

Florida Gaming Control Commission

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June 08, 2023

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FLORIDA GAMING CONTROL COMMISSION

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LOCATION: TELEPHONIC

(Page Nos. 1 - 68)

Thursday, June 8, 2023

9:30 a.m. - 10:48 a.m.

BEFORE: Chairman C.B. Upton  
Commissioner Julie I. Brown  
Commissioner Charles Drago  
Commissioner John D'Aquila  
Commissioner Tina Repp

Stenographically Reported By:  
I. Iris Cooper  
Stenographic Reporter

Job No.: 311548

1 APPEARANCES: (Appearing telephonically)

2

COMMISSION MEMBERS:

3

Chairman C.B. Upton

4

Commissioner Julie I. Brown

Commissioner Charles Drago

5

Commissioner John D'Aquila

Commissioner Tina Repp

6

Executive Director, Louis Trombetta

7

8 CANDIDATES AND SPEAKERS:

9

Mr. Lockwood

Mr. Zachem, Esq.

10

Carl Herold

Ms. Jelks

11

12 OTHERS PRESENT:

13 EMILY ANN ALVARADO, ESQ.

ROSS MARSHMAN, ESQ.

14

ELIZABETH K. STINSON, ESQ.

OF: FLORIDA GAMING CONTROL COMMISSION

15

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- Various Members of the Public

20

- The Florida Channel

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24

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1 Thereupon, the following proceeding began at 9:30 a.m.:

2 CHAIRMAN UPTON: Good morning. It's 9:30.

3 Let's call the meeting to order. It is June 8,  
4 2023. Let's start with the Pledge of Allegiance.  
5 Everybody, please rise.

6 (Pledge of Allegiance.)

7 CHAIRMAN UPTON: The first order of business  
8 is the selection of the Vice Chair. What I would  
9 like to do is open it up for discussion or a  
10 motion.

11 COMMISSIONER DRAGO: Mr. Chair, if I could, I  
12 would like to make a nomination, if I could. I  
13 don't know if this is the right time to do that.  
14 Do you want to do that now?

15 CHAIRMAN UPTON: Absolutely.

16 COMMISSIONER DRAGO: I would like to make a  
17 nomination for Vice Chair of Commissioner Julie  
18 Brown.

19 CHAIRMAN UPTON: Is there a second?

20 COMMISSIONER D'AQUILA: I would like to make a  
21 second, Mr. Chair.

22 CHAIRMAN UPTON: Okay. All in favor?

23 (Multiple ayes.)

24 COMMISSIONER D'AQUILA: Congratulations.

25 COMMISSIONER BROWN: Thank you so much.

1 COMMISSIONER DRAGO: Congratulations.

2 CHAIRMAN UPTON: All right. Agenda Item No.  
3 2, 2.1, approval of the April 6, 2023 minutes.  
4 Open it up for any discussion on that.

5 COMMISSIONER BROWN: Move to approve the  
6 minutes for April 6, 2023.

7 COMMISSIONER D'AQUILA: I would like to make a  
8 second.

9 CHAIRMAN UPTON: All in favor?

10 (Multiple ayes.)

11 CHAIRMAN UPTON: All right. It's unanimous.  
12 All right. Moving on, we're going to handle the  
13 number three, the discussion of consent orders a  
14 little differently than we have in the past. We're  
15 going to take 3.1 through 3.10 up as a consent  
16 agenda, unless any of the commissioners would like  
17 to speak.

18 Or if we have a speaker, which we do today, on  
19 3.2. So what we'll do first is allow Mr. Zachem to  
20 speak on 3.2 if he would like, and then we'll open  
21 it up for any discussion on the others or take them  
22 up as a consent agenda.

23 Mr. Zachem, come on up.

24 MR. ZACHEM: Thank you, Mr. Chair. I'm just  
25 here for information purposes only. I represent

1 Casino Miami. If you have any questions, I was  
2 here to assist. If not, I'm fine with waiving my  
3 time.

4 CHAIRMAN UPTON: Does anyone have questions  
5 for counsel?

6 Okay. Thank you.

7 Okay. Do any of the commissioners want to  
8 discuss any of these consent orders individually?

9 COMMISSIONER BROWN: Mr. Chair, just 3.9 and  
10 3.10 together.

11 CHAIRMAN UPTON: Okay. Let's go ahead and do  
12 3.1 though 3.8 together, if I can get a motion to  
13 approve those consent orders.

14 COMMISSIONER D'AQUILA: I'll make a motion to  
15 approve those consent orders.

16 COMMISSIONER DRAGO: Second.

17 CHAIRMAN UPTON: All in favor?

18 (Multiple ayes.)

19 CHAIRMAN UPTON: Unanimous.

20 Okay. Commissioner Brown, take it away on  
21 3.9.

22 COMMISSIONER BROWN: Thank you, Mr. Chair.  
23 Good morning. Could you just go over -- it's the  
24 same individual, just a few months apart, the same  
25 fine. I'm just worried that this is going to be a

1 continuing pattern because all he has to do is pay  
2 \$1,000, return the money, and he's going to  
3 continue to have this infraction.

4 MS. ALVARADO: Yes. This is Emily Alvarado,  
5 for the record. So the first case, which is  
6 2023-019250, the race was February 18th. The  
7 administrative complaint was not filed until April  
8 12th.

9 And the second case, which is 2023-022742, the  
10 race was April 2nd, so before we had even filed the  
11 first case. It is the same horse and the same  
12 substance, so they didn't have notice of the first  
13 race prior to racing in that second race.

14 COMMISSIONER BROWN: Thank you. I'm okay with  
15 that. I just wanted to make sure that we don't  
16 continue to have this pattern with this trainer.

17 CHAIRMAN UPTON: Any other discussion?

18 COMMISSIONER BROWN: Move to approve 3.9 and  
19 3.10.

20 CHAIRMAN UPTON: Second?

21 COMMISSIONER D'AQUILA: I'll make a second.

22 CHAIRMAN UPTON: All in favor?

23 (Multiple ayes.)

24 CHAIRMAN UPTON: Unanimous.

25 All right. Moving on to number four on the

1 agenda, a discussion of default final orders. And  
2 similar to number three, we will take these up as a  
3 consent agenda for 4.1 through 4.8, unless any  
4 commissioner would like to discuss one of these or  
5 more individually.

6 COMMISSIONER D'AQUILA: General question for  
7 Ms. Alvarado. In at least three of these cases,  
8 there is a difficulty in locating the individual.  
9 Could you briefly explain what we go through. I  
10 mean, I can see what methods we use, but do we use  
11 any electronic means like social media means to  
12 track these people as well?

13 MS. ALVARADO: We don't. We send via USPS  
14 certified mail at least twice, sometimes three  
15 times. If we're unable to serve at the address  
16 that we have on record, we do use any resources  
17 that we have to locate any other address, and we  
18 try to serve at those addresses as well.

19 And then we contact our investigators. They  
20 attempt by hand service. If they are unable to do  
21 that, then publication is our last resort, and  
22 we'll publish in a newspaper of the local newspaper  
23 in the area of the last known address that we have.

24 COMMISSIONER D'AQUILA: Thank you.

25 COMMISSIONER BROWN: Mr. Chair, I do want to

1 discuss 4.2 and 4.7.

2 CHAIRMAN UPTON: Anyone else? Okay. Let's  
3 move 4.1, 4.3, 4.4, 4.5, 4.6, and 4.8 through on  
4 consent. Do I have a motion on those?

5 COMMISSIONER DRAGO: So moved.

6 CHAIRMAN UPTON: Second?

7 COMMISSIONER D'AQUILA: Second.

8 CHAIRMAN UPTON: All those in favor?

9 (Multiple ayes.)

10 CHAIRMAN UPTON: Okay. It's unanimous.  
11 Commissioner Brown, take it away on 4.2.

12 COMMISSIONER BROWN: Thank you so much.

13 Emily, if you don't mind going through the  
14 rationale for the fines for 4.2 and 4.7. 4.2 is a  
15 \$500 administrative fine for a Class III drug;  
16 whereas, 4.7 is a \$1,000 administrative fine for a  
17 Class IV.

18 MS. ALVARADO: Sure. 4.2 is a Class B drug.  
19 The ARCI guidelines require for a first-time  
20 offense \$500 fine, 15-day suspension, and a return  
21 of purse. And then what was the other one you  
22 mentioned?

23 COMMISSIONER BROWN: 4.7, the NSAID aspirin.

24 MS. ALVARADO: So this case is different than  
25 other phenylbutazones that we see. I mentioned

1 this before in other meetings that if it's greater  
2 than five, the penalty guidelines classify it as a  
3 Class C drug. It will have a \$1,000 fine and  
4 return of purse for that for first offense.

