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June 30, 2025

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

Re: Annual Fee: Phase II Regulations  
CGCC-GCA-2025-01-R

Dear Mr. Rosenstein:

I write on behalf of Artichoke Joe's to provide comments on the proposed regulations referenced above. I provide a general comment followed by comments on specific regulations.

## GENERAL COMMENTS

We have previously objected to the new method of calculating annual fees that is based on each cardroom's revenue, and we renew that objection to these proposed regulations. That method is unconstitutional. The law requires that annual regulatory fees be apportioned among licensees based on the burdens each imposes on the regulatory system. Apportionment based on revenue does not do that. Rather, apportionment based on revenue is a characteristic of taxes and these purported "fees" are really taxes, not authorized under Bus. & Prof. Code §19951.

## COMMENTS ON SPECIFIC REGULATIONS

### §12002. General Definitions

#### (a) Active Licensee

The proposed regulation would define the term "active licensee" as a cardroom or TPP "who has generated revenue for at least the last year." Under this definition, a

Mr. Joshua Rosenstein  
California Gambling Control Commission  
June 30, 2025  
Page 2

cardroom or TPP could have operated for 11 months, and be operating today, but would not be considered an active licensee. How are they categorized if not as "active"? As inactive? This makes no sense.

Further, the term "last year" is vague. Is this for the last calendar year, a fiscal year, or any 365 day period? The year period to be used should be specified.

If businesses were ordered shut for any purpose, how would that affect application of this definition. For example, in 2020 cardrooms were subject to closure orders because of Covid. If that occurred again, would there be no active licensees for a year after they were operating again?

(f) Application Cost

This regulation would define "application cost" as "all costs, including the deposit, related to the processing of an application." The phrase "related to" is vague and does not sufficiently convey that the fee must be related to costs incurred to process the application. We suggest this section be worded similar to the definition of "non-application costs" which refers to costs "borne by the Commission [and the] Department of Justice."

Second, the phrase "including the deposit" is inappropriate. The deposit is not a cost at all. Rather, it is an advance payment toward the fee.

(at) Surrendered or revoked licensee

This regulation would define "surrendered or revoked licensee" to mean a former cardroom or TPP which stopped operating "prior to August 31 of the year the invoices are created." This raises a question. If a cardroom surrenders its license between September 1st and December 31st, or its license is revoked in the time period, is it not a surrendered or revoked licensee? As with the definition of the term "active licensee," this makes no sense. Also the phrase "the year the invoices are created" is vague. To what invoices does this refer?

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### § 12003. General Requirements

#### Paragraph (b)(2)

This proposed regulation would require a licensee who is selling its cardroom or TPP business to transfer possession of the “transferor’s records in accordance with (b)(1).” Paragraph (b)(1), which is not being amended, requires a licensee to maintain for 5 years “all records required by the Commission or Bureau.” This would include at least the following:

1. Corporate, partnership and LLC ledgers that reflect ownership interests. (Regs. 19880, 19890, and 19890.5)
2. TPPPS Certificates (Reg. 12270(b)(10))
3. Records of all transactions pertaining to financial activities. (Reg. 12312(b))
4. Accounting records identifying revenues, expenses, assets, liabilities and equity. (Reg. 12312(c)(1))
5. Records of all players banks, dealers’ banks, credit transactions, returned checks, and drop for each table. (Reg. 12312(c)(2))
6. General ledger (Reg. 12312(d))
7. Fire safety and evaluation plans. (Reg. 12370)
8. Record of the names and classifications of all persons assigned or authorized to access or enter a cage, and those person with keys to the cage. (Reg. 12386(c)(3))
9. List of all mechanical keys or electronic card keys and master list or separate department lists. (Reg. 12395(a)(5))
10. Key control logs for each key control box. (Reg. 12395(b)(3))
11. Record of all surveillance activity in the surveillance room.

This claimed purpose of the proposed regulation is “to ensure that the Commission’s regulations related to maintenance of records are not circumvented by the transfer of ownership of a business.” ISOR, p. 4.

We raise three issues with this regulation. First, the proposed regulation would exceed the Commission’s authority. “Administrative agencies only have the power conferred upon them by statute and an act in excess of these powers is void.” (*Rich Vision Centers, Inc. v. Board of Medical Examiners* (1983) 144 Cal.App.3d 110, 114; *American Federation of Labor v. Unemployment Ins. Appeals Bd.* (1996)

13 Cal.4th 1017, 1023.) The Commission has the statutory authority to adopt regulations on record keeping and record retention. (Bus. & Prof. Code, § 19841, subds. (h)(3), (i), (j), (l), (m), and (n).) However, there is no statute that authorizes the Commission to mandate the use of any term or condition in contracts between transferors and transferees of a cardroom or TPPPS business. And, there is no statute that authorizes the Commission to mandate that any transferor transfer its business records to a transferee. While record retention requirements are common for regulated businesses in California, we are aware of no statute or regulation that requires any business to transfer its records upon sale or transfer. (See for example Bus. & Prof. Code, § 10148 [real estate]) and Ins. Code, § 1727 and 10 CCR § 2130.6 [insurance].)

