

**New York State Gaming Commission**

December 4, 2023 1 p.m.

633 3rd Avenue, 36th Floor Conference Room, New York, NY

**Executive Director Williams**

N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 102 provides that the New York State Gaming Commission shall consist of seven members appointed by the governor by and with the advice and consent of the Senate. Four members confirmed by the New York State Senate are necessary to afford the Commission an ability to establish a quorum and undertake action. This present meeting of the Commission is now called to order.

This meeting is being conducted by video conferencing in two locations: New York and Schenectady. Both locations have been appropriately noticed and accommodate public attendance.

Ms. Secretary, please call the roll.

**Ms. Buckley**

Commissioner

- John Crotty
- Sylvia Hamer
- Peter Moschetti
- Brian O'Dwyer
- Marissa Shorenstein
- Jerry Skurnik

**Executive Director Williams**

Ms. Secretary, please have the record reflect that a quorum of qualified members is present, thus enabling transaction of business. Please note that Commissioner Moschetti is in Schenectady. Bilateral visual and oral communications between New York and Schenectady have been established.

**Chairman O'Dwyer**

Minutes of the Commission meeting conducted on October 3, 2023, have been provided to the members in advance. At this time, I'd like to ask the members if there are any edits, corrections, or amendments. Ms. Secretary, please let the record reflect the minutes were accepted.

I now call upon our Executive Director Mr. Williams to give us his report.

## **Executive Director Williams**

I'd like to start by providing an update to the Additional Casino License process round two questions and answers: As you are aware, the Gaming Facility Location Board received an additional 450 questions, supplemental to the 613 initially submitted, Staff have drafted preliminary responses, which under review for accuracy and consistency of response. There are no set deadlines for finalization and staff anticipates working through the holiday season towards completion. To place the questions and answers status in context: once answers to the Round 2 questions have been publicly issued, applicants will then have thirty days to submit applications.

It is only upon the expiration of the deadline for submission will the Community Advisory Committees be formally established. The CACs have an extraordinarily important role in the casino licensing process, as they must evaluate the application for proposed development in their jurisdiction, hold public hearings, and ultimately vote to advance the application to the Gaming Facility Location Board. The Board, of course, cannot consider any project unless it has also satisfied local zoning requirements.

That provides a clean segue to the other item of significance since we last met. Specifically, New York City Department of City Planning recently proposed a citywide zoning text amendment to allow gaming facilities as a permitted use in certain commercial districts and manufacturing districts. The modification would allow a gaming facility licensed by the State and developed through the GFLB's defined siting process to be developed without regard to any potential conflict with the Zoning limitations. Under the proposed text, an approved gaming facility would be deemed complying and conforming with all applicable City use and bulk zoning regulations. In addition to the actual casino itself, other non-casino uses such as hotels, restaurants, bars, eating or drinking establishments, as well as other amenities, may be included with the State approval and license, and will also be deemed as being in compliance with City Zoning.

Applicants will still be required to obtain other proposal-specific non-zoning approvals that may apply to their development that are not included within the text amendment proposal, including but not limited to changes to the City map to de-map parkland or map streets, amendments to the City zoning map to designate or modify zoning districts, or approvals for disposition of City property. This is a significant step for potential city-based applications, as under the statute the GFLB cannot consider any casino application unless the proposal has been considered and approved by its associated Community Advisory Committee and is in compliance with local zoning requirements.

The other item I'd like to address today is the Commission's participation in the National Council on Problem Gambling's annual Gift Responsibly campaign. 2023

marks our tenth consecutive participation. The purpose of the campaign is to raise public awareness about the risks associated with youth gambling. According to the National Council on Problem Gambling, approximately 10 to 14 percent of adolescents are at-risk for developing a problem with gambling and as many as four to six percent of adolescents presently have a serious gambling problem. The Commission is supporting the 2023 Gift Responsibly campaign via television and radio spots and social media posts. We will be supplementing those with displays at high traffic locations across the state, signage at Lottery, video lottery and commercial casino locations, mobile and marquee ads on the New York Lottery's website, and with retail lottery sales agent training.

As a reminder, in 2013 the Commission, the New York State Office of Addiction Services and Supports, and the New York Council on Problem Gambling founded the Responsible Play Partnership to ensure the New York Council has direct and continuing access to Commission and OASAS leadership. This campaign is a result of our enduring relationship. Finally, those seeking problem gambling assistance should call New York's confidential HOPEline at 1-877-8-HOPENY or text HOPENY.

