

STATE OF WASHINGTON  
GAMBLING COMMISSION

In the Matter of the Summary Suspension of the )  
License to Operate Gambling Activities of: )  
 )  
Bao T. Duong )  
Seattle, Washington, )  
 )  
Licensee. )

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NO. CR 2012-01609

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER OF SUMMARY  
SUSPENSION OF LICENSE**

RCW 9.46.070(17) authorizes the Washington State Gambling Commission (Commission) to summarily suspend<sup>1</sup> a license, subject to final action by the Commission. The Director has reviewed this Order of Summary Suspension and has issued it for service.

This order takes effect when served on Bao T. Duong, his representative, or agent. A Commission Special Agent shall seize Bao T. Duong's license and the licensee must immediately stop conducting gambling activities.

**FINDINGS OF FACT**

I.

Rick Day is Director of the Washington State Gambling Commission and issues this order. Jurisdiction of this proceeding is based on chapter 9.46 RCW, Gambling, chapter 34.05 RCW, the Administrative Procedure Act, and Title 230 WAC.

II.

The Washington State Gambling Commission issued Bao T. Duong, license number 68-06203, authorizing Card Room Employee activity at Chips Casino in Lakewood and Silver Dollar Casino in SeaTac. The Commission issued this license, which expires on November 6, 2013, subject to the licensee's compliance with state gambling laws and Commission rules.

III.

After a thorough review of the report by a Commission Special Agent about the facts in this matter, the Director accepts the report as true and has determined that the summary suspension is necessary.

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<sup>1</sup> WAC 230-17-165 defines summary suspension as immediately taking a license or permit from a person or organization which prevents them from operating or conducting gambling activities.

#### IV.

#### **SUMMARY:**

On October 16, 2012, an Information was filed charging Bao T. Duong with a Violation of the Uniformed Controlled Substance Act (VUCSA) for manufacturing marijuana. Mr. Duong admitted to a Renton Police Officer that he was operating a marijuana grow house.

#### **FACTS:**

- 1) A Commission Special Agent (agent) was assigned to Bao T. Duong's file to investigate whether he continues to qualify for a license. Mr. Duong is the subject of a pending felony crime involving moral turpitude. Commission staff learned of this charge during a routine annual investigation.
- 2) As part of the investigation, the agent reviewed Mr. Duong's licensing file. Mr. Duong first applied for and was granted a gambling license in 1999, and has maintained his license since.
- 3) As part of the investigation, the agent reviewed the Judicial Information System (JIS) record on Mr. Duong and noted he had a Controlled Substance Violation charge that was pending. The violation date was May 28, 2012.
- 4) The agent requested and received a certified copy of the Information and the Probable Cause filed in King County Superior Court on October 16, 2012, charging Mr. Duong with VUCSA. The Information stated that Mr. Duong "unlawfully and feloniously did manufacture marijuana, a controlled substance..."
- 5) The following is a summary of the Determination of Probable Cause document:
  - On May 28, 2012, the Renton Police Department received another tip and was advised that a blue vehicle was currently at the home. An officer conducted a traffic stop on the blue vehicle as it left the residence. The driver was identified as Mr. Duong. The officer reported, "He was overwhelmed by the odor of marijuana coming from the inside of the vehicle."
  - Mr. Duong told the officer the odor was coming from a marijuana cigarette that was located inside the vehicle. Mr. Duong also stated that he, "tended to a marijuana grow" located in a home in Renton. He said there were "3-4 rooms with at least 20 marijuana plants in each room of the residence," and that "Tony" owned the home. Later, Mr. Duong changed his story and admitted that the marijuana grow belonged to him.
  - Mr. Duong was arrested for VUCSA. After his Miranda rights, Mr. Duong confirmed he lived at the address and he grew marijuana.

- On May 29, 2012, a search warrant was served at the residence. Once inside the home, officers saw that each of the home's four rooms were dedicated to growing marijuana and contained marijuana plants, grow lights, grow hoods, and power ballasts. "A total of 164 mature marijuana plants and 105 started marijuana plants were...seized from the home." The officers also saw evidence that the main electrical line coming into the home had been cut as a way to divert the power supply to avoid detection by law enforcement or the power company. "No medical marijuana paperwork was located inside or outside of the home."
- 6) Some of the items seized from the residence included:
- Grow manuals and magazines;
  - Dominion and control documents;
  - 105 starter marijuana plants;
  - 164 mature marijuana plants; and
  - Vacuum sealer and scale.
- 7) A search warrant was also served on Mr. Duong's van that was secured inside the Renton Police Department's evidence garage. A marijuana cigarette was located inside a pack of cigarettes near the driver seat of the vehicle. Mr. Duong's wallet, ID, and a receipt from McLendon's Hardware Store dated May 21, 2012, showing a purchase of a 100-watt light bulb and an indoor timer were also found in the vehicle.
- 8) On May 29, 2012, officers interviewed Mr. Duong at the jail, after giving him his Miranda rights. Mr. Duong admitted to manufacturing marijuana. He said he needed money, so he decided to grow marijuana. He said he purchased started plants from a guy in Tacoma, he hired a homeless person to help him put the marijuana grow together, and hired someone to "cut into the electrical wires and divert power." Mr. Duong said he had been growing the marijuana plants for 5-6 months and that he did not have a medical marijuana license or certification to grow or possess marijuana.
- 9) On June 6, 2012, officers contacted the owner of the home and determined that she did not have any knowledge that marijuana was being grown inside the home.
- 10) On November 14, 2012, the agent accessed the case docket through JIS to determine the status of Mr. Duong's case. According to the docket, Mr. Duong was served with a summons on October 22, 2012. His arraignment was supposed to be held on November 13, 2012; however, no update has been made to docket.

