CALIFORNIA GAMBLING CONTROL COMMISSION

INITIAL STATEMENT OF REASONS

CGCC-GCA-2014-02-R

HEARING DATE: **June 18, 2014**

SUBJECT MATTER OF PROPOSED REGULATIONS: **APPLICATION WITHDRAWALS AND ABANDONMENTS, AND HEARING PROCEDURES**

SECTIONS AFFECTED: California Code of Regulations, Title 4, Division 18: **Sections 12002, 12006, 12012, 12015, 12017, 12035, 12050, 12052, 12054, 12056, 12058, 12060, 12062, 12064, 12066, 12068, 12218.5 and 12234**

SPECIFIC PURPOSE OF REGULATORY PROPOSAL:

INTRODUCTION:

The California Gambling Control Commission (Commission) is the state agency charged with the administration and implementation of the California Gambling Control Act (Act).[1] Under the Act, the Commission is required to approve, condition or deny an application for license or other approval at a meeting [evidentiary hearing] where certain provisions must be provided. Regulations concerning the procedures for evidentiary hearings have been prepared to implement and make specific sections 19870 and 19871 of the Business and Professions Code.[2] In addition, section 19872 provides guidance on *ex parte* communications that may occur during the review and approval processes of both the Bureau of Gambling Control (Bureau) and the Commission, and regulations have been included to implement those provisions. Finally, revisions have been proposed for the existing regulations related to the withdrawal of applications, implementing section 19869, along with regulations addressing the abandonment of applications.

PROBLEM ADDRESSED:

Currently, Section 12050 of the Commission's regulations provides procedures for a Gambling Control Act (GCA) evidentiary hearing. The current regulations provide an incomplete hearing procedure and are inconsistent with current Commission practices.

PURPOSE:

This proposed action has been prepared to implement and make specific sections 19869, 19870, 19871 and 19872 by providing a breakdown of the procedures to be followed from the

[1] Business and Professions Code, Division 8, Chapter 4, section 19800 et seq.
[2] All statutory references hereinafter are to the Business and Professions Code, unless otherwise specified.

conclusion of the Bureau's investigation period until any action by the Commission is final. The proposed action will provide transparency by establishing in regulations the details of the Commission's current practices and procedures for the consideration of applications through the evidentiary hearing process.

ANTICIPATED BENEFITS OF PROPOSED REGULATION:

This proposed action will have the benefit of clarifying the hearing process by identifying all of the steps and requirements, and providing clear guidance to the Commission, the Bureau and the applicant, while protecting the applicant's due process and procedural rights. This proposed action will provide Commission and Bureau with a clear process to be followed when processing and reviewing applications that allows each to understand their various roles. The applicant will benefit by understanding the process under which their application will be considered, including how the process can end at their own request and what possible actions could be taken by the Commission. All parties are provided with a clear understanding of when, and what kinds, of communications are allowed once an application has been submitted and through each step of the review process.

PROPOSED ACTION:

This proposed action will make changes within Chapter 1, Division 18, Title 4 of the California Code of Regulations. The proposed changes are as follows:

ARTICLE 1. DEFINITIONS AND GENERAL PROCEDURES.

Amend Section 12002. General Definitions

This proposed action would add seven terms to Section 12002. In addition, five subsections would be updated, and others would be renumbered accordingly.

Subsection (a) adds the term "Administrative Procedure Act Hearing" or "APA hearing" which defines evidentiary hearings which occur pursuant to sections 19825 and 19930 and which proceed pursuant to the Administrative Procedure Act[3] (APA) and Section 1000 et seq. of Title 1 of the California Code of Regulations. This definition provides needed separation between the more formal APA hearing and the default GCA hearing defined below.

Subsection (c) is modified to eliminate language that is no longer applicable in regard to Bureau practices. In the Act, "department" refers to the Department of Justice. While the Act assigns certain powers and authority to the department, in actual practice the responsibility for fulfilling the obligations imposed upon the department is delegated to the Bureau of Gambling Control, pursuant to section 19810. Language has been added to make this clarification.

[3] Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code

Subsection (d) adds the term "Bureau report" to help delineate a point in time under the Act when the Bureau has completed certain efforts in regards to an application. This is beneficial to the Commission, the applicant and the Bureau from an operational perspective.

Subsection (g) updates the definition of "Conviction" to better conform to Penal Code section 1000.1.

Subsection (h) updates the definition of "Deadly Weapon" to conform with recent amendments to the Penal Code which changed the pertinent section from 12020 to 16430.

