

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

AB-9586

File: 21-257061 Reg: 15083196

HAWAII SUPER MARKET, INC.,
dba Hawaii Supermarket
120 East Valley Boulevard, San Gabriel, CA 91776-3544,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: D. Huebel

Appeals Board Hearing: August 3, 2017
Los Angeles, CA

ISSUED AUGUST 17, 2017

Appearances: *Appellant:* Melissa H. Gelbart and Donna J. Hooper, of Solomon Saltsman & Jamieson, as counsel for Hawaii Super Market, Inc.
Respondent: Jonathan Nguyen and Jennifer M. Casey as counsel for the Department of Alcoholic Beverage Control.

OPINION

Hawaii Super Market, Inc., doing business as Hawaii Supermarket (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ suspending its license for 10 days, with all 10 days conditionally stayed, because its clerk sold an alcoholic beverage to a Department minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

1. The decision of the Department, dated April 22, 2016, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on February 22, 1991. On October 23, 2015, the Department filed an accusation charging that appellant's clerk, Yujuan Feng (the clerk), sold an alcoholic beverage to 18-year-old Alvin C. Kuo on May 18, 2015. Although not noted in the accusation, Kuo was working as a minor decoy for the Department of Alcoholic Beverage Control at the time.

On December 8, 2015, appellant filed and served on the Department a Request for Discovery pursuant to Government Code section 11507.6 demanding the names and addresses of all witnesses. On December 18, 2015, the Department responded by providing the address of its Monrovia District Office in lieu of the decoy's home address. On December 12, 2016, appellant sent a letter to the Department demanding it furnish the decoy's contact information by December 30, 2015. On December 26, the Department responded and asserted that the contact information for its Monrovia District Office was sufficient.

On January 5, 2016, appellant filed a Motion to Compel Discovery. The same day, the Department responded and opposed the motion. On January 14, 2016, Chief ALJ John W. Lewis issued an order denying appellant's Motion to Compel.

The administrative hearing proceeded on January 26, 2016. Documentary evidence was received, and testimony concerning the sale was presented by Kuo (the decoy) and by Agent Salvador Zavala of the Department of Alcoholic Beverage Control. Appellant presented no witnesses.

At the beginning of the hearing, appellant requested a continuance in order to review photographs newly disclosed by the Department. Appellant argued it needed

additional time to review the photographs and to conduct an investigation for any additional photographs not produced during discovery.

The Department opposed the requested continuance. It argued the photographs were only produced by Agent Zavala that morning, and that Department counsel had no prior knowledge of them. Moreover, the Department argued it had no intention of using the new photographs as evidence, and further, the photographs contained no new information. It argued appellant would suffer no prejudice if its request for a continuance were denied.

Appellant argued there was a discrepancy in the decoy's appearance—specifically, what the decoy was wearing—between the new photographs and those produced during discovery.

The Department responded that the only difference in the new photos was that the decoy was wearing glasses, which he did not wear in the photo taken with the clerk. The Department pointed out, however, that other evidence already known to appellant—specifically, appellant's own surveillance video—established the decoy's appearance with glasses. Thus, according to the Department, the new photos provided no new information meriting a continuance.

The ALJ found that based on its own surveillance video, appellant was aware, or should have been aware, that the decoy wore glasses during the transaction. The ALJ therefore denied appellant's request for a continuance.

Testimony established that on the date of the operation, Agent Zavala entered the licensed premises. The decoy entered 30 seconds thereafter. The decoy went to the alcoholic beverage cooler and selected a 25-ounce can of Budweiser beer. Beer is an

alcoholic beverage. The decoy took the can of beer and stood in line at check stand number 10. There were three people in line in front of the decoy, and one customer behind him. Agent Zavala stood 10 feet west of check stand number 10, with a clear, unobstructed view of the decoy and the clerk. The decoy had his valid identification card on him, ready to provide it to the clerk upon request and answer truthfully any age-related questions.

At the counter, the decoy set the beer down on the conveyor belt. The clerk scanned the beer and told the decoy the cost of the beer. The decoy paid the clerk, who gave the decoy some change and bagged the beer. The clerk did not ask for identification, nor did she ask any age-related questions. The decoy then exited the store with the bagged can of Budweiser beer, the receipt, and change.

