

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Statement of Reasons for
Denial of Application for a Key Employee
License Against:

PHOUNGEUNE BORIHANH

Respondent.

BGC Case No. BGC-HQ2016-00008SL
CGCC Case No. CGCC-2016-0707-8A

DECISION AND ORDER

Hearing Date: March 1, 2017

Time: 10:00 a.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 12060, in Sacramento, California, on March 1, 2017.

Ron Diedrich (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.

Attorney Jarhett Blonien (Blonien) represented Respondent Phoungueune Borihanh (Borihanh).

During the administrative hearing, Presiding Officer Jason Pope took official notice of the Notice of Hearing and Prehearing Conference, with enclosures, sent by the Commission to Blonien and Diedrich via US mail, on November 10, 2016.

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

- (1) Statement of Reasons; Statement to Respondent; copies of Bus. & Prof. Code, §§ 19870 & 19871; copy of Cal. Code. Regs., tit. 4, § 12060; October 27, 2016, Certificate of Service by Certified Mail Service, with signed Receipt for Certified Mail; and Notice of Defense, dated August 3, 2016, Bates Nos. 001-026;
- (2) California Gambling Control Commission Notices and Memorandum:

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

- a. June 16, 2016, letter from Executive Director Stacey Luna Baxter notifying Phoungene Borihanh of the cancellation of his Interim Key Employee License, Bates Nos. 027-029;
- b. July 7, 2016, Commission’s Licensing Division’s Memorandum, Bates Nos. 030-031;
- c. July 7, 2016, letter from Executive Director Stacey Luna Baxter notifying Phoungene Borihanh of the Commission’s referral of consideration of his application for an Initial Key Employee License to an evidentiary hearing, Bates Nos. 032-033;
- d. November 10, 2016, Notice of Hearing and Prehearing Conference, with redacted copies of Attachments A & B, and Proof of Service, Bates Nos. 034-056; and
- e. January 18, 2017, Conclusion of Prehearing Conference, Bates Nos. 057-060;

(3) Application submitted by Phoungene Borihanh:

- a. A redacted copy of the Application for Interim Key Employee License, with attachment, which was received by the Bureau on July 1, 2014, and dated June 23, 2014, Bates Nos. 061-062;
- b. A redacted copy of the Application for Gambling Establishment Key Employee License, with attachments, and Key Employee Supplemental Background Investigation Information, submitted by Phoungene Borihanh to the Bureau, which is dated July 4, 2014, Bates Nos. 063-081; and
- c. A redacted copy of the [Renewal] Application for Gambling Establishment Key Employee License, with attachments, which was received by the Bureau on May 3, 2016, and dated May 2, 2016, Bates Nos. 082-085;

- 1 (4) A redacted copy of the Bureau's June 2016 Cardroom Key Employee
2 Background Investigation Report, with attachments, for Phoungune
3 Borihanh, Bates Nos. 086-102;
- 4 (5) Bureau's research and phone contact sheet regarding Phoungune
5 Borihanh's credit history, Bates Nos. 103-107;
- 6 (6) Records regarding communication (telephone and email) between the
7 Bureau and Phoungune Borihanh regarding information he failed to
8 disclose on his application, Bates Nos. 108-118;
- 9 (7) Sacramento County Superior Court records regarding Phoungune
10 Borihanh's August 8, 2012, conviction in the case of *People v.*
11 *Phoungune Borihanh* (Super. Ct. Sacramento County, 2012, No.
12 12T03162), Bates Nos. 119-128;
- 13 (8) Sacramento County Superior Court records regarding Phoungune
14 Borihanh's April 10, 2002, conviction in the case of *People v. Phoungune*
15 *Borihanh* (Super. Ct. Sacramento County, 2002, No. 02T01257), Bates
16 Nos. 129-139;
- 17 (9) United States Bankruptcy Court, Eastern District of California, records
18 regarding the July 20, 2005, bankruptcy filing of Phoungune Borihanh,
19 case number 05-28802-C-7, Bates Nos. 140-169; and
- 20 (10) A redacted copy of the LexisNexis printout of records of California
21 Judgment and Lien Filings regarding Phoungune Borihanh, Bates Nos.
22 170-171.

