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June 26, 2017

**VIA EMAIL**

Shawn Reid, Member  
State Gaming Control Board  
1919 College Parkway  
Carson City, Nevada 89710

RE: 2017-01R: Proposed amendments to Regulations 5.300 through 5.380 and Regulation 25

Dear Member Reid:

On behalf of the Nevada Resort Association, thank you for the opportunity to further comment on the proposed amendments to the regulations governing Club Venues (NGC Reg. 5.300 through 5.380) and Independent Agents (Regulation 25).

***Club Venue Regulations***

***Proposed Amendments to Section 5.300(4)***

We appreciate the Board's recognition that there are non-club venues that may technically fall within the definition of a club venue on occasion and appreciate its willingness to be flexible in continuing to exclude those venues from the requirements of NGC Reg. 5.300 to 5.380 under appropriate circumstances. We recognize that the proposed revisions to Regulation 5.300(4) are an accommodation to the gaming industry.

Our concern is with the number of events which are allowed before a non-club venue is treated as a club venue. Our reasons for requesting an increase in the number of events that a non-club venue may host before being treated as a club venue is based on a number of factors.

First, most special events are offered by the licensee; not a third-party operator. The club venue regulations were primarily adopted to govern the activities of entities that are not already subject to the jurisdiction of the Board and Commission. The Board and Commission already have jurisdiction over an event held by a nonrestricted licensee. The Board and Commission need not further regulate the licensees' activities through this particular regulation.

Second, as you recognize, there are significant burdens imposed upon club venues under the regulation. Most of its employees must be registered and it must have security not ordinarily seen in non-club venues. The surveillance standards contemplate extensive coverage of a club venue and it would be expensive to install those surveillance systems in existing non-club venues. It would also be very costly to register all employees who "might" work a special event. These burdens seem to be too extensive for, say a restaurant, which occasionally charges an admission and designates an area for dancing. And, from the licensees' compliance perspective, it would be almost impossible to conduct secret shops of those venues just on an evening with a special event.

We therefore request the following revisions to the Board's proposed Section 5.300(4):<sup>1</sup>

Section 5.300 (4):

*4. Sections 5.300 through 5.380 shall not apply to a venues which holds an event or events which would cause the venue to qualify as a club venue only during the event or events if ~~the cumulative time period of such event or events does not exceed 4 days per calendar year~~ there are no more than 12 events during each calendar year at the venue. If a venue intends to holds an event or events which would cause the venue to qualify as a club venue only during the event or events and ~~the cumulative time period of such event or events exceeds 4 days per calendar year,~~ the venue has held more than 12 such events in a calendar year, the venue shall comply with sections 5.300 through 5.380 only while holding such event or events. the licensee will notify the board of that intent and the board may, in its discretion, require the venue to comply with Sections 5.300 to 5.380.*

Our rationale for the change regarding compliance with Sections 5.300 to 5.380 for events in excess of 12 is that a restaurant or other location which may have special events will likely not satisfy these standards, and yet the Board may determine that the additional event is appropriate. The proposed regulation will give the Board more flexibility than to simply say that a certain number of events are authorized, but exceeding that number requires extensive expenditure.

*Amendments to Section 5.305*

We believe that the following language should be added to 5.305(4) to clarify that the contact with the patron has to be either at the club venue or on the premises at which the club venue is located:

*4. "Independent host"*

*(a) Means a person who is not directly employed by a licensee or club venue operator, who provides hosting or VIP services for a club venue for any form of consideration, and who has any in-person contact with the patrons of the club venue at the club venue or at the premises on which the club venue is located.*

*(b) Does not mean hotel concierges and licensed ticket brokers.*

*Amendments to Section 5.310*

As currently written, Section 5.310 would put licensees in a situation where they might violate the regulation if the designated club venue monitor terminated employment with no notice to the licensee.

We suggest the following revision:

*A licensee shall designate at least one of its employees to monitor club venues at its establishment ~~and shall have at least one such employee designated at all times.~~ If the employee designated as "club venue monitor" ceases to be employed in that capacity, the licensee shall designate a new "club venue monitor," within 10 days. Such employees shall be specifically designated as "club venue monitors" on employee reports submitted to the board pursuant to Regulation 3.100.*

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<sup>1</sup> References in this letter are to the Board's draft dated May 9, 2017.

*Proposed Amendments to Section 5.320(2)-(5)*

We support the inclusion of “bartenders and bar backs” in the registration requirements of the regulation. We do not see that there are compelling reasons to distinguish between cocktail servers and bartenders.

However, we believe that the introductory phrase of the Board’s proposed regulation 5.320(2) is too broad in requiring the registration of any individuals who may have in-person contact with the patrons. We believe the concept is to require registration of individuals whose duties require contact with patrons, not those employees who may on occasion interact with patrons. And the introductory qualification would seem to be inconsistent with the requirement that surveillance personnel be registered as they do not have contact with patrons.

