

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for Approval
of Initial Key Employee License and Initial
Work Permit Regarding:

BRIAN YEE

Applicant.

CGCC Case Nos. CGCC-2019-0411-5B and
CGCC-2018-0906-4B
BGC Case No. BGC-HQ2018-00053SL

DECISION AND ORDER

Hearing Date: Wednesday, July 31, 2019
Time: 10:00 a.m.

This matter was heard by the California Gambling Control Commission (Commission) pursuant to Business and Professions Code sections 19870 and 19871 and Title 4, California Code of Regulations (CCR) section 12060, in Sacramento, California, on Wednesday, July 31, 2019.

Deputy Attorney General Paras Modha, Department of Justice, Attorney General's Office, State of California, represented complainant Stephanie Shimazu, Director of the Bureau of Gambling Control (Bureau), Department of Justice, State of California (Complainant).

Applicant Brian Yee was present on his own behalf (Applicant).

During the administrative hearing, Presiding Officer Jason Pope took official notice of the Notice of Hearing and Prehearing Conference which enclosed Applicant's applications and the Bureau's Report, the Bureau's Statement of Reasons, the Conclusion of Prehearing Conference Letter, and Applicant's signed Notice of Defense.

During the administrative hearing, Presiding Officer Jason Pope accepted into evidence the following exhibits offered by the Complainant:

- (1) Statement to Respondent; Statement of Reasons; Excerpts from the Business and Professions Code and Commission regulations; Notice of Hearing without attachments; and Declaration of Service by Certified Mail, Bates Nos. 0001-0033;
- (2) Applicant's Application For Interim Key Employee License and

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- Supplemental Information, Bates Nos. 0034-0054;
- (3) Bureau’s Cardroom Key Employee Background Investigation Report, Level III, dated June 2018, Bates Nos. 0055-0069;
- (4) Notices and Documents from the Commission:
 - a. September 12, 2016 correspondence re: Interim Key Employee License, Bates Nos. 0070-0071;
 - b. July 27, 2018 correspondence re: Notice of Cancellation of Interim Portable Personal Key Employee License, Bates Nos. 0072-0074;
 - c. Commission Licensing Division Memorandum from Commission Meeting on September 6, 2018 re: Applicant’s Gambling Establishment Key Employee License Application, Bates Nos. 0075-0080;
 - d. September 10, 2018 correspondence re: Referral of Gambling Establishment Portable Key Employee Application to an Evidentiary Hearing, Bates Nos. 0081-0082;
- (5) Applicant’s License History, Bates Nos. 0083;
- (6) Certification of Official Records signed September 18, 2018, Bates Nos. 0084;
- (7) Correspondence between Applicant and the Bureau, Bates Nos. 0085-0127;
- (8) Online Gambling Documentation – Statement Report, Bates Nos. 0128-0139;
- (9) Negative Employment Verification, Bates Nos. 0140-0143;
- (10) Applicant’s Notice of Defense, Bates Nos. 0144-0145;
- (11) Application for Initial Regular Work Permit/Temporary Work Permit Received by the Bureau on February 2, 2018, Bates Nos. 0146-0150;
- (12) Bovada Terms of Service, Bates Nos. 0151-0160;
- (13) Bovada Poker Glossary- Poker Terms and Terminology, Bates Nos. 0161-0175.

1 The Commission left the administrative record open for the limited purpose of allowing
2 Applicant to obtain documents verifying the opening date of his Bovada account and to obtain a
3 complete transaction history for his account. Applicant was given until August 7, 2019 to obtain
4 the documents. The parties were also given until August 21, 2019, to submit written testimony
5 relating to any documents submitted by Applicant.

6 After the administrative hearing, but before the close of the administrative record,
7 Presiding Officer Jason Pope accepted into evidence the following exhibits offered by the
8 Applicant:

9 (A) Written statement by Applicant to Commissioners with redactions,¹ Bates Nos.
10 BY001-BY004;

11 (B) Correspondence between the Bureau and Applicant on August 7, 2019 and
12 Correspondence between Applicant and Bovada Customer Service, Bates Nos.
13 BY005-BY028.

