



INDUSTRY MATTERS

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Vehicle Code Violations: Beyond the Infraction

By Paula LaBrie
Commissioner—Attorney Member

In the July 2017 issue of *Industry Matters*, Chairman Evans reiterated the importance of full disclosure by applicants, which cannot be emphasized enough. One reoccurring theme the Commission has noticed is the failure of applicants to disclose misdemeanor convictions that arise from a violation of the Vehicle Code. When asked why, the answer is consistent, "...but it's only a traffic violation." The confusion seems to be that Vehicle Code violations are only charged as infractions and don't rise to a more serious charge of a misdemeanor. This is incorrect. In California, a violation of the Vehicle Code can result in an infraction, misdemeanor, or sometimes even a felony conviction.

In general, a traffic infraction is a public offense that is prohibited by state law or local ordinance but relatively minor in nature. Infractions are punishable by a base fine of up to \$100 (excluding penalty assessments), unless otherwise indicated. Infractions are not punishable by confinement in jail or probation. Some examples of infractions include failing to obey a traffic sign, making an improper turn, illegally impeding a bicycle lane or unsafe passing. Applicants are not required to disclose these offenses on their application. These acts, in and of themselves (if not excessively repeated or combined with another offense) do not necessarily amount to egregious behavior and do not appear on one's criminal record. On the other hand, more severe Vehicle Code violations are charged as misdemeanors and are therefore crimes. A misdemeanor conviction can be punished by confinement in jail, a base



fine of up to \$1,000 (excluding penalty assessments), unless otherwise indicated, or by both. It can also be punished by forfeiture, such as revocation of a driver's license. Some examples of misdemeanors include driving

under the influence of drugs or alcohol, driving the wrong way on a highway, leaving the scene of an accident, reckless driving, participating in speed contests, or driving without a license. The disclosure of criminal convictions is something the Commissioners care deeply about in order to properly evaluate an applicant, regardless of whether the criminal conviction arose from a violation of the Vehicle Code, the Penal Code, or another body of law.

When completing an application, applicants should double-check to be sure they are not neglecting to disclose misdemeanor convictions that arise from a violation of the Vehicle Code. If in doubt, check the court records in the jurisdiction where the conviction occurred. This is also a good idea because some Vehicle Code violations can be escalated into a higher punitive category, such as from a misdemeanor to a felony "wobbler", or from an infraction to a misdemeanor "wobbler" depending upon the specific facts of the case, severity of the matter, and the offender's criminal history. For example, a DUI charge that is associated with bodily injury might be escalated to a felony. An infraction might be charged

as a misdemeanor if the offender has been convicted of multiple Vehicle Code violations within a 12-month period. In other circumstances, the offender has the option to plead to a lesser offense or to even opt to be charged with a misdemeanor instead of an infraction. There are certain benefits to having those eligible infractions bumped up to the misdemeanor category, such as a trial by jury and access to a public defender. But if convicted, the applicant will need to disclose the conviction. So, the court records should provide some history and perhaps help an applicant remember the specific charge and what plea they entered, particularly if the conviction occurred some time ago. In addition, for a small fee, the Department of Motor Vehicles can also provide you with a copy of your driving record, which might provide some additional helpful information.

→ (See [Vehicle Infractions](#) on page 2)

CGCC Calendar

Upcoming Licensing Meetings

- January 11
- January 25
- February 8
- February 22
- March 8
- March 22

Gaming Policy Advisory Committee Meetings

January 11, 2018 @ 1:30 p.m.

- #### Upcoming State Holidays (Office Closed)
- January 15 (Martin Luther King Jr. Day)
 - February 19 (Presidents' Day)
 - March 30 (Caesar Chavez Day Observed)

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OPG Conducts Self-Exclusion Study

By Terri Sue Canale-Dalman
Chief, Department of Public Health, Office of Problem Gambling

The California Department of Public Health, [Office of Problem Gambling](#) (OPG) is conducting a clinical study of the self-exclusion program throughout California. The study is being administered by the UCLA Gambling Studies Program (UGSP) and includes participation from 20 licensed cardrooms, the California Department of Justice's Bureau of Gambling Control (BGC) and [California Gambling Education and Treatment Services](#) (CalGETS) providers.

