

**COMMISSION MEETING  
THURSDAY, APRIL 12, 2007  
DRAFT MINUTES**

**Chair Ellis** called the meeting to order at 1:35 p.m. at the Red Lion Hotel located in Pasco. He then introduced the following members and staff present, noting that Commissioner Keven Rojecki was delayed because of his Legislative Confirmation Hearing this morning in Olympia.

**MEMBERS PRESENT:**     **COMMISSIONER JOHN ELLIS, Chair**, Seattle  
                                  **COMMISSIONER JANICE NIEMI, Vice Chair**, Seattle  
                                  **COMMISSIONER PEGGY ANN BIERBAUM**, Quilcene  
                                  **COMMISSIONER KEVEN ROJECKI**, Tacoma

**STAFF PRESENT:**       **RICK DAY**, Director  
                                  **SHARON REESE**, Deputy Director  
                                  **MARK HARRIS**, Assistant Director–Field Operations  
                                  **DAVE TRUJILLO**, Assistant Director – Licensing Operations  
                                  **JERRY ACKERMAN**, Assistant Attorney General  
                                  **GAIL GRATE**, Acting Executive Assistant

**1.     Review of Agenda and Director’s Report:**

**Director Day** reviewed the agenda for Thursday and Friday and highlighted inserts added to the agenda packet since publication, and requested that the staff presentation on cheating be held until Commissioner Rojecki arrives. **Chair Ellis** agreed. **Director Day** explained that Amy Hunter was unable to attend the meeting so Sharon Reese would be presenting the items Ms. Hunter normally presented. **Director Day** pointed out that Mr. Swyter would not be present for the Petition for Declaratory Order he filed, but that AAG Bruce Marvin was present.

**a)    Calendar Year-End Adjusted Cash Flow Report**

**Director Day** updated the Commission on the Cash Flow Report. A couple of years ago the reporting period on required cash flow for charitable/nonprofits was changed to a calendar year period. The licensees report on a quarterly basis, but their adjusted cash flow is calculated on a calendar year rather than each quarter. With the discussions regarding the smoking ban impacts, the Commission provided a one-time exception allowing staff to grant relief against the licensees required cash flow. This report reflects that we ended up only having to grant waivers to three licensees: Seattle Junior Hockey, Spokane Youth Sports, and Jaycees of Seattle. None of those licensees came close to needing the entire 50 percent credit that the Commission allowed by rule, and each were granted a waiver from their required adjusted cash flow for one year. As you may recall, the adjusted cash flow rule already contained the provision for a 25 percent waiver, but once a licensee received that waiver they could not get another one within four years. This allowed the licensees to make

necessary adjustments and fall back under the regular provisions for the rule. **Commissioner Niemi** observed that the gross receipts for licensees was broken down into four quarters and asked whether the licensees still reported four times a year. **Director Day** affirmed that the charitable/nonprofits report four times a year. **Commissioner Niemi** asked for clarification that the actual cash flow was what went into the nonprofit part and was for the whole year, not just the quarter. **Director Day** said that was correct. **Commissioner Niemi** thought it would be nice if the report showed the gross receipts for the whole year, which would make it easier to compare. For example, number one is Seattle Junior Hockey Association at about \$9 million. **Commissioner Niemi** pointed out that it makes a difference when looking at how far behind the licensees are and how small the amount is. **Director Day** thought the report used to reflect the total, and offered to have annual gross receipts added back on the report. It is important to note that, with the exception of those three licensees, the others significantly succeeded their required cash flow. **Commissioner Niemi** said it would be nice to see the total gross receipts for the year next to the total required cash flow for the year and the actual cash flow. **Director Day** affirmed that staff would be happy to add that figure. **Director Day** pointed out that the Rotary Club – Columbia Center, in Kennewick, had the fifth largest gross receipts and was at a very significant actual cash flow.

**Chair Ellis** asked whether **Director Day** had general recollection about the relationship between the actuals for 2006 versus actuals for 2005, adding he wondered how big of an impact the smoking ban had based on those relationships. **Director Day** responded that, as he was going back over this, he had that question in mind too. **Director Day** did not have that information and didn't believe Mr. Trujillo had the previous years available. **Mr. Trujillo** responded that he did not have the previous years. **Director Day** said staff would make that comparison and report back to the Commission, adding that it would be interesting to see a three-year period. **Chair Ellis** agreed that it would be helpful. **Director Day** felt the information ended up much more positive than it looked like it was going to be. **Chair Ellis** agreed that the figures were certainly encouraging from that standpoint.

**b) Staff Presentation – *Cheating***

**Director Day** congratulated Commissioner Rojecki on the sterling appearance before the Senate Committee, where he answered complex and difficult questions. **Director Day** then explained that cheating investigations are part of one area of the Commission's mission. The process includes identifying incidences of cheating, getting those violations prosecuted, or investigated and hopefully prosecuted, or administrative action taken. The Commissioners are often called upon during the review process to look at films or surveillance tapes displaying forms of cheating. For several years, Agent Rick Schulte has been giving full day training presentations to new tribal gaming agents regarding cheating in gambling. Agent Schulte will be giving a condensed version of his training presentation, providing some of the information the agents are supplied during their. The evaluations from the training have given Agent Schulte high marks, in part due to Rick's enthusiasm.

**Rick Schulte** introduced himself as being with the Gambling Commission for over five years and currently working as an agent in the Tribal and Technical Gambling Division out of the South District. Agent Schulte appreciated the opportunity to provide information on cheating to the Commission. In addition to teaching Gambling Commission agents, our agency has taught agents from other states, like Arizona, California, and Oregon, and also some tribes from other states. Our agency is becoming known for our training and has been given good marks around the country. Agent Schulte directed the Commissioners to a display board that shows many types of marked cards, explains how the cards are marked, and how to recognize marked cards.

Agent Schulte pointed out that the section of the RCW covering cheating was included in the Commissioners' packet. Cheating is defined as defrauding, deceiving, or gaining advantage over the operator or participant in a gambling activity, or to cause someone to violate or conspire with someone to violate the chapter. The cheating statute does not have a monetary requirement; if a person is cheating, it doesn't matter whether there is gain or loss, or they broke even. In the past year or two, cheating in the first degree has become a Class C felony. Cheating becomes a felony if a person knowingly conspires with another to cheat, whether it is another customer or a member of the house-banked card room or tribal casino, or if you hold a gambling license or certification. If a licensed dealer or cashier goes into another establishment and cheats that would automatically be a felony because they know, and are held to, the standards. Cheating in the second degree is a gross misdemeanor and includes any cheating that does not constitute cheating in the first degree, which could be an individual acting alone; there is no value requirement. There are three main types of cheating: dealers cheating for the customers, outside players trying to take advantage of the house or other players, and collusion between dealers and players or dealers and employees.

