

Florida Gaming Control Commission

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Meeting

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TRANSCRIPTION OF FLORIDA GAMING CONTROL COMMISSION
MEETING

NOVEMBER 3, 2022

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1 Thereupon,
2 the following proceedings were transcribed from an audio
3 recording:

4 CHAIR MACIVER: Good morning and welcome all to
5 the November 3rd regular Florida Gaming Control
6 Commission meeting.

7 Commissioner Brown, would you like to lead us
8 in the pledge for this meeting?

9 COMMISSIONER BROWN: Yes.

10 CHAIR MACIVER: Thank you. We have a pretty
11 full agenda, so I think we're going to jump right in.
12 Agenda Item No. 1 is a discussion for a petition of
13 variance. And Mr. Marshman, I believe you can give
14 us the 50,000-foot description of the issue, and I
15 believe, Mr. Lockwood, you're going to present the
16 petition.

17 MR. MARSHMAN: Good morning. The petitioner in
18 this case which for record purposes is 2022-038844 is
19 asking for a one-year waiver of a particular rule
20 that prohibits a card room employee from playing at
21 the card room itself in which they're employed.

22 They submitted a petition, the commission
23 requested additional information, the petitioner
24 replied with the additional information, provided us
25 with copies of the materials that you've been

1 provided, and Mr. Lockwood is here to present more of
2 the details of the proposed plan. I believe it may
3 be slightly different than what is presented in the
4 petition that you all have before you.

5 CHAIR MACIVER: Mr. Lockwood, the floor is
6 yours.

7 MR. LOCKWOOD: Good morning, commissioners.
8 John Lockwood here on behalf of South Marion Real
9 Estate Holdings d/b/a Oxford Downs. Generally that
10 is, what general counsel has overlaid, is what we're
11 here presenting on.

12 Oxford Downs is a card room in Marion County,
13 Florida, kind of near The Villages. It's been in
14 operation for a number of years now. And I've got my
15 client here, Tony Mendola, who's the operator. And I
16 just want to note, too, we do have a pending rule
17 challenge to the occupational license rule that we're
18 seeking a variance from. That was filed earlier this
19 year, it's pending appeal, and I did want to note for
20 purposes of the commission that we would intend if
21 this variance is granted and allowed for these six
22 tables over the period of one year that the plan
23 would be to withdraw that rule challenge.

24 At the time I think we were in this
25 transitional period where the commission had not yet

1 been set up, had not taken over, the division wasn't
2 really we feel like in a position of granting these
3 type of policy issues at that point in time. So
4 that's what really led to the rule challenge at that
5 time.

6 Basically this rule here, we've got -- where
7 Oxford Downs is located, we've got a number of
8 employees in the card room that have expressed
9 interest in playing poker. Pretty much, across the
10 state, people in the poker industry that work in the
11 poker industry generally like to play poker. In a
12 lot of cases, they're able to be accommodated by card
13 rooms that are in close vicinity to them. However,
14 where Oxford Downs is located, they do not have a
15 card room in close proximity, so these players are
16 forced to drive to Tampa, Jacksonville, other rooms
17 that are nowhere near close to them. And what we're
18 looking to do is to provide some accommodation to
19 ensure that these players are not hosting home games,
20 anything like that. We want to bring all of these
21 operations into the licensed and regulated card room.

22 One thing that I did want to note in the
23 request for additional information that the
24 department -- gaming commission did seek, we had
25 indicated that we may utilize some designated player

1 games for player participation from the employees,
2 however, kind of into reflection and thinking of that
3 and talking with staff, we will not allow the players
4 to be at the designated player games. This variance
5 would only be for typical cash poker games, and then
6 as we've laid for, potentially employee participation
7 tournaments.

8 So they'd just be regular cash poker games, and
9 then the employee participation type tournaments and
10 so scenario would be a player that is not an employee
11 of the room, that's an everyday patron, wouldn't be
12 forced to sit down with an employee of the room if
13 they didn't want to. We'd have these segregated in
14 the room and set up.

15 You know, the interest we have is very much
16 aligned with the interest of the department. There
17 are some jurisdictions that allow this conduct, there
18 are some jurisdictions that don't allow this conduct.
19 It's very much specific to, you know, where these
20 rooms are located across the country. We think that
21 there's a market for this in some cases in Florida.

22 We don't think that everyone in Florida would
23 utilize or want to take advantage of this primarily
24 because if they've got another option for their
25 players to play at in close vicinity, then most

1 likely they won't implement this policy at all.

2 However, for Oxford Downs, we do think it makes
3 sense. We think it's very business friendly.

4 We have, we believe, all the checks and
5 balances in place. There's a lot of eyes at these
6 poker tables. We don't believe that there's gonna be
7 any collusion, cheating or anything between the
8 surveillance, the dealer that's at the table, the
9 other players at the dealer. We believe this is
10 going to work just fine and there won't be any
11 issues.

12 I will note that if there are any concerns that
13 come out of this, if there are players that don't
14 like this setup, they're unhappy with the way this is
15 going, I can assure you on behalf of my client,
16 they're going to cease this activity before we hear
17 anything about it from the gaming commission at that
18 point in time.

19 So what we'd be requesting from the commission
20 would be an approval to allow for kind of a one-year
21 test period to utilize six poker tables. As we've
22 outlined in this, we'd have all the placards at the
23 tables, it would be displayed. Assuming that
24 everything works well at the end of this one year,
25 we'd be able to come back to the commission to put

1 this in place on a more permanent basis for Oxford
2 Downs. With that, if you have any questions, happy
3 to take them.

4 CHAIR MACIVER: Just to start out: So my major
5 concern with this is with the transparency of it, and
6 when I first heard of the idea of a waiver from this
7 rule and allowing employees to gamble at the facility
8 where they're employed, obviously that rule is in
9 place to preserve the integrity of the games, but
10 also to preserve the appearance of the integrity of
11 the games so you don't have a player that sits down
12 at the table and finds out after the fact that
13 they're gambling with someone who has the inside
14 track, so-to-speak. My concern was that you actually
15 laid out specifically parameters that would protect
16 the health, safety, and welfare of the state of
17 Florida, the integrity of the game. I think you've
18 done that in your petition.

19 Commissioners, as I've read through this, with
20 a few clarifications, I'm comfortable with this, and
21 I think I'll be voting to move forward on it and
22 encouraging the body to do so.

23 With that, a couple of questions. One -- and
24 this is either for you or for Mr. Marshman -- can you
25 just walk the commission briefly through its role in

1 a petition for variance or waiver? The statute
2 directs us to consider certain things and to take
3 certain action; and what is our job here today when
4 it comes to a petition or variance?

5 MR. LOCKWOOD: So this would be my first time
6 appearing before a commission that would be granting
7 a variance. However, my understanding is that what
8 the commission here would be doing would take what
9 we've requested in this petition, to grant us a
10 variance for the period of one year for six of these
11 tables, as we've outlined in our petition, and our
12 response to this request for additional information
13 that the commission's sent out, that the commission
14 would vote on a directive to staff to grant this
15 variance with those parameters in place. That would
16 be my understanding.

17 CHAIR MACIVER: Okay. And I think -- I mean,
18 even more in a basic level, what's our standard here?
19 So if we look at 120 and we're looking at petition
20 and variance, what does it tell us to do? Mr.
21 Marshman?

22 MR. MARSHMAN: Thank you, Mr. Chair. Looking
23 at Section 120.542, the petitioner has to demonstrate
24 that there's a substantial hardship, and that's what
25 the petitioner is alleging. There's a few other

1 things that they could allege, but this is the route
2 they're taking. A substantial hardship means a
3 demonstrated economic, technologic, legal or other
4 type of hardship to the person requesting a variance
5 or waiver.

6 CHAIR MACIVER: Okay. And if that is
7 demonstrated and they can also show that the intent
8 of the statute is preserved, what is our direction at
9 that point?

10 MR. MARSHMAN: 120.542-2 states that variances
11 and waivers shall be granted when the person subject
12 to the rule demonstrates that the purpose of the
13 underlying statute will be or has been achieved by
14 other means by the person and when the application of
15 the rule would create a substantial hardship or
16 violate principles of fairness.

17 CHAIR MACIVER: So I think my understanding of
18 that is that we're not being tasked with making a
19 normative judgment about is this good, bad,
20 indifferent, but what we're deciding is has the
21 petitioner shown that there is a hardship to his
22 client and have they preserved the direction that
23 we've been given by the legislature and the statute,
24 and if those two items are met, then it's not a
25 discretionary act on our part, we then shall issue

1 the waiver?

2 MR. MARSHMAN: If the petitioner has met those
3 necessary predicates.

4 CHAIR MACIVER: So we're just determining if
5 the petitioner meets their burden?

6 MR. MARSHMAN: Correct.

7 CHAIR MACIVER: As I look through the rule that
8 you're asking for a waiver from, I also notice
9 paragraph 8 of the rule. I think you've asked for a
10 waiver of paragraph 5, which is you can't gamble at
11 your own places, paragraph 8 also prevents shill or
12 -- help me with the term -- proposition players. I
13 don't think that what you're talking about meets what
14 is colloquially described as a proposition player,
15 but the rule does contain a definition, and I think
16 you fall within that definition. So can you walk me
17 through how we might address that?

18 MR. LOCKWOOD: So in looking at the definition
19 and what is commonly understood to be a proposition
20 player, typically a proposition player just because
21 these are employees of the card room operator that
22 are then playing during off hours where they're not
23 employed by the card room operator, I do not believe
24 that makes them a proposition player. A proposition
25 player typically is employed in commonly western

1 jurisdictions and they're individuals who are paid
2 simply to sit at the seat of the table and to get
3 poker games going. That's not the purpose of what
4 these players are being done for.

5 They're playing on their own time, they're not
6 being compensated for playing in this game, and I
7 think that is the linchpin that would make a player
8 become a proposition player, if they're actually
9 being paid for the purpose of being in that game at
10 that point in time.

11 CHAIR MACIVER: So if we move forward on this,
12 then whatever order the waiver would take form would
13 probably have to have some sort of language, some
14 sort of language saying that these employees are not
15 considered proposition players under the rule
16 provided there's no direction or interaction with the
17 card room itself, i.e., "The boss can't tell me to go
18 sit at a table"?

19 MR. LOCKWOOD: Correct, absolutely. And that
20 is certainly not what we're intending to do in this.
21 And this gets back to probably the substantial
22 hardship and what the card room operator is trying to
23 deal with, and it's the fact that we have a number of
24 employees who are looking for a place to play, and
25 unfortunately, they just don't have any good options

1 here. And we want to make sure that when they're
2 playing authorized card games, they're doing so
3 within the confines of a licensed card room operator
4 that's then generating tax revenue for the state of
5 Florida.

6 CHAIR MACIVER: And then lastly, you included
7 two examples of signage in your exhibits, and I think
8 those were target to when you were still considering
9 using both designated player and non-designated
10 tables. I noticed the signage is a little bit more
11 apparent for the exhibit that was for the designated
12 player table.

13 I just -- for the other commissioners, I think
14 that from my own part, I think that would be the
15 signage we'd want to use for all of the tables,
16 something more openly displayed than just the placard
17 on the table. Other than that, commissioners, I open
18 it up for any and all questions.

19 VICE-CHAIR YAWORSKY: Mr. Marshman, just to
20 clarify, I think the Chair laid out very well the
21 statutory language in its usage, but I think just in
22 my own research and experience, there's a wide degree
23 of latitude in the agency to have these waivers, how
24 they implement them, and the discretion they utilize
25 in that; would that be fair to say?

1 MR. MARSHMAN: Yes, Mr. Vice Chairman, that
2 would be fair to say. On review, the commission or
3 any agency's decision would have to be supported by
4 competent substantial evidence. That's the standard
5 of review.

6 VICE-CHAIR YAWORSKY: And, just to be clear,
7 feel free for either party to weigh in on this. But
8 in the instance here, there's been substantial amount
9 of discussion about the hardship on the employees,
10 but I think the basis of the waiver would not be the
11 hardship of the employees having to travel to engage
12 in gaming, but the hardship that is being alleged
13 here is the financial interest of the entity itself;
14 is that right?

15 MR. MARSHMAN: Mr. Lockwood can correct me if
16 I'm wrong, but yes, I believe that's what the
17 petition is making the argument, it's the loss of
18 revenue for the card room, which the petition in this
19 case is based on their employees not providing that
20 revenue to the card room.

21 VICE-CHAIR YAWORSKY: And -- go ahead --

22 MR. LOCKWOOD: I would also add that it's an
23 employee retention issue as well. Because if the
24 players are -- if we recruit dealers from other rooms
25 and then they realize they're in an area in which

1 they're not going to have the opportunity to play
2 poker in an easily affordable manner, then that
3 impacts our ability to recruit poker dealers, and
4 that's a big issue right now in the state of Florida.

5 So it's certainly our ability -- we feel like
6 the location of the room and its proximity or lack
7 thereof to other larger card rooms is a difficult
8 task for employee retention.

9 VICE-CHAIR YAWORSKY: And about how many
10 employees -- I'm curious how this came to be
11 determined to be an issue. Was there a meeting of
12 employees that came to management, and if so, how
13 many?

14 MR. LOCKWOOD: Oxford Downs is almost like a
15 family-run business at this point in time. Mr.
16 Mendola is on the property constantly and talking to
17 the employees, the patrons, everybody.

18 So what led to this variance is quite frankly
19 years, a long period of time of talking and engaging
20 with them about the patrons, "Would you object to
21 this?" And the employees and their desire that,
22 "Look, we don't really have a good place to go and
23 play cards. Why can't we have the ability to play
24 cards here?" So a lot of that is what came to
25 realization, that we really need to address this in a

1 manner moving forward.

2 VICE-CHAIR YAWORSKY: Okay. And about how many
3 employees in total does Oxford Downs employ?

4 MR. LOCKWOOD: 200.

5 VICE-CHAIR YAWORSKY: Would you characterize
6 that as the number that really want to engage in this
7 activity and have expressed the hardship? I'm going
8 back to at this point the expression to management on
9 the hardship. About how many of them have expressed
10 this desire? How many employees would be lost --

11 MR. LOCKWOOD: I wouldn't say all of them, but
12 we certainly have a significant number of employees
13 that have expressed an interest in being able to play
14 at the room.

15 VICE-CHAIR YAWORSKY: Significant number being
16 100, 10?

17 MR. LOCKWOOD: Half probably.

18 VICE-CHAIR YAWORSKY: About 100?

19 MR. LOCKWOOD: Yeah.

20 VICE-CHAIR YAWORSKY: And correct me if I'm
21 wrong, either party, but as I've looked into this and
22 heard from staff, it seems like most jurisdictions
23 that are allowing this throughout the country are
24 doing so based on the proposition player purposes.
25 It does not seem to be a natural evolution of the

1 industry where this is allowed. Is that a
2 mischaracterization, or how would you respond to
3 that?

4 MR. LOCKWOOD: I'm not sure I understand the
5 question. You're saying in the jurisdictions where
6 employees are allowed to play in games, it's
7 typically just for proposition players?

8 VICE-CHAIR YAWORSKY: It seems to be driven by
9 that from what I've come across.

10 MR. LOCKWOOD: In our research, I don't know
11 that I know a direct correlation between the two as
12 to what it's for. Some jurisdictions just simply
13 don't have this restriction. And we do know in
14 California that they are allowed to play, and
15 certainly in California, they also allow proposition
16 players. But you could be either/or. You could be a
17 proposition player paid for by the room, but also we
18 could have employees in the room who play in their
19 off hours at the room. That would be allowed, too.

20 Generally, though, in jurisdictions that allow
21 for the employees to play in the room, they would
22 typically also probably allow proposition players.

23 VICE-CHAIR YAWORSKY: No further questions at
24 this time.

25 COMMISSIONER D'AQUILA: Mr. Lockwood, I

1 understand the table will have a placard. The public
2 can also play at that same table?

3 MR. LOCKWOOD: That's correct.

4 COMMISSIONER D'AQUILA: Does the public know
5 that maybe two of the players there are employees or
6 dealers? Are they distinguished as well, or do they
7 have no idea?

8 MR. LOCKWOOD: The dealer would basically when
9 the players sat down at the employee retention table
10 -- and it's marked as an employee retention table --
11 would be open that there may be or these individuals
12 would be employees of the room, yes.

13 COMMISSIONER D'AQUILA: Maybe, or they -- if
14 I'm a player and I don't necessarily want to play
15 against employees --

16 MR. LOCKWOOD: There would be plenty of other
17 tables at the room. So we're only going to segregate
18 a couple, and it may be up to six. So the reason we
19 didn't want to have this delineated on specific
20 tables is there's going to be times during the week
21 in which we may not have a desire to have any
22 employee retention tables available depending on how
23 many total licensed tables are in the room. But if
24 we certainly have a player who comes in and they want
25 to be seated at a table and they do not want to play

1 against other employees, I can assure you that
2 accommodation will be made, another table will be
3 created for them to play at. Like I said, I can
4 assure you that they will not be forced to play
5 against any employees of the room.

6 COMMISSIONER D'AQUILA: They'll have an
7 opportunity, it won't come as a surprise to them.

8 MR. LOCKWOOD: That's correct, it won't come as
9 a surprise to them, because -- getting back to where
10 we talked about at the beginning, our interests are
11 aligned with the commission. We don't want these
12 type of issues to kill our existing clientele. So if
13 it were becoming an issue, we will certainly make
14 sure that that player is accommodated.

15 So no player will be forced to play against an
16 employee at any time against their will. We will
17 have numerous other tables available for them that
18 are not employee tables in which they'd play in
19 typical games as well.

