



CANNABIS CONTROL APPEALS PANEL

February 9, 2023
PANEL MEETING

STAFF COPY



CANNABIS CONTROL APPEALS PANEL

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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

MEETING DATE AND TIME

Thursday, February 9, 2023

1:30 p.m. to 3:00 p.m.

(Or conclusion of business)

IN-PERSON LOCATION

Cannabis Control Appeals Panel
400 R Street, Suite 330
Sacramento, CA 95811

VIDEO CONFERENCE

In addition to the physical location of the meeting being open to the public, CCAP will use the video conferencing service, Zoom, to allow for remote participation. (Government Code section 11133)

Join Zoom Video Meeting

<https://us02web.zoom.us/j/82993607981?pwd=Y2xDSjZYVGVMWQ3F5NnFBK3d4VmZsZz09>

Meeting ID: 829 9360 7981

Passcode: 949702

Call-In Information:

1-669-900-9128

Meeting ID: 829 9360 7981

Passcode: 949702

MEETING AGENDA

Item 1	Call to Order and Establishment of Quorum <i>Dr. Diandra Bremond, Chairperson</i>	Action Item
Item 2	Approval of October 17, 2022, Minutes <i>Dr. Diandra Bremond, Chairperson</i>	Action Item
Item 3	Executive Management Report <i>Anne Hawley, Executive Director</i>	Information Item
Item 4	Public Hearing and Possible Action Regarding Proposed Regulation Amendment to Improve Due Process by Instituting Automatic Stay <i>Christopher Phillips, Chief Counsel</i>	Action Item

Item 5	Election of the Chairperson <i>Christopher Phillips, Chief Counsel</i>	Action Item
Item 6	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 7	Future Agenda Items <i>Dr. Diandra Bremond, Chairperson</i>	Procedural Item
Item 8	Adjournment <i>Dr. Diandra Bremond, Chairperson</i>	Procedural Item

NOTICE TO THE PUBLIC

Pursuant to Government Code section 11125.7, 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 Chairperson.

The Cannabis Control Appeals Panel complies with the Americans with Disabilities Act (ADA) by ensuring that the meeting facilities are accessible to persons with disabilities and providing that this notice and information given to the panel members is available to the public in appropriate alternative formats when requested. If you need further assistance, including disability-related modifications or accommodations, you may contact Christopher Phillips at Christopher.Phillips@ccap.ca.gov or (916) 322-6870. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

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.

Interested parties should access the Panel's website for the meeting agenda and more information at www.ccap.ca.gov.

AGENDA ITEM 1

**THERE ARE NO
MEETING MATERIALS**

AGENDA ITEM 2

**APPROVAL OF THE
MINUTES**



Open Session Meeting Minutes

Monday, October 17, 2022
11:02 am – 11:28 am

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)
- Majority Leader Ian Calderon (in Orange 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 11:02 am.

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

2. Approval of September 23, 2022 Meeting Minutes.

Chairperson Bremond asked the Panel if there were any additions or corrections to the minutes of the September 23, 2022 meeting. There were no additions or corrections. No comments from the public.

Motion (Moore): Approve the minutes of the September 23, 2022 meeting as submitted. Seconded (Calderon). Melita Deci took a roll call vote on the motion. Motion passed 3-0.

3. Discussion and Action Regarding Proposed Revisions to Action Item Regulation Text, Title 16, Division 43, § 6014 Stay.

Legal staff made a presentation regarding making changes to CCAP's administrative rules and regulations.

Chief Counsel Chris Phillips opened by notifying the Panel that CCAP staff has another proposed rulemaking package. This agenda item is an action item which will require a vote from the Panel. The proposed rulemaking is different from previous rulemakings. For example, the last time CCAP's regulations were amended, it was for housekeeping items such as cleaning up regulatory language following consolidation of the three licensing entities, updating CCAP's office address, and adding the online portal as a new way to file appeals with CCAP. This time however, staff is asking the Panel for a policy change.

