

Rob Williams: 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. Five members having been confirmed by the New York State Senate affords the commission an ability to establish a quorum and undertake action. The present meeting of the commission is not called to order. Ms. Secretary, will you please call the roll?

Ms. Secretary: John Crotty.

John Crotty: Here.

Ms. Secretary: Peter Moschetti. John Poklemba.

Peter Moschetti: Here.

Ms. Secretary: Barry Sample.

Barry Sample: Here.

Ms. Secretary: Todd Snyder.

Male: Mr. Moschetti had indicated that he was unavailable to attend today's meeting. Ms. Secretary, will you please have the record reflect that a quorum of qualified members are present thus enabling transaction of business. Give the absence of a designated chair, would the members like to select a member for thee purpose of presiding over this meeting.

Male: I nominate John Crotty.

Male: Second.

Male: Mr. Chairman. Mr. Presiding officers.

John Crotty: Thank you all once again. The first item of business is consideration of minutes for the last meeting we had on December 21, 2015. Those minutes have been provided to the members in advance. At this time are there any edits, corrections, or amendments?

Male: No.

Male: None.

John Crotty: Being none, the minutes were accepted. Now we will return to a report from our Executive Director Mr. Rob Williams.

Rob Williams: Thank you. I've just got a couple of items relative the Jockey Injury Compensation Fund, The World's Ark, Powerball, and wagers. At the December meeting the commission approved emergency and proposed rules to govern a default situation wherein the Jockey Injury Compensation Fund failed to timely submit an acceptable assessment and plan of operations governing premiums for the forthcoming year. The rule making was necessary as the governing

statute contemplates that, with the failure of the JICF to submit an adequate plan, the commission shall adopt and promulgate such reasonable rules, as are necessary or advisable, to effectuate the law. If you recollect the morning of our December meeting the JICF filed a proposal for 2016. While that plan was unacceptable, I am pleased to report that, following extensive discussion between the JICF, commission's legal and racing staff, an acceptable plan was approved.

By law the submission of the JICF of an acceptable superseding plan, obviates the necessity for the emergency rule-making plan to take effect. While the emergency rule making is not longer necessary and will be allowed to expire, it is necessary to continue with the proposed rule making to appropriately create a standing default provision to utilize should the JICF again fail to submit an acceptable plan of operation and assessment. I think it's important to note that the premium of the accepted plan was consistent with that proposed by the commission. The variance in costs reported in the news was solely due to differing mechanisms for the collection of individual costs.

As many of you have read, Nassau Regional Off-Track Betting Corporation announced its intention to construct a temporary video-lottery gaming facility in Belmont Park while they pursued legislation that would authorize their establishment to the permanent facility within the grandstand. Nassau seeks to use authority that is in the NYRA state settlement bankruptcy agreement. Any utilization for the Belmont property for video-lottery gaming purposes involves an interplay between several statutes and various regulator agencies. The commission has received only one communication from Nassau regarding the proposal, which was a statement of intention. The present status of the proposal is unknown, as there has been significant local opposition. The staff will continue to monitor the situation.

As with a prior proposal by Nassau to cite a video-lottery gaming facility in Westbury and with Suffolk Regional Off-Track Betting Corporation's proposal to cite a facility in Medford. The commission does not have permitting or site selection approval authority. Many news outlets have disseminated incorrect information relative to the commission's role. I understand that the commission is prohibited by law in playing games that we conduct or regulate, but you might have notice this January 13th Powerball jackpot was landmarked. It rose to \$1.584 billion. While jackpot winners were from California, Florida, and Tennessee, the January 13th drawing produced five \$1 million wins in New York along with two \$100,000 wins in 79 \$50,000 wins. In total over \$18.8 million was won right here in New York.

When looking at the entire period between jackpot wins, New York Lottery posted a total Powerball sales of \$259 million and earned over \$90 million for aid to education. State lottery retailers also earned over \$15.5 million in commissions during that time.

John Crotty: Just to clarify, the million dollars is the five numbers with no Powerball.

Rob Williams: Yeah. It's without the Powerball. Full match without Powerball.

John Crotty: Oh, that's tough.

Rob Williams: It's still a million dollars, on a \$2 wager.

John Crotty: You were this close.

Rob Williams: Finally following consultation with several commissioners, staff will be stepping our examination of Lasix practice in the United States. I've previously discussed information regarding various efforts at racetracks from jurisdictions and allowing Lasix-free racing. We will be looking to formalize our research approach and to try to determine the approaches taken by both racetracks and regulatory authorities. The ethical considerations of such actions, and the effectiveness of past efforts and the direction any of these are considering for this upcoming year.

John Crotty: Just on a purely point, they're probably listed on the Powerball website, right, how many people had five numbers.

Rob Williams: Overall?

John Crotty: Yeah.

Rob Williams: Yeah, it is on the Powerball.

John Crotty:: I'll check it out.

Rob Williams: I'll email you the number.

John Crotty: Yeah, yeah, yeah. Thank you. Getting close. Thank you very much for that Rob. We will move now to rule making. New York State Racing Pari-Mutuel Wagering and Breeding Law authorizes the commission to promulgate rules and regulations that it deems necessary to carry out its responsibilities. To that regard, the commission will, from time to time, promulgate rules, and rule amendments pursuant to the state administrative procedure act. We have four items for consideration today. Rob, will you please outline the first item.

Rob Williams: Certainly. As item 4A commission consideration for reproposal of rules regarding thoroughbred restricted time periods for various drugs. The rule proposal of concern was published in the New York State Register on September 30, 2015, meaning that the public comment period expired on November 16th. The commissions existing rules do permit the topical use of DMSO on race day. The commission had proposed to replace this restriction with a new restricted time period limiting topical use administration to 48 hours while reducing the restricted time period for other administrations from one week to 48 hours. Two public comments were received, one from the New York Thoroughbred Horsemen's Association, and one from the Racing Medication and Test Consortium.

The RMTC suggested that commission staff examine additional unpublished research concerning topical race-day use of DMSO. While restricting oral and intravenous DMSO, administrations to 48 hours before racing, staff found the additional research indicated that topical race-day DMSO administration is appropriate veterinary care that would not result in threshold violations. NYTHA requested that the commission continued to permit the topical use of DMSO on race day indicating that such an approach would be consistent with many other states such as California, Florida, Kentucky, and Pennsylvania. We did confirm that.

Staff also consulted with the State Equine Medical Director, Scott Palmer, and New York Drug Testing and Research Laboratory Director, George Maylin, each of whom opined that race-day use of DMSO does not impose a threat to the integrity or the safety and health of race horses, and they

supported the topical race-day use of DMSO. Given the comments received staff recommends reproposal of these rules with that allowance included. A reproposal will trigger a new rule-making, publication, and comment period.

John Crotty: Commissioners, any questions on the reproposal of the thoroughbred restricted time periods for various drug rules?

Male: Yes, Mr. Chairman. I would just ask Dr. Palmer to give us some more information about DMSO for us uneducated commissioners.

Dr. Palmer: DMSO (dimethyl sulfoxide) is an oxide. It's a compound that is applied topically to the skin. It is most notably used to go through the skin [transdermally]. It's able to transfer through the skin. It's able to transfer through skin unlike other things. It's antiinflammatory compound by itself, but it's frequently combined with other medications. Rule making would make a distinction between straight DMSO or mixed with other medications that carry those mixed agents with it to be available to the body.

Male: We do that in that proposal work.

Dr. Palmer: Yeah. We will keep consistent with allowing race-day utilization of DMSO, topical.

Male: Topical.

John Crotty: Thank you.

Male: Actually, I have one. This can be administered, I guess, by injection?

Dr. Palmer: Yes, the alternative means of administration are either orally or intravenous injection, and that's the 48-hour timeframe, time period that is recommended that, but the topical application of the drug be allowed on race day. The principal reason for a difference, there's very little on determining threshold endpoint and the amount of drug you get into the body is very limited when you use the topical application.