20 COMMISSIONER D'AQUILA: Second question: Can
21 you comment -- the issue of integrity, thought of --
22 I think public integrity, I think one of the original
23 intentions when they wrote this statute that maybe is
24 not clearly written, the perception of the public
25 that the dealer and the players know each other, to

1 what extent are there integrity issues here in what
2 you're requesting? I'm referring to when the public
3 is playing at that table and so forth, are there any
4 risks there? Is the integrity of the games that
5 we're trying to preserve here in the state of
6 Florida, does it suffer any with the knowledge that
7 the one that was the dealer the day before is now on
8 the other side of the table playing with the public?

9 MR. LOCKWOOD: I don't think so, just because
10 certainly right now in all poker games, in any form
11 of gambling, there's always the risk of someone
12 trying to have an unfair advantage at the table. But
13 at every poker game, there's a number of eyes on
14 every hand that's being dealt, not just the other
15 players at the table. You've got the dealer that's
16 employed by the card room operator, you've got
17 surveillance, and you've got supervisors that are
18 there. So we don't think there will be any integrity
19 issues whatsoever.

20 But getting back to the fact that this has
21 never been done in the state of Florida. If this
22 does become an issue and we do have players that are
23 concerned or questioning about this, even ones that
24 are voluntarily entering into these games, I can
25 assure you Oxford Downs will be the first one to pull

1 this back because we want this to be a benefit to the
2 room. We certainly don't want it to be a detriment
3 to the room. And if there's ever any integrity
4 issues with any of these games, then this will be
5 pulled back immediately.

6 COMMISSIONER D'AQUILA: Is one year sufficient?
7 Should it be a shorter period of time?

8 MR. LOCKWOOD: I think one year is sufficient
9 because it allows a couple of things: One, a lot of
10 these card rooms -- and Oxford Downs is not unlike
11 that -- is a very seasonal card room. So we're now
12 moving up into a high season, so we want to see how
13 this is able to go through kind of the low season,
14 the high season, and see how this matriculates
15 throughout the entire year. So if we're allowed
16 that, then we'll be able to see -- because, again,
17 maybe in high season this is something that we don't
18 have the capacity to allow as much as maybe we would
19 in a low season type of environment.

20 COMMISSIONER D'AQUILA: Thank you.

21 CHAIR MACIVER: Commissioner?

22 COMMISSIONER BROWN: Thank you. I think this
23 is a pretty creative approach to getting around a
24 rule I think that you're challenging. So do you
25 represent other card rooms?

1 MR. LOCKWOOD: Quite a few other card rooms.
2 And I can tell you that here we are, we have this
3 petition for variance, not a single other card room
4 has requested to do this, and again, most of --

5 COMMISSIONER BROWN: But will they? Will your
6 clients after we open the door here if we were to
7 approve this?

8 MR. LOCKWOOD: I can see there being a scenario
9 where a couple of other card rooms within the state
10 that are in similarly remote areas that do not have
11 market area type competition, they may want to do
12 this, they may not want to do this. We've learned
13 that a lot of this is dictated. Certain card room
14 managers that have come from jurisdictions where this
15 is allowed, they're totally good with this. Card
16 room managers who may come from other jurisdictions
17 or have always been in Florida, they may be against
18 this.

19 So right now, most -- well, I'd say all of my
20 other clients have taken a, "Let's wait and see how
21 this works out before we want to implement it." And
22 I know probably the vast majority of them will not
23 implement this no matter because they're in an area
24 where they have another room that's 15, 20, 30 miles
25 from them that is easily accessible for their

1 employees and they feel like their issues are able to
2 be accommodated because of that.

3 COMMISSIONER BROWN: Just for the record, I've
4 had to deliberate over lots of different waivers of
5 rules over the years, and there's an element of
6 subjectivity to that deliberation and the criteria.

7 Could you for the record at least provide what
8 the substantial hardship is for Oxford Downs?

9 MR. LOCKWOOD: So it's two things. One, it's
10 the employee retention issue is one. And two, it
11 would be, you know, potential financial hardship in
12 not allowing these players to play. Potentially if
13 we're not able to recruit dealers, we're not able to
14 recruit sufficient staff, we're having those
15 restrictions on us, then that's going to be a drag as
16 we try to get tables open, things like that. It's
17 always the ability to have staffing, and that's what
18 we're looking to make sure is that we have this staff
19 and they like to work there, they want to be there,
20 they enjoy being there, and this is an amenity that
21 they've asked to be able to have, and we're hoping to
22 be able to accommodate that.

23 COMMISSIONER BROWN: So how is Oxford Downs,
24 though, differently situated than any other potential
25 licensee? Wouldn't a rule fix be a better solution

1 so that everyone is on the same playing ground rather
2 than a variance in this specific instance?

3 MR. LOCKWOOD: I think because of the fact that
4 this rule has been in place for so long that it makes
5 sense in this industry to at least have an
6 opportunity, and I think that the variances allows an
7 opportunity to see if this works. It's much easier
8 for you here today to grant this variance and allow
9 this test case in this instance than it would be to
10 have a rulemaking change the rule and then find out
11 it doesn't work out to its intended effect.

12 This is kind of a surgical procedure here to
13 see if it's even necessary. We may be in a scenario
14 where a year from now, this works great, there's no
15 issues, there's been no complaints, and instead of
16 doing a one-year extension for Oxford Downs, then the
17 commission can come back and just revise the rule and
18 say, "This is okay, we've seen this in real life, and
19 it works." We think that changing the rule now would
20 be putting the cart before the horse, I think.

21 COMMISSIONER BROWN: I mean, I like the
22 protections that you've had in the record, but my
23 fear is how do we monitor the protections that are in
24 place that we have the placards, we have the signs
25 that are noticeable so that patrons come in and they

1 know that they're playing with someone that may have
2 a competitive edge when they're playing in a game,
3 and they're doing that voluntarily.

4 What is the mechanisms -- and maybe this is a
5 question for staff -- that we have to monitor, and if
6 there is a violation of this test case scenario, what
7 would our recourse be? Anyone?

8 MR. LOCKWOOD: So for me, inspectors are in the
9 facilities constantly. And a lot of times we're
10 having -- their focus is the placards on the table,
11 do we have the accurate betting limits, do we have
12 the accurate game, all of these issues. So I would
13 say that having this additional placard of, "This is
14 an employee participation table," would be no
15 different than any of the other signage that would be
16 placed on these tables. It would be subject to
17 regular enforcement.

18 We're required to retain video footage of this,
19 and again, at the end of the day, the department's
20 concerns are identical to the concerns that the
21 operator would have, because if there are these
22 issues that you're concerned about that players are
23 upset, that is certainly something that the card room
24 operator does not want to have. So they're going to
25 cease this activity and self-report it to the

1 department at that point in time.

2 COMMISSIONER BROWN: Thank you. And I do think
3 it is a creative approach, and I like the test case
4 scenario, I just want to make sure that the right fix
5 in addressing the rule, everybody is on equal playing
6 ground here. So I don't know if this is the right
7 avenue. I think you've demonstrated that there is a
8 hardship, so to me, I feel that it's demonstrated,
9 I'm just concerned of the balance between being
10 business friendly and then also preserving the
11 integrity of the rule.

12 Does staff have anything to add to any of the
13 discussion here regarding the substantial hardship or
14 what our recourse would be if some of the protections
15 are not in place? Since it's not in the petition.

16 MR. MARSHMAN: The card room would have to
17 amend its internal controls, and that would be
18 reviewed by staff and have to be approved before
19 those internal controls were active. That's
20 something that our staff routinely does. They
21 haven't looked at this particular provision --
22 obviously, as we've been discussing -- yet, but still
23 they have to look at how that interacts with other
24 provisions such as security camera coverage, lockbox
25 procedures, everything else that are typically in

1 card rooms' internal procedures is going to have to
2 be meshed with this new approach with the employees
3 playing at the card room.

4 As the petitioner's counsel's indicated, there
5 are cameras, there are inspectors, and Mr. Dillmore,
6 Mr. Trombetta can explain it better, but they're
7 trained just as much as anyone else is to watch for
8 certain problems, certain issues, and I'm sure that
9 they will look at these games skeptically as well to
10 address the concerns that Commissioner Brown has
11 already identified most recently, which is is there
12 any competitive edge for players sitting at a table
13 where employees are playing potentially a dealer that
14 they know, not playing out a dealer, but -- I think
15 that the investigators, the internal controls, the
16 video footage, those do exist and they can be applied
17 in this scenario.

18 COMMISSIONER BROWN: And then from a
19 substantial hardship criteria, obviously I noted that
20 there's some subjectivity to it, but if every card
21 room came in with the same hardship, then they could
22 all come in if we grant this waiver. It's kind of a
23 slippery slope. We'd be required then to grant
24 waivers for everyone else that alleges the same
25 similar facts.

1 MR. MARSHMAN: If other petitioners approach
2 the commission with facts that demonstrate a
3 substantial hardship or violated the principles of
4 fairness and that the underlying purpose of the
5 statute was being preserved by their proposed
6 solution or their proposed idea similar to what maybe
7 this petitioner is suggesting, then yes, the
8 commission may be in a position to grant other
9 petitions for waiver of variance. However, this
10 decision, this action the commission chooses to take,
11 if it were to grant this petition, I don't believe it
12 stands as --

13 COMMISSIONER BROWN: Precedent.

14 MR. MARSHMAN: -- precedent in the sense that
15 you must then grant a subsequent petition. They are
16 judged on their own individual merits and each
17 petitioner has to have that showing, as this
18 petitioner is attempting to do here.

19 COMMISSIONER BROWN: Thank you.

20 VICE-CHAIR YAWORSKY: I just have some
21 follow-up. Mr. Lockwood, you mentioned -- and I'm a
22 little confused on it -- you mentioned earlier that
23 you felt that it would be most appropriate for the
24 commission to grant this waiver now rather than look
25 at rules, but I mean, the fact is your client, you

1 did challenge the rule, there's an appeal going on.
2 Why would it not be better to wait and see how that
3 plays out than grant the waiver today?

4 MR. LOCKWOOD: Because if we prevail in the
5 rule challenge, one, the commission is going to be
6 liable for our attorney's fees; two, at that point in
7 time, there will be no parameters for any six-table
8 one-year trial period, the rule will just simply be
9 invalid, and the commission won't have the ability at
10 that point in time to kind of police this, see if it
11 works, anything of that nature. The rule will just
12 no longer exist.

13 VICE-CHAIR YAWORSKY: But then the agency could
14 go about working with the industry to build a new
15 rule that could accommodate the interests?

16 MR. LOCKWOOD: So we've talked a lot about this
17 in commission meetings about the plain language in
18 the statute. There's absolutely nothing in the
19 statute that talks about regulating this type of
20 conduct specifically. So I think that if we prevail
21 on the rule challenge, at that point in time the
22 commission may have no ability to put any parameters
23 on this type of conduct and my client would be
24 allowed to place players at designated player games,
25 place players at cash games with no limit on that, no

1 duration, and then other rooms could come in with
2 that same type of conduct. I think if the rule is
3 invalid as it is for a complete prohibition, it's
4 going to be invalid for any type of regulation of the
5 activity at all.

6 VICE-CHAIR YAWORSKY: I appreciate that. At
7 the same time, I think where my concern would come
8 in, similar to Commissioner Brown, the proposition
9 you seem to be proposing is that the choice we have
10 before us in that case -- and I don't entirely agree
11 with it -- is we let this rule go by the waist side
12 one at a time, one waiver at a time, or it's
13 invalidated by law and we have nothing. But over
14 time, the same effect would result where the
15 exceptions would swallow this rule or it goes away
16 immediately.

17 MR. LOCKWOOD: Well, one, if the test case goes
18 well that we're proposing here, then I would see no
19 reason that the state would not allow this to be
20 allowed for any other card room throughout the state
21 in a case. So I think with going the test case
22 route, we have the opportunity -- and again, this has
23 been a publicly noticed variance, we've had no other
24 petitions to intervene, I don't think if you had two,
25 three other rooms I would be surprised come to do

1 this in this state, but going the test case route, we
2 at least have the opportunity to evaluate how this
3 works for a durational period of time, and if it
4 works well, then we have the ability to potentially
5 expand it. We're increasing the pari-mutuel revenues
6 for the state of Florida, taxes, things of that
7 nature, and if it doesn't work well, then in this
8 case, we're going to pull this back, and I don't
9 think there would be any harm to the state, whereas
10 if we go in a scenario where potentially the rule is
11 invalid, we may never know how this plays out.

12 I think this is, again, a small surgical
13 procedure, let's see how this works, and if it works
14 well, then it could be a benefit to the state. And
15 if it doesn't work well, we've allowed it for one
16 operator for a short period of time, we've taken care
17 of it, we'll pull it back.

18 VICE-CHAIR YAWORSKY: Thank you.

19 CHAIR MACIVER: Further questions,
20 commissioners?

21 COMMISSIONER DRAGO: Just one or two. That's
22 what's good about going last, all the questions are
23 asked. One of our big concerns obviously that we've
24 been talking about throughout has been public
25 confidence in the gaming industry in the state of

1 Florida, and we've talked about what the facility is
2 going to do to warn people and so forth, but have you
3 got any ideas of how we'll actually know whether the
4 patrons are being -- are losing confidence in the
5 gaming industry? It's kind of an up-in-the-air kind
6 of thing, perception is difficult to measure unless
7 you've got some system whereby you're monitoring it.
8 How do we know whether this is affecting public
9 confidence?

10 MR. LOCKWOOD: I think that's easy. The poker
11 players, they're a very vocal crowd. They have a
12 number of forums online, and if this becomes an
13 issue, it will go crazy on the forums. The card room
14 operator is going to know about it. I mean, this is
15 something that if anything happens in these rooms,
16 the managers, the supervisors know about it
17 immediately. This is not something where it just,
18 you know, all of a sudden we no longer have any
19 players there.

20 If this becomes an issue, we're going to know
21 about it very quickly, and that's something that
22 really anything throughout the operation of these
23 rooms, they're constantly changing policies,
24 procedures, things of that nature, and having to
25 adapt to that, to patrons' comments. And so this

1 would be no different than that. If there's any
2 concerns whatsoever, the rooms are going to know
3 about it, we're going to hear about it, it's going to
4 be all over the message boards. Everybody talks
5 about this.

6 COMMISSIONER DRAGO: And are they shared with
7 the commission? Are we able to see those kinds of
8 comments?

9 MR. LOCKWOOD: Absolutely. I've had staff
10 contact us before about issues that have popped up on
11 these different threads online and say, "Hey, we were
12 reading that this occurred in X card room, you know,
13 we'd like to request video of this issue," things of
14 that nature, or do an investigation, things like
15 that. So certainly.

16 COMMISSIONER DRAGO: Just one quick question
17 for staff. Does this in any way add any kind of
18 extra burden to staff? I realize it's something
19 extra to look out for, but is this significant in
20 nature of in terms of what our staff is going to have
21 to do to make sure that they're following?

22 MR. TROMBETTA: Thank you. No, I don't believe
23 so. As has been said already, we have investigators
24 regularly in these facilities, and I think as was
25 pointed out before on the enforcement side, if we can

1 get internal controls updated, there's essentially --
2 that's the most of the work, is reviewing the new
3 internal controls, making sure they capture --
4 correct me if I'm wrong -- they capture what's in
5 whatever decision you all make, and then it would
6 just be a matter of our investigators making sure the
7 internal controls are being followed.

8 So from a standpoint -- you know, to be fair,
9 it is a little bit of extra work, but I think we can
10 handle it. It's not substantial.

11 COMMISSIONER DRAGO: Thank you. Thank you, Mr.
12 Lockwood.

13 COMMISSIONER BROWN: Thank you, Mr. Trombetta.
14 What is the genesis behind -- really just a
15 fundamental question -- the genesis behind this rule
16 and the history behind the rule, too? Has it ever
17 sought to be -- other than the legal challenge, has
18 it ever -- has a petitioner ever sought a variance of
19 the rule?

20 MR. TROMBETTA: I'm a little uncomfortable
21 speaking on the intent of the rule because it
22 happened before I was employed by the state. I'm
23 just not 100 percent sure. I think, as you guys have
24 sort of already mentioned, the worry is just the
25 integrity of the games and making sure that the

1 patrons are not in a position in which they feel
2 uncomfortable playing. You guys can judge what has
3 been said here. I think there are efforts being
4 taken to deal with that, but that's my understanding
5 of what the basis of the rule is.

6 COMMISSIONER BROWN: Has there ever been a
7 variance for the rule?

8 MR. TROMBETTA: Not that I'm aware of.

9 MR. MARSHMAN: If I may, just to clarify on
10 that. Looking at the Florida Administrative
11 Register's website, there appears to have been a
12 variance or waiver sometime in February 2013 from the
13 Washington County Kennel Club d/b/a Ebro Greyhound
14 Park, and it appears the petitioner was seeking a
15 waiver from the requirements that bar a card room
16 occupational license from participating in card games
17 at the licensed card room facility where they're
18 employed. One moment, please.

19 MR. LOCKWOOD: If I may real quick to add one
20 point. This rule to my knowledge has been in place
21 since card rooms were originally authorized in 1996,
22 and I can tell you that the surveillance and security
23 requirements of the card rooms in 1996 compared to
24 what they were changed to later on are substantially
25 different at this point. In '96, the surveillance

1 system was very, very basic compared to what the card
2 room operators are now required to have related to
3 PTZ cameras and all of the data collection that they
4 do.

5 MR. MARSHMAN: It appears from this notice that
6 the previous waiver was denied. However, without a
7 copy of the final order in my hands, I cannot tell
8 you why it was denied.

9 COMMISSIONER D'AQUILA: Just going back to two
10 points. On the financial hardship, I just have to
11 think that with the number of players that you've
12 shared, all of the card rooms in the state of Florida
13 have the same rule with regard to players. It
14 appears to me it's more about recruitment than it is
15 about revenue over all and considering the times that
16 we're in. So could you comment on that?

