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**GAMBLING COMMISSION
COMM & LEGAL DEPT**

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON STATE GAMBLING COMMISSION

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

DAMANY S. DEGRANT
Everett, Washington,

Class III Employee.

OAH No. 2012-GMB-0025

WSGC No. CR 2012-00251

INITIAL ORDER DENYING
REVOCATION OF LICENSE

Administrative Law Judge John M. Gray conducted an administrative hearing in this matter on June 18, 2012, at the Gambling Commission Office, 4565 7th Avenue, Lacey, Washington.

Stephanie U. Happold, Assistant Attorney General, appeared and represented the Washington State Gambling Commission ("Commission"). Julie Sullivan, Special Agent with the Commission, appeared as witnesses for the Commission. Jennifer Stretch, Gambling Commission, and Marisa Broggel, Assistant Attorney General, observed, but did not testify.

Damany DeGrant ("Mr. DeGrant"), the Licensee, appeared and represented himself. Jeff Hatch, Deputy Director of Licensing of the Tulalip Tribal Gambling Commission, appeared and testified on behalf of Mr. DeGrant.

On March 22, 2012, the Director of the Commission caused a Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding ("Notice of Administrative Charges") to be issued against Mr. DeGrant. The Director alleged that, although Mr. DeGrant disclosed that he was charged with indecent acts in 2002 in Bangor,

Washington, the Commission checked only for Mr. DeGrant's criminal history in the

Washington State court system and found nothing; thus, the Commission inadvertently issued his certification. The Commission staff did not forward Mr. DeGrant's application to an agent for further review. The Notice of Administrative Charges summarized Mr. DeGrant's criminal offenses as "indecent acts, sodomy, and conspiracy to commit the same." The Commission proposes to revoke Mr. DeGrant class III certification. The Commission served the Notice of Administrative Charges on Mr. DeGrant. The record is silent as to the method and date of service on Mr. DeGrant, but Mr. DeGrant filed his request for an administrative hearing on April 4, 2012. The Commission subsequently issued an Amended Notice of Administrative Charges on April 4, 2012, which is substantially similar to the earlier Notice of Administrative Charges, and mailed it the same day to all parties.

The Commission issued the Notice of Hearing on May 4, 2012, notifying Mr. DeGrant of the time and the place of the administrative hearing.

The Commission offered nine exhibits, numbered 1 through 9, all of which were admitted without objection. Mr. DeGrant offered a written character reference from an attorney who represented him in another matter, marked as Licensee's Exhibit A. That Commission objected to the letter, and the letter was excluded because it did not satisfy the conditions of ER 608(a).

The Administrative Law Judge, having considered the evidence, now enters the following Findings of Fact:

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FINDINGS OF FACT

1. The Commission has issued two Class III Certifications to Mr. DeGrant. It issued the first certification in 2002. Mr. DeGrant renewed that certification until 2008. In 2008, that certification expired by its own terms, there being neither a renewal application from Mr. DeGrant nor a revocation by the Commission, and that certification is not the subject of this revocation proceeding. This case involves the second certification.

2. Mr. DeGrant is an individual who possesses a Class III Certification issued by the Commission and who works at the Tulalip Casino. The Commission issued License No. 69-15181, a type 69, class NA license, to Mr. DeGrant, on November 28, 2011. This license is the second certification. Without more, that certification will expire on November 28, 2012.

3. Mr. DeGrant was in the United States Navy between July 1999 and February 2002. In January 2001, he served as a "damage control fireman apprentice" on the USS Abraham Lincoln.

4. On January 20, 2001, Mr. DeGrant had consensual oral sex with a female sailor on board the USS Abraham Lincoln. Another man served as the "lookout." Someone discovered and reported them, and charges followed.

