

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

**AB-10004**

File: 21-479486; Reg: 24094092

GARFIELD BEACH CVS, LLC and  
LONGS DRUG STORES CALIFORNIA, LLC,  
dba CVS Pharmacy #9674  
1050 West Sunset Boulevard  
Los Angeles, CA 90012,  
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the Dept. Hearing: Matthew G. Ainley

Appeals Board Hearing: November 8, 2024  
Sacramento, CA/Videoconference

**ISSUED NOVEMBER 14, 2024**

*Appearances:* Appellants: Adam Koslin, of Solomon, Saltsman & Jamieson,  
as counsel for GARFIELD BEACH CVS, LLC & LONGS DRUG  
STORES CALIFORNIA, LLC dba CVS Pharmacy 9674,

Respondent: Bryan Rouse, as counsel for the Department of  
Alcoholic Beverage Control.

**OPINION**

**I. INTRODUCTION**

Appellants, Garfield Beach CVS, LLC & Longs Drug Stores California, LLC,  
dba CVS Pharmacy 9674 (appellants) maintain a retail establishment with a  
type 21, off-sale general alcoholic beverage license, which allows them to sell

beer, wine, and distilled spirits to the public for consumption off the premises. The Department of Alcoholic Beverage Control (the Department) issued a decision suspending appellants' license for 25 days because appellants' clerk sold an alcoholic beverage to an individual under the age of 21, in violation of California Business and Professions Code section 25658(a).<sup>1</sup> That suspension is stayed pending the present appeal where appellants have asked the Board to determine whether:

- 1) The Administrative Law Judge (ALJ) erred in quashing appellants' subpoena to the Department to produce the "person most knowledgeable" to testify at hearing regarding whether the Department's filing of the accusation complied with the statute of limitations, and;
- 2) Whether the Department agents complied with Rule 141(b)(5)<sup>2</sup> by handing the clerk a completed citation before the decoy made a "face-to-face" identification.

For the reasons below, the Board finds in favor of the Department and affirms the decision.

## **II. FACTUAL BACKGROUND**

On January 6, 2023, the Los Angeles Police Department (LAPD) conducted a minor decoy operation where they instructed 19-year-old Noelia Alvarez (Alvarez or "the decoy") to attempt to purchase alcoholic beverages

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

<sup>2</sup> All "rules" cited herein are sections of title 4 of the California Code of Regulations.

from various licensed premises. Appellants' business was one of the licensed premises Alvarez visited during that operation.

Alvarez entered the licensed premises, went to the beverage coolers, and selected a 3-pack of Modelo beer. She took the beer to the counter and waited in line. When it was her turn, the clerk, Katerina Gomez (Gomez or "the clerk"), scanned the beer for sale and asked to see Alvarez' identification. Alvarez handed Gomez her valid California driver's license showing her to be 19 years old (exh. 5). Gomez looked at the identification for approximately 30 seconds before handing it back to Alvarez. Gomez and Alvarez completed the sale, and Alvarez exited the licensed premises.

Alvarez re-entered the licensed premises a short time later with LAPD officers. One of the officers asked Alvarez to identify the person who sold her the beer, and she identified Gomez. The identification took place near the register while Alvarez and Gomez were close together, and a photograph of the two of them were taken (exhs. 6 & B.) In the photographs, Alvarez is holding the beer and Gomez is holding a citation book, with the top page filled in.

### **III. PROCEDURAL HISTORY**

The Department filed an accusation against appellants on January 2, 2024. On March 25, 2024, appellants issued a subpoena to the Department compelling the "Person Most Knowledgeable regarding the 'filing' and stamping of the accusation in the instant matter." (Exh. C.) The parties met and conferred on the issue, and ultimately, the Department advised appellants

that they would not comply with the subpoena. (*Ibid.*) The Department also provided appellants with documentary evidence from the United States Postal Service showing that the accusation was timely served before the statute of limitations.

A hearing was held on April 2, 2024, where the Department made an oral Motion to Quash respondents' subpoena for the person most knowledgeable. Argument on the matter was heard, and the ALJ granted the Department's Motion stating:

I'm going to grant the motion to quash. You started off with you were concerned about whether this was filed within one year as required by statute of limitations. I think there's sufficient evidence on its face in these documents that it was not only the legal presumption that Mr. Scoleri referred concerning official duties being performed, but also the tracking information from the Post Office, all of which seemed to indicate it was filed within one year. Dealing with your broader issue, which seems to be that the Department's internal processes are inappropriate, I think that's beyond the scope of this hearing and beyond my authority. The accusation was filed in a timely manner by all accounts, and by the evidence that I can see, and so, therefore, I'm going to grant the motion to quash. It's not an issue we will be delving into today.

(Reporter's Transcript pp. 15:14-16:6.)

