



Massachusetts Gaming Commission Meeting Minutes

Date/Time: November 7, 2023, 10:00 a.m.
Place: Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 111 000 8355

The Commission conducted this public meeting remotely utilizing collaboration technology. The use of this technology was intended to ensure an adequate, alternative means of public access to the Commission’s deliberations for any interested member of the public.

Commissioners Present:

Chair Cathy Judd-Stein
Commissioner Eileen O’Brien
Commissioner Bradford Hill
Commissioner Nakisha Skinner
Commissioner Jordan Maynard

1. Call to Order ([00:00](#))

Chair Judd-Stein called to order the 486th Public Meeting of the Massachusetts Gaming Commission (“Commission”). Roll call attendance was conducted, and all five commissioners were present for the meeting.

2. Legal and IEB ([00:50](#))

- a. Review of Penn Entertainment and ESPN Deal, including presentation by Penn concerning said Deal

Chair Judd-Stein noted that information had been received from Penn Entertainment regarding the ESPN deal that was deemed confidential under MGC rules and regulations.

Heather Hall, IEB Assistant Director and Chief Enforcement Counsel, stated that she was present to discuss the Penn Entertainment – ESPN marketing deal with several others including: Karalyn O’Brien Licensing Division Chief, Zachary Mercer, Enforcement Counsel, and members of the legal team. Ms. Hall reported that there was a prior discussion of the deal during a meeting on October 19, 2023. The Commission had a number of questions regarding the deal and Penn

submitted a document in response. Chris Rogers, Executive Vice President and Chief Strategy Officer of Penn was present to address the document and answer Commissioner questions.

General Counsel Todd Grossman and Deputy General Counsel Caitlin Monahan were present to provide legal guidance as necessary.

Mr. Rogers introduced Erin Chamberlain, Penn Regional Vice President to present on the Penn-ESPN deal and rebranding from Barstool Sports to ESPNBet. She explained the proposed date for the rebranding was November 14, 2023, in all 17 US jurisdictions pending final approvals. Ms. Chamberlain reintroduced Mr. Rogers and Samantha Haggerty, Deputy Chief Compliance Officer and Regulatory Affairs Counsel and Adam Kates, Senior Director of Compliance at Penn Interactive.

Mr. Rogers noted the goal of the presentation was to address any outstanding questions regarding the ESPN deal, whether there have been any changes to Penn or PSI's suitability and whether the divestiture of Barstool Sports required any amendments to the licenses of Penn or PSI. Mr. Rogers recounted that the Commission had previously asked how other regulators had handled the Barstool Sports divestiture and noted that in their October 31, 2023 submission they had reported that there were no meaningful regulatory impediments to moving forward with the rebrand in other jurisdictions or questions of ongoing suitability for Penn. Mr. Rogers further noted that he believed Penn had complied with all Massachusetts laws and regulations to allow the rebranding to occur in Massachusetts pending a review of their house rules.

Penn noted they had begun conversations with the Commission before the August 8, 2023, public announcement of the deal. The next day they provided the Commission with their updated SEC filings. On August 15, 2023, Penn's Chief Compliance Officer, Chris Soriano, met with Commission staff to discuss these topics. On September 19, 2023, Mr. Soriano provided supplemental documentation related to the ESPN marketing deal and met again with Commission staff three days later. Mr. Soriano and Mr. Kates presented to the Commission on October 2, 2023, to provide supplemental information. Following Penn's recent quarterly earnings call they shared additional details about the ESPN partnership with the Commission.

Mr. Rogers then summarized the contents of the October 31, 2023, submission. He noted that the sportsbook agreement governs the terms of the relationship of the operation of ESPNBet. He explained that Barstool Sportsbook would be rebranded as ESPNBet in all available platforms. He also repeated that Penn would oversee and be directly responsible for the Sportsbook production, development, distribution, operations and promotions. He emphasized that Penn remains the responsible party for the conduct of licensed gaming operations and ESPN was a marketing partner. He clarified that only Penn team members would have control and operational responsibility over the actual conduct of gaming.

