

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

**AB-9927**

File: 41-575593; Reg: 21090711

THE LOCAL CIDER BAR, INC.,  
dba The Local Cider Bar  
828 I Street  
Arcata, CA 95521,  
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the Dept. Hearing: Alberto Roldan

Appeals Board Hearing: November 5, 2021  
Telephonic

**ISSUED NOVEMBER 9, 2021**

*Appearances:*      *Appellant:* Gillian Garrett, as counsel for The Local Cider Bar, Inc.,  
*Respondent:* Matthew Gaughan, as counsel for the Department of Alcoholic Beverage Control.

**OPINION**

The Local Cider Bar, Inc., doing business as The Local Cider Bar (appellant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> suspending its license for 15 days because its agent or employee sold, furnished, or gave alcoholic beverages to an individual under the age of 21, in violation of Business and Professions Code section 25658(a).<sup>2</sup>

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<sup>1</sup> The decision of the Department, dated July 6, 2021, is set forth in the appendix.

<sup>2</sup> All statutory references are to the California Business and Professions Code, unless otherwise stated.

## FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer and wine eating place license was issued on November 30, 2016. Appellant was previously disciplined for a violation of section 25658(a) on November 16, 2019.

On January 5, 2021, the Department filed a single-count accusation against appellant charging that, on December 11, 2020, appellant's bartender, Jody Smith (Smith), sold an alcoholic beverage to minor Julia Humphreys (the minor).

At the administrative hearing held on, April 15, 2021, and May 12, 2021, appellant and the Department offered documentary evidence and witness testimony. Agents Stanley Harkness and Chandler Baird testified on the Department's behalf. Smith and Michelle Cartledge, co-owner of the licensed premises, testified for appellant. The minor was subpoenaed by the Department and appeared at the hearing on April 15, 2021. However, because she was facing potential misdemeanor charges arising from the Department investigation, she invoked her Fifth Amendment privilege against self-incrimination and declined to testify at the hearing.

Evidence established that, on December 11, 2020, the minor accompanied a group of friends into the licensed premises. The minor contacted Smith and ordered a glass of hard cider branded as an Imperial Blurberry, which contained 10.8% alcohol by volume. The minor presented a purported Washington State driver's license to Smith (exh D-3C), which Smith examined. Smith also asked the minor to pull down her mask so she could compare the picture on the identification. The image on the identification was of the minor. Further, the height and weight information on the identification

corresponded to the minor. The minor's purported identification indicated she was over 21 years old. Smith concluded that the identification was genuine, and she served the minor a glass of the hard cider.

After receiving her alcoholic beverage, the minor joined her friends at a patio table and began to consume her beverage. Agent Harkness was on an enforcement assignment monitoring licensed establishments with a specific focus on individuals attempting to purchase alcoholic beverages with fake identifications. Agent Harkness and Agent Baird observed the minor and her friends at the licensed premises after the minor purchased an alcoholic beverage from Smith. To Harkness, the minor appeared underage, and she reacted like an inexperienced drinker while sipping from her beverage.

The agents approached the minor and her friends and identified themselves as law enforcement. They requested the women who were drinking alcoholic beverages to produce their identifications. The minor produced a purported Washington State driver's license and handed it to Agent Harkness. Agent Harkness looked at the identification and observed discrepancies which led him to suspect it was not genuine. The minor repeatedly asserted the identification was genuine and that it was her only identification.

Agent Baird took the identification and checked it with the California Highway Patrol (CHP) dispatch while the minor remained with Agent Harkness. Agent Baird determined that the minor's purported identification did not correspond to a legitimate Washington State driver's license. Agent Baird also determined that the California Department of Motor Vehicle database listed a person with the same name as the minor, but with a different date of birth indicating the minor was under the age of 21.

Agent Baird confronted the minor with the information from CHP, and the minor admitted that the Washington identification was fake, and that she had purchased it on the internet. Agent Harkness retained the fake identification and photographed it. The minor was cited and released from custody.

Agent Harkness then contacted Smith regarding the sale to the minor. Smith admitted that she had sold to the minor but that the minor had presented identification that showed her to be older than 21 years old. Smith told Agent Harkness that she believed the license was genuine. Smith confirmed that the licensed premises did not have a scanner, but it did have an identification guide for checking the legitimacy of out-of-state licenses. The licensed premises is in a college town, and because the local university has students from other states, out-of-state identifications are regularly encountered at the licensed premises. Despite having access to the guide, Smith did not use it to examine the genuineness of the security features on the minor's identification.

The agents determined that the purported license felt genuine upon a casual examination, but if scrutinized, a few appearance features were markedly "off" when compared to a genuine license. The minor's false identification is missing the green "WA USA" graphic to the left of the green "WASHINGTON" graphic in the salmon-colored banner across the top. It is also missing the white "WASHINGTON" graphic that is behind the foreground writing in the salmon-colored banner. The "ENHANCED DRIVER LICENSE" graphic is written in italics rather than the block font in the genuine exemplar. The minor's false license has a tree graphic in the upper right of the salmon-colored banner that is not present in the exemplar. The minor's license is missing the gold foil tree graphic that adorns the lower middle of the genuine exemplar and has a USA flag

graphic that is a horizontal block image of the flag. The exemplar's USA flag graphic is a waving flag at a significant angle. The minor's license also has a black graphic of the state seal in the upper left corner of the larger photo of the minor, which is not present in any location on the exemplar.

