

Chapter 1. General Provisions

12002. General Definitions

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

....

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

....

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

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

12047. Withdrawal of Applications

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

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

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

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

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

12048. Abandonment of Applications

At any time prior to final Commission action, the Executive Director may preliminarily determine that the application is abandoned. Such determination may be based upon recommendation of the Division, failure of the applicant to respond to inquiries, or notification by the applicant that the application is no longer being pursued. If the determination is not based upon applicant's notice to the Commission, then notice will be sent to the applicant by regular mail indicating that unless the applicant contacts the Commission within 60 days from the date of the letter, the application will be deemed abandoned. Once deemed abandoned due to unresponsiveness of the applicant or by

1 consent of the applicant, any unused background investigation deposits shall be returned
2 to the applicant by the Division.

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4 **Authority:** Business and Professions Code Sections 19811, 19823, 19824, 19840, 19841, 19893, and
5 19951.

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

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9 **12050. Denial; Appeal of Denial of application for license, permit, or request**
10 **for finding of suitability.**

11 (a) Any applicant for any state gambling license, permit, or finding of suitability for a tribal
12 key employee or resource supplier for whom Commission staff has issued a
13 recommendation of denial shall be given notice by certified mail of the Commission
14 meeting at which the application is scheduled to be heard and the Commission staff
15 recommendation at least 20 days prior to the meeting. Further, the Division shall
16 provide the applicant with a summary of the Director's final report and
17 recommendation, if any, not less than 30 days prior to the meeting. The applicant
18 shall be afforded the opportunity and shall make an election in writing to the
19 Executive Director which is received not less than 10 days prior to the scheduled
20 meeting, or in person at the meeting, as follows:

21 (1) The applicant may address the Commission by way of an oral statement at a
22 noticed Commission meeting, and/or may submit documents in support of
23 the application not less than five days prior to the meeting, or

24 (2) The applicant may request an evidentiary hearing.

25 (b) If the applicant requests an evidentiary hearing, the Executive Director shall set the
26 matter for hearing pursuant to Business and Professions Code sections 19870 and
27 19871, or pursuant to Business and Professions Code section 19825 (which will be
28 conducted pursuant to Chapter 5 (commencing with section 11500) of Part 1 of
29 Division 3 of Title 2 of the Government Code).

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

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

40 (A) The applicant and the Division or Commission staff or Deputy Attorney
41 General presenting the case shall exchange a list of potential
42 witnesses with the general subject of the testimony of each witness

1 and shall disclose and make available copies of all documentary
2 evidence intended to be introduced at the hearing and not previously
3 provided, reports or statements of parties and witnesses and all other
4 writings containing relevant and admissible evidence, at least five
5 calendar days prior to the hearing. Such documentary evidence may
6 be redacted as needed to prevent the disclosure of confidential
7 information. The Commissioners may prohibit testimony of a witness
8 that is not disclosed and may prohibit the introduction of documents
9 that have not been disclosed. Nothing in this subsection confers upon
10 an applicant a right to discovery of the Division's confidential
11 investigative reports or to require production of any document or
12 information the disclosure of which is otherwise prohibited by any
13 provision of the Gambling Control Act, or is privileged from disclosure
14 or otherwise made confidential by law.

- 15 (B) Within the guidelines of subsection (b)(2)(A) above, each party shall
16 have the right to call and examine witnesses; to introduce relevant
17 exhibits and documentary evidence; to cross-examine opposing
18 witnesses on any relevant matter, even if the matter was not covered
19 in the direct examination; to impeach any witness, regardless of which
20 party first called the witness to testify; and to offer rebuttal evidence. If
21 the applicant does not testify on the applicant's own behalf, the
22 applicant may be called and examined as if under cross-examination.
- 23 (C) The hearing shall not be conducted according to technical rules of
24 evidence. Any relevant evidence may be considered, and is sufficient
25 in itself to support findings if it is the sort of evidence on which
26 responsible persons are accustomed to rely in the conduct of serious
27 affairs, regardless of the existence of any common law or statutory
28 rule that might make improper the admission of that evidence over
29 objection in a civil action. A presiding officer, which shall be an
30 administrative law judge or attorney designated by the Commission,
31 shall rule on the admissibility of evidence and on any objections
32 raised.
- 33 (D) Oral evidence shall be taken upon oath or affirmation, which may be
34 administered by a staff member of the Commission or by a
35 Commissioner.
- 36 (E) The hearing shall be stenographically or electronically recorded by the
37 Commission.
- 38 (F) At the conclusion of the hearing, the Commission shall take the matter
39 under submission and shall issue a written decision within 30 days
40 which complies with Business and Professions Code section 19870,
41 subdivision (c). In taking the matter under consideration, any
42 Commissioner who participated at the hearing shall be allowed to vote
43 by mail or by other appropriate method.

1 (3) At the hearings described in subsections (b)(1) and (2) above, the burden of
2 proof rests with applicant to demonstrate why a license, permit, or finding of
3 suitability should issue. The applicant may choose to represent himself,
4 herself, or itself, or may retain an attorney or lay representative at his, her, or
5 its own expense. A representative of the Division shall present the reasons
6 why the license should not be granted. In the event that the Division does
7 not present the case, the Commission may seek outside representation or
8 one or more Commission staff members shall be segregated from the
9 Commissioners and Commission legal unit to present the case.