5 COMMISSIONER BROWN: Thank you for the  
6 clarification.

7 If there are no questions, I'll just move to  
8 approve 4.2 and 4.7.

9 CHAIRMAN UPTON: Do I have a second?

10 COMMISSIONER D'AQUILA: Second.

11 CHAIRMAN UPTON: All in favor?

12 (Multiple ayes.)

13 CHAIRMAN UPTON: It's unanimous. That was 4.2  
14 and 4.7.

15 Now moving on to Agenda Item No. 5, the  
16 discussion of HISA and HIWU agreement. I'll need  
17 counsel's assistant on this one.

18 Would you, Mr. Marshman, like to speak first?

19 MR. MARSHMAN: Yes, sir. Good morning,  
20 Mr. Chair. Before the Commission today is the  
21 latest version of the draft agreement between the  
22 State of Florida and the Horseracing Integrity and  
23 Safety Authority and the Horseracing Integrity &  
24 Welfare Unit of Drug Free Sports America, HIWU.

25 This is acronym soup. So if I mistake any of

1       them, please bear with me.

2               Pursuant to terms of the Horseracing Integrity  
3 and Safety Act, states can enter into agreements  
4 with the Horseracing Integrity and Safety  
5 Authority, HISA, to carry out certain provisions of  
6 the racetrack safety program and the anti-doping  
7 and medication control program.

8               This has been a long process, as most of us  
9 know, because the federal programs have hit their  
10 own roadblocks.

11              For instance, the anti-doping medication  
12 control program was supposed to go live in July of  
13 2022, and it only went live, so to speak, this year  
14 once. And then it was invalidated, and then it  
15 subsequently went back into effect only recently.

16              So this has taken some time, based on  
17 negotiations going back and forth with them and the  
18 status of the constitutionality of HISA itself.  
19 There were changes made to the act in December of  
20 2022 that addressed the Fifth Circuit's concern.

21              They expressed an opinion in late 2022  
22 regarding non-delegation principles. The Fifth  
23 Circuit has since remanded the case back to the  
24 trial court for further proceedings.

25              Meanwhile, the Sixth Circuit has considered

1 that newly-amended language and has ruled that the  
2 newly-amended act is constitutional.

3 So if I had to guess, the trial court will  
4 develop its case similar to the Fifth Circuit, and  
5 the Fifth Circuit will issue a new opinion taking  
6 into account that new language.

7 In terms of timelines, I don't know. The  
8 trial court is still proceeding, and then the Fifth  
9 Circuit will have its own timelines, which are  
10 months, not weeks. I say all that to provide  
11 context for this agreement.

12 This agreement has two parts mirroring the two  
13 parts of HISA's regulations, the racetrack safety  
14 program and the anti-doping and medication control  
15 program.

16 Florida had previously entered into a smaller  
17 agreement only related to the racetrack safety  
18 program, and that is the smaller portion of this  
19 draft agreement before you still.

20 Not much has changed since the last time;  
21 although we have clarified based on feedback from  
22 the Commission last meeting exactly when we will be  
23 reimbursed for certain investigations -- strike  
24 that -- certain time our investigators would spend  
25 carrying out provisions of the racetrack safety

1 program. That's the main substantive change since  
2 the last time we met.

3 For the anti-doping and medication control  
4 program, that's been the subject of the most  
5 debate, both here and, of course, in circuit courts  
6 around the state -- around the country, rather.

7 I can address any specific questions the  
8 commissioners might have about any of the  
9 provisions, both the old provision, so to speak,  
10 and the newly-amended provisions. However, I know  
11 we've had the opportunity to speak individually,  
12 and we've hopefully had a good dialogue so far.

13 But, of course, I'm here to answer any  
14 questions about what this agreement says or doesn't  
15 say and any other questions you may have.

16 CHAIRMAN UPTON: If any of the commissioners  
17 have questions for counsel, go ahead now, and then  
18 we'll have discussion afterward.

19 Not seeing any questions, we'll open it up for  
20 discussion.

21 Commissioner Brown, go ahead.

22 COMMISSIONER BROWN: Thank you, Mr. Chair. I  
23 just want to thank you, Ross, for the amount of  
24 time you spent on this agreement and Liz and your  
25 whole team really getting it to a point where it's

1 palatable for us, and I think it's as good of an  
2 agreement as we can get in the current state.

3 I do have a question more maybe probably for  
4 PMW, and that's how long it's taking right now for  
5 HISA and HIWU to get the results back of the  
6 testing of the specimens?

7 MR. MARSHMAN: Really that's unknown because  
8 we haven't become an interested party within the  
9 meaning of HISA's regulations, so they would not be  
10 sharing with us positive test results until after  
11 we enter into this agreement.

12 We would be aware, generally speaking, of  
13 positive test results, but only at the same time a  
14 trainer or the owner would know something to that  
15 effect.

16 So we would know our own positive test results  
17 from our own sample collection that we conducted  
18 pursuant to our own rules and regulations, but that  
19 was only a brief window of time, and those results  
20 are still being sent in from our own lab as it  
21 winds down.

22 So from HISA HIWU specifically, I don't think  
23 we gotten any results from that based on us not  
24 becoming an interested party.

25 COMMISSIONER BROWN: And once we sign this

1 agreement, which I'm assuming if we approve it  
2 today, we'll sign it expeditiously right away, and  
3 then it will go into effect.

4 Would we in any of these provisions, is there  
5 any recourse for significant regulatory lag if the  
6 specimens and the findings are not -- or at least  
7 we're not notified of it in a timely fashion?

8 MR. MARSHMAN: In this agreement, no. No  
9 other state has managed to get HISA or HIWU to add  
10 any sort of prong or a state to hold them to any  
11 sort of time standard.

12 I would state, however, that their own  
13 interest in prosecuting these cases means they need  
14 to expeditiously move to get these samples  
15 collected for their own sake, for their own  
16 prosecution.

17 And I can say from speaking with HIWU's  
18 general counsel, particularly, she is very aware of  
19 the need for expeditious prosecution which would  
20 entail fast testing, fast sharing of results in the  
21 beginning of this administrative process as quickly  
22 as possible.

23 COMMISSIONER BROWN: And then lastly, I think  
24 from an administrative side, some of the orders  
25 that we approve today, that's more of the

1 regulatory administrative side for the State.

2 Will that affect how we fund individuals or  
3 licensees of our agency, in terms of -- because  
4 they have -- they'll have the test results?

5 MR. MARSHMAN: So whether we enter into this  
6 agreement or not, most of Florida's regulations and  
7 penalties for drug positives have been arguably  
8 preempted by the Horseracing Integrity and Safety  
9 Act.

10 So, again, whether we enter into this  
11 agreement or not, we would have a hard time as a  
12 State, I think, successfully prosecuting a drug  
13 positive that Ms. Alvarado was discussing earlier  
14 if the trainer or the owner of the horse can raise  
15 a preemption argument that would block the State  
16 from carrying out those portions of the law.

17 So, no, I don't think that so long as HISA,  
18 the act, is in effect and its regulations are in  
19 effect, I don't know if the State has a viable path  
20 forward for prosecuting Florida licensees as a  
21 matter of Florida law if those same laws are also  
22 discussed and covered by federal act or federal  
23 regulation.

24 COMMISSIONER BROWN: Thank you.

25 CHAIRMAN UPTON: Any other questions.

1           COMMISSIONER D'AQUILA: I have a general  
2 question for General Counsel Marshman or any member  
3 of the legal team or even Executive Director  
4 Trombetta. We've had a long, successful history  
5 working with the University of Florida lab and  
6 regulating our mutual racing here in the state.

7           In your opinion, is there any way we can, once  
8 this agreement is signed, monitor how well the new  
9 body, HISA, is doing compared to the way we've  
10 done, in your opinion?

11           Or even should we be looking at that,  
12 considering your point about our rights? And,  
13 again, just thinking about the general welfare of  
14 the horse industry and how serious our state has  
15 taken it and the success we've had in the past.

16           MR. TROMBETTA: Let me try to get this one.  
17 I won't be as well spoken as Mr. Marshman, but let  
18 me try. So I think, you know, lately there's been  
19 a lot of attention on what's happening at Churchill  
20 Downs and how now that HISA is in place how HISA is  
21 responding and what they're doing.

22           So I think, Commissioner D'Aquila, my answer  
23 is kind of based on what the general public is also  
24 going to be able to judge them on. There's going  
25 to be information. You know, the horseracing

1 industry is going to evolve and probably change a  
2 little bit under HISA.

3 I don't think we're in a position that's  
4 necessarily that different than what the general  
5 public will have. I think, as the agreement  
6 states, being an interested party will allow us to  
7 have some information ahead of time.

8 But I think that the impact of this federal  
9 act on the horseracing industry is going to be  
10 judged over a period of time to see if some of the  
11 intent and some of the new practices and new  
12 regulations work.