23 During the administrative hearing, Presiding Officer Jason Pope accepted into evidence
24 the following exhibit offered by Borihanh:

- 25 (A) Letters of Reference in support of Borihanh as follows:
- 26 a. Undated letter from James Flannery;
- 27 b. February 28, 2017 letter from Hai Lu;
- 28

- 1 c. February 27, 2017 letter from Jessenia J. Avalostarira;
- 2 d. February 27, 2017 Affidavit from James J. Petelin; and
- 3 e. Undated letter from Bouasy Onesyda.

4 During the administrative hearing, Presiding Officer Jason Pope also accepted into
5 evidence the following exhibit of the Commission:

- 6 (1) May 13, 2005 Tribal Key Employee Background Investigation Report and
7 Tribal Gaming Key Employee Renewal Checklist on Phoungune
8 Borihanh.

9 The matter was submitted on March 1, 2017.

10 FINDINGS OF FACT

11 1. On or about July 9, 2014, the Commission issued an interim key employee license to
12 Borihanh.

13 2. On or about August 4, 2014, Borihanh submitted an Application for Gambling
14 Establishment Key Employee License (Application), which included a Key Employee
15 Supplemental Background Investigation Information form (Supplemental), to the Bureau. During
16 the hearing, Borihanh testified that he was not rushed when he filled out the Application.

17 3. On or about May 3, 2016, Borihanh submitted an application to renew his interim key
18 employee license to the Bureau.

19 4. On or about June 3, 2016, the Bureau submitted a Cardroom Key Employee
20 Background Investigation Report on Borihanh to the Commission. In this report, the Bureau
21 recommends that the Commission deny Borihanh's Application.

22 5. On or about June 16, 2016, the Commission canceled Borihanh's interim key
23 employee license pursuant to CCR section 12354(e)(5).¹

24 6. At its July 7, 2016 meeting, the Commission voted to refer the consideration of
25 Borihanh's Application to a Gambling Control Act evidentiary hearing. The Commission sent a
26 letter to Borihanh, via certified mail, advising him that the Commission voted to refer the

27 ¹ CCR section 12354(e)(5) requires that the Commission cancel an interim key employee license upon the
28 Bureau's recommendation of denial of an applicant's key employee license application.

1 consideration of his Application to a Gambling Control Act hearing.

2 7. On or about August 8, 2016, Borihanh submitted a Notice of Defense to the
3 Commission and the Bureau requesting an evidentiary hearing on the consideration of his
4 Application.

5 8. On or about October 27, 2016, the Bureau filed a Statement of Reasons with the
6 Commission and served the Statement of Reasons on Borihanh and Blonien via certified mail. In
7 its Statement of Reasons, the Bureau recommends the denial of Borihanh's Application.

8 9. On or about November 10, 2016, the Commission served a Notice of Hearing and
9 Prehearing Conference letter, via US mail, on Blonien and Diedrich.

10 10. On or about January 17, 2017, the noticed Prehearing Conference was held before
11 Presiding Officer Jason Pope, Attorney III of the Commission. Ron Diedrich, Deputy Attorney
12 General, attended on behalf of the Bureau. Attorney Jarhett Blonien attended on behalf of
13 Respondent Phoungueune Borihanh, who was not present.

14 11. On or about January 18, 2017, the Commission served a Conclusion of Prehearing
15 Conference letter on Blonien and Diedrich.

16 12. The Commission heard Case No. CGCC-2016-0707-8A on March 1, 2017. The
17 Bureau was represented throughout the hearing by Deputy Attorney General Ron Diedrich.
18 Respondent Phoungueune Borihanh appeared and was represented throughout the hearing by
19 attorney Jarhett Blonien.

20 13. Borihanh served as a Diesel and Auxiliary Mechanic in the United States Navy from
21 January 1997 to January 2001. Borihanh received an Honorable Discharge. Borihanh has
22 continued to successfully serve in the United States Navy Reserves from December 2011 to the
23 present.

24 14. On or about April 10, 2002, Borihanh was convicted of violating California Vehicle
25 Code section 23152(b), driving under the influence of alcohol/0.08% percent (DUI), a
26 misdemeanor, in the case of *People v. Phoungueune Borihanh* (Mun. Ct. Sacramento County,
27 2002, No. 02T01257). Borihanh was sentenced to three years of probation, 48 hours of a work
28

1 project, and ordered to participate in a First Offender Program and pay a fine of \$1,215.

