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VIA E-MAIL: BGC_Regulations@doj.ca.gov

Re: Draft Concept Blackjack Language of September 2023

Dear Director Morrow and Ms. McMillen,

The Department of Justice, Bureau of Gambling Control ("Bureau") is considering promulgating regulations governing the review and approval of blackjack games that are offered for play in California gambling establishments. However, the Bureau has failed to present any evidence or factual basis for promulgating new regulations that will disrupt rules that have been relied upon for over two decades. There have been ongoing discussions with the Bureau for many years and the Bureau has devoted significant resources from the Gambling Control Fund regarding the legality of blackjack-style games. Despite the many hours and dollars spent and the numerous letters sent to the Bureau from interested parties and their counsel, the Bureau has failed to state any contrary law or otherwise explain its concerns regarding the licenses it has issued over the last 20 years.

The current proposal is based upon a premise that has repeatedly been shown to be false and has already been rejected by California courts. The Bureau appears to be under the influence of the illusory truth effect, which is the idea that repeated statements are perceived to be more truthful. There is no truth to the assertion that modern blackjack-style games violate the law, are causing any harm to the People of California, or necessitate reformation.

In 1885, Penal Code section 330 was amended to prohibit the game of "twenty-one." The current proposal does not define or prohibit twenty-one as it was played in 1885. Instead, the current proposal defines and prohibits the modern and markedly different game "blackjack," using the contemporary rules for multiple variants of that game. The proposed language eliminates any form of the blackjack-style games currently approved by the Bureau. The proposed language disregards several decisions interpreting Penal Code section 330 that look at how a game was

played when it was prohibited and hold that section 330 does not apply to games with different rules, even if those games evolved from a prohibited game.

The Bureau lacks the authority to adopt an interpretation that goes against the statute, the history, and the decisional law. Nor can the Bureau unilaterally revoke the approvals for games it previously approved, as the proposed language requires.

Consequently, the Proposal lacks the (1) necessity, (2) authority, (3) clarity, and (4) consistency required for adoption under the Administrative Procedure Act. (Gov't Code, §11349.1.) The proposed language eliminating the play of any form of California Blackjack exceeds the authority granted to the Bureau. Adopting these Regulations would amount to governmental taking of property without due process and is not supported by any rationale or citation to relevant statutory or case law. This is poor public policy that is aimed at killing California jobs, eliminating funding from our cities and law enforcement, and is being done needlessly.

This proposed language is clearly meant to be an existential threat to cardrooms. However, the threat is much broader than the cardrooms, Third Party Proposition Players Services ("TPPPS") companies, vendors, and communities. The threat is also to the Bureau and California Gambling Control Commission ("CGCC"). The current structure of regulatory fees will be upended as cardrooms, and TPPPS companies close due to not being allowed to offer what are the most popular games. As revenue falls and companies close, the Bureau and CGCC will be faced with what to do with state employees with property rights in their jobs when there is little to regulate and insufficient collections in the Gambling Control Fund to continue the departments. The Bureau cannot simply downsize without finding these workers new jobs. The proposed regulations threaten State jobs as well as the private sector.

Government Code section 11346.2 requires a regulatory agency that intends to promulgate new regulations to explain the "specific purpose" for each new or modified rule, including "the problem the agency intends to address." (Gov't Code, § 11346.2(b)(1).) The agency must also provide descriptions of reasonable alternatives and explain why those alternatives have been rejected. Despite the significant resources dedicated to this issue by the Bureau over the years, the proposed regulation is presented without any facts, reasoning, alternatives, statement of a problem, or necessity for change.

For all of the following reasons, we urge the Bureau to heed the well-established maxim that a regulatory agency should do no more than necessary to achieve its statutory objective.

1. **The Bureau Has Failed To Articulate Any Need For Change In The Status Quo Which Appears To Be Acceptable To The Legislature And The Courts.**

Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute. (Govt Code § 11342.2.)

The Bureau has not articulated any statute granting it the authority to change the existing system. Nor has the Bureau articulated why regulations such as the proposed language would not conflict with existing law.

The Proposed language appears to assume that Blackjack is prohibited. The law and the history of Blackjack in California do not support such an assertion.

In 1885, the game of Twenty-One was added to Penal Code §330 as a prohibited game; however, Blackjack is not listed in Penal Code section 330. Blackjack-style games did not develop until approximately 1915, 30 years after Twenty-One was added to Penal Code section 330. Without analysis, the proposed language seems to assume that contemporary versions of Blackjack are the same as the historical game of Twenty-One. This is not so.

