



CANNABIS CONTROL APPEALS PANEL

June 23, 2025
PANEL MEETING

Staff Copy



CANNABIS CONTROL APPEALS PANEL

Table of Contents

| | |
|---|--------------|
| Meeting Agenda..... | Tab 0 |
| Agenda Item 1: Call to Order and Establishment of Quorum | Tab 1 |
| Agenda Item 2: Approval of the Minutes..... | Tab 2 |
| Agenda Item 3: Executive Management Report | Tab 3 |
| Agenda Item 4: Provisional Licensees and Administrative Stays | Tab 4 |
| Agenda Item 5: Training: Deference to Department's Findings | Tab 5 |
| Agenda Item 6: Public Comments on Items Not on the Agenda | Tab 6 |
| Agenda Item 7: Future Agenda Items..... | Tab 7 |
| Agenda Item 8: Adjournment..... | Tab 8 |



GOVERNOR GAVIN NEWSOM

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
Secretary Tomiquia Moss



MEMBERS OF THE PANEL

Dr. Diandra Bremond – Chairperson, Los Angeles County
Cathryn Rivera – Member, Sacramento County
Jim Wood – Member, Sonoma County
Josh Newman – Member, Orange County

MEETING DATE AND TIME

Monday, June 23, 2025
10:30 a.m. to 11:30 a.m.
(Or conclusion of business)

MEETING LOCATION

400 R Street, Suite 330
Sacramento, CA 95811
(Open to the public)

MEETING LOCATION

4401 S. Crenshaw Blvd.
Los Angeles, CA 90043
(Open to the public)

MEETING AGENDA

| | | |
|--------|--|--|
| Item 1 | Call to Order and Establishment of Quorum <i>Dr. Diandra Bremond, Chairperson</i> | Action Item |
| Item 2 | Approval of the Minutes <i>Dr. Diandra Bremond, Chairperson</i> | Action Item |
| Item 3 | Executive Management Report <i>Anne Hawley, Executive Director</i> | Information Item |
| Item 4 | Provisional Licensees and Administrative Stays <i>Christopher Phillips, Chief Counsel</i> | Information and Possible Action Item |
| Item 5 | Training: Deference to Department's Findings <i>Christopher Phillips, Chief Counsel</i> <i>Sarah Smith, Senior Staff Attorney</i> | Information 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

HOW TO PARTICIPATE: If you wish to participate in person, you may attend the above public locations. Or members of the public may take part remotely. You can watch the meeting through Zoom using the link below. You can also listen by phone using the call-in information.

Join Zoom Video Meeting

<https://us02web.zoom.us/j/85757218769?pwd=WYcvjvWujOs2kiKie6bscwTKsSwkw1.1>

Meeting ID: 857 5721 8769

Passcode: 965029

Call-In Information:

Phone Number: 1 669 900 9128

Meeting ID: 857 5721 8769

Passcode: 965029

MEETING ACCESSIBILITY: A person who needs a disability-related accommodation to participate in the meeting may make a request by contacting Christopher Phillips at Christopher.Phillips@ccap.ca.gov, (916) 322-6870, or in writing to: Cannabis Control Appeals Panel, 400 R Street, Suite 320, Sacramento, CA 95811. Providing your request at least one week before the meeting will help to ensure availability of the requested accommodation.

IMPORTANT NOTICES: All times and the order of agenda items are subject to change at the discretion of the Chair. Action may be taken on any item listed on the agenda. We will take public comment on items of discussion for each item. If comment is not requested by the Chair, the public should feel free to request an opportunity to speak. The Chair may limit the time allotted for public comment at their discretion. The meeting may be cancelled without notice.

ADDITIONAL INFORMATION OR REQUESTS: Interested parties may access the meeting agenda and materials at <http://www.ccap.ca.gov>. All other inquiries (such as translation services) should be directed to Christopher Phillips at least one week prior to the meeting.

