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July 28 2020

Mr. Joshua Rosenstein
Legislative and Regulatory Specialist Legislation and Regulatory Affairs Division
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re: CGCC-GCA- 2020-01-R
Proposed Licensing Regulations

Dear Josh:

On behalf of Patrick Tierney I offer the following comments on the Proposed Licensing Regulations and requests for amendment to provide clarification.

Proposed section 12102(b)

As you know, there are many individuals licensed both as owners of TPPPS entities and gambling establishments. Current law permits both types of licensed ownership provided that the TPPPS services are not provided in a gambling establishment in which the individual is licensed as owners.

Proposed section 12102(b) would prohibit any “applicant” from receiving a TPPPS business license if that applicant holds a cardroom business license. The plain meaning of this language would change current law and prohibit an individual from obtaining a TPPPS owner license and a gambling establishment owner license.

While the Statement of Reasons claims that this section is intended to continue existing law “to maintain the limitation in subsection (d) of the Section 12201 and while stated differently, has the same effect”, that is not how the language currently reads. Clarification of the language is necessary to prevent confusion going forward. The regulations must be able to stand on their own and not require reference back to proceedings of the regulatory rulemaking for interpretation.

Proposed Section 12102(g)

This proposed subsection is overbroad and would include in the licensure requirement independent attorneys and consultants who are retained by a gambling establishment for a limited or short-term compliance purpose; sometimes at the order of the

Commission. I recommend this section be qualified by the word “internal”, as proposed for “internal security” and “internal accounting”. Doing so would permit the licensee to retain qualified individuals for their immediate compliance needs.

Very truly yours,

Tracey Buck-Walsh

Tracey Buck-Walsh
Attorney for Patrick Tierney

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** (1926 - 2019)

August 5, 2020

Mr. Joshua Rosenstein
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re: Licensing Regulations
CGCC-GCA-2020-01-R

Dear Mr. Rosenstein:

I write on behalf of Artichoke Joe's with comments on the proposed Licensing Regulations. The first section of this letter has comments on regulation text. A second section comments on the forms.

REGULATION TEXT

I have one general comment on the text. The terminology of "licenses," "type licenses", and "category licenses" is still confusing. There are eight "licenses," four "type licenses," and four "category licenses." When reading a regulation that refers to one, it always take a lot of work to determine what is being referenced.

The eight actual types of licenses are fine. The problem is with the groupings of licenses, and the use of the word "license" as a noun in each name with the four "type licenses" and the four "category licenses." That makes it sound like there are 16 different types of licenses. As an example, under the proposed terminology, a Cardroom Business License is also a Cardroom Owner Type License, a Cardroom Category License, and an Owner Category License. The one license sounds like four types of licenses. That creates confusion. Only eight of these are actual types of licenses. The other 8 are groupings of types of licenses. The solution is to not use the term "license" as a noun except when referring to the eight types of licenses.

The simplest solution would be to discard the grouping of licenses all together. Instead, each regulation could name the specific types of licenses covered. For example, section 12110 requires, "When an *employee category licensee* ceases to be employed by an *owner category licensee*, both the *employee category licensee* and the *owner category licensee* must provide notice to the Bureau...." Instead this could read, "When a key employee licensee, commission work permittee, TPPPS supervisor licensee or TPPPS worker licensee ceases to be employed by a cardroom business licensee or a TPPPS business licensee, both the key employee licensee, commission work permittee, TPPPS supervisor licensee or TPPPS worker licensee and the cardroom business licensee or a TPPPS business licensee must provide notice..."

If the Commission prefers to retain groupings, then the terminology should be clearer. Most important is not to use the word "license" as a noun and not to call any of these groupings a "License." Instead, the word "license" could be used as an adjective to modify "group," and all of these terms could be referred to as "license groups." I suggest renaming them as follows:

<u>Name in CGCC Draft</u>	<u>Suggested Name</u>
Cardroom Owner Type License	Cardroom Owner License Group
Cardroom Employee Type License	Cardroom Employee License Group
TPPPS Owner Type License	TPPPS Owner License Group
TPPPS Employee Type License	TPPPS Employee License Group
Cardroom Category License	Cardroom Industry License Group
TPPPS Category License	TPPPS Industry License Group
Owner Category License	Owner License Group
Employee Category License	Employee License Group

The regulations would refer to these license groups. So if a company holds a cardroom business license, it has a license that is part of the Cardroom Owner License Group, the Cardroom Industry License Group, and the Owner License Group. That is still a lot to digest but avoids the confusion of one license sounding like four different types of licenses. Section 12110 would then be rewritten to read, "When the holder of a license included within the Employee License Group ceases to be employed by a cardroom business licensee or a TPPPS business license, both the holder of the license included within the Employee License Group and the cardroom business licensee or a TPPPS business licensee must provide notice...."

§ 12002(j) Definition of “Cardroom business license”

This definition references two other definitions in the Gambling Control Act, one for “gambling enterprise” and the other for “owner licensee.” These references require the reader to read those statutes to understand this definition. It would be preferable if definitions in the regulations were self-contained, not relying on outside references. Further it is not clear from this definition if gambling enterprise and owner licensee are different entities or just different terms referring to the same entity. Assuming the latter is the case, I suggest this definition be modified to read:

“Cardroom business license” means a license issued to a gambling enterprise, also known as an owner licensee.”

The terms gambling enterprise and owner licensee should then be defined in section 12002.

§ 12002(k) Definition of Cardroom Employee Type License

This definition is unclear and unnecessarily complicated. It reads, “‘Cardroom employee type license’ means a license issued to any person as provided in Business and Professions Code section 19805, subdivision (n), who does not only hold a local work permit;...” Section 19805(n) is just a definition of gambling enterprise employee and does not provide for issuance of licenses. Therefore, the phrase “as provided in ... section 19805” is not correct. Also, the phrase “not only” is not clear. Is there a “but also” clause that is missing? Or should this read “who holds a Commission work permit?” We suggest the definition be simplified to read:

“Cardroom employee type license” refers to and includes all key employee licenses and Commission work permits.”

§ 12002(l) Definition of “Cardroom Endorsee License”

The second half of this definition is not definitional but rather repeats a substantive rule that these license holders are required to be endorsed on the license. As a substantive rule, it does not belong in the definition and given that it is repetitious, it is unnecessary. In addition, the statement that a

cardroom endorsee license is a license held by someone required to be endorsed on the license is a tautology and unhelpful.

§12002(n) Definition of "Cardroom Owner Type License"

Again this regulation refers to the statutes and requires the reader to read outside material to understand the definition. We suggest this be simplified to read:

"Cardroom owner type license" refers to and includes all cardroom business licenses and all cardroom endorsee licenses, and has the same meaning as "gambling license" and "state gambling license" in Business & Professions Code section 19805, subdivision (p).

§12002(t) Definition of Drop

Drop would be defined as all player collection fees received "from patrons or TPPPS business licensees." The use of the disjunctive "or" treats patrons differently from third party players (better called funded players). However, funded players are a type of patron. Therefore, we suggest this read "from patrons, including TPPPS business licensees."

§12002(af) Definition of "Key Employee License"

This definition consists solely of a reference to the Gambling Control Act, and requires the reader to read the statutes to learn the definition. To make it more user-friendly, we suggest this section repeat the definition from the Gambling Control Act.

§12002(aj) Definition of "Player's bank"

This section defines player's bank as any and all monies "a patron or a TPPPS business licensee" has on deposit with the cardroom. The use of the disjunctive "or" treats patrons differently from the funded players. However, as discussed above, funded players are a type of patron. Therefore, we suggest this read "a patron, including a TPPPS business licensee."

