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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

BGC Case No. BGC-HQ2012-0002AL
CGCC Case No. CGCC-2012-0702

In the Matter of the Application for Approval
of Conversion of Third-Party Provider of
Proposition Player Services/Gambling
Business Supervisor Registration to License
for:

DECISION AND ORDER

SAMNANG PHOUNG
7934 Montauban Ave
Stockton, CA 9520

Hearing Date: April 30, 2013 – May 2, 2013
Time: 10:00 am

Registration Nos. TPSU-000222 (TP)
TPSU-000207 (GB)

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 12050, in Sacramento, California, from April 30, 2013 through May 2, 2013.

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

Steven L. Simas, Esq. and Nicole D. Hanley, Esq. of Simas & Associates, Ltd., represented applicant Samnang Phoung.

The matter was submitted on May 2, 2013.

FACTUAL FINDINGS

1. Samnang Phoung holds a registration as a third party proposition player supervisor, Registration Number TPSU-000222. Mr. Phoung also holds a registration as a gambling business supervisor, Registration Number TPSU-000207. He is currently employed in those capacities by Premier Player Providers, Inc. (Premier), which is a licensed provider of third party proposition player services and a licensed gambling business, holding License Numbers TPPP-000040 and TPPP-000041.

1 2. On or about August 15, 2010, Mr. Phoung submitted an Application for Third Party
2 Proposition Player Services License for Supervisor, Player or Other Employee as a supervisor and
3 an Application for Gambling Business License for Supervisor, Player or Other Employee as a
4 supervisor to the Commission (Applications). The Applications require the applicant to disclose
5 criminal and litigation history, financial history, and other detailed information.

6 3. On July 26, 2012, the Commission voted to preliminarily deny the Applications. Mr.
7 Phoung requested an administrative hearing.

8 4. On September 7, 2012, the Executive Director of the Commission set the matter for a
9 de novo hearing to be conducted pursuant to Business and Professions Code Sections 19870 and
10 19871.

11 5. On September 10, 2012, the Commission served a Notice of Hearing, which included
12 Mr. Phoung's Applications and the Bureau's Background Investigation Report, and Prehearing
13 Conference for Samnang Phoung, Case No. CGCC-2012-0702, on Complainant and Jade Jaeckle,
14 Designated Agent for Premier.

15 6. On February 7, 2013, a prehearing conference was held before Presiding Officer Jason
16 Pope, Staff Counsel of the Commission.

17 7. On February 26, 2013, Complainant filed and served a First Amended Statement of
18 Reasons on Mr. Phoung and his attorneys, Simas & Associates, requesting the denial of Mr.
19 Phoung's Applications.

20 8. The Commission heard Case No. CGCC-2012-0702 from April 30, 2013 to May 2,
21 2013. On May 2, 2013, the matter was submitted for Commission consideration. The following
22 factual findings are based on the stipulations at the prehearing conference¹, and the documentary
23 and testimonial evidence received during the administrative hearing.

24 9. Mr. Phoung was convicted upon his plea of guilty on or about May 17, 1999, in the
25 Municipal Court of San Joaquin County, State of California, of a misdemeanor violation of Penal

26 _____
27 ¹ The parties stipulated to the admission of the police reports related to the May 17, 1999
28 conviction for violating Penal Code Section 415 and the October 26, 2004 conviction for
violating Penal Code Section 273.5(a) without objection.

1 Code Section 415, fighting. Mr. Phoung was sentenced to probation, ordered to pay restitution,
2 and ordered to complete 60 hours of community service through the Center for Positive
3 Prevention Alternatives (CPPA). Mr. Phoung failed to report to CPPA and complete his
4 community service, and as a result, Mr. Phoung's probation was revoked. Mr. Phoung later
5 complied with the terms of his probation.

6 10. The facts leading to the May 17, 1999 conviction were drawn from the statements
7 made to the police by Samnang Phoung and others as contained in the police report and the
8 testimony of Mr. Phoung during the administrative hearing. The incident took place on April 23,
9 1999. Reporting Officer Michael Scofield, Identification Number 6990, responded to Bear Creek
10 High School on a report of a large fight on school grounds. Three suspects were arrested: (1)
11 Samnang Phoung; (2) Samoeun Khim; and (3) Kagna Kong. There were no serious injuries.

12 According to the statement of Samnang Phoung, he was at school minding his own
13 business when he got jumped by a large group of Asian males. He got hit at least twice. He did
14 not know who hit him or the reason for the fight. He fought back in self-defense and hit others.
15 Mr. Phoung's testimony during the administrative hearing was substantially similar to the
16 statements he made to the reporting officer.

17 According to the statement of Samoeun Khim, Mr. Phoung was a bully who is constantly
18 "punking" (calling names, harassing and challenging to a fight) him and his friends. Mr. Phoung
19 walked up to Mr. Khim, started "punking" him, and then punched him once in the face. Mr.
20 Khim fought back in self-defense, hitting Mr. Phoung at least once.

21 According to the statement of Kagna Kong, Mr. Phoung is a bully who started "punking"
22 Mr. Khim. Mr. Phoung hit Mr. Khim for no reason. Mr. Kong jumped in to help his friend, Mr.
23 Khim, fight back. He hit Mr. Phoung once.

