BEFORE THE
STATE OF CALIFORNIA
CALIFORNIA GAMBLING CONTROL COMMISSION

PRECEDENTIAL DECISION 2007-01

The following part of the adopted decision below is designated precedential, pursuant to Government Code section 11425.60 and Title 4, California Code of Regulations, section 12572.

Approved at Commission Meeting of AUG 0 9 2007.

Effective Date of Precedent: SEP 1 0 2007.

Signed by: Dean Shelton on 8/10/07.
Dean Shelton, Commission Chair

In the Matter of:	File No. DC # 108056
CHANTHOU SUON	OAH No. N-2007010839
Respondent.	

DECISION

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FINDINGS OF FACT

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5. On February 14, 2002, respondent pled guilty to violating Penal Code section 243, subdivision (e), and the District Attorney dismissed the charge of violating Penal Code section 422. The court granted respondent three years' probation, ordered him to serve 15 days in jail, and pay a probation fee, a $131 booking fee, $100 to a Domestic Violence Fund, and $100 restitution plus a $10 administration fee.

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19. On or about July 10, 2006, the Commission mailed to respondent a letter informing respondent that the Division had recommended to the Commission that respondent's application be denied on the grounds that within 10 years of the application, respondent had been convicted of a misdemeanor involving moral turpitude.

20. On July 20, 2006, respondent attended the Commission's regularly scheduled meeting. Respondent stated he agreed with the Division's recommendation but requested a hearing.

LEGAL CONCLUSIONS
Applicable Statutes

1. California Business and Professions Code section 19859, subdivisions (b) and (d), state:
The Commission shall deny a license to any applicant who is disqualified for any of the following reasons:
[¶]…[¶]
   (b) Failure of the applicant to provide information, documentation, and assurances required by this chapter or requested by the director, or failure of the applicant to reveal any fact material to qualification, or the supplying of information that is untrue or misleading as to a material fact pertaining to the qualification criteria.
   [¶]…[¶]
   (d) Conviction of the applicant for any misdemeanor involving dishonesty or moral turpitude within the 10-year period immediately preceding the submission of the application…
   [¶]…[¶]

2. California Business and Professions Code section 19857, states:
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, of 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.

3. California Penal Code section 243, subdivision (e)(1), states:
When a battery is committed against a spouse, a person with whom the defendant is cohabitating, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship…
[¶]…[¶]

4. California Penal Code section 242, states:
A battery is any willful and unlawful use of force or violence upon the person of another.

Legal Discussion
Moral Turpitude

6. California Business and Professions Code section 19859, subdivision (d), states in relevant part that the Commission shall deny a license to any applicant who is convicted of any misdemeanor involving moral turpitude within the 10-year period immediately preceding the submission of the application.

7. A criminal act involves moral turpitude if it involves a serious breach of a duty owed to another or to society. (*In re Stuart K. Lesansky* (2001) 25 Cal.4th 11, 16; [citing *In re Johnson* (1992) 1 Cal.4th 689, 699; *In re Calaway* (1977) 20 Cal.3d 165, 169-170; *In re Higbie* (1972) 6 Cal.3d 562, 569-570].) Acts of moral turpitude are acts which involve "bad character" and "readiness to do evil." (*People v. Zataray* (1985) 173 Cal.App.3d 390, 400.) "Moral turpitude has also been described as any crime or misconduct committed without excuse, or any 'dishonest or immoral' act not necessarily a crime. (*In re Higbie* (1972) 6 Cal.3d 562, 569.)" (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027.) A crime of moral turpitude is "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*In re Craig* (1938) 12 Cal.2d 93, 97.) Although moral turpitude does not depend on dishonesty being an element of the offense, "there is widespread agreement that convictions of crimes involving fraudulent intent and intentional dishonesty for personal gain establish moral turpitude as a matter of law. (See *In re Hallinan* (1957) 48 Cal.2d 52; *Yakov v. Board of Medical Examiners*, supra, 68 Cal.2d 67, 73; *Morrison v. State Board of Education* (1969) 1 Cal.3d 214; *Golde v. Fox* (1979) 98 Cal.App.3d 167, 185; *Brewer v. Department of Motor Vehicles* (1979) 93 Cal.App.3d 358, 365-366.)." (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 400-401.) In deciding whether a conviction necessarily involved moral turpitude, a court must look to the statutory definition of the particular crime, and only if the least adjudicated elements of the crime necessarily involved moral turpitude does the conviction involve moral turpitude. (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1756-7.)