14 After the administrative hearing, but before the close of the administrative record,
15 Presiding Officer Jason Pope accepted into evidence the following exhibits offered by the Bureau:

16 (14) Correspondence between the Bureau and Applicant dated August 7, 2019,
17 Bates Nos. 000001-000027.

18 The administrative record closed on August 21, 2019.

19 **FINDINGS OF FACT**

20 **Background**

21 1. On or about February 2, 2016, the Bureau received Applicant's Application for Initial
22 Regular Work Permit/Temporary Work Permit to allow for his employment as a dealer at the
23 Napa Valley Casino in California. On or about February 18, 2016, Applicant was issued a
24 temporary work permit by the Commission valid through February 28, 2018.

25 2. In August of 2016, Applicant was promoted to the position of floor supervisor, a key

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27 ¹ Information contained in the documents relating to issues beyond the limited scope of identifying
28 the opening date of Applicant's Bovada account and transaction records was redacted prior to admission of
the documents into evidence.

1 employee position.

2 3. On September 2, 2016, the Bureau received a Key Employee License Application and
3 Supplemental Background Investigation Information form, with attached schedules, both dated
4 August 30, 2016, (Key Employee Application), from Applicant to allow for his employment as a
5 floor supervisor at the Napa Valley Casino in California.

6 4. On September 12, 2016, the Commission issued an Interim Key Employee License to
7 Applicant which was valid until September 30, 2018.

8 5. During the course of conducting a background investigation on the Applicant, the
9 Bureau obtained and reviewed records from Applicant's personal checking account. On July 13,
10 2017, the Bureau questioned Applicant about the source of funds for various deposits and
11 withdrawals to/from his account. Applicant identified some of the transactions as relating to cash
12 outs and wagers he made as a player in online poker games on the Bovada website.

13 6. On August 7, 2017, October 11, 2017 and October 19, 2017 the Bureau made further
14 inquiries by email regarding Applicant's online poker activity. Applicant responded to each of the
15 Bureau's inquiries. Applicant stated that he did not recall ever gambling online in California.
16 Applicant recalled using the Bovada website to play poker while he was on vacation in Chicago,
17 IL around September 16 to 21, 2015. Applicant did not know the exact date he last played online
18 poker, but he believed it was in October 2015.

19 7. On February 2, 2018, Applicant submitted a new Application for Initial Regular Work
20 Permit/Temporary Work Permit (Work Permit Application) rather than a renewal application for
21 his work permit expiring February 28, 2018. On or about February 20, 2018, the Commission
22 issued Applicant a new temporary work permit.

23 8. In February 2018, the Bureau contacted Applicant to request his online player activity
24 sheet and information about the specific types of games he played. Applicant provided the
25 requested information. Applicant's player transaction history shows that Applicant made wagers
26 on four days after October 2015: January 10 and 12, 2016 and July 15 and 16, 2016.

27 9. On April 11, 2018, the Bureau asked Applicant to explain the discrepancy between his
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1 prior statement that he last gambled online in October 2015 and the transaction history showing
2 that he played online poker on four days in 2016. Applicant responded the same day stating that
3 he was trying his “best to remember everything I did for the past few years...I’m not trying to
4 hide anything I just didn’t remember playing on those days.”

5 10. On or about July 17, 2018, the Bureau submitted a Cardroom Key Employee
6 Background Investigation Report to the Commission recommending the Commission deny
7 Applicant’s Key Employee Application on the basis that he participated in online gambling on an
8 “unlicensed casino website,” he was dishonest about the length of time that he gambled online,
9 and he untimely submitted his interim key employee license application.

10 11. On July 27, 2018, Applicants interim key employee license was canceled by the
11 Commission based upon the Bureau’s recommendation of denial on his Key Employee
12 Application pursuant to CCR section 12354, subdivision (e)(5).

13 12. On September 6, 2018, pursuant to CCR section 12054, subdivision (a)(2), the
14 Commission considered Applicant’s Key Employee Application and elected to refer
15 consideration of the application to an evidentiary hearing to be held pursuant to CCR section
16 12060 with the Bureau to serve as Complainant.