Agent Zavala was inside the store during this entire time and witnessed these events. Agent Zavala and the decoy did not communicate with or acknowledge each other while in the licensed premises. Zavala exited the store soon after the decoy.

Agent Zavala reentered the licensed premises with the decoy, another agent, and another decoy. The other decoy had no involvement in the operation. Zavala approached check stand number 10 and contacted the clerk. He identified himself as an officer and explained the violation to the clerk. He then removed the clerk to the area just west of check stand number 10.

Agent Zavala asked the decoy to identify the person who sold him the beer. The decoy looked and pointed at the clerk and said that she had. The decoy and the clerk were standing two feet apart, facing and looking at each other at the time of this identification. The clerk was focused on the decoy and was not helping any customers

at the time of the face-to-face identification. A photo of the clerk and the decoy was taken after the face-to-face identification. Although the clerk spoke broken English, she understood she was being identified as a person who sold an alcoholic beverage to a minor.

Agent Zavala questioned the clerk after the face-to-face identification. The clerk said she thought the decoy looked old enough to buy beer. She gave no explanation as to why she thought he looked old enough. Zavala asked the clerk to explain the store process when a customer buys beer or an alcoholic beverage. The clerk explained the licensed premises' policy requires she scan the beer and verify the customer's age by asking for the customer's identification. The clerk admitted that, during the sales transaction with the decoy, she entered a random birthdate of January 1, 1950, into the register when it requested the customer date of birth. Zavala and the clerk communicated in English and understood each other.

The clerk was issued a citation after the face-to-face identification. The clerk did not appear and did not testify at the hearing.

After the hearing, the Department issued its decision, which determined that the violation charged was proved and no defense was established.

On March 21, 2016, following submission of the proposed decision, the Department's Administrative Hearing Office sent a letter to appellant and to Department counsel offering both parties the opportunity to comment on the proposed decision. That letter stated:

Administrative Records Secretary and Concerned Parties:

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

All concerned parties and their attorneys of record are being sent a copy of this Proposed Decision. All concerned parties and attorneys of record are hereby informed that you may submit comments regarding this Proposed Decision to the Director for consideration prior to any action being taken by the Director. Comments to the Director regarding this Proposed Decision shall be mailed to the Administrative Records Secretary. Additional comments submitted for review by the Director, if any, must also be submitted to all parties and their attorneys. For the convenience of all concerned, a list of those parties and their addresses is attached.

Pursuant to General Order 2016-02, the Administrative Records Secretary will hold this Proposed Decision until 14 days after the date of this letter. After that the Administrative Records Secretary will submit this Proposed Decision along with any comments received from concerned parties to the Director for consideration.

(Letter from John W. Lewis, Chief Admin. Law Judge, Dept. of Alcoholic Bev. Control, Mar. 21, 2016 [hereinafter "Comment Letter"].) As suggested in the final paragraph, the Comment Letter reflected a comment procedure adopted by the Department pursuant to its General Order 2016-02. (Dept. of Alcoholic Bev. Control, "GO-Ex Part and Decision Review," Gen. Order 2016-02, at § 3, ¶¶ 5-6 (eff. Mar. 1, 2016) [hereinafter "General Order"].)

On April 1, 2016, counsel for appellant submitted "Comments to the Director re Proposed Decision," which challenged the legality of the comment procedure itself. The Department submitted no comments.

Ultimately, the Department adopted the proposed decision without changes.

Appellant then filed this appeal contending (1) the ALJ prejudiced appellant by failing to provide a meaningful opportunity to review late discovery; (2) the ALJ abused her discretion by denying appellant's motion to compel the decoy's home address; and (3) the Department's comment procedure constitutes an underground regulation, violates the APA, and encourages illegal ex parte communications.

DISCUSSION

I

Appellant contends the ALJ prejudiced it by refusing to grant its request for a continuance. (App.Br., at p. 7.) Appellant argues it was entitled to a continuance because the Department waited until "the day of the hearing to . . . produce additional photos of the decoy" that fell under appellant's discovery request. (App.Br., at p. 7.)