5. In General Court-Martial Convening Order 10-01, dated September 1, 2001, the Navy charged Mr. DeGrant with five violations of the Uniform Code of Military Justice. The code sections alleged to have been violated are:

- a. Charge I: 10 U.S.C. §881 – Art. 81, Conspiracy;
- b. Charge II: 10 U.S.C. §886 – Art. 86, Absence Without Leave ("AWOL");

c. Charge III: 10 U.S.C. §912A – Article 112A, Wrongful Use of Marijuana;

d. Charge IV: 10 U.S.C. §920 – Article 120. Rape, Sexual Assault, and Other Sexual Misconduct;

e. Charge V: 10 U.S.C. §925 – Article 125, Sodomy.

6. On December 19, 2002, in General Court-Martial Order Number 19-02 (“Order 19-02”), the Court-Martial dismissed Charge II, AWOL and found Mr. DeGrant not guilty of Charges III (wrongful use of marijuana) and IV (rape). In connection with Charge IV, the Court-Martial found Mr. DeGrant not guilty of violating Article 120, but guilty of violating 10 U.S.C. §934 – Article 134, General Article. The Court-Martial also amended the allegation to exclude “rape” and alleged that he “wrongfully [committed] an indecent act with [a female sailor] “by engaging in sexual intercourse in the presence of [a male sailor].”

7. In Order 19-02, the Court Martial found Mr. DeGrant guilty of charge I, but amended the language to exclude any language suggesting “rape” and “lack of consent” and “force,” making it clear that the act was consensual. The Court-Martial also noted that there “was in fact only one agreement to commit the two different offenses as one course of conduct, and accordingly the two specifications are merged into one conspiracy to commit indecent acts and sodomy, with both of the alleged overt acts proven to have taken place in furtherance of the agreement.”

8. In Order 19-02, the Court Martial found Mr. DeGrant guilty of sodomy, but made it clear that the act was done without force and with consent.

9. The Court-Martial sentenced Mr. DeGrant to 6 months confinement with credit for time served, and a bad-conduct discharge.

10. After his discharge from the Navy, Mr. DeGrant filed an application with the Commission for a Class III Certification on May 1, 2002. The application was for a position as a "keno writer/runner" with the Tulalip Tribes. In the section marked "criminal history statement," Mr. DeGrant answered "yes," that he had been in "military confinement." He identified the offense as a charge of AWOL, charged on September 4, 2001, and the disposition and date as "closed, September 8, 2001."

11. The Commission's search through the Washington State Judicial Information System ("JIS") did not reveal any record of Washington State convictions. On the basis of the representations Mr. DeGrant made in his 2002 application, the Commission issued to him a Class III Certification.

12. Neal S. Nunamaker, Program Manager in the Commission's Licensing Division, wrote a letter on June 27, 2002, to the Tulalip Tribal Gaming Agency ("TTGA"), and specifically to the attention of Ms. Lilly Jones. Mr. Nunamaker's letter informed the TTGA that the Commission had received information that "Mr. DeGrant failed to fully and truthfully disclose criminal history record information." While Mr. DeGrant had disclosed the 2001 AWOL, the letter suggested that there were other matters as yet undisclosed. The letter concluded with a request to the TTGA to warn Mr. DeGrant that failure to disclose in the future may result in revocation of his Class III Certification.

13. The TTGA replied to Mr. Nunamaker's letter in a FAX dated July 3, 2002. Lilly Jones added a short note to the FAX cover sheet: "Here is the information on Damany S.

DeGrant. Please let me know if this is different than the dates you have.” Dave Trujillo, a Commission official, made his own notes on the FAX cover sheet: “Dates were same. Nature of admin charges – sensitive. Include in file. DT.” The pages, in addition to the FAX cover sheet, included a signed criminal history statement from Mr. DeGrant, dated July 2, 2002. In it, he disclosed that he was charged on September 4, 2001 with a violation of UCMJ, Art. 125. He wrote that he was found guilty of a lesser charge. Another page of the TAX substantially conveyed the substance of his sodomy conviction as it appears in Exhibit 6, p. 4. Exhibit 4, page 4.

