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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for Initial
Tribal-State Compact Key Employee Finding
of Suitability Regarding:

EDWARD WILSON AUGUSTINE

[REDACTED]

Respondent.

BGC Case No. BGC-HQ2013-00006SL
CGCC Case No. CGCC-2013-1121-D2

DECISION AND ORDER

Hearing Date: October 21, 2014
Time: 2:00 p.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 12050(b)(2), in Sacramento, California, on October 21, 2014.

Neil Houston, 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.

Edward Wilson Augustine (Augustine) failed to appear and was not represented at the hearing.

During the administrative hearing, Presiding Officer Jason Pope took official notice of the following:

- (a) Notice of Hearing and Prehearing Conference, dated August 13, 2014, served by certified mail, return receipt requested; and
- (b) Conclusion of Prehearing Conference letter, dated September 18, 2014.

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

- (1) Statement of Reasons filed and served by the Bureau;
- (2) Copies of the November 27, 2013 letter from Marianne Estes notifying Augustine that the Commission voted to refer consideration of his application to a hearing; August 13, 2014 Notice of Hearing and

1 Prehearing Conference; and September 18, 2014 Conclusion of Prehearing
2 Conference letter;

3 (3) Certified copy of the court records regarding Augustine's August 16, 2011
4 conviction of violating Vehicle Code section 14601.2(a), driving when his
5 driving privilege was suspended and revoked for driving under the
6 influence of an alcoholic beverage and a drug, and their combined
7 influence, when he had knowledge of said suspension and revocation, in
8 the case *People of the State of California v. Edward Wilson Augustine*
9 (Sup. Ct. Lake County, 2011, Case No. CR926401); and

10 (4) Certified copy of the court records regarding Augustine's January 28, 2008
11 conviction of violating Penal Code section 273.5, domestic violence,
12 charged as a misdemeanor, in the case *People of the State of California v.*
13 *Edward Augustine* (Sup. Ct. Lake County, 2008, Case No. CR910856).

14 The matter was submitted on October 21, 2014.

15 FINDINGS OF FACT

16 1. The Robinson Rancheria Gaming Commission operates the Robinson Rancheria
17 Resort & Casino pursuant to a Tribal-State Gaming Compact between the State of California and
18 the Robinson Rancheria Band of Pomo Indians.

19 2. Augustine works as a Casino Shift Manager at the Robinson Rancheria Resort &
20 Casino, a key employee position that requires the applicant to submit a Finding of Suitability
21 application with the Commission.

22 3. On or about July 11, 2012, Augustine filed an Application for Finding of Suitability
23 Tribal Key Employee (Application) and State Gaming Agency Tribal Key Employee
24 Supplemental Background Investigation Information form to the Commission.

25 4. On or about March 27, 2013, the Bureau submitted its Tribal Key Employee
26 Background Investigation Report (Report) on Augustine to the Commission.

27 5. In its Report, the Bureau states that Augustine has failed to pay the fines associated
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1 with his criminal convictions, has two unpaid state tax liens from 2002 and 2011, and has three
2 child support accounts totaling \$80,730.

3 6. The failure to pay fines stemming from criminal convictions, having unpaid state tax
4 liens, and owing substantial amounts of unpaid child support, are indicative of a lack of personal
5 responsibility, accountability and integrity sufficient to warrant denial of a finding of suitability.

6 7. At its November 21, 2013 meeting, the Commission voted to refer the matter of
7 Augustine's Application to an evidentiary hearing.

8 8. On or about November 27, 2013, the Executive Director of the Commission set the
9 matter for an administrative hearing to be conducted pursuant to Business and Professions Code
10 sections 19870 and 19871 and Title 4, CCR section 12050(b)(2).

11 9. On or about July 17, 2014¹, the Bureau filed a Statement of Reasons with the
12 Commission recommending the denial of Augustine's Application.

13 10. On or about August 13, 2014, the Commission served a Notice of Hearing and
14 Prehearing Conference on Augustine and the Bureau.

15 11. On or about September 17, 2014, the noticed Prehearing Conference was held before
16 Presiding Officer Jason Pope, Attorney III of the Commission. Neil Houston, Deputy Attorney
17 General, attended on behalf of the Bureau. Augustine failed to attend the Prehearing Conference.

18 12. On or about September 18, 2014, the Commission served a Conclusion of Prehearing
19 Conference letter on Augustine and the Bureau.

