

# "NEW 2007" 45-DAY COMMENT VERSION

## Chapter 1. General Provisions

### 12002. General Definitions

Unless otherwise specified, the definitions in Business and Professions Code section 19805, supplemented by the definitions found in Chapter 10 of Title 9 of Part 1 of the Penal Code (commencing with section 330), shall govern the construction of this division. As used in this division:

(a) "Bureau" means the Bureau of ~~Criminal Identification and Information~~Gambling Control in the California Department of Justice. For the filing of any reports or forms, Bureau refers to the Sacramento office of the Bureau of Gambling Control.

....

(g) "Executive Director" means the executive officer of the Commission, as provided in Business and Professions Code section 19816 or his or her designee. If the Executive Director position is vacant, the "Executive Director" means the officer or employee who shall be so designated by the Commission.

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**Authority:** Sections 19811, 19823, 19824, 19840, 19841, 19853(a)(3), and 19854, Business and Professions Code; Section 7, Government Code.

**Reference:** Sections 7.5, 19800, 19805, 19811, 19816, and 19951, Business and Professions Code.

### 12047. Withdrawal of Applications

A request by an applicant to withdraw the submitted application may be made at any time prior to the final action by the Bureau. The request shall be made in writing to the Commission. The Commission, pursuant to Business and Professions Code section 19869, may deny the request or may grant the request, with or without prejudice.

(a) If a request for withdrawal is granted without prejudice, any unused portion of the background investigation deposit shall be refunded by the Commission.

(b) If a request for withdrawal is granted with prejudice, the applicant shall not be eligible to apply again for licensure or approval until after the expiration of one year from the date the request for withdrawal is granted. Any unused portion of the background investigation deposit shall be refunded by the Commission.

(c) If the request for withdrawal is denied, the Bureau shall proceed with the investigation of the applicant and provide a recommendation to the Commission for action on the application.

**Authority:** Business and Professions Code Sections 19811, 19823, 19824, 19840, 19841, 19893, and 19951.

**Reference:** Business and Professions Code Sections 19859, 19867, 19869, 19880, 19881, 19890, 19891, 19951, and 19984.

1 **12048. Abandonment of Applications**

2 At any time prior to final Commission action, the Executive Director may preliminarily  
3 determine that the application is abandoned. Such determination may be based upon  
4 recommendation of the Bureau, failure of the applicant to respond to Bureau or  
5 Commission inquiries, or notification by the applicant that the application is no longer being  
6 pursued. If the determination is not based upon applicant's notice to the Commission, then  
7 notice will be sent to the applicant, with a copy to the applicant's employer by certified mail  
8 indicating that unless the applicant contacts the Commission within 30 days from the date  
9 of the letter, the application shall be deemed abandoned. An abandoned application  
10 cannot be reactivated.

11  
12 **Authority:** Business and Professions Code Sections 19811, 19823, 19824, 19840, 19841, 19893, and  
13 19951.

14 **Reference:** Business and Professions Code Sections 19859, 19867, 19869, 19880, 19881, 19890, 19891,  
15 and 19951.

16  
17 **12050. Hearing Procedures; Appeal of Denial of application for license,**  
18 **permit, or request for finding of suitability.**

19 (a) Any applicant for any license, permit, or finding of suitability for whom Commission staff  
20 has issued a recommendation of denial or imposition of conditions shall be given  
21 notice by certified mail of the Commission meeting at which the application is  
22 scheduled to be heard and the Commission staff recommendation at least 10 days  
23 prior to the meeting. Further, the Bureau shall provide the applicant with a  
24 summary of the Bureau's final report which includes a detailed factual and/or legal  
25 basis for any recommendation and the Bureau's recommendation, if any, not less  
26 than 30 days prior to the Commission meeting. The applicant shall be afforded the  
27 opportunity to:

28 (1) Address the Commission by way of an oral statement at a noticed  
29 Commission meeting, and/or may submit documents in support of the  
30 application, or

31 (2) Request an evidentiary hearing.

32 (b) If the applicant requests an evidentiary hearing or the Commission elects to have an  
33 evidentiary hearing, the Executive Director shall set the matter for hearing pursuant  
34 to Business and Professions Code sections 19870 and 19871, or pursuant to  
35 Business and Professions Code section 19825 (which will be conducted pursuant to  
36 Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the  
37 Government Code).

38 (1) If the hearing is to proceed pursuant to Business and Professions Code  
39 section 19825 (Chapter 5 (commencing with section 11500) of Part 1 of  
40 Division 3 of Title 2 of the Government Code; California Code of Regulations,  
41 title 1, section 1000 et seq.), the hearing shall be before an administrative

1 law judge sitting on behalf of the Commission. Notice shall be effected  
2 pursuant to Government Code section 11500 et seq.

