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CALIFORNIA
GAMBLING CONTROL COMMISSION

10 **BEFORE THE**
11 **CALIFORNIA GAMBLING CONTROL COMMISSION**

12
13 **In the Matter of the Statement of Issues**
Against:

14 **Boutdy Phavavichane,**

15 **Respondent.**
16

Case No. BGC # _____

OAH No. _____

STATEMENT OF ISSUES

17 MATHEW J. CAMPOY, Complainant herein, alleges as follows:

18 **PARTIES**

19 1. Complainant Mathew J. Campoy brings this Statement of Issues solely in his official
20 capacity as Interim Chief of the Bureau of Gambling Control of the California Department of
21 Justice. At all times relevant hereto, the Bureau of Gambling Control ("Bureau") was constituted
22 and designated as the Division of Gambling Control ("Division") of the Department of Justice.^{1/}

23 2. On or about October 5, 2005, the Bureau received an Application for a Renewal Work
24 Permit submitted by Respondent Boutdy Phavavichane, dated October 1, 2005, to work at the
25 Empire Sportsman's Association in Modesto, California as a double hand poker dealer.
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28 1. Effective August 24, 2007, the former Division of Gambling Control was denominated
the Department of Justice, Bureau of Gambling Control. See Stats. 2007, ch. 176, § 5. For ease of
reference and consistency, the designation "Bureau" will be used throughout this statement.

1 APPLICATION STATUS

2 3. On or about March 1, 2006, the Bureau issued a Work Permit Employee Background
3 Investigation Report containing the recommendation that Respondent's application be denied on
4 the ground that on January 7, 2003, within 10 years prior to the application, Respondent had been
5 convicted of violating Vehicle Code section 31, providing false information to a peace officer, a
6 misdemeanor involving dishonesty.

7 4. On or about November 2, 2006, Commission staff mailed Respondent a letter
8 informing her that the Commission was recommending that Respondent's application be denied
9 on the ground that on January 7, 2003, within 10 years prior to the application, Respondent had
10 been convicted of violating Vehicle Code section 31, giving false information to a peace officer,
11 a misdemeanor. The Commission advised Respondent that she was entitled to a hearing on this
12 matter.

13 5. On or about November 2, 2006, the California Gambling Control Commission
14 ("Commission") mailed the Empire Sportsman's Association a letter informing the Empire
15 Sportsman's Association that the Commission was recommending denial of Respondent's
16 application for a renewal work permit.

17 6. On or about November 7, 2006, Respondent mailed the Commission a letter requesting
18 a hearing on this matter. At the November 16, 2006, Commission meeting, the Bureau's
19 recommendation to deny the application was presented to the Commission but, based upon
20 Respondent's written request for a hearing, the Commission took no action on the application
21 other than to refer this matter to an evidentiary hearing.

22 JURISDICTION

23 7. This Statement of Issues is brought before the Commission pursuant to the authority
24 detailed in the following paragraphs 8 through 12.

25 8. Business and Professions Code section 19810, in relevant part, states:

26 Except as otherwise provided in this chapter, any power or
27 authority of the department described in this chapter may be
28 exercised by the Attorney General or any other person as the
Attorney General may delegate.

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9. Business and Professions Code section 19826, in relevant part, states:

The department shall have all of the following responsibilities:

(a) To investigate the qualifications of applicants before any license, permit, or other approval is issued, and to investigate any request to the commission for any approval that may be required pursuant to this chapter. The department may recommend denial or the limitation, conditioning, or restriction of any license, permit or other approval.

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

(a) There is in state government the California Gambling Control Commission, consisting of five members appointed by the Governor, subject to confirmation by the Senate. . . .

(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.

11. 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.

12. Business and Professions Code section 19824, provides 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:

1 (a) Require any person to apply for a license, permit,
2 registration, or approval as specified in this chapter, or regulations
adopted pursuant to this chapter.

3 (b) For any cause deemed reasonable by the commission,
4 deny any application for a license, permit, or approval provided for
5 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.

6 * * *

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

9 * * *

10 (h) Issue subpoenas to compel attendance of witnesses and
11 production of documents and other material things at a meeting or
12 hearing of the commission or its committees, including advisory
committees.

13 13. Business and Professions Code section 19825 states:

14 The commission may require that any matter that the
15 commission is authorized or required to consider in a hearing or
16 meeting of an adjudicative nature regarding the denial, suspension,
17 or revocation of a license, permit, or a finding of suitability, be
heard and determined in accordance with Chapter 5 (commencing
with Section 11500) of Part 1 of Division 3 of Title 2 of the
Government Code.

18 **STATUTORY PROVISIONS APPLICABLE TO RESPONDENT**

19 14. Business and Professions Code section 19805, subdivision (b) defines "Applicant" as
20 follows:

21 [A]ny person who has applied for, or is about to apply for, a state
22 gambling license, a key employee license, a registration, a finding
23 of suitability, a work permit, a manufacturer's or distributor's
24 license, or an approval of any act or transaction for which the
approval or authorization of the commission or division is required
or permitted under this chapter.