Agent Schulte explained that when discussing cheating, people tend to ask about card counting. This presentation is not about card counting; courts have determined that card counting is a learned skill. The tribes and licensees have the right to refuse service to someone with that skill. One risk in the Washington gaming industry is most employees are inexperienced because gambling is relatively new in Washington State. Criminals practice and train like professionals. There are thousands of hits on the Internet on card cheating or card marking; to teach a person how to beat the house. We have low betting limits in Washington State compared to a lot of venues around the world. Cheaters have to move from House to House to make money in Washington; too much gambling in one place draws a lot of attention. Higher betting limits are incentive for cheaters to travel further. A lot of folks would fly across the country to take \$20,000 off a table, but a lot more would fly across the country for \$180,000 hit. That is something we need to be prepared for. The cheaters are going to be more skilled and more experienced. How are we going to be ready for that? We are training, we are gaining experience, we are understanding it., and we are training tribes and licensees

Agent Schulte explained that Hole Card Play in a blackjack game is knowing what the dealer's face down card is, which increases player odds. The dealer always has one card players can not see until the end. Internal controls are established to reduce the risk of cheating or to make it easier to catch an illegal theft. The dealer needs to follow internal controls; almost every cheating case involving a dealer involves not following internal controls. Marking Cards can be done by using knuckles or a chip to put a crimp or a crease onto that card. If the mark is put in the right spot, the player will be able to see the dealer's hold card, improving the player's odds on a blackjack game. To discourage marking cards, in a regular blackjack game players are not allowed to touch the cards. Altering Bets: Pinching a bet means removing chip(s) once players have seen their cards; and Capping a bet means adding chip(s) once players have seen their cards. Bets cannot be altered at that point. When a player adds or subtracts from the bet, it leads to theft. There are some games where players are going to be able to add to their bets. In a three-card poker game, the dealer and each player have three cards and are looking for the best poker hand. The ante is the money players have to put out in order to receive cards. Once the bets are on the table, players are not supposed to touch them. A dealer is the main person to catch cheating in the card rooms and tribal casinos. Surveillance, floor supervisors, Gambling Commission Agents, and Tribal Commission Agents are also watching. Another form of cheating is when two players exchange cards under their arms to make the best hands possible from the six cards they have. The cards should not be allowed to leave the table. Fortune Pai Gow is a seven-card game where players are dealt seven cards to make both a two-card poker hand and a five-card poker hand. If both hands beat the dealer, the player wins; if both of hands lose to the dealer, the player loses; if the dealer wins one and the player wins one, it is a push or draw. Players are not allowed to touch the cards after the dealer's cards are revealed; only the dealer can touch the cards after that point. In a poker game, the House takes a couple of dollars out of the pot, called a rake, which is the House's money. If the dealer steals from the rake, the House is the victim; if the dealer steals from the pot, the customer is the victim. Agents need to identify the victim, the player who won that particular pot, because without a victim it is harder to prosecute a case. We are developing relationships and trust with our local prosecutors, our local and tribal law enforcement, casino staff, and tribal officials in the community. By building these relationships, the prosecutors know what to expect from us.

Baccarat is a game played with two or three cards for the dealer and two or three cards for the players. Everyone at the table bets on whether the player wins, the dealer wins, or it is a tie. In baccarat a tracking sheet is used to track what the cards were, what the win was, and whether it was the player, the dealer, or a tie. Baccarat slugs are cards put in a known order into the shuffler. One time, Agent Schulte and another agent set up a table at one of the training sessions, locked it up and filled all the spots and bet at the Washington \$500 limit. In a 26-card slug (a half deck slug), we took the table for \$20,000 in a matter of a few hands, which is the risk in Washington right now. Then with the \$3000 limits, we took almost \$200,000 off the table with the same 26-card slug. That shows how, when limits are increased, there is

a greater risk. Our job is to protect the public by ensuring gambling is legal and honest.

**Chair Ellis** thanked Agent Schulte for a very useful presentation. The Commissioners hear a number of those terms when dealing with license revocation cases, and it is nice to have a better idea of what the practice is. Chair Ellis asked how much time Agent Schulte spends on training activities as opposed to enforcement activities. **Agent Schulte** responded that the new agent training only occurs three times a year, and is hosted by different tribes. The training is spread all over the State; it will be in Sequim April 30 through May 4. Different agents only teach particular classes, so the agent might be there for one or two days but not the whole week of training. **Chair Ellis** wondered why the dealer does not realize there is a camera focusing on what they are doing; possibly some of the people are simply unsophisticated and don't realize they are being filmed as they engage in cheating. **Agent Schulte** responded that over time, it is easy to forget about the camera; they get so used to it day in and day out.

c) **Legislative Update**

**Deputy Director Sharon Reese** gave a brief summary and current status of the bills that are still alive.

*SGA – Commissioner Rojecki Confirmation* was completed this morning

***Agency Request Legislation:***

***House Bill 1218 – Commission Powers and Duties***

The bill passed the House and was passed out of the Senate. Senator Kohl-Welles committed yesterday to pull it out of rules and it was placed on a second reading for rules on April 11, so we feel it has some promise to move forward. If it does not pass, we would have to cease temporary licensing and eliminate our WAC that provides for that.

***House Bill 1345 – Penalties for Underage Gamblers***

The bill was passed by the House. The Senate Committee amended the bill to require that the minor's driver's license be revoked for three months for the first violation, six months for the second, and one year for subsequent violations. I believe this was in response to New Jersey which takes similar actions against drivers' licenses for underage gambling. And the Committee passed the bill out as amended. Also, there have been some proposals and Senator Rasmussen is believed to be proposing some amendments with regards to minors being allowed to purchase raffle tickets. I did have an opportunity to speak with Representative Wood last night on the hill, and he will be discussing those amendments with Senator Rasmussen and some of the ramifications the amendments may have in terms of our policy. **Commissioner Niemi** said she understood the RCW does not allow drivers' licenses to be suspended for any non-driving violation. **Deputy Director Reese** replied that issue did come up. **Commissioner Niemi** added that, consequently, the bill could die. **Deputy**

**Director Reese** agreed it may have some issues or will be pulled as the amendment. The House has indicated they have never allowed a driver's license to be part of anything other than a driver's license violation, so, it is not likely that it would pass with that amendment.

**Chair Ellis** pointed out that when it was proposed that the bill be amended and the Senate wanted to add the driver's license revocation provision, Amy Hunter called me. She asked whether I thought it was such a significant and potentially unfavorable proposal that the other Commissioners, or the Commission, needed to revisit the issue of whether we wanted to support this bill with that provision in it. I told Ms. Hunter that I didn't think that was the case; I thought the other Commissioners would probably agree to that kind of amendment to make the bill more effective and, therefore, it wasn't necessary for her to consult each of the Commissioners. I want each of the Commissioners today to have the opportunity to express any adverse views on that topic and to state whether you feel we should withdraw our support of the bill because of that provision. Is anyone opposed to it? **Commissioner Niemi** thought it sounded like a good idea but guessed it would cause the bill to die because it is inappropriate and, even if it were appropriate, it would be incredibly difficult for the Department of Licensing. Is the bill in conference? **Deputy Director Reese** affirmed that both the Senate and House version were in rules. **Director Day** added that the bill passed the House and went to the Senate. The Senate version died in the Senate, but was then amended and sent to committee and referred out to rules, where it currently sits waiting for action. The problem isn't so much with the RCW as it is with the general House policy, which I understand is not to agree to driver's license suspensions that aren't related to driving and traffic issues. **Commissioner Niemi** thought the Department of Licensing was a little concerned about that. **Director Day** agreed the Department of Licensing is concerned about it and has a technical striking amendment ready to change language from revocation to suspension, if I recall correctly. **Deputy Director Reese** clarified the language change was to suspended or denied rather than revocation.

**Commissioner Bierbaum** commented that Deputy Reese told the Commission that this was the only place where drivers' licenses were affected. It has been several years since I represented juveniles, but it seems to me the MIP's trigger revocations for drivers' licenses too even though they are unrelated. When I saw this, my reaction was the same as Chair Ellis' that it seems appropriate that underage drinking has driver's license implications as does underage gambling so I am unsure whether that is a correct statement. **Commissioner Niemi** thought it might be pretty easy to strike Senator Rasmussen's amendment, which she will probably put on floor, because it has nothing to do with the bill. **Director Day** thought the problem may be getting someone to pull up because of the discussion around the drivers' licenses and raffle tickets getting pulled out of rules. **Chair Ellis** asked what the deadline was for getting it pulled out of rules in each House. **Director Day** replied it needs to be passed by the opposite House tomorrow. I think from our perspective, we didn't see the driver's license provisions to be particularly problematic from the penalty aspect. I think because we have not had an opportunity to prepare people for that side of it, it

might create unintended opposition to a bill that was moving fairly rapidly. Unfortunately that seems to be what has occurred. **Deputy Director Reese** mentioned that information relating to the question of the minor in possession showed that the driver's license being suspended was usually because the underlying violation was traffic-related. So the minor in possession may be the alcohol in the vehicle. **Chair Ellis** did not think that was correct. **Commissioner Bierbaum** said she did not know of anything that would trigger a revocation of one's driver's license. A person can certainly get a suspension, but it even takes a lot of DUI's to get your driver's license revoked as opposed to suspended. Maybe the problem was the revocation language rather than the suspension language. **Deputy Director Reese** affirmed that was the correction that DOL was making in their change. **Commissioner Bierbaum** indicated that seemed appropriate.

