

BEFORE THE DEPARTMENT OF CANNABIS CONTROL
STATE OF CALIFORNIA

In the Matter of the Notice of Violation
Issued to:

WEEDCON PRODUCTIONS, LLC,

JOHN WILLIAMS, Owner

Respondents

Case No. BCC-20-000129

OAH No. 2021020667

ORDER OF DECISION

DECISION

Pursuant to Government Code, section 11517, subdivision (c)(2)(C), the Department makes a technical change to the Administrative Law Judge’s Proposed Decision, and otherwise adopts the Proposed Decision as the Decision of the Department.

The technical change concerns Paragraph 1 of the Proposed Decision, which reads as follows:

1. Lori Ajax (complainant) was formerly the Chief of the Bureau of Cannabis Control (Bureau). It is unknown if she remained with the Department after it consolidated the Bureau or, if not, has been replaced.

It is a matter of public record that Lori Ajax has been succeeded by Nicole Elliott, who was appointed Director of the California Department of Cannabis Control on July 13, 2021. Accordingly, Paragraph 1 of the Proposed Decision is revised as follows:

1. Lori Ajax, the former Chief of the Bureau of Cannabis Control (Bureau), has been succeeded by Nicole Elliott, the Director of the Department of Cannabis Control. (See Bus. & Prof. Code, §§ 26010.5, 26010.7.)

With this technical change, the Proposed Decision is adopted as the Decision of the Department.

This Decision shall become effective on **December 18, 2021**.

IT IS SO ORDERED this **18th** day of **November 2021**.

By: **Nicole Elliott** Digitally signed by Nicole Elliott
Date: 2021.11.18 10:20:29 -08'00'

Nicole Elliott
Director
Department of Cannabis Control

**BEFORE THE
DEPARTMENT OF CANNABIS CONTROL
STATE OF CALIFORNIA¹**

In the Matter of the Accusation Against:

WEEDCON PRODUCTIONS, LLC,

JOHN WILLIAMS, OWNER

License Number CEO-14-0000105-LIC,

Respondent.

Agency Case No. BCC-20-000129

OAH No. 2021020667

¹ This case was filed with the Office of Administrative Hearings on January 21, 2021, by the Bureau of Cannabis Control, which at the time was within the Department of Consumer Affairs. On July 1, 2021, the Department of Cannabis Control (Department) was formed by consolidating the Bureau of Cannabis Control, the CalCannabis Cultivation Licensing Division of the Department of Food and Agriculture, and the Manufactured Cannabis Safety Branch of the Department of Public Health.

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 10 and August 12, 2021, by videoconference.

Robert Tomlin White, Deputy Attorney General, represented complainant.

John Williams, owner of WeedCon Productions, LLC, appeared on the first day of the hearing and represented respondent. However, Mr. Williams failed to appear on the second day of the hearing despite receiving timely and appropriate notice. No other appearance was made by or on behalf of respondent. The remainder of the hearing proceeded by default.

The record was closed and the matter was submitted for decision at the conclusion of the hearing on August 12, 2021.²

SUMMARY

Complainant seeks to discipline respondent's license and impose civil fines because respondent held an unlicensed temporary event, in which cannabis and cannabis products were offered and consumed, during a time when state and local law prohibited large public gatherings due to the COVID-19 pandemic. Its owner has allowed respondent's license to expire, he failed to appear for the second hearing day,

² One week after the hearing concluded, Mr. Williams filed a motion for continuance, which was opposed by complainant, and denied by the undersigned.

and failed to present evidence of mitigation or rehabilitation. Due to the severity of the violations established in this case by a preponderance of the evidence, and lack of countervailing evidence, revocation of respondent's license is warranted, as well as imposition of a \$9,000 civil fine and an order to reimburse costs in the amount of \$32,772.50.

FACTUAL FINDINGS

Parties and Jurisdictional Matters

1. Lori Ajax (complainant) was formerly the Chief of the Bureau of Cannabis Control (Bureau). It is unknown if she remained with the Department after it consolidated the Bureau or, if not, has been replaced.

