

RECEIVED BY  
CGCC LEGAL DIVISION

2010 JUN 29 PM 4:46

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 SARA J. DRAKE  
Acting Senior Assistant Attorney General  
3 SYLVIA A. CATES  
Deputy Attorney General  
4 State Bar No. 111408  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 327-5484  
Fax: (916) 327-2319  
7 E-mail: sylvia.cates@doj.ca.gov  
*Attorneys for Complainant, Chief of Bureau of*  
8 *Gambling Control, Department of Justice*

9  
10 **BEFORE THE**  
11 **CALIFORNIA GAMBLING CONTROL COMMISSION**  
12 **STATE OF CALIFORNIA**

13  
14  
15 **In the Matter of the Statement of Issues**  
**Against:**

**BGC Case No.** \_\_\_\_\_

**OAH No.** \_\_\_\_\_

16  
17 **SHERWIN BOLAND PILALIA,**

**STATEMENT OF ISSUES**

18 **Respondent.**  
19

20  
21 Jacob A. Appelsmith, Complainant herein, alleges as follows:

22 **PARTIES**

23 1. Jacob A. Appelsmith ("Complainant") brings this Statement of Issues solely in his  
24 official capacity as the Chief of the Bureau of Gambling Control, California Department of Justice  
25 ("Bureau").

26 2. On or about April 2, 2008, the California Gambling Control Commission  
27 ("Commission") received an Application for an Initial Regular Work Permit/Temporary Work  
28 Permit submitted by Respondent Sherwin Boland Pilalia ("Respondent"), requesting a work permit

1 to work as a poker dealer at Brooks Oceana Cardroom in Oceano, California. The Commission  
2 then referred the application to the Bureau for investigation.

3 **APPLICATION STATUS**

4 3. On or about March 19, 2009, the Bureau sent Respondent a letter by certified mail  
5 informing him that the Bureau intended to recommend that the Commission deny his application  
6 for a work permit on the following two grounds:

7 a) Under authority of subdivision (a)(7) of Business and Professions Code  
8 section 19914 (made applicable to work permit applications by Cal. Code  
9 Regs., tit. 4, § 12105, subd. (b)(1)), based on the fact that in December 2007  
10 Respondent's previously held gaming license with a tribal gaming agency had  
11 been revoked; and

12 b) Under authority of subdivisions (a) and (b) of Business and Professions  
13 Code section 19857 (made applicable to work permit applications by Cal. Code  
14 Regs., tit. 4, § 12105, subd. (a)(2)), based on Respondent's participation, for  
15 private economic gain, in potentially illegal gambling activities in violation of  
16 the conflict of interest requirements of his employing tribal gaming  
17 establishment.

18 4. The Bureau's March 19, 2009, letter referenced in paragraph 3 also informed  
19 Respondent of his right, under Business and Professions Code section 19868, subdivision (b)(1), to  
20 a pre-denial meeting. A pre-denial meeting thereafter occurred on April 21, 2009, involving  
21 Respondent, an Assistant Bureau Chief, and others.

22 5. On or about May 4, 2009, the Bureau submitted to the Commission a Work Permit  
23 Employee Background Investigation Report containing its recommendation, including the factual  
24 and legal basis supporting the recommendation, that Respondent's application be denied on the  
25 grounds summarized in paragraph 3 above.

26 6. On or about June 1, 2009, the Bureau mailed Respondent a letter which attached a  
27 copy of the Bureau's investigation report that had been submitted to the Commission as detailed in  
28 paragraph 5 above.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

13. Business and Professions Code section 19811, in relevant part, states:

(b) Jurisdiction, including jurisdiction over operation and concentration, and supervision over gambling establishments in this state and over all persons or things having to do with the operation of gambling establishments is vested in the commission.

14. Business and Professions Code section 19823 provides as follows:

(a) The responsibilities of the commission include, without limitation, all of the following:

(1) Assuring that licenses, approvals, and permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.

