STATE OF WASHINGTON
GAMBLING COMMISSION

In the Matter of the Summary Suspension of the State Certification to Conduct Gambling Activities of: Nicole K. Jim Yakima, Washington, Class III Employee.	)))))))))	NO. CR 2010-01409 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF SUMMARY SUSPENSION OF STATE CERTIFICATION**

RCW 9.46.070(17) and Section V(L) of the Yakama Nation Tribal-State Compact authorize the Washington State Gambling Commission (Commission) to summarily suspend[1] a license or certification, subject to final action by the Commission. The Director has reviewed this Order of Summary Suspension and has issued it for service.

This order takes effect when served on the Class III Employee, representative, or agent. A Commission Special Agent shall seize Nicole K. Jim's certification[2] and she must immediately stop conducting gambling activities.

FINDINGS OF FACT

I.

Rick Day is Director of the Washington State Gambling Commission and issues this order. Jurisdiction of this proceeding is based on Section V of the Yakama Nation Tribal-State Compact, chapter 9.46 RCW, Gambling, chapter 34.05 RCW, the Administrative Procedure Act, and Title 230 WAC.

II.

The Washington State Gambling Commission issued Nicole K. Jim the following certification:

Number 69-31747, authorizing Class III Employee activity with the Yakama Nation.

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[1] WAC 230-17-165 defines summary suspension as immediately taking a license or permit from a person or organization which prevents them from operating or conducting gambling activities.

[2] Class III certifications are issued to employees working at Tribal casinos. The certification authorizes similar activities as the Card Room Employee (CRE) license issued to individuals working at commercial house-banked card rooms. Holders of Class III certifications may apply to have the certification transferred to a CRE license.

The certification expires on August 18, 2011, and was issued subject to the Class III Employee's compliance with the Tribal-State Compact, and state gambling laws and rules.

III.

After a thorough review of the report by a Commission Special Agent about the facts in this matter, the Director accepts the report as true and has determined that the summary suspension is necessary.

IV.

SUMMARY:

On November 10, 2010, the Yakima County Prosecuting Attorney charged Class III Employee, Nicole K. Jim, with Vehicular Homicide. The criminal charge is pending and is based on the allegation that Ms. Jim drove while intoxicated on November 5, 2010, and caused another driver's death.

FACTS:

1) On November 9, 2010, a Gambling Commission Special Agent (agent) learned that Class III employee, Nicole Jim, was charged with Vehicular Assault. The agent received the information from a licensing supervisor with the Yakama Tribal Gaming Agency while discussing another licensing matter.

2) On December 6, 2010, the agent reviewed the Information, which charged Ms. Jim with Vehicular Homicide, a class A felony, of which the maximum penalty is life imprisonment and/or a $50,000 fine. The agent also reviewed the Declaration of Probable Cause, which contained the following information:

a. On November 5, 2010, a Washington State Trooper (trooper) arrived at the scene of a 2-car collision, where he observed extensive damage to both cars. A white Ford Bronco, belonging to Ms. Jim, was overturned and on its top in the intersection.

b. The driver of the other car, a Mazda, was deceased.

c. The trooper contacted Ms. Jim and smelled the odor of intoxicants. Ms. Jim was covering her face with her sweater and crying. Ms. Jim answered yes, when asked whether she had been driving. Ms. Jim said she had been driving the Bronco.

d. When asked by the trooper whether she had any alcohol to drink, Ms. Jim replied yes, she had about three. The trooper observed Ms. Jim's eyes were bloodshot.

e. Ms. Jim performed voluntary field sobriety tests, after which the trooper placed her under arrest.

f. The trooper read Ms. Jim her rights and told her the driver of the other card was deceased. Ms. Jim waived her rights and later at the hospital, told the trooper that she had drank "Bacardi" after work at the casino. Ms. Jim added the passenger in her car that night told her to slow down for a stop sign and she slowed, but too late. Ms. Jim said she slammed on the brakes and hit the other car. She cried and said she should be the one dead, not the other guy.

3) Ms. Jim was booked into the Yakima County jail on November 5, 2010, with no planned release date.

4) As of December 8, 2010, Ms. Jim has not disclosed her arrest or the criminal action filed against her.

CONCLUSIONS OF LAW

I.

1) Section V(L) of the Yakama Nation Tribal-State Compact provides the State Gaming Agency may summarily suspend any State Certification if the continued certification of a person constitutes a threat to public health and safety.

2) RCW 9.46.070 provides that the Commission shall have the following powers and duties: The Commission may authorize the Director to temporarily suspend licenses subject to final action by the Commission.

3) WAC 230-17-165(2) provides that the Commission delegates its authority to the Director to summarily suspend any license if the Director determines that a licensee has performed one or more of the actions identified in RCW 9.46.075 as posing a threat to public health, safety, or welfare.

4) WAC 230-17-165(3) The Commission deems the following actions of a licensee constitute an immediate danger to the public safety and welfare:
(The following subsections apply.)

(a) Failing or refusing to comply with the provisions, requirements, conditions, limitations, or duties imposed by chapter 9.46 RCW or any rules adopted by the Commission.

(f) Being subject to current prosecution or pending charges, or appealing a conviction, for any of the offenses included under (d)[i] of this subsection.

(h) Making a misrepresentation of, or failure to disclose, a material fact to the Commission.

Nicole Jim has a pending Vehicular Homicide charge for allegedly driving while under the influence and causing the death of another driver.

Ms. Jim has failed to report the material fact of her arrest and the criminal charges filed against her within 30 days, as required by Commission rules.

The Class III Employee's actions constitute an immediate danger to public safety and welfare based on WAC 230-17-165(3)(a), (f), and (h), and are a basis for Nicole Jim to immediately stop conducting gambling activities.

