

CHAPTER 403a. BOARD OPERATIONS AND ORGANIZATION

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Authority

The provisions of this Chapter 403a issued under 4 Pa.C.S. §§ 1201(f), 1202(a) and (b)(25) and (30), and 1206, unless otherwise noted.

Source

The provisions of this Chapter 403a adopted June 22, 2007, effective June 23, 2007, 37 Pa.B. 2808, unless otherwise noted.

§ 403a.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Financial interest—

- (i) An ownership, property, leasehold or other beneficial interest in an entity.
- (ii) The term does not include an interest which is held or deemed to be held in any of the following:
 - (A) Securities that are held in a pension plan, profit-sharing plan, individual retirement account, tax sheltered annuity, a plan established pursuant to section 457 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 457), or any successor provision, deferred compensation plan whether qualified or not qualified under the Internal Revenue Code of 1986, or any successor provision, or other retirement plan that:
 - (I) Is not self-directed by the individual.
 - (II) Is advised by an independent investment adviser who has sole authority to make investment decisions with respect to contributions made by the individual to these plans.
 - (B) A tuition account plan organized and operated under section 529 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 529) that is not self-directed by the individual.
 - (C) A mutual fund where the interest owned by the mutual fund in a licensed entity does not constitute a controlling interest as defined in this part.

Ownership interest—Owning or holding or being deemed to hold, debt or equity securities or other ownership interest or profit interest.

§ 403a.2. Participation at meetings and voting.

(a) *Qualified majority vote.* An action by the Board, except as set forth in subsections (b) and (c), including the approval, issuance, denial or conditioning of a license or the making of an order or the ratification of a permissible act done or order made by one or more of the members of the Board will require a qualified majority vote consisting of at least one gubernatorial appointee and the four legislative appointees.

(b) *Majority vote.* An action by the Board to suspend, revoke, not renew, void or require forfeiture of a license, permit, certification or registration previously issued by the Board, to impose an administrative fine or penalty or to issue cease and desist will require a majority vote of all the Board members.

(c) *Participation.* A member may not participate in a hearing, proceeding or other matter in which the member, or the immediate family thereof, has a financial interest in the subject matter of the hearing or proceeding or other interest that could be substantially affected by the outcome of the hearing or proceeding, without first fully disclosing the nature of the interest to the Board and other persons participating in the hearing or proceeding. For purposes of the subsection, the term “immediate family” means spouse, parent, brother, sister or child.

(d) *Disqualifying interest.* If a Board member has a disqualifying interest in a voting matter, the member shall disclose the nature of the disqualifying interest, disqualify himself and abstain from voting in a proceeding in which his objectivity, impartiality, integrity or independence of judgment may be reasonably questioned, including instances where he knows that he possesses a substantial financial interest in the subject matter of the proceeding or an interest that could be substantially affected by the outcome of the proceeding. If it is a legislative appointee member that has disqualified himself, the qualified majority will consist of the remaining three legislative appointees and at least two gubernatorial appointees.

(e) *Member abstention.* When a member has disqualified himself, the member’s abstention from voting will apply only to the singular voting matter that led to the disqualification and not apply to other matters under consideration by the Board for which the member is otherwise qualified.

§ 403a.3. Meetings.

(a) *Public sessions.* The proceedings of all public sessions will be conducted in accordance with 65 Pa.C.S. Chapter 7 (relating to the Sunshine Act).

(b) *Regularly scheduled meetings.* The Board will meet once a month, and on other dates as the Board determines.

(c) *Participation by means of telephone or video teleconference.* A Board member may participate in a meeting by means of telephone or video teleconference when it is impractical for the Board member to attend the meeting in person.

(d) *Record of proceedings.* The Board will keep a record of all proceedings held at public meetings of the Board. A verbatim transcript of those proceedings will be prepared by and will be the property of the Board. The verbatim transcript will be available for inspection at the Board's office during normal business hours.

§ 403a.4. Board office hours.

