

MISSOURI GAMING COMMISSION  
COMMISSION RESOLUTION NO. 16-044

TANYA M. NICHOLS (f.k.a. Tatyana G. Nikolova)  
October 26, 2016

WHEREAS, Tanya M. Nichols, formerly known as Tatyana G. Nikolova (“Nichols”), requested a hearing to contest the proposed disciplinary action initiated against her on December 28, 2015, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-15-355; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Nichols’ request and the Hearing Officer has submitted the proposed Findings of Fact, Conclusions of Law and Final Order attached hereto (collectively the "Final Order") for approval by the Commission; and

NOW, THEREFORE, BE IT RESOLVED, that the Commission has reviewed the Final Order and hereby modifies the Hearing Officer Recommendation and issues to Nichols a suspension of her occupational license for six (6) months in the above-referenced case in the matter of DC-15-355; and

BE IT FURTHER RESOLVED, that this shall be considered a final decision of the Missouri Gaming Commission.

**BEFORE THE MISSOURI GAMING COMMISSION**

In Re: )  
 )  
TANYA M. NICHOLS ) Case No. DC 15-355  
(f.k.a. TATYANA G. NIKOLOVA) )  
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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER**

The above-captioned matter comes before the Missouri Gaming Commission (hereinafter referred to as "Commission") ("MGC") upon a request for hearing dated January 25, 2016, submitted by KEVIN O'BRIEN, ESQ., Legal Counsel for TANYA M. NICHOLS (hereinafter referred to as "Licensee"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated December 28, 2016. The designated Hearing Officer, Mr. Chas. H. Steib, conducted a hearing on June 21, 2016, where the Attorney for Licensee and the Commission's attorney, Ms. Carolyn H. Kerr, appeared to present evidence and arguments of law.

**FINDINGS OF FACT**

1. The following Stipulations of Facts was agreed upon by Counsel for the Commission, Counsel for Licensee and Licensee.

**STIPULATION OF FACTS**

Come now the Executive Director of the Missouri Gaming Commission, by and through counsel, acting in his official capacity, and Licensee Tanya Nichols (f.k.a. Tatyana G. Nikolova) personally and by counsel, and together stipulate to the following facts:

1. The Missouri Gaming Commission (the "Commission") is a state commission created under Chapter 313, RSMO (2000)<sup>1</sup>, with jurisdiction over gaming activities, including riverboat gambling activities, in the State of Missouri.
2. The Commission has, pursuant to § 313.004.4, RSMO, and 11 CSR 45-4.260(1), delegated and authorized the Executive Director to carry out its duties as set forth in Chapter 313, RSMO, including the supervision, regulation, and making the initial determination of discipline for Level I and II Occupational Licensees.
3. The Executive Director issued Tanya Nichols (f.k.a. Tatyana G. Nikolova) ("Licensee") a Level II Occupational License for employment on an excursion gambling boat licensed by the Commission (License #MGC159674).

4. The Commission issued a Class B riverboat gambling license to The Missouri Gaming Company ("Company") to conduct games on and operate the excursion gambling boat known as the *Argosy Riverside Casino* ("Casino").

5. As the holder of an occupational license, Licensee is subject to the provisions of §§ 313.800 50 313.850, RSMO, and the regulations promulgated thereunder by the Commission.

6. At all relevant times as alleged in the Preliminary Order for Disciplinary Action sent to Licensee on or about December 28, 2015, Licensee was employed by *Argosy Riverside Casino* as an AR/AP Coordinator.

7. At all relevant times as alleged in the Preliminary Order for Disciplinary Action sent to Licensee on or about December 28, 2015, Trooper Rebecca Eagan ("Tpr. Eagan") of the Missouri State Highway Patrol ("MSHP") was assigned to the Gaming Division of the MSHP as agents of the Commission.

8. On September 3, 2015, the Casino's Slot Supervisor contacted Tpr. Eagan about a patron who won a taxable jackpot but immediately left the Casino.

9. On September 3, 2015, Licensee won a taxable jackpot and immediately left the Casino property without claiming the jackpot.

10. On or about September 3, 2015, Tpr. Eagan arrested Licensee for trespassing / DAP on a gaming floor.

11. Licensee enrolled in the DAP program on November 6, 2006.

12. Licensee admitted she was a DAP when she won the taxable jackpot on September 3, 2015.

13. Licensee's placement on the DAP List was rescinded on September 9, 2015.

14. Exhibit 1 is a true and accurate copy of the December 28, 2015, cover letter and the Preliminary Order for Disciplinary Action (hereafter "Preliminary Order"), addressed to and served upon Licensee notifying her of the proposed disciplinary action against her relating to the aforementioned facts.