§ 12002(al) Definition of "Renewal License"

Line 2 of this definition has a typo. It reads, "(1) The following license *types*:" However, if the word "type" continues to be used in "type licenses," its use here is confusing. Instead, it could read, "(1) The following licenses:"

§ 12002(an) Definition of "Temporary License"

Line 26 is missing the following language: "(1) The following licenses:"

§ 12002(ao) Definition of "Third-party proposition player services"

The term "Third-party proposition player services" is a misnomer. If the so-called TPPPS provider were providing a service, the cardroom would need to pay for the service. Rather, the TPPPS is a funded player which pays for services provided by the cardroom.

§ 12002 (ap) through (ax) Definitions pertaining to TPPPS's

Our comments to section 12002(ao), above, apply to each of the subsections (ap) through (ax).

§ 12005. Prohibited Player-Dealer Participation

This regulation would prohibit a person who does not have an approved TPPPS contract from hiring someone to play in any California game. While we support the current licensing structure for gambling businesses, we do not support the repeal of licensing of gambling businesses and this prohibition.

Subdivision (a) is one long sentence that is ungrammatical and unclear. It reads, "A person cannot hire or finance, including but not limited to providing loans, advances, or any other thing of value, the hiring of employees or independent contractors, or both, whose job duties include participation in the play of any California game without an approved TPPPS contract." It is not clear what exactly is prohibited. This does not say that gambling businesses are prohibited. Nor does it limit itself to the current definition of gambling businesses ("a business enterprise that engages the services of employees, independent contractors, or both to participate in the play of any

controlled game ... that has a rotating player-dealer position...") If this provision is to be kept, this sentence should be rewritten.

We question the necessity for the regulation. The Initial Statement of Reasons states that the prohibition is necessary because current regulation prohibits a person without a gambling license from hiring people to play the games and the Commission is discontinuing issuance of gambling businesses and repealing Chapter 2.2. (ISR, p. 14.) However, what is the necessity for repealing Chapter 2.2? There is none. The Commission is proposing to repeal Chapter 2.2 for lack of use, but that does not create a necessity to prohibit gambling businesses. The Commission could leave Chapter 2.2 in place and there would be no need to prohibit gambling businesses. Thus, the regulation does not satisfy the necessity test.

More important, the Commission lacks authority to adopt this regulation. None of the sections cited as authority—sections 19811, 19841(o) and 19984—provide authority. Section 19984 authorizes cardrooms to contract with third parties for the purpose of obtaining proposition player services, but does not regulate relationships with funded players (third parties) that play without a contract. It does not prohibit play by such players nor even require the licensing of such activity.

Section 19811 provides the Commission with jurisdiction over operation of cardrooms and with supervision over cardrooms, but not to regulate players. Further, designation of certain games as illegal and designation of who is eligible to play in the games is governed by the Legislature in the Penal Code and is not delegated to the Commission. Section 19841(o) provides that the Commission can "restrict, limit, or otherwise regulate any activity that is related to the conduct of controlled gambling, consistent with the purposes of [the Gambling Control Act]." However, legality of games and designation of who is eligible to play in them is controlled by the Penal Code, not by the GCA. The Legislature has neither prohibited play by gambling businesses nor authorized the Commission to prohibit such play.

Finally, we question the application of this provision when players pool monies and one player plays with pooled funds and they split the winnings, including kum kum. Section 19842 of the Act provides that the Commission shall not restrict the manner in which a game is played. Artichoke Joe's game rules, as published on the Bureau website, refers to kum-kum play 12

times. To the extent this regulation prohibits kum-kum play, it violates section 19842.

§12082. Standards of Representation

Subsection (b) would require that if a designated agent advances a payment on behalf of an applicant or licensee, documentation of reimbursement must be provided to the Bureau. This is unnecessary. The Initial Statement of Reasons says this is necessary because if not reimbursed, the person would need to be licensed. (ISR, p. 20.) This same logic could be used to require a licensee to present proof of every single bill they receive. The question is whether this has been an issue and could reasonably be expected to be an issue in the future, and no evidence of that has been provided. This regulation creates far more regulatory burden than benefit.

§12102. General Provisions

The first sentence of subsection (g) is unclear. We suggest the language italicized below be added so that it reads: "Any individual who is not an employee of a cardroom business licensee or TPPPS business licensee *but who is* operating in any position that would otherwise require licensure must apply for...."

§12106. Badges

Subsection (d)(1) would require key employees and people holding Commission work permits to "wear their badge at all times while on duty in the gambling establishment." The purpose as stated in the Initial Statement of Reasons is to "provide[] the public a visible identification of who is participating in the offering of the game." However, key employees often are not in public areas but are in areas such as their own personal offices where the public is not allowed. Some key employees never interact with the public. There is no reason to require employees to wear a badge in those areas. In this regard, subsection (d)(2) would require cardroom owner type licensees to wear their badge only when performing the actions of a work permittee or key employee, and the ISR makes clear this means being in public areas. (ISR p. 24.) We suggest combining paragraphs (1) and (2) into one and modifying them to require employees to wear badges when on duty and in public areas of the cardroom.

§12110. Change in Employment Status

As discussed above, subsection (b) requires the “owner category licensee” to give notice to the Bureau when an employee category licensee ceases employment. (This is in addition to the notice given by the employee.) The use of the term “owner category licensee” is confusing as it includes both the cardroom and all the endorsees and seems to place the requirement on the endorsees in their individual capacities. This requirement should just be on the cardroom (the cardroom business licensee).

Article 2. Initial and Renewal Licenses and Work Permits

As will be discussed further below, the Trust Supplemental Information form states a rule that is not in the statute or in these regulations, namely, to require all trust beneficiaries to be licensed. The Act provides that if the cardroom operator is a trust, trustees must be licensed, and the Commission, in its discretion, can require licensing of trustors and beneficiaries of the trust. Where the cardroom operator is a corporation, all shareholders must be licensed, but if the cardroom operator is a corporation and one of the shareholders is a trust, there is no rule. If the Commission wants to require beneficiaries of a trust that is a shareholder in a corporate operator to be licensed, a section should be added to this Article. Absent that, a direction in the form is an underground regulation. As provided in the APA, a form can summarize a regulation but cannot substitute for a regulation. See Govt. Code 11340.9. See OAL instructions stating, “a formal regulation is ‘needed to implement the law under which the form is issued.’” If the Commission desires to make a rule, it must follow all the procedures, including summarizing the rule in its Notice, and discussing the reasons for the rule in an Initial Statement of Reasons.

Chapter 5. Accounting

§12316. Unclaimed or Abandoned Property (p. 104)

This section has caused confusion in the industry. It requires a cardroom to “establish written policies and procedures which comply with California’s Unclaimed Property Law [cite omitted] regarding unclaimed chips, cash, and cash left at a gaming table or in any player’s bank deemed inactive.” The Unclaimed Property Law applies to accounts and so clearly applies to an

inactive player's bank. It also might apply to chips left at a table by someone who has an account. However, it does not apply to chips left by an unknown player. Rather, Civil Code §2080 et seq., which governs lost property would apply to those chips.

This section is misleading because it implies that the Unclaimed Property Law applies to chips left at a table, when that is not always true. The regulation should create a new rule for such chips, and we suggest that if such chips are not claimed within six months, the money should go to the Office of Problem Gambling. If the money is sent to the Controller, it will sit unclaimed forever. If, instead, the money is sent to the Office of Problem Gambling, it could be used right away for a purpose appropriate to the source of the lost funds.

§12369. Prohibited Player-Dealer Participation; Exclusion (p. 121)

This section requires a cardroom to notify the Commission and the Bureau of any person reasonably believed to be conducting player-dealer participation prohibited under section 12005. We have questioned the authority of the Commission to adopt section 12005. See above. We also question what exact conduct is made illegal under section 12005. If a player provides funds to a friend to play in a player-dealer game, does that violate section 12005? When two players are playing with pooled funds, and one of them takes a break, does that violate section 12005? This section would put cardrooms at risk of discipline for allowing activity, but the regulations do not clearly define what constitutes the prohibited activity.

