




1 ROB BONTA
 Attorney General of California
 2 SARA J. DRAKE
 Senior Assistant Attorney General
 3 WILLIAM TORNGREN
 Supervising Deputy Attorney General
 4 COLIN A. WOOD
 Deputy Attorney General
 5 State Bar No. 267539
 1300 I Street, Suite 125
 6 P.O. Box 944255
 Sacramento, CA 95814-2951
 7 Telephone: (916) 210-7754
 E-mail: Colin.Wood@doj.ca.gov
 8 *Attorneys for Complainant*

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**BEFORE THE
 CALIFORNIA GAMBLING CONTROL COMMISSION
 STATE OF CALIFORNIA**

In the Matter of the Statement of Reasons for
 Denial of Application for a Work Permit for:
VITO MICHAEL LOCONTE

Respondent.

CGCC Case No.: CGCC-2020-1119-7A
 BGC Case No.: BGC-HQ2020-00038SL

STATEMENT OF REASONS

Complainant alleges as follows:

PARTIES

1. Yolanda Morrow (Complainant) brings this Statement of Reasons for denial of an application for initial regular work permit in her official capacity as the Acting Director of the California Department of Justice, Bureau of Gambling Control (Bureau).

1 2. Vito Michael LoConte (Respondent) seeks approval of his Application for Initial
2 Regular Work Permit/Temporary Work Permit (Application) by the California Gambling Control
3 Commission (Commission).

4 **THE APPLICATION AND THIS PROCEEDING**

5 3. On September 4, 2018, the Bureau received the Respondent's Application to hold a
6 dealer employee position at Napa Valley Casino (Casino).

7 4. Respondent was issued a temporary work permit, number GEWP-002789, beginning
8 September 7, 2018, to work as a card dealer at the Casino. Respondent received periodic 120-day
9 extensions of this temporary work permit until its cancellation on or about September 30, 2020.

10 5. On September 24, 2020, the Bureau issued its Work Permit Initial Background
11 Investigation Report in which it recommended denial of the Application.

12 6. On November 19, 2020, the Commission referred consideration of the Application to
13 an evidentiary hearing, which is to be held pursuant to California Code of Regulations, title 4,
14 section 12060, subdivision (a).¹

15 7. On or about December 4, 2020, Respondent submitted a Notice of Defense.

16 **BURDEN OF PROOF**

17 8. Respondent has the burden of proving his qualifications to receive a license or other
18 approval from the Commission. (Cal. Code Regs., tit. 4, § 12060, subd. (i).)

19 **FIRST CAUSE FOR DENIAL**

20 **(Derogatory Gambling Employment History and Dishonesty)**

21 9. Respondent's Application is subject to denial because on or about January 13, 2018,
22 Respondent was terminated by his then-employer, Oceanview Casino, reportedly due to two
23 separate instances of theft. Respondent was seen on surveillance tape by his employer taking a \$5
24 chip from his tray and placing it in his pocket, twice during his shift on January 7, 2018. On both
25 occasions, when the key employee counted down Respondent's dealer trays at the end of the shift,
26 the trays were five dollars (\$5.00) short. When questioned by the key employee on shift that

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

1 evening, Respondent responded, "every dealer does it." Accordingly, Respondent's actions and
2 termination involve moral turpitude and dishonesty and do not establish his good character,
3 honesty, and integrity. Respondent also poses a threat to the effective regulation and control of
4 controlled gambling.

5 10. On November 18, 1996, Respondent was convicted of violating Douglas County
6 Code 9.36.010, trespass on land or trespass in building of another after warning, a misdemeanor,²
7 in case number 96-6014T in Douglas County, Nevada. When asked about the circumstances that
8 led to his arrest and conviction, Respondent provided untrue or misleading information to the
9 Bureau. On April 3, 2019, Respondent stated to the Bureau that he "never at anytime hit, hurt, or
10 did anything to harm anyone." Then, when asked for additional information by the Bureau,
11 Respondent admitted on January 9, 2020, that he did recall the specifics of his 1996 misdemeanor
12 conviction and recounted all of the details for the Bureau. The details recounted by Respondent
13 differed significantly from the Douglas County Sheriff's Department reports.

14 (Bus. & Prof. Code, §§ 19857, subds. (a) & (b), 19859 subd. (b), 19866, 19914, subds. (a)(1),
15 (a)(3); Cal. Code. Regs., tit. 4, § 12105.)