17 13. After the administrative hearing, but before the close of evidence, Applicant verified
18 with Bovada Customer service that he opened his account on May 8, 2015. Applicant also
19 admitted evidence that Bovada is only able to provide account records from August 4, 2015 to
20 present. Thus, for the period of May 8, 2015 through August 3, 2015, Applicant cannot provide
21 transaction records from his Bovada account.

22 14. The available transaction records show that Applicant participated in online poker
23 games on the Bovada website on multiple occasions between September 1, 2015 and July 16,
24 2016 and made one wager on the outcome of a sporting event. All of Applicant’s Bovada activity
25 occurred while Applicant resided in Arizona, with the exception of wagers on online poker made
26 from California on July 15 and 16, 2016. The online wagers made while Applicant resided in
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1 California are the focus of this Decision and Order.²

2 15. On or about January 7, 2019, the Bureau submitted a Work Permit Initial Background
3 Investigation Report to the Commission recommending that the Commission deny Applicant's
4 Work Permit Application.

5 16. On January 25, 2019, Applicants temporary work permit was canceled by the
6 Commission based upon the Bureau's recommendation of denial on his Work Permit Application
7 pursuant to CCR section 12128, subdivision (b)(2).

8 17. On April 11, 2019, pursuant to CCR section 12054, subdivision (a)(2), the
9 Commission elected to refer consideration of Applicant's Work Permit Application to an
10 evidentiary hearing to be consolidated with the hearing on Applicant's Key Employee
11 Application, to be held pursuant to CCR section 12060 with the Bureau to serve as Complainant.

12 18. On or about September 24, 2018, Applicant submitted a signed Notice of Defense
13 form dated September 21, 2018 which requested an evidentiary hearing on his Key Employee
14 Application and Work Permit Application.

15 19. On or about May 15, 2019, the Complainant filed a Statement of Reasons with the
16 Commission. In its Statement of Reasons, Complainant recommended that the Commission deny
17 Applicant's Key Employee Application and Work Permit Application on the basis that he
18 participated in illegal online gaming on the Bovada website and misrepresented to the Bureau the
19 date that he last gambled online.³

20 Applicant's Suitability for Licensure

21 20. Applicant was cooperative throughout the Bureau's investigation. Applicant honestly
22 identified the source of deposits and withdrawals in his checking account as attributable to online
23 gambling. Applicant never denied engaging in online gambling and provided further records and
24 responses to the Bureau's inquiries regarding his activity on the Bovada website.

25 21. Applicant testified at the hearing that he learned about the Bovada website from other

26 ² The Statement of Reasons alleges that Applicant's online wagering activity violated California
27 Penal Code sections 330, 336.9 and 337a, limiting the inquiry to conduct that occurred in California.

28 ³ The Statement of Reasons did not contain allegations that Applicant's Key Employee
Application was not timely submitted.

1 players during live poker games and saw advertisements for Bovada online. Applicant further
2 testified that he never considered that it might be illegal to place wagers on the Bovada website.

3 22. During his testimony, Applicant expressed remorse for participating in online poker
4 and testified that he only plays live poker now. Further, in Applicant's written statement to the
5 Commission, he apologized for "engaging in irresponsible and unlawful conduct." Applicant's
6 testimony and written statement were credible.

7 23. The Commission considers participation in online poker to be an indication of poor
8 judgment and, in some cases, more serious deficiencies. Online poker operators are not eligible
9 for licensure in California and cannot legally offer controlled games to Californians. Because
10 online poker operators are not licensed or regulated by the state, Californians who play online
11 poker have no recourse if their funds or personal information are compromised by the operator.
12 Further, the Commission carefully scrutinizes the ability of an applicant for a key employee
13 license to carry out the duties of ensuring a cardroom's compliance with state and local laws,
14 when the employee is also participating in poker offered online by an unlicensed provider.

15 24. Applicant exhibited poor judgment by participating in online poker, but he was neither
16 charged with, nor convicted of a crime relating to his activity on the Bovada website.

