

**MINIMUM INTERNAL CONTROL STANDARDS (MICS) FOR GAMBLING  
ESTABLISHMENTS**

**PHASE III; GAMBLING FLOOR OPERATIONS & HOUSE RULES**

CGCC-GCA-2011-02-R

**COMMENTS AND RESPONSES FOR PROPOSED REGULATIONS**

The following written and oral comments/objections/recommendations were received regarding the proposed action during the 45-day comment period that commenced August 5, 2011 and ended September 19, 2011, and at the rulemaking hearing held March 8, 2012:

**A. ADOPT SECTION 12391. GAMBLING FLOOR OPERATIONS.**

This proposed action would establish new Section 12391 within Article 3. Section 12391 would require cardrooms to adopt specified minimum policies and procedures that relate to the operation of the gambling floor.

1. Subsection (a), paragraph (1) would require cardrooms to have a policy stating that their gambling floor must be *open to the public*. This proposed regulation also provides for exceptions to this *open-to-the-public* rule should the provisions of Business and Professions Code<sup>1</sup> section 19861 apply to any cardroom in the state. This proposed regulation would allow for additional exceptions when any of the following Business and Professions Code sections apply:

- Section 19844 (Exclusion or Ejection of Individuals from Gaming Establishment)
- Section 19845 (Removal of Persons from Licensed Premises; Reasons)
- Section 19921 (Persons Under 21; Areas of Access)

- a. **David Fried – California Gaming Association (CGA), in a letter dated September 19, 2011, and at the March 8, 2012 hearing:** Section 19921 of the Gambling Control Act (Act) does not allow any person under 21 to enter a gambling establishment, except for specified areas like pathways, bathrooms or restaurants. However, under the Act, a club may exclude underage persons from the premises altogether to provide more effective control on underage entry or gambling.

We want to clarify that this regulation will not require that a licensee afford all members of the public, including underage persons, access to parts of the club other than the gambling floor. There are some clubs where, due to their physical configuration, or the fact that the only other business operating is a bar, would like to bar people under 21, period. It may be easier and more efficient for them, given the entrances and the exits. I'd simply like this section to reflect that they may do so if they choose to do so.

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<sup>1</sup> All statutory references hereinafter are to the Business and Professions Code, unless otherwise specified.

**Proposed Response:** These comments are accepted and have been considered in the adoption of the proposed action. All this provision requires is for licensees to include standards in their policies and procedures that require specified areas of their gambling establishments be open to the public, subject to certain exceptions and limitations. This does not affect the applicability of any statutory provision relating to access to the gambling floor or to any other part of a gambling establishment. This provision is intended only to further the express purpose of section 19801(j), which provides, in part:

“To ensure that gambling is conducted honestly, competitively, and free of criminal and corruptive elements, all licensed gambling establishments in this state must remain open to the general public and the access of the general public to licensed gambling activities must not be restricted in any manner, *except as provided by the Legislature.*” (Emphasis added.)

The Legislature has, in fact, provided specific exceptions to this general *open-to-the-public* rule, among which is a provision for the licensing of private cardrooms established in section 19861. This exception permits the licensing of small (Tier I) *private* cardrooms, provided that they are located in a local jurisdiction that has an ordinance allowing only private cardrooms and that other criteria are met. There is currently only one cardroom in existence in this state that meets the criteria of section 19861.

Additionally, section 19921 imposes specific restrictions and limitations on access to the premises of a licensed gambling establishment, or any portion thereof, by persons under the age of 21 years. While section 19921 does include exceptions, we view those exceptions as permissive in nature and not as mandates to allow underage persons access to the areas or facilities specified. This is another exception to the *open-to-the-public* rule established by the Legislature, and is specifically referenced in this regulation.

Section 19801, subdivision (j), also provides that, subject to prohibitions against discrimination, nothing in subdivision (j) “*shall be construed to preclude exclusion of unsuitable persons from licensed gambling establishments in the exercise of reasonable business judgment.*” Sections 19844 and 19845 address and permit the exclusion, ejection and removal of unsuitable persons from the premises of a licensed gambling establishment. The Commission has implemented sections 19844 and 19845 through the adoption of Title 4, CCR, Section 12362.

Thus, for all of the foregoing reasons, it should be clear that nothing in this regulation would require a licensee to allow persons under the age of 21 years to have access to the premises of a licensed gambling establishment, or any portion thereof. It is intended that licensees retain the discretion to exclude from their entire premises all underage persons “*in the exercise of reasonable business judgment.*” No change in the text of this regulation is needed for this purpose.

2. Subsection (a), paragraph (2) would require a cardroom to have policies and procedures that place conditions on the use of “house proposition players.” When playing controlled games, house proposition players would be required to:
- (A) Hold a valid work permit or key employee license, and wear their work permit or key employee badge;
  - (B) Comply with all house and game rules applicable to the game being played;
  - (C) Comply with all laws and regulations applicable to the play of controlled games;
  - (D) Not accept the deal when playing a California Game;
  - (E) Not use house funds to wager bets;
  - (F) Not be the house dealer for the game being played; and
  - (G) Leave the table when a waiting list exists for the game being played.

- a. **Andrew Schneiderman – Commerce Casino, in a letter dated September 19, 2011:** Commerce Casino objects [to] the requirements that proposition players must wear their work permit badge and leave the table when a waiting list exists for the game being played. Requiring proposition players to wear a badge runs counter to the culture of poker rooms in all other gaming jurisdictions and serves no game integrity or control purpose. Similarly, although most poker rooms require proposition players to give up their seats when a non-employed player is waiting, mandating this practice by regulation would be disruptive to the operation of the poker room, is not necessary, and serves no game integrity or control purpose.

Requiring proposition players to wear a work permit badge violates the generally accepted practice in poker rooms across the world and United States that proposition players are treated as normal players, without special privilege or obligation during the play of a game, and do not wear badges. Permitting proposition players to wear a work permit badge would give the false appearance that they have authority to make a decision in a game.

Although the business function of a proposition player is to help start and keep games going, there are many situations where forcing a proposition player to leave a table when there is a waiting list would be disruptive to the gaming operations. Players on the waiting list board may not be immediately available to join the table because they are eating, smoking a cigarette, on the telephone, etc. Players on the waiting list board may be sitting at a different table and forcing the proposition player to leave the game would only result in a shuffling of players between tables.

Based on the foregoing facts, and the comments submitted by the California Gaming Association [see comment 2. b., below], Commerce Casino proposes the following alternative approach that would be as effective as and less burdensome to affected private persons than the proposed regulation.

Section 12391(a)(2):

(2) When on-duty and playing a controlled game on the premises of

*the gambling establishment for which he or she is employed, a "house prop player" or "public relations player" shall:*

*(A) Hold a valid work permit or key employee license, and ~~prominently display~~ have on his or her person, the work permit or key employee badge issued by the Commission or a local jurisdiction;*

*(B) Comply with all house and game rules applicable to the game being played;*

*(C) Comply with all laws and regulations applicable to the play of controlled games; and*

*(D) ~~Not accept the deal in any controlled game with a rotating player-dealer position;~~*

*(E) ~~Not use house funds to wager bets in the play of controlled games;~~*

*(F) ~~Not be the house dealer for the game being played; and~~*

*(G) ~~Leave the table when a waiting list exists for the game being played.~~*

- b. David Fried – California Gaming Association (CGA), in a letter dated September 19, 2011, and at the March 8, 2012 hearing:** The conditions and restrictions on the use of “house prop players” and “public relations players” should apply only to on-duty employees.

*Subparagraph (D):*

The Act expressly prohibits owners and key employees from taking the player dealer position. Because the law is so specific, it precludes adding other categories of persons to the prohibition on occupying the player dealer position. We incorporate by reference our extensive comments on this issue submitted December 17, 2010 regarding the legal effect of a statute containing a specific listing of persons.

In addition, the policy should be that we should treat proposition players while they are playing and using their own money no better or worse than any other player. This section should say that proposition players are not *required* to take the player-dealer position. But we should not put proposition players using their own funds at a disadvantage to every other player.

Furthermore, while now most clubs have third-party proposition players,<sup>2</sup> so this is not a pressing issue for many clubs, we still wish to preserve this present right to have proposition players in player dealer games. There are small clubs that may not have third-party services available and need proposition players to start games. There also is the risk that something could happen to a particular third-party provider or something would change that whole industry, which would affect every club.

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<sup>2</sup> See Business and Professions Code § 19984, and Title 4, CCR, Chapter 2.1, § 12200 et seq.

*Subparagraph (E):*

This should be limited to player-dealer games, where by law owners and key employees are not allowed to occupy the player-dealer position. But there is no player dealer position in a poker game. Some clubs may need to stake poker props if they cannot find a sufficient number of self funded poker props.

This issue of staking players also was raised and resolved (we thought) twice before. In 1990s, the Bureau went to court with the third-party prop services and argued that staking another person to play was illegal. The Bureau lost. Then in 2006 the Bureau issued an advisory regarding *house* staking of players based on the same analysis, but after we submitted legal authorities, the Bureau withdrew its game staking advisory.

Simply put, there is no legal prohibition on staking proposition players in poker games. The law only prohibits house banking and percentage games and does not rule out any other interest in a game. Poker is not a banking or percentage game. A “banking” game is where a person or entity participates as “one against the many.” *Hotel Employees & Rest. Employees Int’l. v. Davis*, 21 Cal.4th 585, 592 (1999) (“*HERE*”) (citations omitted). In poker, there is no player-dealer position, so poker is not a banking game. *HERE*, 21 Cal.4th at 593. Poker is a “round” game where wagers are made into a common pot. A player does not “take on all comers” and is not required to “pay all winners.” *Id.*, at 608.

The industry has always taken the position separate and apart from [Labor Code] section 2802 that, in poker games, we have the right to stake players because it's not a banking game. The regulation itself deals with house and floor procedures, it really wasn't intended originally to deal with the economic relationship between the employer and the employee. If in this regulatory package we took out the prohibition on staking players in poker games, would one possible course be to finish this reg package without the section that says you can't stake a house prop in a poker game, and then start a separate informal discussion on what the economic relationship is between the employer and the employee? You finish this house floor procedure, and then you're dealing with that issue of the relationship of the employer and the employee separately.

*Subparagraph (G):*

The house practice now is that poker props are directed in and out of games by the floor personnel on duty. For various reasons, they may be left in a game for some period of time even after a name is on the board.

For instance, if a customer signs up for the 3/6 and 6/12 games, and we know that we are about to start a new 6/12 game (with some of the players on the list for 6/12 coming out of the 3/6 game), we would not immediately call a prop player out of that 3/6 game.

To do so would require that we cash out the prop player in the 3/6 game, seat the new player, sell the new player \$1 denomination chips, then remove the same new player

to play 6/12, change their \$1 chips for \$2 denomination chips, and then reseal the prop player in the 3/6 game, and possibly re-sell the prop player the correct denomination chips. It would cause a lot of operational problems to restrict our flexibility.

In addition, a person on the wait list may also pass but remain on the list if they are eating, outside smoking, talking to someone or waiting to see if the 6/12 game starts. We do not want to force someone to sit before they want to even if they are on the list. Many clubs also allow you to put your name on the list by phone, so the person on the list may not be at the club yet.