On May 20, 2021, the administrative law judge (ALJ) issued a proposed decision sustaining the accusation and recommending a 15-day suspension. The Department adopted the proposed decision on June 23, 2021 and issued a certificate of decision on July 6, 2021. Appellant filed a timely appeal contending that: 1) the Department did not produce the minor at hearing for examination, which it was required to do under section 25666; 2) the decision violates the Administrative Procedures Act ("APA"), and; 3) appellant reasonably relied on the minor's false identification.

## DISCUSSION

### I

#### SECTION 25666

Appellant contends that the Department failed to comply with section 25666 since it did not produce the minor for examination at the hearing. (AOB, at pp. 18-19.) Specifically, appellant argues that, since the minor asserted her Fifth and Sixth Amendment privileges, and refused to answer any questions, appellant "did not have an opportunity to examine Ms. Humphreys as required by Section 25666, nor did it waive its Section 25666 rights." (*Id.* at p. 19.)

Section 25666 states:

In any hearing on an accusation charging a licensee with a violation of Sections 25658, 25663, and 25665, the department shall produce the alleged minor for examination at the hearing unless he or she is unavailable as a witness because he or she is dead or unable to attend

the hearing because of a then-existing physical or mental illness or infirmity, or unless the licensee has waived, in writing, the appearance of the minor . . . .

The evidence in the record shows that the Department produced the minor at the hearing on April 15, 2021, via subpoena. However, the minor refused to testify, exercising her Fifth Amendment privilege against self-incrimination. The Department found that section 25666 was satisfied, stating:

In this matter, the Department complied with its obligation to “produce the alleged minor for examination at the hearing” when Humphreys was subpoenaed and produced for examination during the scheduled proceeding on April 15, 2021. Proceeding to the conclusion of evidence on May 12, 2021, was not in violation of section 25666(a) because the evidence established that Humphreys’ assertion of her 5th amendment privilege was ongoing, and it precluded further questioning beyond what had already occurred on April 15, 2021. Humphreys was present to be physically examined and was available to be called as a witness by both sides during the proceeding on April 15, 2021.

(Conclusions of Law, ¶ 2.)

We agree with the Department that it satisfied its requirement under section 25666. Section 25666 only requires the Department to produce the minor for examination; it does not guarantee any type of qualitative examination by a licensee. Further, the fact that the minor exercised her privilege against self-incrimination was not the fault of the Department. In fact, the minor’s privilege left both parties in the same position as being equally unable to examine her. The Board sees no error.

## II

### APA VIOLATION

Appellant contends the Department similarly violated the APA by refusing to continue the hearing “until Ms. Humphreys’ criminal liability was resolved, making her available for both direct and cross examination.” (AOB, at pp. 19-20.)

Pursuant to Government Code section 11524, an ALJ may grant a request for continuance for good cause. The party requesting a continuance must show that good cause exists for granting the request; one is granted or denied at the discretion of the ALJ, and a refusal to grant a continuance will not be disturbed on appeal unless it is shown to be an abuse of discretion. (*Cooper v. Board of Medical Examiners* (1975) 49 Cal.App.3d 931, 944 [123 Cal.Rptr. 563]; *Savoy Club v. Board of Supervisors* (1970) 12 Cal.App.3d 1034, 1038 [91 Cal.Rptr. 198]; *Givens v. Department of Alcoholic Beverage Control* (1959) 176 Cal.App.2d 529, 532 [1 Cal.Rptr. 446].)

The “power to determine when a continuance should be granted is within the discretion of the court, and there is no right to a continuance as a matter of law. [Citation.]” (*Mahoney v. Southland Mental Health Associates Medical Group* (1990) 223 Cal.App.3d 167, 170 [272 Cal.Rptr. 602].) One court offered the following guidance:

In exercising the power to grant continuances in an administrative proceeding, an administrative law judge must be guided by the same principles applicable to continuances generally in adjudicative settings: continuances should be granted sparingly, nay grudgingly, and then only on a proper and adequate showing of good cause. In general, a continuance for a short and certain time is less objectionable than a continuance for a long and uncertain time, and there must be a substantial showing of necessity to support a continuance into the indefinite future. But the factors that influence the granting or denying of a continuance in any particular case are so varied that the judge must necessarily exercise a broad discretion. Since 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.App4th 332 [56 Cal.Rptr.2d 774].)

In the instant case, we find that the ALJ did not abuse his discretion in denying appellant a continuance. The issue in this appeal is the minor’s false identification card, its features, Smith’s examination of the minor’s identification, and Smith’s failure to

reference that identification with the guidebook. Appellant has not shown that the minor's testimony would have been relevant to any of those issues, or to establish any of appellant's affirmative defenses. In short, appellant has not established "good cause" to justify continuing the matter until after the minor's criminal proceedings resolved. A blanket statement that it did not have the opportunity to examine the minor will not suffice. The Board sees no error with the ALJ's decision to deny appellant's request for a continuance.

