



MEETING AGENDA

Wednesday, November 28, 2018
1:00 p.m. – 4:00 p.m.
(or conclusion of business)

State Personnel Board Building, 1st Floor Auditorium
801 Capitol Mall
Sacramento, CA 95814

- 1. Call to Order and Establishment of Quorum**
Sabrina Ashjian, Chair
- 2. Approval of October 17, 2018 Meeting Minutes**
Sabrina Ashjian, Chair
- 3. Executive Management Report**
This will include the 2017-18 Fiscal Year Report.
Anne Hawley, Executive Director
- 4. Informational Presentation: California Environmental Quality Act (CEQA) & Cannabis Industry**
Heather C. Baugh, Assistant General Counsel, California Natural Resources Agency
- 5. Informational Presentation: Local Licensing, Enforcement, & Social Equity Program**
Greg Minor, Cannabis Regulatory Commission, City of Oakland
- 6. Proposed Regulations: Review of Public Comments and Possible Action Regarding Proposed Regulation Text to Establish Appeals Procedures and Timelines**
Christopher Phillips, Chief Counsel
- 7. Discussion and Possible Action Regarding Proposed Public Speaking Policy for Inclusion in Panel Member Handbook**
Anne Hawley, Executive Director and Christopher Phillips, Chief Counsel
- 8. Public Comments on Items Not on the Agenda**
The Panel may not discuss or act on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting.
[Government Code Sections 11125, 11125.7 (a)]



9. Future Agenda Items

10. Adjournment

MEMBERS OF THE PANEL

Sabrina Ashjian – Chair, Fresno County
Diandra Bremond – Member, Los Angeles County
Adrian Carpenter – Member, Yuba County
Sharon-Frances Moore – Member, San Diego County
Vacant – Speaker of the Assembly Appointee

NOTICE TO THE PUBLIC

The public may provide appropriate comment on any issue before the panel at the time the item is discussed. If public comment is not specifically requested, members of the public should feel free to request an opportunity to comment. Total time allocated for public comment may be limited.

All times are approximate and subject to change. The meeting may be cancelled without notice. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. Action may be taken on any item on the agenda. Time limitations for discussion and comment will be determined by the Chair.

This panel meeting is open to the public and is accessible to the physically disabled. A person who needs a disability-related accommodation or modification to participate in the meeting may make a request by contacting Christopher Phillips at (916) 322-6870. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

If you wish to participate, please plan to attend at the physical location. Seating for all attendees cannot, however, be guaranteed in the event the room reaches capacity. Interested parties should access the Panel's website for the meeting agenda and more information at <http://www.ccap.ca.gov/>. Requests for further information should be directed to Christopher Phillips at (916) 322-6870 or in writing to: Cannabis Control Appeals Panel, 801 Capitol Mall, 6th Floor, Sacramento, CA 95814.



Open Session Meeting Minutes

Monday, October 17, 2018
9:00 – 12:00 pm

State Personnel Board Building – 1st Floor Auditorium
801 Capitol Mall, Sacramento, CA 95814

Members present:

- Sabrina Ashjian, Chair
- Diandra Bremond
- Adrian Carpenter
- Sharon-Frances Moore

Staff present:

- Anne Hawley, Executive Director, Cannabis Control Appeals Panel
- Christopher Phillips, Chief Counsel, Cannabis Control Appeals Panel
- Cassandra DiBenedetto, Administrative Assistant, Cannabis Control Appeals Panel
- Catherine Ohaegbu, Assistant Director, Business, Consumer Services and Housing Agency

Presenters

- Lori Ajax, Bureau of Cannabis Control
- Richard Parrot, California Department of Food and Agriculture
- Miren Klein, California Department of Public Health

Public present:

- Sonya Logman, Business, Consumer Services and Housing Agency
- Tamara Colson, Bureau of Cannabis Control
- John Halligan, California Department of Food and Agriculture
- Melissa Eidson, California Department of Food and Agriculture
- Lindsay Herrick, California Department of Food and Agriculture
- Richard Dorsett, Private Company

Summary:

1. Chair Sabrina Ashjian, called the meeting to order at 9:01 a.m. Catherine Ohaegbu provided the roll call. Panel members Sabrina Ashjian, Diandra Bremond, Adrian Carpenter, Sharon-Frances Moore were present. Quorum was established.
2. Panel Member Sharon-Frances Moore from San Diego County, gave a brief introduction and an overview of her background. She stated that she looks forward to working on the Panel.

3. **Motion: (Bremond): Approve the minutes of the August 13, 2018 Panel Meeting as submitted. Second: Carpenter. Motion passed 3-0, Moore abstained.**
4. Ashjian recommended to move Agenda Item #4, the Executive Director's Report, to after the informational presentations of the state cannabis licensing entities.

Lori Ajax, Chief, Bureau of Cannabis Control (BCC), gave an informational presentation about the responsibilities and licensing framework of the Bureau. The BCC is responsible for developing regulations, issuing licenses, and enforcement action for cannabis distributors, retailers, microbusinesses, testing laboratories, and temporary cannabis events.

Richard Parrot, Director of the CalCannabis Cultivation Licensing Division, California Department of Food and Agriculture (CDFA), gave an informational presentation about the responsibilities and licensing framework within the CDFA. The CalCannabis Cultivation Licensing Division issues licenses for cannabis cultivators, develops regulations for cultivation, implements the track and trace system, inspects premises, and issues enforcement actions.

Miren Klein, Assistant Deputy Director of the Manufactured Cannabis Safety Branch, California Department of Public Health (CDPH), gave an informational presentation about the responsibilities and the licensing framework within the CDPH. Manufactured Cannabis Safety Branch is responsible for developing regulations, licensing, and enforcement actions for cannabis manufacturing.

Bremond asked if there is a goal for the percentage of licensees to inspect? Klein stated that CDPH's goal is to inspect all licensees and that they are trying to meet that goal by hiring and training staff. Parrot stated a similar goal for CDFA and that their goal is to be there for inspections during harvest for the implementation of the track and trace system. Ajax stated that the Bureau of Cannabis Control's goal is to do thorough site inspections and in-depth license checks.

Carpenter asked about steps to remediate label claims and how many chances do licensees have to be compliant. Ajax stated that licensees have one chance, but the BCC works with licensees to ensure compliance. Once labs have completed their testing, they will compare the ingredients on the label with the test results. Klein stated that it depends on the test results as to whether remediation claims go to CDPH. If the product is within the Tetrahydrocannabinol (THC) limit, then the lab does not need a remediation plan, and if it is above the THC limit, then a remediation plan is required.

Bremond asked about the application and fee structure of the BCC. Ajax replied that it is based on the dollar value of a prospective licensee's planned operation in terms of the value of the product.

The BCC is in the process of making changes to the fee schedule in its new regulations.

Moore asked about the state's track and trace system. What is the access and processing time for temporary track and trace licenses? Parrot replied that individuals/companies who have temporary licenses receive a notice and they have a certain number of days to upload data into system after tagging products.

Bremond asked about the processing time for temporary license applications. Ajax replied that they must notify local licensing authorities, who have 10 days to respond. The process is typically 14 days in duration. Parrott replied that local authorities have 10 days to respond and a temporary license is required to submit a plan. Currently, the processing time is 3 weeks in duration with the goal to shorten it to 2 weeks. Klein replied that the processing time is approximately 2 weeks.

Ashjian asked how the BCC is providing oversight of delivery by non-store front retailers. Ajax replied that currently, retailers can deliver throughout the state, but monitoring and enforcement is ongoing.

Carpenter asked about non-storefront transportation and what is the process for delivery. Ajax replied that transportation is between licensees and the patient and that an employee of the licensee must do the deliveries. The employee is required to have a driver's license, employee badge and an inventory list.

Carpenter asked about Type-S licenses and the range in prices. Klein replied that the annual application is half the cost of the temporary licenses and that the license fees are based on gross revenues.

Carpenter asked if there are restrictions on Type-S licenses, Klein replied that there are no restrictions, but determinations will be made during the application's review. During the application process, the applicant must provide a diagram of the facility.

Bremond asked if licensee fees are based on projected revenue? Klein replied "yes" in the first year, but after the first year, the licensee must submit tax returns.

Carpenter asked about microbusinesses and what is the feedback in certain jurisdictions? Ajax replied that some local jurisdictions are still assessing the situation. BCC's goal is to educate the local licensing entities and to continue to assess feedback received.

No public comment.

5. Anne Hawley, Executive Director, Cannabis Control Appeals Panel, provided an executive management report to the Panel Members. Hawley expressed gratitude to the Panel Members for her appointment to serve as Executive Director and thanked Secretary Alexis Podesta and the staff of the Business, Consumer Services and Housing Agency for assistance. It is a priority to ensure that the process is fair and transparent for all who come before the Panel.

Personnel: The Attorney III positions were posted, and the positions will be reposted the first week of November. The duty statement for the Associate Governmental Program Analyst has been sent to the Human Resources Unit, Department of General Services for review.

Budget/Accounting: Hawley will provide a year-end report for FY 2017-18 for the Panel Meeting scheduled for November 2018.

Purchasing Authority: Hawley met with the Procurement Unit of the Department of General Services (DGS) on securing the purchasing authority for CCAP. Hawley has submitted the application and anticipates approval by November.

Facilities: The move-in date into the new CCAP office is targeted for Spring 2019.

Procurement: Hawley stated that CCAP is looking at purchasing ProLaw software, which is a case tracking system. This procurement may require the Panel's approval if the cost is above \$10,000.

Future Meetings: Hawley is reaching out to prospective speakers to provide informational presentations on the California Environmental Quality Act (CEQA) and social equity programs in California. Hawley will present a mid-year budget report for FY 2018-19 at either the December or January 2019 meetings.

Other: The Business, Consumer Services and Housing Agency is working on scheduling tours of various licensing entities soon for Panel Members.

No questions from the panel. No questions from audience.

6. Chief Counsel Christopher Phillips provided an overview of the proposed regulations to establish the Panel's procedures and timelines. Phillips expressed gratitude to the Panel Members and Business, Consumer Services and Housing Agency for their assistance.

The 45-day public comment period ended on 10/15/2018. The Panel can vote to move forward with the originally proposed text or approve the modified text as proposed by staff. CCAP received 4 public comments: (3) were not germane and only (1) comment was germane. Ashjian proposed to ask questions in general versus item-by-item descriptions of the proposed modifications. No questions from the panel members.

Phillips explained that the most recent public comment received stated that the regulations were supposed to be based on the Alcoholic Beverage Control Appeals Board's regulations. Phillips explained that the comments were a little misguided as they came from an Alcoholic Beverage Control Appeals Board's prospective. The Panel hearings are not governed by the Administrative Procedure Act (APA) and the comments urged the Panel to conform to APA guidelines, which are not applicable.

Phillips presented 3 options: 1) keep the approved text from the August meeting and staff will prepare necessary documents to file with the Office of Administrative Law (OAL); 2) approve the proposed staff edits to the text and initiate the 15-day public comment period; or, 3) approve and adopt the text as-is if no public comments are received during the 15-day public comment.

Motion (Moore): Approve the proposed regulation text as submitted in the staff report and initiate the 15-day public comment period and adopt the proposed regulation text on the condition that no public comment is received. Bremond seconded. Motion passed 4-0.

7. Hawley requested that the Panel delegate administrative authority to the Executive Director. The goal of the delegation is to ensure that the day-to-day operations are efficiently managed. The Panel Members will approve purchases that are above \$10,000.

Motion (Moore): Approve the action on administrative delegation authority to the Executive Director as recommended in the staff report. Carpenter seconded.

Moore had a question regarding contracts. Hawley stated that anything above \$10,000 would have a contract with the vendor. Moore motioned to amend the motion to add the word "contracts."

Motion (Moore): Approve the action on administrative delegation authority to the Executive Director as recommended in the staff report with additional amendment on any single item or contract. Bremond seconded. Motion passed 4-0.

8. Ashjian outlined a possible meeting schedule for the Panel.

Motion (Bremond): Approve to hold the 3rd Wednesday of each month, starting in January 2019 and ending in December 2019 for CCAP meetings. Moore seconded. Motion passed 4-0.

