

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

**AB-9687**

File: 21-549021; Reg: 17085725

GARFIELD BEACH CVS, LLC and LONGS DRUG STORES CALIFORNIA, LLC,  
dba CVS Pharmacy #9322  
2085 Fair Oaks Boulevard,  
Sacramento, CA 95825,  
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the Dept. Hearing: Alberto Roldan

Appeals Board Hearing: December 6, 2018  
Sacramento, CA

**ISSUED JANUARY 29, 2019**

*Appearances:* *Appellants:* Ralph Barat Saltsman and Donna J. Hooper, of  
Solomon, Saltsman & Jamieson, as counsel for Garfield Beach  
CVS, LLC and Longs Drug Stores California, LLC,

*Respondent:* Joseph J. Scoleri, III, as counsel for the Department  
of Alcoholic Beverage Control.

**OPINION**

Garfield Beach CVS, LLC and Longs Drug Stores California, LLC, doing  
business as CVS Pharmacy #9322, appeal from a decision of the Department of  
Alcoholic Beverage Control<sup>1</sup> suspending their license for 15 days because their clerk  
sold an alcoholic beverage to a police minor decoy, in violation of Business and  
Professions Code section 25658, subdivision (a).

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<sup>1</sup>The decision of the Department, dated January 23, 2018, is set forth in the  
appendix.

## FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on April 26, 2016. There is no prior record of discipline against the license.

On July 5, 2017, the Department filed a single-count accusation against appellants charging that, on November 21, 2016, appellants' clerk, Andrea Xochilt Carranza (the clerk), sold an alcoholic beverage to 19-year-old Cole Tatum. Although not noted in the accusation, Tatum was working as a minor decoy for the Sacramento Police Department (SPD) at the time.

At the administrative hearing held on November 28, 2017, documentary evidence was received and testimony concerning the sale was presented by Tatum (the decoy) and by Yul Alameda, an officer with the ABC Liason Unit of the SPD. Appellants presented no witnesses.

Testimony established that on November 21, 2016, the decoy entered the licensed premises and went to the coolers where he selected an 18-pack of Coors Light beer in cans. He took the beer to the register and presented it to the clerk, who then asked for his identification. The decoy showed the clerk his California driver's license, which had a portrait orientation. The license contained his correct date of birth — showing him to be 19 years of age — and a red stripe indicating "AGE 21 IN 2018." (Exh. D-2.) The clerk rang up the beer and completed the sale without asking any age-related questions.

The decoy exited the premises with the beer, went to the vehicle where the SPD officers were waiting, and told them what had transpired. Officer Alameda and his team returned to the premises with the decoy. Just inside, the decoy pointed out the clerk to the officers from a distance of approximately 25 feet. The group approached the clerk

and the decoy identified her again — specifically, the decoy was asked by one of the officers if the clerk in front of them was the person he had pointed out as the seller. The decoy said it was. The officers then asked the clerk to step to the side, and asked her if there was somewhere they could speak privately. One of the officers explained the violation to the clerk, then they all moved to a secluded hallway to continue the conversation. The clerk was asked in the decoy's presence why she sold beer to him, then the two of them were photographed together (exh. D-3) with the decoy holding the beer in one hand and his ID in the other. The clerk was subsequently cited.

The administrative law judge (ALJ) issued his proposed decision on December 6, 2017, sustaining the accusation and recommending a 15-day suspension of the license. The proposed decision was adopted in its entirety by the Department on January 8, 2018, and a Certificate of Decision was issued on January 23, 2018.

Appellants then filed a timely appeal contending there was not compliance with rule 141(b)(5).<sup>2</sup>

## DISCUSSION

Appellants contend that the face-to-face identification of the clerk failed to comply with the requirements of rule 141(b)(5). (AOB at pp. 4-7.)

Rule 141(b)(5) provides:

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.

This rule provides an affirmative defense. The burden is, therefore, on appellants to

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<sup>2</sup>References to rule 141 and its subdivisions are to section 141 of title 4 of the California Code of Regulations, and to the various subdivisions of that section.

show non-compliance. (*Chevron Stations, Inc.* (2015) AB-9445; *7-Eleven, Inc./Lo* (2006) AB-8384.) The rule requires "strict adherence." (See *Acapulco Restaurants, Inc.* (1998) 67 Cal.App.4th 575, 581 [79 Cal.Rptr.2d 126] [finding that no attempt, reasonable or otherwise, was made to identify the clerk in that case].) The plain language of the rule in no way forbids the officers to first make contact with the suspected seller.