He noted that while there were some similarities between the deal and the prior agreement with Barstool that this deal differs as Penn does not own ESPN, but Penn did own Barstool. ESPN also provides "ESPN marketing services" which was a defined term in the agreement. These services included odds attribution to ESPNBet, editorial integration across mutually agreed ESPN talent, and traditional media integrations such as TV commercial and social media. In addition, ESPN's customer relationship management teams would work to integrate sportsbook

offers with ESPN's customer campaigns. He explained the integrations would have guardrails and procedures to suppress marketing to customers excluded for any reason.

Mr. Rogers stated that Penn and ESPN developed a set of content guidelines to be followed when promoting ESPNBet on media channels. He explained that all advertising and promotions would contain state required responsible gaming messaging, would not target individuals under 21 or who appear to be under 21, and would not be placed on medium unless 73.6% of the audience is expected to be over 21. He also noted that content would not contain persons under 21 promoting or commenting on any betting activity, content would not make reference to wagers being offered by illegal sports wagering operators, content would not glorify excessive wagering or downplay the risks of losing, content would not guarantee success or imply greater chances of success than other operators, content would not use terms like "risk free" or "can't lose," and content would not include crass or lewd comments, intoxicated persons or illicit substances.

With respect to college campuses, Mr. Rogers noted that in collaboration with Penn ESPN has adopted a policy regarding the promotion of ESPNBet on college campuses. The policy prohibits advertising for or solicitation of or for ESPNBet by the announcers on the college game day set or any other programming originating from the college campus to the in-person audience. The policy also prohibits ESPNBet signage on site during programming originating from a college campus and restricts the solicitation of sign-ups for ESPNBet while present on the college campus. Mr. Rogers explained that these prohibitions would be in effect even if the broadcast was off-campus if an in-person audience of college students was still expected. Any promotion for ESPNBet during the broadcast originating from a college campus would not be visible to the audience. He explained by way of an example, that a promotion for ESPNBet may be filmed offsite and added to the broadcast for a television audience but not seen by the live audience. He noted this policy complies with 205 CMR 26.05(4)(e).

On wagering guidelines, Mr. Rogers explained that no employee can place a wager at any facility or through any application or digital platform owned or operated by their employer and that this prohibition would continue to apply to Penn employees. Since ESPN is not an operator and does not own or operate a sports wagering platform, ESPN employees would not be subject to this wagering prohibition. Mr. Rogers explained that ESPN was developing a comprehensive set of employee guidelines to include on air talent to ensure that ESPN maintains high standards of journalistic integrity and that insiders remain independent from ESPNBet. He emphasized that there would be no connection between ESPN insiders, reporters, or the news desk with anyone that handles risk or trading for Penn. Penn would not have access to ESPN's news production

Mr. Rogers noted that he believed that all required information regarding the divestitures of Barstool Sports, the marketing alliance with ESPN and the rebranding had been provided. He continued and explained that where the Commission previously granted both PPC and PSI suitability under the prior relationship with Barstool Sports he did not believe there was any basis to alter their suitability finding. With respect to licensing conditions, Mr. Rogers stated that he did not believe there would be any basis for new conditions and deferred to Commission staff on whether the removal of the Barstool conditions would be required at that time or at a later date. Mr. Rogers then concluded his remarks.

Commissioner Hill asked Mr. Rogers for clarification on advertising during the college game day television program specifically concerning whether there could still be commercials advertising betting. Mr. Rogers noted that Commissioner Hill's understanding was correct and that Penn's focus was on not advertising to the college students in attendance at the event. He further explained that the focus was on advertising only to an audience that is 75% or more over the age of 21.

Commissioner Hill then asked if Mr. Rogers could explain the term "glorify" as it had been used. Mr. Rogers explained that it was important to emphasize that sports betting is a form of entertainment and not a way to make money and not portraying it as something where you can't lose. Mr. Rogers clarified that he believed the use of "glorify" came from an American Gaming Association ("AGA") regulation.

Commissioner O'Brien then raised a concern about where the line is that protects consumers and complies with Commission regulations. She noted that she wanted to hear more from Penn about how odds attribution to ESPNBet on ESPN programming would not run into regulatory problems. She also wanted to know more about how ESPN's customer relationship management team would work to integrate the sportsbook offers within the ESPN customer campaigns and what safeguards would exist so that consumers would not conflate ESPN and ESPNBet.

