagnecht and the other law enforcement officers were in Highsmith's immediate presence. Highsmith told the clerk that he had sold an alcoholic beverage to a minor. Wagnecht was standing next to him when this happened. Highsmith determined that the clerk's name was Owen Messer (Messer).

9. Highsmith then asked Wagnecht if he could identify the clerk who sold the White Claw to him. Wagnecht then stated out loud that Messer was the clerk who sold White Claw to him. Wagnecht and the clerk were approximately five feet away from each other at the time of the question from Highsmith and the subsequent identification.

10. Messer was subsequently photographed while standing next to Wagnecht while Wagnecht held the White Claw and his license. (Exhibit D-7) From the initial law enforcement contact with Messer until after this photograph was taken; Wagnecht was in the immediate presence of Messer, Highsmith, and the other law enforcement officers.

11. Based on Wagnecht's overall appearance, i.e., his physical appearance, clothing, poise, demeanor, maturity, and mannerisms shown at the hearing, and his appearance and conduct in front of Messer at the Licensed Premises on June 27, 2024, Wagnecht displayed the appearance which would generally be expected of a person less than 21 years of age during his interactions with Messer. Messer did not testify in this matter.

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. California Code of Regulations, title 4 § 141 provides that:
 - (a) A law enforcement agency may only use a person under the age of 21 years to attempt to purchase alcoholic beverages to apprehend licensees, or employees or agents of licensees who sell alcoholic beverages to minors (persons under the age of 21) and to reduce sales of alcoholic beverages to minors in a fashion that promotes fairness.
 - (b) The following minimum standards shall apply to actions filed pursuant to Business and Professions Code Section 25658 in which it is alleged that a minor decoy has purchased an alcoholic beverage:
 - (1) At the time of the operation, the decoy shall be less than 20 years of age;
 - (2) The decoy shall display the appearance which could generally be expected of a person under 21 years of age, under the actual circumstances presented to the seller of alcoholic beverages at the time of the alleged offense;
 - (3) A decoy shall either carry his or her own identification showing the decoy's correct date of birth or shall carry no identification; a decoy who carries identification shall present it upon request to any seller of alcoholic beverages;
 - (4) A decoy shall answer truthfully any questions about his or her age;
 - (5) Following any completed sale, but not later than the time a citation, if any, is issued, the peace officer directing the decoy shall make a reasonable attempt to enter the licensed premises and have the minor decoy who purchased alcoholic beverages make a face-to-face identification of the alleged seller of the alcoholic beverages.
 - (c) Failure to comply with this rule shall be a defense to any action brought pursuant to Business and Professions Code Section 25658.
5. 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 June 27, 2024, the Respondents' clerk, Owen Messer, inside the Licensed Premises, sold an alcoholic beverage to Jesse Wagnecht, a person under the age of 21, in violation of section 25658(a). (Findings of Fact ¶¶ 2-11)

6. The Respondents broadly argued that the decoy operation at the Licensed Premises failed to comply with rule 141 and, therefore, the Accusation should be dismissed. Specifically, the Respondents argued that the face-to-face identification failed to comply with rule 141(b)(5) and the statements of the decoy did not comply with rule 141(b)(4). Either of these alleged violations, if established, would be affirmative defenses and require dismissal of the Accusation pursuant to rule 141(c).

7. There is no credible evidence supporting the assertions by the Respondents that there was a failure to comply with rule 141. Regarding the alleged rule 141(b)(5) violation, *Acapulco Restaurants, Inc. v. Alcoholic Beverages Control Appeals Board* (1998) 67 Cal.App.4th 575 confirmed that a face to face must occur for compliance. That case did not establish a baseline standard for what was a compliant face to face identification. The subsequent decision in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2003) 109 Cal.App.4th 1687 held that the regulation at “section 141, subdivision (b)(5), ensures- admittedly not as artfully as it might-that the seller will be given the opportunity, soon after the sale, to come “face-to-face” with the decoy.” *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2003) 109 Cal.App.4th 1687, 1698. This decision confirmed that the purpose of the face to face was to give the seller notice of who the decoy was.