John Crotty: Okay. Alright. Well, may I have a motion to adopt this rule proposal.

Male: So moved.

Male: Second.

John Crotty: All in favor?

Male: Aye.

Male: Aye.

John Crotty: Aye.

John Crotty: Any opposed? The motion carries. Rob, please, call the next item.

Rob Williams: Yes, for commission's consideration is adoption of proposed revisions to the horse-racing rule in relation to the cost and frequency of post-race testing of claimed to determine whether a permissible drug or other substance was administered to the horse. A positive test result, of course, gives the claimant the option to void the claim. Adoption of this rule would discontinue the commissions universal post-race sampling of Clayton horses, and replace it with a program of sampling at the expense of the claimant, when the claimant request this service on the claim form. The purpose is the eliminate the burdensome state expense of testing every claimed horse. Many claimants do not elect to avoid a claim, even it the sample tests positive.

New York is the only major racing commission to provide unrequested free sampling of every claimed horse. Last year there were a total of five post-race positive that resulted in claimed horse. With four of the five positives, the claiming trainer did not void the claim. Under the rule proposal, the stewards and judges would retain their discretion to order the post-race sampling of any horse at the expense of the commission. Positive tests for these samples would continue to provide a claimant with the option to void a claim. As mentioned when the commission considered this rule proposal, any cost savings relative to drug testing will be driven back into equine testing and research. We anticipate this amount will be approximately \$270,00.

The rule proposal was published in the New York State Register on November 18, 2015, meaning that the public comment period expired on January 4th. Once comment was received from the New York Thoroughbred Horsemen's Association. NYTHA raised overall concern that the elimination of testing that they suggest has a deterrent value, but were supportive of the provisions that continue the stewards discretion, allows a horseman to voluntarily request a test, and enables a voidable claim of a drug positive. NYTHA further suggested that the commission should consider whether a positive test from an elected drug test paid for by a claimant may be used for disciplinary proceeding because the testing is conducted for the benefit of the claimant, rather than to serve a regulatory purpose.

The staff suggests a rejection of this concept as any positive drug test has traditionally been central to the commission's mission of ensuring the integrity of horseracing competition and wagering. The staff does, however, anticipate that a positive drug screen test would trigger a fuller forensic testing at the commission's expense. Staff recommends adoption of this rule amendment.

John Crotty: Commissioner, do we have any questions on the post-race testing.

Male: I don't recall. I know it came up before, but the savings of about \$250, 000, \$270,000, you're allowed to reprogram that?

Rob Williams: Two-hundred and seventy-thousand, right because it's part of the drug testing program right now.

Male: Okay.

Male: So we will repurpose that for research.

Male: Okay, that's not taken as DOB as the savings.

Rob Williams: Correct.

Male: Hmm? Now I know.

John Crotty: Anything else on this matter. May I have a motion to adopt this rule proposal?

Male: So moved.

Male: Second.

John Crotty: All in favor.

Male: Aye.

Male: Aye.

Male: Aye.

John Crotty: Aye. Any opposed? Motion carries. Rob, would you be kind enough to call the next item.

Rob Williams: Commission consider is item 4C is adoption of a proposal that would require specific minimum penalties for multiple medication violations. The proposal was designed to ensure that every state proposed a mandatory minimum penalty whenever a horse person, typically the trainer, reaches a certain level of multiple equine-drug violations. At the heart of the proposal is the assignment of the specific number of points for each type of drug violation, along with a minimum mandatory license suspension based on the accumulation of such points within a specified timeframe.

The proposal is similar in concept to a suspension by the Department of Motor Vehicles of a driver's license, [in that] when a motorist accumulates a total of 11 points in moving violations within 18 months, points would remain on the person's license history for a period of time determined by the seriousness of the drug [violation]. Based upon how many points have accumulated a licensee would be subjected to the minimum mandatory penalty enhancement of 30, 60, 180, or 365 days. this rule making is recommended nationally by the Association of Racing Commissioners International.

The concept has been supported widely by other nongovernmental entities including the New York Racing Association, the Jockey Club, and the New York Thoroughbred Horsemen's Association. The rule proposal was published in the New York State Register on November 18th meaning that the public comment period expired on January 4th. Four public comments were received, one each from NYRA, NYTHA, the National Thoroughbred Racing Association and RMTC. Each organization fully supports adoption of this rule. Staff recommends adoption of this rule making.

John Crotty: Commissioners, any questions. I'd ask for a motion.

Male: So moved.

Male: So moved.

John Crotty: Second.

Male: Second.

John Crotty: All in favor.

Male: Aye.

Male: Aye.

John Crotty: Any opposed? The motion passes. Rob, would you be kind enough to quote your next item.

Rob Williams: Finally for the commissions consideration our adoption of revisions to the commissions horse-racing rules that regulate the use of certain substances with per se thresholds and restricted time periods. The adoption of these rules would align the commission's laboratory thresholds for controlled therapeutic medications with the latest ones approved by the Association of Racing Commissioners International. RCI recommends adding a threshold for albuterol, a bronchodilator and lower the threshold for ketoprophen a nonsteroidal antiinflammatory drug. Both recommendation are consistent with commission's existing time restriction for albuterol and for nonsteroidal antiinflammatory drugs, which ensure a horseperson will not inadvertently commit a threshold violation.

RCI's scientific advisory committee also recommended adopting two thresholds for cobalt, a dietary element [with] one threshold at 50 ng/ml regards to detection of the intentional overuse of cobalt, a practice that has no valid purpose, and cannot occur without using refined products. The second threshold at 300 ng/ml would impose a blood-doping-level penalty when a violation has occurred undeniably. Cobalt is reportedly misused in a manner that causes adverse effects in horses including clinical signs of abdominal pain as well as a blood-doping effect.

Finally the proposed rules would also add a threshold for _____ [00:19:03] a corticosteroid, restrict it's use to only joint injections, and establish a requirement that the commission first warn a trainer whose horse tests in excess of the corticosteroid thresholds when the corticosteroid joint injection causing the threshold violation is shown in documentary evidence to have been administered safely in compliance with the commission's seven-day restricted period for thoroughbred race horses. Unlike other proposals, these corticosteroid rule proposals are limited to one bred because the commission has different standards for them. This rule proposal was published in the state register on December 2, 2015, meaning that the public comment period expired on January 19th.

The commission received two public comments, one from the New York Thoroughbred Horsemen's Association, and one from the New York Racing Association. NYTHA opposed the restricted time periods for albuterol and ketoprophen, stating that the Racing Medication and Testing Consortium has shorter withdrawal guidelines than the New York restricted time periods. The staff does not suggest amending the restricted time periods as the proposal adopts national thresholds for such drugs, which are consistent with the existing restricted time periods in New York.

The second comment from NYRA expresses full support for the rule as proposed. Staff recommends adoption of these rule amendments.

John Crotty: Commissioners, any questions on the adoption on the per se thresholds and time-restriction rules? Alright. May I have a motion to adopt this rule.

Male: So moved.

Male: Second.

John Crotty: Second. All in favor.

All: Aye.

John Crotty: All opposed? Motion carries.

Male: Before we move on to adjudications, which I think is next, may I just follow-up with one question, comment, is that alright?

John Crotty: Of course.

Male: I was thinking about the answer that you gave me about DMSO. If the issue is the, I guess, blood-level threshold that's implied by a topical administration versus, like a subcutaneous injection or oral administration, why don't we just limit the threshold. Why are we focused on the manner of administration rather than saying this is the threshold?

Dr. Palmer: The fact of the matter is with the topical administration the compound had very little ability to change the outcome of a race or really change the physiology of the animal, whereas the intravenous administration of that drug, larger quantities, certainly could influence the outcome of the race and influence the physiology of the animal.

Male: But it's about the larger quantities. Correct?