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## CONCLUSIONS OF LAW

### I.

1) **RCW 9.46.070** provides that the Commission shall have the following powers and duties: The Commission may authorize the Director to temporarily suspend licenses subject to final action by the Commission.

2) **WAC 230-17-165(2)** provides that the Commission delegates its authority to the Director to summarily suspend any license if the Director determines that a licensee has performed one or more of the actions identified in RCW 9.46.075 as posing a threat to public health, safety, or welfare.

3) **WAC 230-17-165(3)** The Commission deems the following actions of a licensee constitute an immediate danger to the public safety and welfare:  
(The following subsections apply.)

(a) Failing or refusing to comply with the provisions, requirements, conditions, limitations, or duties imposed by chapter 9.46 RCW or any rules adopted by the Commission;

(f) Being subject to current prosecution or pending charges, or appealing a conviction, for any of the offenses included under (d)<sup>2</sup> of this subsection.

On October 16, 2012, an Information was filed charging Bao T. Duong with a Violation of the Uniformed Controlled Substance Act (VUCSA) for manufacturing marijuana. The licensee's actions constitute an immediate danger to public safety and welfare based on WAC 230-17-165(3) (a) and (f) and are a basis for Bao T. Duong to immediately stop conducting gambling activities.

4) **RCW 9.46.075 Denial, suspension, or revocation of license, application, or permit**  
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 certified employee, or any person with any interest therein:  
(The following subsections apply.)

(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.

(8) Fails to prove, by clear and convincing evidence, that he is qualified in accordance with the provisions of this chapter.

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<sup>2</sup> WAC 230-17-165(3) (d) includes (vii) Any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude.

(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)<sup>3</sup> 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.

(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 related activity in 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) WAC 230-03-085 Denying, suspending, or revoking an application, license or permit**

We may deny, suspend, or revoke any application, license or permit, when the applicant, certified employee, or anyone holding a substantial interest in the applicant's or certified employee's business or organization:

(The following subsections apply.)

(1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075.

(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; or
- (e) Associations.

**6) RCW 9.46.153(1) Applicants and licensees-Responsibilities and duties**

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.

The licensee's pending criminal charges for manufacturing marijuana involve a crime of moral turpitude, and demonstrate that the licensee 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 based on his prior activities.

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<sup>3</sup> RCW 9.46.075(4) includes the following offenses: "...or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude."

Mr. Duong has failed to establish clearly and convincingly that he is qualified for licensure, as required by RCW 9.46.153(1). As a result, there are grounds to revoke Bao T. Duong's license based on RCW 9.46.075(1), (8), (9), (10), and WAC 230-03-085(1) and (8).

II.

The licensee's actions are an immediate danger to public safety and welfare, and the licensee has failed to comply with chapter 9.46 RCW or Commission rules. The immediate suspension of Bao T. Duong's gambling activity is required to protect public safety and welfare.

**ORDER**

Based on the FINDINGS OF FACT AND CONCLUSIONS OF LAW and the Director's authority under RCW 34.05.422, RCW 9.46.070(17), and WAC 230-17-165, the Director orders that Bao T. Duong's license is summarily suspended, pending a formal hearing by an Administrative Law Judge.

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STATEMENT OF RIGHTS

(1) You may ask for a stay of this Order. To do so, you must complete and return to the Commission the enclosed Application for Stay Hearing form within fifteen (15) days from the date you receive this Order. If the Commission receives a timely request, we will hold a hearing within seven (7) days as required by WAC 230-17-170(3). The stay hearing will determine if your suspension should continue, or whether the suspension may be modified.

At the stay hearing, you will have to prove by clear and convincing evidence that:

- (a) You will likely win at hearing; and
(b) If your suspension continues, you will suffer serious injury. Under this section, loss of income from licensed activities is not considered serious injury; and
(c) Removing the immediate suspension will not hurt others in this case; and
(d) The threat to the public safety or welfare does not justify continuing the suspension, or that modifying the suspension will adequately protect the public.

(2) You also have a right to a hearing on the revocation of your license. To do so, you must complete and return to the Commission the enclosed Application for Hearing form within twenty (20) days from the date you receive this order. If you do NOT request a hearing, we will enter an Order of Default revoking your license under RCW 34.05.440.

If you have any questions regarding the rights stated above, please contact Paralegal Jennifer Stretch, at (360) 486-3465 or 1-800-345-2529, extension 3465.

STATE OF WASHINGTON )
) ss.
COUNTY OF THURSTON )

Rick Day, under oath, declares that he has read this Order of Summary Suspension of License, knows its contents, and believes it to be true, and affirms that he is the Director of the Washington State Gambling Commission and in that capacity has executed this Order of Summary Suspension of the License.

[Signature of Rick Day]
Rick Day, Director

SUBSCRIBED AND SWORN TO before me this
7 day of December, 2012.

[Signature of Maureen Pretell]
NOTARY PUBLIC in and for the State of
Washington, residing at: Thurston County
My Commission expires on December 2, 2015

