

Proposed Changes

Additions in Underline; Deletions in Strikeout

Official California Code of Regulations
Title 4. Business Regulations
Division 1. Department of Alcoholic Beverage Control
Article 22. Suspension or Revocation of Licenses

4 CCR § 144

§ 144. ~~Penalty~~ Disciplinary Guidelines.

- (a) It is the policy and goal of this Department to encourage and reinforce voluntary compliance with the law. The California Constitution authorizes the Department, in its discretion, to suspend or revoke any alcoholic beverage license if it shall determine for good cause that the continuance of such license would be contrary to the public welfare or morals. The Department may use a range of progressive and proportional discipline. This range will typically extend from Suspension (including stayed suspension) to Revocation and may include imposition of conditions, or amendments to current conditions, pursuant to Business and Professions Code section 23800. In reaching a decision on a disciplinary action under the Alcoholic Beverage Control Act (Bus. and Prof. Code Sections 23000, *et seq.*), and the Administrative Procedures Act (Govt. Code Sections 11400, *et seq.*), the Department shall consider these disciplinary guidelines entitled “~~Penalty Guidelines~~” (dated 12/17/2003) ~~which are hereby incorporated by reference.~~
- (b) These guidelines contain a schedule of discipline that the Department usually imposes for the first offense of the law listed (except as otherwise indicated). These guidelines are not intended to be an exhaustive, comprehensive, or complete list of all grounds upon which disciplinary action may be taken against a license or licensee; nor are these guidelines intended to preclude, prevent, or impede the seeking, recommendation, or imposition of discipline greater than or less than those listed herein, in the proper exercise of the Department’s discretion.

- (c) Deviation from these guidelines is appropriate where the Department in its sole discretion determines that the facts of the particular case warrant such a deviation - such as where facts in aggravation or mitigation exist. Examples of aggravating or mitigating circumstances may include, but are not limited to:
- (1) A licensee's prior disciplinary history, including record of formal action or warnings for previous violations or activity.
 - (2) Level of harm to the public caused by or resulting from the subject violation.
 - (3) Evidence of preventative steps taken by the licensee prior to the subject violation, including employee training, employment of recognized 'best practices', etc.
 - (4) Evidence of corrective steps taken by the licensee in response to the subject violation, including employee discipline or training, increased monitoring, etc.
 - (5) Level of cooperation on the part of the licensee during investigation of the subject violation.
 - (6) Early acceptance of responsibility for the violation by the licensee.

(d) Schedule of Discipline

Note: For purposes of this schedule of discipline, "revocation" includes any period of stayed revocation as well as outright revocation of the license.

Abbreviation legend:

<u>B&P</u>	<u>California Business and Professions Code section</u>
<u>PC</u>	<u>California Penal Code section</u>
<u>H&S</u>	<u>California Health & Safety Code section</u>
<u>POIC</u>	<u>Payment of Offer in Compromise (B&P 23095 & 23096)</u>
<u>R&T</u>	<u>California Revenue and Taxation Code section</u>
<u>Rule</u>	<u>Title 4, California Code of Regulations section</u>

- | | |
|--|---|
| (1) <u>B&P 125.6: Unlawful Discrimination by Licensee</u> | <u>5 day suspension</u> |
| (2) <u>B&P 23038 & 23396: Not Operating <i>Bona Fide</i> Eating Place</u> | <u>10 day suspension plus indefinitely thereafter until compliance</u> |
| (3) <u>B&P 23300: Sale of Alcoholic Beverages while under Suspension</u> | <u>Double the original suspension to Revocation</u> |
| (4) <u>B&P 23300, 23355, 24200(a): Exceeding license privileges</u> | <u>5 day suspension to revocation</u> |
| (5) <u>B&P 23300, 23355, 23788.5 & Rule 57.6: Hidden or Undisclosed Ownership; Unqualified Manager</u> | <u>15 day suspension plus indefinitely thereafter until ownership corrected to Revocation</u> |
| (6) <u>B&P 23355: Sale of Alcoholic Beverage Not Permitted By License (See also Possession, B&P 25607)</u> | <u>15 day suspension</u> |
| (7) <u>B&P 23394.7: Customer-Operated Checkout Stands</u> | <u>5 day suspension</u> |
| (8) <u>B&P 23402: Sale from an Unauthorized Source</u> | <u>10 day suspension</u> |
| (9) <u>B&P 23431: Club Licenses, Sale to Public</u> | <u>10 day suspension</u> |
| (10) <u>B&P 23790.5: Sale of beer and wine in conjunction with sale of motor vehicle fuel</u> | <u>5 day suspension</u> |