24 There are several witness statements. Saroang Ben, Sokhon Khonn, Sophir Sath and
25 Chandary Vean said that they saw Mr. Phoung get jumped by other students. None of them know
26 who started the fight. Rathana Chheng and Sarun Sang stated that they saw Mr. Phoung
27 challenge Mr. Khim to a fight and punch him, after which other students jumped in.
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1 11. While Mr. Phoung's participation in the incident is not disputed, the circumstances
2 surrounding who started the incident are unclear. One set of witnesses, including Mr. Phoung,
3 states that he was jumped by a group and fought back in self-defense. Another set of witnesses,
4 including Mr. Khim and his friend, Mr. Kong, states that Mr. Phoung challenged Mr. Khim to a
5 fight and landed the first punch. None of the witness statements appear to have any more or less
6 reliability. It is unclear whether Mr. Phoung was an instigator or fought back in self-defense.
7 Given that the circumstances surrounding who started the incident are unclear, none of the
8 witness statements are dispositive regarding the initial cause of the incident.

9 12. Mr. Phoung was convicted upon his plea of nolo contendere on October 26, 2004, in
10 the Superior Court of San Joaquin County, State of California, of a misdemeanor violation of
11 Penal Code Section 273.5(a), intentional infliction of corporal injury on a spouse or cohabitant, a
12 crime of moral turpitude.² Mr. Phoung was sentenced to 15 days in jail, three years of formal
13 probation, participation in a treatment program, and paying \$100 in restitution plus \$1 for a
14 restitution fund collection fee, \$400 to the domestic violence fund, and \$20 for a security fee.

15 13. The facts leading to the October 26, 2004 conviction were drawn from the statements
16 made to the police by Mithona Sek and Sophary Sek as contained in the police report, the
17 Declarations of Mithona Sek and Sophary Sek in support of the Applications of Samnang
18 Phoung, and the testimony of Samnang Phoung and Mithona Sek during the administrative
19 hearing. The incident took place on December 7, 2002, a Saturday. Reporting Officer J. Jarman,
20 Identification Number 1020, responded to Dameron Hospital on a report of a battery victim in the
21 Emergency Room. According to Reporting Officer Jarman, Mithona Sek's right eye was swollen
22 shut and the skin around her eye was tight and beginning to split. Her skin was grayish in color.
23 Reporting Officer Jarman did not see any other injuries to Mithona Sek, but she complained of
24 pain to her lower back, legs and the back of her head.

25 According to the statement of Mithona Sek, she and her husband, Samnang Phoung, had

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27 ² Donley v. Davi (2009) 180 Cal.App.4th 447, 461, 103 Cal.Rptr.3rd 1, 12; People v.
28 Rodriguez (1992) 5 Cal.App.4th 1398, 1402, 7 Cal.Rptr.2d 495, 497.

1 been together for four years, and had been married³ for three years. They had a 4-month old
2 daughter named Kataliya Phoung at the time. During the time that they had been together, Mr.
3 Phoung hit her once before they were married and then at least eight times after they were
4 married. Mithona Sek never called the police and did not call the police prior to the December 7,
5 2002 incident. She did not want to have charges pressed against Mr. Phoung because he would
6 lose his job and she would not have anyone to take care of her. Mithona Sek was a stay-at-home
7 mother at the time of the incident. She said Mr. Phoung only hits her when she “back talks” him
8 and other than that, that he is a good person.

9 Mithona Sek and Samnang Phoung were at home around 3:30 to 3:45 p.m. Mr. Phoung
10 got upset with Mithona Sek because she told him that she did not want his parents to come over
11 and see the kids. She said that she was mad at him because of his attitude, and told him that to
12 make him mad. Mr. Phoung punched her in the face knocking her back against the closet doors,
13 which gave way. She got up and sat on the bed. Mr. Phoung continued to hit her in the back of
14 the head and then kicked her in the legs. She was adamant about not wanting anything done to
15 Mr. Phoung, and that she wanted to have him go to counseling only. She agreed that she was part
16 of the cycle of domestic violence, but declined to seek either an emergency protective order or a
17 restraining order.

18 According to the statement of Sophary Sek, Mithona Sek’s sister, Sophary Sek had
19 watched her sister get beat several times in the relationship, estimating eight to ten times. She
20 had talked with Mithona Sek on several occasions and tried to get her away from Mr. Phoung.
21 She was concerned about her sister’s safety. She was not a witness to the incident. She received
22 a telephone call from Mithona Sek and went to the house. She took Mithona Sek to Dameron
23 Hospital to have her eye looked at. She was at her wit’s end concerning Mr. Phoung. She had
24 tried to get Mithona Sek to leave him and press charges, but she would not.

25 Reporting Officer Jarman attempted to contact Mr. Phoung via telephone but had
26 “negative results.”

27 ³ Mithona Sek and Samnang Phoung were not legally married, but were married
28 traditionally according to their culture.

1 A bench warrant was issued for Mr. Phoung on December 19, 2002. Mr. Phoung was
2 arrested on October 9, 2004 during a traffic stop. Mr. Phoung testified that he did not know about
3 the outstanding warrant.

4 14. Mithona Sek testified during the administrative hearing regarding the incident. She
5 testified that she and Mr. Phoung were engaged in a verbal argument that turned physical. She
6 struck Mr. Phoung in the face. The fight went back and forth with both her and Mr. Phoung
7 receiving physical injuries. Mr. Phoung struck her in the face, giving her a black eye. She does
8 not remember being struck into the closet doors. She does not remember sustaining any other
9 injuries.

