

ETHICAL OVERSIGHT COMMITTEE
ACBL AS TO SHERMAN GAO

Charges of ethical misconduct under Code of Disciplinary Regulations (CDR) 3.2 (violation of ACBL regulations—specification: psyching) and 3.20 (cheating and other ethical violations—specification: unauthorized information) were initiated by Joe Jones, ACBL Executive Director against Sherman Gao on February 25, 2019. The requirements of CDR 2.2.6(b) being fulfilled, the Ethical Oversight Committee (EOC) has proper jurisdiction. The Complaint was amended—after motion and opportunity for response—to include additional, subsequent exemplars of the charged misconduct.

Following the filing of the Complaint, the membership of the EOC was contacted, and members who had no basis for self-recusal were asked to indicate their availability. From the members available, EOC Chairman Peter Boyd assigned Bob Glasson as Chairman and Kevin Bathurst, Cheri Bjerkan, Brian Platnick and Eddie Wold as panelists. The names of the EOC members appointed to the hearing panel were disclosed to both parties well in advance of hearing, and opportunity was afforded for objections or challenges in accordance with CDR 5.1.9. There were none.

Prior to the hearing, acting under CDR 5.1.6 (see also CDR 5.1.10), Chairman Glasson directed the parties to provide a list of their witnesses, a summary of expected testimony of each witness, and any documentary or demonstrative evidence to both EOC and the opposite party according to sequential deadlines. The evidentiary materials and charging documents were compiled by Compliance Coordinator Sabrina Goley and provided to the parties, representatives, and EOC personnel with a table of contents, and supplemented with additional materials submitted on behalf of the Charged Party with Mr. Glasson's approval following a final prehearing conference (by telephone) on July 12, 2019.

The EOC hearing convened on July 22, 2019 at the Cosmopolitan Resort & Casino, Las Vegas, NV at 9:00 a.m. Chairman Glasson presided, and panelists Eddie Wold, Cheri Bjerkan, Brian Platnick, and Kevin Bathurst were present. Allan Falk was present as legal advisor to the Ethical Oversight Committee. Charging Party Representative Robb Gordon (National Recorder), Charged Party Sherman Gao, and Charged Party Representative Andrew Collins were also in attendance, joined by Charged Party expert witness Bo Liu.

Chairman Glasson directed that all witnesses be sequestered, and admitted to the hearing room only during their own testimony; expert witness Bo Liu was permitted to remain in the room to assist Mr. Collins. Witnesses were instructed not to discuss the case among themselves, but to wait nearby to be summoned conveniently at the appropriate time.

After introductions, the Chairman invited the party representatives to present opening statements. Mr. Gordon outlined four categories of evidence: excessive/unsportsmanlike psyching, misuse of unauthorized information, coffehousing, and “wires” (use of unauthorized information from extraneous sources), and referenced the packet materials in support. Mr. Gordon noted that, unlike some prior EOC matters, this was not a case involving the most egregious ethical misconduct.

In his opening statement, Mr. Collins began by reviewing Mr. Gao's personal history, including his immigration to the US in 2012 and his nascent career as a professional bridge player. Mr. Gao's [neurological condition] was referenced to explain some of his behaviors, but not to excuse any ethical violations. On behalf of Mr. Gao, Mr. Collins stipulated to the fact of frequent psyching and the accuracy of the related hand records. As for other problem hands, Mr. Collins contended that the perspective of Mr. Gao and partner was not considered. Mr. Collins emphasized that the enhanced burden of proof (comfortable satisfaction) is on the Charging Party and not Mr. Gao. In closing, Mr. Collins proposed that if opponents were aware of Mr. Gao's [neurological condition] and concomitant limitations with regard to social interactions, there would be far fewer complaints concerning him.

Evidence For Charging Party:

Note: Page number references are to the Packet compiled by the Compliance Coordinator, which is incorporated by reference. The Packet consists of 171 pages (supplemented by an expanded report from Dr. Kang) of substantive material and a separate table of contents which is not part of the record.

Brandon Scheumaker, TD from California, testified regarding the hand on p. 103 that he was alerted to the situation, although no adjustment was requested by the opponents as their result was favorable. Experts were polled and none supported the 4C bid and most opined that bidding 4C would be "insane". All experts also felt that partner's hesitation suggested further action. Scheumaker considered Mr. Gao's action a blatant violation of Law 16B1, the most egregious misuse of unauthorized information he has seen in his directing career. Scheumaker is also the club manager of Mr. Gao's "home" bridge club, and Scheumaker's memo noted that the p. 103 hand was merely the latest in a long line of questionable actions. Scheumaker was troubled by Mr. Gao's penchant for psyching against weaker players ("retirees trying to have a good time"), which led to a club meeting as to what constitutes "unsportsmanlike" psyching. Scheumaker reported that his club decided that a second psychic action in a single session, or any psych against a "C" player, would be considered "unsportsmanlike".

Rebecca Rogers, D17 (NV, Colorado) Recorder, retired TD, testified concerning her interaction with Mr. Gao at the Albuquerque Regional in January, 2019. Ms. Rogers read her letter into the record (p. 16), then noted the related player memoranda (which had been stipulated by Mr. Collins). As a result of Ms. Rogers' counseling of Mr. Gao, an understanding was apparently reached regarding psyching. Other evidence indicated Mr. Gao has refrained from psyching since his conversation with Ms. Rogers.

Mr. Gordon then reviewed packet materials page by page in order, bypassing those involving psychic actions. This summary of particular deals does NOT follow the order of Charging Party's presentation, but instead pigeonholes the evidence into categories corresponding to those identified in Charging Party's opening statement.

Psychic Actions

p. 92/171 Opposite a passed partner, Mr. Gao psyched a 1NT overcall (vulnerability

unspecified) of 1S on a 2-5-2-4 6-count. 4th hand held 3-3-6-1 with two aces, a queen, and a singleton CK; instead of doubling 1NT, 4th hand raised to 2S. Opener bid 4S (there may have been another round of bidding leading to 4S), and 4th hand passed, missing a cold slam.

p. 93/171 After 2 passes, Mr. Gao bid 1NT at favorable on a 2-4-4-3 7-count, catching LHO with an awkward 3-4-6-0 15-count. LHO bid 3D. Although E-W have no fit, they can make 3NT because the AKQJxx of clubs are 3-3). Mr. Gao's partner, holding a 4-3-3-3 11 count, bid 3S and, probably because the 3D bid was understood as a preempt, the 4th player, holding a 4-4-0-5 hand with HAK, had nothing to say. The 3D bidder then neither doubled 3S nor tried 3NT but bid 4D, which was doubled (by Mr. Gao, with 1 defensive trick and a nuisance diamond holding of 9xxx) and down 1 (unlucky—4 losers and nowhere to make one disappear).

p. 94/171 After a 2nd seat 1H (vulnerability unknown), Gao psyched a 1NT overcall on a 4-2-2-5 4-count (spade A). 4th hand had 4-4-4-1 with an ace, 2 kings, a stiff queen and 2 jacks and bid 3H (with a note "after inspecting Gao's Convention Card"¹, showing a NT overcall is 15-18). Not surprisingly, E-W were cold for 5H.

p. 95/171 Psyching After passing in 1st seat on a 3-4-4-2 zero count (C10 prevents the hand from being a proper Yarborough), Gao's partner bid 1H in 3rd position, and 4th hand doubled with a 4-1-3-5 15 count. Gao bid 1S, and his LHO, holding a 3-3-3-4 9 count with SQJ9 and HKQ10 passed instead of bidding 1NT. Gao's partner passed (3-5-3-2), and West doubled again. Gao now bid 2H, and again his LHO passed. West doubled for the 3rd time and now, after Gao passed, E bid 3C. Gao's partner now bid 3H (with 3 aces, a K, and the HJ) ending the auction.

p. 96/171 Psyching Per the original player memo, Mr. Gao's partner opened 1H in 1st chair (West); N doubled instead of bidding 1S holding AJ9xx x AKJ10 KQ9. Mr. Gao (East) psyched a 1S response on a 3-4-3-3 hand with KJ109 of hearts and nothing else. South bid 2D, and N raised directly to 5D (9 card fit), when 4S also makes 5 (8 card fit). The player memo complains that Gao's convention card did not disclose anything about psyching¹.

p. 97/171 Again, Mr. Gao psyched 1NT in 3rd seat at favorable after 2 passes; this time holding a 3-2-6-2 3-count. 4th hand had a 3-4-4-2 16 count and bid a Meckwell 2D (diamonds and a higher suit). Mr. Gao's partner held a 4-3-3-3 11 count and, after much bidding, ended in 4S undoubled (Mr. Gao's partner first bid 3NT, then ran to 4S when that was doubled by RHO; LHO passed 4S with a 3-4-0-6 9-count, and RHO also passed 4S with SAKx *and two red aces*). Best defense nails 4S for down 5, or E-W can make 5H.

