

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

**AB-10026**

File: 21-415615; Reg: 25095370

Hung Q. Nguyen  
Dba Tip Top Liquors  
439 S. Bascom Avenue  
San Jose, CA 95128  
Appellant/Licensee

v.

Department of Alcoholic Beverage Control  
Respondent

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

Appeals Board Hearing: January 16, 2026  
Sacramento, CA/Videoconference

**ISSUED JANUARY 21, 2026**

Appearances: Richard D. Warren, as counsel for Appellant  
Joseph Scoleri, as counsel for the Department

**OPINION**

**I. INTRODUCTION**

This appeal arises from the Department of Alcoholic Beverage Control's decision to revoke appellant's off-sale general license after finding that appellant's employee sold an alcoholic beverage to a minor decoy in violation of Business and Professions Code section 25658, subdivision (a).

On appeal, appellant does not dispute that a sale to a minor occurred. Appellant instead argues that the Department failed to comply with California

Code of Regulations, title 4, section 141, subdivision (b)(2), because the minor decoy allegedly wore a baseball cap during the transaction that was not depicted in the photographs admitted into evidence.

For the reasons discussed below, the Department's decision is affirmed.

## **II. FACTS AND PROCEDURAL HISTORY**

On March 27, 2025, the Department of Alcoholic Beverage Control (Department) filed a single-count accusation against appellant alleging a violation of Business and Professions Code section 25658, subdivision (a)<sup>1</sup>. The accusation alleged that on February 19, 2025, appellant's employee sold an alcoholic beverage to a minor decoy at appellant's licensed premises, an off-sale general license located at 439 South Bascom Avenue in San Jose. The accusation also alleged appellant's prior disciplinary history, including multiple prior violations of section 25658, subdivision (a).

An administrative hearing was held on July 17, 2025, before Administrative Law Judge (ALJ) Alberto Roldan. The Department presented testimony from the minor decoy, Andrew Sanchez, and from San Jose Police Officer Neil Cossey, the lead officer for the minor decoy operation. Appellant presented testimony from appellant Hung Q. Nguyen and from the clerk who sold the alcoholic beverage.

The evidence established that on February 19, 2025, Sanchez, who was 19 years old at the time, participated as a minor decoy in a law enforcement

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

operation conducted at appellant's premises. Sanchez entered the store alone and selected a 24-ounce Four Loko malt beverage. He approached the sales counter and completed the purchase without being asked his age or for identification. After completing the transaction, Sanchez left the store and met with officers participating in the operation.

Officer Cossey testified that after confirming Sanchez had purchased an alcoholic beverage, officers returned with Sanchez to the premises. Inside the store, Sanchez identified the clerk who sold him the alcohol during a face-to-face identification. A photograph was taken of Sanchez standing next to the clerk at that time. Officer Cossey identified the clerk as Nhung Nguyen, who was the sole employee working at the premises during the transaction.

Sanchez testified regarding his role in the decoy operation and identified photographs taken on the date of the operation, including a photograph taken prior to the operation and the face-to-face photograph taken after the sale. Sanchez testified that he could not recall whether he was wearing a hat during the transaction.

Appellant testified that he was not present at the premises at the time of the sale and described the training he provided to his employees regarding the sale of alcoholic beverages and the requirement to check identification. The clerk testified regarding her training and her recollection of the transaction. She testified that she believed the customer to be older than 21 years of age and

stated that the customer she recalled was wearing a black baseball cap during the transaction.

Following the hearing, the ALJ issued a proposed decision sustaining the accusation. The ALJ found that the Department established a violation of section 25658, subdivision (a), and that the minor decoy displayed an appearance that could generally be expected of a person under 21 years of age within the meaning of California Code of Regulations, title 4, section 141, subdivision (b)(2) (Rule 141). The ALJ credited the testimony of the Department's witnesses and rejected appellant's contention that the decoy's appearance failed to comply with Rule 141.

