

**CALIFORNIA GAMBLING CONTROL COMMISSION**

Physical Address: 2399 Gateway Oaks Drive, Suite 100 • Sacramento, CA 95833-4231  
Mailing Address: P.O. Box 526013 • Sacramento, CA 95852-6013  
Phone: (916) 263-0700 • FAX: (916) 263-0452



## Initial Statement of Reasons

California Code of Regulations, Title 4. Business Regulations  
Division 18. California Gambling Control Commission

### Chapter 10 – Discipline, Hearings, and Decisions

The Gambling Control Act<sup>1</sup> provides the California Gambling Control Commission (hereafter, “Commission”) the authority to discipline the Commission’s regulated community. This includes work permit holders, holders of findings of suitability or approvals, key employee licensees, registrants, licensees, and owner licensees of gambling establishments. The intent of such enforcement authority is to ensure that the industry maintains a good reputation, does not cheat or harm the public, and is made up of people of good character. Discipline for violations of law ensures that others in the regulated community do not violate the law, that the public is protected, and that any criminal or corruptive elements are excluded from the industry.

The Gambling Control Act is “an exercise in the police power of the state for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate those purposes.”<sup>2</sup> The Legislative Findings and Declarations of the Gambling Control Act, Business and Professions Code, section 19801, subdivision (f), states:

Public trust that permissible gambling will not endanger public health, safety, or welfare requires that comprehensive measures be enacted to ensure that gambling is free from criminal and corruptive elements, that it is conducted honestly and competitively, and that it is conducted in suitable locations.

Business and Professions Code, section 19801, subdivision (g), further states:

Public trust and confidence can only be maintained by strict and comprehensive regulation of all persons, locations, practices, associations, and activities related to the operation of lawful gambling establishments and the manufacture and distribution of permissible gambling equipment.

<sup>1</sup> Business and Professions Code, section 19800 et seq.

<sup>2</sup> Business and Professions Code, section 19971.

The Commission is tasked with carrying out this legislative intent and

- Assuring that licenses, approvals, and permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.<sup>3</sup>
- Assuring that there is no material involvement, directly or indirectly, with a licensed gambling operation, or the ownership or management thereof, by unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.<sup>4</sup>

Pursuant to Business and Professions Code, section 19930, the Division of Gambling Control (hereafter, "Division") is charged with investigating violations of the Gambling Control Act and regulations adopted thereunder. If the Division, as a result of such investigations, determines that a license, permit, finding of suitability, or approval should be suspended or revoked, the Division (who will generally be represented by a Deputy Attorney General from the Indian and Gaming Law Section of the Office of the Attorney General) must file an accusation in accordance with the Administrative Procedure Act<sup>5</sup>. With regard to such an accusation, the Administrative Procedure Act provides:

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.<sup>6</sup>

The Commission, in addition to actions taken against a license, permit, finding of suitability, or approval, may require the payment of fines or penalties.

According to the Administrative Procedure Act in the California Government Code, no agency may base a penalty on a guideline unless that guideline has been adopted as a regulation.<sup>7</sup> Adopting Disciplinary Guidelines in this chapter satisfies the Government Code requirement and provides notice to the industry of how violations of law will be handled by the Commission.

---

<sup>3</sup> Business and Professions Code, section 19823, subdivision (a)(1).

<sup>4</sup> Business and Professions Code, section 19823, subdivision (a)(2).

<sup>5</sup> Government Code, section 11500 et seq.

<sup>6</sup> Government Code section 11503.

<sup>7</sup> Government Code, section 11425.50, subdivision (e).

The Administrative Procedure Act provides for a quasi-judicial forum to adjudicate disputes. For example, if the Division were to believe that a licensee or registrant was in violation of the law, and that licensee or registrant disputed that belief, then a hearing would be held before the Commission (or an administrative law judge sitting on behalf of the Commission), using the procedures detailed in the Government Code and regulation, to reach a Decision. If the Decision confirmed the violation of law, the penalty would be arrived at by the use of these disciplinary guidelines. Penalties are designed to be deterrents, not punishment.