**Chairman O'Dwyer**

Thank you, Mr. Williams.

N.Y.S. Racing, Pari-Mutuel Wagering and Breeding Law § 104.19 authorizes the Commission to promulgate rules and regulations that it deems necessary to carry out its responsibilities. To that regard, the Commission will from time-to-time promulgate rules and rule amendments pursuant to the State Administrative Procedure Act. Today we have two rules for adoption consideration, and one rule for proposal.

Mr. Williams will outline the first item.

**Executive Director Williams**

For Commission consideration is the adoption of a regulation to set forth the processing fee authorized by N.Y. Tax Law § 1613(d)(7) for review of documentation concerning proposed lottery prize assignments. The Commission published a Notice of Proposed Rulemaking in the State Register of August 23, 2023, meaning the public comment period expired on October 23, 2023. No comments were received. Staff recommends that the Commission adopt this proposed rulemaking.

**Chairman O'Dwyer**

Commissioners, any questions on the adoption of a rule regarding a Lottery Prize Assignment Processing Fee?

May I have a Motion to adopt this rule?

Second?

Discussion on the Motion?

All in favor? Opposed?

The Motion carries.

**Executive Director Williams**

For Commission consideration is adoption of an amendment to regulations governing the purchase of lottery courier services. The amendment would clarify the requirements for customer presence in New York State. Recall, a licensed lottery courier service is permitted to accept orders to purchase New York lottery tickets on behalf of a courier customer. The courier service then fulfills a request by purchasing the ticket at a licensed lottery sales agent retail location on behalf of the courier customer. The Commission initially proposed regulations regarding this matter in October 2022. Upon consideration of the several comments received, the Commission accepted several, leading to the publication of a Notice of Revised Rulemaking. During this publication, only one public comment was received. The comment, and staff response, is included in the record before you. Staff recommends that the Commission adopt this proposed rulemaking, as published.

Commissioners, any questions on the adoption of revised proposed rules to govern Purchase Location Requirements for Lottery Courier Services?

May I have a Motion to adopt this rule?

Second?

Discussion on the Motion?

All in favor? Opposed?

The Motion carries.

For Commission consideration are amendments to the lottery prize payment and subscription rules. As you are aware, the Lottery has been upgrading and modernizing the platform upon which the Division processes lottery prize and subscription claims. Given the programming necessary to implement the platform changes, Staff have determined it appropriate to seek regulatory change that will improve the claims process and clarify practices and interpretations. First, Lottery staff propose to change guaranteed “for life” payouts to a specific annual amount rather than being obligated to reconcile and adjust for a final year payment. This, staff suggests, will reduce the administrative costs of oversight. Staff anticipates this change will minimally increase the annual amount for a claimant. Staff also propose to limit the Lottery subscription program to individuals by eliminating provisions relating to subscriptions by groups. This will ensure that only New York

residents can directly purchase a lottery ticket. It will not affect the claiming of a lottery prize by a group.

The proposed rules also make explicit that a subscription is void if payment for the ticket is rejected for non-sufficient funds and to reserve authority to suspend a subscription in the event of suspicious transactions. The proposed amendments would also clarify responsibilities to ensure that all statutory offsets against either past-due support or public assistance benefits are satisfied by requiring prizes of \$600 or more to be presented directly to the Commission for payment, rather than allowing them to be paid at a licensed lottery sales agent location. Current regulations authorize lottery sales agents to pay prizes of \$600 or less while offset language requires lottery prizes of \$600 or more be reviewed. Corresponding amendments to thresholds pertaining to lottery courier services are also proposed.

Finally, other amendments would codify existing practice of allowing a claimant to direct payment to a bank account, allow delivery of a prize by means other than the United States Postal Service, add a regulatory reference to the statutory offset for past-due State tax liabilities, and make technical stylistic edits to sections relating to prize payments and subscriptions, such as adding titles to subdivisions, improving word choices, and using Department of State style conventions. To synchronize with the commencement of the new platform, the proposal requests an effective date of April 1, 2024.

Staff recommends that the Commission authorize the proposal of this rulemaking.

**Chairman O'Dwyer**

Commissioners, any questions on the proposal of Lottery Prize Payment and Subscription Amendments?

May I have a Motion to propose this rule?

Second?

Discussion on the Motion?

All in favor? Opposed?

The Motion carries.