15. Exhibit 2 is a true and accurate copy of a fax cover sheet dated January 25, 2016, along with letter from the Law Office of Kevin O'Brien, LLC, requesting a hearing in the above-captioned cause and an entry of appearance for Kevin O'Brien as Licensee's attorney.

16. Exhibit 3 is a true and accurate copy of the Gaming Report compiled and written by Trooper Rebecca Eagan regarding Incident Number 20151004001 and her investigation, which is the basis for the Preliminary Order filed in the above-captioned cause.

17. Exhibit 4 is a true and accurate copy of Licensee's DAP Information Sheet dated May 20, 2016.

18. The documents attached hereto as Exhibits 1 through 4 and described above are true and accurate copies of the documents to be offered into evidence by the MGC, and the parties stipulate to the admission of said documents as proper evidence at an evidentiary hearing.

2. The agreed upon Stipulation of Facts, *supra*, was admitted into evidence.

3. Licensee is currently employed at the *Argosy Riverside Casino* as an accounts receivable / accounts payable coordinator accounting associate (Tr.p.14 l.12-25).

4. Commencing in 2006 through 2015, Licensee placed herself on and removed herself several times from the Disassociated Persons List ("DAP") (Tr.p.15, l.12-25, p.16, l.1-11) as a result of her recognizing her gambling behavior being an addiction (Tr.p.17, l.3-5).

5. Licensee describes herself as a compulsive gambler (Tr.p.16, l.14-17).

6. As per Paragraph No. 16 of the agreed upon Stipulation of Facts, *supra*:

i. On September 3, 2015, Licensee won a taxable jackpot and immediately left the Casino property without claiming the jackpot;

ii. Licensee enrolled in the DAP program on November 6, 2006;

iii. Tpr. Eagan arrested Licensee for trespassing / DAP on a gambling floor; and

iv. Licensee admitted she was a DAP and that she had won the taxable jackpot on September 3, 2015.

7. Licensee voluntarily sought out professional counseling and therapy and is currently under the weekly care of Peter Gusman of Northland Counseling Services (Tr.p.19, l.24-15) (Tr.p.20, l.1-10) (Exhibit A).

8. Licensee holds a Masters Degree in Accounting and is a Certified Public Accountant.

9. Commission Exhibit 1 (correspondence dated December 8, 2015, with attached Preliminary Order for Disciplinary Order); Commission Exhibit 2 (correspondence dated January 25, 2016, from Legal Counsel for Licensee requesting a hearing); Commission Exhibit 3 (Commission Gaming Incident Report No. 20151004001); and Commission Exhibit 4 (Licensee's DAP Information Sheet dated May 20, 2016) are admitted into evidence via the admitted Stipulation of Facts agreed upon by Legal Counsel of Record.

10. Licensee's Exhibit A (correspondence dated June 15, 2016, from Northland Counseling Services re: Licensee's recovery program); Licensee's Exhibit B (Progress Notes of Northland Counseling Services re: Licensee); are admitted into evidence without objection.

### CONCLUSIONS OF LAW

1. "The Commission shall have the full jurisdiction over and shall supervise all gaming operations governed by Section 313.800 to 313.850." Section 313.805, MO. REV. STAT. 2000.

2. "A holder of any license shall be the subject to imposition of penalties, suspension or revocation of such license, or if the person is an applicant for licensure, the denial of the application, for any act or failure to act by himself or his agents or employees, that is injurious to the public health, safety, morals, good order and general welfare of the people of the State of Missouri, or that would discredit or tend to discredit the Missouri gaming industry or the State of Missouri unless the licensee proves by clear and convincing evidence that it is not guilty of such action . . . the following acts or omissions may be grounds for such discipline: (1) Failing to comply with or make provision for compliance with Sections 313.800 to 313.850, the rules and regulations of the Commission or any federal, state or local law regulation; . . . "Section 313.812.14, MO. REV. STAT. 2000.

3. "The State has a legitimate concern in strictly regulating and monitoring riverboat gaming operations. As such, any doubt as to the legislative objective or intent as to the Commission's power to regulate riverboat gaming operations in this State must be resolved in favor of strict regulation." *Pen-Yan Investment, Inc. v. Boyd Kansas City, Inc.*, 952 S.W.2d 299, 307 (Mo. App. 1997).

4. The burden of proof is at all times on the Licensee. The Licensee shall have the affirmative responsibility of establishing the facts of his/her case by clear and convincing evidence . . ." Regulation 11 CSR 45-13.060(2).