The goal of the study is to determine baseline variables that predict success with self-exclusion. Data collected will look at trajectories based on gender, types of gambling, and will examine the characteristics of gamblers who self-exclude, including demographic variables, gambling behaviors, level of gambling severity, type of gambler (action vs escape), consequences, motivation to self-exclude, and length of self-exclusion. Participants must be between 18-65 years old, speak English, and be self-excluded or are planning to self-exclude. Participation is strictly voluntary and all data collected is confidential.

Recruitment for the study is ongoing and executed through the self-exclusion packets provided to patrons who self-exclude. Packets are provided by the BGC and/or the gambling establishment and include CalGETS brochures, Freedom from Problem Gambling Self-Help Workbook, a flyer explaining the study and how to participate, and a form allowing UGSP to contact the individual about the study. To date, 36 subjects have enrolled and are participating in the study.

Study participants provide information through a secure encrypted portal, and are asked to complete questionnaires. The questionnaires collect data regarding the participant's gambling history, mental health, stress, and consequences from problem gambling. Participants are divided into three groups: (1) Self-Exclusion, (2) Self-Exclusion + Psychotherapy, and (3) Psychotherapy. Follow-up phone surveys from UGSP staff will occur at one, three, and six month intervals.

The study will conclude June 30, 2018. UGSP will provide a report on the study findings, and provider experiences. The report will be distributed at OPG's Advisory meeting. If you are interested in participating in the study by providing packets to self-excluded patrons, please contact the OPG at 916-327-8611 or at OPG@cdph.ca.gov.



Vehicle Infractions

(Continued from page 1)

There are other resources available to the public to help determine which category a Vehicle Code violation might fall into. The California Vehicle Code, commencing with section 40000.1 of Division 17: Offenses and Prosecution, specifically lists which violations are charged as misdemeanors. The Judicial Council of California publishes an annual Uniform Bail and Penalty Schedule which is available online. This document has a section on both traffic infractions and traffic misdemeanors. It lists Vehicle Code violations by section number with a description of the offense. It also lists the amount of base fine, penalty or bail associated with each offense.

It should be noted that a Vehicle Code misdemeanor conviction does not automatically disqualify an applicant from licensure. Assuring that it is disclosed however, could save an applicant from an Evidentiary Hearing that might result in a delay in the Commission issuing or renewing a license or even result in a denial. When in doubt it's always better to error on the side of disclosing.

WHO CAN REPRESENT YOU AT A HEARING? THE ATTORNEY GENERAL HAS AN OPINION

By **Kate Patterson and Jason Pope**
Staff Counsels

On September 28, 2017, the California Attorney General's Office issued Opinion No. 14.101 (Opinion) concerning lay representation (representation by non-lawyers) at Administrative Procedure Act (APA) hearings. The Opinion concluded that the APA did not explicitly authorize lay representation at APA hearings before the Office of Administrative Hearings (OAH) because the APA does not expressly authorize lay representation, and the OAH, who has the authority over APA hearings, has not adopted regulations allowing lay representatives.

Although it is not a common practice, Business and Professions Code section 19825 and California Code of Regulations Section 12058 authorize the Commission to send applications to APA hearings, when appropriate. A common example occurs when the Bureau of Gambling Control issues an Accusation against an applicant. When the Commission considers an application that has a pending Accusation filed against it, the Commission often refers that application to an APA evidentiary hearing to be consolidated with the filed Accusation.



The evidentiary hearing will go through the APA process prior to returning to the Commission for final action. During these APA processes, the applicant cannot be represented by a Designated Agent or non-attorney at the hearing before OAH.