As a refresher, Phillips noted the Business and Professions Code requires that the Panel adopt procedures similar to those of the Alcoholic Beverage Control Appeals Board (ABCAB). CCAP staff has identified a provision within CCAP's regulations that can be amended to better align with ABCAB's procedures. The proposed change will mitigate certain disincentives against filing an appeal that potential appellants encounter due to CCAP's current merit-based stay. The goal is that this change will provide more access and due process to a greater number of licensees. This proposed change may also impact caseload by increasing the likelihood that certain types of appeals will be filed; currently, it is futile for some licensees to file an appeal with CCAP based on their particular circumstances.

This agenda item presentation will be broken into two parts. First, Staff Attorney Brian Hwang will review the likely reasons why the Panel has a low caseload and demonstrate that today's proposal is one of the few ways that CCAP can undertake that will provide better access to meaningful due process. Following that, Senior Staff Attorney Sarah Smith will get into the details of what an automatic stay is, how it differs from the current merit-based stay, and the incentives created by each.

Staff Attorney Brian Hwang began by noting the low caseload has been a persistent issue ever since CCAP came into being. He then reviewed the four key reasons behind the lack of cases.

First, most cannabis licenses are provisional, which hold no appeal rights. According to the Department of Cannabis Control's (DCC) website, nearly two-thirds of active licenses are provisional. This means that most licensees facing denial or discipline cannot appeal to CCAP. Provisional licenses are also being phased out. DCC stopped accepting provisional applications on March 31 of this year, and stopped issuing provisional licenses on June 30. These deadlines, however, are extended until 2023 for equity applicants. Bottom line, however, is that all provisionals will expire on January 1, 2026.

Second, DCC's focus is spread across many different areas – including a significant emphasis on the illicit market. According to their July 12th press release, in their first year as an entity, the DCC brought 200 enforcement actions against the illicit market. For example, in San Bernardino alone, the DCC has been sending 10-15 investigators every week to assist local law officials in actions against illegal operators. In their August 25th press release, the DCC highlighted that – to date – they have seized over \$1 billion in illegal cannabis from the illicit market. In their October 5th press release, the DCC announced the recent creation of the “Unified Cannabis Enforcement Taskforce”. This brand-new taskforce is co-chaired by the DCC and the Department of Fish and Wildlife, and is tasked with improving the coordination between agencies when it comes to combatting illegal cannabis operations. As of August, 56% of California cities and counties still do not allow any cannabis businesses. Given the above, DCC should be expected to continue to dedicate significant resources towards combatting the illicit market. All this means, in practical terms, is that the less time the DCC spends disciplining annual licensees, the fewer potential appeals there are being filed with CCAP.

Third, cannabis licenses being annual in nature incentivizes against filing an appeal. Annual cannabis licenses are valid for 12 months and are renewed annually. However, if a licensee has been disciplined, they must weigh the option of contesting that matter against applying for a license renewal that year. The DCC has discretion whether to grant a license renewal. They may (but are not required to) deny a renewal application. This places an annual licensee in a sensitive position where they may go from potentially being opposing parties with the DCC in a disciplinary matter to then seeking the DCC's approval of their renewal application afterwards. This creates an incentive to enter into a settlement agreement with the DCC. By waiving their right to a hearing and subsequent appeal, the licensee may do so believing it may result in a more favorable review of their renewal application by the DCC. In comparison, alcoholic beverage licenses are permanent. Generally speaking, those licenses are held indefinitely as long as fees are paid and licensees are in compliance. The exception is when a license is being revoked, but those specific and limited circumstances are defined in statute. So, in contrast to a cannabis licensee, alcohol licensees can afford to be more adversarial. There is little incentive for an alcohol licensee to waive their right to a hearing and appeal.