AGENDA ITEM 1

No Meeting Materials

AGENDA ITEM 2

Approval of the
Minutes



GOVERNOR GAVIN NEWSOM

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
Secretary Tomiquia Moss



Open Session Meeting Minutes

Friday, January 24, 2025

1:32 pm – 2:29 pm

Cannabis Control Appeals Panel
400 R Street
Sacramento, CA 95811

Members present:

- Dr. Diandra Bremond, Chairperson (in Sacramento County – In Person)
- Cathryn Rivera, J.D. (in Sacramento County – In Person)
- Jim Wood (in Sacramento County – In Person)
- Josh Newman (in Sacramento County – In Person)

Staff present:

- 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, Senior Staff Attorney, Cannabis Control Appeals Panel
- Melita Deci, Administrative and Business Services Coordinator, Cannabis Control Appeals Panel
- Ruben Garza, Office Technician, Cannabis Control Appeals Panel

Summary:

1. Call to Order and Establishment of Quorum.

Chairperson Diandra Bremond called the teleconference meeting to order at 1:32 pm.

Melita Deci took the roll call vote. Panel Members Diandra Bremond, Cathryn Rivera, Jim Wood, and Josh Newman were present. A quorum was established.

2. Welcome – Panel Members Jim Wood and Josh Newman.

Chairperson Bremond next introduced and welcomed Jim Wood and Josh Newman – the newest Panel appointees. Mr. Wood was appointed to the Panel by California Assembly

Speaker Robert Rivas at the end of December. Mr. Newman was recently appointed by Senate President pro Tempore Mike McGuire of the Senate Rules Committee.

Prior to joining the Panel, Mr. Wood served as a member of the California State Assembly representing Sonoma, Del Norte, Humboldt, Mendocino, and Trinity counties, where he focused on health care, natural resources, insurance, clean energy, and broadband access. He also served as Speaker pro Tempore, and before that, as Chair of the Assembly Health Committee for eight years. He served in local government as a planning commissioner and city councilmember before his election to the Legislature. As a practicing dentist, he owned and operated a family dental practice in Cloverdale, California from 1987-2013. Mr. Wood is a graduate of the University of California at Riverside with a Bachelor of Science in Biology, and the Loma Linda University School of Dentistry with a Doctor of Dental Surgery degree.

Wood thanked Bremond for the kind introduction.

Prior to joining the Panel, Mr. Newman served in the California State Senate, where he represented the 29th Senate District, which included areas across Orange, Los Angeles, and San Bernardino counties. He chaired the Senate Education Committee and the Veterans Affairs Committee during his tenure, focusing on public education, veteran and mental health services, job creation and transportation. Prior to running for public office, his professional career included service as an officer in the United States Army; executive-level positions for a series of start-ups in the Internet and mobile technology sectors; and the founding and operation of ArmedForce2Workforce, an initiative to assist young veterans in the Orange County/Greater Los Angeles area in the pursuit of rewarding, career-oriented post-service employment. Mr. Newman is a graduate of Yale University, majoring in History, with a focus on 20th century American politics and government.

Newman expressed that he looks forward to working with everyone.

3. Approval of the Minutes.

Chairperson Bremond asked the Panel if there were any additions or corrections to the minutes of the September 26, 2024 meeting. There were no additions or corrections. No comments from the public.

Motion (Rivera): Approve the minutes of the September 26, 2024 meeting as submitted. Seconded (Newman). Melita Deci took a roll call vote on the motion. Motion passed 4-0.

4. Executive Management Report.

Executive Director Anne Hawley began her report by welcoming Wood and Newman to CCAP.

Hawley's report will cover the Panel's budget-to-actual financials and Strategic Plan process. Hawley will then hand the floor to Chief Counsel Chris Phillips for a legal team update.

First, Hawley provided an update on CCAP's financials for the second quarter of the fiscal year. According to the Department of General Services (which tracks CCAP's spending and accounting), CCAP remains comfortably within its budgetary limits. CCAP also remains on track with its operating expenditures.

Under personal services, CCAP was budgeted \$2,499,000 for salaries, wages, and benefits. Of that budget, CCAP spent \$1,040,000 in the second quarter – leaving a surplus of \$1,461,159.

