

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

AB-10007

File: 21-590159; Reg: 23093470

NINM, INC.,
dba California Keg and Liquor No. 2
6802 El Cajon Blvd.
San Diego, CA,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Department Hearing: Hon. Matthew G. Ainley

Appeals Board Hearing: January 17, 2025
Sacramento, CA/Videoconference

ISSUED JANUARY 22, 2025

Appearances: Appellant: Matthew Sheena, as counsel for NINM Inc.

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

OPINION

I. INTRODUCTION

Appellant operates a licensed premises called California Keg and Liquor No. 2. The Department of Alcoholic Beverage Control ("the Department") filed a four-count accusation against appellant for selling alcoholic beverages to people under the age of 21. After an administrative hearing, the Department issued a decision under Government Code section 11517, subdivision (c) that

sustained all four counts and that suspended appellant's license for 25 days.¹

Appellant filed a timely appeal. For the reasons stated below, the Department's decision is affirmed.

II. FACTS

On April 20, 2023, the Department's agents, Anthony Barabas and Chelse Kuhn, visited appellant's premises. While standing outside, Agent Barabas saw Taylor Arms ("Arms") and Kyli Shalom ("Shalom") enter appellant's premises. Arms was 19 years old, and Shalom was 20 years old. Arms and Shalom browsed for alcoholic beverages, and they selected four cans of Four Loko. Four Loko is an alcoholic beverage. Arms and Shalom approached the sales counter together. Appellant's employee was behind the counter. Arms placed the Four Lokos on the counter, and she asked the employee for six 50ml bottles of Fireball Whiskey and six 50ml bottles of Pink Whitney Vodka. Arms showed her identification to the employee. The employee examined it and returned it. Arms paid for the beverages, and she left appellant's premises with Shalom. Shalom was near Arms while the sales transaction occurred. The agents contacted Arms and Shalom outside appellant's premises. Arms admitted to using a fake Arizona identification card to purchase the alcoholic beverages.

¹ The Department's decision dated September 17, 2024 is set forth in the appendix.

On May 5, 2023, the Department's agent, Andrew DeLaTorre, visited appellant's premises. While outside, Agent DeLaTorre saw Kiersten Brown ("Brown") and Eris Manning ("Manning") enter appellant's premises. Brown and Manning were 18 years old. They browsed for alcoholic beverages together, and they selected one bottle of tequila and one bottle of triple sec. Afterwards, they approached the sales counter together. Appellant's employee was behind the counter. Brown showed her identification to the employee. The employee examined it, and he returned it. Brown paid for the beverages by using Manning's bank card. While Brown was paying, Manning stood a few feet away. Brown and Manning left appellant's premises together. Agent DeLaTorre contacted Brown and Manning outside appellant's premises. Agent DeLaTorre determined that Brown used a fake California driver license to purchase the alcoholic beverages. Upon examining it, Agent DeLaTorre immediately knew the license was fake. There were several things wrong with the color, font, printing, and picture.

III. PROCEDURAL HISTORY

Appellant has a type 21 off-sale general license. On May 18, 2020, the Department suspended appellant's license for 15-days for violating Business and Professions Code section 25658, subdivision (a)².

² All further statutory references are the Business and Professions Code unless otherwise stated.

On November 14, 2023, the Department filed an amended four-count accusation against appellant. All four counts alleged that appellant violated Business and Professions Code section 25658, subdivision (a). This subdivision makes selling alcoholic beverages to a person under 21 years of age a misdemeanor. Notably, counts 2 and 4 allege that appellant's employee sold alcoholic beverages to Shalom and Manning.

On January 16, 2024, the Department held an administrative hearing. Administrative Law Judge Matthew Ainley presided. Agents Barabas, Kuhn, and DeLaTorre testified for the Department. Appellant did not present any evidence or testimony. After the hearing, Judge Ainley issued a proposed decision, but the Department's Director rejected it.

On September 17, 2024, the Director issued a decision under Government Code section 11517, subdivision (c). The Director's decision sustained all four counts, and it suspended appellant's license for 25 days. Appellant filed a timely appeal. Appellant's appeal raises five issues. According to appellant's opening brief, they are:

1. "The final decision is not supported by the findings."
2. "The findings are not supported by substantial evidence in light of the whole record."
3. "The Department has proceeded without, or in excess of, its jurisdiction."
4. "The Department has not proceeded in the manner required by law."

