

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

AB-10023

Files: 40-626230 & 40-637471; Regs: 25095235 & 25095248

BARREL & HOPS, INC.  
DBA THE RUNNING SHOP & HOPS  
17500 DEPOT ST., STE. 100  
MORGAN HILL, CA 95037-3886

and

OUT OF THE BARREL, INC.  
DBA OUT OF THE BARREL  
722 W. SHAW AVE., #48B  
FRESNO, CA 93704-2301  
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

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

Appeals Board Hearing: December 19, 2025  
Sacramento, CA/Videoconference

**ISSUED DECEMBER 26, 2025**

Appearances: Gillian Garrett, of Gillian Garrett Law, PC, as counsel for  
Appellants;

Trisha Pal, as counsel for the Department of Alcoholic  
Beverage Control.

## **OPINION**

Barrel & Hops Inc., doing business as The Running Shop & Hops (“Barrel & Hops”) and Out of the Barrel, Inc., doing business as Out of the Barrel, (“Out of the Barrel”) (collectively referred to as “appellants”) appeal from an order of the Department of Alcoholic Beverage Control<sup>1</sup> (hereinafter referred to as the “Department”) suspending their respective licenses for 15 days<sup>2</sup> on the grounds that appellants: 1) sold various ciders and hard ciders without holding a license authorizing such a sale, in violation of Business and Professions Code<sup>3</sup> sections 23300 and 23355, and; 2) possessed various ciders and hard ciders upon the premises for which a license had not been issued, in violation of section 25607(a). For the following reasons, the Department’s decision is affirmed.

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

The Department issued an on-sale beer license to Barrel & Hops on June 9, 2021. The Department issued Out of the Barrel’s on-sale beer license on October 6, 2022. There is no record of prior departmental discipline against Barrel & Hops’ license; however, Out of the Barrel’s license has been suspended

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<sup>1</sup> The Department’s Decision, dated August 28, 2025, is set forth in the appendix.

<sup>2</sup> Barrel & Hops’ 15-day suspension was stayed upon the condition that no further cause for disciplinary action arises for a period of one year.

<sup>3</sup> All statutory references are to the California Business and Professions Code unless otherwise stated.

twice in the previous 36 months for violation of section 25658(a) (unlawful sale to a minor).

Evidence offered at the administrative hearing on May 21, 2025 shows that Department Agent Pender went to Out of the Barrel on May 15, 2024, and noticed hard cider for sale in both the refrigerated section and on tap. (Exhibits D6-D7.) Agent Pender selected a can of Range of Light Strawberry hard cider, an alcoholic beverage, from the cooler and purchased it from clerk Chrissy Hoke ("Hoke"). After the purchase, he asked Hoke how long Out of the Barrel had been selling hard cider and Hoke told him that they had been selling it for as long as she had been employed. Subsequently, Agent Pender requested records related to the hard cider sales at the licensed premises from May 1, 2023, and May 15, 2024, and was provided a summary and 45 pages of invoices (exhs. D9-D10).

Agent Pender visited the Barrel & Hops location on July 10, 2024. He did not notice any ciders for sale. He spoke to a bartender, and the bartender indicated that the location had removed all cider products because of an investigation at another location. Agent Pender requested records relating to the sales of hard cider between July 1, 2023, and July 10, 2024, and was provided a summary and 69 pages of invoices (exhs. D12-D-13).

Department Supervising Agent-in-Charge (SAC) L. Riegler testified that beer is made from hops, malt, barley, or other similar products, while wine is made from grapes, honey, and other fruit. Since cider is made by fermenting

fruit, it is classified as wine, although cider is not explicitly referred to in the operative code sections. SAC Riegler is in charge of the Trade Enforcement Unit, and he was involved in drafting the Department's industry advisory on this topic, which was meant to clarify the rights and privileges of small beer manufacturers licenses. A change in the law on January 1, 2024, meant the holders of small beer manufacturers licenses could now sell cider which they produced. (Exh. D14.)

Evan Jaques ("Jaques"), co-owner of appellants, testified that Out of the Barrel was originally licensed for an on-sale beer and wine license, but exchanged it for an on-sale beer license in 2022. When re-licensed, Out of the Barrel sold its remaining inventory of wine but continued to sell cider. The Department licensing representative that was working with them during re-licensing told them they could no longer sell wine, but cider was not discussed.

Jaques' testimony was that he first became aware that cider was considered a wine during the Department's investigation after Agent Pender visited his licensed premises. Afterwards, Jaques immediately arranged for cider to be removed from both his locations. Jaques testified that, to his knowledge, cider is not wine, and are made using different production processes, different fruit, and different yeast.

Jaques also testified that the cider he purchased for the licensed premises came from licensed wholesalers, none of which had any issue selling cider to appellants, even though both locations only held on-sale beer licenses. None of

the wholesalers ever indicated that cider was considered a wine. Even after May 15, 2024, these wholesalers continued to try and sell cider to appellants.

