

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

WSGC
NOV 25 2019
RECORDS

In the matter of:

Su-Zhen Wu,

Appellant.

Docket No. 09-2019-GMB-00131

**INITIAL ORDER GRANTING GAMBLING
COMMISSION STAFF'S MOTION FOR
SUMMARY JUDGMENT**

Agency: Washington State Gambling
Commission

Program: Gambling Commission

Agency No. 2019-00620

License No. 68-19478

Language Access Notice

English

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Chinese Simplified

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1. ISSUES:

- 1.1. Does a genuine issue of material fact exist as to whether Su-Zhen Wu reported a criminal charge within thirty days of the charge being filed, as required by Washington Administrative Code (WAC) 230-06-085(1)?
- 1.2. Does a genuine issue of material fact exist as to whether Ms. Wu disclosed the solicitation to commit violation of the Uniform Controlled Substances Act criminal charge, as required by Revised Code of Washington (RCW) 9.46.075?
- 1.3. Does a genuine dispute of material fact exists as to whether Ms. Wu can prove by 'clear and convincing evidence' that she is qualified for licensure, as required by RCW 9.46.153(1)?
- 1.4. Whether the Gambling Commission is authorized to revoke Ms. Wu's Public Card Room Employee License (License) based on RCW 9.46.075(1),(8)&(9) and WAC 230-03-085(1), (3), (8), & (9)(a)?

- 1.5. If Ms. Wu's License is revoked, whether an evidentiary, fact-finding hearing is needed?

2. ORDER SUMMARY:

- 2.1. No genuine issue of material fact exists as to whether Ms. Wu failed to report criminal charges within thirty days of the charges being filed, as required by WAC 230-06-085(1). The Gambling Commission's Motion for Summary Judgment on this basis is **GRANTED**.
- 2.2. No genuine issue of material fact exists as to whether Ms. Wu failed to disclose the solicitation to commit Violation of the Uniform Controlled Substances Act (VUCSA) criminal charge, as required by RCW 9.46.075. The Gambling Commission's Motion for Summary Judgment on this basis is **GRANTED**.
- 2.3. No genuine issue of material fact exists that Ms. Wu failed to prove by 'clear and convincing evidence' she is qualified for licensure, as required by RCW 9.46.153(1). The Gambling Commission Staff's Motion for Summary Judgment on this basis is **GRANTED**.
- 2.4. The Gambling Commission is authorized to revoke Ms. Wu's License based on RCW 9.46.075 (1), (8), and (9); and WAC 230-03-085 (1), (3), (8) and (9)(a). Therefore, the Gambling Commission's revocation of Ms. Wu's License, is **AFFIRMED**.
- 2.5. Because the revocation of Ms. Wu's License is **AFFIRMED**, no fact-finding hearing is needed. Therefore, the evidentiary hearing, scheduled for Tuesday, January 7, 2020, is **CANCELLED**.

3. GAMBLING COMMISSION STAFF'S MOTION FOR SUMMARY JUDGMENT:

- 3.1. Hearing Date: The Motion For Summary Judgment was decided without oral argument.
- 3.2. Admin. Law Judge: Charles Bryant
- 3.3. Appellant: Su-Zhen Wu (Ms. Wu)
- 3.4. Agency: Washington State Gambling Commission
 - 3.4.1. Representative: Kellen Wright, Assistant Attorney General
- 3.5. Documents Considered: The following documents were considered for purposes of the Gambling Commission's Motion for Summary Judgment:

Doc. No.	Document Name	Document Date	No. Pages
1	Final Order of the Gambling Commission	07/11/19	6
2	Letter from Su-Zhen-Wu ('Petition for Reconsideration')	7/25/19	1
3	Order Granting Petition for Reconsideration	9/17/19	2
4	Request for Assignment of Administrative Law Judge and scheduling of an Administrative Hearing	9/24/19	2
5	Office of Administrative Hearings (OAH) Prehearing Conference Order	10/10/19	7
6	Declaration of Special Agent Julie Sullivan in Support of Gambling Commission Staff's Motion for Summary Judgment, with attached Exhibits 1-4	10/14/19	50
7	Washington State Gambling Commission Staff's Motion for Summary Judgment	10/17/19	6

4. FACTS FOR PURPOSE OF SUMMARY JUDGMENT:

On a motion for summary judgment, the decision maker only considers those facts for which the parties establish "no genuine issue as to any material fact".¹ "Summary judgment is appropriate only where the undisputed facts entitle the moving party to judgment as a matter of law."² Only evidence in the record and inferences from that evidence establish facts. If evidence in the record points to more than one possible finding of fact, then summary judgment may not rest on the moving party's version of that fact.³ Admissions, stipulations, procedural history, and uncontested declarations and affidavits establish facts for summary judgment. So, the record here supports the following facts for the purposes of summary judgment:

Jurisdiction

- 4.1. On April 18, 2019, the Gambling Commission issued a Notice of Administrative Charges, revoking Ms. Wu's Public Cardroom Employee license. *Exhibit 1*.
- 4.2. On July 11, 2019, the Washington State Gambling Commission (Gambling Commission) issued the 'Final Order of the Gambling Commission' (Revocation) No. CR 2019-00620, revoking Ms. Wu's License No. 68-19478. The Gambling

¹ WAC 10-08-135. In Superior Court matters, CR 56 governs summary judgment. Where the relevant procedural rules do not conflict with CR 56, it and the cases interpreting it serve as persuasive authority in the management of summary judgment under WAC 10-08-135.

