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SPECIFIC PURPOSE OF THE REGULATIONS

In 2016, voters approved Proposition 64, legalizing recreational adult use cannabis in California. The proposition directed the state to create a Cannabis Control Appeals Panel ("CCAP" or "Panel") to be modeled in part after the Alcoholic Beverage Control Appeals Board. Business and Professions Code section 26042 states that "The panel shall adopt procedures for appeals similar to the procedures used in [the statutes governing the ABC Appeals Board procedures]."

The Panel's function is to hear and decide appeals concerning adverse administrative actions taken against license applicants and licensees by the three cannabis licensing authorities (i.e. Department of Food and Agriculture, Department of Public Health, and the Bureau of Cannabis Control). The purpose of these regulations is to clarify and make specific the procedures to be followed by cannabis license applicants, licensees, and licensing authorities when filing, responding to, or otherwise participating in an appeal. Specifically, proposed Rules 6000 through 6018 will set forth the regulations 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.

PROBLEM

Business and Professions Code section 26042 requires the Panel to adopt regulations that establish the procedures for appeals; therefore, these regulations must be adopted in order to bring the Panel into compliance with the law.

Furthermore, cannabis license applicants, licensees, and licensing authorities currently lack any guidance in how they may file an appeal, what is required from them throughout the appeals process, and how the Panel will hear and decide appeals. As a new entity in government it is important to operate with transparency, and to minimize barriers for cannabis applicants and licensees wishing to exercise their due process rights. Additionally, without clear procedures, appeals will vary substantially from case to case, which will cause delays, confusion, and inconsistencies for parties to the appeal and the Panel itself.

NECESSITY

Rule 6000. Definitions. The proposed addition of Rule 6000 provides definitions for certain terms used repeatedly throughout the regulations that have a specific and specialized meaning. Specifically, subsection (a) defines "appellant" as any person who files an appeal. This is necessary to clarify which party to the appeal is considered the "appellant" during the proceedings. Subsection (b) defines "days" as calendar days, unless otherwise stated. This is necessary because California laws and regulations sometimes interpret the word "days" as meaning "business days," which do not include weekends or holidays. Therefore, this definition clarifies that the term "days" means "calendar days" when used in these regulations. Subsection (c) defines "Executive Director" as the executive director of the Panel. This is necessary because some people may assume "Executive Director" is referring to the head of one of the three licensing authorities. This clarification makes certain that all parties understand who the Executive Director is. Subsection (d) defines "licensing authority" as a state agency responsible for the issuance, renewal, or reinstatement of a license, or a state agency authorized to take disciplinary action against a licensee, as defined in Business and Professions Code § 26001(aa). This is necessary to clarify specifically which governmental entities are considered "licensing authorities" under these regulations. Subsection (e) defines "Panel" as the Cannabis Control Appeals Panel. This is necessary to convey the abbreviated name used for the Panel, and avoid any confusion with other panels in existence within the State of California. Subsection (e)(1) provides the physical address for the Panel's Sacramento office, and is necessary so that parties know where to deliver certain documents required within these regulations. Subsection (f) defines "party" as the licensing authority, the appellant, and any person, other than an officer or an employee of the licensing authority in his official capacity, who has been allowed to appear in the proceeding before the licensing authority. This is necessary to not only clarify that both sides of an appeal may be referred to as a "party," but to also explain that individuals employed by a licensing authority that testify or otherwise appear in a proceeding are not themselves a "party" to the appeal. Finally, subsection (g) explains that "appellant" or "party," includes the attorney or other authorized agent of such person. This is necessary because when certain provisions of these regulations require action by the "appellant" or a "party," this subsection clarifies that their attorney or authorized representative may lawfully complete the action on their behalf.

RULE 6001. Time and Date Calculations. Proposed Rule 6001 explains how to calculate due dates for filing and other deadlines imposed by these regulations. This is necessary because there can often be confusion about which days should be counted in, for instance, a 60-day period (e.g. does the first day and last day count?). Therefore, this regulation provides needed guidance to parties in how to properly calculate regulatory deadlines.

RULE 6003. Notice to Authorized Agents. Proposed Rule 6002 explains that whenever the Notice of Appeal indicates that a party is represented by an attorney or other authorized agent, such attorney or agent shall be entitled to a copy of all notices and decisions to which the party would be entitled. Because appeals are legal proceedings and often parties are represented by attorneys, it is necessary to clarify that those representatives are entitled to the same notices as their clients in order to effectively represent them.

RULE 6003. Timing and Contents of Notice of Appeal. Proposed Rule 6003 provides guidance for how appellants shall initially submit their appeals to the Panel. Subsection (a) explains who exactly may appeal an adverse administrative action to the Panel by cross-referencing to the authorizing statute. This is necessary so that potential appellants can determine whether or not the matter they wish to appeal is a lawful subject to come before the Panel.