The objective of a disciplinary proceeding is to protect the public, the occupation, maintain occupational integrity, its high standards, and preserve public confidence in state licensure and registration. These proceedings are not for the primary purpose of punishing an individual.<sup>8</sup>

A more recent court agreed:

The license revocation procedure is designed to protect the public, not to administer punishment to individual licensees. (*citation.*) As the court stated in *Small v. Smith* (1971) 16 Cal. App. 3d 450, 457, "The object of an administrative proceeding aimed at revoking a license is to protect the public, that is, to determine whether a licensee has exercised his privilege in derogation of the public interest, and to keep the regulated business clean and wholesome."<sup>9</sup>

The Commission has engaged in extensive outreach in developing these proposed regulations. Staff researched a number of other gaming jurisdictions as well as other California licensing agencies, and maintained a dialog with the Division to determine what offenses should be specifically listed. Staff worked closely with industry members, both informally by letters, telephone calls, and meetings, as well as formally by holding two open and publicly noticed workshops, one in February 2005 and one in July 2005, before discussing the penultimate notice draft at a regularly noticed Commission meeting on February 9, 2006.

**Section 12550** is the introduction to this chapter, detailing the purpose and scope of the regulations. **Subsection (a)** indicates that this chapter applies to all types of licenses, registrations, permits, findings of suitability, or approvals issued by the Commission, which is necessary because some might think that this chapter was only applicable to cardrooms or cardroom employees.

In those cases where an immediate suspension of a license, permit, or registration is required, these regulations are not to be an impediment. **Subsection (c) of 12550** clarifies that these regulations do not limit the authority of the Commission or Division which is granted in the Business and Professions Code, to issue **either Orders of**

---

<sup>8</sup> *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.

<sup>9</sup> *Mann v. Department of Motor Vehicles* (1999) 76 Cal. App. 4th 312, 320.

**Summary Suspension or Emergency Orders**, respectively, to go to superior court, or to refer the matter to the appropriate agencies for further action.

Many administrative agency disputes settle before, during, or even after a formal hearing has been presented, but before a decision is issued. **Section 12552** provides a method for holders of a license or registration to settle a dispute regarding a violation without going through a formal hearing process pursuant to the Administrative Procedure Act. For example, the Division might, during an inspection or investigation, observe a violation of law. The Division would then issue a Notice of Violation which would specify the law violated and the circumstances surrounding the violation. A settlement would allow (with Commission approval) a holder of a license or registration, who admits that the violation did occur, to pay a monetary penalty instead of going through a formal hearing process. An analogy might be paying a speeding ticket when there is no dispute that the driver was going 70 in a 45 mph zone rather than going to traffic court.

Any fines or penalties collected will go into a Fines & Penalties sub-account in the General Fund. The Division may appropriate money from this account to offset costs incurred pursuant to the Gambling Control Act.<sup>10</sup>

If a holder of a license or registration disputes that there was a violation, however, the holder would so notify the Division. The Division would have the option of dropping the Notice of Violation (based on exonerating information given by the holder, perhaps) or of pursuing the violation through the formal hearing process described in this chapter.

**Section 12552, subsection (b)**, clarifies that Commission must approve any offers to pay a penalty in lieu of the formal hearing process. If an offer is not approved within the timeframe of three Commission meetings, the Division shall proceed with the formal hearing process described in this chapter. This timeframe provides the parties with a necessary deadline for negotiation, since most settlements happen at the last minute, and also ensures that cases are not left hanging for lengthy periods of time.

**Subsection (a) of 12554** provides that disputes will be handled by following the provisions of the administrative adjudication portion of the Administrative Procedure Act, Government Code sections 11500 et seq. This provides a clear set of rules for all participants to follow. For those unfamiliar with administrative hearings, additional information that the decision will be based on findings of fact, etc., is added for purposes of clarity. **Subsection (c) of 12554 also discusses the burden of proof**, which is clarified as being a “preponderance of the evidence” standard. Case law has indicated that there are different levels of proof required for different types of licensees. This clarifies for all participants what level of proof is required to prove that a licensee or registrant violated the law.

It has been generally recognized that administrative proceedings, including proceedings to revoke or suspend a license, are civil rather than criminal in nature.<sup>11</sup> Generally,

---

<sup>10</sup> Business and Professions Code, section 19950.

proof in civil cases is required by a preponderance of the evidence.<sup>12</sup> However, in a number of situations, a greater degree of proof, usually clear and convincing evidence, is required.<sup>13</sup> Thus, stating the burden of proof in regulation is necessary.