8. No California Appellate Court decision has indicated whether Penal Code section 243, subdivision (e) (a simple battery upon a spouse or cohabitant) constitutes a crime of moral turpitude. The crime of felony battery under section 243, subdivision (d) is not necessarily a crime of moral turpitude. (*People v. Mansfield* (1998) 200 Cal.App.3d 82, 87.) To qualify as a battery under section 242 (simple battery), "force against the person is enough; it need not be violent or severe, it need not cause bodily harm or even pain, and it need not leave any mark. (*id.*, at p. 88, quoting 1 Witkin, California Crimes: Crimes Against the Person § 258 (1963)). A battery under section 242 is any willful and unlawful use of force or violence upon the person of another. "The word violence has no real significance. It has long been established, both and in tort and criminal law, that 'the least touching' may constitute a battery. (*id.*). Therefore, a simple battery under Penal Code section 242 does not necessarily show readiness to do evil or necessarily involve moral turpitude." (See *People v. Cavazos* (1985) 172 Cal.App.3d 589, 574.)

9. Penal Code section 243, subdivision (e), involves a special relationship between the perpetrator and the victim of a domestic nature. This special relationship, Complainant argues, lifts this crime to one involving moral turpitude. Complainant cites *People v. Rodriguez* (1992) 5 Cal. App. 4th 1398. In this case the trial court allowed the prosecution to impeach defendant with a prior felony conviction for inflicting corporal injury on a spouse or cohabitant under Penal Code section 273.5. The court stated, "To violate Penal Code section 273.5 the assailant must, at the very least, have set out, successfully, to injure a person of the opposite sex in a special relationship for which society rationally demands, and the victim may reasonably expect, stability and safety, and in which the victim, for these reasons among others, may be especially vulnerable." The court emphasized a willful violation of the special relationship and the "intent to injure' as indicia of the general readiness to do evil that defines moral turpitude. (*id.*, at p. 1402.)

The least adjudicated elements of Penal Code section 273.5 are that the defendant, "willfully inflict corporal injury resulting in a traumatic condition." Respondent and Ms. P. did have the kind of special relationship discussed above. Nevertheless, the facts and circumstances of the incident leading to Respondent's conviction under section 243(e) are distinguishable from *Rodriguez* in that there was no showing that Respondent "set out…to injure" or had an "intent to injure" the victim. Furthermore, a violation of 273.5 demands a resulting injury. Respondent's victim suffered no injury. Because a conviction under section 273.5 requires not only special relationship between defendant and victim but also intent to inflict corporal injury, *Rodriguez* does not demand that a conviction of section 243(e) be classified as a crime of moral turpitude.

The 9th Circuit Federal Court of Appeals in *Galeana-Mendoz v. Gonzales*, (2006) 465 F.3d 1054, discussed whether a violation of California Penal Code section 243, subdivision (e), was a crime of moral turpitude. In finding that a section 243, subdivision (e), misdemeanor conviction is not a crime of moral turpitude, the court stated: "Given that force that is neither violent nor severe and that causes neither pain nor bodily harm may constitute battery, the relationship element of section 243(e)(1) is not sufficient to, by itself, transform every battery under section 243(e) into a crime categorically grave, base, or depraved." (Id., at p. 1064.)

10. Respondents conviction of Penal Code section 243(e), does not constitute a crime of moral turpitude under Business and Professions Code section 19859, subdivision (d).

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