

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

AB-10021

File: 21-459349; Reg: 24094405

California Fine Wine & Spirits, LLC,
dba Total Wine & More
19336 Nordhoff Street
Northridge, CA,
Appellant/Licensee

v.

Department of Alcoholic Beverage Control,
Respondent,

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

Appeals Board Hearing: August 8, 2025
Sacramento, CA/Videoconference

ISSUED AUGUST 13, 2025

Appearances: Carrie L. Bonnington, as counsel for California Fine Wine & Spirits, LLC.

Bryan D. Rouse, as counsel for the Department.

OPINION

I. INTRODUCTION

This appeal arises from the Department of Alcoholic Beverage Control's (Department) decision to suspend appellant's liquor license. The suspension followed a finding that appellant furnished an alcoholic beverage to a minor decoy in violation of Business and Professions Code section 25658, subdivision (a)¹.

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

The violation occurred during a Department-conducted decoy operation in which an alcoholic beverage was ordered from appellant's Northridge location through the Uber Eats delivery platform and ultimately delivered by a third-party driver to the minor decoy.

Following an administrative hearing, the Department adopted the proposed decision of the Administrative Law Judge (ALJ), finding that the Uber Eats driver acted as appellant's agent while furnishing alcohol to the decoy. The Department treated the violation as a second offense and ordered a 30-day suspension of appellant's license.²

On appeal, appellant contends 1) that the Department erred in finding agency; 2) that the decoy operation was unfair and violated Rule 141.1; and 3) that the penalty was excessive in light of the circumstances. For the reasons stated below, the Department's decision is affirmed.

II. FACTS AND PROCEDURAL HISTORY

Appellant holds a Type 21 off-sale general license for its premises located in Northridge, California. On February 22, 2024, agents from the Department conducted a minor decoy operation involving the use of the Uber Eats delivery platform. Agent Alicia Green used a Department-controlled account to place an order for beer from the appellant's premises. Appellant's employees prepared

² The Department's decision, dated March 25, 2025, is set forth in the appendix.

the order and handed it to a third-party driver who was fulfilling deliveries through Uber Eats.

The driver delivered the beer to the Department's minor decoy in a hotel parking lot in Chatsworth, California. While at the delivery location, the driver requested identification, reviewed the decoy's valid California license—which showed she was under 21 years of age—and then handed over the beer. The driver was immediately contacted by Department agents and cited. The Department later deleted the Uber Eats account and the communications used during the operation.

The Department filed an accusation on May 9, 2024, alleging a single violation of section 25658, subdivision (a). A preliminary hearing was held on July 17, 2024, before ALJ Doris Huebel to address issues related to representation and case management. The evidentiary hearing was conducted on January 7, 2025. ALJ Matthew Ainley presided. The Department presented evidence and oral testimony from Agent Alicia Green, Agent Chloe Lee, and the minor decoy. Appellant presented testimony from Tim Seevers, appellant's President of Delivery and Marketplace, and from Catharine Stasiowski, the company's Vice President of Loss Prevention and Safety. On February 11, 2025, ALJ Ainley issued a proposed decision that sustained the accusation and recommended a 30-day suspension of appellant's license. The Department adopted the proposed decision on March 25, 2025. Appellant filed a timely appeal.

III. STANDARD OF REVIEW

In reviewing the Department's decision in this case, the Board's role is to determine whether the Department has proceeded in the manner required by law, whether the findings are supported by substantial evidence, and whether the decision is supported by the findings. (Bus & Prof. Code, § 23084, subds. (b)-(d).)

Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion. (*County of San Diego v. Assessment Appeals Board No. 2* (1983) 148 Cal.App.3d 548, 555, quoting *Hosford v. State Personnel Bd.* (1977) 74 Cal.App.3d 202, 307.) It is evidence of "ponderable legal significance ... reasonable in nature, credible, and of solid value." (*County of San Diego, supra* at p. 555, quoting *Ofsevit v. Trustees of the California State University & Colleges* (1978) 23 Cal.3d 773, fn. 9.)