20 13. The Commission heard Case No. CGCC-2013-1121-D2 on October 21, 2014. The
21 Bureau was represented throughout the pendency of the hearing by Deputy Attorney General Neil
22 Houston. Augustine failed to appear throughout the pendency of the hearing or make any contact
23 with the Commission or the Bureau.

24 14. On or about January 28, 2008, Augustine was convicted of violating California Penal
25 Code section 273.5(a), inflicting corporal injury on a spouse or cohabitant, charged as a
26 misdemeanor, in the case *People of the State of California v. Edward Augustine* (Sup. Ct. Lake

27 ¹ Even though the Statement of Reasons is dated July 17, 2013, the Commission finds that this is a
28 typographical error given that the Statement of Reasons was stamped received by the Commission on July 22, 2014.

1 County, 2008, Case No. CR910856). Augustine was sentenced to 3 years' probation, 10 days in
2 jail, ordered to pay a fine and restitution, and ordered to complete 40 hours of community work
3 service and a 52 week Batterer's Treatment Program. Augustine's conviction took place within
4 the 10-year period immediately preceding the submission of his Application on July 11, 2012.
5 Augustine has not been granted relief from this conviction pursuant to California Penal Code
6 sections 1203.4, 1203.4a, or 1203.45.

7 15. A violation of California Penal Code section 273.5(a) is a crime of moral turpitude.
8 *See People v. Rodriguez* (1992) 5 Cal.App.4th 1398, 1402; *Donley v. Davi* (2009) 180 Cal.App.4th
9 447, 460-61.

10 16. On or about August 16, 2011, Augustine was convicted of violating California Vehicle
11 Code section 14601.2(a), driving when his driving privilege was suspended and revoked for
12 driving under the influence of alcohol and a drug, and their combined influence, and when he had
13 knowledge of said suspension and revocation, a misdemeanor, in the case *People of the State of*
14 *California v. Edward Wilson Augustine* (Sup. Ct. Lake County, 2011, Case No. CR926401).
15 Augustine was sentenced to 3 years' probation, 30 days in jail and ordered to pay a fine.

16 17. On or about October 21, 2011, Augustine was convicted of violating probation for
17 failing to complete the 40 hours of community work service and 52 week Batterer's Treatment
18 Program. Augustine was sentenced to two years' probation, 25 days in jail, and ordered to
19 complete the 40 hours of community work service and 52 week Batterer's Treatment Program.

20 18. Failing to attend the hearing, Augustine did not present or submit any information or
21 evidence in favor of granting his Application.

22 19. Augustine's criminal history, which includes two misdemeanor convictions, one of
23 which involves moral turpitude, and a violation of probation, demonstrates a pattern and practice
24 of flagrant disregard for the law and legal authority.

25 20. Augustine's criminal history demonstrates a lack of good character and integrity.

26 21. The matter was submitted for Commission consideration on October 21, 2014.

1 LEGAL CONCLUSIONS

2 22. Except for an applicant for licensing as a non-key Gaming Employee, the Tribal
3 Gaming Agency [Robinson Rancheria Gaming Commission] shall require an applicant to file an
4 application with the Commission, prior to issuance of a temporary or permanent tribal gaming
5 license, for a determination of suitability for licensure under the California Gambling Control
6 Act. Tribal-State Compact between the State of California and the Robinson Rancheria Band of
7 Pomo Indians section 6.5.6.

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

11 24. At an evidentiary hearing pursuant to Business and Professions Code sections 19870
12 and 19871 and Title 4, CCR section 12050(b)(2), the burden of proof rests with the applicant to
13 demonstrate why a license should be issued. Title 4, CCR section 12050(b)(3).

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

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

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

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

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1 29. An “unqualified person” means a person who is found to be unqualified pursuant to
2 the criteria set forth in Business and Professions Code section 19857, and “disqualified person”
3 means a person who is found to be disqualified pursuant to the criteria set forth in Business and
4 Professions Code section 19859. Business and Professions Code section 19823(b).

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

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

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

18 33. No gambling license shall be issued unless, based on all of the information and
19 documents submitted, the commission is satisfied that the applicant is a person that is in all other
20 respects qualified to be licensed as provided in this chapter. Business and Professions Code
21 section 19857(c).

22 34. The commission shall deny a license to any applicant who is disqualified for
23 conviction of any misdemeanor involving dishonesty or moral turpitude within the 10-year period
24 immediately preceding the submission of the application, unless the applicant has been granted
25 relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code. Business and
26 Professions Code section 19859(d).

