

# DRAFT

1 California Gambling Control Commission  
2 SPECIFIC LANGUAGE OF PROPOSED REGULATIONS  
3 APPLICATION WITHDRAWALS AND ABANDONMENTS, AND HEARING PROCEDURES  
4 CGCC-GCA-2013-0##-R  
5

6 CALIFORNIA CODE OF REGULATIONS

7 TITLE 4. BUSINESS REGULATIONS.

8 DIVISION 18. CALIFORNIA GAMBLING CONTROL COMMISSION.

9 CHAPTER 1. GENERAL PROVISIONS.

10 ARTICLE 1. DEFINITIONS AND GENERAL PROCEDURES.

11 **§ 12002. General Definitions.**

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

16 (a) “Administrative Procedure Act Hearing” or “APA Hearing” means an evidentiary hearing  
17 which is conducted pursuant to the requirements of Chapter 5 (commencing with section 11500)  
18 of Part 1 of Division 3 of Title 2 of the Government Code, and section 1000 et seq. of Title 1 of  
19 the California Code of Regulations. An APA hearing includes those evidentiary hearings which  
20 proceed pursuant to Business and Professions Code sections 19825 as well as 19930 and under  
21 Chapter 10 of this division.

22 (b)(a) “BCII” means the Bureau of Criminal Identification and Information in the California  
23 Department of Justice.

24 (c)(b) “Bureau” means the Bureau of Gambling Control in the California Department of  
25 Justice. ~~For the filing of any information, reports or forms, Bureau refers to the Sacramento~~  
26 ~~office of the Bureau of Gambling Control.~~

27 (d)(e) “California Games” means controlled games that feature a rotating player-dealer  
28 position, as described in Penal Code section 330.11.

29 (e)(d) “Commission” means the California Gambling Control Commission.

30 (f)(e) “Conviction” means a plea or verdict of guilty or a plea of *nolo contendere*,

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1 irrespective of a subsequent order of expungement under the provisions of Penal Code section  
2 1203.4, 1203.4a, or 1203.45, or a certificate of rehabilitation under the provisions of Penal Code  
3 section 4852.13. Any plea entered pursuant to Penal Code section 1000.1 does not constitute a  
4 conviction for purposes of Business and Professions Code section 19859, subdivisions (c) or (d)  
5 unless a judgment of guilty is entered pursuant to Penal Code section 1000.3.

6 ~~(g)~~ ~~(f)~~ “Deadly Weapon” means any weapon, the possession or concealed carrying of which is  
7 prohibited by Penal Code section ~~12020~~16430.

8 (h) “Employee or Agent of the Commission” means the staff employed at the Commission  
9 including the Executive Director and all staff under the direction of the Executive Director.

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

14 (j) “Final action by the Bureau” or “final action” means a final determination by the Chief of  
15 the Bureau regarding his or her recommendation to the Commission on any application.

16 ~~(k)~~ ~~(h)~~ “Gambling Control Act” or “Act” or “GCA” means Chapter 5 (commencing with  
17 section 19800) of Division 8 of the Business and Professions Code.

18 (l) “GCA Hearing” means an evidentiary hearing referred to as “the meeting” pursuant to  
19 Business and Professions Code sections 19870 and 19871.

20 (m) “Interim License” means a license issued by the Commission for some interim period  
21 which includes an interim renewal license issued pursuant to Section 12035, and an interim  
22 gambling license issued pursuant to Section 12349.

23 (n) “Member of the Commission” means an individual appointed to the Commission by the  
24 Governor pursuant to Business and Professions Code sections 19811 and 19812, and does not  
25 include an employee or agent of the Commission.

26 ~~(o)~~ ~~(f)~~ “Registrant” means a person having a valid registration issued by the Commission.

27 ~~(p)~~ ~~(f)~~ “Surrender” means to voluntarily give up all legal rights and interests in a license,  
28 permit, registration, or approval.

29 (q) “Temporary License” means a preliminary license issued by the Commission, prior to  
30 action on an initial license application, with appropriate conditions, limitations or restrictions  
31 determined on a case by case basis.

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1 Note: Authority cited: Sections 19811, 19823, 19824, 19840, 19841, 19853(a)(3), 19854, and 19869, Business and  
2 Professions Code. Reference: Sections 7.5, 19800, 19805, 19811, 19816, and 19951, Business and Professions  
3 Code.

## 4 5 § 12006. Service of Notices, Orders and Communications.

6 (a) When service of any notice or other written communication is specifically required to be  
7 made pursuant to this Section, service shall be made by certified mail, addressed to the address  
8 of record of the applicant, licensee, or designated agent, unless a different address is otherwise  
9 designated by the applicant, licensee, or designated agent.

10 (b) Service shall be effective upon mailing of the notice or communication.

11 Note: Authority cited: Sections 19811, 19824 and 19840, Business and Professions Code. Reference: Section 19811,  
12 19824 and 19840, Business and Professions Code

## 13 14 § 12012. Ex Parte Communication.

15 (a) The limitations on ex parte communication imposed by Government Code sections  
16 11430.10 through 11430.80 shall apply when a proceeding is pending. For purposes of  
17 Government Code section 11430.10, a proceeding is pending when one of the following occurs:

18 (1) The Executive Director has elected to hold an evidentiary hearing under subsection (a) of  
19 Section 12060;

20 (2) The Commission has elected to hold an evidentiary hearing under paragraph (2) of  
21 subsection (a) of Section 12054; or

22 (3) The Bureau has filed an accusatory pleading under Section 12554 or Business and  
23 Professions Code section 19930.