8. Further clarification of what constituted a compliant face to face occurred in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2017) 18 Cal.App.5th 541. This case is particularly helpful since the identification by Wagnecht of Messer in this matter was substantively similar to the identification that was found to be compliant with rule 141(c) in that case. In finding that identification compliant, that court ruled:

“Here there is no violation of Rule 141, as explained above, because the decoy made a face-to-face identification by pointing out the clerk to the officer inside the store while approximately 10 feet from her, standing next to her when the officer informed her she had sold alcohol to a minor, and taking a photograph with her as the minor held the can of White Claw he purchased from her. She had ample opportunity to observe the minor and to object to any perceived misidentification. The rule requires identification, not confrontation. The identification here meets the letter and the spirit of Rule 141.” *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2017) 18 Cal.App.5th 541, 547

9. While, general due process considerations demand a fair identification be facilitated by law enforcement, these cases make clear that this particular regulation is focused on the narrower concern of allowing the *seller* the opportunity to be aware of the identity of the decoy. It stands to reason that compliance with Rule 141, subdivision (b)(5) occurs if the clerk and the decoy, during the process of the investigation, prior to the citation being issued or departure of the decoy, are brought in reasonable proximity to each other to assure that the seller knows (or reasonably ought to know) that he or she is being identified as the seller by the decoy.

10. At the start of the law enforcement contact with Messer, Highsmith approached Messer at the counter, got his attention, and identified himself as a law enforcement officer investigating a sale of alcohol to a minor. While the sale to Wagnecht was discussed between Highsmith and Messer at the counter, Wagnecht stood in their immediate presence. Right after this discussion, Wagnecht was asked by Highsmith about who made the sale to him. In the immediate presence of Messer, Wagnecht verbally identified Messer as the seller in such a way that Messer was, or reasonably should have been, aware that the decoy was Wagnecht. Shortly after the identification, while Wagnecht held his license and the White Claw, Wagnecht and Messer were photographed next to each other. (Findings of Fact ¶ 10 and Exhibit D-7) Messer clearly came face to face with Wagnecht under circumstances that made it clear that Messer had been identified as the person who sold Wagnecht the White Claw alcoholic beverage and that Wagnecht was the minor at issue. (Findings of Fact ¶¶ 2-11)

11. None of the evidence presented by the Respondents rebutted the credible evidence presented by the Department that this was a fully compliant identification that allowed Messer to become aware that Wagnecht was the decoy. Respondents have offered no evidence or argument suggesting that the identification violated state or federal due process considerations. Given the totality of the evidence presented by the Department credibly establishing compliance with rule 141(b)(5), the Respondents' assertion that compliance did not occur is unsupported. (Findings of Fact ¶¶ 2-11)

12. Respondents also broadly asserted that the statements made by the decoy did not comply with rule 141(b)(4). This regulation requires that "[a] decoy shall answer truthfully any questions about his or her age." Wagnecht credibly testified that he did not understand what Messer mumbled to him after Wagnecht handed his license over. Wagnecht stated "No" and then asked "Are you sure?" after the mumbling by Messer. Wagnecht was not intending to assert any information about his age in these responses. As noted above, Messer did not testify in this matter as to what, if any, age-related questions he may have directed at Wagnecht when he mumbled to Wagnecht. The clerk did not testify to establish facts supporting a conclusion that Wagnecht's responses were untrue and they led Messer to reasonably conclude that Wagnecht was over 21 as a result of what Wagnecht said. The Respondents have the burden of proof in the affirmative defense provided by rule 141(b)(4). They have failed to offer evidence in support of this assertion. As such, a defense is not established under this section. (Findings of Fact ¶¶ 2-11)

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

Garfield Beach CVS, LLC,
Longs Drug Stores California, LLC
DBA: CVS Pharmacy, Store 9155
File: 21-477913
Registration: 24094654
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PENALTY

The Department recommended that the Respondents' license be suspended for an aggravated penalty of 30 days. The standard penalty in this matter is a 25-day suspension because of the prior violation of section 25658(a) within three years of the violation established in this matter. The Respondents argued for a mitigated penalty if the Accusation were sustained.

No evidence was presented regarding the Respondents' policies to prevent sales of alcoholic beverages to underage individuals. The Respondents have been licensed since June 2009 and this is now their second incident at this Licensed Premises. Efforts to avoid future underage sales in response to a violation would support some mitigation, but little has been shown to demonstrate the Respondents' diligence in this regard. As a result, mitigation supporting a downward departure from the standard penalty is not established.

However, there appear to be no specific factors in aggravation applicable to this violation that are not already intrinsic to the enhanced penalty called for by rule 144. To impose an aggravated sentence while also applying the penalty schedule enhancement would be tantamount to punishing the Respondents twice for the same misconduct. 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: November 19, 2024



Alberto Roldan
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: _____ <i>J. McCallum</i>
Date: _____ <i>12/18/24</i>