§12566. Disciplinary Guidelines for Cardroom Owner Type Licenses (p. 167)

Section 12566(c)(3) would cover a failure to report under section 12369, which itself is based on the prohibition in Section 12005. We have objected to sections 12005 and section 12369 and object to this section on the same basis.

We also disagree with the statement in the Initial Statement of Reasons that a "cardroom business licensee is ultimately responsible for the activities in their cardroom." A business is responsible for its policies and procedures and other workplace rules and for the training it gives employees, but is never responsible for all activities by the public on the premises. Regulations

make a cardroom responsible only for what it “should have known.” This statement goes too far.

FORMS

We have one general comment. A number of forms, in particular the Supplemental Information forms, have small font and are difficult to read. This is especially true when small font is printed on top of a shaded background. Given the importance of these forms and the need for full and truthful answers, and given the desire to accommodate people who are older or have visual disabilities, I suggest reviewing the forms for legibility.

Appointment of Designated Agent (p. 178)

This form states in its introduction, “The Bureau retains the right to exercise its discretion to disapprove, in whole or in part, such designation(s).” However, the Bureau has retained a right to disapprove designated agents only of owners, not of other applicants or licensees. This is made clear by the Bureau’s definition of designated agents which is limited to agents appointed by “owners.” 11 CCR §2010(e). Thus the statement in the form is not correct. The next sentence in the form is similarly misleading for the same reason. It states that the Bureau Chief has the authority to require a designated agent to be appointed. However, again, that authority is only with regard to owners. Further, we question the legality of the Bureau’s rights either to disapprove designated agents.

Application for Employee Category License (p. 190)

The fourth paragraph of the instructions state, “an applicant understands that pursuant to Business and Professions Code section 19828, the Bureau or Commission may make public any communication or publication from, or concerning an applicant’s application or corresponding background information.” That statement is not correct. Section 19828 of the Act provides for the protection of information privileged under the Evidence Code or any other provision of law. Section 19828(b) provides that if any document or communication provided to the Bureau or the Commission contains any information privileged under Division 8 (commencing with Section 900) of the Evidence Code or any other provision of law, the

privilege is not waived or lost. Further, Section 19828(c) prohibits the Bureau or the Commission from releasing such information with the prior written consent of the holder of the privilege. Therefore, the instructions in the form are incorrect and need to be deleted or revised to conform to the statute.

Section 2, item C asks the employee to fill in the Job Description. We have three objections to this. First, this request is redundant as the Key Employee or TPPPS Supervisor: Supplemental Information form (p. 236) requires that an Employment Agreement or Duty Statement be submitted. Second, the employer not the employee determines the job description, and the applicant is neither the proper nor a reliable source for this information. Applicants assume that are expected to have this information and they try to provide an answer but the answer is often incomplete and/or incorrect. Third, the current Key Employee Application asks for "Description of Job Duties" as does the proposed Supplemental form, and that is different than a "Job Description." The term "Job Description" is both broader but also vague and uncertain. Job descriptions vary greatly. They usually include job duties, but could also include qualifications/skills requirements, education or experience requirements, working conditions, and benefits. The Supplemental Information form asks for information about the individual's education or work experience. If more is being asked, this is a change from the prior form. If all that is wanted is "Job Duties" the request should be limited to those.

Application for Owner Category License (p. 193)

The fourth paragraph of the instructions state, "...an applicant understands that pursuant to Business and Professions Code section 19828, the Bureau or Commission may make public any communication or publication from, or concerning an applicant's application or corresponding background information." That statement is not correct. See our discussion above regarding the same language in the Application for Employee Category License.

The instructions to Section 3 are unclear. They read, "Complete this section only for an owner's license." The term "owner's license" is being retired and this should now read "Complete this section only for a cardroom business license."

Business Entity: Supplemental Information (p. 197)

Section 2 asks for Federal Tax ID Number and for State Tax ID Number. The request for State Tax ID Number has never been clear. The Franchise Tax Board does not assign numbers and refers requests for a tax number to the IRS. The Secretary of State issues a 7-digit corporation number and, where applicable, a 12-digit file number, and one of these is the number required on the FTB-100 Corporation Income Tax Return. The EDD assigns an 8-digit payroll tax number (not income tax) known as a "State Employer Identification Number, SEIN, or state ID number" which is not used on income tax returns. If a state tax ID number is to continue to be requested, the request should be clarified which number is required.

Section 6, item K asks if the business entity has any agreements or contracts with any party. This is vague and potentially extremely broad and the past decade since the Commission and the Bureau has started requesting this information for renewal licenses, it has not been clear. Does this cover employee agreements? A business has an agreement with every employee, whether written or oral. Does it cover utilities services? All those are agreements. No time period is listed and no dollar threshold is given. Does this cover only current agreements or does it include agreements that have been concluded? Does it include purchases? If the entity purchased anything from office supplies, to food, to furniture, each purchase constituted an executed agreement. Are those covered? If so, purchase of a \$20 kitchen supply at the local hardware store would be included. If the Commission wants all these things included, it should make that clear, because most people are not going to think that broadly and are going to assume a lesser level of inquiry. If the Commission does not want all these things included, the form should make clear what is required and what is not.

Individual Owner/Principal: Supplemental Information (p. 210)

We have two comments on section 4. First, section 4 asks the applicant to disclose criminal convictions. The form asks for the degree of the conviction and instructs, "It must be disclosed whether it was a felony or misdemeanor...." Some applicants do not know the degree of the conviction. Further, when a conviction has been reduced under Penal Code §17, the applicant might be confused. In contrast, Bureau personnel have access to data bases and court records which will reveal the information

correctly and exactly. This sets a trap for the applicant. In an attempt to submit a complete application, the applicant might be tempted to guess but if they guess wrong, they may be viewed as not being forthright. We suggest requiring disclosure of the conviction but not asking for the degree of the conviction. If for some reason, Bureau personnel cannot determine the degree of the conviction, then they can ask the applicant for the information.

Second, the instructions to section 4 state "You are not required to disclose: ...(2) any conviction sealed pursuant to a court order." California courts seal court records, but other states use different procedures to achieve the same result. The instruction should make clear that other procedures to the same effect in other states will be treated the same. We suggest this read, "any conviction sealed (*or similarly treated in other states*) pursuant to a court order."

Section 10, item I asks if the applicant has any agreements or contracts with any party. This request is not clear. See the discussion above regarding similar language in the Business Entity Supplemental Information form.

Key Employee or TPPPS Supervisor: Supplemental Information (p. 225)

Section 4 asks for disclosure of criminal convictions. We incorporate our comments immediately above to the same requests in the Individual Owner/Principal Supplemental Information form.

Section 10, item H asks if the applicant has any agreements or contracts with any party. This request is not clear. See the discussion above regarding similar language in the Business Entity Supplemental Information form.

Trust: Supplemental Information (p. 237)

This form alone of all five Supplemental Information forms¹ contains substantive rules on who must be licensed. Further, for the first time, this form would require that all current trust beneficiaries be licensed. However,

¹ The other four Supplemental Information forms are (1) Business Entity form; (2) Individual Owner/Principal form; (3) Key Employee or TPPPS Supervisor form; and (4) the Commission Work Permit or TPPPS Worker form).

these rules are not set forth in the Act or in any regulation, and inclusion of these rules in the form would constitute an underground regulation and violate the APA.

The form instructs that all current trust beneficiaries who receive distributions from the trust are required to be licensed. An exception is then made for beneficiaries who are under 21 years of age.

The form cites to the Act but these rules are not in the Act. Section 19852(e) of the GCA requires that if the cardroom operator is a trust, only the trustees are required to be licensed. The statute then grants the Commission discretion to require licensing of trustors and beneficiaries of a trust. Section 19852(a) provides that if the cardroom operator is a corporation, all shareholders must be licensed. If a shareholder is a trust, there is no rule, though we assume subdivision (e) would then govern.