***House Bill 1346/Substitute Senate Bill 5374 – The Barring List***

**Deputy Director Reese** reported that these companion bills passed out of their respective committees and died in rules. Staff felt that because they both passed out of their committees, there was no objection to the substantive language within the bill. Time will need to be spent working on them next session to provide more detailed information about how we propose to organize our WAC rules to give more confidence to the Legislature.

***Other Bills:***

***House Bill 1449/Senate Bill 5927 – Public Disclosure Exemption for Financial Statements***

**Deputy Director Reese** reported that the Commission voted to support these bills at the February Commission Meeting, and they were still alive. These are the only bills where both companion bills are still alive. The bill passed the House, and the Senate committee conducted a hearing and passed the bill out. On Monday, April 4, the bill passed out of rules and was amended on the floor and passed. The bill will have to go back to the House for their concurrence with the amendments. The amendments resulted in the removal of the retroactive clause, the emergency clause, the requirement that the licensee be placed on notice, and the provision permitting the licensee to consent to the release of the documents. These changes would allow the bill to resemble other public disclosure exemptions. The amendments clarify that this exemption applies only to financial statements of house-banked social card game licensees. The House version is moving forward and the Senate version is dying.

***House Bill 1706 – Sunset Clause for Limited Waiver of Sovereign Immunity***

**Deputy Director Reese** reported that the Commission voted at the January Commission Meeting to support extending rather than removing the sunset clause in this bill, which passed the House and the Senate Committee. Amy Hunter's memo indicated that the bill was amended, but it was not; there were a number of amendments prepared to put a period of years on the sunset clause to renew it, but the amendments were withdrawn. Senate Rules pulled for a second reading on April 10.

***House Bill 1599 – Allowing Raffles by State Employees***

**Deputy Director Reese** explained that the Commission decided at the February Meeting to be neutral on this bill. This bill passed the House and the Senate Committee.

***ESSB 5558 – Limiting Number of House-Banked Card Games/Zoning***

**Deputy Director Reese** stated that the Commission voted to be neutral at the February Commission Meeting. There has been some last-minute tribal opposition to the bill because it freezes the number of house-banked card rooms in locations that were operating or had applied for a new license as of March 31, 2007 (approximately 95 locations). The bill grandfathers all of these locations, approving those jurisdictions which may eventually have been struck down by the courts, and allows house-banked card rooms to relocate only if the new jurisdiction is zoned for gambling and uniformly applies the land use zone. One part of the bill, which Mr. Ackerman assisted with, grants absolute immunity to the Gambling Commission for licensing decisions and interpretations of local ordinances, and prevents any court board from joining with the Commission in such suits. It requires that any ordinance prohibiting house-banked card rooms be subject to the referendum process until July 1, 2010. Bill 5558 passed as amended and is still in rules and on the floor for the second reading.

**Director Day** asked Mr. Trujillo if he was aware of how many new house-banked applications have come in since the amended deadline date of March 31. **Mr. Trujillo** replied that he believed it was a total of three.

**d) Correspondence:**

**Director Day** pointed out two items under the correspondence tab: an e-mail from Mr. Carpenter and a hand written note from Mr. Gross. The e-mail from Mr. Carpenter concerns negative aspects of gambling. A fairly extensive response is in your notebook from Susan Arland, pointing out the various problem gambling programs and aspects. The letter from Mr. Gross concerned tribal gambling and compacts. We have responded to both.

Director Day reported that last month, Commissioner Niemi had expressed concern with 2 percent impact monies, asking how much we estimate come from table games. Assistant Director Julie Lies prepared a memorandum with a table indicating the total tribal revenue estimated and attempted through estimation to reflect approximate amounts of revenues attributed to table games. For 2005, the estimated figure is \$182,800,000. Assistant Director Lies estimated the actual community impact funds at about \$4.5 million, which is a figure we verify. She also estimated how this would generally break down. Most of the tribes have used up the money they are required to under the 2 percent; then they can make additional impact payments under a ½ percent of machines of TLS systems, which is what is reflected. Because of the nature of the various compacts, some tribes will have entered into specific agreements directly with the sheriff's department or the Fire Department for emergency service and payment for those services to offset impacts. These would normally come in as

an impact grant application to the tribe. Payments made by the tribes through those Memorandums of Understanding (MOU) aren't reflected in this community impact section.

Director Day explained the letter from me dated March 30 to the Governor was included to reconfirm that all 27 Appendix X2 Compact Amendments were forwarded to the Governor. The amendments were signed by the Governor on March 30 and have been delivered to the Secretary of Interior for action, which we anticipate will come later this spring.

e) **Monthly Update Reports**

f) **News Articles**

**Director Day** briefly discussed the Administrative Case Update, Seizure Update, Congressional Update, and News Articles.

**Chair Ellis** called for public comment. There was none.

2. **New Licenses and Tribal Certifications:**

**David Trujillo, Assistant Director**, drew attention to three house-banked card rooms for consideration. The report for Big Slicks Casino in Spokane is fine as it stands. The two reports for Drift On Inn Casino and Hollywood Casino are both owned by the same entity. The charts on page two of each report need to be corrected. When charts are updated with new information, at times some old information is not taken off. In the left-hand column there are two boxes, one each for Silver Dollar 6<sup>th</sup> Avenue and Little Nevada III Inc. Both of those were in Tacoma and discontinued operations in October of 2006. They are not operating, and are not part of this chart. In the next column is a box with Hideaway Gaming Inc. which was also sold last year and should not be part of this chart. Staff recommends, with those corrections to the charts, approving the new licenses and Class III licenses listed on pages 1 through 23. **Chair Ellis** asked if there were any unusual issues raised by any of the applications reflected in this report, other than the new applications from the three house-banked card rooms. **Mr. Trujillo** responded that he was not aware of any unusual issues, and said he would be issuing corrected versions of both of those reports.

**Commissioner Niemi** made a motion seconded by **Commissioner Bierbaum** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-23. Vote taken; the motion passed unanimously.

**Chair Ellis** adjourned the meeting for a 10-minute recess at 2:15 to allow staff time to set up for the presentation on cheating. He reconvened the meeting at 2:35 p.m. when Commissioner Rojecki arrived. **Chair Ellis** indicated that we would proceed back to Item 1b on the agenda (go to Item 1b for report).

3. a) **Defaults:**

**Deputy Director Reese** explained that both of the defaults are for individuals and neither is currently working in gaming activities.

**Deborah Kelly, Class III Employee, Revocation**

Ms. Kelly was a Class III employee at the Lummi Tribe's Silver Leaf Casino. The Silver Leaf is in Whatcom County near Ferndale. Staff is requesting that Ms. Kelly's Class III certification be revoked. Ms. Kelly worked as a cage cashier and she force-balanced the cashier cage reconciliation and put money from her drawer into the cashier cage tip pool. Ms. Kelly also took about \$140 of another employee's tip money from the token basket where the employees' monies are held. Both incidents happened on the same day and were recorded on video-tape. The tribe suspended Ms. Kelly's license until it expired on April 4. The Commission had jurisdiction over Ms. Kelly when the charges were issued in February. Charges were sent by both certified mail and regular mail. The certified mail was returned as unclaimed; however, the charges sent by regular mail were not. Our legal secretary made a courtesy phone call to Ms. Kelly and left a message reminding her of the date to request a hearing. By failing to respond, Ms. Kelly has waived her right to a hearing and staff is requesting a default order be entered revoking her Class III certification.