The Board does not reweigh evidence, and it must resolve all evidentiary conflicts in favor of the Department's decision (*Kirby v. Alcoholic Beverage Control Appeals Bd.* (1963) 212 Cal.App.2d 106, 113-114.) The Board may not disregard or overturn a finding of fact by the Department merely because it believes a different finding would have been more reasonable. (*Id.* at p. 114.)

In addition to reviewing the Department's factual findings, the Board also considers whether the penalty imposed constitutes an abuse of discretion. (Bus. & Prof. Code, § 23084, subd. (e); *Martin v. Alcoholic Beverage Control Appeals Bd.* (1959) 52 Cal.2d 287, 291; *Laube v. Stroh* (1992) 2 Cal.App.4th 364, 367.) A

penalty is an abuse of discretion only when it is clearly excessive in light of all circumstances. In assessing the reasonableness of the penalty, the Board considers the Department's penalty guidelines set forth in Rule 144 (Cal. Code Regs., tit. 4, §144.), the existence of prior violations, and any aggravating or mitigating facts in the record.

IV. ANALYSIS

1. Agency

Appellant contends that it cannot be held liable for the actions of the Uber Eats delivery driver because he was an independent third party over whom appellant exercised no control. According to appellant, its relationship with Uber Eats was limited to a delivery facilitation service, and neither the driver nor Uber Eats acted as its agent within the meaning of the law. The Department disagrees, arguing that the driver acted as appellant's agent under established principles of agency because he completed an alcoholic beverage transaction initiated at appellant's licensed premises.

Well-established case law holds licensees strictly liable for the unlawful conduct of their agents or employees, even without actual knowledge or participation. (*Harris v. Alcoholic Beverage Control Appeals Bd.* (1961) 197 Cal.App.2d 172, 180; *Reimel v. Alcoholic Beverage Control Appeals Bd.* (1967) 252 Cal.App.2d 520, 522.) The Department's Rule 141.1, which governs the use of decoys in delivery settings, expressly contemplates that licensees may be liable for the actions of third-party agents or contractors engaged in furnishing alcohol

to a minor decoy. (Cal. Code Regs., tit. 4, § 141.1.) Specifically, Rule 141.1, subdivision (c) defines an agent as:

[An] entity or person the licensee uses to deliver alcoholic beverages to persons who place orders by internet, telephone, other electronic means, or any other method of ordering other than in person at the licensed premises, whether by contract or agreement, even if not an employee of the licensee, including but not limited to a third-party delivery person or service.

In this case, the Department presented evidence that the driver picked up the beer from appellant's premises in response to an Uber Eats order placed through the Department's account. Although the driver was not employed by appellant, he acted as the final link in a chain of distribution initiated by appellant. The driver checked the decoy's identification, which showed she was under 21 years old, but he nonetheless completed the delivery. This conduct occurred in furtherance of the delivery transaction initiated at appellant's store and pursuant to appellant's contractual relationship with Uber Eats. As the Department correctly notes, appellant had the ability to contract for or restrict how alcohol was delivered on its behalf, and it chose to enable third-party delivery services.

Thus, substantial evidence supports the Department's conclusion that the driver was acting as appellant's agent for purposes of Rule 141.1. The mere fact that the driver was not appellant's employee is not dispositive. Agency is a broader concept than employment, and the test is the right to control the manner and means of performance. (See *Malloy v. Fong* (1951) 37 Cal.2d 356, 370; *Ermorian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 506.) Here, appellant

authorized and benefited from the use of Uber Eats as a delivery mechanism. This was sufficient to establish agency—and thus liability—under Rule 141.1.

2. Rule 141.1

Appellant contends that the Department failed to conduct a fair decoy operation as required by Rule 141.1, subdivision (e). According to appellant, the decoy operation violated Rule 141.1's fairness requirement because the minor decoy did not place the order; the Department selected the delivery location to obscure visibility; and the interaction between the driver and decoy was too limited to support a fair assessment of age. Appellant also argues that the Department withheld potentially exculpatory communications and created an ambiguous and misleading setup by using a fictitious Uber Eats profile and failing to preserve related records. The Department maintains that the operation complied with all regulatory requirements and that the decoy's conduct was consistent with the fairness standards imposed by Rule 141.1.

