

TATTOO YOU

By Richard Schuetz

*The Biggest
Criminals
Wear Ties—
Not Tattoos*

—Unknown

I joined the casino industry as a dealer at Harrah's Club in Reno in the early 1970s. As I continued to move up through the ranks of the business I came to discover the necessity of being licensed as a key employee, and this process carried with it the requirement to fill-out a somewhat involved application. My first experience with the background check and the application was in Nevada, and as I began to migrate across the United States as a casino executive in other jurisdictions, I soon had the opportunity to experience applications from these other states and that was always interesting.

This entire process really went on steroids when I was invited to be on the board of directors of Shuffle Master Gaming. Once I accepted this appointment I met two of Shuffle's lawyers, who in concert with three additional staff members were my escorts through the application process in a large number of jurisdictions around the world. This included far away places like New Zealand, Australia, and across Europe. It included tribal commissions across the United States and the First Nations in Canada, as

well as a number of state gaming regulatory agencies. Even more interesting, these applications were all different, some in minor ways, and some in significant ways.

Back in the day, I seem to recall that the state of New Jersey won the title of longest application, and one of the riverboat states printed its application on a light pink paper I was supposed to use, but the point was that the applications were often different, and besides this being a pain, it carried with it certain risks.

Every gaming application I have ever seen, and I have seen a lot of them, contains the stern warning that a failure to answer a question truthfully can affect the outcome of the suitability finding. Furthermore, one quickly learns in this industry that if you get crosswise with one jurisdiction it can have implications in other jurisdictions, that is, it can domino. This reality became a real concern to me because with a great many different and unique applications, the possibility existed that I could become confused as to exactly what a particular jurisdiction wanted in response to a question. Nevada had been in the gambling regulatory business for a great many years, and there was a substantial amount of institutional knowledge around with respect to how they wanted things done, and how each question was to be answered. In many of the new jurisdictions, however, this was not the case. This made the experience somewhat daunting.

In response to this absence of application harmonization, a number of responsible people in different jurisdictions began working together to develop a more uniform product, and the end result of this experience was the Multi-Jurisdictional Personal History Disclosure Form. This ushered the dawn of a new age in the gambling application in the early 2000s, and those involved should be proud of their efforts at this Herculean task. This was a material leap in sanity for all involved in the industry, and those facilitating this advancement should be recognized as the vanguard of a better harmonized regulatory environment. While the end product was lengthier than any of the composite parts, one should expect this, for the effort was to provide a *comprehensive* list of questions. In addition, because of the particular nuances of each jurisdiction, many also required a supplemental form to accompany the Multi-Jurisdictional form. This would include aspects unique to the state or country, such as immigration status and related disclosures, taxation issues, and how the release of personal information was to be handled and acquired.

When one views the Multi-Jurisdictional form, the first instruction, listed as I.a., is:

You must make accurate statements and include all material facts. Any misrepresentation, or the failure to provide requested information, may result in the denial of your application.

This instruction is probably the most important that there is on the application. Then, on page 4 of the application comes the following question:

DO YOU HAVE ANY SCARS, TATOOS, OR OTHER DISTINGUISHING MARKS AND/OR CHARACTERISTICS? IF SO, PLEASE DESCRIBE.

Following this question, in the event the applicant missed this theme with instructions I.a., comes the following warning:

IMPORTANT

FAILURE TO ANSWER ANY QUESTION ON THIS FORM COMPLETELY AND TRUTHFULLY WILL RESULT IN DENIAL OF YOUR APPLICATION.

What I would like to suggest here is that this question probably does not belong on an application to determine if someone is suitable to participate in the gambling industry.

To address the low fruit on this tree first, let's start with the listing of scars. The most obvious scar on many men is a circumcision, a scar that is carried by more than 80% of the US males between the ages of 14 and 59. Several points here:

- I doubt that most men possessing this scar have listed it on their multi-jurisdictional applications, and I have never heard of an investigator checking the veracity of an applicant's response in this area.
- I have never had a legal counsel I was working with on an application ask me directly whether I was so scarred, or made any effort to acquire this information (to my knowledge).
- I also can't believe that, as threatened in the application, that the failure to answer this question "completely and truthfully" will result in a denial of the individual's suitability. In fact, I am very much of the opinion that there are many individuals working within our industry, who are quite honest and honorable, and who are being quite useful and productive, who have not included this fact about their anatomy on the application. I also doubt that the industry will be ravaged by a purge of those that have declined to list this information. No, they will continue along as a licensed member (no pun intended...okay, pun intended) of the industry, having knowingly or unknowingly provided an error of omission on the application, and no one really cares.