Our mission is customer service. Our patrons have lots of choices about how to spend their money or where to play. We are not going to drive patrons away by having them wait around while a proposition player plays absent some valid business reason for not calling the patron right away. Anytime a patron feels that they are not treated fairly, they do not return.

- c. **Bureau of Gambling Control, at the March 8, 2012 hearing:** This (subparagraph (G)) has been kind of an evolutionary process regarding the need to have employees, or the proposition players, playing in the game. The Bureau completely understands that, especially from the small cardrooms' perspective. The initial reasons behind this was the need to start a game, or keep a game going, and the more that we went out in the field and evaluated how cardrooms were actually utilizing prop players, it wasn't just to start a game, or keep a game going, it was to fill tables, completely. So you would have not just one, but sometimes two or three or four employees sitting down and playing a game, and filling the table completely. So, the Bureau had some confusion or concerns on that. I thought the argument was that, for business necessity, licensees needed that to start a game or keep a game going, but they're actually utilizing it to fill a table. And the argument back from the industry folks was, well, some folks don't like to sit at a table and play unless it is a full table. So I think that's where the issue or the argument came up, out of concern for other patrons that were on a waiting list, or on the side trying to get into a game, when we had tables full with several prop players or employees playing at those games.

**Recommended Response (a., b. and c.):** These comments and recommendations were accepted, in part, and the proposed regulation was modified to address and accommodate them. While the modified text did not exactly match the language recommended or suggested by these comments, it was intended to address the various subjects covered in these comments. [See Modified Text dated April 27, 2012, and published April 30, 2012.]

First, a new paragraph (2) was added and the previous paragraphs – (2) through and including (9) – were renumbered accordingly. [Modified text dated April 27, 2012; pg. 2, beginning at line 21.] The new paragraph (2) includes requirements for identifying house proposition players and making available a list of all house proposition players. The Nevada regulation cited as an example in these comments

was used as a foundation and adjustments were made where necessary to conform to California's form of controlled gambling. These changes include options that relate to other policy decision options. These requirements and conditions include the following:

**Option 1-a:**

Subparagraphs (A) and (B) of paragraph (2) would require, if house proposition players are required to wear work permit or key employee badges [Option 3-a], that licensees employing house proposition players prominently display a sign or signs to inform patrons of that fact; and to have a list of all house proposition players and to make the list available to the Bureau upon request.

**Option 1-b:**

Subparagraphs (A) and (B) of paragraph (2) would require, if house proposition players are **not** required to wear work permit or key employee badges [Option 3-b], that licensees employing house proposition players identify those players upon request and prominently display a sign or signs to inform patrons that house proposition players are employed and will be identified upon request; and to have a list of all house proposition players and to make the list available to patrons, the Bureau and the Commission, upon request.

Subparagraph (C) of paragraph (2) would require the following:

- That all house proposition players be gambling enterprise employees and that employment records be maintained, as specified.
- That the licensee comply with all applicable provisions of law affecting the employment of house proposition players, including the reimbursement, pursuant to Labor Code section 2802, of any necessary expenses incurred by the player. [unless Option 2-b is adopted]
- That the licensee enter into a written agreement with each house proposition player which provides that any net winnings shall be retained by that player. [unless either Option 2-a or Option 2-b is adopted and players are not allowed to retain net winnings]
- That the licensee enter into a written agreement with each house proposition player defining the scope of employment and addressing the manner in which the employee performs his or her duties, which may include limitations or prohibitions on play past a specified point in a game.
- That copies of any written agreements be provided to the Bureau in accordance with Title 11, CCR, Section 2060, subsection (a).

In addition to responding to these specific comments, these modifications are also intended to address related issues that were raised during the development of this proposed action relative to the applicability of and potential conflicts with, certain provisions of the Labor Code affecting the reimbursement of necessary expenses incurred by employees in the course of the performance of their duties. Some of

those provisions are dependent on the adoption of subsequent options that affect the method of funding of house proposition players.

Next, a new paragraph (3) was added to address how house proposition players may be funded and to impose certain conditions relative to the method of funding. Three basic options for funding were included – (1) either staking with house funds or requiring the use of personal funds; (2) staking with house funds only; or, (3) the use of personal funds only. [Modified text dated April 27, 2012; pg. 3, line 27, through pg. 7, line 20.]

**Option 2-a:**

Under this option, the licensee would be allowed to either stake its house proposition players or require them to use their own personal funds for wagering in the course of the performance of their duties, subject to specified conditions. Those conditions would be slightly different depending on the method of funding (i.e., staked or personal funds).

If a house proposition player is staked by the licensee, the following conditions would apply:

1. All house funds provided to and returned from a house proposition player shall be processed through a cage and separately accounted for;
2. The funds shall not be provided as or constitute a loan or credit and no interest or fees may be charged for their use;
3. The funds provided may only be used by the house proposition player for wagering in the course of the performance of his or her duties as a house proposition player;
4. The house proposition player shall not be permitted to use personal funds for wagering in the course of the performance of his or her duties as a house proposition player; and
5. The funds provided to a house proposition player shall be periodically reconciled and if there is an amount identified in excess of the total amount provided:
  - that excess amount shall not be retained by the licensee or the house proposition player, but rather the licensee shall establish a method or methods for distributing any excess funds to patrons [Option 2-a-i]; or
  - that excess amount shall be retained by the house proposition player as provided in subparagraph (C) of paragraph (2) [Option 2-a-ii].

If a house proposition player is required to use only personal funds, the licensee shall not provide any house funds to that house proposition player and the following conditions would apply:

1. The purchase of chips by a house proposition player shall be separately accounted;
2. The redemption of chips by a house proposition player shall only be processed through a cage and shall be separately accounted for;
3. Any player's bank established by a house proposition player shall be segregated from any other player's bank established by that house proposition player or any other individual; and
4. The house proposition player's winnings and losses shall be reconciled periodically.

**Option 2-b:**

Under this option, the licensee would be required to stake its house proposition players for wagering in the course of the performance of their duties, subject to the following specified conditions:

1. All house funds provided to and returned from a house proposition player shall be processed through a cage and separately accounted for;
2. The funds shall not be provided as or constitute a loan or credit and no interest or fees may be charged for their use;
3. The funds provided may only be used by the house proposition player for wagering in the course of the performance of his or her duties as a house proposition player;
4. The house proposition player shall not be permitted to use personal funds for wagering in the course of the performance of his or her duties as a house proposition player; and
5. The funds provided to a house proposition player shall be periodically reconciled and if there is an amount identified in excess of the total amount provided:
  - that excess amount shall not be retained by the licensee or the house proposition player, but rather the licensee shall establish a method or methods for distributing any excess funds to patrons [Option 2-b-i]; or
  - that excess amount shall be retained by the house proposition player as provided in subparagraph (C) of paragraph (2) [Option 2-b-ii].

**Option 2-c:**

Under this option, the licensee would be prohibited from providing funds to house proposition players and all house proposition players would be required to use only their personal funds for wagering, subject to the following specified conditions:

1. The purchase of chips by a house proposition player shall be separately accounted;
2. The redemption of chips by a house proposition player shall only be processed through a cage and shall be separately accounted for;

3. Any player’s bank established by a house proposition player shall be segregated from any other player’s bank established by that house proposition player or any other individual; and
4. The house proposition player’s winnings and losses shall be reconciled periodically.

Then, the language of paragraph (2) [renumbered (4)] was modified, as suggested, to specify that its provisions only apply to house proposition players when on duty. [Modified text dated April 27, 2012; pg. 7, lines 22 – 24.] In addition, the following modifications were made:

*Subparagraph (A):*

Subparagraph (A) of paragraph (2) [renumbered (4)] was changed to include options relating to the display of work permit or key employee license badges. Option 3-a retains the requirement to prominently display the badges. Option 3-b would simply require that the badge be carried on the person of the house proposition player. [Modified text dated April 27, 2012; pg. 7, line 27 through pg. 8, line 4.]

*Subparagraph (D):*

The comments regarding subparagraph (D) of paragraph (2) [renumbered (4)] were rejected. Mr. Fried asserts that the Legislature, in expressly prohibiting the “house” – composed solely of owners, landlords, and key employees by definition – from occupying the player dealer position, has effectively precluded the Commission from prohibiting additional employees or other persons from occupying the player-dealer position. This rather narrow view oversimplifies and glosses over confusing and ambiguous statutory language.

For background, in 2000, AB 1416 (Ch. 1023, Stats, 2000) made a number of changes to the Act and the Penal Code (PC). These alterations included PC section 330.11 which excluded player-dealer games from the PC section 330 prohibition of banked or percentage games. This definition was also added, along with the definition of “house,” to the Act under then sections 19805(c) and 19805(r) respectively. The complete definition of house initially was “the *gambling establishment*, any owner, shareholder, partner, key employee, or landlord thereof.” (emphasis added) While the later entities such as owner, shareholder, etc. are relatively clear, the reference to “gambling establishment” was not. “Gambling establishment” was defined under section 19805(n) as “one or more rooms where any controlled gambling or activity directly related thereto occurs.” It goes without saying that it would be impossible for “*one or more rooms*” to occupy the player-dealer position. Therefore, the very definition as initially adopted in AB 1416 was not nearly so “express” or “specific” in its terms as these comments assert.

Those sections were subsequently amended in such a way that further undermines these comments. In 2009, AB 293 (Ch. 233, Stats 2009) changed “gambling establishment” under the definition of house to “gambling enterprise” along with a

host of other references in the Act which appeared nonsensical or confusing. Gambling enterprise was then defined under section 19805(m) as “a natural person or an entity, whether individual, corporate, or otherwise, that conducts a gambling operation and that by virtue thereof is required to hold a state gambling license under the chapter.” Again, just as “one or more rooms” cannot occupy the player-dealer position, a business entity is not a living being capable of acting in the player-dealer position. It must act through its employees or agents. Courts have held that a corporation is legal fiction that cannot act at all except through its employees and agents. (*Black v. Bank of America* (1994) 30 Cal.app.4<sup>th</sup> 1, 5-6; *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 25)

Rather than ignoring the ambiguity in the statute, a natural and reasonable interpretation of the Act would be to preclude the house, which includes the house’s employees, from occupying the player dealer position. There is no conflict or inconsistency created from a regulation which attempts to implement, interpret, or make specific these statutes. (*See Gov’t Code section 11342.2*) In contrast to Mr. Fried’s reference to “*expresso unius est exclusio a terius*,” “interpreting” ambiguities in statutes is a central purpose of adopting regulations. This is clearer if one imagines a scenario where there was no limitation on the house occupying the player-dealer position. Under such a scenario, it is likely that it would not be the “owner, landlord, or key employee” occupying the player dealer position, but still employees hired to sit there, much like third-party providers of proposition player services.

Mr. Fried also argues that the Commission’s authority is limited, and specifically so by the purported “express” legislative intent. As expressed above, this intent is hardly express. However, the Commission has the authority and even the necessity to provide clarity for all concerned under sections 19824 and 19841 of the Act. Mr. Fried’s reliance on sections 19842 and 19843 is misplaced as the Commission would not be affecting any particular game or wagers at a game. Rather it is concerned with the actions of the “house” and specifically its employees, and who may occupy the player-dealer position.

