

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

WSGC
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In the matter of:

Docket No. 09-2019-GMB-00111

Tarah M. Davis,

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

Appellant.

Agency: Washington State Gambling
Commission

Program: Gambling Commission

Agency No. 2019-01059

License No. 68-07857

1. ISSUES:

- 1.1. Does a genuine issue of material fact exist as to whether Tarah Davis 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. Davis disclosed the theft in the first degree 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. Davis 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. Davis'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. Davis'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. Davis 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 is **GRANTED**.
- 2.2. No genuine issue of material fact exists as to whether Ms. Davis failed to disclose the first degree theft criminal charge, as required by RCW 9.46.075. The Gambling Commission's Motion for Summary Judgment is **GRANTED**.

- 2.3. No genuine issue of material fact exists that Ms. Davis 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. Davis's License based on RCW 9.46.075 (1), (8), and (9); and WAC 230-03-085 (1), (3), (8) and (9)(a). The Gambling Commission's revocation of Ms. Davis's License, is **AFFIRMED**.
- 2.5. Because the revocation of Ms. Davis's License is **AFFIRMED**, no fact-finding hearing is needed. Therefore, the evidentiary hearing, scheduled for Friday, January 10, 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: Tarah M. Davis (Ms. Davis)
- 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	Notice of Administrative Charges	08/09/19	5
2	Ms. Davis's Request for Administrative Hearing	08/19/19	3
3	Office of Administrative Hearings (OAH) Prehearing Conference Order	09/18/19	7
4	Washington State Gambling Commission Staff's Motion for Summary Judgment	10/14/19	5
5	Declaration of Special Agent Julie Sullivan in Support of Gambling Commission Staff's Motion for Summary Judgment, with attached Exhibits 1-4	08/12/19	25
7	OAH Status Conference Order Establishing Summary Judgment Briefing Schedule	08/27/19	3

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 August 9, 2019, the Washington State Gambling Commission (Gambling Commission) issued the ‘Notice of Administrative Charges’ (Revocation) No. CR 2019-01059, revoking Ms. Davis’s License No. 68-07857. The Gambling Commission’s Revocation asserted that Ms. Davis was not qualified for licensure based on her pending criminal charge, her failure to disclose the pending criminal charge, 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.
- 4.2. On August 19, 2019, Ms. Davis signed her “Request for Administrative Hearing and Interpreter” and requested “the opportunity to discuss settlement options and keep the right to a hearing.”
- 4.3. On August 30, 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

- 4.4. On October 14, 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.

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.

- 4.5. Ms. Davis did not file a response to the Gambling Commission Staff's Motion for Summary Judgment.
- 4.6. As of the date of this Initial Order, Ms. Davis has not filed any response, nor provided any documentation, challenging the Gambling Commission's motion.

Ms. Davis's Previous Administrative History

- 4.7. Ms. Davis has been a licensed Public Card Room Employee on and off since 1999, and has worked at multiple House Banked Card Rooms and Tribal casinos. *Declaration of Sullivan: Exhibit 2, page 3.*
- 4.8. Ms. Davis is not currently employed, and her last place of employment was at the Palace Casino in Lakewood, Washington. *Declaration of Sullivan: Exhibit 2, page 3.*
- 4.9. Ms. Davis does not have any material administrative history. *Declaration of Sullivan: Exhibit 2, page 3.*

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

- 4.10. On June 14, 2019, Ms. Davis submitted a Card Room Employee license renewal application to the Gambling Commission. *Declaration of Sullivan: Exhibit 1, Pg. 1.*
- 4.11. Ms. Davis did not disclose a pending criminal charge of Theft in the First Degree in the Pierce County Superior Court to the Gambling Commission during her License renewal application process. The criminal Information for Theft in the First Degree was filed against Ms. Davis on March 5, 2019. *Declaration of Sullivan. Exhibit 2, page 3, Exhibit 4, page 2.*
- 4.12. The allegations were that: Between August 1, 2014, and June 30, 2018, Ms. Davis collected welfare money. She reported that she lived with her children in the home and that there was no income in the home. During that time, Ms. Davis's husband lived in the home, and Ms. Davis had been paid \$15,849 that she was not entitled to. Ms. Davis also confirmed that her husband provided for her and her child, and that if she reported this income she would not have received as much benefits. *Declaration of Sullivan, Exhibit 2, page 3. Exhibit 4, page 2.*
- 4.13. In addition to the criminal charge, Ms. Davis provided untrue information in her License renewal application. Ms. Davis 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 1, page 2.*