On the other hand, Commission regulations specifically authorize lay representation at Gambling Control Act (GCA) hearings before the Commission. California Code of Regulations Section 12060 covers the GCA hearing the Commission utilizes to decide on the suitability of applicants. In pertinent part, subdivision (j) states "[t]he applicant may choose to represent himself, herself, or itself, or may retain an attorney or lay representative." The Opinion discusses lay representation at administrative hearings and suggests that lay representation is permissible if authorized by the Legislature or the state agencies who conduct those proceedings. Thus, this Opinion does not impact the current Commission practice or Commission regulations that permit lay representation at GCA hearings.

A copy of the AG's Opinion can be located via the AG's website at www.oag.ca.gov or by clicking [HERE](#).

REGULATIONS CORNER

The Commission (CGCC) has recently completed the following seven regulatory projects:

- Playing Books** utilized by Third-Party Providers of Proposition Player Services (TPPPS) and Gambling Businesses (eff. January 1, 2018)
The amended Playing Books regulations consolidate procedures for requesting approval of hardcopy playing books and allow the use of an electronic playing book system. This includes criteria and approvals to ensure that a system is properly secure. Written procedures must be submitted to the Bureau for review and approval and must be established and implemented by July 1, 2018.
- Change to Disqualifying Felonies** (eff. Nov. 30, 2017) - SB 112 (Committee on Budget and Fiscal review, Chapter 363, Statutes of 2017) amended Business and Professions Code Section (B&P) 19859 of the Gambling Control Act (GCA) to exempt from the requirement for the Commission to deny a license a conviction of a felony for the possession of cannabis that would not constitute a felony or misdemeanor under California law on the date that the application for a license is submitted. This would update the standards of the GCA to reflect changes in the law related to cannabis possession, while retaining stringent standards that protect the integrity of gaming. Two regulatory provisions, which identify mandatory disqualification criteria for Third-Party Providers of Proposition Player Services (Section 12218.11) and Gambling Businesses (Section 12236), have been modified. These provisions will no longer require automatic denial of a license based on any felony conviction but will instead reference a disqualifying felony under B&P Code section 19859, subdivision (c).
- Update to Commission forms** (eff. Sept. 7, 2017, Dec. 7, 2017; submitted on Dec. 1, 2017) - Three separate packages were submitted/approved. The Bureau recently changed its mailing address and phone number. These non-substantive changes updated regulations and forms to conform to this new information. Please make sure you are utilizing the most up-to-date forms.
- Accounting Reference Correction** (submitted Dec. 1, 2017) - In 2015, the CGCC updated its Accounting and Financial Reporting regulations. Part of these amendments included the establishment of Chapter 4. This action makes technical updates to conform to the section numbers added to the 2015 regulations.
- Clean-Up of References to B&P 19801** (submitted Dec. 1, 2017) - In 2007, SB 730 (Flores, Chapter 730, Statutes of 2007) made amendments to B&P Code section 19801 which included a renumbering of the subdivisions. This action makes technical updates to conform to the new subdivision numbering.

Documents associated with these rulemaking files, including the final texts, can be found on the CGCC website at www.cgcc.ca.gov under the Regulations tab or by clicking [HERE](#).

SIGN UP FOR THE COMMISSION'S RULEMAKING MAILING LIST: The CGCC is required by law to annually verify and update the mailing list for rulemaking (regulations). The CGCC recently sent a notice to interested parties to update their subscriptions. If you did not reply, you may have been removed from the mailing list. To sign up, or to confirm contact information, go to the CGCC website at www.cgcc.ca.gov, go to the Regulations tab, and select [Rulemaking \(Regulations\) Mailing List Email Subscription Form](#).

SEPARATION OF EMPLOYMENT?

Be clear when disclosing the reason

By Fred Castano
Licensing Analyst

On most of our supplemental applications, applicants are required to disclose their employment history and the reason for leaving each employer. The most common reasons that we encounter are “laid off”, “left to pursue new employment”, “resigned”, or “terminated.” Those are clear, specific, and definable reasons for why someone would no longer have an employment relationship with a business entity.



