



PENNSYLVANIA GAMING CONTROL BOARD  
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**Sent via Electronic Mail**  
Fantasy Contests Operators

**RE: Industry Guidance 2024-04  
Distinction Between Sports Wagering and Fantasy Contests**

Dear Certificate Holders and Operators:

It has become clear to the Staff at the Pennsylvania Gaming Control Board (“Board Staff”) that Operators are increasingly attempting to pigeonhole what should, by the definitions in the Act<sup>1</sup>, be classified as a Sports Wagering activity<sup>2</sup>, into a Fantasy Contest.<sup>3</sup> Accordingly, Board Staff considers it appropriate to issue guidance to the industry as to what Board Staff believes constitutes each activity and the distinctions which will push an offering into the Sports Wagering or Fantasy Contest realm.

Board Staff, as the employees of the sole regulator of both Fantasy Contests<sup>4</sup> and Sports Wagering<sup>5</sup>, believes these distinctions are crucial so that each offering proposed by an Operator is regulated, operated, and taxed according to the enabling legislation and the intent of the General Assembly. This includes, but is not limited to, the proper realization of tax revenue to the Commonwealth’s taxpayers<sup>6</sup> and, more importantly, the fact that Fantasy Contests are available to eighteen-year-olds<sup>7</sup> whereas Sports Wagering<sup>8</sup> – and wagering generally – is restricted to those twenty-one years of age and above.

To begin, an activity cannot be both Sports Wagering *and* a Fantasy Contest.<sup>9</sup> It must be one or the other. Board Staff will be utilizing the following guidance in making an initial determination as to which classification an offering will meet and fully expects the industry to utilize the same. Additionally, a review will be conducted, under this guidance, of all Fantasy Contests that are currently being offered in the Commonwealth – and Board Staff will be reviewing products to be offered before a license is issued moving forward.

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<sup>1</sup> 4 Pa.C.S. § 301 *et seq.*

<sup>2</sup> 4 Pa.C.S. §§ 13C01 – 13C71

<sup>3</sup> 4 Pa.C.S. §§ 301 – 342

<sup>4</sup> 4 Pa.C.S. § 311(a)(1)

<sup>5</sup> 4 Pa.C.S. § 1202(a)(1)

<sup>6</sup> 4 Pa.C.S. § 1102(3)

<sup>7</sup> 4 Pa.C.S. §325(a) & §326(a)(1)

<sup>8</sup> 4 Pa.C.S. §13C11(3)(ii)

<sup>9</sup> "Sports wagering." The business of accepting wagers on sporting events or on the individual performance statistics of athletes in a sporting event or combination of sporting events by any system or method of wagering, including over the Internet through websites and mobile applications. The term includes, but is not limited to, exchange wagering, parlays, over-under, moneyline, pools and straight bets. The term does not include: ... **(7) Fantasy contests.** (Emphasis added). 4 Pa.C.S. §13C01.

Additionally, it is worth pointing out that to be a Fantasy Contest, the activity in question cannot be against the house but rather must be against other players or another player. The Act specifies that the Contest must be among “Participants” which it specifically separates from Licensees, Operators, Gaming Entities, or any other level of employee by the Facility or Operator.<sup>10</sup>

An extensive review of the enabling legislation, the Board’s promulgated regulations, and the offerings available in the marketplace indicate that two important distinctions – largely definitional – exist that Board Staff believes pushes an offering into one classification or the other: 1) The lack of an outcome being determined by “accumulated statistical results”; and, 2) Undefined prizes. This correspondence will take each in turn and explain the rationale.

### **The lack of an outcome being determined by “accumulated statistical results”**

To be a Fantasy Contest, the outcome *must* “... reflect the relative knowledge and skill of participants and [be] **determined by accumulated statistical results of the performance of individuals**, including athletes in the case of sports events.”<sup>11</sup> (Emphasis added). If the outcome of the Contest is based upon anything other than “accumulated statistical results of the performance of individuals” – for example, if winners and losers are determined by picking the outcome of multiple over/under wagers based upon players’ performances – that activity is Sports Wagering.

The accumulation, crucially, must be of *statistical results* and nothing else (e.g. the number of wagers or whether a particular statistical result exceeded some threshold) to be a Fantasy Contest. Anything deemed to meet that definition strictly will be determined to be a Fantasy Contest and anything that fails that definition strictly will be Sports Wagering.

This is foundational to the definitional language of Fantasy Contests in Pennsylvania’s Gaming Act and Board Staff will seek to implement this requirement.

### **Undefined Prizes**

A Fantasy Contest is an online game or contest with an entry fee and a potential prize.<sup>12</sup> A “prize or award” is similarly defined by the Act as being “Anything of value worth \$100 or more or any amount of cash or cash equivalents.”<sup>13</sup> However, that definition does not address the question of whether a prize must be set ahead of the Fantasy Contest or if it can fluctuate as the Contest plays out. The instructive language in the definition of “Fantasy Contest” stipulates that “...The value of all prizes or awards offered to winning participants is established and **made known to participants in advance of the contest and the value is not determined by the number of participants or the amount of any fees paid by the participants**.”<sup>14</sup> (Emphasis added). The question then remains as to whether, if a Fantasy Contest offers a set prize at the beginning of a contest, but the prize may fluctuate depending on how many people win the prize (in reality only creating a prize pool), that remains a Fantasy Contest. Due to the enabling legislation’s failure to specifically address this topic, Board Staff turns to the rules of statutory construction to arrive at a conclusion. Specifically, Board Staff believes that the clearest way to settle this ambiguity is to utilize the words and phrases in the Act in their common usage and to utilize the rules of grammar, as provided for in the Statutory Construction Act of 1972.<sup>15</sup>

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<sup>10</sup> 4 Pa.C.S. §302.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> 1 Pa.C.S. §1903(a).

Accordingly, and through this tenant of the statutory construction, it becomes necessary to ascertain the meaning of “prize” in the context of both this definitional section of the Act and against potentially fluctuating end results. If it is true, as the Act mandates, that a prize must be established at the outset, and that it cannot be based upon the number of entry fees, it logically follows that the prize itself must be static at the outset of the contest and cannot fluctuate. If that condition is met, Board Staff believes the offering to be a Fantasy Contest. If the prize remains in flux based upon any other consideration – including the performance of the offering (i.e., how many people “win”) – Board Staff believes the activity in question is Sports Wagering.

In fact, a further examination of the Board’s regulations indicates – depending on the circumstances – that a fluctuating prize offering is most likely to fall within the parameters of a “Sports Wagering Contest, Tournament, Pool, or Other Organized Event” as provided for in 58 Pa.Code §1409a.2 which would require *sports wagering licensure*, prior notification to Board staff and approval by Board staff.

To put it succinctly: For an offering to be a Fantasy Contest, the prize must be clear to the contestants from the beginning and cannot change absent relatively rare occurrences of a tie. If it changes – or is likely to change based upon the number of winners and multiple winners are expected (e.g. it is a prize pool) – it is not a Fantasy Contest.

Board Staff thank you for careful consideration of this guidance and hope you find it useful. Please feel free to contact me via email at [kkile@pa.gov](mailto:kkile@pa.gov) or Executive Director Kevin O’Toole via email at [keotoole@pa.gov](mailto:keotoole@pa.gov), if you should have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Kile", with a stylized flourish at the end.

Kevin C. Kile  
Sports Wagering Operations, Director

cc: Kevin O’Toole, Executive Director, PGCB  
Steve Cook, Chief Counsel, PGCB  
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