Subsection (i) adds the term "Employee of the Commission" to differentiate between employees of the Commission and "Members of the Commission" for purposes of prohibitions on ex parte communications. Providing a distinction helps clarify the applicability of the provisions of the Act regarding ex parte communications at different points in the application process as well as helping to deter inappropriate communications.

Subsection (k) adds the abbreviation "GCA" to the previous definition of Gambling Control Act for clarification.

Subsection (l) adds the term "GCA hearing" which is a default evidentiary hearing available to an applicant under the Act. This evidentiary hearing occurs pursuant sections 19870 and 19871. This definition provides the basis for clarity between the two types of hearings (GCA and APA).

Subsection (m) adds the term "Interim License" which is a term more fully developed later in these regulations and in prior regulations adopted by the Commission. Essentially, it is a license of finite duration during the pendency of some ongoing or future event such as an evidentiary hearing, pending accusation, or application process. This definition is necessary to define a category of license which now covers both interim gambling licenses, which were addressed in an approved prior rulemaking package and interim renewal licenses which are addressed in this rulemaking package.

Subsection (n) defines "Member of the Commission" as an individual appointed to the Commission by the Governor pursuant to sections 19811 and 19812. Similar to subsection (h), this helps clarify the application of the provisions of the Act regarding ex parte communications, who can communicate with whom, and when they can communicate.

Subsection (q) adds the term "Temporary License" which is a license that the Commission may issue prior to the consideration of an application. A temporary license is generally subject to conditions that the Commission may deem appropriate on a case-by-case basis. These licenses have been granted in the past and are specifically referenced in section 19824, but have not been specifically addressed in current regulations.

Adopt Section 12006. Service of Notices, Orders and Communications
This proposed action describes how the Commission will communicate with applicants and is the default manner for all notices proposed in this action.

Subsection (a) specifies that when this section is cited, notices will be sent to an applicant, the licensee or designated agent by certified mail at their mailing address. This helps make clear what the parties can expect in advance as well as provide guidance to Commission staff.

Subsection (b) specifies that notice is effective upon mailing of the communication. This helps make clear to parties when the relevant time frames under these regulations and the Act begin to run so that everyone can act accordingly.

Adopt Section 12012. *Ex Parte* Communication
This proposed action addresses and defines *ex parte* communications. The Act[4] imposes prohibitions on communication between "Members of the Commission" and an applicant or an agent of an applicant under certain conditions. These prohibitions are ambiguous. Section 12012 is added to clarify and provide guidance regarding prohibited communications to Members of the Commission, employees of the Commission, Bureau staff, the applicant, and interested parties. Specifically, the proposed regulation does the following:

Subsection (a) states that any communication by a party with the Commission without first providing notice to all parties so that there will be opportunity to participate in the communication is an *ex parte* communication or ex parte.

Subsection (b) clarifies that the ex parte limitations of section 19872, subdivisions (a) and (b), apply as soon as an application is filed with the Bureau until the Bureau report is issued. This clarification is necessary to provide a finite starting and ending point to the ex parte limitations, which provides reasonable guidelines for all parties.

Subsection (c) clarifies that the ex parte limitations of section 19872, subdivisions (a) and (c), apply when the Bureau report is issued until a decision is final pursuant to Section 12066. This clarification is necessary to provide a finite starting and ending point to the ex parte limitations, which provides reasonable guidelines for all parties.

Subsection (d) excludes from ex parte communications those which are:

- Related to procedure or at a properly noticed meeting. The exclusion of communications made on the record follows the exemption allowed by subdivision (f) of Business and Professions Code section 19872 and is included in the proposed regulation in order to maintain a consistent location of all exceptions. The exclusion of communications regarding procedure is required so that a party may ask clarifying questions of Commission staff related to the hearing process as defined in the

[4] Specifically, section 19872

proposed regulations and so that procedural clarification need not become a complicated part of the process.