2. On October 3, 2019, the Bureau issued Cannabis Event Organizer License Number CEO-14-0000105-LIC (license) to WeedCon Productions, LLC (respondent), with John Williams as owner. The license was in full force and effect until it expired on October 2, 2020. The license has not been renewed.

3. On or about September 24, 2020, complainant brought the Accusation in her official capacity with the Bureau.

4. On or after October 8, 2020, respondent filed a Notice of Defense, requesting a hearing to challenge the Accusation.

Bureau Learns of Respondent's Plan to Hold an Event During the COVID-19 Pandemic

5. On March 4, 2020, the Governor of the State of California (Governor) issued Executive Order N-25-20, in which he proclaimed a state of emergency existed due to the Novel Coronavirus Disease (COVID-19) pandemic and ordered, among many things, social distancing. (Ex. 7.)

6. On March 13, 2020, the President of the United States of America issued Proclamation 9994 Declaring a National Emergency Concerning the COVID-19 Outbreak (85 FR 15337). (Ex. 8.)

7. On March 19, 2020, the Governor issued Executive Order N-33-20, in which he ordered residents to stay-at-home unless they were engaged in essential work or essential activity. (Ex. 9.) On the same date, the State Public Health Officer issued a similar stay-at-home order for non-essential workers and activity. (Ex. 10.)

8. On May 4, 2020, the Governor issued Executive Order N-60-20, which maintained the stay-at-home orders. (Ex. 11.)

9. On July 13, 2020, the State Public Health Officer issued a Statewide Order maintaining the prior stay-at-home orders; closing public gathering spots like bars, restaurants, and recreational centers; and prohibiting large public gatherings, such as concert, performance, and entertainment venues. (Ex. 12, p. 55.)

10. On July 14, 2020, by a County of Los Angeles Department of Public Health Order of the Health Officer (County Public Health Order), all public events and gatherings were prohibited in Los Angeles County, unless specially allowed by the order. The County Public Health Order was issued in conjunction with, and by authority

of, the Governor's prior Executive Orders, as well as the State Public Health Officer's prior Statewide Orders. (Ex. 19, p. 102; Ex. 20, p. 131.)³

11. On July 23, 2020, September 18, 2020, and September 22, 2020, the Bureau received anonymous complaints that respondent was planning to hold a large public cannabis gathering in the midst of the COVID-19 pandemic and the various restrictions that were in effect prohibiting such gatherings. (Ex. 20, pp. 251-254.)

12. A. On a date not established, Bureau Special Investigator CJ Croys-Schooley was assigned to investigate these complaints. (Exs. 18-20.) As part of her investigation, Special Investigator Croys-Schooley researched the event on the internet and popular social media platforms. (Testimony [test.] of Croys-Schooley.)

B. Available information on the internet for the event included a link to an "Exhibitors Deck." There also was an eight page exhibitor manual with information about the event. The exhibitor manual contained respondent's license number, but no information about a temporary event license. (Ex. 20, pp. 109, 233-244.)

C. The exhibitor manual also stated "[t]his is an invite only event with Specialty Areas including Farmers Market, Health and Wellness Area, A Taste of Cannabis, Dab Networking Bar, Infusion Bar and the 2020 WEEDCon Cup Awards!" (*Id.*, p. 109.)

³ The Accusation alleges the existence of a September 4, 2020 County Public Health Order, but no such order is in the record.

D. The exhibitor manual also stated there would be "wellness focused cannabis products available" and a "stroll along a path of cannabis culinary delights." (*Ibid.*)

E. Finally, page seven of the exhibitor manual contained the following statements: "6. Don't share joints (bogarting required)" and "7. Don't share dab rigs." (*Ibid.*)

Bureau Warns Respondent About Holding the Event

13. A. On September 9, 2020, Special Investigator Croyts-Schooley contacted respondent's owner, Mr. Williams, about the event. Mr. Williams informed her respondent planned to hold a temporary cannabis event called WEEDCon-West 2020 on September 24 and 25, 2020, at a private residence located in Los Angeles County (or the event). (Test. Croyts-Schooley; Ex. 19, p. 100.)

