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NOTICE TO LICENSEES

Notice # 2021-101

Issuing Division: Board Office

DATE: October 26, 2021

TO: All Gaming Licensees and Interested Persons

FROM: Phil Katsaros, Board Member

SUBJECT: Nevada Gaming Control Board Policy Memorandum Regarding the Marketing and Sale of Topical Cannabidiol Products on the Premises of Licensed Gaming Establishments

This memorandum is issued by the Nevada Gaming Control Board (Board) to address the Board's policy regarding the marketing and sale of topical Cannabidiol (CBD) products on the premises of licensed gaming establishments. To be clear, topical products with tetrahydrocannabinol (THC) levels exceeding 0.3% on a dry weight basis remain illegal under the Federal Controlled Substances Act (CSA) and are not considered CBD under this policy.

While the marketing and sale of CBD products are generally legal under Nevada law, the Food, Drug, and Cosmetic Act (FDCA) remains the primary federal legislation regulating the types of CBD products that can be lawfully marketed and sold in the United States. Currently, under the FDCA, it is unlawful to market or sell a CBD product in interstate commerce unless the product has been approved or declared safe by the Food and Drug Administration (FDA).

Despite federal restrictions on CBD products, products containing CBD are being openly marketed and sold in this State at various retail establishments. This is not unique to Nevada. For example, topical products containing CBD are being offered in spas and other establishments as part of the services they provide, and such products are commonly sold at local and nationwide retailers as well.

As stated above, only CBD products marketed and sold *in interstate commerce* are subject to the FDCA. CBD products wholly cultivated, produced, marketed, and sold within Nevada could be considered intrastate goods and potentially lawful under Nevada law.

Based on the foregoing, absent new direction from the Federal Government, the Board will use its prosecutorial discretion relating to the investigation of potential violations of the FDCA in regards to topical CBD products by deferring enforcement of such matters to the various authorities responsible for primary enforcement over such products.

It is important to draw a distinction with the Board's policy towards topical CBD products versus that of cannabis products with tetrahydrocannabinol (THC) levels that exceed 0.3% on a dry weight basis and synthetic cannabinoids, which continue to be classified as Schedule 1 drugs under the CSA. The Board reaffirms that there has been no change in the policy outlined by the Gaming Policy Committee's Resolution Memorandum of March 5, 2018, relating to cannabis.

The Board will continue to investigate violations of law in any situation where the health and safety of the citizens or visitors to this State have been put at risk. Any such violations will not be tolerated. Further, false or misleading statements or advertisements made by a licensee or its employees, agents, lessees, or partners, including exaggerated or unproven claims of medicinal benefits of CBD, or any other egregious act the Board considers to be unsuitable, will not go unchecked. The Board continues to reserve its right to investigate any matter involving its licensees; therefore, it is incumbent upon each licensee to ensure compliance with all laws and regulations.