We recommend the following revision to this section:

*2. The following individuals are club venue employees and shall register in the same manner as gaming employees and shall be considered gaming employees because such registration is necessary to promote the public policy set forth in Nevada Revised Statute 463.0129:*

- (a) Any person who provides hosting or VIP services;*
- (b) Bartenders and bar backs;*
- (c) Restroom attendants;*
- (d) Security and surveillance personnel;*
- (e) Servers, server assistants, and bussers;*
- (f) Supervisors and managers who directly supervise any individuals required to register pursuant to this section; and*
- (g) Any other individual employed or contracted to work at a club venue for the purpose of performing services for, and who has in-person contact with, patrons at a club venue.*

*Proposed Amendments to Section 5.320(5)*

The language of Section 5.320(5) is superfluous as the concept of in person contact is included in Section 5.320(2). We recommend the following amendment:

5.320 (5)

*5. The licensee which operates a club venue or club venue operator shall be responsible for compliance with the registered gaming employee requirements for all individuals required to register by this section ~~which have in person contact with patrons of the club venue operated by the licensee or club venue operator.~~*

*Proposed Amendments to Section 5.335(4)*

We object to any concept that implies that security personnel are medical personnel. That is a term of art, requiring an assessment of medical need. Most club venue operators will have emergency medical staffing in place; however, the proposed regulation puts an unreasonable burden on security personnel to make medical judgments. They are trained to contact medical providers to come and assist.

We recommend the following amendment:

*Security personnel employed or contracted to work at a club venue shall receive annual awareness training on how to best interact with ~~and medically triage patrons for~~, patrons and onsite or responding emergency medical service providers. Such training shall be performed by an instructor who has a current endorsement as an instructor in emergency medical services from the State of Nevada, Department of Health and Human Services, Division of Public and Behavioral Health or from the Southern Nevada Health District. It will be the responsibility of the licensee and club venue operators to document the completion of said training for each employee on an annual basis.*

*Proposed Amendments to Section 5.345*

We have no objection to the proposed revision requiring registration of independent hosts before allowing them to provide services, except to the extent that it may be used to justify changing the registration process for independent agents. Certainly, there is difference between independent hosts whose jobs are to promote club venues and independent agents who bring gamblers into Nevada's casino resorts.

In respect to Section 5.345(5), we ask the Board to consider allowing an independent host registered with one club venue to be registered to affiliated club venues without additional fees. We recommend the following amendment:

*The chairman or designee may authorize a person who is registered as an independent host for at least one club venue to register as an independent host for additional club venues for such fees and requirements as he determines are appropriate, except that an independent host registered at one club venue may be registered for an affiliated club venue without the payment of additional fees.*

*Proposed Amendments to Section 5.370(3)*

*5.370(3)*

We request amendment to this provision to allow for the funding of a corporate investigative account:

*3. A licensee with one or more club venues at its establishment on or after January 1, 2016, shall establish a revolving account with the board in an amount determined by the chairman which shall not exceed \$ 20,000, which shall be used to pay the expenses of the board and commission conducting undercover observations and operations at club venues. A single revolving account may be established among affiliated licensees. If a revolving account is established among affiliated licensees, it shall not exceed \$50,000. As undercover observations and operations are completed, the board shall provide licensees with information regarding the itemized expenses incurred, listed by individual club venue location, so that the appropriate club venue may reimburse the licensee for such expenses.*

***Proposed Amendments to Independent Agent Regulations***

*Proposed amendments to Regulation 25.020*

The proposed amendments to Regulation 25.020 are a seismic shift in the approach to registration of independent agents and we request that Board not recommend adoption of those proposed amendments.

Since 1972, the Commission has required independent agents to be registered prior to being compensated by nonrestricted licensees. The proposed regulation would change this long-standing

practice and prohibit a resort casino from allowing independent agents to bring potential customers to the casino without being registered. Although the change may seem inconsequential, it has the potential of causing independent agents to take their customers elsewhere.

A prospective independent agent may not wish to go through a registration process in Nevada without knowing what compensation arrangements may be available to him or her for bringing players to a particular casino. At the same time, the resort casinos will not want to commit to any particular compensation arrangement until they have had the opportunity to evaluate the business metrics of the relationship with the independent agent and his or her players. The current system of registration which allows the independent agent to bring players to the casino for a period of time without being registered provides the opportunity for the independent agent to determine whether his or her compensation will warrant registration.

We understand that some independent agents file registration applications but then fail to supply additional requested information. The solution to that problem is for the board to not register the independent agent until the information is supplied, or to object to the registration. This would have the effect of prohibiting payment by the casino and would solve the issue of recalcitrant applicants who fail to submit all required information.

Finally, we would request that the fees for registration and renewals be established in the regulation.

We suggest the following revisions to Regulation 25.020.