## III

## SECTION 25660

Appellant contends the Department erred in rejecting their section 25660 defense. (AOB, at pp. 20-23.) Specifically, appellant argues that it satisfied the defense, because "Ms. Smith asked for ID from Ms. Humphreys, inspected it, and relied upon it in good faith as bona fide evidence of age." (*Id.* at p. 21.)

Section 25660(c) provides:

Proof that the defendant-licensee, or his or her employee or agent, demanded, was shown, and acted in reliance upon [a government-issued identification or identification purporting to be government-issued<sup>3</sup>] shall be

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<sup>3</sup> It is immaterial whether the identification used was actually government-issued.

In *Masani*, the court said:

The licensee should not be penalized for accepting a credible fake that has been reasonably examined for authenticity and compared with the person depicted. A brilliant forgery should not ipso facto lead to licensee sanctions. In other words, fake government IDs cannot be categorically excluded from the purview of section 25660. The real issue when a seemingly bona fide ID is presented is the same as when actual governmental IDs are presented: reasonable reliance that includes careful scrutiny by the licensee.

(*Masani*, *supra* at p. 1445.)



a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon.

*(Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*

(2004) 118 Cal.App.4th 1429, 1444-1445 [13 Cal.Rptr.3d 826, 837] (*Masani*).) However, section 25660 must be narrowly construed, and the licensee has the burden of establishing the defense. (*Lacabanne Properties, Inc. v. Alcoholic Beverage etc. Appeals Board* (1968) 261 Cal.App.2d 181, 189-190 [67 Cal.Rptr. 734] (*Lacabanne*).)

One of the requirements of section 25660 is that a licensee must show that reliance on the false identification was *reasonable*. (*Lacabanne, supra*, at p. 189; *5501 Hollywood v. Dept. of Alcoholic Bev. Control* (1957) 155 Cal.App.2d 748, 753-754 [318 P.2d 820] (*5501 Hollywood*).) In other words, a licensee (or employee) must exercise the caution that a reasonable and prudent person would show in the same or similar circumstances. (*Lacabanne, supra*, at p. 189; *Farah v. Alcoholic Bev. Control Appeals Bd.* (1958) 159 Cal.App.2d 335, 339 [324 P.2d 98]; *5501 Hollywood, supra*, at p. 753.)

Finally, the Department's findings regarding a section 25660 defense will be upheld so long as those findings are supported by substantial evidence. (*Masani, supra*, at p. 1437; *Kirby v. Alcoholic Beverage Control Appeals Bd.* (1968) 261 Cal.App.2d 119, 122 [67 Cal.Rptr. 628] ["In considering the sufficiency of the evidence issue the court is governed by the substantial evidence rule[;] any conflict in the evidence is resolved in favor of the decision; and every reasonably deducible inference in support thereof will be indulged. [Citations.]".) Substantial evidence is "evidence of ponderable legal significance, which is 'reasonable in nature, credible and of solid value.'" (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 814 [38 Cal.Rptr.2d 304, 307-308], internal citations omitted.)

In the instant case, the Department found that Smith's examination of the minor's identification was not reasonable and rejected appellant's section 25660 defense:

If Smith had looked at the purported identification with the level of care required under the law, she would have seen a number of discrepancies that would have led her to the conclusion that it was fraudulent. The identification guidebook (Exhibit D-6) was available to her, but it was inexplicably stored away from the point-of-sale area where it could have been used to effectively guide Smith's required inquiry. (Findings of Fact ¶¶ 5-16) Respondent, during the course of the proceedings, accurately pointed out that it would be too much of a burden on sellers to require the memorization of every detail of bona fide identification prior to an alcoholic beverage purchase. This is exactly why guides like the one that contained Exhibit D-6 exist. Further, if an identification is presented that a seller is unsure of, they can (and should) decline the sale.

(Conclusions of Law, ¶ 14.)

Based on the above, the Department's finding that Smith's examination of the minor's identification was not reasonable is supported by substantial evidence. The licensed premises had a guidebook that Smith could have utilized to compare to the minor's identification. (Finding of Fact, ¶ 14.) Smith did not use the guidebook when checking the minor's identification. (*Ibid.*) In fact, Smith did not even bother to retrieve the guidebook. (*Ibid.*) If Smith had consulted the guidebook, she would have noticed several obvious discrepancies which indicating that the minor's identification was false. (*Id.* at ¶ 15.)

The Board appreciates that Smith had ample training and experience in identifying fake identifications. The Board also notes that the evidence establishes that the minor's identification was somewhat sophisticated and looked and felt genuine to Smith. However, the Board cannot simply second guess the Department and reach a different conclusion based upon its own observations of the evidence.

While we reluctantly conclude that the Department's decision must stand, we encourage the Department to consider what additional training, guidance, or other resources – ideally something in an online or app format – it might make available to licensees. We believe something more should be offered to licensees to assist them in dealing with the increasingly difficult problem presented by today's fake IDs.

ORDER

The decision of the Department is affirmed.<sup>4</sup>

SUSAN BONILLA, CHAIR  
MEGAN McGUINNESS, MEMBER  
SHARLYNE PALACIO, MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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<sup>4</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.

