

**State of California
Office of Administrative Law**

In re:
Alcoholic Beverage Control Appeals Board

Regulatory Action:

Title 04, California Code of Regulations

Adopt sections: 176, 177, 181, 181.1, 181.2,
183, 194, 196, 197.1

Amend sections: 178, 184, 187, 188, 193,
195, 197, 198, 199

Repeal sections: 189, 190

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

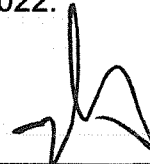
OAL Matter Number: 2022-0422-04

OAL Matter Type: Regular (S)

This resubmittal action reforms the appeals process for administrative decisions issued by the Department of Alcoholic Beverage Control, including definitions and provisions for service of documents, notices, appellate records, briefing, motions, and hearings.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 6/6/2022.

Date: June 6, 2022



**Mark Storm
Senior Attorney**

**For: Kenneth J. Pogue
Director**

**Original: Taryn Kinney, Executive Officer
Copy: Taryn Kinney**

RESUBMITTAL

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW
NOTICE PUBLICATIO

STD. 400 (REV. 10/2019)

For use by Secretary of State only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUN 06 2022
Received at 2:48pm

| | | | |
|------------------------------------------------------------------------------|---------------------------------------------|--------------------------------------------------|-----------------------------|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z-2021-0615-05 | REGULATORY ACTION NUMBER 2022-0422-04S | EMERGENCY NUMBER |
| For use by Office of Administrative Law (OAL) only | | | |
| NOTICE | | REGULATIONS | |
| AGENCY WITH RULEMAKING AUTHORITY Alcoholic Beverage Control Appeals Board | | | AGENCY FILE NUMBER (If any) |

OFFICE OF ADMIN. LAW
2022 APR 22 PM 1:56

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| | | | |
|---------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|-------------------------------|
| 1. SUBJECT OF NOTICE Administrative Appeals Process | TITLE(S) 4 | FIRST SECTION AFFECTED 176 | 2. REQUESTED PUBLICATION DATE |
| 3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | 4. AGENCY CONTACT PERSON Taryn Kinney | TELEPHONE NUMBER (916) 445-4005 | FAX NUMBER (Optional) |
| OAL USE ONLY | ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | NOTICE REGISTER NUMBER | PUBLICATION DATE |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

| | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------|
| 1a. SUBJECT OF REGULATION(S) Alcoholic Beverage Control Administrative Appeals Process | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2020-1013-06 | | |
| 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related) | | | |
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) | ADOPT 176, 177, 181, 181.1, 181.2, 183, 194, 196, and 197.1 | | |
| | AMEND 178, 184, 187, 188, 193, 195, 197, 198, and 199 | | |
| TITLE(S) 4 | REPEAL 189 and 190 | | |
| 3. TYPE OF FILING | | | |
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) | | | |
| <input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> File & Print <input type="checkbox"/> Print Only | | | |
| <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Other (Specify) _____ | | | |
| 4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) 1/4/22-1/20/22 and 3/11/22-3/28/22 | | | |
| 5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) | | | |
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____ | | | |
| 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY | | | |
| <input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal | | | |
| <input type="checkbox"/> Other (Specify) _____ | | | |
| 7. CONTACT PERSON Taryn Kinney | TELEPHONE NUMBER (916) 445-4005 | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) taryn.kinney@abcappeals.ca.gov |

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only
ENDORSED APPROVED
JUN 06 2022
Office of Administrative Law

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| SIGNATURE OF AGENCY HEAD OR DESIGNEE Kinney, Taryn@ABC Appeals <small>Digitally signed by Kinney, Taryn@ABC Appeals Date: 2022.04.22 09:42:00 -0700</small> | DATE 04/22/2022 |
| TYPED NAME AND TITLE OF SIGNATORY Taryn Kinney, Executive Officer | |

Legend

| | |
|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| Text of Regulations Noticed to the Public | Additions in <u>underline</u> Deletions in strikethrough |
| Text of Modified Regulations Noticed to the Public | Additions in <u>double underline</u> Deletions in double-strikethrough |
| Text of Second Modified Regulations Noticed to the Public | Additions in <u>bold, underline and italics</u> Deletions in bold, strikethrough, and italics |

4 CCR § 176

§ 176. Location of Offices. [Repealed]

(a) Any reference to the Board's "principal office" means the Board's physical mailing address as listed at abcab.ca.gov.