13 And I think that we as a -- you know,  
14 personally as a personal opinion, I think we're  
15 just going to -- we're in a position to watch and  
16 see what happens. You know, I think, as I just  
17 mentioned, the preemption is going to change the  
18 role of all State racing commissions.

19 We no longer are going to be the ones.  
20 Whether we sign part of this agreement or not,  
21 we're not going to be the ones involved in the  
22 legal disputes of legal action. So we are going to  
23 be sitting on the sidelines kind of judging it from  
24 there.

25 I mean, if you have a different opinion that

1 you're willing to -- you don't have to. I don't  
2 want to put you on the spot.

3 MR. MARSHMAN: I don't have a different  
4 opinion, but just an additional factor. Let's say  
5 we will have more of a -- if we enter into this  
6 agreement and we become an interested party, we  
7 will have access to other information the public  
8 may not otherwise have faster than the public will  
9 have.

10 This goes back to the example I've tried to  
11 use in the past. If we collect samples from four  
12 horses in a race and we get results back from two  
13 and not the other two, if we're an interested  
14 party, we'll know more or less what happened with  
15 those other two horses, and we'll be able on a  
16 smaller level prior to any public prosecution to  
17 know what's going on.

18 If we don't, then we'll potentially never know  
19 what happened to those other two horses, just like  
20 any other member of the public, unless we just ask  
21 the trainer who may or may not know as well. So on  
22 a smaller level, we will have some access to  
23 information at a period of time that the public  
24 would never have it.

25 So I could foresee any State racing

1 commission, including us, having a conversation  
2 with HISA and HIWU about those two horses. If we  
3 are an interested party, hey, our sample collection  
4 folks took those samples. We know you have them.  
5 We packed them up and shipped them. What's going  
6 on with those two horses?

7 And I expect HISA and HIWU want to have a good  
8 relationship with the State, since we're the ones  
9 largely doing the work for them on the ground. So  
10 I think that's something that if we become an  
11 interested party, we'll have some regulatory  
12 oversight, let's say, not exactly, but we will at  
13 least know more how the sausage is being made, and  
14 we can talk to them about it.

15 CHAIRMAN UPTON: Anything further?

16 A couple points on this. I came into this one  
17 late, and it's a difficult one for me because it  
18 generally offends my sensibilities of a role of a  
19 limited federal government and State's rights.

20 However, after giving it much, much thought,  
21 it's not really our role as regulatory bodies to  
22 pass on the constitutionality of it. And I want to  
23 commend staff, particularly the general counsel and  
24 executive director in negotiating the best deal  
25 they could.

1           It's a very difficult position that they were  
2           in to negotiate with a more or less  
3           take-it-or-leave-it agreement. But they got  
4           something that was a little better than that, so  
5           that's to be commended.

6           So ultimately, I think that the  
7           constitutionality of HISA is to be left to the  
8           courts, and we'll deal with -- on the regulatory  
9           side, this gives us more of a chance for regulation  
10          and to have a seat at the table than we would  
11          otherwise have.

12          I would like to open it up for a motion to  
13          approve the HISA and HIWU agreement.

14          COMMISSIONER DRAGO: I would like to make a  
15          motion to approve the agreement.

16          CHAIRMAN UPTON: All in favor?

17          (Multiple ayes.)

18          CHAIRMAN UPTON: Unanimous. That one is off  
19          the agenda.

20          All right. On to Agenda Item No. 6.

21          Ms. Jelks, would you like to come up and lead us  
22          through the discussions of the renewal application  
23          for slot machine licenses.

24          MS. JELKS: Good morning. I'm La'Kasha Jelks  
25          here presenting for PMW. For 6.1, I have Case No.

1 2023-013390, 831 Federal Highway Acquisition,  
2 L.L.C. would like to renew its annual slot machine  
3 license for the spring 2023-2024 fiscal year.

4 CHAIRMAN UPTON: Ms. Jelks, I think we're  
5 having a hard time hearing. I'm not sure if the  
6 mic is working.

7 MS. JELKS: I'm sorry. Do you want me to  
8 start over?

9 CHAIRMAN UPTON: That would be best, yes.  
10 Thank you.

11 MS. JELKS: So I am presenting for 2023 Case  
12 No. 013390. 831 Federal Highway Acquisition,  
13 L.L.C. would like to renew its annual slot machine  
14 license for the 2023-2024 fiscal year, and it is  
15 effective June 11, 2023. It is our recommendation  
16 that this is approved.

17 CHAIRMAN UPTON: We'll open it up for  
18 questions and discussion. Anything, Commission?  
19 Do we have a motion?

20 COMMISSIONER D'AQUILA: I make a motion to  
21 approve the renewal.

22 CHAIRMAN UPTON: All in favor?

23 (Multiple ayes.)

24 CHAIRMAN UPTON: Unanimous.

25 MS. JELKS: Thank you. Next is Case No.

1 2023-028661 for Calder Race Course, Inc. They are  
2 requesting to renew their slot machines license as  
3 well effective July 10, 2023 through July 9, 2024.  
4 It is our recommendation that this is approved.

5 CHAIRMAN UPTON: Any discussion or questions?  
6 Do we have a motion to approve?

7 COMMISSIONER DRAGO: So moved.

8 CHAIRMAN UPTON: All in favor?  
9 (Multiple ayes.)

10 CHAIRMAN UPTON: Unanimous.

11 Ms. Jelks, you'll lead us through discussion  
12 on Agenda Item No. 7 as well.

13 MS. JELKS: Case No. 2023-030908, OBS Real  
14 Estate Holdings, L.L.C. is requesting to add four  
15 additional card tables for their cardroom for the  
16 2023-2024 fiscal years for a total of nine cardroom  
17 tables. It is our recommendation that the  
18 Commission approve this as well.

19 CHAIRMAN UPTON: Any questions or discussion?  
20 (Inaudible).

21 Second?

22 COMMISSIONER D'AQUILA: Second.

23 CHAIRMAN UPTON: All in favor?  
24 (Multiple ayes.)

25 CHAIRMAN UPTON: It's unanimous.

1 Ms. Jelks, on to Agenda Item No. 8.

2 MS. JELKS: Case No. 2023-028359, Tampa Bay  
3 Downs is requesting to add an additional  
4 performance to their license for the 2023-2024  
5 fiscal year for a total of 92 performances. It is  
6 our request that the Commission approve the request  
7 as well.

8 COMMISSIONER D'AQUILA: Make a motion to  
9 approve.

10 CHAIRMAN UPTON: All in favor?

11 (Multiple ayes.)

12 CHAIRMAN UPTON: Unanimous. 8.2.

13 MS. JELKS: Case No. 2023-030638, Gulfsteam  
14 Park Thoroughbred After Racing Program would like  
15 to delete three performances. They are currently  
16 licensed to perform 42 performances for the  
17 2022-2023 fiscal year. It is our recommendation  
18 that the Commission approve this request with an  
19 effective date of June 1, 2023.

20 CHAIRMAN UPTON: Any discussion or questions?

21 (Inaudible). Second?

22 COMMISSIONER D'AQUILA: Second.

23 CHAIRMAN UPTON: All in favor?

24 (Multiple ayes.)

25 CHAIRMAN UPTON: Unanimous.

1           We'll move on to Agenda Item No. 9, discussion  
2 of license denial. I understand Ms. Alvarado is  
3 going to lead us through 9.1 through 9.4.

4           MS. ALVARADO: 9.1 is Dasha M. Edwards, Case  
5 No. 2023-013060. The applicant applied for a  
6 cardroom employee occupational license. After  
7 review of her application, it was discovered that  
8 she was convicted of aggravated assault with intent  
9 in 2005.

10           The applicant applied for a waiver, which was  
11 declined by the executive director. Therefore, the  
12 Division would ask the Commission to authorize a  
13 notice of intent to deny.

14           CHAIRMAN UPTON: Open it up for questions or  
15 any discussion.

16           COMMISSIONER DRAGO: Mr. Chair?

17           CHAIRMAN UPTON: Yes, you are reorganized.

18           COMMISSIONER DRAGO: Ms. Alvarado, I don't see  
19 any police reports in these this time. Normally,  
20 it seems like we do.

21           MS. ALVARADO: This investigator report did  
22 not have the arrest report in it. It does have an  
23 explanation from her in the waiver interview of the  
24 actual arrest, but there was no arrest report.  
25 There is a judgment and a conviction report and

1 sentencing in there.

2 COMMISSIONER DRAGO: This is one of the cases  
3 where this was a crime committed back in 2005, and  
4 she's been working at the same place for like 11  
5 years, I think. From what I can see, she's  
6 rehabilitated herself, from what I can gather from  
7 the paperwork.

8 And there's some confusion about even the  
9 original arrest back in 2005 in terms of what it  
10 involved, and she's got no other serious issues  
11 like that since.