The ALJ further found that revocation was the appropriate penalty based on appellant's prior disciplinary history, including multiple prior violations for selling alcoholic beverages to minors, some of which occurred within a 36-month period. On September 3, 2025, the Department adopted the proposed decision.<sup>2</sup>

Appellant thereafter filed a timely appeal to this Board.

### **III. STANDARD OF REVIEW**

The Board's scope of review is defined by section 23084 and is further informed by the California Constitution, statute, and relevant appellate authority. (Cal. Const., art. XX, § 22; Bus. & Prof. Code, §§ 23083, 23085.) When reviewing the Department's decision, the Board determines whether the Department proceeded in the manner required by law, whether the decision is supported by

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<sup>2</sup> The Department's decision is set forth in the Appendix.

the findings, and whether the findings are supported by substantial evidence in light of the whole record. (Bus. & Prof. Code, § 23084, subds. (b)–(d).)

Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion—evidence that is “reasonable in nature, credible, and of solid value.” (*County of San Diego v. Assessment Appeals Bd. No. 2* (1983) 148 Cal.App.3d 548, 555, quoting *Ofsevit v. Trustees of California State University and Colleges* (1978) 21 Cal.3d 763, 773, fn. 9; see also *Hosford v. State Personnel Bd.* (1977) 74 Cal.App.3d 302, 307.) The Board may not independently reweigh the evidence or substitute its judgment for that of the Department. (*Kirby v. Alcoholic Beverage Control Appeals Bd.* (1970) 7 Cal.App.3d 126, 129; *Reimel v. Alcoholic Beverage Control Appeals Bd.* (1967) 255 Cal.App.2d 40, 43; *Harris v. Alcoholic Beverage Control Appeals Bd.* (1963) 212 Cal.App.2d 106, 113–114.) All conflicts in the evidence must be resolved in favor of the Department’s decision, and the Board must accept all reasonable inferences supporting that decision. (*Harris, supra*, at p. 113.)

Even where error is shown, the Board may not reverse unless the appellant demonstrates that the error was prejudicial. (*Reimel v. House* (1969) 268 Cal.App.2d 780, 787.) Under the California Constitution, a decision may be set aside only if the error resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13; see *Leal v. Gourley* (2002) 100 Cal.App.4th 963, 968.)

## IV. ANALYSIS

### A. Minor Decoy Law Under Rule 141.

The Department's authority to conduct in-person minor decoy operations is governed by California Code of Regulations, title 4, section 141 (Rule 141). A separate regulation governs delivery-based operations, but this appeal involves only an in-person operation and is therefore controlled exclusively by Rule 141.

Rule 141 begins by articulating a limited purpose: minor decoy operations may be used to apprehend licensees, or their employees or agents, who sell alcoholic beverages to minors, and must be conducted "in a fashion that promotes fairness." (Cal. Code Regs., tit. 4, § 141, subd. (a).) The regulation then gives operative meaning to that fairness requirement by prescribing a defined set of procedural safeguards. (Cal. Code Regs., tit. 4, § 141, subd. (b).)

Subdivision (b) sets forth the "minimum standards" applicable to actions alleging a violation of Business and Professions Code section 25658 based on a decoy purchase. Those standards are specific and enumerated. They require that:

- (1) the decoy be under 20 years of age;
- (2) the decoy display the appearance generally expected of a person under 21 under the actual circumstances presented to the seller;
- (3) the decoy carry valid identification and present it if asked, or carry no identification at all;

- (4) the decoy answer truthfully any questions about age; and
- (5) following a completed sale, the decoy make a face-to-face identification of the seller in the presence of a peace officer.

(*Id.*, subd. (b)(1)–(5).)

Subdivision (c) specifies the consequence of noncompliance: “[f]ailure to comply with this rule shall be a defense to any action brought pursuant to Business and Professions Code section 25658.” (*Id.*, subd. (c).) Read together, the regulation establishes both the Department’s obligations and the scope of the defense available to a licensee. The structure is deliberate: fairness is ensured not through open-ended standards, but through compliance with the particular safeguards Rule 141 enumerates.