Card games, even those that have evolved from games listed in section 330, are not prohibited unless the games are played as banking or percentage games. As a result, since 1885, the Legislature has not added to the list of prohibited games. Rather, the applicability of section 330 has rested on whether unlisted games are played as banking or percentage games. "Thus, a card game played for money not specifically listed under section 330 and not played as a banking or percentage game is not prohibited." (*Tibbetts v. Van De Kamp* (1990) 222Cal. App. 3d 389, 393, *rev. den*., 1990 Cal Lexis 4733; *accord, Oliver v. County of Los Angeles* (1998) 66 Cal.App.4th 1397, 1404.) This holding is consistent with two rules of statutory interpretation. When a statute lists items, such as prohibited games, all other items or games not listed are not prohibited. (*Henderson v. Mann Theatres Corp*., (1976) 65 Cal. App. 3d 397, 403 ("A recognized rule of statutory construction is that the expression of certain things in a statute necessarily involves exclusion of other things not expressed.")

As with any criminal statute, section 330 is subject to the rule of lenity that requires any ambiguity in criminal laws to be interpreted in favor of the persons subjected to them. (*Tibbetts,* supra*,* 222 Cal. App. 3d at 395.) The decision in *Tibbetts* also established that even though games evolve over time, the courts would look at how a game was played when the game was added to section 330 in determining what was prohibited. *Tibbetts* held that section 330 applied only to games "plainly within its terms" and was intended to ban only "a limited number of games." (*Id* at p. 395.) The Court rejected the State's argument to sweep within section 330 any poker games like the poker game at issue. Instead, *Tibbetts* held that if the Legislature wanted to ban games other than those specifically listed in section 330, it "is a matter for the Legislature, not the judiciary." *Id.*

Similarly, the Supreme Court has held that the Legislature did not intend to ban any other games. Section 330, the principal statute on the subject, prohibits 12 specific games and any "banking" or "percentage" game. If the Legislature had intended to regulate the play of any game that is ordinarily played for money or other evidence of value, it would have been very simple to say

just that. Not only did the Legislature fail to use that all-inclusive phrase, but by other legislation, it clearly indicated that it recognized the existence of other gambling games not included in the prohibition of the code section. (*In re Hubbard*, (1964) 62 Cal. 2d 119, 126 (overruled on other grounds, *Bishop v. San Jose*, (1969) 1 Cal. 3d 56).)

In 1991, the Legislature amended section 330 to remove "stud horse poker." In doing so, the Legislature specifically cited the *Tibbetts* decision and said its purpose was to amend section 330 "in conformance with the holding in *Tibbetts*." (*Id*. §2). The Legislature approved *Tibbetts'* interpretation of section 330. *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal. 3d 721, 734 ("the Legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction.").

The Blackjack games currently offered in California card clubs are not the prohibited game of Twenty-One added to section 330 in 1885, but rather games that have been approved by the Bureau and played for many years. The modern game of Blackjack is significantly different than Twenty-One, including the "no bust" feature, which means in some circumstances, the total value of a player's hand can exceed the specified point total and not lose. Blackjack may be played with jokers or specially marked aces that have different point totals and/or change the payouts, odds, and game results. In some versions, the game is also played to 22. While some of these features are reflected in the proposed language and are specifically prohibited, the Bureau has not articulated any reason why it is challenging the existing structure that appears to be acceptable to the courts, the Legislature, the Bureau itself for over two decades, the People of California, and to those who have relied upon the Bureau's interpretation to make business decisions and significant investments.

2. The Concept Language Overreaches The Bureau of Gambling Control's Authority.

To be effective, each regulation adopted shall be within the scope of authority conferred and in accordance with standards prescribed by other law provisions. (Govt Code § 11342.1.) The Bureau, "like all administrative agencies, has no inherent powers; it possesses only those powers that have been granted to it by the Constitution or by statute." (*Sec. Nat'l Guar., Inc. v. Cal. Coastal Comm'n* (2008) 159 Cal.App.4th 402, 419. See also *Louisiana Pub. Serv. Comm'n v. FCC* (1986) 476 U.S. 355, 374 ["[A]n agency literally has no power to act . . . unless and until [the Legislature] confers power upon it."].) "That an agency has been granted some authority to act within a given area does not mean that it enjoys plenary authority to act in that area." (*Sec. Nat'l Guar*., 159 Cal.App.4th at 419.) Accordingly, if the Bureau "takes action that is inconsistent with, or that simply is not authorized by [statute], then its action is void." (*Id*. See also *BMW of North America, Inc. v. New Motor Vehicle Bd*. (1984) 162 Cal.App.3d 980, 994 ["It is fundamental that an administrative agency has only such power as has been conferred upon it

by the constitution or by statute and an act in excess of the power conferred upon the agency is void."]; *B. C. Cotton, Inc. v. Voss* (1995) 33 Cal.App.4th 929, 955-56 ["[A]n attempt by an administrative agency to enlarge the scope of the powers conferred upon it is unlawful and void."].)