Mr. Rogers noted these questions were broad and addressed generally the use of media by sportsbook operators. Commissioner O'Brien explained that she believed this was a different type of relationship as Penn was tethering itself to an existing brand and not using third party marketers like many other operators. Commissioner O'Brien reiterated that she wanted to hear more about how the reporting and media function of ESPN would be kept distinct from ESPNBet for the average consumer.

Mr. Rogers went on to explain that the ESPN brand was important for its existing value. He noted that at that time ESPN was giving odds attribution to Caesars sportsbook and had integrations with both Caesars and DraftKings. Mr. Rogers believed a consumer could distinguish between ESPN editorial and sportsbook and raised examples in other jurisdictions. Commissioner O'Brien asked what was being done to make it clear to consumers when aspects of ESPNBet were integrated into ESPN programming. Mr. Rogers explained that he saw the concern as having news breakers associated with the operator of the sportsbook and having access to information that bettors did not. He noted that ESPN is very focused on that distinction and will develop a conservative policy to make sure the sportsbook is completely separate and that within ESPN there are heightened restrictions around news breakers. Mr. Rogers said he would provide more information on that policy from ESPN when it was finalized. Commissioner O'Brien indicated she would like that information.

Chair Judd-Stein asked if the ESPN guidelines could be provided during the meeting if possible. Mr. Rogers noted that the guidelines are meant to maintain ESPN journalistic integrity and that there is no connection between the news desk and the risk and trading team at Penn. Chair Judd-Stein asked if that was a current risk across the industry. Mr. Rogers agreed and noted it was more of a perception than an actual risk as across the industry sportsbooks are completely separate from media partners. He recognized customer concern that a sportsbook could have access to some sort of insider information from a media partner.

Chair Judd-Stein asked for clarification of the entities involved. She noted that ESPNBet was completely separate but asked for detail on the ESPN entities. Mr. Rogers noted that the operator and licensee is PSI and will be operating ESPNBet and had licensed the brand from ESPN. ESPN Enterprises is the marketing partner that would provide marketing services to Penn and is owned by ESPN which in turn is majority owned by the Walt Disney Company.

Commissioner Skinner asked about control, namely that if the Commission found non-compliance on behalf of ESPN Enterprises how it would be handled with respect to the roles of Penn, PSI and ESPN. Mr. Rogers explained that Penn was the operator and ultimately responsible for actions of the sportsbook while ESPN is a licensed marketing partner. He noted there could be implications on ESPN's own license but ultimately Penn would be responsible as the operator. Commissioner Skinner raised concerns about customer confusion and potential commercials that could be a violation of Commission regulations and asked if there was any concern that Penn would not have the means to address such an incident with ESPN Enterprises. Mr. Rogers noted that there was no concern of this situation occurring and that ESPN was strongly committed to being best in class from a responsible gaming marketing partnership perspective and fully understood the responsibilities.

Commissioner O'Brien noted that this was an exclusive arrangement between Penn and ESPN from a marketing perspective but asked if ESPN would be exclusive in other areas. Mr. Rogers noted that the relationship was largely exclusive around media integrations and while ESPN could still take linear advertisements from other operators during commercial breaks, that the integrations moving forward would all be with ESPNBet.

Commissioner O'Brien asked what was still being finalized in the guidelines and how it would move forward. She noted that there was a lot to be excited about, but it would have to be watched closely because of the same name and the integrations. She asked for additional details on the guardrails. Mr. Rogers indicated that the 10/31/23 letter from Penn had the key points of the policy and that it was constantly evolving as the industry changed and they had discussions with regulators. Commissioner O'Brien noted that the letter was only broad strokes, and she would like to see the actual policy. Commissioner Skinner seconded a request for the finalized guidelines beyond the letter.

Chair Judd-Stein asked about whether the integration between sports wagering operators and media were any different at that time than they would be in the future once those integrations were exclusive between Penn and ESPN and suggested those types of integrations were permitted under the Commission regulatory framework. Commissioner O'Brien disagreed noting that the branding of ESPNBet combined with the exclusivity of the integrations with ESPN could create confusion with the consumer and pose the greatest risk.