17 MR. LOCKWOOD: So as it relates to every other
18 card room, I would say that each card room throughout
19 the state is unique in the sense of where it's
20 located, its geographic proximity to other card
21 rooms. So that's what I think makes it unique about
22 Oxford Downs and its location in Marion County and it
23 does not have any I would say major card rooms in its
24 vicinity. So we think that also means we're not
25 getting any card room operator players from other

1 rooms.

2 So, you know, if we may be -- if we were
3 located in the Tampa market, for example, we may be
4 getting players from Derby Lane, we may be getting
5 players from Tampa Greyhound. However, we're not in
6 that market area. We're kind of in an island out
7 there. So we're not able to pick up the benefit of
8 having those spinoff players from those rooms. We're
9 simply here -- our players are going wherever they
10 may be going, but we're not getting any benefit of
11 any players back or anything like that.

12 And also when you overlay that with the
13 retention issue and the comments that our players
14 have had in that they just don't have the ability to
15 go, we think that we are experiencing a hardship
16 there, and it relates to kind of where we're located.

17 COMMISSIONER D'AQUILA: The other word that
18 keeps coming up here is integrity of the game, and I
19 can't help but think that recruitment is an issue for
20 all card rooms especially in the times that we're in.
21 We can't say for certain, it's speculation on your
22 part with regard to whether how quickly those other
23 rooms are going to jump on this and seek a similar
24 variance, which begins the question: That combined
25 with the concern about integrity, which keeps coming

1 up, I can't help but wonder if this were considered,
2 should it be a shorter period of time that if it did
3 become an issue, there would not be enough time for
4 others to jump on and let's look at the surgical
5 procedure as you refer to it is sooner versus later,
6 and should that time be six months versus a year?

7 MR. LOCKWOOD: I mean, ultimately that's the
8 commission's purview. I think if it were up to me,
9 we would not even have to come back before the
10 commission at this, we would just have the variance
11 for six tables, and if there were an issue, we'd
12 either pull it voluntarily or the commission could
13 file administrative complaints for whatever they
14 feel. But ultimately if the commission feels the
15 best way to deal with this is by a six-month
16 variance, then that is your purview to make that
17 decision, certainly.

18 COMMISSIONER D'AQUILA: Thank you.

19 CHAIR MACIVER: And before we move into debate,
20 one last question: How many total tables are you
21 licensed for?

22 MR. LOCKWOOD: Let's see here -- 20 -- sorry --
23 31.

24 CHAIR MACIVER: 31. And this variance would be
25 for up to six tables?

1 MR. LOCKWOOD: Up to six tables, correct. We
2 want it up to six because we may not use all six, we
3 may just need one, it allows us the discretion to
4 during the week, during the periods, the seasons,
5 things like that, to see how we can accommodate best
6 the demand.

7 CHAIR MACIVER: Commissioners, I'm going to
8 open the floor for debate. Any debate? I will lead
9 us off.

10 First, let me revisit my earlier comment about
11 the discretion of our body. I was not mentioning
12 that in a way to try and coach my fellow
13 commissioners by any means. All I really want to
14 point out is that if we're going to say yes and grant
15 this petition for a waiver, then we have to do so by
16 making the findings that those two elements are met.
17 One, that you have established, you have a burden,
18 and two, that the underlying statute would be
19 protected. The underlying statute actually has
20 legislative intent language that has gone through by
21 [indiscernible] passage and presented to the governor
22 and is actually codified in the statute. And what it
23 does say to us is to protect the integrity of the
24 game.

25 So Mr. Lockwood's burden here today was to

1 prove two things: One, that they do have a
2 substantial burden, and that, two, the integrity of
3 the game would be protected, and that is where I
4 think our discretion lies in being able to make those
5 findings.

6 In my observation, I believe that they make the
7 substantial burden argument and they do convince me,
8 but I will say it's barely. The wiggle room in the
9 term substantial may counsel against you. I think
10 you do make it over the hump and it gives me less
11 worry about the hordes coming over the gate because
12 I'm very skeptical that another card room that would
13 make a similar petition if they didn't have the same
14 geographical restrictions as this card room would be
15 able to get over that hump. I think it would be very
16 hard for them to make that substantial burden
17 argument.

18 As far as the integrity of the game goes,
19 because it is a limited number of tables, because
20 there would be signage and because the players would
21 have the knowledge that they were playing with
22 employees, I believe the integrity of the game is
23 preserved and that we do actually meet our statutory
24 burden there. I heard very carefully the concern
25 that the dealer is going to know the other employee

1 who's sitting down at their table, I don't know that
2 that creates a significant difference, though, from
3 any player who can come in off the street who happens
4 to know the dealer who is still allowed to sit at
5 that table. So that did not give me significant
6 pause.

7 In short, by my observation, I think that the
8 burden is met here, and I would vote to grant the
9 waiver. Further debate? And commissioners, my
10 intent is rather than asking for a motion on this, I
11 think we'll just take a line vote to see whether we
12 should grant or oppose, and then we should probably
13 have a little further discussion. If we approve it
14 on the parameters, we will direct staff to include an
15 order. Mr. Vice Chairman?

16 VICE-CHAIR YAWORSKY: Thank you, Chair. I
17 think the wiggle room on the substantial in my view,
18 and I think there could be a lot of variance here,
19 frankly, I don't think it's been established, because
20 I'm not convinced of a substantial hardship that has
21 been presented here. I might be willing to entertain
22 an idea of reduced time period, but in a city of --
23 in the area where this is situated, there's a
24 substantial population of persons that can engage in
25 this activity and do engage in this activity.

1 Retention is an interesting discussion with hardship,
2 but I don't know that we've seen any hard data that
3 demonstrates any kind of actual loss in the ability
4 to retain or recruit employees at this time.

5 So I'm also more largely concerned with
6 integrity of the games, and it may be -- I think the
7 best thing that -- one of the best things that
8 regulated pari-mutuels have going for them is the
9 notion that they're going to a facility that is just
10 bountiful with integrity and it is a fair game all
11 the way across the board, and at the same time, we
12 have a competing interest in this state of parties in
13 these green market games in other facilities that
14 don't have that guarantee and that seal. And it's
15 becoming a very large problem across our state.

16 So I want to hear certainly what everyone else
17 has to say, but I think that would be where I lay at
18 this moment.

19 CHAIR MACIVER: Commissioner D'Aquila?

20 COMMISSIONER D'AQUILA: I'll add to the Vice
21 Chairman's point. In every matter of substantial
22 financial hardship I've ever seen -- and I will
23 precondition that as I'm the numbers person here --
24 we've had a percentage or we've had a presentation
25 with numbers. Just to bring a point up, if you

1 wanted to qualify for a PPP loan as a small business,
2 you had to demonstrate a percentage decline in one
3 quarter compared to another quarter with real
4 numbers. If you wanted to qualify for an ERC credit,
5 you had to meet certain financial criteria. The
6 subjective comment that I feel I've got a substantial
7 financial decline here without numbers just leads me
8 to pause. It opens up the floodgates, plain and
9 simple. I just think that part is missing. We call
10 it wiggle room -- or maybe the way the statute is
11 written, I'm just having a hard time digesting the
12 that.

13 The second point, though, is the public
14 perception and the speed with which -- we've worked
15 so hard in the state, and like you have mentioned
16 going from 1996 to here, yeah, there's a certain
17 sensitivity to going in the other direction, and it's
18 the monitoring and the speed with which we can
19 preserve that should this surgical procedure not work
20 would be my other concern.

21 CHAIR MACIVER: Commissioner Brown.

22 COMMISSIONER BROWN: Commissioner D'Aquila
23 actually took the words right out of my mouth. I do
24 feel that you generally have made an argument for a
25 hardship, but to quantify what that economic hardship

1 is in raw, real data, that would be more compelling
2 than just alleging that there's a loss of revenue
3 because employees can't participate. We don't know
4 -- you said -- I guess your conjecture about 100 that
5 would want to participate, if there were raw data, I
6 think that would be more persuasive in my eyes.

7 I like the protections that you have and I like
8 the limited nature, but I just don't think the
9 variance threshold has been met.

10 COMMISSIONER DRAGO: I agree with that, and I
11 have a hard time as well getting my hands around just
12 talk. I don't feel like we've got the numbers --
13 like Commissioner D'Aquila talks about -- to make an
14 argument. For me to make an argument to somebody
15 that this is why I granted this variance because X, Y
16 and Z occurred and it's clearly a substantial
17 hardship for this facility, I don't feel like I've
18 got that either, and I don't like we've got a good
19 grip on how to measure the public integrity and the
20 public confidence. I don't feel like we've got a way
21 to measure that. And I feel like that's perhaps why
22 this rule is in place is because it's so hard to
23 measure. You know, maybe we need to have this kind
24 of a rule in order to be able to ensure it where
25 there's no question, there's no doubt that it's going

1 to affect the patrons, because otherwise, we don't
2 know how to measure that for sure.

3 And I understand that you get feedback and so
4 forth, and that might be helpful, that might be the
5 answer in the long run, but I still can't get around
6 how do I -- where do I see this substantial hardship.
7 And also when you talk about retention, and I get
8 that and I understand retention is big problem across
9 all industries today, but I'm not sure why we would
10 give a variance so that this facility would have a
11 leg up above the other facilities now that are also
12 having the same retention problems where their
13 employees can't play. So those are the issues. Go
14 right ahead.

15 MR. LOCKWOOD: If I could, two points on the
16 statistical analysis.

17 CHAIR MACIVER: We're on to debate. We're not
18 in the questioning. I will recognize Mr. Lockwood,
19 but we should be using this time to discuss the
20 issue.

21 MR. LOCKWOOD: Just quickly as it relates to
22 the substantial hardship. It's difficult for us to
23 ascertain because we've always been suppressed by
24 this room, we do believe that -- or by this rule --
25 we would experience an uptick somewhere between -- I

1 think the numbers we last had is about 2 to \$300,000
2 a year just in gross receipts off allowing this on
3 the low side of that. So we do think that we'd
4 experience some upside to having this, certainly.

5 And then as it relates to the integrity, which
6 seems to be a concern, and I think the Chair pointed
7 it out directly, I don't understand how the
8 perception or the integrity would be problematic for
9 an employee dealing to another employee versus a
10 scenario where we could have an employee dealing to
11 his brother or her brother, family members, things
12 like that. All of that is currently allowed and that
13 can occur at any room throughout the state now, and
14 that is not disclosed to anybody. So I think there's
15 certainly more concerns with that type of activity.

16 And as it relates to the other rooms and their
17 potential hardship, I don't think they have the same
18 hardship, Commissioner Drago, because of their
19 proximity to other card rooms and the fact that their
20 players do have generally options to play that are in
21 close proximity to them. So they're not experiencing
22 these type of concerns that we're hearing at this
23 room.

24 CHAIR MACIVER: Because my hypocrisy knows no
25 bounds and I just counseled that we were on debate

1 and not questioning, on the previously discussed rule
2 challenge, I heard that that was at the appellate
3 stage and you're the petitioner in that appeal,
4 correct?

5 MR. LOCKWOOD: That's correct.

6 CHAIR MACIVER: Okay. Commissioners, at this
7 stage, I'm inclined and I will -- if this is not the
8 will of the body, I will entertain a motion to move
9 the previous question, but at this point, I'm
10 inclined to table this agenda item, give Mr. Lockwood
11 the opportunity to provide more evidence to the
12 commission to give that quantitative evidence that
13 you're looking for on the substantial burden rather
14 than what sounds like would be a vote to put a nail
15 in the coffin today. Again, if that's not the will
16 of the body, I will entertain a motion to move the
17 previous question, but without said motion, I will
18 table this agenda item.

19 COMMISSIONER DRAGO: I agree with that. I
20 think we should table it as well.

21 CHAIR MACIVER: Mr. Lockwood, we'll revisit
22 this at a future commission meeting.

23 MR. MARSHMAN: Mr. Chair, if I may. There is a
24 90-day deadline for the granting or denial of a
25 waiver, and that deadline is December 1st. So there

1 are certain provisions where the commission can ask
2 for additional information, and we did that
3 initially, we're now in a scenario where we're
4 seeking additional-additional information, which we
5 can do, however, that does not extend the timeline.

6 CHAIR MACIVER: The tabling -- and I believe in
7 the discussion that we've had here today, the tabling
8 of this is the petition is denied barring further
9 information which would extend beyond the Deemer
10 provision of 120.

11 MR. LOCKWOOD: Just so I'm clear here, we would
12 be allowed the right to essentially amend our
13 petition that we have before the commission to
14 address these concerns, and certainly these issues,
15 we would have addressed, we did not see them in the
16 previous request from the commission, so certainly we
17 can put this type of data together and get it back to
18 the commission on those two points.

19 CHAIR MACIVER: Thank you. And expressly you
20 are waiving the 90-day provision as well?

21 MR. LOCKWOOD: That's correct. Thank you.

22 CHAIR MACIVER: Thank you, commissioners.

23 Agenda Item No. 2 is a motion to reduce penalties.
24 Mr. Taupier, I believe you're presenting?

25 MR. TAUPIER: I am. Mark Taupier for the

1 record. This is FGCC vs. Gerald Brooks, Case
2 No. 2022001778. I believe that we might need IT from
3 the Senate staff to bring Mr. Bailey onto the Zoom
4 screen. There he is. I'm just going to give a brief
5 overview and then turn it over for Mr. Bailey to
6 argue his motion.

7 This case is before you on a motion to reduce
8 the penalty that was imposed by a final order which
9 was filed on March 15th of 2022. This stems from an
10 administrative complaint that was filed against Mr.
11 Brooks for a xylazine drug positive violation.

12 Mr. Brooks did not respond to the
13 administrative complaint that was served on him
14 properly, thereby waiving his right to any kind of
15 formal 120 hearing. The division did file a final
16 order for a fine of \$1,000 and to return the purse to
17 Gulfstream. Mr. Bailey was retained after that final
18 order was filed and appealed it to the 1st DCA.

19 Through discussions with Mr. Bailey and through
20 motions to the First DCA, the DCA did give joint
21 jurisdiction to the commission to hear this motion
22 and rule on it if appropriate.

23 So with that, I can turn it over to Mr. Bailey.

24 CHAIR MACIVER: I will turn it over to Mr.
25 Bailey. Commissioners, I'm going to recognize Mr.

1 Bailey to make his presentation. Please feel free to
2 interrupt at any time with any questions you may
3 have, Mr. Bailey, as though you're making an
4 appellate argument, and you're recognized.

5 MR. BAILEY: Thank you, Mr. Chairman. Mr.
6 Chairman and members of the commission, my name is
7 Bradford Bailey. I represent Mr. Brooks. I have a
8 history with dealing with medication positives with
9 the division in connection with rulemaking, in
10 connection with rule implementation, and what we have
11 here is an issue that's laid out in my motion, and
12 I'm happy to explain the genesis of my motion.

13 In 2015, the legislature brought medication
14 positives into the 21st century in Section 550.2415
15 Sub 7 by requiring the Division of Pari-Mutuel
16 Wagering to adopt by rule the controlled therapeutic
17 medication schedule of the ARCI from 2014, which was
18 the last version pending before the legislature met.
19 The ARCI is the Association of Racing Commissioners
20 International, they take information provided to them
21 from another acronym, the RMTC, the Racing Medication
22 Test Consortium.

23 What the Controlled Therapeutic Medication
24 Schedule is is 27 medications that the ARCI have
25 recommended for uniformity throughout the country

1 that if you're going to use a therapeutic medication
2 on a race horse, that these are the medications we
3 want you to use, and if you do use those medications,
4 then we're giving you the benefit of the doubt by
5 having a threshold. A threshold is a quantum of
6 medication that still may remain in the horse's body
7 in a post race test, but it would not be enough to
8 trigger a positive based on the recognition that that
9 allowable quantum or threshold would not affect the
10 outcome of a race.

11 What brought me here today was something stated
12 by the Chairman, and I believe it was the second
13 meeting in discussing penalties for administrative
14 rule violations, which was that in imposing these
15 penalties, it's not about winning the case, it's not
16 about gotcha, it's about coercing compliance, and
17 it's also about uniformity in imposing the penalties.

18 What happened here, as is set forth in my
19 petition, the year after the division adopted the
20 prior version of the ARCI Controlled Therapeutic
21 Medication Schedule, the therapeutic concentration
22 for a threshold violation of xylazine increased. So
23 to set the predicate, the violation in our rule is
24 based on a ten-picogram threshold. That means if we
25 have a post race blood sample and we quantify the

1 xylazine in it, if there's less than ten picograms
2 which is ten trillionths (ph.) of a gram per cubic
3 milliliter of blood serum, then it's not considered a
4 violation. What happened was the following year, the
5 RMTC recommended that the ten-picogram threshold was
6 for lack of a better term erroneous and changed the
7 number effective in 2017 to 200 picograms, so they
8 were only off by 20 times.

9 As I said in my motion, I understand under
10 Florida law because I've dealt with the division on
11 many, many issues, that the division cannot or could
12 not adopt a third party's document as the division
13 rule as instructed by the legislature, but the
14 exception is you can't adopt it as it changed from
15 time to time.

