

1 XAVIER BECERRA
Attorney General of California
2 SARA J. DRAKE
Senior Assistant Attorney General
3 RONALD L. DIEDRICH
Deputy Attorney General, SBN 95146
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 210-7834
6 Fax: (916) 327-2319
E-mail: Ronald.Diedrich@doj.ca.gov
7 *Attorneys for Complainant*



8
9 **BEFORE THE**
10 **CALIFORNIA GAMBLING CONTROL COMMISSION**
11 **STATE OF CALIFORNIA**
12

13
14 **In the Matter of the Statement of Reasons for**
15 **Denial of Application for Initial Work Permit:**

BGC Case No. BGC-HQ2017-0017SL

CGCC Case No: CGCC-2017-1005-6

16 **STEPHEN ERIC HERRERA**
17 [REDACTED]

STATEMENT OF REASONS

18
19 **Respondent.**
20

21 Complainant alleges as follows:

22 **PARTIES**

23 1. Nathan DaValle (Complainant) brings this Statement of Reasons for Denial of
24 Application for Initial Permit solely in his official capacity as the Acting Director of the California
25 Department of Justice, Bureau of Gambling Control (Bureau).

26 2. On or about January 24, 2017, the Bureau received an Application for Initial Work
27 Permit/Temporary Work Permit, dated January 19, 2017, and a Work Permit Questionnaire, dated
28 January 19, 2017, (collectively, Application) from Stephen Eric Herrera (Respondent) to allow his

1 employment as a host at Casino Merced (formerly Merced Poker Room), a licensed gambling
2 establishment in Merced, California.

3 3. On or about February 1, 2017, Respondent was issued a temporary work permit by the
4 California Gambling Control Commission (Commission) to allow for his employment as a host at
5 Casino Merced. On or about September 22, 2017, that temporary work permit was cancelled
6 pursuant to California Code of Regulations, title 4, section 12128, subdivision (b)(2).¹

7 4. On or about August 22, 2017, the Bureau submitted a Work Permit Employee
8 Background Investigation Report to the Commission recommending Respondent's application be
9 denied.

10 5. At its October 5, 2017 meeting, the Commission referred the determination of
11 Respondent's suitability to be issued a work permit to an evidentiary hearing.

12 6. On or about October 11, 2017, the Commission's Deputy Director, Licensing
13 Division, advised Respondent in writing that the evidentiary hearing will be conducted pursuant to
14 California Code of Regulations, title 4, section 12060, and, at the same time, provided him with a
15 Notice of Defense form.

16 7. On or about October 24, 2017, Respondent submitted a Notice of Defense, dated
17 October 19, 2017.

18 **BURDEN OF PROOF**

19 8. Respondent has the burden to prove he is qualified to receive a work permit.
20 (Bus. & Prof. Code, § 19856, subd. (a).)

21
22 **FIRST CAUSE FOR DENIAL OF APPLICATION**

23 **(Misdemeanor Criminal Convictions)**

24 9. Respondent's Application is subject to denial in that he has suffered the following
25 criminal convictions:

26 _____
27 ¹ The statutes and regulations applicable to this Statement of Reasons are quoted in
28 pertinent part in Appendix A.

1 a. On or about June 23, 2009, Respondent was convicted, upon a plea of no contest, of
2 violating Vehicle Code, section 23152, subdivision (b), driving under the influence of
3 alcohol/drugs, a misdemeanor, with a prior conviction, Vehicle Code, section 23593, subdivision
4 (a),² in the case of *People of the State of California v. Stephen Eric Herrera* (Super. Ct. Merced
5 County, 2009, Case No. CRM000833). On or about March 1, 2016, Respondent obtained relief
6 from this conviction.

7 b. On or about October 24, 2002, Respondent was convicted of violating Vehicle Code,
8 section 23152, subdivision (b), driving under the influence of alcohol/drugs, a misdemeanor, in the
9 case of *People of the State of California v. Stephen Eric Herrera* (Super. Ct. Stanislaus County,
10 2002, Case No. 104817.).
11 (Bus. & Prof. Code, §§ 19856, 19857, subs. (a) & (b), & 19912; & Cal. Code. Regs., tit. 4, §
12 12105, subs. (a)(2) [mandatory denial], (c) & (e).)

13
14 **SECOND CAUSE FOR DENIAL OF APPLICATION**

15 **(Honesty, Integrity & Failure to Disclose – Untrue Statement in Application)**

16 10. Respondent's Application is subject to denial in that Respondent failed to disclose in
17 his Application the June 23, 2009, conviction alleged above in paragraph 9.a. Respondent, under
18 penalty of perjury, affirmatively stated in his Application that he had not been convicted of a
19 misdemeanor in the past 10 years.³

20 (Bus. & Prof. Code §§ 19856, 19857, subs. (a) & (b), 19859, subs. (a) & (b) [mandatory denial],
21 & 19912; & Cal. Code. Regs., tit. 4, § 12105, subs. (a)(1) [mandatory denial], (a)(2) [mandatory
22 denial], (c) & (e).)

23 _____
24 ² Vehicle Code, section 23593, subdivision (a), states: "You are hereby advised that being
25 under the influence of alcohol, drugs, or both, impairs your ability to safely operate a motor
26 vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of
alcohol, drugs, or both, and, as a result of that driving, someone is killed, you can be charged with
murder."

