The New York Racing, Pari-Mutuel Wagering and Breeding Law

Section 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. Six members having been confirmed by the New York State Senate, affords the Commission an ability to establish quorum and undertake action.

This meeting of the Gaming Commission is now called to order. Miss Secretary, will you please call the roll?

John Crotty? Here.
Mark Gearan? Present.
Peter Moschetti? Here.
John Poklemba? Here.
Barry Sample? Here.
Todd Snyder? Here.

Miss Secretary, will you please have the record reflect that a quorum of qualified members are present, thus enabling the transaction of business.

Mr. Chairman?
Great.

Well, good morning. We begin with the approval of the Commission minutes from May 27, 2014. It's been provided to members in advance and I guess I'd ask any members if you have any edits, corrections, or amendments to the minutes.

No.
No.

Okay.
Madam Secretary, please let the record reflect the minutes were adopted.
Next on our agenda is the report of the executive director.
Rob?

Thank you.
I'd like to discuss three issues of potential interest. First to apprise you of the latest activities of the Gaming Facility Location Board, second to briefly recap Belmont Stakes Day, and lastly to discuss recently passed legislation from the legislative session that concluded this last Friday.

Since our last meeting on May 27, the Gaming Facility Location Board has issued a variety of guidance documents concerning
host municipality resolutions, document submission guidelines,
SEQRA guidance and multiple sets of answers
The Board and Joint Commission on Public Ethics also issued a Q&A regarding casino lobbying jointly.
We are now down to 17 potential applicants.
Yesterday, Grossinger Development Corporation formally requested a refund of their application fee.
We fully refunded their fee late yesterday afternoon.
Monday, June 30 at 4 p.m. is, of course, the deadline for the filing of bid applications.
Commission staff continues to actively assist the Gaming Facility Location Board,
staff remains working on drafts of regulations to govern this new industry, and we have been engaging the New York State Police to ensure that their applicant review proceeds smoothly and meets the expectations of both the Gaming Facility Location Board and you gentlemen.
With respect to the Belmont Stakes Day, while California Chrome failed to become the 12th winner of the Triple Crown,
NYRA did have quite an impressive day.
The on-track handle was $19.1 million and all-sources handle was $150 million.
Both amounts surpassed previous all-time NYRA records.
The previous records were set on October 29 of 2005 when a Belmont Cup Day was hosted at Belmont Park.
The previous Belmont Stakes handle records were beaten by $5 million on track and by nearly $40 million in all-sources handle.
The announced attendance was 102,199 which was the third highest attendance in Belmont Stakes' history.
NYRA did, however, receive some problems or had some difficulty with patron egress.
A record number of fans, some 36,000, arrived at Belmont via Long Island Rail Road.
While patron arrival was generally staggered, patron departure was much more concentrated.
Egress from parking lots was similarly complicated.
Obviously, many of the issues such as the LIRR availability and traffic flow once the crowds exit Belmont Park onto local thoroughfares are not solely within NYRA's ability to resolve but NYRA president, Chris Kay, has pledged to work with local officials to address future transportation needs.
NYRA did also experience some on-track issues.
They lacked some lighting in the remote parking areas, there were a few parking attendants--very few parking attendants directing the egress after the races, and there were some
apparent issues with the efficacy of security officials.
I believe NYRA understands some patrons' experiences were poor and have committed to examining the conditions that led to these experiences.
From the Commission staff perspective, we have realized a few lessons relative to our operations and yesterday conducted a meeting chaired by Dr. Palmer to talk about our operations and we anticipate meeting with NYRA staff to discuss our findings and try to resolve any of the issues that we've identified internally.
Lastly, at the end of this year's legislative session, this past Friday, a couple of bills passed.
Counsel's office will be preparing a memorandum like they did last year that identified all the various legislation that passed during the session but I thought it would be prudent just to touch upon a few highlights from the very, very end.
There were two bills that were germane to the Commission's interests: Assembly 10075 would amend the tax law to allow video lottery gaming facilities to operate until 6 a.m. and the previous language that requires closure at 4 a.m.
The same legislation increased the annual value of free play credits authorized for use by video lottery gaming facilities from 10% to 15%.
Both of these changes were intended to enhance revenues and attendance.
Senate 5584 would also amend--this one would amend the Racing, Pari-Mutuel Wagering and Breeding Law.
This would require that a franchised corporation operating a simulcast feeder in a region wholly contained within one county would be permitted to operate only pursuant to an agreement with regional off-track betting corporation and that revenues from that agreement would be distributed pursuant to--or from the operation would be distributed pursuant to the agreement.
There were several bills that were germane to the Commission that failed to pass both houses.
Amongst the most significant was an omnibus Senate bill that would have eliminated a variety of things in horseracing: dark day, maintenance of effort payments made from regional off-track betting corporations, made some technical corrections to the regulation of multijurisdictional account wagering providers, and provided for the free play and the extension of hours, among other things.
It passed the Senate 56 to 2 but was not considered by the Assembly.
The only other bill that--actually, there was another bill that passed as well that would have extended Catskill OTB into the five counties that comprise New York City which is the former footprint of New York City Off-Track Betting Corporation. This legislation passed the Senate 44 to 15 but wasn't considered by the Assembly. The last bill that was a one-house bill that passed in the last week was a bill that would have required NYRA's Independent Business Integrity monitor to make their reports available to the Franchise Oversight Board upon request. That bill passed the Senate 58 to nothing. Mr. Chairman?