Appellate authority has consistently treated this structure as controlling. The courts have held that the Department must strictly comply with the regulation’s express requirements. When the record shows that one of the enumerated safeguards was not satisfied, discipline may not be sustained. The leading case is *Acapulco Restaurants, Inc. v. Alcoholic Beverage Control Appeals Board* (1998) 67 Cal.App.4th 575), in which the Court of Appeal reversed discipline because the required face-to-face identification did not occur. Because the face-to-face safeguard appeared expressly in the regulation, failure to comply with it was fatal to the Department’s case. (*Id.* at p. 581-82.)

At the same time, the courts have been equally clear that the regulation’s requirements are exclusive. Rule 141 identifies the specific conditions that define

a fair in-person minor decoy operation, and neither the Department nor the Board may supplement those conditions by interpretation. Although subdivision (a) speaks in general terms of “fairness,” that concept is given legal effect only through the concrete standards set forth in subdivision (b). The regulation does not authorize the Board to invalidate a decoy operation by imposing additional requirements not found in the text. (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (7-Eleven)* (2003) 109 Cal.App.4th 1687; *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (CVS Garfield Beach)* (2017) 7 Cal.App.5th 628; *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (CVS Tahoe)* (2017) 18 Cal.App.5th 541.

This limitation on the Board's role has been reinforced repeatedly in appellate decisions reviewing Board action under Rule 141. In *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (7-Eleven)*, *supra*, 109 Cal.App.4th 1687 at p. 1697, the Court of Appeal reversed a Board decision that treated the location of the face-to-face identification as dispositive, explaining that while the regulation requires an identification, it does not specify where it must occur. By reading a location requirement into the rule, the Board exceeded Rule 141's text. (*Id.* at p. 1698.)

The same principle was applied in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (CVS Garfield Beach)*, *supra*, 7 Cal.App.5th at p. 631, where the Board concluded that a minor decoy

had an obligation to correct a clerk's mistaken statement about the decoy's age. The Court of Appeal reversed, holding that Rule 141 requires only that a decoy answer questions about age truthfully. (*Id.* at p. 642.) The court concluded that the Board's attempt to impose a broader duty added a requirement not found in Rule 141.

Likewise, in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (CVS Tahoe)*, *supra*, 18 Cal.App.5th at p. 547 the Court of Appeal reversed a Board decision that invalidated a decoy operation based on the distance between the decoy and the clerk during the identification. The court explained that Rule 141 contains no proximity requirement and that the Board may not graft such a condition onto the regulation. (*Id.* at p. 548.)

Taken together, these decisions establish a consistent and narrow rule of law. Rule 141 must be strictly followed, and failure to comply with one of its express requirements is fatal to discipline. Conversely, when the regulation's enumerated requirements are satisfied, the Board may not invalidate a minor decoy operation by imposing additional conditions not found in the rule. The Board's review is therefore confined to the text of Rule 141 and the evidentiary record bearing on compliance with its specific provisions.

## **2. Application of Rule 141 to the Record**

Appellant's argument rests on the contention that the minor decoy did not display the appearance generally expected of a person under 21 years of age

because the decoy allegedly wore a baseball cap during the transaction that was not depicted in the photographs admitted into evidence. Accepting that argument would require the Board to impose an additional requirement not found in Rule 141—namely, that the Department prove the decoy's appearance through photographs that precisely capture every aspect of the decoy's clothing at the moment of sale. Rule 141 contains no such requirement.

The ALJ's findings were grounded in the evidentiary record. The minor decoy, Sanchez, testified regarding his participation in the operation. Sanchez also identified two photographs admitted into evidence: a pre-operation photograph taken shortly before the transaction (Exhibit 8), and a photograph taken during the face-to-face identification in which Sanchez is depicted standing next to appellant's employee (Exhibit 10). Both exhibits were admitted without objection. Notably, Sanchez is not wearing a hat in either photograph.