Even assuming no legislative intent to preclude “gambling enterprise employees” from occupying the player-dealer position, the Legislature gave the Commission explicit broad policy making authority related to gambling. Section 19824 authorizes the Commission to do what is “necessary and proper to enable it to fully and effectually carry out the policies and purposes of this chapter...” This general intent authority is combined with broad regulatory authority under section 19841, specifically subsection (o) which allows the Commission to “[r]estrict, limit or otherwise regulate any activity that is related to the conduct of controlled gambling, consistent with the purposes of this chapter.” Furthermore, it should be noted that an agency’s interpretation of its governing legal authority is entitled to great weight and will be followed unless it is clearly erroneous or unauthorized. (*See Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4<sup>th</sup> 98) The Commission’s regulatory authority and discretion is not limited to those matters which the Legislature has proscribed as violations of the PC. Thus, the Commission

can act as it deems necessary to regulate gambling in California, including who can accept the deal in “player-dealer games” as long as it is consistent with the Act.

In addition, the suggestion to instead say that a house proposition player is not *required* to accept the player-dealer position was rejected. The suggested change is unnecessary as PC section 330.11 already makes it clear that “acceptance of the deal by every player” is not mandatory. This subject is also addressed further in comment 3. b., below [Options 4-a and 4-b].

*Subparagraph (E):*

Without either accepting or rejecting these comments, but rather in conformance with the addition of provisions in the new paragraph (2) for either staking of house proposition players or the reimbursement of expenses if house proposition players use personal funds, or both [see Options 2-a, 2-b and 2-c], the prohibition of the use of house funds by house proposition players in the play of any controlled game has been deleted. Thus, any potential for conflict with the provisions of the new paragraph (2) or Labor Code section 2802 has been avoided.

*Subparagraph (G):*

While it is the stated purpose for the use of house proposition players, both in the proposed definition<sup>3</sup> and in the comments received from industry consistently throughout the development of this regulation, to provide a means to start or continue a controlled game when there are not a sufficient number of patrons available, it is not, nor should it be, the purpose of house proposition players to fill tables. However, for the reasons mentioned in these comments, determining when a house proposition player should leave a game is more appropriately a business decision better left to the licensee’s discretion.

In response to these comments, the provision for a house proposition player to leave the table was deleted in its entirety. Instead, Option 5-a would add a provision that prohibits house proposition players from participating in or receiving proceeds from any gaming activity<sup>4</sup> (i.e., jackpot, bonuses, promotions, etc.) while performing his or her duties as a house proposition player. Option 5-b simply deletes the provision for a house proposition player to leave the table. [Modified text dated April 27, 2012; pg. 8, lines 20 – 25.]

The Bureau has stated that it routinely receives complaints from patrons alleging that cardroom employees are winning jackpots and other promotional contests. While this may give the appearance of collusion or rigging the games, this is more of a policy issue relative to what is fair and equitable. House proposition players are either playing with house funds or are being reimbursed for at least some of their expenses and losses. They also have much more opportunity to play than the average patron. By virtue of his or her employment, a house proposition player would have what may

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<sup>3</sup> Proposed subsection (b) of Section 12360

<sup>4</sup> 11 Cal. Code Reg. § 2010(f)

be considered an unfair advantage over the average patron, and has much less personal financial risk. Just from a public relations perspective alone, licensees should voluntarily prohibit their house proposition players from participating in jackpots and promotions.

- d. **Robert Villalovos – Industrial Relations Counsel IV, Division of Labor Standards Enforcement (DLSE), at the March 8, 2012 hearing:** The express language of section 2802 provides that an employer is required to reimburse their employee for all necessary expenditures or losses incurred by the employee as a direct consequence of the discharge of his or her duties. In 2007, the Supreme Court issued an opinion in the Gattuso case<sup>5</sup> which provides a little bit more guidance in terms of the analysis for a section 2802 claim for reimbursement. The Court recognized that there are employee choices in the performance of their duties which are not actually part of any proscribed duty that they're assigned. So it's legitimate for an employer to then ask the question, or address an expense claim by saying or asking, "Is this a necessary expense in the performance of an assigned duty?" So, conceivably, there can be an instance where the duties or guidelines are established between the employee and the employer which will then have an impact upon the determination of whether any expense is incurred, or loss is incurred, as a direct consequence of performing the duties.

If there is a situation where an employee is making totally independent decisions, I guess in this context it would be to continue playing a hand, or to provide further betting, the question then becomes have we moved beyond the line of the employee incurring a necessary expenditure; or is it more in line with the employee making their own decisions as to their own money. Section 2802 is a very broadly worded statute. The issues we see in terms of establishing a valid claim or awarding a claim do require an analysis of what the duties are. There is a dependency upon the assigned duties of a particular employee.

If there was some requirement or guideline that a house prop player was to play in a particular game and go to a particular point within that game, as long as that's expressly understood by everybody; then actions that were taken, or expenses that were incurred, that are over and above that particular point are then not necessarily a reimbursable expense.

In looking at the statute, you've got to read all the language together, and I think the Gattuso case provides some guidance in recognizing that there are employee choices that are also factored into in making a determination.

**Proposed Response:** These comments were accepted and carefully considered in drafting the first modified language for Section 12391. Specifically, a provision was included in subparagraph (C) of the new paragraph (2) of subsection (a), to require that the scope of employment of a house proposition player be defined in writing.

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<sup>5</sup> *FRANK GATTUSO et al. v. HARTE-HANKS SHOPPERS, INC.* (2007) 42 Cal.4th 554

This would assist in determining the extent of any required reimbursements under Labor Code section 2802. [Modified text dated April 27, 2012, pg. 3, lines 20 – 24.]

- e. **Bill Williams – Deputy Attorney General, Department of Justice, Indian and Gaming Law Section, at the March 8, 2012 hearing:** As I understood the Department of Labor Standards Enforcement's counsel, the way the regulation is written, if it was in operation, would violate the Labor Code if there was not reimbursement of the employees, which is precluded under the reg. It would be a fairly straightforward legal position that you can't adopt a regulation that is in violation of State law, even if it is not the Act; that would seem to be the only place you can go on that issue. I was curious to see what the opinion of the DLSE attorney was going to be because, as I was reading it [section 2802], I was thinking it's a pretty straightforward section. With that opinion by the agency charged with the enforcement of that statute, it just seems like the Commission certainly cannot move forward on the path that is set forth in the regulation at this point.

As far as house staking goes, that raises issues under PC sections 330 and 330.11, as well as practical regulatory concerns. That would be a fairly major re-write of what the Commission has before it in terms of the current proposed regulation, and that would have to be examined extremely closely under PC sections 330 and 330.11 as far as whether you can even have house staking with the house being in the game in that manner. This has nothing to do with the practical realities of playing poker; this has to do with the straightforward legal issues. I'm not saying that there's absolutely no alternative because of sections 330 and 330.11, what I'm saying is that if you redraft this to go towards house staking, that's going to have to be looked at from a legal standpoint as to whether that can be done at all. We have to look at the issue in the context that you propose it as a regulation.

**Proposed Response:** These comments and recommendations were accepted, in part, and the proposed regulation was modified to address and accommodate them. Modifications were made to address the applicability of and potential conflicts with, certain provisions of the Labor Code affecting the reimbursement of necessary expenses incurred by employees in the course of the performance of their duties. [Modified text dated April 27, 2012.] [See also responses to comments 2.a., b. and c., above.]

While not directly related to the originally proposed action, the comments regarding the applicability of PC sections 330 and 330.11 to staking were neither accepted or rejected, but were considered in drafting the first modified language for Section 12391.

- f. **Rod Blonien – Rod Blonien and Associates, at the March 8, 2012 hearing:** Regarding PC sections 330 and 330.11, I think there is confusion related to poker props and props that are in the California games. Section 330.11 of the PC is a section that relates to the California games in which you have a player-dealer position. The last sentence of that section says that the House shall not occupy the

player-dealer position. There is no corollary of that language as it relates to just banking.

PC section 330 says you shall not have banking games, percentage games. We need to make a distinction between props on the California games side and props on the poker side. Most of the Bureau's concerns relate to props on the California games side. I think the industry sitting down with the Bureau and having some conversations can hopefully come to some resolve in terms of what restrictions there will be with respect to the House participating with props on the poker side, and the house participating with props on the California games side.

I think that 99 percent of the people in this room recognize that props on the poker side are very, very important to the card clubs. There are few card clubs in California that use props in California games. Of the 82 card clubs, there are probably fewer than 10 percent that use props in California games, but they will tell you that, in their circumstance and situation, props in California games are important. We can agree to some restrictions or regulations related to those people, but we have to recognize that they are a different species than props on the poker side.

**Proposed Response:** These comments were accepted and considered in drafting the first modified language for Section 12391. [Modified text dated April 27, 2012.]

- g. **Alan Titus – Artichoke Joe's, at the March 8, 2012 hearing:** My comment really doesn't have to do with props, but rather sections 330 and 330.11. We very much disagree with Mr. Williams' comment about those sections as it could apply to a lot more things than just the props. We were involved when section 330.11 was passed, and when it was amended, we were very involved in that. We wanted it shaped as a safe harbor provision, which I believe it is now. It says what banking is not, it doesn't say what banking is. It doesn't say, "Thou shalt not do something," it says, "If you do it this way, you're safe." It was very intentionally drafted that way.

**Proposed Response:** This comment was accepted and considered in drafting the first modified language for Section 12391. [Modified text dated April 27, 2012.]

3. Subsection (a), paragraph (3) would require owners and employees of cardrooms to comply with house and game rules and the applicable laws and regulations when playing controlled games on the premises of their own cardroom.
- a. **Bureau of Gambling Control, in a letter dated September 19, 2011:** The Bureau believes that the same provisions that apply to house proposition players (§ 12391 (a)(2)(A)-(G)) should extend to all cardroom personnel who wish to participate in poker games at the gambling establishment if it is the Commission's intention to permit all persons associated with the cardroom to play poker games at the gambling establishment they are affiliated with. We believe that the industry would support these measures in an effort to prove to the constituents of California that the gambling industry supports an environment ensuring fair and honest play.

- b. Bureau of Gambling Control, in a letter dated September 19, 2011:** As with poker games, the Bureau continues to have concerns with employees and licensees playing in their own clubs, from the standpoint of the integrity of the games and public perception. Throughout the drafting of this regulation, many members of the cardroom industry expressed their support of prohibiting employees and licensees from participating in any controlled game that includes a player-dealer position (i.e., “California games”). In addition, recent regulatory and enforcement activities have highlighted the reasons for the Bureau’s concerns with any employee or licensee participating in California games. As such the Bureau suggests the following be incorporated into the Commission’s MICS III regulation:

*“A gambling establishment employee, key employee, or licensee may not play any controlled game that includes a player-dealer position, whether on or off duty, on the premises of the gambling establishment for which he or she is employer, work permitted for, or licensed.”*

**Proposed Response (a. and b.):** These comments were accepted and considered in drafting the three options [Options 6-a, 6-b and 6-c] included for consideration in the first modified language for Section 12391. [Modified text dated April 27, 2012, pg. 8, line 27, through pg. 9, line 28.]

