

CHANGES TO 45-DAY COMMENT VERSION

45-day version additions in underline

1st 15-day version additions in italic; deletions in strikeout

2nd 15-day version regarding regulation 12050 only;

additions in bold double underline; deletions in bold double strikeout

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 *so* 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~~ *the submitted* application may be made at any time prior to the final action by the ~~Commission~~ *Division*. 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 without prejudice, any unused portion of the background investigation deposit shall be refunded by the Division.

~~(a)~~ *(b) 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 portion of the background investigation deposits shall be ~~refunded~~ *returned to the applicant* by the Division.*

~~(b)~~ *(c) 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.*

Proposed Revisions/Additions to California Code of Regulations, Title 4,
Division 18. California Gambling Control Commission

1st 15-Day comment version; Additions shown in blue italic; Deletions shown in red strikeout.

2nd 15-day comment version regarding regulation 12050 only;
Additions in bold double underline; Deletions in bold double strikeout.

1 **Authority:** Business and Professions Code Sections 19811, 19823, 19824, 19840, 19841, 19893, and
2 19951.

3 **Reference:** Business and Professions Code Sections 19859, 19867, 19869, 19880, 19881, 19890, 19891,
4 ~~and 19951, and 19984.~~

5 **12048. Abandonment of Applications**

6 At any time prior to final Commission action, the Executive Director may preliminarily
7 determine that the application is abandoned. Such determination may be based upon
8 recommendation of the Division, failure of the applicant to respond to *Division or*
9 *Commission* inquiries, or notification by the applicant that the application is no longer being
10 pursued. If the determination is not based upon applicant's notice to the Commission, then
11 notice will be sent to the applicant, *with a copy to the applicant's employer* by *regular*
12 *certified* mail indicating that unless the applicant contacts the Commission within *60-30*
13 days from the date of the letter, the application will be deemed abandoned. ~~Once deemed~~
14 ~~abandoned due to unresponsiveness of the applicant or by consent of the applicant, any~~
15 ~~unused background investigation deposits shall be returned to the applicant by the~~
16 ~~Division. An abandoned application cannot be reactivated.~~

17
18 **Authority:** Business and Professions Code Sections 19811, 19823, 19824, 19840, 19841, 19893, and
19 19951.

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

22 23 **12050. Denial; Appeal of Denial of application for license, permit, or request** 24 **for finding of suitability.**

25 (a) Any applicant for any ~~state gambling~~ license, permit, or finding of suitability ~~for a tribal~~
26 ~~key employee or resource supplier~~ for whom Commission staff has issued a
27 recommendation of denial or imposition of conditions shall be given notice by
28 certified mail of the Commission meeting at which the application is scheduled to be
29 heard and the Commission staff recommendation at least ~~20-10~~ days prior to the
30 meeting. Further, the Division shall provide the applicant with a summary of the
31 Director's final report which includes a factual and/or legal basis for any
32 recommendation and the Division's recommendation, if any, not less than 30 days
33 prior to the Commission meeting. The applicant shall be afforded the opportunity
34 ~~and shall make an election in writing to the Executive Director which is received not~~
35 ~~less than 10 days prior to the scheduled meeting, or in person at the meeting, as~~
36 ~~follows to:~~

- 37 (1) ~~The applicant may address~~ Address the Commission by way of an oral
38 statement at a noticed Commission meeting, and/or may submit documents
39 in support of the application ~~not less than five days prior to the meeting, or~~
40 (2) ~~The applicant may request~~ Request an evidentiary hearing.