Rule 141.1 governs the use of minor decoys in delivery-based enforcement operations. It applies when alcoholic beverages are ordered remotely—whether by telephone, internet, or other means—and delivered by a person or service acting on behalf of the licensee. Rule 141.1, subdivision (e) places responsibility on the Department to conduct such operations fairly. Subdivision (e) provides that the decoy shall be under 20 years of age, that the decoy should appear to be under 21 years of age, that the decoy shall present identification to the delivery driver upon request, and that the decoy shall answer all questions about

his or her age truthfully. Rule 141.1 places no other fairness requirements. In other words, Rule 141.1 does not require the decoy to place the order, nor does it prohibit the use of fictitious or Department controlled profiles when conducting remote decoy operations.

The record shows that Agent Green used a Department-controlled Uber Eats account to place an order for beer from appellant's licensed premises. The Department, however, assigned a minor decoy to receive the delivery. When the driver arrived at the designated location—a hotel parking lot—he approached the minor decoy, asked for and reviewed the minor decoy's identification which clearly showed she was under 21 years of age, and then handed over the beer. The decoy did not attempt to mislead the driver, misrepresent her age, or disguise her appearance.

Appellant argues that the use of a Department agent, rather than the decoy, to place the order rendered the operation unfair. But Rule 141.1 does not require the decoy to initiate the transaction. Subdivision (e) focuses on the decoy's age and conduct at the point of delivery—not the manner in which the order was placed. The decoy's role is to receive the delivery and appear to be under 21 years of age. In this case, the decoy did just that.

Appellant also claims that the delivery location and limited interaction created ambiguity and deprived the driver of a fair opportunity to assess the decoy's age. The record does not support that claim. Even though the delivery occurred at night and in a hotel parking lot, the driver checked the decoy's

identification. And even though the identification clearly showed the decoy was under 21 years of age, he still completed the delivery. Also, the Department did not obstruct or manipulate the interaction or prevent the driver from exercising judgment. The brevity, location, and time of this interaction does not, by itself, establish unfairness under Rule 141.1.

Appellant further suggests that the Department acted improperly by deleting internal communications associated with the Uber Eats order, including group chat messages between the agents. While those allegations may raise potential due process concerns, they do not establish a violation of Rule 141.1. As mentioned above, Rule 141.1 imposes four requirements for the Department to conduct decoy operations fairly, and preserving text messages is not among them.

The record supports the conclusion that the Department conducted the decoy operation in a manner consistent with Rule 141.1. The decoy's conduct met the fairness standards imposed by subdivision (e), and there is no evidence that the Department acted improperly at the point of delivery.

3. Deleted Evidence

Appellant argues that the Department violated its due process rights by deleting material evidence related to the decoy operation. Specifically, appellant alleges that the Department deleted the Uber Eats account used to place the order, along with group chat messages between the agents who coordinated the operation. Appellant contends that the loss of these records

deprived it of a meaningful opportunity to assess the fairness of the operation and to prepare a defense. The Department acknowledges that it deleted the account and the associated messages, but it asserts that those materials were irrelevant or duplicative of other evidence disclosed during discovery.

In administrative proceedings before the Department, due process requires that a licensee be afforded notice and a meaningful opportunity to be heard before the government deprives it of a vested property right. (*People v. Ramirez* (1979) 25 Cal.3d 260, 269 [describing the general principle that procedural due process protections apply when the government seeks to deprive an individual of a protected interest]; *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612 [The essentials of due process are notice and an opportunity to respond].) These protections apply fully to administrative licensing proceedings, which may result in a suspension or revocation of a liquor license.

