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GAMING **LEGAL**NEWS

LANDLORDS, BEWARE! MEDICAL MARIJUANA AND GAMING: HOW CLOSE IS TOO CLOSE?

by Kate Lowenhar-Fisher, Jennifer Gaynor, Greg Gemignani, and Jeff Silver

On June 12, 2013, Nevada became the 14th state to legalize medical marijuana businesses. Suddenly, the country's oldest gaming jurisdiction was grappling with a new regulated business – one that is legal under state law and illegal under federal law.

Nevada State Gaming Control Board Member Terry Johnson responded in May 2014, issuing a Notice to Licensees declaring 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." The notice went on to illuminate the Board's view that "any such investment or involvement by gaming licensees or applicants would tend to reflect discredit upon gaming in the State of Nevada."

During its July 2014 hearing, the Board went further and made it clear that a person could not be in the gaming business if his or her spouse was in the medical marijuana business. In the Board's view, there must be strict separation between the gaming and medical marijuana businesses.

Recently, the Board and Nevada Gaming Commission appear to have again expanded their view of relationships that could violate the "strict separation" requirement. During the August 2015 Commission hearing, Johnson stated "[w]hile the [May 2014] industry notice did talk about and may have been specifically addressed to gaming licensees and applicants, it should go without saying ... that that obviously includes persons such as landlords too that might be involved in the gaming context and concurrently in the medical marijuana context." Nevada Gaming Commission chairman Tony Alamo responded that he "totally agree[d]."

Now it appears to be more likely that landlords in the medical marijuana business who lease property to Nevada gaming licensees are going to be called forward by the Board for a finding of suitability, and Nevada gaming licensees who lease property to medical marijuana facilities may find themselves facing disciplinary action by the Board.

The Nevada gaming regulators are sending a clear message to landlords: proceed with caution.