Subsection (a)(1) requires any person appealing a decision to complete and submit CCAP Form 6003, Notice of Appeal (New 04/18) to the Panel either at their Sacramento office or by scanning and emailing the form. This is necessary to clarify the ways in which the Panel will receive Notices of Appeal. Within CCAP Form 6003, Notice of Appeal (New 04/18), the form provides directions which again state who may file an appeal. This is necessary to again inform a potential appellant of which subjects may be properly appealed to the Panel. The Form also includes boilerplate language explaining that the document serves as the appellant's Notice of Appeal. This is necessary to clarify the purpose of the document and to limit the scope of the document's legal purpose. Additionally, the Form requires the appellant to disclose their name, license number (only if they are a licensee), address of record, case being appealed, licensing authority that issued the adverse administrative action, date of the written decision, and telephone number. This information is necessary to obtain the identity and contact information for the appellant and to identify the specific administrative case being appealed. The Form also requires the appellant to identify the grounds for their appeal. This is necessary because Business and Professions Code section 26043(c) limits the Panel's review to only four permissible questions. By requiring the appellant to identify which of the four grounds for appeal apply to their case, the Form ensures that the appellant will not attempt to appeal for reasons not permitted by law. The Form then restates the requirements set forth under proposed Rules 6003(a)(3) and 6005 regarding proof of service and certification of email address. This is necessary to ensure appellants are aware of and understand the additional requirements elsewhere in the regulations that must be complied with at the time of filing the Notice of Appeal. Finally, the Form requires the appellant's signature, date, and printed name. This is necessary to both obtain an original copy of the appellant's signature (to ensure it matches other signed documents presented in connection with the appeal), and to also indicate that the appellant is submitting the appeal on their own behalf as of the specific date.

Subsection (a)(2) limits the timeline by which an appellant may appeal an adverse action to 30 days after the last day on which reconsideration of the underlying decision can be requested to the

licensing authority pursuant to Government Code section 11521. This is necessary because without limiting the time for appeal, parties may wait months or years before they file their appeals. This reduces the chance that all relevant documents and persons involved in the underlying adverse action are available for review and/or testimony, and also prohibits potentially moot subjects from being appealed and litigated. This is also necessary because it allows licensing authorities to establish retention schedules that do not require them to maintain administrative records indefinitely. Furthermore, the Alcohol Beverage Control Board of Appeals ("ABC Appeals") has a similar appeal time limit; however, theirs is only 10 days (*see* Business and Professions Code section 23081). The Panel has decided to allow appeals up to 30 days after opportunity for reconsideration has passed because this gives cannabis applicants and licensees a more reasonable timeframe to decide if they want to appeal, obtain counsel, and complete the initial Notice of Appeal paperwork. Subsection (a)(2) explains that failure to submit the Notice of Appeal to the Panel within the specified timeframe may result in dismissal of the appeal pursuant to Rule 6011. This is necessary as a warning to appellants of the potential consequences of attempting to appeal an underlying decision after the 30-day window has passed. The use of "may" is intentional because Rule 6011 prescribes the exact circumstances in which the Panel is permitted to dismiss an appeal. It also provides the Panel with the discretion to allow appeals to go forward when there are certain extenuating circumstances that prevented their timely filing.

Subsection (a)(3) requires the appellant to deliver or mail a copy of the Notice of Appeal to all parties to the proceeding and provide proof of service to the Panel at the same time the Notice is filed. Alternatively, the subsection also allows parties to stipulate in writing to service by email, in which case such service must be indicated on the proof of service. This is necessary because without this requirement, a party to the appeal may never learn that an appeal has even been filed with the Panel. This also provides the respondent in an appeal sufficient time to prepare their case prior to the Panel hearing and deciding the matter.

RULE 6004. Submitting the Record. Proposed Rule 6004 describes the timeline and requirements for submitting the underlying administrative record for the appeal. Specifically, subsection (a) states that from the date the Notice of Appeal is submitted to the Panel, the appellant shall have 60 days to obtain the complete underlying administrative record from the Office of Administrative Hearings (OAH), pursuant to 1 CCR 1038, and submit the original and five copies to the Panel at its Sacramento office. This is necessary because the Panel will base much of its decision on the administrative record in the underlying adverse action. Requiring filing of this record within 60 days of the Notice of Appeal ensures that the Panel will receive the bulk of the evidence early in the appeal, and also ensures that the appeal will not be unnecessarily delayed for lack of an underlying record. Furthermore, since OAH is the entity that will conduct all license denial and disciplinary hearings for the licensing authorities, they are the proper source to obtain the complete underlying record from. Subsection (a) also states that failure to submit a complete administrative record within the time set forth in this subsection may result in dismissal of the matter pursuant to section 6011. This is necessary as a warning to appellants of the potential consequences of not filing the administrative record within the 60-day window. The use of "may" is intentional because Rule 6011 prescribes the exact circumstances in which the Panel is permitted to dismiss an appeal. It also provides the Panel with the discretion to allow appeals to go forward when there are certain extenuating circumstances that prevented timely filing of the administrative record.