9. The public did not request to comment on items not on the agenda.
10. Future agenda items. No comments on future agenda items
11. **Motion (Bremond): Adjourn the meeting. Carpenter seconded.**
Meeting adjourned at 10:55 am.

The California Environmental Quality Act (“CEQA”) 101

By: Heather Baugh
Assistant General Counsel
The California Natural Resources
Agency



So, What's the Deal with CEQA?

CEQA Regulates Public Entities (State and Local—Public Resources Code 21000 *et seq.*/CEQA Guidelines 14 Cal. Code Reg. Section 15300 *et seq.*)

CEQA Is an Informational Statute designed to help decision makers understand the environmental consequences of development.

Significant Impacts Do Not Prevent a Project from Proceeding under CEQA, though they may require mitigation.



Terms to Know?

- Lead or Responsible Agency Status?
 - Primary Responsibility to Permit or Approve Project
 - Conflicts in Status: OPR Resolves
 - Usually Defaults to Local Authority



Responsible Agencies

- Responsible Agencies

Presumption that Lead Agency Document is Adequate

- Scoping/ Collaboration
- Additional Feasible Mitigation
- Inadequate EIR
 - Challenge within 30 days of NOD (usually not possible)
 - Deemed to Have Waived unless....
- Assuming Lead Agency Status and/or Preparing new or Supplemental EIR
 - Substantial changes to the Project as originally proposed
 - Substantial changes to Project conditions or assumptions
 - New information that could not reasonably have been known
- Supplemental EIRs
 - Need Justification for Preparing a new EIR
 - Scope is Limited
 - Discretionary



The 3 Part Test

1. Is CEQA even triggered: Is the Approval, Permit, or project a “Legal Project?”
2. If CEQA is triggered, is the Project Exempt from CEQA?
3. What Level of Environmental Review will Be Required?



Part 1—IS CEQA EVEN TRIGGERED?

#1. Do We Have a “Legal Project”

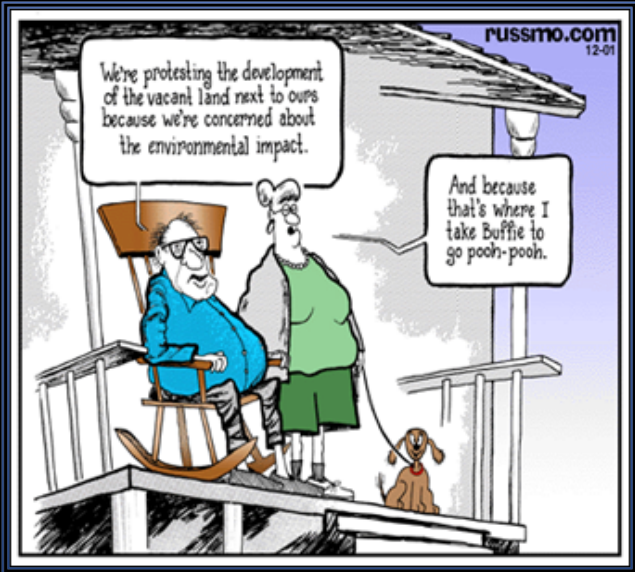
- Discretionary NOT Ministerial Approval
 - The key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project.
- Physical Change to the Environment that has the potential to significantly impact it
- Direct or Indirect Physical Change to the Physical Environment



Examples

- Examples:
- Ministerial permits: does the applicant get the permit if she pays the fee?
 - Renovations
 - Small Buildings
 - Existing entitlements or phased development
- Social v. Environmental Impacts: Permittable activity has no potential for physical impact, the activity carries social, but not environmental consequence, CEQA is used as a political way to avoid denying or approving the project.

Social Disputes Do NOT Trigger CEQA/Site Visits



Part 2-Is the Project Exempt?

- Categorical Exemptions
 - Regulatory (15300 *et seq.*)
 - Potential for Impact from “Unusual Conditions”—
N/A
- Statutory Exemptions
 - Because the Legislature Said So, that’s Why
 - GHADs
 - Stadiums
 - Special Projects



Part 3-Level of Review

What Level of Review is Required?

-Negative Declarations

- Standard of Review: Fair Argument

-Mitigated Negative Declarations

- Can the Project be Designed to Avoid Impacts
- Can conditions of approval be imposed
- Standard of Review: Fair Argument

-Environmental Impact Reports (“EIRs”)

Feasible Alternatives

No Project

Statement of Overriding Considerations and Findings of Fact

Standard of Review: Substantial Evidence

Standards of Review To Keep In Mind

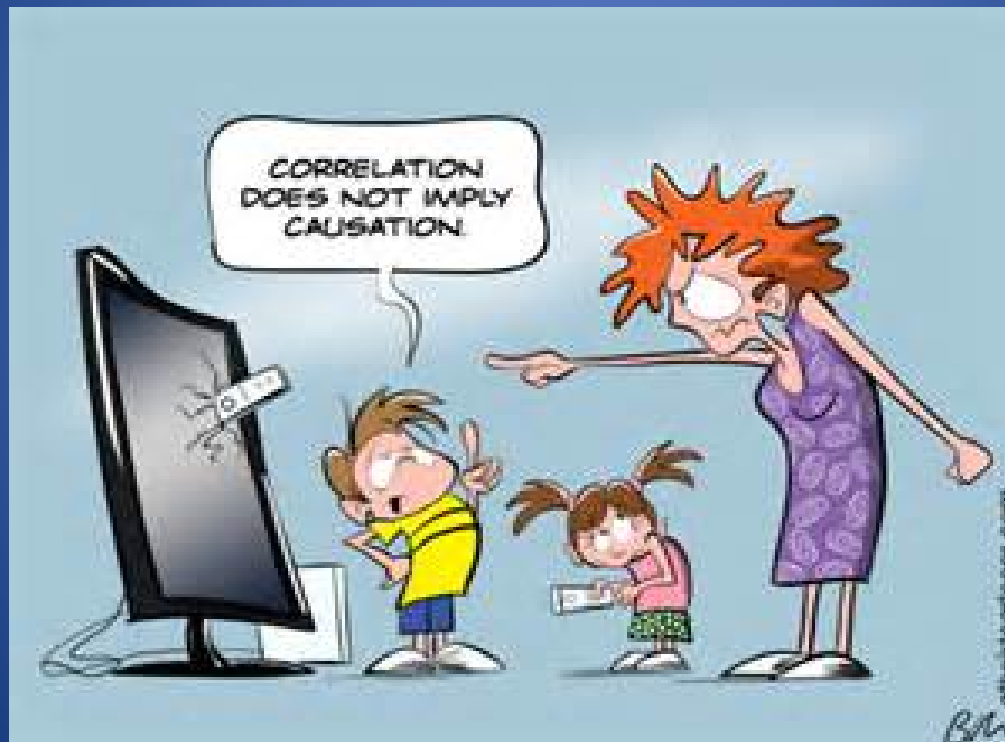
- Inverse Relationship between how complex the review and how much deference a Court will give the Agency who Prepared it
- **Fair Argument:** A lead agency must require an EIR where it is presented with substantial evidence supporting a fair argument that significant environmental impacts may result from a project, even though there is also substantial evidence in the record to the contrary. (Application of Thresholds to facts).
- **Substantial Evidence:** means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. (14 Cal. Code section 15384.)

Application of Substantial Evidence Test—Public Participation

- What Constitutes Substantial Evidence: Facts, reasonable assumptions based on facts, expert opinions supported by facts, relevant personal observations where such observations do not require technical expertise (See, 14 Cal. Code Regs. Section 15384; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.)
- What Does Not Constitute Substantial Evidence: argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of economic or social impacts that do not contribute to or are not caused by physical environmental impacts.



Correlation or Causation?



Thresholds of Significance

- Lead Agencies should establish thresholds to gauge significance
 - Regulatory Standards
 - Local Development Standards
 - Scientific Standards
- The “substantial evidence test” applies to all factual determinations made by a lead agency.
- A lead agency’s factual determinations are given “substantial deference” and are presumed correct; the challenger bears the burden of proving the contrary.

Feasible Mitigation

- **For significant impacts the MND or EIR must discuss and adopt feasible mitigation measures to avoid or substantially reduce them.**
- **Conditions of Approval or Redesign**
- **Constitutional Nollan-Dolan Standard**
 - **Essential Nexus to Impact**
 - **Rough Proportionality (Is the mitigation reasonable?)**



Feasible Alternatives

- Screening Criteria at Beginning and End of Process
 - Should it be Evaluated in the First Place?
 - Should it be Selected if it is Less Impactful?
- Objective of Lead Agency
- Purpose of Project
- Goals and Need for Project
 - Goals of City/Society
 - Goals of Developer
 - Constitutional/Legal Limitations
 - Cannot Make a Property Valueless
 - Cannot Demand a Private Developer Engage in Public Works/Just Compensation



Certified Regulatory Programs

- Functionally Equivalent to CEQA's EIR process.
- Not a Total Exemption
- Only Exempt from Chapters 3 and 4 (preparation of EIRs) and section 21167 (notice provisions).
All substantive constructs of CEQA apply. Theory is the program meets these basic constructs because its environmental review process is more technical or detailed than an EIR.
- E.g. Water Board's Water Quality Planning
- Secretarial Certification PRC 21010.5(e)

Programmatic EIRs

- A series of actions that can be characterized as one large project, and are related either:
 - Geographically,
 - As logical parts in the chain of contemplated actions,
 - In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or
 - As individual activities carried out under the same authorizing statutory or regulatory authority, and having generally similar environmental effects which can be mitigated in similar ways.
- A program EIR can be used to simplify the task of preparing environmental documents on later parts of the program. The program EIR can:

Misc.

- Participation and Exhaustion
- Enforcement: Statute of Limitations
 - 180 days
 - 30 days
 - 35 days
- Notice
 - Trustee Agencies
 - RAs
 - The Public
 - Tribes
 - AB 52
- Circulation of Documents
 - 45 days Plus
- Administrative Record
 - Everything before the lead agency by the decision-making point, nothing that succeeds it.



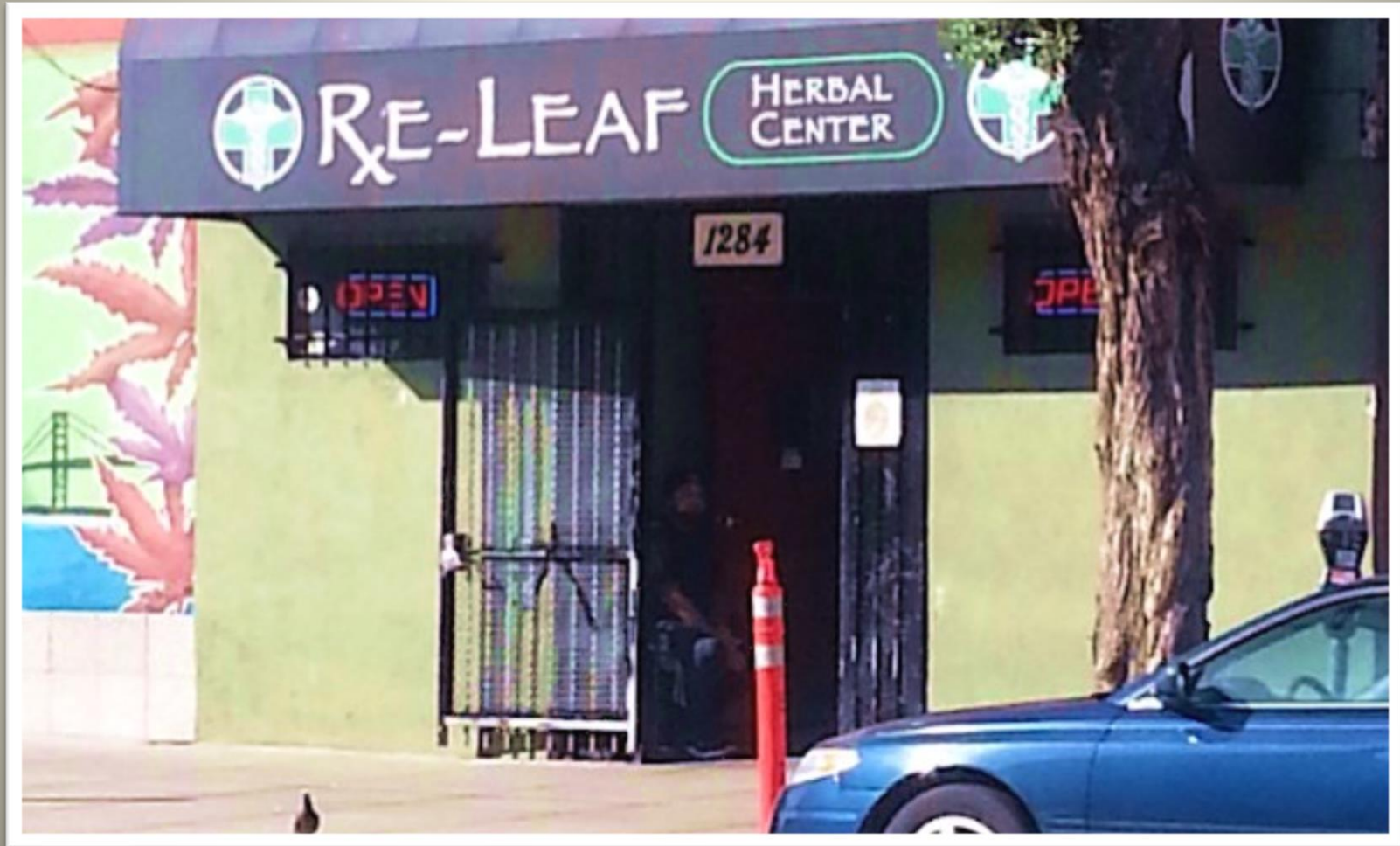
A close-up photograph of a person's hand gently holding a small, vibrant green cannabis plant. The plant has several serrated leaves and a central stem. The background is a soft, out-of-focus natural setting, possibly soil and other plants. The overall tone is natural and focused on the plant itself.