Board offices will be open from 8:30 a.m. to 5 p.m. on business days except Saturdays, Sundays, legal holidays and Commonwealth office closures declared by the Governor, unless otherwise directed by the Board.

§ 403a.5. Public communication.

Requests for information regarding the Board may be directed to:

Office of Communications
Pennsylvania Gaming Control Board
P. O. Box 69060
Harrisburg, PA 17106-9060

§ 403a.6. Delegation of powers.

(a) The Board may, consistent with the act and this part, delegate its authority to perform any of its functions to a Board member or member of the Board's staff.

(b) A delegation of Board authority will be effected by promulgation of a regulation or the adoption of an order or a resolution at a public meeting of the Board. The regulation, order or resolution will specify:

- (1) The specific authority delegated.
- (2) The Board member or Board staff members to whom the authority is delegated.
- (3) Limitations or conditions imposed on the authority delegated.

(c) Delegations of authority made under this section will remain in effect indefinitely unless otherwise specified in the implementing regulation, order or resolution.

(d) A delegation of authority adopted by the Board may be modified or rescinded by the Board through promulgation of a regulation or the adoption of a subsequent order or resolution at a public meeting of the Board.

(e) Notwithstanding any other provision of this section, a matter that has been delegated to the Board staff may alternatively be presented to and determined by the Board on its own motion, at the discretion of the Chairperson or at the request of the Board staff.

Source

The provisions of this § 403a.6 amended August 28, 2009, effective August 29, 2009, 39 Pa.B. 5125. Immediately preceding text appears at serial page (328457).

§ 403a.7. Temporary emergency orders.

(a) Upon request of the Office of Enforcement Counsel in accordance with subsection (d), a temporary emergency order may be issued by the Executive Director of the Board or the Executive Director's designee. A temporary emergency order may be issued without a hearing and without advanced notice in accordance with this section.

(b) A temporary emergency order may be issued to do one of the following:

(1) Suspend a license, certification, permit or registration.

(2) Temporarily exclude a person from a licensed facility pending Board action on an underlying petition for exclusion.

(3) Direct that a person cease and desist engaging in specific conduct.

(c) A temporary emergency order may be issued if there is insufficient time to provide notice and hearing prior to suspension or exclusion; emergency suspension or exclusion is necessary to preserve the public health, welfare or safety, or the integrity of gaming in this Commonwealth; and the Executive Director has determined that one of the following has occurred:

(1) A person holding a license, certification, permit or registration issued by the Board has been charged with or convicted of a felony, a criminal gaming offense, or crime of dishonesty or false statement or other offense that would make the person ineligible or unsuitable to hold a license, permit, certification or registration.

(2) A person meets one or more of the criteria for exclusion or ejection under § 511a.3 (relating to criteria for exclusion or ejection).

(3) The action is necessary to prevent or cure a violation of any provision of the act, this part or other Federal or State laws or regulations.

(d) If the Office of Enforcement Counsel determines that circumstances exist which require that immediate action be taken against a person's license, certification, permit or registration, or to place a person on the exclusion list, the Office of Enforcement Counsel may submit a request for a temporary emergency order. The request will include:

(1) The circumstances upon which the request for a temporary emergency order was made.

(2) The legal grounds upon which the temporary emergency order is being requested.

(3) The specific relief sought.

(e) By the close of the next business day following its issuance, a temporary emergency order, together with the request required under subsection (d), will be filed with the Clerk.

(f) A temporary emergency order will specify that the person subject to the temporary emergency order may request an informal hearing before the Executive Director or a designee which will occur within 3 business days of filing the request for a hearing with the Clerk.

(g) The Bureau will serve the request and the issued order upon the person named in the temporary emergency order. Service required by this subsection will be made as expeditiously as possible following the issuance of the order and the request. Service will be made in the manner prescribed by § 491a.5 (relating to service).

