



Massachusetts Gaming Commission Meeting Minutes

Date/Time: December 20, 2022, 10:00 a.m.
Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 112 768 3893

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 415th Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

Chair Judd-Stein stated that the Commission's principal responsibility in reviewing the sports wagering applications was to ensure the integrity of the gaming industry in Massachusetts. She stated that the Commission would maintain strict oversight of gaming establishments and sports wagering operators. She stated that awarding a sports wagering license is a privilege and that operators would be held to the highest standards of compliance on a continuing basis. She stated that the Commission's mission permits the creation of a fair, transparent process that engenders the confidence of the public and maximizes the benefits to the Commonwealth.

2. [Legal Framework relative to the award of a Category 3 sports wagering operator license](#) (02:52)

General Counsel Todd Grossman explained that G.L. c. 23K required the Commission to conduct a full suitability review before the licensure of casino gaming operators. He stated that G.L. c. 23N had a mechanism for the presumption of suitability for licensees that were subject to further review, and that it allows for a temporary license before full suitability.

General Counsel Grossman noted that this proceeding was happening in a public meeting. He stated that if questions were raised related to suitability, they would be addressed during the thorough investigations. He stated that applicants may be deemed eligible to operate under a temporary license.

General Counsel Grossman stated that the Commission would continue its evaluation of the application received by American Wagering Inc. d/b/a Caesars Entertainment (“Caesars”). He stated that the Commission would then recommence its evaluation of Plainridge Park Casino’s application for a category one sports wagering license and following that review, the category three tethered sports wagering application submitted by Penn Sports Interactive (“PSI”).

General Counsel Grossman stated that 205 CMR 218 set out the application’s requirements, standards, and procedures. He stated that the Commission had convened a meeting to receive public feedback on the category one applications on December 5, 2022. He stated that the regulation sets out factors and considerations for the Commission to analyze in the evaluation process, but that the regulations did not set out a particular order in which to review factors or assign particular weight to the factors. He stated that the Commission may require that the applicant provide additional information or documents that the Commission deems appropriate.

General Counsel Grossman noted that the evaluation of this application was being conducted in public and that all deliberations made by the Commission were required to take place in public. He stated that G.L. Chapter 30A, § 21(a)(7) allowed the Commission to move into executive session to comply with or act under the authority of any general law, such as G.L. Chapter 23N, § 6(i) regarding competitively sensitive information in the course of the application process. He explained that if the Commission requested competitively sensitive information, the applicant could request to move the meeting to executive session.

General Counsel Grossman stated that any finding the Commission makes must be backed by substantial evidence, and that the heightened standard of clear and convincing evidence applied to a durable finding of suitability pursuant to 205 CMR 215.

General Counsel Grossman stated that the factors the Commission would evaluate would be: the applicant’s experience and expertise related to sports wagering; the economic impact and benefits to the Commonwealth; the applicant’s proposed measures related to responsible gaming; the description of the applicant’s willingness to foster racial, ethnic, and gender diversity, equity, and inclusion (“DEI”); the technology the applicant intends to use in operation; the suitability of the applicant and qualifiers; and any other appropriate factor in the Commission’s discretion.

General Counsel Grossman stated that the Commission could make temporary or durable findings of suitability, but that no preliminary finding needed to be entered. He noted that the Commission could use any information received pursuant to G.L. Chapter 23K, G.L. Chapter 128A, G.L. Chapter 128C, or information from other jurisdictions where the operator was authorized to operate. He stated that conditions could be placed on a license pursuant to 205 CMR 220. General Counsel Grossman noted that the operator would require an operations certificate before they could begin sports wagering operations in the Commonwealth.

[3. Continuation of Application Review from December 14, 2022 \(#411\) for Category 3 sports wagering operator license submitted by American Wagering, Inc. \(Caesars Entertainment, Inc\) in accordance with 205 CMR 218.06\(3\) and \(5\) \(27:09\)](#)

Chair Judd-Stein stated that on December 14, 2022, the Commission had reached a consensus that the applicant had met the Commission's expectations in regard to Sections B, C, and F of the application. She stated that the applicant had exceeded the Commission's expectations with respect to Section D of the application.

Chair Judd-Stein stated that the Commission had requested a comprehensive schedule of violations and penalties from the applicant. She stated that supplemental information was requested regarding the ultimate parent company as an entity qualifier. She stated that the Commission had received and reviewed the schedule of penalties and asked the Director of the Investigations and Enforcement Bureau ("IEB") to review the second item.

Director of the IEB Loretta Lillios stated that the parent company's Business Entity Disclosure ("BED") was not submitted to the Commission on December 14, 2022, due to an inadvertent omission by the IEB. She stated that the BED had been submitted and reviewed by the Chief of the Licensing Division. She stated that the submission was substantially complete with no material omissions.

Commissioner O'Brien asked what was missing from the BED submitted. Chief of the Licensing Division, Kara O'Brien stated that the items looked to be complete, but out of an abundance of caution, the Licensing Division was having the applicant confirm that there were no other items that would fall within a particular category. She stated that there were no deficiencies, but that the Licensing Division was seeking for more information, such as docket numbers, for two investigations. Commissioner O'Brien requested that the supplemental materials be provided to the Commission when possible.

Director Lillios stated that the IEB did not perform a review of entity qualifiers but relied upon publicly filed SEC documents. She stated that the Commission was not missing information in its report. Commissioner O'Brien asked if there were any new individual qualifiers based on the information provided by the parent company. Director Lillios stated that individual qualifiers from the parent company were captured during initial scoping and that no new individual qualifiers were identified.