10 15. Mithona Sek testified that there were no physical fights prior to this incident, and that
11 this was the only physical altercation. She does not remember telling the police officer that there
12 had been previous physical fights. She testified that she did not tell the police officer that she and
13 Mr. Phoung had been in physical fights on at least eight prior occasions. She testified that she
14 probably said they had been in physical fights a few times and was exaggerating because she was
15 angry at the time and was trying to make Mr. Phoung look bad. She testified that both she and
16 her sister exaggerated the number of times that she and Mr. Phoung were involved in physical
17 fights. She testified that she and her sister lied to the police officer regarding the history of
18 physical fights. She testified that she had plenty of family support so she did not worry about
19 what would happen to him. She does not remember telling the police officer that she did not want
20 to get Mr. Phoung in trouble or have him lose his job because she depended on his financial
21 support. She remembers that she did not ask to press charges.

22 16. Samnang Phoung also testified during the administrative hearing regarding the
23 incident. He testified that he did not remember the argument precipitating the incident, but
24 remembers that it started verbally and then turned physical. He testified that she started being
25 physical, and that he tried to physically restrain her but she did not stop. She struck him. He
26 "socked her back," punching her in the eye. He does not remember the closet door getting
27 knocked off the hinges. He stopped being physical when he saw her crying.
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1 17. He testified that they had previous arguments and incidents, but that the furthest they
2 went was his using physical force to restrain her, to hold her down and prevent her from attacking
3 him. He testified that he did not hit her, and that he never "hit her in the face like that." He
4 testified that Mithona Sek was not being honest in the police report regarding their past incidents
5 and that he would testify against her if necessary.

6 18. Sophary Sek submitted a Declaration in support of Mr. Phoung's Applications. She
7 did not retract or contradict any statement she made to the investigating officer in the incident
8 report. She states that Mr. Phoung is a changed man who deserves a second chance. She states
9 that Mr. Phoung made positive changes after completing domestic violence counseling, and that
10 after the counseling Mr. Phoung would hold back his anger or walk away if Mithona Sek said
11 something to upset him.

12 19. Mr. Phoung's conduct leading to his October 26, 2004 conviction reflected poor
13 judgment, a lack of self-control, and a blatant violation of two trust relationships, with Mithona
14 Sek and their daughter Kataliya Phoung. Mr. Phoung endangered the physical and emotional
15 health and well-being of his wife. Mr. Phoung inflicted physical violence upon his wife and
16 cohabitant, with whom he was then enjoying a trust relationship of marriage, living together and
17 raising their child in common in a shared household. Mr. Phoung responded to Mithona Sek's
18 words and actions by striking her in the eye with his fist, with sufficient power to knock her back
19 against the closet doors which gave way. Mithona Sek's eye was swollen shut. He exacerbated
20 and perpetuated the conflict by continuing to punch her in the back of the head and kick her in the
21 legs. Mr. Phoung demonstrated extremely poor judgment and a lack of self-control. He did not
22 disengage or walk away from the verbal conflict. Instead, the conflict escalated to where he
23 struck her with force significant enough to cause her eye to swell shut.

24 20. The statements made by Mithona Sek and Sophary Sek as contained in the police
25 report appear to be credible and reliable. The statements made by Mithona Sek were fairly
26 specific in detail, describing the conversation precipitating the incident, the acts of physical
27 violence, and the history of domestic violence. The statements were made at the time of the
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1 incident. The statements provide an explanation as to why Mithona Sek had not reported the
2 previous incidents of domestic violence. The statements describing the acts of physical violence
3 were supported by the injuries reported by Mithona Sek and observed by the investigating officer.

4 The statements made by Sophary Sek are consistent with those made by Mithona Sek.
5 The statements made by Sophary Sek support a history of domestic violence between Mithona
6 Sek and Mr. Phoung. Mithona Sek reported at least nine incidents of domestic violence, while
7 Sophary Sek reported eight to ten incidents of domestic violence, including having witnessed
8 several of them. Sophary Sek tried to get Mithona Sek to leave Mr. Phoung and press charges,
9 but stated that Mithona Sek refused, which comported with Mithona Sek stating that she did not
10 want to press charges against Mr. Phoung and the fact that Mithona Sek did not call the police
11 after this incident. In her Declaration, Sophary Sek stated that Samnang Phoung was a changed
12 man after completing domestic violence counseling. Her characterization of Mr. Phoung as a
13 changed man reflects that this was not an isolated incident of domestic violence.

14 21. The statements made by Mithona Sek and Sophary Sek describe a continuing
15 unhealthy, abusive and violent relationship of four plus years between Mithona Sek and Samnang
16 Phoung. Mithona Sek stated that Mr. Phoung had hit her once before they were married and then
17 at least eight times after they were married. Sophary Sek witnessed many of the acts of physical
18 violence perpetrated by Mr. Phoung against Mithona Sek, and stated that the injuries suffered by
19 Mithona Sek were at least as bad as the injuries she suffered as a result of the incident.
20 Mithona Sek agreed that she was part of the cycle of domestic violence and abuse. She was
21 adamant about not wanting Mr. Phoung to get into trouble, which is further indication of a
22 continuing pattern of domestic violence. At the time of the incident, Mithona Sek and Samnang
23 Phoung had a four month old daughter. Mr. Phoung demonstrated poor judgment and a lack of
24 physical control even after having a child.