In *Chun* (1999) AB-7287, this Board made the following observation about the purpose of face-to-face identifications:

The phrase "face to face" means that the two, the decoy and the seller, in some reasonable proximity to each other, acknowledge each other's presence, by the decoy's identification, and the seller's presence such that the seller is, or reasonably ought to be, knowledgeable that he or she is being accused and pointed out as the seller.

(*Id.* at p. 5.)

In *7-Eleven, Inc./M&N Enterprises, Inc.* (2003) AB-7983, the Board clarified application of the rule in cases where, as here, an officer initiates contact with the clerk following the sale:

As long as the decoy makes a face-to-face identification of the seller, and there is no proof that the police misled the decoy into making a misidentification or that the identification was otherwise in error, we do not believe that the officer's contact with the clerk before the identification takes place causes the rule to be violated.

(*Id.* at pp. 7-8; see also *7-Eleven, Inc./Morales* (2014) AB-9312; *7-Eleven, Inc./Paintal Corp.* (2013) AB-9310; *7-Eleven, Inc./Dars Corp.* (2007) AB-8590; *West Coasts Products LLC* (2005) AB-8270; *Chevron Stations, Inc.* (2004) AB-8187.)

The court of appeals has found compliance with rule 141(b)(5) even where police escorted a clerk outside the premises in order to complete the identification. (See *Dept.*

*of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd. (Keller)* (2003) 109 Cal.App.4th 1687, 1697 [3 Cal.Rptr.3d 339] [finding that the rule leaves the location of the identification to the discretion of the peace officer].)

More recently, the court found rule 141(b)(5) was not violated when:

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.

*(Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd. (CVS)* (2017) 18 Cal.App.5th 541, 547 [226 Cal.Rptr.3d 527, 531].) The court explained that the exact moment of the identification could not be severed from the entire identification procedure, which included the decoy pointing out the clerk to the police, the decoy accompanying the police officer to the counter, the officer informing the clerk she had sold beer to the minor at his side, and the clerk and decoy being photographed together. (*Id.* at p. 532.) The court said, "The clerk in these circumstances certainly knew or reasonably ought to have known that she was being identified" because of the totality of the circumstances. (*Ibid.*)

The ALJ made the following findings on the face-to-face identification in this case:

9. Tatum exited the Licensed Premises with the 18-pack of Coors Light beer. He went to the vehicle where the law enforcement officers were waiting. Tatum told the officers what had just occurred. SPD Officer Yul Alameda (Alameda) and his team returned to the Licensed Premises with Tatum. While standing just inside the entrance, Tatum pointed out the clerk while she was working at the register to the right of the entrance. At this point, they were approximately 25 feet from the clerk. Alameda, Tatum and the rest of the team approached the clerk. While they walked up to her, Tatum identified her again. One of the law enforcement officers

told her they were there because she had sold alcohol to a minor. For privacy, Alameda, Tatum and the rest of the law enforcement team then walked to a secluded hallway with the clerk to talk with her further. The clerk was asked in Tatum's presence why she sold beer to him. The clerk was subsequently photographed next to Tatum. Tatum held the beer he had purchased in one hand and the identification he had presented in the other hand while he posed next to the clerk. (Exhibit D-3) The clerk was identified by Alameda as Andrea Xochilt Carranza and issued a citation for the sale.

(Finding of Fact, ¶ 9.) Based on these findings, the ALJ reached the following conclusions:

5. The Respondent argued that the decoy operation at the Licensed Premises failed to comply with rule 141<sup>[fn.]</sup> and, therefore, the accusation should be dismissed pursuant to rule 141(c). Specifically, the Respondent argued that the face to face identification failed to comply with rule 141(b)(5). This violation, if established, would be an affirmative defense.

6. However, there is no credible evidence supporting this assertion by the Respondent that there was a failure to comply with rule 141. Respondent equated the investigation in this matter to the circumstances that occurred in *Acapulco Restaurants, Inc. v. Alcoholic Beverages Control Appeals Bd.* (1998) 67 Cal.App.4th 575. In that case, there was no face to face identification, whatsoever. The circumstances of that case never established a baseline standard for what was a compliant face to face identification as required by rule 141(b)(5). More helpful to this analysis is the decision in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control appeals Bd.* (2003) 109 Cal.App.4th 1687 that holds that the regulation at "section 141, subdivision (b)(5), ensures - admittedly not as artfully as it might - that the seller will be given the opportunity, soon after the sale, to come "face-to-face" with the decoy." *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2003) 109 Cal.App.4th 1687

7. While, general due process considerations demand a fair identification be facilitated by law enforcement, this case makes clear that this particular regulation is focused on the more narrow 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.