5. "There is relevant evidence, which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing."

IV. DISCUSSION

A. STANDARD OF REVIEW

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.) Further, even if the Board determines the Department erred at some point of the administrative process, the Department's decision may not be reversed unless appellant shows that prejudice was suffered because of the error. (*Reimel v. House* (1969) 268 Cal.App.2d 780, 787.) Under the California Constitution, a judgment shall be set aside only if "the error complained of has resulted in a miscarriage of justice." (Cal. Const., art. VI, § 13.) The burden is on the party seeking reversal of an administrative agency's decision to affirmatively show the alleged error was prejudicial, i.e., that it is reasonably probable the party would have received a more favorable result had the error not occurred. (*Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.296, 308.) In the absence of any showing of prejudice, the Department's decision should be affirmed. (*City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 51-52.)

B. UNSUPPORTED CLAIMS

To demonstrate error, an appellant must present meaningful legal analysis supported by citations to legal authority and by citations to facts in the record that support the claim of error. (*City of Lincoln v. Barringer* (2002) Cal.App.4th 1211, 1239, fn. 16; *In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 672-673, fn. 3.) When a point is asserted without argument and authority for the proposition, "it is deemed to be without foundation and requires no discussion by the reviewing court." (*Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647.)

Appellant's opening brief raised several issues. Most of them, however, are not supported by the appropriate legal or factual citations. Therefore, those issues will not be reviewed by the Board. But after an extensive review of the record, and to fairly address appellant's contentions, the Board must decide the following issues:

- 1) Was there substantial evidence for the Department to find that appellant's employee sold alcoholic beverages to Shalom and Manning?
- 2) Did appellant establish an affirmative defense under Business and Professions Code section 25660?
- 3) Was the 25-day suspension of appellant's license an abuse of discretion?

C. SUBSTANTIAL EVIDENCE FOR COUNTS 2 AND 4

Counts 2 and 4 of the accusation allege that appellant's employee sold alcoholic beverages to Shalom and Manning. Shalom and Manning are the minors who stood nearby as their friends purchased alcohol. Regarding Shalom, the evidence showed that she entered appellant's premises with Arms, that she browsed for alcohol with Arms, that she approached the sales counter with Arms, and that she stood nearby as Arms purchased the alcohol. Regarding Manning, the evidence showed that she entered appellant's premises with Brown, that she browsed for and selected alcohol with Brown, that she approached the sales counter with Brown, and that she stood nearby as Brown purchased the alcohol. Additionally, Brown used Manning's bank card to purchase the alcohol. This evidence is of ponderable legal significance, and a reasonable mind might use it to conclude that Shalom and Manning were also buying alcohol. A reasonable mind might also conclude that Shalom and Manning were simply accompanying a friend during a visit to the liquor store. However, the Board must accept all reasonable inferences from the evidence, and the Board cannot disregard a finding of fact simply because it believes a different finding would be more reasonable. Therefore, the Board finds that the Department's decision for Counts 2 and 4 was supported by substantial evidence, and it is affirmed.

D. AFFIRMATIVE DEFENSE UNDER SECTION 25660

Section 25658, subdivision (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 21 years of age is guilty of a misdemeanor. Section 25660, subdivision (b) provides an affirmative defense for violating section 25658 if the person who sold the alcohol was shown and acted in reliance upon bona fide evidence of identification. Section 25660, subdivision (a) provides that bona fide evidence of majority and identity of the person may be 1) any government issued document that contains the name, date of birth, description, and picture of the person, 2) a valid passport issued by a government, or 3) a valid military identification that includes a date of birth and a picture of the person. 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.) 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.)

As this case stands, there were four minors who purchased alcohol from appellant. Afterall, there was certainly substantial evidence to show that Arms and Brown used fake identification cards to buy alcohol. And as explained above, there was substantial evidence to conclude Shalom and Manning

bought alcohol as well. The evidence also shows that appellant's employee did not check Shalom or Manning's identification cards. Thus, the section 25660 defense would not apply to Shalom and Manning because it only arises when the person who sold the alcohol was shown and acted in reliance upon bone fide evidence of identification. Therefore, this Board does not need to address the affirmative defense for the purchases made by Arms and Brown. Even if the Board concludes appellant established the affirmative defense for the purchases made by Arms and Brown, two violations of section 25658, subdivision (a) will still have occurred for the purchases made by Shalom and Manning. Because of that, appellant cannot show it was prejudiced by the Department's decision regarding the affirmative defense, and the Board must affirm it.