Under general expenses (which includes categories such as office supplies, subscriptions, bar dues, and conference fees), CCAP has a budget of \$15,000. Of that budget, CCAP spent \$5,530 – leaving a surplus of \$9,470.

For printing expenses, CCAP has a budget of \$3,000. CCAP has spent \$1,060 – leaving a surplus of \$1,940.

Communication covers categories such as cell phone service, internet, and cable. The budget for this category is \$14,000 and the expenditures were \$9,000 – leaving a surplus of roughly \$5,000.

For postage, CCAP has a budget of \$300. Second quarter expenditures were only \$64 – leaving a surplus of \$236. When CCAP starts receiving more cases, there may be additional expenditures to report.

For travel, CCAP has a budget of \$6,000 to cover Panel members traveling for Panel meetings and staff members traveling for in-person outreach and education. Expenditures were \$1,133 – leaving a surplus of \$4,867.

For training, the budget of \$3,000 includes mandated trainings for Panel members and professional development for staff. The second quarter expenditures were \$1,450 – leaving a surplus of \$1,550.

For facility operations, CCAP's rent is roughly \$246,000 annually. CCAP is reimbursed \$54,000 annually from the Alcoholic Beverage Control Appeals Board for rent. In total, the second quarter expenditures (for rent, security, lease management, and maintenance/repair) were \$145,328 – leaving a surplus of roughly \$115,000.

For consulting and professional services, CCAP's budget covers contracts with other state entities for various services. As mentioned before, since CCAP is such a small agency, it must rely on these larger agencies for these services. \$59,000 has been budgeted for HR services from the Department of General Services (DGS). \$104,000 has been budgeted for administrative services from the Business, Consumer Services and Housing Agency (BCSH). \$1,000 has been budgeted for purchasing services from DGS. \$3,000 has been budgeted for the statewide surcharge that is assessed by the DGS Office of Financial Services. Roughly \$15,000 has been budgeted for the security circuit provided by the Department of Technology. Overall,

for this group of expenses, CCAP was budgeted for approximately \$182,000. The actual expenditures for the second quarter were \$23,529 – leaving a surplus of around \$158,471.

Next, \$15,000 has been budgeted for interpreter services for CCAP’s website and hearings. \$3,000 has been budgeted for auditing fees owed to control agencies (e.g., DGS, the California Military Department, and State Personnel Board), who conduct compliance audits on CCAP’s procurement authority and hiring practices. CCAP was budgeted \$18,000 for these items, but there have been no expenditures so far.

For information technology, CCAP was budgeted for \$95,000. This covers the cost of CCAP’s interagency agreement with the Department of Consumer Affairs (DCA) – who provides IT services and support for CCAP. There have been no expenditures so far.

For CCAP’s case management system, the budget is \$60,000. This covers the cost of CCAP’s case management system on the Salesforce platform. There have been no expenditures so far.

For Panel meetings, CCAP has \$2,000 budgeted for security provided by the California Highway Patrol for when CCAP begins receiving and hearing cases. There have been no expenditures so far.

Altogether, the Panel’s total budget amounts to \$3,207,000. Actual expenditures were \$1,177,000. This currently leaves a surplus of \$2,030,000 in CCAP’s annual budget.

After completing this financial update, Hawley provided an update on the Panel’s Strategic Planning. Hawley reached out to DCA’s SOLID Unit. They are reviewing their schedule for March to help the Panel with strategic planning. DCA will assist the Panel with reviewing its previous strategic plan from 2021-24, evaluating the current relevance of the previous plan, assessing progress and measuring the success of past goals, engaging both internal and external stakeholders, and analyzing past performances to identify new challenges, trends, and opportunities.

DCA’s SOLID unit will also assist the Panel with developing a new strategic plan by setting clear objectives, focusing on mission and vision, defining priorities (short and long-term based on available resources), implementing actionable steps, fostering collaboration between the Panel and staff to ensure buy in, and, finally, developing a monitoring process.

Lastly, Hawley handed the floor to Chief Counsel Phillips for a legal team update. Phillips first welcomed the new Panel members. This update will cover a recent appeal, CCAP’s case load, and outside legal projects the team has been working on.