Dr. Palmer: Yes, and the route of administration. The route of administration, the amount of drug that can be administered at one time in one instance, and that pharmacokinetics, the pathway, the way the animal [animal's biology] deals with that is very, very different when slowly absorbing into the skin.

Male: Thank you, Doctor. I appreciate it. Thanks.

John Crotty: Alright. Next item on the agenda are adjudications. The commission has three hearing office appoints for consideration today. Mr. Williams, please, outline the first case.

Rob Williams: Ben S. Joseph held conditional licenses as an owner, assistant trainer, and exercise rider. On December 4, 2015 the commission issued a notice of suspension and hearing following evidence that Mr. Joseph violated his license conditions. The hearing was conducted on December 16, 2015. The hearing officer submitted a report to the commission's secretary dated January 6th. The hearing officer recommended that Mr. Joseph thoroughbred racing licenses remained

suspended for a period of one year, and that the licenses be reinstated, conditioned upon a showing that Mr. Joseph attended and completed an approved drug and alcohol program. At a meeting conducted pursuant to the judicial or quasi judicial proceeding exemption of New York Public Officers Law Section 108.2, the commission considered this matter.

John Crotty: The commission duly deliberated and considered this matter and determined, upon a vote of 4 to 0, to both sustain and modify the hearing officer's report and recommendation modified by adding upon restatement such license will be conditioned upon random drug and alcohol testing to a period not to exceed one year? One year. Was that it, or no.

Male: Not less than.

John Crotty: Not less than one year, excuse me.

Male: I think that's what we agreed.

John Crotty: Yes. The second matter is over to you, Rob.

Rob Williams: On January 18, 2012 the Racing Wagering Board issued an order to show cause why Jerome Palumbo should not be fined and barred from participating in racing in New York. The alleged grounds for discipline were that Mr. Palumbo trained thoroughbred horses in New York without a license, was responsible for a DCO₂ drug positive for the horse Martha's Mandate on May 16, 2010, which ran at Belmont Park, and Mr. Palumbo had a history of prior violations and a conviction of a crime involving gambling and bookmaking. Mr. Palumbo had surrendered his groom and stable employee valid receipt on June 29, 2010. A hearing was conducted on June 12, 2012. During the pendency of the hearing officer's report being issues, Mr. Palumbo's attorney and commissioned counsel engaged in settlement discussions, and reached an oral agreement in principle in December 2013 to settle the matter.

Following delays caused by the applicant a newly assigned hearing officer proceeded to adjudicate the matter on the basis of the 2012 record. The hearing officer submitted a report to the commission's secretary dated November 22, 2015. The hearing officer found the charges were established by the commission and recommended that Mr. Palumbo be fined \$5,000 and be barred from applying for any New York racing license for a period of one year from the date of the commission's decision. At a meeting conducted pursuant to the judicial or quasijudicial proceedings exemption of New York Public Officers Law Section 108.1, the commission considered this matter.

John Crotty: Commissioned duly deliberated and considered this matter and determined that state law requires that the appropriate standard to be used is preponderance of the evidence, and remands the case to the hearing office to consider the record in accordance to this standard. Mr. Williams, please, read the third case.

Rob Williams: Certainly, this is in the matter of Roy Sedlack. On November 6, 2015, the commission issued a notice of suspension and hearing to Roy Sedlack after drug testing indicated two horses, which ran at Belmont Park, tested positive for the prohibited drug known as AAH-7921, or 3,4-dichloro-N-1-dimethylamino cylcohexal(metho)benzamide. I'm saying that only once.

Male: Nice job. Nice job.

Male: Sorry, can you repeat that, please.

Dr. Palmer: Easy for you to say.

Rob Williams: Specifically Mr. Sedlack, as an owner and trainer, was accused of running the horse Bossman in the fourth race at Belmont Park on October 11, 2015, finishing second, and the horse Literata in the second race at Belmont Park on October 18, 2015 finishing first. A hearing was conducted on November 10, 2015. Mr. Sedlack was given the opportunity to have a prompt postsuspension hearing, which was conducted on November 10, with posthearing conferences held on December 2nd, 9th, and 16th to admit additional evidence in regard to potential penalties, and to consider the correction of stenographic, typographic, transcription errors. The hearing officer submitted a report to the commission's secretary dated December 21, 2015. The hearing officer found the charges sustained and recommended that Mr. Sedlack return any and all purse monies received from the two races in question that his owner's a trainer's licenses be suspended for a period of five years, and that he be excluded from all New York racetracks for period five years.

At a meeting conducted pursuant to the judicial or quasijudicial proceedings exemption of the New York Public Officers Law Section 108.1, the commission considered this matter.

John Crotty: The commission duly deliberated and considered this matter and determined upon a vote of 4 to 0 to sustain the hearing officers report and recommendation. We move on now to any old business. I noticed there are two items on the list. Rob, these two.

Rob Williams: Sure. The first one regards the staff report relative to KD Equine. In November the staff issued a report in regard to allegations advanced by the People for the Ethical Treatment of Animals in regards KD Equine LLC, et. al. In large measure that's Steve Asmussen [Racing] Stable. In short of the 14 allegations leveled by PETA, the commission staff found four allegations, which are necessarily equivalent to regulatory violations, to be sustained. The evidence and allegations provided by PETA, an investigation thereof, and following industry-wide discussions, the staff identified 9 regulatory measures for commission consideration in 3 broad categories. Furosemide [-induced] or exercise-induced pulmonary hemorrhage, is the first, metabolism the second, and over medication the third. In brief the EIPH proposals would, by explicit rule, remove a horse from racing after it visibly bleeds, require disclosure of serious EIPH episodes of subsequent owners, and require endoscopic examinations, following significant episodes of EIPH.

Drugs whose primary purpose is to affect or modify metabolism, would be restricted on the racetrack and not permitted within 30 days of racing with special exception for horses with rare, documented medical anomalies. Drugs would be restricted generally to a medical preventative or the treatment of a diagnosed medical disorder according to the good-faith judgment of the treating veterinarian. Veterinarians would be permitted to renew prescriptions based only on their own judgment. Trainers would have to keep a log of dispensed medicines that are administered by the stable, and finally drugs that have the potential to cause a significant abnormal effect on the horse may be used only in the course of reasonable an appropriate use. In advance of the commission consideration, these nine rule-making proposals were released to receive industry comment before entering the formal rule-making process.

As mentioned in November, this was requested to get the proposals out to the potentially affected parties more quickly, and allow refining of the drafts before rule making begins. At our December meeting, the staff requested an extension of the preindustry-comment period to gather some additional input. Today we have with State Equine Director Scott Palmer, and by telephone Assistant Counsel Rick Goodell. Both gentlemen were instrumental in undertaking the PETA investigation, drafting the resulting finding and report, and in the creation of regulatory recommendations.

John Crotty: Thank you both, for participating today. To start I'd like you to generally outline your communications with the racing industry and identify the issues and concerns that have been raised to date. Perhaps you could also identify a strategy for further outreach and discuss potential modifications to the proposals as written in the staff report.

Dr. Palmer: Thank you. I'd be happy to. As underscored by the commission's comprehensive investigation, there are major challenges in modern horseracing that reflect core concerns of racing stakeholders and the general public, particularly those of abuse of medications. The New York State Gaming Commission is committed to addressing these challenges. Proposed regulations are designed to address concerns with exercise-induced pulmonary hemorrhage known as EIPH, use of specific drugs or types of drugs such as thyroxine or similar substances that regulate metabolism, and a general concern we all have with protecting horses from inappropriate overuse of therapeutic drugs or the use of nontherapeutic drugs and other substance with potent effects on the horses involved in horse racing. These proposals are intended to enhance the integrity of the sport and protect the horse.

