

1 California Gambling Control Commission
2 SPECIFIC LANGUAGE OF PROPOSED REGULATIONS
3 APPLICATION WITHDRAWALS AND ABANDONMENTS, AND HEARING PROCEDURES
4 CGCC-GCA-2014-02-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 and 19930, as well as 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, acting as “the department” as provided in section 19810 of the Business and Professions
26 Code. ~~For the filing of any information, reports or forms, Bureau refers to the Sacramento office~~
27 ~~of the Bureau of Gambling Control.~~

28 (d) “Bureau report” means a final determination by the Chief of the Bureau regarding his or
29 her recommendation to the Commission on any application as defined in Business and
30 Professions Code section 19869 as “final action by the department.”

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1 ~~(e)~~ “California ~~g~~Games” means controlled games that feature a rotating player-dealer
2 position, as described in Penal Code section 330.11.

3 ~~(f)~~ “Commission” means the California Gambling Control Commission.

4 ~~(g)~~ “Conviction” means a plea or verdict of guilty or a plea of *nolo contendere*,
5 irrespective of a subsequent order of expungement under the provisions of Penal Code section
6 1203.4, 1203.4a, or 1203.45, or a certificate of rehabilitation under the provisions of Penal Code
7 section 4852.13. ~~Any~~ plea of guilty entered pursuant to Penal Code section 1000.1 does not
8 constitute a conviction for purposes of Business and Professions Code section 19859,
9 subdivisions (c) or (d) unless a judgment of guilty is entered pursuant to Penal Code section
10 1000.3.

11 ~~(h)~~ “Deadly ~~w~~Weapon” means any weapon, the possession or concealed carrying of which
12 is prohibited by Penal Code section ~~12020~~16430.

13 (i) “Employee of the Commission” means the staff employed at the Commission including
14 the Executive Director and all staff under the direction of the Executive Director.

15 ~~(j)~~ “Executive Director” means the executive officer of the Commission, as provided in
16 Business and Professions Code section 19816 or his or her designee. If the Executive Director
17 position is vacant, the “Executive Director” means the officer or employee who shall be so
18 designated by the Commission.

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

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

23 (m) “Interim license” means a license issued by the Commission for some interim period
24 which includes an interim renewal license issued pursuant to Section 12035, an interim gambling
25 license issued pursuant to Section 12349, and an interim key employee license issued pursuant to
26 Section 12354.

27 (n) “Member of the Commission” means an individual appointed to the Commission by the
28 Governor pursuant to Business and Professions Code sections 19811 and 19812, and does not
29 include an employee of the Commission.

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

31 ~~(p)~~ “Surrender” means to voluntarily give up all legal rights and interests in a license,

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1 permit, registration, finding of suitability, or approval.

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

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

8
9 **§ 12006. Service of Notices, Orders and Communications.**

10 (a) When service of any notice or other written communication is specifically required to be
11 made pursuant to this section, service shall be made by certified mail, addressed to the residence
12 address, address of record or mailing address of the applicant, licensee, or designated agent as
13 last reported to the Commission.

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

15 Note: Authority cited: Sections 19811, 19824 and 19840, Business and Professions Code. Reference: Section 19811,
16 19824 and 19840, Business and Professions Code

17
18 **§ 12012. Ex Parte Communication.**

19 (a) For purposes of this section, “ex parte communication” or “ex parte” means a
20 communication without notice and opportunity for all parties to participate in the
21 communication.

22 (b) The limitations on ex parte communication imposed by Business and Professions Code
23 section 19872, subdivisions (a) and (b) shall apply when an application is submitted to the
24 Bureau for investigation until the Bureau report is issued and the communication is upon the
25 merits of the application.

26 (c) The limitations on ex parte communication imposed by Business and Professions Code
27 sections 19872, subdivisions (a) and (c) shall apply when the Bureau report is issued to the
28 Commission until a decision is final pursuant to Section 12066 and the communication is upon
29 the merits of the application.

30 (d) When the ex parte provisions of subsections (b) or (c) apply, the following
31 communications shall not be considered ex parte:

32 (1) Communications related to undisputed issues of practice and procedure that are not based
33 upon the merits of an application.

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1 (2) Communications made at a public hearing or meeting and which concern a properly
2 noticed matter.

3 (3) Information or documents provided by the applicant based upon the merits of an
4 application pending disposition before the Bureau or Commission to an employee or member of
5 the Commission, which is simultaneously provided to the Bureau.

6 (4) Information or documents provided by the Bureau based upon the merits of an application
7 pending disposition before the Commission to an employee or member of the Commission,
8 which is simultaneously provided to the applicant.

9 (5) Information or documents provided by any other interested person based upon the merits
10 of an application pending disposition before the Bureau or Commission to an employee or
11 member of the Commission, which is simultaneously provided to both the Bureau and the
12 applicant.

13 (6) Information or documents provided by the Bureau based upon the merits of an application
14 pending disposition before the Commission to an employee or member of the Commission
15 pursuant to Business and Professions Code section 19822, subdivision (b), but that cannot be
16 provided to the applicant pursuant to Business and Professions Code section 19821, subdivision
17 (d), and section 19868 subdivisions (b)(3) and (c)(2), and which is provided as follows:

18 (A) The Bureau first provides redacted information or documents to both an employee or
19 member of the Commission and the applicant;

20 (B) If an employee or member of the Commission requests an unredacted copy of the
21 information or documents, the Commission shall provide a notice to the applicant, pursuant to
22 Section 12006, allowing at least 14 days for the applicant to object and pursue any appropriate
23 judicial remedies to challenge the request and seek a judicial in camera review of the
24 confidentiality and relevancy of the information;

25 (C) The Bureau shall provide the unredacted information or documents only to an employee
26 or member of the Commission and only after the time period specified to seek judicial review
27 has elapsed, or the appropriate judicial remedies have been exhausted, whichever is later.