The Bureau's concept language would revoke existing game approvals for cardrooms' approved games. unilaterally and without any adjudicatory determination that such games are unlawful. The Bureau does not have that authority.

The Gambling Control Act envisions that the Bureau may not revoke game approvals unilaterally but instead must involve the participation of the Commission. Specifically, the statutory scheme assigns the Bureau a prosecutorial role while the Commission adjudicates whether a game approval should be withdrawn. (See, e.g., Bus. & Prof. Code § 19826 [defining DOJ's responsibilities under the Gambling Control Act—to "receive and process", "monitor", "investigate", "initiate disciplinary actions", "adopt regulations", "approve"—but not mentioning revoking game approvals]; § 19842 [supplying a legal standard for the Commission's decision to prohibit a game, suggesting that the Commission alone has such authority]; § 19930(a)–(b) [providing for Bureau investigation, followed by Bureau accusations with the Commission]; § 19932 [providing for judicial review of Commission decisions].)

The Commission's regulations also point against the Bureau's unilateral authority to revoke game approvals. (See, e.g., 4 CCR § 12550 ["Nothing in [the Commission's disciplinary regulations] precludes the Bureau, in its discretion, from issuing warning notices, notices to cure, advisory letters regarding violations or possible violations of law, or from withdrawing such upon further investigation."; making no mention of Bureau authority to withdraw game approval]; 4 CCR § 12552(c) [envisioning a prosecutorial role for the Bureau; "Any settlement of an accusation shall be submitted by the Bureau for approval by the Commission"].)

Accordingly, there is no statutory authority for the Bureau to revoke approval of a game it previously authorized unilaterally. If the Bureau wishes to revoke a game approval, it must bring a formal accusation and succeed in proving to the Commission that the game violates federal, state, or local law. That process is essential to preserving the due process rights of cardrooms. (See, e.g., *Bauer v. City of San Diego* (1999) 75 Cal.App.4th 1281, 1294 [providing that the State may revoke a business permit "only upon notice to the permittee, upon a hearing, and upon evidence substantially supporting a finding of revocation"]. The sweeping language of the Concept Language exceeds the Bureau's authority by unilaterally invalidating games that have been held to be valid and legal by the Courts, the Commission, and the Bureau for many years.

3. The Concept Language Is Not Supported By Relevant Law or Rationale.

The Bureau rests its authority to promulgate these proposed regulations on Business and Professions Code Section 19826. Section 19826 (f) grants the Bureau the right to adopt regulations reasonably related to its functions and duties as specified within the Gambling

Control Act. However, this power is limited to promulgating regulations that implement, interpret, or make certain specific provisions of the Gambling Control Act related to the Bureau's functions. (Gov't Code § 11342.600.) This statute does not allow wholesale revocation of an existing system and substituting an agency-created system.

The Bureau is empowered to receive and process applications and fees, monitor the conduct of licensees, investigate suspected violations of the laws related to gaming, investigate complaints, initiate discipline, adopt regulations related to the scope of its authority, and approve the play and make restrictions on how a game is played. (Bus. & Prof. Code § 19826.) The Bureau has not been granted the authority to revoke game approvals systematically.

4. Nothing In The Business And Professions Code Grants Such Sweeping Authority To The Bureau.

The proposed language also cites *People v. Gosset* (1892) 93 Cal. 641. This case discusses hearsay, evidentiary admissibility, and jury instructions regarding the game of Faro. Nothing in this case supports the Bureau's Concept Language that invalidates the existing long-standing game approvals. Nor does the case justify this action by the Bureau.

The Bureau has consistently interpreted legal Blackjack for over two decades, and there has been industrywide reliance on that interpretation. No court has determined that Blackjack and the prohibited Twenty-One are synonymous, only dicta, which is not instructive or binding. (*Trope v. Katz* (1995) 11 Cal.4th 274, 284; *Stockton Theatres, Inc. v. Palermo* (1956) 47 Cal. 2d 469, 474 (1956) ("the erroneous assumption … is clearly obiter dictum. The statement of facts in the discussion… presupposed a situation. . . it is obvious that the decision was not predicated upon the court's construction of the statute."); *People v. Squier* (1993) 15 Cal. App. 4th 235, 240 (1993).)