Mr. Rogers noted the convergence of media and sports betting and that many operators have media components. He was confused about the focus on Penn's use of the ESPN brand and suggested that this suggested less focus on operators just using marketing affiliates. Commissioner O'Brien responded by noting that in other situations the licensee had absolute control of their media but that in Penn's situation the news reporting function would be controlled by another entity. With other operators it is very clear that media assets are controlled by the operator if something goes awry.

Chair Judd-Stein pointed out that Mr. Rogers led with the reminder that Penn/PSI remains in control and the responsible party for any branding. She noted that she did not believe there were any regulation that addressed the perception of a relationship between the media and betting areas. Deputy General Counsel Caitlin Monahan explained that regulations do address which entities can encourage or recommend specific bets and noted that the legal department had specific questions for Penn/ESPN about how to keep those areas separate. Regulation 256.04(4) sets the standard for who can and cannot encourage or advise on a specific wager or type of wager. Deputy General Counsel Monahan explained that the original question asked about the relationship between Penn and ESPN and what could ESPN employees say or not say with regard to recommending or encouraging a specific wager.

Commissioner Skinner questioned whether Penn had the same “reach” relative to ESPN if ESPN found itself in a situation of non-compliance concerning the encouragement of a patron placing a specific wager. Mr. Rogers indicated that as the operator Penn is ultimately responsible and ESPN is a marketing partner with its own license in MA. Penn also has a contract with ESPN in which ESPN must remain compliant.

Commissioner Maynard noted that Pat McAfee has a popular show where he goes through the entire NFL weekly schedule and betting lines. He then asked where the line is drawn between when an ESPN personality makes a prediction and if those predictions would be connected to the ESPNBet app. Commissioner Maynard noted a concern about protecting consumers from relying on a personality like McAfee to make a bet.

Mr. Rogers recognized the Commissioners’ concern with the ability of ESPN personalities to somehow control the sportsbook. He noted that concern was not present with their Barstool arrangement and that people understood that Barstool was distinct from the sportsbook. Mr. Rogers stated that he was open to how to make the distinction clearer and that ESPN commentators speaking were not speaking for the sportsbook and had no influence over the odds.

Commissioner O’Brien stated that there are incidents where news reporting runs into conflicts because of corporate ownership and disclosures are made to make that clear. She wondered if that was something applicable here to make those differences clear about the corporate structure of ESPN.

Commissioner Maynard added that there was likely a lot of data about whether ESPN could have an impact on betting lines, and he was interested in seeing that data. Commissioner O’Brien indicated that she was interested in the finer details of the agreement with ESPN because of the concerns she raised, and she would want to review that agreement when completed.

Chair Judd Stein asked legal whether there were concerns about Penn going live on November 14, 2023, and whether they would potentially be out of compliance with 256.04. She noted if there were those concerns then likely internal Commission members would need to be alerted. Legal noted that they had only flagged issues after reviewing the Penn letter. Chair Judd-Stein clarified that her question was whether Penn would be out of compliance if these issues were not resolved, further asking if Penn was doing something differently with ESPN than they were with Barstool. Deputy General Counsel Monahan noted she could not say there was a per se violation at the time. General Counsel Grossman added that there are many examples of personalities

talking about wagering and the question of whether the discussion turns into advising and encouraging wagering is ultimately dependent on the Commission's view. General Counsel Grossman noted there is a difference between offering an opinion on a game/spread and telling viewers to go place a wager.

Commissioner O'Brien noted that she wanted a condition because of the history of Penn. She recognized there was no violation of the regulation but the way in which the relationship was rolled out could impact that and thus she wanted to see the guidelines. Chair Judd-Stein asked Commissioner O'Brien if there was something she would specifically like to see from Penn such as a disclaimer before programming. Commissioner O'Brien noted it was hard to answer the question in detail until she could review the guidelines in full and she would want a condition to mandate the production of that document. She further explained she saw risk regarding editorial integration and ESPN talent crossing lines. If the guardrails addressed how those areas complied with the regulation that was the most important issue for Commissioner O'Brien.