As part of its obligation to ensure a fair hearing, the Department may have a duty to preserve evidence when its loss would compromise the licensee's ability to mount a defense. California courts have recognized that due process may be violated where evidence known to be material is destroyed, especially when the loss of that evidence results in unfairness to the accused. (See *People v. Nation* (1980) 26 Cal.3d 169, 175; *People v. Memro* (1995) 11 Cal.4th 786, 831-832.) While administrative hearings are civil in nature, the core due process requirement remains: the agency must not deny the licensee a fair opportunity to challenge

the evidence by failing to preserve material evidence. (*Arizona v. Youngblood* (1988) 488 U.S. 51, 58; *People v. Medina* (1990) 51 Cal.3d 870, 894.)

The record shows that the Department used the Department's Uber Eats account to place the order for alcoholic beverages from appellant's store. After the delivery and issuance of the accusation, the Department deleted the account and associated group chat communications. The Department's witnesses acknowledged the deletions at the administrative hearing. Appellant cross-examined the agents about the missing records and argued that they might have contained exculpatory or impeaching information. However, appellant introduced no evidence that the Department acted in bad faith, or that the deleted content contradicted the testimony or evidence offered at the hearing.

The record includes screenshots of the Uber Eats order, agent testimony regarding the ordering and delivery process, and the decoy's account of the interaction with the delivery driver. The ALJ credited this testimony, and he found that the evidence was sufficient to support a violation. Appellant had access to all disclosed records, examined the witnesses about the deletions, and presented a defense based on its theory of unfairness. Thus, appellant was given a fair and meaningful opportunity to be heard.

Although the Department's deletion of the digital records raises serious and legitimate concerns about its ability to preserve evidence, Appellant has not demonstrated that the missing communications were material or that their absence harmed its ability to receive a fair hearing. Because Appellant has not

shown that the missing information was exculpatory, material, or that its absence resulted in prejudice, there is no due process violation.

4. Penalty

Appellant contends that the Department abused its discretion by treating the violation in this case as a second violation under its penalty guidelines. Appellant argues that the earlier violation, which involved an in-store sale, is meaningfully distinct from the present violation, which involved a delivery by a third-party service. According to appellant, these factual differences should have mitigated the penalty or removed the case from the scope of the Department's escalating penalty schedule.

The Department may use its discretion to impose penalties that it determines to be appropriate. The Board may not disturb the Department's penalty unless it is shown that the Department clearly abused its discretion. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1961) 55 Cal.2d 867, 876.) A mere difference of opinion as to the propriety of the penalty is not sufficient to establish an abuse of discretion. (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594.) The imposition of a penalty within the guidelines established by the Department's penalty schedule will not be deemed an abuse of discretion unless there are extraordinary mitigating or aggravating circumstances. (*Joseph's of California v. Alcoholic Bev. Control Appeals Bd.* (1971) 19 Cal.App.3d 785, 789.)

This was appellant's second violation of section 25658, subdivision (a) within a three-year period. The prior violation occurred in March 2024, and that resulted in a 10-day suspension, all of which was stayed. The Department's penalty guideline calls for a 25-day suspension for a second violation within three years, subject to adjustment based on aggravating or mitigating factors. Here, the Department imposed a 30-day suspension, citing the discipline that occurred only seven months prior and the fact that the decoy was only 17 years old. The use of those two aggravating facts to impose five additional days of suspension shows a reasoned application of the penalty guidelines.

Appellant has not shown that the penalty was arbitrary, capricious, or patently excessive. The violation was appellant's second within three years, and the penalty imposed was only slightly above the recommendation in the Department's guidelines. In light of the penalty guidelines and the Department's discretion in disciplinary matters, the record does not support a finding of abuse.

V. CONCLUSION

The record supports the Department's findings and the imposition of a 30-day suspension. The Department did not err in concluding that the Uber Eats driver acted as appellant's agent for purposes of Rule 141.1. Further, the decoy operation complied with the fairness requirements of Rule 141.1, subdivision (e), and the Department's deletion of internal communications did not result in a due process violation. Lastly, the penalty imposed was consistent with the

Department's penalty guidelines for a second violation, and it was supported by the facts of the case. For these reasons, the Department's decision is affirmed.