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:**

THE LOCAL CIDER BAR, INC.  
THE LOCAL CIDER BAR  
828 I STREET  
ARCATA, CA 95521-6183

ON-SALE BEER AND WINE EATING PLACE -  
LICENSE

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

EUREKA DISTRICT OFFICE

File: 41-575593

Reg: 21090711

**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 June 23, 2021. Pursuant to Government Code section 11519, this decision shall become effective 30 days after it is delivered or mailed.

Any party may petition for reconsideration of this decision. Pursuant to Government Code section 11521(a), the Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or if an earlier effective date is stated above, upon such earlier effective date of the decision.

Any appeal of this decision must be made in accordance with Business and Professions Code sections 23080-23089. The appeal must be filed within 40 calendar days from the date of the decision, unless the decision states it is to be "effective immediately" in which case an appeal must be filed within 10 calendar days after the date of the decision. Mail your written appeal to the Alcoholic Beverage Control Appeals Board, 1325 J Street, Suite 1560, Sacramento, CA 95814. For further information, and detailed instructions on filing an appeal with the Alcoholic Beverage Control Appeals Board, see: <https://abcab.ca.gov> or call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.

On or after August 16, 2021, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: July 6, 2021



Matthew D. Botting  
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

The Local Cider Bar, Inc.	}	File: 41-575593
DBA: The Local Cider Bar	}	
828 I Street	}	Registration: 21090711
Arcata, California 95521-6183	}	
	}	License Type: 41
Respondent	}	
	}	Word Count: 31,855
	}	
	}	Reporter:
	}	John Fahrenwald-CSR #14369
	}	iDepo Reporters
	}	
<u>On-Sale Beer and Wine Eating Place License</u>	}	<b><u>PROPOSED DECISION</u></b>

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter, via videoconference, on April 15, 2021 and May 12, 2021.

Matthew Gaughan, Attorney, represented the Department of Alcoholic Beverage Control (Department).

Gillian Garrett, Attorney, represented The Local Cider Bar, Inc. (Respondent).

The Department seeks to discipline the Respondent's license on the grounds that, on or about December 11, 2020 the Respondent, through their agent or employee, Jody Smith, sold, furnished, or gave alcoholic beverages to Julia Humphreys, an individual under the age of 21 in violation of Business and Professions Code section 25658(a)<sup>1</sup> (Exhibit D-1).

The Department further alleged that there is cause for suspension or revocation of the license of the Respondent in accordance with section 24200 and sections 24200(a) and (b). The Department further alleged that the continuance of the license of the Respondent would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution and sections 24200(a) and (b). (Exhibit D-1)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on May 12, 2021.

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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 January 5, 2021. The matter was set for hearing via videoconference on April 15, 2021. During the on the record appearance in this matter, the Department appeared with all of its witnesses (via videoconference) and was prepared to proceed. One of the subpoenaed Department witnesses was Julia Humphreys (Humphreys), the minor at issue in this matter. Humphreys had been cited by the Department on December 11, 2020 for possessing a falsified identification and being a minor in possession of an alcoholic beverage. Her citation had subsequently been submitted to the Humboldt County District Attorney's Office for potential prosecution on misdemeanor charges arising from the Department investigation. (Exhibit L-1)
2. Humphreys appeared, via videoconference, represented by counsel for the potential criminal matter. Counsel for Humphreys informed the parties present that Humphreys would be invoking her 5<sup>th</sup> amendment privilege against self-incrimination and that she would not be testifying in this matter at any point while criminal charges were pending. Counsel for Humphreys informed the parties that her criminal matter had not even been set for a court date and that her invocation of her 5<sup>th</sup> amendment privilege would continue throughout the pendency of the criminal proceedings, including any participation in a diversion program. Humphreys was sworn in as a witness. She identified herself as Julia Humphreys, gave her date of birth, and provided non-testimonial, identifying information to confirm her identity and physical appearance. Humphreys confirmed that she was invoking her 5<sup>th</sup> amendment privilege and that this invocation would continue through the pendency of the potential criminal matter arising from the Department investigation. (Exhibit L-1)
3. The Department then indicated that it was ready to proceed with evidence. Counsel for the Respondent raised a discovery concern that she had only been provided images of the alleged falsified identification and that she had not been given an opportunity to view and examine it in-person. Counsel made an offer of proof that the details of this exhibit were central to the defense of the Respondent. Good cause for a continuance was granted to facilitate an in-person viewing. A date in May 2021 was discussed so that the identification could be examined by Respondent's counsel and forwarded by the Department to the assigned administrative hearing judge for receipt as a potential exhibit in this matter. It was discussed, on the record, that Humphreys' circumstances regarding the criminal matter would likely remain unchanged and that her ongoing assertion of her 5<sup>th</sup> amendment privilege would apply to a hearing date in May 2021. Counsel were instructed to raise any change in circumstances regarding the availability of Humphreys to provide testimony despite the ongoing assertion of her 5<sup>th</sup> amendment privilege.
4. The continued hearing in this matter was scheduled for May 12, 2021 and the parties were provided notice of this date. Prior to this date, Respondent's counsel had an opportunity to view the purported identification and the potential exhibit was lodged with this administrative court inside of an evidence envelope prepared by the Department. (Exhibits D-3B and D3C) The matter came on for continued proceedings and the Department indicated that it was ready to go forward. Respondent's counsel objected to proceeding and asserted that the Department's failure