Back in November, an appeal was filed by a provisional licensee. As background, while CCAP has yet to fully adjudicate an appeal, CCAP has received several appeals. None of these filings, however, have been ripe for adjudication. This is because either the licensee was provisional

(and thus lacked appeal rights) or, if they held an annual license, they had not gone through the required administrative appeal process with the Department of Cannabis Control (DCC).

In all these cases where an appellant had no standing before CCAP or CCAP had no jurisdiction over the appeal, Phillips has been able to resolve these matters by calling the appellant's attorney and explaining the lack of appeal rights or jurisdiction in the matter. Following these calls, appeals were usually withdrawn voluntarily. However, this was not the case in the recent appeal filed in November.

After receiving the Notice of Appeal in this recent matter, Phillips cross-referenced the license information with publicly available license information on DCC's website. Phillips discovered the license was only provisional. As with all the other appeals, Phillips reached out to the appellant's attorney to explain the lack of standing. However, the attorney did not wish to withdraw the appeal. Phillips then informed the attorney that if they could not meet the first deadline (submitting the administrative record 60 days after initiating the appeal) – a deadline which would have been impossible to meet regardless – that CCAP would dismiss the appeal on its own accord.

Subsequently, appellant's attorney sent cease and desist letters to state enforcement authorities informing them that their client was protected by the automatic stay (under CCAP's regulations) as well as demanding that they return their client's confiscated property and stop any further enforcement actions.

Once the appeal was filed with CCAP, the DCC as well as the Department of Tax and Fee Administration – both involved in the underlying enforcement action against the licensee – responded promptly. The two agencies were concerned with how a provisional licensee managed to utilize the automatic stay in CCAP's regulations without having standing to file an appeal with CCAP in the first place.

However, as a quasi-judicial entity and pursuant to its statutory as well as regulatory authority, CCAP can issue decisions and orders only on evidence in the record or otherwise formally placed before the Panel directly. Once DCC understood that CCAP could not act until there was evidence in front of CCAP (or that a procedural requirement hadn't been met), the DCC filed a motion to dismiss and vacate the automatic stay. CCAP granted this motion.

In short, the dilemma was that although Phillips personally knew the appellant only held a provisional license, these facts were not officially before the Panel. As a result, the Panel could not dismiss the appeal on its own because of the appellant's lack of standing. The appellant exploited this loophole by filing an appeal (despite lacking standing) in order to benefit from the automatic stay.

The next question is what to do about this dilemma, if anything. Staff identified a few potential solutions. One option is to amend CCAP's regulations to close this loophole by allowing the Panel to independently verify the type of license held—similar to the steps Phillips took in this

case. Another option is to delay the automatic stay from taking effect until the appellant confirms their license type, such as by requiring license documentation to be submitted with the Notice of Appeal. With that said, Phillips is uncertain whether these steps are necessary. Provisional licenses are no longer being granted except in very limited cases (i.e., local equity retailers). Other than this very narrow exception, all provisional licenses will expire this year. In addition, the rulemaking process to amend regulations requires significant resources and can take up to nine months.

Panel member Rivera requested additional information regarding the status of provisional licenses – especially those that will continue to be held by local equity retailers. Rivera noted that it may be worth the time to prepare a short memorandum for the Panel laying out the local equity jurisdiction, how many provisional licenses will remain held by this cohort, and how many appeals the Panel may receive from them. This information may help inform the Panel's approach to addressing provisional licensees and the automatic stay loophole moving forward.

Phillips responded that preparing a memorandum on these issues is very feasible.

Panel member Wood stated that – depending on the number of local equity provisional licensees – it may be worth amending CCAP's regulations if those licensees continue to file appeals to exploit the automatic stay loophole.

Phillips explained that local equity retailers may continue to apply for provisional licenses for five more years. He agreed with Wood that it would be helpful to understand how large this cohort may be in terms of potential appeals.

Phillips next discussed CCAP's current and future case load. To monitor potential cases, CCAP staff regularly tracks publicly available resources. The Office of Administrative Hearings (OAH) has a searchable calendar on its website. The legal team can search for all cases from the DCC and identify upcoming cases. On DCC's website, the DCC posts all final decisions – any of which may result in an appeal to the Panel.