12 So I want to, I think, open it up to consider  
13 allowing it to continue with the license process  
14 and not issue the notice to deny. And if we issue  
15 the notice to deny, that still gives her a chance  
16 to come back; right?

17 MS. ALVARADO: Yes. She would still have 21  
18 days to request a hearing.

19 COMMISSIONER DRAGO: But if we decide here not  
20 to issue that notice to deny, she gets the license?

21 MS. ALVARADO: Right.

22 COMMISSIONER DRAGO: Okay. That's what I  
23 thought. So I'm inclined to go that route and not  
24 issue the notice to deny. I think -- I don't know  
25 what else we could get in cases to show that a

1 person's been rehabilitated, other than, what, 18  
2 years or whatever it is of no felonies, of  
3 long-term employment. I don't know what else we  
4 could do to show that she's been rehabilitated.

5 MS. ALVARADO: I will state for the record  
6 that she did have a misdemeanor conviction in 2012  
7 for issuing a worthless check as well.

8 COMMISSIONER DRAGO: Yes, I saw that. You're  
9 right. She explained that, too. Again, that's why  
10 I wish I could see the police report so that we can  
11 see the other side of it. But all we have is her  
12 explanation, and her explanation may or may not be  
13 100 percent accurate.

14 I don't know but to take her word for it at  
15 this point. We don't have anything otherwise. I'm  
16 inclined to listen to the rest of the Commission  
17 obviously, but I'm inclined to issue the license.

18 COMMISSIONER D'AQUILA: My understanding is  
19 that the assault, if I read the materials  
20 correctly, was involving a homeless person who  
21 attempted to grab her bag, but we don't have a  
22 police report on that.

23 MS. ALVARADO: Right.

24 COMMISSIONER D'AQUILA: That came from her  
25 explanation at the time.

1 MS. ALVARADO: Right.

2 COMMISSIONER D'AQUILA: And that goes back to,  
3 I believe, 2003. And then subsequent to that, the  
4 only thing we're aware of is one check which did  
5 not clear, if I understand correctly.

6 MS. ALVARADO: Yes, that's correct.

7 COMMISSIONER D'AQUILA: And we have no other  
8 research or background check, no other felonies or  
9 misdemeanors to speak of?

10 MS. ALVARADO: No, just the stuff that is  
11 included in the record.

12 COMMISSIONER D'AQUILA: I concur with  
13 Commissioner Drago's opinion on this, considering  
14 the number of years working to support oneself. I  
15 will concur with his summation on that and leave it  
16 up to discussion with the other commissioners.

17 CHAIRMAN UPTON: Commissioner Brown.

18 COMMISSIONER BROWN: Commissioner Drago, you  
19 took literally the words right out of my mouth, and  
20 much more eloquently. I completely, agree with  
21 you. This is a case of a completely rehabilitated  
22 character.

23 The one thing that did jump out at me was the  
24 worthless check. You know, she explained  
25 everything very clearly, though, in her letter. I

1 wish we had more of these letters attesting to good  
2 character and being rehabilitated because that  
3 would help us with this process.

4 But I completely agree with you Commissioner  
5 D'Aquila and Commissioner Drago. It does say that  
6 she has a temporary gaming license; is that  
7 correct?

8 MS. ALVARADO: I'm not aware of that.

9 COMMISSIONER BROWN: She states in her letter  
10 or her email she got it in January 2023.

11 MS. ALVARADO: Other than that letter, I don't  
12 believe that's anywhere in the reports we have, so  
13 I'm not exactly sure where she has a gaming  
14 license.

15 COMMISSIONER BROWN: I would support her being  
16 granted a license. She's a single mother, and she  
17 works hard. It looks like she's had no evidence of  
18 any other infraction.

19 CHAIRMAN UPTON: Anyone else?

20 MS. REPP: I just have a question. Is there  
21 any issue that she still owes them money?

22 MS. ALVARADO: Yes. It looks like she still  
23 owes for the 2012 conviction. And for both  
24 convictions, she still owes her court fines.

25 MS. REPP: And is that any bar?

1 MS. ALVARADO: You could still grant her a  
2 license, if that's what you guys are inclined to  
3 do. It could be a basis for denial as well.

4 COMMISSIONER D'AQUILA: Question, counsel. Is  
5 it proper to grant or is it permitted to grant a  
6 license subject to the payment of the fines to the  
7 court?

8 CHAIRMAN UPTON: I had that same question.  
9 Mr. Marshman, do you have the answer to that? But  
10 if you do not, I would like to find that out.  
11 Maybe we can table this. I had another question on  
12 this one as well.

13 It wasn't clear to me in the materials whether  
14 or not she disclosed a felony on her application.  
15 As a general matter, I don't know why these people  
16 continue not to disclose the felony.

17 Anyone out there that's listening, disclose  
18 the felony. It will be found out, and it goes to  
19 your truth, veracity. It's much better to disclose  
20 them and let us have all of it than to find it out  
21 later.

22 So this one, it seems in the memo it said that  
23 she disclosed the conviction on her application.  
24 But when I looked at the actual application, it  
25 appeared she did not, so I was confused by that.

1 MS. ALVARADO: So she in her initial  
2 application, which is considered incomplete, she  
3 did not disclose it. She was sent a deficiency  
4 letter and then disclosed all of the convictions.  
5 So on her initial application --

6 CHAIRMAN UPTON: But she lied on her initial  
7 application?

8 MS. ALVARADO: Yes, you're correct.

9 CHAIRMAN UPTON: I am still somewhat  
10 sympathetic, given the fact that (inaudible).

11 Do we have a motion, or would we like to table  
12 this until we can find out about making it  
13 contingent upon the payment of the outstanding  
14 fines? I'll open it up for discussion or motion.

15 Does general counsel have a comment?

16 MR. MARSHMAN: If I may, you had asked earlier  
17 if the Commission can grant a conditional license.  
18 Yes, you can grant a conditional license. I looked  
19 up this case now since we were talking.

20 The applicant pled and was sentenced to time  
21 served and restitution of 121 days, and there were  
22 court costs that seven years later were referred to  
23 collection. She was never on probation. There was  
24 never any violation of probation for this case.

25 Technically, the Court didn't have

1 jurisdiction to enforce the restitution order when  
2 they didn't put her on probation, so they couldn't  
3 have violated her for failure to pay the violation  
4 of probation, and they can't open a subsequent  
5 criminal case for failure to pay court costs and  
6 fines. That's why they referred it to collection.

7 It's an incomplete record whether this is  
8 still outstanding in collections. I can't tell  
9 from looking at the docket because courts don't  
10 really keep track, as far as I know. This is also  
11 a case from 2005.

12 None of this information is scanned  
13 electronically in any database that I have access  
14 to. To Commissioner Drago's point about the police  
15 report itself, I would have to submit a public  
16 records request for this information in paper copy.

17 And the second question or the second issue  
18 that the chairman brought up was the failure to  
19 disclose. It is a persistent issue for staff where  
20 an individual fails to disclose a prior conviction.

21 My only comment is that the conviction -- the  
22 definition of a conviction for purposes of the  
23 Chapter 550, 551 and 849 is broader, I think, than  
24 a layman's understanding of it in that it captures  
25 any sort of plea, regardless of adjudication.

1           Meaning, if your adjudication is withheld, as  
2 was this particular applicant, you are convicted  
3 within the meaning of Chapter 550. It is something  
4 that we highlight on our form so they can't claim  
5 that they have no notice of it.

6           But it is something that unless we change our  
7 form, as Commissioner Brown has suggested in the  
8 past, it may be a persistent problem, despite us  
9 educating everyone as much as we can that they need  
10 to disclose as much as possible.

11           CHAIRMAN UPTON: Any further discussions? Do  
12 we have a motion?

13           COMMISSIONER D'AQUILA: I would like to make a  
14 motion. Based on counsel's explanation with regard  
15 to the court costs, it appears that we do not need  
16 to attach those to the approval, so I would like to  
17 make a motion to follow the recommendation and  
18 observations of Commissioner Drago. What is the  
19 motion, send it back?

20           COMMISSIONER DRAGO: Approve it, yes. Approve  
21 the license.

22           COMMISSIONER D'AQUILA: Make a motion to  
23 approve the license.

24           CHAIRMAN UPTON: Is that technically correct  
25 that we can approve it?

1 MR. MARSHMAN: That's correct, Mr. Chair. You  
2 can vote to approve the application for a license.

3 CHAIRMAN UPTON: We have a motion and a  
4 second. All in favor?

5 (Multiple ayes.)

6 CHAIRMAN UPTON: All right. 9.2.

7 MS. ALVARADO: That is Kaliyah Alexander  
8 2023-025733. This applicant applied for a slot  
9 machine cardroom pari-mutuel combination  
10 occupational license. After review of her  
11 application, it was discovered that she was  
12 convicted of possession of marijuana with intent to  
13 sell, manufacture or deliver in 2019.

