

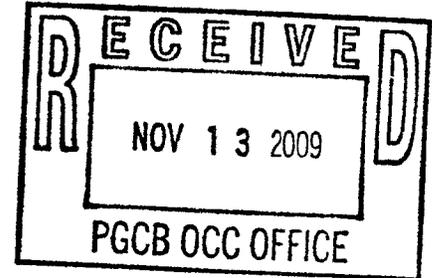
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INDEPENDENT REGULATORY
REVIEW COMMISSIONMark S. Stewart
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November 13, 2009

Richard Sandusky
Director of Regulatory Review
Pennsylvania Gaming Control Board
303 Walnut Street, Strawberry Square
Verizon Tower, 5th Floor
Harrisburg, PA 17106

Re: Comments to Proposed Rulemaking No. 125-106

Dear Mr. Sandusky:

Downs Racing, L.P., t/d/b/a Mohegan Sun at Pocono Downs ("MSPD"), is a Category 1 slot machine licensee that owns and operates a licensed facility located at 1280 Highway 315, Wilkes-Barre, Pennsylvania. MSPD respectfully submits the following comments to the Pennsylvania Gaming Control Board (the "Board") in connection with its proposed rulemaking #125-106 concerning employee credentials, design standards and internal controls; however, MSPD's comments only address the portion of the proposed rulemaking regarding employee credentials.

MSPD recognizes that the Board has attempted to address licensee concerns in the revised credentials requirements. Unfortunately, the positive changes made by the Board do not go far enough. As is recognized in the regulatory treatment of this issue in other jurisdictions, such as New Jersey, there is a substantial risk of harm to employees associated with displaying their credentials as well as an understanding that gaming is a hospitality industry where the aesthetic environment and patron experience are vital. MSPD urges the Board to permit licensees to create the best environment possible, while still achieving regulatory goals, by adopting the revisions set forth herein.

I. THE PROPOSED CHANGES TO SECTION 435a.6(c)

The proposed rulemaking is a revision of the requirements for the display of Board issued employee credentials found in section 435a.6(c) of the Board regulations (58 Pa. Code § 435a.6(c)) by implementing the following changes and clarifications:

- Employees who are not state employees, but are required to obtain Board credentials and whose job duties do not require them to be on the gaming floor or in a restricted area will

only have to carry their credentials at all times while working on the premises of the licensed facility rather than having to display the credentials;

- Employees who are not state employees, but are required to obtain Board credentials and whose job duties require them to be on the gaming floor or in a restricted area still must display the credentials; and
- Employees working with food and beverage who are required to obtain Board credentials and work on the gaming floor are excepted from the general requirement and permitted to carry their credentials so long as they display an access badge that is compliant with section 465a.12 of the Board regulations, and includes a unique employee identification number.

For the reasons set forth below, the Board should extend the access badge exception for food and beverage employees to slot operations, environmental services, and security administration employees.

II. PHYSICAL AND FINANCIAL RISK TO EMPLOYEES WITH NO PUBLIC NEED OR BENEFIT IS BEING PROMOTED

Despite the Board's proposed changes to the employee credentials provisions, its requirement that facility employees display their Board credentials continues to be overbroad, places employees at risk for physical and financial harm, and fails to promote any public need or benefit. Employees working in public areas, such as Slot Operations, Environmental Services and Security Administration, would be forced to display the credentials on their person at all times while working in the licensed facility. The proposed regulation would have a significant adverse impact if imposed. The requirement for all Board credentialed casino employees whose job duties require them to be on the gaming floor or in a restricted area to display their credentials would not only negatively impact the hospitality portion of MSPD's business, which is key to the patrons' enjoyment of MSPD's facility and the overall success of the facility, but it also places employees at risk of physical and financial harm against which the Board has the utmost duty to protect. The front of the credential displays an employee's first and last name and the back of the credential includes more personal and confidential information of the employee, such as the employee's date of birth, sex, height, weight, hair color and eye color.

The information on the front of the credential alone provides the general public with a means to contact and locate the employee outside of work, subjecting the employee to the risk of stalking, retribution or some other act by a patron that could result in physical harm to the employee. These are very real risks, particularly when employees in certain positions such as Security and Slot Operations are charged with enforcing casino rules and regulations. In addition, if the credential were lost by the employee (which could occur during the performance of routine tasks such as working on slot machines, cleaning bathrooms or performing the daily drop) and found

or stolen by a patron, the patron would then be privy to all of the personal information which is printed on the back of the credential – as well as the employee’s signature. This could result in significant financial harm to the employee. In a time when credit and identity theft are prevalent, the need to protect the personal and confidential information of employees is paramount. Certainly, this need should outweigh the Board’s interest in having an additional, *duplicative* means of verifying the identity of an employee when that employee already has an access badge displayed.