Any questions for Mr. Williams on his report? We should also note that our acting executive director is now our official executive director.

Good point. Congratulations on that. Much enthusiasm or gratitude, well said. Well, moving on our agenda. The next item for action was the appointment of a Gaming Facility Location Board member but my understanding is that we will not be making that appointment today. Is that correct? Yeah, that's correct, Mr. Chairman.

We still are waiting on some paperwork that would finalize that. And it's premature to actually consider any action on that today. Great. So we will await that and see. To rule-making. Do you have to be present for those appointments? You mean, can they be telephone--?

I mean, we're in a time-sensitive nature which said we're gonna do things on a monthly basis going forward. If we do that, the next meeting will be close to the end of July. I think if we had an ability to get names in front of you, we would try to do a teleconference on the record. Okay. That seems reasonable enough. That would be my preference. We're also looking into the possibility of whether you guys can exercise an approval in writing to be confirmed but I think the general consensus of the individuals that have expressed an opinion on this
is they prefer to do a formal meeting,
formal emergency meeting.
>> Oh, okay.
Do you have a preference?
No.
No, whatever they need.
It's just they're in a time-sensitive window. 'Cause it's July.
It's July, people are pulling all around.
You wouldn't want to get stuck short.
If you could do it by phone and there was conformity of thought,
we would seem reasonable enough to me.
As long as we had some time with the background materials.
Understood.
We could do it, from my perspective--
Fairly quickly.
Whatever makes people happy, by phone or in--
Yeah, that was my only point.
It would seem to be harder coordinating a single point in time over the next 3 weeks than it would be to get everyone on the phone at one single time.
And rather than wait 'til July 28 as well.
That was the other thought.
The phone would be a problem because of open meetings concerns.
Okay.
But we could do a video conference and that's readily--
easy to do in this.
Yeah, I'm traveling but I don't know what other people are doing but--
But we can also, if we were able to obtain a quorum on a video conference,
others could call in and express their--how they would vote had they been able to be present in the video.
Keep in mind, I have the equipment if it's a weekend we can do it at my house.
We'll all go to Todd's house.
Todd's office.