¹ There is no longer a reserved place on the ACBL Convention Card for describing a partnership's psyching tendencies. If such information goes anywhere, it would have to be under "other" on the "front" of the card. There seems to be an inherent contradiction in this regard, as explained by Keith Wells, ACBL Technical Tournament Analyst—see Appendices 1 and 2.

Unauthorized Information (UI)
A. UI received from partner

p. 102/171 Following a weak 2H bid, Mr. Gao's partner overcalled 2NT. Mr. Gao, according to his partnership methods, bid 3H as Stayman, holding 4 spades and values for game. Mr. Gao's partner, however, announced "transfer" and, after Gao's LHO passed, Mr. Gao's partner bid 3S. Mr. Gao now bid 3NT, instead of raising partner's 3S to 4S, ending the auction. At the end of play, the director (TD) was summoned, and the TD duly changed the result to 4S doubled, down 3, instead of 3NT, undoubled, down 3. This is the first hand on which the ACC [Anti-Cheating Commission] commented. The allegation is that Mr. Gao took egregious advantage of partner's misinformation (UI) to choose 3NT, no longer expecting the 3S rebid by partner to deliver a four card spade suit.

p. 103/171 Mr. Gao balanced over 2H with 3C, holding 3-1-3-6 (black queens, DA). When LHO now bid 3H, Mr. Gao's partner broke tempo (BIT) with a 4-4-4-1 hand with 4 kings, HKJ10x, SJ and D10, and Mr. Gao now bid 4C, which was bad for his side, since 3H was going down at least 1 and 4C was probably down 2. This is the second hand on which the ACC commented. The allegation is that Mr. Gao acted based on his partner's BIT (UI), having no reason to bid again after pushing the opponents to 3H based on either the actual bidding or his own hand.

p. 105/171 Mr. Gao opened 1C on 3-4-3-3 with the black aces, club J, and HKJ10x. After a 1D overcall, Mr. Gao's partner bid 2D, which Mr. Gao alerted as a transfer to hearts (apparently their system required the client to bid 2S to show clubs). The player memo filed by Max Shireson (playing with Debbie Rosenberg) states, "When N made this explanation, S looked like she swallowed a cat. Her eyes bugged out and her face went pale." The TD was called, and summoned again when, after 3rd hand bid 3S, Gao bid 4H, his partner corrected to 5C, and Gao now passed². [Note: This is the 3rd hand on which the ACC commented, opining

² It is troubling that, although a TD was summoned and ruled that Law 16B was violated and that an adjusted score under Law 12C1 should be awarded in consequence, so far as appears the TD filed no report with either League Headquarters or the National Recorder (or, if such a report was filed with the District Recorder, that did not prove accessible to Management or Mr. Gordon as National Recorder, or it surely would have been presented to the EOC). EOC respectfully recommends to the Board of Directors and Management that policies and regulations should be promptly adopted and implemented to assure that such matters are promptly, accurately, and reliably reported to a League office that can suitably file, cross-reference, and otherwise track such data .

Mr. Shireson's report is dated August 15, 2018, while the incident occurred March 12, 2016. If an experienced player like Mr. Shireson did not report the matter contemporaneously (perhaps mistakenly thinking the TD and appeals committee would do so), the League should do more to encourage player memos and to establish means for filing, cross-referencing, and tracking the data. While duplicative reports might unnecessarily exhaust League resources, non-reporting is an even more serious deficiency in terms of protecting the integrity of the game.

Note: The EOC did not reduce the weight given [*footnote 2 continues on next page*]

that Mr. Gao took blatant advantage of partner's reaction to his explanation of "transfer", on the theory that 5C was a cue bid trying for slam.] Shireson further reports that "we won the ruling" and an appeals committee upheld the ruling. The allegation is that, but for partner's UI, Mr. Gao would not know to pass 5C.

p. 106/171 Holding K9 Q83 AKQ964 A4 Mr. Gao as North opened 1D in 1st seat. After two passes, West balanced with 2D, which Mr. Gao doubled. East bid 2S, and after two more passes, Mr. Gao bid 2NT. East now bid 3S, and, after a BIT admitted by Mr. Gao's partner, both South and West passed, after which Mr. Gao now bid 3NT. TD David White was called, and—after polling 5 players, all of whom passed 3S with Mr. Gao's hand—adjusted the result to 3S passed out. The allegation is that the 3NT bid took advantage of partner's BIT to attribute useful values to South.

Unauthorized Information **B. Transmission by Mr. Gao**

p. 98/171 Mr. Gao is reported to have nodded approvingly when partner correctly explained that his initial 1-level response was unlimited. That Mr. Gao is said to have continued nodding even after the director was at the table dovetails with the evidence³ that Mr. Gao has been diagnosed as suffering from [a neurological condition].

[*footnote 2 continued from previous page*] Mr. Shireson's report based on the time lag between the incident and the report, because Charged Party's expert, Mr. Bo, did not dispute that Mr. Gao's partner transmitted UI more or less as claimed by Mr. Shireson.

³ Given the stipulated evidence that Mr. Gao has been diagnosed as [having a neurological condition] (see below "Evidence For Charged Party", addressing the testimony of Dr. Kang), it bears addressing whether such a disability excuses or mitigates any ethical misconduct. Under Title III of the Americans with Disabilities Act, a place of public accommodation (we assume ACBL qualifies as such) is obligated to provide "reasonable accommodation", provided there is first a request or at least notice of disability. Mr. Gao never provided proper notice (until long after the events at issue) or made any request for accommodation. A person is disabled within the meaning of the ADA if he demonstrates that he has a physical or mental impairment that substantially limits one or more of his major life activities, that he has a record of such an impairment, or that he is regarded as having such an impairment. See *Land v. Baptist Med. Ctr.*, 164 F.3d 423, 424 (8th Cir. 1999); 42 U.S.C. § 12102(2)(A-C).

Granting that Mr. Gao suffers some degree of [neurological condition], "major life activities" do not include activities that, although important to the particular individual, are not significant within the meaning of the ADA. See Land, 164 F.3d at 425 (holding that attending day care is not a major life activity); Colwell v. Suffolk County Police Dep't, 158 F.3d 635, 643 (2d Cir. 1998) (holding that gardening, golfing and shopping are not major life activities), cert. denied, 119 S.Ct. 1253 (1999). Playing bridge would likewise seem not to be a major life activity, and correlatively defending against charges of ethical misconduct while playing bridge would be a subset of playing bridge and also not a major life activity. Nor does the ADA offer a "safe harbor" for violating ACBL's rules and regulations against ethical misconduct. Chenari v. George Washington Univ., 847 F.3d 740, 745-746 [footnote 3 continues on next page]

p. 99/171 Again, Mr. Gao is vaguely accused (no real details) of *transmitting* UI by providing absurdly lengthy and never-ending explanations in response to questions from the opponents during a live auction. This again correlates to [his neurological condition].

p. 100/171 Mr. Gao is accused, during the bidding, of trying to count his partner's key cards after a Roman Key Card response by using his fingers. The reports alleges that Mr. Gao miscounted, signaled the miscount with his fingers, and then signed off in 5S. But his partner passed, and they missed a cold slam.

p. 101 After Mr. Gao doubled for takeout, Mr. Gao's partner bid 3H, and Mr. Gao (allegedly with a smile) then first pulled out his "2H" bidding card, but replaced it with a pass. He had what such dramatics suggested—a minimum with 4-3-2-4.

p. 104/171 Mr. Gao, in 3rd seat, opened 1D on 4-3-5-1 with HK and DAQ. When it came back to him after 1H-2C-4H, he passed with extraordinary rapidity (BIT). His partner held Jx void KJ10xx K98xxx and bid 5D, doubled and down 1. Hearts makes 6 on two finesses.

Coffeehousing

pp. 73-74/171 Vladislav Isporski (playing with Valentin Kovachev) indicates Gao "tanked" with Q10xx when declarer led singleton 9 toward KJ8xx, causing declarer to play the K. The allegation is that Mr. Gao's action comes within CDR Appendix B, Item E10 ("Hesitate with an intent to deceive * * *").