Caesars' Assistant General Counsel, Jeff Hendricks explained that Caesars had supplemented its application with a BED filed on behalf of Caesars Entertainment Inc. and an updated exhibit that included a more comprehensive fine schedule that included all fines applicable to Caesars. He stated that all fines were promptly paid. He requested that the Commission issue a temporary license to Caesars.

Chair Judd-Stein asked if any violations on the schedule would put Caesars at a commercial disadvantage if discussed in public. Mr. Hendricks stated that if there was a matter related to how Caesars addressed team processes or updates to controls then he would prefer the topic to be discussed in executive session. He stated that he would answer all questions publicly to the extent possible.

Commissioner Skinner asked whether the IEB had sufficient time to review the supplemented documentation provided by the applicant. Director Lillios stated that the disciplinary actions submitted dated back to 2019 and that it was not a surprise to see a list of disciplinary actions for an operator active in multiple jurisdictions. She stated that Caesars promptly paid all fines.

Commissioner Hill noted several instances of incidents involving individuals who had been self-excluded. He asked if there were additional protocols or employee training to prevent similar issues from arising. Mr. Hendricks stated that Caesars continued to refine its responsible gaming processes. He stated that Caesars had automated the process to prevent human error to every extent possible. He stated that Caesars conducted an annual audit to ensure the information in the excluded person database was accurate. He stated that Caesars had continual training with all team members to ensure adherence with responsible gaming controls.

Commissioner Skinner stated that the Commission was receiving a summary of the information in the application as part of the IEB's report, but that she expected to receive some type of recommendation from the IEB based upon the information presented by the applicant and its qualifiers. She requested that the Commission receive additional input from the IEB going forward on each application, including a recommendation. Chair Judd-Stein asked to revisit the statutory structure and regulatory framework to determine if this was permissible.

Commissioner O'Brien noted that she shared Commissioner Skinner's discomfort with the process. She expressed the expectation that the IEB would alert the Commission to any issues. She stated that there was an obligation to flag any area in the preliminary reports where concerns arose.

General Counsel Grossman stated that G.L. c. 23N allowed the Commission to determine preliminary suitability before a complete investigation had been conducted. He stated that the IEB was not directed to conduct a full investigation or make a recommendation during the preliminary suitability process. He stated that the applicant was required to certify to the best of its knowledge and belief that it was suitable to hold the license, and that the IEB would conduct

an initial background investigation limited to a review of self-disclosed information and an open-source check. He stated that a full investigation would follow after the finding of preliminary suitability. He stated that it was appropriate for the Commission to inquire into any issues that arise during this process.

Commissioner Skinner stated that she recognized that the Commission voted for this process in the regulation, but that she was not satisfied with the process as currently envisioned. She stated that the IEB's report gave a conclusion reciting facts based upon the applicant's self-disclosures, but that she was looking for a recommendation on suitability even at the preliminary suitability stage. Commissioner Skinner asked if the IEB needed additional information or time in order to convert the conclusion of the IEB's report into a recommendation.

Chair Judd-Stein stated that a recommendation was not envisioned by the regulation at this stage of the review process. She suggested the Commission take a break to allow Commissioner Skinner to consult with the General Counsel. Commissioner Skinner stated that her concerns stemmed from the adoption of such an aggressive timeline related to the issuance of sports wagering licenses. She stated that she raised her concerns, and that she looked forward to her fellow Commissioners opinions on the matter.

Commissioner Hill stated that he respected Commissioner Skinner's concerns, but that the Commission had previously voted to adopt the regulations. He stated that if changes needed to be made to the regulations, the Commission could revisit them at some point in the future. Commissioner O'Brien noted that this process had a sunset provision. She stated that the Commission should be able to request more information on a matter before moving forward. She stated that if an issue needed to be reviewed further, she would include a condition precedent to her vote or a condition on the applicant's license. She stated that the Commission was following an aggressive timeline that relied upon the applicant's self-disclosures. She stated that she had additional questions for Caesars related to the supplemental information provided.

Commissioner Maynard stated that the supplemental information was requested to make a decision on preliminary suitability. He stated that if any applicant violated the process or misled the Commission, the full force of the Commission would be brought to bear. He stated that he was comfortable with the process as outlined in the regulation, provided the Commission received all information required in the application.

Chair Judd-Stein asked if there were any questions relative to the schedule of violations submitted by Caesars. Commissioner O'Brien asked if Caesars had precautions in place to ensure the platform did not go live prior to being authorized to do so, as there were incidents in Iowa and New Jersey.

Mr. Hendricks stated that Caesars continued to refine changes to the management process during implementation. He stated that Caesars had improved communications between the compliance team, technical team, and regulators to ensure all necessary approvals have been received prior to

launching. He stated that Caesars would coordinate with Commission staff and Caesars' independent testing laboratory to ensure that the platform meets all applicable standards. He stated that some of the violations were due to the expansion of the industry in a short time period, and that Caesars had learned from these issues.

Commissioner O'Brien asked if there were any changes to internal controls or compliance plans related to this problem. Mr. Hendricks stated that plans and controls were updated to provide safeguards after each incident. He stated that each item listed on the schedule is reviewed prior to deployment. Commissioner O'Brien asked if any particular protocols were added for launching in a new jurisdiction. Mr. Hendricks stated that Caesars regularly met with regulators prior to launching in a new jurisdiction. He stated that Caesars now performs a final confirmation with a run-through of each step required for the jurisdiction.