Subsection (a)(1) creates an exception to subsection (a) though when all parties to the appeal so stipulate in writing—and the Panel approves—to only submit those parts of the administrative record relevant to the issue being appealed. In such event though, the Panel retains the ability to require submissions of the complete record at any time during the appeal. This is necessary because sometimes the parties will only dispute a specific aspect of an administrative record, making submission of the entire record unnecessary and unduly expensive. The Panel, however, may determine that other portions of the record are relevant to the issue being appealed, and therefore must maintain the ability to demand the entire record in such instances so as to render complete and thorough decisions. Finally, five copies of the record are required because each member of the Panel must be able to review the record concurrently.

Subsection (b) requires that when the underlying hearing is only audiotaped, the appellant must have it transcribed and include the transcript with the record when it is submitted to the Panel. This is necessary because the Panel must carefully consider the arguments and testimony presented in underlying hearings, and a written transcript is far easier for the Panel to review and process than an audio recording. Furthermore, this reduces the chance that Panel member will mishear or misunderstand statements made in the underlying hearing.

Subsection (c) states that the appellant must also serve a copy of the underlying administrative record on all parties to the proceeding by delivery or mail, and that proof of service must be submitted to the Panel at the time of filing. This is necessary to ensure that other parties to the appeal receive a timely copy of the administrative record, which is the primary evidence in the appeal. This will also guarantee that all parties and the Panel are proceeding based on the same underlying case and record. Finally, proof of service to the other parties is required by the Panel at the time of filing to ensure the appellant does not unduly delay delivery of the administrative record to the other parties.

Subsection (d) allows an appellant to request an extension of the 60-day limit for good cause and explains that such extensions are to the Panel's discretion. This is necessary because there may be circumstances outside of the appellant's control that makes it impossible to obtain and deliver the underlying administrative record within 60 days. Therefore, this will allow the Panel the discretion to grant extensions in such situations. Alternatively, the subsection also allows all parties to the appeal to stipulate to an extension of up to 20 days beyond the initial 60-day limit. This is necessary because it allows parties to address uncontentious delays without formal action by the Panel. The 20-day extension limit is also necessary, however, to prevent parties from causing unnecessary lengthy delays in the appeals process. Finally, subsection (d) allows the Panel to delegate its authority to decide the grant or denial of an extension to its Executive Director. This is necessary because such matters are more procedural than substantive within an appeal, and therefore the Panel may wish to empower their Executive Director to deal with these issues on a day-to-day basis while they focus on the strictly legal issues before them.

RULE 6005. Service and Filing by Electronic Mail. Proposed Rule 6005 establishes the instructions and process for parties and the Panel to serve, file, and receive documents over the course of an appeal. Subsection (a) requires an appellant to complete and submit CCAP Form 6005, Certification of Email Address (New 04/18) to the Panel at its offices or by email at the same time he or she submits their Notice of Appeal. This is necessary because it implements a uniform

process for establishing whether or not the appellant agrees to receive service by email for the duration of the appeal.

This subsection incorporates CCAP Form 6005, Certification of Email Address (New 04/18) by reference. Form 6005 includes directions for both the appellant and the other parties which restates the requirements set forth in subsection (a) and (b). This is necessary so that all parties understand what is required of them when completing and submitting this Form without having to reference back to the regulations. The Form also requires the parties to disclose their name or agency; indicate if they are the appellant, respondent, or other party; disclose the name and case number for the administrative decision they are appealing; and identify the licensing authority to issue the underlying decision. This information is necessary to verify the identity and role of the party submitting the Form, and which case the Form is being submitted in connection with. The Form then requires the party to select one of two options: either agree to receive service of all documents in the appeal by email, or refuse to receive documents by email, and instead receive documents at a physical address. If they elect the email option, they must provide their official email address, and if they do not, they must provide their physical address. This is necessary because it will establish how the party wishes to receive all documents in connection with their appeal and will also provide the Panel and other parties the official email address or physical address by which they can serve documents on the party submitting the Form. The Form then restates the requirement in subsection (b) that the person completing the Form also serve a copy on all other parties to the appeal. This is necessary so that the party understands their regulatory responsibilities when completing and submitting the Form, and to otherwise ensure that everyone in the appeal has the same contact information for purposes of serving documents, briefs, etc. Finally, the Form requires the party to sign their name and date the document. This is necessary to both obtain an original copy of the appellant's signature (to ensure it matches other signed documents presented in connection with the appeal), and to also indicate that the appellant is submitting the appeal on their own behalf as of the specific date.

Subsection (b) states that upon receipt of the Notice of Appeal from the appellant, all other parties must also complete and submit CCAP Form 6005 to the Panel and other parties, including the appellant, within 30 days. This is necessary to establish early in the appeal how exactly each party wishes to receive service (by email or physical delivery) without imposing too burdensome of a response timeline on the respondents. Subsection (c) expressly states that once all parties to the appeal have submitted Form 6005 to the Panel, they may use each party's email address—if one is provided—for service of all documents in connection with appeal, unless a stipulation to the contrary has been agreed to. This is necessary to clarify when a party may start using another party's email address to comply with the notice/service requirements in these regulations during an appeal. It is also necessary to allow the stipulation exception in the event the parties wish to agree to an alternative service process. Subsection (d) further explains that the Panel and its Executive Director may use each party's official email address—if one is provided—when the Panel serves documents in connection with the appeal on the parties. This is necessary to clarify the Panel's process and authority when it comes to serving its own notices, decisions, etc. Subsection (e) finally explains that once a party has submitted its Form 6005 in accordance with this regulation, it may submit documents in connection with the appeal to the Panel at appeals@ccap.ca.gov, unless otherwise instructed. This is necessary to clarify when a party may begin serving documents on the Panel by email. This also notifies the parties that the Panel has the

authority to direct another form of service when, for instance, a file cannot be sent by email because it is corrupted or too large.

