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BEFORE THE  
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Initial Work Permit  
Application of:

FRANCISCO MONARES

GEWP # 001812

Applicant.

BGC Case No. BGC-HQ2014-00007SL  
CGCC Case No. CGCC-2013-1010-8A

**DECISION AND ORDER**

Hearing Date: August 19, 2015  
Time: 10:00 a.m.

VENUE

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, on August 19, 2015, in Sacramento, California. Jason Pope, Staff Counsel III of the Commission presided, but took no part in making of the Decision.

PARTIES

William L. Williams, Jr., Deputy Attorney General, State of California, represented complainant Wayne J. Quint, Jr., Chief of the Bureau of Gambling Control, Department of Justice, State of California (Bureau).

Applicant, Francisco Monares (In Pro Per).

EVIDENCE

During the administrative hearing, upon stipulation of the parties, Presiding Officer Jason Pope accepted into evidence the following exhibits marked as offered by the Bureau:

- (1) Copies of the Statement of Particulars; Statement to Applicant; Business and Professions Code §§ 19870 & 19871; California Code of Regulations, title 4, § 12060; and Certificate of Service by Certified Mail dated June 8, 2015. Bates Nos. BGC-0001 – 0019.
- (2) Copy of Completed Notice of Defense dated March 1, 2015. Bates Nos. BGC-0020 – 0021.

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- (3) Copies of Notices from the Commission:
  - a) Conclusion of Prehearing Conference dated July 13, 2015;
  - b) Notice of Hearing and Prehearing Conference letter dated April 8, 2015;
  - c) Extension of Work Permit letter dated January 3, 2014;
  - d) Referral of Work Permit Application to Evidentiary Hearing dated October 14, 2013;
  - e) Commission Meeting Memorandum dated October 10, 2013;
  - f) Notification of Scheduled Commission meeting letter dated September 26, 2013;
  - g) Extension of Work Permit letter dated September 5, 2013;
  - h) Extension of Work Permit letter dated May 17, 2013;
  - i) Extension of Work Permit letter dated January 16, 2013;
  - j) Extension of Work Permit letter dated September 25, 2012;
  - k) Extension of Work Permit letter dated May 30, 2012; and
  - l) Approval of Temporary Work Permit letter dated February 8, 2012. (a-1, Bates Nos. BGC-0022 – 0039.)
- (4) Temporary Work Permit Application dated January 21, 2012. Bates Nos. BGC-0040 – 0046.
- (5) Background Investigation Report dated August 30, 2013. Bates Nos. BGC-0047 – 0050.
- (6) Employment Verification letter dated August 9, 2013. Bates No. BGC-0051.
- (7) Applicant’s Statement response to Bureau Analyst dated June 26, 2013. Bates Nos. BGC-0052 – 0053.
- (8) Additional information request letter dated June 12, 2013. Bates Nos. BGC-0054 – 0055.

1 (9) Additional information request letter dated May 22, 2013. Bates Nos.  
2 BGC-0056 – 0057.

3 (10) DMV Vehicle Code Violation dated February 1, 2013. Bates Nos. BGC-  
4 0058 – 0061.

5 (11) License/Permit Verification Letter to Turlock Police Department dated  
6 January 15, 2013. Bates Nos. BGC-0062 – 0063.

7 During the administrative hearing, upon stipulation of the parties, Presiding Officer Jason  
8 Pope accepted into evidence the following exhibits, marked collectively as Exhibit A, offered by  
9 Mr. Monares:

- 10 (1) Letter from Leandro Padilla undated;  
11 (2) Letter from Adam Sanchez dated August 18, 2015;  
12 (3) Unsigned letter from Sam Grozman dated August 18, 2015; and  
13 (4) Seventeen photographs depicting soccer related employment.

14 Mr. Monares was the sole witness to testify during the hearing.

15 The record was closed and the matter was submitted for Decision on August 19, 2015.

16 All members of the Commission executing this Decision and Order heard oral argument  
17 and testimony, considered the pleading, papers and documents in evidence, and deliberated and  
18 decided the matter in closed session on August 19, 2015.

19 APPLICABLE LAW

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

24 2. At an evidentiary hearing pursuant to Business and Professions Code sections  
25 19870 and 19871 and Title 4, CCR section 12060(b), the burden of proof rests with the applicant  
26 to prove his or her qualifications to receive any license under the Gambling Control Act. Title 4,  
27 CCR section 12060(i).

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1           3.       The burden of proving his or her qualifications to receive any license from the  
2 Commission is on the applicant. Business and Professions Code section 19856(a).

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

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

11          6.       No gambling license shall be issued unless, based on all of the information and  
12 documents submitted, the commission is satisfied that the applicant is all of the following:

13               (a) A person of good character, honesty, and integrity.

14               (b) A person whose prior activities, criminal record, if any, reputation, habits, and  
15 associations do not pose a threat to the public interest of this state, or to the effective regulation  
16 and control of controlled gambling, or create or enhance the dangers of unsuitable, unfair, or  
17 illegal practices, methods, and activities in the conduct of controlled gambling or in the carrying  
18 on of the business and financial arrangements incidental thereto. Business and Professions Code  
19 section 19857.