Commissioner O'Brien asked what changes were made related to the erroneous acceptance of credit cards due to an error by a third-party vendor. Mr. Hendricks explained that a payment provider did not properly exclude credit card deposits for several operators in a jurisdiction. He stated that Caesars worked with that operator to ensure all card numbers associated with credit cards are excluded from the platform. He stated that Caesars audits this rule to confirm the prohibition on credit cards is in place.

Chair Judd-Stein noted that the Commission previously found a consensus that Caesars had met the Commission's expectations with regard to Sections B, C, and F of the application, and had exceeded the Commission's expectations with respect to Section D of the Application. The Commission reached a consensus that Caesars had met the Commission's expectations with regard to Section E of the application.

Commissioner Skinner noted that the reservations she had raised earlier in the meeting were not exclusive to the review of Caesars application, but a general statement on certain inadequacies in the process. The Commission reached a consensus that Caesars had met the Commission's expectations with regard to Section G of the application.

4. [American Wagering, Inc. \(Caesars Entertainment, Inc\) Category 3 license application determination by the Commission in accordance with 205 CMR 218.07](#) (2:11:33)

Chair Judd-Stein asked for General Counsel Grossman to clarify the factors the Commission was to use to evaluate the application. General Counsel Grossman reiterated that the factors the Commission would evaluate would be: the applicant's experience and expertise related to sports wagering; the economic impact and benefits to the Commonwealth; the applicant's proposed measures related to responsible gaming; the description of the applicant's willingness to foster racial, ethnic, and gender DEI; the technology the applicant intends to use in operation; the suitability of the applicant and qualifiers; and any other appropriate factor in the Commission's discretion.

General Counsel Grossman stated that there were two options for suitability. He stated that a durable finding of suitability could only be awarded if an applicant had been through an adjudicatory proceeding pursuant to 205 CMR 101, and that durable suitability would not be appropriate as there had not been an adjudicatory proceeding for Caesars. He stated that a preliminary finding of suitability may be awarded based upon certifications made by the applicant and in the IEB's report. He stated that a preliminary finding of suitability would make the applicant eligible for a temporary sports wagering license in accordance with 205 CMR 219.

Commissioner O'Brien stated that given the past practices of the applicant, she would propose a license condition that Caesars not enter into any agreements or relationships for advertising or marketing with any Massachusetts college or university. Chair Judd-Stein asked if this could be addressed by regulation. Commissioner O'Brien stated her preference for imposing the condition, as the regulation related to marketing was not yet in place.

Commissioner Maynard stated that the Commission had not placed this condition on any other applicant. Commissioner O'Brien noted that Caesars had contractual relationships with universities that other applicants had policies to prevent. Chair Judd-Stein stated her preference for marketing restrictions to apply universally for all applicants.

Commissioner Hill asked when the advertising and marketing regulations would be before the Commission. Chair Judd-Stein stated that the Commission would review the marketing regulations on January 12, 2023. Commissioner O'Brien restated that she wanted this restriction as a condition on Caesars' license. Commissioner Skinner stated that she would second the condition, but that she shared Commissioner Maynard's concerns about equity. She stated that she would like to attach the same condition to each applicant absent a universal regulation. Commissioner Hill agreed.

Mr. Hendricks stated that Caesars had no issue adhering to this condition. He requested that the same condition be applicable to all licensees given the competitive landscape. Commissioner O'Brien withdrew her request for a condition as Caesars had represented on the record that they would comply with the Commission's request.

General Counsel Grossman reiterated that a series of automatic conditions were attached to licensure. He stated that whether preregistration could occur might be better addressed by regulation. He stated that the automatic conditions that attach to the license are that: the operator obtain an operations certificate before conducting sports wagering; the operator comply with all terms and conditions of the license and operations certificate; the operator comply with G.L. Chapter 23N and all rules and regulations of the Commission; the operator make all required payments to the Commission in a timely manner; the operator maintain its suitability to hold a sports wagering license; and the operator conduct sports wagering within its approved system of internal controls and in accordance with its approved house rules and G.L. Chapter 23N, § 10(a).

Commissioner Hill moved that the Commission find based on the application submitted and discussed today and on December 14, 2022, that the applicant American Wagering, Inc. d/b/a/ Caesars Entertainment, has shown by substantial evidence, and met the criteria set forth in G. L. Chapter 23N, as well as 205 CMR 218.06(5) specifically as to subsection 7, that the license award would benefit the Commonwealth; and further that they have established by substantial evidence their qualification for preliminary suitability in accordance with 205 CMR 215.01(2) and 205 CMR 218.07(2)(a) and that this approval be subject to the requirements of G.L. Chapter 23N and the requirements set forth in 205 CMR 220.01. Commissioner Maynard seconded the motion.

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.

Caesars' representatives thanked the Commission. The Commission thanked Caesars' representatives for their time.

[5. Continuation of Application Review from December 6, 2022 \(#406\) for Category 1 sports wagering operator license submitted by Plainville Gaming Redevelopment, LLC \(d/b/a Plainridge Park Casino\) \("PPC"\) in accordance with 205 CMR 218.06\(3\) and \(5\) \(3:10:12\)](#)

Chair Judd-Stein noted that the Commission had reached a consensus that PPC had met the Commission's expectations with respect to Sections B, C, D, and F of the application. She stated that the applicant had later submitted a letter to supplement their application.