As of late, the Commission has encountered several instances of applicants not being entirely clear on the circumstances of their separation. Phrases like “let go” seem to be used to split the difference between “laid off” and “fired” because an applicant might not want to admit that their employment was terminated for fear that it may affect consideration of their licensure. Being terminated from a job does not necessarily mean that an applicant is unsuitable for licensure. As part of the Bureau of Gambling Control’s background investigation, the Bureau will look into the circumstances of the termination, and incorporate the circumstances into their recommendation to the Commission.

The Bureau’s background investigation reports always include if the applicant was accurate in disclosing the basis for their separation of employment.

The Commission has also encountered instances of applicants indicating that they had resigned from their employment, while the former employer will indicate that the applicant had been terminated. Discrepancies like these can call into question the applicant’s character, honesty, and integrity, which directly affect consideration of an applicant’s suitability for licensure. If you are unsure of the circumstances under which you left an employer, contact them and ask. Or, if you disagree with the basis of the separation of employment, it is important to disclose the entire reason as you know it, rather than omit a pertinent fact in your application. For example, Employer A stated X, however I believe it to be Y.

Following these tips and disclosing everything as truthfully as possible could mean the difference between your licensure being approved, or referred to an evidentiary hearing.

Be sure to review the Commission’s [Crucial Tips: Must-Do’s for the State Application Process](#) flyer before finalizing your initial or renewal applications.

COMMISSION SPOTLIGHT

The Commission (CGCC) is fortunate to have some of the very best individuals amongst our staff. Our staff is dedicated, motivated, intelligent, and their work product demonstrates their desire to ensure the best for the industry and the people of California. This past December, the Commissioners and Executive Director recognized thirteen members of our staff who have been with the Commission for 10 years or more. Three of our staff, **Jacob Muscan**, **Alaina Lutz**, and **Pam Mathauser** (pictured on the right), were recognized for their 15-plus years of dedication and service to the CGCC (yes, all 15 plus years have been with the CGCC). In addition, eight staff, **Amy Arndt**, **Anna Carr**, **Denise deLotty Smith**, **Edward Diggs**, **Ericka Ramirez**, **Niecesha Williams**, **Quinn Hedges** and **Rachelle Ryan**, were recognized for their 10 years (or more) of dedication and service to the CGCC.



Also in December, in what has become an annual tradition, the Executive Director pays special recognition to two individuals from the staff. This year, Licensing Analyst **Fred Castano** was recognized with the “Awesome Award” as he takes on every task given with passion, dedication and a can-do attitude. In 2016, Deputy Director of Legislation & Regulatory Affairs Division, Anna Carr, was recognized with this award for her incredible work ethic, wealth of information, and ability to thoroughly, accurately and timely conquer any assignment given. The second individual is presented with the “Director’s Award”. In 2016, Management Services Technician Lisa Chimento was recognized with this award for her consistently positive attitude, willingness to assist whenever needed, and dedication to the CGCC. The recipient of the 2017 Director’s Award was Chief Information Officer **Jacob Muscan** in recognition of his incredible work ethic, unwavering commitment to the CGCC and all of its members and staff, and the impeccable service he provides to every person he comes in contact with.*



Congratulations to all recipients and a huge **THANK YOU to all CGCC staff** for their daily commitment to excellence.

Last, but certainly not least, on November 30, 2017, after serving nearly seven years as a Commissioner, Lauren Hammond retired from State service. Also in December, the CGCC was able to properly recognize Lauren for her time at the CGCC, as well as for nearly 30 years of public service. The Commission wishes Lauren beautiful weather accompanied with low golf scores, delay-free traveling, and the very best during retirement.

HEARING RESULTS
(October 1–December 31)

Cardroom Key Employee License:
Rhea A. Motley, denied on Oct. 5th

State Gambling License:
Louis Sarantos Jr., revoked Dec. 18th

*Please note that no State funds were used for the purchase of the staff awards.