B. Advertisement for the event Special Investigator Croyts-Schooley found in her research clearly stated cannabis consumption would be permitted at the event. Mr. Williams confirmed cannabis consumption would be allowed at the event. (*Ibid.*)

C. Special Investigator Croyts-Schooley told Mr. Williams a temporary event license was required for events where cannabis or cannabis products are sold and/or consumed. (See Legal Conclusion 5 below.) Mr. Williams told her a license was not needed because the event was being held on private property and consumption would be at or below "the legal limit." Special Investigator Croyts-Schooley told Mr. Williams he was wrong. (*Ibid.*)

D. Mr. Williams also was informed a temporary event where cannabis or cannabis products were to be sold and/or consumed could only be held at a county fair event, district agricultural association event, or another venue expressly approved by a local jurisdiction for purposes of holding the event. (*Ibid.*)

14. On September 17, 2020, Bureau Supervising Special Investigator II Jose Barajas sent a warning letter to Mr. Williams regarding the ramifications of holding an unlicensed event where cannabis and cannabis products were sold and/or consumed. The letter informed Mr. Williams action would be taken against respondent's license for its failure to comply with the requirements of holding a temporary event. (Ex. 20, pp. 113-114.)

15. On September 18, 2020, Mr. Williams contacted Supervising Special Investigator Barajas concerning the aforementioned warning letter. Mr. Williams now represented that the event would be a business to business educational and networking expo, for the industry only, and that there would be no sale or consumption of cannabis or cannabis products there. Based on that representation, Supervising Special Investigator Barajas advised Mr. Williams such an event would not need a temporary event license. However, Supervising Special Investigator Barajas informed Mr. Williams that respondent would be responsible to ensure all laws were followed if the event fell outside of the educational event criteria. (Ex. 19, pp. 100-101.)

16. A. One of the complaints the Bureau received concerning the event included a copy of respondent's newsletter promoting the event, which reflected respondent's license number. (Ex. 19, p. 101.)

B. On September 22, 2020, Supervising Special Investigator Barajas contacted Mr. Williams and inquired about the use of respondent's license number in

advertisements for an event that did not have a temporary event license. Mr. Williams said he was under the impression respondent's license number had to be on all advertisements for any event. Supervising Special Investigator Barajas told Mr. Williams respondent's license number could not be reflected on any advertisements for a non-licensed event. He asked Mr. Williams to remove respondent's license number from all advertisements related to the event. Mr. Williams agreed to do so.

(Ibid.)

C. Supervising Special Investigator Barajas asked Mr. Williams to send him an email with all the event information and copies of the contracts between respondent and exhibitors. Mr. Williams complied the same day. Mr. Williams stated in the email that the event complied with the County Public Health Order because it was being held outside, participants would wear masks, and social distancing would be enforced. The email contained what appeared to be an announcement to participants, which mentioned that there would be no consumption of cannabis during the event. But the announcement also referenced an "off-site" consumption area. The announcement also had a link to the exhibitor manual. (Ex. 19, p. 101; Ex. 20, pp. 115-123.)

17. On September 23, 2020, Mr. Williams sent another email to Supervising Special Investigator Barajas. Mr. Williams again stated there would be no sales or consumption of cannabis or cannabis products at the event. He also pledged the event would follow the County Public Health Order, a copy of which he attached to the email. (Ex. 19, p. 101; Ex. 20, pp. 124-143.) However, Mr. Williams in his email cited to nothing in the County Public Health Order that would allow this public gathering, even under the conditions he outlined.

Bureau Further Investigates the Event

18. On September 23, 2020, Special Investigator Croyts-Schooley reviewed respondent's website and saw information that the event was still going forward on September 24 and 25, 2020. (Test. Croyts-Schooley; Ex. 19, pp. 101-102.)

19. On September 23, 2020, Special Investigator Croyts-Schooley also had Bureau staff contact the Bureau licensees listed as exhibitors in the exhibitor manual. The licensees provided mixed information whether cannabis was allowed, but at least one licensee stated that it was his understanding that sample cannabis products were allowed as part of the event. (Ex. 19, pp. 101-102.)