Local Licensing , Enforcement, and Equity Program

Greg Minor
City of Oakland

November 28, 2018

San Francisco Visit





sparc

San Francisco
Patient and
Resource Center

City of Oakland Timeline

Year	Action
1996	Prop 215
1998	Federal closure of OCBC
2004	City begins licensing dispensaries Voters pass Measure Z SB 420
2010	Cultivation legislation
2011	City doubles number of licensed dispensaries
2015	MMRSA
2016	Prop 64
2015-17	City develops updated ordinances

“Organizations Move in the
Direction of the Questions
They Ask”

Race and Equity Analysis

**Agree Upon Shared Racial
Equity Outcome**



Data-Based Analysis



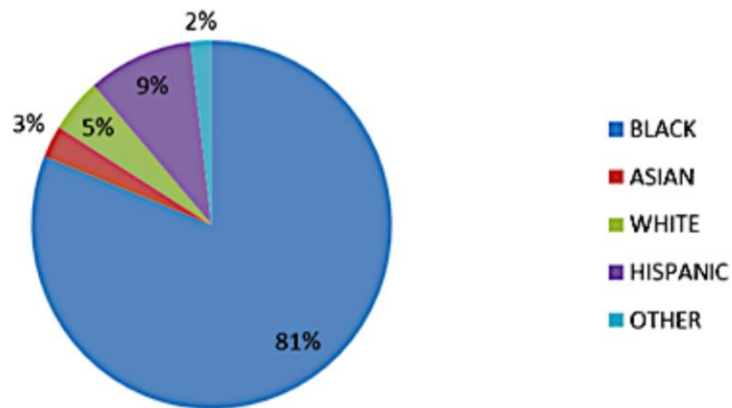
**Identify Equity
Barriers/Opportunities**



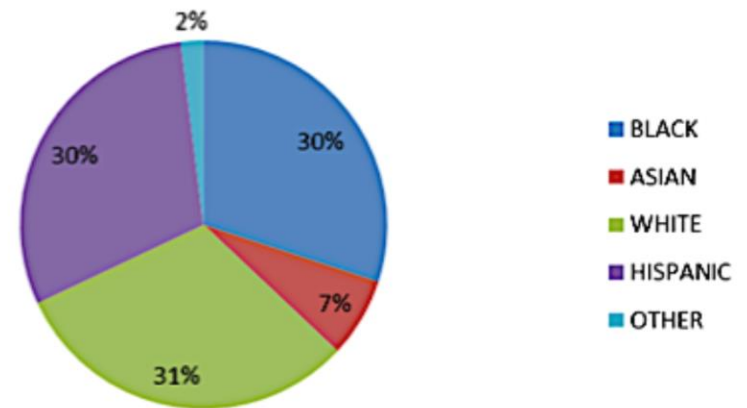
**Recommend Strategies to
Minimize Barriers**

Data-Based Analysis Cannabis Arrest Disparities

1995-2015 ARREST DATA



CITY OF OAKLAND POPULATION



Oakland's Unique Cannabis Industry History



Identify Equity Barriers/Opportunities

- Unequal starting line
- Criminal records
- Access to start-up capital
- Access to business space
- Technical resources – legal, business practices, records/accounting, taxes, etc.
- Experience/trust navigating government bureaucracy

Phased Licensing to Address Start Line Differences

Initial Permit Phase - Now

- Minimum 50% permits to equity applicants
- Equity incubators get priority for general licenses



Equity Assistance Program is funded and implemented



Unrestricted Permits Phase

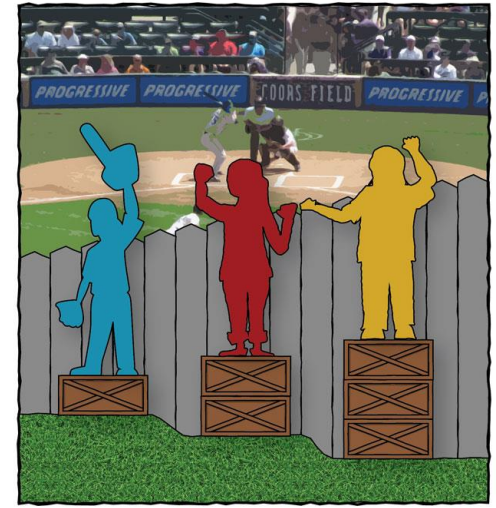
- Equity Assistance Program available to qualified equity owners
 - No-interest loans
 - Technical assistance

Proposed Equity Strategies to Address Barriers

- Equity Incubators
- Phased Licensing
- Restricted background checks
- City Fees Waived
- Cottage Cultivation
- Equity Assistance Program
- Meaningful Definition of Equity Owner and Criteria



EQUALITY



EQUITY

Aligned with Racial Equity Outcome:

Promote equitable ownership and employment opportunities in the cannabis industry in order to decrease disparities in life outcomes for marginalized communities of color and to address the disproportionate impacts of the war on drugs in those communities.

Program Outcomes to Date

- Over a 1,000 Applications Received
- More Than Half Equity Applicants
- More Than 220 Incubators
- Six of Next Eight Dispensaries=Equity Owned
- Almost 400 Local Authorizations for Temporary State Licenses; More Than Half Equity Applicants

More Information

- **Email**

gminor@oaklandca.gov

- **Website**

<https://www.oaklandca.gov/services/office-of-the-city-administrator-index/cannabis-permits>

CANNABIS CONTROL APPEALS PANEL

STAFF REPORT

**REGULAR PANEL MEETING
NOVEMBER 28, 2018**

Subject: Public Hearing and Action by the Panel Regarding the Proposed Regulation Text to Establish Appeals Procedures and Timelines

Background:

Business and Professions Code 26042 requires the panel to adopt procedures for appeal similar to those made by the Alcoholic Beverage Control Appeals Board (ABC Board). The procedures must be adopted in accordance with the Administrative Procedure Act (APA).

At the Panel's first meeting, on August 13, 2018, the Panel voted to commence the comment period for the proposed regulation text and authorized Business, Consumer Services & Housing Agency (BCSHA) staff to (1) complete and submit the rulemaking package to the Office of Administrative Law (OAL) to formally notice the proposed regulations and schedule a hearing on the rulemaking to establish regulations under Title 16, Division 45 of the California Code of Regulations and (2) make non-substantive changes to the language as needed.

At the Panel's second meeting, on October 17, 2018, the Panel voted to approve the proposed amendments made by staff to the proposed regulation text and to notice the proposed amendments for a 15-day public comment period. The Panel further voted to adopt the amended text if no public comments were received.

Three public comments were received (Attachment 4). One was not germane to CCAP's proposed regulations and two were. The two germane comments were identical in substance and relate only to proposed Rule 6000(g).

Analysis:

Staff recommends making the following modification to the proposed regulations:

Rule 6000. Definitions

Under subsection (g), remove the phrase "or other authorized agent". The two public comments received both make the argument that the phrase in question may impermissibly allow the unauthorized practice of law by persons who are not active members of the California State Bar.

Staff disagrees. The phrase in question, located in the definitions section and relating to whom an appellant or party may be, simply expressly incorporates the common usage of "appellant" and "party" in a litigation context that already includes authorized agents.

However, because an "authorized agent" is typically regarded as an "appellant" or "party" in litigation, the phrase in question is not technically or substantively necessary to proposed Rule 6000(g); and,

because of the potential for confusion and future disputes relating to whether proposed Rule 6000(g) authorizes the unlicensed practice of law, staff recommends removing the phrase in question.

Attachments:

1. Approved proposed regulation text originally noticed to the public (“Version 1”)
2. Approved proposed regulation text as modified by CCAP staff at the October 17, 2018, Panel meeting (“Version 2”) (additions to original text are double-underlined and deletions are double-strikethrough)
3. Text of proposed regulation text as modified by CCAP staff (“Version 3”) (edits to original are italicized and single-strikethrough)
4. Public comments received for “Version 2” by CCAP

Recommendation:

Approve the draft proposed regulation text as modified by CCAP staff and authorize CCAP Staff to initiate the required fifteen (15) day public comment period. Further, CCAP staff recommends that the Panel *adopt* the proposed regulation text as modified by CCAP staff after the fifteen (15) day public comment period has expired if no comments are received.

Staff Contact:

Christopher Phillips
CCAP Chief Counsel
(916) 322-6874

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 1. GENERAL
PROPOSED ADOPTION OF
RULE 6000. DEFINITIONS

6000. Definitions.

For purposes of this division:

(a) “Appellant” means any person who files an appeal with the Panel.

(b) “Days” means calendar days, unless otherwise stated.

(c) “Executive director” means the executive director of the Panel.

(d) “Licensing authority” means a state agency responsible for the issuance, renewal, or reinstatement of a license, or a state agency authorized to take disciplinary action against a licensee, as defined in Business and Professions Code § 26001(aa).

(e) “Panel” means the Cannabis Control Appeals Panel of California.

(1) Any reference to the Panel’s “Sacramento office” means 801 Capitol Mall, Suite 500, Sacramento, CA 95814.

(f) “Party” means the licensing authority, the appellant, and any person, other than an officer or an employee of the licensing authority in his official capacity, who has been allowed to appear in the proceeding before the licensing authority.

(g) Unless otherwise stated, the words “appellant” or “party” include the attorney or other authorized agent of such person.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 1. GENERAL
PROPOSED ADOPTION OF
RULE 6001. TIME AND DATE CALCULATIONS

6001. Time and Date Calculations.

(a) The time provided by this division within which any act must be performed shall be computed by excluding the first day and including the last day, unless it is a Saturday, Sunday, or holiday, in which case the last day shall also be excluded.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 1. GENERAL
PROPOSED ADOPTION OF
RULE 6002. NOTICES TO AUTHORIZED AGENTS

6002. Notices to Authorized Agents.

(a) Whenever the Notice of Appeal indicates that a party is represented by an attorney or other authorized agent, such attorney or agent shall be entitled to a copy of all notices and decisions to which the party would be entitled.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 2. FILING OF APPEAL
PROPOSED ADOPTION OF
RULE 6003. TIMING AND CONTENTS OF NOTICE OF APPEAL

6003. Timing and Contents of Notice of Appeal.

(a) Any person aggrieved by the decision of a licensing authority as described in Business and Professions Code section 26043(a) may appeal the licensing authority's written decision to the Panel as follows:

(1) The appellant shall complete and submit the CCAP Form 6003, Notice of Appeal (New 04/18), which is hereby incorporated by reference, to the Panel at its Sacramento office or by scanning and emailing the completed form to the Panel at appeals@ccap.ca.gov.