The Bureau is not charged with addressing or mitigating political problems within California gaming. These tasks rest with the Legislature. The Bureau's lack of a rationale for why games that have been long approved, are functioning without any notable issues, and are clearly not illegal banked games now require change appears to be an overreach of authority and an inappropriate engagement with the politics of tribal versus non-tribal gaming in California.

The Bureau has not supported the proposed language with any reference to statute, court cases, or any other rationale for the change or the Bureau's authority to make such a change.

5. The Concept Language Raises Issues of U.S. and California Constitutional Violations.

While there may be no property interest in a gaming license, there are federally granted property interests in games that are patented. The United States Office of Patent and Trademarks has repeatedly found new versions of Blackjack are sufficiently unique to issue patents on those games. The Cardrooms have entered Bureau-approved contracts with the patent holders to offer

these games and invested in equipment to play these games, and the patrons have enjoyed these games over the last two decades. The concept language seeks to invalidate these previously approved and unique games without any hearing, without compensation, and without rationale. This wholesale invalidation of approved and legally valid contracts amounts to a government taking requiring due process.

The Fifth Amendment of the United States Constitution states that "private property [shall not] be taken for public use, without just compensation." While the Fifth Amendment by itself only applies to actions by the federal government, the Fourteenth Amendment extends the Takings Clause to actions by state and local government as well. The California Constitution states: "Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner." (Cal. Con. Article 1, section 19.)

Interests in intangible as well as tangible property are subject to protection under the Taking Clause. (*Lynch v. United States*, 292 U.S. 571, 579 (1934); *Omnia Commercial Corp. v. United States*, 261 U.S. 502, 508 (1923*), James v. Campbell*, 104 U.S. 356, 358 (1882), *Hollister v. Benedict Mfg. Co.*, 113 U.S. 59, 67 (1885), *Ruckelshaus v. Monsanto Co*., 467 U.S. 986 (1984).) Further, the Due Process Clause of the 5th and 14th Amendments guarantees "due process of law" before the government may deprive someone of "life, liberty, or property."

This also applies to the proposed categorical restrictions to the use of certain terms in the naming of games. Section 2073(c) defines any game that uses the number "21" or the word "blackjack" in its name, or variations on those names, to be the game of blackjack that is prohibited under section 2073(a), regardless of the game rules. Section 2074(b) prohibits game names using the number "21" or the word "blackjack." Section 2075(d) provides that, where an approved game includes "blackjack" in its name, the cardroom must submit an application to modify the game name. These sections conflict with the Act, which vests the authority to regulate advertising with the CGCC. The proposals would also violate commercial speech rights under the U.S. and California Constitutions. Again, relying on and repeating the false notion that conflates twenty-one and blackjack does not make it so.

Section 19841(f) of the Act gives the Commission the authority to regulate advertising in gaming. (See Bus. & Prof. Code, § 19841(f).) Such regulations may "[p]rovide for the disapproval of advertising by licensed gambling establishments that is determined by the department to be deceptive to the public." (Ibid., italics added.) The proposed language is a wholesale usurpation of the role of the CGCC. When a statute gives different, even coordinated, responsibilities to two agencies, one agency cannot assume the other agency's authority. (See *Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 391-392.)

The draft language implicates Constitutional issues that will surely result in expensive and protracted litigation. Given the lack of rationale for the need for any such change or any authority supporting such action by the Bureau, the promulgation of the rules wastes

governmental resources and does nothing to protect the People of California. On the contrary, the adoption of this language will divert resources from the actual mission and toward this folly. The proposed language chooses to kill the business regulated by the Bureau, which will then levy fees to finance litigation to defend the decision. The regulated community is being asked to pay for its own execution.

6. Economic Impact:

If implemented, the proposed language would precipitate an existential crisis for cardrooms, TPPPS companies, and other vendors and have an extremely detrimental effect on municipalities, small businesses, and their employees. Before a regulation is adopted that threatens all this economic vitality, there should be a factual basis and reasoning that clearly articulates the need for change. There has not been any evidence or factual presentation that the proposed regulation substantially advances a state interest. This regulation is meant to infringe on the rights of cardrooms, TPPPS companies, patrons, and the communities that benefit from cardroom taxes. A State gaming license is more than a 'purely economic privilege' granted by the State. Operating for many years under the law and in compliance, these businesses have made substantial investments in reliance on those interpretations. Changing the fundamental nature of the role of TPPPS players by imposing an arbitrary and capricious definition of rotation will dramatically impact the financial viability of these businesses. The Bureau has not provided any facts or evidence that a change is required and is instead proposing harming Californians. Interference with the right to continue an established business is serious. This right is sufficiently personal, vested, and essential to preclude its extinction by a nonjudicial body.