These proposals are also part of the broader commission goal to improve equine health and welfare. The concern regarding the abuse of medication racing is not a new one, and it's not unique to New York State. Our goal is to ensure that all medications [used] in the racehorses is first and foremost for the benefit of the horse and administered in a manner that's consistent with quality veterinary care in the context of a valid veterinarian-client-patient relationship. The prepublication comment period has been supportive of the commission's goals, and has also provided the commission and staff with a number of helpful comments and recommendations to improve these rules and goals.

The primary area of concern has related to vagueness [ambiguity] and uniformity in these proposals. These concerns are natural when one considers that any novel medication, regulatory philosophy that is designed to address fundamental challenges of effective regulation of a rapidly evolving medication landscape is involved. Regulation that's designed to prohibit the use of specific medications, by their very nature, will always lag behind the introduction of new medications in horse racing. The proposed regulations are designed to prohibit general medical practices that are intended to enhance performance in the absence of a valid medical indication related to horse health. We have solicited and received both written and oral input from interested stakeholders, including regulators in other racing jurisdictions, the American Association of Equine Practitioners, the Association of Racing Commissioners International, and other reputable organizations to develop optimal language for these rules. While the objectives of this rule making are simple.

We realize that the rule-making language is difficult to construct, particularly the definition of medically unnecessary treatments, but this is an effort to move forward as an industry to address this important problem. We have been soliciting, encouraging, and we continue to solicit conversation with our colleagues throughout the industry. The adoption of the National Uniform [-

Uniform, Uniformity in (of)] Medication Program represents a very meaningful and positive step forward to control the use of specific medications given to racehorses in the days leading up the race. Our proposed rules are intended to operate in concert with National Uniform Medication Program to regulate medication usage in a purposeful manner designed defined by the specific medical needs of the horse.

If you like, I'm prepared to briefly review each of the six specific proposals from a strategic perspective.

John Crotty: Sure.

Dr. Palmer: I'll start with exercise-induced pulmonary hemorrhage. These rules are designed to define the terms of ineligibility to race after episode of epistaxis, which is bleeding from the nostrils. These rules will require disclosure of episode of epistaxis to subsequent owners of horses when the horse is sold or claimed. It will also require endoscopic examinations after episodes of epistaxis. Equine pulmonary hemorrhage is a common and important condition of athletic horses, and the control of EIPH has long been at the heart of controversy throughout the racing industry. These rule proposals are specifically designed to provide increased protection for horses that experience epistaxis, low server form of pulmonary hemorrhage. Although epistaxis is extremely rare at New York racetracks, approximately one episode per 2,000 starts, it is a significant health risk to the horse, and repeated episodes progressive lung damage. Severe episodes of EIPH can eventually lead to sudden death on the racetrack.

Written, oral comments are mainly concerned with uniformity and compliance. New York pursues uniformity through leadership and proposing amendment to the RCI model rules, and we do foresee any negative effect from New York racing from our leadership role. The potential lack of compliance for shipping horses for example, can be addressed by a proposal for a model to this effect. The rules requirement of disclosure of serious previous episodes of exercised induced pulmonary hemorrhage or epistaxis, would only apply to a horse after it changes hands, which is to the advantage of all racing participants, and in particular the horse. NYRA proposed that the commission use our e-cell reporting system as a vehicle to store this EIPH information, and [00:37:08] commission staff agrees with this.

John Crotty: After?

Dr. Palmer: After.

John Crotty: Why not when?

Dr. Palmer: Well, there's concern about the proprietary value or the confidentiality of a horse's healthcare as long as the owner consistently owns the horse, he should know if the horse had an episode of this.

John Crotty: In the public that shouldn't be disclosed?

Dr. Palmer: We don't feel that it's appropriate right now to do that.

John Crotty: I disagree. I mean you said what percentage of horses end up exhibiting?

Male: One in two-thousand starts.

John Crotty: Right. I mean if that's still the number, what are we talking about?

Dr. Palmer: Very few horses.

John Crotty: But it is relevant as a condition, though.

Dr. Palmer: Yes, it is.

John Crotty: I don't understand why there's a need for confidentiality.

Rick Goodell: Scott, may I interject?

John Crotty: Sure.

Dr. Palmer: Sure.

Rick Goodell: When epistaxis is observed it's readily apparent, and it does lead to mandatory periods of time in which the horse can't race, but there are less serious episodes of exercise-induced pulmonary hemorrhaging that are also covered by the rule proposal. Those are the ones that would not necessarily be disclosed publically. But as a first step towards better care for the horses, this rule proposal would require that at least the new owners are always informed when there's been a serious episode.

John Crotty: Is that for all three? There were four levels of bleeding, right, Doctor?

Dr. Palmer: Yeah. There are more than that, but 1 through 3, the recent research as we talked about this summer, are believed to be significant but aren't necessarily going to cause long-term ill effects in the horse's performance or his general health, but 4 and 5, the more severe ones do. The primary goal here was to make sure that a new owner of a horse new that that episode occurred, so that he can appropriately manage the horse. You may remember a testimony of one of the trainers this summer who talked about a horse that he got from England. They sent him over here to be trained and didn't tell him the horse was a bleeder, the horse had some real problems as a result of that, so we're trying to address that situation.

John Crotty: So he said, right?

Dr. Palmer: Yeah.

John Crotty: It seems inconsistent, doesn't it, that you would only disclose it to the new owner after it changed hands? Why wouldn't that be valid information for the gamblers at the track. It's a fairly serious condition. If you exhibited it, you're in a 1- or 2-percent range of horses, right?

Dr. Palmer: Less than that.

John Crotty: Okay. I mean so wouldn't it seem more relevant to tell everyone that this occurred?

Dr. Palmer: Well, as Rick said, the horses go on the vets list, and that information...

John Crotty: But you go on the vets list for any number of things, right, you know, your ankle, your toe, your tongue. I mean they get sick. There are levels of being sick, right.

Rick Goodell: This is Rick again. One of the consequences of being on the vet list is that the horse not only cannot race for a specific minimum period of time, but that the horse, also, is not permitted to race until veterinarians, independent of the stable, release it to race, but that would be the protection for the bettors.

John Crotty: Pretty flimsy. No, it really is. When you think about it, it's like saying well, you know if the vet clears you, you're fine, but I mean you could get a clean bill of health after a physical, or you could be like a cancer survivor and get a clean bill of health. The doctor said I'm fine. I don't know that that standard actually works if you're relating to an incident that is more than two standard deviations from the norm in terms of its impact.

Dr. Palmer: Well, I think you're point is well taken, and we should take it into consideration as we go forward. Remember these are all proposals. Your comments are certainly valid and appreciated.

John Crotty: The process then is the publication of these?

Dr. Palmer: Well, we're still gathering information. We're not quite to the point of motioning these things.

John Crotty: Okay. Fair enough. [Off-Interview Conversation from 00:41:27 to 00:41:29] Go ahead.

Dr. Palmer: The level of detail is okay?

John Crotty: I mean I think it's a bit much. Keep going through them, but it's a lot to digest here at this meeting. I don't know how you guys feel.

Male: One suggestion I would make is that I'd like to see what the industry says about your proposal about releasing the information sooner, prior to the sale. I mean if you just put out the proposal the way it is, we'll never know what the reaction would be to what you're saying, John.

John Crotty: Fair enough. Yeah, yeah, yeah. What level of bleeding is the relevant one to detail, to your point, or to the point others made, they all bleed at some level, but there's a big variation from a little bit of blood to more severe category 4 or category 5 bleeding events.

Male: How would you propose that this be noticed to [-to, by] the gamblers of the track? [gamblers of the track be notified?]

John Crotty: They find it. The vets find it, right. There's evidence of it, but I mean I guess if there are five grades of it, I'm not sure what grade is the relevant one. Certainly four and five would be.

Dr. Palmer: Epistaxis, the good news about the concept is that epistaxis is easily identifiable [-identifiable, detected], and there's not a lot of controversy about it. Now the horse, theoretically, could bang its nose on the gate coming out of the gate, but that's even a remoter [-more remote (quality not quantity)] possibility.

