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GAMING CONTROL BOARD
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BRIAN SANDOVAL
Governor

A.G. BURNETT, *Chairman*
SHAWN R. REID, *Member*
TERRY JOHNSON, Member

NOTICE TO LICENSEES

Notice #2014-39

DATE: May 6, 2014

TO: All Gaming Licensees & Applicants

FROM: Terry Johnson, Esq., Board Member

SUBJECT: **Medical Marijuana Establishments**

The Gaming Control Board (Board) has received questions regarding whether a person who has received a gaming approval or has applied for a gaming approval may invest in or otherwise participate in medical marijuana establishments approved under Nevada laws and regulations. While the Nevada Legislature has made certain medical marijuana establishments legal, the Controlled Substances Act (CSA) makes it illegal under federal law to manufacture, distribute, dispense or possess marijuana. See 21 U.S.C. § 801, et seq. The federal government has also reiterated that the illegal distribution, possession, and sale of marijuana are serious crimes that provide a significant source of revenue to criminal enterprises, and that there is an expectation that states with some form of legalized marijuana will have strong regulatory practices that are strictly enforced.

The Board is charged with considering and determining whether certain activities by persons or entities involved in gaming implicate the character or integrity of the licensee or would pose a threat to the effective regulation and control of gaming. Further, the Board must also determine whether any such activity by a gaming licensee or applicant that violates federal law would reflect or tend to reflect discredit upon the State of Nevada or its gaming industry.

Accordingly, unless the federal law is changed, the Board does not believe investment or any other involvement in a medical marijuana facility or establishment by a person who has received a gaming approval or has applied for a gaming approval is consistent with the effective regulation of gaming. Further, the Board believes that any such investment or involvement by gaming licensees or applicants would tend to reflect discredit upon gaming in the State of Nevada.

ROOM 4401
9:00 AM

2013-2014 Interim
Advisory Commission on the Administration of Justice's Subcommittee on the Medical Use of Marijuana

Agendas and Minutes are hyperlinked when available

Scheduled Meetings

08/21/14
9:00 AM

Advisory Commission on the Administration of Justice's Subcommittee on the Medical Use of Marijuana
- Room 4401 of the Grant Sawyer State Office Building, 555 E. Washington Ave., Las Vegas, NV
- Videoconferenced to Room 3138 of the Legislative Building, 401 S. Carson St., Carson City, NV

This is the second meeting of the 2013-2014 Interim.
Please see agenda for details.
AGENDA

Gaming Licensees and Medical Marijuana

A.G. Burnett, Chairman, Nevada State Gaming Control Board

OVERVIEW

I will begin with a brief summary of the Board's action in regards to gaming licensees and medical marijuana. I will then detail the Nevada statutory and regulatory landscape in regards to that issue, as well as the federal legal landscape.

When the Board began receiving inquiries as to whether gaming licensees or their immediate family could operate or own interests in medical marijuana establishments (MMEs), we obtained legal advice from the Attorney General's Office. That advice was simple and clear:

Under Nevada state law, medical marijuana is legal and set to be regulated. Under federal criminal law, however, medical marijuana is still a crime.

The Controlled Substances Act (CSA) (21 U.S.C. § 811) makes no distinction between medical and recreational use of marijuana, and can be applied against persons who possess, cultivate, or distribute marijuana.

In light of that, and in an attempt to ensure our Nevada licensees remained free from potential criminal prosecution and regulatory discipline from the Board and Commission, the Board issued an Industry Notice on May 6, 2014. The Notice stated that the Board "does not believe investment or any other involvement in a medical marijuana facility or establishment by a person who has receive a gaming approval or has applied for a gaming approval is consistent with the effective regulation of gaming."

I will now detail why.