16 SECOND CAUSE FOR DENIAL

17 (Multiple Misdemeanor Convictions)

18 11. On January 8, 1996, Respondent was convicted of violating Penal Code section 415,
19 subdivision (1), fight/challenge fight public place, a misdemeanor, in Stanislaus Superior Court
20 case number 46377. Respondent was sentenced to 36 months of probation and ordered to pay a
21 fine. On October 26, 2000, the conviction was dismissed pursuant to Penal Code section 1203.4.

22 12. As noted above, on November 18, 1996, Respondent was convicted of trespassing, a
23 misdemeanor by the Tahoe Justice Center, Douglas County, Nevada and was ordered to pay a
24 fine. This conviction occurred prior to the specified 10-year period and, therefore, Respondent
25 was not required to disclose it in his Application. However, it may serve as a discretionary basis
26 for denial.

27 ² This code provision may be found at:
28 <https://dcnvda.org/CountyCodes.aspx?TID=51&CID=116&SID=400#9.36.010> (retrieved on
April 26, 2021).

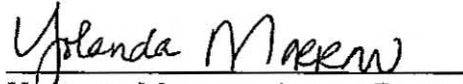
1 13. On March 17, 2005, Respondent was convicted of violating Vehicle Code section
2 23152, subdivision (b), driving under the influence of alcohol/0.08 percent, a misdemeanor, in
3 San Joaquin County Superior Court case number MAN-CR-MI-2005-0004320. Respondent was
4 sentenced to three years of probation and ordered to pay a fine and restitution. This conviction
5 occurred prior to the specified 10-year period and, therefore, Respondent was not required to
6 disclose it in his Application. However, it may serve as a discretionary basis for denial.
7 (Bus. & Prof. Code, §§ 19857, subds. (a) & (b), 19914; Cal. Code. Regs., tit. 4, §§ 12105.)

8 **PRAYER**

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

- 11 1. Denying Respondent’s Application; and
12 2. Taking such other and further action as the Commission may deem appropriate.

13
14 Dated: April 29, 2021

15 
16 _____
17 YOLANDA MORROW, ACTING DIRECTOR
18 Bureau of Gambling Control
19 California Department of Justice
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1 APPENDIX A

2 BUSINESS AND PROFESSIONS CODE

- 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
7 gambling establishments is vested in the commission.

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

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

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

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

21 (b) For the purposes of this section, "unqualified person" means a
22 person who is found to be unqualified pursuant to the criteria set forth
23 in Section 19857, and "disqualified person" means a person who is
24 found to be disqualified pursuant to the criteria set forth in Section
25 19859.

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

27 The commission shall have all powers necessary and proper to
28 enable it fully and effectually to carry out the policies and purposes of
29 this chapter,³ including, without limitation, the power to do all of the
30 following:

31 * * *

32 (b) For any cause deemed reasonable by the commission, deny
33 any application for a license, permit, or approval provided for in this
34 chapter or regulations adopted pursuant to this chapter, limit,
35 condition, or restrict any license, permit, or approval, or impose any
36 fine upon any person licensed or approved. The commission may
37 condition, restrict, discipline, or take action against the license of an

38 ³ "Chapter" refers to Business and Professions Code, division 8, chapter 5, (commencing
with section 19800), also known as the Gambling Control Act.

1 individual owner endorsed on the license certificate of the gambling
2 enterprise whether or not the commission takes action against the
license of the gambling enterprise.

3 * * *

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

- 6
7 4. Business and Professions Code section 19853, subdivision (a), provides in part:

8 The commission, by regulation or order, may require that the
9 following persons register with the commission, apply for a finding of
suitability as defined in subdivision (i) of 19805, or apply for a
10 gambling license:

11 * * *

12 (3) Any person who does business on the premises of a
licensed gambling establishment.

- 13 5. Business and Professions Code section 19856 provides, in part:

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

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

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

- 23
24 6. Business and Professions Code section 19857 provides:

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

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

28 (b) A person whose prior activities, criminal record, if any,

1 reputation, habits, and associations do not pose a threat to the public
2 interest of this state, or to the effective regulation and control of
3 controlled gambling, or create or enhance the dangers of unsuitable,
4 unfair, or illegal practices, methods, and activities in the conduct of
5 controlled gambling, or in the carrying on of the business and financial
6 arrangements incidental thereto.

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

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

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

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

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

19 8. Business and Professions Code section 19866 provides:

20 An applicant for licensing or for any approval or consent required
21 by this chapter, shall make full and true disclosure of all information
22 to the department and the commission as necessary to carry out the
23 policies of this state relating to licensing, registration, and control of
24 gambling.