10 (c) If the application is denied:

11 (1) A detailed statement of reasons shall be issued by the Commission within 30
12 days, and served on the denied applicant and on any business entity with which
13 the denied applicant is associated by mail.

14 (2) If the applicant is an officer, director, employee, agent, representative, or
15 independent contractor of a corporation licensed by the Commission, the
16 applicant shall resign effective immediately upon receipt of notice of the denial
17 and shall so notify the Commission.

18 (3) If the denied applicant is an officer or director of a corporation licensed by the
19 Commission, the corporation shall immediately remove that person from office
20 and shall so notify the Commission. If the denied applicant is an employee,
21 agent, representative, or independent contractor of a corporation licensed by the
22 Commission, the corporation shall immediately terminate its relationship with
23 that person and shall so notify the Commission. If the denied applicant is a
24 shareholder of a corporation licensed by the Commission, the corporation shall
25 repurchase that person's shares, for cash, in an amount not greater than fair
26 market value within 30 days after receipt of the denial and statement of findings,
27 and shall so notify the Commission.

28 (4) If the denied applicant is an owner or holder of an interest in a general or limited
29 partnership licensed by the Commission, the denied applicant shall resign as
30 partner and the general or limited partnership shall, within 30 days after receipt
31 of the denial and statement of findings, return to the denied applicant, in cash,
32 the amount of the denied applicant's capital account as reflected on the books of
33 the partnership, and shall so notify the Commission in writing.

34 (5) If the denied applicant is a principal in a business entity licensed by the
35 Commission not otherwise described above, the denied applicant shall resign
36 his or her position within that entity and divest whatever interest is held in that
37 entity effective immediately upon receipt of the denial, and shall so notify the
38 Commission. The business entity shall remove the denied applicant from any
39 principal role in the business entity and shall so notify the Commission in writing.

40 (6) The denied applicant may request reconsideration by the Commission within 30
41 days of notice of the denial. The request shall be in writing and shall outline the
42 reasons for the request, which must be based upon either newly discovered
43 evidence that could not reasonably have been brought before the denial or other

1 good cause for which the Commission in its discretion decides merits
2 reconsideration. The Commission Chair may delegate to the Executive Director
3 the determination of whether to place requests for reconsideration on the
4 Commission agenda or to act on them at the Commission staff level. If placed
5 on the Commission agenda, the applicant requesting reconsideration shall be
6 notified of the date and time of the agenda item. The granting or denial of
7 reconsideration is at the discretion of the Commission.

8 (d) Unless otherwise specified, any appeal of a final denial by the Commission shall be
9 subject to judicial review under to Code of Civil Procedure, section 1085 (pursuant
10 to Business and Professions Code, section 19870, subdivision (e)).

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

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

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

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16
17 Chapter 6. State Gambling Licenses and Approvals for
18 Gambling Establishments, Owners, and Key Employees

19 **12348. Mandatory and Discretionary Grounds for Denial of Application for a**
20 **State Gambling License or Key Employee license.**

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

23 (1) The Commission finds that the applicant is ineligible pursuant to the criteria set
24 forth in Business and Professions Code section 19852, subdivisions (a) through
25 (h) inclusive.

26 (2) The Commission finds that the applicant is unqualified pursuant to the criteria
27 set forth in Business and Professions Code section 19857, subdivisions (a)
28 through (c) inclusive.

29 (3) The Commission finds that the applicant is unsuitable pursuant to Business and
30 Professions Code section 19858.

31 (4) The Commission finds that the applicant is disqualified pursuant to Business and
32 Professions Code section 19859, subdivisions (a) through (g) inclusive.

33 (5) The Commission finds that the local ordinance does not conform to the
34 requirements of Business and Professions code section 19860.

35 (6) The Commission finds that the applicant, if a publicly traded racing association
36 or a qualified racing association, has failed to meet the criteria set forth in
37 Business and Professions Code section 19863.

38 (7) The Commission finds that the applicant, if a corporation, is ineligible pursuant to
39 the criteria set forth in Business and Professions Code section 19880.

1 (8) The Commission finds that the applicant, if a limited partnership, is ineligible
2 pursuant to the criteria set forth in Business and Professions Code section
3 19890.

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

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

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

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

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

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

19 (C) A conviction regarding or final administrative decision concluding that
20 there was a violation of Labor Code section 450, or

21 (D) A conviction regarding or final administrative decision concluding that
22 there was a violation of campaign finance disclosure or contribution
23 limitations applicable to an election conducted pursuant to Business and
24 Professions Code section 19960.

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

28 (A) Any regulation adopted by the Commission or Division.

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

31 (c) The grounds for denial set forth in this section apply in addition to any grounds
32 prescribed by statute or any grounds that would support revocation under chapter
33 10 of these regulations.

34 **Authority:** Sections 19811, 19823, 19824, 19840, 19841, 19850, 19854, 19861, 19870, 19872, 19880,
35 19890, and 19982, Business and Professions Code.

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