John Crotty: Sure.

Dr. Palmer: If a horse has epistaxis on the racetrack is documented by the racetrack veterinarian, and that's a very significant event no question about it. It's much more significant than the lower grades, about which we talked earlier. That would be the level of demarcation if you will in terms of where do you draw the line in terms of what you should report.

John Crotty: Category 4. Yeah, yeah. It's worth hearing, if you're in a public comment period, what people would react to that.

Rob Williams: Well, we're not in a public comment period. We're still gaining pre ____ [00:43:27].

John Crotty: Pre, alright.

Rob Williams: But, yeah so, we can ask that question and get responses to it.

John Crotty: Yeah. I guess to what level would qualify towards making it known that the horse bled? Right. To your earlier point, they bleed in every race.

Dr. Palmer: For the most part.

John Crotty: Right to some degree, but there are level, and as an industry, you've made determinations about which level of bleeder they are, right?

Dr. Palmer: That's right.

John Crotty: Two, three, four, and five. I mean I don't know what the right standard would be, but 4 and 5; 3, 4 and 5? I'm asking.

Dr. Palmer: We're looking at 4 and 5.

John Crotty: Okay. That seems reasonable enough.

Rick Goodell: We did receive some public comments from NYRA an NYTHA expressing concerns that some of the trainers and veterinarians would not disclose EIPH incidents, and would purposefully not comply with a rule that is too broad. The points are well made, and we are considering those, as the industry is as well. We're also concerned to make sure that the rule-making proceeds in a way that will be received and complied with.

John Crotty: Who scopes the horse

Dr. Palmer: I think there is a broader issue, though, as well about whether all veterinarian records and information should be disclosed, and that certainly a big debate as well.

John Crotty: Sure. Who scopes the horse?

Dr. Palmer: Private veterinarian.

John Crotty: Private. I mean they make a determination when they scope it, right.

Dr. Palmer: Well, if the degree of bleeding...

John Crotty: Sure, any bleeding, and then the degree of bleeding, right.

Dr. Palmer: Absolutely.

John Crotty: Why can't that be the trigger. Everyone gets their horses scoped, right?

Dr. Palmer: No.

John Crotty: Or looked at after a race if the thing something's not run right.

Dr. Palmer: Not always. It depends on the trainer.

John Crotty: Many different trainers and the horse doesn't perform according to what they had anticipated or the horse evidences some inability to put his A game forward, getting them scoped is sort of a first measure before they-- Do we think that would stop somehow if there was a more complete reporting function. Is that what you're saying, Rick?

Rick Goodell: No, no. It really would be, not that it would be inaccurately reported to the trainer by the veterinarian, but rather that they would be resistant to accurately report it to the public.

John Crotty: The trainer would be?

Male: The vet.

Dr. Palmer: That was the concern that was voiced in the public comment, preproposal comments that we received both from NYRA and from NYTHA.

John Crotty: Doesn't the vet operate on NYRA grounds and others as a condition of NYRA allowing them to.

Dr. Palmer: They have authority over them without a doubt. We have discussed, John, also that concept of whether under certain circumstances we would want a NYRA veterinarian to do the scope or a regulatory veterinarian. Scott's informed me that that's pretty challenging to do, but it's something, at which we're also taking a look.

John Crotty: Well, I don't want to delay it if we're just seeking comment.

Dr. Palmer: Okay. The trainer's log regulation. The proposed regulation that would require trainers to keep an administration log while dispensing medications given to horses in their care. Currently there is no requirement to document the date and dose of medications when administered typically in the feed to racehorses by trainers and layemployees in the stable. The intent of this rule is to require record keeping for the medications given to racehorse by laymen in New York racetracks. Public comments recommend clarification, as this is simply a record-keeping requirement, and does not alter current industry practice regarding drug administration. This requirement does not apply to treatments administered by a veterinarian, for which records are already made. The staff agrees. [Pause from 00:47:50 to 00:47:55] Renewal of prescriptions. Veterinarians would be required to renew prescriptions based on their own medical judgment. When renewing a prescription to avoid withdrawal symptoms, a veterinarian must prescribe an administration schedule that eliminates dependence upon the drug.

Currently veterinarians may be asked by a trainer to renew prescriptions for medication previously prescribed by another veterinarian that may no longer be clinically indicated but will do so to avert withdrawal symptoms. For example, daily administration of hormones such as thyroxine or corticosteroids will suppress the body's own production of these hormones. An abrupt withdrawal of these treatments can cause health consequences for the worse, until the normal hormone production by the body is restored. This rule will require that the renewed prescription include directions for withdrawing the horse from ongoing use of the drug, and thereby end this practice. Public comments.

There were no comments from horsepersons or NYRA or Finger Lakes at this point. During the November 30th meeting of the Association of Racing Commissioners International, a member of the Drug Testing Standards and Practices Committee questioned whether this rule was necessary. On the basis of the findings of Asmussen investigation, this scenario was confronted by New York veterinarians who felt more thyroxine was appropriate only to avoid withdrawal issues, and resulted in the continued daily administration of thyroxine in the absence of current reexamination or evaluation for the need to give this drug to treat hypothyroidism.

Metabolism-modifying drugs. The horse may not race for at least 30 days following the administration of these drugs. No person other than a commissioned veterinarian track veterinarian or practicing veterinarian licensed by the commission shall possess these drugs. No drug shall be administered to a horse except based upon a specific diagnosis and prescription for such by a treating veterinarian, and it shall be an affirmative defense to a violation of this section that a person possessed or used such drugs only in a time, place, and manner specifically permitted in writing by the commission. This rule was intended to eliminate the unnecessary administration of metabolism-modifying drugs to increase metabolism of race horses in order to enhance performance. Written and oral public comments were mainly concerned with whether the rule might be too broad.

NYTHA asserts that a horses with low T4 levels benefit from a small dose of thyroxine. Staff notes that leading experts all agree that low T4 levels is not sufficient indication for daily thyroxine supplementation, and the drug is rarely prescribed or used by a majority of trainers at New York racetracks. the provision for use with advanced notice and permission by the commission should control the possible misuse of this drug while permitting typically short periods of treatment that may be appropriate. Staff agrees that the further study of substances in general that may or may not manipulate metabolism, as a primary purpose or effect, is indicated.

To address this concern, we will work closely with practicing veterinarians and leading scientists to add specific examples, such as thyroxine and similar substances, and to ensure that the proposal's wording is both sufficiently broad and precise and clear. The ARCI Drug Testing Standards and Practices Committee offered that certain substance used to regulate female reproductive cycles, might influence metabolism for example, and should be clearly excluded from this rule. There is wide interest among jurisdictions in finding the best means of regulating the use of thyroxine in their jurisdictions. Staff will continue to enlarge and intensify its review of specific examples of metabolism-modifying substances and reach out to more regulated parties both in New York and in other jurisdictions for additional input.

John Crotty: As a gender impact. [affect]

Dr. Palmer: No. It doesn't. No. But Regumate is a hormone that's administered to females, fillies and mares, to stop their estrus cycle while they're racing, and that can arguably influence their metabolism, so it's going to be important to make some distinctions about some of these treatments.

John Crotty: Does that happen fairly regularly, the first treatment to stop...

Dr. Palmer: To?

John Crotty: To stop their cycle, that's a normal.

Dr. Palmer: Well, it's very variable. In some mares it's not a big deal, but in those mares when they come into heat when they're in training, it can be a huge problem, so yeah, it's a pretty common indication for that medication. Lower medication. No drug should be administered to a race horse except as either a recognized preventive or as an accepted clinical treatment for an existing medical disorder or condition as would be appropriate in non-racing circumstances, for example, any therapeutic drug given without medical need or indication. This rule is intended to prohibit the administration of drugs to race horses in the absence of an actual medical disorder. Written and oral public comments voice concern that this rule may be overly vague and suggest further consultations with the ARCI and the RMTC.