The administrative law judge (ALJ) issued a proposed decision sustaining the counts of the accusations and recommended a 15-day stayed suspension for Barrel and Hops, and a 15-day suspension for Out of the Barrel. The Department adopted the ALJ's decision on August 27, 2025, and issued a certificate of decision the next day. Appellants filed a timely appeal contending: 1) the Department violated appellants' due process by failing to give them fair notice that it classified cider as wine; 2) the decision violated appellants statutory due process rights since the Department's classification of cider as wine was not subject to rulemaking requirements; 3) the Department's policy of treating cider as wine is an underground or invalid regulation, and; 4) the Department lacks good cause to suspend appellants' license.

## **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 make contentions in their opening brief regarding violations of by the Department of appellants' due process rights, the Administrative Procedures Act (APA), and fundamental fairness to licensees. These contentions will be discussed in order.

#### A. Fair Notice

Appellants argue that the Department violated their due process rights because it failed to give them fair notice that it classified cider as wine. (Appellants' Opening Brief (AOB) at pp. 11-17.) Specifically, appellants contend sections 23006 and 23007 are unconstitutionally vague, the Department failed to provide constructive or actual knowledge to appellants' owners that cider is considered a wine, and that appellants presented overwhelming evidence of market confusion about whether cider can be sold with a beer-only license. (*Ibid.*)

In its reply brief, the Department argues that neither the Board, nor any other administrative agency, has the authority to declare a statute unconstitutional. (Department's Reply Brief ("DRB) at pp. 6-7.) The Department further contends that it does not have a duty to notify appellants or any licensee of the law, because all licensees have the duty to operate lawfully. (*Id.* at pp. 8-9.) The Board agrees with the Department.

Section 23006 defines “beer” as:

[A]ny alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer, but does not include sake, known as Japanese rice wine. Beer may be produced using the following materials as adjuncts in fermentation: honey, fruit, fruit juice, fruit concentrate, herbs, spices, and other food materials. Beer aged in an empty wooden barrel previously used to contain wine or distilled spirits shall be defined exclusively as “beer” and shall not be considered a dilution or mixture of any other alcoholic beverage.

Section 23007 defines “wine” as:

[T]he product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made and other rectified wine products and by whatever name and which does not contain more than 15 percent added flavoring, coloring, and blending material and which contains not more than 24 percent of alcohol by volume, and includes vermouth and sake, known as Japanese rice wine.

Section 25607 provides that it is “unlawful for any person or licensee to have ... any alcoholic beverages other than the alcoholic beverage which the licensee is authorized to sell ... under his or her license ... .” Further, Section 23300 states that “no person shall exercise the privilege or perform any act ... unless the person is authorized to do so by a license ... .”

Here, appellants have a type-40 on-sale beer license. Subject to the provisions above, they are only allowed to sell beer. Section 23006 defines “beer” as an alcoholic beverage made from barley, malt, hops, or any similar product.

There is no evidence in the record that cider is made from barley, malt, hops, or similar product. The Board does not see how section 23006 is vague.<sup>4</sup>

The record does indicate that there was misunderstanding about whether cider was classified as wine. However, the Board agrees with the Department in that "all one has to do [is] determine whether a given beverage is produced from barley, malt, or hops, on the one hand, or fruit, on the other." (Decision at p. 7.) It is immaterial whether cider is considered a wine because by the plain language of section 23006, cider does not qualify as a beer. Appellants' argument is rejected.

B. Administrative Procedures Act (APA)/Underground Regulation

Appellants argue that the Department's decision violates appellants' statutory due process rights because it failed to follow the APA when issuing guidance classifying cider as wine. (AOB, at pp. 17-19.) The Department disagrees, arguing that it was "simply enforcing the clear and unambiguous terms of ... sections 23006 and 23007, and therefore there is no basis to question whether an Industry Advisory is an underground regulation ... ." (DRB at p. 9.) Again, we agree with the Department.

The classification of cider as a wine is not at issue in this appeal. The issue is whether cider is considered a beer, and thus, were appellants allowed to sell

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<sup>4</sup> As the Department states, even if the Board thought section 23006 was vague, it does not have the authority to declare it unconstitutional. (Cal. Const., art. III § 3.5.)

cider under their licenses. As the Department found, cider is not a beer under the language of section 23006. The Board agrees with the Department. There is ample evidence in the record that cider is made by fermenting apples, and apples are fruit. The Board does not see any evidence in the record that cider is made from barley, malt, or hops, which it would need to be to be considered a beer. The Department's application of these facts to section 23006 is neither an underground regulation nor a violation of the APA.

### C. Good Cause for Suspension

Appellants contend the Department lacked good cause to suspend its licenses because appellants' owners made diligent efforts to comply with the law. (AOB, at pp. 19-20.) They argue that the vagueness of the statutes does not give licensees knowledge that sections 23006 and 23007 apply to cider. (*Id.* at p. 20). The Department maintains that the penalties are a reasonable and proper exercise of its judicial discretion. (DRB at pp. 9-10.)

