# Licensing and Permitting

# Learning Objectives for this Module

## Learn why it is more cost effective to use licensing and permitting rather allowing an activity until the agency can prove it is violating the law.

## Learn why the standards for initial licensing different from those for license revocation.

## Learn the APA standards for due process for license revocation.

## Learn the Louisiana standard for license revocation.

# Reading Assignment

## Remainder of chapter 3

# Issues to be addressed

## Licensing and Permitting

### A license is defined as an agency permit, certificate, approval, registration, charter, membership, statutory exception, or other form of permission. ... In short, licensing is the process by which someone obtains, is denied, or has revoked any form of federal agency permission.

## Administrative Cost Issues

### What are the enforcement advantages of requiring a license or permit as compared to having the agency look for violations in an ongoing activity?

#### Health food supplements v. drugs?

#### What are the implications of requiring that the drug be proven safe and effective before being sold, as opposed to being sold until the FDA can show it is dangerous?

### Dangerous dogs

#### Law allows the agency to put special restrictions on dangerous dogs, but whether a dog is dangerous is decided case by case.

#### Law provides for special restrictions on pit bulls

#### How is the cost of enforcement different?

## Licensing under the APA

### How are the legal standards for initial licensing different from a license review or revocation?

#### Why? - (Who is the movant?)

### How are the potential parties different for a law license than for a TV station license?

#### Competitive licensing

#### How does this change the adjudication?

## Disciplining License Holders - Section 558

### Section 558 applies to licensing

#### Notice and a hearing and a chance to cure before revocation

#### Exception for imminent threats to public health and safety

### What if you timely apply to renew your license, but the agency does not get your renewal processed before your license is set to expire?

## LA Law Note - Title 49, Chapter 13, §961. Licenses

### C. No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gives notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

## Bias in Licensing Boards

### Who sits on state licensing boards?

#### What about the ones for small industries?

### Why does the nature of state licensing boards potentially lead to bias?

#### What due process problems does this pose?

#### We will see more about this in the due process module.

## Law Licenses

### Using lawyers as an example, what are the basic legal requirements for getting a license?

### Are there opportunities for due process hearings?

#### What if you flunk the bar?

#### What if they decide you do not have the character and fitness to take the bar?

### Why do you need to be much more careful about your behavior before you are licensed than after?

# Evaluation Questions

## Using lawyers as an example, what are the basic legal requirements for initial licensing?

## What are the basic due process requirement for revoking a license?

## How are the legal standards for initial licensing different from a license review or revocation?

## Why does this mean that law students better stay out of trouble until after they get their license?

## What special due process must an LA licensing board provide before suspending a license?

### What if the licensee is endangering the public?

## What are the enforcement advantages of requiring a license as compared to allowing the activity until the agency can show that the party is violating the law?

## How would use this analysis in explaining the administrative benefits of restricting the ownership of dangerous dogs as compared to requiring the animal control agency to show that a dog is dangerous before it can be enjoined?

## What is competitive licensing, such as for a TV station license?

### How does this change the process and the parties due process rights in the adjudication?