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COMPLAINTS INVOLVING LICENSEES

1. Policy

It is the Department's policy that enforcement decisions shall not be based upon any improper motives. This means that no group or individual shall be "targeted" for investigation or disciplinary action based upon their political or ideological beliefs or other constitutionally-protected activities.

The Department's enforcement complaint procedure is based upon a "priority system." Matters that arise either from a complaint or by observation will be investigated based upon priorities which reflect level of threats to public welfare and safety. Investigators are expected to exercise sound judgment and discretion based upon their training and experience during and when closing out an investigation.

In the case of misdemeanor violations committed in an Investigator’s presence, the discretionary legal options available include a verbal admonishment, release upon signing a written promise to appear in court (citation), physical arrest and booking, or simply submitting the completed investigation report to the appropriate local prosecutor for criminal filing and prosecution.

All sworn personnel should consider all of these legal options when weighing the level of threat to public welfare and safety inherent with the violation being investigated and the suspect being detained at the time.

- All Supervising Investigators are responsible for training all newly hired Investigators about the philosophy of this policy. All sworn personnel are encouraged to regularly and routinely discuss this policy with their supervisors.

To maximize the efficiency and effectiveness of the Department's enforcement efforts, the following guidelines are to be used to execute the Department's Complaint Investigation Priority System.

2. Procedure

A. Accepting Complaints

There are two forms used for accepting complaints against licensees. The first, Form ABC-99-E, Complaint Against Licensee, is for completion by the public. This form is on the Department's web page (Illustration No. 1). The person making the complaint completes the form and mails it to HQ attention "Complaint Desk," (i.e., Director’s Office). Upon receipt of an ABC-99-E, the Director’s Office will route the complaint to the proper District or Branch Office for review and follow-up as necessary.

The second form for accepting complaints is Form ABC-99-A, Complaint Against Licensee. This form is used by District and Branch Office employees for accepting complaints over the telephone or at the front counter. A complaint may be received from the public, other government agencies, community groups, or anonymous sources. Complaints that may bring public attention to the Department should be brought to the attention of Division when received. (For example, complaints from legislators or involving the media, etc.)
Any employee who receives any complaint, written or oral, for a possible violation shall complete the form. This includes Trade Enforcement violations. Employees shall not automatically refer Trade Enforcement violations to HQ Trade Enforcement. Rather, they shall forward a completed Form ABC-99-A or ABC-99-E to the Supervisor in their respective office.

B. Reviewing Complaints

The Supervisor will review the complaint and decide whether to issue a Form ABC-61, Assignment Sheet (Illustration No. 3).

C. Trade Enforcement Complaints

Trade Enforcement complaints received at District will be immediately forwarded to HQ Trade Enforcement for review. This is done because these types of complaints often:
• Cross jurisdictional boundaries
• May have statewide impact
• May require extensive investigation and technical expertise

The Chief of Trade Enforcement will determine whether the District Office or the Trade Enforcement Unit should conduct the investigation. Some of the reasons the Chief of Trade Enforcement may have the District Office conduct the investigation are:
• Complaint may be localized within the District
• Complaint may not require intensive investigative resources

If the ABC-61 originates in a district office, a copy of the Trade Enforcement ABC-61’s will be routed to the Chief of Trade Enforcement for information and review. Trade Enforcement will provide direction to District on how to proceed. The Chief or Assistant Chief of Trade Enforcement will evaluate the complaint and assign it to an investigator for follow up, where appropriate. The Chief or Assistant Chief of Trade Enforcement will determine the priority of any Trade Enforcement complaint, whether issued by a District Office or by Trade Enforcement.

HQ Trade Enforcement is available at any time to provide technical assistance or investigative resources to District and Division Offices in matters involving Trade Enforcement.

HQ Trade Enforcement will advise the District Office in writing when an assignment has been issued. HQ Trade Enforcement will also advise the District Office of the final disposition of the complaint.

HQ Trade Enforcement Unit is responsible for logging all Trade Enforcement complaints into CABIN (See Logging in Complaints, P-100.6)
3. Acknowledging Complaints

If the complainant requests an acknowledgment or if the supervisor feels one is needed, the supervisor will do so either by telephone or in writing. Routine police reports do not require an acknowledgment.

4. Complaint Assignment Priority System

The Department prioritizes complaints received against licensees by type and by the number of previous complaints against the licensee. This system alerts District Offices to high-priority complaints needing prompt action.