- Provided by the applicant to an employee or member of the Commission while the application is pending disposition before either the Bureau or the Commission, which is simultaneously provided to the Bureau. The exclusion of this form of communication is provided as clarification to subdivision (e) of Business and Professions Code section 19872 which provides that communications "without notice and opportunity for all parties to participate" are "*ex parte*." As that subdivision defines what is "*ex parte*," this proposed exclusion identifies communications that are not "*ex parte*."
- Provided by the Bureau to an employee or member of the Commission while the application is pending disposition before the Commission, which is simultaneously provided to the applicant. The exclusion of this form of communication is provided as clarification to subdivision (e) of Business and Professions Code section 19872 which provides that communications "without notice and opportunity for all parties to participate" are "*ex parte*." As that subdivision defines what is "*ex parte*," this proposed exclusion identifies communications that are not "*ex parte*."
- Provided by an interested party while the application is pending disposition before either the Bureau or the Commission to an employee or member of the Commission, which is also provided to the Bureau and applicant. The exclusion of this form of communication is provided as clarification to subdivision (e) of Business and Professions Code section 19872 which provides that communications "without notice and opportunity for all parties to participate" are "*ex parte*." As that subdivision defines what is "*ex parte*," this proposed exclusion identifies communications that are not "*ex parte*."

An exception is allowed for the Bureau to provide confidential information to the Commission without it also being provided to the applicant.

In order to protect due process it is important that those individuals making a decision on an application are not allowed to become biased through communications with a party to the application, either the Bureau or the applicant. This improper communication is defined by Business and Professions Code section 19872 as "*ex parte*." This definition provides two qualifiers in determining if a communication is "*ex parte*" or not: (1) the communication is upon the merits of the application; and, (2) the communication is made without notice and opportunity for all parties to participate. The regulations are necessary as they provide clarity on when a communication does not fall under these two qualifications, either because the communication is not upon the merits of the application [such as related to procedure] or when the opportunity to participate in the communication has been provided to all parties [such as during a properly noticed meeting or when all parties are simultaneously provided with the communication].

Subsection (e) clarifies that the ex parte limitations of Government Code sections 11430.10 through 11430.80 apply when an evidentiary hearing has been selected either by the

Commission or the Executive Director, until the decision is final or when the Bureau has filed an accusatory pleading under Section 12554. This clarification is necessary to provide a finite starting and ending point to the ex parte limitations, which provides reasonable guidelines for all parties.

Subsection (f) specifies what must happen if an applicant communicates on an ex parte basis. The information must be provided to the Bureau, the communication may be used as basis to deny the applicant's application, and any subsequent meeting may be delayed. This helps alleviate any prejudice that the ex parte communication may have caused and also eliminates any incentive for the applicant to try to gain an advantage.

Subsection (g) provides operational guidance to Commissioners concerning what happens if a member of the Commission has an ex parte communication; the communication must be publically disclosed along with any information or documents being provided to the other party as soon as possible. Any scheduled meeting may be rescheduled to provide sufficient time to allow all parties to fully participate in the communication. In addition, the member of the Commission may voluntarily withdraw. The proposal also provides options on involuntary withdrawal as well, which include not allowing for involuntary withdrawals, allowing the Commission to consider involuntary withdrawals or allowing sufficient time for an applicant to seek judicial recourse should they feel an involuntary withdrawal is warranted.

Subsection (h) specifies that the Commission and its employees are also subject to ex parte rules in their communications upon the merits of the application with either the applicant or the Bureau. This clarifies that ex parte limitations are in effect for communication in both directions with the Commission and its staff.

<u>Amend Section 12015. Withdrawal of Applications</u>
This proposed action would renumber Section 12047 as Section 12015. This renumbered section continues the current application withdrawal procedures and expands upon them. The application process can be lengthy, especially for those applying to be owners of a cardroom, and requires a significant investment in time and funds for the applicant, the Bureau, and the Commission. If at any point in the process, the applicant no longer wishes to proceed with the application, it is beneficial to all parties to have a procedure by which the application process can be ended. The Act, in section 19869, provides for a request to withdraw an application and differentiates between a withdrawal granted "with prejudice" and one granted "without prejudice."

Subsection (a) defines the time during which an applicant may seek to withdraw his or her application and establishes internal procedures for Commission staff for confirmation of the request. This subsection will provide helpful guidance to the industry, Bureau and Commission staff as to the relevant expectations at any given point in time for withdrawal procedures.

Subsection (b) states that the Commission may grant a request either with or without prejudice, at its discretion, based upon the relevant facts of the application and request. This ensures that the Commission can act in the best interest of the public as directed in statute.

Subsection (c) requires any unused portion of the background investigation deposit to be returned if the request to withdraw is granted. The background deposit is intended to reimburse the Bureau for their expenses related to a background investigation. However, if an application is withdrawn and no further background investigation is required, any unexpended deposit balance should be returned to the applicant. This provides guidance to the Bureau and is informative to the applicant.

Subsection (d) clarifies that, if a request for withdrawal is granted with prejudice, the applicant is not eligible to re-apply for licensure until after one year from the date the requested is granted. This prohibition is imposed by section 19869 and is included in the regulation for clarity.