First, the intent of this provision was simply to reinforce the concept that the same rules apply to all players in a game. Cardroom employees should not be treated any better or worse than any other player when they are playing on their own time (whether off-duty or on break) and with their own funds. However, after further consideration it was determined that this provision is unnecessary as all it really does is restate the obvious – that owners and employees must comply with the law and follow the rules. Therefore, Option 6-a simply deletes this provision entirely.

Option 6-b requires gambling enterprise owners, while playing in controlled games on the premises of their own gambling establishment, to only use personal funds, not retain any winnings, and comply with most of the provisions of the new paragraph (4) that are applicable to house proposition players. In addition, if Option 4-b is adopted, owners and employees would also be prohibited from playing in any California games.

Option 6-c simply prohibits owners and employees from playing in any California games, if Option 4-b is adopted.

Options 6-b and 6-c were intended to address the Bureau’s concerns regarding owners and employees playing in controlled games.

- 4.** Subsection (a), paragraphs (5) and (6) would require a licensee to maintain specified information relating to gaming table operation, and to make that information available to the Bureau within two hours of their request, when the request is made during normal business hours. If the request is made after normal business hours, the cardroom would

have until two hours after the start of the next business day to provide the information. Paragraph (5) requires that the following information must be maintained, by shift and by date:

- (A) The tables that were open,
- (B) The games that were played and the collection rates,
- (C) The total time that each table was in use, and
- (D) The names of the house dealers that were assigned to work the tables.

- a. **Bureau of Gambling Control, at the March 8, 2012 hearing:** In the Statement of Reasons there is documentation regarding the utilization of this information in an investigation and for audits. A lot of this information is already being collected by the majority of the cardrooms in their normal day to day operations, maybe just not in one place. The Bureau initially requested that the information be collated or collected in one place, which was going to be too much of a burden on the cardrooms to have to do that. So, the list that we had was reduced down to these four items and, as long as they were collecting and keeping that type of information and it was available to the Bureau, then that was adequate as far as the Bureau was concerned relative to our audit reviews and investigations. Again, the majority of the cardrooms are already collecting that information as a minimum internal controls standard. This was intended to make sure that all the cardrooms were keeping track of that information.
- b. **David Fried – CGA, at the March 8, 2012 hearing:** For the Tier 3 and larger card rooms, it is probably true that they have this data, although not collected in one place. For example, if you look at Subsection D, we have payroll records that will tell us which dealers were on shift, and we probably know the total amount of time each gaming table is in use, and the tables that were open because I've seen internal tracking reports -- not for regulatory purpose, but because a business owner wants to have a handle on how the business is operating. I believe (B) is also collected by a lot of clubs. My concern is that you've got 90 clubs and not all of them collect this data right now. My suspicion is that the Tier 1 and Tier 2 clubs will have (D) which is the payroll records, but not necessarily all of the other stuff collected.

My other concern is, when you read Section 5 together with Section 6, which requires that the data be assembled, if required, within two hours, I think there is a burden there. I appreciate we've moved off having a separate log every day that has this information in it, but there still is some burden in getting this data. I'm still unclear, if there's an audit or an investigation, why you can't come in and just get the existing data, or what this data will tell you. Given all the variables – like five hands an hour, or ten hands an hour, how fast or slow the players are, how fast or slow the dealers are – I just don't know how the data is used in a reliable and meaningful way. If we can avoid requiring someone to compile a lot of data that might not be useful with only two hours' notice, I'm all for it. If there's a stronger, more precise or focused explanation as to why this data should be available on two hours' notice and why the data is going to be useful, that's different. But, from what I've heard from the Bureau

so far, it's hard for me to think that this is really going to be useful as opposed to being just another requirement that doesn't produce a lot of value.

**Proposed Response (a. and b.):** These comments were accepted and considered in drafting the two options [Options 7-a and 7-b] included for consideration in the first modified language for Section 12391. [Modified text dated April 27, 2012, pg. 10, line 8, through pg. 11, line 5.]

In order to provide an opportunity for the presentation of additional supportive information concerning these provisions, Option 7-a would retain paragraphs (5) and (6) with modifications. The modified paragraph (5) includes minor clarifying changes. Paragraph (6) was modified to simply require that the information in paragraph (5) be made available within a reasonable amount of time following a Bureau request, but no later than the close of the following business day.

Option 7-b would simply delete paragraphs (5) and (6) entirely, since the specified information, according to both Bureau and industry sources, is already maintained for the most part, and the Bureau already has the authority to request that information now in connection with an audit or investigation.

5. Subsection (a), paragraph (7) would prohibit a licensee from having on the gambling floor more gaming tables than that which is authorized by the license, unless all excess tables are covered or prominently labeled as non-operational and are under continuous video surveillance.

- a. **Bureau of Gambling Control, at the March 8, 2012 hearing:** This comes from cardrooms having more tables on the floor than they're actually licensed for. There were discussions about whether cardrooms should be permitted to have more tables on the floor because the tables would be freely available for the cardroom to open more tables than allowed. It was an inconvenience to have those tables off the floor and stored somewhere else, either in a storage room or off-site, for tournaments or whatever else. So then it evolved to having those tables on the floor, but being clearly marked or covered to indicate that they're not operable. The idea was to have video surveillance to further confirm that those tables are not being utilized. We have had at least an instance of that where more tables were being utilized than the cardroom is licensed to operate. Cardrooms are already required<sup>6</sup> to have cameras in place over those areas where they put those excess tables because they utilize those areas or those tables for tournaments and other events.

The purpose of the reference to gaming activities is because far too often the cardrooms will open up one of their extra tables to try and accommodate a patron who wants to participate in a NPN (“*no purchase necessary*”) gaming activity. Let's say the cardroom is licensed for 10 tables, but they have 11 tables on the floor. When a patron comes to play for one of those promotions (a gaming activity, e.g., a Bad

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<sup>6</sup> 4 Cal Code Reg. § 12396(a)(1)

Beat Jackpot) and all 10 authorized tables are being used, they obviously need to try and accommodate this player that wants to play for free. So, they will open up their 11<sup>th</sup> table to try and accommodate that NPN gaming activity. That puts them over the maximum number of tables they're legally allowed to operate. When we get complaints and need to follow-up, we can then roll the tape to verify whether or not the 11<sup>th</sup> table was, in fact, illegally used.

- b. **David Fried – CGA, at the March 8, 2012 hearing:** What gives me pause here is if you look at the language at the end of line 22 and the beginning of line 23 (pg. 3 of the Specific Language document), it includes “or gaming activities.” If we're talking about rooms where there are controlled games and tables, there's probably video coverage, even if it's not dedicated to a table, there's surveillance over the room and if there's a live game at any point, there's going to be surveillance. What puzzles me about this is the “or gaming activities.” Is that broader than controlled games and, if so, does that sweep in other rooms in a facility?

I don't think this is a huge issue, but gaming activity includes promotions. We have all kinds of promotions, we have food promotions. We have, you know, all kinds of things that may be for players and, therefore, tied to a game. As an example, we submit food promotions [to the Bureau] for approval as a gaming activity. If we're talking about the rooms where there's a tournament or a game, I don't think that's a problem. I think a tournament is a controlled game.

**Proposed Response (a. and b.):** These comments were accepted and considered in the adoption of the proposed action.

For clarification, and to respond to Mr. Fried's comments concerning the inclusion of “gaming activities,” this language was not intended to “sweep in other rooms” in a gambling establishment. However, if a gaming table is being stored in a room that would not otherwise be required to have continuous video surveillance, video surveillance would have to be provided for that gaming table; not necessarily as a function of this regulation, but of Section 12396(a)(1). The inclusion here of the term “gaming activities” is intended to refer to tournaments and other events that involve the actual play of a controlled game.

6. Subsection (a), paragraph (8) would require that the purchase or redemption of chips be transacted only by designated cardroom employees who have received the training required by section 103.64 of Title 31 of the Code of Federal Regulations. The policies and procedures put in place regarding this regulation must also ensure compliance with Section 12404 in Article 4, which also regulates these types of transactions.
- a. **Bureau of Gambling Control, in a letter dated September 19, 2011:** As expressed throughout the drafting of this regulation, the Bureau is not only concerned with appropriate safeguards to ensure compliance with suspicious activity and cash transaction reporting, but also with overall security issues related to the flow of money on the cardroom floor.

The Bureau continues to strongly believe that the redemption of chips should occur only at the cage and not from a chip runner on the gambling floor or at a satellite cage. There is currently a loophole in the Commission regulation pertaining to cage function, Section 12386 (a)(6), which permits the purchase and redemption of chips by a patron to “occur at the cage or from a designated gambling establishment employee on the gambling floor.” That regulation should be amended to eliminate this deficiency.

**Proposed Response:** This comment and recommendation is not germane to the proposed action and is rejected. While the recommendation to amend Section 12386 was considered in the pre-notice workshops that were conducted during the preliminary development of this regulation, the Commission chose not to include that change in the formally noticed proposed action. Since there was no mention of Section 12386 in the Notice of Proposed Action for this rulemaking, the recommended amendment would not be a sufficiently related change, as defined in Title 1, CCR, § 42, and would therefore not qualify as a 15-day change under Title 1, CCR, § 44.

7. Subsection (a), paragraph (9) would prohibit a licensee from providing house funds to any person for the purposes of playing a controlled game, except when extending credit, pursuant to Section 12388, and when providing payment to a third-party provider of proposition player services, in accordance with a contract approved by the Bureau pursuant to Section 12200.9.

- a. **David Fried – CGA, in a letter dated September 19, 2011, and at the March 8, 2012 hearing:** As explained above, staking poker proposition players can be regulated in poker games rather than prohibited.

While the Bureau has argued this will lead to unfair or biased decisions, the house has no interest in driving away players with unfair or biased decisions. Every time your staff renders a decision on the floor applying a game rule, the person against whom the decision goes is disposed to feel unfairly treated unless the decision is neutral on its face, fair and correctly explained. The card rooms teach employees to make and communicate the decisions in that way.

Every business knows that it costs much less to keep an existing customer than acquire a new one. The business cannot succeed unless a player wants to and does come back. If a cardroom advertised and brought in players, but the players did not return, the card room would fail. As in Nevada where staked players are allowed, the game rules will answer what happens if there is a misdeal or other issue during a hand. Nevada has allowed staked players by regulation for the last 32 years.

I have difficulty reading the language of paragraph (9). It begins, “Except as provided in Section 12388, a licensee ...” now, keep in mind a licensee is also a key employee, not just the gambling enterprise, “... shall not provide house funds ...” and “house” includes not just the gambling enterprise, it includes the owners, the key employees, and the landlord, “... to any person for the purpose of playing a controlled

game, including but not limited to any of the following:” So, this introductory part says a key employee cannot provide the key employee's money to any person for the purpose of playing a controlled game, including (C), a patron of the gambling establishment, except for the purpose of participating in a controlled game. That seems to me to be circular. I think we probably need to step back and figure out what we want to do with this section, what we're trying to accomplish.