To maximize enforcement efforts, District Offices must give consideration to the number of enforcement assignments within a given geographical area regardless of priority. Lesser priority assignments may be worked in a given geographical area; however, the emphasis must be placed on "Priority 1" assignments. The following is the priority of assignments and time frames for investigation of each:

A. Priority No. 1

- Disruptive, disorderly premises, which cause a drain on law enforcement resources and/or disturb neighborhood residents and businesses. Includes violent crimes, as well as noise, prostitution, lewd conduct, lawlessness, drunkenness, and other similar crimes and activities that threaten the safety, welfare and tranquility of communities.
  - All Violations Involving Persons Under Age 21
  - Sales to Obviously Intoxicated Persons
  - Narcotics
  - Licensee or Bartender Working in Premises While Intoxicated
  - Sales Without a License
  - Sales While Under Suspension
  - Undisclosed Ownership involving Felons

  Time Frame for Investigation. All Priority 1 complaints will receive an initial visit within 30 days of receipt of the complaint.

B. Priority No. 2

- Sale and/or Consumption During Restricted Hours
- Not Operating Bona Fide Eating Place
- Visits of Licensees Serving out a Stayed Period (i.e., licensees on probation)
- Nude Entertainment, etc.
- Undisclosed Ownership
- Gambling (felony and/or organized operations)
• Food Stamp Trafficking (i.e., purchasing stamps at discount)
• Retail Operating Standards
• Harmful Matter
• Receiving Stolen Property

Time Frame for Investigation. All Priority 2 complaints will receive an initial visit within 45 days of receipt of the complaint.

C. **Priority No. 3**

• Illegal Solicitation of Alcoholic Beverages
• Violation of Conditions
• Club Licenses, Sale to Public
• Alcoholic Beverage not Permitted by Licensee
• Keg Registration Violations
• Moral Turpitude Backtracks, (Court Documents, Police Reports, etc.)

Time Frame for Investigation. All Priority 3 complaints will receive an initial visit within 60 days of receipt of the complaint.

D. **Priority No. 4**

• Refilling
• Contaminated Bottles (insects, etc.)
• Substitution of Brands
• Sales or Purchase Between Retailers
• Food Stamp Violations involving purchases of alcoholic beverages with food stamps (non-criminal)
• Gambling (misdemeanor and/or non-organized operations)

Time Frame for Investigation. All Priority 4 complaints will receive an initial visit within 75 days of receipt or when practical. In cases of contaminated bottles complaints, a District Office may wish to call upon the local health department to inspect the premises for contaminated bottles. If violations are found, ABC could file an accusation against the licensee based upon the health department's report.
E. No Priority Category

- "Police Reports Assigned for Investigation"

These assignments have no priority category because Section 24202 B& P Code requires that the Department "promptly cause an investigation to be made upon receipt of an incident or arrest report from any state or local law enforcement agency." Police Reports Assigned for Investigation assignments should be issued immediately upon receipt of a police report. Also, depending upon the type of case involved, the CABIN system will automatically assign a priority.

Time Frame for Investigation. Immediately or within 30 days from receipt of a report.

- "Administrative Enforcement"

These assignments have no priority category because they are time sensitive by nature. Administrative enforcement assignments include:

- Discovery Requests
- Hearing Preparation
- Court - Obtaining Court Documents
- POIC Audits
- Posting Suspensions
- Serving Subpoenas
- Evidence - Transporting Evidence
- Witnesses - Transporting Witnesses to Court or Administrative Hearings
- Other

Time Frame for Completion. Administrative enforcement assignments will generate their own urgency for completion. This means that they require immediate processing unless the investigator needs to monitor and await the outcome of an outside investigation or court action.

- Trade Enforcement

The time frame for these assignments will be determined by the Chief of Trade Enforcement.

5. Logging in Complaints

The Supervisor will ensure that all complaints are logged in, as follows:

CABIN. Enter the complaint into CABIN. This will generate an ABC-61 assignment to the field crew or to a specific investigator. If additional complaint(s) are received against a licensee already under assignment, the District Administrator or Supervisor will ensure that the priority of the assignment is raised to a higher level as justified by the circumstances. The additional complaint(s) should be noted on the ABC-61 in CABIN, including the date received.

Logging System. The complaint should be logged either in a binder or on the computer. Some District Offices maintain three-ring binders to log Investigator Assignments and Field Assignments. Some offices prefer, and may use, computerized logging systems (Illustrations 5 and 6).
Field Enforcement Binder. If the ABC-61 is assigned to the field crew, the Supervisor will attach a copy of the complaint to Form ABC-61 for the Field Enforcement binder. The original shall be kept in the licensee’s file. If the complaint does not directly involve a licensed premises, the original shall be placed in the folder for non-licensees, by year.