Subsection (e) requires the Bureau to continue and conclude its investigation of an applicant in the event a request to withdraw an application is denied, as allowed by section 19869.

Subsection (f) clarifies that, consistent with other sections, an applicant who withdraws their application shall not have a right to an evidentiary hearing on the decision.

<u>Amend Section 12017. Abandonment of Applications</u>
This proposed action would renumber Section 12048 as Section 12017. This renumbered section continues the practice of allowing the abandonment of applications under limited specified circumstances.

Subsection (a) defines the process whereby the Chief of the Bureau may deem an application abandoned based on certain criteria, including when an applicant is essentially no longer cooperating in the application process. This section is intended to provide a helpful mechanism to address applications which do not warrant continued Bureau investigation due to lack of cooperation, interest, or other circumstances that may warrant abandonment, such as the applicant's death or unemployment.

Subsection (b) defines a process whereby the Executive Director, after the Bureau has issued its report and has not recommended denial, may deem an application abandoned based on certain criteria, including when an applicant is essentially no longer cooperating in the application process. This subsection is intended to provide a helpful mechanism to address applications which do not warrant Commission consideration due to lack of cooperation, interest, or other circumstances that may warrant abandonment, such as the applicant's death or unemployment.

Subsection (c) defines a process where the Commission, after the Bureau has issued its report, may deem an application abandoned based on certain criteria, including when an

applicant is essentially no longer cooperating in the application process. This subsection is intended to allow the Commission to consider applications that warrant consideration due to lack of cooperation, interest, or other circumstances that may warrant abandonment, such as the applicant's death or unemployment.

Subsection (d) defines the treatment of corresponding deposits related to an abandoned application. This provides important details about the abandonment process.

Subsection (e) clarifies that, consistent with other sections, an applicant whose application has been abandoned shall not have a right to an evidentiary hearing on the decision.

Adopt Section 12035. Issuance of Interim Renewal License
This proposed action adds a new interim renewal license category which extends a current license approval to allow for an evidentiary hearing to occur without an applicant becoming unlicensed prior to Commission action. By holding this interim renewal license, an applicant is responsible for any existing conditions and for those fees normally required of an applicant/licensee.

Subsection (a) states that an interim renewal license shall be issued after the Commission or Executive Director has elected to hold an evidentiary hearing upon a renewal application or where an accusation has been filed. The applicant's previously issued license will, at some point, expire, leaving him or her without a valid license and legally unable to continue in the licensed activity. The interim renewal license is issued to address this gap in licensure while the evidentiary hearing is pending.

Subsection (b) provides the specifics and nature of the interim renewal licenses; including, any restrictions or limitations, the fees required and how the licensee interacts with any ongoing procedures of the Commission.

ARTICLE 2. PROCEDURES FOR HEARING AND MEETINGS ON APPLICATIONS.

Amend Section 12050. Bureau Recommendation and Information
The Act, in subdivision (a) of section 19826, allows the Bureau to recommend the denial or limitation, conditioning, or restriction of any license, permit, or approval, after the completion of a background investigation. This proposed action details the manner in which any recommendation shall be provided to the applicant and how the information may be considered by the Commission.

Subsection (a) requires the Bureau to provide the applicant with the Bureau's report, any recommendation, and any other documents or information at the same time it is provided to the Commission. This requirement ensures that all parties are informed, are provided the same information, and can all properly address the Commission at a Commission meeting.

Subsection (b) clarifies that the authority to make a decision on the suitability of an applicant ultimately rests with the Commission and neither the Commission nor an Administrative Law Judge is bound by the Bureau's recommendation.

Amend Section 12052. Commission Meetings; General Procedures; Scope; Rescheduling of Meeting

This proposed action provides general procedures regarding the hearing process.

Subsections (a) and (b) clarify Commission authority and specify that this article does not apply to disciplinary proceedings. This helps all parties understand their rights and obligations.

Subsection (c) lists the specific notices that applicants are to receive in advance of a meeting and what those notices are to contain. This is to ensure that each applicant is informed and has an opportunity to address the Commission if they so choose. In addition, this subsection incorporates a Notice of Defense Form (CGCC-ND-002). This new form is provided to the applicant to complete, and once returned to the Bureau and Commission, provides important guidance for how the evidentiary hearing process will proceed. The applicant may accept any proposed conditions, waive their participation in the evidentiary hearing or may indicate their interest in continuing and participating in an evidentiary hearing. Should the applicant waive participation in their evidentiary hearing, the subsection provides guidance for how the Commission may choose to consider the application. Should the applicant indicate a desire to participate in the hearing, a space is provided where any legal counsel's or other representative's information can be provided to the Commission and Bureau.