RULE 6006. Filing of Briefs by Parties. Rule 6006 explains the process and restrictions on filing briefs in the appeal. Subsection (a) states that the appellant may file an opening brief, the respondent may file an opposition brief, and the appellant may thereafter file a reply brief. This is necessary to establish the order and number of briefs permitted by the Panel. Use of the word "may" is intentional because the Panel will not require a party to submit any of the briefs.

Subsection (b) requires that all briefs be typewritten on 8½ x 11 sized paper, legible, one-sided, double-spaced, with one inch or greater margins and capitalized headings. This is necessary because it will ensure the Panel receives uniform, legible briefs in each appeal. The subsection also requires that briefs include certification that copies have been served on all other parties, and notes that briefs may be served by email in accordance with Rule 6005. This is necessary to ensure all parties receive a copy of the brief at the same time as the Panel so that they have adequate time to review and respond.

Subsection (c) sets forth page limits for briefs as follows: opening briefs cannot be longer than 20 pages, opposition briefs cannot be longer than 20 pages, and reply briefs cannot be longer than 10 pages. The subsection clarifies, however, that the page length restrictions do not include exhibits, appendices, tables of contents, or cover or title pages. These requirements are necessary because they compel parties to make concise and direct arguments in their briefs and limits the amount of material the Panel needs to review in each appeal. The exception for exhibits, appendices, etc. is also necessary because these documents can vary in length and should not further constrict a party's ability to express the substance of their appeal.

Subsection (d) allows parties to file a motion to request a waiver of the page length restrictions in subsection (c). This is necessary because there may be special circumstances where a party requires more than the permitted number of pages to adequately describe the basis and arguments for their appeal or response. The subsection requires, however, that any party making such a motion do so at least 15 days before their brief is due, and that all other parties have five days from the time they receive the motion to file an opposition. The 15-day and 5-day requirements are necessary because the Panel needs adequate time to review the motion and opposition prior to rendering a decision. Furthermore, these timelines prevent parties from using motions to delay the appeal. Finally, the subsection states that the Panel will decide about waivers without a hearing. This is necessary because the question of whether a party should be granted additional pages in their brief is purely procedural and does not require a hearing to decide. Additionally, the time it takes to schedule a hearing could create unnecessary and lengthy delays in the appeal.

Subsection (e) requires that the opening brief be served on the Panel and all parties within 30 days of the date the administrative record is served pursuant to Rule 6004. This is necessary to ensure the appeal continues to proceed in a timely manner while giving the appellant adequate time with the record to craft the substance of their appeal. The subsection further requires that the opposition brief be served on the Panel and all parties within 15 days after the opening brief is received, and then requires any reply brief to be served seven days after the opposition brief is received. This is necessary to again ensure that the appeal proceeds in a timely manner. The timelines reflect what

the Panel believes are reasonable deadlines for each brief, especially in light of the established page-length restrictions. Finally, the subsection permits any party to file a motion to request an extension for submitting their brief, but only allows the Panel to grant motions upon a showing of good cause. This is necessary because there may be special circumstances where a party has a genuine need for an extension. This subsection therefore gives the Panel the authority to grant extensions in such instances.

RULE 6007. Optional Hearing. Proposed Rule 6007 provides the process and options for holding a hearing on the merits of an appeal. Specifically, subsection (a) explains that after all briefs are submitted, the Panel will come to a preliminary decision in the case, and all parties will be notified. From the date of notice, all parties will have 20 days to submit a written request for a hearing before the Panel. This is necessary because all relevant information and arguments in the appeal should be part of the administrative record and written briefs, allowing the Panel to render a preliminary decision based only on the submitted documents. For the sake of expediency, some parties may wish to forego a hearing, and therefore the case may be decided purely on the written record. In the event a party wishes to have a hearing, however, they are still given that opportunity once they are notified that a preliminary decision has been reached. The 20-day window is necessary to give parties adequate time to decide if they wish to request a hearing after having considered all arguments made in the appeal.

Subsection (b) states that notwithstanding subsection (a), the Panel may direct for a hearing to be held even if no party requests one. This is necessary because there may be instances in which the Panel would like to hear further arguments or clarification in a given appeal.

Subsection (c) explains that if a hearing will be held, the Executive Director will set the hearing date and location and notify all parties. This is necessary because the Executive Director will be the one to coordinate the Panel's availability, and will be in the best position to determine which date and location is most practical and timely for the hearing.