Chair Judd-Stein asked the other Commissioners for additional comments. Commissioner Hill noted he was familiar with these types of shows and recognized that personalities are only giving opinions. He explained the difference would be if the host told viewers to bet on a game and hoped that ESPN and Penn understand that difference.

Commissioner Maynard agreed with Commissioner Hill and then explained he was curious about an integration on the betting app with respect to what the media host was saying. He agreed that there would be no issue if only an opinion was given, the betting lines did not move, and there was no integration with the app. Commissioner Maynard further explained he had no reason to think Penn could not go forward with launch on November 14, 2023.

Chair Judd Stein agreed with Commissioner Maynard but noted that she struggled with seeing any issues of non-compliance at that time as opposed to contemplating future possible non-compliance. The Chair noted she could only evaluate the facts before the Commission when considering non-compliance and they were still waiting to see how everything would work. The Chair noted she had no issue with a condition requiring the documents but was wondering about the timing.

Commissioner O'Brien explained she was not asking to hold up launch pending production of the document, but she was flagging that she wanted to see the complete document and review it. She also worried about the effect on the less sophisticated consumer.

Commissioner Hill supported Commissioner O'Brien's request and that it not hold up the launch. He noted the information was necessary and that he would like to have it. The Chair noted there seemed to be consensus. Commissioner Skinner asked about the specific language for the condition on the license and the process.

The Chair asked General Counsel Grossman to explain the process. General Counsel Grossman asked Mr. Rogers if the document was competitively sensitive, and Mr. Rogers indicated he would need to check with ESPN but that at least some portions of the document should be public. Mr. Rogers indicated he would make any information available as required but that he was struggling with conditions on the use of a media partner when it was an industry wide issue and that the only ask was to be treated like all other operators.

Commissioner O'Brien noted that her reaction was the same as to Barstool branding which was that this was a unique situation using a pre-existing brand and created a heightened risk to consumers because of the reasons discussed. She noted that Penn was not being treated differently than a similarly situated licensee but that inherently Penn was differently situated in this scenario.

Commissioner Skinner stated that she viewed the issue as broader than branding and that it also involved responsible gaming and Penn was not being treated differently as it was required by other licensees during the application review process. She noted it was necessary to move forward and there was no intention to delay the launch.

Chair Judd Stein asked General Counsel Grossman if the Commission adopted a condition if there were examples of other conditions that had been attached to other licensees and what the condition would look like. General Counsel Grossman explained that the proposed condition would be looking to review the policy that ESPN was crafting that established the divide between the news and the sportsbook operations. The Chair asked if it would have to be a condition and General Counsel Grossman noted it could be an internal control. The Chair also noted that Penn was willing to provide the policy to allow the Commission to review it. Commissioner O'Brien noted that normally the internal controls are provided before the launch and explained that the license condition could be simply providing the employee guidelines by a date certain. The Chair asked if it had been an internal control, or a condition and Commissioner O'Brien noted that the timing of the submission to the Commission of the guidelines could be a license condition while the approval would be part of the internal controls. The Chair clarified that the licensee wanted to avoid conditions being attached to its license and was willing to produce the requested document. Commissioner O'Brien suggested that the Commission require the policy be provided by a date certain or a license condition could apply.

Commissioner Maynard asked if there was any mechanism to make sure the policy was received aside from conditioning the license. General Counsel Grossman indicated that the licensee could be directed to provide the document, and they have agreed to do so. He also noted that the licensee must abide by the regulations and that the discussion was really a matter of timing. General Counsel Grossman recommended that the document be provided, reviewed by the Commission and if the Commission was satisfied that it could just be incorporated into an internal control.