Subsection (d) codifies existing practices which allow the Executive Director to reschedule matters before a meeting and the Commissioners to reschedule matters at a meeting. It does not change the current operation of the Commission. The ability for the Commission to reschedule is an important administrative function that assists in maintaining other requirements, such as the requirement that a quorum be available in order to make certain decisions related to an application, or to assist in scheduling requirements for a meeting. The ability to reschedule is also a necessary function to protect an applicant's due process rights and the rights of the other parties by ensuring sufficient time to respond to new issues or information that may be revealed as part of the overall process.

Subsection (e) clarifies that anyone who provides testimony at a Commission meeting may be sworn in by a member of the Commission or the Executive Director.

Adopt Section 12054. Consideration at Regular (Bagley-Keene) Commission Meetings

This proposed action provides procedural guidance by laying out the various decisions the Commission may make at a non-evidentiary meeting in regards to an application.

Subsection (a) describes the actions Commissioners may take at a Commission meeting, including approval of an application, sending a matter to a hearing under section 12056 (an

evidentiary hearing), extending a license as necessary under section 19876(c), tabling or continuing an item, approving the withdrawal of an application, deeming a license abandoned, and granting an interim renewal license if appropriate. This list is intended to be informative and provides all parties with a non-exhaustive list of the possible actions that may occur during the meeting process.

Subsection (b) states that evidentiary hearings are not available to an applicant when the Commission approves or denies withdrawal or makes a finding of abandonment under paragraphs (5) and (6). This is to improve efficiency and clarity in the application process. If a party wanted to contest the rejection of the withdrawal or abandonment via an evidentiary hearing they are still able to avail themselves of the normal licensing process which affords them an opportunity for an evidentiary hearing.

Adopt Section 12056. Evidentiary Hearing

This proposed action defines the manner by which the Commission or Executive Director determines between an APA and GCA evidentiary hearing format once the Commission has elected to hold an evidentiary hearing. Additional procedural information is also provided.

Subsection (a) states that a GCA hearing, as described in sections 19870 and 19871, is the default evidentiary hearing path, unless otherwise specified by the Commission or the Executive Director. The proposal provides an alternative that would limit the selection of an APA hearing to just those cases where the Bureau has recommended denial. This provides helpful procedural guidance to the applicant as to how an evidentiary hearing is selected.

Another Alternative for the use of the APA hearing process is also being proposed. This alternative would allow for the Commission to utilize the APA hearing process with any application, regardless of Bureau recommendation, but would designate Commission staff to present the case in situations where the Bureau had not recommended denial. This alternative would require numerous adjustments to other sections as follows:

- In addition to the definition of “Employee of the Commission,” in Section 12002, the additional definitions of “Advisor to the Commission” and “Advocate of the Commission” would be required. “Advocate of the Commission” would provide for those staff tasked with presentation during the APA hearing process in the event that the Bureau had not recommended denial. “Advisor to the Commission” would be any employee of the Commission not designated as advocate to the Commission.
- The proposed *ex parte* regulations of Section 12012 would be revised to reflect that any advocates to the Commission would be differently directed in their ability to communicate with the applicant, Bureau and Commission on items related to the merits of a specific application.
- The determination of evidentiary hearings in Section 12056 would be revised to allow for, in cases where an APA hearing is elected and the Bureau has not recommended denial, employees of the Commission to be designated as advocates of the Commission.

- The APA hearing process, in Section 12058, would be revised to allow for the advocate to the Commission to prepare and file the Statement of Issues in cases where the Bureau had not recommended denial.

Subsection (b) reiterates the requirement that certain elements of a Bureau report remain confidential, as specified in the Act. This is meant to comport with the limitations of the Act and does not provide any new basis for withholding information.

Subsection (c) makes clear that under an APA or a GCA hearing, each side bears their own costs. This simply provides guidance to public expectations regarding the licensure process.

Adopt Section 12058. APA Hearings
This proposed action provides procedural guidance for when the Commission or Executive Director elects to hold the evidentiary hearing through the processes of the APA.

Subsection (a) states that the Commission will determine whether an APA hearing will be held before an Administrative Law Judge sitting on behalf of the Commission or before the Commission itself with an Administrative Law Judge presiding, in accordance with Government Code section 11512, and that notice of the hearing will be provided pursuant to the APA. This provides procedural guidance to all parties.