8. Tatum pointed out the clerk in this matter more than once. He testified to first identifying her to the officers at the entranceway but he also credibly testified to identifying her as they walked up to her as a group. Tatum then stood in the immediate presence of Carranza while the sale to him was discussed by the law enforcement team with her. Tatum and Carranza were then photographed next to each other. Their arms were touching as they stood next to each other for the photograph. (Findings of Fact ¶¶ 6-10) Carranza clearly came face to face with Tatum under circumstances that made it clear that she had been identified as the person who sold him beer even though he was underage.

9. Neither the clerk nor any other witnesses for the Respondent testified to rebut the credible evidence presented by the Department that this was a fully compliant identification that allowed Carranza to become aware that Tatum 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), the Respondent's assertions that compliance did not occur are unsupported.

(Conclusions of Law, ¶¶ 5-9.)

This Board is bound by the findings in the Department's decision so long as those findings are supported by substantial evidence. The standard of review is as follows:

We cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department's findings of fact. [Citations.] We must indulge in all legitimate inferences in support of the Department's determination. Neither the Board nor [an appellate] court may reweigh the evidence or exercise independent judgment to overturn the Department's factual findings to reach a contrary, although perhaps equally reasonable, result. [Citations.] The function of an appellate board or Court of Appeal is not to supplant the trial court as the forum for consideration of the facts and assessing the credibility of witnesses or to substitute its discretion for that of the trial court. An appellate body reviews for error guided by applicable standards of review.

*(Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd. (Masani) (2004)*

118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826].)

The Board is prohibited from reweighing the evidence or exercising its independent judgment to overturn the Department's factual findings to reach a contrary,

although perhaps equally reasonable, result. (*ibid.*) Looking at the entire identification procedure — including: the decoy pointing out the clerk to the officers - twice; the police officers informing the clerk she had sold beer to a minor; the officers discussing the sale in the hallway with the clerk; and the clerk and decoy being photographed together — the clerk knew, or reasonably should have known, that she was being identified as the person who sold alcohol to a minor. As in *CVS*, the clerk here “had ample opportunity to observe the minor and to object to any perceived misidentification.” (*CVS, supra*, at p. 547.)

The face-to-face identification in this matter fully complies with rule 141(b)(5) and the accusation was properly sustained.

ORDER

The decision of the Department is affirmed.<sup>3</sup>

BAXTER RICE, CHAIRMAN  
MEGAN McGUINNESS, 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 shall become effective 30 days following the date of the filing of this order as provided by section 23090.7 of said code.

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.



# APPENDIX

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

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

**GARFIELD BEACH CVS, LLC AND  
LONGS DRUG STORES CALIFORNIA, LLC  
CVS PHARMACY #9322  
2085 FAIR OAKS BLVD  
SACRAMENTO, CA 95825**

**OFF-SALE GENERAL - LICENSE**

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

**SACRAMENTO DISTRICT OFFICE**

**File: 21-549021**

**Reg: 17085725**

**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 January 8, 2018. 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. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005, or mail your written appeal to the Alcoholic Beverage Control Appeals Board, 1325 J Street, Suite 1560, Sacramento, CA 95814.

On or after March 5, 2018, a representative of the Department will contact you to arrange to pick-up the license certificate.

Sacramento, California

Dated: January 23, 2018



**Matthew D. Botting  
General Counsel**

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Garfield Beach CVS, LLC and  
Longs Drug Stores California, LLC  
dba CVS Pharmacy #9322  
2085 Fair Oaks Blvd.  
Sacramento, California 95825

Respondent

Off-Sale General License

} File: 21-549021  
}  
} Registration: 17085725  
}  
} License Type: 21  
}  
} Page Count: 55  
}  
} Reporter:  
} Myra Pish-CSR # 11613  
} California Reporting Services  
}  
} **PROPOSED DECISION**

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Sacramento, California, on November 28, 2017.

Joseph Scoleri, Attorney, represented the Department of Alcoholic Beverage Control (Department).

Donna Hooper, Attorney, represented Respondent Garfield Beach CVS, LLC and Longs Drug Stores California, LLC (Respondent).

The Department seeks to discipline the Respondent's license on the grounds that, on or about November 21, 2016 the Respondent, through their agent or employee, Andrea Xochilt Carranza, sold, furnished, or gave alcoholic beverages to Cole Tatum, an individual under the age of 21 in violation of Business and Professions Code section 25658(a).<sup>1</sup> (Exhibit D-1.)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on November 28, 2017.