ORDER

Pursuant to Business and Professions Code section 23085, the Department's decision 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:**

CALIFORNIA FINE WINE & SPIRITS LLC
TOTAL WINE & MORE
19336 NORDHOFF ST.
NORTHRIDGE, CA 91324

OFF-SALE GENERAL - LICENSE

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

VAN NUYS DISTRICT OFFICE

File: 21-459349

Reg: 24094405

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 March 25, 2025. 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 May 12, 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: April 1, 2025

RECEIVED

APR 02 2025

Alcoholic Beverage Control
Office of Legal Services



Matthew D. Botting
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

California Fine Wine & Spirits LLC
dba Total Wine & More
19336 Nordhoff St.
Northridge, California 91324

Respondent

} File: 21-459349
}
} Reg.: 24094405
}
} License Type: 21
}
} Word Count: 29,600
}
} Reporter:
} Jaclene Solis
} Kennedy Court Reporters
}
} **PROPOSED DECISION**

Off-Sale General License

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at by videoconference on January 7, 2025.

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

Carrie L. Bonnington and Derek M. Mayor, attorneys-at-law, represented respondent California Fine Wine & Spirits LLC.

The Department seeks to discipline the Respondent's license on the grounds that, on or about February 22, 2024, the Respondent, through its agent or employee, sold, furnished, or gave alcoholic beverages to Ainsley Pierzchalski, an individual under the age of 21, in violation of Business and Professions Code section 25658(a).¹ (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 January 7, 2025.

FINDINGS OF FACT

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

¹ 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 Respondent for the above-described location on July 15, 2009 (the Licensed Premises).

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

<u>Date Filed</u>	<u>Reg. No.</u>	<u>Violation</u>	<u>Penalty</u>
3/6/2024	24094246	BP §25658(a)	10-day susp., all stayed

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

4. Ainsley Pierzchalski was born on December 4, 2006. On February 22, 2024, she served as a minor decoy during an operation conducted by the Department. On that date she was 17 years old. She turned 18 years old prior to the hearing in this matter.

5. Pierzchalski's appearance was the same on February 22, 2024 and at the hearing, although her hair was lighter for the latter. Two photos taken before the operation commenced accurately reflect her appearance on February 22, 2024. (Exhibits 3-4.) An additional photo, taken later that day after the alcohol was delivered to her, also accurately reflects her appearance. (Exhibit 6.)

6. On February 22, 2024, Agent A. Green ordered a six-pack of Pacific beer from the Licensed Premises via UberEats, a delivery app. Pierzchalski waited in a hotel parking lot for the driver to arrive, while various agents waited in their vehicles.

7. Brian Garcia pulled up in his vehicle. He exited and approached Pierzchalski. Garcia asked to see Pierzchalski's ID; she showed her California driver license (exhibit 5) to him. Garcia held his phone over the ID as if he were scanning it. Garcia then handed a bag containing the six-pack of Pacifico beer to Pierzchalski and walked away.

8. The agents contacted Garcia at his vehicle, identified themselves, and explained the violation. Garcia stated that he had received an alert on his phone that Pierzchalski was underage (exhibit 7) and that he was going to try to retrieve the alcohol from her.

9. A photo of Pierzchalski and Garcia was taken. In the photo, Pierzchalski is holding her ID and the beer. (Exhibit 6.) Garcia was cited.

10. The agents went to the Licensed Premises and spoke to a manager. The manager pulled out a tablet and located the order in question. (Exhibit 11.) The manager indicated that third-party orders (i.e., orders placed via delivery apps) show up on the tablet. The manager further indicated that an employee assembles each such order and places it on a counter. When a driver arrives to pick up the order, the driver's ID is checked to verify that he or she is 21 years or older.