Respondent Holds the Event

20. On September 24, 2020, respondent held the WEEDCon-West 2020 event. Respondent did not apply for or obtain a temporary event license from the Bureau.

21. While WEEDCon-West 2020 was promoted as a two-day event, the record does not establish whether the event also went forward on September 25, 2020. Mixed evidence was presented. Special Investigator Croyts-Schooley did not attend the event and she did not specify in her testimony whether it was held one day or two. Even the Accusation only references the event being held on September 24, 2020, but not the following day. (Ex. 2, p. 15, ¶ 25.)

22. By holding WEEDCon-West 2020, respondent violated the County Public Health Order which, in conjunction with the Governor's Executive Orders N-33-20 and N-60-20, and the State Public Health Officer's Statewide Orders, prohibited public festivals and gatherings being held in Los Angeles County. (Test. of Croyts-Schooley.)

During the hearing, respondent provided no evidence indicating the event met any of the exceptions listed in the County Public Health Order. Special Investigator Croyts-Schooley established by her testimony that the Bureau would not have issued a temporary event license if requested because of the state and local laws prohibiting large public gatherings.

23. A. After the event was held, Special Investigator Croyts-Schooley reviewed social media platforms for coverage of the event. She found at least three videos and five photographs of the event posted on Instagram and YouTube.

B. Included in those images was respondent's post on Instagram of an after-event thank you note which read, in part, "Congrats to the new companies that launched back in Jan[uary], we were honored to help you meet over 190 buyers and get orders." (Test. Croyts-Schooley; Ex. 24.)

C. The videos of the event depict one man smoking out of a bong (or dab rig), another man smoking a marijuana cigarette (joint), and a woman smoking a larger joint. (*Ibid.*) In light of the way the event was promoted, and from the context of the videos, it was established by a preponderance of the evidence those three people were smoking cannabis.

D. The videos and photographs also showed many attendees who were not wearing masks, social distancing, or both. (*Ibid.*)

E. However, the social media information shed no light on whether the event was held on one day or two.

Respondent's Evidence

24. In his opening statement on the first day of hearing, Mr. Williams alluded to several defenses to the charges, as well as mitigating facts. However, by failing to appear on the second hearing day, which was when respondent was scheduled to present its case-in-chief, Mr. Williams failed to establish any of the defenses or mitigation he described in his opening statement.

Costs

25. Pursuant to Business and Professions Code section 125.3, subdivision (c), complainant submitted a certified copy of the actual enforcement costs charged by the Department of Justice, Office of the Attorney General, in total amount of \$32,772.50. (Ex. 22.) The certification is prima facie evidence of the reasonable of the costs. (*Ibid.*) Respondent failed to present any evidence rebutting the presumed reasonableness of those costs. Therefore, the total amount requested is deemed reasonable by operation of law.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The burden of proof in a licensing disciplinary action is on the party filing the charges in the accusation, in this case complainant. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789.)

2. Because this administrative action does not involve the discipline of a professional license, the standard of proof is the preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive*

Repair (2011) 201 Cal.App.4th 911, 916–918; see also Evid. Code, § 115.) That standard requires “‘evidence that has more convincing force than that opposed to it.’ [Citation.]” (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Jurisdiction

3. Business and Professions Code section 26012, subdivision (a)(1),⁴ provides the Department has the sole authority to create, issue, deny, renew, discipline, suspend, or revoke licenses for microbusinesses, transportation, storage unrelated to manufacturing activities, distribution, testing, and sale of cannabis and cannabis products within the state.

4. The expiration of a license issued by the Department shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the Department of its authority to institute or continue a disciplinary proceeding against the licensee. (§ 26031, subd. (d).) In this case, because respondent still has time to renew the license, the expiration of respondent’s license does not prevent the Department from taking disciplinary action against it.