It is undisputed that the Department provided new photographs, supplied by Agent Zavala, to appellant's counsel immediately before the administrative hearing. (See RT at pp. 7-8; App.Br., at p. 6; see also Dept.Br., at p. 4.) According to appellant, these new photographs were "critical" to its defense because they were taken at the moment the sale occurred. (App.Br., at p. 8; see also RT at p. 8.) In its oral request for a continuance made before the ALJ at the administrative hearing, appellant argued there was "a discrepancy between the decoy's appearance, what he is wearing, between that photograph and the photo that was taken after the sale." (RT at p. 8.) Appellant argues that without the requested continuance, it was deprived of "the opportunity to meaningfully review the photographs of the operation." (App.Br., at p. 7.)

At the hearing, the Department opposed appellant's request for a continuance. It argued the photos were not previously disclosed in discovery because Department counsel was unaware of their existence; they were provided to Department counsel by Agent Zavala on the morning of the hearing and were not mentioned in Agent Zavala's report. (RT at pp. 7-8.)

The Department further argues the ALJ's denial of the continuance was a proper exercise of her discretion under section 11524 of the Government Code. (Dept.Br., at

p. 4.) According to the Department, the only discrepancy in the decoy's appearance is that he wore glasses during the sale, but was not wearing them when he was photographed with the clerk. (Dept.Br., at p. 5; see also RT at p. 22 [decoy removed glasses following the sale because wearing them strains his eyes].) The Department argues that the new photos, taken at the moment of sale, offer no new information, since appellant itself produced "a surveillance video that clearly shows the decoy wearing glasses during the transaction with the clerk." (Dept.Br., at p. 5.) Because the surveillance video "encompassed the moment the transaction occurred," the photographs were essentially duplicative.

Finally, the Department argues the new photographs were never excluded from evidence. (*Ibid.*) While "[a]ppellant's counsel asked Agent Zavala about the photos," he "made no attempt to have them marked for evidence" or admitted as such. (*Ibid.*)

In sum, the Department contends appellant failed to show good cause to grant a continuance, and denial was therefore proper.

Section 11524(a) of the Government Code provides for continuances of administrative hearings:

The agency may grant continuances. When an administrative law judge of the Office of Administrative Hearings has been assigned to the hearing, no continuance may be granted except by him or her or by the presiding judge of the appropriate regional office of the Office of Administrative Hearings, *for good cause shown*.

(Gov. Code, § 11524(a), emphasis added.) Whether good cause exists is a question of fact:

[S]ince it is impossible to foresee or predict all of the vicissitudes that may occur in the course of a contested proceeding . . . , the determination of a request for a continuance must be based upon the facts and circumstances of the case as they exist at the time of the determination.

(*Arnett v. Office of Admin. Hearings* (1996) 49 Cal.App.4th 332, 343 [56 Cal.Rptr. 2d 774].)

Continuances are granted at the discretion of the ALJ, and are reviewed solely for abuse of that discretion. Section 11524(a) "provides that a continuance . . . may be granted 'for good cause shown,' but there is no absolute right to a continuance unless the refusal thereof would be an abuse of discretion." (*Cooper v. Bd. of Med. Examiners* (1975) 49 Cal.App.3d 931, 944 [123 Cal.Rptr. 563]; see also *Savoy Club v. Bd. of Supervisors* (1970) 12 Cal.App.3d 1034, 1038 [91 Cal.Rptr. 198].) Continuances are granted "at the discretion of the hearing officer and for 'good cause shown.'" (*Givens v. Dept. of Alcoholic Bev. Control* (1959) 176 Cal.App.2d 529, 532 [1 Cal.Rptr. 446].)