**Chair Ellis** asked if Deborah Kelly was present or if anyone was present on her behalf. Let the record show that no one has stepped forward.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Niemi** that the Commission enter the default order revoking Deborah Kelly's Class III Employee Certification to conduct authorized gambling activities. *Vote taken; the motion was adopted unanimously.*

**Andrew S. Kim, Card Room Employee, Revocation**

Mr. Kim worked as a poker supervisor and dealer at the Skyway Park Bowl in King County, in the Renton area. He failed to report the full amount of money he received from players participating in a poker tournament and subsequently took the \$70 that he failed to record, thereby cheating tournament players out of prizes. The card room terminated him. He left a voicemail for the owner saying he was sorry and that he screwed up. He is not currently working in gambling. Mr. Kim's license expired on March 26; however, the Commission had jurisdiction over Mr. Kim when the charges were issued in January. Charges were sent by both certified mail and regular mail. The certified mail was returned as unclaimed; however the charges sent by regular mail were not returned. The legal secretary tried to contact Mr. Kim, but the person who responded by telephone said that Mr. Kim was not at that number, that it was a wrong number. By not responding to the charges, Mr. Kim waived his right to a hearing and staff is requesting a default order be entered revoking his card room employee license.

**Chair Ellis** asked if Andrew Kim was present or if anyone was present on behalf of Andrew Kim. Let the record show that after several moments no one stepped forward.

Commissioner Niemi made a motion seconded by Commissioner Rojecki that the Commission enter the default order revoking Andrew S. Kim's Card Room Employee License to conduct authorized gambling activities. Vote taken; the motion was adopted unanimously.

b) **Petition for Declaratory Order**

**Dave Swyter, Card Room Employee**

**Bruce Marvin, Assistant Attorney General** stated that we are here today to consider a petition for declaratory order submitted by Dave Swyter dated March 23, 2007. There is a long procedural history, covered in the summary of materials that you received. In summary, Mr. Swyter was charged in December 2004 with administrative charges brought against him to revoke his license for stealing approximately \$104 from the poker podium. Mr. Swyter's initial order subsequently issued revoking the license. The Commission heard the petition for review and issued a final order upholding that initial order. Mr. Swyter filed a motion for reconsideration, which was heard in February, 2007. The reconsideration was denied, whereupon Mr. Swyter filed a petition for declaratory order. It is requested that this petition be declined based on the fact that Mr. Swyter has not satisfied the requirements in RCW 34.05.240 of the Administrative Procedures Act and WAC 230-50-850. Both provisions provide that for a declaratory issue the petition must include a statement saying that there is uncertainty regarding a statute, order or rule that requires resolution. This is not a request for an advisory opinion.

**Chair Ellis** said he understood that Mr. Swyter was not going to be present today, but wanted to confirm for the record whether Dave Swyter was in the room. Chair Ellis requested that the records show that Mr. Swyter was not present. **Mr. Marvin** said that correspondence had been received from Mr. Swyter indicating that he was going to rest on his briefs. Mr. Marvin directed the Commission to the March 23, 2007, petition for a review which asked the Commission to reconsider its denial of the motion for reconsideration. The APA and regulations set forth under the Gambling Act are very clear that the revocation of a license proceeds through administrative hearing. It is not the appropriate topic for a declaratory order or judgment action as presented. The regulations and the APA provide the Commission with four alternatives for handling these types of petitions: they can enter an order making a declaration regarding the applicability of the statute of the order that is at issue; they can set the matter for a specified administrative hearing; they can specify a period in which they intend to issue an order; or they can decline to enter a declaratory order. We request that the Commission decline to enter a declaratory order based on Mr. Swyter's failure to satisfy the declaratory judgment requirement in his petition, on the basis that it would be inappropriate to subject this type of licensing issue to a declaratory judgment action.

**Chair Ellis** noted that in the letter to the Commissioners dated April 4, 2007, Mr. Swyter lists a number of things relating to his failure to be present today and to the action the Commission might take. Mr. Swyter says initially that Michelle Pardee was the paralegal that he talked to. He doesn't identify Michelle, but refers to

Michelle from the legal department, and says that she assured him that at this meeting, the Commission would not have time to address his concerns and that he had no reason not to believe her. Mr. Swyter says that he has a serious medical condition that prevents him from being here, then says that the Commission has sufficient evidence before it to make a proper decision based on facts we already have without him being here. Then Mr. Swyter, what appears to be somewhat ambiguously, says he would like the Commission to set the matter for specified proceedings to be held in no more than 90 days and quotes the statutory language. Do you have any information as to what Mr. Swyter is actually proposing. **Mr. Marvin** answered that his understanding was that Mr. Swyter would like to establish an opportunity to make a personal appearance before the Commission for an opportunity to present his motion for reconsideration. **Commissioner Niemi** asked if Mr. Marvin had an idea what Mr. Swyter was going to give as a reason for the motion for reconsideration, or if Mr. Swyter had written down what he was going to do. **Mr. Marvin** replied that he believed there are indications in the petition for review... **Commissioner Niemi** interjected, "That we acted in bad faith?" **Mr. Marvin** agreed there was that issue, and referred to the motion for reconsideration, which is dated on a hand-written document toward the middle of your packet. **Commissioner Niemi** asked if Mr. Swyter was ever specific about our bad faith. **Commissioner Niemi** said she looked but couldn't find anything. **Mr. Marvin** thought that Mr. Swyter's motion for reconsideration sets forth specific grounds upon which relief is requested. Mr. Swyter is rehashing testimony that was presented before the Administrative Law Judge (ALJ) regarding the testimony of the victim. To give you a quick snapshot of what happened here, Mr. Pfeiffer, the victim, came to the poker podium, accidentally left \$100 on the podium, went home, went through his pockets, and discovered that he was \$100 short. Mr. Pfeiffer called Dave Swyter at the poker podium and asked whether he had seen \$100. Dave Swyter denied that he had seen the money, but said he would do a countdown of the till to see if there was an overage. They subsequently had conversations that night and Mr. Swyter basically said, you know I don't see the \$100; why don't you drop by tomorrow morning and maybe there will be something, some additional information that you could learn. In the meantime, a surveillance video showed Mr. Swyter finding the \$100 on top of the podium, depositing the money into the poker podium drawer. Then about 15 minutes later Mr. Swyter removed \$100 from the poker podium drawer and placed it in his pocket. Through Mr. Pfeiffer's testimony, we established that Mr. Swyter lied to him about having no knowledge of the \$100. The video-tape shows that Mr. Swyter pocketed the \$100 and was obviously being dishonest about what took place. Mr. Swyter tries to catch Mr. Pfeiffer in a trap in the motion for reconsideration by suggesting that Mr. Pfeiffer come back the following day, and that somehow this would exonerate Mr. Swyter's actions. However, Mr. Pfeiffer testified that he was told the \$100 was gone and he saw no reason to go back the following day. Mr. Pfeiffer figured he must have lost the money somewhere along the road. If you look at the ALJ's opinion, he determined that Mr. Swyter's testimony was confusing, inconsistent, and unpersuasive, which is probably a fair summation.

Mr. Marvin said he thought this motion for reconsideration contained similar types of logic that the ALJ encountered and commented on. Mr. Marvin believed the Commission was justified in its decision not to grant the motion for reconsideration. Another thing that comes into play here is that Mr. Swyter filed for the motion for reconsideration in January, then asked for a continuance because he was looking for a job in Nevada in the gambling industry, and wasn't going to be able to attend the hearing in February. He did not provide the Commission with a forwarding address in Nevada, and it was impossible to reach him. The burden is upon Mr. Swyter to make sure the Commission has a current addresses or telephone numbers where he can be contacted. Mr. Marvin stated he could understand why the Commission acted as it did in February, and thought the fact that the Commission went ahead and heard the motion for reconsideration and did not consider granting his motion for continuance was the underlying factor that supports Mr. Swyter's allegations of bad faith.