Cause for Discipline

FIRST CAUSE FOR DISCIPLINE - FAILURE TO OBTAIN TEMPORARY EVENT LICENSE

5. A. Section 20630 provides grounds for discipline for “[f]ailure to comply with the provisions of this division [Division 10] or any rule or regulation adopted pursuant to this division” (subd. (a)), as well as “[a]ny other grounds

⁴ Undesignated statutory references are to the Business and Professions Code.

contained in regulations adopted by a licensing authority pursuant to this division” (subd. (c)).

B. Section 26200, subdivision (e)(1), which is part of Division 10, states in pertinent part:

This division does not prohibit the issuance of a state temporary event license to a licensee authorizing onsite cannabis sales to, and consumption by, persons 21 years of age or older at a county fair event, district agricultural association event, or at another venue expressly approved by a local jurisdiction for the purpose of holding temporary events of this nature, provided that the activities, at a minimum, comply with [specified requirements]. . . .

C. Respondent is subject to disciplinary action under sections 26030, subdivisions (a) and (c), and 26200, subdivision (e)(1), for failing to obtain a temporary event license to hold WEEDCon-West 2020 in September 2020, an event where cannabis and cannabis products were sold and consumed. In particular, advertisements before the event promoted it as one in which attendees could sell, purchase, and sample cannabis and cannabis products. Social media photographs and videos generated at the event and later discovered by Bureau staff included respondent promoting the fact that 190 buyers were present and that sales of cannabis products were consummated at the event, as well as depicted at least three individuals smoking cannabis during the event. (Factual Findings 1-23.)

SECOND CAUSE FOR DISCIPLINE - FAILURE TO COMPLY WITH STATE LAWS

6. A. Section 20630, subdivision (d), provides grounds for discipline for “[f]ailure to comply with any state law. . . .”

B. Respondent is subject to disciplinary action under section 26030, subdivision (d), for failing to comply with the Governor’s Executive Orders, the State Public Health Officer’s Statewide Order, and the County Public Health Order issued under the authority of the state orders, which prohibited public festivals and gatherings, and were in effect at the time WEEDCon-West 2020 was held on September 24, 2020. (Factual Findings 1-23.)

THIRD CAUSE FOR DISCIPLINE - FAILURE TO IDENTIFY TEMPORARY CANNABIS EVENT LICENSE NUMBER

7. A. The third cause for discipline alleges Division 10 was violated, for purposes of section 26030, subdivision (a), when respondent violated section 26151, subdivision (a)(1), which provides, “All advertisements and marketing shall accurately and legibly identify the licensee responsible for its content, by adding, as a minimum, the licensee’s license number.”

B. Complainant failed to establish respondent is subject to disciplinary action under sections 26030, subdivision (a), and 26151, subdivision (a)(1). Complainant alleged section 26151, subdivision (a), required respondent to display the requisite temporary event license number on advertisements pertaining to the WEEDCon-West 2020 event. However, section 26151, subdivision (a), does not state that expressly. Instead, a licensee simply is required to state its “license number.” Respondent’s advertisements stated its cannabis event organizer license number until Mr. Williams was told to remove it by Bureau staff. (Factual Findings 1-23.)

C. A fair construction of section 26151 is that a Department licensee is required to identify itself on advertisements by name and license number, so that the Department, another public agency, or a consumer, can readily identify, research, or, if need be, complain to the appropriate authority. There is nothing in this statute indicating a Department licensee, who is required to obtain a limited term permit or license but otherwise is annually licensed by the Department, is required to state the limited term permit or license in addition to the annual one.

FOURTH CAUSE FOR DISCIPLINE - TRUTH IN ADVERTISING AND MARKETING

8. A. The fourth cause for discipline alleges Division 10 was violated, for purposes of section 26030, subdivision (a), when respondent violated section 26152, subdivision (a), which states that a licensee shall not “[a]dvertise or market in a manner that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression.”