The "good cause" standard in administrative proceedings echoes that applied in judicial proceedings. "In exercising the power to grant or deny a continuance, an administrative law judge is guided by the same principles applicable to continuances generally in adjudicative settings." (*Bussard v. Dept. of Motor Vehicles* (2008) 164 Cal.App.4th 858, 864 [79 Cal.Rptr.3d 414]; see also *Arnett, supra*, at pp. 342-343.) The California Rules of Court, while not binding on APA administrative hearings, offer some guidance as to what may be considered "good cause" for a continuance:

(c) Grounds for continuance

Although continuances of trials are disfavored, each request for a continuance must be considered on its own merits. The court may grant a continuance only on an affirmative showing of good cause requiring the continuance. Circumstances that may indicate good cause include:

- (1) The unavailability of an essential lay or expert witness because of death, illness, or other excusable circumstances;
- (2) The unavailability of a party because of death, illness, or other excusable circumstances;

- (3) The unavailability of trial counsel because of death, illness, or other excusable circumstances;
- (4) The substitution of trial counsel, but only where there is an affirmative showing that the substitution is required in the interests of justice;
- (5) The addition of a new party if:
 - (A) The new party has not had a reasonable opportunity to conduct discovery and prepare for trial; or
 - (B) The other parties have not had a reasonable opportunity to conduct discovery and prepare for trial in regard to the new party's involvement in the case;
- (6) A party's excused inability to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
 - A significant, unanticipated change in the status of the case as a result of which the case is not ready for trial.

(d) Other factors to be considered

In ruling on a motion or application for continuance, the court must consider all the facts and circumstances that are relevant to the determination. These may include:

- (1) The proximity of the trial date;
- (2) Whether there was any previous continuance, extension of time, or delay of trial due to any party;
- (3) The length of the continuance requested;
- (4) The availability of alternative means to address the problem that gave rise to the motion or application for a continuance;
- (5) The prejudice that parties or witnesses will suffer as a result of the continuance;
- (6) If the case is entitled to a preferential trial setting, the reasons for that status and whether the need for a continuance outweighs the need to avoid delay;
- (7) The court's calendar and the impact of granting a continuance on other pending trials;
- (8) Whether trial counsel is engaged in another trial;

- (9) Whether all parties have stipulated to a continuance;
- (10) Whether the interests of justice are best served by a continuance, by the trial of the matter, or by imposing conditions on the continuance; and
- (11) Any other fact or circumstance relevant to the fair determination of the motion or application.

(Cal. Rules of Ct., rule 3.1332(c) and (d).)

The decision to grant or deny a continuance can thus implicate a broad range of potential considerations, but necessarily demands "an affirmative showing of good cause" on the part of the moving party. (Cal. Rules of Ct., rule 3.1332(c).)

At the administrative hearing, counsel for appellant raised the issue of the new photographs as a preliminary matter:

[MR. TATONE:] It has just been brought to my attention by the Department that there are photographs that were not produced during [d]iscovery and that were taken at the time of the operation

These photographs were not produced in a timely fashion, they are untimely, and as a matter of due process, we would request a continuance to review the photographs, have an opportunity to meet and discuss the photographs with our client, as well as conduct further investigation for any other additional photographs or other documents that we are unaware of that have not been produced.

(RT at p. 7.) Counsel for the Department opposed the request:

MR. NGUYEN: Your Honor, these photographs were just made note to me this morning by the agent that was involved in this [m]atter. I had no knowledge of these photos prior to and they were not mentioned in the report.

When the agent appeared today, he just said that he had taken a photo of the moment a sale had occurred and he had handed them over to me and I immediately gave them to Respondent's counsel to review.

I don't plan to use these photos. I don't believe that the Respondent is prejudiced by these photos. We have a report and video of the actual sale and these photos had no new information or any new charges.

(RT at pp. 7-8.) Counsel for appellant countered that the new photographs showed a discrepancy in the decoy's appearance:

MR. TATONE: Your Honor, I would argue that the photographs are, in fact, relevant. They were taken at the point of sale which is extremely relevant in a minor decoy case.

I also notice in the photo that there appears to be a discrepancy between the decoy's appearance, what he is wearing, between that photograph and the photo that was taken after the sale.

And I would like an opportunity, as I stated earlier, to discuss the photographs at least with my client, have an opportunity to determine whether there's any other photographs and I believe that our client would be prejudiced if I did not have the opportunity to do so.

(RT at p. 8.) Upon questioning by the ALJ, counsel for appellant disclosed that his client was not present at the administrative hearing. (RT at p. 9.) The ALJ asked the Department if it had any further comment, and counsel for the Department responded:

MR. NGUYEN: Your Honor, I believe the difference that Mr. Tatone is referring to is the glasses that the decoy wore during the operation. There are photos taken before the operation of the decoy wearing glasses.