5) Section V(C) of the Yakama Nation Tribal-State Compact provides the State Gaming Agency may revoke, suspend or deny a State Certification under the provisions of RCW 9.46.075, and rules promulgated thereunder, for any reason or reasons it deems to be in the public interest. In addition, these reasons shall include, but not be limited to when an applicant or holder of certification:
(The following subsection applies.)

(1) Is determined to be a person who because of prior activities, criminal record, if any, or reputation, habits and associations poses a threat to the effective regulation of gaming or creates or enhances the chances or unfair or illegal practices, methods and activities being used in the conduct of the gaming activities permitted pursuant to this Compact.

6) RCW 9.46.075 Denial, suspension, or revocation of license, application, or permit
The Commission may deny an application, or suspend or revoke any license or permit 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 wherein the applicant or licensee, or any person with any interest therein:
(The following subsections apply.)

(1) 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.

(7) Makes a misrepresentation of, or fails to disclose, a material fact to the Commission.

(8) Fails to prove, by clear and convincing evidence, that she is qualified in accordance with the provisions of this chapter.

(9) Is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses included under section (4) of this section, including any crime, whether felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude. Provided, that at the request of an applicant for an original license, the Commission may defer decision upon the application during the pendency of such prosecution or appeal.

7) WAC 230-03-085 Denying, suspending, or revoking an application, license or permit
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:
(The following subsections apply.)

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

(7) Fails to provide us with any information required under Commission rules within the time required, or, if the rule establishes no time limit, within thirty days after receiving a written request from us.

(8) Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by: (a) Prior activities; or (b) Criminal record; or (c) Reputation; or (d) Habits; or (e) Associations.

8) RCW 9.46.153(1) Applicants and licensees-Responsibilities and duties
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 licensed activity will be conducted.

9) WAC 230-06-085(1) provides that licensees must report to us in writing within thirty days all criminal actions filed against the licensee, any manager of the licensed gambling activity, the business organization, or any person holding a substantial interest in the business organization.

Nicole Jim has a pending Vehicular Homicide charge for allegedly driving while under the influence and causing the death of another driver. Ms. Jim has failed to report her arrest and the criminal charges filed against her within 30 days, as required by WAC 230-06-085.

Ms. Jim has failed to establish by clear and convincing evidence, the necessary qualifications for licensure as required by RCW 9.46.153(1). Grounds exist to revoke Ms. Jim's State Certification under Section V(C) of the Yakama Nation Tribal-State Compact, RCW 9.46.075(1), (7), (8) and (9), and WAC 230-03-085(1), (7) and (8).

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II.

Nicole Jim's actions constitute an immediate danger to public safety and welfare. Ms. Jim has failed to comply with the Yakama Nation Tribal-State Compact, chapter 9.46 RCW and Commission rules. The immediate suspension of Nicole Jim's gambling activity is required to protect public safety and welfare.

ORDER

Based on the FINDINGS OF FACT AND CONCLUSIONS OF LAW and the Director's authority under RCW 34.05.422, RCW 9.46.070(17), and WAC 230-17-165, the Director orders that Nichole Jim's State Certification is summarily suspended, pending a formal hearing by an Administrative Law Judge for the revocation of her certification.

STATEMENT OF RIGHTS

(1) **You may ask for a stay of this Order.** To do so, you must complete and return to the Commission the enclosed Application for Stay Hearing form within fifteen (15) days from the date you receive this Order. If the Commission receives a timely request, we will hold a hearing within seven (7) days as required by WAC 230-17-170(3). The stay hearing will determine if your suspension should continue, or whether the suspension may be modified.

At the stay hearing, you will have to prove by clear and convincing evidence that:

(a) You will likely win at hearing; and

(b) If your suspension continues, you will suffer serious injury. Under this section, loss of income from licensed activities is not considered serious injury; and

(c) Removing the immediate suspension will not hurt others in this case; and

(d) The threat to the public safety or welfare does not justify continuing the suspension, or that modifying the suspension will adequately protect the public.

(2) **You also have a right to a hearing on the revocation of your certification.** To do so, you must complete and return to the Commission the enclosed Application for Hearing form within twenty (20) days from the date you receive this order. If you do NOT request a hearing, we will enter an Order of Default revoking your certification under RCW 34.05.440.

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If you have any questions regarding the rights stated above, please contact Arlene Dennistoun, Staff Attorney, at (360) 486-3469 or 1-800-345-2529, extension 3469.

STATE OF WASHINGTON)
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COUNTY OF THURSTON)

Rick Day, under oath, declares that he has read this Order of Summary Suspension of State Certification, knows its contents, and believes it to be true, and affirms that he is the Director of the Washington State Gambling Commission and in that capacity has executed this Order of Summary Suspension of the Certification.

Rick Day, Director

SUBSCRIBED AND SWORN TO before me this 9 day of December, 2010.

Michelle M. Pardee
NOTARY PUBLIC in and for the State of Washington, residing at:

LACEY
My Commission expires on

JUNE 16, 2013

MICHELLE M. PARDEE
COMMISSION EXPIRES
NOTARY
PUBLIC
JUNE 16, 2013
STATE OF WASHINGTON

[i] WAC 230-17-165(3)(d) provides the following offenses: (i) Forgery; or (ii) Larceny; or (iii) Extortion; or (iv) Conspiracy to defraud; or (v) Willful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses; or (vi) Bribing or otherwise unlawfully influencing a public official or employee of any state or the United States; or (vii) Any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude.


MICHELLE M. PARDEE
COMMISSION EXPIRES
NOTARY
PUBLIC
JUNE 18, 2013
STATE OF WASHINGTON