17 25. Applicant has shown remorse for participating in online poker and provided credible
18 testimony that he no longer uses the Bovada website. Further, as verified by the Bovada
19 transaction records and residence history on the Application, Applicant's participation in online
20 poker in California was minimal (a two day period). Further, Applicant did not understand the
21 potential illegality of online poker at the time that he played. Based on these circumstances, the
22 Commission finds that Applicant's lapse in judgment was not so serious that he cannot effectively
23 carry out the duties of a key employee.

24 26. Applicant provided estimated dates to the Bureau regarding the opening of his account
25 and the last date that he played. Applicant's estimates were not precisely accurate, as verified by
26 Bovada customer service and the transaction records. Applicant explained in his written statement
27 to the Commission that he plays poker as a hobby and because he plays frequently, it is difficult
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1 for him to recall specific dates, times, and places that he played. Further, until noticed by the
2 Bureau, Applicant did not believe anything was wrong with playing online poker so the exact
3 dates of his Bovada transactions did not stand out in his memory. Applicant's testimony that he
4 was unable to recall the exact dates of his activity on the Bovada website was credible.

5 27. Applicant has worked in the gambling industry for almost twenty years in Arizona and
6 California with no disciplinary actions taken against him. Applicant has twice been promoted to a
7 key employee position while working in California. Further, Applicant has never been charged or
8 convicted of a crime.

9 28. All documentary and testimonial evidence submitted by the parties that is not
10 specifically addressed in this Decision and Order was considered but not used by the Commission
11 in making its determination on Applicant's Application.

12 **LEGAL CONCLUSIONS**

13 1. Division 1.5 of the Business and Professions Code, the provisions of which govern the
14 denial of licenses on various grounds, does not apply to licensure decisions made by the
15 Commission under the Gambling Control Act. Business and Professions Code section 476(a).

16 2. Public trust and confidence can only be maintained by strict and comprehensive
17 regulation of all persons, locations, practices, associations, and activities related to the operation
18 of lawful gambling establishments and the manufacture and distribution of permissible gambling
19 equipment. Business and Professions Code section 19801(h).

20 3. At an evidentiary hearing pursuant to Business and Professions Code sections 19870
21 and 19871 and Title 4, CCR section 12060(b), the burden of proof rests with the applicant to
22 prove his or her qualifications to receive any license under the Gambling Control Act. Title 4,
23 CCR section 12060(i). Business and Professions Code section 19856(a).

24 4. An application to receive a license constitutes a request for a determination of the
25 applicant's general character, integrity, and ability to participate in, engage in, or be associated
26 with, controlled gambling. Business and Professions Code section 19856(b).

27 5. In reviewing an application for any license, the Commission shall consider whether
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1 issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the
2 license will undermine public trust that the gambling operations with respect to which the license
3 would be issued are free from criminal and dishonest elements and would be conducted honestly.
4 Business and Professions Code section 19856(c).

5 6. The Commission has the responsibility of assuring that licenses, approvals, and
6 permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose
7 operations are conducted in a manner that is inimical to the public health, safety, or welfare.
8 Business and Professions Code section 19823(a)(1).

9 7. An “unqualified person” means a person who is found to be unqualified pursuant to
10 the criteria set forth in Business and Professions Code section 19857, and “disqualified person”
11 means a person who is found to be disqualified pursuant to the criteria set forth in Business and
12 Professions Code section 19859. Business and Professions Code section 19823(b).

13 8. No gambling license shall be issued unless, based on all of the information and
14 documents submitted, the commission is satisfied that the applicant is a person of good character,
15 honesty and integrity. Business and Professions Code section 19857(a).

16 9. An application for a Key Employee License and an application for a Work Permit
17 shall be denied by the Commission if the applicant is found unqualified pursuant to the criteria set
18 forth in subdivisions (a) or (b) of Business and Professions Code section 19857.

19 10. Applicant met his burden of demonstrating that he is a person of honesty and integrity.
20 Therefore, Applicant is qualified for the issuance of a Key Employee License and a Work Permit
21 pursuant to Business and Professions Code section 19857(a).