As stated above, there is substantial evidence that appellants violated sections 25607(a), 23300, and 23355 for possession and selling of cider, an alcoholic beverage for which they did not have a license to sell. Article XX, section 22 of the California Constitution as well as section 24200(a) allow the Department to discipline a license for these violations of law. In this regard, there is good cause for the suspension of appellants' licenses.

It is also clear from the evidence that there was genuine confusion among appellants and industry wholesalers. However, there is no legal authority

that this confusion negates the Department's good cause to discipline appellants' licenses. The record shows that the Department considered appellants' mitigation evidence regarding their confusion and diligent efforts to comply, which resulted in a suspended penalty for Barrel & Hops, and a standard 15-day suspension for Over the Barrel, which had two previous violations within 36 months.

As the Board has said many times over the years, the extent to which the Department considers mitigating or aggravating factors is a matter entirely within its discretion. The Department found that appellants violated the law and imposed a penalty on appellants' licenses. The Board finds these penalties reasonable and not an abuse of discretion.

**ORDER**

Pursuant to Business and Professions Code section 23085, the decision of the Department is affirmed.<sup>5</sup>

MEGAN McGUINNESS, CHAIRPERSON  
SHARLYNE PALACIO, MEMBER  
HON. FRANK C. DAMRELL JR. (Ret.),  
MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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<sup>5</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).

**PETITION FOR PAYMENT OF FINE IN LIEU OF SUSPENSION AND FINANCIAL STATEMENT**

Licensee: OUT OF THE BARREL, INC. File: 40-637471

DBA: OUT OF THE BARREL Reg.: 25095248

Address: 722 W. SHAW AVE., #48B  
FRESNO, CA 93704-2301

District: Trade Enforcement Unit

**IMPORTANT INFORMATION-READ CAREFULLY**

**YOU MAY BE ELIGIBLE TO PAY A FINE IN LIEU OF THE SUSPENSION IMPOSED**

Business and Professions Code section 23095 establishes that in certain circumstances a licensee may file a petition requesting to pay a fine in lieu of serving a suspension. Fines range from \$750 to \$6,000 for a first offense, \$1,500 to \$12,000 for a second offense within 36 months, and \$2,500 to \$40,000 for a second sale to a minor within 36 months.

The Department will only authorize payment of a fine in lieu of suspension if:

- Allowing a fine would not be contrary to public welfare and morals
- A fine would serve the desired disciplinary purpose of the Department, and
- The records and books of the licensee are kept in such a manner that the fine amount can be properly calculated.

To request payment of a fine in lieu of suspension YOU MUST SUBMIT A PETITION stating the grounds for why you believe a fine is appropriate in your case. Space is provided below for your petition or you may attach a separate document. YOU MUST ALSO complete and submit the financial statement on page 3 below. Submit both documents together.

Your petition must be received by the Department no more than **TWENTY (20) DAYS** after the mailing of this notice. Mail your petition to the Trade Enforcement Unit at 3927 Lennane Dr., Sacramento, CA 95834 or contact them at 916-419-2500 if you have any questions.

The Department will commence an investigation into your request that may include a request for sales records. If your petition is accepted you will be notified of the fine amount and payment instructions. If your petition is denied you will be notified of the start date for your suspension.

**RECEIVED**

**AUG 28 2025**

**Alcoholic Beverage Control  
Office of Legal Services**



PETITION FOR PAYMENT OF FINE IN LIEU OF SUSPENSION AND FINANCIAL STATEMENT

Estimate of alcoholic beverage sales, including all State and local sales taxes:

1. Gross sales of all alcoholic beverages for the preceding 12 full months: (1) \$ \_\_\_\_\_

(If sales of alcoholic beverages are not separated from total sales or you have not operated for a full 12-month period, you may offer a reasonable formula for figuring the amount.)

Period covered in computing offer \_\_\_\_\_ (Example: 4/1/04 thru 3/31/05)

If offer is based upon markup of purchases, show percentage markup or cost: \_\_\_\_\_

2. Estimated daily average gross sales: (2) \$ \_\_\_\_\_ (Figure in (1) divided by 365 days or the actual number of sales days used in figuring (1))

If open less than 365 days, show number of days used in your computation: \_\_\_\_\_

3. 50% of estimated daily average gross sales: (3) \$ \_\_\_\_\_ (Figure in (2) multiplied by 50%.)

4. Basic offer in compromise: (4) \$ \_\_\_\_\_ (Figure in 3 multiplied by the number of days (15) upon which I am proposing to pay the offer in compromise.)

5. You must use either Method (a), (b) or (c), below, for computing the amount for Item 6 below. Department records show you should use Method \_\_\_ b \_\_\_.

Table with 3 columns: Method (a), Method (b), Method (c). Each column contains instructions for calculating the amount for Item 6 based on different conditions.

6. Sum offered in payment: (6) \$ \_\_\_\_\_

If this form is prepared or reviewed by a public accountant, the account must sign the statement below:

THIS FORM PREPARED IN ACCORDANCE WITH RULES PRESCRIBED BY THE CALIFORNIA STATE BOARD OF ACCOUNTANCY.