(h) If a person files a request for an informal hearing, the hearing will be held before the Executive Director or a designee within 3 business days at a location determined in accordance with § 491a.8(e) (relating to hearings generally).

(i) At the conclusion of the informal hearing, the Executive Director or a designee will render a decision within 3 business days as to whether the temporary emergency order will continue, be modified or dissolved. Service of the decision will be made in accordance with § 491a.5.

(j) Unless the Executive Director or a designee dissolves the temporary emergency order, the Executive Director, in consultation with the Office of Chief Counsel, will refer the matter for a formal hearing before either:

(1) The Board to determine the validity of the suspension in accordance with subsection (m).

(2) The Office of Hearings and Appeals which will thereafter prepare a report and recommendation for the Board's consideration in accordance with subsection (p).

(k) If the person named in the temporary emergency order does not file a request for an informal hearing within 10 business days of the issuance of the temporary emergency order, the matter will be referred in accordance with subsection (j).

(l) Until the temporary emergency order is presented to the Board for consideration or the Office of Hearings and Appeals has issued its report and recommendation, the Executive Director or a designee may dissolve or modify a temporary emergency order previously issued.

(m) If the hearing is conducted by the Board, the Board may take one of the following actions upon conclusion of oral arguments and evidentiary presentations:

(1) If the Board finds that the facts and circumstances presented are sufficient to support the issuance of the emergency order, and that dissolution of the emergency order would pose a threat to the public health, safety or welfare, or the public's interest in the effective regulation of gaming demands the action, it may issue an order ratifying or modifying the order of suspension. The Board order may thereafter be appealed under § 494a.11 (relating to appeals).

(2) If the Board finds that there is insufficient cause to continue the emergency order, it may issue an order dissolving the emergency order and the privileges of the person named in the order will be reinstated.

(3) If the Board finds that further hearing is necessary, it may schedule a hearing or refer the matter to the Office of Hearings and Appeals for additional

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presentation of evidence and testimony of witnesses. In either case, the order of suspension will remain in effect, with or without modification as the Board deems appropriate.

(n) Board orders ratifying or dissolving temporary emergency orders will not have effect upon the power and duty of the Office of Enforcement Counsel to initiate, in its sole discretion, proceedings for violations of the act or this part or upon the outcome of any proceeding so initiated.

(o) Copies of the Board's final order will be served on the person named in the order in accordance with § 491a.5.

(p) If at any point the Board or Executive Director refers the matter to the Office of Hearings and Appeals, the formal hearing will be subject to the following requirements:

(1) The hearing before a presiding officer will occur no more than 15 business days after the Board or Executive Director refers the matter to the Office of Hearings and Appeals, unless a delay is requested by the person named in the temporary emergency order.

(2) Within 10 business days following the conclusion of the hearing, the presiding officer will forward a report and recommendation for action on the temporary emergency order to the Board. A copy of the report and recommendation will be served on the person named in the temporary emergency order in accordance with § 491a.5.

(3) Upon receipt of a report and recommendation from the Office of Hearings and Appeals, the matter will be placed on an upcoming Board meeting agenda for final consideration.

Authority

The provisions of this § 403a.7 amended under 4 Pa.C.S. §§ 1202(b)(30) and 1207(2) and (9).

Source

The provisions of this § 403a.7 amended July 10, 2009, effective July 11, 2009, 39 Pa.B. 3446; amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial pages (345156) to (345159).

Cross References

This section cited in 58 Pa. Code § 511a.4 (relating to duties of the Bureau and the Office of Enforcement Counsel); and 58 Pa. Code § 511a.5 (relating to placement on the exclusion list).

§ 403a.8. Licensed entity representative meetings.

(a) If a Board member conducts a meeting with a licensed entity representative under section 1201.1(c)(7) of the act (relating to code of conduct), the Board member will record the following in the log:

(1) The names of individuals with whom the Board member met.

(2) The date and time of the meeting.

(b) The Board member will include a memorandum of the content of the discussion in the log.

(c) The log will be available for public inspection.

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