2 Borihanh completed the First Offender Program and paid his fine in full.

3 15. On or about March 14, 2005, Borihanh submitted a complete and accurate application
4 for a Tribal Key Employee license. Borihanh disclosed his 2002 DUI conviction and a “school
5 loan” with a balance of \$10,000 on the application. The Division of Gambling Control²
6 recommended that the Commission approve Borihanh’s application. The Commission approved
7 Borihanh’s application and issued him a Tribal Key Employee Finding of Suitability.

8 16. Borihanh worked for Thunder Valley Casino from May 2003 to November 2009.
9 Borihanh held a Tribal Key Employee license during a portion of that time.

10 17. On or about August 8, 2012, Borihanh was convicted of violating California Vehicle
11 Code section 23103.5, wet reckless driving (in lieu of DUI), a misdemeanor, in the case of *People*
12 *v. Phoungune Borihanh* (Super. Ct. Sacramento County, 2012, No. 12T03162). Borihanh was
13 sentenced to 3 years of probation, 5 days of a work project, and ordered to pay a fine of \$1,564.
14 Borihanh’s driving privilege was suspended, but has since been reinstated. Borihanh paid his fine
15 in full and attended a Wet and Reckless Driving-Under-the-Influence Program.

16 18. Borihanh filled out the Supplemental as part of his Application. Section 6 of the
17 Supplemental asks the applicant the following: “Have you ever been convicted of a crime or pled
18 guilty or nolo contendere (no contest) to a crime?” Borihanh checked the box marked “No”
19 despite having been convicted of two misdemeanor crimes: an April 2002 DUI and an August 8,
20 2012 wet reckless driving.

21 19. In response to an inquiry from the Bureau as to why Borihanh did not disclose his
22 2002 DUI conviction, Borihanh responded: “I didn’t disclose my DUI that happened in April of
23 2002 because I had thought that the background question ask me to go 10 years back.” During
24 the hearing, Borihanh testified that he had not been convicted of any crime. Upon further direct
25 examination, Borihanh then testified that he thought Section 6 of the Supplemental only asks for
26 criminal convictions that occurred within the last ten years.

27 _____
28 ² The Bureau was known as the Division of Gambling Control at this time.

1 20. On or about April 26, 2016, in response to an inquiry from the Bureau as to why
2 Borihanh did not disclose his 2012 wet reckless driving conviction on his Supplemental,
3 Borihanh responded: “I disclosed that I had a conviction of reckless driving in 2012.” During the
4 hearing, Borihanh testified that he did not know that his 2012 wet reckless driving conviction was
5 a crime; Borihanh thought that his wet reckless driving conviction was an infraction. Borihanh
6 also testified that he thought he had disclosed the 2012 wet reckless driving conviction, but could
7 not remember if he disclosed the conviction on his Application.

8 21. Borihanh demonstrated a lack of candor and honesty by failing to disclose his two
9 criminal convictions on his Supplemental. Borihanh offered various explanations for his failure
10 to disclose his two criminal convictions, including: (1) that he was not convicted of any crime; (2)
11 that he thought Section 6 only asked for convictions that occurred within the last 10 years; (3) that
12 he disclosed his 2012 wet reckless driving conviction; and (4) that he thought his 2012 wet
13 reckless driving conviction was only an infraction and did not need to be disclosed. Borihanh’s
14 various explanations for his failure to disclose his two criminal convictions lack consistency and
15 credibility, and reflect poorly upon Borihanh’s honesty and integrity.

16 22. There was no evidence presented that Borihanh has had any subsequent criminal
17 convictions.