PPC's General Manager, North Grounsell introduced CEO and President of Penn Entertainment, ("Penn") Jay Snowden, Penn's General Counsel, Harper Ko, and Penn's Vice President and Chief Compliance Officer, Chris Soriano.

Mr. Snowden stated that he understood the Commission's concerns related to the November 20, 2022, New York Times article included in the IEB's report. He stated that Penn had submitted a response letter on December 15, 2022, with several exhibits. He explained that Barstool Sports Inc. ("Barstool") was separate from the Barstool Sportsbook that was wholly owned and operated by Penn. He stated that Penn acquired a 36% equity position in Barstool in 2010. He stated that Barstool had over 400 employees working across 95 shows, and that Barstool's audience and revenue had more than doubled since Penn's initial investment.

Mr. Snowden noted that Barstool had ample community engagement as it had donated \$40 million to over 800 small businesses affected by the Covid-19 Pandemic. He stated that twenty-

five of those companies were in Massachusetts. He reported that the Boston Strong Fundraiser had raised \$240,000 for one of the victims of the Boston marathon bombing.

Mr. Snowden stated that Barstool had agreed to exclusively promote Penn's brand and licensed Penn the right to use the Barstool brand for Penn's retail sportsbooks and online sports wagering platforms. He stated that Penn operated retail sportsbooks in thirteen casinos and the online sportsbook in fourteen states. He noted that Penn was set to launch Barstool Sportsbooks at four casinos in Ohio in January 2023. He reiterated that no Barstool employee had control or decision-making authority at the Barstool Sportsbooks. He stated that Barstool was solely Penn's media and marketing partner.

Mr. Snowden stated that Google analytics showed that 85% of Barstool's audience was over the age of 25. He stated that 90% of the podcast audience was over the age of 22. He explained that Barstool acted as a marketing partner, and that Penn established compliance guardrails for Barstool personalities to follow. He stated that the guardrails were included in the Barstool employee handbook which each employee signs.

Mr. Snowden stated that Penn's compliance team monitored Barstool content for violations and provided customized training on responsible gaming to the Barstool team. He stated that Penn provided periodic refresher sessions on this training. He stated that Barstool Sportsbook recently passed the Responsible Gaming Council's Responsible Gaming Check, and that Penn was the first U.S. operator to voluntarily go through the accreditation process.

Mr. Snowden stated that Penn chose not to participate in the New York Times article and was disappointed by the misrepresentations and factual inaccuracies. He stated that several of the comments were taken out of context and that the New York Times did not write about who conveyed certain information. He noted that the article did not include any of the potential positive comments offered by those interviewed.

Mr. Snowden stated that the Barstool College Football Show began in 2019 prior to Penn's investment in Barstool. He stated that two out of seventeen shows in 2022 were located on college campuses. He stated that while sports wagering was referred to on the show, the focus of the show was college football games.

Mr. Snowden stated that the Commission had inquired about Barstool's founder David Portnoy's actions on a show in September in Knoxville, Tennessee. He explained that this event was not organized by Barstool Sportsbook. He stated that the event took place at an off-campus bar and Mr. Portnoy referenced a bet he had made on the game. He noted that while the wager may seem large, that wagering at those levels in and of itself did not constitute problem gambling. He stated that all players were subject to responsible gaming practices that monitored for problem gambling behaviors.

Mr. Snowden stated that Penn had received a notice regarding an advertising violation at the University of Toledo in Ohio. He stated that he would discuss this matter further in executive session. He stated that 86% of the viewers of the Barstool College Football Show were not live, but on YouTube, where 90% of the audience was over the age of twenty-five. He stated that this was well above the AGA marketing code requirement of 73.6% of the audience being above the age of twenty-one.

Mr. Snowden stated that Barstool Sports did not market with colleges or universities. He noted that Barstool worked with over 500 universities to increase mental health awareness. He stated that the Barstool College Football Show would restrict access to any further live shows to those over the age of twenty-one. He stated that Mr. Portnoy had not been part of any investigations, criminal litigation, civil litigation, or financial settlements based on the allegations against him. Mr. Snowden stated that Penn would not partner with Mr. Portnoy if he was how the media portrayed him to be. Mr. Snowden stated that Barstool held a non-gaming vendor registration in Massachusetts since May 20, 2020, and that Barstool holds similar registration and licenses in other jurisdictions.

Commissioner Hill stated that some of Mr. Portnoy's comments flew in the face of what the Commission pushed for in relation to responsible gaming. He asked how Penn would address that. Mr. Snowden stated that Barstool's strength was its relationship with its fan base, and that those who have watched the shows for years would have additional underlying context about statements made. He stated that he would need examples to provide additional context.

Commissioner Hill requested further details about the incident that happened on a college campus in Ohio. Mr. Snowden stated that a show was being hosted on-campus at the university of Toledo. He stated that the mistake made was that the host mentioned that the Barstool Sportsbook would be going live in Ohio in January. He stated that Ohio's regulators should have been consulted to determine whether this was considered advertising. Commissioner Hill stated that data about college games appeared to support the fact that the majority of certain college audiences were well over the age of twenty-one. Mr. Snowden stated that any future show on campus or near campus would require live audience members to be twenty-one or older.