25 22. The testimony of Mithona Sek during the hearing is of dubious reliability, as her
26 testimony contradicts the statements she and Sophary Sek made to the investigating officer at the
27 time of the incident, and the testimony of Samnang Phoung. Mr. Phoung testified that he and
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1 Mithona Sek had prior arguments where he used physical force to restrain her and hold her down.
2 Mithona Sek testified that there were no physical fights prior to this incident, and that this was the
3 only physical altercation. In the police report, she and Sophary Sek told the investigating officer
4 that there were eight to ten previous incidents of domestic violence. She first testified during the
5 administrative hearing that she did not tell the police officer that she had been in physical fights
6 on at least eight prior occasions. She later testified that she probably said that they had been in
7 physical fights a few times and was exaggerating because she was angry at the time and was
8 trying to make Mr. Phoung look bad. She testified that both she and her sister exaggerated the
9 number of times that she and Mr. Phoung were involved in physical fights, and that she and her
10 sister lied to the police officer. By testifying that she lied to the police officer, Mithona Sek raises
11 serious questions about her honesty and credibility. She also testified that she had plenty of
12 family support so she did not worry about what would happen to Mr. Phoung, and that she wanted
13 to make him look bad. However, she told the investigating officer that she did not want to get
14 Mr. Phoung in trouble or have him lose his job because, as a stay-at-home mother, she depended
15 on his financial support, which is supported by the fact that Mithona Sek did not call the police
16 after the incident and did not ask to press charges. The statements Mithona Sek and Sophary Sek
17 made to the investigating officer immediately following the incident are more reliable and
18 credible than the conflicting and contradictory testimony of Mithona Sek made during the
19 hearing. Moreover, her demeanor during the administrative hearing suggested discomfort with
20 her testimony, which raises questions as to her veracity.

21 23. The testimony of Samnang Phoung regarding the prior incidents of domestic violence
22 during his relationship with Mithona Sek lacks honesty. During the administrative hearing, Mr.
23 Phoung was asked “did you ever have, during your relationship with Ms. Sek, any other
24 arguments that had physical issues like this one?” Mr. Phoung responded “not like this, but we
25 had argument. You know, the furthest I would go to was maybe restrain her, using force to hold
26 her down, but I never, ever hit her in the face like that.” Mr. Phoung was also asked whether
27 Mithona Sek “was lying when she said [in the police report] that you had struck her before.” Mr.
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1 Phoung responded that Mithona Sek was not accurate and not being honest in the police report.
2 Mr. Phoung's testimony contradicts the statements made by Mithona Sek and Sophary Sek to the
3 investigating officer at the time of the incident regarding the recurring incidents of domestic
4 violence. As a result, Mr. Phoung lied to the Commission about only restraining Ms. Sek and
5 using force to hold her down during their previous physical incidents. Mr. Phoung also lied to the
6 Commission about Mithona Sek being dishonest in the police report regarding whether he had
7 struck her before the incident. In addition, Mr. Phoung underestimates the physical, emotional
8 and psychological impact of repeatedly using physical force against his spouse in violation of the
9 trust relationship he shares with Mithona Sek and their daughter. Mr. Phoung was convicted of
10 one act of intentional infliction of corporal injury on a spouse or cohabitant, but that was not the
11 sole extent of the domestic violence present in the relationship.

12 24. Mr. Phoung attended 52 weeks of domestic violence counseling with Second Chance,
13 Inc. from December 15, 2004 through December 21, 2005. Mr. Phoung was ordered to attend
14 domestic violence counseling as a term of probation stemming from his October 26, 2004
15 conviction. Mr. Phoung did not voluntarily undertake counseling after the incident.

16 25. Mr. Phoung and Mithona Sek stayed together for several more years and had a second
17 daughter together, Loralie Phoung. They have since separated, but amicably share a 50/50 legal
18 and physical custody relationship of their two children, which Mr. Phoung may visit whenever he
19 wants. Their relationship is now stable. Mithona Sek states that Mr. Phoung is a caring and
20 loving father, a hard worker, and a great role model for their daughters. She believes Mr. Phoung
21 has made positive changes in his life. Mithona Sek recommends that the Commission approve
22 his Applications.

23 26. Mr. Phoung does not have any disciplinary history before the Commission. Other
24 than the issues relating to having a current and valid registration issued by the Commission while
25 working for Red Dog, Mr. Phoung's employment record is very strong. He has submitted
26 numerous declarations and other written materials from professional references, including from
27 Monica Dreher, Owner of Folsom Lake Bowl Sports Bar & Casino; William Schipani, President
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1 and Owner of Gaming Fund Group; Brian Altizer, Owner of Napa Valley Casino; Stephen Evans,
2 former Supervisor of Red Dog; and current boss Nasser Qutob, President and Owner of Premier.
3 Each of the above individuals states that Mr. Phoung is professional, capable, responsible and
4 reliable at work. All of them recommend that the Commission approve his Applications.