[footnote 3 continued from previous page] (D.C. Cir. 2017) (violating university Honor Code by "stealing time" during academic examination did not protect student with disability from expulsion).

Moreover, a "reasonable accommodation" does not require ACBL to "fundamentally alter the nature of * * * goods, services, facilities, privileges, advantages, or accommodations." 42 U.S.C. § 12182(b)(2)(A)(ii) (2000). Thus, Mr. Gao has to play bridge according to the rules. While he might be excused from use of bidding boxes if he had vision problems or arthritis, or from the "leaner" prohibition if he had an orthopedic problem, ethical misconduct is a fundamental contravention of the Laws and need not be permitted or provided as a form of "accommodation".

Importantly, in his initial communication to EOC, Mr. Collins, after positing Mr. Gao's [neurological condition], conceded that considerations of disability law will not excuse ethical misconduct:

Just as a bridge player with Tourette's cannot receive "special consideration," neither can Sherman receive such "special consideration" for being [neurological condition] individual. His condition is, however, real and relevant to the hearing . . . and the way he plays bridge." (Ellipsis in the original.)

In his opening statement as well, Mr. Collins acknowledged that Mr. Gao's [neurological condition] could not serve to excuse any ethical lapses.

Unauthorized Information UI From Extraneous Sources (“Wires”)

p. 90/171 This hand—which Howard Weinstein, in his capacity as Chairman of the Anti-Cheating Commission, contends “strongly suggests” a “wire”—indicates that the player who made a negative double of 1S with a 4-2-3-4 distribution and triple spade stopper *possibly* had extraneous information that enabled him to avoid an obvious bid (of either 2 or 3NT after 1D by partner, 1S overcall) and so put the “wrong” hand on lead against 3NT. No doubt a reasonable, innocent explanation of the choice of negative double on a 4-2-3-4 pattern is hard to imagine (other than “lost his mind” or “had a brain fart”)—but at various times every player has made a bidding decision later regretted. Charging Party’s presentation claims that it was Mr. Gao’s partner, Sheng, who made the challenged negative double.

p. 91/171 This is claimed to be a second exemplar of unusual bidding suggesting a “wire”. Mr. Gao opened 2D weak, followed by Dbl, Pass, 2H. Holding 3-2-6-2 (none vul), Gao bid 2S; his partner had 5 spades.

Evidence For Charged Party:

After Charged Party obtained a representative fairly late in the proceedings (a retired tax attorney, Andrew Collins, who has a personal relationship to Mr. Gao), additional time was granted for Charged Party to provide his list of witnesses and documentary and demonstrative evidence.

Somers Collins testified as a character witness and read her written statement into the record. Mrs. Collins described herself as a very frequent BBO player, who met Mr. Gao online in 2004, at which time Mr. Gao made himself available to play with her father during his terminal illness. She considers herself a friend of Mr. Gao and firmly believes he loves the game and would not deliberately do anything untoward.

With respect to the 4 exemplars of Mr. Gao allegedly taking advantage of his partner’s UI and the two accusations of “wire”, Mr. Gao’s witnesses proffered the following:

p. 102 Dr. Richard Chan, a Canadian Grand Life Master, testified that he (Dr. Chan) forgot his system, as he was tired, and he remembers the hand, but not the exact holdings, because the TD changed the result to 4S doubled down 3, -800. Having been offered a choice between 4S and 3NT, with only a doubleton spade his choice was easy.

The analysis of “experts” Bo Liu and Wei Peng, presented in both written form and through Mr. Bo’s testimony, questioned whether “we should always play in a suit contract when we find a 4-4 fit when both hands are balanced? If this is true, it is surely against opinions of many experts expressed in many books and articles I’ve read. Gao was just merely making a choice of game bid in case his partner had a square hand with good and/or slower stops in hearts.”

p. 103/171 Mr. Bo conceded that Mr. Gao’s partner displayed “an odd facial

expression”, and that “To Gao, it conveyed that S may have forgotten that her 2D bid was a transfer.” The defense contends that “[Mr.] Gao felt ethically bound to bid 4H, which he suspected might be a bad result but was the only bid which proved that he didn’t use UI.” The defense then argued:

Without UI, S’s 5C bid—which Gao didn’t act upon—could mean only one of two things: (i) a slam try in H, which seemed wrong; or (ii) that S wanted to play 5C rather than 4H. * * * If the 5C bid by S is in issue, it has nothing to do with SG [Sherman Gao] and must be raised in an inquiry about Ms. Mariko Kakimoto.

p. 105/171 The defense first contended “Charging Party submitted no facts to support this allegation.” The analyses of Bo Liu and Wei Peng concede the BIT, but proffer a lengthy analysis of how the opponents’ bidding indicates partner has a useful card and so justifies the delayed 3NT bid.

p. 106/171 After noting that the original reporter, Mr. Isporski, filed memos with differing details, Mr. Gao’s version is that the D9 was led at trick 4, with himself holding Q1073 in front of dummy’s KJ852. Mr. Bo produced the full deal, in which West, with 5-3-1-4, had bid spades and clubs and followed to 2 rounds of hearts and likely had a third heart, so had to be short in diamonds.

p. 90 Referencing the original complaint by Cindy Sealy—who does not specify the directions in which Gao and partner Ming Sheng sat—it is noted (by Messrs. Bo and Wei, who are analysts, not fact witnesses) that Charging Party claims it was *Sheng* who chose to make a negative double of the 1S overcall on a 4-2-3-4 hand with a triple spade stopper.

Additional Character Witnesses:

Evidence of Mr. Gao’s good character and reputation for ethicality was provided in writing by Shailesh Gupta and Andrew Collins. Both verified Mr. Gao’s integrity, love of, and respect for, the game of bridge.

Dr. Kang:

The report of Dr. Cheng Kang, Deputy Chief Physician, Department of Neurology, Longjiang Hospital, Shunde District, Foshan City, China, was placed in evidence, indicating that Dr. Kang diagnosed Sherman Gao as [suffering from a neurological condition] in 2008.

Closing Arguments:

Mr. Gordon noted that [neurological condition] covers a broad spectrum of ability and disability, but does not justify bending ethical standards. Mr. Gordon also discussed the Recorder system and how player memos are investigated, including a principle of confidentiality that precludes “confrontation of accusers” as Mr. Collins suggested was necessary to validate any such information. Occasional player memos almost never lead to disciplinary action; most that appear to identify CDR violations lead to counseling between

the Recorder and the subject. Mr. Gao has been counseled repeatedly and his behavior has not markedly altered, and continuation of the charged conduct is bad for bridge as it discourages other players from competing on an uneven playing field. Mr. Gordon requested that any discipline be designed to “get Mr. Gao’s attention”, because counseling by various Recorders had not had the desired remedial effect, and Mr. Gordon further indicated that any disciplinary sanction not be draconian.

Mr. Collins began his closing argument by noting that [Mr. Gao’s neurological condition] is a continuing condition. Regarding the veracity of those who file player memos, without personal testimony no proper evaluation is possible, and no such memo should be credited. Bridge being Mr. Gao’s profession (aside from electrical engineering), Mr. Collins requested that Mr. Gao’s need to provide for his family be considered. Socially Mr. Gao is unable to cope with being charged with ethical violations and but for Mr. Collins’ involvement would be unable to defend himself. Mr. Collins, who has partnered Mr. Gao with some regularity since 2009, vouched for Mr. Gao’s ethicality and love for the game of bridge.

DECISION OF THE EOC

The standard of proof applied is that Charging Party bears the burden of proving ethical misconduct to a level of “comfortable satisfaction”, defined by the CDR as:

A burden of proof that is met when, after a careful weighing of the evidence and the facts proved by direct, circumstantial or other evidence, the decision maker has a comfortable satisfaction that he or she has reached a correct and just conclusion. It is higher than [the] “preponderance of the evidence” standard but not as high as “beyond a reasonable doubt.

Direct evidence, circumstantial evidence, hearsay evidence, witness statements, mathematical analysis and any other relevant evidence (including evidence from outside of the ACBL) may be used to establish Comfortable Satisfaction. These factors go to the weight given to such evidence and not its admissibility.

Preliminary Matters

Charging Party’s “Background” Material

pp. 79-86/171 Charging Party’s presentation opened with “background” material. That description is accurate regarding pp. 80-82, which warrant no comment.

