

IN THE MISSOURI GAMING COMMISSION

In RE: Barry Gene Tate)
) DC 13-384
)
License Number: 312376)

PRELIMINARY ORDER FOR DISCIPLINARY ACTION

Comes now the Executive Director of the Missouri Gaming Commission, acting in his official capacity, pursuant to 11 CSR 45-13.050, and states as follows:

1. The Missouri Gaming Commission (the "Commission") is a state commission created under Chapter 313, RSMo (2000), with jurisdiction over gaming activities, including riverboat gambling activities, in the State of Missouri.
2. The Executive Director issued Barry Gene Tate ("Licensee") a Level I Occupational License for employment on an excursion gambling boat(s) licensed by the Commission.
3. The Commission issued a Class B riverboat gambling license to IOC-Caruthersville, LLC (the "Company"), to conduct games on and operate the excursion gambling boat known as the *Lady Luck Casino, Caruthersville* ("Casino").
4. As the holder of an occupational license, Licensee is subject to the provisions of Sections 313.800 to 313.850, RSMo (2000), and the regulations promulgated thereunder by the Commission.
5. The Commission believes the following facts to be true:¹
 - a. Licensee is employed by the Company as a Chief of Security aboard the *Lady Luck Casino, Caruthersville*.
 - b. Licensee knew of a Security Officer/Emergency Medical Technician being assigned to a key escort on April 17, 2013.
 - c. The Security Officer/Emergency Medical Technician that was assigned to the key escort was the only designated Emergency Medical Services first responder ("EMS") on duty at the time of the key escort.

¹ GIR 20130417007

- d. Licensee knew that the Security Officer/Emergency Medical Technician assigned to the key escort was the only EMS on duty.
 - e. During the assigned key escort, a call for an EMS went out, and the Security Officer/Emergency Medical Technician had to wait on Licensee to relieve her on the key escort before responding to the EMS call.
 - f. Licensee's actions and inactions in allowing the only designated EMS on duty at the time to be assigned to a key escort violates Section 313.812.14, RSMo, Section 313.812.14(1), (2), & (9), 11 CSR 45-12.090(3) & (4), 11 CSR 45-7.160, MICS B 4.02, N 3.03 and Lady Luck Casino, Caruthersville ICS B 4.02 & N 3.03.
6. Under Section 313.812.14, RSMo (2000), "A holder of any license shall be subject to imposition of penalties, suspension or revocation of such license, or other action 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..."
 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 Sections 313.800 to 313.850, the rules and regulations of the Commission or 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 or 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 regulated by sections 313.800 to 313.850.
 10. Under 11 CSR 45-9.060(3), violations of the Commission's Minimum Internal Control Standards ("MICS") by a Class A licensee or an agent or employee of the Class A licensee are deemed to be unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to administrative penalty pursuant to Section 313.805(6), RSMo (2000), and 11 CSR 45-1 *et seq.*; as amended from time to time.
 11. Under 11 CSR 45-9.060(4), violations of the Class A licensee's internal control system ("ICS") by the Class A licensee or an agent or employee of the Class A licensee shall be prima facie evidence of unsuitable conduct for which the Class A licensee and/or its agents or employees may be subject to discipline pursuant to Section 313.805(6), RSMo (2000), and 11 CSR 45-1 *et seq.*, as amended from time to time.

12. Under 11 CSR 45-7.160 “(1) An emergency medical services (EMS) first responder is required to be on board an excursion gambling boat at all times when gaming is being conducted or when passengers are present.
(2) The Class B licensee is responsible for the full cost of hiring EMS first responders, who shall be considered gaming employees for the purpose of licensure.
(3) Each Class B licensee shall ensure all designated EMS first responders shall—
 - (A) Be, at a minimum, trained according to national standards by a state-certified training agency pursuant to Chapter 190, RSMo, 19 CSR 30-40.331, and the National EMS Scope of Practice Model for emergency medical responder;
 - (B) Maintain a current nationally-recognized registration as an emergency medical responder or current emergency medical technician license pursuant to Chapter 190, RSMo; and
 - (C) Have their emergency medical activities monitored by a medical director per 19 CSR 30-40.303.”

13. MICS B 4.02 states “The individual who signs out a sensitive key shall maintain custody of the key until the key is returned to the sensitive key box. Keys shall not be passed to other individuals, except keys utilized in the soft count room as noted below. In the event of an emergency (illness or injury rendering the individual incapable of returning the key) a supervisor may return the key with a notation on the Sensitive Key Log. If an automated key system is used and an emergency warrants the need for a supervisor to return a key for an individual, an explanation shall be documented as described in the Internal Control System. The only keys that may be passed are keys utilized within the soft count room, which may be issued to the count team lead and distributed to other count team members only while inside the locked count room. The lead shall regain control of all these keys prior to the door being unlocked for any reason.”

14. MICS N 3.03 states “Designated primary duties are to respond immediately to medical emergencies. Designated Emergency Medical Services (EMS) First Responders shall not be assigned duties that would prevent them from immediately responding to a medical emergency. A designated EMS First Responder shall maintain control as primary care provider unless physically incapable of continuing care, the patient refuses further care, or the patient is transferred to a higher level of care.”