18 23. Section 6 of the Supplemental also asks the applicant the following: “Have you ever
19 been a party to any litigation or arbitration?” Borihanh checked the box marked “No” despite
20 having had two civil judgments entered against him. Section 10 of the Supplemental specifically
21 asks the applicant: “Have you had a judgment or lien filed against you within the last 10 years?”
22 Borihanh checked the box marked “No.” On or about July 21, 2005, Heritage Credit Union
23 obtained a civil judgment against Borihanh in the amount of \$2,500. The full amount was
24 discharged on September 3, 2005 in his father’s bankruptcy. On or about July 28, 2005, National
25 Credit Acceptance Inc. obtained a civil judgment against Borihanh in the amount of \$6,130. The
26 full amount of this civil judgment was still outstanding as of June 16, 2016. Both civil judgments
27 occurred within the 10 year period immediately preceding the submission of Borihanh’s
28

1 Application.

2 24. In response to an inquiry from the Bureau as to why Borihanh did not disclose his two
3 civil judgments, Borihanh responded regarding the July 21, 2005 civil judgment from Heritage
4 Credit Union as follows: “I didn’t know I had a civil judgment against me by Heritage Credit
5 Union, but the car loan was under myself and my father’s name. I assumed that the loan was
6 discharged.” Borihanh was correct that the July 21, 2005 civil judgment was discharged.
7 Borihanh responded regarding the July 28, 2005 civil judgment from National Credit Acceptance
8 Inc. as follows: “I didn’t know I had a civil judgment filed against me, it must have happened
9 when I was working on my bankruptcy.” The civil judgment from National Credit Acceptance
10 Inc. occurred around the time that Borihanh was filing for bankruptcy. During the hearing,
11 Borihanh testified that he did not understand the question on the Supplemental asking about
12 judgments and liens. He also testified that he did not know about the civil judgments.

13 25. Borihanh testified that he did not check his credit history prior to filling out the
14 Application. Borihanh’s testimony that he did not understand the question on the Supplemental
15 asking about judgments and liens lacks credibility. However, it is possible that Borihanh did not
16 know about the civil judgments against him. As a result, it is unclear whether Borihanh was
17 deliberately dishonest in failing to disclose his two civil judgments on the Supplemental.

18 26. Section 10 of the Supplemental asks the applicant for his or her personal financial
19 history. The first question in Section 10 asks: “Have you filed for bankruptcy within the last 10
20 years?” Borihanh checked the box marked “Yes” and disclosed his 2005 bankruptcy. The second
21 question in Section 10 asks: “Have you been a party to a foreclosure within the last 10 years?”
22 Borihanh checked the box marked “Yes” and disclosed the 2009 foreclosure of his property. The
23 fourth question in Section 10 asks: “Have you had any purchase repossessed or had an unpaid
24 debt/loan turned over to a collection agency or deemed uncollectable (charged-off) for any reason
25 within the last 10 years?” Borihanh checked the box marked “Yes” and disclosed a 2005
26 collection account in the amount of \$4,000 with Citibank. Borihanh demonstrated candor and
27 honesty in disclosing his bankruptcy, foreclosure, and his 2005 collection account on his
28

1 Supplemental.

2 27. In addition to failing to disclose his two criminal convictions and two civil judgments
3 on his Supplemental, Borihanh failed to disclose two outstanding federal student loans and one
4 account in collections.

5 28. Borihanh had two outstanding federal student loans that were consolidated and
6 purchased by Coast Professional Agency on February 29, 2016. As of June 16, 2016, the
7 outstanding balance of the remaining loan was \$14,700.15. In response to an inquiry from the
8 Bureau as to why Borihanh failed to disclose the student loans, Borihanh responded: "I thought I
9 had disclosed my federal student loan in my supplemental form. I had two student loans and the
10 first one was paid off. The \$14,700.15 is the one that I will be working on when my finances get
11 stable." During the hearing, Borihanh testified that he was aware of his student loans; however,
12 he could not recall if he included them on his Application. Borihanh did not provide any
13 evidence that he paid off one of the student loans; rather, the two student loans were consolidated
14 into one.

15 29. Borihanh had four accounts in collection as of June 16, 2016 in the total amount of
16 \$8,468 as follows: (1) June 2011 for Global Con in the amount of \$989; (2) January 2016 for
17 Portfolio in the amount of \$1,175; (3) January 2016 for Portfolio in the amount of \$422; and (4)
18 January 2016 for MidlandMCM in the amount of \$5,882. Only the June 2011 account in
19 collection existed at the time that Borihanh submitted his Application. In response to an inquiry
20 from the Bureau as to why Borihanh failed to disclose his June 2011 collection account, Borihanh
21 responded: "Global Con \$989-I must have forgotten about this one, and I don't know which
22 creditor it belongs to. Once the loan goes into default they sell it to different collection agency."