² *Verizon NW, Inc. v. Employment Sec. Dep't*, 164 Wn.2d 909, 916 (2008), citing *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App. 1, 14 (1999).

³ *Verizon NW*, 164 Wn.2d 916.

Commission's Revocation asserted that Ms. Wu was not qualified for licensure based on her failure to disclose the VUCSA, and her representation in her application for renewal of her License that she did not have any pending criminal charges, as well as her failure to prove by clear and convincing evidence that she is qualified for licensure.

- 4.3. On July 25, 2019, Ms. Wu signed a letter to the Washington State Gambling Commission, stating in part that "I have not received your letter mailed on April 14, 2019. I think that is because I moved out 2 years ago." This letter was treated by the Gambling Commission as a Petition for Reconsideration.
- 4.4. On September 17, 2019, the Gambling Commission issued an Order Granting Petition for Reconsideration, which dissolved the final order and remanded the matter to the Office of Administrative Hearings for a hearing on the merits.
- 4.5. On September 24, 2019, the Gambling Commission forwarded a "Request for Assignment of Administrative Law Judge" to the Office of Administrative Hearings, requesting the assignment of an Administrative Law Judge and the scheduling of an administrative hearing.

Gambling Commission's Motion for Summary Judgment

- 4.6. On October 17, 2019, the Gambling Commission filed a Motion for Summary Judgment, along with the "Declaration of Julie Sullivan in Support of Commission Staff's Motion for Summary Judgment" (Declaration of Sullivan), with attached Exhibits 1-4.
- 4.7. Ms. Wu did not file a response to the Gambling Commission Staff's Motion for Summary Judgment, which was due on or before November 18, 2019.
- 4.8. As of the date of this Initial Order, Ms. Wu has not filed any response, nor provided any documentation, challenging the Gambling Commission's motion.

Ms. Wu's Previous Administrative History

- 4.9. Ms. Wu has been a licensed Public Card Room Employee since 2004, and has worked at multiple House Banked Card Room, including the Fortune Casino, where she has been working since 2015. *Declaration of Sullivan: Exhibit 2, page 3.*
- 4.10. Ms. Wu does not have any material administrative history. *Declaration of Sullivan: Exhibit 2, page 3.*

Ms. Wu's Card Room Employee License Application & Investigation

- 4.11. On January 31, 2019 Information and Probable Cause for VUCSA (for unlawfully and feloniously manufacturing marijuana) was filed in King County Superior Court against Ms. Wu. *Declaration of Sullivan. Exhibit 1, page 4. Exhibit 2, page 3. Exhibit 3.*
- 4.12. On February 14, 2019, Ms. Wu was arraigned on the VUCSA charge. *Exhibit 1, page 4. Exhibit 2, page 4.*
- 4.13. On March 27, 2019, Ms. Wu completed her renewal application online to the Gambling Commission. *Declaration of Sullivan: Exhibit 2, Pg. 3. Exhibit 4.*
- 4.14. Ms. Wu did not disclose the pending King County Superior Court criminal charge of VUCSA to the Gambling Commission during her License renewal application process. *Declaration of Sullivan. Exhibit 2, page 3. Exhibit 3, page 11.*
- 4.15. The VUCSA allegations were that Ms. Wu was responsible for maintaining a large marijuana grow operation with over 800 plants. At one location, Officers discovered approximately 60 pounds of processed marijuana and \$43,911 in U.S. currency. *Declaration of Sullivan, Exhibit 2, pages 3 & 4. Exhibit 3, pages 13-21.*
- 4.16. In addition to the criminal charge, Ms. Wu provided untrue information in her license renewal application. Ms. Wu selected the option in her online application renewal that stated, "I have not had any criminal action filed against me within the last 12 months." *Declaration of Sullivan: Exhibit 2, page 3.*
- 4.17. Beginning April 12, 2019, Gambling Commission Special Agent Julie Sullivan opened an investigation regarding Su-Zhen Wu and her renewal application for her Public Card Room Employee license. *Declaration of Sullivan: Exhibit 2, page 1.*
- 4.18. The Gambling Commission's investigation included the review of Ms. Wu's gambling license file, Ms. Wu's online renewal, a criminal history check through the Judicial Information System, and a certified copy of the court documents pertaining to Ms. Wu's criminal charge. *Declaration of Sullivan: Exhibit 2.*
- 4.19. On April 18, 2019, the Gambling Commission issued a Notice of Administrative Charges, revoking Ms. Wu's Public Cardroom Employee license because of (1) her failure to disclose the VUCSA, (2) her representation in her application for renewal of her License that she did not have any pending criminal charges, as well as (3) her failure to prove by clear and convincing evidence that she is qualified for licensure as required by RCW 9.46.153(1). *Exhibit 1.*