(2) The Notice of Appeal must be received by the Panel within 30 days after the last day on which reconsideration of the underlying decision can be requested to the licensing authority pursuant to Government Code section 11521.

(A) Failure to submit the Notice of Appeal to the Panel within the time set forth in this subsection may result in dismissal of the appeal pursuant to section 6011.

(3) The appellant shall also serve a copy of the completed Notice of Appeal upon all parties to the proceeding. Such service shall be made by delivering or mailing a copy of the Notice of Appeal to each party, and proof of service shall be submitted to the Panel at the same time the Notice of Appeal is submitted pursuant to subsection (a)(1).

The parties may stipulate in writing to provide service to one another via electronic mail, and such service shall be indicated on the proof of service.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 3. RECORD ON APPEAL
PROPOSED ADOPTION OF
RULE 6004. SUBMITTING THE RECORD

6004. Submitting the Record.

(a) From the date the Notice of Appeal is submitted to the Panel, the appellant shall have 60 days to obtain the complete underlying administrative record from the Office of Administrative Hearings, pursuant to 1 CCR 1038, and submit the original and five copies to the Panel at its Sacramento office. Failure to submit a complete administrative record within the time set forth in this subsection may result in dismissal of the matter pursuant to section 6011.

(1) Notwithstanding the foregoing, if all parties to the appeal so stipulate in writing, and the Panel approves, the appellant may submit only those parts of the administrative record relevant to the issue being appealed. In such event, the Panel may still require submission of the complete administrative record at any time during the appeal.

(b) If the underlying administrative hearing was audiotaped, the appellant shall arrange to have it transcribed prior to submission of the administrative record to the Panel. The complete transcript shall be included with the administrative record at the time of submission to the Panel in accordance with subsection (a).

(c) The appellant shall also serve a copy of the complete administrative record upon all parties to the proceeding. Such service shall be made by delivering or mailing a

copy of the administrative record to each party, and proof of service shall be submitted to the Panel at the same time the administrative record is submitted pursuant to subsection (a).

(d) An appellant may, for good cause, request an extension of the 60-day limit set forth in subsection (a). Such extensions shall be granted or denied by the Panel in its discretion, or the Panel may delegate this authority to its executive director. Alternatively, parties may stipulate in writing to one extension of up to 20 days, which shall be granted by the Panel, or its executive director if so authorized, upon notice to the Panel of the stipulation.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 4. FILING BRIEFS
PROPOSED ADOPTION OF
RULE 6005. SERVICE AND FILING BY ELECTRONIC MAIL

6005. Service and Filing by Electronic Mail.

(a) Upon submission of a Notice of Appeal to the Panel, the appellant shall also complete and submit CCAP Form 6005, Certification of Email Address (New 04/18), which is hereby incorporated by reference, to the Panel at its Sacramento office or by scanning and emailing the completed form to the Panel at appeals@ccap.ca.gov.

(b) Upon receipt of service of the Notice of Appeal, all other parties to the appeal shall, within 30 days, complete and submit CCAP Form 6005, Certification of Email Address (New 04/18), to the Panel at its Sacramento office or by scanning and emailing the completed form to the Panel at appeals@ccap.ca.gov. At the same time, each party shall also serve a copy of their completed Form 6005, Certification of Email Address (New 04/18) on all other parties to the appeal, including the appellant.

(c) Once all parties to the appeal have submitted their CCAP Form 6005, Certification of Email Address (New 04/18), to the Panel, they may use each party's official email address, if one is provided, for service of correspondence, notices, pleadings, or any other documentation in connection with the appeal, unless a stipulation to the contrary has been agreed to.

(d) The Panel and its executive director may use each party's official email address, if one is provided, to send documents, notices, decisions, or any other correspondence to the party.

(e) Any party to an appeal that has submitted its CCAP Form 6005, Certification of Email Address (New 04/18) in accordance with subsection (a) or (b), may subsequently submit notices, pleadings, or any other documentation in connection with the appeal by electronic mail to the Panel at appeals@ccap.ca.gov unless instructed otherwise by the Panel or its executive director.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 4. FILING BRIEFS
PROPOSED ADOPTION OF
RULE 6006. FILING OF BRIEFS BY PARTIES

6006. Filing of Briefs by Parties.

(a) The appellant may file an opening brief, the respondent may file an opposition brief, and the appellant may thereafter file a reply brief.

(b) All briefs shall be typewritten or printed upon paper 8½ x 11 inches in size, and all copies must be legible. Only one side of the paper shall be used 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 of each brief shall contain a certification that copies have been served upon or mailed to each party or his or her attorney or agent. Parties may serve one another by electronic mail in compliance with section 6005.

(c) Briefs shall comply with the following length restrictions; however the page limitations set forth in this subsection do not include exhibits, appendices, tables of contents, cover or title pages:

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

(2) Opposition briefs shall be no more than 20 pages in length.

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

(d) Any party to the appeal may file a motion in accordance with section 6010 to request a waiver of the page length restrictions in subsection (c). Such motions shall be submitted to the Panel and served on all other parties at least fifteen (15) days before the moving party's brief is due as set forth in subsection (c) of this section. An opposition to the motion may be submitted to the Panel and served on all other parties within five (5) days of the initial motion's service on the opposing party. The matter will be decided by the Panel without hearing.

(e) The opening brief shall be submitted to the Panel and served on all parties to the appeal within 30 days of the date the administrative record is served on the Panel and other parties pursuant to section 6004. Any opposition brief shall be submitted to the Panel and served on all parties within 15 days after the opening brief is served on the Panel and other parties. Any reply brief shall be submitted to the Panel and served on all parties within seven (7) days after the opposition brief is served on the Panel and other parties. Any party to the appeal may file a motion in accordance with section 6010 to request an extension of time within which to file a brief. Motions may only be granted by the Panel upon a showing of good cause.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 5. HEARINGS
PROPOSED ADOPTION OF
RULE 6007. OPTIONAL HEARING

6007. Optional Hearing.

(a) After all briefs have been submitted to the Panel pursuant to section 6006, the Panel shall make a preliminary decision in the appeal based on the record. Once the Panel has reached its preliminary decision, the executive director shall notify all parties that the Panel is ready to enter its final order in accordance with section 6016. Each party shall have 20 days from the date they are served with the notice to submit a written request for a hearing to the Panel.

(b) Notwithstanding subsection (a), the Panel may direct for a hearing to be conducted on the appeal even if no party requests a hearing.

(c) If requested by a party or directed by the Panel, a hearing date and location shall be set by the Panel's executive director and a notice shall be sent to all parties.

(d) After a date and location has been set for hearing by the executive director, requests by any party for a continuance and/or location change may be granted by the Panel only upon a showing of good cause. The Panel may delegate its authority to decide requests for continuances and location changes to its executive director.

(1) A party seeking a continuance or location change shall stipulate to an alternative date or location for the hearing with all other parties to the appeal, and then coordinate with

the executive director to reschedule the date or location if the panel's schedule and docket permits. If the other party or parties will not stipulate to an alternative date or location, the party can submit a motion to the Panel requesting an alternative date or location in accordance with section 6010. The other party or parties may submit an opposition to the motion to the Panel within five (5) days of the initial motion's service on the opposing party.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 5. HEARINGS
PROPOSED ADOPTION OF
RULE 6008. ORAL ARGUMENT

6008. Oral Argument

(a) In the event a hearing for the appeal or a motion is scheduled, and unless otherwise directed by the Panel:

- (1) A party shall be allowed a maximum of 20 minutes for oral argument;
- (2) Not more than one person on a side may be heard;
- (3) The appellant, or moving party, shall have the right to present an opening statement and closing statement; however, both statements shall count towards the 20-minute total limit.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 6. NEW DISCOVERED EVIDENCE
PROPOSED ADOPTION OF
RULE 6009. NATURE OF EVIDENCE AND SHOWING

6009. Nature of Evidence and Showing.

(a) A party may file a motion to remand the case back to the licensing authority in accordance with Business and Professions Code section 26044 on the grounds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the underlying hearing. In support of the motion, the party shall submit the following in the form of a declaration or affidavit:

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

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

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

(4) The 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 underlying hearing. Merely cumulative evidence shall not constitute a valid ground for remand.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042, 26043, and 20644, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 7. MOTIONS
PROPOSED ADOPTION OF
RULE 6010. MOTIONS

6010. Motions.

(a) Unless otherwise provided for, all motions referenced in this Division shall be prepared and submitted as follows:

(1) Motions shall follow the formatting requirements set forth in section 6006(b).

(2) Motions 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.

(3) Motions submitted to the Panel shall include proof of service that the motion was served on all parties to the appeal or their attorneys by electronic or U.S. mail.

(b) Any party opposing a motion may submit their written opposition to the Panel within 5 days of receipt of service of the initial motion, with service on all other parties to the appeal. The opposition 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.

(c) The Panel's executive director shall set a date and location for a hearing on the motion and send notice of the hearing to all parties to the appeal within 20 days of the deadline to submit the opposition described in subsection (b). Notwithstanding the foregoing, at any time after receiving the motion and opposition, the Panel may elect to rule on the motion

without holding a hearing.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 8. DISMISSAL OF APPEAL
PROPOSED ADOPTION OF
RULE 6011. DISMISSAL OF APPEAL

6011. Dismissal of Appeal.

(a) The Panel may issue an order dismissing an appeal and affirming the decision of the licensing authority:

(1) Upon appellant submitting to the Panel a request to dismiss the appeal;

(2) Upon motion of a party, or upon the Panel's own notice to the parties, that appellant has failed to perfect his or her appeal by failing to timely submit the Notice of Appeal or the administrative record to the Panel as set forth in sections 6003 and 6004;

(3) Upon certification by the licensing authority that reconsideration has been granted in the case after the Notice of Appeal has been submitted, and dismissal on this ground shall be without prejudice to the submission of a subsequent appeal in the same case.

(4) Upon a motion by the licensing authority or other party, or upon the Panel's own notice to the parties, where sufficient cause exists for dismissal. In such instance, the Panel's decision shall set forth with specificity the sufficient cause for the dismissal.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042, 26043, 26044, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 9. PANEL MEMBERS
PROPOSED ADOPTION OF
RULE 6012. DISQUALIFICATION OF PANEL MEMBERS

6012. Disqualification of Panel Members.

(a) A Panel member shall disqualify himself or herself and withdraw from any case in which the member cannot accord a fair and impartial hearing. Any party may request the disqualification of any member by filing an affidavit before the submission of the case stating with particularity the grounds upon which it is claimed that a fair and impartial appeal cannot be accorded by the Panel member. The issue raised by the request shall be determined by the other members of the Panel. No member of the Panel shall withdraw voluntarily from any hearing, or be subject to disqualification, if this would prevent the Panel from acting in the particular case.

(b) An affidavit submitted to the Panel pursuant to this section shall become a part of the record.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Section 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 9. PANEL MEMBERS
PROPOSED ADOPTION OF
RULE 6013. ATTENDANCE OF PANEL MEMBERS

6013. Attendance of Panel Members.

(a) If a Panel member cannot attend a hearing where there will be oral testimony or argument, the remaining members of the Panel shall determine one other member to recuse himself or herself from the hearing in order to maintain an odd number of members unless to do so would prevent the Panel from acting in a particular case.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 10. STAYS AND SETTLEMENTS
PROPOSED ADOPTION OF
RULE 6014. STAY

6014. Stay.

(a) In any appeal where the underlying decision of a licensing authority is denial of a license renewal, or cancelation, suspension, or revocation of a license, and upon a motion from the appellant made pursuant to section 6010, the Panel may stay the effect of the underlying decision until the Panel enters its final order.