In addition to the danger to employees stated above, the proposed rulemaking requiring employees in positions that interact with the general public to display the credentials on their person will significantly decrease the appearance of a friendly demeanor for these employees. Permitting employees in positions that interact with the general public to carry the credential and only be required to display the access badge will allow MSPD to maintain a first-class level of hospitality and most of all an attractive atmosphere that encourages slots play. These employees have constant contact with patrons and it is critical to the slots play environment that their appearance be polished, sleek and welcoming. If these employees were required to display credentials on their person, it would greatly detract from their appearance, be less inviting and have the effect of appearing more rigid and authoritative and thus not encouraging slots play. Obviously, if slots play is not encouraged, revenue is not produced and taxes are not generated to the Commonwealth.

Significantly, all of these employees already wear the access badges required by section 465a.12 of the Board’s regulations, which should be sufficient for security, surveillance and identification purposes. There is no discernible benefit from requiring employees working in public areas, such as Slot Operations, Environmental Services and Security, to display – as opposed to carry – their credentials *in addition* to displaying their access badge. Moreover, as compared to food and beverage employees, there is nothing about these categories of employees, their job duties, or the character of their patron interactions that makes the access badge exception any less applicable to them or any less effective in terms of the stated regulatory objective.

The revisions suggested by MSPD find support in the treatment of credentials in other gaming jurisdictions. For example, the New Jersey Casino Control Commission does not require casino employees to display credentials. In New Jersey, casino key employees, casino employees and casino service employees are required to have the credentials on their person at all times while working on the casino premises and access badges are required to be displayed by casino key employees and casino employees when present in restricted areas. *See* N.J.A.C. 19:41-1.4(a). Prior to being eliminated in 1995, New Jersey required employee credentials to be displayed, however, this generated complaints from employees regarding safety and confidentiality, impacted the appearance of employees, and carried a high frequency of lost credentials. In this instance, the Board should consider the regulation and practice of an established gaming

jurisdiction such as New Jersey, and not require the display of credentials by employees working in public areas, such as slot operators, environmental services employees and security administrators.

III. THE CURRENT ACCESS BADGE REQUIREMENTS ARE SUFFICIENT

The exception for food and beverage employees that has been proposed by the Board amends section 435a.6(c) of 58 Pa. Code and provides that:

A food and beverage employee of a slot machine licensee who is required to obtain a Board credential and whose duties require the individual to be on the gaming floor may carry, instead of display, the Board credential if: (1) The employee displays the access badge required under § 465a.12 (relating to access badges and temporary access credentials). (2) The access badge displays a unique identification number that has been assigned to that employee.

Section 465a.12 requires slot machine licensees to develop an access control matrix that identifies the restricted areas of the licensed facility which are accessible to each employee and an access badge system that includes a badge with the employee's name and a color, code or symbol signifying the employee's access level which must be worn at all times in a visible location. *See* 58 Pa. Code § 465a.12(a), (f) and (g).

As explained, the access badge required as part of section 465a.12, which the Board states in its explanation is satisfactory for visually verifying food and beverage employees, is sufficient to ensure that the surveillance department and the Board's casino compliance representatives will have the means to visually verify the identity of additional categories of employees. However, even as to the proposed exception for food and beverage employees, the proposed rulemaking is flawed in that it seeks to include a new feature on the access badge by requiring a unique employee identification number.

This new feature will serve no additional purpose but to add confusion to the access badge since the access badge already displays either a color, code or symbol that has been developed pursuant to the slot machine licensee's access control matrix. Significantly, the Board's casino compliance representatives have the capability of accessing the matrix electronically. Under the proposed regulation, if a unique employee identification number were added to the access badge, the surveillance department and casino compliance representatives would still have to consult some sort of list of employee identification numbers in order to ascertain or verify the employee's information. This can be accomplished through the access control matrix, not to mention that the surveillance department has the ability of visually verifying the employee by reviewing events captured by the surveillance cameras and accessing employee photographs

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electronically. Also, the surveillance department is free to contact security by radio to assist in the process of identifying any employee on the spot. The Board should reject the suggested addition to the access badge of a unique identification number because the Board is attempting to amend section 465a.12 through section 435a.6(c), which is inappropriate, but also because the suggested addition is not needed.

outweighs the Board's interest in having an additional, duplicative means to verify the identity of an employee when the employee already has an access badge displayed.

IV. UNNECESSARY REGULATORY COSTS WILL BE IMPOSED

If MSPD (and other slot machine licensees) are forced to add a unique employee identification number to the access badges of food and beverage employees, as well as slot operators, environmental services employees and security administrators if they are exempted, the process would be costly and burdensome with no likely benefit to the public. The access badges for all those affected would need to be replaced and redesigned to include the unique identification number currently not required by section 465a.12. MSPD estimates 533 of employees would be affected by this requirement.

For all of the foregoing reasons, MSPD requests the Board extend the food and beverage exception to employees working in public areas such as slot operators, environmental services employees and security administrators, and eliminate the proposed change at section 435a.6(c)(2) which adds the requirement of a unique identification number to the access badge under section 465a.12.

Thank you for considering the comments of MSPD in regard to proposed rulemaking #125-106. We will be happy to answer any questions the Board has on these comments.

Very truly yours,



Mark S. Stewart

cc: Mike Bean, Esquire