23 30. Borihanh's explanation that he thought he had disclosed his federal student loan in
24 his Supplemental lacks honesty and credibility. There was no justifiable excuse for his failure to
25 disclose his federal student loan given that Borihanh testified that he was aware of his student
26 loans and disclosed the "school loan" on his May 2005 Tribal Key Employee application.
27 Borihanh also demonstrated a lack of candor and honesty by stating that one of his federal student
28

1 loans was paid off, when in fact, the two federal student loans were simply consolidated into one
2 loan. It is possible that Borihanh simply forgot about the June 2011 collection account with
3 Global Con.

4 31. During the hearing, Borihanh testified regarding the circumstances surrounding his
5 filling out of the Application and Supplemental. Borihanh testified that he does not recall filling
6 out his Application; that he did not understand the Application; that he had no help with filling
7 out the Application; and that he has never filled out a similar application.

8 32. Borihanh's testimony regarding the circumstances surrounding his filling out of the
9 Application and Supplemental lacks credibility, and demonstrates a lack of candor and honesty.
10 Borihanh fully and accurately filled out several portions of the Application and Supplemental,
11 including the section asking about bankruptcies and foreclosures. He also filled out and
12 submitted a very similar application to the Bureau when he applied for a tribal key employee
13 license. In fact, Borihanh disclosed his 2002 DUI conviction and a "school loan" with a balance
14 of \$10,000 on that tribal key employee license application. Borihanh's testimony that he did not
15 understand the Application and had never filled out a similar Application is untrue, and
16 demonstrates a lack of candor and honesty, which reflects poorly on his character and integrity.
17 Borihanh's excuses also demonstrate a failure to take ownership and responsibility for filling out
18 his Application.

19 33. Overall, Borihanh failed to provide significant material information on his
20 Application and Supplemental by failing to disclose both of his criminal convictions, both of his
21 civil judgments, both of his federal student loan, and his account that has gone to collection.

22 34. Prior to the Commission's cancellation of Borihanh's interim key employee license,
23 Borihanh worked as a Gaming Attendant during the graveyard shift at Stones Gambling Hall.
24 There was no evidence presented of any alleged misconduct or disciplinary action against
25 Borihanh while he worked in controlled gambling, other than when he was terminated from
26 employment with Red Hawk Casino for tardiness.

27 35. Two witnesses testified on Borihanh's behalf during the hearing:
28

- 1 a. Alvin Estacio (Estacio) testified that he has known Borihanh since 2003. He
2 met Borihanh while gambling at Thunder Valley Casino, where Borihanh was
3 working as a dealer. Estacio now works in Information Technology for
4 Thunder Valley Casino. Estacio testified that Borihanh is a person of good
5 character, honesty, and integrity; that Borihanh is not a threat to the gambling
6 industry; that Borihanh is focused at work; and that he never had any
7 experience with Borihanh acting careless while working.
- 8 b. Kelly Schwab (Schwab) is a Petty Officer 1st Class in the United States Navy
9 Reserves. Schwab testified that Borihanh was in her unit in the United States
10 Navy Reserves; that he had been deployed overseas; and that he is a Command
11 Career Counselor. Schwab described Borihanh as great at mentorship and
12 counseling; active on career development boards; possessing honesty,
13 integrity, and good character; and consistently active in community outreach
14 and volunteering. She planned to provide Borihanh with an award for
15 community outreach.

16 36. The testimony of Estacio and Schwab is persuasive that Borihanh is a strong employee
17 and successful in his work in controlled gambling and with the United States Navy Reserves. The
18 testimony of Schwab is persuasive that Borihanh is very active in volunteering and community
19 outreach. These characteristics reflect positively on Borihanh's character. There was no
20 evidence presented that discredited Estacio and Schwab's perception of Borihanh as a person of
21 honesty and integrity. However, in light of Borihanh's numerous failures to disclose on his
22 Application and Supplement, and his testimony, which was often inconsistent and lacked
23 credibility, Estacio and Schwab were not persuasive that Borihanh is a person of honesty and
24 integrity.