14. Mr. DeGrant kept his Certification in effect from 2002 until 2008. He did not renew the Certification in 2008.

15. Mr. DeGrant applied again for a Class III Certification on an application date-stamped received by the Commission on November 29, 2011. In Exhibit 5, p. 3, Mr. DeGrant disclosed in the application that he had been charged with “indecent acts” in February 2002 in Bangor, Washington. He disclosed that he had been in military service from August 1999 to February 2002 and that the type of discharge was “dishonorable.”

16. Mr. DeGrant’s 2011 application did not disclose the United States Code citations for the offenses for which he was court-martialed, nor did it disclose the number of the offenses. The application did not inform the Commission that the offenses were the subject of a court-martial and not adjudicated in a Washington State court or court of a Washington political subdivision.

17. The Commission did not investigate Mr. DeGrant’s disclosure in his 2011 application. The Commission renewed Mr. DeGrant’s license on November 28, 2011.

However, the Commission referred the matter of Mr. DeGrant's limited disclosure to Special Agent Sullivan on January 13, 2011, as part of a post-licensing investigation.

18. Special Agent Sullivan has ten years of experience with the Commission. She has completed all of the training assigned to her, including programs offered by the Washington State Criminal Justice Training Commission. She is a nationally certified fraud examiner. She is also a criminal justice major at Washington State University. She works in the Commission's Criminal History Investigation Unit.

19. When Special Agent Sullivan received her assignment to investigate Mr. DeGrant's criminal history, she brought the matter to the attention of Tina Griffin, an Assistant Director at the Commission. Ms. Griffin was concerned about the disclosure, and decided that it was necessary to discuss the matter in person with the TTGA due to the nature of the charges.

20. On February 6, 2012, Ms. Griffin and Jennifer Lamont, a Program Manager at the Commission, drove to the Tulalip Reservation and discussed the situation with Jeff Hatch, the TTGA's Deputy Director of Licensing. It was during this meeting that Mr. Hatch gave Ms. Griffin and Ms. Lamont a copy of Mr. DeGrant's General Court Martial (Exhibit 6).

21. Lance Ledford is the TTGA's Interim Director. On February 23, 2012, Mr. Ledford wrote to Ms. Griffin and provided her with a timeline of Mr. DeGrant's certification history with the Tulalip Tribe. Among other things, Mr. Ledford told Ms. Griffin that, despite Mr. Nunamaker's request, the TTGA had not informed Mr. DeGrant of Mr. Nunamaker's June 27, 2002, letter regarding non-disclosure of criminal history.

22. Ms. Griffin acknowledged Mr. Ledford's correspondence in her own letter dated February 24, 2012, thanking him for Mr. DeGrant's licensing history with the TTGA and informing him that the Commission planned to recommend revocation of Mr. DeGrant's certification.

23. Special Agent Sullivan reviewed the facts concerning Mr. DeGrant's criminal history and those facts disclosed to the Commission by the TTGA. She wrote Case Report No. 2012-00251 that summarized her findings and concluded: "DEGRANT has demonstrated through his prior activities and his criminal history that he poses a threat to the effect regulation of gambling. His criminal history includes convictions of Indecent Acts, Engaging in Sexual Intercourse in the Presence of Another and two counts of Sodomy, crimes of moral turpitude. He disclosed his criminal history on his application and through inadvertence and mistake, [the Commission] issued DEGRANT certification despite his disclosure. DEGRANT has failed to prove by clear and convincing evidence that he is qualified for certification."

24. Mr. DeGrant engaged in consensual oral sex with a female while on board the USS Lincoln. Mr. DeGrant was, at that time, a sailor in the United States Navy. After leaving the Navy, he applied for a license from the TTGA and a certification from the Commission. He worked for the TTGA from May 2002 until January 5, 2009. In November 2011, Mr. DeGrant again applied for a license from the TTGA and a certification from the Commission. Mr. DeGrant has worked for the TTGA since then as a maintenance technician.

