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STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE GAMBLING COMMISSION

GAMBLING COMMISSION  
COMM & LEGAL DIVISION

In the Matter of the Revocation of the  
License to Conduct Gambling  
Activities of:

SHAUNA DILLON,

Licensee

OAH No. 2009-GMB-0085  
Nos. CR 2009-01306

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND INITIAL ORDER

**STATEMENT OF THE CASE**

Administrative Law Judge John M. Gray, conducted an administrative hearing in this matter on January 11, 2010, at the Gambling Commission Office, 4565 7th Avenue SE, Lacey, Washington. The issues presented are:

1. Whether the Washington State Gambling Commission ("Commission") has grounds to revoke Shauna Dillon's gambling license under RCW 9.46.075(1) and WAC 230-03-085(1), which provide that the Commission may revoke a license for any reason deemed to be in the public interest or when the licensee violates the Washington State Gambling laws or regulations set forth in Chapter 9.46 RCW or Chapter 230 WAC.
2. Whether Shauna Dillon has violated RCW 9.46.190, which provides that a person who either directly or indirectly engages in the following conduct in the course of operating a gambling activity has committed a gross misdemeanor and is subject to criminal punishment:
  - (a) Employs any device, scheme, or artifice to defraud; or
  - (b) Engages in any act, practice, or course of operations which would operate as a fraud or deceit upon any person.

3. Whether the Commission has grounds to revoke Shauna Dillon's gambling license under RCW 9.46.075(10), which authorizes the Commission to revoke a license when the holder has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates probable cause to believe that the participation of such person in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity in this state. For purposes of this provision, occupational manner or context shall be defined as the systematic planning, administration, management, or execution of an activity for financial gain.
4. Whether the Commission has grounds to revoke Shauna Dillon's gambling license under RCW 9.46.075(8) and .153(1), which impose an affirmative obligation on licensees to prove that they are qualified to hold a gambling license by clear and convincing evidence.
5. The basic, underlying issue presented in this appeal is whether Ms. Dillon comped a package of cigarettes in Ms. Nutting's name in order to obtain the cigarettes for a dishonest or fraudulent reason.

Shauna Dillon appeared and represented herself. She had no other witnesses.

Bruce Marvin, Assistant Attorney General, appeared and represented the Commission. Mr. John McNutt, acting general manager of the Macau Casino, and Special Agent Richard Schulte, appeared in person as witnesses for the Commission.

The Director of the Commission issued a Notice of Administrative Charges and Opportunity for Administrative Hearing to Shauna Dillon on October 22, 2009. On or about November 6, 2009, Ms. Dillon requested an administrative hearing. The Director of the Commission issued an Amended Notice of Administrative Charges and Opportunity for

Administrative Hearing to Ms. Dillon on December 17, 2009. This matter was set for hearing on January 11, 2010.

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**Having fully considered the entire record, the undersigned Administrative Law Judge enters the following Findings of Fact, Conclusions of Law, and Initial Order based upon a preponderance of the evidence:**

**FINDINGS OF FACT**

1. Shauna Dillon is an individual who holds a Type 68, Class B gambling license issued by the Commission. The license expires on June 10, 2010. Ms. Dillon was an employee of the Macau Casino in Lakewood, WA, from the time the casino opened until she resigned on August 5, 2009 (except for a 6 month period not relevant here).
2. Ms. Dillon was employed at the Macau Casino as a shift manager. A shift manager has the responsibility to operate the casino in the absence of the casino manager. Ms. Dillon was frequently in charge of the casino.
3. The Macau Casino has two video surveillance systems, one for inside the casino and another one that shows the exterior of the back of the casino. The two systems are not connected. Although both display date and time, the two systems could differ by as much as ten minutes.
4. Ms. Dillon worked at the Macau Casino as a shift manager on the night of Monday, August 3, 2009. As a shift manager, Ms. Dillon had access to the Sonoma tracking system.
5. The Sonoma tracking system is a software program that records individual gambling patrons' presence on particular dates, the games they played, the time in and time out at a particular game, the average amount of the players' bets, the points earned, the number of points adjusted, and the dollar amount won or lost. If a player moves to a different gaming

table, the shift manager has the responsibility to track the patron and enter the player's new location.

6. Tanya Nutting was a patron of the Macau Casino. Ms. Nutting's customer history shows that she was present at the Macau Casino on August 3, 2009, from at least 9:32 PM until at least 10:34 PM. Ms. Dillon saw Ms. Nutting at the Macau Casino on the night of August 3, 2009.

7. Players at the Macau Casino earn points that can be redeemed for different items of value, including cigarettes. The redemption is called "comping." A player may, for example, "comp" a package of cigarettes.

