



CANNABIS CONTROL APPEALS PANEL

October 17, 2022
PANEL MEETING

STAFF COPY



CANNABIS CONTROL APPEALS PANEL

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CANNABIS CONTROL APPEALS PANEL

GOVERNOR GAVIN NEWSOM
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
Secretary Lourdes M. Castro Ramirez



MEMBERS OF THE PANEL

Dr. Diandra Bremond – Chairperson, Los Angeles County
Sharon-Frances Moore, J.D. – Member, San Diego County
Majority Leader Ian Calderon – Member, Orange County

LOCATION	MEETING DATE AND TIME
Cannabis Control Appeals Panel 400 R Street Sacramento, CA 95811 Note: Video Conference Only	Monday, October 17, 2022 11:00 a.m. to Noon (or conclusion of business)

NOTICE TO THE PUBLIC

Pursuant to Government Code section 11133, the Cannabis Control Appeals Panel (Panel) meeting will occur remotely, with no physical meeting location. CCAP will use the video conferencing service, Zoom, to host the meeting and allow for remote public participation.

If you have any questions or comments regarding the meeting, or addressing the Panel, or requesting special accommodations during the public comment portion of the meeting, contact us by email at info@ccap.ca.gov or by calling (916) 322-6870 one week prior to the meeting.

Join Zoom Video Meeting

<https://us02web.zoom.us/j/84104730681?pwd=SytDZEIWN1IBdmk2NWxncW5zcVJ0QT09>

Meeting ID: 841 0473 0681

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Call-In Information:

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Passcode: 649040

MEETING AGENDA

Item 1	Call to Order and Establishment of Quorum <i>Dr. Diandra Bremond, Chairperson</i>	Action Item
Item 2	Approval of September 23, 2022, Minutes <i>Dr. Diandra Bremond, Chairperson</i>	Action Item
Item 3	Discussion and Action Regarding Proposed Revisions to Regulation Text, Title 16, Division 43, § 6014 Stay. <i>Christopher Phillips, Chief Counsel</i>	Action Item

Item 4	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)]	Information Item
Item 5	Future Agenda Items <i>Dr. Diandra Bremond, Chairperson</i>	Procedural Item
Item 6	Adjournment <i>Dr. Diandra Bremond, Chairperson</i>	Procedural Item

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, modification, or translation services to participate in the meeting may make a request by contacting Christopher Phillips at Christopher.Phillips@ccap.ca.gov or (916) 322-6870. Providing your request at least one week before the meeting will help to ensure availability of the requested accommodation.

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 Christopher.Phillips@ccap.ca.gov or (916) 322-6870 or in writing to: Cannabis Control Appeals Panel, 400 R Street, Suite 320, Sacramento, CA 95811

AGENDA ITEM 1

**THERE ARE NO
MEETING MATERIALS**

AGENDA ITEM 2

**APPROVAL OF THE
MINUTES**



Open Session Meeting Minutes

Friday, September 23, 2022
1:02 pm – 1:22 pm

Cannabis Control Appeals Panel
400 R Street
Sacramento, CA 95811

Members present via teleconference:

- Dr. Diandra Bremond, Chairperson (in Los Angeles County)
- Sharon-Frances Moore, J.D. (in San Diego County)

Staff present via teleconference:

- Anne Hawley, Executive Director, Cannabis Control Appeals Panel
- Christopher Phillips, Chief Counsel, Cannabis Control Appeals Panel
- Sarah M. Smith, Senior Staff Attorney, Cannabis Control Appeals Panel
- Brian Hwang, Staff Attorney, Cannabis Control Appeals Panel
- Melita Deci, Administrative and Business Services Coordinator, Cannabis Control Appeals Panel

Summary:

1. Call to Order and Establishment of Quorum.

Chairperson Diandra Bremond called the teleconference meeting to order at 1:02 pm.

