

**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

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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.

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 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 Office 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>

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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



BAXTER RICE, CHAIRMAN  
MEGAN McGUINNESS, MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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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:

C & B WILSHIRE INC  
C F RESTAURANT  
3000 WILSHIRE BLVD  
#B100  
LOS ANGELES, CA 90010-1136

CERRITOS ENFORCEMENT OFFICE  
(CEO) DISTRICT OFFICE

File: 47-513735

Reg: 17085503

AB: 9683

ON-SALE GENERAL EATING PLACE - LICENSE

Respondent(s)/Licensee(s)  
under the Alcoholic Beverage Control Act.

**CERTIFICATION**

I, Dominique Williams, do hereby certify that I am a Senior Legal Analyst for the Department of Alcoholic Beverage Control of the State of California.

I do hereby further certify that annexed hereto is a true, correct and complete record (not including the Hearing Reporter's transcript) of the proceedings held under Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code concerning the petition, protest, or discipline of the above-listed license heretofore issued or applied for under the provisions of Division 9 of the Business and Professions Code.

IN WITNESS WHEREOF, I hereunto affix my signature on March 7, 2018, in the City of Sacramento, County of Sacramento, State of California.



Office of Legal Services

2018 MAR -8 AM 8:58  
RECEIVED  
ABC APPEALS BOARD

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

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

C & B WILSHIRE INC  
C F RESTAURANT  
3000 WILSHIRE BLVD, #B100  
LOS ANGELES, CA 90010-1136  
ON-SALE GENERAL EATING PLACE - LICENSE

CERRITOS DISTRICT OFFICE

File: 47-513735

Reg: 17085503

**CERTIFICATE OF DECISION**

Respondent(s)/Licensee(s)

Under the Alcoholic Beverage Control Act

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 this case. 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 7, 2018, a representative of the Department will contact you to arrange to pick-up the license certificate.

Sacramento, California

Dated: January 25, 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:

C & B Wilshire Inc.  
dba C F Restaurant  
3000 Wilshire Blvd., #B100  
Los Angeles, California 90010-1136

Respondent

On-Sale General Eating Place License

} File: 47-513735  
}  
} Reg.: 17085503  
}  
} License Type: 47  
}  
} Word Count: 8,500  
}  
} Reporter:  
} Lisa Gutierrez  
} California Reporting

**PROPOSED DECISION**

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Cerritos, California, on November 16, 2017.

John P. Newton, Attorney, represented the Department of Alcoholic Beverage Control.

Joshua Kaplan, attorney-at-law, represented respondent C & B Wilshire Inc. Joong Young Bae, the Respondent's president, was present.

The Department seeks to discipline the Respondent's license on the grounds that, on January 21, 2017, the Respondent failed to comply with four conditions attached to its license in violation of Business and Professions Code section 23804.<sup>1</sup> (Exhibit 1.)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on November 16, 2017.

**FINDINGS OF FACT**

1. The Department filed the accusation on April 19, 2017.

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

2. The Department issued a type 47, on-sale general eating place license to the Respondent for the above-described location on February 14, 2012 (the Licensed Premises).

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

<b>Date Filed</b>	<b>Reg. No.</b>	<b>Violation</b>	<b>Penalty</b>
2/12/2016	16083796	BP §§ 25632 & 23804	15-day susp.
7/20/2016	16084497	BP § 23804	30-day susp.

The foregoing disciplinary matters are final, (Exhibits 2-3.)

4. On November 9, 2011, the Respondent executed a petition for conditional license containing 20 conditions. (Exhibit 8.) Condition 16 imposed a variety of requirements related to karaoke rooms. Of the 10 subparts of this condition, four are at issue here:

“16. Private/semi-private (Karaoke) rooms (hereinafter “the rooms”) constructed on the premises and depicted on the ABC-257 dated June 29, 2011, shall have the following characteristics:

...

b. No physical obstruction, including but not limited to planters, partitions or items of décor, shall be placed, attached, fastened, or connected in any manner to any section of the door or wall which covers any portion of the glass within the doors or walls.

c. No obstruction, other than clear glass, shall be placed, attached fastened, or connected to either the walls, partitions or ceiling to separate booths/dining areas within the interior space of the licensed premises.

d. Doors or walls to said rooms must allow the activities in the interior of the rooms to be easily discernable at all times.