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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 July 5, 2017. Subsequent to this filing, respondent sought additional discovery from the Department. The Department responded to the request for discovery but did not provide the requested home address of the decoy. The Department instead provided the law enforcement contact information of the agency that utilized the decoy, the Sacramento Police Department (SPD).
2. The Respondent objected to this as an insufficient disclosure and filed a motion to compel discovery. The Respondent's motion, the Department's opposition to the motion and the order denying the motion to compel were received in this matter (Exhibit L-1) but no additional evidence or testimony was taken at the hearing regarding the issue of discovery.
3. On April 26, 2016 the Department issued a type 21, off-sale general license to the Respondent for the above-described location (the Licensed Premises). There is no record of prior Department discipline against the Respondent's license.
4. Cole Tatum (Tatum) was born on March 25, 1997 and was 19 years old at the time of the investigation on November 21, 2016. On that date, Tatum served as a minor decoy in an operation conducted by the SPD at a series of locations, including the Licensed Premises.
5. Tatum appeared and testified at the hearing. On November 21, 2016 his appearance was as depicted in a photograph that was taken during the operation (Exhibit D-4) where he was wearing a quilted jacket over a t-shirt and a pair of black trousers. His face was fully exposed and he was clean shaven with a short haircut. He had no visible tattoos. Tatum is 5 feet 8 inches tall and approximately 140 pounds according to his driver's license information. His appearance at the hearing was consistent with this information. Tatum credibly testified that his size and appearance on the date of the operation was essentially the same except for his hair being slightly shorter during the hearing.
6. On November 21, 2016 Tatum entered the Licensed Premises for the purpose of attempting to purchase alcohol. Prior to entering, he was instructed to purchase a nationally recognized beer. In addition, he was told to carry his identification, to be truthful regarding his age and to provide his driver's license, if asked.
7. Tatum went into the Licensed Premises and found where the beer was. He selected an 18-pack of Coors Light beer cans. Tatum took his selection to the line for the female clerk who was working at one of the registers. Tatum was then assisted by this clerk and he presented the 18-pack of Coors Light beer for purchase.

8. This clerk was the same person in the photo that was later taken of Tatum standing next to the clerk that served him. (Exhibit D-3) The clerk asked for Tatum's identification as she started the transaction for the beer. Tatum took out his identification and presented it to the clerk. Because he was still under 21, his license was portrait rather than landscape style and it indicated in a red band under his date of birth that he would not be 21 until 2018. (Exhibit D-2) Despite this information, no further questions were asked of Tatum about his age by the clerk. Tatum did not recall if the clerk actually took his license from him when he presented it. He would have yielded it to the clerk, if the clerk were to pull it from him because that regularly occurred when he presented his identification on prior decoy operations. The clerk then rang up the beer and presented Tatum the cost. Tatum paid for the beer. Tatum was given change by the clerk along with the beer purchase.

9. Tatum exited the Licensed Premises with the 18-pack of Coors Light beer. He went to the vehicle where the law enforcement officers were waiting. Tatum told the officers what had just occurred. SPD Officer Yul Alameda (Alameda) and his team returned to the Licensed Premises with Tatum. While standing just inside the entrance, Tatum pointed out the clerk while she was working at the register to the right of the entrance. At this point, they were approximately 25 feet from the clerk. Alameda, Tatum and the rest of the team approached the clerk. While they walked up to her, Tatum identified her again. One of the law enforcement officers told her they were there because she had sold alcohol to a minor. For privacy, Alameda, Tatum and the rest of the law enforcement team then walked to a secluded hallway with the clerk to talk with her further. The clerk was asked in Tatum's presence why she sold beer to him. The clerk was subsequently photographed next to Tatum. Tatum held the beer he had purchased in one hand and the identification he had presented in the other hand while he posed next to the clerk. (Exhibit D-3) The clerk was identified by Alameda as Andrea Xochilt Carranza and issued a citation for the sale.

10. Tatum had served as a volunteer decoy on multiple prior operations for SPD since he started working for SPD as a student assistant. Tatum appeared his chronological age at the time of the decoy operation. 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 Carranza at the Licensed Premises on November 21, 2016, Tatum displayed the appearance which would generally be expected of a person less than 21 years of age during his interactions with her. Carranza did not testify in this matter to explain her age related impressions of Tatum or why she sold Tatum alcohol after he presented a portrait style driver's license that clearly depicted him as being under 21 years of age.