Currently, at the OAH, there are four DCC licensing cases on the docket with hearing dates ranging from March to June. These are all potential future appeals currently working through the administrative appeal process. Once an administrative appeal hearing is held, an Administrative Law Judge will issue a proposed decision 30 days after the closing of the record. After the proposed decision is issued, the DCC has 100 days to act on it – otherwise the proposed decision becomes final.

As for final decisions issued by the DCC, there have been nine decisions issued in the past three months. Of those nine decisions, eight have been stipulated judgments and one was a default judgment. With the former (settlement or stipulated judgment), a licensee is generally giving up any future rights to appeal on those issues that were contested. In short, all nine of the final decisions issued by the DCC have been settled and are thus not appealable to CCAP. However, as provisional licensure gets phased out, *annual* licensees will make up a growing proportion of

licensees. The more annual licensees there are, the more potential appellants there will be who have standing to appeal to the Panel. Thus, an increase in workload is a possibility.

Phillips next provided an update on outside legal projects. Due to low caseload, CCAP legal team has been assisting other state entities with their legal matters. Recently, legal team has assisted the California Privacy Protection Agency (CPPA), Board of Vocational Nursing and Psychiatric Technicians (BVNPT), Alcoholic Beverage Control Appeals Board (ABCAB), and California Commission on Asian and Pacific Islander American Affairs (CAPIAA). To preserve certain privileges and protections (e.g., attorney-client privilege, attorney work product), CCAP entered into interagency agreements with these agencies. Due to these agreements, legal team cannot share details about these outside projects.

As part of these projects, Senior Staff Attorney Sarah Smith drafted an excellent legal memorandum for CPPA. CPPA was very satisfied with Smith's work product. As for Phillips, he has been acting as legal counsel for CAPIAA and providing ongoing legal advice as well as assisting at their commission meetings. Senior Staff Attorney Brian Hwang has assisted ABCAB with their case load. He has worked on several of their appeals which is almost identical to the work that CCAP does. This has been an invaluable experience for him. A month or two ago, Phillips also acted as legal counsel for BVNPT.

Legal team has leveraged its extra bandwidth by assisting other agencies on their legal matters as needed. This has been beneficial for CCAP as well. These outside projects have kept the legal team busy. These projects have also allowed CCAP to collaborate with other State agencies.

Rivera commented how incredibly helpful it is to have CCAP's legal team assisting other entities – especially those currently operating without legal counsel. Rivera thanked the legal team for all their hard work.

Phillips and Hawley concluded and handed the floor back to Bremond, who then opened the floor for any questions or comments.

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

5. Recusal Training.

Bremond handed the floor to Senior Staff Attorney Smith to present a recusal training for the benefit of both the Panel and the public.

As background, Panel members must recuse themselves from the decision-making process under certain circumstances, including when a conflict of interest arises. This presentation will provide more detail on when recusal is required, and what procedures the Panel must follow. Section 6012 of CCAP's regulations explains recusal as follows: "A Panel member shall disqualify themselves and withdraw from any case in which the member cannot accord a fair and impartial hearing."

There are two ways a recusal may occur. The first approach is involuntary. Any party can request a Panel member be disqualified by filing an affidavit stating the grounds for their request. This request must be made before the case is submitted to the Panel for consideration. Legal team will review a request and make a recommendation in the form of a memorandum. The other Panel members will rule on the matter and decide if disqualification or recusal is appropriate.

The second approach is a voluntary process. In these instances, Panel members themselves will identify when circumstances may require recusal in a matter. If a Panel member is certain they must recuse, please immediately consult the legal team for guidance. Recusal discussions with staff are always privileged and confidential. Panel members should consult legal team on an individual basis. They should not discuss recusal matters with one another in violation of Bagley Keene.

There is an important exception to note. Section 6012 of CCAP's regulations states: "No member of the Panel shall withdraw voluntarily . . . or be subject to disqualification if this would prevent the Panel from acting in the particular case." In practice, recusal may not be possible if it would destroy the voting quorum.