The ALJ relied on this evidence in making Findings of Fact 5 and 11. Those findings addressed Sanchez's appearance. Sanchez's testimony, together with the admitted photographs, constituted evidence that a reasonable mind could accept as adequate to support the conclusion that Sanchez displayed the appearance generally expected of a person under 21 years of age under the circumstances presented to the seller. The fact that Sanchez testified he could not recall whether he was wearing a hat during the transaction does not negate that evidence, nor does it render the photographs irrelevant or unreliable.

Appellant's position would require the Board to conclude that, absent affirmative proof of every item of clothing worn during the transaction, the Department failed to meet its burden under Rule 141. That approach would improperly supplement the regulation. Rule 141 requires that the decoy display the appearance generally expected of a person under 21; it does not prescribe the way that appearance must be proved, nor does it require photographic evidence that precisely replicates the decoy's appearance at the moment of sale.

Under the substantial evidence standard, the Board may not reweigh the evidence or resolve conflicts differently from the trier of fact. The ALJ was entitled to credit Sanchez's testimony, to consider the admitted photographs, and to draw reasonable inferences from that evidence. Because Findings of Fact 5 and 11 are supported by substantial evidence, the ALJ's conclusions of law—finding compliance with Rule 141 and sustaining the violation section 25658, subdivision (a)—are supported by proper findings of fact.

Appellant has therefore not demonstrated that the Department failed to proceed in the manner required by law or that the decision is unsupported by the findings. Nor has appellant shown prejudice. The appeal asks the Board to impose a requirement not found in Rule 141 and to reweigh evidence the ALJ was entitled to credit. The Board may not do either.

Accordingly, because the Department complied with the requirements expressly set forth in Rule 141, and because appellant's argument would require

the Board to impose an additional condition not contained in the regulation, the ALJ's findings and conclusions must be upheld. The Board's role is limited to applying the regulation as written, not to supplementing it based on how a minor decoy operation might otherwise have been conducted.

## **V. CONCLUSION**

The Department's decision is supported by substantial evidence and reflects a proper application of California Code of Regulations, title 4, section 141.

## **ORDER**

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

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

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

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

# APPENDIX

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

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

HUNG Q. NGUYEN  
TIP TOP LIQUORS  
439 S BASCOM AVENUE  
SAN JOSE. CA 95128

OFF-SALE GENERAL - LICENSE

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

SAN JOSE DISTRICT OFFICE

File: 21-415615

Reg: 25095370

**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 September 3, 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 20, 2025, a representative of the Department will contact you to arrange to pick up the license certificate.



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

Sacramento, California

Dated: September 9, 2025

  
Paul Tupy  
Director

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**SEP 09 2025**

**Alcoholic Beverage Control  
Office of Legal Services**

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Hung Q. Nguyen  
DBA: Tip Top Liquors  
439 South Bascom Avenue  
San Jose, California 95128

Respondent

} File: 21-415615  
}  
} Registration: 25095370  
}  
} License Type: 21  
}  
} Word Count: 9,104  
}  
} Reporter:  
} Tatiana Martindale  
} Kennedy Reporters  
}

Off-Sale General License

PROPOSED DECISION

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter, via videoconference, on July 17, 2025.

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

Rick Warren, Attorney, represented Hung Q. Nguyen. (Respondent).

The Department seeks to discipline the Respondent's license on the grounds that, on or about February 19, 2025, the Respondent, through their agent or employee, Nhung Nguyen, at said premises, sold, furnished, gave or caused to be sold, furnished or given, an alcoholic beverage, to Andrew Sanchez, a person under the age of 21 in violation of Business and Professions Code section 25658(a)<sup>1</sup>. (Exhibit D-1)

The Department further alleged that there is cause for suspension or revocation of the license of the Respondent in accordance with section 24200 and sections 24200(a) and (b). The Department further alleged that the continuance of the license of the Respondent 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 July 17, 2025.