License Number \_\_\_\_\_

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

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

BARREL & HOPS INC.  
THE RUNNING SHOP & HOPS  
17500 DEPOT ST., STE 100  
MORGAN HILL, CA 95037-3886

ON-SALE BEER LICENSE - LICENSE

AND

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

OUT OF THE BARREL, INC.  
OUT OF THE BARREL  
722 W. SHAW AVE., #48B  
FRESNO, CA 93704-2301

ON-SALE BEER LICENSE - LICENSE

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

TRADE ENFORCEMENT UNIT

File: 40-626230

Reg: 25095235

File: 40-637471

Reg: 25095248

**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 August 27, 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 October 8, 2025, a representative of the Department will contact you to pick up the license certificate.

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

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

BARREL & HOPS INC.  
THE RUNNING SHOP & HOPS  
17500 DEPOT ST., STE 100  
MORGAN HILL, CA 95037-3886

ON-SALE BEER LICENSE - LICENSE

AND

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

OUT OF THE BARREL, INC.  
OUT OF THE BARREL  
722 W. SHAW AVE., #48B  
FRESNO, CA 93704-2301

ON-SALE BEER LICENSE - LICENSE

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



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

Sacramento, California

Dated: August 28, 2025

  
Paul Tupy  
Director

TRADE ENFORCEMENT UNIT

File: 40-626230

Reg: 25095235

File: 40-637471

Reg: 25095248

**CERTIFICATE OF DECISION**

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Barrel & Hops Inc.	}	File: 40-626230
dba The Running Shop & Hops	}	
17500 Depot St., Ste 100	}	Reg.: 25095235
Morgan Hill, California 95037-3886	}	
	}	License Type: 40
Respondent	}	
	}	
<u>On-Sale Beer License</u>	}	

and

IN THE MATTER OF THE ACCUSATION AGAINST:

Out of the Barrel, Inc.	}	File: 40-637471
dba Out of the Barrel	}	
722 W. Shaw Ave., #48B	}	Reg.: 25095248
Fresno, California 93704-2301	}	
	}	License Type: 40
Respondent	}	
	}	Word Count: 26,500
	}	
	}	Reporter:
	}	Dalauna Cardoza
	}	Kennedy Court Reporters
	}	
<u>On-Sale Beer License</u>	}	<b><u>PROPOSED DECISION</u></b>

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard these consolidated matters by videoconference on May 21, 2025.

Trisha R. Pal, Attorney, represented the Department of Alcoholic Beverage Control.

Gillian K. Garrett, attorney-at-law, represented respondents Barrel & Hops Inc. and Out of the Barrel, Inc. Evan Jaques, co-owner of both respondents, was present.

The Department seeks to discipline Barrel & Hops' license on the grounds that, between the dates of July 1, 2023 and May 15, 2024, it sold an alcoholic beverage at the premises,

to wit: various ciders, without holding a license authorizing such sale, in violation of Business and Professions Code sections 23300 and 23355.<sup>1</sup> (Exhibit D1.)

The Department also seeks to discipline Barrel & Hops' license on the grounds that, between the dates of July 1, 2023 and May 15, 2024, it possessed upon the premises various ciders for which a license had not been issued, in violation of Business and Professions Code sections 25607(a). (Exhibit D1.)

The Department seeks to discipline Out of the Barrel's license on the grounds that, on or about May 15, 2024, it sold an alcoholic beverage at the premises, to wit: hard cider, without holding a license authorizing such sale, in violation of Business and Professions Code sections 23300 and 23355. (Exhibit D2.)

The Department also seeks to discipline Out of the Barrel's license on the grounds that, between the dates of May 2023 and May 15, 2024, it possessed upon the premises hard cider for which a license had not been issued, in violation of Business and Professions Code sections 25607(a). (Exhibit D2.)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matters were argued and submitted for decision on May 21, 2025.

### **FINDINGS OF FACT**

1. The Department filed the accusation against Barrel & Hops on February 18, 2025.
2. The Department issued a type 40, on-sale beer license to Barrel & Hops for the above-described location on June 9, 2021 (the Barrel & Hops Licensed Premises).
3. There is no record of prior departmental discipline against Barrel & Hops' license.
4. The Department filed the accusation against Out of the Barrel on February 20, 2025.
5. The Department issued a type 40, on-sale beer license to Out of the Barrel for the above-described location on October 6, 2022 (the Out of the Barrel Licensed Premises).

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

6. Out of the Barrel's license has been the subject of the following discipline:

<u>Date Filed</u>	<u>Reg. No.</u>	<u>Violation</u>	<u>Penalty</u>
10/4/2023	23093778	BP §25658(a)	15-day susp.
12/18/2024	24095067	BP §25658(a)	20-day susp.

The foregoing disciplinary matters are final. (Exhibits D3-D4.) They were not pled for the purposes of aggravation.

7. On May 15, 2024, Agent B. Pender went to the Out of the Barrel Licensed Premises. He entered and noticed cider for sale in both the refrigerated section and on tap. (Exhibits D6-D7.)

