

JAN 17 2018

WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS

GOVERNMENT COMPLIANCE  
& ENFORCEMENT

In the matter of:

Docket No. 06-2017-GMB-00022

John L. McCain,

**INITIAL ORDER**

Appellant/Licensee.

Agency: Gambling Commission  
Program: Washington State Gambling Commission  
Agency No. 2016-01605

License No. 69-31577

**1. ISSUES:** Based on the Washington State Gambling Commission's 'Notice of Administrative Charges', dated April 4, 2017, whether the Appellant, John L. McCain:

- 1.1. Failed to report Muckleshoot Gaming Commission's administrative action and its outcome within 30 days of filing the final action or final outcome, as required by WAC 230-06-090?
- 1.2. Knowingly and willfully disregarded the ordinances, statutes, administrative rules, or court rules, as required by RCW 9.46.075 and WAC 230-03-085?
- 1.3. Cannot prove by 'clear and convincing' evidence that he is qualified for licensure, in violation of RCW 9.46.075(7)&(8) and RCW 9.46.153(1)?
- 1.4. Therefore, whether the Appellant's Class III certification should be revoked in accordance with RCW 9.46.075(7) & (8) and WAC 230-03-085(1),(3) and (8)(a),(b),(c) & (d) as well as Section V C(1) and (3) of the Muckleshoot Tribe-State Gaming Compact.

**2. ORDER SUMMARY**

- 2.1. **Affirmed.** John L. McCain failed to report Muckleshoot Gaming Commission's administrative action and its outcome within 30 days of filing the final action or final outcome, as required by WAC 230-06-090.
- 2.2. **Affirmed.** John L. McCain knowingly and willfully disregarded the ordinances, statutes, administrative rules, or court rules, as required by RCW 9.46.075 and WAC 230-03-085.
- 2.3. **Affirmed.** John L. McCain has failed to prove by 'clear and convincing' evidence that he is qualified for licensure, in violation of RCW 9.46.075(7)&(8) and RCW 9.46.153(1).
- 2.4. **Affirmed.** John L. McCain's Class III certification is revoked in accordance with RCW 9.46.075(7) & (8) and WAC 230-03-085(1),(3) and (8)(a),(b),(c)&(d) as well as Section V C(1) and (3) of the Muckleshoot Tribe-State Gaming Compact.

### 3. HEARING

- 3.1. Hearing Date: December 5, 2017
- 3.2. Administrative Law Judge: TJ Martin
- 3.3. Appellant: John L. McCain ('Appellant'/'Licensee')  
The Appellant did not appear for the hearing.
- 3.4. Agency: Washington State Gambling Commission Staff  
(‘Gambling Commission Staff’)
- 3.4.1. Representative: Gregory J. Rosen, AAG
- 3.4.2. Witnesses: Craig Barber, Gaming Investigator II  
Muckleshoot Tribal Gaming Commission
- Lamar Campbell, Gaming Enforcement Agent  
Muckleshoot Tribal Gaming Commission
- Mike Lopez, Special Agent  
Washington State Gambling Commission
- 3.5. Exhibits: Gambling Commission Staff’s Exhibits 1 through  
13 were admitted.  
The Appellant did not provide any exhibits.

### 4. FINDINGS OF FACT

The undersigned administrative law judge finds the following facts by a ‘preponderance of the evidence’:

#### ***Jurisdiction***

- 4.1. On April 4, 2017, the Washington State Gambling Commission (‘Gambling Commission’) issued to John L. McCain (‘Appellant’) a ‘Notice of Administrative Charges’.
- 4.2. On April 20, 2017, Mr. McCain appealed the ‘Notice of Administrative Charges’.