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

**FINDINGS OF FACT**

1. The Department filed the Accusation on March 27, 2025. (Exhibit D-1)
2. On September 7, 2004, the Department issued a type 21, off-sale general license to the Respondent for the above-described location (the Licensed Premises).
2. The following prior Department disciplinary history was established against the Respondent's license:

<b>Date</b>	<b>Violation</b>	<b>Registration Date</b>	<b>Registration Number</b>	<b>Penalty</b>
12/15/2006	25658(a)	01/05/2007	07064755 (Exhibit D-2)	10-day suspension
09/04/2007 and 07/01/2008	Health and Safety Code section 11364.7, 25658(a), 25616, and Penal Code section 381b	08/18/2008	08069466 (Exhibit D-3)	Revocation stayed for 3 years and a 40-day suspension
10/17/2013	25612.5(c)(9)	11/19/2013	13079524 (Exhibit D-4)	10-day suspension, stayed
12/21/2019	25658(a)	04/15/2020	20090017 (Exhibit D-5)	10-day suspension
03/07/2023	25658(a)	09/12/2023	23093652 (Exhibit D-6)	15-day suspension
07/19/2023	25658(a)	10/24/2023	23093869(Exhibit D-7)	25-day suspension

3. Certified documents establishing the violations as described above were received in evidence. (Exhibits D-2 through D-7))
4. Andrew Sanchez (Sanchez) was born on March 14, 2005, and was 19 years old during the investigation on February 19, 2025. On that date, Sanchez served as a minor decoy in an operation conducted by the San Jose Police Department (SJPD) at multiple locations, including at the Licensed Premises.
5. Sanchez appeared, via videoconference, and testified at the hearing in this matter. His appearance at the hearing was generally the same as depicted in an image taken of Sanchez on February 19, 2025. (Exhibit D-8) On the date of the operation, Sanchez wore a black jacket with blue trim, black jeans, a black t-shirt, and white athletic sneakers. Sanchez's face was fully

Hung Q. Nguyen  
DBA: Tip Top Liquors  
File 21-415615  
Reg. 25095370  
Page 3

exposed, and his hair was neatly parted to the side and closely cropped at the temples. Sanchez was clean shaven and he wore black plastic framed prescription glasses. The only visible jewelry Sanchez wore was a gold necklace with no pendants. Sanchez had no visible tattoos. Sanchez was approximately 5 feet, 8 inches tall and 200 pounds during the operation. Sanchez's size and appearance on the date of the operation was substantially the same at the hearing.

6. On February 19, 2025, Sanchez went to the Licensed Premises with officers of the SJPD for the purpose of trying to buy an alcoholic beverage. Sanchez was told to select a common alcoholic beverage. Sanchez was told to carry his identification, show it if requested, and to be truthful regarding his age. Sanchez had his California driver's license on his person and was prepared to present it.

7. Sanchez entered the Licensed Premises. He went to the coolers and selected a single 24 ounce can of Four Loco brand malt beverage. The can Sanchez selected is an alcoholic beverage. Sanchez then approached the register and presented the can of malt beverage to the clerk for purchase. The clerk was a female and she was the only person at the register. The clerk scanned the purchase.

8. The clerk then told Sanchez the total without asking any age-related questions or requesting identification. Sanchez paid the clerk with cash. The Clerk completed the transaction and gave Sanchez change. Sanchez left with the Four Loco malt beverage and the change.