28 (e) The limitations on *ex parte* communication imposed by Government Code sections
29 11430.10 through 11430.80 shall apply from when:

30 (1) The Executive Director has elected to hold an evidentiary hearing under subsection (a) of
31 Section 12060 until any decision is final pursuant to Section 12066;

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1 (2) The Commission has elected to hold an evidentiary hearing under paragraph (2) of
2 subsection (a) of Section 12054 until any decision is final pursuant to Section 12066; or,

3 (3) The Bureau has filed an accusatory pleading under Section 12554 or Business and
4 Professions Code section 19930 until any decision is final pursuant to Government Code section
5 11519.

6 (f) If an applicant, the Bureau or other interested person communicates directly or indirectly
7 on an *ex parte* basis with a member of the Commission, including indirectly through submission
8 of information or documentation to an employee of the Commission, then:

9 (1) All information, documentation and responses shall immediately be provided to the
10 Bureau, applicant or Bureau and applicant.

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

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

16 (g)(1) A member of the Commission who communicates on an *ex parte* basis with an
17 applicant, the Bureau, or other interested persons must publicly disclose the communication, and
18 provide notices to both the applicant and Bureau pursuant to Section 12006. The notice shall
19 contain any information or document(s) conveyed and shall be provided to the applicant and the
20 Bureau as soon as possible so that they may participate in the communication. Any meeting or
21 hearing following the provision of this communication may be delayed as necessary to allow for
22 the full participation of all parties. The member of the Commission may voluntarily withdraw
23 from consideration of an application as long as the withdrawal would not prevent the existence
24 of a quorum qualified to act on the particular application.

25 (2) A member of the Commission who has participated in an *ex parte* communication may be
26 excluded from consideration of an application by an order of the Commission made at the
27 request of the applicant.

28
29 **Alternative 1: Member disqualification is only through judicial recourse [Cannot be**
30 **requested with Alternative 2]**

31 (2) A member of the Commission who has participated in an *ex parte* communication may be

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1 excluded from consideration of an application by an order of a Court. An applicant who seeks to
2 exclude a member of the Commission will be given 14 days to seek a court order upon request.

3
4 **Alternative 2: Member disqualification is only voluntary [Cannot be requested with**
5 **Alternative 1]**

6 (2) [This paragraph would not be included and the subsection would have designations
7 revised to reflect the removal of paragraph (2).]

8
9 (h) An employee of the Commission may communicate and convey information or
10 documents upon the merits of an application as long as it is simultaneously conveyed to both the
11 applicant and the Bureau so that they may participate in the communication.

12 Note: Authority cited: Sections 19811, 19823, 19824, 19840, 19841, and 19872, Business and Professions Code;
13 Sections 11400.20, 11410.40, 11415.10, and 11415.20, Government Code. Reference: Sections 19821, 19822,
14 19825, 19868, 19870, 19871, 19872, and 19930, Business and Professions Code; Sections, 11425.10, 11430.10,
15 11430.20, 11430.30, 11430.50, and 11430.60, Government Code.

16
17 **§ ~~12047~~12015. Withdrawal of Applications.**

18 (a) A request by an applicant to withdraw the submitted application may only be made-~~at any~~
19 ~~time~~ prior to the ~~final action by the~~ Bureau report being issued to the Commission. The request
20 shall be made in writing to the Bureau and the Commission.~~The Commission, pursuant to~~
21 ~~Business and Professions Code section 19869, may deny the request or may grant the request,~~
22 ~~with or without prejudice.~~ Upon receipt of the request to withdraw, Commission staff shall send
23 written confirmation of receipt pursuant to Section 12006. The Bureau shall stay any
24 investigation of the applicant being conducted under Business and Professions Code section
25 19868. The Executive Director shall, upon receipt of any information or documentation
26 provided by the Bureau, place the request before the Commission for consideration at a regularly
27 scheduled meeting pursuant to Section 12054.

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

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

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

7 ~~(e)~~(e) If the request for withdrawal is denied, the Bureau shall proceed with the investigation
8 of the applicant and provide a recommendation ~~to the Commission for action on the application~~
9 pursuant to Business and Professions Code section 19826.

10 (f) An applicant who withdraws their application shall not have a right to an evidentiary
11 hearing pursuant to Section 12056.

12 Note: Authority cited: ~~Business and Professions Code~~ Sections 19811, 19823, 19824, 19840, 19841, 19869, 19893,
13 and 19951 Business and Professions Code. Reference: ~~Business and Professions Code Sections~~ 19859, 19867,
14 19869, 19880, 19881, 19890, 19891, 19951, and 19984 Business and Professions Code.

15
16 **§ ~~12048~~ 12017. Abandonment of Applications.**

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

25 (a)(1) At any time before the Bureau report is issued to the Commission, the Chief of the
26 Bureau may deem an application abandoned based upon the following:

27 (A) Failure of the applicant to respond to Bureau inquiries; or,

28 (B) Notice by the applicant or his, her or its designated agent that the application is no longer
29 being pursued because, for example, the applicant is no longer employed in a capacity that
30 requires Commission consideration or is deceased.

31 (2) If an application has been deemed abandoned, a notice of abandonment shall be sent to
32 the applicant, with a copy to the Commission, stating the reasons for abandonment of the

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1 application and that the Bureau will consider the application abandoned unless the applicant
2 contacts the Bureau within 30 days from the date of the notice.