But pp. 83-86/171 clearly accuse Mr. Gao of offenses under CDR Appendix B, Item E7d (“knowingly or intentionally * * * d. enter an event for which you are not eligible”), which is not charged as misconduct in the Complaint. Aside from the inability of EOC to find a regulation that *mandates* that foreign-born players submit to an analysis of their bridge abilities by management so as to be assigned a masterpoint rating upon first joining ACBL (and Mr. Gordon’s admission that the membership application form gives no such indication), only offenses properly charged may be considered, CDR 5.2.1 and 5.2.3(b). Accordingly, if that

could be the basis for a charge of misconduct, EOC has no jurisdiction over any such charge, and the panel has ignored the accusation in addressing and evaluating the properly charged misconduct.

p. 87/171 It is asserted that Mr. Gao has accumulated a uniquely high number of player memos. The number of player memos may properly be a concern from the perspective of Management and/or the Recorder in terms of initiating an investigation or counseling the player involved, but unless one makes the *unwarranted* assumption that every player memo validly identifies some misconduct subject to discipline (an assumption Mr. Gordon was careful to concede would be false), it is a meaningless datum. When Management files formal charges, its job is to sort the wheat from the chaff and demonstrate that charged misconduct has been perpetrated. Again, the panel has given no consideration to the number of player memos. Those which are part of Charging Party's evidence have been individually evaluated and considered only as to the actual charges before the EOC.

p. 88/171 As a Nationally-rated TD and D17 Recorder, Ms. Rebecca Rogers was clearly put off by Mr. Gao's penchant for psyching—but the exemplars attached to her written report (see below) do not suggest any concealed partnership understanding or other actual impropriety. Other factors are of no relevance to Mr. Gao—for example, as reflected in one of the player memos, Mr. Gao's partner supposedly giggled after Mr. Gao successfully psyched. Undoubtedly, Mr. Gao's partner thereby violated ACBL Codification 3.1.3 (“gloating”) and Law 74A, and was subject to disciplinary sanction by the TD under Law 91A or under the League's Zero Tolerance Policy (ZTP). But EOC is not presently concerned with *her* misconduct—and EOC has no jurisdiction over ZTP violations, CDR 2.2.6(b). Partner's jocularly fails to demonstrate that *Mr. Gao* committed misconduct (as Mr. Gordon again conceded).

Defense evidence and arguments--generally:

Dr. Kang

Mr. Gordon stipulated to accept Dr. Kang's report in evidence at face value. But, as noted in footnote 3 above, [a neurological condition] does not excuse ethical misconduct. The EOC accepts that [the neurological condition] explains (mitigates) Mr. Gao's unfortunate penchant for *transmitting* UI—he perhaps can't help himself but to nod affirmatively when partner correctly explains a partnership agreement, or to prattle incessantly when a question as to partnership understanding is posed to him (as do some non-[afflicted] players)—but, as detailed below, no disciplinary consequences have resulted on that basis. *Mr. Gao is cautioned* (along lines suggested by Mr. Collins) *that he should do whatever is necessary to remind himself, as often as required, to avoid behavior that transmits UI, and request that his partners both do what they can to interrupt such manifestations and, of course, strictly adhere to their own obligations under Laws 16B1 and 73C1.*

Player Memos as evidence

The defense argued that the EOC ought not credit any of the player memos or any witness statements, other than those involving live testimony, submitted by Charging Party,

because all the witnesses are biased and few have been placed under oath or subjected to cross-examination. This point of view is rejected. Oaths are not administered to witnesses in ACBL disciplinary proceedings, and written statements are accepted as evidence (so witnesses need not appear in person, and there is then no opportunity to subject them to cross-questioning). Consistent with CDR Appendix A, Part VI.D, the EOC will ordinarily expect that witnesses testify to (or state in writing) “the truth as they perceive it.” While no hard and fast rule applies, ordinarily there should be a reason—something that suggests a witness is biased, or inaccurate, or lying—before evidence is categorically rejected. While, indeed, it is *conceivable* that all the authors of player memos concerning Mr. Gao are “sore losers” out to avenge poor results by painting Mr. Gao as unethical, or are incapable of perceiving and reporting what they observed at their table, and thus unworthy of credence, experience suggests that is highly unlikely to be correct in theory, and definitely incorrect in this particular instance, inasmuch as most key facts were confirmed by Mr. Bo based on his conversations with Mr. Gao. Bridge players generally try to avoid controversy⁴, and that is probably more true below the expert level, which means that there is no cabal of disgruntled competitors confabulating to use the disciplinary process because they cannot accept being bested at the table by Mr. Gao and partners.

Additionally, several of the key allegations were contemporaneously the subject of director calls and rulings—if Mr. Gao, a professional player, felt the adverse director rulings were grounded in false allegations relating to UI (and Laws 16B1 and 73C), he had the opportunity *at that time* to appeal (Appeals Committees independently judge the facts, but are bound by the law as determined by the TD—Law 93B3). His failure to do so (or at least to do so successfully) confirms that the rulings relating to UI in particular were properly based on facts corresponding to those in the player memos submitted here as evidence.

Character Evidence

The function of character witnesses is to raise doubt as to the weight to be given evidence of wrongdoing. Character evidence thus *may* lead a trier of fact to conclude that direct evidence of wrongdoing ought not be credited because such misconduct would be completely “out of character” for the accused person.

There are two kinds of character witnesses, reputational and opinion. The distinction is important. Reputation character evidence is “that of the [person’s] reputation in the community for the character trait at issue,” *e.g.*, honesty, ethicality, etc., while opinion character evidence is elicited when a person’s character witness provides his or her own personal opinion of “any facet of the [person’s] character,”⁵ Mr. Gao’s character witnesses fall into the “opinion” category.

⁴ Mr. Shireson’s situation is instructive—after calling the TD and receiving a favorable adjustment of the table result, he saw no reason to go to the trouble of seeking disciplinary action. Only after he was contacted over 2 years later and made to realize his prior encounter with Mr. Gao might not be a “one off” did Shireson decide to participate in the disciplinary process by adding his voice to the chorus of accusers.

⁵ *United States v. Curtis*, 644 F.2d 263, 265-268 (3d Cir. 1981).

A trier of fact (here, the EOC panel) evaluating the testimony of an opinion witness must determine two things: (1) how well the witness knows the person, and (2) by what standard the witness judges the person. These witnesses do know Mr. Gao well with respect to the relevant area of bridge. On the other hand, if the witness' judgment is distorted either by such partisanship that the witness would think highly of the person despite misbehavior, or by a warped ethical standard, the witness' opinion may be correspondingly discounted. A strong enough partisan would swear truthfully that the person is of good character even if he has committed the misconduct at issue; a witness who thinks the misconduct at issue is not inconsistent with good character would do the same.⁶

It bears mention that character evidence is most effective countering a single instance of wrongdoing. As discussed in detail below, when, as here, the direct evidence demonstrates 4 instances of similar misconduct, as to most of which the underlying facts are undisputed, character evidence does not reasonably outweigh the direct evidence. Perhaps Mr. Gao does not *intend* to violate the CDR relating to ethical misconduct, but the fact he repeatedly takes advantage of partner's UI, after at least twice receiving score adjustments (presumably accompanied by TD explanations of the reasons), including one procedural penalty, and did not reform his behavior until charges were filed, is highly problematic. Where a novice might be accorded multiple chances to internalize the relevant ethical principles (which are fairly unique to bridge), a professional player who "loves and respects the game" should not require four opportunities to comprehend—and comply with—the principles governing UI (Laws 16B1 and 73C1).

Findings as to Charged Ethical Misconduct

1. Psyching

Mr. Gao clearly perpetrates psychics with much greater frequency than most professional players, and generally successfully in terms of choosing opponents who are unable to cope effectively and situations in which interference bidding rates to be profitable. There is no disciplinary regulation which inhibits players from varying their tactics according to their own judgment of the skills and weaknesses of their opponents or which prohibits factoring vulnerability and position into one's choice of actions. The right to psych is guaranteed by Law 40A3.