16 So what we were left with as of 2017 was a rule
17 that said the threshold is ten picograms, when in
18 actuality going forward throughout the rest of it,
19 the United States jurisdictions that have adopted the
20 ARCI, they're capable of changing their threshold to
21 200 picograms, and this has been an issue between
22 myself and the division and the division stewards for
23 the last five years on the four or five xylazine
24 positives that tend to show up, and they tend to show
25 up at the ten picogram-plus level, meaning we get 12

1 picograms, 13 picograms, 15 picograms, which the RMTC
2 and ARCI has now recognized does not affect the
3 outcome of a race at all, yet we're punishing it
4 because it's in excess of ten even though we all know
5 that the 12, 13, 14 picograms per cubic mil of blood
6 serum did not affect the outcome of the race. So --

7 CHAIR MACIVER: I just want to ask a little bit
8 about what you just said, about the "we all know."

9 Do we also all know that the legislature
10 directed us to adopt a specific schedule?

11 MR. BAILEY: Yes, we know that.

12 CHAIR MACIVER: And that that specific schedule
13 is Florida law?

14 MR. BAILEY: Yes, we do know that.

15 CHAIR MACIVER: So other jurisdictions may not
16 have the same law as Florida, but that does not
17 change Florida law?

18 MR. BAILEY: That would be a correct statement,
19 Mr. Chairman. However, within the actual other
20 document that we adopted in the same legislative
21 session under the same statute, one is Subsection
22 7-A, one is Subsection 7-C, which adopted the uniform
23 classification system and the uniform system for
24 penalty guidelines, and in the uniform system of
25 penalty guidelines, what it provides for a medication

1 such as this -- and so what the commission
2 understands is that xylazine is a fast-acting
3 painkiller, and it's out of the body in a very short
4 period of time. It's typically used for a period of
5 time when dental work is being performed on a horse.

6 So in the classification system and penalty
7 guidelines, it specifically says that although the
8 base penalty may be \$1,000 and the loss of purse,
9 that the agency whether it's the stewards or whether
10 it's the commission imposing the penalty can mitigate
11 that penalty based on certain factors. And one of
12 the clearest mitigating factors that's here in this
13 case even if we're following what existed in Florida
14 law as of 2016, it's the fact that the RMTC did in
15 fact change the threshold, and we're dealing with an
16 issue where that goes back to the "we all know" that
17 the RMTC changed the threshold from ten picograms to
18 200 picograms on the basis of a subsequent study that
19 the ten-picogram threshold and anything between ten
20 picograms and 200 picograms was not affecting the
21 outcome of a race, and therefore it was allowable to
22 be in the horse's system.

23 So I'm not claiming that the division did
24 anything quote-on-quote wrong. What I'm asking for
25 is uniformity. What I also attached here is a second

1 ruling. Mr. Brooks is a resident of the state of
2 Pennsylvania, if we go into his record, which is --
3 he's got two records of violations in the state of
4 Florida, two xylazine positives, he comes here from
5 another jurisdiction with different rules. His horse
6 races, the veterinarians inject xylazine for dental
7 work and it tests higher than ten picograms, it
8 tested 13 picograms.

9 The 13 picograms would be a technical violation
10 of the rule, but can we mitigate it? And what you
11 have -- and this goes back to the chairman talking
12 about uniformity, is that it's taken the division and
13 I many years to get these matters in front of the
14 stewards, and what the stewards are doing -- and I've
15 attached an example of that as Exhibit C to my motion
16 -- is making an express finding on a like-kind
17 xylazine positive that it's mitigated by the very
18 fact that the ARCI changed the quantum from ten
19 picograms to 200 picograms, and recognizing I think
20 in that case the amount was 19 picograms, that it was
21 a technical violation --

22 CHAIR MACIVER: Mr. Bailey, I understand why
23 you're presenting that second case, but it seems to
24 me to be counter to the direction that this body is
25 continuously given that our regulatory penalty should

1 be focused on garnering compliance. And you have
2 told us that within several weeks of this order that
3 there was a second violation, and to be sure, a lower
4 violation, but if the \$1,000 and return the purse
5 didn't get your client's attention, then I don't see
6 the logic in asking us to reduce it.

7 MR. BAILEY: To answer that one, there is a
8 long period of time between when we have a positive
9 actually in a horse race and by the time the trainer
10 finds out about it, and Mr. Chairman, to make this
11 clear, this is a medication administered by a
12 veterinarian in compliance with the standards of the
13 rules, i.e., the amount of the medication that's
14 administered. This is not administered by the
15 trainer, and in addition to that, it's administered
16 within the time period.

17 Now if you look at Exhibit B, it lays out the
18 quantum of the medication to be administered, the
19 withdrawal time of the medication, which is 48 hours,
20 the amount of the admission of the medication, and
21 what would happen is by following exactly that, you
22 might get a number that's above ten, but you're going
23 to be 180 picograms below the 200-degree -- the
24 200-picogram threshold.

25 So what's also happening in our cases -- and

1 the stewards recognize this -- is sometimes you don't
2 even know about the first violation before you have a
3 second . And that's a function of the time delay
4 between the lab reporting the positive to the agency,
5 the agency then preparing an administrative
6 complaint, and the administrative complaint then
7 getting served upon the trainer.

8 We've had many issues -- and it's not just
9 specifically with xylazine -- where a trainer does
10 not know about a first violation before he has a
11 second one or a third one, and what happens then --

12 CHAIR MACIVER: Commissioner, go ahead.

13 COMMISSIONER BROWN: May I ask a question?
14 Pardon for interrupting.

15 MR. BAILEY: Yes, ma'am.

16 COMMISSIONER BROWN: You made a statement that
17 the veterinarian is the one who administered the drug
18 and not the trainer, but isn't the trainer ultimately
19 responsible for that horse and what is in that
20 horse's system on race day?

21 MR. BAILEY: Fully responsible.

22 COMMISSIONER BROWN: Okay, thank you.

23 CHAIR MACIVER: And I wanted to ask, you had
24 mentioned the time delay between knowing that there
25 was one violation and a second violation being

1 discovered. After your client was served, I
2 understand this to be a default order that was
3 entered, I'm wondering why we're having this
4 discussion rather than there being in formal
5 settlement discussions making these equitable
6 arguments to our legal team who could have then --
7 prior to a final order being entered, could have
8 taken some of these things into consideration.

9 What we end up -- instead of that happening
10 because a final order was entered is the potential
11 that we will create a perverse incentive where we've
12 issued a final order and an appeal has been filed and
13 then we, using that appeal as leverage, try to get
14 the commission to vacate its prior order to make the
15 appeal go away. I don't think we want that to happen
16 in every single case where we issue a final order.
17 Frankly, I think going forward, we would probably
18 oppose such motions to relinquish.

19 The time to make informal settlements in these
20 administrative complaints is prior to the issuance of
21 an order, but my understanding is your client didn't
22 respond; is that correct?

23 MR. BAILEY: That's correct, Mr. Chairman.
24 What my client did do was -- as is customary in all
25 other states -- is talk to the stewards after he got

1 the complaint, and the steward said, "If you're going
2 to have a stewards hearing, it's going to be a \$100
3 fine." He didn't need to retain a lawyer.
4 Unfortunately then thereafter when he didn't respond
5 by checking a box and sending it back to the agency
6 clerk to then have them send the matter to the
7 stewards, the agency acted.

8 I was retained the day that the appeal was due
9 to be filed, so I did file the appeal that day just
10 to preserve his rights. I've had discussions with
11 the agency about the knowledge that the stewards are
12 imposing \$100 fines for these violations to recognize
13 it's a technical violation, but it has no effect on
14 the outcome of a race. And what you have here is a
15 \$1,000 penalty and a loss of purse, which is the only
16 one that they've ever issued a loss of purse in this
17 case. It's a second place purse on a \$24,000 purse,
18 so it's \$4,800 to the trainer and the owner of the
19 horse plus the \$1,000, whereas you can see from the
20 attachment -- and I can also represent to this body
21 that there are six other ones that the stewards have
22 imposed for the \$100 fine.

23 So this became -- and I hate to say it in terms
24 of a gotcha, but even afterwards, yes, I would have
25 loved to negotiate this with the lawyers for the

1 division, and we talked, and the suggestion was,
2 "Well, let me ask the Court to relinquish
3 jurisdiction so I can bring it in front of this
4 body." So that's why I'm here today.

5 CHAIR MACIVER: Commissioners? Anything
6 further, Mr. Bailey?

7 MR. BAILEY: Not unless there's any other
8 questions from the members of the commission.

9 CHAIR MACIVER: Commissioners, I'm going to --
10 actually, first, Mr. Marshman, please let us know :
11 Is my understanding of the posture of this correct,
12 that essentially what we have here is a de facto
13 request to vacate our prior order and issue a new
14 order with a lesser penalty?

15 MR. MARSHMAN: Yes. It is a motion to more or
16 less issue an amended final order.

17 CHAIR MACIVER: But to do that, we'd have to
18 vacate the prior order?

19 MR. MARSHMAN: Yes, sir.

20 CHAIR MACIVER: Not that I think it's a
21 significant consideration in the right or wrong of
22 what we do, but what is the commission's exposure to
23 fee liability in that case?

24 MR. MARSHMAN: If Mr. Brooks prevails on
25 appeal, there is a provision for prevailing party

1 fees on an appeal. That would be the limit of our
2 exposure because there was no underlying proceeding
3 at DOAH, for instance, where there would be
4 additional fees.

5 CHAIR MACIVER: If we were to vacate and issue
6 this, there would be no fee liability as well, I'm
7 assuming?

8 MR. MARSHMAN: That's correct, Mr. Chair,
9 because there would be no dispositive conclusion on
10 the appellate case that would entitle either side to
11 fees because there would be no disposition at the
12 appellate level other than dismissing the case. So
13 that's not a jurisdictional -- that's not a decision
14 on the merits, rather, that would entitle either
15 party to fees.

16 CHAIR MACIVER: Commissioners, I think we
17 should open this to debate, and as before, I think we
18 would take a vote on whether or not to grant the what
19 I will call motion to vacate and reissue the order.
20 Any debate? Commissioner Brown.

21 COMMISSIONER BROWN: Mr. Chair, would you mind
22 if I ask staff quick question?

23 CHAIR MACIVER: Please do.

24 COMMISSIONER BROWN: Do you have a
25 recommendation on this matter given the evidence and

1 the discussion provided by the attorney representing
2 the trainer?

3 MR. TROMBETTA: No, I do not.

4 COMMISSIONER BROWN: You thought that pretty
5 hard. Okay. I just wanted some insight because I
6 think the petitioner here does make some valid
7 arguments, and I'd be curious to hear some of your
8 expert opinions on the matter.

9 CHAIR MACIVER: Mr. Vice Chair.

10 VICE-CHAIR YAWORSKY: Thank you, Chair. Just
11 briefly. Could you just maybe for the record provide
12 your -- anyone on the team, your perspective on the
13 underlying point that's being made I think about the
14 consistency of Florida law versus what was
15 [indiscernible] as larger standards that are
16 national?

17 MR. TROMBETTA: Yeah, that I do not mind
18 discussing. My previous role was as the director of
19 the department of pari-mutuel wagering where -- and
20 prior to that, as a chief attorney, I've worked a lot
21 with Mr. Bailey, and during my time as the director,
22 we made a lot of efforts to try to address this
23 issue. The issue that has been identified as sort of
24 the core of this is that we are tied to the 2014
25 version of a document that has since been updated.

1 So in the past, we have used mitigation, I can
2 tell you that, to address discrepancies between the
3 two versions. I agree with the Chair completely,
4 though. Florida law is Florida law. It doesn't
5 matter what these trainers are doing in other states.
6 They should know when they come to Florida this is
7 how it works. Mr. Bailey is very aware of it. I
8 know he doesn't represent anybody and he has no duty
9 to do that, but the trainers that operate in multiple
10 states all know Florida is not super unique. This is
11 a problem in general in horse racing across the
12 country, is that states have different levels and
13 different limits of some substances.

14 So to that end, I don't necessarily -- I think
15 trainers are ultimately responsible, to your point,
16 too, for the condition of their horse, and without
17 providing recommendation, the trainer has had
18 opportunity to respond to do things that frankly
19 didn't happen. So -- but in terms of stewards that
20 has come up, too, our stewards, we've made a lot of
21 effort to use stewards as appropriate.

22 So stewards are used nationally in other racing
23 states to essentially act as judges on the race
24 track. They make decisions about what happens both
25 in the race whether to disqualify somebody for

1 bumping or for cutting somebody off or for making
2 decisions about legal issues such as drug positives.
3 Florida in the past few years has been trying to
4 update our processes for using stewards, that was
5 something done while I was the director. So that's
6 the background there, too.

7 So our stewards in general do see cases, they
8 will -- they have authority under statute and rule to
9 make decisions in those cases depending on what
10 substance and some of the specific facts of the
11 specific case, but what has been provided here, I
12 mean, the law does say it's a \$1,000 fine. The loss
13 of purse is something that we've been encouraged by
14 many attorneys and people in horse racing to do. So
15 the loss of purse I think is something also that may
16 be new, but it's something that we've been encouraged
17 to do to get conformity to make drug positives not a
18 cost of doing business, and that is what happened in
19 this case, too.

20 CHAIR MACIVER: Commissioners -- thank you, Mr.
21 Trombetta. Commissioners, Mr. Bailey's point is not
22 lost on me. This is not gotcha, this is not extract
23 a pound of flesh, this is regulatory penalty, which
24 the goal of which as we've communicated with our
25 legal team is supposed to be compliance. It occurs

1 to me that we probably need to be having that same
2 conversation with our stewards as well. And I have
3 significant worries -- the other side of the coin
4 when we've told our legal team that this isn't about
5 extracting a pound of flesh is that don't also allow
6 our penalties to simply become the cost of doing
7 business, and mitigating a violation of Florida law
8 because another jurisdiction has a different law and
9 mitigating it to the point where it's continuously
10 being violated gives me significant pause.

11 From my part, Mr. Bailey, I'm not persuaded in
12 vacating our earlier order. If there's further
13 debate, I'll entertain it, if not, I'll open up a
14 vote. On the question of granting the motion before
15 us, all in favor? Hearing none -- all opposed?
16 Aye?

17 ALL MEMBERS: Aye.

18 CHAIR MACIVER: Show that motion is denied.
19 Thank you, Mr. Bailey.

20 MR. BAILEY: Thank you, Mr. Chair.

21 CHAIR MACIVER: Agenda Item No. 3, discussion
22 of a petition for relocation of pari-mutuel permit.

23 Mr. Taupier, I believe that was you as well?

24 MR. TAUPIER: I believe that's going to be Ms.
25 Stinson.

1 CHAIR MACIVER: I apologize, Ms. Stinson.

2 MS. STINSON: Good morning. So Item No. 3 is a
3 petition for relocation of a pari-mutuel permit
4 pursuant to 550.0555 Florida Statutes. Fronton
5 Holdings, LLC, their d/b/a is Casino Fort Pierce,
6 petition the commission to approve Fort Pierce's
7 relocation of a permit pursuant to the statute.
8 550.555 addresses permit relocation of a jai alai
9 [indiscernible], that is the only permit in the
10 county, and it allows relocation without a county
11 referendum if certain criteria are met.

12 In this situation, it is within here the
13 criteria has to be within the 30-mile radius and
14 doesn't count cross a county boundary and it is
15 approved by the zoning board. If all of those are
16 met, then there's a hearing under Chapter 120 to
17 determine if the move is necessary to ensure revenue
18 producing capability of the requesting permittee and
19 that it does not decrease the revenue capability of
20 any permittee within 50 miles, and the distance there
21 shall be measured in a straight line.

22 And we held a hearing on this matter in St.
23 Lucie County to determine, after it was determined
24 that it was approved by the county zoning board, it
25 does not cross the county boundary and all the other

1 criteria were met, we determined at the hearing that
2 it is the position of the hearing officer I believe
3 that the move does not deteriorate the revenue
4 producing capability of the other permittees and it
5 is necessary to increase the revenue producing
6 capabilities of the Fronton Holdings.

7 CHAIR MACIVER: I just want to quickly address
8 for the commissioners, in the information that we
9 required from the applicant, certain information was
10 answered by their lease, and we received a redacted
11 copy of that lease. I'm a little bit sensitive when
12 the commission receives redacted information because
13 I don't like the idea of us making decisions on
14 information we can't see.

15 That was not the case here, it was simply that
16 the lease was an easy way to respond to some of the
17 information we needed and there was nonresponsive
18 information in the lease; is that correct?

19 MS. STINSON: Correct.

20 CHAIR MACIVER: Okay. With that, Mr. Rutledge,
21 you're recognized.

22 MR. RUTLEDGE: Mr. Chairman, Mr. Vice Chairman,
23 members, I don't have anything to add. I really came
24 to thank you and the commission, the hearing officer,
25 counsel for the commission. The executive director

1 and the director all have been really cooperative in
2 working with everyone to get this matter handled.

3 And as came up in the hearing last week, it's
4 the hope of Ft. Pierce Jai-Alai at their new leased
5 location that they will commence operations by the
6 end of this year, the beginning of next year, and
7 that would not be possible without your action.

8 One other caveat, I'd like to publicly thank
9 Mr. Pat Rooney, Jr. of Palm Beach Kennel Club and his
10 organization who is well represented in the back for
11 their cooperation. We had a situation where we
12 needed to seek their consent because of the 50-mile
13 requirement of different permit holders, they were
14 just on the edge, it was like 47 and a half miles,
15 and they were cooperative, as I would fully expect
16 that they would be. And I would be glad to answer
17 any questions, Mr. Chairman.

18 CHAIR MACIVER: Commissioners, questions? Any
19 debate? Is there a motion?

20 COMMISSIONER BROWN: So moved.

21 CHAIR MACIVER: And a second?

22 COMMISSIONER D'AQUILA: Second.

23 CHAIR MACIVER: All in favor?

24 ALL MEMBERS: Aye.

25 CHAIR MACIVER: Show that motion as adopted.

1 Thank you, Mr. Rutledge. Agenda Item No. 4 on the
2 easily reviewed paper, discussion of a renewal
3 application for slot machine license at Dania.

4 MS. POUNCEY: Good morning. Jamie Pouncey,
5 Permit Holder Administrator, Division of Pari-Mutuel
6 Wagering. Item No. 4 on the agenda is the Dania
7 entertainment application to renew their slot machine
8 license, Case No. 2022039952.

