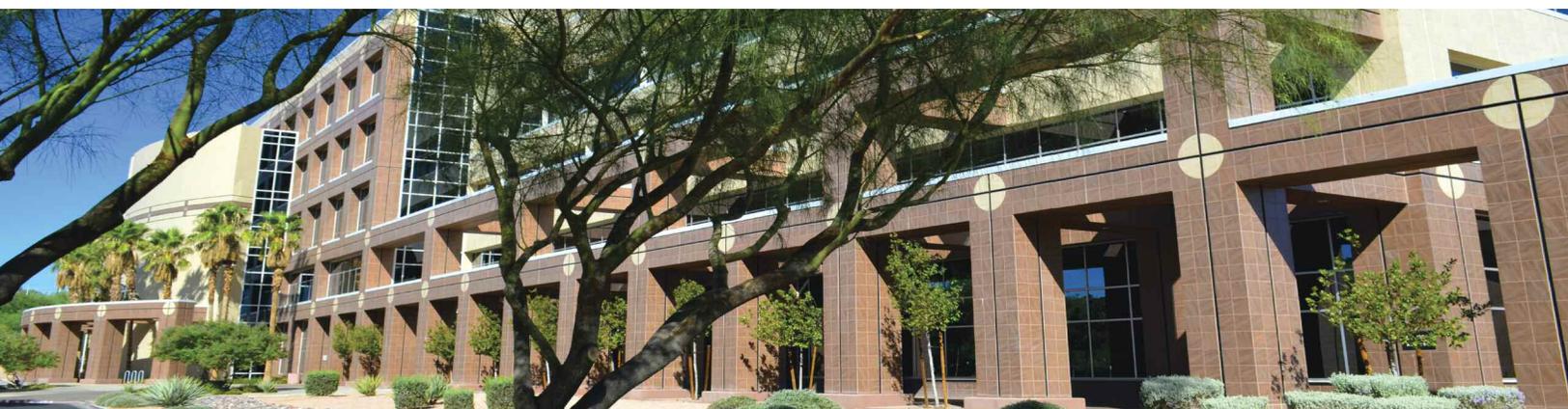




Regulatory Update: **Hot Topics**

In 2014, there have been two issues that have come to the forefront in Nevada gaming regulation. They could not be further apart in many ways, yet both have shown the hard work, dedication, and adherence to regulatory morals that the Nevada State Gaming Control Board is known for.



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

Interactive Gaming

On Tuesday February 26, 2014, our Governor Brian Sandoval, and Delaware Governor Jack Markell signed the first ever Multi-State Internet Gambling Agreement (MSIGA). The event marked the culmination of months of hard work by numerous parties, including regulators, the Governors' staff members, and gaming industry attorneys who were consulted as part of the effort. Great care was taken to ensure the MSIGA fulfilled two goals: First, simplicity, and second, avoidance of federal scrutiny. I am proud to have been part of that effort, and I believe I speak for all involved when I say the work done was tremendous and the professional relationship that developed between the two states was incredible, and continues to grow as we work towards our mutual goal.

Once the MSIGA was signed, a new effort immediately began. The contemplated sharing of player liquidity between the two states requires an entirely new project plan, one that necessitates both states agreeing to the scope of the project, and then the development of the platform that will facilitate it. This encompasses the writing of new code, drafting of commercial agreements, and of course the verification of the integrated platform and eventual deployment.

Much is being done right now to accomplish these goals in an "full speed ahead" fashion. Once again, this requires industry players and regulators to work hand in hand on a real time basis; the Board has sent teams to Delaware twice in recent weeks to meet with their counterparts and the industry in order to ensure an efficient and effective roll-out. Diligent work is being done every day by staff in our Technology Division to shepherd the process, including constant dialogue with the platform provider, the

Nevada operators, the Delaware regulators, and the independent test lab. Once again, all parties involved are working together to make the MSIGA a success.

Importantly, it must be noted that while we are moving swiftly on the MSIGA, we continue to regulate online gaming in the State of Nevada. We all knew that with the state's limited population, poker liquidity was a must and that revenues would likely reflect the state's population. But there is more to the story. What we have not yet seen are the anticipated returns from many out of state players who have registered online, but have not yet come to the Silver State to play. Recall that when our operators went live, they were allowed to receive registrants from around the globe; however, only those located in Nevada were able to play. So what should be realized in the coming calendar years are more revenues because of the synergies generated by operators at affiliated land-based casinos in their efforts to bring players to Nevada both for online and land-based entertainment.

Adding to that story is the fact that to date, we have not had any instances regarding this new industry that have required Board-imposed discipline or potential embarrassment to the state. That is not to say that problems have not been encountered, but it is satisfying to note that we have not experienced some of the problems we spent many months in 2011 through late 2012 trying to guard against.