25 37. Borihanh submitted five letters of reference in support of his application:

- 26 a. James Flannery (Flannery) is a shift manager at Stones Gambling Hall.
27 Flannery states that he has worked extensively with Borihanh; that he has
28

1 witnessed a high level of integrity and professionalism from Borihanh; that
2 Borihanh is reliable and fair in his dealings with fellow team members and
3 guests; that Borihanh is only interested in work, family and service to this
4 country; that Borihanh has the utmost respect for the integrity and honesty
5 required to effectively work in controlled gambling; and that he has not seen
6 anything that would make him question Borihanh's character or honesty.

7 b. Hai Lu (Lu) works for Stones Gambling Hall. Lu states that Borihanh is a man
8 of great integrity and honesty, and is extremely dedicated to his family and
9 work. Lu also states that Borihanh is dependable, responsible, and courteous,
10 and that it is an honor to work with him.

11 c. Jessenia J. Avalostarira (Avalostarira) is a CW03 in the United States Navy
12 Reserves. Avalostarira states that Borihanh was the Information Technician
13 Petty Officer for her unit from January 1, 2012 to December 31, 2014.
14 Avalostarira states that Borihanh displayed an innate leadership ability and a
15 strong personal initiative founded on a bedrock of integrity; that she has
16 witnessed firsthand Borihanh's ability to plan, organize, lead and execute tasks
17 in support of unit operations and mission support for a unit of 45 sailors; and
18 that Borihanh's well-established experience, strong professionalism,
19 exceptional leadership, and uplifting personality combine to make him an
20 extraordinary asset to the United States Navy Reserves and any career he is
21 willing to pursue as a civilian.

22 d. James J. Petelin (Petelin) states that he has known Borihanh for six years and is
23 a close friend and shipmate. Petelin states that he witnessed Borihanh
24 consistently improve his own individual performance and the readiness and
25 effectiveness of their military unit. Petelin also states that Borihanh goes above
26 and beyond as a leader and mentor to junior personnel; that Borihanh adheres
27 faithfully to the Navy's core values of Honor, Courage, and Commitment; that
28

1 Borihanh's performance of duties and commitment to his professional
2 obligations shows his honesty and trustworthiness; and that Borihanh
3 possesses the honesty, integrity and good character necessary to qualify for a
4 state gambling license.

- 5 e. Bouasy Onesyda (Onesyda) states that he has known Borihanh for 22 years
6 and is a close friend. Onesyda describes Borihanh as helpful, honest,
7 hardworking, dependable, and trustworthy. Onesyda states that Borihanh has
8 tremendous character, is well-liked by peers, has a positive attitude, and is a
9 wonderful family man, caring husband, and nurturing father.

10 38. Each of the five letters of reference submitted by Borihanh were extremely favorable
11 regarding Borihanh's suitability for licensure. These letters are persuasive that Borihanh is a
12 strong employee with a great work ethic who demonstrates professionalism, and that Borihanh is
13 well-liked, has a good personality, and gets along well with his bosses, co-workers and friends.
14 However, as was the case regarding the testimony of Estacio and Schwab, these letters are not
15 persuasive that Borihanh is a person of honesty and integrity in light of Borihanh's numerous
16 failures to disclose on his Application and Supplement, and his testimony, which was often
17 inconsistent and lacked credibility.

18 39. All documentary and testimonial evidence submitted by the parties that is not
19 specifically addressed in this Decision and Order was considered but not used by the Commission
20 in making its determination on Borihanh's Application.

21 40. The matter was submitted for Commission consideration on March 1, 2017.

22 **LEGAL CONCLUSIONS**

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

26 42. Public trust and confidence can only be maintained by strict and comprehensive
27 regulation of all persons, locations, practices, associations, and activities related to the operation
28

1 of lawful gambling establishments and the manufacture and distribution of permissible gambling
2 equipment. Business and Professions Code section 19801(h).

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

7 44. An “unqualified person” means a person who is found to be unqualified pursuant to
8 the criteria set forth in Section 19857, and “disqualified person” means a person who is found to
9 be disqualified pursuant to the criteria set forth in Section 19859. Business and Professions Code
10 section 19823(b).

11 45. The Commission has the power to deny any application for a license, permit, or
12 approval for any cause deemed reasonable by the Commission. Business and Professions Code
13 section 19824(b).