In response to the COVID-19 pandemic, the economy plunged into recession in 2020, and many businesses shut down permanently. Smaller businesses were hit harder than larger businesses. By the end of 2020, small business revenues and the number of small businesses open were down about 30 percent from a year earlier. The most significant job losses occurred in the leisure and hospitality industry. In a March 2020 survey, the National Federation of Independent Business (NFIB) asked small business owners to rate the importance of 75 different economic issues for their firms. After the cost of health insurance, finding and retaining good employees, and taxes, the biggest issue was "unreasonable government regulations."

The proposed regulations will increase costs for small businesses more than for large ones. Most of the regulated cardrooms are small establishments with fewer than ten tables. Most are family-owned small businesses. The proposed regulations will impact these businesses the most as fewer patrons will be willing to do the prescribed dance and accept the player-dealer position.

A 2018 study by economist Dustin Chambers and colleagues used a measure of federal regulatory restrictions by industry from 1998 to 2015 to estimate that as restrictions increased, the number of small firms in an industry decreased, but not the number of large firms.

Regulatory governance will raise already sky-high rates being charged by the CGCC. The CGCC and Bureau have raised rates without providing additional services, and the added supervision for this regulation will cause this to become prohibitively expensive. While the Bureau and the CGCC can raise rates and continue spending, the small businesses that support this endeavor have a limited market of players and face inflation in their costs. The pockets of the cardrooms are not limitless.

California cardrooms generate a substantial portion of their annual revenue through gaming operations. Most revenue is from blackjack-style games. This revenue contributes to local and state taxes, providing public services and infrastructure funds. Cardrooms offer employment opportunities to thousands of Californians. They hire staff as dealers, supervisors, security personnel, waitstaff, and administrative employees. These jobs directly benefit local communities. Cardrooms often stimulate the local economy by attracting customers who may also visit nearby restaurants, hotels, and other businesses. This can lead to increased economic activity in the surrounding areas. In addition to direct taxes on cardroom revenue, these businesses also pay licensing fees and other regulatory charges, contributing to government revenue. Many cardrooms engage in philanthropic activities, supporting local charities, events, and community initiatives. This regulation will decrease the local and state taxes and lessen the ability to fund positions for law enforcement and regulation.

If seventy percent of the regulated cardrooms see a significant drop in revenue, will the Bureau and the CGCC reduce their staff and costs? Public employees have vested rights in their jobs, so adopting a regulation that will significantly impact the need for those jobs should be carefully considered. The Bureau should issue a policy or plan on reducing its size according to the needs of a shrinking industry.

We believe that a Standardized Regulatory Impact Assessment (SRIA) is required for this regulation as the economic impact on the communities, including the communities that employ regulators, will exceed $50 million.

The CGCC has already expressed concerns that even with the raised fees that are being charged to Cardrooms, the Gambling Control Fund will fall short of being able to cover the costs incurred by the CGCC and the Bureau this year. Eliminating Blackjack-type games will all but ensure that there is insufficient funding.

The Bureau has not presented any statements of what benefit the public would derive from the proposed change. The Bureau has not addressed the problem if any exists, and how sweeping change with severe economic impact is the answer.

7. Specific Comments on Section 2073

Section 2073(a) defines “blackjack” by listing the rules corresponding to that game's contemporary version. No mention is made of twenty-one—the game that is actually prohibited by section 330—or its rules.

Section 2073(b) lists several types of game modifications that do not distinguish a game from blackjack, as defined in section (a).

Section 2073(c) provides the prohibition on blackjack includes any game with a "variation of the number '21' or the word 'blackjack' in its name."

This section's curious and faulty premise is that a game is prohibited by section 330 if it shares certain elements with one of the prohibited games. This is not the law and is an overly broad, well-thought-out proposal that violates the well-settled rule that only **slight** variations on prohibited games fall within the ambit of section 330.