Pulling Files. The Supervisor should have the file pulled. A review of the file will reveal whether an ABC-61 should be issued, the licensee should be called into the office and placed on notice or a Section 24200(e) letter sent. If there are conditions on the license, a copy of the conditions should be attached to the ABC-61. A copy of the ABC-61 should be placed in the inside cover of the base file. This alerts the front office if someone comes in to transfer the license. If so, the clerical staff should notify the supervisor that an ABC-61 is outstanding.

6. Monitoring Assignments

A. Supervisor's Responsibility

It is the Supervisor's responsibility to review all active 61 assignments, both field and individual assignments to verify they are being worked in the time restraints listed. The supervisor will take appropriate action if any assignments are not being worked or investigated in the required time frames. If needed, the supervisor will comment on the status either in CABIN or on his or her control logs.

7. Closing Out Assignments

Typically, an ABC-61 assigned to a field crew may be closed out after one to three visits. Supervisors will use their own judgment in making this determination.

After determining that an assignment should be closed out, the Supervisor will close it out in CABIN and their log (binder or computer log). Upon request of the District Administrator, the Supervisor will then route any closed out assignments to the District Administrator for his or her information.

A copy of the closed out ABC-61 will be placed in the licensee's file. If warranted, the District Office shall proceed with the disciplinary process per P 105, Disciplinary Procedure.

If the closed out ABC-61 was for an assignment that did not involve a licensed premises, that ABC-61 will be placed in a file entitled Miscellaneous Closed Out 61's. This would include non-licensed premises, assignments for other district offices, etc.

Upon final disposition of the administrative case, the District Office should notify the law enforcement agency with a standard close-out letter, Form ABC-334 (Illustration No. 4). Route copies to the chief or sheriff and the evidence custodian. Upon request by a complainant, the Supervisor should also notify the complainant upon final disposition of the administrative case.
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<th>Title</th>
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<td>Complaint Against Licensee, web version</td>
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<td>2.</td>
<td>ABC-99-A</td>
<td>Complaint Against Licensee</td>
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<td>4.</td>
<td>ABC-334</td>
<td>Close-Out Letter</td>
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<td>---</td>
<td>Sample Investigator Assignments Log</td>
</tr>
<tr>
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<td>---</td>
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Complaint Against Licensee

Read Complaint Form Information before completing this form.
Fill in as many of the blanks as you possibly can.
After completing the form, print and mail to the nearest ABC District Office or
Department of Alcoholic Beverage Control
Attention: Complaint Desk
3810 Rosin Court, Suite 150
Sacramento, CA. 95834

INFORMATION ABOUT YOU
It is not required that you give "Information About You." You may remain anonymous.
If you do give personal information, it will not be released outside of the department and will remain
confidential.
Name:
Address:
City: State: Zip Code:
Phone: (Day): (Evening):

INFORMATION ABOUT ABC LICENSED BUSINESS
Name of Business:
Business Address:
City: State: Zip Code:
Phone:
Name of Owner if known:
Nature of Complaint: (Check all that apply)

- Disorderly House
- Sales to Minors
- Sales to Obviousely Intoxicated Patron
- Illegal Drug Activities
- Prostitution
- Sales After 2:00 A.M.
- Drink Solicitation
- Obviousely Intoxicated Patron
- Gambling
- Lewd Conduct

False Owner
Excessive Noise
Other

Date of incident: Time of incident:
Have you contacted the business owner regarding your complaint? Yes No
Have you filed this with another law enforcement agency? Yes No
If you answer yes, name of law enforcement agency:
Do you wish to be notified of the results of the Department's investigation? Yes No
Other Details:
State of California  
COMPLAINT AGAINST LICENSEE  

1. LICENSEE NAME  

2. LICENSE TYPE AND NUMBER  

3. DOING BUSINESS AS (DBA)  

4. PREMISES ADDRESS (Street number and name, city, state, zip code)  

5. CONDITIONAL LICENSE (If yes, attach a copy of the conditions)  
   □ Yes  □ No  

COMPLAINANT INFORMATION  

6. COMPLAINANT NAME  

7. HOME PHONE NUMBER  

8. HOME ADDRESS (Street number and name, city, state, zip code)  

9. WORK ADDRESS (Street number and name, city, state, zip code)  

10. WORK PHONE NUMBER  

11. RELATIONSHIP TO PREMISES  

12. CONFIDENTIAL  
   □ Yes  □ No  

NATURE OF COMPLAINT  

13. CHECK ALL THAT APPLY  
   □ Minors  □ Noise  □ Lewd Conduct  
   □ After Hours  □ Drink Solicitation  □ Gambling  
   □ False Owner  □ Disorderly House  □ Prostitution  
   □ Drunks/Obviously Intoxicated  □ Drugs  □ Violation of Conditions  
   □ Other  