Mr. Gao's psychics bear some indicia of pattern—his side is, so far as can be determined, not vulnerable, Mr. Gao is almost invariably facing a passed partner (so Mr. Gao is generally in 3rd or 4th seat), and Mr. Gao always has a weakish hand, often with no truly long suit. But for the lack of a relatively safe escape plan, all this is common sense. Mr. Gao tends to psych 1NT openings and overcalls; on occasion, with support for partner, Mr. Gao will psych a suit (spades) to talk the opponents out of a likely game in that strain. So, on two occasions, one holding a 3-4-3-3 4-count with KJ109 of hearts, and the other holding a 3-4-4-2 zero count, Mr. Gao bid 1S when his partner's 1H opening was doubled for takeout—those are "classic" psychic actions which have been popular among the *cognoscenti* almost as long as contract bridge has been played.

⁶ *United States v. Oshatz*, 912 F.2d 534, 539 (2d Cir. 1990).

There is no evidence that Mr. Gao's partners have any concealed partnership understandings in this regard, or cater to the possibility Mr. Gao may have psyched. To the contrary, on multiple occasions Mr. Gao's partners took action which assumed Mr. Gao had the hand and values he had advertised, and the opponents were poised to achieve good results but for their own sub-optimal bidding decisions that generally turned opportunity for success to disaster. The EOC found not a single hand in which Mr. Gao's partner failed to act with proper values or otherwise did anything to suggest awareness of a possible psych, while on several hands his partners took action that overstated their own high cards or distribution, offering opponents the chance at lucrative penalties.

In at least one player memo, it is suggested Mr. Gao's convention card should reflect his tendency towards "frequent" psyching. But current ACBL policy (summarized in Appendix 1) is that (a) the area of the convention card formerly used for this purpose was removed and (b) since by definition a psychic bid is a deviation from partnership agreement, any attempt to report a tendency toward psyching would create such an agreement and run afoul of the Laws. The lack of a place on the Convention Card to alert opponents to "frequent psychics" *may* be a problem to be addressed by Management or the Board of Directors, but the EOC neither found nor was cited to any applicable regulation requiring disclosure of psyching tendency on the Convention Card, or at the conclusion of the auction (which would be prohibited if the side that psyched were defending, see Law 20F5(b)). Law 40C2 expressly declares that, unless an implicit partnership understanding has arisen, "no player is obliged to disclose to the opponents that he has deviated from his announced methods."

ACBL Codification, Chapter 12, §A ¶1.3 provides that, if a partnership psychs 3 or more times in a single session, the TD should investigate the *possibility* of excessive psyching. The evidence indicates that Mr. Gao psyched 3 or more times at a regional tournament, but there is no indication whatsoever of 3 psychics in a *single session*. The experienced TD (Ms. Rogers) investigated and reported, but took no disciplinary action, indicating, despite her misgivings, she found nothing to establish actionable misconduct.

The EOC's review of the hand records and bidding shows no more than that situations appropriate for psychic action—favorable (or at least non-) vulnerability, a passed partner, a weakish hand (suggesting opponents could make at least game), or alternatively 4-card support for partner's 5-card major and a weak hand, and opponents evaluated (correctly) as incapable of coping—arose with greater than expected frequency during such session(s). Given that there was no evidence of his partners taking any action (or failing to act) that even arguably might have been predicated on awareness that Mr. Gao had psyched, the EOC concludes that no Law, regulation or ethical principle relating to psychic bidding has been shown to be violated.

CDR, Appendix B, Item E3, provides for disciplinary sanctions for "unsportsmanlike, frivolous, or frequent psyching", cross-referencing CDR 3.2 (violation of ACBL regulations) and 3.7 (conduct unbecoming a member of ACBL). The ACBL website (https://www.acbl.org/clubs_page/club-administration/club-directors/rulings-faq/) defines "unsportsmanlike psyching" as

Action apparently designed to give the opponents an abnormal opportunity to get a good score, psychs against pairs or teams in contention, psychs against inexperienced players and psychs used merely to create action at the table are examples of unsportsmanlike psychic bidding

No part of that definition properly applies, except possibly that addressing “psychs against inexperienced players”. But while EOC understands that “psychs against inexperienced players” may cause some players new to duplicate to discontinue playing duplicate bridge, it is impossible to outlaw the choice of tactics based on a player’s evaluation of the opponents’ skills and methods⁷. Suffice it to say that no evidence was presented that the particular opponents who fell victim to Mr. Gao’s psychic actions were actually “inexperienced players”—they were, after all, playing in regional events with no (or relatively high) upper masterpoint limits. Nor was there any proof that Mr. Gao was actually familiar with each of the relevant opponents so that he could be deemed to possess actual knowledge of their putative “lack of experience”. There is a significant difference between “inexperienced” and “incapable”—many highly experienced players have difficulty dealing with 10-12 point notrumps, preempts, etc., yet to impose disciplinary sanctions on their opponents for choosing such legal methods would transform the game into something unrecognizable.

Although Mr. Gao psyched 6 times at the Riverside Regional (California) in January, 2019, no evidence was presented that Mr. Gao psyched 3 or more times in a single session. Likewise, there was no evidence whatsoever of frivolous psyching, and no evidence of unsportsmanlike psyching. Psyching issues should not have been brought before this Committee, as no basis for disciplinary action related to psyching was proffered.

While EOC cautions Mr. Gao that, over time, any regular partners must inevitably become more aware of his psychic tendencies, thereby creating implicit, and prohibited, partnership understandings, the evidence presented fails to establish to the level of comfortable satisfaction that anything relating to psychic bidding rises to the level of ethical misconduct. Mr. Gao has the same right to psych as all other players, and he may resume doing so as his judgment dictates is likely to be advantageous (other than in clubs, like that run by TD Scheumaker, which

⁷ So long as there are events where better players encounter inexperienced or less skilled players, the former are going to adjust their actions based on an assessment of their opponents’ acumen and methods. This is part of the game, and if the weaker players need protection, the *legal* solution (allowed by the Laws) is to segregate them (novice games, 99er games, Flight C events, etc.) so they do not encounter stronger players (a concept fraught with its own negatives), *not* to single out the better players for discipline. So a psych by a player in the midst of a poor session merely to generate action or alleviate boredom would be “unsportsmanlike”, as would a psych to punish partner for misplaying the last hand (or some other slight, or to avoid having to play with partner tomorrow). But a psych to make life difficult for the opponents and achieve a better score than not psyching would likely generate thus cannot be “unsportsmanlike”—and every one of Mr. Gao’s psychic actions seems intended to improve his score. Should there be a protest that it might be nearly impossible to differentiate the one from the other, that is Management’s problem when selecting the cases to file and the evidence to present.

have policies designed to protect the weaker players⁸).

2. Coffeehousing

The Complaint, even after Management was allowed to amend it, charges only violation of CDR 3.20 (“Cheating and Other Ethical Violations”) and CDR 3.2 (“Violation of ACBL Regulations”). While CDR Appendix B, item E10 (“Hesitate with an intent to deceive * * *”) cross-references CDR 3.1, 3.2, and 3.7, the Complaint’s sole specification under 3.2 addresses only the frequency of psyching, and contains no mention of coffeehousing or related proscribed deceptive mannerisms.

Again, the CDR requires that any charge of misconduct be in writing. CDR 5.2.1 and 5.2.3(b). While a Complaint should not be judged by a technical legal standard, neither can misconduct be charged in language so general, or misleading, that the Charged Party is not fairly apprised of the allegations (s)he must defend. If Management has not opted to charge coffeehousing with some fair degree of specificity, it is not within EOC’s jurisdiction, as an adjudicative body, to revise the Complaint on its own authority. In this instance, however, the Charged Party’s own evidence directly addressed the single incident and even provided the missing hand record and the auction, so procedural fairness is satisfied and the issue may be resolved.

The particular incident is troubling. The excuse that Mr. Gao had to consider whether to cover the 9 rings hollow. Mr. Gao’s expert analysts postulate that declarer might have 964, 96, 94, or singleton 9—which leaves partner with singleton DA, or A4, A6 or A64. Covering is pointless no matter what—either declarer intends to run the 9 (with a 3 card holding) or play the K or J (with a 1 or 2 card holding). Mr. Gao’s expert analysts concede he studied for “10 to 15 seconds” before playing low. The bidding indicated declarer had a minimum of 9 black cards, and in the play declarer had shown 2 hearts already and almost surely held a third (else Mr. Gao’s partner would have competed to 3H with HAKQ109x and DAX after a 2H response), leaving declarer with a singleton diamond.