25 9. Business and Professions Code section 19870 provides:

26 (a) The commission, after considering the recommendation of the
27 chief⁽⁴⁾ and any other testimony and written comments as may be
28 presented at the meeting, or as may have been submitted in writing to
the commission prior to the meeting, may either deny the application
or grant a license to an applicant who it determines to be qualified to
hold the license.

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

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

⁴ "Chief" refers to the Director of the Bureau. (Bus. & Prof. Code, § 19805, subd. (d).)

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

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

11 10. Business and Professions Code section 19871 provides:

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

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

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

18 (A) To call and examine witnesses.

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

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

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

26 (E) To offer rebuttal evidence.

27 (3) If the applicant does not testify in his or her own behalf,
28 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.

1 (b) Nothing in this section confers upon an applicant a right to
2 discovery of the department's⁵ investigative reports or to require
3 disclosure of any document or information the disclosure of which is
4 otherwise prohibited by any other provision of this chapter.

5 11. Business and Professions Code section 19914 provides, in part:

6 (a) The commission may revoke a work permit or, if issued by
7 the licensing authority of a city, county, or city and county, notify the
8 authority to revoke it, and the licensing authority shall revoke it, if the
9 commission finds, after a hearing, that a gambling enterprise employee
10 or independent agent has failed to disclose, misstated, or otherwise
11 misled the department or the commission with respect to any fact
12 contained in any application for a work permit, or if the commission
13 finds that the employee or independent agent, subsequent to being
14 issued a work permit, has done any of the following:

15 (1) Committed, attempted, or conspired to do any acts
16 prohibited by this chapter.

17 * * *

18 (3) Concealed or refused to disclose any material fact in any
19 investigation by the department.

20 **CALIFORNIA CODE OF REGULATIONS**

21 12. California Code of Regulations, title 4, section 12056, subdivision (a) provides, in
22 part:

23 If the Commission elects to hold an evidentiary hearing, the
24 hearing will be conducted as a GCA hearing under Section 12060,
25 unless the Executive Director or the Commission determines the
26 hearing should be conducted as an APA hearing under Section
27 12058

28 13. California Code of Regulations, title 4, section 12060, provides:

(a) If the Executive Director determines it is appropriate, he or
she may set an application for consideration at a GCA hearing in
advance of a meeting pursuant to Section 12054. The Executive
Director shall give notice to the applicant, pursuant to paragraph (2)
subsection (c) of Section 12052, to the Office of the Attorney General,
and to the Bureau no later than 90 calendar days in advance of the
GCA hearing. The Executive Director's determination will be based
on information contained in the Bureau's report or other appropriate
sources including, without limitation, a request from the Bureau or
applicant as well as the Commission's operational considerations. The
Commission retains the authority to refer the matter to an APA
hearing pursuant to subsection (a) of Section 12056 or hear the matter

⁵ "Department" refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd.
(h).)

1 at a Section 12054 meeting if the Commission deems it appropriate.

2 (b) When the Commission has elected to hold a GCA hearing, the
3 Executive Director shall give notice to the applicant, pursuant to
4 paragraph (2) subsection (c) of Section 12052, to the Office of the
5 Attorney General, and to the Bureau no later than 60 calendar days in
6 advance of the GCA hearing.

7 (c) The presiding officer shall have no communication with the
8 Commission or Commission staff upon the merits, or upon
9 information or documents related to the application prior to the
10 evidentiary hearing. The Executive Director shall designate a
11 presiding officer which shall be:

- 12 (1) A member of the Commission's legal staff; or,
- 13 (2) An Administrative Law Judge.

14 (d) The applicant or the complainant, or the applicant and the
15 complainant, may request a continuance in writing to the Executive
16 Director stating the reason for the continuance and any proposed
17 future hearing dates. The Executive Director or Commission may
18 approve the request.

19 (e) The complainant shall provide to the applicant, at least 45
20 calendar days prior to the GCA hearing, and the applicant shall
21 provide to the complainant, at least 30 calendar days prior to the GCA
22 hearing, the following items:

- 23 (1) A list of potential witnesses with the general subject of
24 the testimony of each witness;
- 25 (2) Copies of all documentary evidence intended to be
26 introduced at the hearing and not previously provided;
- 27 (3) Reports or statements of parties and witnesses, if
28 available; and
- (4) All other written comments or writings containing
relevant evidence.

(f) A presiding officer shall rule on the admissibility of evidence
and on any objections raised except for objections raised under
subsection (g). A ruling by the presiding officer shall be final.