<u>(11) B&P 23804: Violation Of Conditions</u>	<u>15 day suspension with 5 days stayed for one year</u>
<u>(12) B&P 24200(a) Licensee or Employee Working In Premises While Intoxicated (Penal Code 647(f))</u>	<u>30 day suspension</u>
<u>(13) B&P 24200(a): Food Stamp Violations</u>	
<u>(A) Allowing purchases of alcoholic beverages</u>	<u>10 day suspension</u>
<u>(B) Food stamp trafficking (i.e. purchasing stamps at discount):</u>	<u>20 day suspension to Revocation</u>
<u>(14) B&P 24200(a) and (d): Commission of Crime Involving Moral Turpitude</u>	
<u>(A) Committed on premises</u>	<u>Revocation</u>
<u>(B) Committed away from premises (petty theft/shoplifting)</u>	<u>Revocation stayed 3years</u>
<u>(C) Committed away from premises (other than petty theft)</u>	<u>Revocation</u>
<u>(15) B&P 24200(a) & PC 148: Licensee or Employee Resisting Arrest or Interfering with Investigation on the Premises</u>	<u>35 day suspension to revocation</u>
<u>(16) B&P 24200(a) and PC 664 & 496: Receiving Stolen Property</u>	
<u>(A) By license on premises</u>	<u>Revocation</u>
<u>(B) By employee on premises</u>	<u>Revocation stayed for 3 years, and a 20 day suspension</u>
<u>(17) B&P 24200(a) and PC 330: Gambling</u>	
<u>(A) Organized (bookmaking, football cards, etc.)</u>	<u>30 day suspension</u>
<u>(B) Local (cards, dice, football & baseball pools, etc.)</u>	<u>10 day suspension</u>
<u>(C) Electronic/video games (slot machines, Poker, 21, etc.) – possession</u>	<u>15 day suspension</u>
<u>(D) Electronic/video with payoffs</u>	<u>30 day suspension</u>

<u>(18) B&P 24200(a) and PC, Chapter 4 of Title 13 of Part 1 (commencing with section 470 et seq.): Sale or possession of counterfeit items</u>	<u>15 day suspension to revocation</u>
<u>(19) B&P 24200(c): Misrepresenting Material Fact on Application</u>	<u>Revocation</u>
<u>(20) B&P 24200(e) and (f): Failure to correct objectionable conditions</u>	<u>30 day suspension to revocation</u>
<u>(21) B&P 24200.5 and/or H&S Violations: Controlled Substances –</u>	
<u>(A) Transactions or possession for sale on licensed premises</u>	<u>Revocation</u>
<u>(B) Unauthorized possession of Pharmaceuticals on premises</u>	<u>Revocation, stayed for 3 years and a 20 day suspension</u>
<u>(C) Paraphernalia, possession for sale</u>	<u>Revocation, stayed for 3 years and a 20 day suspension</u>
<u>(22) B&P 25176 & 25177: Refilling:</u>	
<u>(A) With different brand</u>	<u>15 day suspension</u>
<u>(B) With same brand</u>	<u>5 day suspension</u>
<u>(23) B&P 25601: Disorderly House, Prostitution, Lewd Conduct</u>	
<u>(A) Occasional or isolated offenses</u>	<u>30 day suspension</u>
<u>(B) Recurring or aggravated offenses</u>	<u>Revocation</u>
<u>(C) Rule 143.2 & .3: Nude Entertainers, etc.</u>	<u>30 day suspension to revocation</u>
<u>(24) B&P 25602: Sales to obviously intoxicated person(s)</u>	<u>15 day suspension</u>
<u>(A) 2nd violation within 3 years</u>	<u>25 day suspension</u>
<u>(B) 3rd violation within 3 years</u>	<u>45 day suspension to revocation</u>

<u>(25) B&P 25607: Possession of Alcoholic Beverage Not Permitted By License</u> <u>(See also Sale, B&P 23355)</u>	<u>10 day suspension</u>
<u>(26) B&P 25609: Substitution of Brands</u>	<u>15 day suspension</u>
<u>(27) Section B&P 25612.5: Operating Condition Violations</u>	
<u>(A) Subsections (c) (3), (4), (5), (6), (7), (10)</u>	<u>5 day suspension</u>
<u>(B) Subsections (c) (1), (2), (8), (9)</u>	<u>10 day suspension and indefinite suspension until compliance</u>
<u>(28) B&P 25616 and/or 25755: Licensee or Employee Not Permitting Inspection of Records or Premises</u>	<u>30 day suspension and indefinite suspension until inspection is permitted</u>
<u>(29) B&P 25631: Sale/Service After Hours</u>	<u>15 day suspension</u>
<u>(30) B&P 25632: Consumption After Hours</u>	<u>10 day suspension</u>
<u>(31) Illegal Solicitation of Alcoholic Beverages:</u>	
<u>(A) B&P 25657(a)</u>	<u>Revocation</u>
<u>(B) B&P 24200.5(b)</u>	<u>Revocation</u>
<u>(C) B&P 25657(b) and PC Section 303a</u>	<u>30 day suspension to revocation</u>