Staff agrees that further input will be helpful including comparison with other rule making by the Veterinarian Practice Rules and Guidelines of the New York State Department of Education's Office of the Professions, which licenses private veterinarians. A member of the ARCI Drug Standards and Practice Committee compared this rule to hay, oats, and water. This reflects a misunderstanding or a misinterpretation of the rules intent and meaning. Staff will continue to examine the wording of this rule to clarify the intent in meaning and to seek input about how to draft a rule of broad application that prescribes the conduct of administration of drugs to horses in the absence of an actual medical disorder.

Finally the abuse of potent substances. No drug or other substance that could abnormally affect, and that means alter the normal physiologic processes of a horse should be administered unless in the course of reasonable and good-faith care of the horse. Within these restrictions these proposals would not second guess the documented professional judgment of treating veterinarians. An example of this is cobalt sulfate. Initially we did not have an adequate rule to regulate cobalt in New York, so if we put this kind of rule in place, when the next new potent substance emerges in racing, we will have a rule in place to address it properly. This rule is intended to prevent the administration

of drugs to horses that have no accepted therapeutic use in the horse and can have harmful side effects.

Written in the oral public comments are mainly concerned with ambiguity and uniformity. Staff agrees and will work to be more explicit in identifying what drugs and other substance are addressed by this rule. In particular additional language is being consider to narrow the rule to substances that are capable intrinsically of abnormally enhancing or impairing performance, and are nontherapeutic as used. In conclusion the free publication comment period has provided the commission and staff with a number of helpful comments and recommendations to improve these rule proposals. Staff will continue the dialogue with industry stakeholders to refine these proposals prior to presenting them to you for approval.

Our goal is to provide for the use of medication in an era of advanced equine sports medicine, but [to] focus on the medical needs of the horse as a top priority and delivery of medical care that defines the highest standards of professional integrity and ethical practice. We will be working hard and cooperatively with industry stakeholders and other regulators to overcome any concerns of ambiguity and uniformity and to provide an optimum rule proposal for our medication regulatory philosophy, which is designed to address the fundamental challenge of effective regulation of a rapidly evolving medication landscape. As I noted at the outset regulations designed to prohibit the use of only specific medications, by their very nature, have always lagged behind the introduction of new medication into racing.

The proposed regulations are designed to prohibit general medical practices that are intended to enhance performance, the absence of a valid medical indication related to horse health. We will address this issues in the upcoming months, and are encouraged by the supported principle for all of these proposals.

John Crotty: Sounds great. Thank you very much. That was very thorough.

Rob Williams: Thank you. A lot of hard work went into this. We really appreciate it.

John Crotty: You did already, right.

Rob Williams: We're up to whip pierces,

John Crotty: Whip pierces, yeah. In November following the adjudication that involved the use of a riding crop, commissioners requested the staff conduct research into the use of a whip in jurisdictions across the United States. As you are aware, late last week legal circulated a memorandum detailing their research. While we understand that all commissioners may not have enough time to digest the information contained to discuss the issue and its potential variation, I'd be remiss if I let this opportunity pass. Thank you for preparing this and putting it together. Today, I've been informed that we have Tomas Kennedy of Kennedy, Jennik, and Murray serves as outside counsel to the Jockey's Guild. Jeff Johnston who is the regional manager of the guild. You here?

Tom Kennedy: Yes.

John Crotty: Oh, hello. The Jockey's Guild has been involved with California's recent attempts to revise their crop rule, and perhaps they would give us some of their comments and experiences and

the landmines and concerns from their experience, and what to consider in existing rules. If you'd be so kind.

Tom Kennedy: Thank you. As the Chairman Noted, my name is Tom Kennedy. I'm the general counsel for the guild. With me is Mindy Coleman, who is counsel for the guild, and Jeff Johnston who is our regional manager, one of our regional managers. We have prepared a presentation for the commission that I'd like to distribute, if I might.

John Crotty: Sure.

Tom Kennedy: I don't have a lot of copies, so hopefully that'll be adequate.

John Crotty: You can sit down if you're more comfortable.

Tom Kennedy: My role today is really just to introduce Ms. Coleman and Mr. Johnston. Mr. Johnston was a jockey for a long time, has more than 8,000 mounts, many of which he won, but not all of them.

Male: Thank you. Have a seat. Come on down this way. Thank you.

[Off-Interview Conversation from 00:58:16 to 00:58:46]

Jeff Johnston: As Tom said, my name is Jeff Johnston. I'm the regional manager for the Jockey's Guild. My region included Kentucky, Illinois, Indiana, Ohio, Iowa, Minnesota, New York, and New Jersey. Commissioners for years, the horseracing industry has been looking for ways to maintain or regain market share in the sports, entertainment, and gambling industries. One of those measures has been to look at public perception, but specifically the use of the whip. Several years ago when this first came out, one of the things that we did as an industry was change the rule or change even the wording. Whip is no longer used. It's taboo. It's not a riding cropping, and in that process the dimensions and the aspects of the whip were changed. It's no longer as severe as it once was.

It's not a padded riding crop. It is much less severe, much easier on the horse, much more humane. It was mentioned during this time period that why don't we just do away with the whip? Well, that's not an option. As far as the jockeys are concerned, this is a tool. It's a safety measure. It's a necessity in the racing world. It doesn't have to be severe, but you need something that's going to get the horses attention that is doing something that is harmful to either you, the horses, or the other jockeys in the race.

Also upon implementation of the riding-crop rule, there were other measures that went into including the vets who are supposed to check after each race to make sure that the horses are not being cut up or welts being put on them. But the riding crop is actually doing what it's supposed to do, be less sever and be more humane for the animals. Well, let me add this. Because the riding crop changed and it's padded, it makes a louder sound, so even though it's a softer whip, it's more humane, it sounds worse than the old ones, so we still have a perception issue, and it's not been really marketed well to the public to say that we're even using these. They still think that it's the old severe riding whip.

One of the things we can do, I think, is start a marketing campaign, explain to the public or the fans that this is easier on the horse, that it's certainly not as severe as what it sounds and looks like. But other states have looked at new rules basically limiting the number of strikes or asking the jockeys to hit the horse only a limit of three times, and then give them a chance to respond. This works relatively well especially as an awareness campaign to the riders to make them think of how they're using it, to actually say hey, consider the fan's point of view, if you don't need it, if you're winning by a lot, you don't need to pound the horse. If you're out of contention you don't need to pound on the horse. But states are still looking at ways to amend that rule and make a rule that limits the use of strikes. They've done this in California. It's been in place for a year or so now. They've had multiple problems with it.

They've also done it in Illinois, they've had multiple problems with it. They've got a house rule that they implement in the Chicago area tracks, and they've had multiple problems with it. The problems being, one, the fines can get pretty severe if riders have multiple violations, but the bigger problem is it's not a good rule for the bettors who we need in this industry. When it comes down to the wire, and you're restricted to use the whip three times instead of four, and a rider's been fined multiple times, he's not going to use it. While the guy next to him hasn't been fined, he's going to take the first fine in order to win the race and get the share of the purse. Well, who loses there?

The guy who was true to the rule loses the race, the owner loses purse, the trainer loses his percentage, and the people who bet on that horse lose. The people who broke the rule win. There have been multiple problems. We've gone to California. The jockeys have set up, asked the commission, or the California Racing Board to set up a committee to look at this rule. The steward at NYRA have contacted our office, our National Manager Terry Meyocks and asked that we help them, or they wanted to implement the California rule, and we've asked them with the addition of a petition signed by the NYRA riders to hold off on adopting the California rule because it did have so many problems and work with that committee to basically come up with a rule that gets done what they want to get to get done but doesn't harm the participants or the bettors.

John Crotty: Is there a limit?

Jeff Johnston: There is no limit, actual one number limit.