3 (b)(1) At any time after the Bureau report is issued to the Commission and either
4 recommended approval or made no recommendation, the Executive Director may deem an
5 application abandoned based upon the following:

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

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

9 (C) Notice by the applicant or his, her or its designated agent that the application is no longer
10 being pursued.

11 (2) If an application has been deemed abandoned, a notice of abandonment shall be sent to
12 the applicant, pursuant to Section 12006, with a copy to the Bureau, stating the reasons for
13 abandonment of the application and that the Commission will consider the application
14 abandoned unless the applicant contacts the Commission within 30 days from the date of the
15 notice.

16 (c) Where the Bureau has issued its Bureau report, the Commission may deem an application
17 abandoned at its discretion, pursuant to Section 12054 after taking into consideration those
18 criteria listed under subparagraphs (A) through (C), inclusive, of paragraph (1) of subsection (b).

19 (d) Upon abandonment of an application, a refund of any unexpended portion of a
20 background investigation deposit shall be made, if possible.

21 (e) An applicant who abandons their application shall not have a right to an evidentiary
22 hearing pursuant to Section 12056.

23 Note: Authority cited: ~~Business and Professions Code~~ Sections 19811, 19823, 19824, 19840, 19841, 19893, and
24 19951, ~~Business and Professions Code~~. Reference: ~~Business and Professions Code~~ Sections 19859, 19867, 19869,
25 19880, 19881, 19890, 19891, and 19951, ~~Business and Professions Code~~.

27 § 12035. Issuance of Interim Renewal Licenses.

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

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

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

3 (3) An accusation is pending pursuant to Business and Professions Code section 19930 and
4 under Chapter 10 of this division.

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

7 (1) An interim renewal license shall be issued with the same conditions, limitations, or
8 restrictions, if any, as existed for the previous license, except for any condition that by
9 Commission decision has been determined to be satisfied and no longer applicable. This
10 paragraph does not preclude the Commission from applying additional conditions with the
11 consent of the applicant.

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

17 (3) The holder of an interim renewal license shall pay all applicable annual fees associated
18 with that license.

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

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

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

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

1 ~~§ 12050. Hearing Procedures; Appeal of Denial of or Imposition of Conditions on~~
2 ~~application for license, permit, or request for finding of suitability.~~

3 ~~(a) If the Bureau, after an investigation pursuant to Business and Professions Code section~~
4 ~~19826, subdivision (a), issues a recommendation to deny, limit, restrict, or condition a license,~~
5 ~~permit, or finding of suitability, the Bureau shall provide the applicant with a copy of the~~
6 ~~Bureau's final report as described in Business and Professions Code section 19868, subdivision~~
7 ~~(b), which includes a detailed factual and/or legal basis for any recommendation as well as the~~
8 ~~Bureau's recommendation to the Commission and any supplemental documents provided to the~~
9 ~~Commission at the time of the report and recommendation. Any applicant for any license,~~
10 ~~permit, or finding of suitability for whom Commission staff has issued a recommendation of~~
11 ~~denial or imposition of conditions shall be given notice by certified mail of the Commission~~
12 ~~meeting at which the application is scheduled to be heard and the Commission staff~~
13 ~~recommendation at least 10 days prior to the meeting. The applicant shall be afforded the~~
14 ~~opportunity to: (1) Address the Commission by way of an oral statement at a noticed~~
15 ~~Commission meeting, and/or may submit documents in support of the application, or (2) Request~~
16 ~~an evidentiary hearing.~~

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

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

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

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

11 (B) ~~Nothing in this section confers upon an applicant a right to discovery of the~~
12 ~~Commission's or Bureau's confidential information or to require production of any document or~~
13 ~~information the disclosure of which is otherwise prohibited by any provision of the Gambling~~
14 ~~Control Act, or is privileged from disclosure or otherwise made confidential by law.~~
15 ~~Documentary evidence may be redacted as needed to prevent the disclosure of confidential~~
16 ~~information. Exculpatory or mitigating information shall not be withheld from the applicant, but~~
17 ~~may be redacted.~~

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

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

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

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

4 ~~(G) At the conclusion of the hearing, the Commission shall take the matter under submission~~
5 ~~and may schedule future closed session meetings for deliberation. In taking the matter under~~
6 ~~consideration, any Commissioner who participated at the hearing shall be allowed to vote by~~
7 ~~mail or by other appropriate method. Within 30 days of the conclusion of the hearing, the~~
8 ~~Commission shall issue a decision which complies with Business and Professions Code section~~
9 ~~19870, subdivision (c), and shall serve the decision by certified mail on the applicant and on any~~
10 ~~business entity with which the applicant is associated.~~

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

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

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

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

26 ~~(3) If the denied applicant is an officer or director of a corporation licensed, registered, or~~
27 ~~found suitable by the Commission, the corporation shall immediately remove that person from~~
28 ~~office and shall so notify the Commission in writing. If the denied applicant is an employee,~~
29 ~~agent, representative, or independent contractor of a corporation licensed, registered, or found~~
30 ~~suitable by the Commission, the corporation shall terminate its relationship with that person~~
31 ~~pursuant to the date specified in the decision and shall so notify the Commission in writing. The~~

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1 ~~denied applicant and the corporation licensed, registered, or found suitable by the Commission~~
2 ~~shall comply with Business and Professions Code section 19882.~~

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

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

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

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

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

7 ~~Note: Authority cited: Sections 19804, 19870 and 19872, Business and Professions Code. Reference: Sections~~
8 ~~19868, 19870, 19879, 19883, 19892, Business and Professions Code.~~

9
10 ARTICLE 2. PROCEDURES FOR HEARINGS AND MEETINGS ON APPLICATIONS.