Smith then outlined specific scenarios where recusal may come into play:

- Financial conflict of interest: A Panel member must recuse if they have a financial interest in any party, or in the outcome of a case. They must notify the Panel Chair or Executive Director immediately. Common financial interests include investments, income, gifts, or real property. If in doubt, please contact the legal team.
- Financial interests held by family: A Panel member must recuse if their spouse, partner, or minor child holds a financial stake in one of the parties, or in the outcome of a case. If the financial interest belongs to a former spouse, an adult child, or a close relative, contact legal team for guidance.
- Position or business relationship: A Panel member must recuse if they hold a position or office with any party to a case. Examples include officer, director, employee, or any other direct business relationship.
- Past position or financial interest: A past business or financial relationship with any party in a case may require recusal. Contact the legal team for guidance.
- Personal relationship with a party: May require a recusal. Examples include a romantic relationship, a close friendship, or any other important connection to anyone in the case – including any party or their attorney. When in doubt, please contact the legal team.
- Personal knowledge of facts in a case: Independent knowledge of key facts in a case may require recusal. General knowledge obtained from public sources (e.g., reading about a licensee in the news) is not disqualifying. However, specific factual knowledge that is not publicly available will require evaluation by the legal team to determine whether recusal is necessary.

- Bias or prejudice: A strong personal bias or prejudice against a party or their attorney – regardless of the reason – may require recusal. This is not limited to ethnicity or religion. It can include a simple scenario such as if someone bumped into you or your car. If you have any reason whatsoever to feel personal bias, prejudice, or animosity towards a party, please contact legal team for guidance.
- Absence from oral argument: A Panel member must recuse if they miss oral argument (or any part of it). However, if the absence is anticipated in advance, notify the Executive Director as soon as possible.
- Inability to review case: This will commonly involve a medical situation. Most temporary or permanent disabilities can be accommodated. If accommodation is impossible or it cannot be made in time, the Panel member may need to recuse.
- Appearance of impropriety: This is a catch-all category. Recusal may be required if, under the circumstances, an outside observer might question a Panel member's ability to make a fair and impartial decision. The Panel member should use personal judgment with guidance from the legal team to determine whether to withdraw or not. Public trust is paramount. This is key to the recusal question. Anything that might impair a fair and impartial hearing must be brought up with the legal team.

Recusal can be a complex topic, but it ensures fair and impartial appeals. When in doubt, contact the legal team. Smith then opened the floor for any questions from the Panel. No questions from the Panel.

Bremond thanked Smith for the presentation.

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

6. Election of the Chairperson.

As this is the first meeting of the year, Bremond stated it is time to elect the next Chair. Chief Counsel Phillips will first discuss election procedures. The Panel will then proceed with the election, with Phillips overseeing the voting process.

Phillips summarized the election process. The first step is to identify the candidates, including self-nominations. Once all candidates are determined, each may (but is not required to) provide a statement or speech in support of their candidacy. There will then be a roll call vote in which each Panel member may vote for only one candidate. If there is a tie, those procedures will be explained later if necessary.

Phillips then opened the floor for nominations. Chairperson Bremond nominated themselves to continue serving as Chairperson. There were no other candidates.

Melita Deci then took a roll call vote on Bremond being re-elected as Chairperson. The Panel voted 4-0 in favor of Bremond's re-election.

Rivera congratulated Bremond and thanked them for their leadership and hard work as Chairperson. Bremond thanked Rivera for her comments as well as Wood and Newman for their votes of support.

7. 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.

8. Future Agenda Items.

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

9. Adjournment.

Motion (Newman). Adjourn the meeting. Seconded (Wood). Meeting adjourned at 2:29 pm.