3 (2) If the hearing is to proceed pursuant to Business and Professions Code  
4 sections 19870 and 19871, notice shall be effected by the Commission, and  
5 the hearing before the Commission shall be conducted pursuant to Business  
6 and Professions Code section 19871:

7 (A) The Bureau or Commission staff or Deputy Attorney General or other  
8 representative presenting the case (Complainant) shall provide the  
9 applicant, at least 30 calendar days prior to the hearing, a list of  
10 potential witnesses with the general subject of the testimony of each  
11 witness and shall disclose and make available copies of all  
12 documentary evidence intended to be introduced at the hearing and  
13 not previously provided, reports or statements of parties and  
14 witnesses and all other writings containing relevant evidence,  
15 including all evidence made available to the Commissioners. The  
16 applicant shall provide Complainant with similar information to be  
17 introduced at the hearing and not previously provided at least ten  
18 calendar days prior to the hearing. The Commissioners may prohibit  
19 testimony of a witness that is not disclosed and may prohibit the  
20 introduction of documents that have not been disclosed.

21 (B) Nothing in this section confers upon an applicant a right to discovery  
22 of the Commission's or Bureau's confidential information or to require  
23 production of any document or information the disclosure of which is  
24 otherwise prohibited by any provision of the Gambling Control Act, or  
25 is privileged from disclosure or otherwise made confidential by law.  
26 Documentary evidence may be redacted as needed to prevent the  
27 disclosure of confidential information. Exculpatory or mitigating  
28 information shall not be withheld from the applicant, but may be  
29 redacted.

30 (C) Within the guidelines of subsection (b)(2)(A) above, each party shall  
31 have the right to call and examine witnesses; to introduce relevant  
32 exhibits and documentary evidence; to cross-examine opposing  
33 witnesses on any relevant matter, even if the matter was not covered  
34 in the direct examination; to impeach any witness, regardless of which  
35 party first called the witness to testify; and to offer rebuttal evidence. If  
36 the applicant does not testify on the applicant's own behalf, the  
37 applicant may be called and examined as if under cross-examination.

38 (D) The hearing need not be conducted according to technical rules of  
39 evidence. Any relevant evidence may be considered, and is sufficient  
40 in itself to support findings if it is the sort of evidence on which  
41 responsible persons are accustomed to rely in the conduct of serious  
42 affairs, regardless of the existence of any common law or statutory

1 rule that might make improper the admission of that evidence over  
2 objection in a civil action. A presiding officer, which shall be an  
3 administrative law judge or attorney designated by the Commission,  
4 shall rule on the admissibility of evidence and on any objections  
5 raised.

6 (E) Oral evidence shall be taken upon oath or affirmation, which may be  
7 administered by a staff member of the Commission or by a  
8 Commissioner.

9 (F) The hearing shall be stenographically or electronically recorded by the  
10 Commission.

11 (G) At the conclusion of the hearing, the Commission shall take the matter  
12 under submission and may schedule future closed session meetings  
13 for deliberation. In taking the matter under consideration, any  
14 Commissioner who participated at the hearing shall be allowed to vote  
15 by mail or by other appropriate method. Within 30 days of the  
16 conclusion of the hearing, the Commission shall issue a decision  
17 which complies with Business and Professions Code section 19870,  
18 subdivision (c), and shall serve the decision by certified mail on the  
19 applicant and on any business entity with which the applicant is  
20 associated.

21 (3) At the hearings described in subsections (b)(1) and (2) above, the burden of  
22 proof rests with applicant to demonstrate why a license, permit, or finding of  
23 suitability should be issued or not conditioned. The applicant may choose to  
24 represent himself, herself, or itself, or may retain an attorney or lay  
25 representative at his, her, or its own expense. A representative of the  
26 Bureau shall present the reasons why the license, permit, or finding of  
27 suitability should not be granted or should be granted with conditions  
28 imposed. In the event that the Bureau does not present the case, the  
29 Commission may seek outside representation or one or more Commission  
30 staff members shall be segregated and present the case.

31 (c) If the application is denied or conditions imposed:

32 (1) The Commission's decision will provide the effective date of the decision and  
33 may include further directions as to stay provisions or orders to divest.

34 (2) If the applicant is an officer, director, employee, agent, representative, or  
35 independent contractor of a corporation licensed, registered, or found suitable by  
36 the Commission, the denied applicant shall resign pursuant to the date specified  
37 in the decision and shall so notify the Commission in writing.

38 (3) If the denied applicant is an officer or director of a corporation licensed,  
39 registered, or found suitable by the Commission, the corporation shall  
40 immediately remove that person from office and shall so notify the Commission  
41 in writing. If the denied applicant is an employee, agent, representative, or

1 independent contractor of a corporation licensed, registered, or found suitable by  
2 the Commission, the corporation shall terminate its relationship with that person  
3 pursuant to the date specified in the decision and shall so notify the Commission  
4 in writing. The denied applicant and the corporation licensed, registered, or  
5 found suitable by the Commission shall comply with Business and Professions  
6 Code section 19882.

7 (4) If the denied applicant is an owner or holder of an interest in a general or limited  
8 partnership licensed, registered, or found suitable by the Commission, the  
9 denied applicant shall resign as partner. If the denied applicant is an owner or  
10 holder of an interest in a limited partnership licensed, registered, or found  
11 suitable by the Commission, the denied applicant and the limited partnership  
12 shall comply with Business and Professions Code section 19892 and shall so  
13 notify the Commission in writing.