Melita Deci took the roll call vote. Panel Members Diandra Bremond and Sharon-Frances Moore were present. A quorum was established.

2. Approval of April 27, 2022 Meeting Minutes.

Chairperson Bremond asked the Panel if there were any additions or corrections to the minutes of the April 27, 2022 meeting. There were no additions or corrections. No comments from the public.

Motion (Moore): Approve the minutes of the April 27, 2022 meeting as submitted. Seconded (Bremond). Melita Deci took a roll call vote on the motion. Motion passed 2-0.

3. Executive Management Report.

Executive Director Anne Hawley presented the Executive Management Report.

Hawley began with an end-of-the-year summary on the 2021-22 Fiscal Year (FY), which closed on June 30, 2022.

As a reminder, Hawley noted that the Panel is funded by the cannabis control fund (#3288). This fund is supported by cannabis licensing fees, delinquent fees, and other regulatory fees. In addition to funding CCAP, this fund also supports 12 to 13 state agencies and other operational programs that are part of the regulatory framework in California.

Hawley then gave an overview of CCAP's budget. Overall, the budget is divided into two big categories. The first is personal services (e.g., salaries and wages). The second is operating expenditures and equipment.

For personal services, CCAP's budget in FY 2021-22 was \$2,475,000. However, by the end of the year, CCAP's actual expenses were \$1,750,460 – leaving a surplus of \$724,540. This surplus was largely due to the two vacancies on the panel and three staff vacancies (Office Technician, Legal Secretary, and Legal Assistant).

Overall, CCAP had a total budget of \$3,117,000 for FY 2021-22 between “personal services” and “operating expenditures and equipment”. For the latter, CCAP was budgeted for \$642,000 but its actual expenses were only \$453,800.

On a separate note, CCAP's budget reflects an amount of \$18,485 in reimbursements. This is the rent paid by the Alcoholic Beverage Control Appeals Board (ABCAB) beginning from February 2022 for use of CCAP's office space.

Hawley then transitioned into CCAP's second budget category – operating expenditures and equipment. Hawley's report divided this category into multiple sub-categories:

- **General Expenses:** This covers bar dues, office supplies, legal subscriptions (e.g. Westlaw), and news subscriptions. CCAP had a budget for \$10,000 in FY 2021-22. Its actual expenses, however, were \$13,253. Hawley reassured that this is not a problem as overspending in one area can be compensated by CCAP's cost savings in other areas.
- **Printing:** CCAP had a budget of \$5,000. CCAP has seen significant savings in this category due to the impacts from COVID such as the increase in telework.
- **Communications:** CCAP had a budget of \$28,000, but only incurred \$19,422 in actual expenses. This sub-category includes cell phones, CALNET, delivery services, etc.
- **Postage and Travel (in-state):** Hawley commented that the pandemic's impact is reflected in the total lack of spending in the areas of postage and travel. However, travel is expected to increase due to AB-1733, which was signed by the Governor a few months ago. This bill allows boards and commissions to hold meetings via

teleconference, but this is set to expire on July 1, 2023. Travel is also expected to increase because of outreach efforts becoming a greater point of focus as outlined in CCAP's strategic plan. CCAP has had major cost savings in postage since it has been transmitting meeting materials electronically instead of printing and shipping through physical mail.