20          7.       An applicant who fails to meet the requirements of subdivisions (a) and (b) of  
21 Business and Professions Code section 19857 shall be denied a work permit. Title 4, CCR  
22 section 12105(a).

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

27          9.       An "unqualified person" means a person who is found to be unqualified pursuant  
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1 to the criteria set forth in Business and Professions Code section 19857. Business and  
2 Professions Code section 19823(b).

3 10. The Commission has the power to deny or condition any application for a license,  
4 permit, or approval for any cause deemed reasonable by the Commission. Business and  
5 Professions Code section 19824(b).

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

9  
10 FINDINGS OF FACT

11 1. On January 21, 2012, the Commission received from Mr. Monares an application  
12 for an Initial Work Permit (Application) to work at the Empire Sportsmen's Association (Empire)  
13 in Modesto, California.

14 2. At its October 10, 2013 meeting, the Commission referred the question of Mr.  
15 Monares' suitability for licensure to an evidentiary hearing.

16 3. On or about October 14, 2013, the Commission's Executive Director set the matter  
17 for a hearing to be conducted pursuant to the provisions of Business and Professions Code  
18 sections 19870 and 19871.

19 4. On or about April 8, 2015, the Commission served a Notice of Hearing and  
20 Prehearing Conference letter on Mr. Monares and the Bureau.

21 5. On or about June 11, 2015, the Bureau filed a Statement of Particulars with the  
22 Commission recommending approval of the Application.

23 6. On July 8, 2015 at 4:00 p.m., the noticed Prehearing Conference was held before  
24 Presiding Officer Jason Pope. William L. Williams, Jr., Deputy Attorney General, attended on  
25 behalf of the Bureau. Mr. Monares attended on his own behalf.

26 7. On or about July 13, 2015, the Commission served a Conclusion of Prehearing  
27 Conference letter on Mr. Monares and the Bureau.

1           8.       The Commission heard this matter on August 19, 2015. The Bureau was  
2 represented throughout the pendency of the hearing by Deputy Attorney General William L.  
3 Williams, Jr. Mr. Monares appeared In Pro Per.

4           9.       Mr. Monares was born in 1985.

5           10.      Mr. Monares has been an employee of Empire since February 8, 2012.

6           11.      From June 2008 to October 2010, Mr. Monares was employed by Turlock Poker  
7 Room (Turlock) as a dealer.

8           12.      Mr. Monares was terminated from employment from Turlock in or about October  
9 2010. He did not contest his termination.

10          13.      Mr. Monares disclosed on his Application that he was suspended from Turlock.  
11 Upon the Bureau's request, Mr. Monares provided a written statement explaining the  
12 circumstances of his suspension. He stated to the effect that he was in an intimate relationship  
13 with another employee and he had naked photographs of this individual which he sent  
14 electronically to another employee of the establishment. Subsequently, the photographs were  
15 further transmitted to several other employees giving rise to the employer's disciplinary action.

16          14.      Mr. Monares stated that when management became aware of the distributed  
17 photographs, he was suspended for one year. Turlock provided information to the Bureau that  
18 Mr. Monares was terminated for showing sexually explicit photographs to co-workers. Mr.  
19 Monares is ineligible for rehire at Turlock due to his inappropriate behavior, which could be  
20 deemed as sexual harassment. In his written statement, Mr. Monares stated to the effect that his  
21 employer told him that he could have his job back after one year because that would be when the  
22 time for the other employee to file a sexual harassment claim would expire. There is no evidence  
23 that any sexual harassment or other claim was filed in relation to the above matter.

24          15.      Mr. Monares has never been disciplined by Empire, nor has he had a complaint  
25 filed against him by any customer of Empire. He has not been the subject of any civil or criminal  
26 action as a result of his conduct at Turlock.

27          16.      During his testimony Mr. Monares:  
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1 a) Agreed with the findings 13 and 14.

2 b) Clarified that the photographs were consensual and did not depict nudity  
3 below the waist or sexual acts.

4 c) Clarified that he sent the naked photographs via text messages to a key  
5 employee. The photographs were of a player employed by a third party provider of  
6 proposition player services to play at Turlock. After disclosure of the photographs the  
7 player depicted in the photographs had to change the location of her employment. The  
8 player depicted in the naked photographs currently shares a residence with Mr.  
9 Monares; and

10 d) Acknowledged that if he were a manager in a gambling establishment he  
11 would consider it important to know if any employees were having an intimate  
12 relationship with any players.

13 17. Mr. Monares testified truthfully and answered all questions with candor. His  
14 testimony demonstrated contrition for his reprehensible act of texting the naked photographs to a  
15 key employee at Turlock without regard to the consequences.

16 18. The Bureau recommends approval of the Application because it believes that Mr.  
17 Monares' conduct in relation to his termination from Turlock, standing alone, is an insufficient  
18 ground for denial of his work permit.