The Commission has never in its 20 year history required all trust beneficiaries to be licensed, and if that is to be required, the Commission needs to adopt regulations that state the rule and the reason for the rule.

The APA requires that state agencies must follow the procedures and requirements of the Administrative Procedure Act and rules adopted by the Office of Administrative Law rule when adopting regulations. Government Code §11340.9 contains an exemption from this requirement for the adoption of forms. However, the statute makes clear that the exemption does not apply when a form contain rules that constitute a regulation. Section 11340.9 reads:

This chapter does not apply to any of the following: ... (c)
A form prescribed by a state agency or any instructions relating to the use of the form, ***but this provision is not a limitation on any requirement that a regulation be adopted pursuant to this chapter when one is needed to implement the law under which the form is issued.***

OAL discusses this rule in a Guide on its website, and advises:

[I]f an agency adds any language [to a form] which satisfies the definition of "regulation" to the existing legal requirements, then,

under Government Code section 11340.9(c), a formal regulation is "needed to implement the law under which the form is issued."

Section 11340.9(c) cannot be interpreted as permitting state agencies to avoid mandatory APA rulemaking requirements by simply typing regulatory language into a form because this interpretation would allow state agencies to ignore the APA at will.

Guide to Public Participation in the Regulatory Process, p. 7. (Emphasis added.)

Although this form is part of the regulations packet, the substantive rules in the form are not subjected to the procedures and requirements of the APA. This change is not summarized in the Notice of Proposed Action. Nor is the change discussed in the Initial Statement of Reasons. There is no explanation of the reason for this change, no explanation of the problem being addressed, the purpose of, necessity for, and benefits of the changes. There is no identification of the factual material relied on by the Commission in proposing the regulation. One of the purposes of the APA is to ensure the creation of an adequate record for OAL and judicial review. By adding rules to this form without subjecting them to this process, one of the main purposes of the APA has been thwarted.

Nor does the rule requiring all current beneficiaries to be licensed serve a good purpose. One of the key uses of trusts is to provide for management of assets for someone incapable of managing the assets on their own. Trusts allow for the trustee to manage the assets as if he were the sole owner. Trusts thus allow a parent to deprive a child of control of an asset while allowing them to enjoy the fruits of the asset. Control of the stock is solely with the trustee. This is used for minors, but also can be used for children of any age. Parents will frequently create trusts that continue until the children are 30 or 40 years old to allow time for young adults to learn to be responsible owners. Sometimes, trusts are used for the lifetime of a son or daughter. An indiscriminate policy which requires all current trust beneficiaries to be licensed defeats these beneficial uses of trusts that the Legislature has allowed. Further, adoption of a blanket rule is contrary to the Legislature's direction in section 19852(e) to exercise discretion.

Commission Work Permit, TPPPS Player, or TPPPS Other Employee: Supplemental Information (p. 246)

Section 4 asks for disclosure of criminal convictions. We have the same two comments to the request in this form as to the requests in the Individual Owner/Principal Supplemental Information form.

Supplemental Information: Schedules (p. 254)

Schedule H, Taxes Payable

The instructions for Schedule H are not clear. They read, "List all unpaid and estimated taxes." Our first question is what types of taxes are covered. Just income or other taxes. Other taxes could include payroll taxes, gift taxes, estate taxes, and sales and use taxes. Payroll taxes include social security, medicare, unemployment and disability taxes. There are also property taxes. Does this refer only to federal and state taxes, or to county taxes as well?

The term "unpaid taxes" is unclear. It could refer to taxes shown on a return, not yet due and not yet paid (such as taxes on an installment sale) or taxes shown on a return, due and unpaid. This should be clarified.

The term "estimated taxes" could refer to estimated taxes required under law. Both the IRS and FTB require quarterly payments of estimated taxes based on the prior year's taxes. However, the term "estimated taxes" could refer to estimates based on current year's income and could be requiring the applicant to estimate taxes based on current income. Estimates are difficult to make both due to the complexity of the tax laws but also due to unpredictability of income. We question the value of requiring an estimate of taxes owing as a matter of course. This would rarely be relevant.

Schedule I – Notes Payable

This schedule has an instruction "List all loans and notes payable (monies owed by the business entity)" The parenthetical comment creates uncertainty. It implies that this schedule is applicable only to business entities, and we wonder if other applicants do not have to complete this.

California Gambling Control Commission
August 5, 2020
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Spousal Information (p. 266)

The fourth paragraph of the instructions state, "...an applicant understands that pursuant to Business and Professions Code section 19828, the Bureau or Commission may make public any communication or publication from, or concerning an applicant's application or corresponding background information." That statement is not correct. See discussion under Application for Employee Category License, above.

* * *

We appreciate your consideration of these comments.

Sincerely,


Alan Titus



August 4, 2020

Mr. Joshua Rosenstein, Legislating and Regulatory Specialist
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
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RE: Licensing – CGCC-CGA-2020-01-R

Dear Mr. Rosenstein:

The Bureau of Gambling Control (Bureau) has reviewed the California Gambling Control Commission's (Commission) proposed regulatory action – Licensing, routed for initial 45-day comments, and submits the following comments for consideration:

California Code of Regulations, Title 4, Division 18, Section 12002

Subject: Subdivision (k); Definition of Cardroom Endorsee Licensee; Suggested Change

It is not clear to the reader that the word “person” is defined in statute as a person or an entity. The Bureau suggests the following amendment:

(k) “Cardroom endorsee license” means a license issued to any person or entity required to be licensed pursuant to Business and Professions Code sections 19852 or 19853 and is required to be endorsed on the license certificate pursuant to Business and Professions Code section 19851, subdivision (b).

California Code of Regulations, Title 4, Division 18, Section 12040

Subject: Subdivision (a)(1); Mandatory and Discretionary Grounds for Denial; Suggested Change

Subdivision (a)(1) is worded slightly different than the other subdivisions in this section. For clarity and consistency, the Bureau suggests the following amendment:

(1) Will be denied if the Commission ~~makes a finding~~ finds that the applicant has not satisfied the requirements of Business and Professions Code section 19857; or,

California Code of Regulations, Title 4, Division 18, Section 12080

Subject: Subdivision (b); Designated Agent – Authorization; Suggested Change

The Bureau requests the following amendment to state that an authorization must be provided to both the Commission and Bureau before a natural person represents an applicant before either agency. This is also consistent with the language on the draft form.

(b) A natural person(s) must be authorized as the applicant's, licensee's, or holder of a Commission work permit's designated agent before representing the applicant, licensee, or holder of a Commission work permit before the Commission and Bureau.

California Code of Regulations, Title 4, Division 18, Section 12116

Subject: Subdivision (d); Submission of Renewal Application after Expiration; Suggested Change

The Bureau is suggesting the following amendment for consistency with statute.

(d) If a complete renewal application, including all required fees and deposits, has not been submitted within 10 calendar days after the expiration date of the current cardroom business license, the cardroom business license will be deemed ~~abandoned~~ surrendered and will be subject to the provisions of subsection (b) of Section 12142.

California Code of Regulations, Title 4, Division 18, Section 12134

Subject: Subdivision (a); Notification of Qualifying Event; Suggested Change

The Bureau is suggesting the following amendment to ensure that both agencies are notified when a qualifying event occurs.

(a) Subject to the provisions of the Act, this division and Title 11, Division 3, of the California Code of Regulations, a cardroom business licensee may continue gambling operations or a TPPPS business license may continue to provide third-party proposition player services following a qualifying event only if an owner or a licensed person affiliated with the cardroom business licensee or TPPPS business licensee has control of the gambling operations or the provision of third-party proposition player services, as applicable, the Commission and Bureau are ~~is~~ notified of the qualifying event within 10 calendar days of that event, and the new owner, or individual in control of the ownership interest, submits a request for an interim gambling business license to the Bureau as provided in Section 12136.