15. Lady Luck Casino, Caruthersville ICS B 4.02 states “The individual who signs out a sensitive key shall maintain custody of the key until the key is returned to the sensitive key box. Keys shall not be passed to other individuals except keys utilized in the soft count room as noted below. In the event of an emergency (illness or injury rendering the individual incapable of returning the key) a supervisor may return the key with a notation on the Sensitive Key Log. If an automated key system is used and an emergency warrants the need for a supervisor to return a key for an individual, the supervisor will return the key and notify Surveillance, MGC, and the Security Lead or above. Surveillance will make a notation in the Daily Surveillance Report (RM5a & b). The only keys that may be passed are utilized within the soft count

room which may be issued to the count team lead and distributed to other count team members only while inside the locked count room. The lead shall regain control of all these keys prior to the door being unlocked for any reason.”

16. Lady Luck Casino, Caruthersville ICS N 3.03 states “Designated Emergency Medical Services (EMS) First Responders primary duties are to respond immediately to medical emergencies. Designated Emergency Medical Services (EMS) First Responders shall not be assigned duties that would prevent them from immediately responding to a medical emergency. A designated EMS first responder shall maintain control as primary care provider unless physically incapable of continuing care, the patient refuses further care or the patient is transferred to a higher level of care.”
17. The actions or omissions of Licensee as described in paragraph 5 above violate the following statutes, rules, MICS, or ICS: Section 313.812.14, RSMo, Section 313.812.14(1), (2), & (9), 11 CSR 45-12.090(3) & (4), 11 CSR 45-7.160, MICS B 4.02, N 3.03 and Lady Luck Casino, Caruthersville ICS B 4.02 & N 3.03.
18. Licensee is subject to discipline for such violations pursuant to 11 CSR 45-9.060(3) & (4), Section 313.805(6), RSMo (2000), and Section 313.812.14, RSMo (2000).

PENALTY PROPOSED

19. Under Section 313.805(6), RSMo (2000), the Commission has the power to assess any appropriate administrative penalty against Licensee, as the holder of a Level I occupational license.
20. THEREFORE, it is proposed that the Commission impose the following penalty against the license of Licensee for the violations set forth herein: **Three (3) calendar days suspension.**

Dr. Barrett Hatches
Chairman
Missouri Gaming Commission

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she caused a true and correct copy of the following to be mailed, postage prepaid, this _____ day of October, 2013 to:

Barry G. Tate
1506 Eleanor St
Kennett, MO 63857

Dr. Barrett Hatches
Chairman
Missouri Gaming Commission

Similar Cases:

August 2011

Ameristar KC - 20110613002 (*Date of Incident 5-27-11*)

An investigation was done on insufficient staffing levels in the security department. The security department did not have enough security officers to fulfill their obligations such as escorts and table fills. Security Supervisor, Hungriano told an EMT to do an escort when he was not busy and could have done the escort himself. The Security Manager and the Director of Security did not want employees to talk to MGC about staffing levels. The Director of Security, Opolski, failed to cooperate with this investigation and he lied to an agent of the commission.

- Another incident occurred on June 13, 2011, where EMTs were conducting escorts on day shifts because there were not enough security officers to complete all the jobs security is tasked with. Three EMTs were conducting a job which would prevent them from immediately responding to a medical emergency. *It was determined another officer was available for the escort so this incident cannot be directly attributed to inadequate staffing levels.*

Mark Hungriano (SO - L2) - 1 day

Chester Opolski (Chief of Security - L1) - 10 days (*termed*)

Jerry Henderson (Security Shift Manager - L2) - 5 days Under 11 CSR 45-.260(4),

(m) – failure to cooperate with an investigation (although this is aimed at investigations outside of MGC);

(o) – committing an act that, if committed by a Class A licensee, would result in discipline; and

(q) – negligence, dishonesty, etc... in the performance of your duties.

Letter to GM - include GR - 20110529001 (Les Hahn)

February 2012

Ameristar SC – 20111222011 (*Date of Incident 12-18-11*) (escort, abandon, post)

A Security/EMT Officer had left a table fill, containing funds, unattended on the podium in the High Limit table games pit to answer a medical call on the gaming floor. The SO stated she had been instructed by her grave shift supervisor if she was assigned a table fill and received a medical call, she was to notify surveillance and respond to the medical call.

Rikkita Pitts (EMT/Officer – L2) – NPL

April 2012

Lady Luck – 20120227014 (*Date of Incident 2-26-12*)

Lady Luck Casino failed to have an emergency medical technician (EMT) on board the boat at all times when gaming is being conducted or when patrons are present. The two security officers who were the assigned EMTs took off work early. Their absence resulted in insufficient coverage. The Operations Manager, McCracken, presumed a former security officer, who now works in the surveillance department and is an EMT would meet the requirements. The Operations Manager stated she called surveillance and they were ok with it.

Patricia McCracken (Operations Manager – L1) – 2 days

Scott Warren (Surveillance Agent – L2) – NPL (*Not listed as a violator*)

Luther Sturm (Surveillance Sup – L2) – NPL (*Not listed as a violator*)

Casino Fine - \$5,000 (*Casino received letter in 2009 pertaining to this same thing.*)