A professional license often represents the fulfillment of extensive education, training and rigorous testing. A professional licensee has an extremely strong interest in retaining the professional license that he or she worked so hard to obtain. A higher standard of proof than a preponderance of the evidence is required to revoke or suspend a professional license -- proof by clear and convincing evidence is required.<sup>14</sup> "Clear and convincing evidence" means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered.<sup>15</sup> The evidence must be so clear as to leave no substantial doubt and so strong as to command the unhesitating assent of every reasonable mind.<sup>16</sup> "Clear and convincing evidence" is a higher standard of proof than proof by a "preponderance of the evidence"<sup>17</sup> and requires a finding of high probability for the propositions advanced in an Accusation against a targeted licensee. Thus, the standard of proof in an administrative disciplinary action that seeks the suspension or revocation of a professional license, such as a doctor, lawyer, dentist, veterinarian, registered nurse, licensed vocational nurse, pharmacist, psychiatric technician, smog check technician, chiropractor, psychologist, insurance agent, real estate agent, barber, or cosmetologist, or of a teaching credential, is "clear and convincing evidence to a reasonable certainty."<sup>18</sup>

On the other hand, where an occupational or professional license may be obtained without education and training, the standard of proof required to suspend or revoke such a license is merely a "preponderance of the evidence."<sup>19</sup> A "preponderance of the evidence" means evidence that has more convincing force than that opposed to it.<sup>20</sup>

Licenses to process foods, sell vehicles, or to operate such facilities as a substance abuse treatment facility, a child day-care facility, or a health care facility all use the

---

<sup>11</sup> *Petrucci v. Board of Medical Examiners* (1975) 45 Cal.App.3d 83, 88 and *Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 540; Quoted in *Ettinger v. Board of Medical Quality Assurance*, 135 Cal. App. 3d 853, 855 (Cal. Ct. App., 1982)

<sup>12</sup> Evidence Code, section 115: Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

<sup>13</sup> *Belli v. Curtis Pub. Co.* (1972) 25 Cal.App.3d 384, 388 and *Trujillo v. City of Los Angeles* (1969) 276 Cal.App.2d 333, 343; Quoted in *Ettinger v. Board of Medical Quality Assurance*, 135 Cal. App. 3d 853, 855 (Cal. Ct. App., 1982).

<sup>14</sup> *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889.

<sup>15</sup> *People v. Mabini* (2001) 92 Cal.App.4th 654, 662.

<sup>16</sup> *In re Michael G.* (1998) 63 Cal.App.4th 700, 709-710, fn 6; *In re David C.* (1984) 152 Cal.App.3d 1189, 1208.

<sup>17</sup> BAJI No. 2.62 (8<sup>th</sup> ed. 2002) [Book of Approved Jury Instructions, Standard Jury Instructions, Civil], and CACI No. 201 [Judicial Council of California Civil Jury Instructions].

<sup>18</sup> *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853; *James v. Board of Dental Examiners* (1985) 172 Cal. App.3d 1096, 1105; *Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035.

<sup>19</sup> *Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4<sup>th</sup> 312.

<sup>20</sup> BAJI 2.60.

preponderance of the evidence standard.<sup>21</sup> A notary public, who must take a one-day course to pass an examination and must be trustworthy and of good moral character, also has a preponderance of the evidence standard in disciplinary actions.

No formal training or examinations must be taken in order to obtain a license or registration in the gambling industry. Applicants must be honest, reputable, fiscally responsible, and trustworthy individuals – this is determined by a background investigation by the Division, for which the applicants themselves complete supplemental information forms. The background check in and of itself does not raise the standard of proof, since day care and health care facility workers must also pass similar investigations. As a nonprofessional license, the preponderance of the evidence standard is stated as the burden of proof for disciplinary actions. This is the same standard used by the Nevada Gaming Commission in their disciplinary hearings.

**Section 12554, subsection (d)**, details the options open to the Commission for discipline. These include outright revocation, suspension, the imposition of fines or monetary penalties, and/or conditions. The Commission could, for example, find that an order of revocation should be stayed, on certain terms and conditions.