5 27. Mr. Phoung has also submitted several declarations from personal references. The
6 consensus among the declarants is that Mr. Phoung is a caring father, a good friend, and a
7 dedicated employee. There was no mention that Mr. Phoung continues to demonstrate poor
8 judgment, anger management issues or physical violence. Mithona Sek and Sophary Sek each
9 declared that she believes that Mr. Phoung has changed in a positive way. Each of the declarants
10 recommends that the Commission approve his Applications.

11 28. The Superior Court of San Joaquin County, State of California, entered an order
12 pursuant to Penal Code Section 1203.4 on October 31, 2008, granting Mr. Phoung's motions to
13 expunge his May 17, 1999 conviction for violating Penal Code Section 415 and his October 26,
14 2004 conviction for violating Penal Code 273.5(a).

15 29. On several occasions prior to the expungement of his October 26, 2004 conviction,
16 Mr. Phoung submitted various applications⁴ and requests for conversion of a registration to a
17 license⁵ to the Commission. On every application, Mr. Phoung has checked the box marked "no"
18 to the question of whether he had been convicted of a misdemeanor within the last ten years
19 involving moral turpitude that had not been expunged or dismissed as provided by law. On every
20 request for conversion of a registration to a license, Mr. Phoung checked the box marked "yes" to
21 the question of whether he had been convicted of a misdemeanor within the last 10 years. Mr.
22 Phoung checked the box marked "no" to the question of whether he had ever engaged in any act
23 involving dishonesty or moral turpitude charged or chargeable as a criminal offense. Mr. Phoung

24 _____
25 ⁴ Mr. Phoung submitted applications for third party proposition player services
26 registration and gambling business registration on or about February 17, 2005; February 23, 2008;
and February 26, 2008.

27 ⁵ Mr. Phoung submitted requests for conversion of a third party proposition player
28 services registration to a license and a gambling business registration to a license on or about
February 7, 2007 and February 9, 2007.

1 checked the box marked “no” to the question of whether he had ever been convicted of an offense
2 involving dishonesty or moral turpitude.

3 30. Mr. Phoung checked the box marked “no” to the question of whether he was convicted
4 of a misdemeanor involving moral turpitude on all applications and requests for conversion of a
5 registration to a license prior to the expungement of his October 26, 2004 conviction. It does not
6 appear that Mr. Phoung was being deliberately evasive by failing to disclose that he had been
7 convicted of a crime of moral turpitude. As support, on or about September 22, 2009, Mr.
8 Phoung submitted a Request for Conversion of a Third Party Proposition Player Services
9 Registration to a License where he checked the boxes marked “yes” to the questions of whether
10 he had ever engaged in any act involving dishonesty or moral turpitude charged or chargeable as
11 a criminal offense and whether he had ever been convicted of an offense involving dishonesty or
12 moral turpitude. While Mr. Phoung is responsible for being honest and disclosing all requested
13 information on his applications to the Commission, Mr. Phoung is not an attorney and is unlikely
14 to know the meaning of “moral turpitude.” Mr. Phoung testified that he did not know what
15 “moral turpitude” meant. As a result, it is unreasonable to expect Mr. Phoung to check the box
16 marked “yes” to the question of whether he has been convicted of a misdemeanor involving moral
17 turpitude.

18 31. Mr. Phoung has been registered with the Commission as a third party provider of
19 proposition player services starting in 2004. Mr. Phoung has submitted, and occasionally
20 abandoned, applications and requests to convert his registration to a license. Mr. Phoung was
21 employed as a third party proposition services player with Red Dog Partners, Inc. (Red Dog). On
22 September 27, 2008, Red Dog informed the Commission that it had ceased its affiliation with Mr.
23 Phoung. As a result, Mr. Phoung was required to surrender his player badge. It is not clear
24 whether Mr. Phoung knew, or had reason to know, that Red Dog had ceased its affiliation with
25 Mr. Phoung. Mr. Phoung did not surrender his badge, and continued to work as a third party
26 proposition services player with Red Dog from October 2008 through August 2009 with an
27 unexpired, but invalid player registration. From August 2009 through December 2009, Mr.
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1 Phoung was employed as a supervisor with Red Dog but was only registered as a player.

2 32. Red Dog, and its designated agent, Jeffrey Combs, were primarily responsible for
3 submitting timely applications for registrations and advising the Commission of the status of its
4 employees, including Mr. Phoung. Red Dog was issued a Letter of Warning by the Bureau on
5 September 25, 2009. One of the issues in the Letter of Warning was that Mr. Phoung was
6 working for Red Dog as a player and supervisor without a valid registration issued by the
7 Commission. In a response letter to the Bureau, Red Dog admitted to the error of having Mr.
8 Phoung work without a valid registration. Red Dog has subsequently ceased operation as a third
9 party provider of proposition player services and gambling business.

10 33. Mr. Phoung is ultimately responsible for obtaining and maintaining a current and valid
11 registration from the Commission to work as a third party proposition player and/or supervisor.
12 Mr. Phoung demonstrated a lack of responsibility for working as a third party proposition player
13 and supervisor without maintaining a valid registration issued by the Commission. Mr. Phoung
14 further demonstrated a lack of responsibility and personal accountability by testifying that he is
15 not responsible for his own licensure, only the designated agent is responsible. However, it is not
16 clear whether Mr. Phoung knew, or had reason to know, that he was working for Red Dog
17 without a valid registration. According to the Declaration of Stephen Evans, a supervisor for Red
18 Dog, Mr. Phoung always wore his Commission issued third party badge at all times that Mr.
19 Evans saw Mr. Phoung provide third party proposition player services at Silver Fox Casino.
20 Further, Red Dog also demonstrated a lack of responsibility with regard to keeping Mr. Phoung
21 informed and timely submitting applications and other materials to the Commission related to Mr.
22 Phoung's registration status.