[laughing]
You're always welcome in Geneva.
[laughing]
Okay, well, why don't we turn, if no other questions on that,
to rule-making.
New York State's Racing, Pari-Mutuel Wagering and Breeding Law
authorizes the Commission to promulgate rules and regulations that it deems necessary to carry out its responsibilities.
So in that regard, the Commission will from time to time promulgate rules and rule amendments pursuant to
the State Administrative Procedure Act.
So today, we have three rule-making items for consideration.
So Mr. Williams, if you could outline those proposals,
I would be--
Certainly.
The first proposal for Commission consideration is the adoption of amendments to our standardbred out-of-competition testing rule. The proposal was adopted by the Commission at its March 12, 2014, meeting. The proposed amendments will, among other things, clarify the existing rule, incorporate Commission enforcement protocols, and make the rule more uniform with the Commission's thoroughbred racing out-of-competition rule. Only one public comment was received. The Empire State Harness Horsemen's Alliance, which represents harness horsemen's organizations at six New York race tracks, made a multi-faceted argument in opposition to the rule. They previously circulated memorandum from counsel Ed Burns, identified each of the various Alliance arguments, and addressed each. Any questions on the adoption of the amendments to our standardbred out-of-competition testing rule as a permanent rule? Any questions from the commissioners? Comments? Nothing further to add other than what you've seen before, yeah. Right, everything is before as well. Well, may I have a motion then to adopt the amendments to our standardbred out-of-competition testing rule as a permanent rule? Sure. Motion by Mr. Crotty. Second? Second. Discussion on the motion? All those in favor? Aye. Aye. Opposed? Motion carries. Next rule-making in regards to the use of cellular phones in a standardbred paddock. Last August, the Commission authorized a rule permitting the use of cellular telephones or other electronic communication devices in a designated area of a harness racing paddock or receiving barn, effective for 1 year. The current rule followed a similar 1-year experiment by the
former Racing and Wagering Board that had expired on February 15 of 2013. In adopting the rule last August, commissioners expressed the desire to understand how New York's experience was progressing and how other jurisdictions treated the issue. Do we have Brian Barry on the telephone today? >> Yes, we do.
Hello.
Brian is our Director of Racing Officials. He surveyed the presiding judges at the State's race track and can speak intelligently to what our experience has been.
Mr. Barry, would you please report your findings?
All of the presiding judges at Yonkers, Monticello, Tioga, Vernon, Saratoga, and Buffalo reported no problems with the new rule. The designated area signs were all posted at the entrance to the paddock and the horsemen were complying and just using that area to make the cell phone calls. There were only two fines for misuse in other areas in the whole year so, after they get a warning, they do use the designated area. As far as the other jurisdictions, it's in the USTA rule book, rule number 5, number 11(g), that cell phones are permitted in the paddocks.
Also, the New Jersey and Pennsylvania Commissions allow them anywhere in the paddock. The only place they restrict them is the track itself. They fine any driver that brings his cell phone out onto the track.
Other staff research also indicated that Delaware allows the use of the cell phone in a paddock but not while walking or riding a horse and Ohio does not permit the use of cellular telephones in the paddock at all. Other research that was conducted indicates that neither Massachusetts nor Maine seems to have ever addressed this concern and regulation, probably leaving it to the USTA rules for address.
Brian, do you have anything else to add?
No, sir.
Well, thank you, Brian, and to Rob. Any questions from the commissioners on the proposed rule amendment? Sir?
As I understand it, this was an experiment. Now with the Commission, the newly constituted Commission, now we're coming back to this for this final. Well, the Commission adopted it last August on a 1-year experimental basis to see how the experience would bear out with the rule.
And to look at other jurisdictions. And to see what the experience was in other jurisdictions. I think we were concerned there was gonna be an enforcement issue, maybe there'd be some resistance and it appears that we have not seen that in any significant regard. My understanding is there were only, I think, two fines for people who wouldn't comply. Generally, what happens is if one of the judges sees someone who is not in compliance, he informally reminds them of the rule and tells them where to go and people comply.

Well, may I have a motion then to propose a regulation authorizing the use of cellular telephones or other electronic communication devices in a designated area of a standardbred paddock?

Motion. So moved. Okay. Second? Any discussion on the motion? All in favor?