19 LEGAL CONCLUSIONS

20 19. This is an extremely close case. Mr. Monares committed a reprehensible act when  
21 he disclosed the photographs to Turlock's key employee, and based on the record the  
22 Commission would not abuse the discretion vested in the Commission pursuant to Business and  
23 Professions Code section 19857 if we were to deny this Application. However, the following  
24 reasons justify granting Mr. Monares' Application:

25 a) truthful disclosure on the Application of his suspension from employment  
26 at Turlock;

27 b) uncontested cessation of employment from Turlock;

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- c) lack of any civil or criminal action due to the disclosure of the photographs;
- d) acceptance of responsibility for his actions;
- e) contrite testimony;
- f) lapse of almost five years since the disclosure of the photographs;
- g) lack of employment in the gaming industry for over fourteen months after cessation of employment with Turlock;
- h) Mr. Monares was twenty-five at the time of disclosure of the photographs;
- i) evidence indicates the impact on the victim has abated to the point where she is willing to share a residence with Mr. Monares;
- j) the Bureau recommended approval; and
- k) the lack of any criminal record of misdemeanor or felony convictions.

20. Based on Findings 9 – 18 and all of the circumstances before us being considered a decision to exercise discretion to deny a work permit to Mr. Monares based on a single reprehensible act would result in injustice.

21. Notwithstanding the exercise of discretion in granting approval of the Application, two conditions are warranted. They include:

- 1) to protect game integrity at his current employer (Empire), Mr. Monares shall immediately disclose to his immediate supervisor every current or future intimate relationship he has with any player of Empire (“player” includes any employees of a third party proposition player service at Empire); and
- 2) Mr. Monares shall complete any sexual harassment training program offered by Empire, and provide proof of its completion to the Bureau, prior to October 30, 2015.

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1 NOTICE OF APPEAL RIGHTS

2 Mr. Monares has the following appeal rights available under state law:

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

4 [A]n applicant denied a license, permit, registration, or finding of suitability, or  
5 whose license, permit, registration, or finding of suitability has had conditions,  
6 restrictions, or limitations imposed upon it, may request reconsideration by the  
7 Commission within 30 calendar days of service of the decision, or before the  
8 effective date specified in the decision, whichever is later. [The] request shall be  
9 made in writing to the Commission, copied to the Bureau, and shall state the reasons  
10 for the request, which must be based upon either: (1) newly discovered evidence or  
11 legal authorities that could not reasonably have been presented before the  
12 Commission's issuance of the decision or at the hearing on the matter; or, (2) Other  
13 good cause which the Commission may decide, in its sole discretion, merits  
14 reconsideration.

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

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

23 Title 4, CCR section 12066, subsection (c) provides:

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

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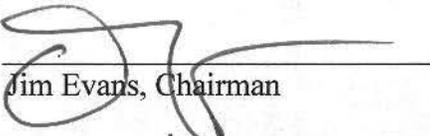
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ORDER

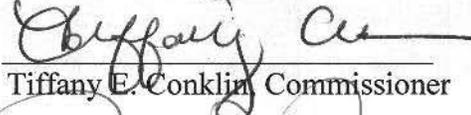
Upon the foregoing findings of fact and legal conclusions, and the entire record in this matter, it is hereby ORDERED that:

1. Mr. Francisco Monares' Initial Regular Work Permit Application for the Empire Sportsman Association is GRANTED WITH CONDITIONS provided in the Decision.
  - a. Mr. Monares shall immediately disclose to his immediate supervisor every current or future intimate relationship he has with any player of Empire ("player" includes any employees of a third party proposition player service at Empire); and
  - b. Mr. Monares shall complete any sexual harassment training program offered by Empire, and provide proof of its completion to the Bureau, prior to October 30, 2015.
2. No costs or fees are to be awarded.
3. This Order is effective September 1, 2015.

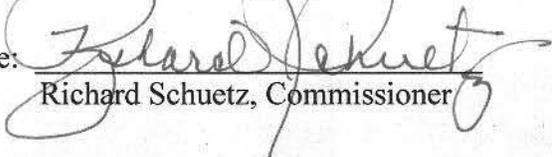
Dated: 8-27-15

Signature:   
Jim Evans, Chairman

Dated: Sept. 1, 2015

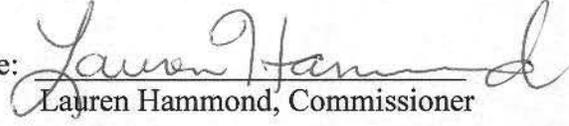
Signature:   
Tiffany E. Conklin, Commissioner

Dated: Aug. 27, 2015

Signature:   
Richard Schuetz, Commissioner

I find Mr. Morales unqualified pursuant to Business and Professions Code subdivision 19823 (b). Therefore, respectfully, I vote to deny the Application.

Dated: 8-27-15

Signature:   
Lauren Hammond, Commissioner