I've always been confused by subparagraph (E). What are we trying to do, what's the problem with a business entity that sponsors a gaming activity? If a charity comes in, which is a nonprofit business entity, and wants to run a charity poker tournament, we can't provide house funds to them? We can't put up the prize money for them as a donation? We can't give them food and beverage? Maybe that's a house asset rather than a house fund.

The checks and credit regulations already say you cannot provide credit to a house prop player. It doesn't say anything about nonprofits. I can't think of a policy reason why, if we give some of our poker tables to a nonprofit to run a tournament, why we're prohibited from also contributing something. What is it in addition to the checks and credit regs that this section does? If we can't identify what that is, then do we need this section? If somebody can't tell me what (C), (D) and (E) means, maybe we should throw out the rest of it.

I'm still confused by why you cannot give money to a patron, except for the purpose of participating in approved gaming activity. If gaming activity is a promotion, or a tournament, or something like that, what's the purpose of subsection (C)? The section to accomplish that purpose could be rewritten to say if you're not following the credit procedures, you can't provide house funds for a gaming activity, or something like that?

The first informal release of the reg was in December of 2009. There was an issue, or an approach that the Commission had to decide early on, which was what I call a regulatory vs. prohibitory approach. One of the earlier lengthy discussions was with respect to house props and staking of poker players, and all sorts of things, are we going to start prohibiting things categorically, or are we going to figure out where a problem may lie and appropriately restrict them? The Association submitted a really long letter, probably one of the longest one we've ever sent in on any reg packet, back in December of 2010, talking about that. One of the points we made was every jurisdiction draws that distinction differently. A lot of jurisdictions in the world prohibit gambling outright, and a lot of jurisdictions allow gambling, but they try to assure fairness of the games and honesty of the games. In California, the Legislature decided it was going to be prohibitory in three ways, it was going to say, if you have a third-party prop service, you can't have an interest in their wins or losses, the house cannot occupy the player-dealer position, and we're not going to allow banking games. We know that poker is not a banking game because the California Supreme Court has told us that explicitly. But, once you get beyond those three, when you start talking about staking poker players, restricting other things, I don't think you can

take a prohibitory approach. I think the approach needs to be, “Is there a problem that we can identify? Is it worth addressing in some form of regulation?” The regulation has to be aimed at the integrity of the game, and that is what industry supports. I don't start with the premise that house money is bad, it sits on every table in every casino in most jurisdictions, it sits in tribal casinos here in California. It's a question of whether we can make the games fair and honest, and prevent any collusion or cheating.

**Proposed Response:** These comments and recommendations were neither accepted nor rejected, but were considered in drafting the first modified language for Section 12391. [Modified text dated April 27, 2012, pg. 11, lines 16 through 29.]

Subparagraphs (A) through (E) were deleted in order to simplify and clarify the primary intent of this paragraph.

To eliminate any conflict with Labor Code section 2802, and to be consistent with those options that would provide for staking of House proposition players, this paragraph was modified with an additional qualification; i.e., “Except as *otherwise* provided *in this section or...*” The modifications also retain the provision that will continue to allow licensees to provide patrons with funds in connection with approved gaming activities.

8. Subsection (b) would require Tier III through V cardrooms to have at least one owner-licensee or key employee on duty during all hours of operation to supervise gambling operations and ensure compliance with the Act and its regulations.
  - a. **Bureau of Gambling Control, in a letter dated September 19, 2011, and at the March 8, 2012 hearing:** The Bureau has expressed throughout the drafting of this proposed regulation its concern relative to key employee staffing levels. The absence of any specific key employee to table ratio may result in a lack of adequate supervision, thus resulting in multiple problems on the gaming floor. This concern is not just the Bureau's alone, as indicated in a recent article in a trade publication, *VEGASINC*.<sup>7</sup>

We suggest that the issue of key employee to table staffing ratios be vetted out more extensively and that the Commission proposes a set of minimum staffing ratios in its next release of this proposed regulation.

There is concern about the floor person position and whether that was supervisory or not. That, in the industry's eyes, is not supervisory; therefore, not a key employee. Then there's also the issue that they [floor persons] participate in the tip pools. The concern is about not having a key employee or an adequate number of key employees managing the gaming floor operations. In Tiers 1, 2 and 3, appears to be an adequate

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<sup>7</sup> Benston, Liz (July 20, 2011). VEGASINC/Casinos cutting back on floor supervisors, whose jobs evolving. <http://www.vegasinc.com/news/2011/jul/20/casinos-cutting-back-floor-supervisers-who-see-the/>

number of key employees relative to the number of tables; it's when you get into Tiers 4 and 5 that we had concerns. You could technically have 200 or 240 tables with one key employee on-site, which is not adequate management of the gaming floor if all those other floor persons were not considered key employees. We last proposed a possible ratio of one key employee to 10 tables, which wasn't acceptable to the industry, but I think we're still open to further discussions on trying to meet somewhere on what would be a more appropriate ratio for Tiers 4 and 5.

**Proposed Response:** This comment and recommendation is rejected. The imposition of a key employee-to-table staffing ratio was the subject of extensive discussion throughout the development of this proposed action. Various proposals for staffing requirements were presented, considered and commented on in the several workshops and informal comment periods that were held over the course of more than one and a half years. Neither during that time nor since, has any factual basis or data been presented to substantiate the necessity for any state-mandated staffing ratios. While the *VEGASINC*. article does discuss the possible effects of staff reductions in Las Vegas and New Jersey casinos, it also focuses on the reasons for those reductions – the current economic climate. Perhaps more importantly, that article clearly demonstrates that stringent or prescriptive requirements would hinder a licensee's ability to quickly respond to sometimes unpredictable events or circumstances.

There has been no correlation shown between the ratio of key employees to tables and the level of game integrity or other problems on the gaming floor. What has been shown is that appropriate staffing levels are almost exclusively dictated by the complexity or simplicity of the games in operation, betting limits, and volume of play, not just the number of tables in operation. Decisions regarding staffing needs are better left to the discretion of cardroom owners and management.

Industry representatives have consistently presented credible arguments and information concerning the general staffing practices widely employed in California cardrooms. From this information it can be determined that most cardrooms, at least in Tiers III and above, generally staff the gaming floor with a dealer at each table, at least one floor person in each gaming section, and a shift manager on each shift. In addition, high stakes player-dealer style games are staffed with additional floor persons and, at least for some games, a second dealer at the table. Commission staff has even observed, first hand, occasions where one floor person is assigned to monitor four or fewer tables in a given room or section, or even just a single table for a particular type of game. Staff's observations are limited to only a few individual licensees and do not necessarily serve as evidence of a widespread industry practice, but they do lend credibility to industry's comments.

Again, according to industry statements, key employees supervise and make discretionary decisions; shift managers are licensed key employees. Industry representatives also maintain that, in contrast, it is the floor person who monitors the gambling operation and applies house and game rules; they do not supervise or make

discretionary decisions. Also, dealers must comply with approved house and games rules. If there is a question regarding the application of a house or game rule, the industry indicates that a floor person is available to come to the dealer's immediate assistance and resolve the issue according to the applicable rules. In the event of a unique situation that the house or game rules do not address, or if there is a continuing disagreement as to how to apply the rules, a shift manager is on duty and may be summoned to resolve the situation.

At no time has the Bureau disputed industry's assertions that numerous cardroom employees are customarily involved in gambling floor operations. It seems that the Bureau's contentions center primarily on how many of those individuals should be licensed as *key employees*. That is not a matter that can necessarily be determined by the number of gambling tables in operation, but rather by the duties and authority assigned to and performed by the individual employee. The definition of "*key employee*," as set forth in section 19805, subdivision (x), requires that a person be employed in a gambling enterprise in a supervisory capacity or be empowered to make discretionary decisions that regulate gambling operations, for that title to be applicable. Industry representatives consistently and steadfastly maintain that floor persons do not act in a supervisory capacity, within the meaning of section 19805(x), and are not authorized to, nor do they make any discretionary decisions.

In the industry's view, the Bureau's suggested provision could either require that affected cardrooms hire additional key employees or essentially have all their floor persons licensed as key employees. If the Bureau were concerned that a particular floor person is acting in a particular capacity, or has been assigned certain duties that appear to require licensure as a key employee, the authority and processes already exist to resolve those issues, such as letters of warning, accusations or other administrative or disciplinary measures. Addressing the issue by requiring that essentially every floor person be licensed as a key employee would seem to be excessive, unreasonable, unnecessary and overly burdensome, both from an economic impact perspective and as a matter of practicality.

Industry representatives have also stated that a floor person's salary takes into account the tips received. If floor persons were elevated to key employees, they would be supervisors and could not share in or receive tips. As a result, the cardrooms say that they would be required to make up the difference by increasing the salaries of those employees. One cardroom estimates that, under a mandated 1:8 ratio, they would incur an additional cost of \$1,400,000 for increased salaries. While this may be an extreme example, others have provided estimates of additional costs ranging between \$250,000 and \$350,000, to as high as \$500,000, for increased salaries and added staffing. One cardroom representative estimated that one of the ratios considered could have required the addition of up to 35 *new* key employees *per shift*, operating three shifts per day, and seven days a week. Given that no actual benefit has been shown, either for the cardrooms themselves or the public in general, even the most conservative estimate of the potential adverse economic impact

expressed by the cardroom industry would not appear to be justified from a cost-benefit perspective.

Ultimately, it is the responsibility of cardroom owner-licensees to exercise effective supervision and control over their gambling operations in order to protect the public health, safety and general welfare of the residents of this state.<sup>8</sup> How that responsibility is satisfied should be left to the discretion of those owner-licensees, absent a *compelling* reason or justification to do otherwise. That reason or justification does not appear to be present in this instance. Furthermore, under the present regulatory scheme, should an owner-licensee fail to fulfill their responsibility in this regard, they could be subject to disciplinary action under the Act.<sup>9</sup>

**9. Complimentary Items.**

- a. Bureau of Gambling Control, in a letter dated September 19, 2011:** Throughout the drafting of MICS III, the Bureau has suggested that language pertaining to the issuance and accounting of complementary items be included. However, the proposed regulation no longer has any provision related to complementary items. The Bureau respectfully requests that this area be included, suggesting that the language as proposed by the Bureau related to the August 26, 2010 distribution of the draft regulation be included.

**Proposed Response:** This comment and recommendation is not germane to the proposed action and is rejected. While the recommendation to include provisions related to complementary items was considered in the workshops that were conducted during the preliminary development of this regulation, the Commission chose not to include that subject in the formally noticed proposed action. Since the subject of complementary items was not addressed in the Notice of Proposed Action, the suggested amendment would not be a sufficiently related change, as defined Title 1, CCR, § 42, and would not qualify as a 15-day change under Title 1, CCR, § 44.

**B. ADOPT SECTION 12392. HOUSE RULES.**

This proposed action would also establish new Section 12392 within Article 3. Section 12392 would require cardrooms of all tiers to adopt specified minimum policies and procedures regarding house rules.