[Continued]

### **July 4, 2016 Hit and Run Incident**

- 4.3. On July 4, 2016, at around 7:30 p.m., Daniel Carrell, a patron of the Muckleshoot Casino, located in Auburn, Washington, was struck by a white, F-250 pick-up, later to be determined to be driven by John L. McCain, an employee of the Muckleshoot Casino. *Testimony of Craig Barber (hereinafter 'Testimony of Barber') and Exhibits ('Ex.')* 1 & 12.
- 4.4. McCain failed to stop for Carrell who was walking in the crosswalk. Carrell was struck by McCain's vehicle and moved several feet backward. He remained standing after being struck. Carrell and McCain briefly exchanged words following Carrell being struck. *Ex. 12.*
- 4.5. McCain drove into the Muckleshoot parking garage following the exchange. The incident was caught on Muckleshoot Casino security cameras. *Ex. 12.*
- 4.6. After parking in the Muckleshoot parking garage, McCain clocked into work and proceeded to begin working at his job as a poker dealer in the casino. McCain did not report the incident to Muckleshoot security staff, local law enforcement, or his supervisor. *Testimony of Barber.*
- 4.7. Medical personnel responded to the scene of the incident to treat Mr. Carrell, who complained of suffering pain in his left forearm. *Testimony of Barber.*
- 4.8. Craig Barber, Muckleshoot Gaming Commission Gaming Investigator II, and Lamar Campbell, Gaming Enforcement Agent, responded to the incident and conducted an investigation regarding the hit and run incident. *Testimony of Barber, Testimony of Lamar Campbell (hereinafter 'Testimony of Campbell') and Ex. 1.*
- 4.9. Carrell provided a written statement to the Auburn Police Department asserting he was struck by McCain while he was in the crosswalk at the Muckleshoot casino. *Ex. 5.*
- 4.10. On July 4, 2016, shortly after the incident, McCain provided a written statement to the Muckleshoot Gaming investigators. In his statement, McCain asserted that Carrell had jumped in front of his vehicle and started hitting the hood then broke off McCain's side mirror. *Exhibits 2 & 6.*
- 4.11. On the following day, July 5, 2016, McCain, as a part of a follow-up interview with the Muckleshoot Gaming Investigators provided another written statement. In the statement, McCain contradicted his previous statement, now asserting he knew he had struck Carrell in the crosswalk, but left the scene out of fear of Carrell becoming violent. *Testimonies of Barber and Campbell and Exhibits 3 & 13.*

- 4.12. Thomas Young, an eyewitness to the July 4, 2016 incident, provided a written statement to the Auburn Police Department. In his statement, Mr. Young asserted McCain failed to yield to Carrell while he was in the crosswalk. McCain struck Carrell with his pick-up truck then proceeded into the parking garage without stopping to see if Carrell was not injured. Young's statement was consistent with the statement provided by Carrell. *Ex. 4.*
- 4.13. Based on the incident, the Muckleshoot Gaming Commission, on July 20, 2016, suspended John L. McCain's Class III Gaming License pending a revocation hearing on August 3, 2017. *Exs. 7 & 8.*
- 4.14. On August 3, 2016, the Muckleshoot Gaming Commission held a revocation hearing regarding Mr. McCain's Class III Gaming License. The Appellant did not appear for the hearing. Upon conclusion of the revocation hearing, the Muckleshoot Gaming Commission revoked the Appellant's gaming license. *Ex. 9.*
- 4.15. The Appellant did not contact the Washington State Gambling Commission within 30 days of receiving either the notice of the administrative revocation hearing, which occurred on August 3, 2016 or the actual revocation of his gaming license by the Muckleshoot Gambling Commission. *Testimony of Mike Lopez (hereinafter 'Testimony of Lopez').*
- 4.16. On August 4, 2016, the Muckleshoot Gaming Commission sent notice to the Washington State Gambling Commission regarding the revocation of the Appellant's gaming license, effective August 3, 2016 to July 12, 2017. *Ex. 10.*
- 4.17. On September 12, 2016, Mike Lopez, Washington State Gambling Commission Special Agent, conducted an investigation of the July 4, 2016 involving the Appellant and the July 4, 2016 hit and run incident at the Muckleshoot Casino. *Testimony of Lopez and Ex. 11.*
- 4.18. At the hearing, held on December 5, 2017, the Appellant failed to appear. As a result, the Appellant did not contest any of the evidence presented by the Washington State Gambling Commission Staff.

[Continued]

## 5. CONCLUSIONS OF LAW

Based upon the facts above, the undersigned administrative law judge makes the following conclusions, based on a 'preponderance of the evidence':

### *Jurisdiction*

5.1. The Office of Administrative Hearings (OAH) has jurisdiction over the persons and subject matter of this case under RCW (Revised Code of Washington) 9.46.140(2)&(4) and WAC (Washington Administrative Code) 230-17-025.