24 (b) The limitations on ex parte communication imposed by Business and Professions Code  
25 sections 19872 shall apply when an application is pending disposition and the communication is  
26 upon the merits of the application. For purposes of Business and Professions Code section  
27 19872:

28 (1) Pending disposition shall mean the time after an application has been filed with the  
29 Bureau, including while the Bureau performs a background investigation pursuant to Business  
30 and Professions Code section 19826, up to when the Commission's decision is final pursuant to  
31 Section 12066; and,

32 (2) Ex parte communication does not include any of the following:

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1 (A) Communications related to procedure and practice that are not based upon the merits of  
2 an application or those made on the record at a public meeting or hearing concerning a properly  
3 agendized matter.

4 (B) The Bureau or applicant providing information or documents based upon the merits of an  
5 application pending disposition to an employee or agent of the Commission which is  
6 simultaneously provided to the other party.

7 (C) Any other interested person providing information based upon the merits of an  
8 application pending disposition to an employee or agent of the Commission which is  
9 simultaneously provided to both the Bureau and the applicant.

10 (D) The Bureau providing information or documentation to the Commission pursuant to  
11 Business and Professions Code section 19822, subdivision (b), but that is not provided to the  
12 applicant pursuant to Business and Professions Code section 19821, subdivision (d), and section  
13 19868 subdivisions (b)(3) and (c)(2).

14 (c) If an applicant, the Bureau or other interested person communicates directly or indirectly  
15 on an *ex parte* basis with a member of the Commission, including indirectly through submission  
16 of information or documentation to an employee or agent of the Commission, then:

17 (1) All information and documentation shall immediately be provided to the Bureau,  
18 applicant or Bureau and applicant.

19 (2) That communication, if by the applicant, may be used as a basis for denial of the  
20 application pursuant to Business and Professions Code sections 19856, 19857 and subdivision  
21 (d) of section 19872.

22 (3) Any meeting or hearing following the provision of this communication may be delayed as  
23 necessary to allow for the full participation of all parties.

24 (d) A member of the Commission who communicates on an *ex parte* basis with an applicant,  
25 the Bureau, or interested persons must publicly disclose the communication. Any information or  
26 document(s) conveyed shall be provided to the applicant and the Bureau as soon as possible so  
27 that they may participate in the communication. Any meeting or hearing following the provision  
28 of this communication may be delayed as necessary to allow for the full participation of all  
29 parties. The member of the Commission may be disqualified from consideration of an  
30 application as long as the withdrawal would not prevent the existence of a quorum qualified to  
31 act on the particular application. Disqualification may take place by:

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1 (1) The member's determination that withdrawal is warranted.

2 (2) A motion of the Commission upon the request of the applicant.

3 (e) An employee or agent of the Commission may communicate and convey information or  
4 documents upon the merits of an application pending disposition as long as it is simultaneously  
5 conveyed to both the applicant and the Bureau so that they may participate in the  
6 communication.

7 (f) Where a proceeding is pending under both subsections (a) and (b), the more stringent  
8 relevant rule or remedial measure contained herein, under the Act or under Chapter 4.5  
9 (commencing with section 11400) of Part 1 of Division 3 of Title 2 of the Government Code,  
10 shall apply.

11 Note: Authority cited: Sections 19811, 19823, 19824, 19840, 19841, and 19872, Business and Professions Code;  
12 Sections 11400.20, 11410.40, 11415.10, and 11415.20, Government Code. Reference: Sections 19821, 19822,  
13 19825, 19868, 19870, 19871, 19872, and 19930, Business and Professions Code; Sections, 11425.10, 11430.10,  
14 11430.20, 11430.30, 11430.50, and 11430.60, Government Code.

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### 16 **§ 12015. Withdrawal of Applications.**

17 (a) A request by an applicant to withdraw a submitted application may be made at any time  
18 prior to the Bureau taking final action by issuing a recommendation on the application. The  
19 request shall be made in writing to the Bureau and the Commission. Upon receipt of the request  
20 to withdraw, Commission staff shall send written confirmation of receipt pursuant to Section  
21 12006. This written confirmation shall include a non-exhaustive list of possible consequences of  
22 withdrawal. The Bureau shall stay its background investigation pursuant to Business and  
23 Professions Code section 19868 and the Executive Director shall place the request and any  
24 information provided by the Bureau, before the Commission at a regularly scheduled meeting for  
25 consideration under Section 12054.

26 (b) The Commission may grant a withdrawal request with or without prejudice based upon  
27 the public interest and the applicable provisions of the Act, including for example, where the  
28 applicant has failed to respond to Bureau or Commission inquires, or preliminary information  
29 has been provided by the Bureau which would indicate grounds for mandatory denial under  
30 Business and Professions Code section 19859.

31 (c) If a request for withdrawal is granted, any unused portion of a background investigation  
32 deposit shall be refunded as soon as possible.

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1 (d) If a request for withdrawal is granted with prejudice, the applicant shall not be eligible to  
2 apply again for licensure or approval until after the expiration of one year from the date the  
3 request for withdrawal is granted.

4 (e) If the request for withdrawal is denied, the Bureau shall proceed with the investigation of  
5 the applicant and provide a recommendation pursuant to Business and Professions Code section  
6 19826.

7 Note: Authority cited: Sections 19811, 19823, 19824, 19840, 19841, 19869, 19893, and 19951 Business and  
8 Professions Code. Reference: Sections 19859, 19867, 19869, 19880, 19881, 19890, 19891, 19951, and 19984,  
9 Business and Professions Code.

## 10 11 § 12017. Abandonment of Applications.

12 (a)(1) At any time before the Bureau has taken its final action, the Chief of the Bureau may  
13 deem an application abandoned based upon the following:

14 (A) Failure of the applicant to respond to Bureau or Commission inquiries; or

15 (B) Notice by the applicant or their designated agent that the application is no longer being  
16 pursued because, for example, the applicant is no longer employed in a capacity that requires  
17 Commission consideration or is deceased.