- Facilities Operation: CCAP went over its budget due to the installation of security card readers for the large conference room as well as new locks for the IT storage closet and the copy room. CCAP's actual rent for the FY was \$222,095. Moving forward, ABCAB will reimburse CCAP each FY in the amount of \$45,000 for rent.
- Interdepartmental Expenditures: CCAP had a surplus due to the cost savings in this area. The actual expenses went down by \$100,000 because DGS accounting and budget is now handled through a direct transfer – it is no longer reflected in this category. Hawley noted that \$24,420 was still spent on DGS “pro rata” which is a mandatory state-wide general administrative services expenditure that each state agency contributes to in order to support those agencies tasked with providing support to all agencies (e.g. State Controller's Office). CCAP was also charged \$3,757 from the Military Department for facilitating the IT audit that CCAP is required to do every three years. CCAP's interagency agreement with the Business, Consumer Services and Housing Agency was \$11,485. CCAP spent \$45,000 with the Department of Consumer Affairs (DCA) since CCAP transferred its IT services over to DCA earlier in 2022. Going forward, the expenditure for DCA's IT services will go up to \$90,000 annually. In addition to DCA, the Department of Financial Protection and Innovation (DFPI) charged CCAP \$15,897 for IT services that DFPI provided the year prior. However, since DCA has now taken over providing IT services to CCAP, this DFPI line item will now be discontinued from the budget.
- Information Technology: This area covers case management consultants, internet service, and supplies (paper, toner, etc.).
- Capital Asset Purchases: The \$16,662 in expenses was required to update (1) CCAP's AV equipment because of various difficulties with sound feedback and connectivity issues in the hearing and large conference rooms and (2) CCAP's microphones to be ADA compliant to better serve those who are sight impaired.
- Non-Capital Asset Purchases: This area includes additional AV cords and equipment, as well as additional chairs for CCAP's large conference room in anticipation of larger meetings. Relatedly, Hawley noted that CCAP lends out its large conference room and hearing room to the Victim Compensation Board and several other state agencies within the building. This is an effort to better utilize CCAP's office space. There is also furniture for hoteling offices that will be built out soon. Lastly, the purchases also include software used every day such as the Adobe suite and Microsoft suite.

Overall, CCAP only spent 70% of the total budget appropriated for FY 2021-22. Hawley closed the report by commenting that CCAP is in good fiscal shape.

No comments from the Panel. No comments from the public.

4. Update on Strategic Plan.

Hawley next provided a brief update on CCAP's strategic plan.

Since the Panel approved the strategic plan in late April, CCAP staff has been working hard at developing various action items for each of the goal areas and objectives. CCAP staff has come up with 40 action items for Goal 1 (Decision Making), 25 for Goal 2 (Outreach and Education), 15 for Goal 3 (Organizational Effectiveness), and 35 for Goal 4 (Diversity, Equity, and Inclusion).

Within a week or two, Hawley will be sending the list of action items to the Panel. This is meant to be a living document that may change over time as the Panel sees fit. Staff will catch up with each panel member in one-on-one meetings scheduled for October. In these meetings, each panel member is encouraged to provide comments on how staff can continue to build on the strategic plan and implement the plan to the Panel's satisfaction. To date, staff has already begun working on several action items – especially those with a high priority.

No comments from the Panel. No comments from the public.

5. Discussion and Action Regarding Proposed Revisions to Regulation Text.

Chairperson Bremond opened by asking if this agenda item could be postponed to the next Panel meeting due to Panel Member Ian Calderon's absence today. No comments from the Panel. No comments from the public.

Motion (Moore): Move this agenda item to the next Panel meeting. Seconded (Bremond). Motion passed 2-0.

6. Public Comments on Items Not on the Agenda.

Chairperson Bremond warned any comment should not involve pending or future appeals, complaints, applications, or any disciplinary actions that may come before the Panel. No comments from the public.

7. Future Agenda Items.

No comments from the Panel. No comments from the public.

8. Adjournment.

Motion (Moore). Adjourn the meeting. Seconded (Bremond). Meeting adjourned at 1:22 pm.

AGENDA ITEM 3

**DISCUSSION & ACTION RE:
PROPOSED REVISIONS TO
REGULATION TEXT, TITLE 16,
DIVISION 43, § 6014 STAY**

CANNABIS CONTROL APPEALS PANEL

STAFF REPORT

REGULAR PANEL MEETING

October 17, 2022

SUBJECT: Discussion and Action Regarding Proposed Revisions to Regulation Text

BACKGROUND:

Business and Professions Code 26042 requires the Panel to adopt procedures for appeals similar to those made by the Alcoholic Beverage Control Appeals Board (Board), as outlined in Article 3 (commencing with Section 23075) and Article 4 (commencing with Section 23080) of Chapter 1.5 of Division 9 of the Business and Professions Code.