Subsection (b) states that the burden is on the applicant at all times to prove his or her qualifications under the Act. This reiterates the mandate in the Act that the applicant must prove they are suitable for licensure.

Subsection (c) states that the Bureau will prepare and file a Statement of Issues according to Government Code section 11504, whether they made a recommendation or not. This provides guidance to all parties.

Subsection (d) makes it clear that the Bureau is not required to make a recommendation or seek any particular outcome in the APA process, but rather to merely provide the facts to the decision makers. This makes clear what is expected of all parties. This subsection would not be included if the alternative in Section 12056 is adopted limiting the selection of an APA hearing to those cases where the Bureau has recommended denial.

Subsection (e) discusses the process at the end of an evidentiary hearing for the Commission to reach a decision. This provides guidance to the applicant and the Commission.

Subsection (f) clarifies that only the Executive Director or the Commission can delay or cancel any scheduled hearing date.

Adopt Section 12060. GCA Hearings
This proposed action would implement the evidentiary hearing process pursuant to sections 19870 and 19871. This process provides a clear method for the applicant to show the

Commission that they meet the requirements of the Act and are of good character, honesty and integrity.

Subsection (a) creates a path for the Executive Director to schedule an application for a GCA hearing without an initial Bagley-Keene public meeting. The Commission still retains the option of sending a matter that has been scheduled for a GCA hearing to an APA hearing. This is intended to provide a more expeditious resolution of certain applications which would benefit all applicants and the public in general; and, it is also consistent with the spirit of the Act.

Subsection (b) provides guidelines for when the Commission elects to hold an evidentiary hearing pursuant to Section 12054. This is intended to provide a timeline that is accelerated when no documents or witness lists are being included.

Subsection (c) requires the Commission to designate a presiding officer who may be either a member of the Commission's legal staff or an Administrative Law Judge. This provides important clarification under the Act and a procedural requirement for the Commission.

Subsection (d) allows the applicant or the Bureau to request, in writing to the Executive Director, a continuation of the GCA hearing. This allows for a delay as necessary to eliminate any potential burden on the parties and provides flexibility for the Commission.

Subsection (e) requires the Bureau and applicant to exchange certain information and documents in advance of the GCA hearing. The Bureau is required to exchange at least 45 days prior to the GCA hearing, while the applicant is required to exchange at least 30 days prior to the GCA hearing. This provides guidance to both parties as to procedure. Current regulations include a requirement that the Bureau provide information to the applicant at least 30 days prior to a hearing and that the applicant provide information to the Bureau (complainant) at least ten days prior to a hearing. The Bureau has stated that a ten day receipt window is insufficient time for the preparation of a response or rebuttal. In addition, comments from the public suggested that a staggered exchange system was required in order to provide an applicant the ability to formulate its case for approval. The specific 45 and 30 day time periods were selected, with a mind toward the goal of maintaining an unprotracted hearing process.

Subsection (f) provides that the presiding officer rules on the admissibility of evidence and that any ruling is final. This includes that relevant evidence will be admitted and that there are no applicable technical rules which would bar evidence from being admitted so long as reasonable persons would rely on it. This also includes when and how pre-hearing conferences may occur as well as what issues may be discussed during the conference. This provides guidance to both parties and the presiding officer. The ability to hold a pre-hearing conference is necessary to maintain a streamlined GCA hearing process, as parties are able to receive procedural information and resolve evidentiary issues prior to the hearing; issues that if covered at the hearing may result in a longer hearing or necessitate continuances.

Subsection (g) allows the Commission to prohibit the admission of certain evidence upon a showing of prejudice. This provides guidance to both parties so as to discourage certain potential discovery abuses for any potential advantage.

Subsection (h) requires the Bureau to commence the GCA hearing by presenting the facts and information in the Bureau's report, the background investigation, and the basis for any recommendation. The Bureau is not required to make any recommendation or seek any particular outcome, unless it so chooses, but simply to provide the Commission with the facts and law related to the application along with their background investigation so that the Commission can make an informed decision. This provides helpful procedural guidance to the Bureau and applicant. Subdivision (a) of Business and Professions Code section 19870 provides that the Commission must consider the recommendation of the Bureau, but does not provide any requirement to the Bureau for what that recommendation must be. In addition, the proposed requirement to have the Bureau present its report first is helpful to the process as it allows the applicant something to respond to instead of having to prove everything related to their suitability, pursuant to Business and Professions Code sections 19856 and 19857.