18 (2) If an application has been deemed abandoned, notice shall be sent to the applicant,  
19 pursuant to Section 12006, with a copy to the Commission, stating the reasons for abandonment  
20 of the application, and a non-exhaustive list of the possible consequences of abandonment and  
21 that the Bureau will consider the application abandoned unless the applicant contacts the Bureau  
22 within 30 days from the date of the notice.

23 (3) A refund of any unexpended portion of a background investigation deposit shall be made  
24 if possible.

25 (b)(1) At any time after the Bureau has taken its final action by recommending approval or  
26 issued a report containing no recommendation, the Executive Director may deem an application  
27 abandoned based upon the following:

28 (A) Information related to abandonment provided to the Commission as a result of the  
29 Bureau's background investigation;

30 (B) Failure of the applicant to respond to Bureau or Commission inquiries; or

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1 (C) Notice by the applicant or their designated agent that the application is no longer being  
2 pursued because, for example, the applicant is no longer employed in a capacity that requires  
3 Commission consideration or is deceased.

4 (2) Where the Bureau has taken its final action, the Commission may deem an application  
5 abandoned at its discretion, taking into consideration those criteria listed under subsection (a).  
6 The refund of any unexpended portion of a background investigation deposit shall be determined  
7 at the Commission's discretion.

8 (3) If an application has been deemed abandoned, notice shall be sent to the applicant,  
9 pursuant to Section 12006, with a copy to the Bureau, stating the reasons for abandonment of the  
10 application, and a non-exhaustive list of the possible consequences of abandonment and that the  
11 Commission will consider the application abandoned unless the applicant contacts the  
12 Commission within 30 days from the date of the notice.

13 (4) A refund of any unexpended portion of a background investigation deposit shall be made  
14 if possible.

15 Note: Authority cited: Sections 19811, 19823, 19824, 19840, 19841, 19893, and 19951, Business and Professions  
16 Code. Reference: Sections 19859, 19867, 19869, 19880, 19881, 19890, 19891, and 19951, Business and  
17 Professions Code.

## 18 ARTICLE 2. INTERIM RENEWAL LICENSES.

### 19 § 12035. Issuance of Interim Renewal Licenses.

20 (a) The Commission shall issue an interim renewal license to an applicant for renewal of a  
21 license when:

22 (1) The Commission has elected to hold an evidentiary hearing pursuant to paragraph (2) of  
23 subsection (a) of Section 12054;

24 (2) The Executive Director determines pursuant to subsection (a) of Section 12060 that it is  
25 appropriate for the application to be considered at a GCA hearing; or,

26 (3) An accusation is pending under Chapter 10 of this division.

27 (b) The following conditions shall apply to all interim renewal licenses issued under  
28 subsection (a):

29 (1) An interim renewal license shall be issued with the same conditions, limitations, or  
30 restrictions, if any, as existed for the previous license, except for any condition that by  
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1 Commission decision have been determined to be satisfied and no longer applicable.

2 (2) An interim renewal license shall be valid for a period of two years from the date the  
3 previous license expires, or until a decision is final under Section 12066, whichever is sooner,  
4 and is not subject to renewal. The Commission may issue additional interim renewal licenses if  
5 the hearing process has not, or will not be concluded by the expiration date of the current interim  
6 renewal license.

7 (3) The holder of an interim renewal license for a state gambling license shall pay all  
8 applicable annual fees associated with that state gambling license.

9 (4) The issue date of the most recently granted interim renewal license shall serve as the issue  
10 date for any regular license granted thereafter.

11 (5) The issuance of an interim renewal license does not limit or impair, and is without  
12 prejudice to, any exercise of the discretion vested in the Commission with respect to the license  
13 at issue in the hearing process.

14 (6) The issuance of an interim renewal license is without prejudice to the Bureau's  
15 prosecution of an accusation and has no preclusive effect on any ground for discipline that may  
16 exist against the licensee, whether or not presented in an accusation.

17 Note: Authority cited: Sections 19811, 19823, 19824, 19840, 19841, 19893, and 19951, Business and Professions  
18 Code. Reference: Sections 19859, 19867, 19869, 19876, 19880, 19881, 19890, 19891, and 19951, Business and  
19 Professions Code.

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### 21 ~~§ 12047. Withdrawal of Applications.~~

22 ~~A request by an applicant to withdraw the submitted application may be made at any time~~  
23 ~~prior to the final action by the Bureau. The request shall be made in writing to the Commission.~~  
24 ~~The Commission, pursuant to Business and Professions Code section 19869, may deny the~~  
25 ~~request or may grant the request, with or without prejudice. (a) If a request for withdrawal is~~  
26 ~~granted without prejudice, any unused portion of the background investigation deposit shall be~~  
27 ~~refunded by the Commission. (b) If a request for withdrawal is granted with prejudice, the~~  
28 ~~applicant shall not be eligible to apply again for licensure or approval until after the expiration of~~  
29 ~~one year from the date the request for withdrawal is granted. Any unused portion of the~~  
30 ~~background investigation deposit shall be refunded by the Commission. (c) If the request for~~  
31 ~~withdrawal is denied, the Bureau shall proceed with the investigation of the applicant and~~  
32 ~~provide a recommendation to the Commission for action on the application.~~

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1 Authority: Business and Professions Code Sections 19811, 19823, 19824, 19840, 19841, 19893, and 19951.  
2 Reference: Business and Professions Code Sections 19859, 19867, 19869, 19880, 19881, 19890, 19891, 19951, and  
3 19984.

## 4 5 ~~§ 12048. Abandonment of Applications.~~

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

14 Authority: Business and Professions Code Sections 19811, 19823, 19824, 19840, 19841, 19893, and 19951.  
15 Reference: Business and Professions Code Sections 19859, 19867, 19869, 19880, 19881, 19890, 19891, and 19951.