(2) Assuring that there is no material involvement, directly or indirectly, with a licensed gambling operation, or the ownership or management thereof, by unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.

(b) For the purposes of this section, "unqualified person" means a person who is found to be unqualified pursuant to the criteria set forth in Section 19857, and "disqualified person" means a person who is found to be disqualified pursuant to the criteria set forth in Section 19859.

15. Business and Professions Code section 19824 provides in part as follows:

The commission shall have all powers necessary and proper to enable it fully and effectually to carry out the policies and purposes of this chapter, including, without limitation, the power to do all of the following:

\* \* \*

(b) For any cause deemed reasonable by the commission, deny any application for a license, permit, or approval provided for in this chapter or regulations adopted pursuant to this chapter, limit, condition, or restrict any license, permit, or approval, or impose any fine upon any person licensed or approved.

\* \* \*

1 (d) Take actions deemed to be reasonable to ensure that no ineligible,  
2 unqualified, disqualified, or unsuitable persons are associated with  
3 controlled gambling activities.

4 16. Business and Professions Code section 19870 provides in part as follows:

5 (a) The commission, after considering the recommendation of the  
6 chief and any other testimony and written comments as may be presented  
7 at the meeting, or as may have been submitted in writing to the  
8 commission prior to the meeting, may either deny the application or grant  
9 a license to an applicant who it determines to be qualified to hold the  
10 license.

11 (b) When the commission grants an application for a license or  
12 approval, the commission may limit or place restrictions thereon as it may  
13 deem necessary in the public interest, consistent with the policies  
14 described in this chapter.

15 (c) When an application is denied, the commission shall prepare and  
16 file a detailed statement of its reasons for the denial.

17 (d) All proceedings at a meeting of the commission relating to a  
18 license application shall be recorded stenographically or on audiotape or  
19 videotape.

20 17. Business and Professions Code section 19871 provides as follows:

21 (a) The commission meeting described in Section 19870 shall be  
22 conducted in accordance with regulations of the commission and as  
23 follows:

24 (1) Oral evidence shall be taken only upon oath or  
25 affirmation.

26 (2) Each party shall have all of the following rights:

27 (A) To call and examine witnesses.

28 (B) To introduce exhibits relevant to the issues of  
the case.

(C) To cross-examine opposing witnesses on any  
matters relevant to the issues, even though the matter  
was not covered on direct examination.

(D) To impeach any witness, regardless of which  
party first called the witness to testify.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(E) To offer rebuttal evidence.

(3) If the applicant does not testify in his or her own behalf, he or she may be called and examined as if under cross-examination.

(4) The meeting need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be considered, and is sufficient in itself to support a finding, if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of that evidence over objection in a civil action.

(b) Nothing in this section confers upon an applicant a right to discovery of the department's investigative reports or to require disclosure of any document or information the disclosure of which is otherwise prohibited by any other provision of this chapter.

18. Commission regulation section 12050 (Cal. Code Regs., tit. 4, § 12050) provides in pertinent part as follows:

(a) If the Bureau, after an investigation pursuant to Business and Professions Code section 19826, subdivision (a), issues a recommendation to deny, limit, restrict, or condition a license, permit, or finding of suitability, the Bureau shall provide the applicant with a copy of the Bureau's final report as described in Business and Professions Code section 19868, subdivision (b), which includes a detailed factual and/or legal basis for any recommendation as well as the Bureau's recommendation to the Commission and any supplemental documents provided to the Commission at the time of the report and recommendation. Any applicant for any license, permit, or finding of suitability for whom Commission staff has issued a recommendation of denial or imposition of conditions shall be given notice by certified mail of the Commission meeting at which the application is scheduled to be heard and the Commission staff recommendation at least 10 days prior to the meeting. The applicant shall be afforded the opportunity to:

(1) Address the Commission by way of an oral statement at a noticed Commission meeting, and/or may submit documents in support of the application, or

(2) Request an evidentiary hearing.