Next is our rule-making regarding conflict of interest by officials in standardbred racing. For Commission consideration is a proposed amendment of its standardbred rules intended to strengthen conflict of interest provisions. A current rule prohibits a racing secretary or assistant secretary from being licensed as an owner, trainer, or driver during the racing season. There are, however, potential conflicts of interest if a racing secretary or assistant racing secretary were allowed to race or drive a horse, even if such racing occurred out of the state because working for or competing against an owner of a horse which may appear in New York could be perceived as a compromise to the objective performance of the official's duties. This proposal aims to strengthen the current rules by broadening the prohibition against the activities in which the officials may engage. Any questions? Yeah, I actually have a question. Ed, does this rule come into alignment with the existing thoroughbred racing rule? There is not a similar rule in thoroughbred racing
but, as a practical matter, we don't have people who are race officials ever even proposing or asking for clearance to ride a horse or be a jockey. But you do see that in--

Is there some reason that I--like, I don't have the experience to recognize why that's always gonna be the case or is it just a matter of time before it arises? It's hard to make weight on the thoroughbred side. Not so hard on the trotter size. I mean, I guess we could. Wouldn't you want to just harmonize the rules just--

Seems to me that that would be a reasonable step to take. We could look into a parallel and teed it up for you for future consideration. If we looked into that, then I'd be--you know, I have no other questions about this rule.

So we'll all wait. That's a separate matter. Any more questions on this ruling?

Well, may I have a motion then to adopt a proposed rule-making regarding conflict of interest by officials in standardbred racing?

So moved. It's been moved. Second?

The motion carries. Next on our agenda is adjudications. And the Commission has four hearing officer reports for consideration today.

I'd like to raise a question for Ed. Ed, I think that when it comes to adjudications, we have the opportunity to have a private discussion and I'd like to suggest that we do that before we proceed.

Yes, subdivision 1 of section 108 of the Public Officers Law provides that the State Open Meetings Law does not apply to judicial and quasi-judicial proceedings which these administrative adjudications are so, at the discretion of the Commission, you could choose to fully discuss things at an open meeting or discuss some matters privately amongst yourselves.
00:19:52:04 >> So Mr. Chairman, I'd actually suggest that we
00:19:53:21 take a brief recess from the public meeting
00:19:56:16 and have a discussion about the adjudications
00:19:58:21 that are on the agenda so that we can move
00:20:00:19 more smoothly through the public meeting.
00:20:02:17 >> And then to return to our business.
00:20:04:02 >> And then return, yes.
00:20:05:09 >> And do we want to vote on that or can I just rule on that?
00:20:08:19 >> I think you could say, well, you know, if you don't hear
00:20:11:23 any objections to that--
00:20:13:09 >> Any instruction to this--it's a run.
00:20:15:10 It's a good suggestion, concurrent with--okay, so why don't we
00:20:17:16 take this break for executive session or whatever the particular
00:20:23:26 appropriate term would be and we'll be back.
00:20:26:03 >> Just consideration of judicial
00:20:27:21 and quasi-judicial applications.
00:20:29:13 >> For the record, it's not an executive session.
00:20:31:21 You could temporarily adjourn the meeting
00:20:33:17 and then discuss some of this business elsewhere
00:20:37:21 but it's technically not an executive session
00:20:39:19 of the same meeting, yeah.
00:20:41:05 >> We're in essence going off the record.
00:20:42:07 >> Yes.
00:20:42:29 >> Terrific.
00:20:43:21 >> Very good.
00:20:53:22 >> Thank you.
00:20:54:23 We're now returning from a session to consider judicial or
00:20:59:09 quasi-judicial review, pursuant to the Public Officers law
00:21:03:05 108.1, and so we now return to our public meeting.
00:21:07:16 The Commission, following this quasi-judicial deliberation, has
00:21:11:18 considered remanding the cases of in the matter of Anthony W.
00:21:16:04 Dutrow and in the matter of Peter Kazamias for a hearing.
00:21:21:04 So may I have a motion to remand those cases?
00:21:22:24 >> Motion.
00:21:28:14 >> Motion has been made.
00:21:29:18 Seconded?
00:21:30:13 >> I'll second it.
00:21:31:18 >> Any discussion on the motion?
00:21:33:01 >> I just wanted to add that upon remand in the Dutrow matter,
00:21:39:22 we note the hearing officer's consideration that there be no
00:21:47:01 authority to suspend the penalty as it was done in that matter.
00:21:51:14 The penalty that was imposed may not be suspended.
00:21:57:29 >> Any other discussion or questions on the motion that's been
00:22:01:17 made and seconded?
00:22:02:25 All those in favor?
00:22:04:13 [ayes all around]
00:22:06:02 >> Opposed?
00:22:07:14 The motion is accepted.
So we go to our next consideration. Next matter is in the matter of Edward J. Williams. On November 21st, 2013, the Bureau of Licensing declined to license Edward J. Williams as a harness-racing driver and trainer. The denial was based on the conclusion that his experience, character, and general fitness are such that his participation in racing or related activities would be inconsistent with the public interest, convenience, or necessity, or with the best interest of racing generally. After Mr. Williams appealed, a hearing was conducted on April 22nd, 2014. The hearing officer report and recommendations were delivered to the Commission secretary on June 4th. The hearing officer recommended that the license denial be upheld. The hearing officer also recommended a course of action beyond the judicatory matter, and I would like the Council to discuss this particular aspect of the case. What is at issue for the Commission's final determination is the propriety of the license denial of the applicant for a trainer/driver license. Part of the recommendations of the hearing officer went beyond that particular matter and made some suggestions about other licenses he may or may not be able to apply for in the future. And my recommendation to you is that whatever you decide, whether to accept or reject the hearing officer's modifications, it be limited to the matter before you, which is the licensure as a driver/trainer. Okay, all members have received a copy of the hearing officer's report and have had an opportunity to review the record of the hearing. Would any of the Commissioners like to discuss the report or the recommendations? Mr. Chairman, I'm inclined to accept the recommendation of the hearing judge to deny the license. I understand Council's reservations about some of his more creative statements. But the basics of his findings seem to me to be his recommendation that the decision to deny the license to be a trainer/driver be upheld, the denial be upheld, and I would support that.
But I'd also just like to be clear--Ed, can you clarify for me?
It's my understanding that such a finding, if we were to all support that or by majority to support that, that nothing in saying or doing that would prevent Mr. Williams from applying or reapplying, applying for an assistant license or reapplying for a trainer/driver license based on that determination.