(b) Any reference to the Department's "principal office" means the Department's headquarters and its physical mailing address as listed at abc.ca.gov.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23050 and 23075, Business and Professions Code.

4 CCR § 177

§ 177. Tenses, Gender, and Number. [Repealed]

For purposes of these rules and regulations, any reference to gender shall extend to all genders and any reference to the singular number shall extend to and include the plural number also.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. ~~Sections 23081 and 23083, Business and Professions Code.~~

4 CCR § 178

§ 178. Definitions.

For the purpose of these rules and regulations:

(a) "Board" means Alcoholic Beverage Control Appeals Board.

(b) "Department" means Department of Alcoholic Beverage Control.

(c) ~~Unless the context otherwise requires, the words "appellant" or "party," include the attorney or other authorized agent of such person.~~ "Appellant" means any person or entity who files an appeal with the Board.

(d) ~~"Party" includes the Department, the appellant and any person, other than an officer or an employee of the Department in his official capacity, who has been allowed to appear in the proceeding before the Department.~~ "Respondent" means any person or entity who responds to an appeal filed with the Board.

(e) "Party" includes the Department, appellant(s), and respondent(s)

(f) "Person or entity" includes the attorney or authorized agent of a party.

(g) "Day" refers to a calendar day, unless otherwise stated.

(h) "File" or "filed" refers to ~~when the date~~ a document is received by the Board ~~except when a document is electronically at the Board's electronic mail address as listed at www.abcab.ca.gov, or by mailed to the Board principal office; provided, however, an appeal mailed to the Board by means of via registered or certified mail, in which case, the document is shall be~~ deemed "filed" ~~with the Board~~ on the date of ~~the registry or certification~~ with the United States Post Office.

(i) "Section" or "subsection" refers to the rules and regulations contained in Title 4, Division 1.1 of the California Code of Regulations, unless otherwise specified.

(j) "Serve" or "served" refers to the manner of service listed in section 181.1.

(k) "Sign," "signed," or "signature" includes both physical and electronic signatures.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23077 and 23081, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 181

§ 181. Administration. ~~[Repealed]~~ Proof of Service.

(a) A proof of service shall be attached to any documents filed or served under sections 184, 187, 193, 195, 196, 198 and 199~~175~~ through 200.1.

(b) A proof of service shall include all of the following:

(1) The address where the document was served;

(2) the date of service;

(3) the manner of service;

(4) a statement that the person making service is over the age of 18 years; and;

(5) signature of the person making service, under penalty of perjury.

(c) Proof of electronic service may be in electronic form, subject to the provisions of sections 181.1 and 181.2.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23081.5, Business and Professions Code.

4 CCR § 181.1

§ 181.1 Manner of Service.

(a) A party may serve a document to the Board using any of the following means of service:

(1) in-person service, ~~or~~;

(2) service by mail (~~regular or certified~~); ~~or~~

(3) electronic service to the Board's electronic mail address as listed at www.abcab.ca.gov.

(b) A party may serve a document to the Department or other party using any of the following means of service:

(1) in-person service, ~~or~~;

(2) service by mail (~~regular or certified~~); ~~or~~

(3) electronic service, subject to the requirements of section 181.2.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081, 23081.5, and 23088, Business and Professions Code.

4 CCR § 181.2

§ 181.2. Electronic Service.

(a) A party agrees to accept electronic service by:

(1) serving a notice on all parties that the party accepts electronic service; and

(2) filing the notice with the Board.

(b) The notice must include the electronic mail address at which the party agrees to accept service.

(c) The notice must be signed by the party agreeing to accept electronic service.

(d) Termination or modification of electronic service

(1) A party may terminate its agreement to accept electronic service by filing a notice of termination of electronic service with the Board and serving the notice on all other parties.

(2) A party may modify its electronic service by filing a notice of modification of electronic service with the Board and serve the notice on all other parties.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23077, 23081, and 23081.5, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 183

§ 183. ~~Form of Appeal~~ Notice of Appeal.