California Code of Regulations, Title 4, Division 18, Section 12138

Subject: Subdivision (a)(2); Request for an Interim Gambling License; Suggested Change

The Bureau cannot conduct its review of a request for an interim licenses unless documents of succession are received. As such, the Bureau is suggesting the following amendment specifying that the timeframe for review does not begin until all necessary documents are received.

(2) Once the Bureau determines that a ~~request~~ an application for an interim owner category license is complete, the matter will be set for consideration at a noticed Commission meeting. The Bureau will provide their review to the Commission no later than 40 calendar days after receipt of the ~~request~~ complete application. Pursuant to the provisions of the Act and this division, the Commission will grant or deny the request for an interim owner category license within 60 calendar days after receipt of the ~~request~~ completed application. An application request for an interim owner category license will be denied by the Commission if the applicant is disqualified for any reason set forth in section 19859 of the Business and Professions Code.

California Code of Regulations, Title 4, Division 18, Section 12144

Subject: Effective Date

As written, the renumber section 12144 would appear to reinstate provisions of the prior surrender or abandonment because the effective date of the original text is not included. The Bureau suggests that the section be amended to include the effective date of the original text, formerly numbered section 12348, in order to address this issue.

Proposed Forms

Subject: Applicant Information

Several sections of the proposed forms include the following text:

“If this applicant currently holds a valid license, this question need only be answered to update since the last time this form or another supplemental information form was submitted and licensure granted.”

The Bureau has concerns that this will lead to more instances of non-disclosure. This would require that the applicant remember when their last form was submitted, not necessarily when they were granted a license. Currently, applicants have a difficult time recalling their employment history. It is unlikely that an applicant would recall the information disclosed on a previous application. The Bureau suggests that this sentence be removed and applicants be required to disclose information according to the specific question asked and not consider prior disclosure on previous applications.

Secondly, because the proposed forms would require current licensees and permit holders to provide only updates to information previously submitted to bring current the information on record since the last time the applicable form was submitted and licensure or permit granted, this change will require Bureau staff to more closely analyze the previous information submitted by the applicant to the information newly submitted, thus slowing down the application processing for several dozen owner-type licenses and hundreds of employee-type licenses each year. The increased time required to process applications for existing license or permit holders seeking a new or different license or permit would be billable to the investigation and could result in increased costs to the applicant.

For owner related license types, the Bureau estimates an additional 4-5 hours per license would be required to review the prior applications to the new application and the information contained therein. The analytical workload associated with this includes, but is not limited to: comparing the new application to all prior applications for the same applicant, to verify if information was previously disclosed. Staff would be comparing the following information: criminal, residential, employment, licensing, gaming regulatory discipline, business interests, bankruptcy, liens and judgements, tax audits, repossessions and collections, foreclosures, foreign assets and liabilities, and contracts and agreements.

For employee license types, the Bureau estimates an additional 2-3 hours per license would be required to review the prior applications to the new application and the information contained therein. The analytical workload associated with this includes, but is not limited to: comparing the new application to all prior applications for the same applicant, to verify if information was previously disclosed. Staff would be comparing the following information: criminal, lawsuits or arbitration, residential, employment, licensing, gaming regulatory discipline, business interests, bankruptcy, liens and judgements, tax audits, repossessions and collections, foreclosures, and contracts and agreements.

While it is not anticipated that the proposed regulation will change the Bureau's overall background investigation processes, these regulation changes will require updates to the Bureau's procedures and checklists, as well as familiarization with the new applications, which could result in immediate but short term production decreases. The overall impact is anticipated to be minimal. It should also be noted that while the anticipated benefit of overall efficiency increases, it is not anticipated that these efficiencies would result in decreased workload or necessitate decreased staffing.

All of the workload increased are absorbable because the time would be billable to the investigation. For any additional hours necessary, the industry would be responsible for additional costs. At \$76 per billable hour, applicants could expect additional costs ranging approximately from \$152-\$380.

Mr. Joshua Rosenstein
August 4, 2020
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Notification of Employment Change Form

Subject: Businesses Reporting of Employee Disassociation; Suggested Change

The Bureau suggests adding a section or adding a form for a business to notify the Bureau that an employee is no longer employed. This is most commonly how the Bureau is notified of the change in employment. This type of notification is most important with third-party provider companies whose annual fees are based on the number of registered or licensed employees associated with that business.

Application for Self-Restriction

Subject: Formatting Suggestion; Suggested Change

The Bureau suggests that the “Self-Restriction” form be formatted in landscape orientation rather than portrait. Prompting the user to change the orientation of the form being completed could help the user to distinguish between the program at an individual gambling establishment and the voluntary, statewide Self-Exclusion Program.

If you have any questions, please contact me at (916) 830-9066 or by email at yolanda.morrow@doj.ca.gov.

Sincerely,

YOLANDA MORROW
Assistant Director

For XAVIER BECERRA
Attorney General

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August 3, 2020

Via Email

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Stacey Luna-Baxter, Executive Director
Adrianna Alcala-Beshara, Deputy Director
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Re: Licensing Regulations Comments CGCC-GCA-2020-01-R

Dear Stacey and Adrianna:

Thank you for circulating the proposed regulatory changes for licensing. On behalf of the Oaks Card Club and California Grand Casino, I am submitting the following comments on the draft regulations.

12005 Prohibited Player-Dealer Participation. (p. 9)

Section 12005 is intended to address third parties whose job duties involve *play* in a California game. Similarly, 12002 (ao) defines a TPPPS as an entity with a contract to *play* as a participant in a California game.

However, in subsections (a), (b) and (c) the draft uses the word “participate,” which should be narrowed to “play” since all cardroom employees participate in the play of the game by doing their jobs, dealing cards, etc....

Subsection (b) should also include persons employed by a person with an approved TPPPS contract. Subsection (c) fails to contain an exception for play under an approved TPPPS contract and should be similarly amended, or (c) could be eliminated as it duplicates (b).

The sections can be changed as follows.

(a) A person cannot hire or finance, including but not limited to providing loans, advances, or any other thing of value, the hiring of employees or independent contractors, or both, whose job duties include ~~participation in the playing in~~ of any California game without an approved TPPPS contract.

(b) A person cannot ~~participate in the play of a California game~~ as an employee or independent contractor play in a California game as part of their employment or contractual duties without an approved TPPPS contract or unless employed by a licensed TPPPS with an approved TPPPS contract.

(c) A person cannot ~~participate in the play in~~ of a California game pursuant to any oral or implied agreement with a cardroom business licensee that requires their play in a California game, except under an approved TPPPS contract. (or delete (c))

12006 Service by Mail or Email (p. 9)

An applicant, designated agent or licensee should be able to choose service by mail and email, since neither is 100% or even 90% reliable. But the regulation only provides the option of receiving notices by mail (subsection (a)) or “exclusively” by email (subsection (b)).

We all know of instances where emails are missed, delivered to the wrong folder or blocked. And although the Post Office offers an Informed Delivery product which scans physical mail to be delivered, that service only detects mail that reaches the scanning point before delivery and even then is not accurate. When a letter is lost before the scanning point and is not delivered, you don't know it's missing.¹ In addition, due to travel or home office use, what means may be best at any particular time can also change suddenly or for short periods of time, creating a need for both forms of notice.

The most important thing is that the Commission's notice is received so people don't miss their hearings. If the Commission has the ability to send notices by mail or email, it should send them using both means on request of the applicant, licensee or designated agent, especially where the agent is concerned about responsibility to the client for missing an important communication. This section could be changed as follows:

¹ For my last key employee license renewal, I received the mailed notice for the commission meeting four months after the meeting and did not attend the meeting. I signed up for Informed Delivery but frequently get mail delivered to me which was not scanned at all.