**Chair Ellis** asked if there were any questions. There were none. Chair Ellis called for a recess at 3:20 p.m. to discuss the petition and reconvened the meeting at 3.25 p.m. Hearing none, why don't the members of the Commission go into the back of the room briefly.

**Commissioner Niemi** made a motion seconded by **Commissioner Rojecki** that the Commission decline Dave Swyter's request to enter into a declaratory order. *Vote taken; the motion was adopted unanimously.*

**Commissioner Niemi** explained the motion to decline Mr. Swyter's request to enter into a declaratory order was made for several reasons. There is no actual controversy that Mr. Swyter has shown the Commission based upon what we said when we affirmed the action of the Administrative Law Judge. There were no facts; we have always had a video of this problem that led to the request to deny Mr. Swyter's license to be employed as a card room employee. Mr. Swyter still has that license and it is particularly important that, as of the time we sign the motion to decline his request for a declaratory order, Mr. Swyter's license as a card room employee be immediately revoked.

**Chair Ellis** added that, in addition to Commissioner Niemi's statement of the motion, the fact that Mr. Swyter has not presented any facts that would rebut what was shown on the video and what the ALJ found in the context of a petition for a declaratory order. My understanding is that the issue is whether there is uncertainty whether a statute or a rule applies to conduct, and Mr. Swyter has presented no issue about whether the statutes apply that provide for the revocation of a person's license for fraud. The only issue that Mr. Swyter raised was whether he committed fraud, so I agree that this is not an appropriate instance for a declaratory order.

**Chair Ellis** called for further discussion. There was none.

c) **Request for Summary Suspension:**

**Bunthoeun B. Toun, Card Room Employee and Class III Employee**

**Deputy Director Reese** reported that while working as a security guard at Midway Casino, Mr. Toun conspired with others to cheat by removing decks of cards from the Midway Casino premises. The cards were later marked by other persons and used to cheat at blackjack games at Midway Casino in 2005. Mr. Toun was implicated by two of his co-conspirators, and admitted to agents that he received \$250 for the decks of cards he removed from the Midway Casino. Staff forwarded a criminal case to the prosecutor, who said he would take the case. Mr. Toun is currently working as a security guard at the Muckleshoot Casino. The two co-conspirators who implicated Mr. Toun pled guilty and are waiting sentencing. Staff is requesting the Commission sign an order to summarily suspend Mr. Toun's Class III certification and card room employee license. **Commissioner Niemi** asked whether working as a security officer was the same thing as conducting authorized gambling activities. **Deputy Director Reese** responded not in terms that you would think, but the security guards have access to a number of areas that would give us concern and they are required to be licensed. **Commissioner Niemi** asked, whether he could work as a security guard any longer. **Deputy Director Reese** answered no.

**Chair Ellis** asked if Bunthoeun B. Toun was present or anyone present acting on Mr. Toun's behalf. Let the record show that no one stepped forward.

**Commissioner Niemi** made a motion seconded by **Commissioner Bierbaum** that the Commission enter an order summarily suspending Bunthoeun B. Toun's card room employee license and Class III employee certification to conduct authorized gambling activities, based upon the findings and conclusions of the order. *Vote taken; the motion adopted unanimously.*

4. a) **Commission Officer Elections**

**Chair Ellis** called for a motion for the position of Chair of the Commission.

**Commissioner Rojecki** made a motion seconded by **Commissioner Bierbaum** electing **Commissioner Janice Niemi** as Chair of the Commission. *Vote taken; the motion passed unanimously (Commissioner Niemi voted aye, making it unanimous).*

**Chair Ellis** congratulated Commissioner Niemi thanked her for her readiness to provide the Commission the benefit of her willingness for another year.

**Chair Ellis** called for a motion for the position of Vice Chair for the year beginning July 1, 2007.

**Commissioner Niemi** made a motion seconded by **Commissioner Rojecki** to elect **Commissioner Peggy Ann Bierbaum** as Vice Chair of the Commission beginning July 2007. *Vote taken; the motion passed unanimously (Commissioner Bierbaum also voted aye).*

**Chair Ellis** thanked Commissioner Bierbaum for her willingness to undertake that role.

**Commissioner Niemi** told Chair Ellis that he has been a wonderful Chair and that he has done as good a job as anyone on the Commission ever has, adding that Chair Ellis may have missed his calling and that he would have made a wonderful judge. You are going to be a hard act to follow. Commissioner Niemi noted that Chair Ellis was not going to be at the next meeting, which was why new officers were elected at this meeting. **Chair Ellis** said he appreciated Commissioner Niemi's comments and that he has enjoyed the opportunity of being the Chair for most of the past year, adding that he may very well be appointed for another term on the Commission, and was looking forward to many more of these meetings. **Chair Ellis** said he appreciated all of the work that has been done by staff, by Director Day, Jerry Ackerman, and the contributions made by all the affected members of the industry.

**b) Other Business/General Discussion/Comments from the Public**

**Chair Ellis** called for public comment.

**Max Faulkner**, Vice President of the Recreational Gaming Association thanked Chair Ellis for his distinguished service and congratulated Commissioner Niemi and Commissioner Bierbaum on their elections, adding that he looked forward to working with the Commission this coming year. Mr. Faulkner congratulated Commissioner Rojecki on his Senate Confirmation. **Commissioner Rojecki** said "Not yet." **Commissioner Niemi** added that it was just a hearing. **Chair Ellis** explained there was still a process to go through, adding he was sure Commissioner Rojecki appreciated the spirit of your comment.

**Gary Murrey**, Great American Gaming Association, testified that he enjoyed the presentation on cheating that was given earlier today by Agent Schulte. Mr. Murrey noted that the gaming industry is faced with the gaming public and our front line to help stop any cheating is the front line staff in the surveillance room and the supervisory staff on the casino floors. It occurred to Mr. Murrey that this training should be out there for the card rooms and should be one of the priorities of the Commission to provide that training to the front line staff, while or before it is happening, not later on. If the staff watching the games doesn't know what to look for, how can they catch the cheating or stop it? How can we prevent cheating and create more of a barrier to make it less enticing for people to attempt? Mr. Murrey asked the Commission to look for a way to provide in-depth, high-level training to the front line staff in an attempt to catch the cheaters. **Chair Ellis** replied that he felt sure commission staff would be open to that possibility. **Director Day** explained that, as you have seen from the video, a number of the individuals involved in those examples are card room employees. The difficult challenge, both for owners and for agency staff is, although we want to create a supervisor rank and an awareness with the dealers and the supervisors, we also do not want to go into any more detail than is necessary about how agents are going to detect and process cheaters. Attempting to

come up with something that may help, particularly with the supervisory ranks, to increase some awareness will be difficult. A lot of what Agent Schulte was trying to say had to do with procedures and internal controls. In many cases, people question why gambling agents are so particular about the policies regarding how a game is dealt, where you put your hands, etc. Surveillance is the same way. Director Day thought the best approach would be to continue emphasizing those standard procedures. If those standard procedures are being followed, at the very least you don't appear like you are cheating and actually have less possibility that you are going to cheat. That also works for surveillance; if someone is stepping outside of the bounds, or something is being done that doesn't follow house procedures, it does in turn help surveillance identify them. Director Day added we would definitely support Mr. Murrey's concerns; one of the critical areas is the surveillance. When I once asked an agent "how do you know that's cheating?" he replied "because the surveillance guy told me and I can see it now." Director Day noted that the job the surveillance staff do is very critical, and that may be the area where we can work together to find some way that will help.

**Chair Ellis** asked if there were any other members of the public who would like to address the Commission. There were none. At 3:40 p.m., **Chair Ellis** called for an executive session to discuss pending investigations, tribal negotiations, and litigation. He called the meeting back to order at 5:10 p.m., and immediately adjourned the meeting.

