

STATE OF WASHINGTON  
GAMBLING COMMISSION

In the Matter of the Summary Suspension of the )  
License and Class III Certification to )  
Operate Gambling Activities of: )  
David A. Falcon Jr. )  
Lakewood, Washington, )  
Licensee and Class III Employee. )

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NO. CR 2011-00811

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER OF SUMMARY  
SUSPENSION OF LICENSE AND  
CLASS III CERTIFICATION**

RCW 9.46.070(17) authorizes the Washington State Gambling Commission (Commission) to summarily suspend<sup>1</sup> a certification and/or license 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 Mr. Falcon, representative, or agent. A Commission Special Agent shall seize David A. Falcon Jr.'s current license, and Mr. Falcon must 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 chapter 9.46 RCW, Gambling, chapter 34.05 RCW, the Administrative Procedure Act, and Title 230 WAC, and the Snoqualmie Tribal-State Compact.

II.

The Washington State Gambling Commission issued David A. Falcon Jr. the following:

License Number 68-26829, authorizing Card Room Employee activity, formerly at Macau Casino, Lakewood.

Certification Number 69-28976, authorizing Class III Employee activity, formerly at Snoqualmie Casino, North Bend. Mr. Falcon has not worked as a Class III Employee since December 8, 2010.

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<sup>1</sup> 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.

The Commission issued this license and certification, which expire on August 3, 2011, subject to Mr. Falcon's compliance with the Snoqualmie Tribal/State Compact, state gambling laws and Commission 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 February 18, 2011, the licensee/certified employee, David A. Falcon Jr., was charged with Theft in the Second Degree, arising from the theft of over \$5,000 in \$500 chips from the Snoqualmie Casino while he was working at baccarat tables. On May 26, 2011, Mr. Falcon pled guilty to Attempted Theft in the Second Degree and placed on 12 months' probation. Additionally, Mr. Falcon's Tribal Gaming License was revoked by the Snoqualmie Gaming Commission on June 2, 2011.

#### **FACTS:**

- 1) On May 26, 2011, a Gambling Commission Special Agent (agent) began investigating Mr. Falcon's qualifications to continue holding a license after he reported to Commission licensing staff that he wished to transfer to a house-banked card room after being terminated by Snoqualmie Casino.
- 2) The agent discovered that on December 8, 2010, Mr. Falcon's employment was terminated by Snoqualmie Casino for a criminal violation, specifically theft. The Tribe did not revoke his tribal license, and the investigation was turned over to law enforcement. The agent obtained and reviewed the police report and court records related to Mr. Falcon's criminal charges.
- 3) On February 18, 2011, Mr. Falcon was charged by Information, issued by the King County Prosecutor, with Theft First Degree, a felony. The Information alleges that on December 5, 6, and 7, 2010, Mr. Falcon knowingly stole over \$5,000 in \$500 chips from the Snoqualmie Casino while dealing baccarat.
- 4) On February 18, 2011, a Declaration of Probable Cause was filed with the King County Superior Court. The Declaration of Probable Cause contained the following allegations:
  - a) David Falcon was employed as a card dealer at the Snoqualmie Casino for some months when Casino Security manager Patrick Karr received information that on December 2, 2010, an anonymous caller reported that Mr. Falcon was stealing from the casino.

b) Mr. Karr then contacted the Pit Manager, who told Mr. Karr that Mr. Falcon had been requesting to work baccarat tables, and that a particular customer was always at Mr. Falcon's table winning large amounts of money.

c) Mr. Karr initiated an investigation, and on December 7, 2010, he and other security employees watched surveillance video of Mr. Falcon working baccarat tables on December 5, 2010, from 20:00 hours to 23:00 hours. A particular individual played at Mr. Falcon's table for the entire three-hour period. During this time, security personnel watched Mr. Falcon reach into his chip rack and pull out a purple \$500 chip with his right hand. Without clearing his hand, Mr. Falcon then reached down and slipped the chip into his shoe. Security observed video showing Mr. Falcon repeating this behavior ten times during the three-hour period.

d) Casino surveillance members conducted a review of all available surveillance footage of Mr. Falcon working. Mr. Falcon committed five more thefts of \$500 chips over three additional days. On each occasion, the identical player was at Mr. Falcon's table, and the floor supervisor was distracted by another task. Casino officials believe the player was signaling Mr. Falcon when the Floor Supervisor was distracted.

e) Mr. Karr and other casino officials questioned Mr. Falcon, after advising him of his Miranda rights. Mr. Falcon waived his rights and admitted to stealing thousands of dollars in \$500 chips over a three-month period. Mr. Falcon confirmed that he was slipping the chips into his shoe and then taking the chips out of the casino building.

f) Mr. Karr contacted the King County Sheriff's Office. After the Sheriff's Office investigated, Mr. Falcon was arrested. Mr. Falcon again waived his Miranda Rights and gave the Sheriff's Office a written confession that he stole thousands of dollars in \$500 chips over a three-month period. Mr. Falcon confirmed that he was slipping the chips into his shoe and taking them out of the casino building. When he was arrested, Mr. Falcon had one \$500 chip in his wallet.