**Subsection (d)(7) of 12554 provides for a stay of suspension and payment of monetary penalties.** As mentioned previously, the Division might recommend that a respondent in a disciplinary action pay a monetary penalty in lieu of serving a suspension. That would ensure that employees or vendors would not be out of work for the period of a suspension for an employer's or supervisor's error, or that a city would not be out revenue taxes, if the circumstances so warrant. (An example might be a cardroom or proposition player service paying a fine instead of not conducting controlled gambling during the period of suspension.) A fine may serve as an appropriate deterrent in some instances, and the amounts are detailed. Because the fine may be based on the number of tables or gross revenue of a cardroom, or the amount of tables for which a third-party contract exists, **subsections (g) and (h)** require this information to be included in the written decision.

Along similar lines of keeping employees employed while disciplining an owner, in **subsections (e) and (f) of 12554**, the Commission could revoke a cardroom or proposition player service owner but allow a reasonable amount of time for the business to be sold. Due to the current moratorium on new cardrooms, this was a suggestion by industry, so that cities would not lose a source of revenue in the event that an owner's license were to be revoked. In the interests of parity, this option was mirrored for third-party providers of proposition player services and gambling businesses.

**Cost recovery** was recently added to Section 19930 of the Business and Professions Code and became effective January 1, 2005. It is included in **subsection (i) of 12554** so that decisions will include findings and orders with regard to the costs of investigation and prosecution of the case.

---

<sup>21</sup> *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889.

Cardrooms, while under the regulatory jurisdiction of the Commission, may also be subject to regulation by other agencies. For instance, if a cardroom serves alcohol, it would also be regulated by the Department of Alcoholic Beverage Control (ABC). If it has employees, it would fall under the jurisdiction of the Labor Commissioner, etc. In the event that one incident gives rise to different agencies imposing a discipline, or in the event that a cardroom is being disciplined for more than one violation, it is necessary for the Commission decision to state whether a suspension should be concurrent or consecutive, which is indicated in **subsection (j)**.

While it may be shown in the course of formal hearing that a holder of a license, work permit, or registration violated a particular law, the penalty for that violation may be either lessened/mitigated by a showing of the holder's cooperation, clean history, restitution, etc., or heightened/aggravated by a showing of the holder's lack of cooperation, previous history of violations, refusal to make restitution, etc. **Section 12556 thus allows for factors in mitigation or aggravation** of the penalty. Many of these factors were added in looking at other jurisdictions, or from input by industry members during our workshops or informal comment periods. **Subsection (p)** allows for the respondent to bring in any relevant evidence, to cover additional fact patterns not otherwise accounted for in the listed factors in mitigation.

**Sections 12558-12568 are disciplinary guidelines for various types of licenses, registrations, and work permits.**

Many holders of permits, licenses, registrations, or entities requiring findings of suitability or approval have already been exposed to disciplinary guidelines (and, possibly, the administrative adjudication process) by virtue of interactions with the Department of Alcoholic Beverage Control (ABC) or other regulatory agencies. The ABC guidelines were considered in the drafting of these proposed disciplinary guidelines.

Aggravating and mitigating factors would be taken into account (for example, this is the third violation in two months or perhaps there was an honest misunderstanding). In addition, references to subsection (d)(7) of section 12554 indicates that a monetary penalty may be imposed in lieu of serving an actual suspension.

These guidelines were written with a range of penalties to take into account the totality of the situation and the seriousness of the offense. The listed offenses came from industry, from other gambling jurisdictions, and from the Division, based upon the violations of law most commonly seen in the field of controlled gambling. Because the Commission is charged with keeping unsuitable characters out of the gambling industry, the Commission has determined that anything which would preclude a person from initially obtaining a gambling license, registration, etc., such as a felony conviction, should also be a ground for revoking the license, registration, etc., in the interests of protection of the public.

**Subsection (a) of 12566, disciplinary guidelines for gambling establishments,** looks at small infractions, and takes into account the size and income of the

establishment, as required by the Gambling Control Act, rather than set a fixed monetary penalty that may seem enormous to a small cardroom and a pittance to a large cardroom. The maximum suspension would be one day of normal business operation. More serious violations are in **subsection (b)** and carry a maximum seven-day suspension, which may be stayed on payment of the monetary penalty in subsection (d)(7) of section 12554.