Fourth, CCAP's current stay mechanism also incentivizes against filing an appeal. A stay temporarily pauses the DCC's discipline from going into effect while an appeal is pending with CCAP. As a comparison, alcohol licensees receive a stay automatically when they file an appeal with ABCAB. There is no similar provision for cannabis licensees. Instead, they may only request a stay by filing a motion with CCAP. A motion for a stay must establish 3 factors – each of which are complex:

- First, an appellant must demonstrate there is a substantial likelihood that they will prevail in the appeal. Having just lost against the DCC in an administrative hearing, they're now attempting to argue – in an expedited brief and timeline – that they will overcome that ruling and win the appeal. While it sounds simple, the reality is that this is a high hurdle to overcome.

- Second, an appellant must demonstrate that they will experience immediate and irreparable harm without a stay. Irreparable harm is a special type of harm that is not easy to establish. Examples include: a violation of a constitutional right, pollution of an ocean, or business trade secrets being revealed. The primary argument a licensee is likely to raise in their motion is that they will suffer financial distress if a stay is not granted. The problem, however, is that irreparable harm generally excludes monetary loss. Overall, an average licensee – especially those operating without legal representation – would not be aware of the nuances involved in this issue.
- Third, an appellant must demonstrate that the stay would not be detrimental to the health and welfare of the public. But how do you use evidence to show something will not happen? It's one thing to argue from the DCC's side how a stay would be detrimental. However, it's more of a challenge to prove a negative – that granting a stay would not be detrimental to the public.

Taken together, establishing all three factors in the motion presents a significant challenge. However, even if a licensee meets all three factors, a stay is still discretionary. The Panel may, but is not required to, grant a stay under CCAP's current regulations. Without a stay, this means that licensed businesses may not continue to operate. Another issue is that if a licensee is facing suspension, the time it takes for them to draft and submit their motion for a stay, and then for CCAP to review the motion, will likely outrun the suspension itself. Essentially, this would make requesting a stay meaningless. Even if they still pursued an appeal with CCAP and prevailed, doing so would have little value if the suspension has already been served. In addition to the complexities involved in drafting the motion, there are also financial hurdles. Does the licensee have funding to put their operations on hold? Do they have the funding to hire legal representation? Bottom line is that if a licensee cannot hold out financially, they are more likely to cut their losses and opt against pursuing an appeal with CCAP.

Of the four reasons behind the lack of cases, Hwang informed the Panel that CCAP staff has targeted the last one (the lack of an automatic stay). This is because the stay mechanism is the only item within CCAP's area of control since it is part of CCAP's regulations. As Chief Counsel Phillips noted earlier, under CCAP's controlling statutes, the Panel is required to adopt appeal procedures like those of ABCAB. By updating CCAP's stay mechanism to be automatic instead of merit-based, it would bring CCAP's procedures more in line with those of ABCAB. This proposed solution would level the playing field and provide greater fairness to a larger number of potential appellants. It would also remove one barrier to potential appeals being filed with CCAP. Hwang then concluded his presentation and handed the floor back to Phillips, who then introduced Sarah Smith.

Smith emphasized that the burden of requesting the stay falls on the appellant. Echoing Hwang, Smith noted that the motion for a stay must establish the three factors. As background, when the DCC imposes discipline, the licensee may request reconsideration, but the DCC has total discretion whether to grant reconsideration. After this point, the imposed discipline goes into effect approximately two weeks later. The effect of the stay is to halt that disciplinary action until the appellant has had the opportunity to be heard by CCAP. Currently, without an

automatic stay, there is no incentive to appeal and a strong incentive to settle outside of a hearing. This deprives the appellant of due process. For example, if their license is suspended, the appellant loses income for the entire term of the suspension. If their license is revoked, they lose their stream of income entirely.