(b) Notwithstanding subsection (a), the Panel may only grant a stay upon a motion by the appellant that demonstrates:

- (1) there is a substantial likelihood that the appellant will prevail in the appeal; and
- (2) the appellant will experience immediate and irreparable harm if the stay is not granted.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 10. STAYS AND SETTLEMENTS
PROPOSED ADOPTION OF
RULE 6015. SETTLEMENTS

6015. Settlements.

(a) Whenever any matter is pending before the Panel, and the parties to the matter agree upon a settlement, the Panel shall, upon the stipulation by the parties that such an agreement has been reached, remand the matter to the licensing authority.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 11. ORDERS
PROPOSED ADOPTION OF
RULE 6016. TIME LIMIT FOR ENTRY OF ORDER

6016. Time Limit for Entry of Order.

(a) In all cases, the Panel shall enter its order within 90 days after the hearing on the merits is held in accordance with section 6007. If no hearing is conducted, then the Panel shall enter its order within 90 days of the executive director's notice to the parties that the Panel has reached a preliminary decision in accordance with section 6007(a).

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 11. ORDERS
PROPOSED ADOPTION OF
RULE 6017. TIME LIMIT FOR ENTRY OF ORDER

6017. Form of Order.

(a) Each order of the Panel on appeal from a decision of a licensing authority shall be in writing and shall be filed by delivering copies to the parties personally or by mailing copies to them by electronic or certified mail. Each such order shall become final upon being filed as provided herein, and there shall be no reconsideration or rehearing by the Panel.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 12. EX PARTE COMMUNICATIONS
PROPOSED ADOPTION OF
RULE 6018. EX PARTE COMMUNICATIONS

6018. Ex Parte Communications.

(a) While an appeal is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the Panel from any party to the appeal without notice and opportunity for all parties to participate in the communication.

(b) Nothing in this section precludes a communication made on the record at a hearing.

(c) Notwithstanding subsection (a), the following communications are permissible:

(1) Communications that are required for disposition of an ex parte matter specifically authorized by statute.

(2) Communications concerning a matter of procedure or practice that is not in controversy.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 1. GENERAL
PROPOSED ADOPTION OF
RULE 6000. DEFINITIONS

6000. Definitions.

For purposes of this division:

(a) “Appellant” means any person who files an appeal with the Panel.

(b) “Days” means calendar days, unless otherwise stated.

(c) “Executive Director” means the executive director of the Panel.

(d) “Licensing authority” means a state agency responsible for the issuance, renewal, or reinstatement of a license, or a state agency authorized to take disciplinary action against a licensee, as defined in Business and Professions Code § 26001(aa).

(e) “Panel” means the Cannabis Control Appeals Panel of California.

(1) Any reference to the Panel’s “Sacramento office” means 801 Capitol Mall, Suite 500, Sacramento, CA 95814.

(f) “Party” means the licensing authority, the appellant, and any person, other than an officer or an employee of the licensing authority in his official capacity, who has been allowed to appear in the proceeding before the licensing authority.

(g) Unless otherwise stated, the words “appellant” or “party” include the attorney or other authorized agent of such person.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 1. GENERAL
PROPOSED ADOPTION OF
RULE 6001. TIME AND DATE CALCULATIONS

6001. Time and Date Calculations.

(a) The time provided by this division within which any act must be performed shall be computed by excluding the first day and including the last day, unless it is a Saturday, Sunday, or holiday, in which case the last day shall also be excluded.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 1. GENERAL
PROPOSED ADOPTION OF
RULE 6002. NOTICES TO AUTHORIZED AGENTS

6002. Notices to Authorized Agents.

(a) Whenever the Notice of Appeal indicates that a party is represented by an attorney or other authorized agent, such attorney or agent shall be entitled to a copy of all notices and decisions to which the party would be entitled.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 2. FILING OF APPEAL
PROPOSED ADOPTION OF
RULE 6003. TIMING AND CONTENTS OF NOTICE OF APPEAL

6003. Timing and Contents of Notice of Appeal.

(a) Any person aggrieved by the decision of a licensing authority as described in Business and Professions Code section 26043(a) may appeal the licensing authority's written decision to the Panel as follows:

(1) The appellant shall complete and submit the CCAP Form 6003, Notice of Appeal (New 04/18), which is hereby incorporated by reference, to the Panel at its Sacramento office or by scanning and emailing the completed form to the Panel at appeals@ccap.ca.gov.

(2) The Notice of Appeal must be received by the Panel within 30 days after the last day on which reconsideration of the underlying decision can be requested to the licensing authority pursuant to Government Code section 11521.

(A) Failure to submit the Notice of Appeal to the Panel within the time set forth in this subsection may result in dismissal of the appeal pursuant to section 6011.

(3) The appellant shall also serve a copy of the completed Notice of Appeal upon all parties to the proceeding. Such service shall be made by delivering or mailing a copy of the Notice of Appeal to each party, and proof of service shall be submitted to the Panel at the same time the Notice of Appeal is submitted pursuant to subsection (a)(1). The parties may stipulate in writing to provide service to one another via electronic mail, and such service shall be indicated on the proof of service.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 3. RECORD ON APPEAL
PROPOSED ADOPTION OF
RULE 6004. SUBMITTING THE RECORD

6004. Submitting the Record.

(a) From the date the Notice of Appeal is submitted to the Panel, the appellant shall have 60 days to obtain the complete underlying administrative record from the Office of Administrative Hearings, pursuant to 1 CCR 1038, or if an informal or emergency hearing was conducted by the licensing agency pursuant to Government Code 11445.10, obtain the complete underlying administrative record from the licensing agency, and submit the original hardcopy and one electronic version ~~five copies~~ to the Panel at its Sacramento office. Failure to submit a complete administrative record within the time set forth in this subsection may result in dismissal of the matter pursuant to section 6011.

(1) Notwithstanding the foregoing, if all parties to the appeal so stipulate in writing, and the Panel approves, the appellant may submit only those parts of the administrative record relevant to the issue being appealed. In such event, the Panel may still require submission of the complete administrative record at any time during the appeal.

(b) If the underlying administrative hearing was recorded in a means other than transcription-audiotaped, the appellant shall arrange to have ~~it~~ a certified copy transcribed prior to submission of the administrative record to the Panel. The complete transcript shall be included with the administrative record at the time of submission to the Panel in accordance with subsection (a).

(c) The appellant shall also serve a copy of the complete administrative record upon all parties to the proceeding. Such service shall be made by delivering or mailing a copy of the administrative record to each party or by electronic service in accordance with section 6005, and proof of service shall be submitted to the Panel at the same time the administrative record is submitted pursuant to subsection (a).

(d) An appellant may, for good cause, request an extension of the 60-day limit set forth in subsection (a). Such extensions shall be granted or denied by the Panel in its discretion, or the Panel may delegate this authority to its executive director. Alternatively, all parties may stipulate in writing to one extension of up to 20 days, which shall be granted by the Panel, or its executive director if so authorized, upon notice to the Panel of the stipulation.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 4. FILING BRIEFS
PROPOSED ADOPTION OF
RULE 6005. SERVICE AND FILING BY ELECTRONIC MAIL

6005. Service and Filing by Electronic Mail.

(a) Upon submission of a Notice of Appeal to the Panel, the appellant shall also complete and submit CCAP Form 6005, Certification of Email Address (New 04/18), which is hereby incorporated by reference, to the Panel at its Sacramento office or by scanning and emailing the completed form to the Panel at appeals@ccap.ca.gov.

(b) Upon receipt of service of the Notice of Appeal, all other parties to the appeal shall, within 30 days, complete and submit CCAP Form 6005, Certification of Email Address (New 04/18), to the Panel at its Sacramento office or by scanning and emailing the completed form to the Panel at appeals@ccap.ca.gov. At the same time, each party shall also serve a copy of their completed Form 6005, Certification of Email Address (New 04/18) on all other parties to the appeal, including the appellant.

(c) Once all parties to the appeal have submitted their CCAP Form 6005, Certification of Email Address (New 04/18), to the Panel, they may use each party's official email address, if one is provided, for service of correspondence, notices, pleadings, or any other documentation in connection with the appeal, unless a stipulation to the contrary has been agreed to.

(d) The Panel and its executive director may use each party's official email address, if one is provided, to send documents, notices, decisions, or any other correspondence to the party.

(e) Any party to an appeal that has submitted its CCAP Form 6005, Certification of Email Address (New 04/18) in accordance with subsection (a) or (b), may subsequently submit notices, pleadings, or any other documentation in connection with the appeal by electronic mail to the Panel at appeals@ccap.ca.gov unless instructed otherwise by the Panel or its executive director.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 4. FILING BRIEFS
PROPOSED ADOPTION OF
RULE 6006. FILING OF BRIEFS BY PARTIES

6006. Filing of Briefs by Parties.

(a) The appellant may file an opening brief, the respondent may file an opposition brief, and the appellant may thereafter file a reply brief.

(b) All briefs shall be typewritten or printed upon paper 8½ x 11 inches in size, and all copies must be legible. Only one side of the paper shall be used 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 of each brief shall contain a certification that copies have been served upon or mailed to each party or his or her attorney or agent. Parties may serve one another by electronic mail in compliance with section 6005.

(c) Briefs shall comply with the following length restrictions; however the page limitations set forth in this subsection do not include exhibits, appendices, tables of contents, cover or title pages:

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

(2) Opposition briefs shall be no more than 20 pages in length.

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

(d) Any party to the appeal may file a motion in accordance with section 6010 to request a waiver of the page length restrictions in subsection (c). Such motions shall be submitted to the

Panel and served on all other parties at least ~~fifteen~~ ~~ten~~ (10~~15~~) days before the moving party's brief is due as set forth in subsection (e) of this section. An opposition to the motion may be submitted to the Panel and served on all other parties within five (5) days of the initial motion's service on the opposing party. The matter will be decided by the Panel without hearing.

(e) The opening brief shall be submitted to the Panel and served on all parties to the appeal within 30 days of the date the administrative record is served on the Panel and other parties pursuant to section 6004. Any opposition brief shall be submitted to the Panel and served on all parties within 15 days after the opening brief is served on the Panel and other parties. Any reply brief shall be submitted to the Panel and served on all parties within seven (7) days after the opposition brief is served on the Panel and other parties. Any party to the appeal may file a motion in accordance with section 6010 to request an extension of time within which to file a brief. Motions may only be granted by the Panel upon a showing of good cause.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 5. HEARINGS
PROPOSED ADOPTION OF
RULE 6007. OPTIONAL HEARING

6007. Optional Hearing.

(a) After all briefs have been submitted to the Panel pursuant to section 6006, the Panel shall make a preliminary decision in the appeal based on the record. Once the Panel has reached its preliminary decision, the executive director shall notify all parties that the Panel is ready to enter its final order in accordance with section 6016. Each party shall have 20 days from the date they are served with the notice to submit a written request for a hearing to the Panel.

(b) Notwithstanding subsection (a), the Panel may direct for a hearing to be conducted on the appeal even if no party requests a hearing.

(c) If requested by a party or directed by the Panel, a hearing date and location shall be set by the Panel's executive director and a notice shall be sent to all parties.

(d) After a date and location has been set for hearing by the executive director, requests by any party for a continuance and/or location change may be granted by the Panel only upon a showing of good cause. The Panel may delegate its authority to decide requests for continuances and location changes to its executive director.