## 16 17 ~~§ 12050. Hearing Procedures; Appeal of Denial of or Imposition of Conditions on~~ 18 ~~application for license, permit, or request for finding of suitability.~~

19 (a) If the Bureau, after an investigation pursuant to Business and Professions Code section  
20 19826, subdivision (a), issues a recommendation to deny, limit, restrict, or condition a license,  
21 permit, or finding of suitability, the Bureau shall provide the applicant with a copy of the  
22 Bureau's final report as described in Business and Professions Code section 19868, subdivision  
23 (b), which includes a detailed factual and/or legal basis for any recommendation as well as the  
24 Bureau's recommendation to the Commission and any supplemental documents provided to the  
25 Commission at the time of the report and recommendation. Any applicant for any license,  
26 permit, or finding of suitability for whom Commission staff has issued a recommendation of  
27 denial or imposition of conditions shall be given notice by certified mail of the Commission  
28 meeting at which the application is scheduled to be heard and the Commission staff  
29 recommendation at least 10 days prior to the meeting. The applicant shall be afforded the  
30 opportunity to: (1) Address the Commission by way of an oral statement at a noticed  
31 Commission meeting, and/or may submit documents in support of the application, or (2) Request  
32 an evidentiary hearing.

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

6 (1) If the hearing is to proceed pursuant to Business and Professions Code section 19825  
7 (Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the  
8 Government Code; California Code of Regulations, title 1, section 1000 et seq.), the hearing  
9 shall be before an administrative law judge sitting on behalf of the Commission. Notice shall be  
10 effected pursuant to Government Code section 11500 et seq.

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

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

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

31 (C) Within the guidelines of subsection (b)(2)(A) above, each party shall have the right to

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1 call and examine witnesses; to introduce relevant exhibits and documentary evidence; to cross-  
2 examine opposing witnesses on any relevant matter, even if the matter was not covered in the  
3 direct examination; to impeach any witness, regardless of which party first called the witness to  
4 testify; and to offer rebuttal evidence. If the applicant does not testify on the applicant's own  
5 behalf, the applicant may be called and examined as if under cross examination.

6 (D) The hearing need not be conducted according to technical rules of evidence. Any  
7 relevant evidence may be considered, and is sufficient in itself to support findings if it is the sort  
8 of evidence on which responsible persons are accustomed to rely in the conduct of serious  
9 affairs, regardless of the existence of any common law or statutory rule that might make  
10 improper the admission of that evidence over objection in a civil action. A presiding officer,  
11 which shall be an administrative law judge or an attorney designated by the Commission, shall  
12 rule on the admissibility of evidence and on any objections raised.

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

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

16 (G) At the conclusion of the hearing, the Commission shall take the matter under submission  
17 and may schedule future closed session meetings for deliberation. In taking the matter under  
18 consideration, any Commissioner who participated at the hearing shall be allowed to vote by  
19 mail or by other appropriate method. Within 30 days of the conclusion of the hearing, the  
20 Commission shall issue a decision which complies with Business and Professions Code section  
21 19870, subdivision (c), and shall serve the decision by certified mail on the applicant and on any  
22 business entity with which the applicant is associated.

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

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

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

3 (2) If the denied applicant is an officer, director, employee, agent, representative, or  
4 independent contractor of a corporation licensed, registered, or found suitable by the  
5 Commission, the denied applicant shall resign according to the date specified in the decision and  
6 shall so notify the Commission in writing.

7 (3) If the denied applicant is an officer or director of a corporation licensed, registered, or  
8 found suitable by the Commission, the corporation shall immediately remove that person from  
9 office and shall so notify the Commission in writing. If the denied applicant is an employee,  
10 agent, representative, or independent contractor of a corporation licensed, registered, or found  
11 suitable by the Commission, the corporation shall terminate its relationship with that person  
12 pursuant to the date specified in the decision and shall so notify the Commission in writing. The  
13 denied applicant and the corporation licensed, registered, or found suitable by the Commission  
14 shall comply with Business and Professions Code section 19882.

15 (4) If the denied applicant is a general or limited partner in a general or limited partnership  
16 licensed, registered, or found suitable by the Commission, the denied applicant shall resign as  
17 partner. If the denied applicant is an owner or holder of an interest in a limited partnership  
18 licensed, registered, or found suitable by the Commission, the denied applicant and the limited  
19 partnership shall comply with Business and Professions Code section 19892 and shall so notify  
20 the Commission in writing.

21 (5) If the denied applicant is a principal in a business entity not otherwise described above  
22 which is licensed, registered, or found suitable by the Commission, the denied applicant shall  
23 resign his or her position within that entity and divest whatever interest is held in that entity  
24 pursuant to the timelines and instructions specified in the decision, and shall so notify the  
25 Commission in writing. The business entity shall remove the denied applicant from any  
26 principal role in the business entity and shall so notify the Commission in writing.

27 (6) An applicant denied a license, permit, registration, or finding of suitability, or whose  
28 license, permit, registration, or finding of suitability has had conditions imposed upon it may  
29 request reconsideration by the Commission within 30 days of notice of the decision. The request  
30 shall be in writing and shall outline the reasons for the request, which must be based upon either  
31 newly discovered evidence or legal authorities that could not reasonably have been presented

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1 before the Commission's issuance of the decision or at the hearing on the matter, or upon other  
2 good cause for which the Commission in its discretion decides merits reconsideration. The  
3 Commission Chair may delegate to the Executive Director the authority to determine whether to  
4 place requests for reconsideration on the Commission agenda or to act on them at the  
5 Commission staff level. If placed on the Commission agenda, the applicant requesting  
6 reconsideration shall be notified of the date and time of the agenda item. The granting or denial  
7 of reconsideration is at the discretion of the Commission. The Commission shall notify the  
8 applicant requesting reconsideration whether or not reconsideration is granted or denied within  
9 30 days of the applicant's request. If the Commission grants reconsideration, the effective date  
10 of the decision shall be stayed or vacated, at the Commission's discretion, while the decision is  
11 reconsidered.