- 1.** Subsection (a) would require cardrooms to adopt and implement house rules, written in English, which promote the fair and honest play of controlled games and gaming activity. This section would also require that the house rules:
- (1) Allow for the play of only those games that are permitted by local ordinances and state and federal laws and regulations;

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<sup>8</sup> Business and Professions Code sections 19920, 19924

<sup>9</sup> Business and Professions Code sections 19920, 19922

- (2) Address player conduct, etiquette and other general rules so as to promote the orderly conduct of controlled games and gaming activities;
- (3) Include provisions that discourage players from, during the play of a hand, speaking in a language, or using any other form of communication, that is not understood by all persons at the table;
- (4) Not conflict with Bureau-approved *game rules*; and
- (5) Address the following situations as they may apply during the play of a controlled game or gaming activity:
  - (A) Customer conduct,
  - (B) Table policies,
  - (C) Betting and Raising,
  - (D) “Misdeals,”
  - (E) Irregularities,
  - (F) “The Buy-In,”
  - (G) “Tied Hands,”
  - (H) “The Showdown,”
  - (I) “House Way,”
  - (J) Player Seating and Seat Holding, and
  - (K) Patron Disputes.

- a. **David Fried – CGA, in a letter dated September 19, 2011:** Paragraph (2) overlaps with subparagraph (A) of paragraph (5) which follows, and which also requires rules that address customer conduct.

Also, is it necessary that the government mandate the adoption of house rules to address etiquette and conduct either at the table or throughout the whole facility? That is something naturally the clubs want to do because we don't want a rude player driving away other players, or a game to get a reputation for being bad-mannered. But should the government require etiquette rules?

*Also, by putting this in a regulation and requiring specific rules or procedures it can expose the club to a problem. When it comes to behavior, Clubs need a lot of flexibility to determine what is appropriate, what is not, and how best to respond to those situations.*

Accordingly, if a requirement that we adopt conduct rules is really needed, we would like to construe this section to require only general rules, and not have the Commission or Bureau later insist that very specific rules are required.

We cannot think of every situation that will arise or every phrase that may be uttered. There will have to be judgment calls made about not only what conduct is inappropriate, but whether the correct remedy is to talk to the patron or suspend them.

But if there are specific house rules required by regulation, we open ourselves to patron claims that any action we take violates the rules mandated by regulation.

**Proposed Response:** This comment was accepted and considered in drafting the first modified language for Section 12392. [Modified text dated April 27, 2012.] It is not the intent of this regulation to be prescriptive in requiring that house rules be as specific and detailed as to address every imaginable situation or event that could possibly occur. This regulation does not require specific rules or procedures; it merely specifies some of the general subjects that should be addressed in house rules. The rules themselves need only be general in nature and may allow for discretion and flexibility in their application.

To resolve the apparent redundancy or overlap between paragraph (2) and subparagraph (A) of paragraph (5) in subsection (a), the relevant text has been modified. Subsection (a) was revised to refer to the implementation of “general house rules;” and paragraph (2) was deleted entirely. These changes were made not only to resolve the redundancy issue, but more particularly to help make clear that house rules need only be general in nature and should be directed toward promoting “*the fair and honest play of all controlled games and gaming activities.*” [Modified text dated April 27, 2012, pg. 12, line 17, and lines 22 and 23.] Subparagraph (A) of paragraph (5) [renumbered (3)] was also modified to refer to “player conduct” in order to conform to the overall context of that paragraph. [Modified text dated April 27, 2012, pg. 13, line 9.] Paragraph (5) [renumbered (3)] relates to issues that may come up during the play of a controlled game, so *player* is the more accurate and appropriate descriptive term when referring to an individual’s conduct in that context. Paragraph (4) of subsection (a) was also deleted and added as a new subsection (b).

- b. **David Fried – CGA, in a letter dated September 19, 2011:** After a great deal of consideration, we think the best approach in paragraph (3) is not to refer to speaking a language or the need for everyone to understand the same language, which is often not the case. This might be impossible to realize. We think this paragraph should just state: “Include provisions that discourage collusion, including provisions addressing player communication during a hand.”
- c. **Alan Titus – Artichoke Joe’s, in a letter dated September 19, 2011, and at the March 8, 2012 hearing:** Players may be racially and culturally very diverse, and at times there may be no common language among them. Many were born in foreign countries, and some do not understand much, if any, English. There can be times when one player does not understand English but not all the other players understand his or her language.

It is not necessary that all players understand the same language to prevent collusion and cheating. Rather, it is important that cardrooms be able to prohibit players from communicating in a foreign language not understood by everyone. Therefore, we think that cardrooms should be allowed to designate a certain language to be spoken at the table, and we suggest the following alternative language:

*“(3) Allow a licensee to designate a language to be spoken at a table during the play of a hand.”*

At Artichoke Joe's, we do have an English only requirement at the table while the game is being played. That is something that is used to prevent collusion; it is something we're more concerned about in the poker games than in the California games. My understanding is that there are new civil rights laws in California that are of concern, so I can understand card rooms wanting a regulation. I'm not sure if that's the solution or not, but this particular language I had objected to because the way it is worded, it says you don't want a language that is not understood by all persons. People might understand what's going on, but that doesn't mean they really understand the language. We can have people at the table who might speak only a little bit of English, but they will say they understand the game. They understand being asked that question, and being able to say yes, but I'm not sure they've fulfilled the way this is worded. If you do have a regulation on language, we ask that it be worded a little differently.

- d. **Bureau of Gambling Control, at the March 8, 2012 hearing:** This is not an issue that was just a concern of the Bureau; this was an issue that was of concern to the industry and to the Bureau. Many of the cardrooms already have signs or policies in place that refer to English speaking only at the games. The problem with this whole speaking in a different language is having players playing at the game and speaking a different language, which the dealers or the third-parties are not familiar with, so that collusion could be happening at the game. It's not just Asian games; it could be Hispanic, or other languages that are not understood by everybody at the table. After evaluating – trying to soft step what reg language we could possibly come up with that wasn't going to violate some sort of civil rights, or bring lawsuits, it was softened to say that, as long as everybody at the table is speaking the same language, or it's understood by the dealers and the third-parties, then that was going to be acceptable for the card rooms. If somebody is here from the industry that has a different opinion, please speak up, but that was what we were trying to establish.
- e. **Andy Schneiderman – Commerce Casino, at the March 8, 2012 hearing:** Many clubs, including Commerce Casino, have tried to control the play of a game by requiring that all the players at the table speak a language that they all recognize, and sometimes that's English, sometimes it's not. And we actually did request this regulation because we wanted the backup of a regulation that gave us a regulatory purpose behind that, and I think it does fit into one of those five categories of regulations that you mentioned in terms of game integrity. Although we can't control scratching and some other forms of communication, when it comes to something as blatant as two players speaking to each other in a language that no one else at the table understands, that creates suspicion amongst the players and it's not something that we like to encourage. So this is a regulation that we do support for that purpose.

**Proposed Response (b. – e.):** These comments were accepted and considered in drafting the first modified language for Section 12392. [Modified text dated April 27,

2012, pg. 12, line 25, through pg. 13, line 3.] Two options were included to address these comments. In Option 8-a, paragraph (3) [renumbered (2)] is modified to require that house rules include provisions that discourage collusion, which may include provisions relating to spoken language or other methods of communication. In Option 8-b, paragraph (3) [renumbered (2)] is modified to require simply that house rules include provisions that discourage collusion, with no mention of a spoken language or other methods of communication.

There were no further comments, objections or recommendations received within the initial 45-day public comment period or at the March 8, 2012 hearing, regarding the proposed action.

### **1<sup>ST</sup> 15-DAY CHANGE COMMENT PERIOD ENDING MAY 15, 2012**

The following written comments/objections/recommendations were received regarding modifications to the proposed action during the 15-day comment period that commenced April 30, 2012 and ended May 15, 2012:

#### **A. ADOPT SECTION 12391. GAMBLING FLOOR OPERATIONS.**

This proposed action would establish new Section 12391 within Article 3. Section 12391 would require cardrooms to adopt specified minimum policies and procedures that relate to the operation of the gambling floor.

1. Subsection (a), paragraph (1) would require cardrooms to have a policy stating that their gambling floor must be *open to the public*. This proposed regulation also provides for exceptions to this *open-to-the-public* rule should the provisions of section 19861 apply to any cardroom in the state. This proposed regulation would allow for additional exceptions when any of the following Business and Professions Code sections apply:

- Section 19844 (Exclusion or Ejection of Individuals from Gaming Establishment)
- Section 19845 (Removal of Persons from Licensed Premises; Reasons)
- Section 19921 (Persons Under 21; Areas of Access)

- a. **David Fried – California Gaming Association (CGA):** Included a suggested change to the text of paragraph (1) as follows:

“(1) Except as provided in Business and Professions Code sections 19844, 19845, 19861 and 19921, and except for restrictions on persons under age 21, all areas of the gambling establishment in which controlled games and gaming activity are being conducted shall be open to the public.”

**Proposed Response:** This suggested change is rejected as it is not germane to the proposed modified text published on April 30, 2012. This issue has been addressed in the responses to written comments and the comments received at the March 8, 2012 hearing.

2. Subsection (a), paragraph (2) of the modified text gave two options, depending on whether house proposition players would be required to wear a badge [see Options 3-a and 3-b for subparagraph (A) of paragraph (4)] while on duty and playing a controlled game. The options here are as follows:

**OPTION 1-a:** [If Option 3-a is adopted] Would require that a licensee employing house proposition players prominently display a sign legible from each gambling table which states: “This gambling enterprise employs house proposition players.” The licensee would also be required to maintain a list of all house proposition players at the cage, or at another suitable location on the gambling floor, and make the list available to the Bureau upon request.

**OPTION 1-b:** [If Option 3-b is adopted] Would require that a licensee employing house proposition players identify those players upon request and display a sign legible from each gambling table which states: “This gambling enterprise employs house proposition players. House proposition players shall be identified by management upon request.” The licensee would also be required to maintain a list of all house proposition players at the cage, or at another suitable location on the gambling floor, and make the list available to patrons, the Bureau, and the Commission upon request.

- a. **Mark Kelegian – Ocean’s Eleven Casino (OEC):** We have no objections to either Option 1-a or Option 1-b.
  - b. **David Fried – CGA:** The regulations should require each club either: (1) to have the proposition players wear badges, or (2) to have a sign visible from each table saying that proposition players are used, have their badges on them and will be identified on request. A club does not need to do both. Every club can keep a list of proposition players at the cage or on the gaming floor. Moreover, given that some clubs may have physical constraints on making signs visible from each table, giving the clubs an option also makes sense. (*See comment 5 c, also.*)
3. Subsection (a), paragraph (2), subparagraph (A) [(C) if either 1-a or 1-b is adopted] would require all house proposition players to be gambling enterprise employees and that employment records be maintained for them as for any other employee. Unless Option 2b is adopted, provisions are included regarding reimbursement of the house proposition player’s necessary expenses, pursuant to Labor Code section 2802. Unless either Option 2-a or 2-b is adopted, and house proposition players are not allowed to retain net winnings, the licensee would be required to enter into a written agreement with the house proposition player requiring that the player retain any net winnings. The licensee would also be required, irrespective of the adoption of any option, to enter into a written agreement with each house proposition player which defines the scope of employment and to provide copies of any written agreements to the Bureau in accordance with Title 11, CCR, Section 2060, subsection (a).
    - a. **Mark Kelegian – OEC:** Options 2-a and 2-b should not be adopted and all of the sentences in this subparagraph related to those options should be deleted.