Subsection (d) provides that after a date and location for a hearing are set, any party to the appeal may request a continuance or location change upon a showing of good cause. This is necessary because there may be legitimate special circumstances that prevent a party from appearing at a hearing on a specific date or in a specific location. This subsection gives parties a mechanism to adjust the hearing date or location in such instances. The subsection also allows the Panel to delegate its authority to decide requests for continuances and location changes to the Executive Director. This is necessary because such matters are more procedural than substantive during the appeal, and therefore the Panel may wish to empower their Executive Director to deal with these issues on a day-to-day basis while they focus on the strictly legal issues before them. Subsection (d)(1) further explains that a party seeking a continuance or location change shall first attempt to stipulate to an alternative date or location with the other parties, and then coordinate with the Executive Director. In the event the parties will not stipulate, the party may file a motion to request an alternative hearing date or location, and the other parties may then file an opposition to the motion within five days. This is necessary because it provides the parties an opportunity to stipulate to an alternative hearing date or location without having to file any motions or unnecessarily involve the whole Panel. Nevertheless, it is necessary to also establish a clear procedure when the parties cannot stipulate that gives the Panel a proper means and opportunity to decide whether

there is good cause to alter the hearing date or location. The five-day timeline for the opposition motion is necessary to ensure the appeal is not needlessly delayed due to purely procedural matters.

RULE 6008. Oral Argument. Proposed Rule 6008 sets forth the restrictions on oral arguments in the event there is a hearing. Specifically, subsection (a) states that in the event a hearing for an appeal or motion is scheduled, parties shall only receive 20 minutes each for oral argument, only one person per party may be heard, and the appellant or moving party may make both an opening and closing statement within their allotted 20 minutes. This is necessary because the Panel will often conduct numerous hearings each day, and therefore must limit the amount of time parties may speak. The Panel has determined that 20 minutes is a reasonable amount of time because all arguments should already have been made in the hearing briefs, and therefore the time for oral arguments is only necessary to clarify issues or questions. Limiting one speaker per party is also necessary to keep hearings streamlined, and to otherwise prevent confusion about which speakers represent which parties. Finally, the right for an appellant or moving party to make both an opening and closing statement is necessary to preserve the traditional oral argument structure in appeals, and to clarify the order in which the parties may speak.

RULE 6009. Nature of Evidence and Showing. Business and Professions Code section 26044 provides that the Panel may remand a case when it finds there exists "relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the licensing authority." Proposed Rule 6009 describes the process by which a party may move to remand a case on appeal based on this statute. Specifically, subsection (a) restates the statutory parameters to clarify under which circumstances a party may move to remand their case. This is necessary to ensure parties understand the legal requirements for remanding an appeal, and to otherwise maintain all Panel appeals procedures within the regulations. Subsection (a) also requires a moving party to submit a declaration or affidavit in support of their motion that includes: the substance of the newly discovered evidence; the relevancy and part of the record to which the evidence pertains; names of witnesses to be produced and their expected testimony; the nature of any exhibits to be introduced; and a detailed explanation of why the evidence could not have been discovered and produced at the underlying hearing. This information is necessary to give the Panel adequate information and context for deciding whether or not to remand a case based on new evidence. Requiring the information on a declaration or affidavit is necessary to ensure the party signing the document takes personal responsibility for the information being conveyed and does so in a manner that may be recognized and relied upon by the Panel. A description of the substance of the evidence is necessary for the Panel to have a clear understanding of what would be introduced if the case were remanded. A description of the relevancy and the part of the record to which it pertains is necessary for the Panel to understand fully the significance of the evidence and where it fits into the underlying record. Names of witnesses and their expected testimony is necessary to establish who may be called to testify in the event of the remand, and what their testimony would cover in relation to the new evidence. A description of the nature of any new exhibits being introduced is also necessary for the Panel to understand how certain evidence would be introduced in the event of a remand, which may affect the credibility of the evidence. Finally, an explanation of why the evidence could not originally be produced in the underlying hearing is necessary in order for the Panel to confirm that the cases it remands are done so in accordance with Business and Professions Code section 26044. Subsection (a)(5) also states that mere cumulative evidence shall not constitute a valid ground for

remand. This is necessary because, by definition, cumulative evidence is essentially corroborating/supporting evidence of facts already established. Therefore, the Panel wishes to clarify for parties attempting to utilize this provision that it will not remand a case simply for redundant or repetitive evidence.

RULE 6010. Motions. Proposed Rule 6010 describes the process by which Parties may submit motions to the Panel in connection with an appeal. Specifically, subsection (a) requires all motions to: follow the formatting rules set forth in Rule 6006(b); be no more than 10 pages, unless accompanied by a declaration showing good cause for additional pages, but in which case shall be no more than 15 pages; and include proof of service on all parties to the appeal when filed with the Panel. The formatting requirements are necessary to ensure the Panel receives uniform, legible motions that are easy to review. The page limit is necessary because it compels parties to make concise and direct arguments in their motions and limits the amount of material the Panel needs to review in each appeal. The adjusted 15-page limit upon a showing of good cause is necessary because there may be special circumstances where an issue being argued is so complex that it requires additional pages. By merely requiring a declaration at the time of filing, the Panel is streamlining the process for reviewing cause for extended motions by not further requiring a motion for a motion. Finally, the proof of service requirement is necessary to ensure all parties receive a copy of the motion at the same time as the Panel so that they have adequate time to review and respond with an opposition.