9. Sanchez then approached the SJPD officers who were waiting for him. Sanchez told them what happened. Sanchez then immediately re-entered the Licensed Premises along with SJPD Officer N. Cossey (Cossey). Upon entering, Cossey contacted the clerk who made the sale. Cossey identified himself as a law enforcement officer and explained the reason for their presence was because she had sold alcohol to Sanchez. The clerk identified herself to Cossey as Nhung Nguyen (Nhung). Sanchez was with Cossey when Nhung was contacted. Cossey then asked Sanchez to identify the clerk who made the sale. Sanchez said Nhung sold the alcoholic beverage to him. Nhung was at the counter and approximately four feet away when Sanchez identified Nhung.

10. After he identified Nhung, Sanchez was photographed standing next to her. (Exhibit D-10) From the initial contact of Nhung by Cossey until after this photograph was taken, Sanchez was in the immediate presence of Nhung and Cossey. Nhung was subsequently issued a citation for the sale.

11. Sanchez, based on his 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 Nhung at the Licensed Premises on February 19, 2025, displayed the appearance which would generally be expected of a person less than 21 years of age during his interactions with Nhung. Nhung testified in this matter that the person she made the alcohol sale to looked 25-30 years old and that person was wearing a black hat and did not have a necklace on. During the February 19, 2025, investigation, Nhung testified that she did not request identification or ask

Hung Q. Nguyen  
DBA: Tip Top Liquors  
File 21-415615  
Reg. 25095370  
Page 4

any age-related questions because the purchaser looked to be about 25-30 years old. Nhung testified that she did not believe Sanchez was the person who bought the alcoholic beverage from her. Nhung also testified that the store was extremely busy at the time of the sale.

12. Hung Nguyen (Nguyen) testified for the Respondent in this matter. He is the Licensee/Owner and is involved in the day-to-day operations of the Licensed Premises. Nguyen testified to the practices used at the Licensed Premises to prevent unlawful sales of alcohol. Nguyen testified that he regularly told employees like Nhung that they are supposed to check identifications in any situation where there might be a question about the person being under 21. Nguyen personally trained Nhung after she was hired 8 months prior to the sale in this matter. Nguyen told Nhung to check identifications and to check that the buyer and the person depicted on the identification are the same person. Nguyen has also posted a sign to remind clerks to check identification. The Licensed Premises uses a point-of-sale system to remind clerks about the need to check for identification during alcohol sales. Nguyen expressed frustration in his testimony that there appeared to be no legal consequences to Nhung as a result of the sale that occurred.

### **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, Division 1, Article 22, section 141, commonly referred to as Rule 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 Respondent' license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b) on the basis that on February 19, 2025, the Respondent's clerk, Nhung Nguyen, inside the Licensed Premises, sold an alcoholic beverage to Andrew Sanchez, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 1-12)

6. The Respondent generally argued that the decoy operation at the Licensed Premises failed to comply with rule 141 and, therefore, the Accusation should be dismissed. Specifically, the Respondent argued that the appearance of the decoy did not comply with rule 141(b)(2). This alleged violation, if established, would be an affirmative defense and require dismissal of the Accusation pursuant to rule 141(c).

7. There is no credible evidence supporting the assertion by the Respondent that there was a failure to comply with rule 141. The Department has shown compliance with all of the requirements of rule 141. An example of 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 Sanchez of Nhung 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 beer

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

8. 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.

9. Sanchez and Cossey approached Nhung shortly after she sold the malt beverage to Sanchez. Cossey got her attention, and identified himself as a law enforcement officers investigating a sale of alcohol to a minor. While the sale to Sanchez was discussed between Cossey and Nhung, Sanchez remained in the direct presence of Nhung and the SJPD officer. Nhung was given an ample opportunity to be aware of Sanchez as the identified decoy. During this face-to-face, Sanchez was asked by Cossey about who made the sale to him. In the immediate presence of Nhung, Sanchez identified Nhung as the seller. Nhung clearly came face to face with Sanchez under circumstances that made it clear that Nhung had been identified as the person who sold Sanchez the Four Loco malt beverage and that Sanchez was the minor at issue. Nhung’s testimony about Sanchez wearing a hat and not wearing a necklace was at odds with the credible testimony of Sanchez and Cossey and physical evidence in this matter (Findings of Fact ¶¶ 1-12)