**Chairman O'Dwyer**

The next item of scheduled business regards adjudications. Today, we have three matters for adjudication. Mr. Williams?

**In the Matter of Todd Pletcher and In the Matter of the Disqualification of Forte from the 11th Race at Saratoga Race Course on September 5, 2022**

**Executive Director Williams**

The NYRA State Steward issued a violation to Thoroughbred trainer Todd Pletcher on May 11, 2023, imposing a suspension of 10 days and a fine of \$1,000, for violation

of the trainer responsibility rule and the rule against administration of nonsteroidal anti-inflammatory drugs unless the administration is of one clinical dose of one of three specifically named drugs. In particular, the horse *Forte*, trained by Pletcher, was found in post-race testing to have the drug meloxicam in a sample taken from the horse after winning the Hopeful Stakes at Saratoga Race Course on September 5, 2022. Meloxicam is not one of the permitted NSAIDs. In addition, the stewards disqualified Forte from any part of the purse in the race. Pletcher requested a hearing. In addition, Michael Repole, the owner representative for *Forte*, requested a hearing on the disqualification ruling.

The two hearing requests were consolidated into a joint hearing, which was conducted on July 20, 2023. The owner representatives of each of the other horses in the race were given notice and the opportunity to participate in the hearing as intervenors, as a purse redistribution could affect their interests. One such owner, Ludolph Heiligbrodt, the owner representative of the horse *Gulfport*, which would be placed first in the race if the disqualification of *Forte* were upheld, appeared at the hearing in support of the disqualification decision.

The Hearing Officer issued a report dated September 30, 2023, recommending that the violations charged against Pletcher be upheld, that Pletcher be fined \$1,000 and suspended for 10 days, and that *Forte* be disqualified from the Hopeful Stakes conducted September 5, 2022, and from any share of the purse in that race.

The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1.

### **Chairman O'Dwyer**

The Commission duly deliberated and considered this matter and determined, upon a unanimous vote to sustain the Hearing Officer's Report and Recommendations. I note, however, it has been the practice, and continues to be the practice of the stewards to determine the time and place of the suspension. We leave to the discretion of the stewards as we have done in the past, asking that you take into consideration all relevant matters in this regard.

### **In the Matter of Joseph Chindano**

#### **Executive Director Williams**

The judges at Buffalo Raceway issued a violation to harness driver Joseph J. Chindano on April 29, 2023, imposing a suspension of 10 days and a fine of \$1,000 for violation of the rule regulating a driver's use of a whip in the 7th race on April 22, 2023. The licensee requested a hearing, which was conducted on August 8, 2023. The Hearing Officer issued a report dated November 3, 2023, recommending that the violation charged against Mr. Chindano be upheld and that he be fined \$1,000 and his license as a driver be suspended for 10 days.

The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1.

**Chairman O’Dwyer**

The Commission duly deliberated and considered this matter and determined, upon a unanimous vote, to modify the Hearing Officer’s Report and Recommendations considering the number of past violations in the year to a 20-day suspension. In addition, in deliberating the commission noted a long and troubling history of Mr. Chindano terms of violations of both whipping and other violations, at the races. While the commission is making no determination at this time, we have asked the Executive Director for reference to staff to determine if Mr. Chindano meets the requisite requirements for licensing in the future and the staff will report back to us.

**In the Matter of Hillside Mini Mart I Corp.**

**Executive Director Williams**

On August 23, 2023, the Bureau of Licensing issued a Notice of License Revocation to Hillside Mini Mart I Corp., which conducts business at 87-87 Francis Lewis Boulevard in Queens Village. The notice informed Hillside that its lottery sales agent license was revoked for engaging in conduct that constitutes a fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the State lottery. Specifically, the notice stated that Hillside’s owner had been arrested and charged with Promoting gambling in the second degree, and Possession of a gambling device, both class A misdemeanors under the Penal Law, and Suffering or permitting gambling on the licensed premises of a location licensed to serve alcoholic beverages, an unclassified misdemeanor under the Alcoholic Beverage Control Law. Hillside requested a hearing, which was conducted on November 15, 2023. The Hearing Officer submitted a report to the Commission’s Acting Secretary dated November 20, 2023, recommending that the Hillside license be revoked. The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1.

**Chairman O’Dwyer**

The Commission duly deliberated and considered this matter and determined, upon a unanimous vote to sustain the Hearing Officer’s Report and Recommendations.