25 15. Business and Professions Code section 19857, states:

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

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

1 (b) A person whose prior activities, criminal record, if any,
2 reputation, habits, and associations do not pose a threat to the
3 public interest of this state, or to the effective regulation and
4 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.

5 16. Business and Professions Code section 19859, states:

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

8 * * *

9 (b) Failure of the applicant to provide information,
10 documentation, and assurances required by this chapter or
11 requested by the director, or failure of the applicant to reveal any
12 fact material to qualification, or the supplying of information that
13 is untrue or misleading as to a material fact pertaining to the
14 qualification criteria.

15 * * *

16 (d) Conviction of the applicant for any misdemeanor
17 involving dishonesty or moral turpitude within the 10-year period
18 immediately preceding the submission of the application, unless
19 the applicant has been granted relief pursuant to Section 1203.4,
20 1203.4a, or 1203.45 of the Penal Code; provided, however, that the
21 granting of relief pursuant to Section 1203.4, 12093.4a, or 1203.45
22 of the Penal Code shall not constitute a limitation on the discretion
23 of the commission under Section 19856 or affect the applicant's
burden under Section 19857.

24 17. Vehicle Code, Section 31 provides:

25 No person shall give, either orally or in writing, information to a
26 peace officer while in the performance of his duties under the
27 provisions of this code when such person knows that the
28 information is false.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction Involving Crime of Dishonesty or Moral Turpitude)

24 18. Respondent's application is subject to denial pursuant to Business and Professions
25 Code section 19859, subdivision (d), by reason of the conviction of the respondent of a
26 misdemeanor involving dishonesty or moral turpitude within the 10-year period immediately
27 preceding the submission of the application. On January 7, 2003, in Sacramento County
28 Superior Case No. 50389, Respondent was convicted of violating Vehicle Code section 31,

1 providing false information to a peace officer, a misdemeanor. Providing false information to a
2 peace officer is by definition a misdemeanor involving dishonesty. In addition, it has been held
3 that providing false information constitutes a crime involving moral turpitude for witness
4 impeachment purposes. (*People v. Maestas* (2005) 132 Cal.App.4th 1552, 1556; *People v. Steele*
5 (2000) 83 Cal.App.4th 212, 223.)

6 **SECOND CAUSE FOR DENIAL OF APPLICATION**

7 **(Character, Honesty, Integrity)**

8 19. Complainant hereby incorporates the allegations contained in paragraph 18, above, as
9 though set forth herein at length.

10 20. Respondent's application is subject to denial because, by reason of Respondent's
11 conviction for violation of Vehicle Code section 31, providing false information to a peace
12 officer, Respondent has not shown herself to be a person of good character, honesty and integrity
13 as required by Business and Professions Code section 19857, subdivision (a).

14 **THIRD CAUSE FOR DENIAL OF APPLICATION**

15 **(Failure to Provide Accurate, Material Information)**

16 21. Complainant hereby incorporates the allegations contained in paragraphs 17 through
17 20, above, as though set forth herein at length.

18 22. Respondent's application is subject to mandatory denial pursuant to Business and
19 Professions Code section 19859, subdivision (b) for failure to disclose two misdemeanor
20 convictions in the last ten years on her application for a renewal work permit. Respondent
21 affirmatively declared under penalty of perjury on her application that she had not been convicted
22 of a misdemeanor within the ten-year period preceding the application. The Bureau's
23 investigation, however, revealed that she had been convicted of two misdemeanors in the last ten
24 years. On January 7, 2003, she was convicted of violating Vehicle Code section 31, a
25 misdemeanor crime involving dishonesty, and on September 18, 2003, she was convicted of
26 violating Vehicle Code section 16028, failure to have proof of insurance, a misdemeanor crime.
27 In addition, Respondent affirmatively declared under penalty of perjury on three separate
28 applications for temporary work permits (signed by Respondent on February, 24, 2006, July 11,

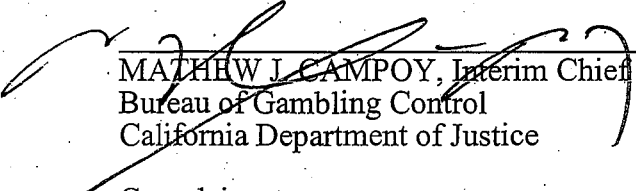
1 2006, and October 18, 2006) that she had not been convicted of a misdemeanor involving
2 dishonesty within the ten-year period preceding the temporary work permit applications, when, in
3 fact, she had been convicted of a violation of Vehicle Code section 31, a misdemeanor involving
4 dishonesty, on January 7, 2003.

5 **PRAYER**

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

- 8 1. Denying the application of Boutdy Phavavichane for a poker dealer's license pursuant
9 to Business and Professions Code section 19859, subdivisions (b) and (d) and section 19857,
10 subdivision (a).
11 2. Awarding the Complainant's costs and attorneys' fees.
12 3. Taking such and further action as is deemed necessary and proper.

13
14 Dated: September 10, 2008

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16 MATTHEW J. CAMPOY, Interim Chief
17 Bureau of Gambling Control
18 California Department of Justice

19 Complainant
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