### *A. Failure to Report*

5.2. WAC 230-06-090 'Report administrative and civil actions filed' requires, in pertinent part:

(1) All licensees must report to us in writing within thirty days all administrative actions filed against them by other gambling regulatory agencies, including those from other countries and Indian tribes.

(3) The report must consist of a complete copy of the original documents filed. Licensees must notify the commission of the final disposition of the case and include a copy of the final documents filed including, but not limited to, settlement agreements.

(5) We must receive a copy of the final written decision or settlement within thirty days after the case is resolved.

5.3. In the present matter, the Gambling Commission Staff has proven, by a preponderance of the evidence, that John McCain failed to contact the Washington State Gambling Commission regarding the administrative revocation of his gaming license by the Muckleshoot Gaming Commission within 30 days of his license being revoked on August 3, 2016.

5.4. Mr. McCain did not appear for the evidentiary hearing and present evidence refuting these facts.

5.5. **Affirmed.** As a result of Mr. McCain failing to contact the Washington State Gambling Commission within 30 days of the administrative action regarding his gaming license by the Muckleshoot Gaming Commission, he violated WAC 230-06-090. The Washington State Gambling Commission's 'Notice of Administrative Charges' is affirmed regarding this issue.

[Continued]

**B. Disregard of ordinances, statutes, and administrative rules**

5.6. The Gambling Commission based its denial of the Appellant's Public Card Room Employee License Application on the provisions of RCW 9.46.153(1) in conjunction with RCW 9.46.075 (1), (4), (8), and (10); and WAC 230-03-085(1),(3) and (8)(a),(b).

5.7. RCW 9.46.153(1), in pertinent part, 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 licensed activity will be conducted;

5.8. RCW 9.46.075 is the Commission's legislative grant of authority to deny, suspend, or revoke gambling licenses or permits:

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:

(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, she or it is qualified in accordance with the provisions of this chapter;

(10) 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 other related activity of 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;

5.9. The Commission also relied on its own administrative rules. Specifically, WAC 230-03-085 states when the Commission will deny, suspend, or revoke an application, license, or permit:

We [referring to the Commission] 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; or

(3) Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or

(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;

(c) Reputation; or

(d) Habits;...

5.10. In the present matter, the Washington State Gambling Commission Staff has proven, by a preponderance of the evidence, that Mr. McCain not only failed to report the July 4, 2016 hit and run incident, but also provided false or misleading information during the investigation to the Muckleshoot Gaming Commission since Mr. Cain later changed his statement, directly contradicting his previous statement. The actions by Mr. McCain poses a threat to the integrity of the gaming industry, through his failure to adhere to applicable ordinances, statutes, and administrative rules, as required by RCW 9.46.075 and WAC 230-03-085. Mr. McCain did not appear for the evidentiary hearing and present evidence refuting these facts.

5.11. **Affirmed.** As a result of Mr. McCain failing to adhere to applicable ordinances, statutes, and administrative rules, he violated RCW 9.46.075 and WAC 230-03-085. Therefore, the Washington State Gambling Commission's 'Notice of Administrative Charges' is affirmed regarding this issue.

**C. Failure to prove qualified for licensure by 'clear and convincing evidence'**

5.12. RCW 9.46.075(7)&(8) establishes:

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: ...

(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 he, she or it is qualified in accordance with the provisions of this chapter;

5.13. Further, RCW 9.46.153(1) requires applicants to prove their eligibility for a license:

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[.]” **Emphasis Added.**

5.14. “Clear and convincing evidence,” as that term is used in RCW 9.46.153(1), is a higher burden of proof than “preponderance of the evidence.” See *Hardee v. Department of Social and Health Services*, 172 Wn.2d 1, 6-18, 256 P.3d 339 (2011).

5.15. **Affirmed.** In the present case, Mr. McCain failed to appear for the hearing and present any evidence to refute the case presented by the Washington State Gambling Commission Staff. As a result, the Appellant has not met his burden of proving by ‘clear and convincing evidence’ that he is qualified for licensure, in accordance with RCW 9.46.075(7)&(8) and RCW 9.46.153(1). As a result, the Washington State Gambling Commission’s ‘Notice of Administrative Charges’ is affirmed regarding this issue.