5. "Clear and convincing evidence" is evidence that "instantly tilts the scales in the affirmative when weighed against the opposing evidence, leaving the fact finder with an abiding conviction that the evidence is true." *State ex rel. Department of Social Services v. Stone*, 71 S.W.3d 643,646 (Mo. App. 2002).

6. "The Commission shall have the following powers . . . to access any appropriate administrative penalty against a licensee, including, but not limited to, suspension, revocation, and penalties of an amount as determined by the commission . . ." Section 313.805(6), MO. REV. STAT. 2000.

7. Section 313.812.14(1), RSMO (2000), states that a Licensee may be disciplined for failing to comply with or make provisions for compliance with Section 313.800 to 313.850, the rules and regulations of the Commission of any federal, state or local law or regulation.

8. Section 313.812.14(2), RSMO (2000), states that a Licensee may be disciplined for failing to comply with any rule, order of ruling of the Commission or its agents pertaining to gaming.

9. Section 313.812.14(9), RSMO (2000), states that a Licensee may be disciplined for incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties by Sections 313.800 to 313.850.

10. Under 11 CSR 45-4.260(4)(E), (F), (L) and (Q), the Commission may suspend (emphasis added) or revoke an occupational license of any person if any of the following occur:

- a. The Licensee fails “to comply with or make provisions to comply with Chapter 313, RSMO, the rules of this commission, or any federal, state, or local law or regulation,” under 11 CSR 45-4.260(4)(E);
- b. The Licensee “fails to comply with any rule, order or ruling of the commission or its agents” under 11 CSR 45-4.260(4)(F);
- c. The Licensee “is financially irresponsible” under 11 CSR 45-4.260(4)(L); and/or
- d. The Licensee’s actions demonstrate “incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties regulated by Sections 313.800 to 313.850, RSMO,; under 11 CSR 45-4.260(4)(Q).

11. Section 313.813, RSMO, states that “Any person that has been self-excluded is guilty of trespassing in the first degree pursuant to Section 569.140 if such person enters an excursion gambling boat.”

12. Section 569.140.1, RSMO, states the “A person commits the crime of trespass in the first degree if he knowingly enters unlawfully or knowingly remain unlawfully in a building or inhabitable structure or upon real property.

13. Title 11 CSR 45-10.030 states, in pertinent part, as follows:

- (1) Licensees shall promptly report to the commission any facts which the licensee has reasonable grounds to believe indicate a violation of law (other than minor traffic violations), minimum internal control standard requirements or commission rule committed by licensees, their employees or others, including, without limitation, the performance of licensed activities different from those permitted under their license.

\* \* \*

- (3) In the event that a licensee or employees of the licensee knows or should have known that an illegal or violent act has been committed on or about the licensed premises, they shall immediately report the occurrence to law enforcement authorities and shall cooperate with law enforcement authorities and agents of the commission during the course of any investigation into an occurrence.

\* \* \*

- (7) All occupational licensees shall have a working knowledge of Chapter 313.800, RSMO *et seq.*, *Code of State Regulations*, Title 11 Division 45, and the internal controls of the Class A or B licensees for whom they are currently employed by as they pertain to the responsibilities and limitations of their job.

14. The action and omissions of Licensee in paragraph 6, including subparts above, violate §§ 313.813 and 569.140.1, RSMO and 11 CAR 45-10.030(1), (3) and (7) and, thus, provide grounds to discipline Licensee's occupational license pursuant to §§ 313,805 and 313,812.14(1) and (9), RSMO and 11 CSR 45-4.260(4)(E), (F), (L) and (Q).

### DISCUSSION

Licensee has admitted via the Stipulation of Facts Agreement her actions which violate §§ 313.813 and 569.140.1, RSMO, which provide grounds to discipline Licensee.

Licensee admitted under oath her compulsory behavior regarding gambling. However, she has voluntarily entered a professional treatment and recovery plan to overcome this. She has also voluntarily placed herself in the past on the Disassociated Persons List.

Pursuant to 11 CSR 45-13.020, the Hearing Officer shall recommend a final order to the Commission.

### FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED that Licensee did not meet her burden of proof to show clearly and convincingly that she should not be subject to discipline for the violations set forth herein.

It is the Recommendation of the Hearing Officer that Licensee's Level II License be suspended for one (1) calendar year to afford Licensee an opportunity to successfully complete her counseling program after which she may apply for rescission of her suspension.

Dated:

August 1, 2014

  
Chas. H. Steib, Hearing Officer