So the Respondent had noticed that glasses were worn during the operation, and they actually produced the video to us which shows the decoy wearing glasses. Other than that, there is nothing different about the appearance of the decoy that would warrant continuance or more discussion.

(*Ibid.*) In a final comment, counsel for appellant focused on the Department's delay in producing the photographs:

[MR. TATONE:] The fact here is that we found a discovery and we requested all photographs be produced and they were not. This is untimely and I have not had an opportunity to discuss these photographs with my client.

I may, in fact, want to use these photographs. I may want to question somebody about these photographs. However, I was unaware of these photographs and so I think it would be prejudicial.

(*Ibid.*)

The ALJ ultimately rejected appellant's request. She stated:

I'm going to decline your request for a continuance. The Department has indicated that as soon as they became aware of the photos given to them this morning, they gave them immediately to you and also there was indication that they will not be used.

You were aware or at least should have been aware that there were glasses worn by the minor decoy at the time with the video that you gave the Department.

(RT at pp. 9-10.)

We find no abuse of discretion. It was appellant's burden to show good cause to grant a continuance. The mere suggestion that counsel needed to discuss the new photos with his absent client is insufficient, as is the unsupported speculation that there might be additional undisclosed photos. While it may be true that the decoy was wearing glasses at the moment of sale in the new photos, the Department is correct that this adds no new information, as the moment of sale—showing the decoy wearing glasses—was also captured in the video surveillance tape appellant provided to the Department. (RT at p. 10.) Additionally, photographs taken of the decoy before the operation clearly show his appearance with glasses. (See exhs. 3 and 4.) These photographs were provided to appellant in discovery and were entered into evidence; appellant cannot argue it was not aware of the decoy's appearance while wearing glasses. In fact, during closing arguments counsel for appellant relied on these two exhibits as part of a rule 141(b)(2) defense, claiming the glasses made the decoy look older. (RT at p. 53.) There is nothing to suggest that either the late production of Agent Zavala's photographs or the denial of the continuance deprived appellant of any potential defense.

Finally, it is important to note that a continuance is not a punitive action against the opposing party.² (See App.Br., at pp. 7-8 [suggesting, without reference to law, that it was the Department's burden to show good cause as to why it failed to produce the photographs during discovery].) The only question is whether appellant established good cause sufficient, in the ALJ's discretion, to merit a continuance. Appellant argues prejudice only in the abstract; it supplies much speculation, but little fact, in support of its request. Denial of the request was therefore a proper exercise of the ALJ's discretion, and we see no cause to disturb it.

II

Appellant contends the Department failed to comply with section 11507.6 of the Government Code when it provided the address of its Monrovia District Office, rather than the decoy's address as listed on his California driver's license, during pre-hearing discovery. (App.Br., at pp. 9-11.)

Appellant further contends the ALJ abused her discretion by denying appellant's motion to compel the decoy's home address. (*Id.* at p. 9.)

Appellant argues the reasoning employed by this Board in *Mauri Restaurant Group* is "fatally flawed." (*Id.* at p. 9.) However, it also rejects this Board's later, more detailed rulings, which concluded that minor decoys qualify as "peace officers" whose private information is protected under Penal Code section 832.7. (*Id.* at p. 11; see also

2. While it was indeed incumbent upon the Department to disclose all known photographs during discovery, it is undisputed that Department counsel was unaware of these particular photographs before Agent Zavala produced them the morning of the hearing. (RT at pp. 7-8.) Upon learning of them, Department counsel promptly disclosed them to appellant. (RT at p. 8.) There is neither allegation nor evidence that the Department was either lax in conducting discovery or that it intentionally deceived appellant. (See generally App.Br.)

7-Eleven, Inc./Joe (2016) AB-9544 [holding that the minor decoy qualifies for peace officer protections by operation of Penal Code § 830.6(c).]

This Board has recently addressed a number of cases raising this purely legal issue. In *7-Eleven, Inc./Joe*, we held that the decoy's personal address is protected under section 832.7 of the Penal Code. (*7-Eleven, Inc./Joe, supra*, at pp. 6-10.)