25. The TTGA conducts background checks similar to those done by the Commission. The TTGA follows the state criteria for licensing and well as some tribal criteria, as well. One of the factors the TTGA considers is whether an applicant is an enrolled member or an affiliated member, or some other relationship, or lack of same, with the Tulalip Tribe.

26. Mr. DeGrant is an affiliated member of the Tulalip Tribe. An affiliated member is one who is related as a parent, child, or spouse to an enrolled member of the Tulalip Tribe. An applicant's status as an enrolled or affiliated member of the Tulalip Tribe is a factor the TTGA takes into account in deciding whether to issue a license or to revoke a license.

27. The TTGA considers Mr. DeGrant to be qualified to hold a tribal license and opposes the Commission's effort to revoke Mr. DeGrant's state-issued certification.

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Administrative Law Judge now enters the following Conclusions of Law:

1. The Office of Administrative Hearings has jurisdiction over the persons and subject matter of this case pursuant to the Tribal-State Compact for Class III Gaming Between the Tulalip Tribes of Washington and the State of Washington, RCW 9.46.140, Chapter 34.05 RCW, and Title 230 WAC.

2. The State of Washington and the Tulalip Tribes of Washington are parties to the Tribal-State Compact for Class III Gaming ("Compact"). The Washington State Gambling Commission is the "State Gaming Commission" ("SGA") identified in the Compact. The

Tulalip Tribal Gaming Commission is the "Tribal Gaming Agency" ("TGA") identified in the Compact. The Compact defines "state certification" to mean "the licensing process utilized by the State Gaming Agency to ensure all persons required to be licensed/certified are qualified to hold such license in accordance with the provisions of Chapter 9.46 RCW." The Compact authorizes the SGA to investigate applicants for "state certification," and provides for other state enforcement action, including summary suspension of state certification.

3. Mr. DeGrant holds a Class III Certification and is subject to RCW 9.46.075 and WAC 230-03-085.

4. The Commission has the broad purpose of protecting the public by insuring that those activities authorized by Ch. 9.46 RCW do not maliciously affect the public and do not breach the peace. RCW 9.46.010.

5. The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities by strict regulation and control. The Commission is required to closely control all factors incident to the activities authorized in Ch. 9.46 RCW, and the provisions of Ch. 9.46 RCW are to be liberally construed to achieve those ends. RCW 9.46.010.

6. The Commission bases its proposed revocation of Mr. DeGrant's gambling license on the provisions of RCW 9.46.075(1), (3), (4), and (8), and WAC 230-03-085(1) and (8).

7. RCW 9.46.075(1) provides that the Commission may suspend or revoke any license or permit issued by it, for any reason or reasons it deems to be in the public interest, including failing to comply with chapter 9.46 RCW and Title 230 WAC.

8. RCW 9.46.075(3) provides that the Commission may suspend or revoke any license or permit issued by it where the applicant has obtained a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake.

9. RCW 9.46.075(4) provides that the Commission may suspend or revoke any license or permit issued by it where the applicant has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, wilful 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.

10. RCW 9.46.075(8) provides that the Commission may suspend or revoke any license or permit issued by it where the applicant or licensee fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of chapter 9.46 RCW.

11. WAC 230-03-085 provides that the Commission may suspend or revoke any license or permit when the licensee (1) commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075, or (8) when the licensee poses a threat to the effective regulation of gambling, or increases the likelihood

of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by prior activities, criminal record, reputation, habits, or associations.

12. Each licensee has an affirmative responsibility to establish, by clear and convincing evidence, his continuing qualifications for licensure. RCW 9.46.153(1). Each holder of a license issued pursuant to ch. 9.46 RCW is subject to continuous scrutiny regarding his general character, integrity, and ability to engage in, or associate with, gambling or related activities impacting this state. RCW 9.46.153(7).

13. The Commission's Amended Notice of Charges and Case Report 2012-00251, on which the Amended Notice of Charges was based, show that the Commission's main reason for revoking Mr. DeGrant's certification is the underlying convictions themselves; the Commission acknowledges that Mr. DeGrant disclosed his criminal history on his 2011 application. Exhibit 1, page 7.