14 46. 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 47. 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 48. 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 49. At an evidentiary hearing pursuant to Business and Professions Code sections 19870
25 and 19871 and CCR section 12060(b), the burden of proof rests with the applicant to prove his or
26 her qualifications to receive any license under the Gambling Control Act. CCR section 12060(i).

27 50. No gambling license shall be issued unless, based on all of the information and
28

1 documents submitted, the commission is satisfied that the applicant is a person of good character,
2 honesty, and integrity. Business and Professions Code section 19857(a).

3 51. The Commission shall deny a license to any applicant who is disqualified for failure of
4 the applicant to provide information, documentation, and assurances required by this chapter or
5 requested by the chief, or failure of the applicant to reveal any fact material to qualification, or the
6 supplying of information that is untrue or misleading as to a material fact pertaining to the
7 qualification criteria. Business and Professions Code section 19859(b).

8 52. Borihanh demonstrated a lack of honesty and integrity by failing to disclose his two
9 criminal convictions, his two civil judgments, his two federal student loans, and his account that
10 has gone to collection, on his Application and Supplemental. In attempting to excuse his failures
11 to disclose, Borihanh's responses to the Bureau's inquiries and testimony during the hearing
12 lacked candor and honesty, which demonstrates a further lack of integrity. As a result, Borihanh
13 failed to meet his burden of demonstrating that he is a person of good character, honesty and
14 integrity. Therefore, Borihanh is unqualified for a key employee license pursuant to Business and
15 Professions Code section 19857(a).

16 53. Borihanh failed to provide significant material information on his Application and
17 Supplemental by failing to disclose both of his criminal convictions, both of his civil judgments,
18 his two federal student loans, and his account that has gone to collection. As a result, Borihanh
19 has failed to provide information required by the Gambling Control Act. Therefore, Borihanh is
20 disqualified from receiving a finding of suitability pursuant to Business and Professions Code
21 section 19859(b).

22 NOTICE OF APPLICANT'S APPEAL RIGHTS

23 Borihanh has the following appeal rights available under state law:

24 CCR section 12064, subsections (a) and (b) provide, in part:

25 An applicant denied a license, permit, registration, or finding of suitability,
26 or whose license, permit, registration, or finding of suitability has had
27 conditions, restrictions, or limitations imposed upon it, may request
28 reconsideration by the Commission within 30 calendar days of service of the
decision, or before the effective date specified in the decision, whichever is
later. The request shall be made in writing to the Commission, copied to the

1 Bureau, and shall state the reasons for the request, which must be based
2 upon either newly discovered evidence or legal authorities that could not
3 reasonably have been presented before the Commission's issuance of the
4 decision or at the hearing on the matter, or upon other good cause which the
5 Commission may decide, in its sole discretion, merits reconsideration.

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

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

15 CCR section 12066, subsection (c) provides:

16 A decision of the Commission denying an application or imposing conditions on
17 license shall be subject to judicial review as provided in Business and Professions
18 Code section 19870, subdivision (e). Neither the right to petition for judicial
19 review nor the time for filing the petition shall be affected by failure to seek
20 reconsideration.

21 ORDER

22 1. Phoungune Borihanh's Application for Gambling Establishment Key Employee


23 License is DENIED.

24 2. No costs are to be awarded.

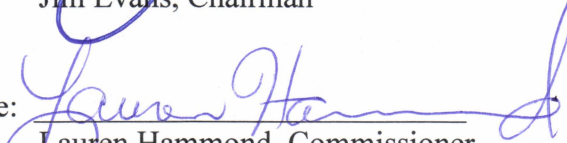
25 3. Each side to pay its own attorneys' fees.

26 This Order is effective on Apr 24, 2017.

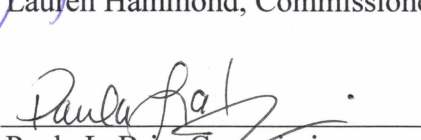
27 Dated: 3/23/17

28 Signature: 
Jim Evans, Chairman

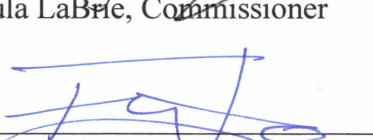
Dated: 3/23/17

Signature: 
Lauren Hammond, Commissioner

Dated: 3/23/17

Signature: 
Paula LaBrie, Commissioner

Dated: 3/23/17

Signature: 
Trang To, Commissioner