12 (d) An appeal of a denial or imposition of conditions by the Commission shall be subject to  
13 judicial review under Code of Civil Procedure section 1085 (pursuant to Business and  
14 Professions Code section 19870, subdivision (e)). Neither the right to petition for judicial review  
15 nor the time for filing the petition shall be affected by failure to seek reconsideration.

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

18 Note: Authority cited: Sections 19804, 19870 and 19872, Business and Professions Code. Reference: Sections  
19 19868, 19870, 19879, 19883, 19892, Business and Professions Code.

## 20 21 ARTICLE 3. HEARING PROCEDURES AND DECISIONS.

### 22 § 12050. Commission Meetings; General Procedures; Scope; Rescheduling of Meeting.

23 (a) Nothing in this Article is intended to limit the Commission's authority or discretion under  
24 the Act or this division including, without limitation, the way it reviews an application.

25 (b) This Article does not apply to accusations brought under Business and Professions Code  
26 section 19930, subdivision (b) to revoke, suspend, or discipline a license, registration, permit,  
27 finding of suitability, renewal or other approval under the Act or a matter proceeding pursuant to  
28 Chapter 10 of this division.

29 (c) An applicant for any license, permit, finding of suitability, renewal, or other approval  
30 shall be given notice of the meeting at which the application is scheduled to be heard and a copy  
31 of any Commission staff report and any recommendation at least 10 days prior to the meeting

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1 date. Notice shall be given pursuant to Section 12006.

2 (1) If the application is to be scheduled as a consent item the notice shall inform the applicant  
3 of the following:

4 (A) The date, time and location of the Commission meeting at which the application is  
5 scheduled to be heard;

6 (B) That the item will not be discussed but may be rescheduled as an agenda item at a  
7 subsequent meeting at the discretion of a Commissioner or the Executive Director.

8 (2) If the application is to be scheduled as an agenda item the notice shall inform the  
9 applicant of the following:

10 (A) The date, time and location of the Commission meeting at which the application is  
11 scheduled to be heard;

12 (B) That the applicant will be afforded the opportunity to:

13 1. Address the Commission by way of an oral statement, written statement, or both; and

14 2. Submit documents in support of the application, provided however that documents which  
15 are not provided to the Commission and Bureau with sufficient time for consideration may result  
16 in the documents not being considered or the application being continued, at the Commission's  
17 discretion.

18 (C) That the application may be rescheduled for consideration at an evidentiary hearing  
19 pursuant to Section 12058, by Commission action.

20 (d) Any application for a license, permit, approval or finding of suitability scheduled for  
21 Commission consideration at a noticed public meeting may be rescheduled for a later public  
22 meeting by the Executive Director, prior to the meeting, or by the Commission at the meeting,  
23 provided that in the case of renewal applications, the Commission must act before the license  
24 expires.

25 (e) Individuals who provide testimony at a Commission meeting may be sworn in by the  
26 Commissioners or Executive Director as they deem appropriate.

27 Note: Authority cited: Sections 19811, 19823, 19824, 19840, and 19841, Business and Professions Code.  
28 Reference: Sections 19816, 19823, 19824, 19834, 19856, 19870, 19871, 19876 and 19930, Business and  
29 Professions Code.

30  
31 **§ 12052. Bureau Recommendation and Information; Commission Staff Recommendation.**

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1 (a) When the Bureau issues its final action with a recommendation to deny, limit, restrict, or  
2 condition a license, permit, finding of suitability, renewal, or other approval, as described in  
3 Business and Professions Code section 19868, subdivisions (b) and (c):

4 (1) The Bureau shall provide to the applicant a copy of the following:

5 (A) The final report which shall include any Bureau recommendation to the Commission.

6 (B) A detailed factual and/or legal basis for any recommendation.

7 (C) Any supplemental documents provided to the Commission.

8 (D) Any other information or documentation provided to the Commission.

9 (2) The Bureau need not provide any documents or information that is inconsistent with  
10 Business and Professions Code section 19868, subdivisions (b)(3) and (c)(2).

11 (b) The Commissioners or Administrative Law Judge, sitting on behalf of the Commission at  
12 an APA hearing, will determine what, if any, significance the Bureau's recommendation and the  
13 Commission's staff recommendation shall have regarding the merits of the application. The  
14 Commissioners and Administrative Law Judge are not bound by the recommendations' rationale  
15 or conclusions in any way.

16 Note: Authority cited: Sections 19811, 19823, 19824, 19840, and 19841, Business and Professions Code.  
17 Reference: Sections 19824, 19826, 19827, 19868, 19869, 19870, 19871, and 19930, Business and Professions  
18 Code.

## 19 § 12054. Approval; Commission Elected Hearings.

20 (a) At a Commission meeting, the Commission may take, but is not limited to taking, one of  
21 the following actions:

22 (1) Issue a license, temporary license, interim license, registration, permit, finding of  
23 suitability, renewal or other approval.

24 (2) Elect to hold an evidentiary hearing in accordance with Section 12056 and when for  
25 renewal, issue an interim renewal license pursuant to Section 12035.

26 (3) Table or continue an item for consideration at a subsequent meeting, for any purpose,  
27 including obtaining new or additional information from the applicant, Bureau or Commission  
28 staff, provided however that in the case of renewals, the Commission must act on the application  
29 before the license expires.

30 (4) Extend a state gambling license for up to 180 days as necessary, as provided in Business  
31 and Professions Code section 19876, subdivision (c).  
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1 (5) Approve or deny a request for withdrawal pursuant to Section 12015.

2 (6) Make a finding of abandonment pursuant to paragraph (2) of subsection (b) of Section  
3 12017.

4 (7) If the Bureau has filed an accusatory pleading with the Commission pursuant to Business  
5 and Professions Code section 19930 prior to Commission action on a renewal application, the  
6 Commission may issue an interim renewal license pursuant to Section 12035.