14 She did fail to disclose this on her  
15 application. She did not apply for a waiver  
16 because 561 does not compensate waivers by the  
17 executive director. Therefore, the Division would  
18 ask the Commission to authorize a notice of intent  
19 to deny.

20 CHAIRMAN UPTON: Any discussion?

21 You're recognized.

22 COMMISSIONER DRAGO: Again, the same kind of  
23 issues as we had in the first one, I think.  
24 Possession of marijuana with intent, we don't know  
25 what that meant in this case, whether she had 2

1 pounds of marijuana or 21 grams of marijuana.

2 And somebody's decision, either the officer or  
3 the prosecutor decided that it was enough to  
4 warrant possession with intent. I'm sorry we're  
5 not sure what the circumstances are.

6 I don't know if this is a drug dealer  
7 situation or it's just somebody with a substantial  
8 amount of pot or what it is. And I don't know that  
9 this is really a -- if it is a drug sale situation,  
10 I think it would relate to pari-mutuel wagering  
11 industry.

12 I think if it's a mere possession of  
13 marijuana, then I'm not sure I see how it relates  
14 to pari-mutuel wagering business. Again, this is  
15 the only thing we're aware of, in terms of any  
16 other felony convictions.

17 Again, this is four years ago. It's not that  
18 long ago, but I think I'd like to have some  
19 discussion on it because of the nature of the  
20 conviction, as opposed to the time. I think I  
21 would like to hear what the other commissioners  
22 have to say in that regard, whether or not we would  
23 deny a license based on that one offense.

24 CHAIRMAN UPTON: Commissioner Brown, you're  
25 recognized.

1           COMMISSIONER BROWN: Thank you. The one thing  
2 that jumped out at me about this case is that there  
3 is not a lot of information in the file. A lot of  
4 these other cases have substantial information.  
5 Again, like the last case, we have letters of  
6 support.

7           In terms of this investigation, was there any  
8 direct discussion with the individual?

9           MS. ALVARADO: I'm not aware of the  
10 discussions with our investigators or with our  
11 staff with the individual. I don't think so. It's  
12 not in the record. Usually they would make note of  
13 that if they did make contact with the individual.

14          COMMISSIONER BROWN: There's just not a lot --  
15 I mean, this individual is still employed by the  
16 Island Capri currently. I would not be inclined to  
17 support a denial without more information.

18          CHAIRMAN UPTON: Anything else from any of the  
19 other commissioners?

20          COMMISSIONER DRAGO: Can I ask one more  
21 question?

22          CHAIRMAN UPTON: We'll go Commissioner Drago,  
23 then Commissioner D'Aquila.

24          COMMISSIONER DRAGO: Thank you. She was put  
25 on probation. Do we know if she is still on

1 probation or not? I can't really figure it out  
2 from the material.

3 MS. ALVARADO: I am not aware. If you can  
4 give me a moment, I can check that.

5 MR. MARSHMAN: Mr. Chair.

6 CHAIRMAN UPTON: General counsel, you're  
7 recognized.

8 MR. MARSHMAN: To Commissioner Drago's point,  
9 I think we do have additional information that we  
10 can provide. There is a police report that was  
11 scanned not in our materials.

12 And Commissioner Brown's point, we wouldn't  
13 have contact with this individual necessarily,  
14 unless it was in the context of a waiver interview.  
15 And because this applicant is not eligible for a  
16 waiver, we don't have those types of conversations.

17 So that kind of explains the lack of personal  
18 contact with this applicant. However, I think if  
19 the Commission votes to table this item, we can  
20 provide additional information to the  
21 commissioners. I'm just not sure what the 90th day  
22 is for granting or denying the application in this  
23 case.

24 Ms. Alvarado, if she's allowed, if she can  
25 provide that information to the Commission just to

1 consider the time. If not, I'm happy to provide a  
2 summary of the police report. It does include  
3 details.

4 It was a traffic stop. Marijuana and firearms  
5 were located in the vehicle. We can go into that  
6 now, if we'd like to do it now. I would only  
7 advise that if we're on that 90th day cusp where if  
8 we don't issue some notice of taking an action, we  
9 would by default grant the application when the  
10 Commission may have concerns about the applicant.

11 CHAIRMAN UPTON: Commissioner D'Aquila and  
12 then Commissioner Brown. Commissioner Repp, do you  
13 also have something? I thought you had your hand  
14 up.

15 COMMISSIONER D'AQUILA: Ms. Alvarez, as I go  
16 through the materials, if you can explain to me, I  
17 see possession of equipment also. And then further  
18 down, I see possession of paraphernalia. And I  
19 think one of the charges is, if I understand  
20 correctly, intent to sell.

21 In addition to possession of whether it be 21  
22 grams or 2 pounds, is this also a case where the  
23 individual was selling to others?

24 MS. ALVARADO: I do not have specific  
25 information on the arrest in my file here.

1 Mr. Marshman's report might have more information  
2 on that as well. I will say, the 90th day is not  
3 until August. So if you would like to review the  
4 report that Mr. Marshman has, I can add that and  
5 address it again at the July meeting as well.

6 CHAIRMAN UPTON: As I understand it, it's a  
7 certain amount. If you have a certain amount,  
8 you're assumed to have the intent of selling. So I  
9 don't think we necessarily know just from the --  
10 we'd have to dig more into the facts.

11 COMMISSIONER D'AQUILA: So with those charges,  
12 this would indicate that the amount would have to  
13 be greater to have that on the initial charge.

14 CHAIRMAN UPTON: That's my understanding.  
15 Commissioner Drago might have something. It's more  
16 than just -- it's more than this individual, in the  
17 eyes of the law.

18 COMMISSIONER DRAGO: So it can be the amount.  
19 It can be the circumstances around it. It can be  
20 paraphernalia might be like baggies, individual  
21 baggies, or some type of manufacturing devices  
22 nearby, something to indicate that this is more  
23 than mere intent.

24 That's why I say it could be just possession  
25 with baggies found. It can be, you know, depending

1 on the amount. Again, that's why I say without the  
2 police report, it's difficult to know what extent  
3 the person was involved with this, whether there  
4 was any real evidence that it was her intent to  
5 sell or whatever it might have been.

6 CHAIRMAN UPTON: What we do know is that four  
7 years ago, she was convicted of this, and she lied  
8 about it on her application, which I find troubling  
9 because it was just four years ago. Whereas, the  
10 last one we looked at, it was a much longer time.

11 To me, there's really no argument here that it  
12 shouldn't have been reported. That's where I have a  
13 little bit of an issue. I know Commissioner Brown  
14 wanted further discussion.

15 COMMISSIONER BROWN: It's a perpetual problem  
16 that we have with failure to disclose. Our forms  
17 just need a little reworking on them. On the  
18 current application, it doesn't -- other than the  
19 section of disclosing the charge, it doesn't say  
20 along with the application, please submit  
21 additional materials, does it, currently? We don't  
22 have that section that we discussed previously.

23 MR. MARSHMAN: If I may, I would suggest that  
24 someone like Ms. Ricks, who is behind me, would  
25 probably be most knowledgeable about what the

1 application says or doesn't say.

2 COMMISSIONER BROWN: I mean, even the forms  
3 still have DBPR on it. We really need to look at  
4 modifying them. Maybe some of this can be solved  
5 and we can see less cases here that are inclined  
6 that don't disclose.

7 CHAIRMAN UPTON: I agree that the form can be  
8 improved, but I think it's more of a matter of  
9 training on the HR side of the various operators  
10 that these applicants know it's going to be found  
11 out. You're in a much better position if you  
12 disclose it than if you tried to hide it and then  
13 we find out.

14 I think that should be more on the applicant.  
15 I agree we don't need to have a form that says DBPR  
16 on it or anything like that. But to me, the form  
17 is pretty obvious. And I think when they're not  
18 disclosing it, a vast majority of the time, they  
19 know what they're doing.

20 COMMISSIONER DRAGO: Chairman, can I ask a  
21 follow-up question?

22 CHAIRMAN UPTON: Yes.

23 COMMISSIONER DRAGO: So when somebody  
24 doesn't -- and I know we've had this discussion  
25 before. But when somebody doesn't fill out the

1 form entirely and they leave their address off, or  
2 they leave a conviction off, or they leave their  
3 date of birth off, is there some difference in the  
4 way we look at that in terms of whether we're going  
5 -- I know we send it back if it's not complete.

6 But is there a difference, meaning what they  
7 leave off the application? Do you understand what  
8 I'm saying? Do we have established policy -- I  
9 know this is a rhetorical question -- established  
10 policy that if they don't report or disclose  
11 criminal convictions, we won't approve it, but if  
12 they leave their address off, we'll give them  
13 another shot to do it?