The Local Cider Bar, Inc.  
DBA: The Local Cider Bar  
File: 41-575593  
Registration: 21090711  
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to have Humphreys present on May 12, 2021 was a violation of section 25666. The Department asserted that it had complied with this section by compelling Humphreys' appearance on April 15, 2021 and that her assertion of her 5<sup>th</sup> amendment privilege precluded further examination beyond what had already occurred on that date. Respondent's counsel did not offer any evidence that Humphreys' ongoing assertion of her 5<sup>th</sup> amendment privilege was no longer applicable on May 12, 2021. The matter then proceeded to the taking of evidence.

5. On November 30, 2016 the Department issued the Respondent a type 41, on-sale beer and wine eating place license for the above-described location (the Licensed Premises). (Exhibit D-1)

6. The following is the record of prior Department discipline against the Respondent's license as established by official records introduced by the Department (Exhibit D-5):

<b>Violation Date</b>	<b>Violation</b>	<b>Registration Date</b>	<b>Registration Number</b>	<b>Penalty</b>
11/16/2019	25658(a)	3/6/2020	20089921	15 day suspension (POIC paid in lieu of suspension)

7. Julia Humphreys (Humphreys) was born on August 6, 2000 and was 20 years old on December 11, 2020. On that date, Humphreys was detained by an agent of the Department after she was observed consuming an alcoholic beverage at the Licensed Premises. Prior to being detained, Humphreys had entered the Licensed Premises with the intent to purchase an alcoholic beverage using a purported Washington State driver's license she had obtained. (Exhibit D-C3)

8. On December 11, 2020 Humphreys accompanied a group of friends into the Licensed Premises. The Licensed Premises was actively enforcing COVID-19 health regulations during the pandemic and it was serving patrons in an outside patio area with tables spread out to enforce social distancing. The business was also enforcing the wearing of face masks by employees and patrons when they were not actively consuming food and drinks. Humphreys presented the purported Washington State driver's license to Jody Smith (Smith) who was the only bartender working that evening. Smith was an experienced bartender and she had encountered underage patrons attempting to use falsified identifications on prior dates.

9. Humphreys contacted Smith and ordered a glass of hard cider branded as an Imperial Blurberry (Blurberry). The Blurberry contained 10.8% alcohol by volume. Because the Blurberry was an alcoholic beverage, Smith asked Humphreys to provide identification to prove she was over 21 years of age. Humphreys produced the purported Washington State driver's license. (Exhibit D-3C) Smith took the identification and examined it. She also had Humphreys pull down her mask so she could compare the picture on the identification to Humphreys. The image on the identification was of Humphreys so they matched. The height and weight information corresponded to Humphreys. The purported Washington State driver's license showed her date of birth as February 15, 1998 which would make her over 21 if this was a genuine identification with accurate information.



10. Smith was aware that the Licensed Premises kept an identification guide for checking the security features of purported licenses for genuineness. Arcata is a college town with Humboldt State University located nearby. Because the university has students from other states, out of state identifications are regularly encountered at the Licensed Premises. The Licensed Premises encountered the use of fake identifications frequently enough that it had developed policies for its employees to seize fake identifications that were presented so they could be turned over to law enforcement. Smith had also personally encountered persons trying to use fake identifications to purchase alcoholic beverages at the Licensed Premises and in her previous employment. Despite the presence of the guide in the Licensed Premises, Smith did not use it to examine the genuineness of the security features on the identification presented by Humphreys.

11. Smith concluded that the identification presented by Humphreys was genuine and she served her a glass of the Burberry. Humphreys joined her friends at a patio table and began to consume the Burberry. Department Agent S. Harkness (Harkness) was on an enforcement assignment on December 11, 2020. On that date, he was monitoring licensed establishments with a specific focus on persons attempting to purchase alcoholic beverages with fake identifications. Harkness and Department Agent C. Baird (Baird) observed Humphreys and her friends at the Licensed Premises after Humphreys had made the purchase of the Blurberry from Smith. To Harkness, Humphreys appeared underage and she reacted like an inexperienced drinker while sipping from the Blurberry.

12. The agents approached Humphreys and her friends and identified themselves as law enforcement. They requested the women who were drinking alcoholic beverages, including Humphreys, to produce their identifications. Humphreys then produced the purported Washington State driver's license and handed it to Harkness. (Exhibit D-3C) Harkness looked at the identification handed to him by Humphreys. Harkness observed discrepancies in the identification Humphreys presented that led him to suspect it was not genuine. Humphreys repeatedly asserted the identification was genuine and that it was her only identification.

13. Baird took the identification and checked it with California Highway Patrol dispatch while Harkness remained with Humphreys. Baird determined that the information did not correspond to a legitimate Washington State driver's license and that California's Department of Motor Vehicle database had a Julia Humphreys with a date of birth of August 6, 2000. Harkness confronted Humphreys with this information and she then admitted to Harkness that the Washington identification was not real, and she had purchased it on the internet. (Exhibit L-1) Harkness retained possession of the purported Washington State driver's license Humphreys had used and photographed it. (Exhibit D-3A) Harkness also photographed Humphreys' unfinished glass of Blurberry in front of the Licensed Premises' advertisement for the drink. (Exhibit D-4) Humphreys was cited and released from custody.