DETAILS OF COMPLAINT  

14. DESCRIPTION OF PREMISES LOCATION (Who, what, when, where, why, or how)  

15. COMPLAINANT HAS CONTACTED THE BUSINESS OWNER REGARDING COMPLAINT  
   □ Yes  □ No  

16. COMPLAINANT WISHES TO BE NOTIFIED OF THE RESULTS OF THE INVESTIGATION  
   □ Yes  □ No  

17. COMPLAINANT HAS FILED A COMPLAINT WITH ANOTHER LAW ENFORCEMENT AGENCY  
   □ Yes  □ No  

18. IF YES, NAME OF LAW ENFORCEMENT AGENCY  

19. COMPLAINT RECEIVED BY  

20. DATE RECEIVED  

21. TIME RECEIVED  

22. SUPERVISOR REVIEWED  

23. ABC-61 ACTION  

ABC-99-A (6/01)  

P 100 Illustration No. 2
State of California
Department of Alcoholic Beverage Control

ASSIGNMENT SHEET
As of January 29, 2003

Subject:    
DBA:       
Address:   

ABC-61 Assign. Type: LICENSING 61

No: 
Date: 
File: 
Origin: LICENSEE
License Type(s): 02-ACT

INSTRUCTIONS:

Type: CORPORATION CHANGES  
Date: Assigned to: 

The Corporation Secretary has submitted a letter, along with 208, and H's for Corporation Treasurer. Please conduct a Corporation Update and obtain all the necessary paperwork and funds. Submit report so it can be processed at HQ.

Investigator: 
Date: 02-AUG-01 Time: 1700 
Comments: Updating Cabin-I previously reviewed the correspondence and the 208 is incomplete-need to recheck this file when I returned on 08-08-01 to determine if reports can be written-I recd 2 files and Cabin appears to have only one assignment/assigned to me for this licensee.

Investigator: 
Date: 11-MAR-02 Time: 345pm 
Comments: Updating the Cabin record-I spoke to the President on Friday-I advised him-I would be submitting his update on 3-11-02/States that hey have had several personnel changes-retirements, deaths, births-he apologized for the delay.

Disposition: 
Date: 
Supervisor: 
District Admin.: 

P 100 Illustration No. 3
File:
Licensee:

ABC Reg.:

Dear Sir:

This is a notice of the final order of the Department in the action against the above-licensed premises:

( ) The license has been ordered revoked, effective: __________________________.

( ) The license has been ordered suspended for a period of ______________________ days, with ____________ days stayed, effective: __________________________.

( ) The Department has accepted the licensee's Offer in Compromise in the amount of ______________________ in lieu of ________ days suspension, with _________ days stayed.

( ) The accusation was dismissed because: __________________________.

( ) Evidence retained in the above matter for purpose of administrative hearing is hereby released for appropriate disposal.

Exercising the privileges of a license during a suspension or following a revocation of such license is a violation of Section 23300 of the Alcoholic Beverage Control Act.

Sincerely,

District Administrator

ABC-334 (9/93)
<table>
<thead>
<tr>
<th>CABIN 61 Number</th>
<th>Date</th>
<th>Licensee</th>
<th>Type</th>
<th>Investigator</th>
<th>Compl.</th>
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<tbody>
<tr>
<td>Curiel/328805/San Pablo</td>
<td></td>
<td>243 B/T</td>
<td></td>
<td>J.M.</td>
<td>R02-05-02</td>
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</table>

*R = Report assigned for Inv.; X = Admin assignments
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<tr>
<th>CABIN 61 Number</th>
<th>Date Assigned</th>
<th>Licensee and DBA</th>
<th>Priority and Type of Violation</th>
<th>First Visit</th>
<th>Second Visit</th>
<th>Third Visit</th>
<th>Completed</th>
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<tr>
<td>11/2/98</td>
<td>Chao, Jeffrey F/334262/San Pablo</td>
<td>After Hours</td>
<td></td>
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