A. LEGAL LANDSCAPE

Chapter 463

The starting point for analysis is **NRS 463.0129,** which sets out the public policy related to gaming regulation:

> *1. The Legislature hereby finds, and declares to be the public policy of this state, that:*
>
> . . .
>
> *(b) The continued growth and success of gaming is dependent upon public confidence and trust that .....gaming is free from criminal and corruptive elements.*
>
> *(c) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments, the manufacture, sale or distribution of gaming devices and associated equipment and the operation of inter-casino linked systems.*

State statute identifies various items the Board must consider in evaluating a gaming licensee:

> ***NRS 463.170 Qualifications for license, finding of suitability or approval; regulations.***
>
> *1. Any person who the Commission determines is qualified to receive a license, to be found suitable or to receive any approval required under the provisions of this chapter, . . . having due consideration for the proper protection of the health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada and the declared policy of this State, may be issued a state gaming license . . .*
>
> *2. An application to receive a license or be found suitable must not be granted unless the Commission is satisfied that the applicant is:*
>
> . . .
>
> *(b) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this State or to the effective regulation and control of gaming or charitable lotteries, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or charitable lotteries or in the carrying on of the business and financial arrangements incidental thereto; and*

This statute also requires the Board to consider the source of any financing for gaming activities.

Nevada Gaming Commission Regulations

Among others, **Regulation 5.011** outlines what would be improper conduct by a gaming licensee:

> ***5.011 Grounds for disciplinary action.*** *The board and the commission deem any activity on the part of any licensee, his agents or employees, that is inimical to the public health, safety, morals, good order and general welfare of the people of the State of Nevada, or that would reflect or tend to reflect discredit upon the State of Nevada or the gaming industry, to be an unsuitable method of operation and shall be grounds for disciplinary action.*
>
> *8. Failure to comply with or make provision for compliance with all federal, state and local laws and regulations and with all commission approved conditions and limitations pertaining to the operations of a licensed gaming establishment, including, without limiting the generality of the foregoing, payment of all*

license fees, withholding any payroll taxes, liquor and entertainment taxes and antitrust and monopoly statutes.

Again, it is abundantly clear that under the federal Controlled Substances Act (CSA), it is illegal to manufacture, distribute, dispense or possess marijuana. 21 U.S.C. § 801, *et seq.* Moreover, cultivation, distribution and possession with the intent to distribute of marijuana are a felony. 21 U.S.C. 841(b). So under federal law, marijuana is treated like every other controlled substance, such as heroin or cocaine, and pursuant to the CSA, marijuana is classified as a Schedule I drug. As you know, this is why doctors may not "prescribe" marijuana for medical use under federal law. They must instead "recommend" its use.

Finally, Regulation 5.014 states that the commission may revoke or suspend the gaming license or finding of suitability of a person who is convicted of a crime, even though the convicted person's postconviction rights and remedies have not been exhausted, if the crime or conviction discredits or tends to discredit the State of Nevada or the gaming industry.

The Federal Landscape

Again, it is abundantly clear that under the federal Controlled Substances Act (CSA), it is illegal to manufacture, distribute, dispense or possess marijuana. 21 U.S.C. § 801, *et seq.* Moreover, cultivation, distribution and possession with the intent to distribute of marijuana are a felony. 21 U.S.C. 841(b). So under federal law, marijuana is treated like every other controlled substance, such as heroin or cocaine, and pursuant to the CSA, marijuana is classified as a Schedule I drug. As you know, this is why doctors may not "prescribe" marijuana for medical use under federal law. They must instead "recommend" its use.

Indeed, this statement is taken from the White House website link to the ONDCP:

Since 1996, 20 states and Washington, DC have passed laws allowing smoked marijuana to be used for a variety of medical conditions. It is important to recognize that these state marijuana laws do not change the fact that using marijuana continues to be an offense under Federal law. Nor do these state laws change the criteria or process for FDA approval of safe and effective medications.

Marijuana is a topic of significant public discourse in the United States, and while many are familiar with the discussions, it is not always easy to find the latest, research-based information on marijuana to answer to the common questions about its health effects, or the differences between Federal and state laws concerning the drug. Confusing messages being presented by popular culture, media, proponents of "medical" marijuana, and political campaigns to legalize all marijuana use perpetuate the false notion that marijuana is harmless. This significantly diminishes efforts to keep our young people drug free and hampers the struggle of those recovering from addiction.