9 The application was submitted, all of the
10 required information and their slot license renewal
11 fees have been submitted, and the division is
12 recommending approval.

13 CHAIR MACIVER: Commissioners, any questions?
14 Any debate? And a motion --

15 COMMISSIONER D'AQUILA: Motion.

16 CHAIR MACIVER: -- to approve? And a second?

17 COMMISSIONER BROWN: Second.

18 CHAIR MACIVER: Any opposition? Hearing none,
19 show that adopted.

20 MS. POUNCEY: I also have Item No. 5 from that
21 is an application from Daytona Beach Kennel Club for
22 additional tables, Case No. 202209952, that's the
23 same case number, there was a typo. Let me look at
24 this. I'm sorry. 2022048727, it is an application
25 to add additional tables to their card room floor.

1 It is for 12 tables. Daytona has submitted their
2 required forms and also the required license fees for
3 each of those tables, and we are recommending
4 approval.

5 CHAIR MACIVER: Commissioners, any questions?

6 COMMISSIONER BROWN: Motion to approve.

7 COMMISSIONER D'AQUILA: Second.

8 CHAIR MACIVER: Show it approved. Thank you,
9 Ms. Pouncey. On to Agenda Item No. 6, someone wants
10 to transfer their tax credits.

11 MS. SWAIN: Good morning. Tracy Swain, Revenue
12 Program Administrator within the Division. This is
13 in reference to Case 2022048835.

14 Pensacola Greyhound Racing is requesting to
15 transfer \$340,000 of their tax credits to Daytona
16 Beach. They've met all the requirements of 550.0951,
17 Sub-1B, and staff recommendation is for this tax
18 credit to be approved for transfer.

19 CHAIR MACIVER: Just one comment, and Ms.
20 Pouncey, please hear this as well. It occurs to me
21 that sometimes when we move through these things that
22 are so close to ministerial as to be essentially as
23 hitting the easy button, it shouldn't be lost on us
24 the incredible amount of work staff has to do to put
25 all of this together, to review all of this, to make

1 sure that this is actually checking all the boxes
2 before they tell us that it's okay for us to vote yes
3 on it.

4 So just thank you very much for what is a much
5 heavier lift than the amount of time that we actually
6 have to take to hit the easy button.

7 MS. SWAIN: Thank you.

8 CHAIR MACIVER: Commissioners, any questions?

9 COMMISSIONER BROWN: Move to approve.

10 COMMISSIONER D'AQUILA: Second.

11 CHAIR MACIVER: Any opposition? Show that
12 motion adopted. Thank you. Item No. 7, we are on to
13 a discussion of default final orders. And Ms.
14 Alvarez, I believe that's you -- Ms. Alvarado, I'm
15 sorry.

16 MS. ALVARADO: No problem. Good morning, this
17 is Emily Alvarado. I'm here to present all of 7 and
18 8. So 7.1 --

19 CHAIR MACIVER: For the record, I was reading
20 Alvarez when I said that.

21 MS. ALVARADO: No problem. I'm here to present
22 FGCC vs. Marcus Mendoza Alvarez in Case
23 No. 2022024913. This case was a one-count
24 administrative complaint alleging that respondent was
25 excluded from Casino Miami on December 18, 2021 for

1 manipulating a slot machine in order to gain about
2 \$1,700 in winnings. He's subject to exclusion
3 pursuant to Sections 550.02516 and 551.112 Florida
4 Statutes. In that packet, there was also the USPS
5 tracking that showed delivery as well.

6 He failed to respond within the 21 days. So
7 here we'd ask that the commission enter a final order
8 showing that he was properly served and failed to
9 respond within 21 days and should be added to the
10 permanent exclusion list.

11 CHAIR MACIVER: Just a curiosity question, and
12 it doesn't affect I think the commission's
13 consideration, but are there any criminal charges
14 filed in this case?

15 MS. ALVARADO: I don't think it was in the
16 record if there was.

17 CHAIR MACIVER: It wasn't in the record. I was
18 just wondering if staff happened to --

19 MS. ALVARADO: We haven't gotten an update on
20 that if he has been.

21 CHAIR MACIVER: Okay. Thank you. Sorry for
22 the transgression. Commissioners, any questions?
23 Any debate? Is there a motion?

24 VICE-CHAIR YAWORSKY: Motion.

25 COMMISSIONER BROWN: Second.

1 CHAIR MACIVER: Any opposition? That motion
2 carries. Item 7.2.

3 MS. ALVARADO: This is FGCC vs. Shakera Hilary
4 Charles in Case No. 2022033258. This case was a
5 two-count administrative complaint alleging that
6 respondent, who's a licensee, she holds a slot
7 machine combo license, she was a food and beverage
8 waitress, she was seen removing items off of
9 customers' checks and keeping tokens or chips for
10 herself as payment for herself. She was excluded and
11 terminated from PPI. She's subject to revocation of
12 her slot machine license as well as exclusion from
13 all slot machine and pari-mutuel facilities pursuant
14 to 550.02516 and 551.112 Florida Statutes.

15 You'll see that she was served as well, you'll
16 see the tracking, she didn't respond within 21 days.
17 So similarly we'll ask that the commission find that
18 she was properly served, she failed to respond within
19 21 days, that her slot machine license will be
20 revoked and that she will be added to the permanent
21 exclusion list for all slot machine and pari-mutuel
22 facilities.

23 CHAIR MACIVER: Correct me if I'm wrong, if we
24 were to make an analogy of the particular reason why
25 she was excluded from the facility, if she were

1 charged and it were a criminal conviction for theft,
2 that misdemeanor of theft would exclude her from
3 licensure, correct?

4 MS. ALVARADO: You could, yes. You could
5 revoke her license as well.

6 CHAIR MACIVER: And again, that's just
7 consideration by way of analogy for the seriousness
8 of theft when we talk about excluding someone from
9 all the facilities in the state.

10 Commissioners, any further questions?

11 COMMISSIONER BROWN: How much did it equate to,
12 the amount of money that they determined she
13 absconded with?

14 MS. ALVARADO: Give me one moment. I do think
15 they put that in here.

16 COMMISSIONER BROWN: Twofold question, also,
17 and were criminal charges similarly brought against
18 her?

19 MS. ALVARADO: That's also not in the record,
20 and they actually didn't even put in here how much.
21 I know that they found it via surveillance footage
22 and they started looking at the surveillance footage
23 because she was getting such a high number in tips
24 that she was cashing out with the chips. I don't
25 think they put in the record how much the total was,

1 but it was over a period of a week that they watched
2 on surveillance footage.

3 COMMISSIONER BROWN: Obviously serious in
4 nature to not just exclude her but also for her to
5 lose her license, so I would be interested in having
6 just a little bit more detail in that when we go
7 ahead and proceed and determine that a license should
8 be revoked.

9 MS. ALVARADO: Okay.

10 COMMISSIONER BROWN: Thank you.

11 CHAIR MACIVER: Further questions? Debate? Do
12 we have a motion to approve or did we want to amend
13 that motion? Commissioner Brown?

14 COMMISSIONER BROWN: Is there a way that we
15 could find that information so that the record is
16 just much clearer when we approve this, could we
17 defer it for --

18 MS. ALVARADO: I would have to follow up with
19 investigations to see if they could get that
20 information from the facility. I could definitely do
21 that and we can bring it to the next meeting.

22 COMMISSIONER BROWN: I think --

23 CHAIR MACIVER: And we're not under any time
24 constraints for this, are we, Mr. Marshman?

25 MR. MARSHMAN: Mr. Chair, no, we're not.

1 However, I do believe there's an e-mail from PPI to
2 an investigator that indicates that the total amount
3 was \$39.

4 COMMISSIONER BROWN: \$39?

5 MR. MARSHMAN: Over a series of multiple
6 transactions that were pocketed, \$6, \$5, \$15, \$7, and
7 \$6.

8 COMMISSIONER BROWN: Okay, thank you. I'm
9 ready to proceed.

10 CHAIR MACIVER: I'll entertain a motion.

11 VICE-CHAIR YAWORSKY: So moved.

12 COMMISSIONER BROWN: Second.

13 CHAIR MACIVER: Any opposition? Hearing none,
14 show that motion carries. We're on to 7.3.

15 MS. ALVARADO: 7.3 is FGCC vs. TBD
16 Entertainment in Case No. 2022035114. In this case
17 it was a one-count administrative complaint alleging
18 that respondent violated 61D11.0166 by having more
19 card room tables in operation than they were
20 permitted in their operating license. I believe they
21 had 15, what happened here it seems like in 2021,
22 2022, they had amended their 14 license to 15 and
23 they assumed that it came over and they were notified
24 and they've already fixed the issue since then. So I
25 had issued a consent order to them for a \$250 fine.

1 They didn't respond within the 21 days, but I
2 would ask that the respondent -- you guys would find
3 that the respondent was properly served, they failed
4 to respond within 21 days, and that we issue a final
5 order of \$250.

6 CHAIR MACIVER: So -- and correct me if I'm
7 wrong about this, in my reading over the record, it
8 seemed as though they made their petition to amend
9 after they had already submitted their application
10 for renewal for the next year and the application for
11 renewal had 14 on it, they thought that when they
12 amended it to 15, they didn't realize that the other
13 documentation they had already submitted said 14?
14 There was no --

15 MS. ALVARADO: Right.

16 CHAIR MACIVER: -- okay. Commissioners, any
17 further questions? Any debate? I think I would be
18 inclined to deny this motion and dismiss the
19 administrative complaint. It is not lost on me that
20 it is the requirement of the applicant to know the
21 law and it is the requirement of the applicant to
22 understand the status of their license. The manner
23 in which this happened seems to me to be so far
24 outside the norm, though, that I don't think that
25 we're really looking at an issue with compliance

1 here.

2 With that, commissioners, further debate?

3 COMMISSIONER DRAGO: Yeah, just a comment, I
4 guess. I have a problem with trying to get into
5 peoples' heads and figure out whether they actually
6 made a mistake or they intended to do it or didn't
7 intend to do it or whatever, and I don't think it's
8 your job to try to get into peoples' heads. If
9 there's evidence that something occurred that was
10 beyond their control, then fine, but, "Oh, I forgot,"
11 you hear that a lot, and I know you do because I've
12 heard that a lot in my career.

13 So I think the fact that -- the facts are the
14 facts, and if the commission wanted to entertain a
15 lesser fine, I could understand that, but I don't
16 think to just throw it out and say, "Well, we think
17 they might have made a mistake," I don't think that's
18 appropriate. In my opinion, it was properly handled
19 in the way you made the determination in that if the
20 fine is in question, that's one thing, but I don't
21 think that they should be able to just excuse it
22 with, "I forgot." The IRS certainly doesn't.

23 COMMISSIONER D'AQUILA: I concur with
24 Commissioner Drago.

25 CHAIR MACIVER: And to be clear, again, my

1 hypocrisy knows no bounds, I know we're not in
2 question time, but this is an agreed to settlement
3 amount as well, correct?

4 MS. ALVARADO: No, this is a default. They
5 didn't respond to the settlement, but I was putting
6 the same amount as I put in the proposed settlement
7 anyway.

8 CHAIR MACIVER: Commissioner Brown?

9 COMMISSIONER BROWN: My first instinct was also
10 just the fact that they were relying on a prior
11 number of tables, you know, it wasn't intentional,
12 but then there's a cost associated with that. They
13 earned revenue, right? Do we know how much revenue
14 they earned during that period?

15 MS. ALVARADO: No. I don't have that number.

16 COMMISSIONER BROWN: So I'm kind of in the same
17 camp with my other commissioners on the matter.

18 CHAIR MACIVER: I think we're going to jump
19 outside of debate for a moment with the concurrence
20 of the body.

21 Mr. Rutledge, would you like to be recognized?

22 MR. RUTLEDGE: I apologize. Mr. Chairman, Mr.
23 Vice Chairman, members, again, Gary Rutledge. We
24 represent Tampa Bay Downs. I apologize to Emily, I
25 wasn't aware that this matter was even on the agenda

1 and that there was a default. We had had serious
2 discussions about this issue, it was an issue -- as
3 was stated previously, Mr. Chairman -- where there
4 was an amendment filed, there was an overlay between
5 the licensures, there was never any intention to do
6 anything.

7 Was it a mistake? Probably. But it involved
8 this table which they were subsequently trying to
9 amend and paid their fees for. I don't know how it
10 ended up being a default matter before the
11 commission. So we would request alternatively that
12 there not be a penalty imposed and a default order
13 issued or that we be allowed to speak to this matter
14 in an ensuing commission meeting.

15 Just as a side, they had another outstanding
16 matter, you may recall, Mr. Chairman, Commissioner
17 Drago and others had a concern with a couple of
18 settlements, one was Tampa Bay Downs previously, one
19 was also another client, Washington County Kennel
20 Club, the commission felt that the penalty may not
21 have been sufficient for those two clients. We've
22 had dialog with commission counsel about representing
23 those matters back to you in a fashion that we hope
24 will be satisfactory for your subsequent actions.

25 So I'm sorry, I apologize, we weren't aware a

1 default matter was even before the commission on
2 this. So hopefully there will not be a penalty
3 imposed or we can address that at a subsequent
4 meeting.

5 CHAIR MACIVER: Thank you, Mr. Rutledge. And
6 since we've opened it up, by my reading of the
7 record, once the violation was discovered, my
8 understanding is they put in their application to
9 amend the same day?

10 MS. ALVARADO: Yes, they did.

11 CHAIR MACIVER: And we approved that at our
12 very next commission meeting?

13 MS. ALVARADO: Yes, we did. And if I could
14 clear up, at the time that this was served on the
15 facility, we didn't know that Rutledge was
16 representing them. I think we were informed after
17 this last commission meeting. So Rutledge was never
18 served on it, it was sent to the facility, they
19 received it. And I'm happy to continue settlement
20 negotiations if you'd prefer me to do that as well.

21 VICE-CHAIR YAWORSKY: Are there any timing
22 issues associated with allowing --

23 MS. ALVARADO: No, there's not.

24 VICE-CHAIR YAWORSKY: Okay. I would -- the
25 appropriate motion would be I would move to allow for

1 continued discussion. That would be my motion.

2 COMMISSIONER BROWN: Second.

3 CHAIR MACIVER: So we'll table this agenda.

4 VICE-CHAIR YAWORSKY: Just to be clear, I'd
5 move to table the item. That's probably a much
6 better way of expressing it.

7 CHAIR MACIVER: So we don't have a moving
8 motion sitting out there [indiscernible] Agenda
9 Item 7.4.

10 MS. ALVARADO: That is FGCC vs. Clifton Smith
11 in Case No. 2022036656. In this case there was a
12 one-count administrative complaint filed alleging
13 that respondent was excluded from Calder Casino on
14 July 30, 2022 for capping his bet. We're seeking to
15 permanently exclude him pursuant to Sections
16 550.02516 and 551.112 Florida Statutes.

17 In the packet there's also the USPS tracking
18 that shows that it was served on respondent. We had
19 asked that the commission enter an order finding that
20 the administrative complaint was properly served,
21 they failed to respond within 21 days, and that
22 respondent shall be added to the permanent exclusion
23 list for all pari-mutuels and all slot machine
24 facilities.

25 CHAIR MACIVER: Commissioners, questions or

1 debate? Do I have a motion?

2 COMMISSIONER BROWN: Move to approve.

3 COMMISSIONER D'AQUILA: Second.

4 CHAIR MACIVER: Any opposition? Hearing none,
5 show that approved. Agenda Item 7.5.

6 MS. ALVARADO: That is FGCC vs. Samantha Rose
7 Dobles in Case No. 2022041504. In this case it was a
8 one-count administrative complaint filed alleging
9 that respondent violated Section 550.024151(a) and
10 Rule 61D6.0083(c) by racing a horse with an
11 impermissible amount of phenylbutazone.

12 You were also provided the affidavit of
13 service, this was served by hand service. The
14 respondent failed to respond within 21 days, and
15 therefore the division would ask that the commission
16 enter an order finding that respondent was properly
17 served with the administrative complaint, they failed
18 to respond within 21 days, and including that
19 respondent shall be issued a written warning which is
20 the penalty that the ARCI guidelines recommends.

21 CHAIR MACIVER: So I understand the guidelines
22 recommend a written warning unless there are
23 aggravating factors?

24 MS. ALVARADO: Yes.

25 CHAIR MACIVER: Are those enumerated

1 aggravating factors or is it up to the commission to
2 determine what is and what is not an aggravating
3 factor?

4 MS. ALVARADO: There are some enumerated
5 aggravating factors.

6 CHAIR MACIVER: What are they?

7 MR. TAUPIER: If I can have one moment to pull
8 up the rule. It's actually within the rule.

9 CHAIR MACIVER: In short, I'm curious if
10 failure to respond to hand-delivered service might in
11 some way show a disregard for our process, and
12 whether or not that is enough of an aggravating
13 factor that a written warning perhaps is not
14 warranted.

15 MR. TAUPIER: For the record, the rule is
16 61D-6.011, Subsection 5, which states that the
17 division shall consider the following mitigating or
18 aggravating factors to deviate from the penalties
19 provided by the classification and penalty
20 guidelines. There are about seven, which is the
21 impact of the offense and the integrity of the
22 pari-mutuel industry, the danger to the public and/or
23 racing animals, the number and date of prior
24 violations if any, penalty class in Florida or other
25 jurisdictions, the number of similar prior offenses,

1 the time period between the offenses, the number of
2 complaints filed against such licensee which have
3 resulted in prior discipline, and the length of time
4 the licensee has been licensed in Florida or any
5 other jurisdiction.

6 It does state that this is not exhaustive, so
7 long as there's something on the record that's placed
8 on the record as an aggravating factor, the
9 commission can use that to aggravate the offense.