8. The parties' testimony conflicted on who may comp an item of value. Ms. Dillon testified that it is a common practice at the Macau Casino for shift managers to comp an item on behalf of a customer or patron, doing so even if unasked, in order to keep the patron at the gambling tables. Mr. McNutt testified that only a patron may comp an item. The testimony directly conflicts on this point, and Ms. Dillon's explanation of her role in comping the package of cigarettes in Ms. Nutting's name is credible. This is so because Ms. Dillon comped the package of cigarettes at the casino's cage, which is staffed by another employee of the casino. If only a patron may comp an item of value, Ms. Dillon's presence at the cage requesting a package of cigarettes, to be paid for with the points from Ms. Nutting's account, would have raised a red flag with the cage employee. Consequently, it is found that Macau Casino shift managers could, at least as of August 3, 2009, comp items of value using the Sonoma tracking system as part of their job duties to try and keep casino patrons at the gambling tables instead of leaving to comp items themselves.

8. On the night of Monday, August 3, 2009, Ms. Dillon accessed the Sonoma system to comp a package of cigarettes to the account of Tanya Nutting. Ms. Nutting did not ask Ms. Dillon for the cigarettes. The request for the cigarettes was submitted on a chit of paper bearing Ms. Nutting's printed name and the printed date of 08/03/2009. On the line marked "signature" appear the handwritten words "Marl Light 100's."

9. Ms. Dillon's actions attracted the attention of the surveillance system's operator, who manually tracked and recorded Ms. Dillon's movements with the overhead video cameras inside the casino. The video surveillance systems show Ms. Dillon at the "cage" obtaining a package of cigarettes, returning to the gaming tables, and placing the cigarette package on a podium. For some time after that, she picked up the cigarettes and set them down again on the podium. Later that evening, she left the casino and went outside to the back, where the other surveillance system showed her and two other women smoking cigarettes.

10. Ms. Dillon is a smoker. On August 3, she had her own package of cigarettes with her in her possession. Whether the cigarettes she smoked were from her personal package or from the package comped on Ms. Nutting's account is not found. However, Ms. Dillon did not deliver the comped cigarettes to Ms. Nutting because Ms. Nutting was not in sight for the remainder of that evening.

11. John McNutt, the acting general manager of the Macau Casino, confronted Ms. Dillon and alleged that she stole the cigarettes from the casino through fraudulent action. On August 5, 2009, Ms. Dillon tendered her written resignation from the Macau Casino, effective that date.

12. Mr. McNutt notified the Commission of this allegation. The Commission assigned the

investigation to Special Agent Richard Schulte, an eight year veteran of the Commission. Based upon Special Agent Schulte's investigation, the Commission asks that Ms. Dillon's license be revoked.

**Based upon the preceding Findings of Fact, the undersigned Administrative Law Judge enters the following Conclusions of Law and Initial Order:**

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the persons and subject matter herein pursuant to RCW 9.46.140; Chapter 34.05 RCW and Title 230 WAC.
2. The Commission may revoke or suspend a license of any license holder that fails to prove herself qualified by clear and convincing evidence. RCW 9.46.075(8).
3. The Commission may suspend or revoke any license issued by it, for any reason or reasons, it deems to be in the public interest. These reasons shall include, but not be limited to, cases where a licensee, or any person with any interest therein "has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and any amendments thereto, or any rules adopted by the Commission pursuant thereto, or when a violation of any provision of chapter 9.46 RCW, or any Commission rule, has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control." RCW 9.46.075(1).
4. Ms. Dillon was not charged with a crime arising out of the facts. RCW 9.46.190 is a criminal statute. The burden of proof in a criminal case is "beyond a reasonable doubt," but this is a license revocation case. The statute provides:

Any person or association or organization operating any gambling activity who or which, directly or indirectly, shall in the course of such operation:

- (1) Employ any device, scheme, or artifice to defraud; or
  - (2) Make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made not misleading, in the light of the circumstances under which said statement is made; or
  - (3) Engage in any act, practice or course of operation as would operate as a fraud or deceit upon any person;
- Shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021.

5. In RCW 9.46.190(1), the critical element is “defraud.” “Fraud will not be presumed and must be proven by evidence that is clear, cogent, and convincing.” *Beckendorf v. Beckendorf*, 76 Wn.2d 456, 462, 457 P.2d 603 (1969). *Beckendorf* also stated, at 76 Wn.2d 462::

The elements necessary to establish fraud - all of which must be shown by clear, cogent, and convincing evidence - are a representation of an existing fact; its materiality; its falsity; the speaker’s knowledge of its falsity; his intent that it shall be acted upon by the person to whom it is made; ignorance of its falsity on the part of the person to whom it is addressed; the latter’s reliance on the truth of the representation; his right to rely upon it; and his consequent damage.