Subsection (i) reiterates that the burden remains with the applicant to prove their suitability under the Act.

Subsection (j) makes clear that applicants may represent themselves or retain an attorney or lay representative. This is meant to identify the representation options for the evidentiary hearing proceeding.

Subsection (k) discusses the rights the Bureau or applicant has during a GCA hearing including calling witnesses, introducing documentary evidence, cross-examining witnesses, and impeaching witnesses. The applicant may also be called to testify. This provides helpful procedural guidance to the parties. This is necessary as paragraph (2) of subdivision (a) of Business and Professions Code section 19871, which provides these rights, does not define who the parties that receive the rights are. The proposed language clarifies that it is the Bureau and the applicant who are the parties in a GCA hearing.

Subsection (l) requires that oral evidence be taken upon oath or affirmation, administered by the Executive Director, a member of the Commission, or an Administrative Law Judge. This provides helpful procedural guidance by specifying who shall administer the oath as required pursuant to paragraph (1) of subdivision (a) of Business and Professions Code section 19871.

Subsection (m) discusses the process at the end of an evidentiary hearing for the Commission to reach a decision. This provides guidance to the parties and continues the existing practice of subparagraph (G) of paragraph (2) of subsection (b) of Section 12050. This is necessary to establish another key element in the adjudicatory process.

Adopt Section 12062. Issuance of GCA Hearing Decisions

This proposed action describes the procedural method and requirements by which the Commission proposes its decision following a GCA evidentiary hearing.

Subsection (a) requires that a member of the Commission's legal staff will prepare and submit to the Commission a proposed decision with a detailed statement of reasons within 30 days of the conclusion of the hearing. This provides guidance to the parties and the Commission. This would not prevent an earlier issuance if all the time is not required. This is necessary to ensure a clear and sufficient amount of time is available for the writing of the proposed decision.

Subsection (b) requires the Commission to issue its decision, in compliance with section 19870, within 45 days of the issuance of the proposed decision. The decision shall be served upon the applicant at the applicant's address of record by certified mail. This provides guidance to the parties and the Commission. This would not prevent an earlier issuance if all the time is not required. This is necessary to ensure a clear and sufficient amount of time is available for the consideration and possible revision of the decision and to provide sufficient time to schedule and notice the Commission meeting at which the decision will be adopted.

Subsection (c) requires all decisions to specify an effective date and allows the inclusion of directions as to any stay provisions or orders to divest. This provides guidance to the parties and the Commission for the implementation of proposed sections 12064, 12066 and 12068. This is necessary to ensure that there is a date certain for the purposes of compliance with any order and to establish the date upon which the times to appeal, request reconsideration, or seek judicial review commence.

Subsection (d) restricts voting on the decision to only members of the Commission who heard the evidence presented in the hearing, unless such restriction would prevent the existence of a quorum. In such case, another member may be allowed to vote after a review of the record and any additional briefing or hearing deemed necessary. This provides guidance to the parties and the Commission by providing a clear requirement that only those Commissioners who have participated in, and are knowledgeable of, the specifics of the hearing will be eligible to participate in its decision and that only in cases where a quorum is not available will additional Commissioners be allowed to participate in the decision and then only after they are sufficiently knowledgeable of the specifics of the hearing. This provides a balance between the legal requirement of having a quorum for the issuance of decisions and an acknowledgement that direct participation in a hearing provides a better understanding than a review of the records. In addition, this continues the existing provision of subparagraph (G) of paragraph (2) of subsection (b) of Section 12050. This is necessary to avoid an application rehearing if a quorum cannot be established due to the unavailability of a Commissioner. While rare, this situation could occur when a Commissioner's appointment expires, a Commissioner is ill or incapacitated, or in the case of the death of a Commissioner.

Adopt Section 12064. Requests for Reconsideration

This proposed action defines the procedure by which an applicant can request reconsideration from the Commission after an evidentiary hearing but before any decision becomes final. This proposal continues the existing practice of paragraph (6) of subsection (c) of Section 12050. In addition, the practice of reconsideration is consistent with the process established within the APA and is necessary to preserve the applicant's due process rights when new evidence comes to light. After a decision becomes final, the Commission loses jurisdiction and applicant's only recourse becomes judicial review.

Subsection (a) allows an applicant to request reconsideration of an issued decision within 30 days of service of that decision.

