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

00:00:00
This is a very--
00:00:10:11 >> Okay, New York--call to order here.
00:00:13:09 New York State 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.
00:00:25:25 Six members having been confirmed by the New York State Senate, affords the Commission an ability to establish quorum and undertake action.
00:00:32:11 This present meeting of the Commission is now called to order.
00:00:38:04 >> John Crotty?
00:00:42:04 >> 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 >> Miss Secretary, please have the record reflect that a quorum of qualified members are present, thus enabling transaction of business.
00:01:10:00 Chairman Gearan?
00:01:12:00 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 September 30 meeting.
00:01:21:05 Minutes of the Commission meetings conducted on that date, 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 edits or corrections or amendments.
00:01:36:22 Madam Secretary, please let the record reflect then that the 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.
Given the length of the rule-making portion of today's meeting, I'm gonna try to be very brief here. The Gaming Facility Location Board has met on three occasions to discuss financial and employment histories of those applicants responsive to the request for application to develop and operate a gaming facility in New York State. Their most recent meeting occurred this past Friday when they met at Hofstra University. While information relative to the Board's review and deliberation has been scarce, it is my understanding that they have tentatively scheduled December 17 in Albany for their final meeting. The other item that I'd like to talk to you about is the Zweig Fund. The Harry M. Zweig Memorial Fund for Equine Research recently conducted its annual meeting at Cornell University's Ruffian Equine Specialist Center which is across the street from Belmont Park. The Zweig Fund, which receives its funding indirectly from the thoroughbred breeding and development funds, is statutorily charged to promote equine research at Cornell University's College of Veterinary Medicine. The Fund annually solicits and reviews research grant proposals. This year, the fund received 18 proposals requesting over $1.8 million in funding. The committee ultimately chose to award or to fund 8 grants in the cumulative total of $619,000. The fund's work is very important as it provides for the study of critical issues relative to equine health and issues of significance for the racehorse industry. This year's proposal allows study of diseases such as strangles and equine herpesvirus-1, equine osteoarthritis, and enhanced breakdown screening for multi-modal imaging and serum biomarkers. This past meeting was also significant as it marked the final service of Dr. Zweig's widow, Anna. Mrs. Zweig, who is also a Cornell alumnus, has been a member of the committee since it was founded in 1979. She determined to relinquish her seat and not seek reappointment. The Zweig family, however, remains represented on the committee through the service of their son, Brian.
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
00:05:43:09 be 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?
The motion carries. The next items, Rob?

Items 4(b) through 4(g) all regard thoroughbred racing. In November 2013, the Commission proposed a variety of rules designed to protect the integrity of the pari-mutuel wagering system and the health and safety of thoroughbred horses engaged therein. Specifically—hold on just a second, if you would. Thank you, Rodney.

Specifically, the Commission considered amending its existing rules to create regulatory thresholds for 24 drugs that had widely accepted beneficial effects and can be effectively regulated by means of laboratory thresholds. The adoption of these same thresholds is occurring at other racing commissions throughout the nation. Other proposed amendments related to commissions' rules restricting the time period after various drug treatments before a horse may participate in a race and rules relative to specific drug utilization. These proposals are necessary to harmonize rules that forewarn a trainer when to stop using each particular drug with the new thresholds. The proposed rules were the subject of a public hearing conducted January 21, 2014. Information received at that hearing resulted in reconsideration of certain rules relative to standard bred racing. Those rules remain in the process of review and are not yet ready or ripe for Commission consideration. Thoroughbred rule modifications, however, were considered and re-proposed with a few revisions at the Commission meeting conducted on March 12. Overall, it is important to note that the centerpiece of the thoroughbred rules, the 24 threshold, has not changed since the initial proposal in November of 2013. Commission staff saw industry and general public input on the proposed rules no less than four times: pre-proposal, initial proposal, the public hearing, and the revised proposal. Substantive comments from two organizations were received regarding the thoroughbred rule proposals. Both were generally supportive of the drug-testing changes. As a result of the hearing, the Commission may make fact findings in regard to rule-making proposals. Staff strongly recommends this approach, given the rules—these rules present the first major new regulatory approach in New York equine drug testing since the Racing and Wagering Board adopted restricted time periods in 1982. And they're thus likely to be challenged much as the
restricted time periods were challenged back in 1982.

Findings of fact provide the best opportunity to ensure that there is a clear and concise record of the agency actions regarding the scientific consultant's analysis and considerations in establishing these rules.