You're correct.

Any other discussion or questions on the report or the recommendations? Okay, hearing none, may I have a motion, then, to adopt the hearing officer's report and confirm its finding and recommendations as submitted?

I will make a motion to affirm the finding that the decision to deny should be upheld, which is not the finding as stated.

Is there a second? I'll second.

Mr. Snyder.

I'd just like to say this. I don't agree. I believe that we should not accept the hearing officer's finding. I do not think the gentleman should have been denied a license.

Not to diminish the seriousness of the allegation, but it is a misdemeanor conviction that's more than 40 years old. And based on that and based on what I read in the record and the gentleman's background, I believe he should not have been denied a license.

So I would not vote in favor.

Any other discussion on the motion? Okay.

Why don't we have a vote, then? All in favor, say, "Aye."

[ayes]

[two nays]

Motion carries.

Our final matter is in the matter of Winkys Pride. On September 6th, 2013, the judges at Batavia Downs harness craft disqualified the horse, Winkys Pride, for various starting and racing infractions in violation of Commission Rules 4115.2d, 4115.2f, and 4017.4b, and finally, 4117.4f.
Winkys Pride finished the race in first place, but was placed seventh by the judges pursuant to rule 4117.12a. After Robert M Hummel, the owner of Winkys Pride, appealed, the hearing was conducted on April 11th, 2014. The hearing officer's report and recommendations were delivered to the Commission secretary on May 26th. The hearing officer recommended that the Commission sustain the judge's placement decision, finding violations of two rules, 4115.2d, and 4115.2f. All members have received a copy of the hearing officer's report, and have had an opportunity to review a record of the hearing.

>> Would any of the Commissioners like to discuss the report or its recommendations?

Discussion on the matter?