11 **§ 12050. Bureau Recommendation and Information.**

12 (a) When the Bureau report is issued to the Commission with a recommendation to deny,
13 limit, restrict, or condition a license, permit, finding of suitability, renewal, or other approval, as
14 described in Business and Professions Code section 19868, subdivisions (b) and (c):

15 (1) The Bureau shall provide to the applicant a copy of the following as relevant to the
16 application:

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

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

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

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

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

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

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

30
31 **§ 12052. Commission Meetings; General Procedures; Scope; Rescheduling of Meeting.**

32 (a) Nothing in this article is intended to limit the manner in which the Commission reviews

1 an application, or otherwise limit its authority or discretion under the Act.

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

6 (c) An applicant for any license, permit, finding of suitability, renewal, or other approval
7 shall be given notice of the meeting at which the application is scheduled to be heard at least 10
8 days prior to the meeting date. Notice shall be given pursuant to Section 12006.

9 (1) If the application is scheduled at a non-evidentiary hearing meeting, the notice shall
10 inform the applicant of the following:

11 (A) That the applicant will be afforded the opportunity to:

12 1. Address the Commission by way of an oral statement, written statement, or both; and,
13 2. Submit documents in support of the application; however, documents which are not
14 provided to the Commission and Bureau with sufficient time for consideration may result in the
15 documents not being considered or the application being continued, at the Commission's
16 discretion.

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

19 (C) Any individual making an oral statement may be required to be placed under oath.

20 (2) If the application is to be scheduled at an evidentiary hearing, pursuant to subsections (a)
21 or (b) of Section 12060, the notice of hearing shall inform the applicant of the following:

22 (A) The date, time and location of the evidentiary hearing at which the application is
23 scheduled to be heard;

24 (B) The date, time and location of the pre-hearing conference, pursuant to paragraph (1) of
25 subsection (f) of Section 12060;

26 (C) The individual assigned, pursuant to subsection (c) of Section 12060, as the presiding
27 officer and his or her contact information;

28 (D) That the applicant will be afforded the opportunity to:

29 1. Address the Commission by way of an oral statement, written statement, or both;
30 2. Submit documents in support of the application;
31 3. Call, examine, cross-examine and impeach witnesses; and,

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1 4. Offer rebuttal evidence.

2 (E) That a Notice of Defense, CGCC-ND-002 (New 01/14), which is attached in Appendix A
3 to this chapter, will be included unless already provided by Commission staff or the Bureau.

4 (F) That the waiver of an evidentiary hearing may result in a default decision being issued by
5 the Commission based upon the Bureau report, any supplemental reports by the Bureau and any
6 other documents or testimony already provided or which may be provided to the Commission, or
7 that the hearing may be held as originally noticed without applicant participation.

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

13 (e) Testimony provided at a Commission meeting may be taken upon oath or affirmation.

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

17
18 **§ 12054. Consideration at Regular Commission Meeting.**

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

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

23 (2) Elect to hold an evidentiary hearing in accordance with Section 12056 and, when for a
24 renewal application, issue an interim renewal license pursuant to Section 12035. The
25 Commission shall identify those issues for which it requires additional information or
26 consideration related to the applicant's suitability.

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

31 (4) Extend a license for up to 180 days as necessary, as provided in Business and Professions
32 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 subsection (c) of Section 12017.

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

6 (b) If the Commission approves or denies a request for withdrawal pursuant to paragraph (5)
7 of subsection (a) or makes a finding of abandonment pursuant to paragraph (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 to Section 12060, unless the Executive Director or the Commission
16 determines the matter should be conducted as an APA hearing pursuant to Section 12058.

17
18 **Alternative 3: APA can only be chosen when the Bureau recommends denial.**

19 (a) If the Commission elects to hold an evidentiary hearing, the hearing will be a GCA
20 hearing conducted pursuant to Section 12060, unless the Bureau is recommending denial and the
21 Executive Director or the Commission determines the matter should be conducted as an APA
22 hearing pursuant to Section 12058.

23
24 (b) Nothing in this section, Section 12058 or Section 12060 confers upon an applicant a right
25 to discovery of the Commission's or Bureau's confidential information or to require production
26 of any document or the disclosure of information which is otherwise prohibited by any provision
27 of the Act, or is privileged from disclosure or otherwise made confidential by any other provision
28 of law. Documentary evidence may be redacted as needed to prevent the disclosure of
29 confidential information. Exculpatory or mitigating information shall be provided to the
30 applicant, but any confidential information may be redacted by the Bureau.

1 (c) Under either an APA or a GCA hearing, all parties will bear their own costs. This does
2 not prevent the Bureau from requiring that additional sums be deposited pursuant to Business
3 and Professions Code section 19867 for any necessary supplemental investigations.

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

7
8 **§ 12058. APA Hearing.**

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

14 (b) The burden of proof is on the applicant to prove his or her qualifications to receive any
15 license or other approval under the Act.

16 (c) The Bureau shall prepare and file a Statement of Issues according to Government Code
17 section 11504.

18 (d) The Bureau is not required to recommend or seek any particular outcome, unless it so
19 chooses, but rather to simply present the facts and law related to the applicant and the Bureau's
20 background investigation so that the Commission or an Administrative Law Judge can make an
21 informed decision on whether the applicant has met his or her burden of proof. [If Alternative 3
22 in Section 12056 is adopted, subsection (d) would not be included in this section.]

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

26 (f) The evidentiary hearing shall proceed as indicated in the notice, unless and until the
27 Executive Director or Commission approves cancellation or a continuance.

28 Note: Authority cited: Sections 19811, 19823, 19824, 19840, and 19841, Business and Professions Code.
29 Reference: Sections 19816, 19823, 19824, 19825, 19868, and 19876, Business and Professions Code; Section
30 11512 and 11517, Government Code.