[Continued]

**D. Revocation of Appellant's Class III Certification**

5.16. RCW 9.46.075(7) & (8) and WAC 230-03-085(1),(3) and (8)(a),(b),(c) and (d) as well as Section V C(1) and (3) of the Muckleshoot Tribe-State Gaming Compact.

5.17. RCW 9.46.075 is the Commission's legislative grant of authority to deny, suspend, or revoke gambling licenses or permits:

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:

(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 he, she or it is qualified in accordance with the provisions of this chapter;

5.18. The Commission also relied on its administrative rules. Specifically, WAC 230-03-085 states when the Commission will deny, suspend, or revoke an application, license, or permit:

We [referring to the Commission] 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;

(3) Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or

(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;...

[Continued]

5.19. In the present matter, based on the aforementioned 'Findings of Fact' and 'Conclusions of Law', the Washington State Gambling Commission Staff has established, by a preponderance of the evidence', that the Appellant misrepresented facts regarding the July 4, 2016 hit and run incident. Further, the Appellant failed to appear at the hearing and prove by 'clear and convincing evidence' that he is qualified for licensure.

5.20. **Affirmed.** Therefore, John L. McCain Class III certification is revoked in accordance with RCW 9.46.075(7) & (8) and WAC 230-03-085(1),(3) and (8)(a),(b),(c) and (d) as well as Section V C(1) and (3) of the Muckleshoot Tribe-State Gaming Compact. As a result, the Washington State Gambling Commission's 'Notice of Administrative Charges' is affirmed regarding this issue.

## 6. INITIAL ORDER

### IT IS HEREBY ORDERED THAT:

- 6.1. The Washington State Gambling Commission's 'Notice of Administrative Charges', dated April 4, 2017 is **affirmed**.
- 6.2. **Affirmed.** John L. McCain failed to report Muckleshoot Gaming Commission's administrative action and its outcome within 30 days of filing the final action or final outcome, as required by WAC 230-06-090.
- 6.3. **Affirmed.** John L. McCain knowingly and willfully disregarded the ordinances, statutes, administrative rules, or court rules, as required by RCW 9.46.075 and WAC 230-03-085.
- 6.4. **Affirmed.** John L. McCain has failed to prove by 'clear and convincing' evidence that he is qualified for licensure, in violation of RCW 9.46.075(7)&(8) and RCW 9.46.153(1).
- 6.5. **Affirmed.** John L. McCain Class III certification is revoked in accordance with RCW 9.46.075(7) & (8) and WAC 230-03-085(1),(3) and (8)(a),(b),(c) and (d) as well as Section V C(1) and (3) of the Muckleshoot Tribe-State Gaming Compact.

**Issued** from Tacoma, Washington on the date of mailing.



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TJ Martin  
Administrative Law Judge  
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED

## PETITION FOR REVIEW

Any party to this proceeding may file a Petition for Review of this initial order. The written petition for review must be mailed to the Washington State Gambling Commission at:

Washington State Gambling Commission  
PO Box 42400  
Olympia, WA 98504

The petition for review must be received by the Commission within twenty (20) days from the date this initial order was mailed to the parties. A copy of the petition for review must be sent to all parties of record. The petition for review must specify the portions of the initial order with which the party disagrees, and must refer to the evidence in the record which supports the party's position. The other party's reply must be received at the address above, and served on all parties of record, within thirty (30) days from the date the petition for review was mailed.

Any party may file a cross appeal. Parties must file cross appeals with the Washington State Gambling Commission within ten days of the date the petition for review was filed with the Washington State Gambling Commission. Copies of the petition or cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed.

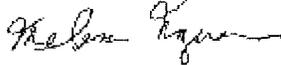
**CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 06-2017-GMB-00022**

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

<p>John L. McCain 2800 Alder St., #321 Milton, WA 98354 <b>Appellant</b></p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Gregory Rosen, AAG Office of the Attorney General MS 40100 PO Box 40100 Olympia, WA 98504 <b>Agency Representative</b></p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Tuesday, January 16, 2018

OFFICE OF ADMINISTRATIVE HEARINGS



Melesa Noguera  
Legal Assistant 2