...

f. All windows between the rooms and the doors shall be of clear glass and measurements as depicted on the ABC-257 dated June 29, 2011.

....”

5. The ABC-257 dated June 29, 2011 has a series of measurements on it. All of the doors to all of the karaoke rooms bear the measurement “27 x 66.” (Exhibit 4.)

6. On January 21, 2017, Agent Jason Groff entered the Licensed Premises. He contacted Gia Hoon Choi, identified himself as a peace officer, and informed Choi that he would be conducting an inspection of the Licensed Premises.

7. During his inspection, Agent Groff noticed that the doors to the karaoke rooms had an opaque panel in the middle of them. There was glass visible above and below the panel in each of the doors. Agent Groff took photos of three of the doors. (Exhibits 5-7.) From his observations, the panel appeared to be metal, although he conceded that it might have been wood. The coloring of the panel differed from that of the surrounding door.

8. Agent Groff approached karaoke room #3. He could not see into the room because of the panel in the door. He entered the room and noticed some patrons with a bottle of Grey Goose vodka and some food on the table in front of them. He took a photo of the table and seized the receipt. (Exhibits 9-10)

9. Joong Young Bae, president of the Respondent, testified that a fire destroyed a portion of the interior of the Licensed Premises. There was also water damage from the sprinkler system. Agent Groff, during a prior visit to the Licensed Premises, observed damage to the interior of the Licensed Premises. The employees told him that it was from a sewage problem.

10. Regardless of the source of the damage, the doors to the karaoke rooms had to be replaced. Bae hired a contractor to rebuild the interior, including replacing the doors. Bae did not design the doors, he left that to the contractor.

11. Based on his observations, Agent Groff concluded that the door had one large glass pane, covered in the middle by the panel. Bae testified that the panel was part of the framework of the door, with a glass pane above it and another below it. The glass is clear, not tinted.

12. Bae made a variety of measurements of the door to karaoke room #3. These measurements were transferred to a photo of the door. (Exhibit A.) This photo indicates that the door measures 36 inches wide by 80 inches tall. The measurement from the left-most edge of the glass within the door to the right-most edge is 27 inches. The measurement from the bottom edge of the lowest portion of the glass to the top of the highest portion is 66 inches.

13. 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 23804 provides that the violation of a condition placed upon a license constitutes the exercise of a privilege or the performing of an act for which a license is required without the authority thereof and constitutes grounds for the suspension or revocation of the license.

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 January 21, 2017, the doors to the karaoke rooms inside the Licensed Premises did not comply with conditions 16b, 16d, and 16f as alleged in counts 1, 3, and 4 in violation of section 23804 (Findings of Fact ¶¶ xx.)

5. With respect to count 3, the evidence established that the panel in the middle of the door obscured the view into the interior of the karaoke rooms. Although the glass above and below the panel allowed a clear view into the top and bottom portion of the room, the panel obstructs the view of the middle of the room. A person standing outside the room would not be able to see the activity taking place at the table without standing next to the door and peering over the top of the panel. The ability to see feet and, if the people inside the room are standing, heads is insufficient. Condition 16d, by its own terms, requires that the construction of the doors "must allow the activities in the interior of the room to be easily discernable at all times." The doors, as constructed, do not do so.

6. With respect to count 4, the evidence established that the doors do not meet the requirements set forth in condition 16f. It is unusual for a condition to require that doors comply with specific measurements. Condition 16f, however, does just that. By its own terms, this condition requires that the windows in the doors "shall be of clear glass and measurements as depicted in the ABC-257 dated June 29, 2011." The ABC-257 has a series of measurements on it. All of the doors to all of the karaoke rooms bear the measurement "27 x 66." (Exhibit 4.) Logically, these dimensions are too small (2'3" wide by 5'6" tall) to represent the measurement of the entire door. A photo of the door to karaoke room #3 indicates that door measures 36 inches wide by 80 inches tall (3 feet wide by 6 feet, 8 inches tall). Focusing on the measurements relating to the glass, however, reveals that the measurement from the left-most edge of the glass within the door to the right-most edge is 27 inches, while the measurement from the bottom edge of the lowest portion of the glass to the top of the highest portion is 66 inches. (Exhibit E.) This matches the dimensions on the ABC-257 exactly.