Any person or entity aggrieved by the decision of the Department as defined in Business and Professions Code section 23080 may appeal the Department's decision to the Board as follows:

(a) The appellant shall file a Notice of Appeal with the Board in accordance with Business and Professions Code section 23081.5.

(b) The appellant must file the Notice of Appeal with the Board on or before the tenth day after the last day on which reconsideration of the underlying decision of the Department can be requested pursuant to Government Code section 11521(a).

(c) An appellant shall also serve a copy of the Notice of Appeal upon all parties, including the Department at its principal office.

(d) Failure to comply with the provisions in this section shall result in dismissal of the appeal pursuant to section 199.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23084, Business and Professions Code; ~~and Article XX, Section 22, California Constitution.~~

4 CCR § 184

§ 184. Contents of Notice of Appeal.

(a) The Notice of Appeal shall be signed by the appellant ~~or his its authorized agent~~. The Notice of Appeal should state the general grounds for appeal and the specific questions to be considered by the Board on review. The **original and three copies of the** Notice of Appeal shall be filed with the Board and **a copy** shall also be served upon **the Department and** all parties to the proceeding before the Department, ~~including the Department at its principal office~~. Proof of service shall be filed with the **original** Notice of Appeal.

~~(b) The Notice of Appeal should state the general grounds for appeal (see Business and Professions Code Section 23084) and the specific questions to be considered by the Board on review. The original and three copies of the Notice of Appeal shall be filed with the Board and a copy shall also be served upon all parties to the proceeding before the Department, including the Department at its principal office in Sacramento. Such service shall be made by delivering or mailing a copy of the Notice of Appeal to each party. Proof of service shall be filed with the original Notice of Appeal.~~

~~(c) The Notice of Appeal should be typewritten or printed upon paper 8 1/2 x 11 inches in size and be double spaced.~~

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23084, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 187

§ 187. Filing Record. Preparation, Payment, and Filing of the Record of Appeal.

(a) Upon the filing of the Notice of Appeal, the Department shall calculate the estimated cost of the record of appeal, **including the transcript in accordance with the fee schedule provided in Section 69950 of the Government Code**, notify appellant thereof, and demand payment When a Notice of Appeal has been filed with the Board, the Board shall request the Department to furnish appellant an itemized statement of the estimated cost of the record on appeal ~~in accordance with the fee schedule provided in Section 69950 of the Government Code.~~

(b) Appellant shall make payment to the Department within fifteen days after the date of the Department's demand for payment.

(c) Cost of the record ~~on~~ appeal shall include the filing of an original and three copies of the reporter's transcript and file transcript, accompanied by the original exhibits, with the Board preparation and filing of the record of appeal with the Board.

(d) Such statement of costs shall also include the cost of preparing and delivering to appellants serving a copy of the reporter's transcript, exhibits and file transcript record of appeal on appellant, should any or all it be requested by appellant.

(e) In those instances, however, wWhere the Department has previously ordered an original copy of the reporter's transcript because of action taken by it pursuant to Government Code Section 11517(c), the appellant need only pay the fee for a first copy of the reporter's transcript, plus the fee for each additional copy, as provided by Section 69950, for the record on appeal furnished to the Board and appellant.

(f) Upon receipt of payment from appellant, the Department shall forthwith immediately arrange for the preparation of the record on appeal and file it with the Board.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 188

§ 188. Contents of Record.

The record on appeal filed with the Board shall consist of:

~~(1)~~(a) The Department's file transcript, which shall include:

- (1) all notices and orders issued by the administrative law judge and the Department, including any proposed decision by an administrative law judge and the final decision issued by the Department;
- (2) pleadings ~~and correspondence by a~~ filed by any party;
- (3) any filed notices, orders, or pleadings ~~and correspondence~~ pertaining to reconsideration;

~~(2)~~(b) the hearing reporter's transcript of all proceedings;

~~(3)~~(c) exhibits admitted or rejected.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 189

§ 189. Documents Filed with Board.

In addition to the Notice of Appeal and the record on appeal, other documents which may be legally filed with and received by the Board in connection with the appeal, shall also become part of the record.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23083 and 23085, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 190

§ 190. Cost of Record and Payment Therefor.