Subsection (b) allows any party opposing a motion to file their opposition with the Panel within five days of receipt of the initial motion, and in compliance with the requirements described in subsection (a). This is necessary in order to preserve all parties' rights to respond to a motion. The 5-day time limit is necessary to ensure the process of responding to a motion does not unduly delay the appeal, and otherwise allows the Panel to make a swift determination on the issue raised. Finally, requiring the party opposing the motion to follow the same formatting and service requirements is necessary for the same reasons described in the paragraph above.

Subsection (c) explains that the Executive Director will set a hearing date and location for each motion filed within 20 days of the opposition filing deadline. This is necessary to clarify the process for when and how hearings will be scheduled for oral arguments concerning motions filed. Furthermore, it is necessary for the Executive Director to schedule the hearing because he or she will be the one to coordinate the Panel's availability and will be in the best position to determine which date and location is most practical and timely for the hearing. Finally, the subsection states that notwithstanding the foregoing, the Panel may elect to rule on the motion without holding a hearing. This is necessary because there will likely be instances where the Panel does not need to conduct a hearing to decide on a motion. Giving the Panel the authority to forego a hearing will therefore better streamline the appeals process and prevent needless delays.

RULE 6011. Dismissal of Appeal. Proposed Rule 6011 describes the circumstances in which the Panel may dismiss an appeal and affirm the decision of the licensing authority. Specifically, subsection (a)(1) states that the Panel may dismiss an appeal when requested by the appellant. This is necessary because the appellant is the party to have initially filed the appeal, and their desire for a dismissal may create a situation where no party wishes to continue with the case. The Panel may therefore dismiss the appeal in such circumstances without violating any due process rights.

Subsection (a)(2) permits the Panel to dismiss an appeal upon motion of a party, or upon its own determination and notice, based on the fact that the appellant failed to timely file their Notice of Appeal or the administrative record in compliance with Rules 6003 and 6004. This is necessary because without the ability to dismiss untimely cases and evidence, the Panel could be compelled to hear appeals that are years old or have no record. This subsection therefore gives the Panel a mechanism to dismiss cases where the appellant does not comply with their regulations. Subsection (a)(3) allows the Panel to dismiss an appeal without prejudice upon certification from the licensing authority that it will reconsider a case after the Notice of Appeal is filed. This is necessary because there may be instances where the appellant files their Notice of Appeal prior to the deadline for the licensing authority to reconsider the underlying case. In such a situation, if the licensing authority subsequently grants reconsideration, the appellant must exhaust their initial administrative remedies before filing their appeal. Such dismissals shall be without prejudice though because the applicant or licensee may still be aggrieved after the reconsideration is complete and must have the ability to have their appeal still heard on the merits. Finally, subsection (a)(4) allows the Panel to dismiss an appeal upon a party's motion, or on their own findings, where sufficient cause exists for dismissal. In such instances, the Panel is required to specify the sufficient cause for the dismissal in their decision. This is necessary because at the conclusion of the appeal, the Panel is required to either affirm or reverse the decision of the licensing authority (*see* Business and Professions Code section 26044(b)). If at the end of the appeal the Panel agrees with the action taken by the licensing authority, they must affirm the decision and consequently dismiss the appeal. It is also necessary for the Panel to describe the specific reason for the dismissal in their decision because the Panel's reasoning and conclusions may be the basis for further appeals to California's appellate courts or Supreme Court.

RULE 6012. Disqualification of Panel Members. Proposed Rule 6012 describes the circumstances in which a Panel member is required to disqualify themselves from hearing a particular appeal. Subsection (a) explains that a Panel member shall disqualify themselves in any case where they cannot accord a fair and impartial hearing. This is necessary to ensure that all appeals before the Panel receive a fair and impartial adjudication so as not to infringe on any party's due process rights. The subsection further requires any party requesting the disqualification of a Panel member do so by filing an affidavit with the Panel that states why a fair and impartial appeal cannot be accorded by the Panel member. Such requests are to be determined by the other Panel members. This is necessary to establish a formal process by which a party may petition the disqualification of a Panel member. An affidavit is necessary to ensure the party signing the document takes personal responsibility for the information being conveyed and does so in a manner that may be recognized and relied upon by the Panel. It is also necessary for the other Panel members to decide whether or not a disqualification is necessary to remove any potential for bias or impartiality. Finally, the subsection prohibits any Panel member from withdrawing voluntarily or being subject to disqualification if it would prevent the Panel from acting in a particular case. This is necessary because the Panel is primarily responsible for carrying out its statutory duties and is required by law to hear any case properly appealed. Therefore, the Panel must not be permitted to disqualify its members to the point of becoming inoperable.