The hearing continued and the parties introduced oral evidence, documentary evidence, and evidence by oral stipulation. The ALJ issued a proposed decision on April 29, 2024, wherein he recommended sustaining the violation and imposing a 25-day suspension. The Department adopted the proposed decision on June 25, 2024 and issued a certificate of decision on July 2, 2024. Appellants filed a timely appeal.

## IV. DISCUSSION

### A. Standard of Review

The scope of the Board's review of the Department's decisions is established by statute. (Bus. & Prof. Code, § 23084.) The nature of this review is further governed by the California Constitution, statutes, case law, and precedential decisions of the Department. (See Cal. Const., art. XX, § 22; Bus. & Prof. Code, §§ 23083, 23085; Gov. Code, § 11425.60; *Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85, 94-96; and *American Federation of Labor v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1027.)

In reviewing the Department's decision in this case, the Board's role is to determine whether the Department has proceeded in the manner required by law; whether the decision is supported by the findings; and whether the findings are supported by substantial evidence. (Bus. & Prof. Code, § 23084, subds. (b)-(d).) Substantial evidence has been defined as that which a reasonable mind might accept as adequate to support a conclusion. (*County of San Diego v. Assessment Appeals Board No. 2* (1983) 148 Cal.App.3d 548, 555 quoting *Hosford v. State Personnel Board* (1977) 74 Cal.App.3d 302, 307.) It is evidence of "ponderable legal significance ... reasonable in nature, credible, and of solid value." (*County of San Diego v. Assessment Appeals Board No. 2, supra*, 148 Cal.App.3d at 555 quoting *Ofsevit v. Trustees of the California State University and Colleges* (1978) 23 Cal.3d 773, fn. 9.)

In determining whether the Department's decision is supported by substantial evidence, the Board may not independently reweigh the evidence. (*Kirby v. Alcoholic Beverage Control Appeals Bd.* (1970) 7 Cal.App.3d 126, 129; *Reimel v. Alcoholic Beverage Control Appeals Bd.* (1967) 255 Cal.App.2d 40, 43.) The function of the Board is "merely to determine whether the findings of the Department are supported by substantial evidence." (*Harris v. Alcoholic Beverage Control Appeals Bd.* (1963) 212 Cal.App.2d 106, 113.) Any conflicts in the evidence are to be resolved in favor of the Department's decision, and the Board must accept all reasonable inferences from the evidence which support the Department's decision. (*Ibid.*) The Board may not disregard or overturn a finding of fact by the Department simply because the Board believes a different finding would have been more reasonable. (*Id.* at p. 114.)

#### B. Appellants' Subpoena

Appellants contend the ALJ erred in quashing its subpoena for the Department's "Person Most Knowledgeable" regarding the filing and stamping of accusations. (Appellants' Opening Brief (AOB) at pp. 4-5.) Specifically, appellants argue that the ALJ failed to provide a valid reason to quash its subpoena and that it would have produced "testimony highly material to the question of whether the accusation in this matter was 'filed' in time [ ] to meet the one year statute of limitations ... ." (*Ibid.*) We disagree.

Section 24206 sets a one-year statute of limitations for violations of Business and Professions Code section 25658. The charged violation occurred on

January 6, 2023, and the Department filed the accusation on January 2, 2024 (exh. 1). Further, the Department provided tracking information from USPS establishing that the accusation was served on appellants on January 5, 2024, prior to the expiration of the statute of limitations. (Exh. 8.) Appellants did not dispute that they received the accusation on January 5, 2024.

Based on the above, the ALJ's finding that the accusation was timely filed and served is supported by substantial evidence. Appellants failed to provide any evidence to the contrary. Further, the ALJ did not abuse his discretion in finding that the undue consumption of time under Government Code section 11513(f) substantially outweighed the probative value of the information appellants sought from the Department. A person most knowledgeable from the Department would have provided no probative value, as here, the substantial evidence supports the finding that the accusation was filed and served on time. The Board sees no error.

C. Rule 141(b)(5)

Appellants' contention with the face-to-face identification stems from the clerk holding the citation when the photograph of her and the decoy were taken. (AOB, pp. 5-6.) Appellants argue that "the face-to-face identification was memorialized in a photograph with the minor holding the beer she purchased, and the clerk holding a completed citation." (*Id.* at p. 5.) In short, appellants maintain that the photograph is evidence that the citation was

issued *before* the face-to-face identification occurred, rendering it invalid under rule 141(b)(5). (*Ibid.*)

Rule 141(b)(5) provides:

Following any completed sale, but not later than the time a citation, if any, is issued, the peace officer directing the decoy shall make a reasonable attempt to enter the licensed premises and have the minor decoy who purchased alcoholic beverages make a face to face identification of the alleged seller of the alcoholic beverages.