If made, fact findings will constitute resolved facts for all relative adjudicatory proceedings before the Commission.

Staff has prepared for consideration a memorandum identifying nine agency findings for four rule proposals. Overall, staff recommends the adoption of each of these five rule-makings and nine findings of fact.

Staff also recommends one proposed rule regarding restricted time period for administration of unspecified corticosteroids in thoroughbred horses be withdrawn as moot, given the rule proposals that are before you now.

Today, we have with us State Equine Medical Director, Scott Palmer.

Dr. Palmer would like to briefly address the science that underlies the proposals.

Additionally, on the telephone, we have the Director of Racing, Ron Ochrym, and Assistant Counsel, Rick Goodell.

Collectively, they should be able to answer any questions that you might have relative to the rules before you.

Dr. Palmer?

>> Thank you, Rob.

I participated in the rule-making public hearing on January 21 and I have reviewed all the written submissions and public documents in order to prepare the agency-specific findings with regard to these key issues, whether adopting thresholds is consistent with the agency's regulatory approach, whether these thresholds are consistent with our other rules that are already in place, and whether we have proposed appropriate adjustments to our restricted time periods.

Dr. George Maylin, who is the long-time director of the New York State Laboratory for drug testing and research, has also reviewed these issues and the draft findings.

We both are sure that these findings, based upon a review of all the industry and public input and applying the institutional knowledge and the expertise of Commission staff, are accurate and sufficient to set forth the Commission fact findings for adopting the proposed rules.

I personally support this approach to regulating medication in horse racing.

And it's my own professional opinion that adoption of these proposed rules is of critical importance to New York State horse racing.

Adoption of these rules will position New York as a leader in
concert with our neighboring mid Atlantic states in establishing uniform medication rules for horse racing throughout North America. Because these rule-making proposals represent a significant change regarding the regulation of certain classes of medication, it is important for the Commission to set a date for implementation that provides for ample opportunity for licensees to prepare for these rule changes and to make steps to comply with them. We will announce these changes and provide guidance to horsemen and veterinarians on the Commission website. I'm working with Lee Park to create a broader communication vehicle for trainers and veterinarians using both the website and social media that will be ready in the near future. If you have any questions, I'd be happy to address them. So, Dr. Palmer, what would be the effective date? We're recommending January 1. There is one particular medication—2015? Yes. There is one medication, methylprednisolone, which, if a trainer had given the medication to a horse today or yesterday, it could be as long as 50, 60 days before the medication clears. So if we have the rule right away, it's possible some people could get caught up in the transition inappropriately and we want to avoid that at all costs. That's the Depo? That's the Depo. Doctor, I dunno, this might be a question for you, might be for Ed. What happened—when I was reading this and I wasn't here in 2013 or March of 2014, but you guys had essentially made a recommendation and then revised that, right? And I was reading—and it had to do with, it says, the threshold for unapproved drugs. Can you tell me what happened there? Just-- Well, we were trying to incorporate uniform national medication policy and the initial proposal was made by the Association of Racing Commissioners International in conjunction with the Racing Medication Testing Consortium, included eliminating a large quantity of medications with a zero threshold tolerance.
And then they changed their minds. We proposed it—the national organization changed their approach and we were caught in the midst of the problem. Well, how do we proceed then? We had to really withdraw that first proposal and rewrite it in conjunction with the national rules so, as we go forward, we're in concert with the national ruling proposal.
No, I don't--I think that's some--pretty close, but I think the more--the overriding concern is this. That we race in an area, this part of the country, where a trainer could have horses racing in five or six different jurisdictions at any one time. And the rules have been different, leading up to now. And it's an extremely important thing to have a national uniform medication policy. The Jockey Club wants it, ARCI wants it, RMTC wants it, AAEP wants it. Everybody wants it and needs it badly. If New York can lead by getting this national rule policy done and then adjusting it from there but to go off in a direction that would be contrary to national uniform rule medication policy would be very harmful to New York and for the whole process going forward. You mean harmful to racing? It would be harmful to racing nationally, absolutely. At the time, if I remember correctly, they did say, "If we do this national policy then we could implement on top of that whatever," 'cause there was a theory as to why you had any drugs in grade 1 races and, you know, maybe 2-year-old races and it, right now, I don't want to speak for you, but I remember it as such, they were saying, "Yeah, well, if you had a uniform drug code that was more than we had ever had before and that was across those states, and then you could adopt that." I would love to go there too. I think--I'm just thinking but we might wait forever to get there, though, you know? Not if this gets approved, though. Well, but we're not approving what we really wanted to do, right? Well, I think it's important to understand that we can get these things done and, if you'll note, in these rules we already have recommended some additional issues. For example, this issue of Depo-Medrol, methylprednisolone, you notice that we've put in here an additional rule that is not in the national rules. It says that if you really want to use this medication because it's so difficult to regulate it, you have to go on the rest list and you can't race until you test negative to get off the rest list. That's not in any other rule any part of the country.
This is just one example of how New York, we are leading the way in trying to make sure that these national rules are really well done and that we don't have issues in the state like there have been in some other states. And so I think that there's--also I will share with you that Rick and I--Rick Goodell and I are working on some additional prescription medication rules that will be superimposed on all this stuff. It'll help entire regulation of all prescription medications in New York that will be a very good step forward but we didn't have that ready in time to present it to you today. But that's coming. I know Rick is on the line. Rick, did you want to add anything to this discussion?

No, I agree with what Dr. Palmer has said.

Okay.

Dr. Palmer, I know you spoke about the website and working with Lee. But getting the message out to veterinarians and others in this timeline, you're comfortable with our capacity?

I believe we can. I believe we can get it done shortly. We can certainly use the website immediately. We can use the overnight sheets, we can use contacts with the HBPA, the New York Thoroughbred Horsemen's Association, and the state and national veterinary associations. So I think we can get the word out well. But I think Lee and I are very sensitive to the fact that, as time goes on, we would like a more immediate listserv-type situation where you can actually directly contact all licensed veterinarians, all licensed trainers in New York, to advise them of change to these rules. We just don't have the database in place to do that just now. Lee, anything else to add?

No, we're working on it.

We're moving towards it. We don't have the exact ending, that is what'll happen in place but it is something we're moving towards. Any other questions or comments for Dr. Palmer or Rick or anyone?

Well, given what we've heard from Dr. Palmer, could I have a motion then to authorize the effective date of these rules, January 1, 2015?

Motion?

Yes.

Great.

Second?
Great.

So the following rules that are before you and I'll just read them into the record regarding per se thoroughbred regulatory thresholds for equine drugs, regarding the use of corticosteroid, Methodisolone--

Methylprednisolone.

Acetate in thoroughbred racing, regarding a restricted time period for systemic administrations of corticosteroids to thoroughbred horses, and regarding eliminating betamethasone meth--

Methylprednisolone.

Thank you.

And triamcinolone to only joint injections in thoroughbred race horses and regarding a restricted time period after IV administrations of Flunixin to thoroughbred horses.

Motion's been made and seconded.

All in favor?

Aye.

Aye.

Opposed?

The motion carries.

Now, Rob, did you want to speak to--

Yeah, and, well, as we'd mentioned before, you also have before you a memorandum relative to nine agency findings, as fact findings that are relative to this rule-making that you just undertook.

As I mentioned, the fact findings would therefore establish certain facts for all administrative hearings that outflow relative to these 24 thresholds.

The reason why it's not in all the rules and just on some of the rules is one of the rules had changed and therefore was not subject to that hearing so therefore you couldn't make findings of fact based upon the hearing relative to that rule that changed.

But in front of you are nine agency findings regarding the new rules.

Okay.

So we need a motion then to adopt the nine agency findings of fact findings--as fact findings.

Could I have a motion?

Maybe John?

So moved.

Seconded?

Sure.

Thank you.

Any discussion on that motion?

All in favor?

Could I--I'm sorry.

Please.

I'm late.

Go ahead.

I was reading, like, is it Banamine?
Is that one of --
It's Banamine.
Yeah.
And then there's -- I think there was some talk of there has been some confusion among the trainers and some of the others about how it's administered and there's a different, I guess, time period when it's done by way of joint or intra-articularly, is that what you say?
Flunixin is given systemically -- it's not given in the joint.
It's not?
No, it's an oral -- it's a systemic medication.
It comes in formulations which can be given as an oral paste, for example, or it can be given intravenously.
And the confusion that happened in some respects was that some trainers didn't appreciate that the withdrawal times would be different for an oral administration than for an intravenous administration of the same drug concentration. And that caused some problems and I think we've addressed that.
Okay.
Is that the issue to which you're referring?
Yeah, that was the issue.
Any other discussion on the motions we've made and seconded?
Great.
All those in favor?
Aye.
Aye.
Opposed?
The motion carries.
Now we also have the motion -- we would invite a motion to withdraw the previously proposed rule regarding a restricted time period for the administration of unspecified corticosteroids to thoroughbred horses that we've covered.
So this is the withdrawal.
Do I have a motion for that?
So moved.
Seconded?
Second.
Any discussion on the motion?
All in favor, say, "Aye."
Aye.
Aye.
Any opposed?
The motion carries.
Rob, can we turn to you now for the next proposed rule-making?
Certainly.
As item 4(h) for Commission consideration is a draft
regulation refining the current rule that sets forth grounds for the suspension and revocation of a lottery license. Current regulations require a sales agent, as a condition of licensing, to comply with the licensing agreement and any rules, regulations, procedures, policies, and instructions promulgated or issued by the Commission. The lottery sales agent license agreement contains an obligation, as a condition of licensing, that the agents achieve a level of sales required by the lottery. The proposed amendments would make explicit that failure to meet such obligations is grounds for suspension or revocation of a sales agent license. The amendments would add other grounds for suspension or revocation including violation of the licensing agreement, violation of the conditions of licensing, and non-cooperation with or frustration of a Commission investigation. To protect the licensed sales agent, the amendments would also require that the Commission to notify the sales agent of a sales deficiency in writing and set forth a time which the agent could illustrate satisfactory improvement. The amendment would also allow the sales agent to raise, as an affirmative defense to the suspension or revocation based upon insufficient sales, that the agent's sales performance is reasonably excused by factors outside the control of the agent or that the agent has taken reasonable steps to mitigate. Examples of some are extreme weather, natural disaster, flood, earthquake, war, discharge of hazardous material, blackout or power interruption, civil unrest or other events and circumstances. Other revisions to the proposed rules are to eliminate duplication of statute, align the provisions for winding up terminated sales agents' licenses with preferred practice, and to make stylistic changes. Today on the telephone, we have with us Gardner Gurney. He is the director of the division of the lottery and he can answer any questions along with Ed that you might have relative to this proposal. Any questions or conversation or--well, I'll entertain a motion then. I have one question then. Please. I think. Does this come within our delegation of authority? Is this something that we have delegated to the staff to make these determinations? This is actually the first step of that. This is a rule-making to actually establish that we can
create these criteria.
As to the specific delegation, Ed?
Right, well, then the implementation, once you make the rule, would devolve to staff according to your delegation to implement it.
At any point would this come before us to make an adjudication with respect to a license revocation?
Yes, it could, yeah.
In a manner similar to horse racing,
where an individual's, like--
That was my question.
Yes, yes.
So it would be the same process with respect to violations in the horse racing area.
We would deal with that the same way and we would have before us appeals, say, of license revocations?
You could, yes.
Those rules are already established.
We don't need to--those rules--
Those rules are already established, yeah.
This is really to refine them to make explicit that if someone doesn't comply with their conditions of license--
They can lose their license.
They could--that's a grounds for revocation.
As opposed to just merely qualifying for the license?
Yes.
Right, now I got--
We haven't had any of those appeals as of yet?
We have not, no.
Nor during Commissions planning.
Thank you.
Sorry.
No, that's good.
Well, may I have a motion then to propose rule-making regarding grounds for suspension and revocation of--
So moved.
So moved?
Second?
Sure.
Great.
Any further discussion?
All in favor?
Aye.
Aye.
Opposed?
The motion carries.
Okay, we next turn on our agenda to adjudications and the Commission has four hearing officer reports for consideration today.
And I'd ask Rob to outline the first case.
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 of commission rule 417.4L.
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. Creech on the basis that his, quote, "experience, character, and general fitness are such that his participation in racing-related activities would be inconsistent with the public interest, convenience, or necessity or with the best 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 sustain the license denial.
00:29:28:29 At a meeting conducted pursuant to the judicial or
00:29:31:12 quasi-judicial proceeding 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 license to Barry Held on the basis that his "experience, character, and general fitness are such that his participation in racing-related activities would be inconsistent with the public interest, convenience, or necessity or with the best interests of racing generally."
00:29:58:03 End quote.
Following Mr. Held's appeal, a hearing was conducted on October 3, 2014. The hearing officer's report and recommendation were delivered to the Commission secretary on October 5. The hearing officer recommended that the Commission sustain the license denial. At a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of the New York Public Officers Law section 108.1, the Commission considered this matter.

Following Mr. Held's appeal, a hearing was conducted on October 3, 2014. The hearing officer's report and recommendation were delivered to the Commission secretary on October 5.

The hearing officer recommended that the Commission sustain the license denial.

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