8. Agent Pender selected a can of Range of Light Strawberry Hard Cider (exhibit D8) from the cooler and purchased it from Chrissy Hoke, the clerk. After making the purchase, he asked Hoke how long Out of the Barrel had been selling hard cider. She indicated that they had been doing so for as long as she had been employed.

9. Agent Pender requested records relating to the sales of cider between May 1, 2023 and May 15, 2024. Evan Jaques provided a Products Report—Summary and 45 pages of invoices. (Exhibit D9-D10.)

10. On July 10, 2024, Agent Pender visited the Barrel & Hops Licensed Premises. He looked around, but did not notice any ciders for sale. He spoke to a bartender and asked if there were any ciders for sale. The bartender indicated that, because of an investigation at another location, they had removed all cider products.

11. Agent Pender requested records relating to the sales of cider between July 1, 2023 and July 10, 2024. Jaques provided a summary of cider sales and 69 pages of invoices. (Exhibit D12-D13.)

12. Supervising Agent-in-Charge L. Riegler is in charge of the Trade Enforcement Unit. She testified that beer is made from hops, malt, barley, or other similar products, while wine is made from grapes, honey, and other fruit. Since cider is made by fermenting fruit, it is classified as wine, although cider is not explicitly referred to in the code section.

13. SAC Riegler was involved in drafting one of the Department's industry advisories which was intended to clarify the rights and privileges of a type 23, small beer manufacturers license. Because of a change in the law effective January 1, 2024, the holders of small beer manufacturers license could now sell cider which they produced. (Exhibit D14.)

14. Jaques testified that he and his wife are the co-owners of both Out of the Barrel and Barrel & Hops. He opened his first craft brew tap room in 2018, acquired Barrel & Hops in 2020, and acquired Out of the Barrel in 2019. He currently owns five business which hold ABC licenses.

15. Out of the Barrel originally was licensed with a type 42, on-sale beer and wine license, which was exchanged for type 40 license in 2022. At the time Out of the Barrel was re-licensed, they sold their remaining inventory of wine. They continued to sell cider, however. The licensing representative who worked on the re-licensing told them they could no longer sell wine. Cider was not specifically discussed.

16. Jaques researched ABC laws before acquiring his first license. He has continued to research the laws applicable to the different types of licenses to keep abreast of any developments. He regularly checks the ABC website and subscribed to the Department's e-mail list. At no point did he find anything which indicated that cider was classified as a wine.

17. The first time he heard that cider was classified as a wine was on May 15, 2024, when Agent Pender visited the Out of the Barrel Licensed Premises. He immediately arranged for cider to be removed from both locations.

18. The cider sold at both locations was purchased from licensed wholesalers. (Exhibits D10 & D13.) None of them had any problem selling cider to Out of the Barrel or Barrel & Hops, even though both locations only held on-sale beer licenses. None of them ever indicated that cider was considered a wine. After May 15, 2024, these wholesalers continued to try to sell cider to both locations. Jaques had to inform them that cider was considered wine.

19. Jaques testified that, to his knowledge, cider is not wine. Cider and wine are made using different production processes, different fruit, and different yeast.

20. 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 23006 defines beer as "any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer, but does not include sake, known as Japanese rice wine. Beer may be produced using the following materials as adjuncts in fermentation: honey, fruit, fruit juice, fruit concentrate, herbs, spices, and other food materials. Beer aged in an empty wooden barrel previously used to contain wine or distilled spirits shall be defined exclusively as "beer" and shall not be considered a dilution or mixture of any other alcoholic beverage."

4. Section 23007 defines wine as "the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made and other rectified wine products and by whatever name and which does not contain more than 15 percent added flavoring, coloring, and blending material and which contains not more than 24 percent of alcohol by volume, and includes vermouth and sake, known as Japanese rice wine. Nothing contained in this section affects or limits the power, authority, or duty of the State Department of Health Services in the enforcement of the laws directed toward preventing the manufacture, production, sale, or transportation of adulterated, misbranded, or mislabeled alcoholic beverages, and the definition of "wine" contained in this section is limited strictly to the purposes of this division and does not extend to, or repeal by implication, any law preventing the production, manufacture, sale, or transportation of adulterated, misbranded, or mislabeled alcoholic beverages."

5. Section 25607 provides that it is "unlawful for any person or licensee to have upon any premises for which a license has been issued any alcoholic beverages other than the alcoholic beverage which the licensee is authorized to sell at the premises under his or her license" except that the holder of a "bona fide public eating place for which an on-sale beer and wine license has been issued may have upon the premises brandy, rum, or liqueurs for use solely for cooking purposes." Under this section, it "shall be presumed that all alcoholic beverages found or located upon premises for which licenses have been issued belong to the person or persons to whom the licenses were issued."

6. Section 23300 provides that "no person shall exercise the privilege or perform any act which a licensee may exercise or perform under the authority of a license unless the person is authorized to do so by a license issued pursuant to this division."