Second, the regulation also wrongly includes pledges and hypothecations as covered dispositions. These terms describe grants of security interests and not “disposition” of ownership of the cardroom or TPP. The term pledge means “to give as security on a loan.” It involves a transfer of possession but not title, and could apply to a pledge of a stock certificate, but not of the business. Hypothecation is the pledging of an asset as collateral for a loan, without transferring possession or title to the lender. This provision should be limited to transfers of ownership or title. Neither pledge nor hypothecation involves transfer of title, and therefore these terms should be deleted from the regulation.

Third, we question the meaning of the phrase “entire gambling operation.” Does this refer to assets such that if a licensee keeps some of the assets, they didn’t transfer the “entire gambling operation?” Whatever this means should be more clearly expressed.

#### **§12091. Annual Fees in Transaction**

This regulation would provide for payment of annual fees on “disposition” of a cardroom or TPP, but improperly includes pledges and hypothecation as dispositions. As discussed above, neither pledge nor hypothecation involves disposition of title, and therefore these terms should be deleted.

## **§12092. Annual Fee**

### Subd. (a) Invoicing

This regulation provides for invoicing of the annual fees. It provides for invoicing “by October 5, 2024,” which has passed. Is this supposed to read October 5, “2025?” The regulation does not say what period is covered by the fee, and should make clear that the invoice is for the following calendar year, consistent with subsection (g) which refers to “calendar” year.

### Paragraph (g)(3) Exception for disposition of cardroom or TPP

This regulation provides for the non-applicability of section (g) when there has been a disposition of a cardroom or a TPP, but improperly includes “pledges” and “hypothecations” as dispositions. As discussed above, neither a pledge nor a hypothecation involves disposition of title, and therefore these terms should be deleted.

### Paragraph (h)(3) Calculation of 3-year average gross revenue of cardroom or TPP subject to disposition

This regulation would provide for calculate of the 3-year average gross revenue of a cardroom or TPP that had been subject to disposition within that period. However, pledges and hypothecations are improperly included as dispositions. Those terms should be deleted for the reasons discussed above.

## **§12094. Annual Fee Amounts**

This regulation sets annual fees for cardrooms, and the fee for active licensees with \$1.5 million or more of average gross revenue is a percentage of gross revenue. This is unconstitutional. Regulatory fees must be based on the burden the licensee imposes on the regulators, not on the revenues the activity generates. The charge should be based on the number of tables under license. A charge based on revenue is a tax.

Aside from that now long-standing and simmering issue, on April 28, 2025, before these regulations were proposed, the Commission approved Update to Annual Fees (GCA-2024-04-R) which would amend all these fees. Section 12368.2 is to be

Mr. Joshua Rosenstein  
California Gambling Control Commission  
June 30, 2025  
Page 6

amended to provide a fee for cardrooms with active licenses and a 3-year average gross revenue of \$1.5 million or more of 1.18% of the 3 year average gross revenue. That was set based on analysis of expected costs and expected revenues, and therefore the 1.33% amount in 2024 is improper.

Further, to the extent that the fee does not take into account any surplus in the Gambling Control Fund, the fee is excessive and illegal.

### **§ 12312. Record Retention and Maintenance**

Subsection (a)(2) of the proposed regulation would require that on disposition of a cardroom or TPP business, the transaction document require that the transferee "receive and maintain the transferor's records." We have two issues.

First, the proposed regulation would treat pledges and hypothecations as dispositions, which, for the reasons discussed above, is not correct. Pledges and hypothecations are not dispositions of title, and this regulation should not apply to them.

Second, as discussed above, the Commission lacks the authority to require a transferor cardroom or TPP business to transfer their records.

### **§ 12396. Surveillance**

Subparagraph (a)(7)(B)

This regulation would require that whenever there is a disposition of a cardroom, the buyer must "receive and maintain the transferor's recordings." Again we raise two issues with this regulation.

First, the proposed regulation would treat pledges and hypothecations as dispositions, which, for the reasons discussed above, is not correct. Pledges and hypothecations are not dispositions of title, and this regulation should not apply to them.

Second, as discussed above, the Commission lacks the authority to require a transferor cardroom or TPP business to transfer their records.

Mr. Joshua Rosenstein  
California Gambling Control Commission  
June 30, 2025  
Page 7

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We appreciate your consideration of these comments.

Sincerely,

  
Alan Titus