Commissioner O'Brien stated that her concerns were related to PPC and Penn branding their Sportsbooks as Barstool. She stated that she appreciated the supplemental information provided by PSI in relation to the New York Times article. She stated that tying the sportsbooks to the Barstool brand brings both the good, the bad, and the ugly associated with the brand. She stated that while Barstool attracted a new demographic, that demographic was a group vulnerable to addiction.

Commissioner O'Brien stated that it was not solely Mr. Portnoy's conduct that raised concerns. She noted that other media personalities at Barstool, including, Dan Katz, had also said crass things. She stated that Barstool helped Penn's market share, but that it raised questions related to suitability, character, reputation, and honesty of the applicant. She noted that PPC had been

exemplary in responses to the Commission, but that she had a hard time reconciling the branding decision.

Mr. Snowden asked what it was about Barstool that made Commissioner O'Brien uncomfortable. He highlighted the company's diversity amongst staff and listeners; stating that Barstool was more than just young men, and that it brought a diverse audience. He stated that these concerns did not line up with the data and statistics. Mr. Snowden requested that PPC be provided the benefit of the doubt during the temporary license process to allow the Commission to uncover the full information.

Commissioner O'Brien expressed frustration that the response indicated a failure to appreciate and acknowledge the seriousness of the issue and pointed out that she had been asking these questions since Q3 of 2021. She stated that Barstool was not a qualifier for PPC, but still wanted a vetting of Barstool conducted by the IEB. She stated that the entities seemed intertwined, and it was worthy of a review by IEB and a conversation. Mr. Snowden stated that media response is often clickbait and that the most controversial issues were not a full representation of Barstool and its founder.

Commissioner Skinner stated that she shared a lot of Commissioner O'Brien's concerns. She stated that her concerns went beyond responsible gaming and entered the category of responsible relationships. She expressed appreciation for the information shared by PPC and Penn. She stated that she wanted a deeper dive from the IEB and a more fulsome discussion regarding Mr. Portnoy and Barstool as they were tethered to Penn and PPC's branding.

Mr. Snowden stated that there was statistical evidence and positive articles written about Barstool's philanthropic efforts. He stated that the Commission should have access to the positive portrayals of Barstool in addition to the negative. He stated that not all articles are completely factual, and that out of context statements could have people negatively labeled. He stated that the Commission should evaluate the full context and comprehensive information.

Commissioner Maynard stated that the Commission heard one side of the story, but that he wanted to keep an open mind and give PPC a fair shot. Chair Judd-Stein stated that she had initial concerns, but that her mind could be changed with data. She stated that she still had concerns about responsible gaming and stated that the IEB should look into this matter further with Penn's cooperation. She stated that the Commission could still provide temporary licensure while the investigation is ongoing.

Mr. Snowden stated that PPC had provided a fulsome application and responded to concerns raised by the Commission on December 6, 2022. He stated that changes had been made to ensure the live audience at the Barstool College Football Show was over the age of twenty-one. He stated that there was more positive information about Barstool for the Commission to review.

Chair Judd-Stein stated that PPC's initial presentation was excellent with respect to everything but the association with Barstool. She stated that there was still conflicting messaging between some of David Portnoy's statements and responsible gaming.

Commissioner O'Brien stated that she was happy to hear about the changes to live audiences. She noted that in the Ohio matter, the host went beyond stating the launch date and included statements about preregistration offers. She welcomed additional information from Mr. Snowden if there was more, he wanted to share now or within an executive session. Mr. Snowden stated that while Barstool did not believe itself to be in violation, he recognized that they should not have assumed that they were in compliance with the law and should have checked with the regulator beforehand. He assured the Commission that this will not happen again.

Commissioner O'Brien stated that on December 11, 2022, the Barstool College Football Show broadcast from a parking lot next to the Army-Navy game. She indicated that she had questions after having reviewed the video in question. Commissioner O'Brien had pulled the video of that show, and a panning of the audience looked pretty young to her. She asked Mr. Snowden whether there had been mechanisms in place to ensure that the audience for this show were all twenty-one or older. Mr. Snowden stated that he was not certain but that all shows going forward would check the IDs of the audience.

Commissioner Skinner noted that in the December 15, 2022, letter it was indicated that Barstool could not take certain marketing actions without approval from Penn appointees to Barstool's Board of Directors, if the action would have an adverse effect on Penn's gaming license. She asked what type of marketing actions would be deemed risks that require this approval.

Mr. Snowden stated that there were nuances in each jurisdiction's laws and regulations, and that Penn ensured a thorough understanding of expectations related to the approval of Barstool content. He stated that these guardrails related to responsible gaming, age, alcohol usage, and other factors specific to each jurisdiction.

Commissioner Skinner asked if an advisory or guidance was issued to Barstool informing the personalities of the requirements and types of marketing for which they must seek approval. Mr. Snowden stated that this policy had been in place for more than two years. Commissioner Skinner thanked Mr. Snowden for the clarification that it was not a new initiative.

Chair Judd-Stein asked if the on-air talent group went through the guardrail training. Mr. Soriano stated that each employee went through that training, and that the Board's Compliance Committee regularly developed enhancements for the program. Chair Judd-Stein stated that while watching recordings of some of the personalities it was not clear that they received all of the guardrail concepts. She stated that she had concerns and that she had raised similar questions during other applications with respect to third-party affiliate marketers. She asked if Penn had control over Barstool's content. Mr. Snowden stated that PSI would have control over the

portions of the Barstool conduct that would pertain to gaming and sports wagering. He stated that Barstool abides by the responsible gaming protocols and guardrails established by Penn.