Allowing **minors on the premises**, especially if they engage in drinking or gambling, is a very real issue with regard to public safety and is treated very seriously in other states and is addressed in **Section 12566, subsections (b)(9) and (11)**. Recently, a Nevada casino stipulated to a \$10,000 fine as a result of allowing a minor to gamble and drink in their casino.<sup>22</sup> This incident was caught by the casino and self-reported to regulators. In 1997, a casino in Missouri was fined \$250,000 after regulators caught a 12-year-old girl playing the slots in their riverboat casino. After other allegations in 2000, including allowing a 16-year-old girl and two other minors to gamble on their riverboats, the casino surrendered its Missouri gambling licenses and sold its gambling interests.

In a similar vein of protecting minors, the Department of Alcoholic Beverage Control (ABC) has a penalty of a 15-day suspension for the first violation of allowing persons under 21 to consume or purchase alcohol in a licensed establishment, with a second violation within 36 months having a penalty of 25 days suspension and a third violation within 36 months being cause for revocation.

The felony of “**loan-sharking**” is listed as a reason for suspension in **Section 12560, subsections (b)(15) and (d)(4); Section 12562, subsections (b)(9) and (d)(4); and Section 12568, subsection (b)(6)**. Loan-sharking is described as follows:

Any person who willfully makes or negotiates, for himself or another, a loan of money, credit, goods, or things in action, and who directly or indirectly charges, contracts for, or receives with respect to any such loan any interest or charge of any nature, the value of which is in excess of that allowed by law, is guilty of loan-sharking, a felony, and is punishable by imprisonment in the state prison for not more than five years or in the county jail for not more than one year. This subdivision shall not apply to any person licensed to make or negotiate, for himself or another, loans of money, credit, goods, or things in action, or expressly exempted from compliance by the laws of this state with respect to such licensure or interest or other charge, or to any agent or employee of such person when acting within the scope of his agency or employment.

This was enacted as an initiative measure by the people of the State of California in the Statutes of 1919, and amended by Statutes of 1970, chapter 784, section 1. While it may be found in West’s California Codes as Civil Code section 1916-3, it is found in Deering’s Uncodified Initiative Measures and Statutes Code on page 35 and in Appendix I of the Deering’s Civil Code (in the pocket supplement to the last volume).

---

<sup>22</sup> “Venetian agrees to \$10,000 fine over underage gambling: Las Vegas Sun, January 21, 2005. Available at <http://www.lasvegassun.com/sunbin/stories/gaming/2005/jan/21/518162515.html> or in Attachment A to this Initial Statement of Reasons.

**Section 12572** provides for the Commission's adoption of all or part of a final decision or stipulated decision pursuant to a settlement agreement as a **precedential decision**. Precedential decisions are described in Government Code 11425.60, and are a way for an agency to indicate that a particularly significant legal or policy determination of general application would be binding on the regulated community. For instance, the Commission could determine, during the course of a formal hearing, that a certain crime was a "crime of moral turpitude" with regard to those involved in gaming activity or gambling establishments. Rather than repeat the legal arguments the next time this certain crime came up in a hearing, the Commission could adopt the first decision, in whole or in part, which indicated the findings and conclusions regarding the crime. Any precedential decisions adopted would be maintained in an index, on the Commission's web page, for the public to access.

### Required Determinations

#### LOCAL MANDATE

These regulations do not impose a mandate on local agencies or school districts.

#### REASONABLE ALTERNATIVES TO THE PROPOSED REGULATIONS AND REASONS FOR REJECTING THOSE ALTERNATIVES.

The Commission is not aware of any reasonable alternatives that would as effectively achieve the regulatory purpose of processing additional temporary table applications and achieving compliance in situations where temporary tables have been requested.

#### REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES

The Commission is not aware of any reasonable alternatives that would lessen any adverse impact on small businesses.

#### IMPACT ON PRIVATE PERSONS

The Commission is not aware of any reasonable alternatives that would be more effective or as effective and less burdensome to private persons.

#### IMPACT ON BUSINESS

The Commission has made a determination that the proposed regulatory changes will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.