<u>(32) B&P 25658: Sales to minors</u> <u>(Note: priors must be final – B&P 25658.1):</u>	
<u>(A) Sales of alcoholic beverages to person(s) under 21</u>	<u>15 day suspension</u>
<u>(B) 25658(d): Permitting person(s) under 21 to consume</u>	<u>15 day suspension</u>
<u>(C) Furnishing or causing to be furnished alcoholic beverages to person(s) under 21</u>	<u>15 day suspension</u>
<u>(D) 2nd violation within 36 months</u>	<u>25 day suspension</u>
<u>(E) 3rd violation within 36 months</u>	<u>Revocation</u>
<u>(33) B&P 25659.5: Keg Registration violations</u>	<u>10 day suspension</u>
<u>(34) B&P 25663: Unlawful Employment of minor(s); Unsupervised sales by person(s) under 18</u>	<u>10 day suspension</u>
<u>(35) B&P 25665: Minor(s) on public premises</u>	<u>10 day suspension</u>
<u>(36) B&P 25755: Licensee or Employee Not Permitting Inspection Of Premises (See B&P 25616)</u>	
<u>(37) PC 148: Obstruction, See B&P 24200(a)</u>	
<u>(38) PC 242 and/or 245: Battery by a licensee or their employee, agent, or representative</u>	<u>30 day suspension to revocation</u>
<u>(39) PC 313.1: Harmful matter</u>	<u>5 day suspension</u>
<u>(40) PC 300: Gambling, See B&P 24200(a)</u>	
<u>(41) PC 347b: Contaminated Bottles (insects, etc.)</u>	<u>5 day suspension</u>
<u>(42) PC, Part 6 (commencing with 16000 et seq.): Sale or possession for sale of dangerous weapons</u>	<u>Revocation, stayed for 3 years and a 20 day suspension to revocation</u>

<u>(43) R&T 30163(b): Sale or possession of untaxed cigarettes</u>	<u>Revocation, stayed for 1 year and a 10 day suspension</u>
<u>(44) Rule 57.6: Unqualified Manager: See B&P 23300</u>	
<u>(45) Rule 64.2: Premises Altered</u>	<u>10 day suspension and indefinitely thereafter until changes approved or returned to prior configuration</u>
<u>(46) Rule 65: Failure to Surrender License When Required</u>	<u>Revocation stayed for 180 days to permit transfer or reactivation of license</u>
<u>(47) Rule 106 / B&P 25600: Free Goods</u>	<u>15 days suspension</u>
<u>(48) Rule 107: Failure to Post Required Warning Notice</u>	<u>5 day suspension</u>
<u>(49) Rule 108: Notice of Suspension</u>	<u>5 day suspension to a suspension equal to double the original suspension</u>
<u>(50) Rule 143: Employees accepting drinks</u>	<u>15 day suspension</u>
<u>(51) Rule 143.2 & .3: Nude Entertainers, etc.: See B&P 25601</u>	

(e) PETITION FOR OFFER IN COMPROMISE (“POIC”):

Business and Professions Code Section 23098 authorizes the Department, in its discretion, to accept a Petition for Offer in Compromise (“POIC”) in lieu of the service of a suspension of 15 days or less. For purposes of determining whether the Department may accept a POIC in lieu of suspension, the total discipline imposed must be for 15 days or less, and shall not include any period of stayed suspension that would result in the potential suspension being for a period of greater than 15 days, nor can it include any period of stayed revocation. In the event that the suspension is for a period of 15 days or less with some portion thereof stayed, the POIC shall be calculated based upon the period of actual suspension (not including the stayed portion). In such cases, if the stayed period of suspension is later reimposed, the Department will generally not accept a POIC in lieu of serving the reimposed period of suspension.

Note:

Authority cited: Section 25750, Business and Professions Code; and Section 22, Article XX, California Constitution.

Reference: Section 23001, Business and Professions Code; and Section 11425.50(e), Government Code