Subsection (b) states that an affidavit submitted to the Panel pursuant to subsection (a) shall become part of the record. This is necessary because a party may wish to appeal the Panel's final decision on the basis that a Panel member(s) was biased and/or not impartial when judging their

matter. In such instances the appellate or Supreme Court will need to review the affidavit submitted by the party in addition to the rest of the record. Accordingly, these affidavits are properly included in the record.

RULE 6013. Attendance of Panel Members. Proposed Rule 6013 provides that if a Panel member cannot attend a hearing with oral testimony or argument, the remaining members shall determine another Panel member to recuse themselves in order to maintain an odd number of members unless to do so would prevent the Panel from acting in a particular case. This is necessary because it takes an odd number of Panel members to guarantee that the Panel will reach a final decision in a motion or case. If there are an even number of Panel members hearing a case, there runs the risk that the Panel will be split in a particular decision and unable to resolve the issue on appeal. Nevertheless, the provisions in this section shall not apply if they would prevent the Panel from acting at all in a particular case. This is necessary because the Panel is primarily responsible for carrying out its statutory duties and is required by law to hear any case properly appealed. Therefore, the Panel must not be permitted to recuse its members to the point of becoming inoperable.

RULE 6014. Stay. Proposed Rule 6014 provides the parameters and process for when the Panel may stay the decision of a licensing authority. Specifically, subsection (a) states that whenever the underlying decision is for denial of a license renewal, cancelation, suspension, or revocation of a license, the Panel may stay the effect of the underlying decision—upon the appellant's motion—until the Panel enters its final order. This is necessary because there may be instances where the adverse action taken by a licensing authority requires the licensee to stop operating their cannabis business. Therefore, in order to prevent these licensees from experiencing irreparable harm, this section allows the Panel to stay the penalty until it resolves the appeal. This is also consistent with the ABC Appeals Board's general authority to issue stays under Business and Professions Code section 23082.

Subsection (b) further clarifies, however, that the Panel may only grant a stay of a licensing authority's decision if the appellant demonstrates in their motion that there is a substantial likelihood they will prevail in the appeal, and that they will experience immediate and irreparable harm if the stay is not granted. This is necessary to prevent licensees from using the Panel's stay powers to simply keep their businesses operating despite having been lawfully penalized by a licensing authority. Any licensee that cannot show a substantial likelihood they will prevail in the appeal is likely to have been rightfully and legally punished by the licensing authority. Even if the licensee can show a substantial likelihood of prevailing though, if they won't experience immediate and irreparable harm during the appeal, then a stay is unnecessary.

RULE 6015. Settlements. Proposed Rule 6015 states that whenever any matter is pending before the Panel, and the parties to the matter agree upon a settlement, the Panel shall, upon the stipulation by the parties that such an agreement has been reached, remand the matter to the licensing authority. This is necessary because in such instances neither party will wish to continue with the appeal, having come to a mutually agreed resolution. Furthermore, since the settlement is ultimately in resolution of what was initially before the licensing authority, it is appropriate for the Panel to remand the matter back to the licensing authority to enter into the settlement.

RULE 6016. Time Limit for Entry of Order. Proposed Rule 6016 establishes the timeframe in which the Panel shall enter its final order either affirming, reversing, or remanding the case on appeal. Specifically, the rule requires the Panel to render its final decision within 90 days of the case's hearing, or, if no hearing is conducted, then 90 days from the time the Executive Director notifies the parties that the Panel has reached a preliminary decision. This is necessary to clarify for parties when they can expect to receive a final decision in the appeal, and to also ensure appeals proceed quickly without any undue delays. Although the Panel cannot yet estimate how many appeals it will receive on average, it was determined that 90 days is a reasonable timeframe to render a final decision in any case, regardless of complexity or outstanding caseload.

RULE 6017. Form of Order. Proposed Rule 6017 describes the form and process for the Panel's final orders. Specifically, the rule states that each order of the Panel will be in writing, and will be delivered to the parties either personally, by email, or by certified mail. This is necessary to clarify for parties how, and in what format they can expect to receive a copy of the Panel's final orders. The rule also states that each order will become final upon being filed as provided, and that there shall be no reconsideration or rehearing by the Panel. This is necessary to clarify that the order is final upon being delivered to the parties, which will in turn commence the statute of limitations for any further appeals (*see* Business and Professions Code section 26045). Additionally, it is necessary for the parties to understand that, unlike decisions by the licensing authorities, there is no process for reconsideration of the Panel's final decision.

RULE 6018. Ex Parte Communications. Proposed Rule 6018 describes the Panel's prohibition on *ex parte* communications. Specifically, subsection (a) requires that whenever there is an appeal pending, no party shall communicate with the Panel regarding any issue in the proceeding without notice and an opportunity for all parties to participate in the communication. This is necessary because allowing such communications to occur could violate another party's due process rights and create an unfair proceeding.

Subsection (b) clarifies, however, that nothing in this section prohibits a communication on the record at a hearing. This is necessary because a party may otherwise worry that statements made on the record at a hearing amount to an *ex parte* communication if the other side is not present. Since all hearings are noticed and provide both parties an opportunity to participate though, these are plainly not *ex parte* communications, even if one party is absent.