**COMMISSION MEETING  
FRIDAY, APRIL 13, 2007  
DRAFT MINUTES**

**Chair Ellis** called the meeting to order at 9:30 a.m. at the Red Lion Hotel located in Pasco and introduced the following attendees, noting that Commissioner Peggy Ann Bierbaum had been here, but had to leave unexpectedly:

**MEMBERS PRESENT:**     **COMMISSIONER JOHN ELLIS, Chair**, Seattle  
                                  **COMMISSIONER JANICE NIEMI, Vice Chair**, Seattle  
                                  **COMMISSIONER KEVEN ROJECKI**, Tacoma

**STAFF PRESENT:**       **RICK DAY**, Director  
                                  **SHARON REESE**, Deputy Director  
                                  **MARK HARRIS**, Assistant Director – Field Operations  
                                  **DAVE TRUJILLO**, Assistant Director – Licensing Operations  
                                  **JERRY ACKERMAN**, Assistant Attorney General  
                                  **GAIL GRATE**, Acting Executive Assistant

**5.     Approval of Minutes:**

Commissioner Niemi made a motion seconded by Commissioner Rojecki to approve the minutes of the regular meeting of March 8 and 9, 2007, as presented. Motion passed unanimously.

**Rules Up for Final Action**

**6.     Rules Simplification Project – Card Room Rules *(These rules won't become effective until 01-01-08)***

- a) **New Section WAC 230-15-065** - Enforcement of card game rules of play.
- b) **New Section WAC 230-15-126** - Cutting cards in center dealer dealt games.
- c) **New Section WAC 230-15-150** - Selling and redeeming chips.
- d) **New Section WAC 230-15-275** - Surveillance requirements for Class F card rooms.
- e) **New Section WAC 230-15-285** - Camera and monitor requirements for closed circuit television systems.
- f) **New Section WAC 230-15-320** - Surveillance room requirements for house-banked card game licensees.
- g) **New Section WAC 230-15-400** - Accounting for player-supported jackpot funds.
- h) **New Section WAC 230-15-430** - Internal control requirements.
- i) **New Section WAC 230-15-475** - Tips from players and patrons to card room employees.

**Beth Heston, Project Manager**, clarified for the record that at the March Commission Meeting, she referred to GAAP, Generally Accepted Accounting Principals, when in reality it should have been GAAS, Generally Accepted Auditing Standards. The rules in

item 6 a) through h) were rules that during the process of having card game rules on the agenda were commented upon by the public and several significant changes were made to them. Those rules were pulled from the packet and put on a separate track to provide plenty of public notice about the changes that were made. These are the last of the card game rules. In January, a petition to change WAC 230-40-855, the tip rule, was adopted. The last rule in this section, WAC 230-15-475, will be before you once more in the housekeeping package. After the January passage of the rule petition, there were comments from the field on the changes that were made, so staff is going to do one last correction to the rule before it goes into the final packets.

Commissioner Niemi made a motion seconded by Commissioner Rojecki to adopt WACs 230-15-065, 15-126, 15-150, 15-275, 15-285, 15-320, 15-400, 15-430, and 15-475 as presented by staff, with an effective date of January 1, 2008. Vote taken; the motion was passed unanimously.

**7. Rules Simplification Project–Charitable/Nonprofit Rules**

**New Chapter WAC 230-07** - Charitable and nonprofit rules.

*This chapter won't become effective until 01-01-08.*

**Ms. Heston:** reported that these rules have been before the Commission twice. Ms. Heston clarified that “BAP” stands for Brief Adjudicative Procedure and is a term used by the Administrative Procedures Act (APA) to cover the processes of Administrative Hearings.

**Chair Ellis** asked if there were any questions, then called for public comment. There was none and the public hearing was closed. Chair Ellis asked the members of the Commission if there was any objection to treating this group of rules as a package or whether they would prefer to break out any particular rule for individual discussion and action. There was none, so they will be treated as a package

Commissioner Niemi made a motion seconded by Commissioner Rojecki to adopt new Chapter 230-07, in its entirety, as presented by staff, with an effective date of January 1, 2008. Vote taken; the motion was adopted unanimously.

**8. Rules Simplification Project – Bingo Rules**

**New Chapter WAC 230-10** - Bingo rules.

*This chapter won't become effective until 01-01-08.*

**Ms. Heston** reported on changes made to this Chapter 10 since last month. WAC 230-10-180, having to do with requirements for electronic daubers, and WAC 230-10-235, dealing with instant winners in hidden face bingo, are being pulled and will reappear in the housekeeping rules.

**Chair Ellis** asked if any members of the Commission had a concern about the Commission discussing and taking action upon these rules as a group or if they would prefer to break out any individual rule. There were no concerns. **Ms. Heston** recommended making the motion for all the rules in the packet except for the two that

were removed. **Chair Ellis** agreed, and called for public comment. No one stepped forward and Chair Ellis closed the public hearing.

**Commissioner Niemi** made a motion seconded by **Commissioner Rojecki** to adopt new Chapter 230-10, with the exception of WAC 230-10-180 and WAC 230-10-235, as presented by staff, with an effective date of January 1, 2008. *Vote taken; the motion was adopted unanimously.*

### **Rule Up for Discussion**

**9. Petition for Rule Change from Nickels and Dimes, Inc. – Amusement Game Wagers Amendatory Section WAC 230-20-685 - Commercial amusement games – Wager and prize limitations.**

**Mark Harris, Assistant Director** reported that the petitioner requests that amusement game wagering limits be increased from 50 cents to \$2 for regional shopping centers, movie theaters, bowling alleys, miniature golf courses, skating facilities, amusement centers, restaurants, department stores, and grocery stores. The petitioner originally requested to increase prize limits from \$200 to \$600, which the petitioner withdrew at the March Commission Meeting. Most amusement game activities that have wagering limits and prize limits occur where there is no supervision and minors are allowed to play. The petition would significantly increase the cost to play in areas with uncontrolled environments and may require the agency to increase regulatory programs in those areas. In contrast, one example would be that a pull-tab costs a dollar, and is offered in a very controlled environment, highly regulated, and they may also offer merchandise prizes. The petitioner is requesting the \$2 wagering limit so they can offer a new type of crane game with a higher end prize that they are only planning to place at two locations.

Additional agency resources may be needed to respond to complaints, but no additional revenue would be generated to fund the additional oversight. Minimal regulatory resources are currently used to monitor amusement games. As proposed, the petition would offer higher limit games in an uncontrolled environment where minors spend money on the activity.

As a follow-up for information requested at the previous Commission Meeting, included in your packet is a list of states where the petitioner currently has games located. The question was asked what other States, if any, regulate amusement games. New Jersey is the only state that staff is aware of, and the state did not have any regulatory concerns. The limit on the cost per play is \$10 with a maximum prize of \$10,000; although most games only charge between \$1 and \$5, because people do not play the games if they charge much higher than that.

Staff recommends the Commission consider whether the proposal is consistent with the Legislative intent expressed in RCW 9.46.010 and whether the \$2 increase in wagering limits would still be considered entertainment. The petitioner requests the changes be effective 31 days from filing. **Commissioner Niemi** asked if the limit was \$2 now. **Assistant Director Harris** responded the current limit is 50 cents. The petitioner is

requesting the increase to \$2. **Director Day** added that there is no limit on games located in a tavern, where only those over 21 years could access the game. **Mr. Harris** agreed, confirming that the specific locations affected would be where minors can play, such as regional shopping centers, movie theaters, bowling alleys, miniature golf courses, skating facilities, amusement centers, restaurants, department stores, and grocery stores.

**Commissioner Rojecki** asked how many complaints staff currently receives on these kinds of games. **Assistant Director Harris** replied that complaints are very minimal.

**Chair Ellis** asked, as a practical matter, what was the approximate maximum amount of the wagers in machines located in taverns and other areas limited to people who are over 21. **Mr. Harris** estimated they pretty much reflect the current limits placed on the games at the other locations. They don't vary much; I have seen dollar games too. **Chair Ellis** asked, although there would not be an answer to the question, what kind of a prize would someone get in New Jersey that would be worth \$10,000.