23 LEGAL CONCLUSIONS

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

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

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

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

11 5. An "unqualified person" means a person who is found to be unqualified pursuant to
12 the criteria set forth in Business and Professions Code Section 19857, and "disqualified person"
13 means a person who is found to be disqualified pursuant to the criteria set forth in Business and
14 Professions Code Section 19859. Business and Professions Code Section 19823(b).

15 6. The Commission has the power to deny any application for a license, permit, or
16 approval for any cause deemed reasonable by the Commission. Business and Professions Code
17 Section 19824(b).

18 7. The Commission shall not issue a gambling license unless, based on all of the
19 information and documents submitted, the Commission is satisfied that the applicant is all of the
20 following: (a) A person of good character, honesty and integrity; (b) A person whose prior
21 activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the
22 public interest of this state, or to the effective regulation and control of controlled gambling, or
23 create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in
24 the conduct of controlled gambling or in the carrying on of the business and financial
25 arrangements thereto; (c) A person that is in all other respects qualified to be licensed as provided
26 in this chapter. Business and Professions Code Section 19857.

27 8. The Commission shall deny a license to any applicant who is disqualified based upon
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1 a conviction of the applicant for any misdemeanor involving dishonesty or moral turpitude within
2 the 10-year period immediately preceding the submission of the application, unless the applicant
3 has been granted relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code:
4 provided, however, that the granting of relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of
5 the Penal Code shall not constitute a limitation on the discretion of the Commission under Section
6 19856 or affect the applicant's burden under Section 19857. Business and Professions Code
7 Section 19859(d).

8 9. An applicant for a license to provide third proposition player services shall be
9 ineligible for licensing if the applicant has failed to meet the requirements of Business and
10 Professions Code Sections 19856 or 19857. Title 4, CCR Section 12218.11(e).

11 10. An applicant for a license to provide services as a gambling business employee shall
12 be ineligible for licensing if the applicant has failed to meet the requirements of Business and
13 Professions Code Sections 19856 or 19857. Title 4, CCR Section 12236(e).

14 11. No person may provide proposition player services or obtain a badge without a current
15 valid registration issued by the Commission. Title 4, CCR Section 12201(a). No person may
16 engage in a gambling business as an owner or as an employee or independent contractor of an
17 owner, nor may any person obtain a badge without a current valid registration issued by the
18 Commission. Title 4, CCR Section 12221(a).

19 12. As set forth in the Factual Findings, Mr. Phoung has been convicted of violating
20 California Penal Code Section 415, fighting, a misdemeanor not involving moral turpitude. The
21 fight occurred on April 23, 1999 at Bear Creek High School. Mr. Phoung's participation in the
22 fight is not disputed; however, there is a dispute regarding whether Mr. Phoung instigated the
23 fight or fought back in self-defense. None of the witness statements have any more or less
24 reliability. Given that the circumstances surrounding who started the incident are unclear, none
25 of the witness statements are dispositive regarding the initial cause of the incident. Mr. Phoung's
26 participation in the April 23, 1999 fight reflects slightly negatively on his good character.
27 However, this conviction alone is insufficient to demonstrate that Mr. Phoung lacks good
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1 character, honesty and integrity. This conviction alone is also insufficient to demonstrate that Mr.
2 Phoung poses a threat to the public interest of this state or to the effective regulation and control
3 of controlled gambling.

4 13. Mr. Phoung has been convicted of violating California Penal Code Section 273.5(a),
5 intentional infliction of corporal injury on a spouse or cohabitant, a crime of moral turpitude.
6 Donley v. Davi (2009) 180 Cal.App.4th 447, 461, 103 Cal.Rptr.3rd 1, 12; People v. Rodriguez
7 (1992) 5 Cal.App.4th 1398, 1402, 7 Cal.Rptr.2d 495, 497. “Moral turpitude” is defined as a
8 “general readiness to do evil.” People v. Castro (1985) 38 Cal.3d 301, 314. Crimes which
9 “reveal a defendant’s dishonesty, ‘general readiness to do evil,’ ‘bad character’ or ‘moral
10 depravity’ involve moral turpitude.” People v. Hunt (1985) 169 Cal.App.3d 668, 674. An act of
11 moral turpitude is “an act of baseness, vileness, or depravity in the private and social duties which
12 a man owes to his fellow men or to society in general, contrary to the accepted and customary
13 rule of right and duty between man and man.” People v. Mazza (1985) 175 Cal.App.3d 836, 842.
14 In deciding whether a crime involves “moral turpitude,” a court must analyze whether the least
15 adjudicated elements of the crime constitute “a general readiness to do evil” or “moral laxity.”
16 Castro, 38 Cal.3d at 317.