The Chair noted that this would not necessarily be a condition or an internal control as it would have been discussed in the ordinary course. Commissioner O'Brien stated she was looking for more clarity on the timing of the production of the policy. Mr. Rogers indicated the policy would be provided as soon as possible within the next 30-60 days. Commissioner Skinner indicated she wanted a more definitive response before launch on November 14, 2023, further explaining that this type of document was not a condition on other temporary licenses as it was not needed. The Chair agreed. Commissioner Skinner noted that ideally the Commission would have already had the document for review, but she wanted a more definitive timeline for the production of the document. Mr. Rogers committed to providing the document but indicated that Penn did not view it as something that was required under the regulations and was only being produced voluntarily. He noted that ESPN was drafting the policy to make sure there was no perception of a lack of journalistic integrity. He further explained that many sports betting operators have

partnerships with media companies and the same issues would be applicable and they were not required to submit similar policies.

Commissioner O'Brien reiterated that she did not believe the production of the policy was voluntary or optional and that she viewed the protections as a critical part of Penn's house rules. Commissioner Maynard noted that this process took place during initial licensure with all the operators, including Penn and suggested that since they have already agreed to produce the document the discussion was complete. Chair Judd-Stein asked for Commissioner Maynard to elaborate on analogies as to how other operators were treated, noting that she believed the Penn-ESPN deal was unique.

Commissioner Maynard noted that the Commission had always made it clear that licensees owned the actions of their vendors. Chair Judd-Stein agreed with Commissioner Maynard and noted that this situation was unique because of the exclusive branding and the perception issue. She also credited Mr. Roger's contention that production of the policy was not required in the regulations. Deputy General Counsel Monahan confirmed that the document was not being requested pursuant to a regulation but that it was being requested as part of the application review process because Penn was operating under a temporary license and there was substantive change from Barstool to ESPN. Chair Judd-Stein explained that the material change referenced by Deputy General Counsel Monahan was from case law as opposed to statute or regulation. Mr. Rogers noted the document would be produced but he did not want to over commit on timing. He only mentioned the voluntary nature with respect to why the policy had not been produced to date.

Commissioner O'Brien stated that she was looking for the supplemental materials by a specific date and she recognized Penn was working with another party to draft the document. Commissioner Skinner was satisfied with production in 30-60 days but was hoping for a clearer estimate. Chair Judd-Stein suggested setting a production date. General Counsel Grossman suggested the document be produced on or before December 14, 2023, the next public hearing date and if the document was not produced that the licensee appear and explain why. Commissioner O'Brien agreed with the proposal and asked that if the document was not going to be produced that the Commission be notified the week before the 14th. Commissioner Skinner agreed. Deputy General Counsel Monahan suggested the document be produced prior to the 14th for review purposes.

Chair Judd-Stein suggested the document be produced by December 11, 2023, and noted the Commission would be fair if something came up to delay production by the licensee as long as it was communicated to the Commission. Commissioner Skinner raised a question about the disassociation of Barstool sports and player data and the transition from one company to another and how that would look to the consumer in terms of communication. Mr. Rogers explained that the divestiture of Barstool was complete and the rebrand was in preparation. All the customer data was held by Penn, not Barstool. Customers were already receiving communication about the rebranding and were being sent emails and pop-ups in the app. From a process standpoint after relaunch customers would be directed to the app store to download the new app and then all of their data would port over to the ESPNBet app. Commissioner Skinner asked about an opt out process before the data transfer. Mr. Rogers explained that the data was already on the system and would just transport over.

Commissioner O'Brien noted there was a prior executive session on the details of the divestiture, and she was seeking details on additional components related to Barstool and Penn, but it may be better suited for discussion in executive session. Chair Judd-Stein believed that topic would be marked for a different meeting. Commissioner O'Brien suggested there was a reference to the topic in part of that day's agenda, but it could be cleaner to get an update in a separate meeting. General Counsel Grossman agreed with Commissioner O'Brien and recommended a more precise notice for a future meeting. Chair Judd-Stein agreed with addressing the topic in a future meeting.

Chair Judd-Stein asked Licensing Chief O'Brien for the status of ESPN's licensing. Chief O'Brien explained that ESPN held a sports wagering registration and had since March of 2023. The Chair noted that no conditions were being added at that time and they wished the licensee good luck.

Commissioner Hill moved to adjourn. The motion was seconded by Commissioner O'Brien.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

List of Documents and Other Items Used

1. [Notice of Meeting and Agenda](#) dated November 7, 2023