As Hwang noted, CCAP currently requires the appellant to request a stay by filing a motion with the Panel. Within this current regime, Smith shared that one solution CCAP staff considered was to recommend to the Panel that they be extremely lenient in granting these requests for a stay. However, this still places the burden of requesting a stay on the appellant. In addition, the appellant will hedge their bets and refrain from filing an appeal lest they do so and lose on the motion for a stay.

Under the recommended changes, Smith explained it would shift the burden to the DCC. Specifically, the amended regulations would require the DCC to request that a stay be withheld. CCAP staff discussed what this standard should look like – in other words, what standard the DCC must meet to have the stay withheld. After many discussions, staff concluded that where there is an immediate harm to public health and safety, then it may be appropriate to withhold the stay. This reflects the same practice that occurs with ABCAB when there is an immediate harm to the public. This is a rare situation. When it happens in other practices, it involves something like the immediate trade of drugs. But where the DCC can demonstrate immediate and irreparable harm, then it would be appropriate to withhold the stay. Overall, the key point is that the burden would be on the DCC to move to withhold the stay. The burden would not fall on the appellant.

Smith cautioned, however, that changing CCAP's regulations would not fix every problem. As Hwang noted earlier, cannabis licenses are annual. Even if an annual licensee filed an appeal and the disciplinary action against them were stayed, the DCC may still decide not to grant their license renewal at the end of the year. Thus, there will still be disincentives to filing an appeal with CCAP which are not present in ABCAB appeals. With that said, however, today's proposed change will provide substantially more due process to appellants, it will put the burden on the DCC to move to withhold the stay, and it will alleviate much of the financial pressure that may otherwise prevent appellants from pursuing an appeal with CCAP. Smith concluded and then handed the floor back to Phillips.

Phillips made some additional remarks. He noted that staff does not expect this change will have any budgetary or fiscal impacts. Under the current regulations, the motion for a stay must be filed by the appellant. Under the proposed change, no motion would need to be filed by the appellant. This would lead to a potential decrease in CCAP workload although, in some instances, the DCC would probably file a motion requesting that the stay be withheld. Overall, any change in staff's workload will be insignificant and easily absorbed by existing resources. There are no known risks associated with the proposed change. There are several benefits, however, that have been identified. Most notably, an automatic stay will help to provide meaningful due process to all appellants regardless of their financial condition or the nature of the enforcement action pending against them. This proposed change will also align CCAP's

procedures more closely with ABCAB's procedures as required by Business and Professions Code section 26042.

Phillips then recommended that the Panel approve the proposed regulation text and authorize CCAP 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 the regulations, and (2) make any non-substantive changes to the language as needed.

Phillips concluded by reminding the Panel that today is just the first step in the rulemaking process. After this, assuming Panel approval on this agenda item, staff will draft the necessary documents to initiate the rulemaking process. These documents will then go to Agency (Business, Consumer Services and Housing Agency) for approval, which will take about a month. Following this approval, the rulemaking package will be filed with the Office of Administrative Law (OAL) which is when the rulemaking process officially begins. From this point, CCAP will have one year to finish the rulemaking process. Once CCAP has filed with OAL, there will be a public notice period and, at the end of that period, a public hearing.

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

Motion (Moore): Proceed with the rulemaking process to amend Rule 6014 as proposed by CCAP staff. Seconded (Calderon). Melita Deci took a roll call vote on the motion. Motion passed 3-0.

4. 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.

5. Future Agenda Items.

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

6. Adjournment.

Motion (Moore). Adjourn the meeting. Seconded (Calderon). Meeting adjourned at 11:28 am.