May I have a motion, then, to adopt the hearing officer's report and confirm its findings and recommendations as submitted?

>> So moved.

>> Motion is made.

And seconded?

Mr. Sample.

Discussion on the motion?

All in favor, say, "Aye."

[ayes]

>> Opposed?

The motion carries.

Okay, we're now down to new and old business.

First, consider any new business to be brought before the Commission.

I guess for old business, I guess I would ask you, Rob, to give perspective.

At our last meeting, we adopted the rules for the planned multi-state lottery for Cash For Life, and it would be helpful, I think, to get your assessment of the initial implementation of that new Cash For Life game.

Certainly.

Gardner Gurney, who's the director of the lottery, reported that the initial experiences have been very positive with this game. The Lottery Division had anticipated the game would generate sales increase of $.08 per capita on a weekly basis, net of the removal of the Sweet Millions game, which this one replaced. Actual performance has been at $.11 net for the first three drawings.
In real dollars, Sweet Million was attaining an average of $280,000 per drawing during the last month. Cash For Life has had draw sales of $1.26 million for the first draw, 1.42 for the second draw, and 1.52 for the third draw. This past Monday, we actually had the first New York win of a thousand dollar a day for life. This occurred with a purchase at a 7-Eleven in Bayside, Queens. We also had a second place winner, which is a thousand dollars per week for life, which was made at a purchase in East Rockaway. The bottom line is that this game has produced $1.2 million in education for the first three drawings.

Very successful to begin the month.

Well, thank you for the update. Any other new business to consider?

Just one thing. Mr. Burns had distributed to us a schedule of presumptive penalties, as we discussed at a prior meeting. I've reviewed them, and I wanted to thank Ed for putting it together, he and his staff, and also I would ask the Commission to be considered in the future, developing a rule based upon these penalties that have been imposed, so it should give the hearing officers and the staff some type of direction as to the proper penalties that should be imposed for the various offenses, and leaving it to the Commission in the future to be able to adjust those, depending upon the experience.

If a certain regulation were to be violated repeatedly, perhaps we would consider an increase in the penalty. So just something for future consideration and I would ask the staff that they would take a look at that, and maybe propose something for us in the future, if the Commission agrees.

Any reflection on that?

Certainly. Well, I'll talk with Ed later today, and we'll start consideration of how we can approach, at least starting the research and getting back to you at the next meeting as to what the possibilities are related so that.

I agree with you, John.

It was very helpful. As a further observation, I have to commend my assistant counsel, Rick O'Dell*, for pulling all of those materials
Well, and finally, at the last meeting, I suggested that we establish a uniform date for our meetings, the fourth Monday of the month was best decided, I think, as a uniform date that we can at least plan on going forward.

That would bring us to July 28th for our next meeting. Should any Commissioner have any conflict, you can coordinate that with Miss Buckley*, but that would be the next suggested date, unless there are apparent conflicts that might suggest moving.

Ron tells me that the tentative dates for the next two meetings certainly fall during the conduct of NYRA's summer meet, and the suggestion has been made to consider the possibility of our meeting in Saratoga Springs.

Excellent idea. For July?

For July or August or some hybrid.

Peter may be on to something.

Peter may be on to something.

Norberg* Fund meeting is the 29th, so that would actually be consistent with, if you're going to do an in-person attendance there, consistent with--

Do you want it make it that Tuesday?

Or we could adjust it to the 29th.

Kill two birds with one stone?

I can't do the 29th.

Yeah, I'm not actually in country the 29th.

But we have enough members to have a quorum.

So why don't we coordinate that with--people can coordinate.

Yeah, I don't know if I can get to Saratoga on the 28th, actually.

I'm back on a red-eye that morning, Monday morning, yeah.

But it could be the next week?

So anyway, we can coordinate our schedules to notify Miss Buckley of availability.

Go from there.

That concludes today's published agenda.

Do any of the Commissioners have any other additional items to present for consideration?

Well, hearing none, the meeting of this New York State Gaming Commission meeting is adjourned.

Thank you all very much.