Appellant counters the reasoning of that case by arguing that "minor decoys are never identified as peace officers in the statutory scheme that identifies the class of persons whose personnel records are made confidential." (App.Br., at p. 10.) Moreover, appellant contends that Penal Code section 830.6(c) does not protect the decoy's home address because that section "does not deem a person a 'peace officer,' but instead only temporarily grants that person limited powers of a peace officer." (*Id.* at p. 11.) Appellant argues that *only* individuals who are "actually deemed peace officers . . . may enjoy the protection of their contact information from discovery pursuant to" section 832.7 of the Penal Code. (*Ibid.*)

Appellant overlooks case law extending, by operation of Penal Code section 830.6(c), various peace officer protections to individuals or organizations summoned to the aid of law enforcement. In *7-Eleven, Inc./Joe*, we cited as persuasive authority the Ninth Circuit's decision in *Forro Precision, Inc.*, which held that the provision "must be understood as according a citizen immunity that derives from the officer's own immunity." (*Forro Precision v. Intl. Business Machines Corp.* (9th Cir. 1982) 673 F.2d 1045, 1054 [interpreting Pen. Code, § 830.6(b), later renumbered as subdivision (c)].) *Forro Precision* relies on two California cases, both of which grant similar civil immunity to parties assisting law enforcement. (See *Forro Precision, supra*, at p. 1054, citing

Peterson v. Robison (1954) 43 Cal.2d 690, 697 [277 P.2d 19] [private citizen not subject to action for false arrest when arrest made at peace officer's request] and *Sokol v. Public Utilities Com.* (1966) 65 Cal.2d 247 [53 Cal.Rptr. 673] [public utility not civilly liable for disconnecting plaintiff's phone upon notice that it was used for illegal purposes].)

Regrettably, there is no case law discussing whether the protections afforded a peace officer's *contact information* are extended to individuals summoned to the peace officer's assistance. However, immunity from civil suit is a significant protection—it effectively eliminates a civil recovery for an injured plaintiff. If the courts have seen fit to extend peace officers' civil immunity to individuals summoned under section 830.6, we believe they would also extend the lesser protections of section 832.7 to those individuals as well—particularly where, as here, those protections help facilitate decoy sting operations by ensuring decoy volunteers are not subjected to unwarranted disclosure of personal information.

Finally, appellant neither establishes nor alleges that it attempted to contact the decoy through the Monrovia District Office. Appellant has shown no cause to believe the decoy was unreachable at that address. Provision of the Monrovia District Office address was therefore proper.

III

Appellant contends the Department's comment procedure, implemented pursuant to its General Order 2016-02, violates the hearing and review procedures set forth in the APA, constitutes an underground regulation prohibited by the APA, and encourages illegal *ex parte* communications. (App.Br., at pp. 11-24.)

We recently addressed an identical argument in *7-Eleven, Inc./Gupta* (2017) AB-9583. In that case, we concluded the Department's comment procedure, as outlined in the General Order, constitutes an unenforceable underground regulation. The comment procedure was identical in this case. We therefore reach the same legal conclusion here, and refer the parties to *Gupta* for our complete reasoning. (*Id.* at pp. 12-25.)

Furthermore, the sole comment, submitted by appellant, had no effect on the outcome of the case, and therefore, the comment procedure did not materially affect appellant's due process rights. (See *id.* at pp. 26-29.)

As we have noted elsewhere, however, the Department's comment procedure creates a minefield of potential due process issues. (See *id.* at p. 29 ["The Department's decision to bypass the rulemaking process deprived it of the opportunity to review public comments that might have alerted it to potential pitfalls in the comment procedure."].) We remind the parties that "we shall remain particularly vigilant in future cases, and will not hesitate to reverse where the Department's improperly adopted comment procedure materially infringes on an appellant's due process rights." (*Ibid.*)

ORDER

The decision of the Department is affirmed.³

BAXTER RICE, CHAIRMAN
PETER J. RODDY, MEMBER
JUAN PEDRO GAFFNEY RIVERA, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

3. 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.