22 11. Applicant met his burden of demonstrating that he is a person whose prior activities,
23 criminal record, if any, reputation, habits, and associations do not pose a threat to the public
24 interest of this state, or to the effective regulation and control of controlled gambling, or create or
25 enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the
26 conduct of controlled gambling or in the carrying on of the business and financial arrangements
27 incidental thereto. Therefore, Applicant is qualified for the issuance of a Key Employee License
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1 and a Work Permit pursuant to Business and Professions Code section 19857(b).

2 12. Applicant met his burden of demonstrating that he did not fail to provide information,
3 documentation, and assurances required by this chapter or requested by the chief, or fail to reveal
4 facts material to qualification, and did not supply information that is untrue or misleading as to a
5 material fact pertaining to the qualification criteria. Therefore, Applicant is not disqualified from
6 the issuance of a Key Employee License or a Work Permit pursuant to Business and Professions
7 Code section 19859(b).

8 **NOTICE OF APPLICANT'S APPEAL RIGHTS**

9 Applicant has the following appeal rights available under state law:

10 4 CCR section 12064, subsections (a) and (b) provide, in part:

11 An applicant denied a license, permit, registration, or finding of suitability,
12 or whose license, permit, registration, or finding of suitability has had
13 conditions, restrictions, or limitations imposed upon it, may request
14 reconsideration by the Commission within 30 calendar days of service of
15 the decision, or before the effective date specified in the decision,
16 whichever is later. The request shall be made in writing to the
17 Commission, copied to the Bureau, and shall state the reasons for the
18 request, which must be based upon either newly discovered evidence or
19 legal authorities that could not reasonably have been presented before the
20 Commission's issuance of the decision or at the hearing on the matter, or
21 upon other good cause which the Commission may decide, in its sole
22 discretion, merits reconsideration.

17 Business and Professions Code section 19870, subdivision (e) provides:

18 A decision of the commission denying a license or approval, or imposing
19 any condition or restriction on the grant of a license or approval may be
20 reviewed by petition pursuant to Section 1085 of the Code of Civil
21 Procedure. Section 1094.5 of the Code of Civil Procedure shall not apply
22 to any judicial proceeding described in the foregoing sentence, and the
23 court may grant the petition only if the court finds that the action of the
24 commission was arbitrary and capricious, or that the action exceeded the
25 commission's jurisdiction.

23 CCR section 12066, subsection (c) provides:

24 A decision of the Commission denying an application or imposing
25 conditions on license shall be subject to judicial review as provided in
26 Business and Professions Code section 19870, subdivision (e). Neither the
27 right to petition for judicial review nor the time for filing the petition shall
28 be affected by failure to seek reconsideration.

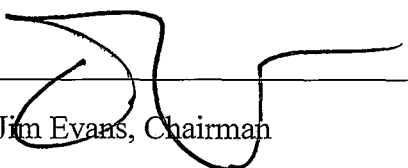
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ORDER


1. Applicant Brian Yee's Application for a Key Employee License is GRANTED.
2. Applicant Brian Yee's Application for a Work Permit is GRANTED.
2. Each side to pay its own attorneys' fees.

This Order is effective on October 24, 2019.

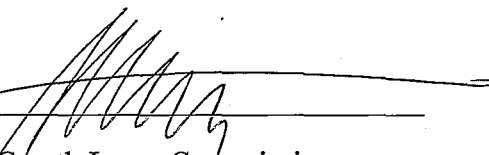
Dated: 10/24/19

Signature: 
Jim Evans, Chairman

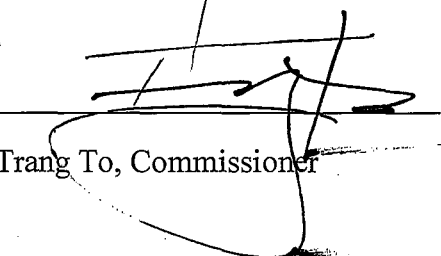
Dated: 10/24/19

Signature: 
Paula LaBrie, Commissioner

Dated: 10/24/19

Signature: 
Gareth Lacy, Commissioner

Dated: 10/24/19

Signature: 
Trang To, Commissioner

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