The rule requires “strict adherence.” (See *Acapulco Restaurants, Inc. v. Alcoholic Beverage Control Appeals Board* (1998) 67 Cal.App.4th 575, 581 [79 Cal.Rptr.2d 126] (*Acapulco*) [finding that no attempt, reasonable or otherwise, was made to identify the clerk in that case].) However, since this rule provides an affirmative defense, the burden is on appellants to show non-compliance. (*Chevron Stations, Inc.* (2015) AB-9445; *7-Eleven, Inc./Lo* (2006) AB-8384.)

In its decision, the Department rejected appellants' rule 141(b)(5) arguments, reasoning that:

Rule 141(b)(5) is an affirmative defense. The Respondents bear the burden of establishing this defense. In this case the following facts are clear: (1) at some point there was an identification and (2) at some point a citation was written and the photograph was taken. It can be inferred that the citation was given to Gomez (i.e., removed from the citation book and handed to her) after the photo was taken. What has not been established is the timing of the face-to-face identification in relation to the other facts. The face-to-face identification may have been first, it may have the exact moment captured by the camera, or it may have been afterward. Moreover, simply filling out a citation is not the same thing as issuing it. The citation is issued when an officer removes it from his or her citation book and hands it to the person being cited. Between the lack of evidence regarding the timing of the face-to-face



identification and the fact that the citation was issued after the photo was taken, the Respondents have failed to meet their burden of proof.

(Conclusions of Law, ¶ 6.) We agree with this assessment. There is no evidence in the record that the photograph was taken at the exact moment of the face-to-face confrontation. The photograph could have been taken just after the decoy identified the clerk face-to-face. Further, 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. (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826, 837].) Appellants had the burden of establishing an affirmative defense under rule 141(b)(5) and the photo, alone, is not enough to meet that burden. Therefore, the Department's decision must be affirmed.

**ORDER**

Pursuant to Article XX, section 22 of the California Constitution, the Department's decision is affirmed.<sup>3</sup>

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

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<sup>3</sup> This final order is filed in accordance with Business and Professions Code section 23088, and it 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. Service on the Board pursuant to California Rules of Court (Rule 8.25) should be directed to: 400 R Street, Ste. 320, Sacramento, CA 95811 and/or electronically to: [abcboard@abcappeals.ca.gov](mailto:abcboard@abcappeals.ca.gov).

# APPENDIX

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

IN THE MATTER OF THE APPEAL BY:

GARFIELD BEACH CVS, LLC., LONGS  
DRUG STORES CALIFORNIA, LLC.  
DBA: CVS PHARMACY 9674  
1050 W SUNSET BLVD  
LOS ANGELES, CA 90012-2102

CERRITOS ENFORCEMENT OFFICE (CEO)

File: 21-479486

Reg: 24094092

AB: 10004

Off-Sale General - LICENSE

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

**CERTIFICATION**

I, Yuri Jafarinejad, 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 September 6, 2024, in the City of Sacramento, County of Sacramento, State of California.

  
Office of Legal Services

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

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

GARFIELD BEACH CVS, LLC & LONGS DRUG  
STORES CALIFORNIA, LLC  
CVS PHARMACY 9674  
1050 W. SUNSET BLVD.  
LOS ANGELES, CA 90012-2102

OFF-SALE GENERAL - LICENSE

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

CERRITOS ENFORCEMENT OFFICE

File: 21-479486

Reg: 24094092

**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 25, 2024. 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, 400 R St, Suite 320, Sacramento, CA 95811. 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.

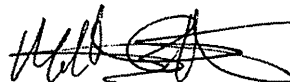
On or after August 12, 2024, a representative of the Department will contact you to arrange to pick up the license certificate.



[https://abcab.ca.gov/abcab\\_resources/](https://abcab.ca.gov/abcab_resources/)

Sacramento, California

Dated: July 2, 2024



Matthew D. Botting  
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Garfield Beach CVS, LLC &	}	File: 21-479486
Longs Drug Stores California, LLC	}	
dba CVS Pharmacy 9674	}	Reg.: 24094092
1050 W. Sunset Blvd.	}	
Los Angeles, California 90012-2102	}	License Type: 21
	}	
Respondents	}	Word Count: 8,500
	}	
	}	Reporter:
	}	Shelby Maaske
	}	Kennedy Court Reporters
	}	
<u>Off-Sale General License</u>	}	<b><u>PROPOSED DECISION</u></b>

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at by videoconference on April 2, 2024.

Bryan D. Rouse, Attorney, and Joseph J. Scoleri, Assistant Chief Counsel, represented the Department of Alcoholic Beverage Control.

Adam N. Koslin, attorney-at-law, represented respondents Garfield Beach CVS, LLC and Longs Drug Stores California, LLC.