14 But isn't the reason we send them the -- I  
15 forget what we call it -- but an incomplete, it's  
16 not complete, a not complete report or application  
17 so that they can look at it again and get a second  
18 bite at the apple and put in whatever information  
19 they may have left out, isn't that the purpose of  
20 sending it to them the second time?

21 CHAIRMAN UPTON: You're recognized, Executive  
22 Director.

23 MR. TROMBETTA: Thank you, Mr. Chair. I can  
24 speak on the licensing process in general. We don't  
25 have a set policy. We review the licenses on a

1 case-- license applications on an  
2 application-by-application basis.

3 Deficiency letters are sent out when materials  
4 are missing or the license is incomplete or where  
5 essentially the agency can't make a decision based  
6 on the information that was submitted and we need  
7 more information.

8 The deficiency in terms of failing to  
9 disclose, we do send out deficiency letters in that  
10 instance, but it's more -- I don't want to say it's  
11 more for anything.

12 But we review the applications separately.  
13 And the information that either is provided or is  
14 not provided, it's kind of all viewed  
15 independently.

16 CHAIRMAN UPTON: Commissioner Repp.

17 MS. REPP: I agree on a lot of things. I come  
18 from a background where omission is the same as a  
19 lie. I do agree with Commissioner Brown  
20 (inaudible).

21 CHAIRMAN UPTON: Question for the executive  
22 director. Can we issue a letter or something  
23 recommending to the permit holders here to stress  
24 to their applicants, what I've mentioned, it's far  
25 better to disclose than to have us find out later

1 because it certainly is a frustration?

2 And we don't know. We don't know if it --  
3 like Commissioner Repp, I think I assume that it's  
4 intentional, particularly when it happened in 2019.  
5 You don't forget your felony conviction from four  
6 years ago.

7 I do think that that's something that it's  
8 more of an HR issue on the other side where they  
9 can clarify to the applicant that's sitting there,  
10 you need to disclose.

11 MR. TROMBETTA: Mr. Chair, I do think we have  
12 a few options. I would suggest maybe that  
13 operationally, we can have the pari-mutuel wagering  
14 work with the licensing facilities to address sort  
15 of the discussion we're having here about  
16 completing the application.

17 However, some applicants don't -- you know,  
18 that is one large group of applicants that go  
19 through the pari-mutuels. There's a whole other  
20 group that don't go through those pari-mutuels. So  
21 I think that will solve a problem, and we  
22 absolutely can do that.

23 I just want the Commission to be aware that  
24 people can apply online. They can apply -- they  
25 can submit their applications in a number of ways.

1 CHAIRMAN UPTON: Commissioner Brown.

2 COMMISSIONER BROWN: Thank you.

3 Mr. Trombetta, what is the process for revising  
4 the forms, is it through rule making or --

5 MR. TROMBETTA: Yes, Commissioner Brown, it  
6 is through rule making. Particularly, this form  
7 has been incorporated by rule, so any change to the  
8 form would have to go through formal rule making.  
9 That's why it still says DBPR on the form.

10 COMMISSIONER BROWN: Is that one of the rules  
11 that we're contemplating?

12 MR. TROMBETTA: Yes. We filed notice of  
13 proposed rule -- no -- notice of rule development,  
14 which is the initial stage for our occupational  
15 licensing form, so it's something that we're going  
16 through the process.

17 I plan to speak a little bit more about rule  
18 making at the executive director update at the end  
19 of the Commission meeting, but I'm happy to address  
20 some of that right now.

21 COMMISSIONER BROWN: I think we'll just wait,  
22 if that's okay. Thank you.

23 CHAIRMAN UPTON: I think that's better, too.  
24 Does anyone have a motion on 9.2? Further  
25 discussion?

1           COMMISSIONER BROWN: Mr. Chair, I would really  
2 like to see a more complete file in the record  
3 before we make --

4           CHAIRMAN UPTON: Would you like to make a  
5 motion to table?

6           COMMISSIONER BROWN: Yes, sir.

7           CHAIRMAN UPTON: Any second?

8           COMMISSIONER D'AQUILA: I will second that,  
9 table it to the next meeting.

10          CHAIRMAN UPTON: All in favor?

11          (Multiple ayes.)

12          CHAIRMAN UPTON: Unanimous that we'll table  
13 9.2 until the next meeting.

14          Ms. Alvarado, you're recognized for 9.3.

15          MS. ALVARADO: That is 2023-027265, Robert  
16 Jeffrey Kaye. This applicant is seeking a slot  
17 machine cardroom pari-mutuel combination  
18 occupational license. Upon our review of his  
19 application, he was convicted of possession of  
20 dangerous drugs in 1970.

21          He did fail to disclose this on his  
22 application. He could not apply for a waiver  
23 because it's a slot machine combo license under  
24 Chapter 551. Back in 2017, there was a consent  
25 order granting this applicant a cardroom

1 occupational license.

2 He also provided some sort of documentation  
3 from New York. It's called a certificate of  
4 release from disability which removes any  
5 restrictions in New York from getting a license.  
6 It's not necessarily applicable here, but it's  
7 something to note.

8 So the Division would ask the Commission to  
9 authorize a notice of intent to deny in this case.

10 CHAIRMAN UPTON: I will open it up for  
11 discussion.

12 COMMISSIONER D'AQUILA: Ms. Alvarez, reading  
13 all the materials, I was unclear. Maybe you can  
14 help me. What is an NYCPL? What does that mean?  
15 How does that -- does that have any relevance in  
16 this matter?

17 MS. ALVARADO: Where are you reading NYCPL?

18 COMMISSIONER D'AQUILA: If you're in the  
19 unredacted materials Page No. 1121, it refers to  
20 NYCPL 720.35.

21 MR. DRAGO: I think that refers to criminal  
22 procedure in the number, criminal procedure CPL  
23 after whatever. The criminal procedure, it's in  
24 the documents.

25 COMMISSIONER D'AQUILA: Does that have any

1 relevance here whatsoever? He was encouraged to  
2 bring that up in connection with his license by  
3 someone advising him on the outside. I see it in  
4 the evidence.

5 MS. ALVARADO: Yes. Actually, the next page  
6 on it has the actual youthful offender statute.

7 COMMISSIONER D'AQUILA: 2035 youthful  
8 offender, right.

9 MS. ALVARADO: That doesn't have any relevance  
10 here. I think it may apply in New York when he's  
11 applying for a license. But here, he was  
12 convicted --

13 COMMISSIONER D'AQUILA: So no relevance  
14 whatsoever?

15 MS. ALVARADO: No.

16 COMMISSIONER D'AQUILA: Okay. Thank you.

17 CHAIRMAN UPTON: Commissioner Brown, you're  
18 recognized.

19 COMMISSIONER BROWN: I think most importantly  
20 to note here is that there's a stipulation and  
21 contempt order that granted him a current  
22 pari-mutuel license.

23 So with the same crimes that we are  
24 contemplating today, simply because this is a slot  
25 machine combo license, he can't request a waiver.

1 So we've already granted him a waiver for this 19  
2 -- and he actually put all of his crimes.

3 He did disclose the crimes in the '80s and the  
4 '70s. None go -- again, to Commissioner Drago's  
5 earlier point, none go to whether he is fit to hold  
6 a slot machine license. He's a current pari-mutuel  
7 licensee.

8 COMMISSIONER D'AQUILA: It's my understanding  
9 he's working as a guest services representative  
10 currently, and I'm also looking at the package. I  
11 want to put the gentleman in the '70s; is that  
12 correct?

13 MS. ALVARADO: Right.

14 CHAIRMAN UPTON: This is unclear. His only  
15 felony was in 1970, and he was, I think, 18 at the  
16 time. No other felonies. They were DUI  
17 misdemeanors, possession in 1986 in New York,  
18 drugs.

19 And then also, I do think maybe the youthful  
20 felony -- he probably -- well, I hate to say I know  
21 what he's thinking. But it can be -- that is when  
22 it can be confusing.

23 It's hard to distinguish between, if you're a  
24 non-lawyer, that New York's laws aren't going to be  
25 the same as Florida's laws, and you didn't have to

1 disclose it here and there. That one is more  
2 understandable than just committing a crime four  
3 years ago, in my opinion.

4 COMMISSIONER D'AQUILA: In light of the  
5 circumstances, I'm inclined to make a motion to  
6 approve a license.

7 CHAIRMAN UPTON: All in favor?

8 (Multiple ayes.)

9 CHAIRMAN UPTON: All right. Moving on to 9.4.

10 MS. ALVARADO: This is 2023-028305 Terrell  
11 Lipscomb. He applied for a slot machine cardroom  
12 pari-mutuel combination occupational license.

13 Upon review of his application, he has been  
14 convicted of grand theft of a motor vehicle in  
15 2020, possession of a vehicle without a VIN number  
16 in 2020, dealing in stolen property in 2023, false  
17 ownership information for a pawned item in 2023.