E. Rule 144

The Board must uphold a penalty even if it believes a different penalty would have been more reasonable. (*Harris v. Alcoholic Bev. Control Appeals Board* (1965) 62 Cal.2d 589, 594.) If the Department's penalty is reasonable, then there is no abuse of discretion. If there is no abuse of discretion, the penalty must not be disturbed. (*Martin v. Alcoholic Beverage Control Appeals Bd. & Haley* (1959) 52 Cal.2d 287, 291.) California Code of Regulations, title 4, section 144, commonly referred to as Rule 144, provides penalty guidelines. The Department may increase or decrease a penalty if it determines, in its sole discretion, that the facts in aggravation or mitigation of a particular case warrant a deviation from the guidelines. The penalty guideline for violating

section 25658, subdivision (a) is a 15-day suspension. The penalty guideline for a second violation of section 25658, subdivision (a) within 36 months of the first violation is a 25-day suspension.

In this case, the Department found that "some aggravation" was appropriate, and it suspended appellant's license for 25 days. The Department found that aggravation was warranted from two facts in the record. First, the sales in this case occurred withing a few weeks of each other. And second, appellant's previous discipline for the same actions occurred 38 months prior. Therefore, the Department relied upon substantial evidence in the record to aggravate appellant's penalty. This is a proper exercise of the Department's sole discretion, and its decision is affirmed.

V. CONCLUSION

For the reasons stated above, the Department's decision is affirmed.

ORDER

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

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

³ 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.

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

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

NINM Inc.
dba California Keg and Liquor #2
6802 El Cajon Blvd.
San Diego, California 92115-1724

Respondent

Off-Sale General License

File No.: 21-590159

Reg. No.: 23093470

DECISION UNDER GOVERNMENT CODE SECTION 11517(c)

The above-entitled matter having regularly come before the Department on September 19, 2024, for decision under Government Code Section 11517(c) and the Department having considered its entire record, including the transcript of the hearing held on January 16, 2024, before Administrative Law Judge Matthew G. Ainley, and good cause appearing, the following decision is hereby adopted:

Bryan D. Rouse, Attorney, represented the Department of Alcoholic Beverage Control.

Steve S. Mattia, attorney-at-law, represented respondent NINM Inc.

The Department seeks to discipline the Respondent's license on the grounds that, on or about April 20, 2023, the Respondent, through its agent or employee, sold, furnished, or gave alcoholic beverages to Taylor Arms and Kyli Shalom, individuals under the age of 21, in violation of Business and Professions Code section 25658(a).¹ (Exhibit 1.)

The Department also seeks to discipline the Respondent's license on the grounds that, on or about May 5, 2023, the Respondent, through its agent or employee, sold, furnished, or gave alcoholic beverages to Kiersten Brown and Eris Manning, individuals under the age of 21, in violation of Business and Professions Code section 25658(a). (Exhibit 1.)

¹ All statutory references are to the Business and Professions Code unless otherwise noted.

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 January 16, 2024.

FINDINGS OF FACT

1. The Department filed the accusation on August 3, 2023. The Department filed its first amended accusation adding an additional count on November 14, 2023
2. The Department issued a type 21, off-sale general license to the Respondent for the above-described location on April 30, 2018 (the Licensed Premises).
3. The Respondent's license has been the subject of the following discipline:

<u>Date Filed</u>	<u>Reg. No.</u>	<u>Violation</u>	<u>Penalty</u>
5/18/20	20090092	BP §§ 25658(a), 25616 & 25753	15-day susp.
6/22/23	23093297	BP §§ 23402	15-day susp.