The Department seeks to discipline the Respondents' license on the grounds that, on or about January 6, 2023, the Respondents, through their agent or employee, sold, furnished, or gave alcoholic beverages to Noelia Alvarez, an individual under the age of 21, in violation of Business and Professions Code section 25658(a).<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 April 2, 2024.

**FINDINGS OF FACT**

1. The Department filed the accusation on January 2, 2024.

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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 21, off-sale general license to the Respondents for the above-described location on November 25, 2009 (the Licensed Premises).

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

<u>Date Filed</u>	<u>Reg. No.</u>	<u>Violation</u>	<u>Penalty</u>
10/24/2014	14081462	BP §25658(a)	10-day susp.
1/26/2023	23092930	BP §25658(a)	10-day susp., all stayed

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

4. Noelia Alvarez was born on July 26, 2003. On January 6, 2023, she participated in a minor decoy operation conducted by the Los Angeles Police Department. On that date she was 19 years old.

5. Alvarez appeared and testified at the hearing. On January 6, 2023, she was 5'3" tall and weighed 115 pounds. Her hair was long and parted in the middle. She wore a Dodgers jacket, leggings, and tennis shoes. (Exhibits 4, 6 & B.) At the hearing, her appearance was the same.

6. A police officer entered the Licensed Premises. Alvarez entered by herself after the officer gave her the all-clear signal. Alvarez went to the coolers and selected a 3-pack of Modelo beer. She took the beer to the counter, where she had to wait in line.

7. When it was her turn, the clerk, Katerina Gomez, rang up the beer and asked to see her ID. Alvarez handed her California driver license (exhibit 5) to Gomez. Gomez looked at the ID for approximately 30 seconds, then handed it back to Alvarez. Alvarez paid, received some change, and exited.

8. Alvarez met to a vehicle where a sergeant was waiting. She re-entered the Licensed Premises when the officers instructed her to do so. One of the officers asked her to identify the person who sold her the beer. She identified Gomez. The identification took place near the register while the two of them were very close together. A photo of the two of them was taken. (Exhibits 6 & B.) In the photo, Alvarez is holding the beer and Gomez is holding a citation book, with the top page filled in.

9. Alvarez's appearance was consistent with her actual age, 19 years old. Based on her overall appearance, i.e., her physical appearance, dress, poise, demeanor, maturity, and mannerisms shown at the hearing, and her appearance and conduct in the Licensed Premises on January 6, 2023, Alvarez displayed the appearance which could generally be expected of a person under 21 years of age under the actual circumstances presented to Gomez.

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

### **CONCLUSIONS OF LAW**

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

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

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

4. Cause for suspension or revocation of the Respondents' license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that, on January 6, 2023, the Respondents' employee, Katerina Gomez, inside the Licensed Premises, sold an alcoholic beverage to Noelia Alvarez, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 4-9.)

5. The Respondents argued that the decoy operation at the Licensed Premises failed to comply with rule 141(b)(5)<sup>2</sup> and, therefore, the accusation should be dismissed pursuant to rule 141(c). Specifically, the Respondents argued that the citation must have been issued before the photo was taken (since it is visible in the photo) and, therefore, that it was issued before the face-to-face identification was made. This argument is rejected.

6. Rule 141(b)(5) is an affirmative defense. The Respondents bear the burden of establishing this defense. In this case the following facts are clear: (1) at some point there was an identification and (2) at some point a citation was written and the photograph was taken. It can be inferred that the citation was given to Gomez (i.e., removed from the citation book and handed to her) after the photo was taken. What has not been established is the timing of the face-to-face identification in relation to the other facts. The face-to-face identification may have been first, it may have the exact moment captured by the camera, or it may have been afterward. Moreover, simply filling out a citation is not the same thing as issuing it. The citation is issued when an officer removes

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



it from his or her citation book and hands it to the person being cited. Between the lack of evidence regarding the timing of the face-to-face identification and the fact that the citation was issued after the photo was taken, the Respondents have failed to meet their burden of proof.

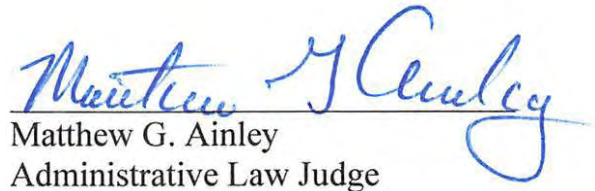
**PENALTY**

The Department requested that the Respondents' license be suspended for 25 days, arguing that the violation at hand was a second strike. The Respondents argued that, if the accusation were sustained, a mitigated penalty was appropriate based on the clerk's cooperation. The penalty recommended herein complies with rule 144.

**ORDER**

The Respondents' off-sale general license is hereby suspended for 25-days.

Dated: April 29, 2024

  
Matthew G. Ainley  
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: <u>J. McCullough</u>
Date: <u>06/25/24</u>