By prohibiting potential game rule modifications, the language violates the case law stating that whether a game violates section 330 is a fact-specific issue, which requires an individualized determination based on the game rules and evidence. (See *Huntington Park Club Corp. v. County of Los Angeles* (1988) 206 Cal.App.3d 241, 249 ["Whether a particular game falls within the proscription of section 330 presents a factual question."].) Instead of making such determinations, this proposal seeks to allow the Bureau to place a game into a prohibited category and avoid considering whether certain rules create significant differences in gameplay, strategy, or odds. The Proposal treats entire categories of game modifications as irrelevant.

8. Specific Comments on Section 2074

Section 2074(a) provides that a game that meets the definition of blackjack in section 2073 may only be approved only if it has four specific features. There is no legal justification for requiring any single one of these features.

There are no facts, reasoning or justification to support the requirement that a game lack a "bust" feature, more than one target point count, a two-card 21 from automatically winning, or that the nonplayer dealer win in the event of a tie.

Section 2073(b) provides that a game cannot be approved if the name includes the number "21" or the word "blackjack." Again, such restrictions on game names are invalid.

VI. Specific Comments on Section 2075

Section 2075(a) requires a cardroom that offers a blackjack-style game prohibited by the proposed regulation to apply to modify that game.

This is problematic as it does not deal with the reality of what will happen. First, a cardroom should be able to submit a substitute game for expedited review rather than being compelled to modify an existing game. If a new game is better suited to any adopted rules, this should be approved on an expedited basis. We suggest the adoption of strict guidelines for what expedited means, as the Bureau has a well-documented track record of not processing applications in a timely fashion.

If these regulations are adopted, they will undoubtedly be subject to judicial review and likely be overturned. If these regulations are overturned or enjoined, the cardroom may wish to continue using the previously approved game rather than be limited to a game that has been modified unnecessarily. The regulation should not effectively prevent cardrooms from using currently approved rules in the event the regulation is enjoined.

Section 2075(d) requires modification of games with names that include the number "21" or the word "blackjack." Again, these restrictions on game names are invalid.

Section 2075(e) provides that, if the Bureau does not receive a request to review or an application to modify these games within a certain timeframe, it shall deem the corresponding game non-compliant. This section lacks due process protections, including notice of the reasons for denying a game or game modification and the right to a hearing before a neutral decision-maker before an existing game approval is revoked. This is violative of the U.S. and California Constitutions.

The revocation of an existing game approval with only unilateral notice from the Bureau and no hearing is beyond the authority of the Bureau and will result in endless litigation.

Section 19841(f) of the Act gives the CGCC the authority to regulate advertising in gaming. (See Bus. & Prof. Code, § 19841(f).) Such regulations may "[p]rovide for the disapproval of advertising by licensed gambling establishments that is determined by the department to be deceptive to the public." (Ibid., italics added.) But it is, in every instance, the CGCC's role to draft and adopt the regulation—not the Department's. When a statute gives different, even coordinated, responsibilities to two agencies, one agency cannot assume the other agency's authority. (See Assn. for Retarded Citizens v. Dept. of Developmental Services (1985) 38 Cal.3d 384, 391-392 ["the regional centers and DDS have distinct responsibilities in the statutory scheme: ... that of DDS is to promote the cost-effectiveness of the operations of the regional centers, but not to control the manner in which they provide services."].)

CONCLUSION

The law does not support the Bureau's proposed changed regulatory language. The authority to make the sweeping changes, including the revocation of game approvals, has not been granted to the Bureau. The revocation of game approvals and the impossible new proposed game rules would give rise to legal challenges to the validity of the Bureau's actions. The Bureau overreaching its authority does not benefit the People of the State of California.

We ask that this letter and others opposing the proposed changes to Blackjack variations be thoroughly considered by the Bureau before proceeding any further with this folly.

The Legislature wisely perceived that the party subject to regulation is often in the best position and has the greatest incentive to inform the agency about possible unintended consequences of a proposed regulation. Moreover, public participation in the regulatory process directs the attention

of agency policymakers to the public they serve, thus providing some security against bureaucratic tyranny. (See *San Diego Nursery Co. v. Agricultural Labor Relations Bd.* (1979) 100 Cal.App.3d 128, 142–143.)

The political issues with gaming entities within California are well known to our Legislature. Millions of dollars per year are spent on lobbying and informing the legislators of the issues. The Legislature has not determined that any change in the current rules regarding Blackjack is needed. Nor has the CGCC made any determination that new regulations are judicious and necessary.

The Bureau has stated that it seeks alternative proposals. Here, we urge that the Bureau consider the Latin phrase "primum non nocere." First, do no harm.

Very Truly Yours,

Jarhett Blonien