- 4.20. On July 11, 2019, the Washington State Gambling Commission (Gambling Commission) issued the 'Final Order of the Gambling Commission' (Revocation) No. CR 2019-00620, revoking Ms. Wu's License No. 68-19478.
- 4.21. On July 25, 2019, Ms. Wu filed a Petition for Reconsideration.
- 4.22. On September 17, 2019, the Gambling Commission issued an Order Granting Petition for Reconsideration, which dissolved the final order and remanded the matter to the Office of Administrative Hearings for a hearing on the merits.
- 4.23. On September 24, 2019, the Gambling Commission forwarded a "Request for Assignment of Administrative Law Judge" to the Office of Administrative Hearings, requesting the assignment of an Administrative Law Judge and the scheduling of an administrative hearing.

5. CONCLUSIONS OF LAW:

Jurisdiction

- 5.1. The Office of Administrative Hearings (OAH) has jurisdiction over the persons and subject matter of this case under Revised Code of Washington (RCW) 9.46.140 (2), RCW 9.46.140 (4), Washington Administrative Code (WAC) 230-17-025 and Chapters 34.05 RCW and 34.12 RCW.

Summary Judgment Motions, Applicable Statutes, Regulations and Case Law

- 5.2. WAC 10-08-135 'Summary judgment' provides:

A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.
- 5.3. "Summary judgment is appropriate only where the undisputed facts entitle the moving party to judgment as a matter of law." *Verizon NW, Inc. v. Employment Sec. Dep't*, 164 Wn.2d 909, 916 (2008), *citing Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App. 1, 14 (1999).
- 5.4. Admissions, stipulations, procedural history, and uncontested declarations and affidavits establish facts for summary judgment.
- 5.5. In Superior Court matters, CR 56 governs summary judgment. Where the relevant procedural rules do not conflict with CR 56, it and the cases interpreting it serve as persuasive authority in the administrative management of summary judgment under WAC 10-08-135.
- 5.6. Civil Rule 56(e) provides: "If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party."

Gambling Commission Policy, Rules & Regulations

5.7. RCW 9.46.010 establishes, in relevant part:

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 and by strict regulation and control.

5.8. RCW 9.46.040 also authorizes the Washington State Gambling Commission to enforce the rules and regulations relating to gambling activities in the State.

5.9. RCW 9.46.075 provides, in relevant part, the Gambling Commission may deny a license application, revoke or suspend a license when an applicant or license holder:

(1) Has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW...;

(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;...

(9) Is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses included under subsection (4) of this section...⁴

5.10. WAC 230-03-085 also authorizes the Gambling Commission to deny, suspend or revoke any application, license or permit, for any of the following reasons, in relevant part:

(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

⁴ Subsection (4) states: 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 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; or

(9) 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

(c) Reputation; or

(d) Habits;...

5.11 Under WAC 230-06-085(1) entitled "Report criminal actions filed:"

(1) 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.

Ms. Wu's Failure to Report and Failure to Disclose a Pending Criminal Charge

5.12. Ms. Wu had a pending criminal charge for VUCSA at the time of her March 27, 2019, license renewal application, in violation of RCW 9.46.075(9). Ms. Wu did not report the pending criminal charge to the Gambling Commission within thirty days of the charges being filed as required by WAC 230-06-085(1).

5.13. Ms. Wu also failed to disclose material facts as a part of her license application, in violation of RCW 9.46.075 and WAC 230-03-085. In particular, Ms. Wu failed to disclose the fact that there was a pending felony solicitation to commit violation of the Uniform Controlled Substances Act charge against her in the King County Superior Court (which was charged only a little less than two months before she filed her online License application renewal) in violation of WAC 230-03-085(8).

5.14. In addition, Ms. Wu affirmatively represented that she did not have a pending criminal charge at the time she completed her online License renewal application, which "demonstrates a willful disregard of applicable gaming rules and regulations," in violation of WAC 230-03-085(3).

5.15. Therefore, because Ms. Wu: (1) had a pending criminal charge at the time of her application renewal; (2) failed to disclose the pending criminal charge in her application renewal as required by law; and (3) demonstrated a willful disregard for applicable gaming rules and regulations by indicating in her application that she had no pending criminal charges, the Gambling Commission's Motion for Summary Judgment should be **GRANTED**.