- *ARTICLE 3. The Alcoholic Beverage Control Appeals Board [23075 - 23077]* establishes the Board in state government under the Business, Consumer Services, and Housing Agency, notes that all personnel are under the direction of the Board and refers back to the authority the Board is vested under the California Constitution.
- *ARTICLE 4. Appeals from Decisions of the Department [23080 - 23089]* more specifically outlines how any party aggrieved by a final decision may file with the Board. The section of law outlines how documents shall be delivered, specific timelines that must be followed, how the board derives revenue through surcharges on annual fees, and how final orders may be reviewed by the courts.

Business and Professions Code 26042 also requires the Panel to adopt procedures in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The regular rulemaking process under the Administrative Procedures Act includes comprehensive public notice and comment requirements. This comprehensive process is intended to create an adequate rulemaking record for review by the Office of Administrative Law and the courts.

At the Panel's first meeting, on August 13, 2018, the Panel voted to commence the rulemaking process. The Office of Administrative Law approved CCAP's regulations on April 12, 2019 and have been effective since July 1, 2019.

At the Panel's meeting on September 16, 2021, the Panel voted to commence the rulemaking process due to the recent merger of the three licensing entities, the office location change for CCAP, and the newly developed additional option for appellants to initiate an appeal with CCAP via an online portal. The Office of Administrative Law approved CCAP's regulations on April 5,

2022. The current version of regulations, found in Title 16, Division 45, of the California Code of Regulations at sections 6000 – 6020, have been effective since July 1, 2022.

This agenda item and the Panel’s approval of the proposed amendments is the first step in the rulemaking process.

ANALYSIS:

Since the establishment of CCAP in 2018, only one appeal has been filed (withdrawn by appellant due to lack of ripeness and jurisdiction). While it was expected that not many appeals would be filed early on, the continuing dearth of annual licensees that have availed themselves to the due process that the Panel provides has been of growing concern. Staff has identified the most likely causes contributing to the lack of appeals and has reported to the Panel in the past.

Of the four major contributing factors that staff has identified (the large number of provisional licenses that do not have appeal rights compared to annual licenses that do, the focus of enforcement efforts directed primarily at the illicit market, the annual (versus permanent) nature of a cannabis license, and the absence of a stay of enforcement pending appeal), only one is within the control of CCAP; namely, the procedures related to a stay of enforcement pending appeal.

As noted above, Business and Professions Code 26042 requires the Panel to adopt procedures for appeals similar to those made by the Alcoholic Beverage Control Appeals Board. The relevant statute relating to a stay of execution for the Alcoholic Beverage Control Appeals Board is found at section 23082 of the Business and Professions code and reads:

No decision of the department shall become effective during the period in which an appeal may be filed and the filing of an appeal shall stay the effect of the decision until such time as a final order is made by the board.

The above language is commonly referred to as an “automatic stay” and provides immediate injunctive relief to appellants upon the filing of an appeal. By comparison, no similar provision protects cannabis licensees. Moreover, the regulations governing appeals before CCAP allow for a stay of enforcement pending appeal only where the licensee files a motion demonstrating

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

(Code Regs., tit. 16, § 6014(b).) The burden is on the licensee to establish these factors; in particular, the first factor may prove difficult for most licensees to meet, as the Panel will not yet have access to the administrative record at the time the motion is filed.

Additionally, even where the licensee clearly establishes all three factors, the stay of enforcement is discretionary: “the Panel *may* stay the effect of the underlying decision,” but is not required to do so. (Code Regs., tit. 16, § 6014(a), emphasis added.)