Finally, subsection (c) further states that *ex parte* communications authorized by statute, and communications concerning a matter of procedure or practice not in controversy, are not prohibited *ex parte* communications. This is necessary to ensure consistency with other statutes that may affirmatively authorize specific *ex parte* communications, and to also clarify that uncontroversial procedural issues may be discussed with the Panel because they do not infringe on any other party's due process rights.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

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 throughout the appeals process. Furthermore, the adoption of a uniform appeals process will help prevent discrimination and promote fairness for those parties appealing an adverse decision by a licensing authority. It also provides for openness and transparency in how the Panel conducts its business.

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.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS OR DOCUMENTS

The panel did not rely on any technical, theoretical and/or empirical study, reports or documents in proposing these regulations.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The results of the Panel's Economic Impact Assessment as required by Government Code Section 11346.3(b) are as follows:

- The proposed regulations will not impact the creation or elimination of jobs within the State of California.
- The proposed regulations will not have an impact on the creation of new businesses or the elimination of existing businesses in the State of California.
- The proposed regulations will not have an impact on the expansion of existing businesses in the State of California.
- Benefits of Proposed Action to the health and welfare of California residents, worker safety and the state's environment: The proposed regulations will ensure an orderly and consistent method for cannabis license applicants and licensees to appeal adverse administrative decisions by licensing authorities. These regulations enhance due process for those Californians participating in the cannabis industry by creating and clarifying the procedures to be followed when filing, responding to, or otherwise participating in an appeal before the Panel. Otherwise, these regulations do not benefit worker safety or the state's environment.

<u>Purpose:</u>

The purpose of these regulations is to clarify and make specific the procedures to be followed by cannabis license applicants, licensees, and licensing authorities when filing, responding to, or otherwise participating in an appeal. Additionally, these regulations describe the process and timelines by which the Panel will hear appeals and issue final decisions.

The Creation or Elimination of Jobs Within the State of California

The proposed regulations make specific and clarify the procedures to be followed by cannabis license applicants, licensees, and licensing authorities when filing, responding to, or otherwise participating in an appeal. Additionally, these regulations describe the process and timelines by which the Panel will hear appeals and issue final decisions. The regulations in no way alter or enhance the legal or factual basis for a party's appeal, and do not affect the Panel's decision to affirm or reverse an adverse action taken by a licensing authority. Therefore, the Panel has determined that this regulatory proposal will not impact the creation or elimination of jobs in the State of California.

The Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The proposed regulations make specific and clarify the procedures to be followed by cannabis license applicants, licensees, and licensing authorities when filing, responding to, or otherwise participating in an appeal. Additionally, these regulations describe the process and timelines by which the Panel will hear appeals and issue final decisions. The regulations in no way alter or enhance the legal or factual basis for a party's appeal, and do not affect the Panel's decision to affirm or reverse an adverse action taken by a licensing authority. Therefore, the Panel has determined that this regulatory proposal will not have an impact on the creation of new businesses or the elimination of existing businesses in the State of California.

The Expansion of Businesses Currently Doing Business Within the State of California

The proposed regulations make specific and clarify the procedures to be followed by cannabis license applicants, licensees, and licensing authorities when filing, responding to, or otherwise participating in an appeal. Additionally, these regulations describe the process and timelines by which the Panel will hear appeals and issue final decisions. The regulations in no way alter or enhance the legal or factual basis for a party's appeal, and do not affect the Panel's decision to affirm or reverse an adverse action taken by a licensing authority. Therefore, the Panel has determined that this regulatory proposal is not relevant to the expansion of businesses currently doing business in the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

These regulations enhance due process for those Californians participating in the cannabis industry by creating and clarifying the procedures to be followed when filing, responding to, or otherwise participating in an appeal before the Panel. Otherwise, these regulations do not benefit worker safety or the state's environment.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFCANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

Businesses in the State of California, including small businesses, will only be affected by these regulations if they are (1) an applicant for, or holder of, a cannabis license; (2) have had an adverse

action taken against their application or license by a licensing authority; and (3) have decided to appeal the licensing authority's adverse decision. Of this very small subset of businesses participating in the cannabis industry, the Panel anticipates that an appellant's fees to have the underlying administrative record prepared and copied for the Panel (as 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. This, however, is a one-time fee, and may lead to a reversal of the licensing authority's decision, which would likely have a positive economic affect on the appellant. For these reasons, the Panel concludes that any impact on businesses will not be significant.

ALTERNATIVE TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES

The Panel has determined that no reasonable alternative it considered or that has otherwise been identified and brought to its attention 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 provision of law.

REASONABLE ALTERNATIVES TO THE REGULATORY ACTION

These proposed regulations were discussed and approved on August 13, 2018 at the Panel's inaugural public meeting. No alternatives to the recommendations were proposed by the Panel or by any other individual or entity at the meeting. No subsequent alternative recommendations were made prior to the notice. The Panel invites any interested party to submit comments which offer any alternative proposal.

Cannabis Control Appeals Panel
August 31, 2018