18 And he did disclose the felonies on his  
19 application. He did not apply for a waiver because  
20 you can't apply for a waiver under Chapter 551.  
21 Therefore, the Division would ask that the  
22 Commission authorize the notice of intent to deny  
23 in this case.

24 CHAIRMAN UPTON: Open it up for discussion and  
25 questions.

1           COMMISSIONER BROWN: These crimes go to -- are  
2 very relevant to being granted a license. With  
3 that, I would move to approve the staff  
4 recommendation.

5           COMMISSIONER D'AQUILA: Second.

6           CHAIRMAN UPTON: All in favor?

7           (Multiple ayes.)

8           CHAIRMAN UPTON: Unanimous. We move on to  
9 Agenda Item No. 10. And, Mr. Executive Director,  
10 the floor is yours.

11           MR. TROMBETTA: Thank you, Mr. Chair. So I  
12 have a few updates to provide. I think first in  
13 accordance with Section 285.710, the Florida Gaming  
14 Control Commission has to distribute moneys to  
15 several cities and counties within the state based  
16 on moneys paid as part of the revenue share by the  
17 Seminole Tribe of Florida.

18           The regulatory team of Division of Pari-Mutuel  
19 Wagering has submitted the paperwork to DFS this  
20 past week to make payments of an amount of about  
21 \$5.6 million distributed to 11 cities and counties.  
22 It goes to DFS, so we've essentially sent the  
23 paperwork out.

24           This is money that's relied on by these cities  
25 and counties. So the notice was for the Commission

1 to be aware that it's happened so that if any of  
2 the counties are tuning in, they're aware to that  
3 it is going out.

4 The moneys, the revenue shares are based on  
5 payments made from October of 2021 to February of  
6 2022, so going back a little bit. Any questions on  
7 that?

8 And then moving on to rule making updates, so  
9 I do have a few updates. A few meetings ago, the  
10 Commission provided the authority for me and my  
11 staff to have rule making on a few areas. We  
12 initially filed notice of rule development in three  
13 areas.

14 One was public comments made at the Commission  
15 meetings. The second one was forms for  
16 occupational licensing. Well, it's really  
17 occupational licensing, not just forms.

18 And the third area was a greyhound cleanup.  
19 Essentially, with greyhound racing ending, there's  
20 still a number of rules that reference greyhounds,  
21 and we have a -- you know, we intend to kind of  
22 clean all of that up.

23 The rule development is still going on for the  
24 greyhound cleanup and for the occupational  
25 licensing. Essentially, our staff is reviewing the

1 rules and trying to come up with a plan before we  
2 move to the next step, which is filing a notice of  
3 proposed rule.

4 Today the notice of proposed rule is noticed  
5 in FAR on the public comment portion our rule.  
6 This was modified, as discussed in the last  
7 Commission meeting to provide a three-minute  
8 speaking period.

9 However, there was some additional discussion  
10 at that meeting about some additional requests to  
11 have in the rule. We didn't move forward on that.  
12 Frankly, I'd like to turn it over to legal affairs  
13 for any comments or thoughts or questions about  
14 what happened.

15 Essentially, the advice from legal counsel was  
16 to try to stick to the rule, I guess, to make it as  
17 clean as possible, just sticking with public  
18 comment. And then if the Commission wants to go  
19 into other areas during public meetings, we would  
20 probably do that through a different rule.

21 So at this point, I would like to kind of open  
22 it up if you have any other thoughts or any ideas  
23 on some items that you'd like us to cover in rule  
24 making regarding the process of the Commission  
25 meetings, we can do that.

1           And I know the discussion of -- what were some  
2 of the things, Liz. Do you mind jumping in here.  
3 What were some of the things that we discussed?

4           MS. STINSON: Sure. So we discussed including  
5 information about the IT policy saying that we were  
6 going to try and provide the same access  
7 electronically as we were in person, and that  
8 typically is addressed through a different rule,  
9 other than the public comment rule.

10           So we wanted to keep the rule as this  
11 particular rule based only on the public comment  
12 section and then include information about other  
13 procedural items and other rules in that chapter.

14           MR. TROMBETTA: And so big picture, we are  
15 trying to effectuate rule making as the Commission  
16 desires. We're just trying to do it in the best  
17 way. So even if there's nothing at this point, I  
18 just want you all to know that if there are other  
19 things that you'd like us to adopt to govern  
20 Commission meetings, we can do it.

21           You have some time to think about it, but we  
22 can do it. We just need to do it through the  
23 correct rule-making process.

24           For the other two rules, so for greyhound rule  
25 making, again, that's still rule development of the

1 next step for both greyhound cleanup and for the  
2 occupational licensing. The next step would be to  
3 move and file a notice of proposed rule and then  
4 try to move forward.

5 At that point, we would have to have a draft  
6 of the language. That's essentially what's slowing  
7 that process down. Finally, in terms of rule  
8 making, there's a notice of technical change has  
9 been filed as well.

10 The technical change is really the DBPR  
11 cleanup. It kind of moves and replaces references  
12 to DBPR with the FGCC. That is also in the  
13 process. Essentially, we've done our end, and  
14 we're kind of waiting for, is it FAR, to correct  
15 the existing rules.

16 Is there any questions on rule making?

17 From the legislative sessions, House Bill  
18 No. 7063 was signed by the Governor. This was the  
19 bill related to tax credits for thoroughbred  
20 horseracing permit holders associated with the HISA  
21 program.

22 So the intent, big picture here is that the  
23 thoroughbred permit holders in the state that are  
24 part of the HISA program will be able to request a  
25 tax credit from the Gaming Commission to offset

1 costs associated with the HISA implementation.

2 So that bill has been passed. That is going  
3 to be something that we are going to be working  
4 with permit holders to help make happen this year,  
5 so just update there.

6 As Mr. Marshman said in some of the HISA  
7 discussion, HISA drug testing program did go into  
8 effect May 22nd. So we are at the racetracks in  
9 the state of Florida, we are now operating under  
10 HISA's drug testing rules as the agreement.

11 As we were just authorized to sign the  
12 agreement, we'll continue to have our staff  
13 collect, do sample taking, and our investigators  
14 will work with HISA to conduct any investigations  
15 that are needed.

16 There's a lot of things happening with the  
17 close -- with the end of fiscal year coming up just  
18 kind of around the admin IT side. Our IT team has  
19 been in the process of moving as many users onto  
20 the Gaming Commission's own network as possible.

21 We've kind of come up with a plan where we are  
22 keeping -- right now, there's issues with some of  
23 our document processing and record retention  
24 programs. So employees that have a large  
25 responsibility in using those programs, we're kind

1 of keeping on DBPR so we can fix some of the issues  
2 that have come up.

3 We're trying to move everybody else onto the  
4 Gaming Commission's network as soon as possible.  
5 So I know IT is doing a lot in that area.

6 Admin-wise, same type of thing. Our  
7 construction is going really well at the building  
8 over here. We're hoping -- I don't have a  
9 deadline, but for the commissioners, for the staff  
10 that are watching, we are trying to make that move  
11 happen as soon as possible.

12 Right now, the plan is to as construction  
13 winds up to move people that are in temporary  
14 offices. I'm pointing. Sorry. At the 4070  
15 location into their final offices and then move  
16 people from the other building over once those  
17 offices are ready.

18 Again, I don't have a firm deadline, but I  
19 think it's coming up pretty quick. It won't happen  
20 probably before the end of this fiscal year. But  
21 shortly thereafter, I think we're going to be able  
22 to make some rules on moving people into that  
23 building, which I think will be a great thing for  
24 me, for staff, just to have everybody in the same  
25 place. It's going to make thing a lot easier, so

1 that's exciting.

2 I'm going to turn it over to Carl Herold, our  
3 director of law enforcement, to give you an update  
4 on some of the law enforcement activities that have  
5 occurred over the past month. But before I do  
6 that, I just want to also point to the next  
7 Commission meeting.

8 Just while we're here, I think I've spoken  
9 with all of you to get scheduling. It looks like  
10 July 11th everybody is available for the next  
11 Commission meeting. If that is still the case, I'd  
12 just like to get that out there publicly. Does  
13 that still work? Perfect.

14 And then I'm planning, depending on the  
15 feedback I get right now to have kind of a year in  
16 review at that meeting. I would like kind of our  
17 admin team, kind of the senior management to have  
18 five or ten minutes to kind of present to you and  
19 to everybody that's watching what we've been able  
20 to accomplish in the last year. It's a ton. We've  
21 done a ton.

22 Looking back, we've got a lot done, and I  
23 would like to show that off to you all to allow you  
24 to answer questions to talk about some of the kind  
25 of internal things we've been working on and

1 external stuff that we've got done.