7 (b) If the Commission approves or denies pursuant to paragraphs (5) or (6) of subsection (a),  
8 that decision is final when issued, unless the Commission specifies otherwise. An applicant shall  
9 not have a right to an evidentiary hearing pursuant to Section 12056.

10 Note: Authority cited: Sections 19811, 19823, 19824, 19840, and 19841, Business and Professions Code.  
11 Reference: Sections 19816, 19823, 19824, 19869, 19870, 19871, and 19876, Business and Professions Code.

## 12 13 § 12056. Evidentiary Hearings.

14 (a) If the Commission elects to hold an evidentiary hearing, the hearing will be a GCA  
15 hearing conducted pursuant Section 12060, unless the Executive Director or the Commission  
16 determines the matter should be conducted as an APA hearing pursuant Section 12058. The  
17 applicant may supply information in support of either a GCA or APA hearing.

18 (b) Nothing in this section, Section 12058 or Section 12060 confers upon an applicant a right  
19 to discovery of the Commission's or Bureau's confidential information or to require production  
20 of any document or the disclosure of information which is otherwise prohibited by any provision  
21 of the Gambling Control Act, or is privileged from disclosure or otherwise made confidential by  
22 any other provision of law. Documentary evidence may be redacted as needed to prevent the  
23 disclosure of confidential information. Exculpatory or mitigating information shall not be  
24 withheld from the applicant, but any confidential information may be redacted by the Bureau.

25 (c) Under either an APA or a GCA hearing, all parties will bear his, her or its own costs.  
26 This does not prevent the Bureau from requesting that additional sums be deposited pursuant to  
27 Business and Professions Code section 19867 for any necessary supplemental investigations.

28 Note: Authority cited: Sections 19811, 19823, 19824, 19825, 19840, and 19841, Business and Professions Code.  
29 Reference: Sections 19816, 19823, 19824, 19825, 19868, 19870, 19871, and 19876, Business and Professions  
30 Code; Section 11512, Government Code.

## 31 32 § 12058. APA Hearing.

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1 (a) When the Commission elects to hold an APA hearing the Commission shall determine  
2 whether the APA hearing will be held before an Administrative Law Judge sitting on behalf of  
3 the Commission or before the Commission itself with an Administrative Law Judge presiding at  
4 the hearing in accordance with Government Code section 11512. Notice of the APA hearing  
5 shall be provided to the applicant pursuant to Government Code section 11500 et seq.

6 (b) The burden of proof is on the applicant at all times to prove his or her qualifications to  
7 receive any license or other approval under the Act.

8 (c) The Bureau shall prepare and file a Statement of Issues according to Government Code  
9 section 11504 regardless of any recommendation.

10 (d) The Bureau is not required to recommend or seek any particular outcome, unless it so  
11 chooses, but rather simply to present the facts and law related to the applicant and the Bureau's  
12 background investigation so that the Commission or an Administrative Law Judge can make an  
13 informed decision on whether the applicant has met his or her burden of proof.

14 (e) At the conclusion of the evidentiary hearing, when the Commission is hearing the matter,  
15 the members of the Commission shall take the matter under submission, may discuss the matter  
16 in a closed session meeting, and may schedule future closed session meetings for deliberation.

17 (f) The evidentiary hearing shall proceed as indicated in the notice, unless and until the  
18 Executive Director or Commission approves any continuance or removal.

19 Note: Authority cited: Sections 19811, 19823, 19824, 19840, and 19841, Business and Professions Code.  
20 Reference: Sections 19816, 19823, 19824, 19825, 19868, 19870, 19871, and 19876, Business and Professions  
21 Code; Section 11512 and 11517, Government Code.

## 22 § 12060. GCA Hearings.

23 (a) If the Executive Director determines it is appropriate he or she may set an application for  
24 consideration at a GCA hearing in advance of a meeting pursuant to Section 12054. The  
25 Executive Director shall give notice to the applicant, pursuant to Section 12006, and to the  
26 Office of the Attorney General and Bureau no later than 60 days in advance of the GCA hearing.

27 (1) The Executive Director's decision will be based on information contained in the Bureau's  
28 report or other appropriate sources including, without limitation, a request from the Bureau or  
29 applicant as well as the Commission's operational considerations. The Commission retains the  
30 authority to refer the matter to an APA hearing pursuant to subsection (a) of Section 12056 or  
31 hear the matter at a Section 12054 meeting if the Commission deems it appropriate.  
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1 (2) Any item pursuant to subsection (e) must be exchanged at least 30 days prior the GCA  
2 hearing.

3 (b) If the Commission elects to hold an evidentiary hearing pursuant to paragraph (2) of  
4 subsection (a) of Section 12054, and that evidentiary hearing is a GCA hearing, the hearing shall  
5 be scheduled a minimum of 30 days following the action.

6 (1) If the applicant, the Bureau or the applicant and the Bureau indicate to the presiding  
7 officer or the Commission that they will present items to the Commission that would require an  
8 exchange pursuant to subsection (e), a continuance shall be granted. The continuance shall be of  
9 sufficient time to allow the exchange of items pursuant to (e) at least 30 days prior to the revised  
10 hearing date.

11 (c) The Executive Director shall designate a presiding officer which shall be:

12 (1) A properly segregated member of the Commission's legal staff; or,

13 (2) An Administrative Law Judge.

14 (d) The applicant, the Bureau, or the applicant and Bureau, may request a continuance in  
15 writing to the Executive Director stating the reason for the continuance and any proposed future  
16 hearing dates. The Executive Director or Commission may approve the request.

17 (e) The Bureau and applicant shall exchange the following items prior to the GCA hearing:

18 (1) A list of potential witnesses with the general subject of the testimony of each witness;

19 (2) Copies of all documentary evidence intended to be introduced at the hearing and not  
20 previously provided;

21 (3) Reports or statements of parties and witnesses, if available; and

22 (4) All other written comments or writings containing relevant evidence.