In most cannabis disciplinary cases, then, there is little incentive to pursue an appeal if the motion for stay of enforcement fails. This is especially true for limited-term license suspensions, which may be substantially complete—if not served in their entirety—before Panel staff can review the motion for stay of enforcement. A favorable outcome on appeal would have little value.

Licensees facing revocation or denial will have more incentive to pursue an appeal even absent the stay of enforcement, since a successful appeal could lead to reinstatement. However, there are financial limits—a licensee may not have the funding to put all operations on hold for the duration of an appeal before CCAP. If the loss of a license for a period of several months is enough to push the licensee into insolvency, then it is more likely to cut its losses and forego an appeal before CCAP.

Due to these factors, staff believes that the Panel should initiate the rulemaking process to promulgate a regulation that is substantially similar to the automatic stay provided to alcohol licensees. While an automatic stay would not require an appellant to demonstrate that the stay is not detrimental to the health and welfare of the public, a rebuttable presumption is created by an automatic stay that can be overcome by a showing from the Department that the stay will place the public safety at risk and should not be granted. Staff believes that this burden-shifting to demonstrate public safety risk, from the appellant to the Department, places the onus on the party in the best position to make such a showing.

BUDGET AND FISCAL IMPACTS:

Negligible. An automatic stay may have a minor impact on staff workload due to fewer motions being filed by appellants seeking a stay. This reduction in appellant motions may be offset by motions filed by the department seeking to deny the stay for public safety concerns.

BENEFITS AND RISKS:

There are no known risks associated with approving the proposed regulation text. There are, however, several benefits:

- To provide adequate and meaningful due process for all appellants, despite their financial condition or the type of enforcement action taken against them.
- To provide clear, accurate, and up to date procedures for appeals as mandated by Business and Professions Code 26042.

- To better align the Panel's stay procedures with those of the Alcoholic Beverage Control Appeals Board as required by Business and Professions Code 26042.

ATTACHMENTS:

1. Draft proposed regulation text
2. Current regulation text

RECOMMENDATION:

Approve the proposed regulation text and authorize staff to (1) complete and submit the rulemaking package to the Office of Administrative Law to formally notice the proposed regulation amendments and schedule a hearing on the rulemaking to amend regulations under Title 16, Division 45 of the California Code of Regulations and (2) make non-substantiative changes to the language as needed.

STAFF CONTACT:

Christopher Phillips, Chief Counsel
Cannabis Control Appeals Panel
(916) 322-6874

**CANNABIS CONTROL APPEALS PANEL
TEXT OF PROPOSED REGULATIONS**

**CALIFORNIA CODE OF REGULATIONS
TITLE 16
DIVISION 43. CANNABIS CONTROL APPEALS PANEL**

§ 6014. Stay.

- (a) In any appeal where the underlying decision of the licensing authority is denial of a license renewal, or cancelation, suspension, or revocation of a license, the filing of an appeal shall stay the effect of the decision until such time as a final order is made by the Panel.
- (b) Notwithstanding subsection (a), the licensing authority may file a motion, pursuant to section 6010, demonstrating that the stay would present an immediate danger to the health, safety, and welfare of the public.

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

**CANNABIS CONTROL APPEALS PANEL
TEXT OF REGULATIONS**

**CALIFORNIA CODE OF REGULATIONS
TITLE 16
DIVISION 43. CANNABIS CONTROL APPEALS PANEL**

§ 6014. Stay.

- (a) In any appeal where the underlying decision of the 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 demonstrating that:
 - (1) there is a substantial likelihood that the appellant will prevail in the appeal;
 - (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.

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

AGENDA ITEM 4

**NO MEETING
MATERIALS**

AGENDA ITEM 5

**FUTURE AGENDA
ITEMS**

**(NO MEETING
MATERIALS)**

AGENDA ITEM 6

**THERE ARE NO
MEETING MATERIALS**