14. Harkness then contacted Smith regarding the sale to Humphreys. Smith admitted that she had sold to Humphreys but that Humphreys had presented identification that showed her to be older than 21. Smith communicated to Harkness that she believed the license to be genuine.

Smith confirmed the Licensed Premises did not have a scanner but that it did have an identification guide for checking the legitimacy of out of state licenses. Smith did not retrieve or use the guide on December 11, 2020 when checking Humphreys' identification. Smith retrieved the guide from another room where it was stored. The page from the guide relating to Washington state licenses that Smith had available to her was received in evidence in this matter. The page contained written descriptions of the security features and it also contained visual exemplars that could be compared to a purported license to determine its genuineness. The purported license presented by Humphreys was an "enhanced driver license" which corresponded to the middle exemplar sample. (Exhibit D-6)

15. The purported license feels genuine upon a casual examination but if scrutinized, a number of appearance features are markedly "off" when compared to a genuine license. A comparison of the purported license presented by Humphreys (Exhibit D-3C) to the exemplar of a genuine Washington State enhanced driver license from the guide (Exhibit D-6) reveals a number of significant visual disparities. The license presented by Humphreys is missing the green "WA USA" graphic to the left of the green "WASHINGTON" graphic in the salmon colored banner across the top. It is also missing the white "WASHINGTON" graphic that is behind the foreground writing in the salmon colored banner. The "ENHANCED DRIVER LICENSE" graphic is written in italics rather than the block font in the genuine exemplar. The purported license has a tree graphic in the upper right of the salmon colored banner that is not present in the genuine exemplar. The purported license is missing the gold foil tree graphic that adorns the lower middle of the genuine exemplar. The purported license has a USA flag graphic that is a horizontal block image of the flag. The genuine exemplar's USA flag graphic is a waving flag at a significant angle. The purported license has a black graphic of the state seal in the upper left corner of the larger photo of Humphreys. This graphic is not present in any location on the legitimate exemplar.

16. Smith cooperated with Harkness during the investigation and she immediately contacted Michelle Cartledge (Cartledge) about what had just occurred. Cartledge is the owner and a corporate officer of the corporation holding the license. She is actively involved in the running of the Licensed Premises. During the text exchange with Smith, Cartledge discussed adding an identification scanner to the tools for the bartenders. (Exhibit L-4) Cartledge purchased an identification scanner for the Licensed Premises on December 14, 2020 which was three days after the incident. (Exhibit L-5) Cartledge texted all of the employees of the Licensed Premises on December 11, 2020 and during a text exchange with all of them, she described what occurred and reiterated the need to check identifications carefully. During the text exchange with the employees, screen shots of the identification guidebook were shared. Smith shared with Cartledge and the other employees that she had moved the guidebook from the "garage" to next to the register. (Exhibit L-3)

17. Cartledge ensured that the Licensed Premises had enforced policies regarding the checking of identification and that the business checks patrons for age. The employee who had made an underage sale in 2019 had been terminated as a result of the incident and his failure to follow policy. Cartledge, through the corporation, has three alcoholic beverage licenses with the

Department at two locations and the corporation has held licenses since 2014. The prior received in 2019 is the only incident of discipline against any of the three licenses. After that prior incident and after this incident, the Licensed Premises made changes in its procedures to prevent future incidents. The Licensed Premises is active in the surrounding community through donations and community support. (Exhibit L-2) A number of community leaders weighed in on how Cartledge and her husband run their business and they consistently pointed out that the Respondent is a responsible business and that the Cartledges are positive and responsible community members. (Exhibit L-6)

### CONCLUSIONS OF LAW

1. Section 25666(a) provides that in any hearing on an accusation charging a licensee with a violation of Sections 25658, 25663, and 25665, the department shall produce the alleged minor for examination at the hearing unless he or she is unavailable as a witness because he or she is dead or unable to attend the hearing because of a then-existing physical or mental illness or infirmity, or unless the licensee has waived, in writing, the appearance of the minor. When a minor is absent because of a then-existing physical or mental illness or infirmity, a reasonable continuance shall be granted to allow for the appearance of the minor if the administrative law judge finds that it is reasonably likely that the minor can be produced within a reasonable amount of time.
2. In this matter, the Department complied with its obligation to “produce the alleged minor for examination at the hearing” when Humphreys was subpoenaed and produced for examination during the scheduled proceeding on April 15, 2021. Proceeding to the conclusion of evidence on May 12, 2021 was not in violation of section 25666(a) because the evidence established that Humphreys’ assertion of her 5<sup>th</sup> amendment privilege was ongoing, and it precluded further questioning beyond what had already occurred on April 15, 2021. Humphreys was present to be physically examined and was available to be called as a witness by both sides during the proceeding on April 15, 2021.
3. Examination of a witness involves the ability to perceive who they are and for both parties to ask them questions, to the extent those questions are relevant, material and allowed by law. The production required by the statute may occur at a time when applicable legal privileges preclude questioning that may be relevant and material to the proceeding. In this instance, it was established that Humphreys was asserting her 5<sup>th</sup> amendment privilege against self-incrimination to preclude any testimonial questions and responses on April 15, 2021. Humphreys explicitly asserted this privilege going forward until her criminal matter was resolved. Humphreys was examined on April 15, 2021 to the extent she was allowed to be examined, given her assertion of this constitutional privilege. The privilege continued through the rescheduled hearing date on May 12, 2021. The Respondent was given notice that the privilege was being asserted by Humphreys through the pendency of criminal proceedings against her and that Respondent would be given an opportunity to recall Humphreys if evidence was presented that the criminal matter had been concluded and the privilege no longer applied. The Respondent did not offer any