The Administration steadfastly opposes legalization of marijuana and other drugs because legalization would increase the availability and use of illicit drugs, and pose significant health and safety risks to all Americans, particularly young people.

Much has been made of the belief that the U.S. Attorney General declared that the office would not prosecute marijuana-related violations of the CSA. This assertion is not entirely accurate. In October of 2009, the Obama Administration sent a memo to federal prosecutors encouraging them not to prosecute people who distribute marijuana for medical purposes in accordance with state law.

U.S. Department of Justice Deputy Attorney General James M. Cole issued a memorandum (the *"Cole Memo"*) August 29, 2013 to all United States Attorneys providing *updated guidance* to federal prosecutors concerning marijuana enforcement under the CSA. The statement reads that while marijuana remains illegal federally, the USDOJ expects states like Colorado and Washington to create "strong, state-based enforcement efforts.... and will defer the right to challenge their legalization laws at this time." The department also reserved the right to challenge the states at any time they feel it's necessary.

The Cole Memo reiterates Congress's determination that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Cole Memo notes that the DOJ is committed to enforcement of the CSA consistent with those determinations. It also reiterates that DOJ will enforce the CSA consistent with the primary federal enforcement priorities, which include:

- preventing the distribution of marijuana to minors;
- preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels;
- preventing the diversion of marijuana from states where it is legal in some form under state law to other states;
- preventing violence and the use of firearms in the cultivation and distribution of marijuana, and
- preventing marijuana possession or use on federal property.

Outside of the context of marijuana's legality, additional federal concerns are present. As you know, any proceeds from the marijuana industry are illegal proceeds under federal law, and can cause money laundering concerns.

B. THE POSITION OF THE BOARD

I think after that discussion you can see why the Board acted. As questions began pouring in regarding gaming licensees' wanting to pursue an MME, it was realized that guidance had to be given. For the Board not be proactive, and instead be passive on this matter, would have been negligent and perhaps unfair. It became apparent that eventually, if nothing was done, gaming licensees might find themselves in trouble both with the federal government and the Board.

Nevada licensees are under constant scrutiny by the Board. Agents are assigned to monitor PTCs for their continued adherence to Nevada law. Further, ongoing monitoring and investigative work is done in regards to licensees' adherence to federal law as well. This comes up routinely in monitoring activities and occurs during routine licensure investigations.

Companies must report any violations of federal promptly. Further, compliance programs dictate adherence to all laws, not just NV.

As of late, many industries, including the gaming industry, have come under scrutiny by the federal government related to money laundering. The Financial Crimes Enforcement Network (or FINCEN), acts as the financial crimes arm of the U.S. Treasury. I have met with their director, who has made it clear that FINCEN feels that marijuana proceeds and gaming cannot mix.

With the marijuana industry remaining almost exclusively a cash business, the risk, or at least the perceived risk, of those proceeds, being commingled if a gaming licensee is involved with the marijuana industry to simply too great. This is why banks have passed on medical marijuana in many instances.

So, while the Board investigates potential violations of our gaming laws, and works hand-in-hand with Federal investigators to determine whether federal violations have occurred, you can clearly see our position. In light of the clear federal law on marijuana, if we were to allow gaming licensees to take part, we would be willingly allowing them to violated federal law while we investigate gaming licenses for violations of other federal laws. This is an untenable position to take; I do not feel we can overlook some federal criminal laws, but not others.

To conclude, please recognize that the Board did not state that it was opposed to medical marijuana in general. We have not criticized the state law, nor have we acted against it. In fact, we have done everything we can to respect that law. The Board's position is narrowly tailored to protect the Board's ability to perform its statutorily mandated regulatory function, along with protecting the reputation of the gaming industry in Nevada.

Transfers of Interest:

As you have done with medical marijuana, in gaming, a license is not a right but it is instead a privilege. Further, prior to engaging in that business, one must have the requisite licensure or finding of suitability, as the case may be.

In Nevada gaming law, the statutes are clear:

NRS 463.160 Licenses required; unlawful to permit certain gaming activities to be conducted without license; exceptions; separate license required for each location where operation of race book or sports pool conducted.