10 CHAIR MACIVER: So again, commissioners, it
11 just gives me a little bit of pause that -- and this
12 wasn't even service-service -- but here someone
13 actually hand-delivered this and it just was not
14 responded to, and I wonder what that says to us about
15 the violator's desire to be compliant with our rules.
16 I don't necessarily know if this is a first offense,
17 if we need to vary from the guidelines. Maybe the
18 proof is in the pudding if we see future offenses,
19 then it wouldn't be a written warning anymore, but I
20 wanted to bring that up so that the body could
21 consider it fully.

22 COMMISSIONER DRAGO: Ms. Alvarado, other than
23 that, what were the aggravating factors that you
24 referred to? You said there are aggravating factors.

25 MS. ALVARADO: I was saying there are

1 enumerated aggravating factors.

2 COMMISSIONER DRAGO: Sorry about that. Okay.

3 CHAIR MACIVER: Commissioners, any discussion?

4 All right. I'm not so dug in on this thought that I
5 think we need to change the recommendation. I

6 just -- like I said, I wanted to just bring that up
7 so that we could at least have it in our minds as we
8 move forward. Mr. Vice Chair?

9 VICE-CHAIR YAWORSKY: I would just add I do
10 agree with the Chair. I think that every time we
11 have one of these meetings, at this point there's a
12 long list of folks that are just not responding to
13 anything we were sending their way. Hand delivery,
14 respondent doesn't reply, I think it is important
15 that we make it clear that that is a -- to the extent
16 we can within the bounds of the law, that that is a
17 serious matter and that we can have a discussion. I
18 think we all desire -- from comments on this --
19 desire a very positive relationship with this
20 industry, but at the same time, you can't even have a
21 discussion if one half is not interested in talking.

22 So I agree with the Chair on that, I would be
23 open to amending it. But also, I don't have a
24 specific number in mind.

25 CHAIR MACIVER: As do I. I would entertain a

1 motion to amend, I would also entertain a motion to
2 move forward. Knowing that we're sending a signal to
3 the public in this meeting, that we expect a response
4 when we have served someone with notice and that we
5 would take that into consideration when we're talking
6 about some of these discussions or when we're talking
7 about penalties. If that satisfies the body, then
8 maybe we can move forward. If not, then certainly I
9 will entertain a motion.

10 COMMISSIONER DRAGO: I'd like to make a motion
11 to approve. I think the comments here I think is
12 sufficient in my opinion. So everyone is aware of
13 where the commission is going with this, I would make
14 a motion that we go ahead and approve this one and
15 deal with this when it comes up again.

16 COMMISSIONER BROWN: Second.

17 CHAIR MACIVER: Any opposition? Seeing none,
18 the motion carries. That was our last one. We're on
19 to Item No. 8, discussion of consent orders.

20 MS. ALVARADO: First consent order is FGCC vs.
21 Huong Dao in Case No. 2022027070. In this case
22 materials you're provided the filed administrative
23 complaint alleging that respondent was subject to
24 exclusion from all pari-mutuels and all slot machine
25 facilities based on her actions of moving chips from

1 a losing bet to a winning bet. This was at PPI, Inc.

2 After they received the administrative
3 complaint, they sent in an election of rights
4 requesting an informal hearing, and prior the
5 informal hearing, the attorney representing Ms. Dao
6 called me and asked to have a settlement agreement
7 basically excluding her from all facilities for all
8 slot machine and all pari-mutuel facilities in the
9 state.

10 The settlement agreement was signed, it was
11 sent in, and it's in your packet as well. So I'd ask
12 that the commission enter an order adopting and
13 incorporating the proposed settlement agreement.

14 CHAIR MACIVER: Any questions or debate?

15 COMMISSIONER BROWN: Move to approve.

16 CHAIR MACIVER: Any opposition? Show the
17 motion carries. 8.2, Gulfstream Park Racing
18 Association.

19 MS. ALVARADO: This is Case No. 2022038702. In
20 this case file you were provided the filed
21 administrative complaint alleging that respondent
22 allowed individuals to work in the back side of
23 Palmetto's training center without an occupational
24 license, which is a violation of 61D2.0231(h). You
25 were also provided the settlement and consent order

1 which had a fine of \$1,000.

2 Respondent had no prior violations of this
3 rule, the commission has the authority to impose an
4 administrative fine of \$1,000 pursuant to Section
5 849.086, and I would ask that the commission enter an
6 order adopting and incorporating the consent order
7 for this case.

8 CHAIR MACIVER: So the consent order is for a
9 fine of \$1,000?

10 MS. ALVARADO: Yes.

11 CHAIR MACIVER: And their total exposure would
12 have been \$4,000?

13 MS. ALVARADO: The AC was only filed with one
14 count. Potentially I could have put it into four
15 counts, but I did one count, \$1,000 fine.

16 CHAIR MACIVER: And they accepted essentially
17 the maximum fine?

18 MS. ALVARADO: Yes.

19 CHAIR MACIVER: Commissioners, any questions?

20 COMMISSIONER BROWN: Just for the record, those
21 four individuals were employees of Gulfstream?

22 MS. ALVARADO: They didn't have current
23 licenses, but yes, they had prior licenses or they
24 were seeking licenses.

25 COMMISSIONER BROWN: Okay, thank you.

1 CHAIR MACIVER: Commissioners, any further
2 questions or debate? Is there a motion?

3 COMMISSIONER D'AQUILA: Motion to approve.

4 COMMISSIONER BROWN: Second.

5 CHAIR MACIVER: Any opposition? Show the
6 motion carries. Item 8.3 is St. Petersburg Kennel
7 Club.

8 MS. ALVARADO: This is Case No. 2022041729.
9 This was a two-count administrative complaint
10 alleging first that respondent failed to permanently
11 alter a damaged card to ensure it was not put back
12 into play. This is a violation of 61D11.0144(c).
13 And the second count was they failed to have a drop
14 box secured with a lock to the poker table, which is
15 a violation of Rule 61D11.0201(b).

16 You were also provided the settlement and
17 consent order which had a \$500 fine. Respondent had
18 two prior violations of 61D11.0144(c), which is
19 failing to permanently alter the cards. One was from
20 2018, it was a one-count complaint that had a \$150
21 fine. The second was a 2020 case which had five
22 violations of the same rule and was a \$500 fine, so
23 potentially \$100 per violation.

24 There was three violations of 61D11.0201(b),
25 which is failing to properly secure the lockbox on

1 the poker table. They've had three prior violations.
2 The first one was a 2017 case which had a one-count,
3 a \$500 fine, another was a 2018 case which had a
4 one-count and had a \$350 fine, and then a 2020 case
5 which had three counts, one of which was this rule
6 and had a \$750 fine.

7 The commission has the authority to impose a
8 fine of \$1,000 per violation pursuant to
9 Section 849.086 Florida Statutes, and the division
10 would ask that the commission adopt this consent
11 order.

12 CHAIR MACIVER: Which was for which penalty
13 again?

14 MS. ALVARADO: It was a \$500 total for both
15 counts.

16 CHAIR MACIVER: I think the failure to install
17 the lockbox is pretty clear cut, but I'm kind of
18 curious about the determination that a card is
19 damaged and how we go about doing that. Basically
20 the record that we had before us did have a photo and
21 obviously the PDF file that we get isn't the clearest
22 thing in the world, but for the life of me, I
23 couldn't discern any damage on that card, and I'm
24 wondering: Who makes that determination? Is it our
25 investigator? Is it -- how do we arrive, and then

1 ultimately what would be our burden to prove that
2 that card was actually damaged?

3 MS. ALVARADO: So I believe the executive
4 director might be better at answering at how we
5 determine that.

6 MR. TROMBETTA: I'll try, and I see somebody
7 else walking up that may have some input. Generally
8 it happens at the facility, usually players will
9 identify it. Commonly cards get damaged just from
10 the automatic shufflers, they'll either get markings
11 on them, they'll physically rip, and that will be
12 either the shuffler or player or just through time,
13 they'll just kind of get folded, creased, and
14 typically a player will say, "Hey, this card is
15 damaged," they'll give it to the dealer, the dealer
16 will give it to the floor, and from there, our
17 investigators at some point will review their
18 internal controls and what they're supposed to be
19 doing with those damaged cards. And that's sort of
20 where these cases usually stem from.

21 CHAIR MACIVER: And I guess I'm kind of curious
22 about the process there. You said if someone finds a
23 card, they give it to the dealer. At which point has
24 a violation occurred? If there's a damaged card and
25 you have failed to replace that card, are you in

1 violation as soon as someone discovers the damaged
2 card, or does there have to be some sort of
3 determination made, "Yes, this was actually damaged,
4 and yes, you failed to return it."

5 MR. TROMBETTA: Well, that determination will
6 be made internally by one of our investigators. I
7 don't know the facts of this case specifically, but I
8 imagine they're probably outside of the rule
9 identifying this as a penalty, there probably isn't a
10 standard in the rule, and it's taken up as a fact by
11 fact type of decision.

12 CHAIR MACIVER: Mr. Rutledge, any observations?

13 MR. RUTLEDGE: I'm becoming a regular here this
14 morning. Again, Mr. Chairman, Mr. Vice Chairman,
15 members, Gary Rutledge for St. Petersburg Kennel
16 Club, Derby Lane. I wasn't here coming today for
17 this matter, but happen to be here because of the
18 significant matter, No. 3 on the relocation.

19 But in response to the question about the
20 damaged card, it's interesting. I looked while I was
21 in the audience at the same thing, and I'd be darned
22 if I could see what was damaged in the card. But
23 that wasn't really the issue in the case because it
24 had been removed for whatever reason, however slight,
25 and this card room and other card rooms are pretty

1 meticulous to make sure that any discoloration,
2 marking, tear, the card is going to be removed.

3 The violation in this was not the removal of
4 the card, it was properly removed even though neither
5 you, Mr. Chairman, nor I could see what the damage
6 was to it, and was placed correctly in an envelope,
7 the envelope was correctly sealed, it was dated, etc.
8 The violation that was reported is that after the
9 fact before it was put into the envelope, that the
10 card was not like punched so that it could be clearly
11 ascertained that it couldn't be used again.

12 If you'll see the pictures that you referenced,
13 Mr. Chairman, there were a couple of punches at the
14 top of the envelope, they're going to start punching
15 the card while they're in the envelope, but there was
16 no chance whatsoever that this card was going to be
17 replayed. It was removed, it was sealed, and unlike
18 the prior violations that were cited by Emily, those
19 situations involved some cases where -- a case or two
20 where the card may not have been punched again, but
21 it had to do with the sealing of the envelope and the
22 identification and the like as the record reflects.
23 I apologize. Thank you.

24 CHAIR MACIVER: No need to apologize. I
25 appreciate the additional information.

1 Commissioners, any further questions?

2 COMMISSIONER DRAGO: I'm just curious about,
3 again, the fine, and how we came to that and this
4 significant history in similar types of offenses, and
5 it seems like we've gone up and down and up and down
6 in fines. Again, my concern is always going to be
7 consistency and being able to argue why we've reached
8 this point in the fine, and just like it's been
9 brought up here today about with the drugs and the
10 horse, some people get this, we don't want that.

11 Just my concern is that whether or not we're
12 being consistent, aggressive enough in our discipline
13 and following a process. And I know that we've
14 talked about this before and I know that these were
15 done before our last meeting, so perhaps the
16 commission's feelings -- sense about it has -- has --
17 you were able to bring it in, you didn't know it at
18 the time, but my concern, again, is where we could
19 have gone as high as \$2,000 that we did \$500 when
20 they've already had \$750 and several other fines.

21 I just think that we need to have that
22 consistency. It needs to which will, again, we're
23 not just trying to punish people. And like Mr.
24 Rutledge said, there's going to be some that are less
25 serious and more serious, and I don't know that we

1 even want to get into every little bit of minutia
2 about the offense. And we have -- I think, in my
3 opinion, we have to put some confidence into the
4 investigators and so forth and what they decide. I
5 can't see anything with that card either, but that
6 doesn't mean there isn't something that there that I
7 don't see.

8 So just for discussion -- I think we're back to
9 where we were in the last meeting -- do we want to
10 ask for an increased fine on this to be more
11 progressive, or are we satisfied with where it is and
12 just move it along?

13 CHAIR MACIVER: As an item, I guess we're kind
14 of into debate here. For my feeling, I think we're
15 getting our message out. I think that the industry
16 is hearing what we're going for, that compliance is
17 our focus, and that when we continue to see
18 repetitive cases, they're going to get harsher and
19 harsher. In this individual case, I don't know that
20 it's necessary to amend the recommendation to
21 accomplish that.

22 I'll certainly entertain a motion to do that if
23 that's the will of the body. I don't know that we --
24 from my part, I don't know that we need to in this
25 individual case knowing that this is what we're doing

1 moving forward. Commissioners?

2

3 VICE-CHAIR YAWORSKY: I think in this case I
4 would agree with the Chair. Again, I think the
5 message is getting out. I also think everyone is
6 still getting -- I think staff is still taking
7 signaling, very broad signaling, in trying to
8 interpret that, and I also think sometimes the
9 tighter you try and hold onto a fish, the more likely
10 it is to slip away, and to some extent, we have to
11 allow staff to really look both at the folks on the
12 ground that are doing this work and investigation of
13 the matter all the way up to those that are reviewing
14 it, otherwise that doesn't mean -- I think over time
15 we may need to establish some tighter metrics and
16 analytics around the whole process, but I do think,
17 broadly speaking, the message is getting out to staff
18 about what it is we're looking for and trickling
19 down. So for this matter, I think my comfort is
20 established at where it is.

21 COMMISSIONER DRAGO: And I agree with that.
22 The thing we're trying to do is get this message out.
23 I would make a motion that we approve.

24 COMMISSIONER D'AQUILA: I second.

25 CHAIR MACIVER: Any opposition? Seeing none,

1 show the motion approved. Thank you, Commissioner
2 Drago. I appreciate the thoughtful comments. 8.4,
3 Mr. Robert Hess.

4 MS. ALVARADO: This is Case No. 2022042997. In
5 the case material, you're provided a filed
6 administrative complaint alleging that respondent
7 raced a horse that had been determined to have
8 omeprazole sulfate present in its system. This is a
9 violation of 550.24151(a) Florida Statutes and
10 61D6.0082(s).

11 You were also provided the settlement and
12 consent order which had a written warning. This is
13 respondent's first violation of this, of a drug
14 positive in Florida. Omeprazole sulfate is a Class D
15 drug, which under the ARCI guidelines is issued a
16 written warning on a first offense. The division
17 would ask that the commission enter an order adopting
18 and incorporating the proposed settlement and consent
19 order in this case.

20 CHAIR MACIVER: So a question that occurs to me
21 is the second one of our written warnings is within
22 the guidelines is where there aren't aggravating or
23 mitigating factors, and obviously availing yourself
24 of process to protect your rights is never an
25 aggravating factor.

1 So if someone did request a formal hearing on
2 this and we were to move forward with the
3 administrative complaint and adjudicate this,
4 ultimately we'd be adjudicating for a penalty of
5 giving you a written warning in the end anyway?

6 MS. ALVARADO: For a Class D drug, yes.

7 CHAIR MACIVER: Thank you. Commissioners, any
8 questions?

9 COMMISSIONER D'AQUILA: I'll make a motion.

10 CHAIR MACIVER: And a second? Any opposition?
11 Show that motion adopted. I wait to see that day,
12 though, when someone actually spends a significant
13 amount of money to challenge a written warning.

14 Agenda Item No. 9 and 9.1 is a discussion of a
15 license denial recommendation for Mr. Steven Frazier.

16 MR. TAUPIER: Mark Taupier, for the record,
17 presenting Steven R. Frazier, Case No. 2022040492.
18 Mr. Frazier applied for a card room employee
19 occupational license on August 15, 2022. Upon review
20 of his completed application, it appeared that Mr.
21 Frazier was convicted in South Carolina of the
22 following crimes: Manufacture, deliver or possess
23 narcotic drugs, specifically LSD and cocaine, in the
24 year 2007, unlawful neglect of child or helpless
25 person in 2006, and strong arm robbery in 2007.

1 Mr. Frazier did apply for a waiver of the
2 felony convictions, and that interview did occur on
3 September 8, 2022. The executive director did review
4 the interview and the complete application file and
5 declined to grant the waiver, therefore the
6 recommendation from the division is that you
7 authorize the issuance of a notice of intent to deny
8 license based off of the potential disqualifying
9 criminal convictions.

10 CHAIR MACIVER: Commissioners, any questions?
11 Any debate? Commissioner Brown? So when there are
12 the disqualifying events, we then have the discretion
13 to deny the license, and the thing that would counsel
14 us to deny or not deny that license would be any
15 mitigation that they've had since then and really any
16 activity that they've had since then.

17 I don't remember from this exact record were
18 there charged but not adjudicated incidents in the
19 applicant's record, which normally would not be
20 applicable because you have a right to due process,
21 but when we're considering the rehabilitated good
22 moral character is certainly something that's within
23 our purview to think about.

24 MR. TAUPIER: Yes. According to my records, it
25 looks like all of this happened in South Carolina.

1 There were several arrests, about one, two, three,
2 four, five, six, seven, eight, nine, ten stemming
3 from the years 2014 -- from 2004 to 2014. The
4 arrests that happened post those convictions, there
5 appears to be one, two, three, four, five, six
6 stemming from 2007, '12, '16, and '17, as well as
7 2014. I don't necessarily have exactly what he was
8 arrested for, but they ultimately did not result in
9 convictions one way or the other.