Subsection (b) specifies the conditions under which an applicant may request reconsideration, based upon either newly discovered evidence or legal authorities that could not reasonably have been presented at the hearing or before the Commission's issuance of a decision; or, other good cause for which the Commission may decide, in its sole discretion, merits reconsideration.

Subsection (c) authorizes the Executive Director to initially determine whether a request for reconsideration is complete and should be placed on the Commission's agenda for consideration. This provides important guidelines for the handling of a request including; that the approved request is to be placed on the Commission's agenda within 60 days of its receipt, and requires the applicant to be given at least 10 days advance notice of the Commission meeting at which the request will be considered. This paragraph also states that the applicant will be notified of the Commission's decision on the request within 10 days following the meeting.

Subsection (d) states that a decision will be stayed while the request is under review by the Commission.

Subsection (e) clarifies that the granting or denying of a reconsideration request shall be at the sole discretion of the Commission.

Adopt Section 12066. Final Decisions; Judicial Review

This proposed action provides procedural guidance to applicants related to when a decision of the Commission becomes final and what judicial remedy may be available.

Subsection (a) provides that a decision to withdraw or a finding of abandonment is final, upon either a decision by the Commission or 30 days after a notice of abandonment is issued by either the Executive Director or the Bureau.

Subsection (b) provides that the decision of the Commission following a GCA or APA hearing shall become final: 30 days after service of the decision, if reconsideration has not

been granted; or immediately after the Commission affirms its decision or issues a reconsidered decision, if reconsideration has been granted.

Subsection (c) reiterates that the appeal by the applicant is subject to judicial review under Code of Civil Procedures section 1085.

Adopt Section 12068. Decisions Requiring Resignation or Divestiture
This proposed action relocates much of subsection (c) from former Section 12050 to this section. It remains in substantially the same form.

Repeal Section 12218.5. Withdrawal of Request to Convert Registration to License
This proposed action would repeal this section. With a reframing of general withdrawal provisions, this section is no longer needed.

Repeal Section 12234. Withdrawal of Request to Convert Registration to License
This proposed action would repeal this section. With a reframing of general withdrawal provisions, this section is no longer needed.

UNDERLYING DATA:

Technical, theoretical, or empirical studies or reports relied upon: None.

BUSINESS IMPACT:

The Commission has made an initial determination that the adoption of these regulations would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

This proposed action imposes no mandatory requirement on businesses. The regulation simply provides a clear process to follow should a party's application be sent to an evidentiary hearing for consideration before the Commission. Any costs associated with pursuing a license would be voluntarily are assumed upon the filing of an application. The proposed process provides for numerous opportunities for an applicant to request to end the process and therefore avoid further costs.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

These regulations do not mandate the use of specific technologies or equipment.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

IMPACT ON JOBS/NEW BUSINESSES:

The Commission has determined that this regulatory proposal will not have any impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California.

This proposal is only directed at GCA evidentiary hearings and license applications already being conducted by the Commission. These regulations would only be used by Commission staff, the Bureau of Gambling Control and applicants or their attorney of record. For applicants subject to a GCA evidentiary hearing, there is no requirement to obtain an attorney. The regulation simply provides a clear process to follow for the consideration of applications for licensure and other approvals by the Commission.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or more cost-effective to affected private person and equally effective in implementing the statutory policy or other provision of law.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

(1) Maintain Status Quo: Current regulations are effective and operative and therefore GCA evidentiary hearings could continue without any change by the Commission. Current regulations do not, however, implement the *ex parte* provisions of section 19872. In addition, current Commission needs have expanded beyond those originally considered when the original regulations became effective, and the proposed procedures allow for an update to include these improvements.

(2) No Longer Utilize the GCA Evidentiary Hearing Process: The second alternative considered and rejected by the Commission was to only utilize the procedures of the APA for the purposes of denying or conditioning a license. This option would allow the Commission to be more of an approving agency, mainly just reviewing the proposed decision of the administrative law judge and separating the Commission from any possible investigatory role that an interactive hearing process could allow. This alternative is inconsistent with the Gambling Control Act, which originally intended applications to only be reviewed through the evidentiary process and only later allowed for consideration to take place through the APA.

(3) A Single *Ex Parte* Provision: The third alternative considered and rejected by the Commission was to utilize the *ex parte* provisions of the APA starting at application submittal to the Bureau. Such an interpretation of the APA would render section 19872

surplusage. The provisions of the APA envision its *ex parte* provisions becoming effective upon a request for hearing, which for the purpose of the proposed procedures is not at application submittal. In addition, section 19872 contains nuances in its application that would be overridden should the APA be applied immediately.