1 (b) If the applicant requests an evidentiary hearing or the  
2 Commission elects to have an evidentiary hearing, the Executive Director  
3 shall set the matter for hearing pursuant to Business and Professions  
4 Code sections 19870 and 19871, or pursuant to Business and Professions  
5 Code section 19825 (conducted pursuant to Chapter 5 (commencing with  
6 section 11500) of Part 1 of Division 3 of Title 2 of the Government  
7 Code).

8 \* \* \*

9 (2) If the hearing is to proceed pursuant to Business and  
10 Professions Code sections 19870 and 19871, notice shall be  
11 effected by the Commission, and the hearing before the  
12 Commission shall be conducted pursuant to Business and  
13 Professions Code section 19871:

14 (A) The Bureau or Commission staff or Deputy  
15 Attorney General or other representative presenting the  
16 case (Complainant) shall provide the applicant, at least 30  
17 calendar days prior to the hearing, a list of potential  
18 witnesses with the general subject of the testimony of each  
19 witness and shall disclose and make available copies of all  
20 documentary evidence intended to be introduced at the  
21 hearing and not previously provided, reports or statements  
22 of parties and witnesses and all other writings containing  
23 relevant evidence, including all evidence made available  
24 to the Commissioners. The applicant shall provide  
25 Complainant with similar information to be introduced at  
26 the hearing and not previously provided at least ten  
27 calendar days prior to the hearing. The Commissioners  
28 may prohibit testimony of a witness that is not disclosed  
and may prohibit the introduction of documents that have  
not been disclosed.

(B) Nothing in this section confers upon an applicant  
a right to discovery of the Commission's or Bureau's  
confidential information or to require production of any  
document or information the disclosure of which is  
otherwise prohibited by any provision of the Gambling  
Control Act, or is privileged from disclosure or otherwise  
made confidential by law. Documentary evidence may be  
redacted as needed to prevent the disclosure of  
confidential information. Exculpatory or mitigating  
information shall not be withheld from the applicant, but  
may be redacted.

(C) Within the guidelines of subsection (b)(2)(A)  
above, each party shall have the right to call and examine

1 witnesses; to introduce relevant exhibits and documentary  
2 evidence; to cross-examine opposing witnesses on any  
3 relevant matter, even if the matter was not covered in the  
4 direct examination; to impeach any witness, regardless of  
5 which party first called the witness to testify; and to offer  
6 rebuttal evidence. If the applicant does not testify on the  
7 applicant's own behalf, the applicant may be called and  
8 examined as if under cross-examination.

9 (D) The hearing need not be conducted according to  
10 technical rules of evidence. Any relevant evidence may be  
11 considered, and is sufficient in itself to support findings if  
12 it is the sort of evidence on which responsible persons are  
13 accustomed to rely in the conduct of serious affairs,  
14 regardless of the existence of any common law or  
15 statutory rule that might make improper the admission of  
16 that evidence over objection in a civil action. A presiding  
17 officer, which shall be an administrative law judge or an  
18 attorney designated by the Commission, shall rule on the  
19 admissibility of evidence and on any objections raised.

20 (E) Oral evidence shall be taken upon oath or  
21 affirmation, which may be administered by a staff member  
22 of the Commission or by a Commissioner.

23 (F) The hearing shall be stenographically or  
24 electronically recorded by the Commission.

25 (G) At the conclusion of the hearing, the Commission  
26 shall take the matter under submission and may schedule  
27 future closed session meetings for deliberation. In taking  
28 the matter under consideration, any Commissioner who  
participated at the hearing shall be allowed to vote by mail  
or by other appropriate method. Within 30 days of the  
conclusion of the hearing, the Commission shall issue a  
decision which complies with Business and Professions  
Code section 19870, subdivision (c), and shall serve the  
decision by certified mail on the applicant and on any  
business entity with which the applicant is associated.