1. Except as otherwise provided in subsection 4 and NRS 463.172, it is unlawful for any person, either as owner, lessee or employee, whether for hire or not, either solely or in conjunction with others:

(a) To deal, operate, carry on, conduct, maintain or expose for play in the State of Nevada any gambling game, gaming device, inter-casino linked system, mobile gaming system, slot machine, race book or sports pool;

(b) To provide or maintain any information service;

(c) To operate a gaming salon;

(d) To receive, directly or indirectly, any compensation or reward or any percentage or share of the money or property played, for keeping, running or carrying on any gambling game, slot machine, gaming device, mobile gaming system, race book or sports pool;

(e) To operate as a cash access and wagering instrument service provider; or

(f) To operate, carry on, conduct, maintain or expose for play in or from the State of Nevada any interactive gaming system,

Ê without having first procured, and thereafter maintaining in effect, all federal, state, county and municipal gaming licenses as required by statute, regulation or ordinance or by the governing board of any unincorporated town.

3. Except as otherwise provided in subsection 4, it is unlawful for any person knowingly to permit any gambling game, slot machine, gaming device, inter-casino linked system, mobile gaming system, race book or sports pool to be conducted, operated, dealt or carried on in any house or building or other premises owned by the person, in whole or in part, by a person who is not licensed pursuant to this chapter, or that person's employee.

Gaming licenses are considered specific to the transaction or gaming operation for which they are issued; they are not specific to an individual.

An individual cannot carry a license around wherever he or she goes. They must receive licenses or approvals according to the actual intended activity in which they wish to engage.

Since ownership and control of gaming operations is usually done through corporate entities, we have an extensive process for "transfers of interests." In short, you may transfer ownership of your corporate gaming entity to another, but only with (1) our approval of that transaction and (2) our finding the person suitable to hold that interest.

The law creates a difference between transfers of interest between persons already licensed to hold an interest in the same entity, such as transfers between shareholders of the same entity, and transfers from a person who holds an interest in an entity to an person who does not currently hold an interest in that same entity.

If it's a **non-public Limited Partnership** – we look at NRS 463.567(1) – same thing – its "void" without NGC prior approval.

If it's a **non-public LLC**, we look to NRS 463.5733 – same thing – its "void" without prior NGC approval.

For **Holding Companies**, regardless of which type of entity they may be – a corp, an LLC, etc., we look to NGC Regulation 15.585.7-1 for transfers between current interest holders and to 15.585.7-2 for transfers from the holding company to another person.

Public Companies: Have many shareholders, and thus we look to overall control. Reg. 16.200 for a change in control, and 463.643 for 5 percent informational filings and then findings of suitability for over 10 percent voting interests. Also, of course, there is 16.400 for controlling person, but that isn't necessarily a transfer issue unless the transfer results in a change in control.

There are some exceptions for certain percentage holders, as long as they are not controlling; current law now is the prior approval of the Commission as discussed above apply regardless of whether the person is transferring over 5% to over 5%, or 5% or less to 5% or less, etc. Prior NGC approval is required for all the transfers. So the 5% or less rules only impact whether the person receiving the interest has to first be licensed, or just has to register before receiving the interest.

Violations of Statutes and Regulations:

If an unapproved TOI occurs, the rule of thumb is that the transfer is "void ab initio," and deemed to have never occurred. That way the Board can claw back into the transaction by keeping the corporate structure the same, unchanged, and then investigate and take proper disciplinary action if it so chooses.

NRS 463.300 Unlawful transfer of ownership. *It is unlawful for any person to sell, purchase, lease, hypothecate, borrow or loan money, or create a voting trust agreement or any other agreement of any sort to or with any licensee in connection with any gaming operation licensed under this chapter or with respect to any portion of such gaming operation, except in accordance with the regulations of the Commission.*

[30:429:1955]—(NRS A 1959, 442)

NRS 463.302 Moving location of establishment and transferring restricted or nonrestricted license: Exclusive authority of Board to approve; conditions for approval; exception.