10 CHAIR MACIVER: Commissioners, any further
11 questions or debate? Is there a motion?

12 COMMISSIONER D'AQUILA: Motion.

13 COMMISSIONER BROWN: Second, to deny.

14 CHAIR MACIVER: And -- to deny the license,
15 approve the --

16 COMMISSIONER D'AQUILA: Mr. Chair, correct
17 that, motion to deny.

18 COMMISSIONER BROWN: I agree, I'm sorry.

19 CHAIR MACIVER: Or to approve the
20 recommendation of staff to deny, yes. I'm tracking
21 with you both. Any opposition to the motion?
22 Hearing none, show that motion carries. Item
23 Number 9.2.

24 Commissioners, before we do 9.2, I will tell
25 you that my initial instinct of this was to simply

1 table this. I have significant pause over this case,
2 and let me explain, because based upon the record, I
3 feel that if we are to deny this, we would be
4 abdicating our own duty to exercise our individual
5 discretion and delegating our responsibilities to the
6 state of Maryland. I'm not going to table this and
7 foreclose a discussion of that matter, but I just
8 wanted to put that on the record before we discuss
9 it.

10 I'm not going to deprive this body of the
11 ability to consider the issue by tabling it, but
12 again, in the record that we have, I don't think that
13 we can deny this license. Mr. Taupier, please,
14 you're recognized.

15 MR. TAUPIER: This is Case No. 2022040989,
16 Yohanni Mariana Vasques Feliz. This is an
17 application for a slot machine/card room/pari-mutuel
18 combination occupational license. That application
19 came in on September 13th of 2022. Upon review of
20 the file, it appeared that she did hold a license
21 with Maryland to which her license was revoked in
22 Maryland on April 28th of 2022, specifically her
23 license was for video lottery license.

24 We did have staff reach out to Maryland.
25 Maryland -- I don't want to put them on the spot --

1 but refused to give us any type of written
2 information. Ms. Ricks and her staff did reach back
3 out to Maryland to try and confirm exactly what
4 happened, and although it's not written, the facts of
5 what happened was she was a bartender working in the
6 hotel where this casino was located and over \$60,000
7 of overcharging drinks to rooms and things like that
8 were happening. So she was using her lottery license
9 to get into the hotel and charge almost 60 to \$70,000
10 of extraneous things to the patrons who were staying
11 there.

12 I'm not sure why we don't have any written
13 information. I will say it's pretty recent and I
14 don't know if criminal charges are pending. That's
15 just pure conjecture and speculation on my part. But
16 that's sort of the factual scenario of what's going
17 on.

18 Speaking with the division and staff, I did not
19 feel comfortable not presenting this forward because
20 of the sheer amount and the kind of scheme going on
21 behind it to potentially allow someone like this
22 who's defrauded about \$60,000 from Maryland patrons
23 to come to Florida and potentially do the same.

24 So the recommendation going forward is to deny
25 the license and issue the notice of intent to deny.

1 CHAIR MACIVER: Commissioners, questions?

2 Commissioner D'Aquila, I believe you --

3 COMMISSIONER D'AQUILA: That's all verbal,
4 right? We don't have any -- what we have to work
5 with is just an agency just saying the license has
6 been revoked, correct?

7 MR. TAUPIER: That's correct, that is all
8 verbal. However, if it is the commission's strong
9 will that they do not want or you do not want this
10 person within this industry because you have
11 concerns, Maryland did say that we could take a plane
12 ride up to there and get the documents ourselves.
13 It's expensive, but it's definitely less than \$60,000
14 of defrauding the patrons and the citizens of
15 Florida.

16 COMMISSIONER D'AQUILA: A follow-up. She
17 didn't reply as I recall; is that right?

18 MR. TAUPIER: So there's no waiver interview
19 because it's a slot combo, and there's no criminal
20 conviction, so nobody necessarily asked her from the
21 investigative side.

22 COMMISSIONER D'AQUILA: So just a question:
23 Are we able to ask her to provide the details of
24 this?

25 MR. TAUPIER: I believe that we can and see

1 sort of what comes out of it. I have to see when the
2 deadline is. I could potentially try to get this
3 back on the December -- the deadline is
4 December 12th, or else it would be waived and deemed
5 admitted. So if the commission wants me to go back
6 and see if we can contact her --

7 CHAIR MACIVER: I don't remember, and Mr.
8 Marshman, maybe you can speak on this, I don't
9 remember the exact case law, but when there is
10 communication, that indicates that a licensing body
11 is going to deny something, but for further
12 information, it does stop the clock on the Deemer
13 provision.

14 COMMISSIONER DRAGO: I think we should -- I
15 didn't even think about that, Mr. Chairman, you
16 brought it up, that we're just basically going off of
17 what another state says and we don't really have any
18 other information. I was just kind of happy to just
19 go along with what Maryland said.

20 But I think you bring up some great points,
21 both of you, in terms of I'd feel more comfortable
22 for sure now if we had some real information,
23 documentation that we could go by rather than just
24 another state that actually won't even cooperate
25 sending us information.

1 So I think I would like to see us table it.

2 VICE-CHAIR YAWORSKY: Just to -- and actually,
3 Chair, if you want counsel --

4 MR. MARSHMAN: Mr. Chairman, I think you had
5 asked would the issuance of a notice of intent to
6 deny toll the 90 days, and you're correct. Just to
7 confirm that.

8 CHAIR MACIVER: I believe it's -- and I'm
9 sorry, I don't remember the exact the case, I recall
10 that there were two, and that the level of
11 communication was even much more informal than a
12 notice of intent to deny. I mean, basically a phone
13 call where a discussion happened that said, "You're
14 not going to be approved unless we get further
15 information," was enough to toll the clock on a
16 Deemer provision. I apologize, I don't remember the
17 case. We'll have to hunt that down, but that's my
18 recollection.

19 MR. MARSHMAN: We'll do some work on that.

20 VICE-CHAIR YAWORSKY: I did have a question
21 also. I don't want to be the commissioner defending
22 Maryland, but I want to make sure I understand.
23 Could Maryland perhaps be concerned about the vast
24 openness of our Public Records Laws or others that
25 could interfere with their activities as they pursue

1 this matter?

2 MR. TAUPIER: That's definitely a concern. I
3 know that when we reached out, it was legal that was
4 holding everything back. So I'm sure legal has their
5 reasoning behind their laws and potentially letting
6 information out that, you know, again, there could be
7 ongoing issues going on with her in Maryland that
8 they kind of want to keep under wraps.

9 VICE-CHAIR YAWORSKY: And just to set the
10 stage, I want to make sure that the feedback that we
11 got from Maryland was not along the lines of a, "Shut
12 up and go away," it was more, "We have our reasons,
13 we can't provide this right now." Is that a good way
14 to phrase it?

15 MR. TAUPIER: Yeah, that's a good summary. The
16 -- I'll call them investigators for their commission
17 have been responsive, but they were not able to give
18 us information based off of guidance from legal.

19 VICE-CHAIR YAWORSKY: And lastly, just to
20 comment for everyone's consideration, while I
21 absolutely agree we should not yield our authority to
22 another state, I would also caution against being the
23 state that never takes into account what other states
24 are doing when it comes to regulatory affairs. I
25 think that that comes with its own peril and would

1 probably invite certain actors.

2 There's a weird phenomenon in this industry
3 that I've seen from the get-go where other -- a lot
4 of other industries have matured to the point where
5 they have, FINRA would be a good example, or
6 insurance, the NIC, any things where these interstate
7 agreements or private entity that takes on the role
8 of ensuring that there's universal access to
9 information about actors across the country.

10 And while no state has necessarily yielded its
11 authority to make its own decisions, there's a
12 comprehensive way to take all of that into account.
13 We don't have that here, and as far as I know, we
14 don't have an MOU in place with Maryland that would
15 provide easy access to information.

16 So while I would not want to yield to Maryland,
17 I do think somewhere along the spectrum, that needs
18 to be taken into account. So I would be -- I guess I
19 would recommend what others have said about maybe
20 attempting to solicit some more information about
21 what's going on.

22 CHAIR MACIVER: So let's show this item tabled,
23 and I think that legal needs to reach out to the
24 applicant and let them know that they're facing a
25 notice of intent to deny unless they can provide

1 further information. Item 9.3.

2 MR. TAUPIER: 9.3 is James Auguste, Case
3 No. 2022047255. This is a slot combo application
4 that was submitted on September 26th of 2022. Upon
5 review of the application, it appears that there were
6 several felony convictions: Throwing missile into
7 dwelling in 2001, use of firearm during a felony in
8 2001, burglary in 2001, grand theft in 2001 and 2006,
9 resisting officer with violence in 2006, and battery
10 on a police officer in 2007.

11 Because this is a slot combo license
12 application, the waiver process is not available via
13 statute, therefore no waiver was conducted, therefore
14 based off of the information from that application,
15 the staff recommendation is to authorize the issuance
16 of the notice of intent to deny.

17 COMMISSIONER BROWN: Mr. Chairman, this is a
18 very clear case with no explanation other than moving
19 to approve the notice to deny the license.

20 CHAIR MACIVER: Do I have a second?

21 COMMISSIONER D'AQUILA: Second.

22 CHAIR MACIVER: Any opposition? Hearing none,
23 show that motion carries. Item 9.4.

24 MR. TAUPIER: This is Jarvis Jackson, Case
25 No. 2022047294. This, again, is a slot machine combo

1 occupational license application that was submitted
2 on September 26th of 2022. Upon review of the
3 application and the criminal record of the applicant,
4 it appears that he was convicted of grand theft in
5 2010.

6 There is no waiver process for slot machine
7 licensees, therefore a waiver interview was not
8 conducted, therefore the recommendation from the
9 staff is going to be authorizing the issuance of a
10 notice of intent to deny.

11 CHAIR MACIVER: Commissioners, any questions?

12 COMMISSIONER BROWN: I will repeat the same
13 comments I just made. This is grand theft, so this
14 is a clear case. I move to approve the notice to
15 deny.

16 COMMISSIONER D'AQUILA: Second.

17 CHAIR MACIVER: Any opposition? Hearing none,
18 show the motion carries. Item -- are we 9.5?

19 MR. TAUPIER: This is Adrian Lamar Kenon, Jr.
20 (ph.), Case No. 2022040989. This is another slot
21 machine/card room/pari-mutuel combination
22 occupational license application. It was received on
23 October 6th of 2022. Upon review of the application,
24 it appears that the applicant was convicted of
25 possession of cocaine in the year of 2009.

1 Because there's no waiver process for slot
2 machine combination applications, there was no waiver
3 interview conducted. And the recommendation from
4 staff is to authorize the issuance of a notice of
5 intent to deny.

6 CHAIR MACIVER: Is there any evidence of
7 mitigation post 2009?

8 MR. TAUPIER: I don't have any. I don't see
9 any other convictions. I don't necessarily know
10 about the arrests, but I can look into that very
11 quickly, if that was given to me.

12 CHAIR MACIVER: So as a matter of process on
13 these where there's no waiver available, we're making
14 a determination based upon a disqualifying conviction
15 and then have to make a determination of whether the
16 applicant has met their burden of showing mitigation
17 or good moral character post that disqualifying
18 event. At what opportunity does an applicant have to
19 demonstrate their mitigation if there's no waiver
20 process?

21 MR. TAUPIER: Through their rights that they
22 put forward in a 120 hearing.

23 CHAIR MACIVER: So a notice of intent to deny
24 and then take it to a hearing?

25 MR. TAUPIER: That's correct.

1 CHAIR MACIVER: Which could always result in
2 informal settlement at any point?

3 MR. TAUPIER: Correct.

4 CHAIR MACIVER: Commissioner.

5 COMMISSIONER BROWN: As a follow-up to the
6 Chair's question, obviously no waiver, but the
7 commission has discretion based on record to grant a
8 license irrespective of the staff's recommendation,
9 is it a default recommendation? Just, again, because
10 it's a slot, there's no waiver, there's a conviction,
11 regardless of the time period, it's just -- staff
12 just automatically denies?

13 MR. TAUPIER: I wouldn't necessarily say it's
14 automatic. The reason why it comes before you for a
15 decision and our recommendation is to deny it is
16 because we don't have under the same rules of 550 and
17 card rooms the opportunity to evaluate through the
18 actual procedure of have you been reestablished. We
19 believe that because there's a body -- collegial body
20 before us that that decision then comes to you
21 because there's nothing within statute that
22 authorizes the executive director or its staff to
23 make that decision in lieu of yours.

24 COMMISSIONER BROWN: So is there any authority
25 that we have to go ahead and say, "This individual's

1 been rehabilitated since 2009," to just go ahead and
2 grant the license?

3 MR. TAUPIER: Yes, you can.

4 COMMISSIONER BROWN: When they apply for the
5 licensing, are they given an opportunity to provide
6 evidence of rehabilitation?

7 MR. TAUPIER: They are -- they can provide
8 anything that they wish for us to consider. However,
9 because our application form is via rule, we can't
10 necessarily require them to provide anything that's
11 not promulgated, therefore that fine line, we kind of
12 steer away in not tote of requiring or requesting
13 information that they could deem is required or etc.,
14 but they're always available to submit anything that
15 they wish, any recommendation letters or anything for
16 the review of PMW and the review of commission.

17 COMMISSIONER BROWN: I mean, just looking at
18 the record, it looks like he had a rough 2009 and
19 2010, and there doesn't seem to be anything else
20 after that. And this is just one of the ones that
21 jumped out at me, I would have liked to see some
22 evidence of rehabilitation. It looks like he's
23 rehabilitated. Just to deny him an opportunity to
24 work in the state, these charges, I just had some
25 pause on it.

1 COMMISSIONER D'AQUILA: So, did he disclose
2 these things when he applied?

3 MR. TAUPIER: Based off of what I have in front
4 of me, it says he did accurately reflect his criminal
5 history on his application.

6 COMMISSIONER D'AQUILA: The application,
7 though, does have another section if there's anything
8 else you'd like to add?

9 MR. TAUPIER: It does. But again, we're
10 dealing with individuals who might construe that
11 however they wish and might not see that as an
12 opportunity to provide or see it as, "Here is your
13 opportunity to say what you want."

14 COMMISSIONER D'AQUILA: But it might not also
15 be the first time someone has encountered this. If
16 you are on a path of redemption or whatever, you
17 know, you may have had this come up in another
18 application somewhere, you know, you welcome the
19 opportunity to explain yourself.

20 MR. TAUPIER: Right.

21 COMMISSIONER D'AQUILA: And we have it, but
22 you're saying it's not as clear.

23 So I think we have a lot of speculation here,
24 but the person has to save themselves, too, in this
25 situation, and it doesn't sound like he has.

1 MR. TAUPIER: There's nothing before me that
2 he's provided to suggest rehabilitation.

3 COMMISSIONER D'AQUILA: So would it be proper
4 for the commission to go back and say, "Is there
5 anything you want to add to explain this, why we
6 should consider?" Should we table it and give him
7 that opportunity because we believe maybe perhaps he
8 missed that section of the application or our
9 application just isn't that clear?

10 I mean, we don't want to be so quick to judge,
11 to Commissioner Brown's point, but maybe, to use a
12 figurative term, maybe shyness or whatever, but I've
13 got people I've worked with and met that have gone
14 down this road, they will properly explain it given
15 the opportunity.

16 MR. TAUPIER: Yes, we can request that they
17 provide more information. However, it's what
18 information the commission wants to feel comfortable
19 in the decision they make. So if you would like more
20 information to say, "We're going to grant it over the
21 recommendation because we now have X, Y, and Z," we
22 can try and get that for you.

23 CHAIR MACIVER: So I think what I'm hearing
24 here from multiple commissioners including myself is
25 a concern about the notice that an applicant has to

1 be able to demonstrate their rehabilitation and their
2 good moral character, and perhaps when these type of
3 license denial recommendations are coming before the
4 commission, we need to just add an additional step
5 into the process where even where there's no waiver
6 period, we have reached out to them and invited them
7 to provide any extra information they would like that
8 might demonstrate good moral character for the
9 commission to consider.

10 And leaving -- returning us then back to the
11 instant case, what is our Deemer deadline?

12 MR. TAUPIER: It's January 4th.

13 CHAIR MACIVER: I think we could table this for
14 the next meeting.

15 COMMISSIONER DRAGO: Can I ask a question?

16 CHAIR MACIVER: Commissioner.

17 COMMISSIONER DRAGO: I look at the application,
18 and in addition to possession of cocaine, he was also
19 arrested three times for violation of probation,
20 correct?

21 MR. TAUPIER: That's what the record shows.

22 COMMISSIONER DRAGO: So he's had his probation
23 revoked, which is not easy to happen in Broward
24 County. I mean, that goes on a couple of years of
25 his activities. And I think Commissioner Brown

1 mentioned he had a few rough years, but there is more
2 to it than just the possession of cocaine that I
3 think is important to note.

4 The fact that they failed to follow their
5 probation and get arrested for it three times
6 certainly sends a message as to the type of person
7 they were dealing with. It doesn't mean he hasn't
8 rehabilitated since 2011. And I agree with what
9 everybody's saying about getting more information,
10 but this is more than just a possession of cocaine.
11 Just to point that out.

12 MR. TAUPIER: And for the violation of
13 probation, it looks like during the time frame of
14 2009 and 2010, he picked up misdemeanor possession
15 charges which would automatically violate his felony
16 probation. That's what it looks like happened, that
17 that was the cause of his violation.

18 CHAIR MACIVER: All right. Commissioners, are
19 we still onboard with tabling this item?

20 COMMISSIONER BROWN: Mr. Chairman, I think it
21 would be -- again, acknowledging the fact that this
22 individual has been upfront with all of his charges
23 in this time period in the record, I would be
24 interested in hearing more about -- when you have
25 such a gap in time -- I mean, we're not talking grand

1 larceny here, this individual, clearly it looks like
2 from his record that he's been rehabilitated, but we
3 don't know anything more.