~~The Department shall calculate the cost of the record on appeal as provided by Section 187, shall notify appellant thereof, and demand payment. Payment shall be made by appellant to the Department within fifteen days after the date of issuance of such demand.~~

~~Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23083, Business and Professions Code; Section 69950, Government Code; and Article XX, Section 22, California Constitution.~~

4 CCR § 193

§ 193. Filing of Briefs by Parties.

(a) Appellant may file an opening brief, respondent may file a reply brief, and appellant may thereafter file a closing brief.

~~(a) Form and Filing of Briefs. Briefs shall be typewritten or printed upon paper 8 1/2 x 11 inches in size. Reproduction thereof may be by any process, provided all copies are clear and permanently legible. Only one side of the paper shall be used, unless printed, and the margins shall not be less than one inch on all sides of the page. The lines shall be double spaced. Headings shall be capitalized. An original and three copies of all briefs shall be filed with the Board. The original of each brief shall contain a certification that copies have been served upon or mailed to each party, his attorney or agent, as well as the Department, and the Attorney General's office.~~

~~(b) Time for Service and Filing. The opening brief shall be served and filed with the Board and served on all parties to the appeal within fifteen~~30~~ days after of the date on the notice issued by the Board stating that the record on appeal has been is filed with the Board. The reply brief shall be served and filed with the Board and served on all parties within fifteen~~20~~ days after the filing date of the opening brief with the Board is served. The Any closing brief shall be served and filed with the Board and served on all parties within five~~seven~~ days after the filing date of the reply brief with the Board is served. An extension of time within which to file a brief will be granted only upon a showing of good cause. A proof of service shall be included with each brief indicating the date it was served.~~

~~(c) A party to the appeal may request an extension of time to file a brief. Any objections to an extension request may be filed with the Board within three days of the request. The extension request will be decided by the Board, or its executive director if so authorized, without hearing and will be granted only upon a showing of good cause.~~

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 194

§ 194. ~~Briefs by Other Interested Persons.~~~~[Repealed]~~ Requirements for Briefs.

(a) All briefs shall be double-spaced on paper 8 1/2 x 11 inches in size. Only one side of the paper shall be used, and the margins shall be at least one inch on all sides of the page. Headings shall be capitalized, in bold, or underlined. If typed, a minimum of size 12 font shall be used.

(b) Briefs shall comply with the following length restrictions:

(1) Opening briefs shall be no more than 20 pages in length.

(2) Reply briefs shall be no more than 15 pages in length.

(3) Closing briefs shall be no more than 10 pages in length.

(c) The page limitations set forth in subsection (b) do not include exhibits, appendices, tables of contents, or cover or title pages.

(d) Any party to the appeal may request a waiver of the page length restrictions in subsection (b). The waiver request will be decided by the Board, or its executive director if so authorized, without hearing and will only be granted upon a showing of good cause.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 § CCR 195

§ 195. Motions.

~~The provisions of Section 193(a) as to form and filing of briefs shall apply to a motion filed with the Board. Any showing in opposition to the motion of a party shall be served and filed within ten days after the date on the notice by the Board providing therefor. The Board may place any motion on the calendar for hearing or the Board may otherwise dispose of the motion.~~

(a) A party may file a motion with the Board as follows:

(1) A motion shall follow the same formatting requirements for briefs set forth in section 194(a).

(2) A motion shall be no more than 10 pages in length unless accompanied by a declaration showing good cause for additional pages, but in no case shall be more than 15 pages in length.

(3) A motion filed ~~to~~with the Board shall include proof of service that the motion was served on all parties to the appeal.

(b) Any party opposing a motion may file a written opposition with the Board within seven days of service of the initial motion. The opposition shall follow the same requirements described in subsections (a)(1) through (3).

(c) The Board may place any motion on the calendar for a hearing or may ~~otherwise~~ elect to rule on the motion without oral argument.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 196

§ 196. Hearing.

(a) After the Record of Appeal is filed with the Board, the Board shall set a hearing date and time, and serve notice to all parties.

(b) Any party wishing to present oral argument before the Board shall notify the Board and all parties in writing at least 21 days before the scheduled hearing date. Failure to timely request oral argument ~~may~~ shall result in submission of the appeal on the pleadings. However, failure to timely request oral argument does not preclude a party from seeking a continuance of the hearing in accordance with subsections (d) and (e).