The problem, once again, is the panel in the middle of the door. Condition 16f requires that the entire 27" by 66" portion of the door "shall be of clear glass." The doors in this



case are not—they have a panel in the middle of them and, therefore, violate this condition.

7. With respect to count 1, the testimony of Agent Jason Groff and Joong Young Bae are in direct conflict with each other about the paneling in the middle of the door. From Agent Groff's observations, it appeared to be a covering placed over the glass pane. Bae testified that it was part of the door and did not cover any portion of the two panes of glass (one above, one below). The photos are of no use in resolving this conflict, with one exception—the frame surrounding the glass is beveled on all sides. The only area which is not beveled is the top and bottom of the panel. If the panel separated two panes of glass, as Bae testified, then it should have been beveled in a similar manner. The lack of beveling supports Agent Groff's testimony that the panel is a covering installed over the glass. Such a covering violates condition #16b, which prohibits physical obstructions from being "placed, attached, fastened, or connected in any manner to any section of the door."

8. Cause for suspension or revocation of the Respondent's license was **not** established for the violation of section 23804 alleged in count 2. (Findings of Fact ¶¶ xx.)

9. Count 2 alleges a violation of condition 16c. That condition, by its own terms, applies to "walls, partitions[,] or ceilings." Given the great care with which the Department has drafted the petition for conditional license, the exclusion of doors from this condition is significant. The only evidence presented relates to the doors—not to the walls, the partitions, or the ceilings. Accordingly, although the paneling violates other conditions, it does not violate condition 16c.

### **PENALTY**

The Department requested that the Respondent's license be revoked, with the revocation stayed for one year, and that a 60-day suspension be imposed. In the Department's view, an aggravated penalty is necessary since this is the third case in which the Respondent violated the conditions attached to its license and the second time it has violated the provisions of condition 16. The Respondent argued that, if the accusation were sustained, the penalty recommended by the Department was excessive.

An aggravated penalty is clearly warranted—this is the third time in 17 months that the Respondent has been caught violating the conditions attached to its license. The first time its license was suspended for 15 days; the second time it was suspended for 30 days. A significant penalty is warranted for yet another violation, particularly one so close in time to the prior violations. The Respondent is responsible for ensuring compliance with all of the conditions attached to its license, even where, as here, it delegated that

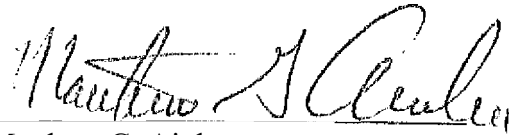
responsibility to an outside contractor. Its failure to do so indicates an ongoing problem. The penalty recommended herein complies with rule 144.<sup>2</sup>

**ORDER**

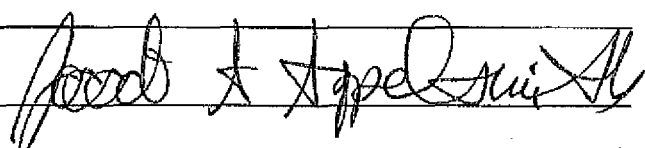
Counts 1, 3, and 4 are sustained. In light of these violations, the Respondent's on-sale general eating place license is hereby revoked, with the revocation stayed upon the condition that no subsequent final determination be made, after hearing or upon stipulation and waiver, that cause for disciplinary action occurred within one year from the effective date of this decision; that should such determination be made, the Director of the Department of Alcoholic Beverage Control may, in his or her discretion and without further hearing, vacate this stay order and reimpose the stayed penalty; and that should no such determination be made, the stay shall become permanent. In addition, the Respondent's license shall be suspended for a period of 45 days.

Count 2 is dismissed.

Dated: December 1, 2017



Matthew G. Ainley  
Administrative Law Judge

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

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