27 35. Augustine did not attend the Prehearing Conference or administrative hearing, or
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1 submit any information or evidence in favor of granting his Application. As a result, Augustine
2 did not meet his burden of demonstrating why a finding of suitability should be issued pursuant to
3 Business and Professions Code section 19856(a) and Title 4, CCR section 12050(b)(3).

4 36. Augustine's criminal history demonstrates a lack of good character, honesty and
5 integrity. As a result, Augustine has failed to demonstrate that he is a person of good character,
6 honesty and integrity pursuant to Business and Professions Code section 19857(a). Therefore,
7 Augustine is unqualified for licensure pursuant to Business and Professions Code section
8 19857(a).

9 37. Augustine's criminal history demonstrates a pattern of prior activities that pose a
10 threat to the public interest of the State of California. As a result, Augustine has failed to
11 demonstrate that he is a person whose prior activities, criminal record, reputation and habits do
12 not pose a threat to the public interest of this state pursuant to Business and Professions Code
13 section 19857(b). Therefore, Augustine is unqualified for licensure pursuant to Business and
14 Professions Code section 19857(b).

15 38. Augustine's criminal history includes one misdemeanor conviction involving moral
16 turpitude, which occurred within the 10-year period immediately preceding the submission of his
17 Application, and for which he has not been granted relief pursuant to Penal Code sections 1203.4,
18 1203.4a or 1203.45. As a result, Augustine is disqualified for licensure pursuant to Business and
19 Professions Code section 19859(d).

20 39. Given that Augustine is disqualified for licensure pursuant to Business and
21 Professions Code section 19859(d) for having been convicted of a misdemeanor involving moral
22 turpitude, Augustine is not a person that is in is all other respects qualified to be licensed pursuant
23 to Business and Professions Code section 19857(c). Therefore, Augustine is unqualified for
24 licensure pursuant to Business and Professions Code section 19857(c).

1 NOTICE OF APPLICANT'S APPEAL RIGHTS

2 Augustine has the following appeal rights available under state law:

3 Title 4, CCR section 12050, subsection (c)(6) provides, in part:

4 An applicant denied a license, permit, registration, or finding of suitability, or whose
5 license, permit, registration, or finding of suitability has had conditions imposed
6 upon it may request reconsideration by the Commission within 30 days of notice of
7 the decision. The request shall be in writing and shall outline the reasons for the
8 request, which must be based upon either newly discovered evidence or legal
9 authorities that could not reasonably have been presented before the Commission's
10 issuance of the decision or at the hearing on the matter, or upon other good cause for
11 which the Commission in its discretion decides merits reconsideration.

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

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

20 Title 4, CCR section 12050, subsection (d) provides:

21 An appeal of a denial or imposition of conditions by the Commission shall be
22 subject to judicial review under Code of Civil Procedure section 1085 (pursuant to
23 Business and Professions Code section 19870, subdivision (e)). Neither the right to
24 petition for judicial review nor the time for filing the petition shall be affected by failure
25 to seek reconsideration.
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ORDER

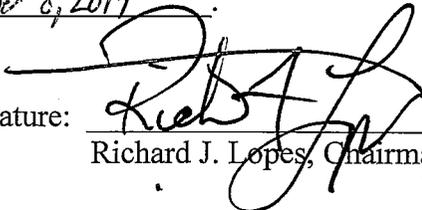
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2 1. Edward Wilson Augustine's Application for Finding of Suitability Tribal Key
3 Employee is DENIED.

4 2. No costs are to be awarded.

5 3. Each side to pay its own attorneys' fees.

6 This Order is effective on December 8, 2014.

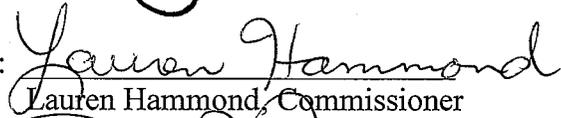
7 Dated: 11/6/2014

8 Signature: 
Richard J. Lopes, Chairman

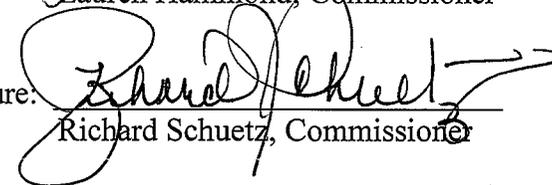
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10 Dated: Nov. 6, 2014

11 Signature: 
Tiffany E. Conklin, Commissioner

12 Dated: Nov. 6, 2014

13 Signature: 
Lauren Hammond, Commissioner

14 Dated: Nov. 6, 2014

15 Signature: 
Richard Schuetz, Commissioner