(1) In advance of the GCA hearing, upon a motion of a party
or by order of the presiding officer, the presiding officer may
conduct a pre-hearing conference, either in person, via
teleconference, or by email exchange, subject to the presiding
officer's availability and shall issue a pre-hearing order if
appropriate or requested by either party. The pre-hearing
conference and order may address the following:

- (A) Evidentiary issues;

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(B) Witness and exhibit lists;

(C) Alterations in the Bureau recommendation;

(D) Stipulation for undisputed facts including the admission of the Bureau's report; and

(E) Other issues that may be deemed appropriate to promote the orderly and prompt conduct of the hearing.

(2) The GCA hearing need not be conducted according to technical rules of evidence. Any relevant evidence may be considered, and is sufficient in itself to support findings if it is the sort of evidence on which reasonable 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.

(g) The Commission may, at any time upon a showing of prejudice by the objecting party:

(1) Prohibit the testimony of any witness or the introduction of any documentary evidence that has not been disclosed pursuant to subsection (e); or

(2) Continue any meeting or hearing as necessary to mitigate any prejudice.

(h) The complainant shall present all facts and information in the Bureau report, if any, and the results of the Bureau's background investigation, and the basis for any recommendation, if the Bureau filed one with the Commission according to Business and Professions Code section 19868, to enable the Commission to make an informed decision on whether the applicant has met his, her, or its burden of proof. The complainant may but is not required to recommend or seek any particular outcome during the evidentiary hearing, unless it so chooses.

(i) The burden of proof is on the applicant at all times to prove his, her, or its qualifications to receive any license or other approval under the Act.

(j) The applicant may choose to represent himself, herself, or itself, or may retain an attorney or lay representative.

(k) Except as otherwise provided in subsection (g), the complainant and applicant shall have the right to call and examine witnesses under oath; to introduce relevant exhibits and documentary evidence; to cross-examine opposing witnesses on any relevant matter, even if the matter was not covered in direct examination; to impeach any witness, regardless of which party first called the witness to testify; and to offer rebuttal evidence. If the applicant does not testify on his, her or its own behalf, the applicant may be called and examined, under oath, as if under cross-examination.

1 (l) Oral evidence shall be taken upon oath or affirmation, which
2 may be administered by the Executive Director, a member of the
Commission, or the presiding officer, if an Administrative Law Judge.

3 (m) At the conclusion of the evidentiary hearing, the members of
4 the Commission shall take the matter under submission, may discuss
5 the matter in a closed session meeting, and may schedule future closed
session meetings for deliberation.

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

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

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

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

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

14 (1) Cause set forth in Business and Professions Code section
15 19914, subdivision (a), paragraphs (1) through (9), inclusive.

16 * * *

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

19 * * *

20 (e) The provisions of Business and Professions Code sections
21 19857, 19859, and 19914, subdivision (a) shall be deemed
22 incorporated by reference into this regulation for the purposes set forth
23 in this section. For the purposes of this section, the criteria
incorporated by reference in these regulations from Business and
Professions Code section 19914, subdivision (a), apply to conduct or
events occurring prior to the filing of an application for a work permit.

24 **DOUGLAS COUNTY, NEVADA, CODE**

25 15. Douglas County Code section 9.36.010 provides:

26 A. It is unlawful for any person to go upon the land or into any
27 building of another with intent to vex or annoy the owner or occupant,
or to commit any unlawful act, or to willfully go or remain upon any
28 land or in any building after having been warned by the owner or
occupant not to trespass.

1 B. Every owner or other occupant of any land is deemed to have
2 given sufficient warning against trespassing, within the meaning of
this section if the owner or occupant:

3 1. Posts in a conspicuous manner on each side of the
4 property upon or near the boundary, at intervals of not more than
5 seven hundred feet, legible signs warning persons not to trespass;
or

6 2. Fences the area.

7 C. It is prima facie evidence of trespass for any person to be
8 found on private or public property which is posted or fenced as
provided in subsection B without lawful business with the owner or
occupant of the property.

9 D. As used in this section, "fence" means a barrier sufficient to
10 indicate an intent to restrict the area to human ingress, including but
11 not limited to a wall, hedge or chain link or wire mesh fence. (Ord.
392 §1, 1978)

12 16. Douglas County Code section 9.36.020 provides:

13 Any violation of the provisions of this chapter constitutes a
14 misdemeanor and shall be punishable as set forth in section 1.08.010
of this code. (Ord. 392 §1, 1978)