7. Section 23355 provides that, except as otherwise provided in the Alcoholic Beverage Control Act and subject to the provisions of Section 22 of Article XX of the Constitution, a license “authorize[s] the person to whom issued to exercise the rights and privileges specified in this article and no others at the premises for which issued during the year for which issued.”

8. Cause for suspension or revocation of Out of the Barrel’s license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that, on May 15, 2024, it sold an alcoholic beverage at the premises, to wit: hard cider, without holding a license authorizing such sale, in violation of Business and Professions Code sections 23300 and 23355. (Findings of Fact ¶¶ 7-9.)

9. Cause for suspension or revocation of Out of the Barrel’s license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that, between the dates of May 2023 and May 15, 2024, it possessed upon the premises hard cider for which a license had not been issued, in violation of in violation of Business and Professions Code sections 25607(a). (Findings of Fact ¶¶ 7-9.)

10. Cause for suspension or revocation of Barrel & Hops’ license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that, between the dates of July 1, 2023 and May 15, 2024, it sold an alcoholic beverage at the premises, to wit: various ciders, without holding a license authorizing such sale, in violation of in violation of Business and Professions Code sections 23300 and 23355. (Findings of Fact ¶¶ 10-11.)

11. Cause for suspension or revocation of Barrel & Hops’ license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that, between the dates of July 1, 2023 and May 15, 2024, it possessed upon the premises various ciders for which a license had not been issued, in violation of in violation of Business and Professions Code sections 25607(a). (Findings of Fact ¶¶ 10-11.)

12. Section 23006 is clear that, to qualify as beer, an alcoholic beverage must be made from barley, malt, hops, or any similar product. Fruit may be included as adjuncts in fermentation. Section 23007 is clear that, to qualify as wine, an alcoholic beverage must be made by the normal alcoholic fermentation of fruit juice. Cider is produced from fruit juice and does not contain any barley, malt, hops, or any similar product. Accordingly, cider is wine as defined. The mere fact that cider and wine are produced using different yeasts and different production processes is irrelevant—the code specifies that it is the source material which is determinative.

13. There is clearly a misunderstanding about the classification of cider among some licensees. Not only was Evan Jaques unaware that cider is classified as wine, but the invoices show that a large number of wholesalers were similarly unaware. (Findings of Fact ¶¶ 14-19.) Each sale by every wholesaler listed in exhibits D10 and D13 were in violation of the law, indicating a widespread problem.

14. Both respondents pointed to this misunderstanding as evidence that the code sections are too vague to be enforceable, i.e., a reasonable person would not be able to determine whether the sales of cider violated the law or not. This argument is rejected. The code sections are not vague—all one has to do is determine whether a given beverage is produced from barley, malt, or hops, on the one hand, or fruit, on the other. Cider is made from fermenting apples—not from barley, malt, or hops—and, therefore, is wine.

### **PENALTY**

The Department requested that Barrel & Hops' license be suspended for 15 days. The Department similarly requested that Out of the Barrel's license be suspended for 15. In making these recommendations, the Department noted that both licensees' actions demonstrated a continuing source of conduct. It also noted that Out of the Barrel had two prior disciplinary decisions against it.

The respondents did not recommend a penalty in the event that the accusations were not dismissed. They emphasized, however, that they took immediate steps to comply with the law upon learning that cider was classified as wine. They also noted that wholesalers sold cider to them without reservation, which they took as an indication that they could legally obtain and sell cider.

Rule 144<sup>2</sup> provides that possession of an alcoholic beverage not permitted by the license type warrants a 10-day suspension, while a 15-day suspension is warranted for the sale of such an alcoholic beverage. The rule also provides that "[i]t is the policy of this Department to impose administrative, non-punitive penalties in a consistent and uniform manner with the goal of encouraging and reinforcing voluntary compliance with the law."

With respect to Barrel & Hops, no aggravation is warranted. Barrel & Hops' sales of cider were the result of a good faith mistake that was reinforced by a common misunderstanding among retailers and wholesalers in the area. A mistake, even a good-faith mistake, does not excuse the violations, but provides necessary context.

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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.

As mitigation, Barrel & Hops ceased selling cider the instant it learned of the Department's interpretation. When Department investigators visited the Barrel & Hops' Licensed Premises, it was in full compliance with the law. Such voluntary compliance is the stated policy of Department and the guiding principle behind rule 144. The penalties recommended herein comply with rule 144.

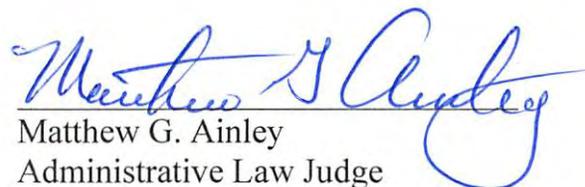
With respect to Out of the Barrel, no aggravation is warranted based on the same good-faith mistake. Although Out of the Barrel's license has been disciplined twice before, those are for violations of unrelated code sections. It is the Department's policy not to aggravate a penalty under such circumstances.

