



Nevada Gaming Licensees and the Disciplinary Process

By Michael Somps

A newspaper headline reads: “Nevada regulators approve \$1,000,000 fine against Nevada gaming licensee.” This sort of newspaper headline occurs from time to time and offers the public a small glimpse of the important work the Nevada Gaming Control Board (Board) and the Nevada Gaming Commission (Commission) do on behalf of the State of Nevada with the assistance of the Nevada Attorney General and his deputies. Some may be curious when they see such headlines as to how the disciplinary process works in the gaming world and what occurs behind the scenes to lead to perhaps an eye-grabbing headline. This article is meant to shed some light on that process and the role of the Nevada Attorney General’s Office.

Pursuant to NRS 463.1405, the Board:

[S]hall continue to observe the conduct of all licensees and other persons having a material involvement directly or indirectly with a licensed gaming operation or registered holding company to ensure that licenses are not issued or held by, nor is there any material involvement directly or indirectly with a licensed gaming operation or registered holding company by unqualified, disqualified or unsuitable persons, or persons whose operations are conducted in an unsuitable manner or in unsuitable or prohibited places or locations.

As part of fulfilling this mandate, the Board sometimes discovers a gaming law violation, typically by a gaming licensee, and has discretion on how it chooses to proceed. The Board’s options, assuming it decides to take some action, are generally the following: 1) issue a “violation letter;” 2) issue an Order to Show Cause; or 3) file a complaint. Depending on the

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action the Board chooses to take, the Nevada Attorney General, through the Gaming Division, provides varying levels of support, advice, and advocacy consistent with NRS 463.0199.



Violation Letter

Of the three options available to the Board when choosing how to address a gaming law violation, issuing a violation letter is reserved for violations determined to be on the low-end of the severity scale. A violation letter is also relatively informal and typically does not lead to any more punitive actions.

As part of the process of issuing a violation letter, the Board's staff drafts and sends the letter. The assistance of the Gaming Division is typically not sought and is not required. In fact, the Gaming Division typically is not aware when a violation letter is issued. However, the issuance of a violation letter and any response to the violation letter may be an important consideration for the Gaming Division if the Board determines that an Order to Show Cause or the filing of a complaint is necessary to address a subsequent and perhaps similar gaming law violation by a gaming licensee.

Order to Show Cause

The second option available to the Board to address a gaming law violation is what is known as an Order to Show Cause or "OSC" and is considered a more formal type of action taken by the Board compared to a violation letter. A gaming licensee who has engaged in some unsuitable activity may receive an OSC.

An OSC is a document prepared by a Gaming Division deputy at the request of a Board member or Board Division chief. To actually be issued, it requires the signatures of at least two of the three Board members. An OSC sets forth the facts giving rise to its issuance, what gaming law provisions were allegedly violated, and directs the gaming licensee receiving it to respond in writing to the Board to show cause why a complaint should not be filed with the

Commission. An OSC may also call on the gaming licensee to address specific areas of concern or respond to specific questions.

A gaming licensee who receives an OSC is expected to respond as directed within the time frame specified, which is typically 20 days. Upon receipt of a response to an OSC, the assigned deputy from the Gaming Division reviews that response, analyzes the matter, and provides a recommendation to the Board on how to proceed. Options available to the Board upon receipt of a response to an OSC include requesting additional information, accepting the response to the OSC, or filing a complaint with the Commission.

There is no direct reference to an OSC found within the Gaming Control Act or the regulations of the Commission. However, the Board's authority to issue an OSC is easily found within various provisions of NRS chapter 463 that give the Board broad reaching powers to regulate the gaming industry and request information. The OSC is a tool that has historically been used by the Board as a mid-level form of discipline, something short of a complaint, which puts a gaming licensee on notice of their violations and gives them an opportunity to take ameliorative action. In keeping with the title of the document, an OSC also allows the Board to assess the viability of alleged violations before deciding whether to initiate more formal disciplinary proceedings. Unless an OSC is referenced by the Board in future disciplinary proceedings, it is not made public and the information provided in response to an OSC is kept confidential by the Board in accordance with NRS 463.120.



Disciplinary Complaint

When circumstances warrant, the Board's third option to address a gaming law violation is to initiate a hearing before the Commission by filing a complaint against the culpable gaming licensee. A filed

complaint is a public document and the Board's power to initiate such proceedings is found in NRS 463.310. Further, pursuant to NRS 463.0199, the Board must be represented by the Attorney General and his deputies in those proceedings. Thus, when the Board determines that a complaint is necessary, a deputy from the Gaming Division is assigned to review the evidence, draft the complaint in accordance with NRS 463.312(1), and represent the Board in prosecuting the complaint.

Once a complaint is drafted and at least two of the Board members are satisfied with its content, the Board members make a decision on how to proceed. The Board can either share the draft complaint with the named gaming licensee prior to the actual filing of the complaint or the Board can proceed directly to file the complaint with the Commission. Often, the Board chooses to share its draft complaint prior to filing because the circumstances support exploring potential settlement with the gaming licensee. Alternatively, the circumstances may convince the Board that the immediate filing of the complaint is necessary.

If the Board decides to share its draft complaint, the assigned deputy attorney general initiates contact with the gaming licensee or its counsel and provides the draft complaint to them, which often results in settlement discussions. On behalf of the Board, the assigned deputy attorney general stewards those settlement discussions. Settlements of Board complaints normally involve the imposition of a monetary fine and/or conditions attached to the gaming license, but settlements can take many forms. If a settlement cannot be reached between the parties prior to filing the complaint, the Board can proceed to file the complaint with the Commission. However, if a settlement is negotiated, the complaint is then filed contemporaneously with the submission to the Commission of a proposed settlement in a document known as a stipulation for settlement and order. The Commission must approve any proposed settlement between the Board and a gaming licensee. Thus, the matter is scheduled for consideration and heard by the Commission at a regularly scheduled meeting.

While the ability to settle a complaint will remain an option, the provisions of NRS 463.312(2)–(4) come into play in those circumstances where the Board files a complaint without a settlement. The complaint is served on the gaming licensee by the Commission and, once the complaint is served, the gaming licensee has 20 days to answer. Failure to answer the complaint constitutes an admission of all of the

alleged facts. Also, after an answer is received by it, the Commission sets the time and place for a hearing.

All proceedings leading up to and including a hearing before the Commission are governed by NRS 463.310-.3145 and Commission Regulation 7. Therefore, those provisions should be reviewed and followed by counsel representing a gaming licensee in a disciplinary proceeding. At the conclusion of a hearing, the Commission will render a decision and, assuming the Commission concludes that the gaming licensee committed gaming law violations, the Commission has the authority to impose a broad range of discipline. Pursuant to NRS 463.310(4), the Commission may, among others, limit, condition, suspend, revoke and/or fine the gaming licensee.



Finally, upon the conclusion of the hearing before the Commission, any person aggrieved by that decision may obtain judicial review and the provisions of NRS 463.315-.318 apply. Again, throughout the disciplinary process and any subsequent judicial review, the Board is represented by a deputy attorney general.

Conclusion

Holding a gaming license in Nevada is a privilege and the vast majority of Nevada gaming licensees treat it as such. However, occasionally a gaming licensee either intentionally or negligently engages in unsuitable activity and the Board is obligated to exercise its regulatory authority by taking some disciplinary action against the gaming licensee. That disciplinary action may be in the form of a violation letter, an OSC, or a complaint. Throughout, the Gaming Division of the Nevada Attorney General's Office offers its advice, guidance, and representation.

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