23 (f) In advance of the GCA hearing, upon a motion of a party or by order of the presiding  
24 officer, the presiding officer may conduct a pre-hearing conference, either in person, via  
25 teleconference, or by email exchange, subject to the presiding officer's availability and shall  
26 issue a pre-hearing order if appropriate or requested by either party. The pre-hearing conference  
27 and order may address the following:

28 (1) Evidentiary issues;

29 (2) Witness and exhibit lists;

30 (3) Alterations in the Bureau recommendation;

31 (4) Stipulation for undisputed facts including the admission of the Bureau's report; and

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1 (5) Other issues as may be deemed appropriate to promote the orderly and prompt conduct of  
2 the hearing.

3 (g) The Commission may, at any time upon a showing of prejudice by the objecting party:

4 (1) Prohibit the testimony of any witness or the introduction of any documentary evidence  
5 that has not been disclosed pursuant to subsection (e); or

6 (2) Delay any meeting or hearing as necessary to mitigate any prejudice.

7 (h) The Bureau shall present all facts and information in the Bureau's report, the results of its  
8 background investigation, and the basis for their recommendation.

9 (i) The burden of proof is on the applicant at all times to prove his or her qualifications to  
10 receive any license or other approval under the Act.

11 (j) The Bureau is not required to recommend or seek any particular outcome during the  
12 evidentiary hearing, unless it so chooses, but rather simply to present the facts and law related to  
13 the applicant and the Bureau's background investigation, along with any recommendation  
14 already filed with the Commission according to Business and Professions Code sections 19868  
15 so that the Commission can make an informed decision on whether the applicant has met his or  
16 her burden of proof.

17 (k) The applicant may choose to represent himself, herself, or itself, or may retain an attorney  
18 or lay representative.

19 (l) Except as otherwise provided in subsection (g), the Bureau and applicant shall have the  
20 right to call and examine witnesses under oath; to introduce relevant exhibits and documentary  
21 evidence; to cross-examine opposing witnesses on any relevant matter, even if the matter was not  
22 covered in direct examination; to impeach any witness, regardless of which party first called the  
23 witness to testify; and to offer rebuttal evidence. If the applicant does not testify on his, her or its  
24 own behalf, the applicant may be called and examined, under oath, as if under cross-  
25 examination.

26 (m) The GCA hearing need not be conducted according to technical rules of evidence. Any  
27 relevant evidence may be considered, and is sufficient in itself to support findings if it is the sort  
28 of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs,  
29 regardless of the existence of any common law or statutory rule that might make improper the  
30 admission of that evidence over objection in a civil action. A presiding officer shall rule on the  
31 admissibility of evidence and on any objections raised but for subsection (g).

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1 (n) Oral evidence shall be taken upon oath or affirmation, which may be administered by the  
2 Executive Director, a member of the Commission, or the presiding officer, if an Administrative  
3 Law Judge.

4 (o) At the conclusion of the evidentiary hearing, the members of the Commission shall take  
5 the matter under submission, may discuss the matter in a closed session meeting, and may  
6 schedule future closed session meetings for deliberation.

7 Note: Authority cited: Sections 19811, 19823, 19824, 19840, and 19841, Business and Professions Code.  
8 Reference: Sections 19816, 19823, 19824, 19824.5, 19825, 19868, 19870, 19871, and 19876, Business and  
9 Professions Code; Section 11512, Government Code.

## 10 11 § 12062. Issuance of GCA Hearing Decisions.

12 (a) Within 30 days of the conclusion of a GCA hearing, the presiding officer shall prepare  
13 and submit to the Commission a proposed decision containing a detailed statement of its reasons,  
14 including:

15 (1) Findings of fact;

16 (2) Conclusions of law; and,

17 (3) An order.

18 (b) Within 45 days of the issuance of the proposed decision, the Commission shall issue its  
19 decision, which shall comply with Business and Professions Code section 19870, and shall be  
20 served pursuant to Section 12006 and, in the case of a gambling license, on any associated or  
21 endorsed owner or owner-licensee.

22 (c) All decisions of the Commission issued pursuant to this section shall specify an effective  
23 date and may include further directions as to any stay provisions or orders to divest.

24 (d) Only members of the Commission who heard the evidence presented in the hearing are  
25 eligible to vote on a decision and may vote by mail or by another appropriate method unless such  
26 a requirement would prevent the existence of a quorum qualified to act on the particular  
27 application. In that event, a member of the Commission who has not heard the evidence may be  
28 allowed to vote after a review of the complete record and any additional briefing or hearing the  
29 Commission believes necessary.

30 Note: Authority cited: Sections 19811, 19823, 19824, 19840, and 19841, Business and Professions Code.  
31 Reference: Sections 19823, 19824, 19825, 19870, 19871, 19876, 19883 and 19892, Business and Professions Code.

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## § 12064. Requests for Reconsideration.

(a) After the Commission issues a decision following a GCA hearing conducted pursuant to Section 12056, an applicant denied a license, permit, registration, or finding of suitability, or whose license, permit, registration, or finding of suitability has had conditions, restrictions, or limitations imposed upon it, may request reconsideration by the Commission within 30 days of service of the decision.

(b) A request for reconsideration shall be in writing to the Commission and shall state the reasons for the request, which must be based upon either:

(1) Newly discovered evidence or legal authorities that could not reasonably have been presented before the Commission's issuance of the decision or at the hearing on the matter; or

(2) Other good cause for which the Commission may decide, in its sole discretion, merits reconsideration.

(c) The Executive Director shall determine whether a request for reconsideration is complete and if so shall place the request on the Commission's agenda within 60 days of its receipt. The applicant shall be given at least 10 days advance written notice, pursuant to Section 12006, of the date and time of the Commission meeting at which the request will be heard. The applicant, whether present at that meeting or not, shall be notified in writing of the Commission's decision on the request within 10 days following the meeting pursuant to Section 12006.