**Chair Ellis** called for public comment, and asked if the representative of the petitioner were present. No one stepped forward. Chair Ellis closed the public hearing.

### **Rules Up for Discussion and Possible Filing**

#### **10. Petition for Rule Change from Shuffle Master –Games Played Within a Hand of Cards**

**Amendatory Section WAC 230-40-010** - Social card games – Rules of play – Types of card games authorized.

**Assistant Director Harris** reported that currently no more than two separate games may be played in a single hand of cards. The petitioner's original request at the last Commission Meeting was to change the rule to remove any limits on the amount of games that can be played in a single hand. When the petition was up at the March 2007 meeting, Roger Snow, representative of Shuffle Master, withdrew the petition and said he would resubmit a revised version. The current petition would allow three hands to be dealt or played in a single hand of cards, instead of two. This was to allow the progressive jackpot to be added to a game like three-card poker that currently has two hands within it, and it would allow the jackpot to make a third hand. In your packet is a copy of a sample layout of a similar type game they are proposing. The difference between a progressive jackpot and a player-supported jackpot is that a progressive jackpot is offered on house-banked card games where players can place an additional wager on a specific outcome and part of the wager accrued to the jackpot goes back to the player and part goes to the house; and a player-supported jackpot goes into a separate fund and all the proceeds go back to the players. In May 2000, permanent house-banked card room rules were adopted limiting the number of games that could be played in a single game to two. At the time, the limit was chosen because no games at that time offered more than two hands and it was a way to control the separate number of wagers within a single hand. Tribal casinos are currently not limited on the number of games they can play within a single hand. This new version being proposed of three-card poker with a progressive jackpot is not currently on the list for tribal casinos, so this would be a new variation. Currently only five tribes offer just three games with three hands.

**Chair Ellis** asked whether staff had any information from the five tribes offering the three games per hand as to regulatory problems or player confusion based on the number of games involved in each hand. **Assistant Director Harris** responded that he had talked with Julie Lies, who had checked with the five tribes and they had not noted any concerns. **Commissioner Niemi** asked whether the agency regulates cheating at the tribes and whether we could anticipate how large the cheating problems would be. **Assistant Director Harris** responded that the regulatory side is different with non-tribal casinos. In non-tribal casinos, we are the primary regulatory agency; in tribal casinos, the primary regulators are the Tribal Gaming Agency (TGA) and our role is more of an oversight.

**Chair Ellis** called for public comment.

**Warren Montney**, card room employee/service supplier, testified that the betting round increase would only total \$600. In blackjack, you can bet \$200 on a hand but then you can split it three times and double down on each of those hands for a total wager of approximately \$1,200 under our current rule. So that would not really be an expansion of gambling.

**Ralph Bell**, sales representative for Shuffle Master, testified that Shuffle Master wanted the change to add a progressive/bonus bet at \$1 to existing games which currently allow two games within one hand.

**Gary Murrey**, Recreational Gaming Association (RGA), testified that the RGA supports filing this petition for discussion. **Chair Ellis** asked how many different card games this rule would apply to and whether the Shuffle Master game was the reason for the petition. In Pai Gow Poker, how many different games are there where three games are involved? **Gary Murrey** responded that Shuffle Master has three different games: Fortune Pai Gow, three-card poker, and one other. Shuffle Master had to change the pay tables to adjust for a third bet to be approved in Washington. There are 300 new games out all the time, but the number that is popular in play is minimal. **Assistant Director Harris** added that there are nine games that allow three hands, which are offered in Washington at tribal casinos, and two that have multiple games.

**Commissioner Niemi** made a motion seconded by **Commissioner Rojecki** to accept for filing and further discussion amendatory section WAC 230-40-010, as presented by staff. *Vote taken; the motion was adopted unanimously.*

11. **Petition for Rule Change from Porterhouse – Dealing Card Games by Hand**  
**Amendatory Section WAC 230-40-800** - Operating rules for house-banked card games. **Assistant Director Harris** reported this petition for a rule change was submitted by Robert Otto, a licensed card room manager, and is up for discussion and possible filing today. All house-banked card games must be dealt using a shuffler or a dealing shoe. The petitioner would like to add wording to the current rule that if the game is dealt using a single deck of cards, the game may be hand dealt provided a protective cover is used to conceal the bottom card. The petitioner is specifically interested in the ability to hand

deal Pai-Gow type games; however, the revised rule would allow dealers to hand deal any single deck card game. In house-banked card rooms, cards can be shuffled using hand or an electronic shuffling device. Cards must be dispensed to players from a shoe or a shuffling device, which are the only two approved methods. The purpose of using the shuffler or dealing shoe is to reduce or minimize the risk of dealers neglecting cards or cheating. By using these devices, dealers do not hold the shuffled decks of cards in their hands, providing less opportunity for dealers to manipulate the random distribution of cards. The petitioner states in his letter that the current requirement imposes unreasonable cost on the smaller card room operator because they must lease electronic shuffling devices to offer certain types of games. The petitioner further states that other options for using the dealing shoe in some games would dramatically slow down the game to where players would not play the game. The petitioner believes by allowing hand dealing, card room operators could reduce their expenses and make it more cost effective for smaller operators, allowing them to compete with the larger card rooms. Most of the proprietary games that are offered require the use of a shuffler. If the rule was changed, it would be the manufacturers' decision whether to allow hand dealing on their games. Currently, the two most common non-proprietary games are blackjack and standard Pai-Gow poker. Hand dealing house-banked card games may increase the opportunity and risk of card manipulation; the opportunity may increase the number of dealer's cheating cases and the amount of time the agency uses to investigate and prosecute these cases.

Staff contacted New Jersey, California, and a Washington tribe that allow hand dealing. All three indicate they there was no significant impact on their regulatory work. In all three jurisdictions, hand dealt games seem to be used on a limited bases and were mostly for single or double deck blackjack and Pai-Gow games. It does not appear that hand dealt games would drastically change the way card rooms currently operate. For most single deck blackjack games, it does not appear it would be a popular alternative for Pai-Gow because it would slow the game down. Comments received from other jurisdictions indicate that hand dealt games are being used on a limited basis, specifically for single and double deck blackjack. Operators offering hand dealt games would be required to include additional dealing procedures and internal controls. Additional procedures would include staff review time. Based on the three jurisdictions contacted, it appears the impact on the agency if any would be minimal; however, the proposed change may increase the number of cheating cases investigated. Although most agents have been trained on dealing and cheating schemes, they are still very difficult to detect, and additional staff training may be needed in this area.

Staff recommends filing the petition for further discussion. **Chair Ellis** noted that the staff memorandum concerning the proposed rule indicates that hand dealing may not be popular for Pai-Gow type games because it may slow the game down. The petitioner implies the reason for submitting the petition is specifically for Pai-Gow poker. **Mr. Harris** explained there are two separate issues in the petition. Most Pai-Gow games are dealt with a shuffling device where the shuffler kicks out the seven cards for each hand and the dealer just passes the cards to the players, which is relatively quick. The petitioner's main concern was the cost of the shuffling device. If a shuffling device is not

used, the dealer would have to shuffle the cards, put them in a shoe, and then hand deal them, which would take substantially more time. That would be the alternative if the licensee did not want to use the shuffler. If allowed, the hand dealt would be quicker than dealing from a shoe, but it is still slower than coming from a shuffling device.

**Chair Ellis** called for public comments concerning the proposal.

**Robert Otto**, petitioner, explained even if a game was slowed down temporarily by hand dealing, a casino that only opens a game two or three days a week doesn't necessarily warrant having a \$600 shuffler. Once we hand deal the game and then find out it has the volume needed, that would warrant a shuffler. We are going to put the shuffler in to keep the hands up, but we don't have the option of seeing whether a game is going to warrant a shuffler. In Pai-Gow, the setting of hands is random so the dealer would deal the hands out and then a random number generator would be used to produce the number the hand would start at. So as far as manipulating the deck, it would not do any good because it is not necessarily known where the hands are going to go. There is a risk on games such as blackjack, but in a game of single deck blackjack if the dealer wanted to stack the deck or manipulate the cards in some way, the dealer would do so before putting the cards in the shoe. I hope you will seriously consider this petition.