31
32 **§ 12060. GCA Hearings.**

33 (a) If the Executive Director determines it is appropriate, he or she may set an application for

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1 consideration at a GCA hearing in advance of a meeting pursuant to Section 12054. The
2 Executive Director shall give notice to the applicant, pursuant to paragraph (2) subsection (c) of
3 Section 12052, to the Office of the Attorney General, and to the Bureau no later than 90 days in
4 advance of the GCA hearing. The Executive Director's determination will be based on
5 information contained in the Bureau's report or other appropriate sources including, without
6 limitation, a request from the Bureau or applicant as well as the Commission's operational
7 considerations. The Commission retains the authority to refer the matter to an APA hearing
8 pursuant to subsection (a) of Section 12056 or hear the matter at a Section 12054 meeting if the
9 Commission deems it appropriate.

10 (b) When the Commission has elected to hold a GCA hearing, the Executive Director shall
11 give notice to the applicant, pursuant to paragraph (2) subsection (c) of Section 12052, to the
12 Office of the Attorney General, and to the Bureau no later than 60 days in advance of the GCA
13 hearing.

14 (c) The presiding officer shall have no communication with the Commission or Commission
15 staff on the merits, and information or documents related to the application prior to the
16 evidentiary hearing. The Executive Director shall designate a presiding officer which shall be:

17 (1) A member of the Commission's legal staff; or,

18 (2) An Administrative Law Judge.

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

22 (e) The Bureau shall provide to the applicant, at least 45 calendar days prior to the GCA
23 hearing, and the applicant shall provide to the Bureau, at least 30 calendar days prior to the GCA
24 hearing, the following items:

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

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

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

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

30 (f) A presiding officer shall rule on the admissibility of evidence and on any objections raised
31 except for objections raised under subsection (g). A ruling by the presiding officer shall be final.

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

6 (A) Evidentiary issues;

7 (B) Witness and exhibit lists;

8 (C) Alterations in the Bureau recommendation;

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

10 (E) Other issues as may be deemed appropriate to promote the orderly and prompt conduct of
11 the hearing.

12 (2) The GCA hearing need not be conducted according to technical rules of evidence. Any
13 relevant evidence may be considered, and is sufficient in itself to support findings if it is the sort
14 of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs,
15 regardless of the existence of any common law or statutory rule that might make improper the
16 admission of that evidence over objection in a civil action.

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

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

20 (2) Continue any meeting or hearing as necessary to mitigate any prejudice.

21 (h) The Bureau shall present all facts and information in the Bureau's report, the results of its
22 background investigation, and the basis for their recommendation already filed with the
23 Commission according to Business and Professions Code sections 19868 so that the Commission
24 can make an informed decision on whether the applicant has met his or her burden of proof. The
25 Bureau is not required to recommend or seek any particular outcome during the evidentiary
26 hearing, unless it so chooses.

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

29 (j) The applicant may choose to represent himself, herself, or itself, or may retain an attorney
30 or lay representative.

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

8 (l) Oral evidence shall be taken upon oath or affirmation, which may be administered by the
9 Executive Director, a member of the Commission, or the presiding officer, if an Administrative
10 Law Judge.

11 (m) At the conclusion of the evidentiary hearing, the members of the Commission shall take
12 the matter under submission, may discuss the matter in a closed session meeting, and may
13 schedule future closed session meetings for deliberation.

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

17
18 **§ 12062. Issuance of GCA Hearing Decisions.**

19 (a) Within 30 days of the conclusion of a GCA hearing, the Commission legal staff shall
20 prepare and submit to the Commission a proposed decision.

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

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

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

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

3
4 **§ 12064. Requests for Reconsideration.**

5 (a) After the Commission issues a decision following a GCA hearing conducted pursuant to
6 Section 12060, an applicant denied a license, permit, registration, or finding of suitability, or
7 whose license, permit, registration, or finding of suitability has had conditions, restrictions, or
8 limitations imposed upon it, may request reconsideration by the Commission within 30 days of
9 service of the decision, or before the effective date specified in the decision, whichever is later.

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

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

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

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

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

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

26 Note: Authority cited: Sections 19811, 19823, 19824, 19840, and 19841, Business and Professions Code.
27 Reference: Sections 19823, 19824, 19825, 19870, 19871, and 19876, Business and Professions Code; Section
28 11521 Government Code.

29
30 **§ 12066. Final Decisions; Judicial Review.**

31 (a) A withdrawal or abandonment decision is final:

1 (1) 30 days after the date of notice of abandonment if pursuant to either paragraph (2) of
2 subsection (a) or paragraph (2) of subsection (b) of Section 12017 if not repealed by the issuing
3 agency.

4 (2) Upon approval by the Commission pursuant to paragraph (5) of subsection (a) of Section
5 12054 or the making of a finding of abandonment pursuant to paragraph (6) of subsection (a) of
6 Section 12054.

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

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

12 (2) If a request for reconsideration has been granted under Section 12064, immediately upon
13 the Commission's affirmation of its decision or issuance of a reconsidered decision.

14 (c) An appeal of a denial or imposition of conditions by the Commission shall be subject to
15 judicial review as provided in Business and Professions Code section 19870, subdivision (e).
16 Neither the right to petition for judicial review nor the time for filing the petition shall be
17 affected by failure to seek reconsideration.

18 Note: Authority cited: Sections 19811, 19823, 19824, 19840, and 19841, Business and Professions Code.
19 Reference: Sections 19823, 19824, 19825, 19870, 19871, and 19876, Business and Professions Code; Section
20 11521 Government Code.