(1) A party seeking a continuance or location change shall stipulate to an alternative date or location for the hearing with all other parties to the appeal, and then coordinate with the executive director to reschedule the date or location if the panel's schedule and docket

permits. If the other party or parties will not stipulate to an alternative date or location, the party can submit a motion to the Panel requesting an alternative date or location in accordance with section 6010. The other party or parties may submit an opposition to the motion to the Panel within five (5) days of the initial motion's service on the opposing party.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 5. HEARINGS
PROPOSED ADOPTION OF
RULE 6008. ORAL ARGUMENT

6008. Oral Argument

(a) In the event a hearing for the appeal or a motion is scheduled, and unless otherwise directed by the Panel:

- (1) A party shall be allowed a maximum of 20 minutes for oral argument;
- (2) Not more than one person on a side may be heard;
- (3) The appellant, or moving party, shall have the right to present an opening statement and closing statement; however, both statements shall count towards the 20-minute total limit.
- (4) No evidence, other than what is contained in the administrative record, shall be referenced by any party.
- (5) Panel members may ask questions of any party at the conclusion of oral argument. Panel member questions and party responses will not count towards the 20-minute time limit.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 6. NEW DISCOVERED EVIDENCE
PROPOSED ADOPTION OF
RULE 6009. NATURE OF EVIDENCE AND SHOWING

6009. Nature of Evidence and Showing.

(a) A party may file a motion to remand the case back to the licensing authority in accordance with Business and Professions Code section 26044 on the grounds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the underlying hearing. In support of the motion, the party shall submit the following in the form of a declaration or affidavit:

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

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

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

(4) The 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 underlying hearing. Merely cumulative evidence shall not constitute a valid ground for remand.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042, 26043, and 20644, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 7. MOTIONS
PROPOSED ADOPTION OF
RULE 6010. MOTIONS

6010. Motions.

(a) Unless otherwise provided for, all motions referenced in this Division shall be prepared and submitted as follows:

(1) Motions shall follow the formatting requirements set forth in section 6006(b).

(2) Motions 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.

(3) Motions submitted to the Panel shall include proof of service that the motion was served on all parties to the appeal or their attorneys.

(b) Any party opposing a motion may submit their written opposition to the Panel within five (5) days of receipt of service of the initial motion. The opposition shall follow the same requirements described in subsections (a)(1) through (3).

(c) The Panel's executive director shall set a date and location for a hearing on the motion and send notice of the hearing to all parties to the appeal within 20 days of the deadline to submit the opposition described in subsection (b). Notwithstanding the foregoing, at any time after receiving the motion and opposition, the Panel may elect to rule on the motion without holding a hearing.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 8. DISMISSAL OF APPEAL
PROPOSED ADOPTION OF
RULE 6011. DISMISSAL OF APPEAL

6011. Dismissal of Appeal.

(a) The Panel may issue an order dismissing an appeal ~~and affirming~~ of the decision of the licensing authority:

(1) Upon appellant submitting to the Panel a request to dismiss the appeal;

(2) Upon motion of a party, or upon the Panel's own notice to the parties, that appellant has failed to perfect his or her appeal by failing to timely submit the Notice of Appeal or the administrative record to the Panel as set forth in sections 6003 and 6004;

(3) Upon certification by the licensing authority that reconsideration has been ~~has been~~ granted in the case after the Notice of Appeal has been submitted, and dismissal on this ground shall be without prejudice to the submission of a subsequent appeal in the same case.

(4) Upon a motion by the licensing authority or other party, or upon the Panel's own notice to the parties, where sufficient cause exists for dismissal. In such instance, the Panel's decision shall set forth with specificity the sufficient cause for the dismissal.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042, 26043, 26044, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 9. PANEL MEMBERS
PROPOSED ADOPTION OF
RULE 6012. DISQUALIFICATION OF PANEL MEMBERS

6012. Disqualification of Panel Members.

(a) A Panel member shall disqualify himself or herself and withdraw from any case in which the member cannot accord a fair and impartial hearing. Any party may request the disqualification of any member by filing an affidavit with the Panel before the submission of the case stating with particularity the grounds upon which it is claimed that a fair and impartial appeal cannot be accorded by the Panel member. The issue raised by the request shall be determined by the other members of the Panel. No member of the Panel shall withdraw voluntarily from any hearing, or be subject to disqualification, if this would prevent the Panel from acting in the particular case.

(b) An affidavit submitted to the Panel pursuant to this section shall become a part of the record.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Section 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 9. PANEL MEMBERS
PROPOSED ADOPTION OF
RULE 6013. ATTENDANCE OF PANEL MEMBERS

6013. Attendance of Panel Members.

(a) If a Panel member cannot attend a hearing where there will be oral testimony or argument, the remaining members of the Panel shall determine one other member to recuse himself or herself from the hearing in order to maintain an odd number of members unless to do so would prevent the Panel from acting in a particular case.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 10. STAYS AND SETTLEMENTS
PROPOSED ADOPTION OF
RULE 6014. STAY

6014. Stay.

(a) In any appeal where the underlying decision of a licensing authority is denial of a license renewal, or cancelation, suspension, or revocation of a license, and upon a motion from the appellant made pursuant to section 6010, the Panel may stay the effect of the underlying decision until the Panel enters its final order.

(b) Notwithstanding subsection (a), the Panel may only grant a stay upon a motion by the appellant that demonstrates:

(1) there is a substantial likelihood that the appellant will prevail in the appeal; and

(2) the appellant will experience immediate and irreparable harm if the stay is not granted;

and,

(3) the stay is not detrimental to the health and welfare of the public.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 10. STAYS AND SETTLEMENTS
PROPOSED ADOPTION OF
RULE 6015. SETTLEMENTS

6015. Settlements.

(a) Whenever any matter is pending before the Panel, and the parties to the matter agree upon a settlement, the Panel shall, upon the stipulation by the parties that such an agreement has been reached, ~~remand~~ dismiss the matter to the licensing authority.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 11. ORDERS
PROPOSED ADOPTION OF
RULE 6016. TIME LIMIT FOR ENTRY OF ORDER

6016. Time Limit for Entry of Order.

(a) In all cases, the Panel shall enter its order within 90 days after the hearing on the merits is held in accordance with section 6007. If no hearing is conducted, then the Panel shall enter its order within 90 days of the executive director's notice to the parties that the Panel has reached a preliminary decision in accordance with section 6007(a).

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 11. ORDERS
PROPOSED ADOPTION OF
RULE 6017. TIME LIMIT FOR ENTRY OF ORDER

6017. Form of Order.

(a) Each order of the Panel on appeal from a decision of a licensing authority shall be in writing and shall be filed by delivering copies to the parties personally or by mailing copies to them by ~~electronic or certified mail~~ or electronic mail pursuant to rule 6005. Each such order shall become final upon being filed as provided herein, and there shall be no reconsideration or rehearing by the Panel.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 12. EX PARTE COMMUNICATIONS
PROPOSED ADOPTION OF
RULE 6018. EX PARTE COMMUNICATIONS

6018. Ex Parte Communications.

(a) While an appeal is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the Panel from any party to the appeal without notice and opportunity for all parties to participate in the communication.

(b) Nothing in this section precludes a communication made on the record at a hearing.

(c) Notwithstanding subsection (a), the following communications are permissible:

(1) Communications that are required for disposition of an ex parte matter specifically authorized by statute.

(2) Communications concerning a matter of procedure or practice that is not in controversy.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 1. GENERAL
PROPOSED ADOPTION OF
RULE 6000. DEFINITIONS

6000. Definitions.

For purposes of this division:

(a) “Appellant” means any person who files an appeal with the Panel.

(b) “Days” means calendar days, unless otherwise stated.

(c) “Executive Director” means the executive director of the Panel.

(d) “Licensing authority” means a state agency responsible for the issuance, renewal, or reinstatement of a license, or a state agency authorized to take disciplinary action against a licensee, as defined in Business and Professions Code § 26001(aa).

(e) “Panel” means the Cannabis Control Appeals Panel of California.

(1) Any reference to the Panel’s “Sacramento office” means 801 Capitol Mall, Suite 500, Sacramento, CA 95814.

(f) “Party” means the licensing authority, the appellant, and any person, other than an officer or an employee of the licensing authority in his official capacity, who has been allowed to appear in the proceeding before the licensing authority.

(g) Unless otherwise stated, the words “appellant” or “party” include the attorney ~~or other authorized agent~~ of such person.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 1. GENERAL
PROPOSED ADOPTION OF
RULE 6001. TIME AND DATE CALCULATIONS

6001. Time and Date Calculations.

(a) The time provided by this division within which any act must be performed shall be computed by excluding the first day and including the last day, unless it is a Saturday, Sunday, or holiday, in which case the last day shall also be excluded.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 1. GENERAL
PROPOSED ADOPTION OF
RULE 6002. NOTICES TO AUTHORIZED AGENTS

6002. Notices to Authorized Agents.

(a) Whenever the Notice of Appeal indicates that a party is represented by an attorney or other authorized agent, such attorney or agent shall be entitled to a copy of all notices and decisions to which the party would be entitled.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 2. FILING OF APPEAL
PROPOSED ADOPTION OF
RULE 6003. TIMING AND CONTENTS OF NOTICE OF APPEAL

6003. Timing and Contents of Notice of Appeal.

(a) Any person aggrieved by the decision of a licensing authority as described in Business and Professions Code section 26043(a) may appeal the licensing authority's written decision to the Panel as follows:

(1) The appellant shall complete and submit the CCAP Form 6003, Notice of Appeal (New 04/18), which is hereby incorporated by reference, to the Panel at its Sacramento office or by scanning and emailing the completed form to the Panel at appeals@ccap.ca.gov.

(2) The Notice of Appeal must be received by the Panel within 30 days after the last day on which reconsideration of the underlying decision can be requested to the licensing authority pursuant to Government Code section 11521.

(A) Failure to submit the Notice of Appeal to the Panel within the time set forth in this subsection may result in dismissal of the appeal pursuant to section 6011.

(3) The appellant shall also serve a copy of the completed Notice of Appeal upon all parties to the proceeding. Such service shall be made by delivering or mailing a copy of the Notice of Appeal to each party, and proof of service shall be submitted to the Panel at the same time the Notice of Appeal is submitted pursuant to subsection (a)(1). The parties may stipulate in writing to provide service to one another via electronic mail, and such service shall be indicated on the proof of service.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 3. RECORD ON APPEAL
PROPOSED ADOPTION OF
RULE 6004. SUBMITTING THE RECORD

6004. Submitting the Record.

(a) From the date the Notice of Appeal is submitted to the Panel, the appellant shall have 60 days to obtain the complete underlying administrative record from the Office of Administrative Hearings, pursuant to 1 CCR 1038, or if an informal or emergency hearing was conducted by the licensing agency pursuant to Government Code 11445.10, obtain the complete underlying administrative record from the licensing agency, and submit the original hardcopy and one electronic version ~~five copies~~ to the Panel at its Sacramento office. Failure to submit a complete administrative record within the time set forth in this subsection may result in dismissal of the matter pursuant to section 6011.

(1) Notwithstanding the foregoing, if all parties to the appeal so stipulate in writing, and the Panel approves, the appellant may submit only those parts of the administrative record relevant to the issue being appealed. In such event, the Panel may still require submission of the complete administrative record at any time during the appeal.

(b) If the underlying administrative hearing was recorded in a means other than transcription-audiotaped, the appellant shall arrange to have ~~it~~ a certified copy transcribed prior to submission of the administrative record to the Panel. The complete transcript shall be included with the administrative record at the time of submission to the Panel in accordance with subsection (a).

(c) The appellant shall also serve a copy of the complete administrative record upon all parties to the proceeding. Such service shall be made by delivering or mailing a copy of the administrative record to each party or by electronic service in accordance with section 6005, and proof of service shall be submitted to the Panel at the same time the administrative record is submitted pursuant to subsection (a).

(d) An appellant may, for good cause, request an extension of the 60-day limit set forth in subsection (a). Such extensions shall be granted or denied by the Panel in its discretion, or the Panel may delegate this authority to its executive director. Alternatively, all parties may stipulate in writing to one extension of up to 20 days, which shall be granted by the Panel, or its executive director if so authorized, upon notice to the Panel of the stipulation.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 4. FILING BRIEFS
PROPOSED ADOPTION OF
RULE 6005. SERVICE AND FILING BY ELECTRONIC MAIL

6005. Service and Filing by Electronic Mail.

(a) Upon submission of a Notice of Appeal to the Panel, the appellant shall also complete and submit CCAP Form 6005, Certification of Email Address (New 04/18), which is hereby incorporated by reference, to the Panel at its Sacramento office or by scanning and emailing the completed form to the Panel at appeals@ccap.ca.gov.

(b) Upon receipt of service of the Notice of Appeal, all other parties to the appeal shall, within 30 days, complete and submit CCAP Form 6005, Certification of Email Address (New 04/18), to the Panel at its Sacramento office or by scanning and emailing the completed form to the Panel at appeals@ccap.ca.gov. At the same time, each party shall also serve a copy of their completed Form 6005, Certification of Email Address (New 04/18) on all other parties to the appeal, including the appellant.