(c) Notwithstanding subsection (b), the Board may direct for oral argument to be conducted on the appeal even if no party requests it. If oral argument is directed by the Board, a separate notice shall be sent by the Board to all parties.

(d) A party seeking a continuance of the hearing shall first attempt to stipulate to an alternative hearing date with all other parties to the appeal, and then make a request to the Board to reschedule. If any other party will not stipulate to continuance, the requesting party can submit a request to the Board to continue the hearing. A party may object to the continuance request within five days of such request.

(e) Requests by any party for a continuance of oral argument may be granted by the Board, or its executive director if so authorized, without a hearing and upon a showing of good cause.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 197

§ 197. Oral Argument.

(a) In the event oral argument is requested or ordered:

~~(a) Unless otherwise ordered by the Board: (1) A party~~ Each side ~~The appellants, collectively, and respondents, collectively,~~ shall each be allowed a maximum of ~~30~~15 minutes for oral argument;

(2) ~~not more than~~only one person ~~on a side for a party need~~ may ~~shall~~ be heard;

(3) the appellant, or moving party, shall have the right to open and close; however, both statements shall count towards the 15-minute total limit;

(4) No evidence, other than what is contained in the administrative record, shall be referenced by any party.

(b) Continuances. Requests for continuances of oral argument will Additional time for oral argument ~~may~~ shall be granted upon a showing of good cause.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 197.1

§ 197.1. Quorum.

(a) The Board may decide an appeal so long as there is a quorum of at least two members present for:

(1) oral argument and deliberation in closed session; or

(2) deliberation in closed session where an appeal has been submitted on the pleadings.

(b) In the event there are three members appointed to the Board, and a two-member quorum cannot reach a unanimous decision, oral argument and deliberation in closed session will be continued ~~for~~ to a time when the third member can be present.

(c) In the event there are only two members appointed to the Board, and the Board cannot reach a unanimous decision, the Department's decision shall stand.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23077, Business and Professions Code; Article XX, Section 22, California Constitution; *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1176 [56 Cal.Rptr.2d 223]; *Lopez v. Imperial County Sheriff's Office* (2008) 165 Cal.App.4th 1, 4 [80 Cal.Rptr.3d 557, 559].

4 CCR § 198

§ 198. ~~Nature of New Evidence and Showing.~~

(a) When the Board is requested to remand the case to the Department for reconsideration upon the ground that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the hearing before the Department, the party making such request must, in the form of a declaration or affidavit, set forth:

(1) The substance of the newly-discovered evidence;

(2) Its relevancy and that part of the record to which it pertains;

(3) Names of witnesses to be produced and their expected testimony;

(4) Nature of any exhibits to be introduced;

(5) A detailed statement of the reasons why such evidence could not, with due diligence, have been discovered and produced at the hearing before the Department.

(b) Merely cumulative evidence ~~or the exclusion of evidence~~ shall not constitute a valid ground for remand.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23084 and 23085, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 199

§ 199. Dismissal of Appeal.

The Board ~~may~~ shall issue an order dismissing an appeal:

(a) Upon appellant filing a request to dismiss the appeal with the Board ~~with the Board a request to dismiss the appeal;~~

(b) Upon motion of a party, or ~~the Board itself~~ upon the Board's own notice to the parties, that appellant has failed to timely file the Notice of Appeal or pay for the record on appeal as set forth in sections 183 and 187 ~~perfect his appeal by failure to timely file same or to pay the amount specified pursuant to Sections 187 and 190 of these rules;~~

(c) Upon certification by the Department that reconsideration has been granted ~~in the case,~~ after the Notice of Appeal has been filed, and dismissal on this ground shall be without prejudice to the submission of a subsequent appeal in the same case; ~~said dismissal to be without prejudice to the filing of a subsequent appeal; or~~

(d) Upon a motion by ~~the Department or other~~ any party, or upon the Board's own ~~motion~~ notice to the parties, where sufficient cause exists for dismissal. In such an instance, the Board's order shall set forth the sufficient cause for the dismissal; or,

(e) Upon stipulation of the parties.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081, 23083 and 23087, Business and Professions Code; Section 11521, Government Code; and Article XX, Section 22, California Constitution.