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- 4.14. Beginning June 17, 2019, Gambling Commission Special Agent Julie Sullivan conducted an investigation regarding Tarah M. Davis and her renewal application for her Public Card Room Employee license. *Declaration of Sullivan: Exhibit 2, page 3.*
- 4.15. The Gambling Commission's investigation included the review of Ms. Davis's gambling license file, Ms. Davis's online renewal, a criminal history check through the Judicial Information System, and a certified copy of the court documents pertaining to Ms. Davis's felony theft charge. *Declaration of Sullivan: Exhibit 2.*
- 4.16. On August 9, 2014, the Gambling Commission issued a 'Notice of Administrative Charges' against Ms. Davis because of her criminal charge of theft in the first degree, her failure to disclose the criminal charge in her application renewal, and her inability to prove by clear and convincing evidence that she is qualified for licensure as required by RCW 9.46.153(1). *Declaration of Sullivan: Exhibit 1.*
- 4.17. On February 13, 2015, Washington State Gambling Commission Director, David Trujillo, issued a revocation of Ms. License. *Declaration of Sullivan: Exhibit 1.*

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 Prof. 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.

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- 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

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.

(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) 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. Davis's Failure to Report and Failure to Disclose a Pending Criminal Charge

5.12. Ms. Davis had a pending criminal charge for first degree theft at the time of her license renewal application, in violation of RCW 9.46.075(9). Ms. Davis did not report the pending criminal charge to the Gambling Commission within thirty days of the charges being filed as required by Washington Administrative Code (WAC) 230-06-085(1)

5.13. Ms. Davis 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. Davis failed to disclose the fact that there was a pending felony theft in the first degree charge against her in the Pierce County Superior Court (which was charged only a little more than two months before she filed her online License application renewal) in violation of WAC 230-03-085(8).

5.14. In addition, Ms. Davis 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).

[Continued]

- 5.15. Therefore, because Ms. Davis: (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. Davis'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. Davis, in her June 14, 2019, Public Card Room Employee License Application Renewal, failed to disclose a pending charge for felony theft in the first degree. In addition, Ms. Davis 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. Davis had been charged with Felony Theft in the First Degree on March 5, 2019, which was "within the last 12 months" of June 14, 2019.
- 5.18. Ms. Davis 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. Davis 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 Staff's Motion for Summary Judgment on this basis should be **GRANTED**.

Authorization to Revoke Ms. Davis'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. Davis 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. Davis'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 Friday, January 10, 2020, should be **CANCELLED**.

6. INITIAL ORDER:

6.1. No genuine issue of material fact exists as to whether Ms. Davis failed to report a criminal charge within thirty days of the charge being filed, as required by WAC 230-06-085(1). Ms. Davis was charged with a felony criminal offense on March 5, 2019, and failed to report the charge to the Gambling Commission when she submitted her online License renewal application on June 14, 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. Davis failed to disclose the first degree theft charge, as required by RCW 9.46.075. Ms. Davis 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. Davis did not respond to the Motion for Summary Judgment. Consequently, no genuine issue of material fact exists that Ms. Davis cannot prove by 'clear and convincing evidence' that she is qualified for licensure, as required by RCW 9.46.153(1). Ms. Davis also represented to the Gambling Commission that she did not have a criminal charge within the past 12 months, which was not true. Because Ms. Davis 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 Tarah M. Davis's Public Card Room Employee License under RCW 9.46.075 and WAC 230-03-085. Thus, the Gambling Commission's revocation of Ms. Davis's Public Cardroom Employee License is **AFFIRMED**.

6.5. Because the denial of Tarah M. Davis's Public Card Room Employee License is **AFFIRMED**, no fact-finding hearing is needed. Therefore, the evidentiary hearing, scheduled for Friday, January 10, 2020, is **CANCELLED**.

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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.

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CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 09-2019-GMB-00111

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

<p>Tarah M. Davis 10310 Short Lane SW Lakewood, WA 98498 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 15, 2019

OFFICE OF ADMINISTRATIVE HEARINGS

Hailey Miles

Hailey Miles
Legal Assistant 3