14. The issue is whether Mr. DeGrant's certification should be revoked because of his 2002 convictions in a General Court Martial under Charge I of conspiracy to commit indecent acts and sodomy, under Charge IV of violating Article 134, "General Article," and under Charge V of consensual sodomy.

15. There is no question that the Commission has the legal authority under RCW 9.46.075(3) to revoke a license that it issued by mistake; that is, if the Commission learns that it should have, and would have, denied a license to an applicant but for its lack of knowledge that the applicant had committed a crime, the Commission may revoke that license.

16. RCW 9.46.075(4) allows revocation for certain kinds of crimes. First, subsection (4) refers to convictions or guilty pleas to “forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payments or reports to a government agency at any level, or filing false reports therewith, or of any similar offense or offenses[.]” The kind of offenses that come within the catch-all phrase “or of any similar offense or offenses” refers to the list of offenses that preceded it. “The ejusdem generis rule requires that general terms appearing in a statute in connection with specific terms are to be given meaning and effect only to the extent that the general terms suggest items similar to those designated by the specific terms.” *Seattle v. Department of Housing and Human Services*, 136 Wn.2d 693, 699, 965 P.2d 619 (1998). The enumerated offenses involve efforts to obtain money or property or some advantage through illegal means. Sodomy, conspiracy to commit sodomy, and indecent acts are not crimes that come within the phrase “or of any similar offense or offenses” as used in this statute.

17. Second, in RCW 9.46.075(4), sodomy, conspiracy to commit sodomy, and indecent acts are not acts of “bribing or otherwise unlawfully influencing a public official or employee of any state or the United States.”

18. Third, sodomy and indecent acts may be felonies or misdemeanors, chargeable under different statutes, if they involve either physical harm to individuals or involve moral turpitude. Mr. DeGrant’s 2002 convictions did not involve physical harm to individuals. Thus, under RCW 9.46.075(4), revocation of Mr. DeGrant’s certification depends on a conclusion that the crimes of sodomy, conspiracy to commit sodomy, and indecent acts involved moral turpitude.

19. Sodomy is no longer a criminal offense in Washington State. In 1976, the Legislature repealed the statute criminalizing that activity.

20. There is also no criminal offense in Washington State of having sex in the presence of a third-person adult, which was the basis for Mr. DeGrant's conviction of an indecent act.

21. Based on Conclusions of Law No. 22 and 23, there can be no criminal charge in Washington State for conspiring to commit lawful acts.

22. Moral turpitude has been defined in Washington law. "Prostitution is unquestionably a crime involving moral turpitude. A crime involves moral turpitude if it is an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men or to society in general." *Seattle v. Jones*, 3 Wn. App. 431, 437, 475 P.2d 790 (1970). And in *State v. Hennings*, 3 Wn. App. 483, 489, 475 P.2d 926 (1970).

This basic ingredient or element of most crimes has not always been clearly conceived. It is variously called 'scienter,' 'guilty knowledge,' 'willfulness,' or 'evil' or 'felonious' intent. It is a necessary 'element' of a crime involving 'moral turpitude.'

Without doubt, by contemporary community standards possession and sale of narcotics, unless authorized by law, is a crime which by its very nature involves 'moral turpitude.' Crimes which involve moral turpitude are categorized as crimes mala in se. *State v. Turner*, 78 Wash.Dec.2d 276, 474 P.2d 91 (1970).

The peripheral evils associated with the narcotics traffic-prostitution, robbery, and even homicide--are so well recognized that the assertion that possession and sale of narcotics is a crime malum in se needs no elaboration.