(b) Notwithstanding subsection (a), notice and other written communication may also be provided using email, or exclusively provided via email, to the email address of the applicant, licensee, or designated agent as last reported to the Commission where they provide the Commission written authorization including, for instance in a completed and returned Notice of Defense, CGCC-ND-002 (Rev. 12/18) received under subparagraph (E) of paragraph (2) of subsection (c) of Section 12052 or at an earlier point from the Commission staff.

12080 Designated Agent. (p. 14)

As the proposed regulations recognize, a person or entity may wish to appoint more than one person to serve as a Designated Agent (DA). For example, a club may want its lawyer to be the designated agent for licensing and/or game approvals, but its General Manager to serve as the DA for all other inquiries. The DA form should include subject matter distinctions of this type, but presently does not. The proposed form does not identify the subject matter of the communication and therefore does not anticipate the ways in which many clubs want to divide responsibilities between DAs.

In addition, rather than have multiple forms on file for a licensee or applicant, each one for a different DA, an alternative could be to allow the licensee or applicant to include all DAs on one form and with the different subjects or categories for their responsibilities identified. When a responsibility or DA changes, the person can file an updated form. Each DA can sign a separate acceptance form.

§ 12108. Replacement of a Badge (p.18)

While a person is waiting for a replacement badge, can they work using a self generated or employer generated replacement badge with all the same information required in an issued badge? (If you lose or misplace your badge you should be able to keep working, or the employee, other employees and the card room will be adversely affected.)

§ 12112. Initial License Applications; Required Forms

General Comment: Work Permits and the Scope of Investigation.

The Commission should consider whether the current scope of work permit investigations is appropriate. Over time, the Commission's scope of inquiry for work permits may have exceeded that contemplated by the Legislature and plainly is broader than what is typically reviewed in other gambling jurisdictions.

In Nevada, gaming employees must register. This involves a short form, fingerprint cards and a fee of \$75. The gaming regulators focus on criminal history. The Nevada Gaming Control Board has 15 employees statewide for gaming employee registrations and they process 3,000 applications per month. Registrations are for a five year period. The applications are done online using a web portal.

In New Jersey, employees must register. This involves a form, fingerprint cards and a fee of \$95. The form asks about the applicant's criminal history including arrests, last three jobs, any gambling related jobs, child support and New Jersey governmental liens or judgments. The registration does not expire and no renewal is required.

The California Legislature similarly set a range on the work permit application fee of \$25 to \$250. Even though the Commission is currently charging the maximum amount, the work permit process greatly exceeds in scope even the \$250 fee. The 2019 California State Auditor report states that the bureau charges \$250 for each work permit application, but spends an average of 27 hours on each application at a cost per hour of \$76, for a loss per application of \$1802. As the Bureau is now attributing more time to specific applications rather than general work, this disparity may have already increased. This also does not include the cost of associated time spent by commission staff or commissioners. There needs to be a cost / benefit judgment about the scope of inquiry.

As in other states, a work permit requires an evaluation of the applicant's suitability, but consistent with other states, work permit investigations should largely concern criminal background, and specific civil matters discernible from public records, such as delinquent child support, delinquent taxes, bankruptcies or gambling law violations. The scope of relevant civil matters included in the application should be narrowed and should not include unlawful detainers, collections, small claims disputes, etc...

In addition, our agencies sometimes try to determine whether there were any discrepancies in describing prior work history, and if so were they intentional, careless, simply a misunderstanding, or are there just two sides to the story. The applicant can get tripped up by their memory or disagreement with a prior employer. The inquiries often prove indeterminate and in the end unlikely to make a difference. If prior non-gaming employment is included for work permits, then the relevant employment should be limited

to the last three jobs or the time period should be reduced from the current ten years to five or three (v. ten years of job history for key employee and owner applicants).

Clearly, the small fee for a work permit is intended to cover an applicant assessment that is more records based, faster and tangible. While it may be difficult to quantify the exact amount of regulatory costs attributable to broader inquiries into other civil cases and prior non-gaming employment, the benefits seem low. The broader, more time consuming and expensive investigation now used for work permits makes a difference in few cases, is fiscally unsound, and is inconsistent with the practices in other gaming jurisdictions.

Employee Category Application: CGCC-CH2-04

Form 04 combines applications and questions for key employees and work permit applicants into one form with similar scopes of inquiry, when the scope of inquiry for work permit employees should be narrowed rather than expanded. These applications should be kept separate with the work permit application narrower in scope.

Renewals, Section 3:

Sub 1. As explained above, for work permit applicants the form should limit the civil litigation to specified types of civil proceedings (i.e., child support) as in other states.

For key employee applicants, the form should provide examples of civil litigation that commonly arise to avoid mis-understandings regarding what should be included.

Sub 3. The form should provide examples of misdemeanors that commonly arise, for example: “including but not limited to, driving under the influence, reckless driving, etc...”

Sub 5. Contracts

First, for key employees the request for contract information should relate to: (1) gambling related agreements; and (2) agreements with the employer or a TPPPS. We should not be asking broadly for everything that can be considered a contract.

People enter into contracts all the time for personal or household reasons: day care, a new credit card, landscaping, a new roof for their house, apartment lease, a new mortgage, termite repairs, a gym membership, dance lessons for kids, school agreements, etc... The contract information requested by the Bureau should relate to gaming contracts or contracts with a licensee. (In prior license renewals, Bureau analysts have agreed to this limitation.)

Second, work permit applicants are not asked to list all their contracts in their initial application, so this renewal question should be for key employee license holders only.

Owner Category Application: CGCC-CH2-05

Sec. 2, Sub 1. The form should provide examples of civil litigation that commonly arise.

Sec. 2, Sub 3. The form should provide examples of misdemeanors that commonly arise.

Section 3: It is not clear why this form calls for a listing of the games offered, when that is covered in the supplemental form CGCC-CH2-06, and the Bureau maintains a list of approved games and requires periodic reports of the same from the cardroom.

Owner Category Supplemental: CGCC-CH2-06

Section 6 (k): This section calls for a list of contracts, but there is no monetary threshold on the contract amounts. Cardrooms can have contracts for a few thousand dollars or less, for example for photo or ad shoots, or repairs. Listing all contracts regardless of monetary amounts would mean listing hundreds of transactions, only some of which are recurring or of any magnitude.

Similarly, if the owner is a sole proprietor, the contracts should be limited to cardroom related agreements and not include personal or household agreements.

Individual Owner Category Application: CGCC-CH2-07 and Key Employee / Supervisor Supplemental Application: CGCC-CH2-08

Section 4

1. Given the heading and instructions, which refer only to convictions or litigation, would an applicant construe subparts B (barred from entry from gambling facility) or C (illegal gambling) to relate only to criminal or civil proceedings?
2. Subpart C should delete “bookmaking.”

First, bookmaking is a subset of the “illegal gambling” which is already included in the question, except that the question uses “knowingly engaged” for all other forms of “illegal gambling” other than bookmaking.

Second, it is not clear how “bookmaking” may be applied to contemporary activities. Penal Code §337a. Does it include daily fantasy sports, participant pools created by entry fees (like a golf tournament), e sports, skill games, loot boxes, March Madness brackets, add on tokens for freemium games, any online game token that has a secondary market, etc...? For these activities, the State has been conspicuously silent. As in most states, our gambling laws are indeterminate in some respects and impacted by technological changes that the laws and court decisions do not anticipate, leaving us with the uncertain application of the law to new technology, mediums, or activities.

If anything cried out for using the words “knowingly engaged” it is Penal Code 337a, especially since this question is not limited to charges or convictions. In addition, sometimes gambling laws make the operation of a particular activity illegal but not attendance or play. So an illegal carnival game means the carnival is breaking the law but not necessarily the person trying to flip the ring around the jar.

As a result, “knowingly engaged” should modify all parts of the question, and the Commission should make clear that in this case “knowingly engaged” means the person knew or should have known that what the person did was established at the time to be illegal.