- b. **David Fried – CGA:** How §2802 applies to each card room depends on each card room’s individual policies. What is a “necessary” expense subject to reimbursement depends on the assigned duties (playing guidelines) between the employer and employee.

The Gattsuo case permits an employer to choose a variety of reimbursement calculation methods, including statistical estimations, rather than counting every dollar or chip. Statistics will show how many hands per hour are dealt, how many hours the player worked, how often starting hands in the top 5% prevail, and the average pot size. The club can use a statistical formula for estimating the player’s collection and any other reimbursement owed. Other clubs may use a different formula or different guidelines for play. As a result, Section 12391 should not require each club to have the same practice, the same formula, or if the club is using a formula, to count every chip.

4. Subsection (a), paragraph (3) of the modified text gave three options for funding house proposition players. The options here are as follows:

**OPTION 2-a:** Would allow a licensee to either stake its house proposition players or require its house proposition players to use personal funds, subject to specified conditions.

**OPTION 2-b:** Would require that a licensee stake its house proposition players, subject to specified conditions.

**OPTION 2-c:** Would require that a licensee limit its house proposition players to only the use personal funds, subject to specified conditions.

- a. **Mark Kelegian – OEC:** Options 2-a and 2-b should not be adopted. We fail to see the logical connection between allowing the house proposition player to retain net winnings and forcing the casino to bear 100% of the losses. If a casino is going to have an interest in the outcome, then they should take both the wins and the losses. Otherwise, the relationship has no integrity and will be subject to collusion between house proposition players and customers, to the direct disadvantage of the casino.

Reconciliations should occur at the end of each shift. [Options 2-a-i and 2-a-ii]

We don’t understand why excess funds should be distributed to patrons. How do you determine who should receive excess funds and what portion? This does not seem like a viable or necessary option.  
Why should staked props keep winnings?

Requiring that props be staked will result in the elimination of all props. [Option 2-b]

We have no objection to casinos not being allowed to use house funds, but reconciliation should occur at the end of each shift. [Option 2-c]

- b. **David Fried – CGA:** We urge you to adopt Option 2-a, allowing each club to determine how to comply with section 2802 and run its business according to its own needs.

If a player is not staked but is instead reimbursed, the only necessary conditions are that: (1) the assigned duties or playing guidelines be in writing; (2) the gambling enterprise shall reimburse the player not less than every pay period for any reimbursement owed under Labor Code §2802; and (3) the gambling enterprise shall keep records regarding the calculation of the reimbursement.

We do not need to reconcile every win and loss without regard to whether the hand was within the range of assigned duties or not. We do not need to account for every purchase and redemption of chips separately for each proposition player. We do not need the player to keep two separate player banks, one for on duty play and one for off duty play.

If a player is staked the transactions must be processed through the cage and accounted for in the aggregate for all proposition players. There is no need to separately reconcile for each individual proposition player and for every pay period since §2802 is not applicable. There is nothing attributed to the player for any purpose, unless the club adopts some bonus system sharing winnings with the player. Thus, for a staked player, because the reconciliation is not part of employee pay or expense reimbursement, it does not need to be tied to pay periods nor should the club have to track every player separately.

Instead, the regulation should require a written policy respecting any winnings. For example, a club may bonus a share of winnings to the player periodically, keep the winnings for promotions, bank the winnings against future staked play, or a combination of those options. Each club may make its own judgment respecting what works best.

Due to variations in results in any short period of time, the account may show a loss or gain this week and the opposite next week. Therefore, it would be unfair to require the club to distribute all winnings acquired in a short period of time, and have the club absorb all losses the following week, without offsetting the two over a longer period.

We object to [options] 2-[a]-i and 2-[a]-ii because they do not provide the clubs any individual choice in how to address winnings while maintaining an incentive for persons to want to be proposition players. These two sub-options also incorrectly require the clubs to reconcile for each proposition player even though the proposition players are staked and not entitled to reimbursement, and restrict clubs to short reconciliation periods which does not allow clubs to offset variations in results.

5. Subsection (a), paragraph (4) would require a cardroom to have policies and procedures that place conditions on the use of “house prop players.” When playing controlled games, house prop players would be required to:

- (A) Hold a valid work permit or key employee license, and either wear the work permit or key employee badge [Option 3-a] or have the work permit or key employee badge on his or her person [Option 3-b];
- (B) Comply with all house and game rules applicable to the game being played;
- (C) Comply with all laws and regulations applicable to the play of controlled games;
- (D) Not occupy the player-dealer position in any California games [Option 4-a] or not participate in any California games [Option 4-b];
- (E) Not be the house dealer for the game being played;
- (F) Not participate in or be eligible to receive any proceeds, benefits or winnings from any gaming activity [Option 5-a]. [Option 5-b eliminates subparagraph (F) entirely.]

- a. **Alan Titus, for Artichoke Joe's**: Option 4-b is not sufficiently related to the originally proposal regulation and is not appropriate for adoption in a 15-day change.
- b. **Mark Kelegian – OEC**: Option 3-a is too aggressive and unnecessary. We do not object to Option 3-b.

We have no objection to Option 4-a. There is no reason to preclude props from playing in California games.

We don't understand the reference to props not being house dealers.

- c. **David Fried – CGA**: Whether proposition players must wear work permit badges is left to local ordinances where local governments issue badges. [Options 3-a and 3-b] The regulation should not override those ordinances.

State law only prohibits the house – that is, owners, key employees and landlords – from occupying the player-dealer position. The regulation should be consistent with state law, meaning that if proposition players are equated with the house, then Option 4-a should be used which prohibits proposition players from occupying the player-dealer position. There is no statutory restriction on proposition players playing in player-dealer games outside of the player-dealer position.

You should reject option 5-a. Option 5-a is flawed because it does not distinguish between proposition players using their own money and staked players. Non-staked proposition players should be eligible for promotions, including jackpots.

- 6. Subsection (a), paragraph (5) of the modified text included three options relating to owners and employees playing in controlled games. The options here are as follows:

**OPTION 6-a**: Would eliminate this paragraph entirely (formerly paragraph (3)).

**OPTION 6-b**: Would require that an owner of a gambling enterprise who chooses to play controlled games on the premises of his or her own gambling establishment only use personal funds, not retain any winnings and shall be subject to and comply with specified conditions in paragraph (4); and [If Option 4-b is adopted] would prohibit an owner of a gambling enterprise and all gambling enterprise employees from playing in any

California game on the premises of his or her own gambling establishment or the gambling establishment for which he or she is employed.

**OPTION 6-c:** [If Option 4-b is adopted] Would prohibit an owner of a gambling enterprise and all gambling enterprise employees from playing in any California game on the premises of his or her own gambling establishment or the gambling establishment for which he or she is employed.

- a. **Mark Kelegian – OEC:** Owners and employees should be permitted to play in any game with personal funds. [Options 6-b and 6-c]
- b. **David Fried – CGA:** Options 6-b and 6-c are both faulty. In particular, there is no legal authority for restricting employees on or off duty from playing in player-dealer or poker games.

The Act specifically prohibits the Commission from adopting new restrictions on games and players not in the Act. Bus. Prof. Code §19842 and §19843. Here, options b and c would restrict a person present at a gaming table and who wants to play from participating in the game.

In view of the specific listing in the definition of “house” of specific persons, and the Legislature’s determination to make only those persons barred from the player-dealer position, all other employees are not barred from playing in any controlled game, and owners and key employees are restricted only from the player-dealer position. If the Legislature wanted to exclude on or off duty “gambling establishment employees” from controlled games, or make owners give away their poker winnings, it could have easily said so in §330.11, but did not.

Moreover, there is no factual record to support the restrictions in options b and c.

- c. **Waldemar Dreher, Lake Bowl Cardroom:** The owner of a cardroom should be able to play poker with his or her own money. We do not agree that an owner should not be able to retain earnings. Owners cannot bank California games and should be allowed to play in those games. [Option 6-b]

If option 6-c is adopted, owners should be allowed to play in California games while “off duty.”

**Proposed Response (numbers 2. through and including 6. above.):** These comments were neither accepted nor rejected. After considering all of the comments received (45-day written comments, oral comments at the March 8, 2012 hearing, and the 1<sup>st</sup> 15-day change written comments) concerning the use of house proposition players, the implications of Labor Code section 2802, the use of house funds in the play of controlled games, and the play of controlled games by owners and employees, all of those provisions were removed from the proposed action. The removal of those provisions should not be construed as an indication of agreement or disagreement

with any particular comment. Removing those provisions will allow more time to further research and discuss those matters in order to come to a reasonable solution that will protect the public's interests and maintain the integrity of controlled games.

Since all reference to house proposition players and the providing of house funds, etc. has been removed from the proposed action [Second modified text dated May 29, 2012], these comments are no longer relevant.

## 7. House Staking and Use of House Funds in Controlled Games

**Martin J. Horan, IV, Acting Chief, Bureau of Gambling Control, in a letter dated May 15, 2012:** If house proposition players are reimbursed pursuant to Labor Code section 2802, the house, in addition to paying fees for the employee, would be paying for losses incurred by such employee. The house would thus have an interest in the outcome of the game which is prohibited by law.

The April 27, 2012-version of the regulation requires compliance with Labor Code section 2802 [Pg. 3, lines 10-12], it then continues to state that reimbursement, pursuant to section 2802, shall not be construed as providing house funds within the meaning of subparagraph (B) of paragraph (3), or of paragraph (10) [lines 12-15]. A regulation may not define an act that is prohibited by law to be allowable. The use of house funds by an employee in wagering or participating in the play of games at the gambling establishment for which the employee is licensed or work permitted may constitute game staking in violation of PC section 337a. The use of house funds to cover losses from the play of a game would result in the house having a direct financial interest in the success of the employee's play and, thus, an interest in the outcome of the game which is prohibited by law.

The single state law provision relating to proposition player services (section 19984) provides, among other things, that a licensed gambling enterprise "may contract with a third party for the purpose of providing proposition player services at a gambling establishment ... [but] in no event shall a gambling enterprise or the house have any interest, whether direct or indirect, in funds wagered, lost, or won." With regard to the house interest in "funds wagered, lost, or won" there is no meaningful distinction between banked games using third party proposition players or round games, such as poker, using house proposition players. The language of section 19984 aligns with the notion that the house should not have a direct or indirect financial interest in the outcome of a particular game.

The reimbursement of house proposition players pursuant to Labor Code section 2802 and house staking of those players is inconsistent with case law prohibiting house interest in the outcome of a game.

We have concerns that the Commission proposal in this regulation to permit or facilitate house proposition players to gamble with the use of house funds is contrary to PC section 337a, subdivision (a), paragraph (3) which prohibits game-staking.

This PC provision would appear to prohibit a licensed gambling enterprise (house) from staking a house proposition player. The Bureau objects to any provision in the proposed MICS relating to a house proposition player being staked by the house since any such regulatory provision may violate existing law.