17 14. Section 273.5 “cannot be violated without a breach of the trust relationship the
18 perpetrator enjoys with a cohabitant or a spouse, and that perpetrator commits an act of physical
19 violence upon the other in violation of that trust.” Donley, 180 Cal.App.4th at 457. To violate
20 Section 273.5, “the assailant must, at the very least, have set out, successfully, to injure a person
21 of the opposite sex in a special relationship for which society rationally demands, and the victim
22 may reasonably expect, stability and safety, and in which the victim, for these reasons among
23 others, may be especially vulnerable. To have joined in, and thus necessarily to be aware of, that
24 special relationship, and then to violate it willfully and with intent to injure, necessarily connotes
25 the general readiness to do evil that has been held to define moral turpitude.” Rodriguez, 5
26 Cal.App.4th at 1402. It does not matter that the conviction is for a misdemeanor rather than a
27 felony. Donley, 180 Cal.App.4th at 459. The “readiness to do evil lies not in the severity of the
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1 injury inflicted, but in the violation of the special relationship” between, in this case, cohabitants
2 and parents of a child by use of physical force by Mr. Phoung against Mithona Sek. Id.

3 15. Mr. Phoung would be disqualified from licensure pursuant to Business and
4 Professions Code Section 19859(d) based on his conviction of Penal Code Section 273.5(a) had
5 he not successfully been granted relief pursuant to Section 1203.4 of the Penal Code. However,
6 the granting of relief pursuant to Penal Code Section 1203.4 shall not limit the discretion of the
7 Commission under Business and Professions Code Section 19856 or affect Mr. Phoung’s burden
8 under Business and Professions Code Section 19857.

9 16. Mr. Phoung punched his wife, cohabitant and co-parent in her eye with enough force
10 to knock her backwards against the closet doors, which gave way. Mithona Sek suffered, at a
11 minimum, significant bruising in and around her eye such that her eye had swollen shut. Mithona
12 Sek also complained of injuries to her lower back, legs and the back of her head. This incident
13 occurred four years into an unhealthy and physically violent relationship, and four months after
14 the birth of their first child, showing that Mr. Phoung’s violent tendencies did not cease upon the
15 birth of his first child. The circumstances of this incident reflect extremely negatively on Mr.
16 Phoung’s good character and demonstrate that Mr. Phoung poses a threat to the public interest of
17 this state and to the effective regulation and control of controlled gambling. As a result, Mr.
18 Phoung has not met his burden of proving that he is qualified to receive a license pursuant to
19 Business and Professions Code Section 19857(a) and (b).

20 17. Mr. Phoung testified that there were several prior incidents where he used physical
21 force to restrain Mithona Sek and hold her down. He shows a pattern of using physical force and
22 violence to settle disputes. Mr. Phoung testified that this was the sole incident where he struck
23 her. His testimony contradicts the statements made to the investigating officer by Mithona Sek
24 and Sophary Sek at the time of the incident, statements which appear more reliable and credible
25 than the testimony of Mr. Phoung and Mithona Sek during the hearing. As a result, Mr. Phoung
26 lied to the Commission during the administrative hearing regarding the history of domestic
27 violence in his relationship with Mithona Sek. By lying to the Commission, Mr. Phoung has
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1 demonstrated a lack of honesty. Therefore, Mr. Phoung has not met his burden of proving that he
2 is a person of good character, honesty and integrity, and is not qualified to receive a license
3 pursuant to Business and Professions Code Section 19857(a).

4 18. During the hearing, Mr. Phoung and Mithona Sek attempted to minimize and explain
5 away the nature and frequency of the physical violence in their relationship. In so doing, Mr.
6 Phoung demonstrates an inability or unwillingness to accept responsibility for the severity of the
7 incidents of domestic violence. Mr. Phoung also underestimates the physical, emotional and
8 psychological impact of repeatedly using physical force against his spouse in violation of the trust
9 relationship he shares with Mithona Sek and their daughter. As a result, Mr. Phoung has
10 demonstrated a lack of good character and integrity. Therefore, Mr. Phoung has not met his
11 burden of proving that he is qualified to receive a license pursuant to Business and Professions
12 Code Section 19857(a).

13 19. Mr. Phoung demonstrates some level of rehabilitation, though it has been slow to
14 develop. He was arrested and convicted in 1999 of violating Penal Code Section 415, fighting.
15 As a term of his probation, he was required to complete 60 hours of community service with
16 CPPA. He failed to report to CPPA and complete his community service, and as a result, his
17 probation was revoked. Mr. Phoung later complied with the terms of his probation.

18 He then entered into a relationship with Mithona Sek that was unhealthy and physically
19 violent, culminating after four years and the birth of his first daughter in an incident where he
20 struck Mithona Sek in the eye with enough force to cause her eye to swell shut. He did not make
21 a statement at the time, but Mithona Sek and Sophary Sek stated that there had been between
22 eight and ten other incidents of domestic violence, with injuries to Mithona Sek as bad as she
23 suffered as a result of the incident.

24 Mr. Phoung was not arrested immediately following the incident. He was arrested two
25 years later on an outstanding warrant during a routine traffic stop. Mr. Phoung testified that he
26 did not know about the outstanding warrant. Mithona Sek testified that this was the last incident
27 of physical violence between her and Mr. Phoung. However, Mithona Sek's testimony during the
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1 hearing lacks credibility, and there are no signs of rehabilitation during the time period between
2 the December 7, 2002 incident and his October 26, 2004 conviction.