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

4. Taylor Arms was born on February 5, 2004. (Exhibits 8 & 22.) On April 20, 2023, she was 19 years old.
5. Kyli Shalom was born on February 13, 2003. (Exhibits 9 & 23.) On April 20, 2023, she was 20 years old.
6. Kiersten Brown was born on June 1, 2004. (Exhibit 24.) On May 5, 2023, she was 18 years old.
7. Eris Manning was born on November 23, 2004. (Exhibit 25.) On May 5, 2023, she was 18 years old.
8. On April 20, 2023, Agent A. Barabas and Agent C. Kuhn went to the Licensed Premises. Agent Barabas saw two youthful-appearing females enter the Licensed Premises. The two females were later identified as Taylor Arms and Kyli Shalom.
9. Agent Barabas got out of his vehicle and stood outside the Licensed Premises, looking in. Arms and Shalom were at the cooler in the back, selecting alcohol. They approached the register together. Arms was carrying four 23.5-oz. cans of Four Loko, an alcoholic beverage. Shalom was behind her and was not carrying anything.
10. Ihab Oraha was behind the register. Arms set the four cans down on the counter. She looked at the display of small bottles and said something to I. Oraha. She selected six 50ml bottles of Fireball Whiskey and six 50ml bottles of Pink Whitney Vodka. Arms took an ID out of her wallet and handed it to I. Oraha. He examined the ID, then returned it to her. Arms paid for all of the alcohol. I. Oraha bagged the alcohol and Arms picked it up. Shalom, while not directly involved in the transaction, remained in proximity to Arms while the transaction took place and was seen next to Arms by I. Oraha. (Exhibit 11.)
11. The agents contacted Arms and Shalom. They determined that Arms was 19 years old, and that Shalom was 20 years old. They took photos of the two of them and the alcoholic beverages. (Exhibits 4-6.) Arms said that she had used a fake Arizona ID to make the purchase. (Exhibit 7.)

12. The agents entered the Licensed Premises and contacted I. Orah. He said that he remembered the transaction. They told him that he needed to be careful and informed him that they would be requesting a copy of the video, which was subsequently provided. (Exhibits 10-12.)

13. On May 5, 2023, Agent A. De La Torre was at the Licensed Premises. He noticed two youthful-appearing females enter the Licensed Premises. The two females were subsequently identified as Kiersten Brown and Eris Manning. He stood by the front door and watched them.

14. Brown selected one bottle and Manning selected a second, which she handed to Brown. Brown carried both bottles to the counter and set them down. One was a bottle of tequila, and the other was a bottle of triple sec, both of which are alcoholic beverages. M. Orah was able to see the two minors walk in the licensed premises together, have a conversation with one another, and approach the counter together. (Exhibits 19 and 20.)

15. Brown handed an ID to M. Orah, the clerk. He looked at it, then handed it back to Brown. Brown pulled Manning's bank card from her own purse and used it to pay for the alcohol. (Exhibits 17-18.) M. Orah bagged the alcohol and handed it to Brown. During the transaction, Manning walked past Brown and stood a few feet away from her at a point closer to the door. After Brown paid, but before M. Orah handed her the bag, Manning looked at something on the counter.

16. Agent De La Torre contacted Brown and Manning outside the Licensed Premises. He determined that they were only 18 years old. He took photos of the two of them and the alcoholic beverages. (Exhibits 13-14 & 16.) Brown had a fake California driver license in her possession. (Exhibit 15.)

17. Upon examining the ID, Agent De La Torre immediately knew it was fake. The printing was brighter, bolder, and not as "clean" as an actual California driver license. Upon further examination, he noticed that the coloring of the date of birth in the lower right-hand corner was off, the ink was generally too bold and thick, the film lining was visible, the signature was not as "clean," and the photo appeared to be superimposed over the blue background. Agent De La Torre opined that, to a "common person," the fake ID might have been believable.

18. Agent De La Torre entered the Licensed Premises and spoke to M. Orah. M. Orah stated that he had checked Brown's ID, looking at the color, stamping, and photo, among other things. He also stated that he did not check Manning's ID because she stood apart and did not appear to be part of the transaction.