Thus, the full hand record indicated that, at the crucial moment, Mr. Gao had sufficient information from the bidding and play at that point to deduce that the D9 was a singleton. There is a significant difference, particularly for disciplinary purposes, between a “fumble” and a studied delay—the former tends to be subject to Law 73D1, so that an opponent draws an inference at his or her own risk, while the latter may fall under Law 73D2 and constitute prohibited deception by way of mannerism.

This being a single incident out of evidence covering a 3 year period, the EOC admonishes Mr. Gao not to repeat such behavior. In situations where he finds that he has taken time to consider his play only to realize that low is correct, announcing “Sorry, no problem” is

⁸ Although doubtful a club can define “unsportsmanlike psyching” for itself, EOC expresses no opinion on whether such club policies are valid, given Law 40; that is a matter for Management and the Board of Directors to address.

the proper ethical action, even though it may be tantamount to admitting that one does not hold the ace.⁹

3. Unauthorized Information—Transmitted by Mr. Gao

Generally, *transmitting* UI does not seem to be part of the formulated charges against Mr. Gao—suggesting that all such evidence was a distraction. In any event, the usual understanding is that *transmitting* UI is not itself a violation of the Laws. If *partner* acts based on UI, THAT is a violation of Laws 16B1 and 73C1.

There *could* be situations where a player attempts to transmit what he intends as a collusive illegal signal (perhaps forgetting today's partner is not part of a collusive agreement), which would plainly be covered by CDR Appendix B, Item E19 (E16 would apply if partner were privy to the illicit arrangement, even if partner misinterpreted or simply missed the signal). But no evidence suggests Mr. Gao was so engaged, and certainly his partners either did not receive whatever UI was being transmitted, or did not act upon it.

p. 98/171 Mr. Gao's questioned bid—1S—was said at the table to have denied a 4-card major according to his partnership agreement. Whether that was a correct explanation (so Mr. Gao chose to suppress his 4 card spade suit) or an error by Mr. Gao's partner (misinformation), Mr. Gao and partner missed their 4-4 spade fit, and instead reached 3C, which rated to fail unless declarer drops the offside SQx (which, if done in 3S, would generate +140). However, the opponents competed to 3D, which should have been down 1 for a non-double dummy par-beating result for the opponents. Mr. Gao's affirmative nodding appears to have had no effect whatsoever on the bidding or play.

p. 100/171 An e-mail from Mr. Gao's partner, Shailesh Gupta, asserted that Mr. Gao's fingers were not in the middle of the table, but that Mr. Gao did indeed visibly count key cards on his fingers. The difference in finger position is unimportant. But, again, there was no effect on the outcome—the partnership did not bid the slam despite indications Mr. Gao's key card calculation was a misinterpretation of Gupta's response.

p. 101/171 Part of the complaint (by Walter Schafer) is that a somnolent opponent might have been misled into carelessly accepting the 2H bid, or, had there been more bidding, that there might have been other problems. That is not exactly correct (see Law 25A6), but in any case speculative, and irrelevant—Mr. Gao is not charged with disruption by making a deliberately insufficient bid. It seems Mr. Gao—unusually for a person claimed to be [afflicted with his neurological condition]—was trying to engage in a humorous exchange during a lengthy match, and his effort was not appreciated. This is a proper subject for a player memo, The Recorder's task would seem to be to then speak with Mr. Gao and explain how such humor might go awry and lead to unnecessary problems. Or a TD might impose a procedural penalty under Law 91.

⁹ As Mr. Gordon himself noted, when only a single such incident is at issue, it would seem more usual for the Recorder to counsel the offender, rather than bring the full resources of the disciplinary system to bear. EOC endorses that approach.

p. 104/171 Mr. Gao earned a good result by bidding 1D; his BIT thereafter was irrelevant—but, if it was important, this would be evidence against his *partner*, not against Mr. Gao himself, per Laws 16B1 and 73C. Given his partner’s 5-card diamond support and 6-5 distribution, the EOC concludes that there was no “logical alternative” to bidding 5D.

However, Mr. Gao is cautioned that he has a habit of transmitting UI. This pattern should be corrected, as it creates problems for his partners and positions his partnership to both generate complaints and to suffer adverse score adjustments.

But the EOC lacks comfortable satisfaction that any ethical misconduct relating to Mr. Gao *transmitting* UI has occurred.

4. Unauthorized Information—from Extraneous Sources (“Wires”)

p. 90/171 This hand *could* be evidence of misconduct within the ambit of CDR Appendix B, Item E9 (Accidentally¹⁰ gain access to information and then act on it”), for which the normative sanction is 1 year probation and/or up to 180 days suspension (although the cross-reference does not include CDR 3.20).

There are two issues. First and foremost, Charging Party agrees it was Mr. Gao’s partner, Ming Sheng, who made the negative double. There was neither evidence nor argument that Mr. Gao’s 1NT rebid (with 3-2-5-3) was in any way suspect; Mr. Gordon expressly conceded Mr. Gao’s bidding was ethically impeccable. Even if the proof of a “wire” were otherwise satisfactory, the finger of accusation would only point to Mr. Sheng, leaving no possibility that the evidence as to Mr. Gao could achieve the level of comfortable satisfaction.

A second problem is that this evidence of a “wire” is only 1 hand. A single aberrant bid or play is not ordinarily sufficient proof of cheating—if it were, few players could survive a challenge to their bidding or play. Sometimes players get lucky because they forget their options or methods; most of the time, lapses lead to rotten results and no one complains (other than partner or teammates), but inevitably there will be occasions when doing the “wrong” thing produces a windfall—and an accusation. No other bid, lead, or play is claimed to demonstrate a “wire” by Mr. Gao’s partners, still less on Mr. Gao’s own part (but see the next paragraph), so, in the end, while suspicions may be duly raised, “comfortable satisfaction” remains out of reach.

p. 91/171 IF Mr. Gao had a wire, he would have passed 2H, since the opponents were about to miss their cold game in hearts. Despite Mr. Gao unwisely giving them a second bite at the apple, they whiffed again.

Charging Party’s presentation made no mention of East’s double of 2D on 3-3-3-4 with a 12 count, or of West’s 2H (and then 3H) bid (over 2S) on AQ Q9xxx Ax KJxx, or of South’s failure to bid 3S (which might have pushed E-W to 4H). Other than showing that at least 3 of the 4 players were clueless, and that Mr. Gao is an extremely aggressive bidder, no indication of how Mr. Gao had a “wire” is proffered. It is at most an *unlikely* possibility, nothing like a near

¹⁰ If Mr. Gao had a “wire”, there is nothing to suggest how he came by it, so the CDR Appendix B items that cover deliberately obtaining such information, such as E13, cannot be invoked.

certainty or even a strong likelihood (which would be the least the “comfortable satisfaction standard” requires).

The EOC lacks comfortable satisfaction that Mr. Gao possessed or utilized extraneous information.

5. Unauthorized Information—Misuse (Laws 16B1 and 73C; CDR 3.20)

p. 102/171 If Mr. Gao had no intention of playing 4 spades if he uncovered a 4-4 fit with his Stayman inquiry, why bid Stayman at all? Yes, experts often raise to 3NT holding a 4-card major without going through Stayman; but that is not what Mr. Gao did. He bid Stayman, caught a 3S response which, in the absence of UI, showed a 4-card spade holding, and *then* he bid 3NT with UI indicating partner does not have 4 spades. The defense argument that 3NT was choice of games was admittedly not clearly communicated to the director at the time and is a self-serving analysis after the fact. While there is logic to 3NT offering a choice of games in the absence of UI (where, as here, there is only one major suit of interest, and especially where Advancer is 4-3-3-3), with no contemporaneous demonstration of such a partnership agreement after Stayman (as compared with transfers), the UI clearly suggested 3NT over 4S, and Laws 16B1 and 73C1 bar choosing the action indicated by the UI.

p. 103/171 The defense did not contest the facts, which demonstrate that Mr. Gao took advantage of UI to bid 4C. Mr. Gao’s own expert, Mr. Bo, regarded the 4C “rebalance” as “insane”. That Mr. Gao misread partner’s hesitation does not alter either the presence of UI or the impropriety of acting upon it.

p. 105/171 Contrary to the defense analysis, but for some reason to think partner does not have hearts (despite his free 4H bid), there is no rational way Ms. Kakimoto would “want to play 5C” instead of 4H at matchpoints. Ms. Kakimoto might have had, say, xx AQxxxx x KQ109, which would be cold for 6C opposite minor variations of Mr. Gao’s actual hand, *e.g.* Axx KJ10x xx AJxx. Even if Ms. Kakimoto were 5-5 in the round suits, 5H would be a superior contract to 5C, so passing 5C is the issue, and the impropriety was *exclusively* perpetrated by Mr. Gao. Bidding 5H or even 6H was a “logical alternative”, while passing 5C was clearly suggested by the UI.