21
22 **§ 12068. Decisions Requiring Resignation or Divestiture.**

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

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

31 (b)(1) If the denied applicant is an officer or director of a limited liability company or
32 corporation that is licensed, registered, or found suitable by the Commission, the limited liability

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1 company or corporation shall remove that person from office according to the date specified in
2 the Commission's decision and shall so notify the Commission in writing.

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

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

10 (c)(1) If the denied applicant is a general or limited partner in a general or limited partnership
11 licensed, registered, or found suitable by the Commission, the denied applicant shall resign as a
12 partner according to the date specified in the Commission's decision and shall so notify the
13 Commission in writing.

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

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

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

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

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

28
29 CHAPTER 2.1. THIRD-PARTY PROVIDERS OF PROPOSITION PLAYER SERVICES:

30 REGISTRATION; LICENSING.

31 ARTICLE 3. LICENSING.

1 **§ 12218.5. Withdrawal of Request to Convert Registration to License.**

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

7 (b) ~~The Commission shall not grant the request unless the requester has established that~~
8 ~~withdrawal of the request would be consistent with the public interest and the policies of the Act~~
9 ~~and this chapter. If a request for withdrawal is denied, the Bureau may go forward with its~~
10 ~~investigation and make a recommendation to the Commission upon the request, and the~~
11 ~~Commission may act upon the request to convert as if no request for withdrawal had been made.~~

12 (c) ~~If a request for withdrawal is granted with prejudice, the requester thereafter shall be~~
13 ~~ineligible to renew its request until the expiration of one year from the date of the withdrawal.~~
14 ~~Unless the Commission otherwise directs, no payment relating to any request is refundable by~~
15 ~~reason of withdrawal of request.~~

16 ~~Note: Authority cited: Sections 19840, 19841 and 19984, Business and Professions Code. Reference: Sections~~
17 ~~19869 and 19984, Business and Professions Code.~~

18
19 CHAPTER 2.2. GAMBLING BUSINESSES: REGISTRATION; LICENSING.

20 ARTICLE 3. LICENSING.

21 **§ 12234. Withdrawal of Request to Convert Registration to License.**

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

27 (b) ~~The Commission shall not grant the request unless the requester has established that~~
28 ~~withdrawal of the request would be consistent with the public interest and the policies of the Act~~
29 ~~and this chapter. If a request for withdrawal is denied, the Bureau may go forward with its~~
30 ~~investigation and make a recommendation to the Commission upon the request, and the~~
31 ~~Commission may act upon the request to convert as if no request for withdrawal had been made.~~

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1 ~~(c) If a request for withdrawal is granted with prejudice, the requester thereafter shall be~~
2 ~~ineligible to renew its request until the expiration of one (1) year from the date of the withdrawal.~~
3 ~~Unless the Commission otherwise directs, no payment relating to any request is refundable by~~
4 ~~reason of withdrawal of request.~~

5 ~~Note: Authority cited: Sections 19840, 19841 and 19853(a)(3), Business and Professions Code. Reference: Sections~~
6 ~~19853(a)(3) and 19869, Business and Professions Code.~~

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ALTERNATIVE 4

(APA is always an option, but presenter changes depending on Bureau recommendation)

DRAFT

1 § 12002. General Definitions.

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

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

12 (b) “Advisor to the Commission” shall be all employees of the Commission except those
13 designated as an advocate of the Commission.

14 (c) “Advocate of the Commission” shall be any employee so designated pursuant to
15 subsection (a) of Section 12056.

16 (d) ~~(b)(a)~~ “BCII” means the Bureau of Criminal Identification and Information in the
17 California Department of Justice.

18 (e) ~~(e)(b)~~ “Bureau” means the Bureau of Gambling Control in the California Department of
19 Justice, acting as “the department” as provided in section 19810 of the Business and Professions
20 Code. ~~For the filing of any information, reports or forms, Bureau refers to the Sacramento office~~
21 ~~of the Bureau of Gambling Control.~~

22 (f) ~~(d)~~ “Bureau report” means a final determination by the Chief of the Bureau regarding his
23 or her recommendation to the Commission on any application as defined in Business and
24 Professions Code section 19869 as “final action by the department.”

25 (g) ~~(e)(e)~~ “California gGames” means controlled games that feature a rotating player-dealer
26 position, as described in Penal Code section 330.11.

27 (h) ~~(f)(d)~~ “Commission” means the California Gambling Control Commission.

28 (i) ~~(g)(e)~~ “Conviction” means a plea or verdict of guilty or a plea of *nolo contendere*,
29 irrespective of a subsequent order of expungement under the provisions of Penal Code section

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

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

8 ~~(k)(i)~~ (k)(i) “Employee of the Commission” means the staff employed at the Commission including
9 the Executive Director and all staff under the direction of the Executive Director.

10 ~~(l)(j)(g)~~ (l)(j)(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 ~~(m)(k)(h)~~ (m)(k)(h) “Gambling Control Act” or “Act” or “GCA” means Chapter 5 (commencing with
15 section 19800) of Division 8 of the Business and Professions Code.

16 ~~(n)(j)~~ (n)(j) “GCA hearing” means an evidentiary hearing referred to as “the meeting” pursuant to
17 Business and Professions Code sections 19870 and 19871.

18 ~~(o)(m)~~ (o)(m) “Interim license” means a license issued by the Commission for some interim period
19 which includes an interim renewal license issued pursuant to Section 12035, an interim gambling
20 license issued pursuant to Section 12349, and an interim key employee license issued pursuant to
21 Section 12354.

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

25 ~~(q)(o)(i)~~ (q)(o)(i) “Registrant” means a person having a valid registration issued by the Commission.