(d) The effective date of the decision will be stayed while the request is under review by the Commission.

(e) The granting or denial of reconsideration under this section shall be at the sole discretion of the Commission.

Note: Authority cited: Sections 19811, 19823, 19824, 19840, and 19841, Business and Professions Code.  
Reference: Sections 19823, 19824, 19825, 19870, 19871, and 19876, Business and Professions Code; Section 11521 Government Code.

## § 12066. Final Decisions; Judicial Review.

(a) A Commission decision is final following a GCA or APA hearing, subject only to judicial review:

(1) The effective date specified in the decision or 30 days after service of the decision if no effective date is specified, and if reconsideration under Section 12064 has not been requested; or,

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1 (2) Immediately after the Commission affirms its decision or issues a reconsidered decision if  
2 reconsideration has been granted under Section 12064;

3 (b) A waiver under paragraphs (1) and (2) of subsection (a) does not relieve an applicant of  
4 their obligation to pursue any and all administrative remedies prior to waiver before seeking  
5 judicial review.

6 (c) Neither the right to petition for judicial review nor the time for filing the petition shall be  
7 affected by failure to seek reconsideration.

8 Note: Authority cited: Sections 19811, 19823, 19824, 19840, and 19841, Business and Professions Code.  
9 Reference: Sections 19823, 19824, 19825, 19870, 19871, and 19876, Business and Professions Code; Section  
10 11521 Government Code.

## 11 12 **§ 12068. Decisions Requiring Resignation or Divestiture.**

13 When an application is denied or conditions, limitations, or restrictions are imposed under  
14 the Act or this chapter and that decision is final under Section 12066, any requirements set forth  
15 in the decision shall be complied with, and the following shall apply to the extent not  
16 inconsistent with the decision, as applicable:

17 (a) If the denied applicant is an officer, director, employee, agent, representative, or  
18 independent contractor of a corporation licensed, registered, or found suitable by the  
19 Commission, the denied applicant shall resign according to the date specified in the  
20 Commission's decision and shall so notify the Commission in writing.

21 (b)(1) If the denied applicant is an officer or director of a corporation licensed, registered, or  
22 found suitable by the Commission, the corporation shall remove that person from office  
23 according to the date specified in the Commission's decision and shall so notify the Commission  
24 in writing.

25 (2) If the denied applicant is an employee, agent, representative, or independent contractor of  
26 a corporation licensed, registered, or found suitable by the Commission, the corporation shall  
27 terminate its relationship with that person pursuant to the date specified in the decision and shall  
28 so notify the Commission in writing.

29 (3) Any denied applicant subject to paragraphs (1) or (2) of this subsection and the  
30 corporation licensed, registered, or found suitable by the Commission, shall comply with  
31 Business and Professions Code section 19882, if applicable.

32 (c)(1) If the denied applicant is a general or limited partner in a general or limited partnership

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1 licensed, registered, or found suitable by the Commission, the denied applicant shall resign as a  
2 partner according to the date specified in the Commission's decision and shall so notify the  
3 Commission in writing.

4 (2) If the denied applicant is an owner or holder of an interest in a limited partnership  
5 licensed, registered, or found suitable by the Commission, the denied applicant and the limited  
6 partnership shall comply with Business and Professions Code section 19892 and shall so notify  
7 the Commission in writing.

8 (d) If the denied applicant is a principal in a business entity not otherwise described above  
9 that is licensed, registered, or found suitable by the Commission:

10 (1) The denied applicant shall resign his or her position within that entity and divest whatever  
11 interest is held in that entity pursuant to the timelines and instructions specified in the  
12 Commission's decision, and shall so notify the Commission in writing.

13 (2) The business entity shall remove the denied applicant from any principal role in the  
14 business entity and shall so notify the Commission in writing.

15 Note: Authority cited: Sections 19811, 19823, 19824, 19840, and 19841, Business and Professions Code.  
16 Reference: Sections 19823, 19824, 19825, 19870, 19871, 19876, 19882, 19883 and 19892, Business and  
17 Professions Code.

## CHAPTER 2.1. THIRD-PARTY PROVIDERS OF PROPOSITION PLAYER SERVICES:

### REGISTRATION; LICENSING.

#### ARTICLE 3. LICENSING.

#### **§ 12218.5. Withdrawal of Request to Convert Registration to License.**

23 (a) A request for withdrawal of a request to convert a registration to a license may be made at  
24 any time prior to final action upon the request by the Chief by the filing of a written request to  
25 withdraw with the Commission. ~~For the purposes of this section, final action by the Bureau~~  
26 ~~means a final determination by the Chief regarding his or her recommendation on the request to~~  
27 ~~the Commission.~~

28 ...

29 Note: Authority cited: Sections 19840, 19841 and 19984, Business and Professions Code. Reference: Sections  
30 19869 and 19984, Business and Professions Code.

## CHAPTER 2.2. GAMBLING BUSINESSES: REGISTRATION; LICENSING.

Additions shown in blue underline; Deletions shown in ~~red-strikeout~~. **DRAFT**

Revision Date: May 2, 2013

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## ARTICLE 3. LICENSING.

### **§ 12234. Withdrawal of Request to Convert Registration to License.**

(a) A request for withdrawal of a request to convert a registration to a license may be made at any time prior to final action upon the request by the Chief by the filing of a written request to withdraw with the Commission. ~~For the purposes of this section, final action by the Bureau means a final determination by the Chief regarding his or her recommendation on the request to the Commission.~~

...

Note: Authority cited: Sections 19840, 19841 and 19853(a)(3), Business and Professions Code. Reference: Sections 19853(a)(3) and 19869, Business and Professions Code.