Commissioner O'Brien stated that she thought the commission as a whole needed to further discuss how to handle third party marketers who don't rise to the level of a qualifier but need to be vetted. She further stated the structure of Penn's relationship with Barstool might be such that it could in the future affect the reputation and character of the licensee without necessarily qualifying as a qualifier. She stated that there might be a mechanism for the Commission to conduct suitability for certain third-party marketers. Mr. Snowden stated that it was within the Commission's authority but asked that it be applied equally across all applicants. Commissioner O'Brien stated that the nature of a licensee's relationship with the marketing partner was part of the Commission's analysis.

Commissioner Maynard asked if Penn would notify the Commission before announcing the go-live date and how to sign up at any event. Mr. Snowden stated that Penn would notify the Commission and acknowledged the error that occurred in Ohio. He stated that Penn would pay the fines and that they had internal conversations to ensure this mistake would not happen again.

Commissioner Maynard asked what benefits the Barstool brand would bring to PPC. Mr. Snowden stated that Barstool had a very loyal fanbase that originated in Massachusetts. He stated that Penn anticipated one of the highest-ranking market shares in Massachusetts due to the fanbase loyalty. He stated that a lot of Barstool fans might be confused if the platform was not offered in Massachusetts.

Chair Judd-Stein asked if the Commission had a consensus whether PPC had met the Commission's expectations with respect to Sections E and G of the application. Commissioner Skinner noted that the application met her expectations with the caveat that the IEB needed to conduct a more thorough investigation, even for preliminary suitability. She expressed an interest in attaching conditions to the applicant's license.

General Counsel Grossman noted that the Commission had awarded a durable finding of suitability to each of the other category one gaming licensees. He stated that if there were outstanding issues the Commission believed would benefit from a full IEB investigation, then the Commission could look to a preliminary finding of suitability. He stated that for a preliminary finding of suitability the Commission would have to find substantial evidence of suitability based upon the information presented. He stated that this was consistent with the way the Commission reviewed and evaluated all other applications not in category one.

Commissioner O'Brien stated that she wanted additional details related to the Barstool College Football Show at the Army-Navy game, and whether those under the age of twenty-one were in the audience. She stated that she wanted a full suitability review of Barstool as a condition on PPC and PSI's licenses. She stated that it should be a fulsome review of the company as a media marketing branch of the licensee without distinction of who was an independent contractor.

Penn's Michael West stated that no IDs were checked for the live audience at the Army-Navy game.

Chair Judd-Stein stated that she wanted to ensure that the IEB understood the scope of Commissioner O'Brien's request and how that would affect the IEB's investigative work. Commissioner O'Brien stated that she viewed Barstool as an entity qualifier that was intertwined with both this applicant and PSI. She stated that a condition on licensure should be that Barstool undergoes a suitability review as if it was an entity qualifier.

Director Lillios stated that the IEB anticipated investigating Barstool in light of the upcoming transaction where Penn would obtain 100% ownership of Barstool in February. She stated that this condition would accelerate the review instead of performing ongoing suitability in February.

Chair Judd-Stein asked if Commissioner O'Brien's proposal was reaching beyond the Commission's authority. Commissioner O'Brien noted that the Commission had previously directed the IEB to conduct further suitability review of Wynn when a matter arose in the public realm. Chair Judd-Stein questioned whether Barstool would have to be a qualifier for the IEB to investigate.

Mr. Snowden requested that PPC receive a temporary sports wagering license while the full suitability investigation was being conducted. Commissioner O'Brien noted that PPC had an existing category one gaming license, and that there was a question whether there was clear and convincing evidence to disturb that finding of suitability. She stated that for that to be determined, the Commission would need a full IEB report on Barstool. She stated that this issue arose in connection with PPC and PSI's applications for sports wagering, but that Barstool might not fall under the category of entity qualifiers. She stated that the investigation into Barstool impacted two different licenses and two different postures.

Chair Judd-Stein stated that the Commission needed additional information, but that the information could be gathered when the entity is under temporary licensure subject to further investigation. Commissioner O'Brien stated that the temporary license should be subject to the condition that a full suitability investigation is conducted by the IEB on Barstool as a qualified entity.

Chair Judd-Stein requested clarity regarding how Barstool fit into Penn's corporate governance structure. Mr. Snowden stated that an executive session might be appropriate. Mr. Soriano stated that the media entity discussed by Commissioner O'Brien is Barstool Sports Inc., not the Barstool Sportsbook. He stated that Penn is taking 100% ownership of Barstool in February. He stated that further review could be conducted by the IEB, and that Penn would cooperate with that. He stated that Barstool would likely not meet the definition of an entity qualifier, but that Penn would cooperate with additional review by the IEB.

Ms. Ko asked if this condition would be attached to PSI or PPC. Commissioner O'Brien stated that the condition would apply to both applicants. She stated that more information was needed before moving forward on the applicant's license. Executive Director Wells stated that the IEB typically designated qualifiers and would likely provide this information to the Commission as part of ongoing suitability reviews. She stated that it was more consistent with past practices to move forward with the investigation rather than having the Commission add a qualifier that is not part of the statutory or regulatory structure.