26 ~~(r)(p)(j)~~ (r)(p)(j) “Surrender” means to voluntarily give up all legal rights and interests in a license,
27 permit, registration, finding of suitability, or approval.

28 ~~(s)(q)~~ (s)(q) “Temporary license” means a preliminary license issued by the Commission, prior to
29 action on an initial license application, with appropriate conditions, limitations or restrictions

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1 determined on a case-by-case basis.

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

5
6 § 12012. Ex Parte Communication.

7 (a) For purposes of this section, “ex parte communication” or “ex parte” means a
8 communication without notice and opportunity for all parties to participate in the
9 communication.

10 (b) The limitations on ex parte communication imposed by Business and Professions Code
11 section 19872, subdivisions (a) and (b) shall apply when an application is submitted to the
12 Bureau for investigation until the Bureau report is issued to the Commission and the
13 communication is upon the merits of the application.

14 (c) The limitations on ex parte communication imposed by Business and Professions Code
15 sections 19872, subdivisions (a) and (c) shall apply when the Bureau report is issued to the
16 Commission until a decision is final pursuant to Section 12066 and the communication is upon
17 the merits of the application.

18 (d) When the ex parte provisions of subsections (b) or (c) apply, the following
19 communications shall not be considered ex parte:

20 (1) Communications related to undisputed issues of practice and procedure that are not based
21 upon the merits of an application.

22 (2) Communications made at a public hearing or meeting and which concern a properly
23 noticed matter.

24 (3) Information or documents provided by the applicant based upon the merits of an
25 application pending disposition before the Bureau or Commission to an ~~advisor~~ ~~employee~~ or
26 member of the Commission which is simultaneously provided to the Bureau or advocate of the
27 Commission, if one has been designated.

28 (4) Information or documents provided by the Bureau or an advocate of the Commission,
29 based upon the merits of an application pending disposition before the Commission to an ~~advisor~~
30 ~~employee~~ or member of the Commission which is simultaneously provided to the applicant.

31 (5) Information or documents provided by any other interested person based upon the merits

Additions shown in blue underline; Deletions shown in ~~red-strikeout~~. **DRAFT**
Changes relating to Alternative 4 in double blue underline; and ~~double red-strikeout~~.

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1 of an application pending disposition before the Bureau or Commission to an advisor ~~employee~~
2 or member of the Commission which is simultaneously provided to both the Bureau, an advocate
3 of the Commission, if one has been designated, and the applicant.

4 (6) Information or documents provided by the Bureau based upon the merits of an application
5 pending disposition before the Commission to an advisor ~~employee~~ or member of the
6 Commission pursuant to Business and Professions Code section 19822, subdivision (b), but that
7 cannot be provided to the applicant pursuant to Business and Professions Code section 19821,
8 subdivision (d), and section 19868 subdivisions (b)(3) and (c)(2), and which is provided as
9 follows:

10 (A) The Bureau first provides redacted information or documents to both an advisor
11 ~~employee~~ or member of the Commission and the applicant;

12 (B) If an advisor ~~employee~~ or member of the Commission requests an unredacted copy of the
13 information or documents, the Commission shall provide a notice to the applicant, pursuant to
14 Section 12006, allowing at least 14 days for the applicant to object and pursue any appropriate
15 judicial remedies to challenge the request and seek a judicial in camera review of the
16 confidentiality and relevancy of the information;

17 (C) The Bureau shall provide the unredacted information or documents only to an advisor
18 ~~employee~~ or member of the Commission and only after the time period specified to seek judicial
19 review has elapsed, or the appropriate judicial remedies have been exhausted, whichever is later.

20 (e) The limitations on *ex parte* communication imposed by Government Code sections
21 11430.10 through 11430.80 shall apply from when:

22 (1) The Executive Director has elected to hold an evidentiary hearing under subsection (a) of
23 Section 12060 until any decision is final pursuant to Section 12066;

24 (2) The Commission has elected to hold an evidentiary hearing under paragraph (2) of
25 subsection (a) of Section 12054 until any decision is final pursuant to Section 12066; or,

26 (3) The Bureau has filed an accusatory pleading under Section 12554 or Business and
27 Professions Code section 19930 until any decision is final pursuant to Government Code section
28 11519.

29 (f) If an applicant, the Bureau or other interested person or an advocate of the Commission, if

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1 one has been designated, communicates directly or indirectly on an *ex parte* basis with a member
2 of the Commission, including indirectly through submission of information or documentation to
3 an ~~advisor~~ ~~employee~~ of the Commission, then:

4 (1) All information, documentation and responses shall immediately be provided to the
5 Bureau, applicant or an advocate of the Commission, if one has been designated, or Bureau,
6 advocate of the Commission, if one has been designated, and applicant.

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

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

12 (g)(1) A member of the Commission who communicates on an *ex parte* basis with an
13 applicant, the Bureau, ~~or~~ other interested persons or an advocate of the Commission, if one has
14 been designated, must publicly disclose the communication, and provide notices to both the
15 applicant and Bureau pursuant to Section 12006. The notice shall contain any information or
16 document(s) conveyed and shall be provided to the applicant and the Bureau as soon as possible
17 so that they may participate in the communication. Any meeting or hearing following the
18 provision of this communication may be delayed as necessary to allow for the full participation
19 of all parties. The member of the Commission may voluntarily withdraw from consideration of
20 an application as long as the withdrawal would not prevent the existence of a quorum qualified to
21 act on the particular application.

22 (2) A member of the Commission who has participated in an *ex parte* communication may be
23 excluded from consideration of an application by an order of the Commission made at the
24 request of the applicant.