John Crotty: I know, but you're a rider. Is there a limit? There's a number of times where you say well, look more than this is just too much?

Jeff Johnston: It depends on the horse. Another problem with this rule is not every riding-crop strike is created equal. There are riding-crop strikes that are very severe, very high above the head, very hard, very strong riders, they really get a horses attention. Really one or two of those should be fine, but there are other horses, especially horses in my case, which I remember riding, that came from way back. They were lazy horses. They didn't require to be hit hard. They just required motion or movement. It's a tap. It's not even a strike. It's a tap, but it's the tap, tap, tap, tap. If you let up, they're going to let up, so it's not about how many. It's more about how severe.

Male: The way this came to us originally is when a jockey dropped the crop and used his goggles. Do you have any position on a rule that would limit jockeys just to use a crop and not use anything else?

Jeff Johnston: Well, first the goggles aren't going to harm a horse. It's again accidents happen. You can get your whip knocked out of your hand by a rider.

Male: You think we should allow them to use the goggles?

Jeff Johnston: I think so. The goggles aren't going to do a lot. They're not going to influence the outcome of a race, necessarily.

John Crotty: We did debate it a little bit, remember, because on the other hand to your point, if he didn't use everything he could to get the horse up, maybe it's a subpar to not give everything you can for the horse to run. I mean if you were better.

Tom Kennedy: Can I make a point on that, Mr. Chairman?

John Crotty: Please.

Tom Kennedy: Our researcher indicates that there have been four times on the ARCI database since 1987 where jockeys have been fined for using goggles.

Mindy Coleman: But the last time it was actually done in New York was 1987. There are more time periods that they've...

John Crotty: Well, we did it last year.

Mindy Coleman: No, no. Up until...

John Crotty: Oh, up until that it was 1987.

Male: It was last month.

Mindy Coleman: It was 1987 with the New Yorkers and it was Randy Romero. Then up until that time last year it was inconsistently applied in the state of New York. There were two jockeys that were fined. There were four others that were not fined. That's when it was brought to everyone's attention at this point was the goggle issue. But on a regular basis, I mean, jockeys across the country have dropped there rider sticks and used goggles or other means averse to...

Male: Are there any states that do limit it to just the crop.

Jeff Johnston: I'm not sure. States rules and regulations vary from state to state, and a bigger thing would be implementation. Usually if you've got a good stand of stewards, they're going to hold the best interest of the horse and the public at hand. If the jockey's doing something that's going to harm the horse or the integrity of the sport, they're going to get penalized, even if it's in the rulebook, but I'm not aware of any states that have a specific rule that say you can only use--

Male: Are there any states, of which any of you are aware, to which we should look as a model?

Rob Williams: On this point?

Male: Yes.

Mindy Coleman: With regards to the goggle, there isn't anything specifically.

Male: Just on crop use in general.

John Crotty: Just crop use in general.

Mindy Coleman: Crop use in general, we're in the process of trying to come up the model rule as far as what should be done, and that's kind of what Mr. Johnston was alluding to with the striking issue. That's where the model rule been attractive. There hasn't bean anything with regards to the goggle issue until it came here in New York. There was one case and it was in Illinois or Ohio.

Jeff Johnston: I want to say Ohio.

Mindy Coleman: It might have been Ohio where they had done...and they had given the jock multiple warnings, and that was how that situation-- A lot of times, if the stewards do believe there is an issue, they typically give the jock a warning and say hey, don't do that, if they think that it's the jockey's fault, but most of the time, as Jeff said, a jock doesn't want to go out there without their riding crop. If the horse responds to a riding crop, they're going to prefer to have it. Now there are states that vary as to whether or not you're required to carry a riding crop. There's one state where you are required to carry it. Other states you're not required to carry it, and if you do not, you're being disclosed to the betting public.

Male: If I recall correctly, I think, in the case that you adjudicated recently the hearing officer referred to a rule in Colorado that explicitly said the only thing that you can use to strike a horse during a race is a riding crop, and he used that as an example of what we don't have in New York, so I don't know if that's something that...

Mindy Coleman: I was trying to remember if it was Colorado or Ohio that might be one.

Male: Didn't you give us a survey of crop rules?

John Crotty: Yeah, yeah.

Mindy Coleman: It wasn't just with regard to goggles.

John Crotty: It was more about the whip. [Off-Interview Conversation from 01:09:51 to 01:09:58]

Tom Kennedy: We've received materials from the Jockeys Guild, we forward that out, and they've incorporated in the materials that we circulate.

John Crotty: Well, do jockeys have a standard they want to see enforced? I mean if you're sitting at the table with these things, you obviously have a path you want to get to or a standard that would work for you as well.

Tom Kennedy: I think I've mentioned this one piece, but I think goggles, our position is that it's a problem that comes up so rarely it doesn't need--

John Crotty: I agree. I'm not asking about goggles.

Male: I think he's talking more about the crop.

John Crotty: The crop. Yeah, yeah.

Tom Kennedy: We have made a proposal that we actually described in our presentation. The California committee that's reviewing this. I want to note because I think it's significant. When the rule went in, in California from July 1 through November 11th, and there were 125 fines handed out, 13 suspensions for 69 different jockeys. That's why we came to California and said this isn't working. You've got three strikes, and then a pause. It was translatable into the racing world. My understanding of what we're looking for, although we would agree that we want a consensus rule that commissions are comfortable with, the public is comfortable with, and that's something that we think is a process.

The two problems we have is we think the mechanical application of limit doesn't address instances where a horse is either lugging in or getting out, and the jockey, for safety reasons, has to simply respond, and it doesn't address what we call the final sixteenth of a mile issue where you should be urging the horse under the normal rules of racing as dramatically as is necessary for the horse to finish well. That doesn't excuse somebody beating a horse up, and if there is evidence that that's happened, then they should be appropriately disciplined. We think a mechanical rule that fails to address the points on that.

John Crotty: The safety would seem fairly simple that, if you were a jockey, and you exceeded whatever the limits were, and you felt as though you were in danger, so that you had to use the whip exceeding whatever had been sort of set as the limit, you would simply state that, and there would be some amount of considerations of these matters all the time. You would say well, I was in trouble, the horse was coming in on me, I wanted to keep him away, so I gave him a couple of taps to get out of trouble. Sorry it's over the limit. Then there's a determination to be made. The sixteenth miles the horse is just slow.

Mindy Coleman: If I may, that's currently with the model rule some of the language it has a stewards discussion and there are determinations if a jockey is abusing a horse or in excessive use of the whip. Again, we go back to the state that's inspecting the horse after. I guess some of the modifications aren't necessarily required, other than we're doing it for public perception and that's why when we were approached by the CHRV, initially in 2014 to create this, we said okay, look, we'll count three times and give them the opportunity to respond. What we considered the opportunity or a jockey considered as the opportunity to respond, and now what's being interpreted as the opportunity to respond are turning in to two different. Things. We agree with you. We want it to be discretionary if it's safety issue where this is turning into a literal interruption, so you have one, two, three, and then that's it. It doesn't matter if the horse is lugging in our out or the reasons.

Tom Kennedy: One point I would make in response to your comment commissioner is that, what you're saying of course, makes sense, but if the default position is there's automatic discipline on the fourth strike, if there hasn't been a full stride in between, and then the jockey has to accept

the discipline and then respond to it, and they offer their defense. I think that's unnecessary. It's an imposition on the jockey. I don't think we'd have a problem with the idea that stewards have the discretion to impose discipline if someone goes above three strikes before the horse has a chance to respond recognizing that the last sixteenth of a mile is one issue, and the lugging in and lugging out is another.

John Crotty: You said there was a proposal in here in what you distributed?

Tom Kennedy: We described in sort of prose what we did to _____ [01:14:21].

John Crotty: Good. It'll be good to take a look and see what's in there.