Commissioner O'Brien explained that Barstool was not listed as an entity qualifier, and that she wanted the review of qualifiers to include Barstool. Chair Judd-Stein stated that due to the corporate governance structure and control the Commission could not necessarily get to the entity it was most interested in. She stated that she felt compelled to honor the statute and regulatory scheme. Commissioner O'Brien stated that it was not overstepping the Commission's authority because Penn had a pending acquisition of Barstool in February. She stated that the only barrier appeared to be that Penn did not currently have complete ownership of Barstool.

Commissioner Skinner asked what the extent of the investigation into Barstool would be if Barstool was not designated an entity qualifier. Director Lillios stated that the IEB could investigate areas that potentially overstepped on responsible gaming or inconsistencies with cultural integrity as it relates to the brand. She stated that a lot could be done without designating Barstool as a qualifier. She noted that designating Barstool as an entity qualifier required the designation of individuals to be fingerprinted, and that the IEB might not have that authority if Barstool was not designated an entity qualifier.

Director Lillios stated that the IEB would want to see the transaction with Barstool occur before making requests. She stated that a lot could be done without the formal qualifier designation piece. She recommended that the IEB develop a plan and revisit qualification in due course. Commissioner Skinner stated that this approach was no different than the approach applied to every other applicant with respect to full suitability.

Chair Judd-Stein noted that category one applicants were treated differently by statute, and that other category one applicants were awarded durable suitability with no further investigation. She stated that Mr. Snowden had offered to undergo the temporary license process due to the Commission's requests for more information which created a distinction. Commissioner O'Brien agreed.

General Counsel Grossman stated that the request appeared to be that regardless of what scoping might find that the IEB designate Barstool as an entity qualifier. He stated that an issue arose related to fingerprinting, and that the IEB might not be able to fingerprint Barstool employees if Barstool did not qualify as an entity qualifier by statute. He stated that the IEB could conduct a background investigation, but that CORIs might not be run on the individuals in Barstool.

Commissioner Hill stated that he was comfortable moving forward with a temporary license, and that more information could be uncovered during the investigation. He stated that he was fine with Commissioner O'Brien's proposed condition, but that he believed that the Commission would receive that information going forward regardless of the condition.

Commissioner Maynard expressed that he wanted the treatment of applicants to be equitable and that other category one applicants each received a durable finding of suitability. He stated that he had full faith in the IEB and that he was not comfortable with the proposed condition.

Commissioner Skinner sought clarification regarding what Penn had proposed. Mr. Snowden stated that Penn was requesting that PPC move forward on a temporary licensure basis and to let the full suitability investigation play out in its normal course.

Commissioner O'Brien reworded her request and asked for a fulsome and full investigation of Barstool by the IEB without limitation in connection with Barstool's branding as it related to PPC and Penn. She stated that this language would address the fingerprint issue.

Chair Judd-Stein asked what this further investigation would look like. Director Lillios stated that the IEB would anticipate full cooperation from PPC, Penn, and Barstool as of February when they were fully owned by Penn. She stated that Penn had always been cooperative with the IEB, and that the IEB could develop an investigation plan with that cooperation. She stated that temporary licensure would give the IEB sufficient time to conduct this investigation. Executive Director Wells stated that this approach would satisfy what Commissioner O'Brien wants and allow the IEB to investigate with no limitations.

Chair Judd-Stein stated that there would be expanded responsibility in February as Penn would own and control all content that Barstool uses for promotion and advertising. Mr. Snowden stated that was correct. Chair Judd-Stein asked if there was less control in the interim period. Mr. Snowden stated that there were guardrails in place, but that there would be more official policy once the transaction with Barstool was complete.

[6. Plainville Gaming Redevelopment, LLC \(d/b/a Plainridge Park Casino\) \("PPC"\) Category 1 license application determination by the Commission in accordance with 205 CMR 218.07 \(5:35:46\)](#)

General Counsel Grossman reiterated that the factors the Commission would evaluate would be: the applicant's experience and expertise related to sports wagering; the economic impact and benefits to the Commonwealth; the applicant's proposed measures related to responsible gaming; the description of the applicant's willingness to foster racial, ethnic, and gender DEI; the technology the applicant intends to use in operation; the suitability of the applicant and qualifiers; and any other appropriate factor in the Commission's discretion.

General Counsel Grossman stated that there were two options for suitability. He stated that a durable finding of suitability could only be awarded if an applicant had been through an

adjudicatory proceeding pursuant to 205 CMR 101, and that the applicant was not pursuing a durable finding of suitability.

General Counsel Grossman stated that a durable suitability finding could be premised on the applicant's ongoing suitability proceedings under G.L. c. 23K. He stated that if there were outstanding issues that would benefit from further review from the IEB, the Commission could then look at a preliminary finding of suitability standard outlined in 205 CMR 215. He stated that under preliminary suitability the standard shifts from clear and convincing evidence to substantial evidence standard.

He stated that a preliminary finding of suitability may be awarded based upon certifications made by the applicant and in the IEB's report. He stated that a preliminary finding of suitability makes the applicant eligible for a temporary sports wagering license in accordance with 205 CMR 219.

General Counsel Grossman noted that the Commission identified two conditions to attach to the license pursuant to 205 CMR 220.01. He stated that the first condition was that the applicant and presumptive licensee agreed that no person under the age of twenty-one years old would be allowed at its live shows. He stated that the second condition was that the licensee fully cooperate with the IEB, which would conduct a fulsome investigation without limitation of Barstool and its connection with the branding of the licensee.