19. 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. 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, in making 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). This section expressly states that "[b]ona 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."
5. The defense offered by this section is an affirmative defense. As such, 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.² This section applies to IDs actually issued by government agencies as well as those which purport to be.³ A licensee or his or her employee is not entitled to rely upon an identification if it does not appear to be a bona fide government-issued ID 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.⁴ The defense offered by section 25660 is not established if the appearance of the minor does not match the description on the identification.⁵
6. 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 April 20, 2023, the Respondent's employee, Ihab Oraha, inside the Licensed Premises, sold or furnished or caused to be sold or furnished an alcoholic beverage to Taylor Arms, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 4 & 8-12.)
7. Cause for suspension or revocation of the Respondent's license also exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that, on April 20, 2023, the Respondent's employee, Ihab Oraha, inside the Licensed Premises, sold or furnished or caused to be sold or

² *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).

³ *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).

⁴ *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).

⁵ *5501 Hollywood*, 155 Cal. App. 2d at 751-54, 318 P.2d at 822-24; *Keane*, 130 Cal. App. 2d at 411-12, 279 P.2d at 155 (construing section 61.2(b), the predecessor to section 25660).

furnished an alcoholic beverage to Kylie Shalom, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 5 & 8-12.)

8. The Respondent argued that it had established a defense under section 25660 with respect to this sale based on the Arizona ID shown by Arms. This argument is rejected. Part of the Respondent's burden of proof is establishing that the fake ID in question qualifies as a bona fide government-issued identification. In this case, the Respondent did not present any evidence concerning Arizona IDs. Without such information, it is impossible to determine if Arms' fake ID was a perfect rendering of an Arizona ID or if it bore no resemblance whatsoever. In addition, Respondent never checked the ID of Shalom who was near the transaction and was with Arms while the transaction occurred and a reasonable person should have known the alcoholic beverages purchased would be consumed by both.

9. 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 May 5, 2023, the Respondent's employee, Martin Orah, inside the Licensed Premises, sold or furnished or caused to be sold or furnished an alcoholic beverage to Kiersten Brown, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 6 & 13-18.)

10. 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 May 5, 2023, the Respondent's employee, Martin Orah, inside the Licensed Premises, sold or furnished or caused to be sold or furnished an alcoholic beverage to Eris Manning, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 7 & 13-18.)

11. Once again, the Respondent argued that it had established a defense under section 25660 with respect to this sale based on Brown's fake ID. This argument is rejected. While the ID in question had the same format as an actual California ID, it had several problems. Among them were the coloring of some of the ink, the boldness and thickness of the ink, a visible film covering the ID, a lack of cleanness in the print, and the fact that the photo was superimposed over the background. (Finding of Fact ¶ 17.) Agent De La Torre's testimony that an ordinary person might have been fooled by the ID is rejected as speculation—there is no evidence to support it. In addition, Respondent never checked the ID of Manning who was near the transaction and was with Arms while the transaction occurred and a reasonable person should have known the alcoholic beverages purchased would be consumed by both, especially since it was Manning's form of payment that was used to make the sale in question.

12. Additionally, the fact that the name on the bank card used to pay for the transaction—Manning—was different than the name on the ID—Brown—should have raised some concerns. With a youthful appearing customer in front of him, it was not reasonable to blindly accept the ID under the circumstances.

PENALTY

The Department requested that the Respondent's license be suspended for a period of 25 days in light of the prior sale-to-minor violation, even though it no longer qualifies as a strike under section 25658.1 and rule 144.⁶

⁶ All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

The Respondent did not recommend a penalty in the event that the accusation were sustained, although it did argue that the prior was too old to be considered aggravation.

It is concerning that there were two sales or furnishing of alcoholic beverages to multiple minors in a short period of time—only two weeks apart. Additionally, the prior sale-to-minor violation took place only 3 years and 2 months before the first violation in this case. Accordingly, some aggravation is warranted. The penalty recommended herein complies with rule 144.

ORDER

Counts 1-4 are sustained. For these violations, the Respondent's off-sale general license is hereby suspended for a period of 25 days as to each count, to be served concurrently (for a total suspension period of 25 days).

Dated: September 17, 2024

Sacramento, California



Joseph McCullough
Director

Pursuant to Government Code section 11521(a), any party may petition for reconsideration of this decision. The Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or on the effective date of the decision, whichever is earlier.

Any appeal of this decision must be made in accordance with Chapter 1.5, Articles 3, 4 and 5, Division 9, of the Business and Professions Code. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.