evidence that the privilege was no longer applicable, which means that Humphreys was examined as fully as the law would allow on April 15, 2021.

4. 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.

5. 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.

6. 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.

7. Section 25660 provides that:

(a) Bona fide evidence of majority and identity of the person is any of the following:

(1) A document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a valid motor vehicle operator's license, that contains the name, date of birth, description, and picture of the person.

(2) A valid passport issued by the United States or by a foreign government.

(3) A valid identification card issued to a member of the Armed Forces that includes a date of birth and a picture of the person.

(b) Proof that the defendant-licensee, or his or her employee or agent, demanded, was shown, and acted in reliance upon bona fide evidence in any transaction, employment, use, or permission forbidden by Section 25658, 25663, or 25665 shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon.

8. 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 December 11, 2020 the Respondent's clerk, Jody Smith, inside the Licensed Premises, sold an alcoholic beverage to Julia Humphreys, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 5-17)

9. The evidence established that on December 11, 2020 Humphreys was 20 years old and she purchased an alcoholic beverage in the Licensed Premises, a location subject to the responsibilities of an establishment holding a type 41, on-sale, beer and wine eating place

license. Humphreys purchased a Blurberry hard cider from the Respondent's employee, Smith after she produced a fraudulent Washington State identification with a fake date of birth, rather than her own identification. After looking at the identification and having Humphreys show her face, Smith subjectively concluded that Humphreys was over 21 even though Humphreys was actually 20 years old. Humphreys appeared consistent with her chronological age of 20. (Findings of Fact ¶¶ 5-16)

10. The Respondent has offered testimony and evidence in support of the assertion that Smith reasonably relied on the purported Washington State identification presented by Humphreys that showed her to be over 21 years of age and that the provisions of section 25660 should apply as a defense to the accusation. Section 25660 provides a defense to any person who was shown and acted in reliance upon bona fide evidence of majority in permitting a minor to enter and remain in a public premises in contravention of section 25665, a sale forbidden by section 25658(a), or in permitting a minor to consume in an on-sale premises in contravention of section 25658(b).

11. The defense offered by this section is an affirmative defense. As such, the Respondent, as the licensee, has the burden of establishing all of its elements, namely, that evidence of majority and identity was demanded, shown, and acted on as prescribed.<sup>2</sup> This section applies to identifications actually issued by government agencies as well as those which purport to be.<sup>3</sup> A licensee or his or her employee is not entitled to rely upon identification if it does not appear to be a bona fide government-issued identification or if the personal appearance of the holder of the identification demonstrates, above mere suspicion, that the holder is not the legal owner of the identification.<sup>4</sup>

12. In this matter, it is undisputed that the identification presented by Humphreys depicted her image and that the age information on the identification depicted her as being over the age of 21. It is also undisputed that the identification was a fabrication and was not a "document issued by a federal, state, county, or municipal government." The remaining question is whether the identification presented by Humphreys was something that Smith could have reasonably relied on because the identification *appeared* to be a bona fide government-issued identification. The Respondent has not met their burden regarding this prong of the defense offered by section 25660. (Findings of Fact ¶¶ 5-16)

13. Smith requested and received the identification from Humphreys and looked at it in making her inquiry as to whether she was older than 21. Part of the analysis required under the law requires her to determine the bona fides of the identification itself. Smith credibly testified that

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<sup>2</sup> *Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control*, 261 Cal. App. 2d 181, 189, 67 Cal. Rptr. 734, 739 (1968); 27 Ops. Atty. Gen. 233, 236 (1956).

<sup>3</sup> *Dept. of Alcoholic Beverage Control v. Alcoholic Control Appeals Bd. (Masani)*, 118 Cal. App. 4th 1429, 1444-45, 13 Cal. Rptr. 3d 826, 837-38 (2004).

<sup>4</sup> *Masani*, 118 Cal. App. 4th at 1445-46, 13 Cal. Rptr. 3d at 838; *5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control*, 155 Cal. App. 2d 748, 753, 318 P.2d 820, 823-24 (1957); *Keane v. Reilly*, 130 Cal. App. 2d 407, 411-12, 279 P.2d 152, 155 (1955); *Conti v. State Board of Equalization*, 113 Cal. App. 2d 465, 466-67, 248 P.2d 31, 32 (1952).

she had multiple years of experience in ferreting out fakes. Smith also credibly testified that she subjectively concluded that Humphreys was over 21. Her conclusion was based on her review of the identification and a conclusion that it was Humphreys' bona fide Washington State identification that she looked at. (Findings of Fact ¶¶ 5-16) The remaining question is whether her reliance on the genuineness of the identification presented by Humphreys was objectively reasonable such that a defense is established.