AGENDA ITEM 3

Executive Management Report

**(No Meeting
Materials/PowerPoint
Presented at Meeting)**

AGENDA ITEM 4

Provisional
Licensees and
Administrative
Stays

CANNABIS CONTROL APPEALS PANEL

STAFF REPORT

REGULAR PANEL MEETING

June 23, 2025

SUBJECT: Provisional Licenses and Administrative Stays

BACKGROUND:

At the last Panel meeting, on January 24, 2025, Chief Counsel Chris Phillips updated the Panel on a recent appeal that had been filed. The appeal was filed by an operator that held only a provisional license. Despite the licensee lacking appeal rights, they refused to voluntarily withdraw the appeal. With no administrative record filed by the appellant¹, the Panel was unable to act *sua sponte*² to dismiss the appeal³. Upon learning that the appellant was attempting to avail themselves to the protections of the automatic stay of execution against the Department while the appeal was pending, the Department filed a motion to dismiss based on lack of standing and jurisdiction. The Panel promptly granted the motion and dismissed the case.

The appeal exposed a vulnerability that potentially allows for a provisional licensee to enjoy the benefits and protections of the automatic stay of execution while their appeal is pending before a motion to dismiss can be filed and heard. It is undisputed that provisional licensees do not have appeal rights to the Panel⁴ and they should not receive the protection of the automatic stay of execution if an appeal is filed.

Panel members requested that staff analyze the provisional license program's future and whether this vulnerability requires a formal solution, such as regulatory rule making.

ANALYSIS:

Provisional Licensees and their Future

Under current law, the Department no longer has the authority to renew or issue provisional licenses as of January 1, 2025. Licenses are valid for 12 months. Thus, nearly every provisional license will expire by January 1, 2026. The only path to continued licensure will be transitioning

¹ 16 CCR § 6004 provides the appellant has 60 days to obtain and file the complete administrative record with the Panel from the day the appeal was initiated.

² Sua sponte is a Latin term meaning "of one's own accord". In legal contexts, it refers to a judge or court taking an action without being prompted by either party in a case.

³ The Panel's laws and regulations prohibit the Panel from engaging in independent fact-finding. The Panel is limited to considering only evidence contained in the administrative record. B&P Code § 26043(b).

⁴ B&P Code § 26050.2(m).

to an annual license prior to expiration. There is one exception. Locally verified equity retail applicants may apply for and renew their provisional licenses beyond January 1, 2026. The Department may issue a license to this cohort until January 1, 2031⁵.

As of April 2025, there were 1,029 active provisional licenses, including 131 provisional local equity licenses. Only the 131 provisional equity licenses are eligible to remain in effect beyond January 1, 2026. The Department estimates the provisional equity licenses will peak at 136 in FY 25/26 and gradually diminish to 83 licenses by FY 28/29.

While it is difficult to accurately predict how many appeals the Panel may receive from this cohort of provisional licensees, staff has conducted an analysis of past appeals to provide at least a modicum of indicia for future provisional licensee appeals.

Since 2018, the Panel has processed four appeals. In each instance, the appeal was filed by a provisional licensee. All four appeals were either voluntarily withdrawn by the appellant or dismissed by the Panel for lack of jurisdiction. It is worth noting that CCAP's regulations did not allow for the automatic stay of execution until October 1, 2023. Two of the appeals were filed after this date, though only one of them exploited the loophole. It is also worth noting that the number of provisional licensees over the last few years have been in the many thousands, peaking at over 11,000 provisional licenses in 2023.

To put all of this data into context, over the next five years, there will be less than 1% of provisional licensees remaining from peak numbers. Over the last seven years, the Panel has received 4 appeals from provisional licensees. Staff believes the volume of future appeals from provisional licensees will be miniscule, if any.

Options Moving Forward

Staff has identified three options to manage these situations where a provisional licensee files an appeal and refuses to voluntarily withdraw for lack of standing. They range from keeping the status quo to regulatory rulemaking and are offered in order of staff preference and complexity.

1. Keep Status Quo. The likelihood of an appeal from this cohort is exceedingly low. The most efficient way to handle these appeals in the future is to continue dealing with appeals on a case-by-case basis; that is, contacting and informing each appellant that provisional licensees have no appeal rights and encourage them to voluntarily withdraw the appeal.