11. The UberEats account Agent Green used was a Department-based account, not a personal account. The other agents did not have access to Agent Green's Department account. Agent Green took a screenshot of two communications sent to the driver via the app. (Exhibit G.) Agent Green subsequently deleted her Department app. She indicated that Department-based accounts tend to get flagged by delivery apps because they generate a lot of returns. Any information contained within the app would have been deleted when the account was deleted.

12. The agents kept in touch during the operation via a group chat, which was deleted after the operation concluded.

13. Tim Seevers, Vice President of Delivery and Marketplaces, testified that the Respondent has two different systems for taking online orders. The first is the Respondent's own website; the second is UberEats. Regardless of the source of the order, UberEats makes the delivery. Seevers' description of the process by which UberEats orders are filled matched the in-store manager's. (See *supra*, Finding of Fact ¶ 10.

14. The Respondent has a master agreement with UberEats covering all of its locations. (Exhibit H.) The master agreement specifies that the delivery person is an independent contractor. The Respondent does not receive any identifying information about customers who place orders via UberEats. Seevers testified that the Respondent has no control over the delivery person or the order once the alcohol has been picked up.

15. Various documents obtained by the Respondent detail the various steps described above in relation to this order, including the order information (exhibit I), the cancellation of the order by UberEats (exhibit J), the transaction detail (exhibit K), a screenshot from the driver's phone (exhibit 7), and a letter from UberEats (exhibit L).

16. The Respondent no longer allows any deliveries from the Licensed Premises. Additionally, the Respondent was informed by UberEats that Garcia is no longer allowed to delivery alcohol.

17. Catherine Stasiowski, Vice President of Loss Prevention and Safety, testified about the training all employees receive to prevent the sale of alcohol to minors. This training covers which types of IDs are acceptable and point-of-sale procedures. The Respondent prohibits minors from purchasing anything in its stores, including non-alcoholic products. The Respondent also posts signs throughout its stores, including a born-before sign on the register. The register will reject all sales to underage individuals and requires manager approval for sales to individuals aged 21-22. The Respondent makes incentive payments to employees for following procedures and preventing sales to minors.

18. Pierzchalski learned of the decoy program while attending a police event when she and her mother were looking for internships for her. She started working as a decoy in the Fall of 2023. She participated in four decoy operations prior to this one.

19. Pierzchalski testified that each of the decoy operations she participated in involved attempting to buy alcohol from approximately six locations. The sale at issue here was the last one that day. All attempted purchases on February 22, 2024 were via delivery apps.

20. Pierzchalski's appearance was consistent with her actual age, 17-18 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 front of Garcia on February 22, 2024, Pierzchalski displayed the appearance which could generally be expected of a person under 21 years of age under the actual circumstances presented to Garcia.

21. 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. Rule 141.1² sets forth the requirements for an operation in which alcoholic beverages are delivered to a minor decoy. Subsection (c) of this rule provides that, "[f]or purposes of this section, 'agent' shall mean any entity or person the licensee uses or contracts or agrees with, who is not an employee of the licensee, including but not limited to a third-party delivery person or service, to deliver alcoholic beverages to persons who place orders by way of the Internet, telephone, or other electronic means."

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

5. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that, on February 22, 2024, the Respondent's agent, Brian Garcia, sold, furnished, or gave an alcoholic beverage to Ainsley Pierzchalski, a person under the age of 21, in violation of Business and Professions Code section 25658(a) (Findings of Fact ¶¶ 4-20.)

6. The Respondent argued that, based on its agreement with UberEats, Garcia was not its agent or employee, but an independent contractor. In the Respondent's view, it had no control over Garcia's actions once he picked up the alcohol. Furthermore, the Respondent has no ability to control over the alcoholic beverage or the delivery process once the alcohol has been picked up. The various contract provisions, including an indemnity provision, provide that UberEats is responsible for the delivery process. Accordingly, the Respondent argued that it should not be held liable under these circumstances, analogizing these facts to a shoulder tap operation (i.e., a person who provides alcohol to a minor is liable, not the licensee from whom the person purchased the alcohol).