(3) At the hearings described in subsections (b)(1) and (2)  
above, the burden of proof rests with applicant to demonstrate why  
a license, permit, or finding of suitability should be issued or not  
conditioned. The applicant may choose to represent himself,  
herself, or itself, or may retain an attorney or lay representative at  
his, her, or its own expense. A representative of the Bureau shall  
present the reasons why the license, permit, or finding of suitability  
should not be granted or should be granted with conditions

1 imposed. In the event that the Bureau does not present the case, the  
2 Commission may seek outside representation or one or more  
3 Commission staff members shall be segregated and present the  
4 case.

5 (c) If the application is denied or conditions imposed:

6 (1) The Commission's decision shall provide the effective  
7 date of the decision and may include further directions as to stay  
8 provisions or orders to divest. (2) If the denied applicant is an  
9 officer, director, employee, agent, representative, or independent  
10 contractor of a corporation licensed, registered, or found suitable  
11 by the Commission, the denied applicant shall resign according to  
12 the date specified in the decision and shall so notify the  
13 Commission in writing.

14 \* \* \*

15 (6) An applicant denied a license, permit, registration, or  
16 finding of suitability, or whose license, permit, registration, or  
17 finding of suitability has had conditions imposed upon it may  
18 request reconsideration by the Commission within 30 days of  
19 notice of the decision. The request shall be in writing and shall  
20 outline the reasons for the request, which must be based upon  
21 either newly discovered evidence or legal authorities that could  
22 not reasonably have been presented before the Commission's  
23 issuance of the decision or at the hearing on the matter, or upon  
24 other good cause for which the Commission in its discretion  
25 decides merits reconsideration. The Commission Chair may  
26 delegate to the Executive Director the authority to determine  
27 whether to place requests for reconsideration on the Commission  
28 agenda or to act on them at the Commission staff level. If placed  
on the Commission agenda, the applicant requesting  
reconsideration shall be notified of the date and time of the  
agenda item. The granting or denial of reconsideration is at the  
discretion of the Commission. The Commission shall notify the  
applicant requesting reconsideration whether or not  
reconsideration is granted or denied within 30 days of the  
applicant's request. If the Commission grants reconsideration, the  
effective date of the decision shall be stayed or vacated, at the  
Commission's discretion, while the decision is reconsidered

**OTHER PERTINENT STATUTORY AND REGULATORY PROVISIONS**

19. Business and Professions Code section 19805 provides in part as follows:

As used in this chapter, the following definitions shall apply:

\* \* \*

1 (b) "Applicant" means any person who has applied for, or is about to  
2 apply for, . . . a work permit . . . or an approval of any act or transaction for  
3 which the approval or authorization of the commission or department is  
4 required or permitted under this chapter.

5 \* \* \*

6 (d) "Chief" means the head of the entity within the department that is  
7 responsible for fulfilling the obligations imposed upon the department by  
8 this chapter.

9 (e) "Commission" means the California Gambling Control  
10 Commission.

11 \* \* \*

12 (h) "Department" means the Department of Justice.

13 \* \* \*

14 (m) "Gambling enterprise employee" means any natural person  
15 employed in the operation of a gambling enterprise, including, without  
16 limitation, dealers, floor personnel, security employees, countroom  
17 personnel, cage personnel, collection personnel, surveillance personnel,  
18 data-processing personnel, appropriate maintenance personnel, waiters and  
19 waitresses, and secretaries, or any other natural person whose employment  
20 duties require or authorize access to restricted gambling establishment areas.

21 (n) "Gambling establishment," "establishment," or "licensed premises,"  
22 except as otherwise defined in Section 19812, means one or more rooms  
23 where any controlled gambling or activity directly related thereto occurs.

24 \* \* \*

25 (aj) "Work permit" means any card, certificate, or permit issued by the  
26 commission, or by a county, city, or city and county, whether denominated  
27 as a work permit, registration card, or otherwise, authorizing the holder to  
28 be employed as a gambling enterprise employee or to serve as an  
independent agent. A document issued by any governmental authority for  
any employment other than gambling is not a valid work permit for the  
purposes of this chapter.