### ORDER

Barrel & Hops' on-sale beer license is suspended for 15 days, with execution of 15 days of the suspension stayed, upon the condition that no subsequent final determination be made, after hearing or upon stipulation and waiver, that cause for disciplinary action occurred within one year from the effective date of this decision; that should such determination be made, the Director of the Department of Alcoholic Beverage Control may, in his or her discretion and without further hearing, vacate this stay order and reimpose the stayed penalty; and that should no such determination be made, the stay shall become permanent.

Out of the Barrel's on-sale beer license is hereby suspended for 15 days

Dated: July 11, 2025

  
Matthew G. Ainley  
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By:  _____
Date: <u>08/27/2025</u>

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

<p>IN THE MATTER OF THE ACCUSATION AGAINST:</p> <p>BARREL &amp; HOPS INC. THE RUNNING SHOP &amp; HOPS 17500 DEPOT ST., STE 100 MORGAN HILL, CA 95037-3886</p> <p>ON-SALE BEER LICENSE - LICENSE</p> <p>AND</p> <p>IN THE MATTER OF THE ACCUSATION AGAINST:</p> <p>OUT OF THE BARREL, INC. OUT OF THE BARREL 722 W. SHAW AVE., #48B FRESNO, CA 93704-2301</p> <p>ON-SALE BEER LICENSE - LICENSE</p> <p>under the Alcoholic Beverage Control Act.</p>	<p>File: 40-626230</p> <p>Reg: 25095235</p> <p>File: 40-637471</p> <p>Reg: 25095248</p> <p style="text-align: center;">DECLARATION OF SERVICE BY MAIL</p>
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The undersigned declares:

I am employed at the Department of Alcoholic Beverage Control. I am over 18 years of age and not a party to this action. My business address is 3927 Lennane Drive, Suite 100, Sacramento, California 95834. On August 28, 2025, I served, by CERTIFIED mail (unless otherwise indicated) a true copy of the following documents:

**DECISION AND CERTIFICATE OF DECISION**

on each of the following, by placing them in an envelope(s) or package(s) addressed as follows:

BARREL & HOPS INC.  
THE RUNNING SHOP & HOPS  
17500 DEPOT ST., STE 100  
MORGAN HILL, CA 95037-3886

9589 0710 5270 2460 7019 82

EVAN JAQUES  
180 GARLIC AVENUE  
MORGAN HILL, CA 95037

9589 0710 5270 2460 7020 02

OUT OF THE BARREL, INC.  
OUT OF THE BARREL  
722 W. SHAW AVE., #48B  
FRESNO, CA 93704-2301

9589 0710 5270 2460 7019 99

GILLIAN GARRETT, ATTORNEY AT LAW  
1875 S BASCOM AVE., STE 560  
CAMPBELL, CA 95008-2345

9589 0710 5270 2460 7020 19

Office of Legal Services  
Headquarters, Inter Office Mail

and placing said envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with this department's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, County of Sacramento, State of California, in an envelope with the postage fully prepaid. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 28, 2025 at Sacramento, California.

  
Mark Kinyon

TRADE ENFORCEMENT UNIT (INTEROFFICE MAIL)  
 DIVISION OFFICE (INTEROFFICE MAIL)

## DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL



July 22, 2025

To all parties:

Please find enclosed a copy of the proposed decision prepared by the Administrative Law Judge (“ALJ”) in this matter. This is being provided to all parties pursuant to Government Code section 11517(c)(1), and the proposed decision is hereby filed as a public record.

**PLEASE NOTE:** This proposed decision has not been adopted by the Department. The Director has up to 100 days from the date it was received from the Administrative Hearing Office to act on the proposed decision. Such action may include, among other things, adoption or rejection of the proposed decision. (See Government Code section 11517(c)(2).)

There is no provision in the Government Code that specifically authorizes parties to submit written comments to the Director regarding the proposed decision. However, there is also no restriction in the law that prohibits parties from doing so, and it is not uncommon for parties to submit such comments, identifying asserted errors or flaws in the proposed decision.

The Director is limited to reviewing the proposed decision based upon the record developed at the hearing. As such, if you do choose to send comments, the Director can only consider them to the extent that they identify alleged error based on the law and/or on the evidence presented at hearing. In addition, **any comments should be sent to the Administrative Records Secretary and must be served on all parties** (which includes the attorney representing the Department at the hearing) and be **accompanied by a proof of service** establishing that this was done. Failure to do so will result in the comments being considered an *ex parte* communication, which is prohibited pursuant to Government Code sections 11430.10, *et seq.*, and the Director will not review such comments.

Although proposed decisions are typically acted on within 30 to 60 days following receipt, action may be taken earlier than this. As such, if you do decide you wish to submit comments, you should do so promptly. Action on proposed decisions will not be delayed awaiting receipt of comments.

Whether or not comments are submitted, parties have all rights to request reconsideration (Government Code section 11521), to appeal a decision to the ABC Appeals Board, or to pursue such other legal remedies as provided by law.