Even if a particular practice is not clearly prohibited by statute, the Bureau has significant concerns with the Commission moving ahead to sanction a practice that would put the house in the position of having an interest in the outcome of a game. As stated in subdivision (h) of section 19801, “[p]ublic trust and confidence can only be maintained by strict and comprehensive regulation of all persons ... practices ... and activities related to the operation of lawful gambling establishments ...”

**Proposed Response:** These comments were rejected. The opinions expressed in these comments are inconsistent with case law and statutory authority. No California statute addresses house proposition players or makes the practice of providing house proposition player services illegal. Any question related to the funding source, either personal or house funded, is addressed through the relevant Labor Code provisions and incorporation of those provisions in this context would be based on policy, not law. Simply put, this does not involve banked or percentage games under PC sections 330 and 330.11.

Furthermore, a house proposition player and the house do not engage in a criminal violation of PC section 337a when they provide house proposition services. This statute deals with bookmaking where two entities, or three entities with one serving as an intermediary, place wagers on a subsequent event. This includes sporting events, competitions of skill, or a hazard of chance. House proposition players, as far as the Commission is informed, are not given money by the house to bet on a certain event. Rather, they are given money to engage in the play of a game with no concern or expectation about any event; e. g., winning a hand, multiple hands, who gets a straight flush first, etc.

Since all reference to house proposition players and the providing of house funds has been removed from the proposed action [Second modified text dated May 29, 2012], these comments are no longer relevant.

8. Subsection (a), paragraphs (7) and (8) of the modified text included two options relating to maintenance of information concerning table operations and making that information available to the Bureau. The options here are as follows:

**OPTION 7-a:** Would require a licensee to maintain specified information, either in writing or electronically, relating to gaming table operations, and to make that information available to the Bureau within a reasonable period of time after their request, but no later than the close of business on the next workday.

**OPTION 7-b:** Would eliminate these paragraphs entirely.

- a. **Waldemar Dreher, Lake Bowl Cardroom:** We suggest the (C) be changed to the open and close time of each table. [Option 7-a]

**Proposed Response:** This comment was rejected. First, if Option 7-a is adopted it could be more onerous to keep track of each opening and closing time for each gaming table, particularly in larger cardrooms. Any given table could open and close multiple times during a shift. That activity is already recorded through video surveillance. Keeping track of each opening and closing time would unnecessarily duplicate what is already being recorded. That would also likely require individual table logs to be kept to record that information which seems overly burdensome and unnecessary. The amount of time a gaming table is in use during a shift can be calculated from other sources that may already exist. No further modification of the text of these paragraphs is necessary.

- b. **David Fried – CGA:** The options here are both improvements over the prior draft, but it is incumbent on the Bureau to explain the need for this record-keeping.

**Proposed Response:** This comment was accepted and considered in the final action concerning these provisions.

9. Subsection (a), paragraph (11) would prohibit a licensee from providing house funds to any person for the purposes of playing a controlled game, other than to a patron in connection with an approved gaming activity, and except as otherwise provided in this section and when extending credit pursuant to Section 12388.

- a. **Mark Kelegian – OEC:** We have no objection to this provision.

**Proposed Response:** This comment was accepted and considered in drafting the second modified language for Section 12392. [Modified text dated May 29, 2012.] (See also response to the 1<sup>st</sup> 15-day change comments in numbers 2. – 6. above.)

10. Subsection (b) would require Tier III through V cardrooms to have at least one owner-licensee or key employee on duty during all hours of operation to supervise gambling operations and ensure compliance with the Act and its regulations.

- a. **Mark Kelegian – OEC:** We have no objection to this provision.

**Proposed Response:** This comment is not germane to the April 27, 2012 modified text as no changes were included in this subsection.

11. Subsection (c) would require cardrooms to implement the provisions of Section 12391 no later than six months following the effective date of the regulation.

- a. **Mark Kelegian – OEC:** We have no objection to this provision.

**Proposed Response:** This comment is not germane to the April 27, 212 modified text as no changes were included in this subsection.

**B. ADOPT SECTION 12392. HOUSE RULES.**

This proposed action would also establish new Section 12392 within Article 3. Section 12392 would require cardrooms of all tiers to adopt specified minimum policies and procedures regarding house rules.

1. Subsection (a) would require cardrooms to adopt and implement house rules, written in English, which promote the fair and honest play of controlled games and gaming activity. This section would also require that the house rules:
  - (1) Allow for the play of only those games that are permitted by local ordinances and state and federal laws and regulations;
  - (2) **OPTION 8-a:** Include provisions that discourage collusion, which may include provisions for a specific language and player communication generally, at a table during the play of a hand;  
**OPTION 8-b:** Include provisions that discourage collusion;
  - (3) Not conflict with Bureau-approved *game rules*; and
  - (4) Address the following situations as they may apply during the play of a controlled game or gaming activity:
    - (A) Player conduct,
    - (B) Table policies,
    - (C) Betting and Raising,
    - (D) “Misdeals,”
    - (E) Irregularities,
    - (F) “The Buy-In,”
    - (G) “Tied Hands,”
    - (H) “The Showdown,”
    - (I) “House Way,”
    - (J) Player Seating and Seat Holding, and
    - (K) Patron Disputes.

a. **Mark Kelegian – OEC:** We have no objections to any of these provisions.

b. **David Fried – CGA:** We support Option 8a, as it provides clearer guidance for the clubs and patrons respecting anti-collusion measures.

**Proposed Response (a. and b.):** These comments were accepted and considered in the adoption of the proposed action.

There were no further comments, objections or recommendations received within the first 15-day change public comment period regarding the modifications to the proposed action.

**2<sup>ND</sup> 15-DAY CHANGE COMMENT PERIOD ENDING JUNE 14, 2012**

The following written comments/objections/recommendations were received regarding modifications to the proposed action during the 15-day comment period that commenced May 30, 2012 and ended June 14, 2012:

**A. ADOPT SECTION 12391. GAMBLING FLOOR OPERATIONS.**

This proposed action would establish new Section 12391 within Article 3. Section 12391 would require cardrooms to adopt specified minimum policies and procedures that relate to the operation of the gambling floor.

1. Subsection (a), paragraph (2) would prohibit a licensee from taking or threatening to take, any adverse action against their employees for the employee's refusal to play controlled games.
  - a. **David Fried – CGA, in a letter dated June 14, 2012:** The sentence proposed to be deleted should remain. Proposition players are employed to play in games and an employer should be able to take an employment action against a proposition player who refuses to go to an assigned table.

**Proposed Response:** The deletion of this sentence is appropriate and consistent with the elimination of all references and provisions relating to house proposition players. The intent of the remaining provision remains unchanged – licensees may not arbitrarily require their employees to play in controlled games. House proposition players are employed specifically to play in controlled games, or at least playing in those games is one of the duties within the scope of their employment. This provision is neither intended, nor should it be interpreted to hinder an employer from taking appropriate action against an employee who refuses to perform some or all of the duties which he or she was specifically hired to perform.

2. Subsection (a), paragraphs (3) and (4) of the May 29, 2012 modified text included two options relating to maintenance of information concerning table operations and making that information available to the Bureau. The options are as follows:

**OPTION 1-a:** Would require a licensee to maintain specified information, either in writing or electronically, relating to gaming table operations, and to make that information available to the Bureau within a reasonable period of time after their request, but no later than the close of business on the next workday.

**OPTION 1-b:** Would eliminate these paragraphs entirely.

- a. **Alan Titus, for Artichoke Joe's, in a letter dated June 12, 2012:** We support deletion of the recordkeeping requirements. [Option 1-b.]
- b. **Bureau of Gambling Control, in a letter dated June 12, 2012:** The Bureau prefers Option 1-a.

- c. **David Fried – CGA, in a letter dated June 14, 2012:** Our understanding is that subparagraph (D) of paragraph (3) would require that we keep the names of all dealers on shift, rather than keep records of when each dealer was assigned to each table. Perhaps the [final] statement of reasons could confirm that.

**Proposed Response (a., b. and c.):** These comments are not germane to the 2<sup>nd</sup> 15-day changes as no changes were made in these paragraphs, other than the nonsubstantive renumbering to conform to the deletion of other provisions.

**B. ADOPT SECTION 12392. HOUSE RULES.**

This proposed action would also establish new Section 12392 within Article 3. Section 12392 would require cardrooms of all tiers to adopt specified minimum policies and procedures regarding house rules.

1. Subsection (a) would require cardrooms to adopt and implement house rules, written in English, which promote the fair and honest play of controlled games and gaming activity. This section would also require that the house rules:
- (1) Allow for the play of only those games that are permitted by local ordinances and state and federal laws and regulations;
  - (2) **OPTION 2-a:** Include provisions that discourage collusion, which may include provisions for a specific language and player communication generally, at a table during the play of a hand;  
**OPTION 2-b:** Include provisions that discourage collusion;
  - (3) Address the following situations as they may apply during the play of a controlled game or gaming activity:
    - (A) Player conduct,
    - (B) Table policies,
    - (C) Betting and Raising,
    - (D) “Misdeals,”
    - (E) Irregularities,
    - (F) “The Buy-In,”
    - (G) “Tied Hands,”
    - (H) “The Showdown,”
    - (I) “House Way,”
    - (J) Player Seating and Seat Holding, and
    - (K) Patron Disputes.

Subsection (b) would specify that house rules shall be in addition to and not conflict with game rules approved by the Bureau.

- a. **Bureau of Gambling Control, in a letter dated June 12, 2012:** The Bureau prefers Option 2-a.

**Proposed Response:** This comment was accepted and considered in the adoption of the proposed action.

- b. **Mark Kelegian – OEC, in a letter dated June 13, 2012:** It should be clarified that house rules are in addition to, or distinct from the game rules for a controlled games.

**Proposed Response:** This comment was neither accepted nor rejected. This section has contained a provision stating that house rules shall be in addition to and not conflict with game rules approved by the Bureau since the proposed action was first noticed August 5, 2011. [See original text dated July 7, 2011; pg. 5, lines 5 and 6 (§ 12392(a)(4)).

- c. **David Fried – CGA, in a letter dated June 14, 2012:** Option 2-a is the proper choice. Allowing two players to speak in a language no one else understands makes every other player suspicious that they are colluding. Yet even if the club adopts an “English only” rule while a hand is active, and some players at the table do not speak English fluently, so long as someone speaks the language used by the two players, the collusive discussion will be caught. The issue should not be can we pick a language that everyone at the table speaks (an impossibility); rather, can we designate a language so that if people are colluding someone will overhear them.

**Proposed Response:** This comment was accepted and considered in the adoption of the proposed action.

**C. GENERAL, NONSPECIFIC COMMENTS.**

Mark Kelegian – OEC, in his letter of June 14, 2012, makes general reference to comments submitted by David Fried on behalf of the Regulations Subcommittee of the CGA, and incorporated by reference all prior written and oral comments submitted on behalf of OEC. However, it is not clear to which of Mr. Fried’s comments he is referring, so no response is possible or necessary here. All of Mr. Fried’s comments have been responded to. It also cannot be determined from the generic incorporation by reference of prior comments, which of those comments, if any, might be applicable to the second 15-day change text, but they could not have been made in relation to the second 15-day change and no response would be required here.

There were no further comments, objections or recommendations received within the second 15-day change public comment period regarding the modifications to the proposed action.