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

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

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

17 (A) ~~The applicant and the Division or Commission staff or Deputy Attorney~~
18 ~~General *or other representative* presenting the case (**Complainant**)~~
19 ~~shall **provide the applicant, at least 30 calendar days prior to the**~~
20 ~~**hearing, exchange** a list of potential witnesses with the general~~
21 ~~subject of the testimony of each witness and shall disclose and make~~
22 ~~available copies of all documentary evidence intended to be~~
23 ~~introduced at the hearing and not previously provided, reports or~~
24 ~~statements of parties and witnesses and all other writings containing~~
25 ~~relevant **and admissible** evidence, ~~at least five ten calendar days prior~~~~
26 ~~~~to the hearing. **Applicant shall provide Complainant with similar**~~~~
27 ~~**information to be introduced at the hearing and not previously**~~
28 ~~**provided at least ten calendar days prior to the hearing. Such**~~
29 ~~**documentary evidence may be redacted as needed to prevent the**~~
30 ~~**disclosure of confidential information.**~~ The Commissioners may
31 prohibit testimony of a witness that is not disclosed and may prohibit
32 the introduction of documents that have not been disclosed. ~~Nothing~~
33 ~~in this subsection confers upon an applicant a right to discovery of the~~
34 ~~Division's confidential investigative reports or to require production of~~
35 ~~any document or information the disclosure of which is otherwise~~
36 ~~prohibited by any provision of the Gambling Control Act, or is~~
37 ~~privileged from disclosure or otherwise made confidential by law.~~

38 (B) *Nothing in this section confers upon an applicant a right to discovery*
39 *of the Commission's or Division's confidential information or to require*
40 *production of any document or information the disclosure of which is*
41 *otherwise prohibited by any provision of the Gambling Control Act, or*

1 is privileged from disclosure or otherwise made confidential by law.
2 Documentary evidence may be redacted as needed to prevent the
3 disclosure of confidential information.

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

13 ~~(C)~~(D) The hearing ~~shall~~ **need** not be conducted according to technical
14 rules of evidence. Any relevant evidence may be considered, and is
15 sufficient in itself to support findings if it is the sort of evidence on
16 which responsible persons are accustomed to rely in the conduct of
17 serious affairs, regardless of the existence of any common law or
18 statutory rule that might make improper the admission of that evidence
19 over objection in a civil action. A presiding officer, which shall be an
20 administrative law judge or attorney designated by the Commission,
21 shall rule on the admissibility of evidence and on any objections
22 raised.

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

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

28 ~~(F)~~(G) At the conclusion of the hearing, the Commission shall take the
29 matter under submission **and may schedule future closed session**
30 **meetings for deliberation. and shall issue a written decision within 30**
31 **days which complies with Business and Professions Code section**
32 **19870, subdivision (c).** In taking the matter under consideration, any
33 Commissioner who participated at the hearing shall be allowed to vote
34 by mail or by other appropriate method. **Within 30 days of the**
35 **conclusion of the hearing, the Commission shall issue a decision**
36 **which complies with Business and Professions Code section 19870,**
37 **subdivision (c), and shall serve the decision by certified mail on the**
38 **applicant and on any business entity with which the applicant is**
39 **associated.**

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 *be issued*. 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, *permit, or finding of suitability* should not be granted. In the
7 event that the Division does not present the case, the Commission may seek
8 outside representation or one or more Commission staff members shall *be*
9 ~~segregated from the Commissioners and Commission legal unit to~~ present
10 the case.

11 (c) If the application is denied *or conditions imposed*:

- 12 (1) ~~A detailed statement of reasons shall be issued by the Commission within 30~~
13 ~~days, and served on the denied applicant and on any business entity with which~~
14 ~~the denied applicant is associated by mail. The Commission's decision will~~
15 ~~provide the effective date of the decision and may include further directions as to~~
16 ~~stay provisions or orders to divest.~~
- 17 (2) If the applicant is an officer, director, employee, agent, representative, or
18 independent contractor of a corporation licensed by the Commission, the *denied*
19 applicant shall resign ~~effective immediately upon receipt of~~ *pursuant to the date*
20 *specified in the decision* ~~notice of the denial~~ and shall so notify the Commission
21 *in writing*.
- 22 (3) If the denied applicant is an officer or director of a corporation licensed by the
23 Commission, the corporation shall immediately remove that person from office
24 and shall so notify the Commission *in writing*. If the denied applicant is an
25 employee, agent, representative, or independent contractor of a corporation
26 licensed by the Commission, the corporation shall ~~immediately~~ terminate its
27 relationship with that person *pursuant to the date specified in the decision* and
28 shall so notify the Commission *in writing*. ~~If the denied applicant is a~~
29 ~~shareholder of a corporation licensed by the Commission, the corporation~~
30 ~~shall repurchase that person's shares, for cash, in an amount not greater~~
31 ~~than fair market value within 30 days after receipt of the denial and~~
32 ~~statement of findings, and shall so notify the Commission *in writing*. The~~
33 ~~denied applicant and the corporation licensed by the Commission shall~~
34 ~~comply with Business and Professions Code section 19882.~~
- 35 (4) If the denied applicant is an owner or holder of an interest in a general or limited
36 partnership licensed by the Commission, the denied applicant shall resign as
37 partner. *If the denied applicant is an owner or holder of an interest in a*
38 *limited partnership licensed by the Commission, the denied applicant* and
39 the ~~general or~~ limited partnership shall *comply with Business and*
40 *Professions Code section 19892*, ~~within 30 days after receipt of the denial~~