The EOC notes that, without UI, Mr. Gao was entitled to guess that his partner’s 5C bid was not as sophisticated a slam try as postulated here, and thus as indicating that his partner forgot their system when bidding 2D. However, the actions by his partner at the table made it 100% certain what happened, so passing is no longer a guess and does not risk missing a better heart contract. And Laws 16B1 and 73C1 prohibit selecting the action suggested by the UI.

p. 106/171 Charging Party DID submit supporting facts—that Mr. Micone broke tempo after Mr. Gao had once balanced with 2NT, and that Mr. Gao then bid 3NT. Moreover, the original report indicates Mr. Micone admitted his BIT at the time.

The Bo-Wei analysis ignores the possibility partner has one or more stray queens or

jacks that might be a defensive trick but useless on offense; there simply is no basis for the assumption partner must have a working A or K. Aside from the fact that the BIT suggested Mr. Micone had something useful (far more impactfully than the opponents' stopping in 2S and then 3S), the very same information which supposedly justified the 3NT bid was available (even more strongly) when the opponents first subsided in 2S. So Mr. Gao's failure to bid 3NT (at the point where he bid 2NT) indicates either that Mr. Gao did not "reason" that partner "must" have something useful, or that Mr. Gao thought 2NT the limit of his hand (which did not improve merely because the opponents took the push to 3S). While surely Mr. Gao could bid 3NT had his partner not broken tempo (perhaps based on a calculation he would be -50 or -100 against -140), after the BIT 3NT was barred by Laws 16B1 and 73C1(a) because pass was a "logical alternative" per 16B1(b), as the TD's polling demonstrated (and as the EOC panelists' own experience and judgment confirm). Again, there is logic to the 3NT bid, but partner's hesitation takes away the doubt or risk that would exist without the UI.

Defense experts Bo and Wei also challenge the TD's use of poll results obtained by questioning players with 6,000-10,000 masterpoints, contending that "it might be more proper that the polled were experts." The EOC panelists, who among them have dozens of NABC+ championships and several world championships (each of whom has at least one national championship), likewise consider pass a logical alternative, and note further that "experts" are usually chary about rebidding the same values, especially when "polled" (which 99% of the time signals that partner hesitated).

Accordingly, the EOC finds, to a level of comfortable satisfaction, that Mr. Gao repeatedly availed himself of unauthorized information contrary to Laws 16B1 and 73C1, and thereby violated CDR 3.1¹¹.

Disciplinary Sanctions

The unethical utilization of UI is arguably addressed by two different provisions of CDR Appendix B—Items E9 and E19. E9 is defined as "Accidentally gain access to information and then act on it (CDR 3.1¹¹, 3.2 and 3.7), for which the suggested sanction is "1 year probation and/or up to 180 days Suspension (Note 2)" plus a "fine" of "0-25% of Discipline Person's total masterpoint holding. E19 is defined as "Cheating and other Ethical Violations not specifically cited by other sections of this Appendix (CDR 3.20)", for which the suggested sanction is "90 days Suspension up to Expulsion (NOTES 2 and 3" plus a "fine" of 0-100% of Disciplined Person's total masterpoint holding."

¹¹ Count 1 of the Complaint references CDR 3.20, which covers "cheating and other ethical violations". The EOC rejects any contention that Mr. Gao is guilty of cheating. The misuse of UI is an "ethical violation", but not akin to cheating. While the EOC suggests that the CDR should have a specific provision regarding UI, the pertinent CDR provision is CDR 3.1, "violation of Laws". The distinction is important as to the disciplinary category and recommended sanctions (as detailed in the next section of this decision) in CDR Appendix B, and EOC must resolve charged misconduct according to the applicable principles and findings of the EOC itself, rather than be limited to the category selected at the Complaint stage (before the full record is developed at a hearing or findings by EOC are made).

Notes 2 and 3 provide:

NOTE 2 If a Disciplinary Body imposes a Suspension in this case, then it should also disqualify the pair or team from the event. This will mean the pair or team will lose its place in the event, any masterpoints earned in the event and any other benefits it may have earned from playing in the event. Should this disqualification take place after the correction period for the event has expired, other pairs and teams do not move up – the place formerly held by the disqualified contestant (pair or team) remains vacant.

NOTE 3 If a Disciplinary Body imposes a Suspension in this case, then it is encouraged to also impose an appropriate term of probation following the term of suspension.

Given the significant disparity in suggested penalties, the EOC must determine which category properly applies. The UI acted upon by Mr. Gao was, in each instance, obtained by him “accidentally”, in the sense that he took no affirmative steps, and engaged in no planning or preparation, to acquire it. Therefore, E9 properly applies, and thus, by its terms, E19 does NOT apply because another specific section (namely, E9) of Appendix B covers the misconduct.

In determining the appropriate disciplinary sanction, the EOC has taken heed of the introductory portions of CDR Appendix B, which provide:

The second column, entitled “RECOMMENDED DISCIPLINE”, is a guide for discipline to be imposed. **It is not mandatory.** However, discipline imposed that is outside these recommendations must be explained in the Hearing Report.

The third column, entitled “SUGGESTED MASTERPOINT PENALTIES”, represents a range of masterpoints which may be deducted in accordance with an offense listed in the chart for which the Charged Party is found guilty. Players who are found guilty of collusive cheating and Expelled shall forfeit all masterpoints.

The fact that Mr. Gao misused UI in multiple instances is an aggravating factor, balanced against the fact the 4 incidents occurred over a 3 year period. When Charging Party was allowed to amend the Complaint to add additional evidence of charged misconduct post-dating the Complaint, none of the “new” evidence involved Mr. Gao taking advantage of UI, suggesting that, once put on notice that his attitude toward UI had put him in serious jeopardy of discipline, he did not violate Laws 16B1 and 73C1 again. Also acting as a mitigating factor is the fact Mr. Gao has no prior record of discipline.

The EOC considers that a sanction of 14 (fourteen) days’ suspension, to commence August 12, 2019, followed by 1 year of probation, is a fair and just disciplinary sanction for the ethical misconduct established. **This level of discipline has been crafted to both gain Mr. Gao’s attention (as Charging Party requested), and as a deterrent to other players who may incorrectly believe that acting on UI risks only a score adjustment.**

As for masterpoint removal, the EOC is concerned that deducting masterpoints might put Mr. Gao in a lower masterpoint stratum, when Charging Party was already advocating penalizing Mr. Gao for playing in events beneath his proper skill level. Moreover, given that score adjustments were made in several of the UI situations, no “masterpoint windfall” appears to have

occurred as a consequence of Mr. Gao's misconduct. Accordingly, the EOC assesses no masterpoint deduction.

Approved:

/s/ Bob Glasson

Bob Glasson, Chairman

/s/ Kevin Bathurst

Kevin Bathurst

/s/ Cheri Bjerkan

Cheri Bjerkan

/s/ Brian Platnick

Brian Platnick

/s/ Eddie Wold

Eddie Wold

**Right to Appeal Decision of the Ethical Oversight Committee and
Right to Request a Stay of Discipline Pending the Outcome of Any Appeal
(The right to appeal applies to both the Complainant and the Disciplined Party.)**

In accordance with Section 7.2.1(a) of the *ACBL Code of Disciplinary Regulations*, an appeal may be filed with the Appeals and Charges Committee. An Appellate Body, in addition to the power to affirm or reverse, may modify, reduce or increase the discipline being appealed.

Written notice of appeal must be made within thirty (30) days following the notice of the ruling being appealed. Per CDR 7.2.3, in order for an appeal to be considered, a written statement must accompany the appeal which shall provide an allegation that at least one (1) of the following exists:

- (a) The decision is not supported by the weight of the evidence presented at the hearing held by a disciplinary body (*i.e.*, not an appellate body).
- (b) Procedures inconsistent with the CDR;
- (c) Discipline inappropriate;
- (d) One (1) or more person(s) on the hearing panel having a bias which affected the decisions of the panel, when objection to such bias was raised at the hearing.

