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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 10. Cannabis [26000 - 26325] (*Heading of Division 10 amended by Stats. 2017, Ch. 27, Sec. 3.*)

CHAPTER 4. Appeals [26040 - 26047] (*Chapter 4 added November 8, 2016, by initiative Proposition 64, Sec. 6.1.*)

26040. (a) (1) There is established in state government, in the Business, Consumer Services, and Housing Agency, a Cannabis Control Appeals Panel which shall consist of the following members:

(A) One member appointed by the Senate Committee on Rules.

(B) One member appointed by the Speaker of the Assembly.

(C) Three members appointed by the Governor and subject to confirmation by a majority vote of all of the members elected to the Senate.

(2) Each member appointed by the Governor, at the time of their initial appointment, shall be a resident of a different county from the one in which either of the other members appointed by the Governor resides. Members of the panel shall receive an annual salary as provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The members of the panel may be removed from office by their appointing authority.

(Amended by Stats. 2020, Ch. 93, Sec. 1. (AB 1872) Effective September 18, 2020. Note: This section was added on Nov. 8, 2016, by initiative Prop. 64.)

26041. All personnel of the panel shall be appointed, employed, directed, and controlled by the panel consistent with state civil service requirements. The Executive Director of the panel shall furnish the equipment, supplies, and housing necessary for the authorized activities of the panel and shall perform such other mechanics of administration as determined by the panel.

(Amended by Stats. 2021, Ch. 70, Sec. 30. (AB 141) Effective July 12, 2021.)

26042. The panel shall adopt procedures for appeals similar to the procedures used in Article 3 (commencing with Section 23075) and Article 4 (commencing with Section 23080) of Chapter 1.5 of Division 9 of the Business and Professions Code. Such procedures shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(Added November 8, 2016, by initiative Proposition 64, Sec. 6.1.)

26043. (a) After proceedings pursuant to Section 26031, 26031.5, or 26058 or Chapter 2 (commencing with Section 480) or Chapter 3 (commencing with Section 490) of Division 1.5, any person aggrieved by the decision of the department denying the person's application for any license, denying the person's renewal of any license, placing any license on probation, imposing any condition on any license, imposing any fine on any license or licensee, assessing any penalty on any license, or canceling, suspending, revoking, or otherwise disciplining any license as provided for under this division, may appeal the department's written decision to the panel.

(b) The panel shall review the decision subject to such limitations as may be imposed by the Legislature. In such cases, the panel shall not receive evidence in addition to that considered by the department.

(c) Review by the panel of a decision of the department shall be limited to the following questions:

(1) Whether the department has proceeded without or in excess of its jurisdiction.

(2) Whether the department has proceeded in the manner required by law.

(3) Whether the decision is supported by the findings.

(4) Whether the findings are supported by substantial evidence in the light of the whole record.

(Amended by Stats. 2021, Ch. 70, Sec. 31. (AB 141) Effective July 12, 2021. Note: This section was added on Nov. 8, 2016, by initiative Prop. 64.)

26044. (a) In appeals where the panel finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the department, it may enter an order remanding the matter to the department for reconsideration in the light of that evidence.

(b) Except as provided in subdivision (a), in all appeals, the panel shall enter an order either affirming or reversing the decision of the department. When the order reverses the decision of the department, the panel may direct the reconsideration of the matter in the light of its order and may direct the department to take such further action as is specially enjoined upon it by law, but the order shall not limit or control in any way the discretion vested by law in the department.

(Amended by Stats. 2021, Ch. 70, Sec. 32. (AB 141) Effective July 12, 2021. Note: This section was added on Nov. 8, 2016, by initiative Prop. 64.)

26045. (a) No court of this state, except the Supreme Court and the courts of appeal to the extent specified in this chapter, shall have jurisdiction to review, affirm, reverse, correct, or annul any order, rule, or decision of the department or to suspend, stay, or delay the operation or execution thereof, or to restrain, enjoin, or interfere with the department in the performance of its duties, but a writ of mandate shall lie from the Supreme Court or the courts of appeal in any proper case.

(b) Any person affected by a final order of the panel, including the department, may apply to the Supreme Court or to the court of appeal for the appellate district in which the proceeding arose, for a writ of review of that final order.

(c) The application for writ of review shall be made within 30 days after filing of the final order.

(d) The provisions of the Code of Civil Procedure relating to writs of review shall, insofar as applicable, apply to proceedings in the courts as provided by this chapter. A copy of every pleading filed pursuant to this chapter shall be served on the panel, the department, and on each party who entered an appearance before the panel.

(e) No decision of the department that has been appealed to the panel and no final order of the panel shall become effective during the period in which application may be made for a writ of review, as provided by subdivision (c).

(f) The filing of a petition for, or the pendency of, a writ of review shall not of itself stay or suspend the operation of any order, rule, or decision of the department, but the court before which the petition is filed may stay or suspend, in whole or in part, the operation of the order, rule, or decision of the department subject to review, upon the terms and conditions which it by order directs.

(Amended by Stats. 2021, Ch. 70, Sec. 33. (AB 141) Effective July 12, 2021.)

26046. (a) The review by the court shall not extend further than to determine, based on the whole record of the department as certified by the panel, whether:

(1) The department has proceeded without or in excess of its jurisdiction.

(2) The department has proceeded in the manner required by law.

(3) The decision of the department is supported by the findings.

(4) The findings in the department's decision are supported by substantial evidence in the light of the whole record.

(5) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the department.

(b) Nothing in this chapter shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence.

(Amended by Stats. 2021, Ch. 70, Sec. 34. (AB 141) Effective July 12, 2021.)

26047. The findings and conclusions of the department on questions of fact are conclusive and final and are not subject to review. Those questions of fact shall include ultimate facts and the findings and conclusions of the department. The panel, the department, and each party to the action or proceeding before the panel shall have the right to appear in the review proceeding. Following the hearing, the court shall enter judgment either affirming or reversing the decision of the department, or the court may remand the case for further proceedings before or reconsideration by the department.

(Amended by Stats. 2021, Ch. 70, Sec. 35. (AB 141) Effective July 12, 2021.)