Ms. Wu's Failure to Establish 'Clear and Convincing Evidence' of Licensure Qualification

5.16. RCW 9.46.153(1) establishes:

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;

5.17. Ms. Wu, in her March 27, 2019, Public Card Room Employee License Application Renewal, failed to disclose a pending charge for felony solicitation to commit violation of the Uniform Controlled Substances Act. In addition, Ms. Wu affirmatively responded on the renewal application that "I have not had any criminal action filed against me within the last 12 months." This statement was not accurate. Ms. Wu had been charged with Felony Solicitation to commit violation of the Uniform Controlled Substances Act on January 31, 2019, and was arraigned on the charge on February 14, 2019, which was "within the last 12 months" of March 27, 2019.

5.18. Ms. Wu failed to respond to the Gambling Commission Staff's Motion for Summary Judgment and therefore did not dispute the material fact that she cannot show by 'clear and convincing evidence' that she is qualified for licensure, as required by RCW 9.46.153(1). In fact, as of the date of this order, she has not filed any response or presented any evidence demonstrating that she is qualified for gaming licensure. As a result, Ms. Wu has failed to prove, by 'clear and convincing evidence', that she is qualified for licensure. Because she cannot show that she is qualified for licensure, the Gambling Commission's Motion for Summary Judgment on this basis should be **GRANTED**.

Authorization to Revoke Ms. Wu's Public Card Room Employee License

5.19. RCW 9.46.075 and WAC 230-03-085 allow for the revocation of a licensee's Public Card Room License if the terms of the law are violated. Because Ms. Wu violated the provisions of RCW 9.46.075, RCW 9.46.153 and WAC 230-03-085 as detailed above, the revocation of her Public Card Room Employee license should be **AFFIRMED**.

Evidentiary Hearing Cancellation

5.20. Because the denial of Ms. Wu's License should be **AFFIRMED** on the basis of the Commission's Motion for Summary Judgment, no fact-finding hearing is needed. Therefore, the evidentiary hearing, scheduled for Tuesday, January 7, 2020, should be **CANCELLED**.

6. INITIAL ORDER:

- 6.1. No genuine issue of material fact exists as to whether Ms. Wu failed to report a criminal charge within thirty days of the charge being filed, as required by WAC 230-06-085(1). Ms. Wu was charged with a felony criminal offense on January 31, 2019, was arraigned on that charge on February 14, 2019, and failed to report the charge to the Gambling Commission when she submitted her online License renewal application on March 27, 2019. Therefore, the Gambling Commission's Motion for Summary Judgment on this basis is **GRANTED**.
- 6.2. No genuine dispute of material fact exists as to whether Ms. Wu failed to disclose the VUCSA charge, as required by RCW 9.46.075. Ms. Wu failed to disclose the information to the Gambling Commission. Therefore, the Gambling Commission's Motion for Summary Judgment on this basis is **GRANTED**.
- 6.3. Ms. Wu did not respond to the Motion for Summary Judgment. Consequently, no genuine issue of material fact exists that Ms. Wu cannot prove by 'clear and convincing evidence' that she is qualified for licensure, as required by RCW 9.46.153(1). Ms. Wu also represented to the Gambling Commission (in her online renewal application) that she did not have a criminal charge within the past 12 months, which was not true. Because Ms. Wu cannot prove that she is qualified for licensure, the Gambling Commission Staff's Motion for Summary Judgment on this basis is **GRANTED**.
- 6.4. The Gambling Commission is authorized to deny Su-Zhen Wu's Public Card Room Employee License under RCW 9.46.075 and WAC 230-03-085. Thus, the Gambling Commission's revocation of Ms. Wu's Public Cardroom Employee License is **AFFIRMED**.
- 6.5. Because the denial of Su-Zhen Wu's Public Card Room Employee License is **AFFIRMED**, no fact-finding hearing is needed. Therefore, the evidentiary hearing, scheduled for Tuesday, January 7, 2020, is **CANCELLED**.

SIGNED at Tacoma, Washington on the date of mailing.



Charles Bryant
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE IS 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. 09-2019-GMB-00131

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

<p>Su-Zhen Wu 2914 South Graham Street Seattle, WA 98108 Appellant</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>Kellen Wright, AAG Office of the Attorney General MS: 40100 PO Box 40100 Olympia, WA 98504 Agency Representative</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>
<p>Ashlie Laydon Washington State Gambling Commission MS: 42400 PO Box 42400 Olympia, WA 98504 Agency Contact</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: Friday, November 22, 2019

OFFICE OF ADMINISTRATIVE HEARINGS

Carla Sullivan

Carla Sullivan
Legal Assistant 2