B. Complainant failed to establish respondent is subject to disciplinary action under sections 26030, subdivision (a), and 26152, subdivision (a). It was not established by a preponderance of the evidence that, when respondent displayed its cannabis event organizer license number in materials promoting the event, it falsely implied that respondent had obtained a temporary event license for the event. Respondent’s owner advised Bureau staff he only stated his annual license number in advertisements because he thought he was required to do so, which was a fair reading of the involved statute. When the advertisements with respondent’s license number were placed, respondent’s owner had a good faith belief a temporary event license was not needed. There is nothing in the advertisements otherwise

implying or suggesting respondent had obtained a temporary event license. (Factual Findings 1-23.)

Cause for Imposition of a Civil Fine

9. A. Pursuant to section 26200, subdivision (e)(2), the Department may impose a civil penalty on any person who violates section 26200, subdivision (e)(1), *supra*, by holding an event without obtaining a required temporary event license, in an amount up to three times the amount of the license fee for each violation.

B. Pursuant to section 26038, subdivision (a), a person engaging in commercial cannabis activity without a license required by Division 10 shall be subject to civil penalties of up to three times the amount of the license fee for each violation. Each day of operation constitutes a separate violation.

C. Respondent is subject to imposition of a civil fine under sections 26200, subdivision (e)(2), and 26038, in that it engaged in commercial cannabis activity without the requisite temporary event license when it held the WEEDCon-West 2020 event on September 24, 2020. (Factual Findings 1-23.)

D. Official notice is taken that a temporary event license fee is \$3,000 per event, for a licensee who holds five events or fewer per year. Respondent is deemed to have had one violation since it was not established the event was held on a second day. Because respondent held an unlicensed event during a pandemic in violation of state and local law, trebling the fine per violation is warranted. Therefore, the total civil fine amount is \$9,000.

E. In closing argument, complainant requested an additional civil fine pursuant to California Code of Regulations, title 16, section 5014. However, the

Accusation does not allege that regulation or demand a civil fine pursuant to it. Moreover, the regulations pertaining to the Department have been renumbered but it is not clear they have been reauthorized, or that a civil fine provided by former regulation section 5014 remains. Under these circumstances, no additional civil fine against respondent is warranted.

Costs

10. Section 26031, subdivision (d), provides that the Department may recover the costs of investigation and enforcement of a disciplinary proceeding pursuant to section 125.3. In turn, section 125.3 provides that a licensing board or bureau may request an administrative law judge to direct a licentiate found to have committed a violation of the involved licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement. In this case, complainant established respondent violated the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), and that the Department incurred reasonable prosecution costs in the amount of \$32,772.50. (Factual Finding 25.)

Disposition

11. A. The Department's highest priority is in protecting the public. (Bus. & Prof. Code, § 26011.5.) In keeping with that mandate, the Department currently uses the *Disciplinary Guidelines* (Guidelines) established by the Bureau and effective as of October 2018. (Ex. 23.) The Guidelines recommend license revocation as the appropriate discipline for specifically enumerated violations "which are potentially harmful," including respondent's two established MAUCRSA violations. (*Id.*, p. 354.)

B. In this case, holding a large public event during a pandemic, which was prohibited by state and local law, without a temporary event license because the

Bureau would not have issued one under those circumstances, qualifies as potentially harmful conduct. While the Guidelines also contain various factors to be considered in imposing less than the maximum recommended discipline, including mitigation, respondent failed to establish any such factors apply. Finally, Mr. William's decision to let respondent's license expire, and his failure to appear for the second hearing day, demonstrate discipline less than revocation would be futile.

C. Under these circumstances, revocation of respondent's license is warranted in order to protect the public. (Factual Findings 1-24; Legal Conclusions 1-8.)

ORDER

Cannabis Event Organizer License Number CEO-14-0000105-LIC, issued to respondent WeedCon Productions, LLC, with John Williams as owner, is revoked.

Respondent WeedCon Productions, LLC, with John Williams as owner, shall pay the Department of Cannabis Control a civil fine of \$9,000 within 30 days of the effective date of this Decision.

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Respondent WeedCon Productions, LLC, with John Williams as owner, shall pay the Department of Cannabis Control prosecution costs totaling \$32,772.50 within 30 days of the effective date of this Decision.

DATE: Sep 9, 2021


Eric C. Sawyer (Sep 9, 2021 10:04 PDT)

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings