

This transcript was produced as the meeting progressed. It has not been edited or reviewed for corrections.

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00:00:09:10 >> Why don't we--

00:00:10:11 >> Okay, New York--call to order here.

00:00:13:09 New York State Racing, Pari-Mutuel Wagering and

00:00:15:13 Breeding Law section 102 provides that the New York State

00:00:18:26 Gaming Commission shall consist of seven members appointed by

00:00:22:06 the Governor by and with the advice

00:00:23:28 and consent of the Senate.

00:00:25:25 Six members having been confirmed by the New York State

00:00:28:27 Senate, affords the Commission an ability to establish quorum

00:00:32:11 and undertake action.

00:00:34:21 This present meeting of the Commission

00:00:37:02 is now called to order.

00:00:38:20 Miss Secretary, will you please call the roll?

00:00:42:04 >> John Crotty?

00:00:43:07 >> Here.

00:00:45:11 >> Mark Gearan?

00:00:46:15 >> Present.

00:00:48:19 >> Peter Moschetti?

00:00:49:19 >> Here.

00:00:51:19 >> John Poklemba?

00:00:52:21 >> Here.

00:00:54:20 >> Barry Sample?

00:00:55:25 >> Here.

00:00:58:02 >> Todd Snyder?

00:00:59:06 >> Here.

00:01:03:26 >> This is a very--

00:01:04:26 >> Miss Secretary, please have the record reflect that a quorum

00:01:07:01 of qualified members are present, thus enabling

00:01:10:01 transaction of business.

00:01:12:00 Chairman Gearan?

00:01:13:04 >> Great.

00:01:14:08 Thank you very much, Rob.

00:01:15:08 And good afternoon.

00:01:16:11 We'll begin with consideration of the minutes from our

00:01:18:28 September 30 meeting.

00:01:21:05 Minutes of the Commission meetings conducted on that date,

00:01:24:00 September 30, 2014, have been provided to members in advance.

00:01:28:15 And at this time, I'd like to ask the members if there are any

00:01:31:14 edits or corrections or amendments.

00:01:36:22 Madam Secretary, please let the record reflect then that the

00:01:39:00 minutes were adopted.

00:01:41:13 I'm just seeing acknowledgement.

00:01:43:01 All those in favor?

00:01:44:04 >> Aye.

00:01:45:07 >> Aye.

00:01:46:09 >> Great.

00:01:47:10 Thank you all.

00:01:48:15 Next, we turn to the report of our Executive Director.

00:01:49:22 Rob?
00:01:51:01 >> Thank you.
00:01:52:10 Given the length of the rule-making portion of today's
00:01:53:13 meeting, I'm gonna try to be very brief here.
00:01:56:05 The Gaming Facility Location Board has met on three occasions
00:01:59:05 to discuss financial and employment histories of those
00:02:01:22 applicants responsive to the request for application to
00:02:05:14 develop and operate a gaming facility in New York State.
00:02:08:27 Their most recent meeting occurred this past Friday when
00:02:11:16 they met at Hofstra University.
00:02:14:14 While information relative to the Board's review and
00:02:16:10 deliberation has been scarce, it is my understanding that
they
00:02:19:22 have tentatively scheduled December 17 in Albany
00:02:23:13 for their final meeting.
00:02:27:09 The other item that I'd like to talk to you about
00:02:29:06 is the Zweig Fund.
00:02:30:22 The Harry M. Zweig Memorial Fund for Equine Research
00:02:33:10 recently conducted its annual meeting at Cornell University's
00:02:36:00 Ruffian Equine Specialist Center which is across the street
00:02:39:19 from Belmont Park.
00:02:41:25 The Zweig Fund, which receives its funding indirectly from
00:02:44:18 racing handle as a passthrough from both the standard bred
and
00:02:47:15 the thoroughbred breeding and development funds, is
00:02:50:14 statutorily charged to promote equine research at Cornell
00:02:53:22 University's College of Veterinary Medicine.
00:02:58:06 The Fund annually solicits and reviews
00:03:00:09 research grant proposals.
00:03:02:06 This year, the fund received 18 proposals requesting
00:03:05:20 over \$1.8 million in funding.
00:03:08:12 The committee ultimately chose to award or to fund 8 grants
in
00:03:12:10 the cumulative total of \$619,000.
00:03:16:04 The fund's work is very important as it provides for the
00:03:19:02 study of critical issues relative to equine health and
00:03:22:02 issues of significance for the racehorse industry.
00:03:25:22 This year's proposal allows study of diseases such as
00:03:29:05 strangles and equine herpesvirus-1, equine
00:03:32:20 osteoarthritis, and enhanced breakdown screening for
00:03:37:09 multi-modal imaging and serum biomarkers.
00:03:41:12 This past meeting was also significant as it marked the
00:03:43:23 final service of Dr. Zweig's widow, Anna.
00:03:47:27 Mrs. Zweig, who is also a Cornell alumnus, has been a
00:03:51:24 member of the committee since it was founded in 1979.
00:03:55:16 She determined to relinquish her seat and not seek
reappointment.
00:03:59:11 The Zweig family, however, remains represented on the
00:04:02:00 committee through the service of their son, Brian.
00:04:05:20 Chairman Gearan?
00:04:06:20 >> Great.
00:04:07:22 Thank you very much.
00:04:08:22 Our agenda will now turn to rule-making.
00:04:11:23 And we have a busy agenda here.

00:04:13:25 New York State Racing, Pari-Mutuel Wagering and
00:04:16:08 Breeding Law 104.19 authorizes the Commission to promulgate
00:04:20:16 rules and regulations that it deems necessary to carry out
00:04:23:16 its responsibilities.
00:04:26:05 To that regard, the Commission will, from time to time,
00:04:28:04 promulgate rules and rule amendments pursuant to the State
00:04:31:14 Administrative Procedure Act.
00:04:33:26 And today, we have eight rule-making items for
00:04:36:14 consideration and Rob will outline the proposals.
00:04:40:24 >> Sure.
00:04:41:28 Item 4(a) regards rules pertaining to the Gaming
00:04:43:20 Facility Request for Application and Gaming Facility
00:04:46:16 License Application.
00:04:48:12 Specifically, on March 31, 2014, the Commission promulgated
00:04:52:11 emergency rules prescribing both forms for the request for
00:04:55:12 application to develop and operate a gaming facility and
00:04:58:28 several forms that were necessary to consider and
00:05:01:16 process applications for gaming facility licenses.
00:05:05:04 By publication in the State Register on July 16 and again on
00:05:09:00 September 10, the Commission extended the emergency adoption.
00:05:12:27 This present emergency rule will expire on December 21, 2014.
00:05:18:16 Accordingly, for Commission consideration is the re-adoption
00:05:21:15 of Part 5300 as an emergency rule with such re-adopting to be
00:05:26:16 filed with the Department of State prior to the expiration of
00:05:29:15 the current emergency rule.
00:05:31:25 The text of the rules has not changed since the initial
00:05:34:07 emergency adoption on March 31.
00:05:37:04 While the public comment period has expired and no public
00:05:39:29 comment was received, permanent adoption of this rule should
be
00:05:43:09 considered when the Commission has before it, a broad set of
00:05:46:17 proposed commercial casino regulations that are still in
00:05:49:29 the process of being drafted.
00:05:52:08 Commission staff recommends re-adoption
00:05:54:08 of this emergency rule-making.
00:05:56:24 >> Thank you, Rob.
00:05:59:08 Commissioners, any questions on the re-adoption of the rules
00:06:02:16 pertaining to the Gaming Facility Request for
00:06:04:21 Application, Gaming Facility License Applications, with such
00:06:08:10 re-adoption to be filed with the Department of State prior to
the
00:06:10:16 expiration of the current emergency rule?
00:06:15:22 Questions for Rob?
00:06:16:28 So I may have a motion then to readopt the rules pertaining
to
00:06:20:05 the Gaming Facility Request for Application for a Gaming
00:06:22:21 Facility License Application?
00:06:24:13 >> So moved.
00:06:25:19 >> Moved.
00:06:26:10 Seconded?
00:06:26:27 >> Sure.
00:06:27:28 >> Great.
00:06:29:12 Any discussion on the motion?
00:06:31:06 All in favor?

00:06:32:17 >> Aye.
00:06:33:21 >> Aye.
00:06:34:24 >> Opposed?
00:06:36:15 The motion carries.
00:06:37:28 The next items, Rob?
00:06:39:01 >> Items 4(b) through 4(g) all regard thoroughbred racing.
00:06:41:21 In November 2013, the Commission proposed a variety of rules
00:06:44:25 designed to protect the integrity of the pari-mutuel
00:06:48:20 wagering system and the health and safety of thoroughbred
00:06:51:23 horses engaged therein.
00:06:54:05 >> Specifically--hold on just a second, if you would.
00:06:57:18 Thank you, Rodney.
00:06:59:18 Specifically, the Commission considered amending its existing
00:07:02:05 rules to create regulatory thresholds for 24 drugs that had
00:07:05:22 widely accepted beneficial effects and can be effectively
00:07:09:22 regulated by means of laboratory thresholds.
00:07:12:16 The adoption of these same thresholds is occurring at other
00:07:15:25 racing commissions throughout the nation.
00:07:18:02 Other proposed amendments related to commissions' rules
00:07:21:08 restricting the time period after various drug treatments
00:07:25:00 before a horse may participate in a race and rules relative
to
00:07:29:06 specific drug utilization.
00:07:31:16 These proposals are necessary to harmonize rules that
forewarn a
00:07:35:29 trainer when to stop using each particular drug
00:07:40:00 with the new thresholds.
00:07:42:05 The proposed rules were the subject of a public hearing
00:07:45:05 conducted January 21, 2014.
00:07:48:29 Information received at that hearing resulted in
00:07:52:02 reconsideration of certain rules relative
00:07:54:05 to standard bred racing.
00:07:56:03 Those rules remain in the process of review and are not
00:07:59:03 yet ready or ripe for Commission consideration.
00:08:03:11 Thoroughbred rule modifications, however, were considered and
00:08:06:14 re-proposed with a few revisions at the Commission meeting
00:08:10:11 conducted on March 12.
00:08:12:23 Overall, it is important to note that the centerpiece of the
00:08:14:28 thoroughbred rules, the 24 threshold, has not changed since
00:08:19:12 the initial proposal in November of 2013.
00:08:23:07 Commission staff saw industry and general public input on the
00:08:26:24 proposed rules no less than four times: pre-proposal, initial
00:08:32:04 proposal, the public hearing, and the revised proposal.
00:08:37:00 Substantive comments from two organizations were received
00:08:39:29 regarding the thoroughbred rule proposals.
00:08:42:16 Both were generally supportive of the drug-testing changes.
00:08:46:19 As a result of the hearing, the Commission may make fact
00:08:49:19 findings in regard to rule-making proposals.
00:08:52:17 Staff strongly recommends this approach, given the rules--
these
00:08:58:05 rules present the first major new regulatory approach in New
00:09:01:25 York equine drug testing since the Racing and Wagering Board
00:09:05:07 adopted restricted time periods in 1982.
00:09:09:27 And they're thus likely to be challenged much as the

00:09:15:00 restricted time periods were challenged back in 1982.
00:09:18:22 Findings of fact provide the best opportunity to ensure that
00:09:21:16 there is a clear and concise record of the agency actions
00:09:24:26 regarding the scientific consultant's analysis and
00:09:27:05 considerations in establishing these rules.
00:09:31:01 If made, fact findings will constitute resolved facts for
00:09:34:19 all relative adjudicatory proceedings
00:09:37:03 before the Commission.
00:09:39:03 Staff has prepared for consideration a memorandum
00:09:41:19 identifying nine agency findings for four rule proposals.
00:09:47:01 Overall, staff recommends the adoption of each of these five
00:09:50:07 rule-makings and nine findings of fact.
00:09:54:03 Staff also recommends one proposed rule regarding
00:09:58:22 restricted time period for administration of unspecified
00:10:02:28 corticosteroids in thoroughbred horses be withdrawn as moot,
00:10:06:28 given the rule proposals that are before you now.
00:10:10:10 Today, we have with us State Equine Medical Director,
00:10:14:10 Scott Palmer.
00:10:16:05 Dr. Palmer would like to briefly address the science that
00:10:18:10 underlies the proposals.
00:10:20:12 Additionally, on the telephone, we have the Director of
Racing,
00:10:22:21 Ron Ochrym, and Assistant Counsel, Rick Goodell.
00:10:26:26 Collectively, they should be able to answer any questions
00:10:29:06 that you might have relative to the rules before you.
00:10:32:21 Dr. Palmer?
00:10:34:14 >> Thank you, Rob.
00:10:36:05 I participated in the rule-making public hearing on
00:10:37:27 January 21 and I have reviewed all the written submissions
and
00:10:41:11 public documents in order to prepare the agency-specific
00:10:44:13 findings with regard to these key issues, whether adopting
00:10:47:27 thresholds is consistent with the agency's regulatory
00:10:50:15 approach, whether these thresholds are consistent with
00:10:53:28 our other rules that are already in place, and whether we
have
00:10:57:04 proposed appropriate adjustments to our restricted time
periods
00:11:00:04 to accommodate adopting the national thresholds.
00:11:03:19 Dr. George Maylin, who is the long-time director of the New
00:11:06:14 York State Laboratory for drug testing and research, has also
00:11:12:15 reviewed these issues and the draft findings.
00:11:14:26 We both are sure that these findings, based upon a review of
00:11:17:12 all the industry and public input and applying the
00:11:20:10 institutional knowledge and the expertise of Commission
staff,
00:11:23:10 are accurate and sufficient to set forth the Commission fact
00:11:27:08 findings for adopting the proposed rules.
00:11:30:01 I personally support this approach to regulating
00:11:32:12 medication in horse racing.
00:11:34:10 And it's my own professional opinion that adoption of these
00:11:36:17 proposed rules is of critical importance to New York State
00:11:39:12 horse racing.
00:11:40:21 Adoption of these rules will position New York as a leader in

00:11:43:09 concert with our neighboring mid Atlantic states in
establishing
00:11:46:01 uniform medication rules for horse racing
00:11:47:21 throughout North America.
00:11:49:19 Because these rule-making proposals represent a
00:11:52:12 significant change regarding the regulation of certain
classes of
00:11:57:07 medication, it is important for the Commission to set a date
for
00:12:00:08 implementation that provides for ample opportunity for
licensees
00:12:03:21 to prepare for these rule changes and to make steps--take
00:12:06:22 steps to comply with them.
00:12:08:14 We will announce these changes and provide guidance to
horsemen
00:12:11:16 and veterinarians on the Commission website.
00:12:13:26 I'm working with Lee Park to create a broader communication
00:12:16:08 vehicle for trainers and veterinarians using both the
00:12:18:14 website and social media that will be ready
00:12:20:16 in the near future.
00:12:22:12 If you have any questions, I'd be happy to address them.
00:12:24:14 >> So, Dr. Palmer, what would be the effective date?
00:12:28:07 What's your recommendation?
00:12:29:15 >> We're recommending January 1.
00:12:31:12 There is one particular medication--
00:12:33:11 >> 2015?
00:12:35:07 >> Yes.
00:12:37:05 There is one medication, methylprednisolone, which, if a
00:12:39:00 trainer had given the medication to a horse today or
yesterday,
00:12:41:15 it could be as long as 50, 60 days
00:12:43:27 before the medication clears.
00:12:46:03 So if we have the rule right away, it's possible some people
00:12:48:19 could get caught up in the transition inappropriately and
00:12:51:09 we want to avoid that at all costs.
00:12:55:02 >> That's the Depo?
00:12:56:18 Depo?
00:12:58:09 >> That's the Depo.
00:13:00:18 >> Doctor, I dunno, this might be a question for you,
00:13:02:18 might be for Ed.
00:13:04:05 What happened--when I was reading this and I wasn't here
00:13:06:29 in 2013 or March of 2014, but you guys had essentially made a
00:13:12:28 recommendation and then revised that, right?
00:13:15:28 And I was reading--and it had to do with, it says, the
threshold
00:13:23:13 for unapproved drugs.
00:13:25:12 Can you tell me what happened there?
00:13:27:01 Just--
00:13:29:16 >> Well, we were trying to incorporate uniform national
00:13:31:08 medication policy and the initial proposal was made by the
00:13:34:20 Association of Racing Commissioners International in
00:13:37:15 conjunction with the Racing Medication Testing Consortium,
00:13:40:16 included eliminating a large quantity of medications with a
00:13:44:14 zero threshold tolerance.

00:13:46:23 And then they changed their minds.
00:13:48:05 We proposed it--the national organization changed their
00:13:50:29 approach and we were caught in the midst of the problem.
00:13:54:17 Well, how do we proceed then?
00:13:55:29 We had to really withdraw that first proposal and rewrite it
in
00:13:58:09 conjunction with the national rules so, as we go forward,
00:14:01:18 we're in concert with the national ruling proposal.
00:14:04:13 >> Why though?
00:14:05:19 I mean, I assume when it was proposed initially, everybody
00:14:08:11 was comfortable with that or you guys--
00:14:10:07 >> No, that's not true.
00:14:11:07 >> Okay.
00:14:12:16 >> There was controversy about that and it was--the
controversy
00:14:14:07 centers around the fact that there are a large number of
00:14:17:00 medications that are not addressed by these 24 rules,
00:14:19:09 these 24 thresholds.
00:14:21:07 And if we completely make them all illegal, that would
00:14:24:09 inappropriately restrict the medical care of horses who may
00:14:27:07 not even be racing at that time.
00:14:29:16 So it was a very complicated issue.
00:14:31:11 There was a lot of discord about it.
00:14:33:16 And the--as soon as the national rule was proposed at the
00:14:37:14 different racing jurisdictions, there was a tremendous
00:14:39:10 amount of pushback.
00:14:41:10 Then the ARCI came back and said, "Okay, fellas, let's leave
00:14:43:23 that alone for now.
00:14:45:07 And we're just gonna focus on regulating
00:14:47:04 this group of medications."
00:14:49:09 >> So if the national organizations hadn't reversed
00:14:51:16 their positions, then we would have stayed with the proposal,
00:14:55:09 the original proposal, 2013?
00:14:58:16 >> I don't think we could have gotten industry consensus on
00:15:00:28 that initial proposal, that was the problem nationwide.
00:15:06:01 >> I just think it--for New York maybe, that it's a good time
to
00:15:09:03 lead on those issues.
00:15:11:08 And I understand the ramifications and we have to be
00:15:13:08 sensitive to that but when I read that I just thought, you
00:15:17:06 know, New York--that might be one of those steps that the
00:15:19:19 public really wants to see.
00:15:22:03 And I understand there are concerns because if you
00:15:25:11 eliminate certain medications it might have a deleterious or
00:15:28:24 inappropriate effect for the horses.
00:15:31:10 I understand that.
00:15:32:29 But I thought that that seemed to be a step
00:15:34:18 in the right direction.
00:15:36:15 And then we kind of reversed course because, as I read it,
00:15:38:13 and I wasn't there for the discussion, but, well, everybody
00:15:41:18 else doesn't want to do that so we're not gonna do that.
00:15:44:00 >> I think that--
00:15:45:23 >> Maybe I'm simplifying.

00:15:47:15 >> No, I don't--I think that's some--pretty close, but I think
00:15:49:04 the more--the overriding concern is this.
00:15:51:20 That we race in an area, this part of the country, where a
00:15:53:19 trainer could have horses racing in five or six different
00:15:55:15 jurisdictions at any one time.
00:15:58:06 And the rules have been different, leading up to now.
00:16:02:02 And it's an extremely important thing to have a national
00:16:04:15 uniform medication policy.
00:16:06:19 The Jockey Club wants it, ARCI wants it, RMTC wants it,
00:16:09:08 AAEP wants it.
00:16:11:11 Everybody wants it and needs it badly.
00:16:13:18 If New York can lead by getting this national rule policy
00:16:16:18 done
00:16:16:18 and then adjusting it from there but to go off in a direction
00:16:20:05 that would be contrary to national uniform rule medication
00:16:25:01 would be very harmful to New York and for the whole
00:16:28:05 process going forward.
00:16:29:25 >> You mean harmful to racing?
00:16:31:12 >> It would be harmful to racing nationally, absolutely.
00:16:33:12 >> At the time, if I remember correctly, they did said, "If
00:16:36:04 we
00:16:36:04 do this national policy then we could implement on top of
00:16:38:28 that
00:16:38:28 whatever," 'cause there was a theory as to why you had any
00:16:42:06 drugs in grade 1 races and, you know, maybe 2-year-old races
00:16:45:22 and
00:16:45:22 it, right now, I don't want to speak for you, but I remember
00:16:49:01 it
00:16:49:01 as such, they were saying, "Yeah, well, if you had a
00:16:51:26 uniform drug code that was more than we had ever had before
00:16:55:28 and
00:16:55:28 that was across those states, and then you could adopt that."
00:16:58:05 I would love to go there too.
00:16:59:14 I think--
00:17:00:27 >> I'm just thinking but we might wait forever to get there,
00:17:02:29 though, you know?
00:17:04:21 >> Not if this gets approved, though.
00:17:06:07 >> Well, but we're not approving what we really
00:17:07:20 wanted to do, right?
00:17:09:24 >> Well, I think it's important to understand that we can get
00:17:11:14 these things done and, if you'll note, in these rules we
00:17:15:22 already
00:17:15:22 have recommended some additional issues.
00:17:18:23 For example, this issue of Depo-Medrol, methylprednisolone,
00:17:21:19 you notice that we've put in here an additional rule that is
00:17:25:25 not in the national rules.
00:17:27:11 It says that if you really want to use this medication
00:17:30:05 because
00:17:30:05 it's so difficult to regulate it, you have to go on the rest
00:17:32:13 list and you can't race until you test negative to get off
00:17:35:04 the rest list.
00:17:36:23 That's not in any other rule any part of the country.

00:17:38:15 This is just one example of how New York, we are leading the way
00:17:41:21 in trying to make sure that these national rules are really
00:17:44:29 well done and that we don't have issues in the state like
there
00:17:46:22 have been in some other states.
00:17:49:02 And so I think that there's--also I will share with
00:17:51:13 you that Rick and I--Rick Goodell and I are working on
00:17:54:06 some additional prescription medication rules that will be
00:17:57:16 superimposed on all this stuff.
00:17:59:28 It'll help entire regulation of all prescription medications
in
00:18:01:28 New York that will be a very good step forward but we didn't
00:18:05:22 have that ready in time to present it to you today.
00:18:08:16 But that's coming.
00:18:10:06 >> I know Rick is on the line.
00:18:11:20 Rick, did you want to add anything to this discussion?
00:18:15:00 >> No, I agree with what Dr. Palmer has said.
00:18:18:18 >> Okay.
00:18:20:18 Dr. Palmer, I know you spoke about the website and working
00:18:22:19 with Lee.
00:18:24:27 But getting the message out to veterinarians and others in
this
00:18:28:07 timeline, you're comfortable with our capacity?
00:18:32:01 >> I believe we can.
00:18:33:10 I believe we can get it done shortly.
00:18:34:29 We can certainly use the website immediately.
00:18:37:06 We can use the overnight sheets, we can use contacts with the
00:18:39:08 HBPA, the New York Thoroughbred Horsemen's Association, and
the
00:18:42:04 state and national veterinary associations.
00:18:44:01 So I think we can get the word out well.
00:18:45:26 But I think Lee and I are very sensitive to the fact that, as
00:18:47:24 time goes on, we would like a more immediate listserv-type
00:18:51:13 situation where you can actually directly contact all
licensed
00:18:54:28 veterinarians, all licensed trainers in New York, to advise
00:18:57:13 them of change to these rules.
00:18:59:14 We just don't have the database in place to do that just now.
00:19:03:04 >> Lee, anything else to add?
00:19:05:13 >> No, we're working on it.
00:19:06:17 We're moving towards it.
00:19:07:08 We don't have the exact ending, that is what'll happen
00:19:09:22 -- in place but it is something we're moving towards.
00:19:14:00 >> Any other questions or comments for Dr. Palmer
00:19:16:16 or Rick or anyone?
00:19:19:18 Well, given what we've heard from Dr. Palmer, could I have
00:19:23:05 a motion then to authorize the effective date of these rules,
00:19:27:12 January 1, 2015?
00:19:31:02 Motion?
00:19:33:05 >> Yes.
00:19:34:04 >> Great.
00:19:35:10 Second?
00:19:36:15 >> Yes.

00:19:38:04 >> Great.
00:19:39:15 So the following rules that are before you and I'll just read
00:19:41:01 them into the record regarding per se thoroughbred regulatory
00:19:42:25 thresholds for equine drugs, regarding the use of
00:19:46:01 corticosteroid, Methylprednisolone--
00:19:49:06 >> Methylprednisolone.
00:19:51:08 >> Acetate in thoroughbred racing, regarding a restricted
00:19:53:14 time period for systemic administrations of
00:19:55:11 corticosteroids to thoroughbred horses, and regarding
00:19:58:29 eliminating betamethasone meth--
00:20:02:05 >> Methylprednisolone.
00:20:04:10 >> Thank you.
00:20:05:23 And triamcinolone to only joint injections in thoroughbred
race
00:20:07:13 horses and regarding a restricted time period after IV
00:20:11:02 administrations of Flunixin to thoroughbred horses.
00:20:16:25 Motion's been made and seconded.
00:20:19:07 All in favor?
00:20:21:03 >> Aye.
00:20:22:14 >> Aye.
00:20:23:29 >> Opposed?
00:20:25:13 The motion carries.
00:20:28:18 Now, Rob, did you want to speak to--
00:20:32:06 >> Yeah, and, well, as we'd mentioned before, you also have
00:20:34:00 before you a memorandum relative to nine agency findings, as
fact
00:20:39:08 findings that are relative to this rule-making
00:20:43:05 that you just undertook.
00:20:45:14 As I mentioned, the fact findings would therefore
00:20:48:12 establish certain facts for all administrative hearings that
00:20:51:22 outflow relative to these 24 thresholds.
00:20:56:00 The reason why it's not in all the rules and just on some of
00:21:00:16 the rules is one of the rules had changed and therefore was
00:21:05:00 not subject to that hearing so therefore you couldn't make
00:21:07:25 findings of fact based upon the hearing relative to that rule
00:21:11:06 that changed.
00:21:13:16 But in front of you are nine agency findings regarding
00:21:16:26 the new rules.
00:21:19:06 >> Okay.
00:21:20:21 So we need a motion then to adopt the nine agency findings
00:21:22:26 of fact findings--as fact findings.
00:21:27:22 Could I have a motion?
00:21:33:04 Maybe John?
00:21:34:10 >> So moved.
00:21:35:23 >> Seconded?
00:21:36:17 >> Sure.
00:21:37:05 >> Thank you.
00:21:38:05 Any discussion on that motion?
00:21:39:11 All in favor?
00:21:40:19 >> Could I--I'm sorry.
00:21:41:18 >> Please.
00:21:42:16 >> I'm late.
00:21:43:12 >> Go ahead.
00:21:44:17 >> I was reading, like, is it Banamine?

00:21:47:26 Is that one of--
00:21:49:01 >> It's Banamine.
00:21:50:10 >> Yeah.
00:21:51:28 And then there's--I think there was some talk of there has
been
00:21:53:04 some confusion among the trainers and some of the others
00:21:56:22 about how it's administered and there's a different, I guess,
00:22:02:25 time period when it's done by way of joint or
00:22:06:00 intra-articularly, is that what you say?
00:22:08:29 >> Flunixin is given system--it's not given
00:22:10:22 in the joint.
00:22:12:01 >> It's not?
00:22:13:12 >> No, it's an oral--it's a systemic medication.
00:22:15:10 It comes in formulations which can be given as an oral paste,
00:22:17:09 for example, or it can be given intravenously.
00:22:19:21 And the confusion that happened in some respects was that
some
00:22:24:23 trainers didn't appreciate that the withdrawal times would be
00:22:27:14 different for an oral administration than for an
00:22:30:01 intravenous administration of the same drug concentration.
00:22:32:21 And that caused some problems and I think
00:22:34:09 we've addressed that.
00:22:35:14 >> Okay.
00:22:36:25 >> Is that the issue to which you're referring?
00:22:38:12 >> Yeah, that was the issue.
00:22:41:16 >> Any other discussion on the motions we've made and
seconded?
00:22:45:03 Great.
00:22:46:16 All those in favor?
00:22:48:02 >> Aye.
00:22:49:14 >> Aye.
00:22:51:04 >> Opposed?
00:22:53:03 The motion carries.
00:22:54:26 Now we also have the motion--we would invite a motion to
00:22:58:10 withdraw the previously proposed rule regarding a restricted
time
00:23:02:10 period for the administration of unspecified corticosteroids
to
00:23:07:06 thoroughbred horses that we've covered.
00:23:09:25 So this is the withdrawal.
00:23:11:14 Do I have a motion for that?
00:23:13:05 >> So moved.
00:23:14:11 >> Seconded?
00:23:15:24 >> Second.
00:23:17:09 >> Any discussion on the motion?
00:23:20:13 All in favor, say, "Aye."
00:23:22:10 >> Aye.
00:23:24:04 >> Aye.
00:23:26:02 >> Any opposed?
00:23:27:26 The motion carries.
00:23:29:09 Rob, can we turn to you now for the next proposed rule-
making?
00:23:31:21 >> Certainly.
00:23:33:23 As item 4(h) for Commission consideration is a draft

00:23:35:15 regulation refining the current rule that sets forth grounds for
00:23:38:08 the suspension and revocation of a lottery license.
00:23:40:15 Current regulations require a sales agent, as a condition of
00:23:44:10 licensing, to comply with the licensing agreement and any
00:23:48:00 rules, regulations, procedures, policies, and instructions
00:23:51:17 promulgated or issued by the Commission.
00:23:54:02 The lottery sales agent license agreement contains an
00:23:56:20 obligation, as a condition of licensing, that the agents
00:24:00:24 achieve a level of sales required by the lottery.
00:24:04:12 The proposed amendments would make explicit that failure to
00:24:07:09 meet such obligations is grounds for suspension or revocation
of
00:24:10:09 a sales agent license.
00:24:12:11 The amendments would add other grounds for suspension or
00:24:15:11 revocation including violation of the licensing agreement,
00:24:19:10 violation of the conditions of licensing, and non-cooperation
00:24:22:14 with or frustration of a Commission investigation.
00:24:26:07 To protect the licensed sales agent, the amendments would
also
00:24:29:19 require that the Commission to notify the sales agent of a
00:24:33:03 sales deficiency in writing and set forth a time which the
sales
00:24:37:03 agent could illustrate satisfactory improvement.
00:24:40:21 The amendment would also allow the sales agent to raise, as
an
00:24:43:23 affirmative defense to the suspension or revocation based
00:24:46:22 upon insufficient sales, that the agent's sales performance
is
00:24:51:03 reasonably excused by factors outside the control of the
agent
00:24:54:21 or that the agent has taken reasonable steps to mitigate.
00:24:58:10 Examples of some are extreme weather, natural disaster,
00:25:03:01 flood, earthquake, war, discharge of hazardous material,
00:25:06:26 blackout or power interruption, civil unrest
00:25:09:21 or other events and circumstances.
00:25:13:07 Other revisions to the proposed rules are to eliminate
00:25:16:25 duplication of statute, align the provisions for winding up
00:25:19:24 terminated sales agents' licenses with preferred
00:25:23:02 practice, and to make stylistic changes.
00:25:26:19 Today on the telephone, we have with us Gardner Gurney.
00:25:29:26 He is the director of the division of the lottery and he
00:25:31:26 can answer any questions along with Ed that you might have
00:25:35:11 relative to this proposal.
00:25:41:13 >> Any questions or conversation or--well, I'll entertain
00:25:46:22 a motion then.
00:25:49:07 >> I have one question then.
00:25:50:22 >> Please.
00:25:52:27 >> I think.
00:25:54:09 Does this come within our delegation of authority?
00:25:57:02 Is this something that we have delegated to the staff to make
00:26:00:14 these determinations?
00:26:03:10 >> This is actually the first step of that.
00:26:05:17 This is a rule-making to actually establish that we can

00:26:08:07 create these criteria.
00:26:09:24 As to the specific delegation, Ed?
00:26:12:19 >> Right, well, then the implementation, once you make
00:26:15:04 the rule, would devolve to staff according to your delegation
00:26:19:08 to implement it.
00:26:21:14 >> At any point would this come before us to make an
00:26:26:16 adjudication with respect to a license revocation?
00:26:29:28 >> Yes, it could, yeah.
00:26:32:06 >> In a manner similar to horse racing,
00:26:34:09 where an individual's, like--
00:26:36:00 >> That was my question.
00:26:37:25 >> Yes, yes.
00:26:39:23 >> So it would be the same process with respect to
00:26:41:20 violations in the horse racing area.
00:26:43:28 We would deal with that the same way and we would have before
us
00:26:47:00 appeals, say, of license revocations?
00:26:50:13 >> You could, yes.
00:26:52:04 >> Those rules are already established.
00:26:53:06 We don't need to--those rules--
00:26:55:08 >> Those rules are already established, yeah.
00:26:57:09 This is really to refine them to make explicit that if
someone
00:27:00:06 doesn't comply with their conditions of license--
00:27:02:01 >> They can lose their license.
00:27:03:16 >> They could--that's a grounds for revocation.
00:27:05:00 >> As opposed to just merely qualifying for the license?
00:27:06:03 >> Yes.
00:27:07:06 >> Right, now I got--
00:27:08:14 >> We haven't had any of those appeals as of yet?
00:27:09:17 >> We have not, no.
00:27:10:16 >> Nor during Commissions planning.
00:27:11:06 >> Thank you.
00:27:12:16 >> Sorry.
00:27:13:12 >> No, that's good.
00:27:15:17 Well, may I have a motion then to propose rule-making
00:27:18:18 regarding grounds for suspension
00:27:19:22 and revocation of--
00:27:21:10 >> So moved.
00:27:22:04 >> So moved?
00:27:22:21 Second?
00:27:23:22 >> Sure.
00:27:24:20 >> Great.
00:27:25:24 Any further discussion?
00:27:26:22 All in favor?
00:27:27:15 >> Aye.
00:27:28:11 >> Aye.
00:27:29:10 >> Opposed?
00:27:30:09 The motion carries.
00:27:31:19 Okay, we next turn on our agenda to adjudications and the
00:27:35:22 Commission has four hearing officer reports
00:27:39:13 for consideration today.
00:27:41:26 And I'd ask Rob to outline the first case.
00:27:44:24 >> In the matter of Aaron Byron.

00:27:48:10 On March 21, 2014, the presiding judge at Buffalo Raceway issued
00:27:52:13 an 8-day suspension of driver Aaron Byron for interfering with
00:27:56:07 another horse in the third race in violation
00:27:58:27 of commission rule 4117.4L.
00:28:03:27 Following Mr. Byron's appeal, a hearing was conducted on
August
00:28:07:01 8, 2014, at which Mr. Byron failed to appear.
00:28:11:16 The hearing officer's report and recommendation were delivered to
00:28:14:08 the Commission secretary on October 30.
00:28:16:16 The hearing officer recommended that the Commission sustain
00:28:19:09 the license suspension.
00:28:23:05 At a meeting conducted pursuant to the judicial or
00:28:26:16 quasi-judicial proceeding exemption of the New York Public
00:28:29:17 Officers Law section 108.1, the Commission
00:28:33:10 considered this matter.
00:28:35:18 >> And the Commission duly deliberated and considered this
00:28:38:11 matter and determined with a unanimous vote to sustain the
00:28:41:24 hearing officer's report and recommendations.
00:28:46:24 The matter of William Creech?
00:28:49:08 >> On May 15, 2014, the Bureau of Licensing declined to issue
a
00:28:53:05 thoroughbred stable employee license to William H.
00:28:55:20 Creech on the basis that his, quote, "experience, character,
00:28:59:24 and general fitness are such that his participation in
00:29:02:28 racing-related activities would be inconsistent with the
public
00:29:06:17 interest, convenience, or necessity or with the best
00:29:09:20 interests of racing generally."
00:29:11:25 End quote.
00:29:13:23 Following Mr. Creech's appeal, a hearing was conducted on
July 1.
00:29:17:15 The hearing officer's report and recommendation were delivered to
00:29:20:08 the Commission secretary on October 7, 2014.
00:29:23:19 The hearing officer recommended that the Commission
00:29:25:26 sustain the license denial.
00:29:28:29 At a meeting conducted pursuant to the judicial or
00:29:31:12 quasi-judicial proceedings exemption of the New York Public
00:29:34:13 Officers Law section 108.1, the Commission
00:29:37:16 considered this matter.
00:29:39:15 >> And the Commission duly deliberated and considered the
00:29:41:09 matter and with a unanimous vote sustained the hearing
officer's
00:29:45:15 report and recommendations.
00:29:49:02 Next matter--
00:29:50:07 >> In the matter of Barry Held, on August 15, 2014, the
Bureau
00:29:54:21 of Licensing declined to issue a standard bred horse owner's
00:29:58:03 license to Barry Held on the basis that his "experience,
00:30:01:28 character, and general fitness are such that his
participation

00:30:05:17 in racing or related activities in the State of New York was
00:30:09:11 inconsistent with the public interest, convenience, or
00:30:11:24 necessity or with the best interests of racing generally."
00:30:15:29 Following Mr. Held's appeal, a hearing was conducted
00:30:18:18 on October 3, 2014.
00:30:21:06 The hearing officer's report and recommendation were
delivered to
00:30:24:12 the Commission secretary on October 5.
00:30:27:20 The hearing officer recommended that the Commission
00:30:29:16 sustain the license denial.
00:30:31:16 At a meeting conducted pursuant to the judicial or
00:30:33:18 quasi-judicial proceedings exemption of the New York Public
00:30:36:06 Officers Law section 108.1, the Commission
00:30:39:24 considered this matter.
00:30:42:03 >> And the Commission duly deliberated, considered the
00:30:44:08 matter, and determined on a unanimous vote to sustain the
00:30:47:08 hearing officer's report and recommendations.
00:30:50:29 The matter of Jack Rice?
00:30:53:07 >> Final matter, in the matter of Jack D. Rice.
00:30:56:23 On April 18, 2014, the presiding judge at Buffalo Raceway
fined
00:31:00:25 driver Jack Rice for delaying the start of the tenth race
00:31:04:08 in violation of Commission rule 4115.2A.
00:31:10:15 Following Mr. Rice's appeal, a hearing was conducted on
00:31:13:03 September 25, 2014.
00:31:15:26 The hearing officer's report and recommendation were
delivered
00:31:18:06 to the Commission secretary on November 3, 2014.
00:31:22:15 The hearing officer recommended that the violation be upheld
00:31:25:05 but a fine of \$50 be imposed.
00:31:28:20 >> The Commission duly deliberated and considered this
00:31:30:09 matter and determined upon a unanimous vote to sustain the
00:31:32:26 hearing officer's report and recommendations.
00:31:36:24 So that concludes our adjudications section
00:31:41:01 of our agenda.
00:31:42:22 The next item is new and old business.
00:31:46:07 Do any of the commissioners have any matters to consider
here?
00:31:52:16 Anything to bring before the committee?
00:31:55:15 Any old business?
00:31:56:26 No, I guess, we'll next then turn to our scheduling
00:31:59:22 of the next meeting.
00:32:00:29 The date of our next scheduled meeting is December 22.
00:32:05:17 And please advise Ms Buckley of your availability.
00:32:10:14 So with that, that concludes today's published agenda.
00:32:13:26 Do any commissioners have any items that they'd like to
00:32:16:24 present for consideration?
00:32:19:26 Anything else before we--hearing none, this meeting of the
New
00:32:22:13 York State Gaming Commission is adjourned.
00:32:25:11 >> Thank you, Rob.
00:32:26:18 >> Thank you.
00:32:40:20