3. The form could provide examples of civil litigation or misdemeanors that commonly arise.

Section 10 (i): Contracts

First, the request for contract information should relate to gambling related agreements or agreements with the employer or a TPPPS only. The request should not include contracts for personal or household use.

Second, there should be a monetary threshold on the contract amounts. For example, the gift section for owners uses \$10,000 as a threshold.

Employee Work Permit Supplemental Application: CGCC-CH2-10

Section 4: Same Comments as above.

Section 6: This should limit prior employment to the applicant’s last three jobs or 3-5 years.

Spousal Information: CGCC-CH2-12

Section 3. I understand the Commission wanting to make sure that if it is not issuing a license to a spouse, that he or she won't claim a property interest later. But family law establishes what is separate property and what is community property, and how that classification may be transmuted. It is inappropriate for this form to assign a burden of proof regarding separate property status making the applicant prove it is separate property. A business entity and accounts used to buy a cardroom or start a TPPPS could have been established before a marriage, in which case the burden of proof may be on the other spouse to claim a community property interest. The reference to the burden of proof should be deleted and instead documentation regarding ownership should just be required. If the first two paragraphs of this section were deleted the statements in section 2 and the remaining statements in section 3 should suffice.

Section 4. This should include as an additional option evidence that the applicant or business entity and accounts were established before the marriage.

Thank you in advance for your consideration of these comments.

Sincerely,

/s/

David M. Fried

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August 4, 2020

VIA EMAIL (jrosenstein@cgcc.ca.gov)

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Re: CGCC-GCA-2020-01-R; Proposed Licensing Regulations

Dear Mr. Rosenstein:

Thank you for the opportunity to comment on the above-referenced proposed licensing regulations. I have the following comments:

Section 12102(b)

This proposed section states:

“(b) No applicant can receive a TPPPS business license if that applicant holds a cardroom business license. No applicant can receive a cardroom business license if that applicant holds a TPPPS business license.”

The Initial Statement of Reasons with respect to this proposed section states:

“Subsection (b) provides that no applicant can receive both a TPPPS business license and cardroom business license. This provision maintains the limitation in subsection (d) of Section 12201 and while stated differently, has the same effect. This is necessary to maintain the requirement in the Act that the house has no interest in the funds, wagered, lost, or won.”

While I believe it is in fact the Commission's intent in this section to simply restate the current limitation contained in Section 12201(d) with the same effect, I don't believe that intent is clear from the proposed language of Section 12102(b). In fact, the proposed language potentially creates a vague and possibly confusing result which could be interpreted much more broadly

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August 4, 2020

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than the current language in Section 12201(d) to preclude an individual from concurrently holding both a TPPPS business and a cardroom business license.

Specifically, I call your attention to the current language of the second sentence of Section 12201(d) and the definitions of “Cardroom business license” and “TPPPS business license” under the proposed regulations as follows:

“(d) ...No business entity or sole proprietor can be registered under this chapter that is also licensed under the Act to operate a gambling establishment.”

“(j) “Cardroom business license” means a license issued to a gambling enterprise as defined in Business and Professions Code section 19805, subdivision (m), or owner licensee as defined in Business and Professions Code section 19805, subdivision (ad), and is the holder of the license certificate pursuant to Business and Professions Code section 19851, as applicable.”

“(ap) “TPPPS business license” means a license issued to a sole proprietor, corporation, partnership, limited liability company, or other business entity for the purpose of providing third-party proposition player services in a gambling establishment.”

The current language of Section 12201(d) is clear, direct and concise, to wit, if you are a sole proprietor or a business entity that is licensed to operate a gambling establishment you cannot also be registered as a TPPPS. The proposed language instead prohibits an “applicant” from holding both a cardroom business license and a TPPPS business license thereby precluding an individual from concurrently holding both licenses. That is clearly a substantial change to the existing regulation which reference specific license holders rather than applicants. In addition, the defined terms in the proposed language, include further references to other defined terms which are much more expansive in their inclusion of individuals as well as entities.

I respectfully suggest that in order to provide clarity and avoid confusion Section 12102(b) should simply read as follows:

“A sole proprietor or business entity holding a cardroom business license may not also simultaneously hold a TPPPS business license.”

The foregoing language clearly reflects the intent and has the same effect as the current language of Section 12201(d).

Finally, the statement in the last sentence of the Initial Statement of Reasons cited above is misplaced and further adds to the confusion created by Section 12102(B). In particular, the term “house” is very expansive in including not only a gambling enterprise but also any owner, shareholder, partner, key employee, or landlord thereof. Again, the limitation contained in

Joshua Rosenstein

August 4, 2020

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current regulation covers only sole proprietors and business entities who are licensed to operate a gambling establishment. If the intent of the proposed language is to have the same effect as current language the term “house” should not be used.

Thank you for your consideration.

Very truly yours,

FALK & SHARP,
A Professional Corporation

By: *Keith A. Sharp*

Keith A. Sharp

KAS/lrd



CALIFORNIA GAMING ADVISORS

VIA Email (jrosenstein@cgcc.ca.gov)

August 5, 2020

Joshua Rosenstein
Legislative and Regulatory Specialist
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2399 Gateway Oaks Drive, Suite 220
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Re: Comments on Proposed Licensing Regulations - CGCC-GCA- 2020-01-R

Dear Mr. Rosenstein,

On behalf of my clients, Empire Sportsmen's Association, Outlaw's Card Parlour, and The Deuce Lounge & Casino, please accept the following comments and proposed amendments pertaining to the California Gambling Control Commission's ("CGCC") Proposed Licensing Regulation draft.

CGCC Proposed Section 12002(k)

In passing the Gambling Control Act ("Act"), the Legislature clearly intended there to be different standards of suitability for those that hold a "gambling license" as defined in Business and Professions Code section 19805(p) versus the lesser "work permit" defined in section 19805(ak).

Under the Act, an applicant for a gambling license must pay both a large application fee and deposit to enable the Bureau to conduct an extensive background investigation into the suitability of the applicant pursuant to Business and Professions Code sections 19857 and 19859, statutes that contain both mandatory and discretionary grounds for denial. In contrast, section 19912 specific to work permit applications provides that applicants are only subject to mandatory denial under 19859. The Legislature placed a statutory cap on the work permit fee signaling that only minimal work was required to determine whether an applicant was disqualified from holding a work permit. This interpretation is further strengthened in section 19914 which limits the grounds for work permit revocation to mandatory provisions of section 19859 and specific offenses related to gambling.

All of my clients operate in a jurisdiction that requires state issued work permits and each have had employees denied on discretionary grounds. The additional burden placed on state work permit applicants to prove suitability has no doubt contributed to the Bureau's licensing backlog. As noted in the Bureau's April 29, 2018 response to State Auditor Report 2018-132, it spends an average of 27 hours on an initial work permit application. Using the Bureau's \$76/hour rate, this means the average work permit application costs \$2,052, of which only \$250 is paid by the applicant. These inequities and inefficiencies



will only be exacerbated by including Commission issued work permits in the definition of “cardroom employee type license.”

Proposed Amendment:

(k) “Cardroom employee type license” means a license issued to any person as provided in Business and Professions Code section 19805, subdivision (n), who does not only hold a local work permit; and, for the purposes of this division also includes a key employee license ~~or a Commission work permit.~~

The following definitions should also be amended for the reasons previously stated:

(ab) “Initial license” means the same as provided in Business and Professions Code section 19805; and, for the purposes of this division also includes:

(1) The following licenses:

- (A) Initial cardroom business license;
- (B) Initial cardroom endorsee license;
- (C) Initial key employee license;
- ~~(D) Initial Commission work permit;...~~

(ad) “Interim renewal license” means an interim license issued by the Commission to an applicant for renewal of a license, ~~work permit,~~ or other approval involving a finding of suitability when the applicant’s application is pending consideration at an evidentiary hearing or the licensee ~~or holder of a work permit~~ has a pending accusation.