**Max Faulkner**, Vice President of the Recreational Gaming Association (RGA), asked that the Commissioners file this petition for further discussion. It is new to the RGA and members would like some time to consider any ramifications. Speaking not for the RGA but for myself, when we first started in house-banked games I was glad that the Commission made us deal out of a shoe, because, at least for black jack, it was fairly simplified. The cards were face up and the players didn't touch the cards; making it fairly easy to regulate. But that was nine years ago and we were new at the business. Now we have become more sophisticated at hiring and knowing what to look for and have better surveillance, security, and game protection. Personally, I feel a lot more comfortable now that we have been in the business quite awhile to be able to police a hand pitched game. **Chair Ellis** noted that the proposal would permit hand dealt games only if a single deck of cards were being used. How many games are there where multiple decks of cards are used that would not be subject to this rule change? **Mr. Faulkner** replied that would include most of the blackjack in this State and most of the Spanish 21, which are multiple decks. Texas Shoot Out is a Holdem' based game and uses a multiple deck, but pretty much everything else is single deck. There are a number of Texas Holdem' based table games coming out that are single deck and a bit cumbersome to deal, even out of a shuffler machine. Generally, the more cards the player gets, the longer it takes to deal out by hand and the more beneficial the automatic shufflers are. But if you only have to deal two cards to a player like in Two Card Texas Holdem's starting hand, it is fairly quick to deal by hand. **Chair Ellis** asked whether in the situation that Mr. Otto described where a card room only had a table open a few days a week, there would be no particular reason to need to use multiple decks for blackjack; a single deck could be used until they got to the point where it was economically feasible to use a shuffling machine. **Mr. Faulkner** affirmed, noting that with single decks there is a

better player edge and could facilitate card counting, which is legal but tough for the owner to police and protect themselves.

**Warren Montney**, Badabings Big Games, testified that Robert Otto would like to put my Pai-Gow game in his casino as a second Pai-Gow game. On this side of the state, there are many card rooms in smaller towns that only have three or four tables open during the week. But on the weekend when Friday night is payday the card rooms want to have all of their tables open. These casinos cannot justify the cost of a game lease, a shuffle machine, a dealer, and the other labor involved to make that game profitable for a five-hour push on a Friday night; you will find that these casinos will instead have a blackjack table with no side bet. This petition would allow those casinos to have games on busier Friday and Saturday nights; it would make those tables more profitable and make the industry as a whole more profitable. I think it is important that the card rooms have the ability to maintain a profit margin, even in a smaller market.

**Commissioner Niemi** said she was impressed by the cheating lecture provided yesterday. It seems obvious that there are at least two things that Agent Schulte mentioned that could come up under this rule change, like seeing the final card and the way the decks are shuffled. I would like to hear more about how cheating relates to this change and more about the problem Mr. Faulkner initially explained. I think we should have more discussion about it. **Chair Ellis** noted that the rule as proposed would require a protective cover be used to conceal the bottom card when hand dealing is used, which would address that particular method of cheating. **Commissioner Niemi** asked for further information from our agency cheating expert. **Chair Ellis** asked Assistant Director Harris to make a point at the next meeting, assuming that the petition is accepted for filing, to address the extent that hand dealing might facilitate cheating. **Assistant Director Harris** agreed.

**Commissioner Niemi** made a motion seconded by **Commissioner Rojecki** to accept for filing and further discussion amendatory section WAC 230-40-800, as presented by staff. *Vote taken; the motion was adopted unanimously*

**Chair Ellis** commented that this petition would now be subject to our revised approach to the number of times a petition is on the agenda; that this petition will not be on the agenda for discussion again, but will be up for final action the next time it appears on the agenda. **Director Day** said that was correct, unless the Commissioners believe it needs to be put on the agenda for discussion next month. **Chair Ellis** asked whether the petition would be up for final action. **Director Day** affirmed it would be up for final action in August.

**Chair Ellis** informed Mr. Otto that the August meeting would be in Vancouver.

12. **Rules Simplification Project–Amusement Games**

**New Chapter WAC 230-13** - Amusement game rules.

*This chapter won't become effective until 01-01-08.*

**Ms. Heston** reported that Chapter 230-13 will be running parallel with the petition from Nickels and Dimes. If the Nickels and Dimes petition passes, staff will have a companion simplification rule so the change is made at the same time. Ms. Heston explained the changes to Chapter 13, which can be found on the Rules Summaries, mentioning that duplicative or redundant language has been removed. "Operator" has been defined to mean both "licensed" and "unlicensed" charitable or nonprofit organizations operating amusement games." The word "may" was changed to "must in the section on strength-based amusement games" because staff felt that when the rule was originally written the more stringent language was intended. In WAC 230-13-060, the use of "combined scores" to determine winners has been removed because there are no games that could do it. WAC 230-13-090 adds a definition and requirements of "attended amusement games." Record keeping requirements for commercial amusement games was unnecessary and was removed from WAC 230-13-170.

**Chair Ellis** asked whether Ms. Heston had received input from members of the industry affected by this package of rule changes. **Ms. Heston** responded that stakeholders were invited to take part in our small group meetings, but no one attended. Staff sent drafts of the new rules to them, but no comments have been received. **Chair Ellis** asked whether these rules would be the subject of a work session before one of the next Commission Meetings. **Ms. Heston** affirmed the rules were at last month's study session and no comments were received. **Chair Ellis** felt most of the changes appeared to be deleting unnecessary cross references and phrases as opposed to making substantive changes in how the industry should operate. **Director Day** explained it was routine for any rule changes to be put on the study session for discussion in the intervening or second month, and then they will come back to the Commission for final action.

**Chair Ellis** asked if there were questions from the Commissioners or members of the public. There was none.

**Commissioner Niemi made a motion seconded by Commissioner Rojecki to accept for filing and further discussion new Chapter 230-13, as presented by staff, with an effective date of January 1, 2008. Vote taken; the motion was adopted unanimously.**

13. **Rules Simplification Project – About the Commission**

**New Chapter WAC 230-01** - About the commission.

*This chapter won't become effective until 01-01-08.*

**Ms. Heston** explained changes made to Chapter 230-01. WAC 230-02-010 and WAC 230-12-090 are being repealed because they already appear in RCW 9.46.040 and RCW 9.46.050. WAC 230-01-001 is being repealed because it is an APA and RCW requirement requiring at least two weeks advance notice of our meetings; we exceed that requirement. This chapter was created out of a number of other rules chapters because there is currently not a chapter specifically about the Commission. This new chapter provides information in one location on how to contact us and information on the rule

making process. **Chair Ellis** provided Ms. Heston with some written proposed stylistic changes to the new section WAC 230-01-001.

**Chair Ellis** asked if there were any questions by members of the Commission and called for public comment. There were none.

**Commissioner Niemi** made a motion seconded by **Commissioner Rojecki** to accept for filing and further discussion new Chapter 230-01, as presented by staff, with an effective date of January 1, 2008. *Vote taken; the motion was unanimously.*

**14. Business/General Discussion/Comments from the Public/Adjournment**

**Chair Ellis** opened the meeting for public comments. There was none.

**Director Day** stated, on behalf of staff, he would like to thank Chair Ellis for his service over this past year as Chair. It has been a pleasure working with you. **Chair Ellis** said he had been glad to do it and appreciated all the help he has gotten from members of the staff over the course of the year. **Director Day** looked forward to seeing Chair Ellis in August, adding that we look forward to working with Chair Niemi during her last term on the Commission.

With no further business, **Chair Ellis** adjourned the meeting at 10:45 a.m., and noted the next meeting would be conducted at the Heathman Lodge in Vancouver.

Minutes submitted by,

Gail Grate  
Acting Executive Assistant