Beyond this example, there are many other additional reasons why an inquisition into the scar landscape of an individual's body is probably inappropriate. This would include certain issues surrounding the privacy of medical information that can often be revealed by scars. More importantly, what great insight is gained from the knowledge of the scars on one's body in determining the suitability of an applicant for a gaming license? I know of no instances in all of licensed and regulated gambling where a scar has come into play regarding the determination of suitability of an applicant. "Damn, but for that

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Richard Schuetz

Richard Schuetz was appointed as the Executive Director of the Bermuda Casino Gaming Commission on September 1, 2015, following a four-year engagement as a commissioner for the California Gambling Control Commission. Prior to this, Mr. Schuetz has served in positions ranging from blackjack & dice dealer, to Executive Vice President, to President & CEO of casino resorts in numerous jurisdictions. Mr. Schuetz has worked as a senior executive in the gaming markets of Las Vegas, Atlantic City, Laughlin, Reno/Tahoe, Minnesota, Mississippi, and Louisiana. Mr. Schuetz has lectured throughout the world on the topics of gaming, gaming regulation, and casino marketing and has published over 80 articles in these areas.

The opinions expressed in this article are his alone, and do not necessarily reflect the position of the Government of Bermuda, the Bermuda Casino Gaming Commission, or any other entities or individuals within that country. The author is also sincerely appreciative of the help he received from his friends and colleagues throughout the gaming world in developing this article, understanding that any and all errors are his own.

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And so too it is with tattoos. The presence of a question concerning tattoos originates from law enforcement, often the source for human resources as a regulatory agency is initially constructed. There was a day when the adornments of one's body with tattoos was a sign that the person was certainly not mainstream, and as such, potentially suspect. Furthermore, it was once apparently true that people with tattoos were more likely to have had an adverse experience with the law enforcement or the judicial system, but today tattoos are sported by a more broad-based demographic. There is also the argument that a tattoo might provide some insight into a criminal investigation. In some traumatizing crimes, such as a rape, the victim may remember little, but will recall a distinctive tattoo or marking, and in this sense that information could prove of value in solving a crime where such a bit of evidence could prove pivotal. But in a regulatory environment we are talking about suitability and not crime solving, and we are also talking about a modern world where a tattoo is more the rule than the exception.

There are those who might argue that a tattoo can provide certain insight into a gang or group affiliation, but if the background investigation is unable to ascertain that the individual was a member of the Sinaloa Cartel, the Crips, or the KKK, without the knowledge of the applicant's skin markings, well, that agency is probably lost as an investigatory entity anyway. Also, one would suspect that if the applicant did have some great statement on his or her body of their homage to white supremacy, to Carlos the Jackal, or whatever, he or she would probably lie about such a memorial emblazoned upon their body on the application, and I know of no regulatory agency that employs a body viewing process to audit scars and tattoos of all applicants. And if an applicant can fool an investigatory agency into believing that he did not belong to a gang or mobbed-up entity simply by keeping his shirt on, well, again, those investigators are so lost that nothing will probably awaken them.

More importantly, this type of information simply is not the business of the government. Let us just imagine that a very modern and respected general counsel, during her college years, may have had a spring break experience that ended up in a tattoo parlor, and maybe at the time it seemed quite brilliant to have a small heart placed on her inner thigh. Do we believe that this individual is going to faithfully disclose this bit of information to be incorporated on a suitability application to be memorialized on a government database? Or imagine the Ivy League graduate who may now be a chairman of the board, who, in a college-drinking episode had “Yale Sucks” put on his

butt. Do we really believe that this is critical information to determine his suitability, and that he is going to faithfully disclose such a bit of information for many a bureaucrat to share? (One can only imagine the repercussions if it were the case that the head of the regulatory body had in fact graduated from Yale). The point is, it is foolish to ask this question, and it is even more foolish to expect the applicant to answer it honestly. No, the point is that scars should have never been an area of inquiry, and the relevance of tattoos should be assigned to a bygone and antiquated era.

Regulatory cooperative efforts that attempt to enhance harmonization tend to be accretive in nature, implying that if an error is to be made it will be to include more, not less. Furthermore, in the United States, regulatory agencies are monopolies, and monopolies tend to be very slow to change and innovate. Finally, as regulatory agencies are formed in most states, they draw heavily from law enforcement to fill their ranks. It is these conditions that have probably assisted in regulators from across the United States asking inappropriate questions concerning scars and tattoos that do not really advance the exploration of suitability, and least in this day and age. We often do things because we do things. One would hope that as we mature as regulators that we would become better at developing a public policy calculus that weighs the intrusiveness of the inquiry against the potential gain from the information acquired, but these types of mature discussions are rather quite rare. This results in what my favorite gaming attorney refers to as voodoo regulation, that being we do things because we say we can, not because they build better regulatory schemes. Asking about scars and tattoos in this day and age is contrary to all things that a regulatory agency should stand for in that it potentially encourages evasion and deception upon the honest, and that is a terrible thing for a regulatory entity to encourage. Furthermore, these questions provide little insight into the whole question of suitability.

A cornerstone of the US regulatory model is the importance of the suitability of the participants, and this is for two good reasons. The first is that the best model we have of determining future behavior of an individual is past behavior, and so by only allowing people to participate who have not been mischievous in the past, we reduce the risk of there being future mischief within the industry. In addition, suitability is important because the background of the participants can shape the image of the industry, and this industry best flourishes when it is considered to have a clean and positive image. Neither of these important goals is adversely affected by eliminating questions about the characteristics of one's skin, for in this day and age it is a waste of time and patently annoying. ♣