**Consideration and Appointment of Gaming Facility Location Board Member**

**Executive Director Williams**

By N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 109-a, the Commission is required to select five individuals to serve as members of the Gaming Facility Location Board for the Additional Licensing Process. The Commission staff’s search

for qualified, unconflicted individuals to serve has led to the identification of a fourth member who has been advanced for Commissioner consideration to be a member of the Gaming Facility Location Board. His name, biography, and conflicts review have been previously circulated to members.

Mr. Chair?

**Chairman O'Dwyer**

I'd like to state that I appreciate the potential candidate's desire to accept this task as I do appreciate the other three members of the board who have already undertaken this task. Members serve without compensation. Few people will be pleased at the conclusion of the process and with so many constituencies, so much media interest, decisions will inevitably be questioned. That said, few tasks have the ability to transform. The Casino licensing process has that possibility, with capital investment direct in construction employment, and driving of incremental tax revenue these projects will offer the possibility of tangible change to their host locations I have personally reviewed the qualifications capacities of our candidate. I appreciate his openness to this important service. Do I have any questions on the candidate. Hearing none may I have a motion to accept the appointment of: **Carlos Naudon** to the Gaming Facility Location Board?

Second?

Discussion on the Motion?

All in favor? Opposed?

The Motion carries.

That concludes today's published agenda.

Do any Commissioners have items they'd like to present for consideration?

I'd just like to make a few remarks marks to the Commission on what I've been doing since our last meeting. I'm pleased to report that commissioner Hamer and I had an opportunity to go out to Belmont and review what's going on there in terms of new facilities. I'm particularly pleased to report - and thank you commissioner Hamer for your work on this, that the new facilities for the workers housing have started. The demolition of one barn has been done and they're beginning work on the housing as part of a very comprehensive review and revision of housing both in Saratoga and at Belmont. I think I will say that the people at NYRA have done an excellent job in starting. I'm told by our Executive Director that the franchising board has found a number of areas in quality of life for the workers in both places, and that they are looking at that and that they will be using in the future some very, very severe qualifications for NYRA and NYRA has been most cooperative now. I think I think we' all be very proud of it in the next couple years workers



housing in both areas is going to be considerably better, much better. In that report we commissioner Hamer and I also both reviewed and visited both the race chaplaincy and the preschool for the workers. I'm happy to report that in my role as a member of two boards the agricultural board the standardbred horse and the thoroughbred that considerable resources from those funds have been given to the race track chaplaincy for the work in promoting the work of the race track chaplaincy and working with the workers out there as well, as for after care for those horses that are no longer able to work.

I reported last meeting that I was meeting with me and the Chief Executive of DraftKings. As you will remember we were all appalled by a series of bets that were put up on DraftKings involving 911 and making a betting opportunity off the tragedy of 911. I met with our Executive Director and the Chief Executive Officer of DraftKings, who indicated to me that obviously they were apologizing and appalled as we were by this and indicated to me that they had put in considerable changes in terms of reviewing all bets that went out and making sure that all those bets were reviewed responsibly. I expressed to the chief executive officer the disgust of this commission and hope that it would not be reported again, and if we do find anything in the future I can tell you that we will be look at it very, very severe eyes. I'm I was heartened by their response, and I hope they have go through it uh again.

We've had some meetings again with our advertising agencies on lottery reporting that we' had some meetings thanks to our director of communications um with the Sunday Morning New York and there will be a something on something on the lottery in the future giving the story of the lottery and how much good it does for people in New York in terms of the lottery.

In terms of the lottery, we did have breach of the systems and the executive director and I will be meeting with the Chief Executive Officer of vendor in January make sure that that does not happen again.

I wish all a very happy pleasant holiday season and we'll see you in the New Year

I'd like to take a moment to mark the passing of Matthew Moore who worked as a business system analyst in the division of Lottery two and a half years, Matt was an outgoing kind man with a smile. We in the commission offer our most sincere condolences to his parents Mark and Carol Moore of Ilion, his brother Richard, and his sister Michelle.

Mr Williams would you introduce our new employee.

**Executive Director Williams**

Certainly. With us today is our new uh division director for the division of horse racing and paramutual wagering Sarah Klein. Sarah comes from to us most immediately from a position that she held in program and counsel at the New York State Assembly, where she had jurisdiction, among other things, over all things gambling.

**Chairman O'Dwyer**

You're very welcome and we wish you a pleasant and productive tenure.

Hearing no other items for consideration, this meeting of the New York State Gaming Commission is adjourned.

###