3 As one of the terms of probation, Mr. Phoung completed a 52 week course in domestic
4 violence counseling. Sophary Sek attributes the change in Mr. Phoung's behavior to the domestic
5 violence counseling. Mr. Phoung's claims that he changed his behavior because of his daughters
6 are only partially credible, given that he had a daughter at the time of the incident.

7 Mr. Phoung's track record since receiving domestic violence counseling is very strong.
8 There are no reported events of domestic violence and his entire work history in controlled
9 gambling is without incident. He has received many personal and professional references in
10 support of his Applications.

11 Mr. Phoung's rehabilitation appears to reflect an improved set of behaviors. However,
12 during his testimony before the Commission, Mr. Phoung marginalized and misrepresented the
13 numerous acts of domestic violence that took place during his relationship with Mithona Sek, and
14 the physical, emotional and psychological damages that resulted. Thus, Mr. Phoung has not
15 demonstrated that he has taken full accountability and responsibility for his actions. His partial
16 rehabilitation is not sufficient to meet his burden of proving his qualifications pursuant to
17 Business and Professions Code Section 19857(a) and (b).

18 20. Mr. Phoung disclosed on his various applications and requests for conversion from a
19 registration to a license to the Commission that he was convicted of a misdemeanor, but he did
20 not disclose that he was convicted of a misdemeanor involving moral turpitude. Mr. Phoung was
21 convicted of violating California Penal Code Section 273.5, which is a crime of moral turpitude
22 as a matter of law. Donley, 180 Cal.App.4th at 461; Rodriguez, 5 Cal.App.4th at 1402. It is
23 unreasonable to expect Mr. Phoung to know the meaning of "moral turpitude" and to check the
24 box marked "yes" to the question of whether he has been convicted of a misdemeanor involving
25 moral turpitude without a clear understanding and definition of the term, which is not defined on
26 the application forms submitted to the Commission. Mr. Phoung's failure to check the box
27 marked "yes" to the question of whether he has been convicted of a misdemeanor involving moral
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1 turpitude does not reflect negatively on his character, honesty or integrity and does not adversely
2 impact his qualifications for licensure pursuant to Business and Professions Code Section 19857.

3 21. Mr. Phoung is ultimately responsible for obtaining and maintaining a current and valid
4 registration from the Commission to work as a third party proposition player and/or supervisor
5 and gambling business employee and/or supervisor. Mr. Phoung was in violation of Title 4, CCR
6 Section 12201(a) for approximately 14 months. Mr. Phoung demonstrated a lack of responsibility
7 for working as a third party proposition player and supervisor without maintaining a valid
8 registration issued by the Commission. Mr. Phoung further demonstrated a lack of responsibility
9 and personal accountability by testifying that he is not responsible for his own licensure, and that
10 only the designated agent is responsible. However, it is not clear whether Mr. Phoung knew, or
11 had reason to know, that he was working for Red Dog without a valid registration. Further, Red
12 Dog also demonstrated a lack of responsibility with regard to keeping Mr. Phoung informed and
13 timely submitting applications and other materials to the Commission related to Mr. Phoung's
14 registration status. While Mr. Phoung's treatment of his registration and licensure demonstrates a
15 concerning lack of responsibility, under the unique facts and circumstances of this matter, it is
16 insufficient to demonstrate a lack of good character, honesty and integrity and does not adversely
17 impact his qualifications for licensure pursuant to Business and Professions Code Section 19857.
18 Further, Mr. Phoung's violation of Title 4, CCR Section 12201(a) is insufficient to warrant a
19 denial of his Applications.

ORDER

1
2 1. Samnang Phoung's application to convert his registration as a third party proposition
3 player supervisor to a license, Application No. 56066, is DENIED.

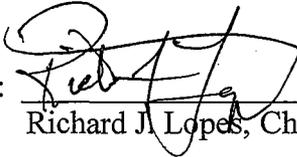
4 2. Samnang Phoung's application to convert his registration as a gambling business
5 supervisor to a license, Application No. 56067, is DENIED.

6 3. No costs are to be awarded.

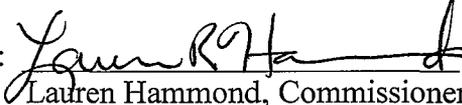
7 4. Each side to pay its own attorneys' fees.

8 This Order is effective on May 29th 2013. Mr. Phoung shall resign and
9 provide written notice of his resignation to the Commission on this date.

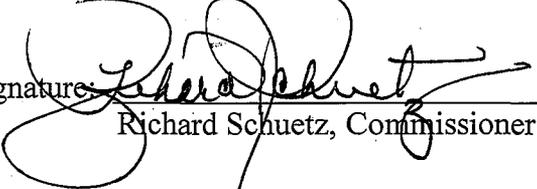
10 Dated: 5/23/13

11 Signature: 
Richard J. Lopes, Chairman

12
13 Dated: 5-23-13

14 Signature: 
Lauren Hammond, Commissioner

15 Dated: 5/23/13

16 Signature: 
Richard Schuetz, Commissioner

17 Commissioner Conklin did not support the conclusion to deny Mr. Phoung's applications for
18 conversion. However, Commissioner Conklin concurred with the decision not to award costs and
19 for each side to pay its own attorneys' fees.

20
21 Dated: 5/23/2013

22 Signature: 
Tiffany E. Conklin, Commissioner