14. If Smith had looked at the purported identification with the level of care required under the law, she would have seen a number of discrepancies that would have led her to the conclusion that it was fraudulent. The identification guidebook (Exhibit D-6) was available to her but it was inexplicably stored away from the point of sale area where it could have been used to effectively guide Smith's required inquiry. (Findings of Fact ¶¶ 5-16) Respondent, during the course of the proceedings, accurately pointed out that it would be too much of a burden on sellers to require the memorization of every detail of every bona fide identification prior to an alcoholic beverage purchase. This is exactly why guides like the one that contained Exhibit D-6 exist. Further, if an identification is presented that a seller is unsure of, they can (and should) decline the sale.

15. As noted above, the purported license was somewhat sophisticated. Smith clearly *subjectively* relied on the identification as real. Though Smith was negligent, she did not recklessly disregard her obligation to check for identification. The purported license felt and looked genuine to her. However, had she had taken the basic step of comparing it to the genuine exemplars in the identification guidebook she had available, she would have recognized that a number of its features were off. A comparison of the purported license presented by Humphreys (Exhibit D-3C) to the exemplar of a genuine Washington State enhanced driver license from the guide (Exhibit D-6) reveals a number of significant visual disparities. The license presented by Humphreys is missing the green "WA USA" graphic to the left of the green "WASHINGTON" graphic in the salmon colored banner across the top. It is also missing the white "WASHINGTON" graphic that is behind the foreground writing in the salmon colored banner. The "ENHANCED DRIVER LICENSE" graphic is written in italics rather than the block font in the genuine exemplar. The purported license has a tree graphic in the upper right of the salmon colored banner that is not present in the genuine exemplar. The purported license is missing the gold foil tree graphic that adorns the lower middle of the genuine exemplar. The purported license has a USA flag graphic that is a horizontal block image of the flag. The genuine exemplar's USA flag graphic is a waving flag at a significant angle. The purported license has a black graphic of the state seal in the upper left corner of the larger photo of Humphreys. This graphic is not present in any location on the legitimate exemplar.

16. The Department has met its burden of proof that there was a violation of section 25658(a) and the Respondent has failed to establish a defense under section 25660. Specifically, the Respondent failed to prove that Smith made a sufficient inquiry as to whether Humphreys' identification was bona fide evidence of majority and identity such that Smith could reasonably have relied upon it. (Findings of Fact ¶¶ 4-17)

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

### **PENALTY**

The Department established that the Respondent suffered a prior violation of section 25658(a) within 36 months. The standard penalty for a violation with one prior of this nature is 25 days. The Respondent has been licensed at the Licensed Premises since 2016 and has held licenses since 2014. The prior occurred in November 2019 which is a little more than a year prior to this incident. No factors in aggravation have been established by the Department beyond the close proximity of this prior.

The Respondent has established factors in mitigation that justify a departure downward from the standard penalty. This violation, in comparison to other violations, appeared to be the product of an error on the part of the clerk while she was subjectively trying to enforce the requirement to show identification. She fell below the duty of care required, but she did not actively ignore her duty, as occurs in many, more serious violations. Humphreys presented a fairly sophisticated fake identification to Smith. It is also noted that this incident occurred during disrupted operations at the Licensed Premises during a pandemic and Smith was also having to juggle health and safety requirements such as social distancing and mask wearing with her ongoing duty to ensure that only persons 21 and older were served alcoholic beverages.

The Respondent immediately used the incident to train its employees to prevent underage sales and the Respondent took other steps, like the purchase of a scanner, to further improve its effort to prevent underage sales. The Respondent appears to be serious about improving its effort to avoid sales to minors. After the first incident in 2019, the employee who made the sale was fired. It is clear that the Respondent actively communicates with its employees to prevent reoccurrences. This incident appears to be a departure from the compliance with the law the Respondent seeks from its corporate officers and employees. During the text exchange with all of the employees right after the most recent incident, it was recognized that the identification guidebook should be next to the register. That change was implemented immediately. The Respondent has repeatedly demonstrated that it takes its duties regarding the responsible exercise of license privileges seriously.

There appear to be no other factors in mitigation applicable to this violation. It is worrisome that the Respondent has had two violations since 2019 given its proximity to a university. It is hoped that the Respondent will redouble its efforts to avoid future sales given the vulnerable student population that will undoubtedly continue to test the boundaries of this Licensed Premises. No other factors in aggravation have been shown. The penalty recommended herein complies with rule 144.

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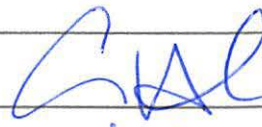
**ORDER**

The Respondents' on-sale beer and wine license is hereby suspended for a period of 15 days.

Dated: May 20, 2021



Alberto Roldan  
Administrative Law Judge

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By:  _____
Date: <u>06/23/21</u> _____