5) On May 26, 2011, an Amended Information was filed in King County Superior Court charging Mr. Falcon with Attempted Theft Second Degree. On that same day, David A. Falcon Jr. was convicted of Attempted Theft in the Second Degree upon entry of a Statement of Defendant on Plea of Guilty.

6) On June 24, 2011, Mr. Falcon was sentenced to one year in jail with 364 days suspended and credit for one day served, 12 months of probation, a \$500 fine, and 240 hours of community service. Additionally, Mr. Falcon shall not have contact with Snoqualmie Casino.

7) On June 2, 2011, the Snoqualmie Gaming Commission revoked Mr. Falcon's Tribal Gaming License.

## CONCLUSIONS OF LAW

### I.

1) **RCW 9.46.070(17)** 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.

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

3) **WAC 230-17-165(3)** The commission deems the following actions of a licensee or permittee 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;

(d) Being convicted of, or forfeiting of a bond on a charge of, or having pled guilty to:

(ii) Larceny.

(vii) Any crime, whether a felony or misdemeanor involving any gambling activity or involving moral turpitude.

(i) Having pursued or 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 the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management, or execution of an activity for financial gain.

David A. Falcon Jr. was convicted of Attempted Theft in the Second Degree, after he took over \$5,000 in \$500 chips from the Snoqualmie Casino while he was working at baccarat tables. The charges were based on the licensee/certified employee's conduct occurring in December 2010.

Mr. Falcon pursued economic gain in an occupational manner, which is in violation of the criminal public policy of this state, and there is probable cause to believe that his participation in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity. Therefore, based on his prior activities and criminal record, Mr. Falcon 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.

The licensee/certified employee's actions and criminal history constitute an immediate danger to public safety and welfare based on WAC 230-17-165(3) (a), (d), and (i), and are a basis for Mr. Falcon to immediately stop conducting gambling activities.

4) **Snoqualmie Tribal/State Compact Section V.C.** provides that the State Gaming Agency<sup>2</sup> 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 shall not be limited to when an applicant or holder of certification or principal of an entity:

(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 of unfair or illegal practices, methods and activities being used in the conduct of the gaming activities permitted pursuant to this Compact.

(4) Has had a Tribal or State gaming license revoked or denied during the twelve (12) months prior to the date the Tribe received the application; is currently on probation imposed by any jurisdiction; or has demonstrated a willful disregard or failed to comply with the requirements of any gaming regulatory authority in any jurisdiction, including offenses that could subject the individual or entity to suspension, revocation or forfeiture of any gaming license. For the purpose of reviewing any application for a state certification or for considering the denial, suspension or revocation of any state certification, the State Gaming Agency may consider any prior criminal conduct or current probationary status of the applicant or holder of certification and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases.

**5) 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.

(4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, 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 of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude;

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

(10) Having pursued or 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 the

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<sup>2</sup> Washington State Gambling Commission, as referred to in the Snoqualmie Tribal/State Compact, Section II.

purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management, or execution of an activity for financial gain.

**6) 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.

(5) Is serving a period of probation or community supervision imposed as a sentence for any juvenile, misdemeanor, or felony criminal offense, whether or not the offense is covered under RCW 9.46.075(4).

(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.

**7) RCW 9.46.190 Violations relating to fraud or deceit**

Any person or association or organization operating any gambling activity who or which, directly or indirectly, shall in the course of such operation: (The following subsections apply.)

(1) Employ any device, scheme, or artifice to defraud; 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.02.021.

**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.

David A. Falcon Jr. was convicted of Attempted Theft in the Second Degree, after he took over \$5,000 in \$500 chips from the Snoqualmie Casino while he was working at baccarat tables. The charges were based on the licensee/certified employee's conduct occurring in December 2010. Because of his conviction, Mr. Falcon is currently on probation.

Mr. Falcon, while working as a Class III Employee at Snoqualmie Casino, pursued economic gain in an occupational manner that is in violation of the criminal public policy of this state and there is probable cause to believe that his participation in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity.

Under RCW 9.46.190, the licensee/certified employee, while operating a gambling activity at baccarat tables, employed a scheme and engaged in an act, practice or course of operation as would operate as a fraud or deceit upon Snoqualmie Casino, his employer at the time.

Mr. Falcon's actions and criminal history demonstrate that he is 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.

The licensee/certified employee has failed to prove by clear and convincing evidence that he is qualified to hold a certification or license, in violation of RCW 9.46.153. Grounds, therefore, exist to revoke David A. Falcon Jr.'s license and certification based on the Snoqualmie Tribal/State Compact Section V.C., RCW 9.46.075(1), (4) (8), and (10), and WAC 230-03-085(1), (5), and (8).

## II.

The licensee/certified employee's actions are an immediate danger to public safety and welfare, and he has failed to comply with the Snoqualmie Tribal/State Compact Section V.C., chapter 9.46 RCW or Commission rules. The immediate suspension of David A. Falcon Jr.'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 David A. Falcon Jr.'s license and certification are summarily suspended, pending a formal hearing by an Administrative Law Judge.

## 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.