(al) “Renewal license” means the same as provided in Business and Professions Code section 19805; and, for the purposes of this division also includes: (1) The following license types:

- (A) Renewal cardroom business license;
- (B) Renewal cardroom endorsee license;
- (C) Renewal key employee license;
- ~~(D) Renewal Commission work permit;...~~

(an) ~~(z)~~ “Temporary license” means a preliminary license ~~or Commission work permit issued by the Commission,~~ issued to an applicant prior to action on an initial license application, with appropriate conditions, limitations or restrictions determined on a case-by-case basis. ~~and, for the purposes of this division also includes:~~

- (A) Temporary cardroom business license;
- (B) Temporary cardroom endorsee license;
- (C) Temporary key employee license;
- ~~(D) Temporary Commission work permit;~~

CGCC Proposed Section 12002(l)

Business and Professions Code section 19853 is permissive, not mandatory.

Proposed Amendment:

(l) “Cardroom endorsee license” means a license issued to any person ~~required to be licensed~~ pursuant to Business and Professions Code sections 19852 or 19853 and is required to be endorsed on the license certificate pursuant to Business and Professions Code section 19851, subdivision (b).

CGCC Proposed Section 12002(p)

The definition of “conviction” found in Business and Professions Code section 7.5 was amended on July 1, 2020. This new definition supersedes any definition of “conviction” found in individual practice acts within the Business and Profession Code, including the Gambling Control Act:

- (a) A conviction within the meaning of this code means a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) or (c) of Section 480.
- (b) (1) Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.
(2) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:
 - (A) The State Athletic Commission.
 - (B) The Bureau for Private Postsecondary Education.
 - (C) The California Horse Racing Board.
- (c) Except as provided in subdivision (b), this section controls over and supersedes the definition of conviction contained within individual practice acts under this code.
- (d) This section shall become operative on July 1, 2020.

Proposed Amendment:

(p) ~~“Conviction” means a plea or verdict of guilty or a plea of nolo contendere, irrespective of a subsequent order of expungement under the provisions of Penal Code section 1203.4, 1203.4a, or 1203.45, or a certificate of rehabilitation under the provisions of Penal Code section 4852.13. A plea of guilty entered pursuant to Penal Code section 1000.1 does not constitute a conviction for purposes of Business and Professions Code section 19859, subdivisions (c) or (d) unless a judgment of guilty is entered pursuant to Penal Code section 1000.3.~~ means the same as provided in Business and Professions Code section 7.5.

CGCC Proposed Section 12040

This draft’s inclusion of discretionary grounds for denial under section 19857 demonstrates the need for work permits to be distinguished from key employee and owner applicants.

Proposed Amendment:

Add:

(d) An application for a Commission initial or renewal work permit:

(1) Will be denied if the Commission finds that any provisions of Business and Professions Code section 19859 apply to the applicant.

(e) An application for a Commission renewal work permit:

(1) May be denied if the Commission makes a finding that any of the provisions of Business and Professions Code section 19914 apply to the applicant.

CGCC Proposed Section 12056

Subsection (e) is incorrect, the current regulation only contains subsections (a)-(c).

Proposed Amendment:

~~(e)~~ (d) An APA or GCA hearing is sufficient to meet the hearing requirement of Business and Professions Code section 19914.

CGCC Proposed Section 12102

Commission issued work permits should be included in this section.

Proposed Amendment:

(a) An initial or renewal license or Commission work permit referenced in this chapter will be valid for a period of two years.

CGCC Proposed Section 12106(d)(3)

The proposed language is overly broad. Employees should only be required to wear their badge when they are on duty at a gambling establishment.

Proposed Amendment:

(3) A TPPPS ~~category licensee~~ owner type licensee must wear their badge whenever present in any gambling establishment which has an approved TPPPS contract with a TPPPS business licensee that is owned by ~~or employs~~ the licensee, including when not on duty.

(4) A TPPPS employee type licensee must wear their badge at all times while on duty in a gambling establishment.

CGCC Proposed Section 12124

Consistent with previous comments, work permits should not be included within the meaning of an employee category license.

Proposed Amendment:

(a) The Executive Director ~~will shall~~ issue a temporary employee category license ~~work permit or Commission work permit~~ if all of the following requirements are met:

CGCC Proposed Section 12128(a)(2)

The draft language conflicts with the language in proposed section 12122(d) which provides that a temporary license or work permit only becomes void once a license or work permit is issued or denied. Temporary licenses/work permits should only be revoked without a hearing when based on mandatory grounds. Revocation based on discretionary grounds should occur only after a hearing in order to ensure the applicant is provided due process.

Proposed Amendment:

(a) Any temporary license or Commission work permit ~~work permit~~ issued in accordance with this article: ~~will shall be subject to summary cancellation pursuant to subsections (b) and (c) of this section.~~

~~(b) A temporary work permit shall be cancelled or conditioned, as provided in subsection (a) and (b), if by the Executive Director at any time, if any of the following applies:~~

- (1) Will be cancelled if the Commission determines that it has received reliable information that the holder of the temporary license or Commission work permit ~~work permit~~ is ineligible under section 12040 or has supplied information to the Bureau or Commission that is untrue or misleading as to a material fact pertaining to the criteria for issuance of a temporary license work permit.
- (2) Will be conditioned if the applicant's initial license or Commission work permit ~~regular work permit~~ application is referred by a vote of the Commission ~~to for~~ an evidentiary hearing
- ~~(3) The temporary license is for a temporary TPPPS category license, and the applicant:~~

~~(A) Buys or sells chips other than to or from the cardroom business licensee, except for exchanging with a patron one denomination of chips for chips of another denomination.~~

~~(B) Lends money or chips to gambling establishment patrons, except for exchanging with a patron one denomination of chips for chips of another denomination.~~

~~(C) Makes a wager that was not specifically authorized by the Bureau approved game rules.~~

~~(D) Provided proposition player services at a gambling establishment without a Bureau approved contract on and after April 30, 2004.~~

~~(4) The temporary license is for a TPPPS owner type license or a TPPPS supervisor license and the applicant:~~

~~(A) Knowingly permitted one or more TPPPS category licensee to commit any act described in paragraph (3):~~

~~(B) Knew, or failed to implement reasonable oversight procedures that would have apprised the TPPPS business licensee, that one or more employees was in violation of the Act or Commission regulations, and failed or refused to take action to prevent the recurrence of the violation(s):~~

~~(b)(e) If a temporary license or Commission work permit is cancelled pursuant to subsection (a)(1), any of the circumstances set forth in subsection (a)(b) applies, and the temporary license is a temporary employee category license, then the license must be summarily cancelled and~~ the Executive Director ~~or his or her designee~~ will shall immediately do all of the following:

(1) Notify the temporary licensee or work permit holder ~~work permit holder~~, ~~the any owner category licensee~~ gambling establishment that the temporary license or work permit holder is currently associated with, the local law enforcement agency, and the Bureau, in writing, of the cancellation of the temporary license ~~work permit~~ and the grounds thereof.

(2) Require ~~the holder of the license for~~ the cardroom business licensee ~~gambling establishment, the TPPPS business licensee~~ or any applicable ~~its~~ hiring authority to terminate, immediately, any employment of the holder covered by the cancelled temporary license or work permit ~~work permit~~.

(3) Notify the temporary licensee or work permit holder ~~work permit holder~~ that he or she is required to surrender their badge ~~temporary work permit~~ to the Bureau ~~Commission~~ not more than ten calendar days following the date that the notice of cancellation was mailed or a such greater time as specified is ~~authorized~~ by the Executive Director in the notice.

Thank you in advance for your consideration of these comments and proposed amendments. Please do not hesitate to contact me with questions or concerns regarding anything included in this letter.

Sincerely,



TIFFANY CONKLIN-LICHTIG