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

### CONCLUSIONS OF LAW

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

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

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

4. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b) on the basis that on November 21, 2016 the Respondent's clerk, Andrea Xochilt Carranza (Carranza), inside the Licensed Premises, sold an alcoholic beverage to Cole Tatum, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 4-10)

5. The Respondent argued that the decoy operation at the Licensed Premises failed to comply with rule 141<sup>2</sup> and, therefore, the accusation should be dismissed pursuant to rule 141(c). Specifically, the Respondent argued that the face to face identification failed to comply with rule 141(b)(5). This violation, if established, would be an affirmative defense.

6. However, there is no credible evidence supporting this assertion by the Respondent that there was a failure to comply with rule 141. Respondent equated the investigation in this matter to the circumstances that occurred in *Acapulco Restaurants, Inc. v. Alcoholic Beverages Control Appeals Bd.* (1998) 67 Cal.App.4th 575. In that case, there was no face to face identification, whatsoever. The circumstances of that case never established a baseline standard for what was a compliant face to face identification as required by rule 141(b)(5). More helpful to this analysis is the decision in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2003) 109 Cal.App.4th

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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.

1687 that holds that the regulation at “section 141, subdivision (b)(5), ensures-admittedly not as artfully as it might-that the seller will be given the opportunity, soon after the sale, to come “face-to-face” with the decoy.” *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2003) 109 Cal.App.4th 1687, 1698

7. While, general due process considerations demand a fair identification be facilitated by law enforcement, this case makes clear that this particular regulation is focused on the more narrow 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.

8. Tatum pointed out the clerk in this matter more than once. He testified to first identifying her to the officers at the entranceway but he also credibly testified to identifying her as they walked up to her as a group. Tatum then stood in the immediate presence of Carranza while the sale to him was discussed by the law enforcement team with her. Tatum and Carranza were then photographed next to each other. Their arms were touching as they stood next to each other for the photograph. (Findings of Fact ¶¶ 6-10) Carranza clearly came face to face with Tatum under circumstances that made it clear that she had been identified as the person who sold him beer even though he was underage.

9. Neither the clerk nor any other witnesses for the Respondent testified to rebut the credible evidence presented by the Department that this was a fully compliant identification that allowed Carranza to become aware that Tatum 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), the Respondent’s assertions that compliance did not occur are unsupported.

10. Further, Tatum testified in this matter and his appearance matched the appearance he presented to the clerk on the date of the operation. His appearance was consistent with a person under the age of 21. As previously noted, the clerk did not testify to establish facts suggesting an identification issue or whether there was anything in Tatum’s actions, manner, or appearance that led her to reasonably conclude that he was over 21.

Garfield Beach CVS, LLC and  
Longs Drug Stores California, LLC  
dba CVS Pharmacy #9322  
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### **PENALTY**

The Department recommended that the Respondent's license be suspended for a period of 20 days which is an upward departure from the standard penalty. This argument was based on the short period of licensure at this Licensed Premises and its proximity to California State University, Sacramento. Other than proximity of over a mile from the entrance and across the H Street Bridge, no evidence was offered by the Department to establish that this particular Licensed Premises was utilized in high numbers by the student population or that this was presented as a special condition or consideration during the licensure of the Respondent's business. As such, without more of a nexus, this cannot be considered a factor in aggravation. The extremely short period of licensure was established but is more accurately characterized as the lack of a factor in mitigation rather than an aggravating factor.

The Respondent argued for but failed to present evidence showing that established and enforced policies to prevent sales of alcoholic beverages to underage individuals were in place at this Licensed Premises. The Respondent also argued for but failed to show evidence that the Respondent's overall exercise of privileges pursuant to the Act reflected a pattern of general compliance that would show this incident to be a deviation from their normal way of operating. As such, these cannot be appropriate factors in mitigation to be weighed in this matter.

There appear to be no factors in aggravation or mitigation applicable to this violation. The penalty recommended herein complies with rule 144.



Garfield Beach CVS, LLC and  
Longs Drug Stores California, LLC  
dba CVS Pharmacy #9322  
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**ORDER**

The Respondents' off-sale general license is hereby suspended for a period of 15 days.

Dated: December 6, 2017



Alberto Roldan  
Administrative Law Judge

<input checked="" type="checkbox"/> - Adopt
<input type="checkbox"/> Non-Adopt: _____
By: <u>Joseph A. Appelsmith</u>
Date: <u>1/8/18</u>