

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Robert LaPlaut,

Appellant.

Docket No. 11-2020-GMB-00164

**INITIAL ORDER ON SUMMARY
JUDGMENT MOTION**

Agency: Gambling Commission
Program: Washington State Gambling
Commission

Agency No. 2020-01246

1. ISSUES

1.1. Did the Gambling Commission properly seek to revoke Robert LaPlaut's Class III Employee license pursuant to RCW 9.46.075 and WAC 230-03-085, as set out in the Notice of Administrative Charges dated November 2, 2020?

2. ORDER SUMMARY

2.1. Yes. The Gambling Commission properly sought to revoke Robert LaPlaut's Class III Employee license pursuant to RCW 9.46.075(9), because he is subject to current prosecution or pending charges for a crime involving physical harm to another individual.

3. SUMMARY JUDGMENT MOTION HEARING

3.1. Hearing Date: April 1, 2021

3.2. Administrative Law Judge: Joni Derifield

3.3. Appellant: Robert LaPlaut ("Appellant")

3.3.1. Representative: Henry Warren

3.4. Agency: Gambling Commission ("Commission")

3.4.1. Representative: Doug Van de Brake, Assistant Attorney General

3.5. Documents Considered: I considered the following documents:

Doc. No.	Document Name	Document Date	No. Pages
1	Washington State Gambling Commission Staff's Motion for Summary Judgment	03/04/21	8
2	Declaration of Special Agent Julie Sullivan in Support of Commission Staff's Motion for Summary Judgment, with Exhibits 1-4	03/02/21	28

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. The record here supports the following facts for the purposes of summary judgment:

Jurisdiction

- 4.1. The Commission issued a Notice of Administrative Charges in this matter on November 2, 2020. Ex. 2, pg. 21-23.
- 4.2. The Appellant timely requested a hearing on November 16, 2020.

Summary Judgment

- 4.3. The Commission filed a Motion for Summary Judgment on March 4, 2021. Ex. 1.
- 4.4. The Appellant did not file a response, although his counsel presented oral argument on his behalf at the April 1, 2021 motion hearing.

Robert LaPlaunt

- 4.5. The Commission issued a Class III Employee license to the Appellant under license number 69-47715. Ex. 2, pg. 1. That license expires on October 13, 2021. *Id.*
- 4.6. On October 5, 2020, the Appellant submitted an application to renew his license. *Id.* He disclosed on his renewal application that he had been charged with assault in Mason County. *Id.* at 2.
- 4.7. The Commission assigned Special Agent Julie Sullivan to investigate the Appellant’s renewal application. *Id.* at 1-2, 15. Agent Sullivan obtained certified copies of court documents during the course of her investigation. *Id.* at 2. She discovered that on May 13, 2020, the Appellant was charged with felony Assault in the Third Degree in Mason County Superior Court Case No. 20-1-00191-23. *Id.* at

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.

2, 4-5. The charging documents allege that, on May 10, 2020, the Appellant caused bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm. *Id.*

4.8. On November 2, 2020, the Commission issued a Notice of Administrative Charges to the Appellant related to his gambling license. Ex. 2, pg. 21-23. The Notice of Administrative Charges alleges that the Appellant “is the subject of pending charges for Assault in the Third Degree, a felony crime involving physical harm to individuals or an intention to inflict physical harm on another person.” *Id.* at 22-23. On that basis, the Commission sought to revoke the Appellant’s Class III Employee license pursuant to RCW 9.46.075(1), (8), and (9) and WAC 230-03-085(1) and (9)(a). *Id.* at 23.

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

5.1. I have jurisdiction over the persons and subject matter of this case under Chapter 34.05 RCW and WAC 230-17-025.

Applicable Law

5.2. The legislature declares that “[t]he public policy of the state of Washington on gambling is to keep the criminal element out of gambling.” RCW 9.46.010.

5.3. The Commission may suspend or revoke any license or permit it issued for reasons it determines to be “in the public interest.” RCW 9.46.075. These reasons include cases in which the licensee:

. . .

(4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to . . . **any crime, whether a felony or misdemeanor involving . . . 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;

. . .

(9) **Is subject to current prosecution** or pending charges . . . for any of the offenses included under subsection (4) of this section: PROVIDED, That at the request of an applicant for an original license, the commission may defer decision upon the application during the pendency of such prosecution or appeal;

Id. (emphasis added).

5.4. The Commission has the authority to suspend a license if the licensee commits any act which is grounds for suspending a license under RCW 9.46.075. WAC 230-03-085(1).

5.5. "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." RCW 9.46.153(1).

Analysis

5.6. In this case, the uncontroverted evidence establishes that the Appellant was charged with and is currently being prosecuted for a crime involving physical harm to another individual. The Appellant does not dispute that this is the case. This fact alone is a sufficient basis for the Commission to revoke the Appellant's license pursuant to RCW 9.46.075(9).

5.7. The Appellant argues that RCW 9.46.075 uses the term "may," and thus the Commission need not revoke his license. The language of RCW 9.46.075 is indeed permissive; the Commission is not obligated to revoke the Appellant's license. However, the Commission did not act outside the scope of its authority in doing so.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

6.1. The Commission's action is AFFIRMED.

6.2. The Commission properly sought to revoke Robert LaPlaunt's Class III Employee license pursuant to RCW 9.46.075(9), because he is subject to current prosecution or pending charges for a crime involving physical harm to another individual.

6.3. The Commission's Motion for Summary Judgment is GRANTED. The evidentiary hearing scheduled for May 21, 2021, and all other deadlines outlined in the case schedule, are STRICKEN.

SIGNED at Tacoma, Washington on the date of mailing.



Joni Derifield
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. 11-2020-GMB-00164

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

Robert LaPlaunt 1599 Dickinson Ave Shelton, WA 98584 <i>Appellant</i>	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail
Robert LaPlaunt 541 Emerald Lake Drive Grapeview, WA 98546 <i>Appellant</i>	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail
Doug Van de Brake, AAG Office of the Attorney General MS: 40100 PO Box 40100 Olympia, WA 98504 <i>Agency Representative</i>	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail Doug.VandeBrake@atg.wa.gov jordan.nimon@atg.wa.gov GCEEF@atg.wa.gov
Ashlie Laydon Washington State Gambling Commission MS: 42400 PO Box 42400 Olympia, WA 98504 <i>Agent Contact</i>	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail ashlie.laydon@wsgc.wa.gov legal@wsgc.wa.gov
Henry Warren PO Box 783 Shelton, WA 98584 <i>Appellant Representative</i>	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail henry.warren@johnbonin.com michelle.goode@johnbonin.com

Date: Thursday, April 08, 2021

OFFICE OF ADMINISTRATIVE HEARINGS

Ashleigh A. Vandeyacht

Ashleigh Vandeyacht
 Legal Assistant 2