Mr. Snowden asked if this condition was in place of designating Barstool as a qualifier. Commissioner O'Brien stated that was correct, and that the change in language addressed the statutory issue. Director Lillios stated that the IEB could conduct a relevant full investigation without the qualifier status. Mr. Snowden stated that Penn would have mechanism in place to prevent those under twenty-one from attending the Barstool College Football Show's live shows.

Commissioner Maynard asked why the Commission was not considering a finding of durable suitability for the category one applicant. Chair Judd-Stein stated that Mr. Snowden had requested preliminary suitability which allowed for temporary licensure as the Commission had requested additional details related to Barstool. She stated that durable suitability did not require further investigation.

Commissioner Maynard asked why the IEB would not investigate further at the time Penn acquires Barstool in February. General Counsel Grossman stated that a durable finding of suitability required no further background investigation. Director Lillios stated that it could be looked into as part of the ongoing suitability reviews. Chair Judd-Stein stated that under statute temporary licensure could be granted subject to rules and regulations pursuant to G.L. Chapter 23N, § 6.

Commissioner O'Brien stated that durable suitability was not being considered because some Commissioners had requested additional information regarding Barstool's branding.

Commissioner Maynard stated that he would treat PPC the same as the other two category one applicants.

The Commission reached a consensus that PPC had met the Commission's expectations with regard to Section E of the application. The Commission reached a consensus that PPC had met the Commission's expectations with regard to Section G of the application. Commissioner O'Brien stated that she still wanted the condition related to investigating Barstool.

Commissioner Maynard inquired as to why the Commission was not moving for durable suitability with regard to this applicant. He stated that durable suitability could be found and that the IEB would still have authority to investigate Barstool. General Counsel Grossman stated that durable suitability required clear and convincing evidence that PPC had demonstrated its suitability, and that there were concerns raised by the Commission where it might not be possible to get to that clear and convincing level.

Ms. Ko stated that PPC had maintained suitability for the past seven years and that PPC was subject to continued investigation to maintain the finding. Chair Judd-Stein stated that suitability was always ongoing, but that the Commission had to take a vote around the factors enumerated. She stated that the Commissioners had different levels of comfort with voting on suitability, and something would have to spark an investigation if PPC had durable suitability. Ms. Ko stated that Penn's upcoming acquisition of Barstool could spark the investigation for ongoing suitability.

Commissioner O'Brien expressed that she did not find clear and convincing evidence for a category one sports wagering request without the further information requested as a condition on the license. She stated that she would vote no on durable suitability. Chair Judd-Stein stated that she wanted as much information as possible and recommended preliminary suitability as Mr. Snowden requested. She stated that she was aligned with Commissioner O'Brien on this matter.

Commissioner Skinner agreed with Chair Judd-Stein. Commissioner Skinner noted that Mr. Snowden had requested temporary licensure, and that there was no need to have further debate on whether suitability should be preliminary or durable. She stated that the decision was made easier due to Mr. Snowden offering a path forward with temporary licensure.

Commissioner Maynard stated that he was open to learning more, but that he wanted to ensure that Mr. Snowden was aware of the full implications of what he was saying. Commissioner Maynard stated that he agreed that there should be an ongoing investigation but expressed hesitancy in treating PPC different from the other category one applicants.

Mr. Snowden stated that durable suitability was ideal but that he was listening to the Commission's questions and concerns. He stated that PPC was comfortable with an investigation to the extent described and that Penn would cooperate. He stated that the investigation was likely

to happen whether PPC pursued durable suitability or temporary suitability. He stated that Penn was comfortable with PPC moving forward with temporary suitability.

Commissioner Hill agreed with Commissioner Maynard and stated that he was ready to move forward. Commissioner O'Brien stated that she would move on temporary licensure with the conditions described.

Commissioner O'Brien moved that the Commission find based on the application submitted and what was discussed today and on December 6, 2022, that the applicant Plainville Gaming and Redevelopment, LLC d/b/a Plainridge Park Casino, has shown by substantial evidence that they have satisfied the criteria set forth in G.L. c. 23N as well as 205 CMR 218.06(5) and that the license award would benefit the Commonwealth and further that they have established by substantial evidence their qualification for preliminary suitability in accordance with 205 CMR 215.01(2) and 205 CMR 218.07(1)(a) and that this approval be subject to the requirements of G.L. c. 23N and the requirements set forth in 205 CMR 220.01 in addition to the two conditions allowable by 205 CMR 215.01(2)(d)(2) as previously stated by General Counsel, specifically that the licensee agrees not to allow the attendance of anyone under the age of twenty-one at their shows for the Barstool College Football Show, and second that the licensee fully cooperate with the Commission's IEB without limitation in conducting an investigation of Barstool Sports Inc. in connection with the licensee's branding of the licensee. Commissioner Skinner seconded the motion.

Chair Judd-Stein asked if suitability had to be separated from the other factors. Commissioner O'Brien noted that suitability has the same standard as the other factors for temporary licensure. Commissioner Maynard stated that he would vote for the preliminary finding of suitability, but that he believed PPC had met the requirement for a durable finding of suitability with the investigation condition. Commissioner Hill agreed.

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.

The Commission thanked PPC and Penn's representatives for their time. The Commission reached a consensus to adjourn for the evening and review PSI's application on January 3, 2023.

7. [Other Business](#) (6:19:44)

Hearing no other business, Chair Judd-Stein requested a motion to adjourn.

Commissioner Maynard 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 December 15, 2022
2. [Commissioner's Packet from the December 20, 2022](#), meeting (posted on massgaming.com)