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NOTICE TO LICENSEES

Notice #2021-26

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DATE: April 2, 2021

TO: All Gaming Licensees and Other Interested Persons

FROM: J. Brin Gibson, Chair – Nevada Gaming Control Board
John T. Moran, Jr. – Chairman – Nevada Gaming Commission

SUBJECT: Joint Statement of the Nevada Gaming Control Board and Nevada Gaming Commission on COVID-19 Vaccination of Hospitality Workers

On May 1st, the State will transition into the next phase of the Governor’s [Roadmap to Recovery](#), when, pursuant to [Emergency Declaration 041](#), responsibility for a number of COVID-19 mitigation measures will transfer to local governments. As part of this transition, the Nevada Gaming Control Board will oversee occupancy limits, and other COVID-19 mitigation measures, for gaming floors, including but not limited to, high-limit gaming rooms or salons, gaming floors located poolside or within venues, areas dedicated to gaming on the premises of restricted licensees, and any other gaming-revenue producing areas of all restricted and nonrestricted licensees (See Section 12 of Directive 041).

Central to the Nevada Gaming Control Board’s and Nevada Gaming Commission’s mandate to strictly regulate the gaming industry are the public policy declarations contained in [NRS 463.0129](#), including the charge that gaming be conducted in a manner that “protect[s] the public health, safety, morals, good order, and general welfare of the inhabitants of the state” (See also [Nevada Gaming Commission Regulation 5.010](#)).

In fulfilment of aforementioned duties under the Governor’s Roadmap to Recovery and the Gaming Control Act, the Board will take a measured approach relying on a number of factors as it considers relaxation of occupancy limits on gaming floors.

Key to this consideration is the status of vaccination penetration within in the State’s hospitality workforce. Hospitality workers, many of which are front-of-house personnel interacting with visitors from around the globe, are critically positioned to help mitigate the spread of COVID-19 both within the industry, and the community as a whole. Such viral surges are a continuing threat to the economic health of the gaming industry and greater State, as they threaten the hard-fought efforts undertaken over the last year to safely reopen. More importantly, they are a continuing threat to the health and well-being of the significant portion of the

population employed by the hospitality industry, making vaccination efforts an indispensable element in the Board's and Commission's ongoing COVID-19 strategy.

These lingering threats are compounded by new and much more contagious variants of the original 2019 sequenced virus, SARS-CoV-2. For a better understanding of the threats posed by mutated strains of the virus, consider the article, "[New SARS-CoV-2 Variants — Clinical, Public Health, and Vaccine Implications](#)," published in the March 24, 2021 edition of the [New England Journal of Medicine](#). The article explains that three new variants of the original 2019 virus have rapidly become dominant within the countries in which they were first identified: B.1.1.7 (also known as VOC-202012/01 or the U.K. variant), 501Y.V2 (B.1.351 or the South African variant) and P.1 (B.1.1.28.1 or the Brazilian variant). The U.K. and South African mutations were sequenced in December of 2020; the Brazilian variant was identified in January of 2021. By February 22, 2021, these three variants were observed—genomically sequenced—in 93, 45, and 21 countries, respectively.¹

New viral variants and a relatively low degree of vaccination penetration within the hospitality workforce drives the Board's current approach rooted in caution. As such, at this time, consideration by the Board to increase gaming floor occupancy will only be taken in cases where licensees have taken measurable and material steps to vaccinate, and thereby, protect their workforce, visitors, and the community. For resources illustrating the continued possibility of a virus resurgence, please consider data from Johns Hopkins' COVID-19 resources, hyperlinked, below:

- <https://coronavirus.jhu.edu/data/animated-world-map>
- <https://coronavirus.jhu.edu/data/new-cases-50-states/michigan>
- <https://coronavirus.jhu.edu/data/new-cases-50-states/connecticut>
- <https://coronavirus.jhu.edu/data/new-cases-50-states/new-york>
- <https://www.npr.org/2021/03/31/983157525/france-imposes-3rd-national-lockdown-as-covid-19-again-surges>

Licensees are reminded that any license or approval granted by the Commission or Board is a revocable privilege, not a right. This is detailed in the federal court case of *Thomas v. Bible*, 694 F. Supp. 750, 759 (D. Nev. 1988), *aff'd*, 896 F.2d 555 (9th Cir. 1990):

Licensed gaming is a privilege conferred by the state and does not carry with it the rights inherent in useful trades and occupations. *State v. Rosenthal*, 93 Nev. at 44, 559 P.2d at 835; see also *Posadas de Puerto Rico Assoc. v. Tourism Co.*, 478 U.S. 328, 106 S.Ct. 2968, 92 L.Ed.2d 266 (1986); *Dunn v. Tax Comm'n*, 67 Nev. 173, 216 P.2d 985 (1950); *State ex rel. Grimes v. Board*, 53 Nev. 364, 1 P.2d 570 (1931).

Licensed gaming is a matter reserved to the states within the meaning of the Tenth Amendment to the United States Constitution. "Within this context, we find no room for federally protected constitutional rights. This distinctively stated problem is to be governed, controlled and regulated by

¹ One who argues that a community cannot go backwards—or regress—in a pandemic assumes genomic stasis of the original pathogen, an isolated population, and other errant, outmoded notions. Vigilance and vaccination are measures that will be required now and into the future for some time.

the state legislature and, to the extent the legislature decrees, by the Nevada Constitution.” Rosenthal, 93 Nev. At 44-55, 559 P.2d at 836.

The Board will take action against those that place short-term gain in violation of current Emergency Directives or Board Health and Safety Standards above the well-being of its workforce.

Both the Board and Commission urge licensees to be proactive in arranging for vaccination opportunities for their workforces, and to provide effective communication so that all employees that wish to avail themselves of such opportunities may do so.

Positive initiatives that have been undertaken by licensees, and the Board supports continuation of, include:

- Paid time off to staff for vaccination appointments;
- Arranging transportation for employees to public vaccination sites;
- Entering into agreements with pharmacy partners; and
- Underwriting private vendors to administer vaccines onsite using a POD distribution system.

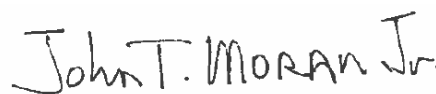
Additional considerations for licensees in their vaccination efforts include:

- Have legal counsel, together with company leadership and HR staff, review EEOC guidance regarding what companies can and cannot do effectuate vaccinating workforce. Important resources include:
 - <https://www.eeoc.gov/coronavirus>
 - <https://www.natlawreview.com/article/eeoc-says-employers-may-mandate-covid-19-vaccinations-subject-to-limitations>
 - <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>
- Review your company’s vaccination plan for completeness and for efficacy in achieving employee vaccination.
- Take immediate remedial measures to correct deficiencies in company vaccination efforts, if necessary.
- Prepare to account to the Board on your company’s vaccination efforts if you seek increased gaming floor occupancy.
- Understand that if you wish to identify and contract with a private vaccination vendor, this is a limited resource, unlikely to have capacity to accommodate most licensees at this point, unless they are located out of state.
- Seek out opportunities to contract with retail pharmacies to travel to your sites to administer vaccine.

If you need assistance in developing a vaccine program for you workforce, please contact former Clark County Fire Chief and current Incident Commander, Incident Management Team, Greg Cassell (gcassell@clarkcountynv.gov) or GCB Senior Research Analyst Mike Morton (mmorton@gcb.nv.gov).



J. Brin Gibson
Chair
Nevada Gaming Control Board



John T. Moran, Jr.
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