20. Commission regulation section 12105, subdivision (b) (Cal. Code Regs., tit. 4, §  
12105, subd. (b)), provides in part as follows:

(b) An application for a work permit may be denied by the  
Commission if it finds any of the following:

(1) Cause set forth in Business and Professions Code section  
19914, subdivision (a), paragraphs (1) through (9), inclusive.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

21. Business and Professions Code section 19914 provides in part as follows:

(a) The commission may revoke a work permit . . . if the commission finds that the employee . . . has done any of the following:

(7) Been refused the issuance of any license, permit, or approval to engage in or be involved with gambling . . . in any jurisdiction, or had the license, permit, or approval revoked or suspended

22. Commission regulation section 12105, subdivision (a) (Cal. Code Regs., tit. 4, § 12105, subd. (a)), provides in part as follows:

(a) An application for a work permit shall be denied by the Commission if either of the following applies:

\* \* \*

(2) The applicant is found unqualified pursuant to the criteria set forth in subdivisions (a) or (b) of Business and Professions Code section 19857.

23. Business and Professions Code section 19857 states in part:

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

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

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

**FIRST CAUSE FOR DENIAL OF APPLICATION**

**(Had Previous Gambling Related License or Permit Revoked)**

24. Complainant incorporates by this reference each and every allegation contained in paragraphs 1 through 23, above, as though set forth here in full.

25. Respondent's application for a work permit to be employed as a dealer is subject to denial pursuant to California Code of Regulations, title 4, section 12105, subdivision (b), for cause set forth in subdivision (a)(7) of Business and Professions Code section 19914, in that on or about December 22, 2007, Respondent's license or approval to work at the Chumash Casino Resort as a

1 poker dealer, valet and/or beverage dispenser was revoked, and his employment at the Chumash  
2 Casino Resort terminated.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

4 **(Character, Honesty, Integrity)**

5 26. Complainant incorporates by this reference each and every allegation contained in  
6 paragraphs 1 through 25, above, as though set forth here in full.

7 27. On multiple occasions prior to December 2007, Respondent engaged in and promoted,  
8 for private economic gain, potentially illegal poker games involving participation by employees  
9 and customers of Respondent's employer, the operator of the Chumash Casino Resort. This  
10 conduct was in conflict with the interests of his employer and was in violation of his employer's  
11 conflict of interest requirements, thereby resulting in the operators of the Chumash Casino Resort  
12 terminating Respondent's employment and revoking his license or approval to work as a dealer,  
13 valet or beverage dispenser.

14 28. Respondent's application for a work permit to work as a card dealer in a California  
15 gambling establishment is subject to denial pursuant to California Code of Regulations section  
16 12105, subdivision (a)(2), because, by reason of allegations set forth in this second cause for  
17 denial, Respondent has failed to establish that he is a person of good character, honesty and  
18 integrity as required by Business and Professions Code section 19857.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held pursuant to the procedures set  
21 forth in Business and Professions Code sections 19870 and 19871 on the matters herein alleged,  
22 and that following the hearing, the Commission issue a decision:

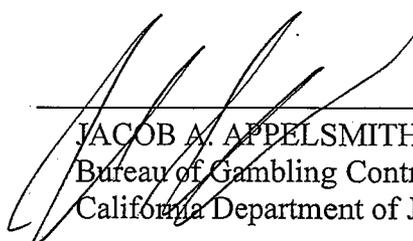
23 1. Denying the application of Respondent Sherwin Boland Pilalia for a work permit to  
24 work as a poker dealer.

25 2. Awarding Complainant, pursuant to subdivisions (d) and (f) of Business and  
26 Professions Code section 19930, the costs of investigation and costs of preparation and  
27 prosecution of this Statement of Issues before the Commission, in a sum according to proof; and  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. Taking such and further action as the Commission may deem appropriate.

Dated: April 20, 2010



---

JACOB A. APPELSMITH, Chief  
Bureau of Gambling Control  
California Department of Justice

Complainant