AGENDA ITEM 3

Executive Management Report

(No Meeting Materials)

AGENDA ITEM 4

**PUBLIC HEARING & POSSIBLE
ACTION REGARDING
PROPOSED REGULATION
AMENDMENT TO IMPROVE
DUE PROCESS BY INSTITUTING
AUTOMATIC STAY**

CANNABIS CONTROL APPEALS PANEL

STAFF REPORT

REGULAR PANEL MEETING

February 9, 2023

SUBJECT: Public Hearing and Possible Action Regarding Proposed Regulation Amendment to Improve Due Process by Instituting Automatic Stay

BACKGROUND:

Business and Professions Code section 26042 requires the Panel to adopt procedures for appeals similar to those used by the Alcoholic Beverage Control Appeals Board (the 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 [sections 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 to the authority vested in the Board under the California Constitution.
- *ARTICLE 4. Appeals from Decisions of the Department [sections 23080 - 23089]* more specifically outlines how any party aggrieved by a final decision of the Department of Alcoholic Beverage Control may file an appeal with the Board. These sections dictate 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 of the Board may be reviewed by the courts.

Business and Professions Code section 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. Those regulations 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, has been effective since July 1, 2022.

At the October 17, 2022, Panel Meeting, the Panel voted to approve the proposed regulatory change to institute an automatic stay and to initiate the 45-day public comment period as required by the Administrative Procedure Act. The public comment period ends at 1:30 pm on February 9, 2023. As of the drafting of this staff report, the only public comment that has been received is from the Department of Cannabis Control. If any additional comments are received during the remaining comment period or at the public hearing itself, the Panel will have the opportunity to consider those comments prior to taking any final action on the proposed regulatory change.

This agenda item and the Panel's adoption of the proposed amendments is a necessary and required step in the rulemaking process.

ANALYSIS:

Since the establishment of CCAP in 2018, only two appeals have been filed before the Panel (one withdrawn by appellant due to lack of ripeness and jurisdiction, and the other dismissed for lack of jurisdiction). While it was expected that few 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 section 26042 requires the Panel to adopt procedures for appeals similar to those governing the Alcoholic Beverage Control Appeals Board. The relevant statute relating to a stay of enforcement 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 filing appeals before the Panel. Moreover, the regulations

governing appeals before CCAP allow for a stay of enforcement pending appeal only where the licensee files a motion 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.

(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 the Panel. 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 the Panel.

Due to these factors, staff believes that the Panel should complete 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 of Cannabis Control 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, and protects the public by allowing the stay to be withheld in cases involving particularly egregious or dangerous violations.

PUBLIC COMMENTS

As of the date of this updated staff report, only one public comment has been received. The Department of Cannabis Control has issued a comment applauding the Panel's efforts in providing cannabis licensees and applicants with fair hearings that respect the parties' procedural rights while also ensuring the protection of the public. The Department's comment also contains some suggestions for improvement. The Department suggests that the proposed rules should clarify that the Panel will vacate a stay if the Department makes the required showing, and that the proposed rules should clarify that the Department's required showing is disjunctive. Staff agrees with much of the Department's suggestions for improvement and proposes some minor edits to the already approved proposed regulation text.

If the Panel agrees with the proposed revisions made by staff and approves the new text, the newly approved text must be made available for public comment for 15 days. A 15-day public comment period is required if the newly approved text is substantial (in that it materially alters the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text) and sufficiently related (in that a reasonable member of the directly affected public could have determined from the notice that the proposed change could have resulted) to the already approved text.

Additionally, Chief Counsel Phillips has made presentations seeking feedback on the proposed amendment before two cannabis bar associations. While no formal comments have been received (other than from the Department), several attendees shared their support of the amendment during the question-and-answer period. Support was based on the perceived fairness of the amendment and potential cost-savings licensees may realize as a result of lower attorneys' fees.

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 adopting 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 section 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 section 26042.

ATTACHMENTS:

1. Approved proposed regulation text (marked up)
2. Approved proposed regulation text (clean)
3. Revised proposed regulation text (marked up)
4. Revised proposed regulation text (clean)

RECOMMENDATION:

Approve the revised proposed regulation text (Attachments 3 and 4) and authorize staff to notice a 15-day public comment period. After the completion of the 15-day period, the Panel will again have the opportunity adopt, reject, or revise the approved text.