Medical Marijuana

During the 2013 legislative session, most of us were aware of a pending bill on medical marijuana. I was asked early on whether the Board should regulate marijuana. I respectfully declined. As I write this, I don't think anyone could have contemplated the connections that medical marijuana would have to gaming; I believe that as the law made its way through the Legislature, the intent was that sick people might have some form of curative or palliative care through the substance. I don't think anyone realized that it would hit the gaming community the way it has.

When the Board began receiving inquiries as to whether gaming licensees or their close relatives could operate or own interests in medical marijuana establishments (MMEs), legal advice was sought. That advice was simple: Under Nevada state law, medical marijuana was legal and set to be regulated. Under federal criminal law, marijuana is 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.

The analysis is simple: 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. Further, doctors may not "prescribe" marijuana for medical use under federal law. They must instead "recommend" its use.

Much has been made of federal statements on the issue. In October of 2009, the Obama Administration delivered a memorandum to its Department of Justice (DOJ) prosecutors discouraging them from prosecuting people who engage in MME business in strict accordance with state law. Other memos were issued after that. An August 2013 DOJ document acknowledged state medical marijuana laws but outlined ongoing concerns, and reiterated that the substance remains illegal federally. The memo indicated that there must be "strong, state-based enforcement efforts" and expressly reserved its rights going forward. The DEA (or Drug Enforcement Administration of the DOJ) has also similarly kept all options on the table.

On May 6, 2014, the Board issued a Notice to Licensees on the subject. 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 received a gaming approval or has applied for a gaming approval is consistent with the effective regulation of gaming."

Gaming practitioners need only reference NRS 463.0129, NRS 463.170, and most of Regulation 5 to understand why. Going further, one must realize that at

present medical marijuana is nearly an all-cash business. Where will cash be kept, and how will it be spent or utilized, and what connection might highly regulated gaming licensees have to that? So separate from marijuana's federal illegality, other crimes are possible from a federal prosecutor's standpoint. Money laundering possibilities also exist, along with taxation questions. Realize that the Board has taken no opposition to medical marijuana. 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.

Indeed, many in the new medical marijuana industry argued that no one is better suited than gaming licensees to carry their regulatory knowledge and compliance habits into that new space. This is a respectable argument, but unfortunately, none of that changes the fact that medical marijuana is a violation of federal criminal law.

As a Board, we are required to strictly regulate our licensees. Allowing licensees or those to whom they are close, such as their wives, to willfully engage in a federal crime would be tantamount to relinquishing our duties.

We investigate matters every day that involve state crimes and federal crimes. There are gaming crimes that fall under our immediate supervision. There are federal crimes, however, that we work hand in hand with our federal affiliates in investigating. We generally wait until the federal prosecutors move forward with their case before moving forward with our case in those instances, but nonetheless we are waiting in the wings to act if need be.

Here, however, we have publicly advised licensees to keep away. This is because it would be disingenuous to the industry, and more importantly, to the public, to not be proactive and instead be passive. To not act now might be deemed ignorance of the issue and the eventuality that were nothing done, gaming licensees might find themselves in trouble both with the federal government and the Board.

To be certain, regulators will continue to encounter questions. What associations are permissible? What family relatives are acceptable? What about landlords and tenants, or mere passive investments? I believe that now that our intent is clear, the Board and Commission must take up these remaining issues on a case by case basis; to draw further lines in the sand is not only limiting but speculative at best. One cannot contemplate the myriad tangles of relationships that we will encounter, but as always, our guiding lights shall be the gaming statutes and regulations we have all worked so hard to uphold.

A.G. was appointed to the Board by former Governor Jim Gibbons from January 1, 2011, to January 30, 2011, and then was reappointed by Governor Brian Sandoval to serve a four-year term, beginning January 31, 2011. Before being appointed to the Board, he was the Deputy Chief of the then-Corporate Securities Division (the "Division") for the Board. Prior to his time at the Board, A.G. served as Senior Deputy Attorney General in the Gaming Division of the Nevada Attorney General's Office, representing the Board, the Nevada Gaming Commission, and the Nevada Commission on Sports. In addition, he served as a member of the Executive Committee of the Nevada State Bar's Gaming Law Section from 2000-2006. A.G. was also appointed by the Nevada State Bar Board of Governors to serve a three year term on the Nevada State Bar's Committee on Functional Equivalency from 2001 and 2004. He received his J.D. from Gonzaga University School of Law in 1996, and his B.A. in International Affairs and Political Science from the University of Nevada, Reno in 1992.