1. Notwithstanding any other provision of law and except as otherwise provided in this section, the Board may, in its sole and absolute discretion, allow a licensee to move the location of its establishment and transfer its restricted or nonrestricted license to:

(a) A location within a redevelopment area created pursuant to chapter 279 of NRS, if the redevelopment area is located in the same local governmental jurisdiction as the existing location of the establishment;

(b) Any other location, if the move and transfer are necessary because the existing location of the establishment has been taken by the State or a local government through condemnation or eminent domain in accordance with a final order of condemnation entered before June 17, 2005; or

(c) In any county other than a county whose population is 100,000 or more but less than 700,000, any other location within the same local governmental jurisdiction as the existing location of the establishment, if the move and transfer are necessary because the existing location of the establishment has been taken by the State or a local government through condemnation or eminent domain in accordance with a final order of condemnation entered on or after June 17, 2005.

2. The Board shall not approve a move and transfer pursuant to subsection 1 unless, before the move and transfer, the licensee receives all necessary approvals from the local government having jurisdiction over the location to which the establishment wants to move and transfer its license.

3. Before a move and transfer pursuant to subsection 1, the Board may require the licensee to apply for a new license pursuant to the provisions of this chapter.

4. The provisions of subsection 1 do not apply to an establishment that is:

(a) A resort hotel; or

(b) Located in a county, city or town which has established one or more gaming enterprise districts.

(Added to NRS by 1997, 3313; A 2005, 2211; 2011, 1280)

8.010 General.

1. No person shall sell, purchase, assign, lease, grant or foreclose a security interest, hypothecate or otherwise transfer, convey or acquire in any manner whatsoever any interest of any sort whatever in or to any licensed gaming operation or any portions thereof, or enter into or create a voting trust agreement or any other agreement of any sort in connection with any licensed gaming operation or any portion thereof, except in accordance with law and these regulations.
2. No licensee shall permit any person to make any investment whatever in, or in any manner whatever participate in the profits of, any licensed gaming operations, or any portion thereof, except in accordance with law and these regulations.
3. No person shall transfer or convey in any manner whatsoever any interest of any sort whatever in or to any licensed gaming operation, or any portion thereof, to, or permit any investment therein or participation in the profits thereof by, any person acting as agent, trustee or in any other representative capacity whatever for or on behalf of another person without first having fully disclosed all facts pertaining to such representation to the board. No person acting in any such representative capacity shall hold or acquire any such interest or so invest or participate without first having fully disclosed all facts pertaining to such representation to the board and obtained written permission of the board to so act.
4. Regulation 8 shall apply to transfers of interest in corporations subject to Regulation 15, but shall not apply to transfers of interest in corporations subject to Regulation 16.

(Amended: 9/73)

8.020 Transfer of interest among licensees. If a person who is the owner of an interest in a licensed gaming operation proposes to transfer any portion of his interest to a person who is then the owner of an interest in such licensed gaming operation, both parties shall give written notice of such proposed transfer to the board, including the names and addresses of the parties, the extent of the interest proposed to be transferred and the consideration therefore. In addition, the proposed transferee shall furnish to the board a sworn statement setting forth the source of funds to be used by him in acquiring such interest; and he also shall furnish to the board such further information as it or the commission may require. The board shall conduct such investigation pertaining to the transaction as it or the commission may deem appropriate and shall report the results thereof to the commission. If the commission does not give notice of disapproval of the proposed transfer of interest within 30 days after the receipt by it of the report of the board, the proposed transfer of interest will be deemed approved and the transfer of interest may then be effected in accordance with the terms of transfer as submitted to the board. The parties shall immediately notify the commission when the transfer of interest is actually effected.

(Amended: 2/60; 9/73; 9/74)

8.030 Transfer of interest to stranger to license.

1. Except as and to the extent provided in these regulations pertaining to emergency situations, no individual who is the owner of any interest in a licensed gaming operation shall in any manner whatsoever transfer any interest therein to any person, firm or corporation not then an owner of an interest therein, and no such transfer shall become effective for any purpose until the proposed transferee or transferees shall have made application for and obtained all licenses required by the Nevada Gaming Control Act and these regulations, or have been found to be individually qualified to be licensed, as appropriate.