#### *25.020 Registration.*

##### *1. An independent agent who:*

*(a) Has authority from a licensee to ~~offer~~ authorize customer incentives with a cumulative value exceeding \$10,000 in a calendar year to any patron;*

*(b) Receives compensation from a licensee for his or her services; or*

*(c) Approves or grants the extension of gaming credit on behalf of a state gaming licensee or collects a debt evidenced by a credit instrument*

*→ must be registered with the board and shall have a written agreement with the licensee evidencing such authority or compensation.*

*2. An independent agent required to register by this section must register with the board for each licensee where the person acts as an independent agent. The registrations must be renewed every five years from the first registration of the independent agent.*

*3. A licensee may not pay compensation to an independent agent who must register pursuant to subsection 1 ~~shall not provide services to a licensee~~ until the board chairman notifies the licensee in writing that the independent agent is registered with the board.*

*4. A filing for registration, or renewal of registration, as a registered independent agent must include the following:*

*(a) A fee set by the chairman;*

*(b) A copy of ~~the final, executed~~ any proposed agreement, concerning compensation and authority between the licensee and the independent agent, and for renewals, a copy of the final, executed agreement;*

*(c) Completed forms, information, and documents as required by the chairman;*

*(d) A statement on a form furnished or approved by the board that the independent agent:*

*(1) Submits to the jurisdiction of the State of Nevada, the board, and the commission;*

(2) Designates the Secretary of State as its representative upon whom service of process may be made; and

(3) Agrees to be governed and bound by the laws of the State of Nevada and the regulations of the commission;

(e) One complete set of fingerprints from the independent agent (if a natural person) and from each of the direct and beneficial owners thereof, if any (if a natural person) except that independent agents residing outside of the United States may produce a Certificate of No Criminal Conviction from the law enforcement agency in the jurisdiction in which the independent agent resides; and

(f) Such additional information as the board or commission may request.

→The chairman or designee may authorize a person who is registered as an independent agent for at least one licensee to register as an independent agent for additional licensees for such fees and requirements as he determines are appropriate.

5. The independent agent shall provide the information required by subsection 4(a)-(d)(f) its filing to the licensee for transmittal to the board. The licensee shall transmit such filing information to the board within 60 days of the licensee's receipt of the filing the information required. The board may reject filings made directly by an independent agent.

6. The chairman may object to the registration of an independent agent for any cause he deems reasonable, including, but not limited to, the failure of the proposed independent agent to submit information as requested by the board or commission pursuant to subsection 4(f). If the chairman objects to the registration of an independent agent, the chairman shall send written notice of the decision to the independent agent and the submitting licensee.

(a) A chairman objection to the registration of an independent agent shall be considered an administrative decision, and therefore reviewable pursuant to the procedures set forth in Regulations 4.185, 4.190, and 4.195. If an objection is sustained under the procedures set forth in Regulations 4.185, 4.190, and 4.195, the objected to independent agent may file an application for finding of suitability. If the independent agent obtains commission approval of its application, it may commence providing the services set out in subsection 1 of this section.

(b) A licensee shall not transmit an independent agent's filing for registration to the board prior to the expiration of 1 year from the date of a notice of the chairman objecting to the registration of the independent agent. Such independent agent shall not commence providing any services set out in subsection 1 of this section prior to the chairman approving the registration.

7. A person registered, or a person who has a pending filing for registration, pursuant to this section shall report changes to the information required pursuant to subsection 3 to the board within 30 days of such change. The chairman may, in his sole and absolute discretion, require a new registration pursuant to subsection 1 of this section if there is a change in

#### *Proposed Regulation 25.025*

We do not understand the purpose of proposed Regulation 25.025. The Gaming Control Act prohibits any person, including an independent agent, who is providing services to a gaming licensee from being compensated based on the earnings or profits from gambling games.

As has been the acceptable industry practice, independent agents are currently compensated based on the theoretical hold, or the expected earned income from a patron based on a calculation of the following factors: (Average Bet \* Hours Played \* Decisions Per Hour \* House Advantage of the Game). This is not compensation based on the earnings from gambling games. Therefore, to the extent that this is an attempt to modify or prohibit the current, generally accepted, and legal method of compensating agents,

we object. If this is simply a desire to restate the language set forth in NRS 463.162(c) we believe it is not necessary to repeat that statutory language in the regulation.

*Proposed amendments to Regulation 25.050*

Consistent with our position on amendments to Regulation 25.020, we request the proposed amendment to this provision, prohibiting independent agents from providing services before they are registered, be withdrawn so that the regulation would read as it was originally drafted. Therefore, the following phrase would be deleted from the proposed amendment:

*25.050 Mandatory requirements. Every agreement, including any agreement of employment, between a licensee and a registered independent agent must contain the following conditions:*

- 1. No Change.*
- 2. The agreement is not effective and the registered independent agent ~~shall not provide any services and~~ is not entitled to and may not be paid any compensation until the licensee receives notice that the board chairman has registered the independent agent.*

Again, on behalf of these gaming industry representatives, thank you for the opportunity to comment further on these proposed regulations. The effort undertaken by you to create an environment in which comments are welcomed is appreciated. Please do not hesitate to contact me if you have any questions regarding these comments.

Respectfully,



Virginia Valentine  
President  
Nevada Resort Association