1 ~~and statement of findings, return to the denied applicant, in cash, the~~
2 ~~amount of the denied applicant's capital account as reflected on the books~~
3 ~~of the partnership,~~ and shall so notify the Commission in writing.

4 (5) If the denied applicant is a principal in a business entity licensed by the
5 Commission not otherwise described above, the denied applicant shall resign
6 his or her position within that entity and divest whatever interest is held in that
7 entity ~~effective pursuant to the timelines and instructions specified in the~~
8 ~~decision~~ immediately upon receipt of the denial, and shall so notify the
9 Commission *in writing*. The business entity shall remove the denied applicant
10 from any principal role in the business entity and shall so notify the Commission
11 in writing.

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

30 (d) ~~Unless otherwise specified, any~~ An appeal of a ~~final~~ denial by the Commission shall be
31 subject to judicial review under ~~to~~ Code of Civil Procedure, section 1085 (pursuant
32 to Business and Professions Code, section 19870, subdivision (e)). *Neither the*
33 *right to petition for judicial review nor the time for filing the petition shall be affected*
34 *by failure to seek reconsideration.*

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

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

38 Reference: Sections 19868, 19870, 19879, 19883, 19892, Business and Professions Code.

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1
2 Chapter 6. State Gambling Licenses and Approvals for
3 Gambling Establishments, Owners, and Key Employees

4 **12348. Mandatory and Discretionary Grounds for Denial of Application for a**
5 **State Gambling License or Key Employee license.**

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

8 (1) The Commission finds that the applicant is ineligible, *unqualified, disqualified, or*
9 *unsuitable pursuant to the criteria set forth in the Act or other applicable law or*
10 *that granting the license would be inimical to public health, safety, welfare, or*
11 *would undermine the public trust that gambling operations are free from criminal*
12 *or dishonest elements.* ~~pursuant to the criteria set forth in Business and~~
13 ~~Professions Code section 19852, subdivisions (a) through (h) inclusive.~~

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

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

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

21 (2) The Commission finds that the local ordinance does not conform to the
22 requirements of Business and Professions code section 19860.

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

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

28 ~~(8)(3) The Commission finds that the applicant, if a limited partnership, is ineligible~~
29 ~~pursuant to the criteria set forth in Business and Professions Code section~~
30 ~~19890.~~

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

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

35 (2) The Commission finds that an applicant has attempted to communicate or has
36 communicated *ex parte*, as that term is defined in Business and Professions

1 Code section 19872, subdivision (e), with one or more Commissioners, through
2 direct or indirect means, regarding the merits of the application while the
3 application is pending disposition at the Division or the Commission.

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

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

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

10 (C) A ~~conviction regarding or~~ final administrative decision concluding that
11 there was a violation of ~~Labor Code section 450~~ of law involving gambling
12 or gambling-related activities, or

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

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

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

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

23 (c) The grounds for denial set forth in this section apply in addition to any grounds
24 prescribed by statute or any grounds that would support revocation under chapter
25 10 of these regulations.

26 **Authority:** Sections 19811, 19823, 19824, 19840, 19841, 19850, 19854, 19861, 19870, 19872, 19880,
27 19890, and 19982, Business and Professions Code.

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