(c) Once all parties to the appeal have submitted their CCAP Form 6005, Certification of Email Address (New 04/18), to the Panel, they may use each party's official email address, if one is provided, for service of correspondence, notices, pleadings, or any other documentation in connection with the appeal, unless a stipulation to the contrary has been agreed to.

(d) The Panel and its executive director may use each party's official email address, if one is provided, to send documents, notices, decisions, or any other correspondence to the party.

(e) Any party to an appeal that has submitted its CCAP Form 6005, Certification of Email Address (New 04/18) in accordance with subsection (a) or (b), may subsequently submit notices, pleadings, or any other documentation in connection with the appeal by electronic mail to the Panel at appeals@ccap.ca.gov unless instructed otherwise by the Panel or its executive director.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 4. FILING BRIEFS
PROPOSED ADOPTION OF
RULE 6006. FILING OF BRIEFS BY PARTIES

6006. Filing of Briefs by Parties.

(a) The appellant may file an opening brief, the respondent may file an opposition brief, and the appellant may thereafter file a reply brief.

(b) All briefs shall be typewritten or printed upon paper 8½ x 11 inches in size, and all copies must be legible. Only one side of the paper shall be used 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 of each brief shall contain a certification that copies have been served upon or mailed to each party or his or her attorney or agent. Parties may serve one another by electronic mail in compliance with section 6005.

(c) Briefs shall comply with the following length restrictions; however the page limitations set forth in this subsection do not include exhibits, appendices, tables of contents, cover or title pages:

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

(2) Opposition briefs shall be no more than 20 pages in length.

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

(d) Any party to the appeal may file a motion in accordance with section 6010 to request a waiver of the page length restrictions in subsection (c). Such motions shall be submitted to the

Panel and served on all other parties at least ~~fifteen~~ ~~ten~~ (10~~15~~) days before the moving party's brief is due as set forth in subsection (c) of this section. An opposition to the motion may be submitted to the Panel and served on all other parties within five (5) days of the initial motion's service on the opposing party. The matter will be decided by the Panel without hearing.

(e) The opening brief shall be submitted to the Panel and served on all parties to the appeal within 30 days of the date the administrative record is served on the Panel and other parties pursuant to section 6004. Any opposition brief shall be submitted to the Panel and served on all parties within 15 days after the opening brief is served on the Panel and other parties. Any reply brief shall be submitted to the Panel and served on all parties within seven (7) days after the opposition brief is served on the Panel and other parties. Any party to the appeal may file a motion in accordance with section 6010 to request an extension of time within which to file a brief. Motions may only be granted by the Panel upon a showing of good cause.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 5. HEARINGS
PROPOSED ADOPTION OF
RULE 6007. OPTIONAL HEARING

6007. Optional Hearing.

(a) After all briefs have been submitted to the Panel pursuant to section 6006, the Panel shall make a preliminary decision in the appeal based on the record. Once the Panel has reached its preliminary decision, the executive director shall notify all parties that the Panel is ready to enter its final order in accordance with section 6016. Each party shall have 20 days from the date they are served with the notice to submit a written request for a hearing to the Panel.

(b) Notwithstanding subsection (a), the Panel may direct for a hearing to be conducted on the appeal even if no party requests a hearing.

(c) If requested by a party or directed by the Panel, a hearing date and location shall be set by the Panel's executive director and a notice shall be sent to all parties.

(d) After a date and location has been set for hearing by the executive director, requests by any party for a continuance and/or location change may be granted by the Panel only upon a showing of good cause. The Panel may delegate its authority to decide requests for continuances and location changes to its executive director.

(1) A party seeking a continuance or location change shall stipulate to an alternative date or location for the hearing with all other parties to the appeal, and then coordinate with the executive director to reschedule the date or location if the panel's schedule and docket

permits. If the other party or parties will not stipulate to an alternative date or location, the party can submit a motion to the Panel requesting an alternative date or location in accordance with section 6010. The other party or parties may submit an opposition to the motion to the Panel within five (5) days of the initial motion's service on the opposing party.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 5. HEARINGS
PROPOSED ADOPTION OF
RULE 6008. ORAL ARGUMENT

6008. Oral Argument

(a) In the event a hearing for the appeal or a motion is scheduled, and unless otherwise directed by the Panel:

- (1) A party shall be allowed a maximum of 20 minutes for oral argument;
- (2) Not more than one person on a side may be heard;
- (3) The appellant, or moving party, shall have the right to present an opening statement and closing statement; however, both statements shall count towards the 20-minute total limit.
- (4) No evidence, other than what is contained in the administrative record, shall be referenced by any party.
- (5) Panel members may ask questions of any party at the conclusion of oral argument. Panel member questions and party responses will not count towards the 20-minute time limit.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 6. NEW DISCOVERED EVIDENCE
PROPOSED ADOPTION OF
RULE 6009. NATURE OF EVIDENCE AND SHOWING

6009. Nature of Evidence and Showing.

(a) A party may file a motion to remand the case back to the licensing authority in accordance with Business and Professions Code section 26044 on the grounds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the underlying hearing. In support of the motion, the party shall submit the following in the form of a declaration or affidavit:

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

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

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

(4) The 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 underlying hearing. Merely cumulative evidence shall not constitute a valid ground for remand.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042, 26043, and 20644, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 7. MOTIONS
PROPOSED ADOPTION OF
RULE 6010. MOTIONS

6010. Motions.

(a) Unless otherwise provided for, all motions referenced in this Division shall be prepared and submitted as follows:

(1) Motions shall follow the formatting requirements set forth in section 6006(b).

(2) Motions 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.

(3) Motions submitted to the Panel shall include proof of service that the motion was served on all parties to the appeal or their attorneys.

(b) Any party opposing a motion may submit their written opposition to the Panel within five (5) days of receipt of service of the initial motion. The opposition shall follow the same requirements described in subsections (a)(1) through (3).

(c) The Panel's executive director shall set a date and location for a hearing on the motion and send notice of the hearing to all parties to the appeal within 20 days of the deadline to submit the opposition described in subsection (b). Notwithstanding the foregoing, at any time after receiving the motion and opposition, the Panel may elect to rule on the motion without holding a hearing.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 8. DISMISSAL OF APPEAL
PROPOSED ADOPTION OF
RULE 6011. DISMISSAL OF APPEAL

6011. Dismissal of Appeal.

(a) The Panel may issue an order dismissing an appeal ~~and affirming~~ of the decision of the licensing authority:

(1) Upon appellant submitting to the Panel a request to dismiss the appeal;

(2) Upon motion of a party, or upon the Panel's own notice to the parties, that appellant has failed to perfect his or her appeal by failing to timely submit the Notice of Appeal or the administrative record to the Panel as set forth in sections 6003 and 6004;

(3) Upon certification by the licensing authority that reconsideration has been ~~has been~~ granted in the case after the Notice of Appeal has been submitted, and dismissal on this ground shall be without prejudice to the submission of a subsequent appeal in the same case.

(4) Upon a motion by the licensing authority or other party, or upon the Panel's own notice to the parties, where sufficient cause exists for dismissal. In such instance, the Panel's decision shall set forth with specificity the sufficient cause for the dismissal.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042, 26043, 26044, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 9. PANEL MEMBERS
PROPOSED ADOPTION OF
RULE 6012. DISQUALIFICATION OF PANEL MEMBERS

6012. Disqualification of Panel Members.

(a) A Panel member shall disqualify himself or herself and withdraw from any case in which the member cannot accord a fair and impartial hearing. Any party may request the disqualification of any member by filing an affidavit with the Panel before the submission of the case stating with particularity the grounds upon which it is claimed that a fair and impartial appeal cannot be accorded by the Panel member. The issue raised by the request shall be determined by the other members of the Panel. No member of the Panel shall withdraw voluntarily from any hearing, or be subject to disqualification, if this would prevent the Panel from acting in the particular case.

(b) An affidavit submitted to the Panel pursuant to this section shall become a part of the record.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Section 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 9. PANEL MEMBERS
PROPOSED ADOPTION OF
RULE 6013. ATTENDANCE OF PANEL MEMBERS

6013. Attendance of Panel Members.

(a) If a Panel member cannot attend a hearing where there will be oral testimony or argument, the remaining members of the Panel shall determine one other member to recuse himself or herself from the hearing in order to maintain an odd number of members unless to do so would prevent the Panel from acting in a particular case.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

CANNABIS CONTROL APPEALS PANEL OF CALIFORNIA
TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 10. STAYS AND SETTLEMENTS
PROPOSED ADOPTION OF
RULE 6014. STAY

6014. Stay.

(a) In any appeal where the underlying decision of a licensing authority is denial of a license renewal, or cancelation, suspension, or revocation of a license, and upon a motion from the appellant made pursuant to section 6010, the Panel may stay the effect of the underlying decision until the Panel enters its final order.

(b) Notwithstanding subsection (a), the Panel may only grant a stay upon a motion by the appellant that demonstrates:

(1) there is a substantial likelihood that the appellant will prevail in the appeal; and

(2) the appellant will experience immediate and irreparable harm if the stay is not granted;

and,

(3) the stay is not detrimental to the health and welfare of the public.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 10. STAYS AND SETTLEMENTS
PROPOSED ADOPTION OF
RULE 6015. SETTLEMENTS

6015. Settlements.

(a) Whenever any matter is pending before the Panel, and the parties to the matter agree upon a settlement, the Panel shall, upon the stipulation by the parties that such an agreement has been reached, ~~remand~~ dismiss the matter to the licensing authority.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 11. ORDERS
PROPOSED ADOPTION OF
RULE 6016. TIME LIMIT FOR ENTRY OF ORDER

6016. Time Limit for Entry of Order.

(a) In all cases, the Panel shall enter its order within 90 days after the hearing on the merits is held in accordance with section 6007. If no hearing is conducted, then the Panel shall enter its order within 90 days of the executive director's notice to the parties that the Panel has reached a preliminary decision in accordance with section 6007(a).

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 11. ORDERS
PROPOSED ADOPTION OF
RULE 6017. TIME LIMIT FOR ENTRY OF ORDER

6017. Form of Order.

(a) Each order of the Panel on appeal from a decision of a licensing authority shall be in writing and shall be filed by delivering copies to the parties personally or by mailing copies to them by ~~electronic or certified mail~~ or electronic mail pursuant to rule 6005. Each such order shall become final upon being filed as provided herein, and there shall be no reconsideration or rehearing by the Panel.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 43. CANNABIS CONTROL APPEALS PANEL
ARTICLE 12. EX PARTE COMMUNICATIONS
PROPOSED ADOPTION OF
RULE 6018. EX PARTE COMMUNICATIONS

6018. Ex Parte Communications.

(a) While an appeal is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the Panel from any party to the appeal without notice and opportunity for all parties to participate in the communication.

(b) Nothing in this section precludes a communication made on the record at a hearing.

(c) Notwithstanding subsection (a), the following communications are permissible:

(1) Communications that are required for disposition of an ex parte matter specifically authorized by statute.

(2) Communications concerning a matter of procedure or practice that is not in controversy.

Note: Authority cited: Section 26042, Business and Professions Code.

Reference: Sections 26042 and 26043, Business and Professions Code.

Public Comments Received by CCAP

Public Comment #1:

I am a manufacturer of Cannabis Vape cartridges operating under a temporary license.

First I want to commend the Bureau for listening to the public comments and proposing new regulations that are sensible & succinct. I applaud 1) the child resistant transition until Jan 2020, 2) the manufacturer ability to have distributor label the THC / CBD after testing. This will save a lot of cost & increase efficiency and **3) most important Section 5032 :**

5032. Designated M and A Commercial Cannabis Activity

(a) All commercial cannabis activity shall be conducted between licensees. Retail licensees Licensed retailers and licensed microbusinesses authorized to engage in retail sales may conduct commercial cannabis activity with customers in accordance with cChapter 3 of this division.