2 So, you know, if that's something you'd like,  
3 I'd like to go forward doing that for the next  
4 meeting.

5 If there's nothing else, Mr. Herold, the floor  
6 is yours.

7 MR. HEROLD: Thank you. For the record, Carl  
8 Herold, the director of law enforcement.

9 CHAIRMAN UPTON: If I may, I would like to do  
10 one thing. I would like to commend you,  
11 Mr. Herold. You and your team have done an  
12 excellent job with the recent enforcement actions,  
13 and I just wanted to note that for the record.  
14 Great work on that. Now the floor is yours.

15 MR. HEROLD: Well, since you brought that up,  
16 I've got a little something. First, thank you very  
17 much. You know, I'm gratified that I was able to  
18 do something as far as the whole unit in the law  
19 enforcement realm that gave some value to the works  
20 of everybody in our agency.

21 I mean, you know, while this was a law  
22 enforcement action, it was not without the help of  
23 everybody within the Gaming Enforcement Unit, from  
24 administration to general counsel's office and  
25 everybody in between.

1           And I think -- Mr. Chair, you weren't here  
2 whenever I initially spoke about getting this  
3 position. I really stress collaboration and  
4 working partnerships with our law enforcement  
5 community, and I think that this particular action  
6 really highlights that sense of cooperation and  
7 collaboration.

8           I did want to take an opportunity to kind of  
9 highlight the men and women that were a part of  
10 this in the law enforcement community that helps us  
11 out.

12           Commissioner Mark Glass with his folks from  
13 FDLE, Sheriff Rick Bradshaw with the Palm Beach  
14 County Sheriff's Office, Sheriff Ken Mascara from  
15 the St. Lucie County Sheriff's Office, Sheriff Chad  
16 Chronister from Hillsborough County Sheriff's  
17 Office, and then Chief Anthony Holloway of St. Pete  
18 PD.

19           All their folks were instrumental in helping  
20 us carry this out, so they certainly deserve a  
21 great deal of our thanks and gratitude for what  
22 they've done for us. Thank you. I'm glad we were  
23 able to do this.

24           Kind of a summary of what happened in that  
25 action is we were able to close four arcades.

1 Personally, I don't like that term. It insinuates  
2 that it is some sort of lawful action that is very  
3 innocent, but it is not. We were able to close  
4 four arcades. We confiscated 359 slot machines.

5 The number of cash and bank deposits that were  
6 seized is just over \$1 million and over \$2 million  
7 worth of property had liens put on them, since they  
8 were all purchased through proceeds of these  
9 illegal actions.

10 We made five arrests for everything from money  
11 laundering to RICO to some other possession of slot  
12 machines and those kind of things like that.

13 Probably the greatest compliment to all of that is  
14 that now the news media is helping us carry the  
15 banner and educate the public and educate these  
16 business owners that are out there that if they're  
17 going to conduct themselves in an illegal  
18 operation, they're going to be identified.

19 Going forward, we already have four or five  
20 operations in various level of completeness. So  
21 this is certainly not the only one that you'll see.  
22 It's the first one, and I'm glad it turned out to  
23 be very identifiable to the public and something  
24 that we can hang our hat on, but this is certainly  
25 not the last one. Thank you.

1 CHAIRMAN UPTON: Thank you.

2 Commissioner Brown.

3 COMMISSIONER BROWN: I cannot echo it more  
4 emphatically your compliments to Carl and his team.  
5 Literally, you have been working with these  
6 partners. There were two law enforcement officers  
7 in our agency.

8 And what you have been able to achieve is just  
9 mind blowing with the limited resources that you  
10 had, and I know there's more to come. You've just  
11 done a tremendous job. The more resources you get,  
12 I think we'll begin to see it even more mind  
13 blowing.

14 So, Carl, thank you so much for working so  
15 hard and for your team. You guys have been doing a  
16 great job.

17 I also want to commend our admin, our HR, our  
18 CIO. What they're doing, too, is just incredible,  
19 and our new external affairs director, too.

20 MR. HEROLD: Absolutely. And without their  
21 assistance, this would not have been possible. I  
22 do want to specifically call out Dan DeCoursey  
23 (phonetic), my chief of law enforcement because  
24 without him there to help stand shoulder to  
25 shoulder, it wouldn't have been possible. Thank

1 you.

2 CHAIRMAN UPTON: Thank you.

3 Commissioner Repp.

4 COMMISSIONER REPP: I'd also really want to  
5 commend you. I was there in Hillsborough for the  
6 law enforcement action. I'm really excited to see  
7 what you did with so little resources at that time.

8 I got to sit down and talk to you about your  
9 vision for how you plan to develop and your ideas  
10 and your values behind how you want to create your  
11 department. I'm really excited to see it.

12 I'm glad that I'm here to watch you follow  
13 through with your vision. I know it's going to be  
14 great. I appreciate your efforts, and we're very  
15 lucky to have you.

16 MR. HEROLD: Thank you. I'm humbled.

17 COMMISSIONER D'AQUILA: I would just like to  
18 multiply all of that praise by two. Thank you very  
19 much, sir, for all your work.

20 MR. HEROLD: Thank you.

21 MR. DRAGO: I guess I'm going to have to say  
22 something. Everybody I think knows how I feel  
23 about the work you guys have done. I really do  
24 appreciate it. I know what's gone into it,  
25 especially with the limited resources that you had.

1 I also want to make sure -- because my  
2 understanding is that the statewide prosecutor, of  
3 course, is a valuable part in this, too. I want to  
4 make sure we recognize them as well and appreciate  
5 their efforts.

6 Their help is what's going to help make this  
7 all happen as we go statewide. So, yes, thank you  
8 so much for what you've done. Thank you for your  
9 folks. I know you're moving ahead and hiring more  
10 people. So as you hire more people, we certainly  
11 expect you to do way more work and get more and  
12 more arrests, so thank you, everybody.

13 MR. HEROLD: The only thing I would say is,  
14 again, I'm grateful for all this praise. Without  
15 my executive director being there helping make  
16 these things happen, it wouldn't be possible. I  
17 thank you very much. Hope to do more.

18 CHAIRMAN UPTON: On to Agenda No. 11, public  
19 comment. I do not have any cards. I understand we  
20 do not have any public comment today. Anything  
21 further from any of the commissioners?

22 Mr. Lockwood, welcome.

23 MR. LOCKWOOD: I apologize. I did not realize  
24 we were doing public comment cards on just the  
25 public speaking portion, so I'll fill this out and

1 get this in.

2 Briefly, one, it's great now that we have back  
3 full Commission slate with five commissioners.  
4 Great to see you. I look forward to working with  
5 everyone.

6 Second, I just would like to echo the thanks  
7 that Carl and the law enforcement staff with the  
8 internet cafes and the arcades. It's certainly  
9 been a very big issue for all of my clients over  
10 the years, and it's really gratified to see this  
11 actually taking place and some change being  
12 accomplished.

13 Last, Lou had mentioned rule making that the  
14 Commission staff is undertaking. In the last  
15 couple weeks, my firm and myself have been working  
16 with the staff on the concept of cashless wagering  
17 in the context of slot machine operations.

18 I know that some of the commissioners may be  
19 aware of this and some of the protocols that are  
20 going on and the products that are on the market.  
21 At this point, our slot machine laws really and the  
22 rules and regulations haven't been modified in a  
23 number of years.

24 The concept of cashless wagering I think is  
25 certainly contemplated by Chapter 551. But maybe

1 through various technological issues, we've got  
2 some rules that may or may not be problematic.

3 At a minimum, I know that staff would want to  
4 see kind of more standalone rules to make sure that  
5 they're gathering the data that they're needing in  
6 order to conduct their audits and enforcements and  
7 things of that nature.

8 And with that, I would hope that the  
9 Commission -- I'm asking that the Commission at  
10 least give some direction to staff.

11 I feel like they need that direction now to  
12 kind of continue their exploration of this idea and  
13 this technology so that the slot machine facilities  
14 can have this technology. It is definitely  
15 something that is becoming more prevalent in the  
16 casino gaming industry.

17 CHAIRMAN UPTON: Any questions? Okay. Thank  
18 you. Do you have anything further?

19 MR. LOCKWOOD: Nothing further. Thank you.

20 CHAIRMAN UPTON: Thank you. Would anybody  
21 else like to say anything? I know it wasn't -- it  
22 may not have been clear, but I do like to have the  
23 comment cards, just so I know who's speaking. No  
24 other speakers, then we'll stand adjourned.

25 (Proceedings concluded at 10:48 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

I, I. IRIS COOPER, do hereby certify that I was authorized to and did stenographically report the foregoing telephonic proceeding, and that the transcript is a true and complete record of my stenographic notes.

Dated this 15th day of August, 2023.



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I. Iris Cooper  
Stenographic Reporter  
Notary Public, State of Florida  
My Commission No. 1366674  
Expires: July 27, 2025

Job No.: 311548