23. If Mr. DeGrant had not been in the military and had engaged in these acts in Washington State in 2001 or 2002, he would not have been charged with a crime in the first place. The legislature recognized that offenses involving oral sex between consenting adults, do not involve moral turpitude. An indecent act may or may not involve moral

turpitude, and in this case, the indecent act conviction was based on the same act that resulted in the conviction for sodomy. If that same act had occurred in Washington State (in a closed room and not in public), there would have been no criminal charge. I conclude that Mr. DeGrant was not convicted of crimes involving moral turpitude.

24. I conclude that Mr. DeGrant's certification may not be revoked on the basis of RCW 9.46.075(1), (3), (4), (8), or WAC 230-03-085(1) or (8). The Commission's argument that it made a mistake issuing Mr. DeGrant his certification and now should revoke it is linked to the argument that Mr. DeGrant was convicted of crimes involving moral turpitude.

25. Mr. DeGrant has affirmatively shown that, since leaving the Navy, he is qualified to hold his certification in accordance with the provisions of chapter 9.46 RCW.

26. This decision leaves open the question whether the Commission may revoke a license or certification if the person holding the license or certification is convicted of a Federal offense for which there can be no Washington State counterpart.

27. I conclude that the Commission may not revoke Mr. DeGrant's certification.

From the foregoing conclusions of law, NOW THEREFORE,

INITIAL ORDER

IT IS HEREBY ORDERED That the Commission's proposal to revoke Mr. DeGrant's Class III Certification, License No. 69-15181, is DENIED.

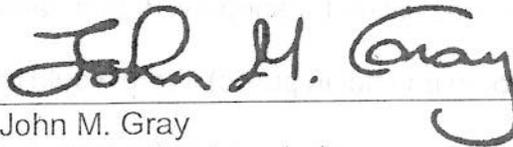
A request that this order be vacated must be filed within seven days of service of this order, stating the grounds relied upon. RCW 34.05.440(3).

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DATED at Olympia, Washington, this 8th day of August, 2012.



John M. Gray
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO THE PARTIES

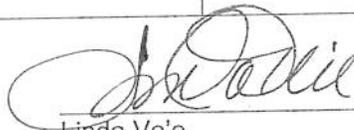
Initial orders must be entered in accordance with RCW 34.05.461(3). WAC 230-17-085(1). An initial order becomes the final order unless a party files a petition for review of the initial order as explained in WAC 230-17-090. WAC 230-17-085(2). RCW 34.05.464 governs the review of initial orders. WAC 230-17-090(1). Any party to an adjudicative proceeding may file a petition for review of an initial order. Parties must file the petition for review with us within twenty days of the date of service of the initial order unless otherwise stated. Parties must serve copies of the petition to all other parties or their representatives at the time the petition for review is filed. WAC 230-17-090(2). Petitions must specify the portions of the initial order the parties disagree with and refer to the evidence in the record on which they rely to support their petition. WAC 230-17-090(3). Any party to an adjudicative proceeding may file a reply to a petition for review of an initial order. Parties must file the reply with us within thirty days of the date of service of the petition and must serve copies of the reply to all other parties or their representatives at the time the reply is filed. WAC 230-17-090(4). Any party may file a cross appeal. Parties must file cross appeals with us within ten days of the date the petition for review was filed with us. WAC 230-17-090(5). Copies of the petition or the cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed. WAC 230-17-090(6). After we receive the petition or appeal, the commissioners review it at a regularly scheduled commission meeting within one hundred twenty days and make a final order. WAC 230-17-090(7).

Certificate of Service – OAH Docket No. 2012-GMB-0025

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

Address: Damany S. DeGrant 1222 118 th Place SW Everett WA 98204	First Class US Mail, postage prepaid
Address: Stephanie Happold Assistant Attorney General Office of the Attorney General PO Box 40100 Olympia WA 98504-0100	First Class US Mail, postage prepaid
Address: Maureen Pretell Washington State Gambling Commission ATTN: Legal Department PO Box 42400 Olympia WA 98504	First Class US Mail, postage prepaid
Address:	
Address:	
Address:	

Date: August 8, 2012


Linda Ve'e
Office of Administrative Hearings