10. None of the evidence presented by the Respondent rebutted the credible evidence presented by the Department that this was a fully compliant identification that allowed Nhung to become aware that Sanchez was the decoy. Respondent has 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 Respondent’s assertion that compliance did not occur is unsupported. (Findings of Fact ¶¶ 1-12)

11. The main thrust of the Respondent’s remaining argument was an unsupported assertion that the appearance of the decoy did not comply with rule 141(b)(2). Sanchez testified in this matter and his appearance matched how he presented to Nhung on the date of the operation. Sanchez had an appearance “which could generally be expected of a person under 21 years of age” which is the standard required by rule 141(b)(2). Sanchez was unremarkable in appearance and looked consistent with his age of 19 years old. Nothing in his physical appearance alone would have given Nhung a basis to reasonably conclude that Sanchez was unquestionably over 21. (Findings of Fact ¶¶ 1-12) Other than the opinion expressed by Nhung that the person she sold alcohol to looked 25-30 years old, the Respondent has offered little in the way of evidence to support this assertion.

As noted in Precedential Decision No. 19-02-E, *7-Eleven, Inc. and Gytari, Inc. (Gytari)* (2019):

“The two key provisions of Rule 141(b)(2) are: first, the decoy’s appearance could generally be expected of a person under the age of 21 (not “average” or “usual”); and second, that the decoy’s appearance is determined based upon the actual circumstances presented to the seller at the time of the alleged offense. Since there is no over-arching principle of “fairness” beyond the five specific criteria listed in subdivision (b) (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (Garfield Beach CVS)* (2017) 7 Cal.App.5th 628, 638), a licensee seeking to meet its burden of establishing the affirmative defense under subdivision (c) may only rest on the language of Rule 141(b)(2). In doing so, if a decoy is actually under 20 years old at the time of the offense (as required by Rule 141(b)(1)), there is a rebuttable presumption that he or she had an appearance that could generally be expected of a person under the age of 21. Therefore, the licensee must provide actual, substantial evidence of indicia of appearing over the age of 21, under the actual circumstances presented to the seller at the time of the violation, to overcome such a presumption.”

12. Sanchez was an unremarkable height and weight. His clothing was consistent with a 19-year old’s attire. The glasses he wore were very standard, plastic rimmed glasses with clear lenses that allowed scrutiny of his face with little obstruction. He was clean shaven and his hair did not cover his visage. None of the statements of the Respondent’s witness, Nhung, supported the conclusion that Sanchez looked like a 25-30-year-old. No credible evidence by the Respondent rebutted the presumption that Sanchez had an appearance that could generally be expected of a person under the age of 21. The actual circumstances presented to Nhung compelled her to check his age. She failed to do so. The Department has established compliance with rule 141 and the Respondent has failed to rebut this evidence. (Findings of Fact ¶¶ 1-12)

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

### PENALTY

The presumptive penalty, pursuant to Rule 144,<sup>[1]</sup> for a third violation of section 25658(a) within a 36-month period is revocation, absent aggravating and mitigating factors. The Department recommended the Respondent’s license be revoked because of the absence of mitigation and the additional aggravating factor of a total of six sustained accusations against the Respondent during its licensure.

Further, the Respondent has shown little in the form of organized policies and procedures to prevent reoccurrences. The result has been repeated sustained accusations against the

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<sup>[1]</sup> All rules referred to herein are contained in Title 4 of the California Code of Regulations unless otherwise noted.

Hung Q. Nguyen  
DBA: Tip Top Liquors  
File 21-415615  
Reg. 25095370  
Page 8

Respondent, with most of the accusations involving underage sales in violation of section 25658(a). The Respondent has testified that it has told its employees to avoid underage sales and check identifications, but he has not adopted an organized approach that would minimize the errors and problematic discretion that have allowed repeated underage sales to occur. There are no significant factors in mitigation applicable to this violation that would flow from the Respondent's insufficient efforts to avoid violations. Mitigation has not been established and aggravation has.