25 (h) An ~~advisor~~ ~~employee~~ of the Commission may communicate and convey information or
26 documents upon the merits of an application as long as it is simultaneously conveyed to ~~both~~ the
27 applicant, ~~and~~ the Bureau and advocate of the Commission, if one has been designated, so that
28 they may participate in the communication.

29 Note: Authority cited: Sections 19811, 19823, 19824, 19840, 19841, and 19872, Business and Professions Code;
30 Sections 11400.20, 11410.40, 11415.10, and 11415.20, Government Code. Reference: Sections 19821, 19822,

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1 19825, 19868, 19870, 19871, 19872, and 19930, Business and Professions Code; Sections, 11425.10, 11430.10,
2 11430.20, 11430.30, 11430.50, and 11430.60, Government Code.

3 4 **§ 12056. Evidentiary Hearings.**

5 (a) If the Commission elects to hold an evidentiary hearing, the hearing will be a GCA
6 hearing conducted pursuant to Section 12060, unless the Executive Director or the Commission
7 determines the matter should be conducted as an APA hearing pursuant to Section 12058. If an
8 APA hearing is elected, and the Bureau has not recommended denial, the determination shall
9 include a list of employees of the Commission who shall be designated as an advocate of the
10 Commission.

11 (b) Nothing in this section, Section 12058 or Section 12060 confers upon an applicant a right
12 to discovery of the Commission's or Bureau's confidential information or to require production
13 of any document or the disclosure of information which is otherwise prohibited by any provision
14 of the Act, or is privileged from disclosure or otherwise made confidential by any other provision
15 of law. Documentary evidence may be redacted as needed to prevent the disclosure of
16 confidential information. Exculpatory or mitigating information shall be provided to the
17 applicant, but any confidential information may be redacted by the Bureau.

18 (c) Under either an APA or a GCA hearing, all parties will bear their own costs. This does
19 not prevent the Bureau from requiring that additional sums be deposited pursuant to Business
20 and Professions Code section 19867 for any necessary supplemental investigations.

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

24 25 **§ 12058. APA Hearing.**

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

31 (b) The burden of proof is on the applicant to prove his or her qualifications to receive any

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1 license or other approval under the Act.

2 (c) ~~The Bureau shall prepare and file a~~ The Statement of Issues shall be prepared and filed
3 according to Government Code section 11504 by:

4 (1) The Bureau when the Bureau has recommended denial; or,

5 (2) The advocate of the Commission when the Bureau has not recommended denial.

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

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

14 (e)(f) The evidentiary hearing shall proceed as indicated in the notice, unless and until the
15 Executive Director or Commission approves cancellation or a continuance.

16 Note: Authority cited: Sections 19811, 19823, 19824, 19840, and 19841, Business and Professions Code.
17 Reference: Sections 19816, 19823, 19824, 19825, 19868, and 19876, Business and Professions Code; Section
18 11512 and 11517, Government Code.

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APPENDIX A

(Add Form CGCC-ND – 002 (New 01/14))



State of California
California Gambling Control Commission
 2399 Gateway Oaks Drive, Suite 220
 Sacramento, CA 95833-4231
 (916) 263-0700; Fax: (916) 263-0452
 www.cgcc.ca.gov

NOTICE OF DEFENSE CGCC – ND – 002 (New 01/14)

In the Matter of:

CGCC No. _____

Failure to submit this Notice of Defense to the California Gambling Control Commission (Commission) and the Bureau of Gambling Control (Bureau) may result in a default decision being issued by the Commission. The Notice of Defense is due:

- **Within 15 days of receipt, if provided by Commission staff or the Bureau; or,**
- **Within 15 days of the date of service, if provided with the Notice of Hearing.**

(please select one of the following:)		
1	A	<input type="checkbox"/> I acknowledge and accept that the conditions, limitations and restrictions attached to the notice will be placed on my license, registration, finding of suitability or other approval, and waive my right to an evidentiary hearing. (See Box 2)
	B	<input type="checkbox"/> I waive my right to an evidentiary hearing. (See Box 2)
	C	<input type="checkbox"/> I request an evidentiary hearing where the Commission will consider the merits of my application and any recommendation of the Bureau.
2	<p>_____ (Initial Here)</p>	<p>The waiver of my right to an evidentiary hearing includes a waiver of the following associated rights:</p> <ul style="list-style-type: none"> The right to be heard at the hearing The right to a copy of the hearing's governing procedure The right to discovery The right to present oral evidence The right to present and examine witnesses The right to introduce relevant exhibits The right to cross-examine opposing witnesses The right to impeach witnesses The right to offer rebuttal evidence The right to challenge evidence used against me The right to request reconsideration following the decision's issuance The right to petition for review of the decision under Section 1085 of the Code of Civil Procedure <p>The waiver of an evidentiary hearing may result in a default decision being issued by the Commission based upon the Bureau report, any supplemental reports by the Bureau and any other documents or testimony already provided or which may be provided to the Commission, or that the hearing may continue to occur on the originally noticed date without applicant participation.</p>

3	<input type="checkbox"/>	I understand English or have had an interpreter read and explain this form to me in _____ <div style="text-align: right; font-size: small;">(Language)</div>
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NOTICE OF DEFENSE

		(please select one of the following:)	
4	A	<input type="checkbox"/>	I am represented by counsel, whose name, address and telephone number appear below:
			Name:
			Mailing Address:
			City, State and Zip Code:
			Telephone Number:
	B	<input type="checkbox"/>	I am not represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be provided to the Commission and the Bureau so that counsel will be on the record to receive legal notices, pleadings, and other papers.

Signature: _____

Date: _____

Relationship to Gambling Enterprise: _____ (N/A if Individual signing on own behalf)