Appeal may be filed, by regular mail or e-mail, addressed to:

Appeals & Charges Chairperson A. J. Stephani c/o ACBL Disciplinary Coordinator 6575 Windchase Blvd.

Horn Lake, MS 38637-1523
Sabrina.Goley@acbl.org

Any request for stay may be filed in like manner with the Appeals and Charges Chair.

Section 8. Stays of Execution of Discipline Pending an Appeal

- 8.1 The mere filing of a notice of appeal does not stay execution of a discipline.
- 8.2 A stay pending an appeal may be granted only on written request which will include the reasons for the request. Once granted, neither the appeal nor the request for the stay may be withdrawn. The foregoing does not affect the power of the grantor to modify or vacate the stay.
- 8.3 A stay may be granted only if the appellant makes a showing that a reasonable likelihood exists that the verdict will be reversed or that the discipline will be reduced.

APPENDIX 1

Summary by Keith Wells, ACBL Tournament Technical Analyst, of how the ACBL Convention Card handles the reporting of a partnership's psyching tendencies

From: Keith Wells <Keith.Wells@acbl.org>

Sent: Monday, June 24, 2019 2:21 PM

Subject: RE: rules question

Law 40A1b states that a “partnership has a duty to make its partnership understandings available to its opponents.” By its very definition under the Laws, a psych is the antithesis of a partnership understanding (“a deliberate and gross misstatement of honor strength and/or suit length”), so for a partnership to have an agreement about a psych makes it not a psych. This was why the psych section was removed from the convention card in 1994 (I still have one of the old cards here at HQ).

Since Law 40C allows psychs, but states that “repeated deviations lead to implicit understandings which then form part of the partnership’s methods and must be disclosed”, the more one psychs, the sooner the calls shift from psychs to agreements. So, the question becomes what qualifies as too many psychs.

That’s where TDs turn to the directions from the BoD and ACBL Headquarters that were established in the early 90’s. I’m attaching a PDF copy of the Psych document that was part of the ACBLscore Tech Files. There is also a very good writeup about psychs in Duplicate Decisions in the commentary on Law 40, incorporating much of this same information. Dan Plato also used this information in his Rulings FAQ response for Psychs (<https://s3.amazonaws.com/cdn.acbl.org/wp-content/uploads/2014/06/Psychic-Bidding.pdf>).*

But none of these documents require the pair who psychs to report that they have psyched to the director. All they state is that if the director becomes aware of more than three psychic actions by a pair (or more than two by one player) in a session, then the presumption of inappropriate behavior by the player exists which should be addressed by disciplinary action unless the player can “show that they happened to pick a string of hands unusually appropriate for psychs.”

Regards,

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[ACBL Tournament Technical Analyst](#)

*Reproduced as Appendix 2 to this Summary

APPENDIX 2

Rev. 9/14/13

Psych, Psyche, or Psychic Bidding

(Taken from Duplicate Decisions)

Psychic Calls – While psychic bids are an integral part of bridge, a player does not have the right to psych as frequently as he wishes simply because he enjoys doing so. A series of tops and bottoms so earned by one pair can unfairly affect the final results of a tournament.

ACBL's Policy on Psychs: Psychs are regulated by taking disciplinary action against a player who disrupts a game with frequent, random psychs. The ACBL Board of Directors has defined types of disruptive bidding that make the offenders subject to penalty. The following definitions and explanations should prove helpful to all Directors trying to enforce this regulation. Excessive Psychic Bidding — When three or more psychic initial actions by members of a partnership have been reported in any one session and are called to the attention of the Director, the Director should investigate the possibility that excessive psyching is taking place. A presumption of inappropriate behavior exists, and it is up to the players to demonstrate that they were not just horsing around. It is up to them to show that they happened, this once, to pick up a string of hands unusually appropriate for psychs. The continued use of undisciplined psychic bids tends to create partnership understandings that are implied from partnership experience. Example: If a player opens 1♦ three times in one session with two or fewer diamonds, partner finds it hard to take any 1♦ opening bid seriously. When the psychic bidder's partner, because of prior usages, has a better chance of catching a psych than either opponent, there is presumptive evidence that an undisclosed partnership understanding exists, and the result of the board may be adjusted.

Frivolous Psychic Bidding — Any psychic action inspired by a spirit of malicious mischief or lack of will to win may be interpreted as frivolous.

Unsportsmanlike Psychic Bidding — Action apparently designed to give the opponents an abnormal opportunity to get a good score, psychs against pairs or teams in contention, psychs against inexperienced players and psychs used merely to create action at the table are examples of unsportsmanlike psychic bidding.

NOTE TO CLUB MANAGERS: Clubs should regulate the use of uncontrolled psychs by saying that the burden of proof will be on the player, if he makes more than two psychic calls per session, to prove that he is not using excessive, frivolous or unsportsmanlike psychic bidding. Disciplinary action should be taken against a player whose bidding does not conform to these regulations. Score adjustments should be made only when the result was affected because the partner, due to previous experience, may have allowed for the psychic call.

Psychs which require no regulation or director attention: Any call that deliberately and grossly misstates either honor strength or suit length is by definition a psych. However, some psychs are disruptive to the game while others involve bridge tactics. These definitions should help to distinguish a psych that warrants disciplinary action or, at the least, attention by the Director, from those that are an integral part of the game.

A tactical bid is a psych that is made to paint a picture in an opponent's mind and partner's mind that will cause them to play you for a holding that you do not have, enabling you to succeed at the contract to which you were inevitably headed.

Example: After partner opens with 1♠, responder bids 2♦ to try to ward off a diamond lead on the way to 4♠ holding:

♠Q J x x x ♥A x ♦x x x ♣K Q x.

Or, you might cuebid an ace you don't have on your way to six of a suit.

NOTE: Frequent use of tactics similar to this will develop an implicit partnership agreement which requires an Alert, possibly delayed.

A waiting bid is generally a forcing bid made by responder to allow him time to learn more about partner's opening hand. This type of call is only rarely a psych, since in most cases the suit length is not grossly misstated. Example: Over a 1♠ opening, responder bids 2♣ on:

♠A x x x x ♥x x x x ♦x x ♣A Q.

The hand is too good for 2♠ and not good enough to force to game. The 2♣ bid is a waiting bid. If opener rebids 2♠, responder can now bid 3♠ - invitational.

A deviation was defined by Don Oakie (Feb., 1978, ACBL Bridge Bulletin) as a bid in which the strength of the hand is within a queen of the agreed or announced strength, and the bid is of a suit of ample length or of notrump. He also defined a deviation as a bid of a suit in which the length of the suit varies by no more than one card from the agreed or announced length and the hand contains ample high-card values for the bid in the system being played. If either of these situations occurs, it is easy to see by repeating the definition of a psych (a deliberate and gross misstatement of honor strength or suit length) that a deviation is NOT a PSYCH.

However, frequent deviations may indicate that the pair has an undisclosed implied agreement acquired through experience. This situation should be dealt with firmly.

The following appears in the ACBLscore Techfiles and is also relevant to psych bidding:

RISK-FREE PSYCHS Psychic controls are not permitted. If a pair is using methods that enable them to make risk-free psychs, they are in essence playing psychic controls. For example, in playing a 10-12 NT, many pairs have the understanding or the agreement that the NT opener may not bid again (except in forcing or invitational situations). If the pair were to psych a non-forcing or invitational response, the agreement would be a psychic control. For example,

1NT-Pass-2♥-3♣,

if the opener is prohibited from bidding 3♥ with a maximum and a fit, then a risk-free environment is created. To pass without the interference would not be a problem as there is still risk involved (your partner could have a maximum real 2♥ bid), but to pass in competition gives your partner room to maneuver with the knowledge that you will not interfere.

Since psychic controls are illegal, when a player does psych one of these responses, the pair is playing an illegal agreement. WE should lean heavily toward issuing a procedural penalty or adjustment for the pair's illegal use of this agreement as a psychic control.

Another example is a 2♠ response to a weak 2♥ or 2♦ bid that opener is not permitted to raise. This becomes a psychic control when the 2♠ bid is a psychic. While it would be legal to have the agreement that a 2NT rebid shows spade support, the agreement would be illegal (a psychic control) if responder were to psych the 2♠ response.

Therefore, a legal agreement that creates a risk-free psychic environment (that is an environment where the psycher knows his partner is under control - this does not include hands where we know because of our particular hand that we have an answer to most things that our partner can do to us) becomes illegal if the pair psychs.

(Office Policy - 08/1995)