The crucial element missing in the facts is intent. Under the facts presented, it is just as likely that Ms. Dillon comped the cigarettes to give to Ms. Nutting as it is that Ms. Dillon comped the cigarettes for her own benefit. The evidence does not show that Ms. Dillon intended to defraud, deceive, or mislead anyone when she comped the package of cigarettes, even if I accept that the burden of proof under RCW 9.46.190 in this license revocation case is “preponderance of the evidence.” The Commission has not proved that Ms. Dillon violated RCW 9.46.190(1), (2), or (3).

6. RCW 9.46.153(1) provides:

It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence the necessary qualifications for licensure of each person required to be qualified under this chapter, as well as the qualifications of the facility in which the licenses activity will be conducted.

WAC 230-03-085(1) provides:

We may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization:

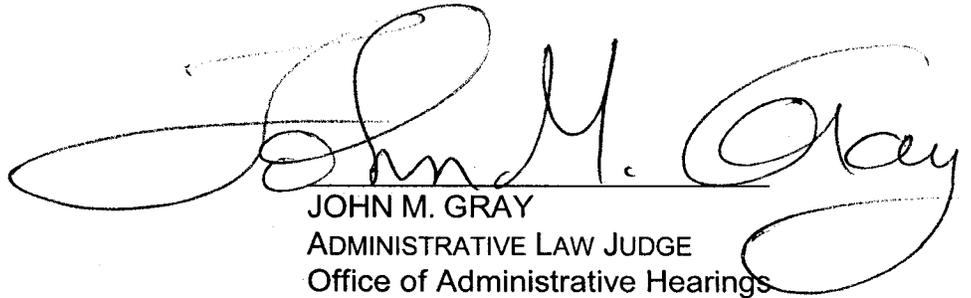
(1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075[.]

The parties do not dispute the basic facts. Ms. Dillon comped a package of cigarettes using a system that exists to reward the casino's patrons (in this case, Ms. Nutting), and did not deliver the package of cigarettes to Ms. Nutting. There is no other evidence against Ms. Dillon other than she comped the cigarettes and did not deliver them to Ms. Nutting. As noted by the Commission, it is the Commission's burden of proof to show by a preponderance of the evidence that Ms. Dillon violated the gambling statutes or administrative rules. Under the facts presented, the Commission has not proved that Ms. Dillon is unqualified to hold her gambling license.

**ORDER**

**IT IS HEREBY ORDERED That**, in the public interest, the Gambling Commission's decision to revoke Ms. Dillon's license is REVERSED.

DATED at Olympia, Washington, this 12<sup>th</sup> day of March, 2010.



JOHN M. GRAY  
ADMINISTRATIVE LAW JUDGE  
Office of Administrative Hearings  
2420 Bristol Court SW  
PO Box 9046  
Olympia, WA 98507-9046

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## **NOTICE TO THE PARTIES**

You may file an appeal of this order within twenty three days from the day OAH mails this initial order to you. WAC 230-17-090(2); see also WAC 230 -17 -030(2), WAC 230 -17 -035(2) [Service by first class mail is complete three days after mailing.]. An appeal from an initial order is known as a "petition for review". Your petition for review should (a) identify the parts of the initial order you disagree with and (b) refer to the evidence in the record that supports your position. If you decide to petition for review, you must serve copies of your petition on all parties or their representatives at the same time you file it with the Gambling Commission. If the Commission does not receive a petition for review within 23 days, the Commission will automatically make this order its final order.

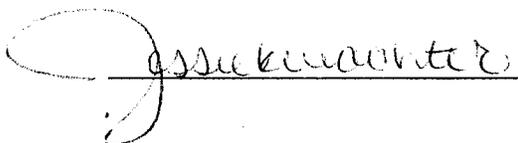
Any party may file a written response to a petition for review, known as a reply. If you wish to file a reply, it must be filed with the Commission within thirty days of the date you are served with the petition. You must serve copies of the reply on all parties or their representatives at the same time you file your reply.

Any party may file a cross appeal. Cross appeals must be filed with the commission within ten days of the date when the petition for review is filed with the Commission. WAC 230 -17 -090(5). If you wish to make a cross appeal, you must serve copies of the cross appeal upon all other parties or their representatives at the same time you file your cross appeal.

If a party timely files a petition for review, then at least a majority of the Commission members shall review the petition within 120 days and render a final order.

### **Certification of Mailing**

I certify that I mailed true and exact copies of the Initial Order to the following parties, postage prepaid this 12<sup>th</sup> day of March 2010 at Olympia, Washington.

A handwritten signature in cursive script, appearing to read "Jessie Wachter", is written over a horizontal line.

Jessie Wachter

Office Assistant

**Copies mailed to:**

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