7. This argument is rejected. The Respondent has been licensed by the Department, UberEats has not. Unlike a shoulder-tap operation, neither UberEats nor Garcia purchased the alcohol from the Respondent. Rather, UberEats' delivery person, Garcia, simply picked up the alcohol purchased by the patron and delivered it to the patron. In other words, the sale of alcohol was made by the Respondent under its license directly to the patron, with UberEats providing delivery services only.

8. Case law is clear that licensees have an affirmative obligation to ensure that the licensed premises are not used in violation of the law.³ The Respondent's legal obligations as a licensee—in this case, to prevent the sale of alcohol to a minor—are nondelegable. The Respondent has chosen to make deliveries to patrons who purchase alcoholic beverages from it by retaining a delivery service. As rule 141.1 makes clear, the delivery service is an agent of the Respondent when delivering alcohol sold pursuant to its license.

9. The Respondent argued that the decoy operation at the Licensed Premises failed to comply with rule 141.1(e)(2)⁴ and, therefore, the accusation should be dismissed pursuant to rule 141.1(f). Specifically, the Respondent argued that Pierzchalski did not have the

³ *Morell v. Department of Alcoholic Beverage Control*, 204 Cal. App. 2d 504, 514, 22 Cal. Rptr. 405, 411 (1962); *Marcucci v. Board of Equalization*, 138 Cal. App. 2d 605, 610, 292 P.2d 264, 266 (1956); *Reilly v. Stroh*, 161 Cal. App. 3d 47, 51, 207 Cal. Rptr. 250, 252 (1984); and *Laube v. Stroh*, 2 Cal. App. 4th 364, 379, 3 Cal. Rptr. 2d 779, 789 (1992).

⁴ All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

appearance of a person under the age of 21, particularly since she was sitting on a bench in a hotel parking lot at night by herself. This argument is rejected. As noted above, Pierzchalski had the appearance generally expected of a person under the age of 21. (Finding of Fact ¶ 20.)

10. Finally, the Respondent argued that the accusation should be dismissed because the agents failed to maintain all evidence related to the violation. Specifically, the Respondent cited the deleted UberEats account, the deleted group chat between the agents, and the Exif data⁵ lost when the photos were printed.

11. This argument is rejected. There is no evidence that any of this information was omitted from the report (e.g., information such as date, time, and location are typically included), much less that it was material (e.g., not every conversation between the agents relates to an element of the offense). Without some evidence beyond mere speculation, there is no basis for concluding that material information was destroyed or lost.

PENALTY

The Department requested that the Respondent's license be suspended for a period of 30 days, noting that Pierzchalski was only 17 years old at the time of the violation (i.e., was still a juvenile) and that the sale took place only seven months after the sale at issue in the prior disciplinary decision. In addition to the legal defenses set forth above, the Respondent argued that no aggravation was warranted since the nature of the violation (delivery of alcohol to a minor by a delivery service) was different from the nature of the first violation (an in-store sale of alcohol to a minor).

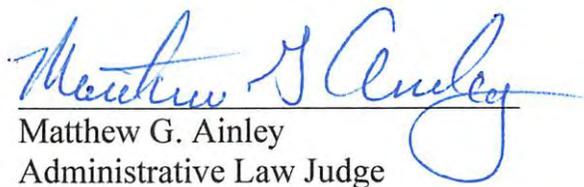
The Respondent's argument is rejected. The violation at issue—selling alcohol to a minor in violation of section 25658(a)—is the same, even if the circumstances of the sale differ. As a second-strike violation, an aggravated penalty is warranted. Moreover, the fact that the minor involved in the sale was a juvenile warrants additional aggravation. The penalty recommended herein complies with rule 144.

⁵ Exchangeable Image File Format data, which may include, among other things, the date and time the photo was taken, the device used to take the photo, and the location where the photo was taken.

ORDER

The Respondent's off-sale general license is hereby suspended for a period of 30 days.

Dated: February 11, 2025


Matthew G. Ainley
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: <u>J. McCullina</u>
Date: <u>03/25/25</u>