14 (5) If the denied applicant is a principal in a business entity licensed, registered, or  
15 found suitable by the Commission not otherwise described above, the denied  
16 applicant shall resign his or her position within that entity and divest whatever  
17 interest is held in that entity pursuant to the timelines and instructions specified  
18 in the decision, and shall so notify the Commission in writing. The business  
19 entity shall remove the denied applicant from any principal role in the business  
20 entity and shall so notify the Commission in writing.

21 (6) An applicant denied a license, permit, registration, or finding of suitability, or  
22 whose license, permit, registration, or finding of suitability has had conditions  
23 imposed upon it may request reconsideration by the Commission within 30 days  
24 of notice of the decision. The request shall be in writing and shall outline the  
25 reasons for the request, which must be based upon either newly discovered  
26 evidence or legal authorities that could not reasonably have been presented  
27 before the Commission's issuance of the decision or at the hearing on the  
28 matter, or upon other good cause for which the Commission in its discretion  
29 decides merits reconsideration. The Commission Chair may delegate to the  
30 Executive Director the determination of whether to place requests for  
31 reconsideration on the Commission agenda or to act on them at the Commission  
32 staff level. If placed on the Commission agenda, the applicant requesting  
33 reconsideration shall be notified of the date and time of the agenda item. The  
34 granting or denial of reconsideration is at the discretion of the Commission. The  
35 Commission shall notify the applicant requesting reconsideration whether or not  
36 reconsideration is granted or denied within 30 days of the applicant's request. If  
37 the Commission grants reconsideration, the effective date of the decision shall  
38 be stayed or vacated, at the Commission's discretion, while the decision is  
39 reconsidered.

40 (d) An appeal of a denial by the Commission shall be subject to judicial review under  
41 Code of Civil Procedure, section 1085 (pursuant to Business and Professions Code,  
42 section 19870, subdivision (e)). Neither the right to petition for judicial review nor  
43 the time for filing the petition shall be affected by failure to seek reconsideration.

1 (e) Proceedings to revoke, suspend, or discipline a license, registration, permit, finding of  
2 suitability, or other approval shall be pursuant to Chapter 10 of these regulations.

3 Authority: Sections 19804, 19870 and 19872, Business and Professions Code.

4 Reference: Sections 19868, 19870, 19879, 19883, 19892, Business and Professions Code.

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6  
7 Chapter 6. State Gambling Licenses and Approvals for  
8 Gambling Establishments, Owners, and Key Employees

9 **12348. Mandatory and Discretionary Grounds for Denial of Application for a**  
10 **State Gambling License or Key Employee license.**

11 (a) An application for a state gambling license or key employee license shall be denied by  
12 the Commission if any of the following apply:

13 (1) The Commission finds that the applicant is ineligible, unqualified, disqualified, or  
14 unsuitable pursuant to the criteria set forth in the Act or other applicable law or  
15 that granting the license would be inimical to public health, safety, welfare, or  
16 would undermine the public trust that gambling operations are free from criminal  
17 or dishonest elements.

18 (2) The Commission finds that the local ordinance does not conform to the  
19 requirements of Business and Professions code section 19860.

20 (b) An applicant for a state gambling license may be denied if:

21 (1) The Commission finds that the applicant meets any of the criteria for license  
22 denial set forth in Business and Professions Code section 19862, subdivision  
23 (a).

24 (2) The Commission finds that an applicant has attempted to communicate or has  
25 communicated *ex parte*, as that term is defined in Business and Professions  
26 Code section 19872, subdivision (e), with one or more Commissioners, through  
27 direct or indirect means, regarding the merits of the application while the  
28 application is pending disposition at the Bureau or the Commission.

29 (3) The Commission finds that the applicant's past behavior calls into question the  
30 applicant's qualification requirements and considerations outlined in Business  
31 and Professions Code section 19856. Examples of past behavior that may be  
32 considered include, but are not limited to:

33 (A) Convictions which demonstrate a pattern of disregard for the law,

34 (B) A conviction involving gambling or gambling-related activities,

35 (C) A final administrative decision concluding that there was a violation of law  
36 involving gambling or gambling-related activities, or

37 (D) A conviction regarding or final administrative decision concluding that  
38 there was a violation of campaign finance disclosure or contribution

1 limitations applicable to an election conducted pursuant to Business and  
2 Professions Code section 19960.

3 (4) The Commission finds that the applicant has, within ten years immediately  
4 preceding the submission of the application, willfully or persistently violated any  
5 of the following:

6 (A) Any regulation adopted by the Commission or Bureau.

7 (B) Any condition, limitation, or directive imposed on a previously held state  
8 gambling or key employee license.

9 (c) The grounds for denial set forth in this section apply in addition to any grounds  
10 prescribed by statute or any grounds that would support revocation under chapter  
11 10 of these regulations.

12 **Authority:** Sections 19811, 19823, 19824, 19840, 19841, 19850, 19854, 19861, 19870, 19872, 19880,  
13 19890, and 19982, Business and Professions Code.

14 **Reference:** Sections 19850, 19851, 19852, 19857, 19858, 19859, 19860, 19862, 19863, and 19960,  
15 Business and Professions Code.