4 So I would love to hear if the staff was given
5 an opportunity to reach out and say, "The commission
6 is looking at giving a notice of intent to deny, but
7 if there are any redeeming mitigating factors since
8 your time period, please provide them."

9 CHAIR MACIVER: We can do that.

10 COMMISSIONER D'AQUILA: To add to Commissioner
11 Brown, I think what I'm hearing and what we're all
12 trying to say is it's that consistent period of time
13 of no further action, unlike some of the other cases
14 we've heard that gives one reason to pause, and maybe
15 go one extra yard if we can.

16 MR. TAUPIER: Sure.

17 CHAIR MACIVER: All right. And so we will show
18 Item 9.6 tabled for the next commission meeting. And
19 in the interim, please, staff, reach out and advise
20 them of their opportunity and burden to show their
21 own good moral character. We're not done yet. Item
22 No. 9.6.

23 MR. TAUPIER: And just to clarify for the
24 record, 9.5 is being tabled, correct?

25 CHAIR MACIVER: Correct.

1 MR. TAUPIER: 9.6 is Terrance Antonio Harvey,
2 Case No. 2022049319. This is a slot machine/card
3 room/pari-mutuel combination occupational license
4 application which was received on October 12th of
5 2022. Upon review of the actual file, it appears
6 there were several felony convictions that came out
7 of the Commonwealth of Virginia. It appears that in
8 2016, the applicant was convicted of attempted
9 malicious wounding, in 2003, felony hit-and-run, in
10 2003, receiving stolen property, and in 2003, another
11 charge of malicious wounding.

12 Because there's no waiver opportunity with slot
13 machine licensees, there was no waiver that was
14 conducted, and the recommendation from the division
15 is that you authorize the notice of intent to deny.

16 CHAIR MACIVER: Commissioners, the floor is
17 open for questions.

18 COMMISSIONER BROWN: I just want to acknowledge
19 that this individual is a security officer currently
20 at a slot room right now.

21 CHAIR MACIVER: Our memo has attempted
22 malicious wounding in 2016. Was that the most recent
23 date?

24 MR. TAUPIER: That is the most recent date for
25 the conviction.

1 VICE-CHAIR YAWORSKY: What exactly is
2 malicious? I mean, I think it's somewhat
3 self-explanatory. But I want -- there was one in
4 2003 that was based on the wording actually carried
5 out and then an attempted version. I just don't know
6 that I've actually heard that particular --

7 CHAIR MACIVER: This is really, really shooting
8 from the hip. Based upon the level of sentence and
9 the wording, it sounds like it would be what in
10 Florida is an aggravated battery. I have not looked
11 at Virginia's laws to determine that, but that's what
12 it sounds like to me.

13 VICE-CHAIR YAWORSKY: Okay.

14 CHAIR MACIVER: Further questions? Debate? I
15 will entertain any motion.

16 COMMISSIONER DRAGO: Motion to move.

17 CHAIR MACIVER: And a second?

18 COMMISSIONER BROWN: Second.

19 CHAIR MACIVER: Show the motion carries to
20 approve the staff recommendation to deny the license.
21 Item No. 10, Mr. Trombetta.

22 MR. TROMBETTA: Thank you, Mr. Chair. I have
23 essentially one item. Let me just get my note back
24 up.

25 For the executive director update portion of

1 today's meeting, the main item that I'd like to
2 discuss is the submission of the annual report. So
3 by statute, we have to send the annual report by
4 December 1st of every year. The annual report will
5 cover a variety of items also laid out in the statute
6 that occurred in the previous fiscal year. In the
7 past -- so we sort of have an operational process for
8 how this works -- the division of PMW has been
9 submitting these reports since the '30s. You can get
10 them all online, but we would -- Joe and the team and
11 the Division of Pari-Mutuel Wagering have been
12 working on this just in terms of formally submitting
13 it.

14 I'm going to ask that you guys delegate the
15 authority from me, too, kind of as we did with LER in
16 that we would provide a draft of the report -- and I
17 plan to go over it a little bit more in detail right
18 now -- but just so you know -- prior to the December
19 1st deadline -- and if you have feedback, that would
20 require an additional meeting. I can go through the
21 Chair try to make that happen so that we can iron out
22 any details that would have conflicts essentially.

23 The annual report right now is going to consist
24 of several sections, but for the most part, a lot of
25 it is stats and numbers based. So there's going to

1 be an intro, the intro is going to cover sort of what
2 the gaming commission does. We are kind of taking
3 the model that was done by PMW and tweaking it to be
4 more specific to what the gaming commission is doing.
5 So our intro is going to cover what the gaming
6 commission is, it's going to do an overview of the
7 work chart, and then kind of touch on subject matter
8 areas then we're going to move into data by permit
9 holders.

10 So we would to split up the pari-mutuel
11 wagering data by permit holder type, this would
12 include sort of what they do, how many races they --
13 events they have performed, and sort of statistical
14 background about the permit holders. We then move
15 into like a more pari-mutuel heavy statistical
16 section. So this would be a breakdown by
17 pari-mutuel, card room or slot revenue, by facility.
18 So we could show exactly how much each facility made
19 in revenue for each month, and then we would cover
20 sort of how handle and tax revenue is calculated. So
21 we would identify -- those are sort of the main
22 sections.

23 Right now, the report is about 40ish pages
24 where we include those numbers. The big change this
25 year is going to be tailoring it specifically to the

1 commission, but because the subject, the data is
2 really last fiscal year prior to July 1st, the plan
3 is to kind of introduce the reader to the commission,
4 what we're going to be doing without going into heavy
5 detail about things that have been going on in
6 meetings so far this year.

7 But with that, kind of general explanation, I'm
8 happy to answer more questions and talk about the
9 suggestion of delegating the authority.

10 CHAIR MACIVER: So commissioners, I think our
11 normal preference would always be to have a report
12 come before us we could read and go over and approve
13 ahead of time before it is submitted. Because of the
14 deadline and the timing of this and the status of the
15 report and our brand new baby of an agency, it's just
16 not feasible for that to happen at this meeting.

17 I had suggested to the executive director that
18 what we could do since this is not something -- this
19 is not an action by the commission that would affect
20 the rights or responsibilities of any party, that we
21 wouldn't have to have an affirmative vote by the
22 commission approving it before submission, however,
23 we do definitely all need to see it, and if there's
24 objection by any member of the commission, then they
25 could immediately communicate that to the executive

1 director and we could impanel a quick meeting to go
2 over and discuss the report before it goes out.

3 If that is to the satisfaction of the body,
4 then again, yes, we would be delegating the authority
5 to prepare this report, submit a draft to us and then
6 file it without any further objection, and then if
7 there was further objection, of course, having a
8 special meeting on the subject. I defer to the body
9 for any questions or concerns about that.

10 COMMISSIONER BROWN: I agree. Sounds like a
11 good plan.

12 COMMISSIONER D'AQUILA: I agree.

13 CHAIR MACIVER: That's our -- Commissioner
14 Drago? I hear a consensus. Let's move forward with
15 that plan.

16 MR. TROMBETTA: Thank you, Mr. Chair.

17 CHAIR MACIVER: Were we going to have a brief
18 discussion of the HISA deadline?

19 MR. TROMBETTA: Yeah. So HISA has submitted
20 the annual budget for the total program now to all
21 the racing commissions including Florida. There's a
22 November 15th deadline at which to respond, to make a
23 decision about whether or not the state is going to
24 pay the expense associated with the program. It's
25 six and a half million dollars roughly that will be

1 assessed to the state of Florida, that has been
2 assessed to the state of Florida.

3 The decision that the commission will have to
4 make is whether or not the commission -- well, I'm
5 using the word decision as used in the federal
6 statute -- about whether or not we as a state will
7 opt in to pay the assessed amount upfront or not.
8 And so that decision does have to be made by
9 November 15th.

10 CHAIR MACIVER: So commissioners, obviously
11 this is not -- this is a big enough deal that if we
12 were going to be taking any state action on it, it
13 would have to be noticed and would have to have a
14 discussion and people would have to be able to come
15 in and give us their input on this before we took any
16 action.

17 However, I don't believe there is an avenue for
18 us to take any state action on this. Obviously we
19 can't agree to spend money that has not been
20 appropriated to us. We're not the legislature of the
21 state of Florida. There's no action that we can take
22 on this.

23 However, to the extent that inaction can be
24 deemed to be action, I think that we do need to make
25 sure that we communicate to all stakeholders that

1 we're open to public comment from all of them over
2 the course of the next couple of weeks until the
3 deadline, they should be reaching out to staff, they
4 should be communicating their issues, and if by some
5 chance our observation is incorrect and there is a
6 path forward that someone from public comment wants
7 to demonstrate to us, we could at such time notice
8 and impanel a special meeting on the subject.

9 But at present, there is no item before us, and
10 frankly I don't think any authority before us. That
11 second part is simply by my own opinion, though.

12 Any questions for the executive director?

13 COMMISSIONER BROWN: Thank you, Mr. Chairman.
14 So could we seek comment on our website from all
15 stakeholders that the commission is going -- my
16 understanding is that we have to at least notify HISA
17 one way or the other, otherwise it could be deemed to
18 opt in. Is that the default if the states don't
19 provide HISA with notice of what the decision is?

20 MR. TROMBETTA: I don't recall what the
21 consequence of not responding would be. We can look
22 into that and let you know. But the first part, if
23 that is an option you want to go down, I think one of
24 my other updates is that we now have much more
25 control of our website and we're in a better position

1 to open up -- to make special items like that if you
2 so choose.

3 CHAIR MACIVER: Actually, in addition to the
4 website, I think it might -- if the commission agrees
5 -- behoove us to put just a general notice in the FAR
6 that we are seeking public comment on this subject.

7 COMMISSIONER BROWN: That would be the most
8 prudent route and possibly have it also on our
9 website to seek actually written comments on the
10 matter given the gravity of the matter.

11 MR. TROMBETTA: Yes. We can do that, yes.

12 COMMISSIONER BROWN: On the same note of the
13 website, I was going to mention, if there are an
14 "other matters" section -- but I was going to
15 compliment -- our admin and our IT team have been
16 exceptional and really has surpassed all expectations
17 and they're just doing a great job. Our gaming
18 enforcement as well has been motoring forward, and it
19 just should not go unnoticed the progress that these
20 folks have been making to the team. Thank you.

21 MR. TROMBETTA: Mr. Chair, if I can provide a
22 little bit more information on those subjects, I'd be
23 happy to.

24 CHAIR MACIVER: Please do.

25 MR. TROMBETTA: Just to wrap up the previous

1 one. So we're going to get something out in FAR, we
2 will make something on the website, update the
3 website. What kind of timelines were you thinking,
4 though? Again, with the November 5th deadline, would
5 you like me to keep it open until let's say the 10th
6 --

7 CHAIR MACIVER: I'm sorry, I thought you said
8 November 15th was the deadline.

9 MR. TROMBETTA: Yeah, but how long would you
10 like the public comment portion to be available?

11 CHAIR MACIVER: Right up until the -- and
12 commissioners, chime in if you disagree -- but I
13 think right up until the very last minute that we
14 could reasonably notice a special meeting if we
15 needed to.

16 MR. TROMBETTA: Yes, sir. Understood.

17 COMMISSIONER DRAGO: Just clarification for me.
18 So what are we doing? Do we have to give an answer
19 before the 15th? That's what I'm not clear on. I
20 understand what we're doing in terms of notifying the
21 public and so forth, but what should we be doing
22 right now in terms of -- Liz is raising her hand --

23 MR. TROMBETTA: Liz, you can fill in, but my
24 understanding is we will have to do something before
25 it 15th. Liz, can you shed a little bit more on

1 that?

2 MS. STINSON: Sure. So per our 2023 assessment
3 letter that we received, the deadline to advise HISA
4 of whether the state will opt in to the financial
5 assessment is November 16th. So that's the deadline
6 for us to say that we're going to opt in.

7 CHAIR MACIVER: So the default would be to opt
8 out, which is pretty consistent with the idea that
9 the federal government couldn't give us a bill that
10 we didn't agree to? Okay.

11 VICE-CHAIR YAWORSKY: I would just request that
12 if staff does determine that correspondence is
13 necessary on this matter, that commissioners are
14 provided a draft copy in advance, similar to the
15 other actions. I think it lines up well when you
16 think of what the Chairman said and what the others
17 said about the timeline, just make sure that -- leave
18 it to staff to make sure that all those factors are
19 incorporated, that there's adequate notice to the
20 industry, adequate notice of necessity of a meeting
21 if deemed so so the public comment period is cut off
22 and that if it is deemed without a meeting,
23 potentially, that commissioners are given adequate
24 time to make sure if there is a letter necessary, it
25 is given out.

1 CHAIR MACIVER: And just for the record, the
2 amount of input from the commission that it would
3 take to impanel that special meeting is one. If any
4 commissioner on this body wants to have a special
5 meeting on the subject after receiving public
6 comment, I will impanel a meeting.

7 MR. TROMBETTA: Yes, sir. Understood.

8 COMMISSIONER BROWN: Will you also please
9 notify the commissioners once we have those materials
10 of any written comments or notices on the matter so
11 we're informed of what the stakeholders are saying
12 about this?

13 MR. TROMBETTA: Absolutely.

14 CHAIR MACIVER: Are we done with Item No. 10?
15 Anything else on HISA?

16 MR. TROMBETTA: No. Can I provide a little bit
17 of an update on admin and law enforcement just real
18 quick?

19 CHAIR MACIVER: Please do.

20 MR. TROMBETTA: As Chairman Brown said --
21 Commissioner Brown said, our admin, IT, we really --
22 the PMW team, everybody has kind of done a really
23 great job stepping up. Two meetings ago I think we
24 made a decision about a domain change for IT, that
25 has been approved, the flgaming.gov I think was

1 approved, and we're in the process of moving over to
2 that.

3 In this week, we successfully moved our first
4 sort of system -- computer off of -- onto our own
5 independent network, which is a big step, too,
6 because now we can sort of start moving more and more
7 and more, and eventually that network is going to
8 grow and surpass the one that we're on. It gives us
9 a lot more freedom.

10 On our admin team, we've been filling in -- our
11 HR folks have been onboard, they've been super
12 helpful. We're getting help in our finance
13 accounting areas, we're doing a lot of good things
14 behind the scenes that you may not see every day, but
15 I know the feedback you just provided will be well
16 received and they do deserve a lot of credit.

17 On the law enforcement side, we have -- we're
18 in the process of hiring our second law enforcement
19 officer right now, I think they start next week, and
20 we will be advertising for four agent positions. If
21 they're not up today, they should be up very shortly.
22 So we're moving forward there, too, although we
23 probably can't -- aren't in a position to do anything
24 crazy at this moment, I think we are moving in the
25 right direction and will be kind of operational very

1 soon.

2 If you have any other questions specifically
3 about any of those items, I'd be happy to help or --
4 otherwise that was my update for today.

5 COMMISSIONER D'AQUILA: One question.

6 MR. TROMBETTA: Yes, sir.

7 COMMISSIONER D'AQUILA: Mr. Trombetta, I am --
8 I understand we're now receiving tips on our site
9 from citizens --

10 MR. TROMBETTA: Yes, sir. So the same
11 complaint portal that we've had up for months now,
12 we're continuing to use. That, too, has evolved. As
13 our IT team has come in, they've made adjustments to
14 make it easier to read. Both legal and Joe's team
15 and the Division of Pari-Mutuel Wagering have been
16 responding to those and for tips for say illegal
17 gambling related to let's say to illegal gambling, we
18 are looking at them.

19 Unfortunately, you've brought this up also,
20 that it's not always clear what's legal and what
21 isn't legal, and some of the information we're
22 receiving, we have to kind of do an initial
23 assessment of what is the person actually identifying
24 and then we kind of are moving that along.

25 COMMISSIONER D'AQUILA: Just because of the

1 passage of -- my question is specifically with regard
2 to the perception the public has when making a
3 criminal observation. We are replying versus -- and
4 I understand we're not ready fully to act upon all of
5 these, but we have a communication plan or we're
6 dealing with that?

7 MR. TROMBETTA: Yeah. We have a process in
8 place that -- a communication plan essentially where
9 initial communication goes out right away, and then
10 there's a second, once we kind of review things and
11 have more time, there's the ability to provide
12 additional information.

13 COMMISSIONER D'AQUILA: I think we're in
14 agreement of the importance of that for a new agency
15 and perception that we're taking this serious and
16 we're taking action when there are legitimate
17 complaints out there of a serious nature and that
18 we're doing everything possible to build up our
19 ability to, specifically law enforcement and so
20 forth.

21 MR. TROMBETTA: Yes, we are.

22 CHAIR MACIVER: I think it might be a good idea
23 -- and please work with our CIO on this -- to migrate
24 those tips into a shared but secured folder that the
25 commissioners would have access to. We need to be

1 able to see that information as well.

2 MR. TROMBETTA: Yes, sir. We can do that.

3 CHAIR MACIVER: Are we done with Item No. 10?

4 MR. TROMBETTA: Yes, sir.

5 CHAIR MACIVER: Thank you, commissioners. Item
6 No. 11, for any of you three out there, it's open for
7 public comment. All right. Seeing none, again,
8 commissioners, thank you. A lot of really good
9 consideration on some of the subjects that came up
10 today, and I'm enjoying seeing how this commission is
11 coming together as we move forward in building this
12 thing. It's really inspiring. And with that, I
13 believe we are adjourned.

14 (Transcription concluded.)

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STATE OF FLORIDA)
COUNTY OF BROWARD)

I, Shelby Rosenberg, Florida Professional Reporter,
certify that I was authorized to and did
stenographically report the foregoing audio
transcription to the best of my ability and that the
transcript is a true and complete record of my
stenographic notes.

Dated this 30th of January, 2023.



Shelby Rosenberg, Florida Professional Reporter