(b) Licensees shall not conduct commercial cannabis activities on behalf of, at the request of, or pursuant to a contract with any person that is not licensed under the Act. Such prohibited commercial cannabis activities include, but are not limited to, the following:

(1) Procuring or purchasing cannabis goods from a licensed cultivator or licensed manufacturer. (2) Manufacturing cannabis goods according to the specifications of a non-licensee.

(3) Packaging and labeling cannabis goods under a non-licensee's brand or according to the specifications of a non-licensee.

(4) Distributing cannabis goods for a non-licensee.

I believe STRONGLY that only LICENSEES should conduct commercial activities since WE ARE REGULATED and prevents JUST ANYONE to enter a 3rd party contract creating mayhem for the State to monitor the plethora of brands that non-licensees could create. It also sets up possible kickbacks & possible other unethical & illegal business practices that can not be controlled by State regulation.

Respectfully,

Kathryn Golden Williams

CEO

Golden Lady, LLC

Staff Response: Ms. Williams' public comment is not germane to CCAP's proposed regulations.

Public Comment #2:

See attached letter from the Law Offices of Omar Figueroa received on November 5, 2018.

Staff Response: Staff recommends making the requested change to proposed Rule 6000(g).

Public Comment #3:

See attached letter from CANBAR Association received on November 5, 2018.

Staff Response: Staff recommends making the requested change to proposed Rule 6000(g).

November 5, 2018

Christopher Phillips, Chief Counsel
Cannabis Control Appeals Panel
801 Capitol Mall, 6th Floor
Sacramento, CA 95814
(916) 322-6874
Christopher.Phillips@ccap.ca.gov

Re: Comments on Proposed Procedures to Appeal Administrative Actions Against
Cannabis Licensees or Applicants, Specifically Rule 6000

My name is Omar Figueroa. I am an attorney and I write as a private citizen. I write specifically regarding Rule 6000, which defines the words "appellant" and "party" to "include the attorney or other authorized agent of such person." As an attorney, I write to ask that you consider striking the words "or other authorized agent" from the language of Rule 6000(g), as that language would impermissibly allow the unauthorized practice of law by persons who are not active members of the California State Bar.

Please take into account the attached opinion of the Office of the Attorney General, dated September 28, 2017, which considered the question of whether a party in an administrative proceeding may be represented by a person who is not an active member of the California State Bar.¹ The answer is generally no, according to the Attorney General. This is because "representation of another before a governmental entity has historically been regarded as the practice of law." (AG Opinion, page 4). Given the lack of express statutory authority to allow lay representation in Chapter 4 (relating to Appeals) of Division 10 (Cannabis) of the Business and Professions Code, the Cannabis Control Appeals Panel cannot infer an unspoken exception to the legislative prohibition against the unlicensed practice of law.

My understanding is that the intent of the proposed language is to allow corporations (and other legal entities who are not natural persons) to appear *in pro per* by way of a director, officer, "or other authorized agent." This proposed rule fails to meet the consistency requirements of Government Code § 11349(d) because it conflicts with settled law. A corporation is not a natural person, and therefore it cannot make an *in propria persona* appearance; except in small claims court cases where there is an express statutory exception, legal entities who are not natural persons can appear only through counsel. *See, Merco Construction Engineers, Inc. v. Mun.Ct. (Sully Miller Contracting Co.)* (1978) 21 Cal.3d 724, 731. This prohibition stems from the notion that a corporate representative who would likely appear on behalf of the corporate entity would be engaged in the unlicensed practice of law.

Moreover, the prohibition against corporate "self-representation" before the Cannabis Control Appeals Panel also would further the efficient administration of justice by assuring that licensed legal professionals present the legal entity's case and assist the Cannabis Control

¹ The opinion is available on the California Attorney General web site at:
https://oag.ca.gov/system/files/opinions/pdfs/14-101_1.pdf

— LAW OFFICES OF —
OMAR FIGUEROA

Appeals Panel in resolution of the issues; and it would help maintain the distinction between the legal entity and its officers, directors, and other agents. *See, CLD Const., Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1146. In sum, the words “or other authorized agent” should be stricken from the language of Rule 6000(g), as they would impermissibly allow the unauthorized practice of law by persons who are not active members of the California State Bar.

Please let me know if you have any questions. (For clarification, this comment is not directed at natural persons, who I believe have every right to appear *in propria personam* before the Cannabis Control Appeals Panel; this comment is directed at legal entities who are not natural persons and should be required to appear through counsel since there is no express statutory exception that allows corporate self-representation.) I hope this comment is helpful as you work to craft the best appeals rules possible.

Dated: November 5, 2017

Respectfully submitted,

Omar Figueroa

CANBAR ASSOCIATION

244 California Street, Suite 507
San Francisco, California 94111
(415) 723-6222
info@canbar.org

November 5, 2018

Christopher Phillips, Chief Counsel
Cannabis Control Appeals Panel
801 Capitol Mall, 6th Floor
Sacramento, CA 95814
(916) 322-6874
Christopher.Phillips@ccap.ca.gov

Re: Comments on Proposed Procedures to Appeal Administrative Actions Against
Cannabis Licensees or Applicants, Specifically Rule 6000

My name is Christopher J. Davis. I am writing to submit a comment on behalf of Canbar Association (d/b/a National Cannabis Bar Association or NCBA), as the Executive Director of the Association.

We are writing to comment on Procedures to Appeal Administrative Actions Against Cannabis Licensees or Applicants, specifically Rule 6000.

As brought to our attention by NCBA member Omar Figueroa, Rule 6000 defines the words "appellant" and "party" to "include the attorney or other authorized agent of such person." I write to ask that you consider striking the words "or other authorized agent" from the language of Rule 6000(g), as that language would impermissibly allow the unauthorized practice of law by persons who are not active members of the California State Bar.

Please take into account the attached opinion of the Office of the Attorney General, dated September 28, 2017, which considered the question of whether a party in an administrative proceeding may be represented by a person who is not an active member of the California State Bar.¹ The answer is generally no, according to the Attorney General. This is because "representation of another before a governmental entity has historically been regarded as the practice of law." (AG Opinion, page 4). Given the lack of express statutory authority to allow lay representation in Chapter 4 (relating to Appeals) of Division 10 (Cannabis) of the Business and Professions Code, the Cannabis Control Appeals Panel cannot infer an unspoken exception to the legislative prohibition against the unlicensed practice of law.

My understanding is that the intent of the proposed language is to allow corporations (and other legal entities who are not natural persons) to appear *in pro per* by way of a director, officer, "or other authorized agent." This proposed rule fails to meet the consistency requirements of Government Code § 11349(d) because it conflicts with settled law. A corporation is not a natural person, and therefore it cannot make an *in propria persona* appearance; except in small claims court cases where there is an express statutory exception, legal entities who are not natural persons can appear only through counsel. *See, Merco Construction Engineers, Inc. v. Mun.Ct. (Sully Miller Contracting Co.)* (1978) 21 Cal.3d 724, 731. This prohibition stems from the notion that

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https://oag.ca.gov/system/files/opinions/pdfs/14-101_1.pdf

a corporate representative who would likely appear on behalf of the corporate entity would be engaged in the unlicensed practice of law.

Moreover, the prohibition against corporate “self-representation” before the Cannabis Control Appeals Panel also would further the efficient administration of justice by assuring that licensed legal professionals present the legal entity’s case and assist the Cannabis Control Appeals Panel in resolution of the issues; and it would help maintain the distinction between the legal entity and its officers, directors, and other agents. *See, CLD Const., Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1146. In sum, the words “or other authorized agent” should be stricken from the language of Rule 6000(g), as they would impermissibly allow the unauthorized practice of law by persons who are not active members of the California State Bar.

Please let me know if you have any questions. (For clarification, this comment is not directed at natural persons, who we believe have every right to appear *in propria personam* before the Cannabis Control Appeals Panel; this comment is directed at legal entities who are not natural persons and should be required to appear through counsel since there is no express statutory exception that allows corporate self-representation.) I hope this comment is helpful as you work to craft the best appeals rules possible.

Sincerely,

Christopher J. Davis
Executive Director
National Cannabis Bar Association

CANNABIS CONTROL APPEALS PANEL

STAFF REPORT

**REGULAR PANEL MEETING
NOVEMBER 28, 2018**

Subject: Discussion and Possible Action Regarding Proposed Public Speaking Policy for Inclusion in Panel Member Handbook.

Background:

The Cannabis Control Appeals Panel (CCAP) provides quasi-judicial administrative review of licensing decisions by the Bureau of Cannabis Control, California Department of Food and Agriculture, and the California Department of Public Health. The Panel Members are vested with issuing written decisions with orders of affirming, reversing, and/or remanding the licensing and/or disciplinary decisions.

CCAP is not a policy-making body, but a quasi-judicial entity that should adhere to the principles of judicial ethics and prudence.

At its August 13, 2018, meeting, CCAP adopted a *Member Handbook* that serves as a guide and reference resource for Panel members. The *Member Handbook* also contains certain policies that members are expected to adhere to, such as the *General Rules of Conduct* and *Ex Parte Communications* sections.

Analysis:

Staff recommends that Panel Members limit activities that have the potential to erode its neutral character or activities that may create the appearance of bias towards appellants, licensing entities, and/or other parties that may come before the Panel. To memorialize and preserve these recommendations, staff further recommends that the Panel consider the *Policy on Public Speaking* (Attachment 1) and vote to include it in the *Member Handbook*.

Attachment:

1. Draft proposed CCAP Policy on Public Speaking

Recommendation:

Approve the draft proposed CCAP Policy on Public Speaking for its inclusion in the *Member Handbook*.

Staff Contact:

Christopher Phillips
CCAP Chief Counsel
(916) 322-6874

[DRAFT]

Cannabis Control Appeals Panel

Policy on Public Speaking

Mission of the Panel and Role of the Members

The Cannabis Control Appeals Panel (CCAP) provides quasi-judicial administrative review of licensing decisions by the Bureau of Cannabis Control, California Department of Food and Agriculture, and the California Department of Public Health. The Panel Members are vested with issuing written decisions with orders of affirming, reversing, and/or remanding the licensing and/or disciplinary decisions. Members of the Panel will review the cases on their docket, the pleadings of those cases, and will hold hearings where parties to the administrative litigation will make oral arguments.

CCAP is not a policy-making body, but a quasi-judicial entity that should adhere to the principles of judicial ethics and prudence. It is recommended that Panel Members limit activities that have the potential to erode its neutral character and create the appearance of bias towards appellants, licensing entities, and/or other parties that may come before the Panel.

Activities Not Recommended

Panel Members may be asked to give presentations or speak at public or private events. It is recommended that Panel Members refrain from engaging in such activities to ensure there is not an appearance of biased, partisan or activist activities that could undermine the Panel Member's credibility or CCAP's respectability as a quasi-judicial entity.

If asked to speak at an event that is catered to the cannabis industry or an event that is likely to have prospective or active licensees in attendance, the Panel Member should decline or forward the request to the Executive Director to decline or to be referred to an appropriate licensing entity. Below are examples of some activities not recommended for participation:

- Events sponsored by the cannabis industry
- Speeches, panel discussions or other formats sponsored by any entity whose topic is about the functions and processes of the Panel
- City council meetings
- Board of supervisors' meetings
- Providing opinions, either in social media and/or public events, on licensing entities' programs, licensees, and/or the cannabis industry in general

Thus, in the interest of maintaining the highest level of dignity and objectivity; and, to protect Panel Members from potential conflicts of interest (that would require recusal), or situations that could lead to intimidation, extortion, or blackmail by potential appellants or members of the public, Panel Members, in their role as a Panel Member, should not, except for limited circumstances, participate in public speaking events.

Permitted Events

A limited exception is made for events that Panel Members are asked to share their biographical experiences or disassociated with cannabis in any way, i.e., career path that led to their appointment. Examples of speaking engagements could include the following:

- Alumni association events
- Organizations engaged in career development
- Moot Court judge

Process for Presentation Requests

If a Panel Member is approached about a speaking engagement, please direct the requester to the Executive Director. Additionally, travel expenses or other costs incurred from attending a speaking event are not subject to reimbursement, as those activities are beyond the scope of Panel Member's duties.

DRAFT