The penalty recommended herein complies with rule 144.

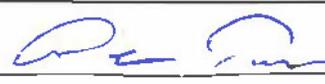
**ORDER**

Count One of the Accusation is sustained. The Respondent's off-sale general license is revoked.

Dated: July 31, 2025



Alberto Roldan  
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: 
Date: <u>09/03/2025</u>

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

<p>IN THE MATTER OF THE ACCUSATION AGAINST:</p> <p>HUNG Q. NGUYEN TIP TOP LIQUORS 439 S BASCOM AVENUE SAN JOSE. CA 95128</p> <p>OFF-SALE GENERAL - LICENSE</p> <p>under the Alcoholic Beverage Control Act.</p>	<p>File: 21-415615</p> <p>Reg: 25095370</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 September 9, 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:

HUNG Q. NGUYEN  
TIP TOP LIQUORS  
439 S BASCOM AVENUE  
SAN JOSE. CA 95128

RICHARD D. WARREN, ATTORNEY AT LAW  
929 FRESNO AVENUE  
BERKELEY, CA 94707-2304

9589 0710 5270 2460 7022 17

9589 0710 5270 2460 7022 00

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 September 9, 2025 at Sacramento, California.

  
Mark Kinyon

SAN JOSE DISTRICT OFFICE (INTEROFFICE MAIL)  
 DIVISION OFFICE (INTEROFFICE MAIL)

## DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL



August 12, 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

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

<p>IN THE MATTER OF THE ACCUSATION AGAINST:</p> <p>HUNG Q. NGUYEN TIP TOP LIQUORS 439 S BASCOM AVENUE SAN JOSE. CA 95128</p> <p>OFF-SALE GENERAL - LICENSE</p> <p>under the Alcoholic Beverage Control Act.</p>	<p>File: 21-415615</p> <p>Reg: 25095370</p> <p style="text-align:center">DECLARATION OF SERVICE BY MAIL</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------

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 12, 2025, I served, by regular mail (unless otherwise indicated) a true copy of the following documents:

PROPOSED DECISION

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

HUNG Q. NGUYEN  
TIP TOP LIQUORS  
439 S BASCOM AVENUE  
SAN JOSE. CA 95128

RICHARD D. WARREN, ATTORNEY AT LAW  
929 FRESNO AVENUE  
BERKELEY, CA 94707-2304

BRYAN ROUSE  
3927 LENNANE DRIVE, SUITE 100  
SACRAMENTO, CA 95834

MATTHEW GAUGHAN  
CHIEF COUNSEL  
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 August 12, 2025 at Sacramento, California.

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

SAN JOSE DISTRICT OFFICE (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:** }

Hung Q. Nguyen  
Db: Tip Top Liquors  
439 S Bascom Avenue  
San Jose, CA 95128

Off-Sale General - License  
Under the Alcoholic Beverage Control Act.

}  
}  
} FILE: 21-415615  
} REG: 25095370  
}

} **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 June 5, 2025, I mailed from Sacramento:

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

Hung Q. Nguyen  
Db: Tip Top Liquors  
439 S Bascom Avenue  
San Jose, CA 95128

Richard D. Warren, Attorney at Law  
Law Offices of Richard D. Warren  
929 Fresno Avenue  
Berkeley, CA 94707-2304

**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)  
 San Jose District Office (Inter-Departmental Mail)



Paul Tupy  
Director



Gavin Newsom  
Governor

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

August 7, 2025

In the Matter of the Accusation Against:

Hung Q. Nguyen  
DBA: Tip Top Liquors  
439 South Bascom Avenue  
San Jose, California 95128

File: 21-415615  
Reg: 25095370

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

RECEIVED

AUG 12 2025

Alcoholic Beverage Control  
Administrative Records Office