STAFF CONTACT:

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

**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.~~ 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 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.~~ 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 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.~~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 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.~~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 or welfare of the public. After considering the motion and any opposition, the Panel may vacate the stay.

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

**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, or welfare of the public. After considering the motion and any opposition, the Panel may vacate the stay.

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

AGENDA ITEM 5

**ELECTION OF THE
CHAIRPERSON**

CANNABIS CONTROL APPEALS PANEL

STAFF REPORT

REGULAR PANEL MEETING

February 9, 2023

SUBJECT: Election of the Chair

BACKGROUND:

The Member Handbook provides that election of the Panel Chair must occur at the first meeting of each calendar year. Pursuant to this procedure, the Panel must elect a new Chair at the current meeting.

ANALYSIS:

Election of the new Chair is subject to the procedures outlined in the Member Handbook:

Election of the Chair shall occur annually at the first meeting of each calendar year. The election can only occur with a quorum present.

A member must first announce their willingness to be Chair and then may give a short statement why they should be elected.

Each Panel member may cast one vote for the Chair position. Votes will be made publicly. The candidate with the most votes will be elected Chair and will assume the duties of that position at the end of the public meeting.

In the event of a tie, the Secretary of the Business, Consumer Services and Housing Agency, or their delegate, shall publicly cast a single vote to break the tie either at the meeting, or at the next publicly noticed meeting. In the latter situation, the prior Chair shall retain their duties until the tie is broken.

(Selection of Officers, CCAP Member Handbook, at p. 8.)

The Member Handbook also outlines the Chair's responsibilities, including coordinating with the Executive Director to stay abreast of day-to-day Panel operations; managing Panel meetings; overseeing annual review of the Executive Director; and representing the Panel before external entities as necessary. Panel staff can answer any additional questions regarding the duties of the Chair.

BUDGET AND FISCAL IMPACTS:

The election of the Chair will have no effect on the Panel's personnel budget. While the Chair enjoys a higher pay rate than other Panel members (see Gov. Code, § 11553), that pay is already contemplated in the Panel's budget.

BENEFITS AND RISKS:

The election of a Panel Chair during the first meeting of a calendar year is consistent with the duties and responsibilities of the Panel. Adherence to these requirements aligns with best practices, ensures the Panel's administrative and procedural tasks are accomplished, and allows the Panel to continue to adapt its procedures as necessary to accommodate the ongoing development of the cannabis industry. Deviation from these procedures, or failure to timely elect a Chair, may lead to confusion and delays to Panel business. Requiring the regular election at the first meeting of every calendar year also provides clear notice to and consistency for interested parties.

Holding the regular election only once a year ensures continuity of leadership and service under a single Chair. Should the Panel determine that the duly elected Chair has failed to fulfill their duties, there are statutory mechanisms for the removal or resignation of a Panel member, as well as filling the resulting vacancy:

- If necessary, a Panel member may be removed from office by their appointing authority (see Bus. & Prof. Code, § 26040(b)).
- A Panel member, including the current Chair, can resign from their position by providing written notification (see Gov. Code, § 1750).
- Finally, the Member Handbook provides that if the office of the Chair becomes vacant, the Panel shall elect a new Chair at its first meeting after such vacancy occurs, if reasonably feasible. (Selection of Officers, CCAP Member Handbook, at p. 8.)

In sum, the election of the Chair is necessary for the Panel's continuing function and carries only negligible risks.

ATTACHMENTS:

None.

RECOMMENDATION:

Elect a Panel Chair pursuant to Member Handbook procedures.

STAFF CONTACT:

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AGENDA ITEM 6

**PUBLIC COMMENTS ON
ITEMS NOT ON THE
AGENDA**

(NO MEETING MATERIALS)

AGENDA ITEM 7

**THERE ARE NO
MEETING MATERIALS**

AGENDA ITEM 8

**THERE ARE NO
MEETING MATERIALS**