

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

NOTICE OF PROPOSAL TO ADD RULES 6000-6018
PROCEDURES TO APPEAL ADMINISTRATIVE ACTIONS AGAINST CANNABIS
LICENSEES OR APPLICANTS

The Cannabis Control Appeals Panel (Panel) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Panel will hold a public hearing starting at **9:00 a.m., Wednesday October 17, 2018**, or as soon after that as business before the Panel will permit, at the **State Personnel Board Building, 1st Floor Auditorium, 801 Capitol Mall, Sacramento, CA 95814**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Panel at its address below. Comments may also be submitted by email to philip.laird@bcsh.ca.gov. The written comment period closes at **5:00 p.m. on October 15, 2018**. The Panel will consider only comments received at the Panel offices by that time. Submit comments to:

Philip Laird
Cannabis Control Appeals Panel
801 Capitol Mall, Suite 601
Sacramento, CA 95814
Telephone: 916-653-4090
Email: Philip.laird@bcsh.ca.gov

AUTHORITY AND REFERENCE

Business and Professions Code section 26042 authorizes the Panel to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific sections 26042, 26043, and 26044 of the Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action creates, clarifies and makes specific the procedures to be followed by a cannabis license applicant or existing cannabis licensee who has had a denial of his or her

application, or any disciplinary action taken against his or her existing license, by a state licensing agency.

Business and Professions Code section 26042 provides that, “The panel shall adopt procedures for appeals similar to the procedures used 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. Such procedures shall be adopted 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).” Additionally, Business and Professions Code section 26043 defines who may appeal a decision to the Panel, restricts the Panel from accepting new evidence not considered by the licensing authority, and limits review to the following questions: whether the licensing authority has proceeded without or in excess of its jurisdiction; whether the licensing authority has proceeded in the manner required by law; whether the decision is supported by the findings, and; whether the findings are supported by substantial evidence in the light of the whole record. Finally, Business and Professions Code section 26044 permits the Panel to remand cases to the licensing authority when it is discovered that there exists evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the underlying hearing. The statute also instructs that in any case the Panel shall enter an order either affirming or reversing the decision of the licensing authority, and that the Panel may direct the reconsideration of the matter to the licensing authority in light of any reversal it issues.

These proposed regulations will set forth the rules on how to file and serve a notice of appeal; how to file and serve the administrative record; how to file and serve any documents through email; how to file briefs that argue a party’s position; the method by which dates for oral argument may be scheduled; limits on oral arguments; how to move to remand a case due to new evidence; how to file and serve motions; the reasons for which the Panel may dismiss an appeal; when Panel members are to disqualify or recuse themselves from hearing a case; the method by which the Panel may grant a stay; how the Panel handles settlements; the timeframe in which the Panel will enter its final order; the form of Panel orders; and prohibited *ex parte* communications.

The broad objectives of this regulation is to bring the Panel into compliance with Business and Professions Code section 26042, and to otherwise establish a clear, consistent, and predictable appeals process for applicants, licensees, licensing authorities, and the Panel to follow.

FORMS INCORPORATED BY REFERENCE

- 1) CCAP Form 6003, Notice of Appeal (New 04/18)
- 2) CCAP Form 6005, Certification of Email Address (New 04/18)

The proposed addition of Rule 6003 incorporates by reference CCAP Form 6003, Notice of Appeal (New 04/18), which is required to be completed and submitted to the Panel by the appellant in order to initiate his or her appeal.

The proposed addition of Rule 6005 incorporates by reference CCAP Form 6005, Certification of Email Address (New 04/18), which is required to be submitted to the Panel by all parties to an appeal to determine whether or not they agree to receive service of documents through email.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS:

The proposed addition of Rules 1600-1618 will benefit cannabis applicants, licensees, and licensing authorities by clearly defining the process they must follow when filing or responding to the appeal of a cannabis licensing decision. The regulations will also explain and clarify what the Panel's timelines and criteria are for hearing and deciding cases, creating greater transparency through the appeals process.

Additionally, the regulations will benefit the Panel by creating a defined structure by which the Panel will accept, hear, and decide appeals. This will allow the Panel to handle its caseload in a uniform and consistent manner, and to more easily track and process the status of appeals.

CONSISTENCY EVALUATION

The Panel has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. This is because the law creating the Panel and its underlying appeals process is new and has had no implementation up to this point.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Panel has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: The Panel anticipates that an appellant's fees to have the underlying administrative record prepared and copied for the Panel, set by the Office of Administrative Hearing's regulations, will likely average around \$300 depending on the length of the underlying administrative hearing and number of documents admitted into evidence.

Statewide adverse economic impact directly affecting businesses and individuals: None.

Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Panel concludes that the proposal will not: (1) create or eliminate jobs in California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Benefits of Proposed Action to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: These regulations merely ensures an orderly and consistent method for cannabis license applicants and licensees to appeal administrative decisions that are adverse to them. These regulations enhance due process for Californians by helping facilitate a more streamlined system of administrative appeal outside of the existing judicial system. Otherwise, these regulations do not benefit worker safety or the state's environment.

Effect on small businesses: The Panel has determined that the proposed regulations affect small businesses only to the extent a small business uses the appeals process for cannabis licensure. In such instance, the small business benefits from the enforcement of the regulation in that the regulations provide a predictable and orderly method for the small business to appeal an adverse decision concerning the small business' license.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Panel must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Panel would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The Panel invites interested persons to present statements with respect to alternatives to the proposed regulations during the written comment period or, as needed, the scheduled hearing.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Philip Laird
Cannabis Control Appeals Panel
801 Capitol Mall, Suite 601
Sacramento, CA 95814
Telephone: 916-653-4090
Email: Philip.laird@bcsh.ca.gov

The backup contact person for these inquiries is:

Catherine Ohaegbu
Cannabis Control Appeals Panel
801 Capitol Mall, Suite 601
Sacramento, CA 95814
Telephone: 916-653-4090
Email: Catherine.Ohaegbu@bcsh.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Panel will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Philip Laird, or the alternative contact person at the address, phone number, or e-mail address listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Panel may adopt the proposed regulations substantially as described in this notice. If the Panel makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Panel adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Philip Laird at the address indicated above. The Panel will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Philip Laird at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at <https://www.ccap.ca.gov/>.