27 ³ Respondent also did not disclose the October 24, 2002 conviction on his Application.
However, that conviction occurred prior to the 10-year disclosure period.

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

PRAYER

WHEREFORE, Complainant requests that following the hearing to be held on the matters herein alleged, the Commission issue a decision:

1. Denying Respondent's Application for a work permit; and
2. Taking such other and further action as the Commission may deem appropriate.

Dated: January 22, 2018.



Nathan Davalle, Acting Director
Bureau of Gambling Control
California Department of Justice
Complainant

1 **APPENDIX A**

2 **JURISDICTION**

- 3 1. Business and Professions Code section 19811, subdivision (b), provides:

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

- 7 2. Business and Professions Code section 19823 provides:

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

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

13 (2) Assuring that there is no material
14 involvement, directly or indirectly, with a licensed
15 gambling operation, or the ownership or management
16 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.

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

- 21 3. Business and Professions Code section 19824 provides in part:

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

25 * * *

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

1 person licensed or approved. The commission may condition, restrict,
2 discipline, or take action against the license of an individual owner
3 endorsed on the license certificate of the gambling enterprise whether or
4 not the commission takes action against the license of the gambling
5 enterprise.

6 * * *

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

10 4. Business and Professions Code section 19870 provides:

11 (a) The commission, after considering the recommendation of
12 the chief and any other testimony and written comments as may be
13 presented at the meeting, or as may have been submitted in writing to
14 the commission prior to the meeting, may either deny the application or
15 grant a license to an applicant who it determines to be qualified to hold
16 the license.

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

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

23 (d) All proceedings at a meeting of the commission relating to a
24 license application shall be recorded stenographically or by audio or
25 video recording.

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

5. Business and Professions Code section 19871 provides:

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

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

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

4 (A) To call and examine witnesses.

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

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

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

11 (E) To offer rebuttal evidence.

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

14 (4) The meeting need not be conducted according to
15 technical rules relating to evidence and witnesses. Any relevant
16 evidence may be considered, and is sufficient in itself to support a
17 finding, if it is the sort of evidence on which responsible persons
18 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.

19 (b) Nothing in this section confers upon an applicant a right to
20 discovery of the department's^[4] investigative reports or to require
21 disclosure of any document or information the disclosure of which is
22 otherwise prohibited by any other provision of this chapter.

23 6. Business and Professions Code section 19912, provides in part:

24 (d) Application for a work permit for use in any jurisdiction
25 where a locally issued work permit is not required by the licensing
26 authority of a city, county, or city and county, shall be made to the

27 ⁴ Hereinafter, "department" refers to the Department of Justice, Bureau of Gambling
28 Control. (Bus. & Prof. Code, § 19805, subd. (h).)

1 department, and may be granted or denied for any cause deemed
2 reasonable by the commission. . . .

3 **SPECIFIC STATUTORY AND REGULATORY PROVISIONS**

4 7. Business and Professions Code section 19856, provides:

5 (a) Any person who the commission determines is qualified to
6 receive a state license, having due consideration for the proper protection
7 of the health, safety, and general welfare of the residents of the State of
8 California and the declared policy of this state, may be issued a license.
The burden of proving his or her qualifications to receive any license is
on the applicant.

9 (b) An application to receive a license constitutes a request for a
10 determination of the applicant's general character, integrity, and ability to
11 participate in, engage in, or be associated with, controlled gambling.

12 (c) In reviewing an application for any license, the commission
13 shall consider whether issuance of the license is inimical to public health,
14 safety, or welfare, and whether issuance of the license will undermine
15 public trust that the gambling operations with respect to which the license
would be issued are free from criminal and dishonest elements and would
be conducted honestly.

16 8. Business and Professions Code section 19857 provides:

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

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

20 (b) A person whose prior activities, criminal record, if any,
21 reputation, habits, and associations do not pose a threat to the public
22 interest of this state, or to the effective regulation and control of
23 controlled gambling, or create or enhance the dangers of unsuitable,
24 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.

25 (c) A person that is in all other respects qualified to be licensed as
26 provided in this chapter.

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

9. Business and Professions Code section 19859 provides in pertinent part:

The commission shall deny a license to any applicant who is disqualified for any of the following reasons:

(a) Failure of the applicant to clearly establish eligibility and qualification in accordance with this chapter.

(b) Failure of the applicant to provide information, documentation, and assurances required by the chapter or requested by the chief, or failure of the applicant to reveal any fact material to qualification, or the supplying of information that is untrue or misleading to a material fact pertaining to the qualification criteria.

10. California Code of Regulations, title 4, section 12105, provides in part:

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

(1) The applicant meets any of the criteria for mandatory disqualification under Business and Professions Code section 19859.

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

* * *

(c) The grounds for denial set forth in this section apply in addition to any grounds prescribed by statute.

11. California Code of Regulations, title 4, section 12128, provides in part:

(b) A temporary work permit shall be cancelled by the Executive Director at any time if any of the following applies:

* * *

(2) Pursuant to Business and Professions Code section 19826, the Bureau recommends denial of a regular work permit to the applicant.