The main benefits of this option are consistency and efficiency. This approach is how legal staff already deals with appeals filed by provisional licensees, so no adjustments would be necessary. It would also be cost efficient given how few appeals CCAP has

⁵ B&P Code § 26050.5(a).

received. The main drawback, however, is that this approach relies on the cooperation of appellants. It is only effective insofar as a provisional licensee agrees to withdraw the appeal. If a licensee refuses, it will require the Department to file a motion to dismiss.

2. Judicial Notice. This option allows for staff to consider information on the Department's website for the purpose of verifying an appellant's license status. This would allow for the Panel to act *sua sponte* and dismiss an appeal for lack of standing without action by either party. Panel Members, please refer to the legal analysis provided in previous legal memorandum for a detailed discussion on the applicability and use of judicial notice.

The benefits of taking judicial notice are clarity, efficiency, and expediency. The Panel will quickly confirm if a license is provisional, take notice of this fact from the Department's website, and dismiss an appeal on its own motion. The Panel could exercise this inherent power without going through any formal channel.

The risk of taking judicial notice relates to a subsequent challenge by an affected appellant. While there is no direct statutory or regulatory authority that allows for the Panel to utilize judicial notice, there is ample persuasive authority and case law that does.

3. Regulatory Rule Making. This option is to proceed with a formal regulatory rule making package that modifies the Panel's regulations to prevent this situation from occurring in the future. The regulations can be modified either to expressly allow for the Panel to take judicial notice, or to put the onus on the appellant to verify license status at the initiation of an appeal.

The main benefit of this option is clarity, and eventually efficiency. After the rulemaking is complete and the new regulation(s) are effective, the Panel will have clear and unambiguous authority to dismiss appeals *sua sponte* without the need for the Department to file a motion.

The drawbacks of this option are time, resources, and potential mootness. Rulemaking is a rigorous endeavor requiring months of preliminary work before the process is even initiated with the Office of Administrative Law (OAL). Once initiated, rulemaking involves a thorough vetting process by the public and OAL attorneys. Legal staff could spend several months responding to public comments before the process ever reaches OAL attorneys for final approval. By the time a formal rulemaking is complete, there will be zero provisional licenses remaining in effect except for the local equity cohort of around 100 licensees that is diminishing by the day.

BUDGET AND FISCAL IMPACTS:

While regulatory rulemaking is a large project that will require significant staff time to complete, the Panel is adequately staffed to absorb such workload. Staff believes that none of the options above will have more than a *de minimis* effect on the Panel's budget.

BENEFITS AND RISKS:

Each of the three options carry their own benefits and risks and are discussed above.

RECOMMENDATION:

Staff recommends the Panel consider the options in the order presented. Based on the number of appeals filed in the past and the dwindling number of provisional licensees, the almost unified cooperation from provisional licensees to voluntarily withdraw, and the impact on staff time and resources, proceeding with the status quo is preferable.

STAFF CONTACT:

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

AGENDA ITEM 5

Training: Deference to
Department's Findings

CANNABIS CONTROL APPEALS PANEL

STAFF REPORT

REGULAR PANEL MEETING

June 23, 2025

SUBJECT: Training on Deference to Department's Findings

BACKGROUND:

In 2022, the Panel adopted a strategic plan that included four broad goals relating to decision making, outreach and education, organizational effectiveness, and diversity, equity, and inclusion. This training is intended to assist the Panel with the following two specific goals:

Goal 1.2 – Create impartiality through the decision-making process to provide fairness to the Panel's stakeholders; and,

Goal 1.4 – Identify and develop trainings for Panel members to provide a solid foundation on decision making.

ABSTRACT:

In administrative actions against cannabis licenses, the presiding ALJ and the Department function as finders of fact, weighing evidence and testimony. By law, the Panel must afford deference to these findings. At the same time, the Panel's scope of review includes the question of whether the findings are supported by substantial evidence. This training will briefly cover the issue of deference and when, if ever, the Panel may scrutinize the Department's findings of fact.

STAFF CONTACT:

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

AGENDA ITEM 6

Public Comments on
Items Not on the
Agenda

(No Meeting Materials)

AGENDA ITEM 7

Future Agenda Items
(No Meeting Materials)

AGENDA ITEM 8

Adjournment

(No Meeting Materials)