Sincerely,

A handwritten signature in blue ink that reads "Mark Kinyon".

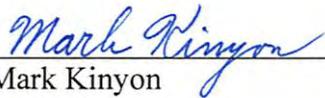
Mark Kinyon

Administrative Records Secretary  
Department of Alcoholic Beverage Control  
3927 Lennane Drive, Suite 100  
Sacramento, CA 95834



and placing said envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with this department's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, County of Sacramento, State of California, in an envelope with the postage fully prepaid. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 22, 2025 at Sacramento, California.

  
\_\_\_\_\_  
Mark Kinyon

TRADE ENFORCEMENT UNIT (INTEROFFICE MAIL)  
 DIVISION OFFICE (INTEROFFICE MAIL)

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

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

Out of the Barrel, Inc.  
Dbas: Out of the Barrel  
722 W Shaw Ave., #48B  
Fresno, CA 93704-2301

On-Sale Beer - License  
Under the Alcoholic Beverage Control Act.

FILE: 40-637471  
REG: 25095248

**PROOF OF SERVICE BY MAIL  
(CCP §§ 1013(A), 2015.5)**

I, the undersigned, hereby certify as follows:

I am a citizen of the United States and employed in the County of Sacramento, California. I am over the age of eighteen (18) years and I am not a party to the above-captioned action. My business address is P.O. BOX 348210, Sacramento, CA 95834.

On April 22, 2025, I mailed from Sacramento:

**NOTICE OF CHANGE IN HEARING DATE BY VIDEO CONFERENCE ON ACCUSATION  
VIDEO CONFERENCE HEARING NOTICE TO PARTIES**

Out of the Barrel, Inc.  
Dbas: Out of the Barrel  
722 W Shaw Ave., #48B  
Fresno, CA 93704-2301

Evan Jaques  
180 Garlic Avenue  
Morgan Hill, CA 95037

Gillian Garrett, Attorney at Law  
1875 S Bascom Ave., Ste. 560  
Campbell, CA 95008-2345

**BY MAIL** - I served the documents by enclosing them in an envelope and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Administrative Hearing Office  
Diana Villanueva

OLS (Inter-Departmental Mail)  
 Trade Enforcement Unit (Inter-Departmental Mail)

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

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

Barrel & Hops, Inc.  
Dbas: The Running Shop & Hops  
17500 Depot St., Ste. 100  
Morgan Hill, CA 95037-3886

On-Sale Beer - License  
Under the Alcoholic Beverage Control Act.

FILE: 40-626230  
REG: 25095235

**PROOF OF SERVICE BY MAIL  
(CCP §§ 1013(A), 2015.5)**

I, the undersigned, hereby certify as follows:

I am a citizen of the United States and employed in the County of Sacramento, California. I am over the age of eighteen (18) years and I am not a party to the above-captioned action. My business address is P.O. BOX 348210, Sacramento, CA 95834.

On April 9, 2025, I mailed from Sacramento:

**NOTICE OF HEARING BY VIDEO CONFERENCE ON ACCUSATION  
VIDEO CONFERENCE HEARING NOTICE TO PARTIES**

Barrel & Hops, Inc.  
Dbas: The Running Shop & Hops  
17500 Depot St., Ste. 100  
Morgan Hill, CA 95037-3886

Barrel & Hops, Inc.  
180 Garlic Avenue  
Morgan Hill, CA 95037

**RECEIVED**  
JUL 22 2025  
Alcoholic Beverage Control  
Administrative Records Office

**BY MAIL** - I served the documents by enclosing them in an envelope and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
Administrative Hearing Office  
Diana Villanueva

OLS (Inter-Departmental Mail)  
 Trade Enforcement Unit (Inter-Departmental Mail)



Frank Robles  
Acting Director



Gavin Newsom  
Governor

Department of Alcoholic Beverage Control  
Administrative Hearing Office  
P.O. BOX 348210  
Sacramento, CA 95834-8210

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July 21, 2025

In the Matter of the Accusations Against:

Barrel & Hops Inc.  
Db: The Running Shop & Hops  
17500 Depot St., Ste 100  
Morgan Hill, California 95037-3886

File: 40-626230  
Reg: 25095235

and

Out of the Barrel, Inc.  
Db: Out of the Barrel  
722 W. Shaw Ave., #48B  
Fresno, California 93704-2301

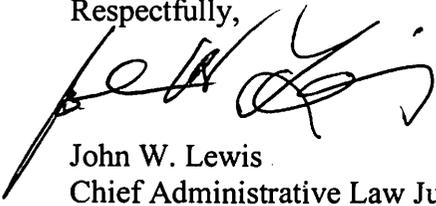
File: 40-637471  
Reg: 25095248

Director, Department of Alcoholic Beverage Control,

Enclosed is the Proposed Decision resulting from the hearing before the Department of Alcoholic Beverage Control, Administrative Hearing Office in the above-entitled matter.

This Proposed Decision is submitted for your review and action.

Respectfully,



John W. Lewis  
Chief Administrative Law Judge