Mindy Coleman: What we requested is with Mr. Goodell and working with Rob that we work in conjunction with the committee that's currently working with the CHRB, so that we can get some sort of uniformity because obviously once New York and California adopt, then everyone seems to follow suit, and we'd like to have, as Mr. Kennedy was indicating as well, uniformity with this rule, so as opposed to it going into effect immediately, January, or go into effect this month is what they have it.

John Crotty: I don't think we have a rule on the table do we?

Male: She's referring to a house rule that NYRA had proposed, which may or may not be preempted by commission action already on the subject. That's something that we're considering.

Male: In fact we would like to be able to advise our members that there is an intense interest on the commission and by NYRA on the use of the whip to encourage them in an informal way to recognize that as they ride, but for there not to be a formal house rule in place until regularize this topic, which we're happy to work as quickly as you want us to.

Male: Chairman, may I ask Jeff a question, please? Can you give me your feeling about timing of applying crop, you know, in the horses stride in terms of do you feel that there's a opportune and by contrast an inopportune time to strike a horse during its stride to achieve the desired effect urging the horse to move forward.

Jeff Johnston: You certainly have to be in rhythm with the horse and hit him in stride. Hitting a horse that's already trying as hard as they can, can be counterproductive. So you really have to read the horse. You have to hit it at the right time. There are other times when a horse will kind of be tripping all over themselves, there is no regular stride, and a good whop with the riding crop will kind of line him out and make him extend himself where he's going on again, but mostly it's just feel. These guys are professionals. You have to just give them the chance to ply their trade. They don't want to hurt the horse, none of them do.

Male: I appreciate your comments, but in my conversations with some very good jockeys they've told me that are inappropriate times when the jockeys try to hit the horse where you actually distract them or they upset their stride in terms of how you apply that. It's not so much-- You've got to realize it's an art form too. It's not something you can, you know-- _____ [01:16:45]. I'm just interested in your comments. Thank you.

John Crotty: Yeah. It might be a good thing also maybe, I don't know, if it makes sense but dollars levels, the grade 1 races, graded races, the black types, there's a different standard than \$10,000 state bred. It's a different exercise of the use of the whip in general, right.

Male: It shouldn't be. It should be a uniform application of what applied.

John Crotty: I don't ride the horses. In just observing them, there seems to be...

Male: You're talking use of the whip is _____ [01:17:19] discipline.

John Crotty: Yeah. There seems to be more encouragement required at the sort of lower claiming rungs, than there does at sort of...

Male: Required or just applied.

John Crotty: Applied. Well, probably both, but I mean at some level, who's to say. They certainly don't run as fast as the horses in the bigger stakes races and bigger allowance races. It's just something to consider, I guess. You're a jockey. You've run from the top to the bottom. Any validity to that? I mean the quality varies greatly by race, right?

Jeff Johnston: Well, and again, it comes down to the individual horse. One of the best horses I rode required a lot of...

John Crotty: Which one?

Jeff Johnston: It was XCountry [PH]. He ran in the Early Times Classic on Derby Day. But he was a lazy horse, which laid back, and when you moved on him you had to stay busy. It didn't take a strong hand, but it took a frequent that just like constant movement. Whereas I rode other cheap horses that loved to run. Some of them, if you hit them, like doc was saying that they would back up on you. Now they weren't as talented a horse, but they had the effort there, so it's on an individual basis. That's why it's so hard to make one rule with how you can use the riding crop because it's going to affect certain horses and it's not going to affect others. It's really in this case more about the human use of the riding crop and using it properly.

John Crotty: Um-huh. So I guess we'll looking forward to hearing more from you and reading what you put out there.

Tom Kennedy: There's just one other matter that Mr. Meyocks the National Manager of the Guild ask to raise. I'll just mention it briefly. There's been some discipline in New York as a result of flicking or fanning a horses ears as means of encouragement, or sometimes frankly accidentally as we're moving forward with the crop in hand. We believe that discipline in the absence of some evidence that the rider is trying to hit the horse or that the horse physically reacts. I mean we'd even agree that, if the horse is hit on the head or the ear with enough strength, the head moves. As I've seen before, that's subject to discipline. You're not supposed to be hitting, kind of, the horse, but if you're showing the horse the crop, it's very difficult to sometimes not flick the ear. The idea that you'd be disciplined for that you be disciplined for that in our view is just lacking what I would call race sensibility. I don't know, Jeff, would you like to comment?

Jeff Johnston: There are different riding styles, and this is one that another humane effort to get the most out of a horse, that doesn't harm the horse. By laying the stick up like between his ears, the horse will actually put his head down, and extend his stride more. I don't know what is considered, you know, where do you draw the line between flicking a horses ear and doing something that should be illegal or punishable.

John Crotty: That was recent adjudication, right, we had the last-- Yeah, but the problem was...

Male: It was the goggles case. No.

John Crotty: Was it. It wasn't. It was the whip hit the horse inn the head. The whip that he was holding. He wasn't flicking him, he was hitting him in the head, and the rule was pretty clear as it related to the whipping the head. I think that's what that one came down to. I don't think it was the flicking of the ears, but maybe we're thinking about a different case.

Mindy Coleman: The hearing officer said that it was actually a flicking of the ear, but they took the interpretation of the ear to be part of the head, and you're not to strike the horse.

John Crotty: Was he flicking it with the whip?

Mindy Coleman: When a jock's down riding and their riding crop is going like this, it was doing this in his ear, and that's what they considered hitting him. We went back and watched the video. I know the fan, an ear to make that sound in the horse's ear...

John Crotty: He hit the horse in the head with the whip. He did, and that's why we found it. I appreciate your opinion, but...

Tom Kennedy: I think we agree then. Well, that's just ear flicking. Our point is that that's just...

John Crotty: I would agree with you, but he hit, it was inadvertent, I think by even the hearing officer, but he used the whip and hit the horse in the head. I mean you've studied the case. I don't recall all the details, but I thought it was one of those sort of cases you read and go wow, unfortunately we're going to find it against him because it was perfectly clear you cannot whip the horse in the head under circumstances.

Male: I mean if you want us to consider some language that would make the regulation clearer that's it not going to cover incidental contact that does no harm to the horse. If you want to suggest some language.

Tom Kennedy: You know Mr. Mendel is listening to the call. McGill has submitted a proposed rule that would apply to this ARCI, and we're just giving you that report and that's insignificant. Mr. Feld [PH] we believe will be involved in developing this kind of rule. I don't think it's sensible for New York to develop a rule on its own, if we can do it in the ARCI process. Jeff, am I right in that?

Jeff Johnston: I agree.

Male: That makes sense. Thank you.

John Crotty: Is that everything? Well, thank you very much for coming. Appreciate you input.

Male: Thank you very much.

Jeff Johnston: Thanks for having us.

Mindy Coleman: Thank you.

[Off-Interview Conversation/Inaudible from 00:00:00 to 00:00:54]

Chairman: Good. I hope you can hear us better than we can hear you. The first item of business is the consideration of the minutes from October 15, 2015. They've been provided to the members in advance. I'll take a motion, by Dennis, seconded by Stew on the minutes. Any revisions changes additions? All in favor?

Male: Aye.

Female: Aye.

Chairman: Any opposed? The minutes are approved. The next order of business, and really the only substantive item on the agenda is consideration of the gaming facility location board's report and recommendations relative to the 2015 request for applications to develop and operate a gaming facility in New York State. As you're all aware, this board publically announced it's recommendations on October 14, 2015. This report serves as a full record of the actions and determinations of the gaming facility location board.

The report is a comprehensive detailed and exhaustive examination of the signing process, and fully explains the rationale for our decisions and details all the statutorily required findings for this bidder. Does anyone have any comments or concerns regarding the proposed report or would otherwise care to speak. Hearing or seeing none, may I have a motion to accept the report and recommendations. Motion by Stew, seconded by Dennis. All in favor to approve?

Male: Aye.

Female: Aye.

Chairman: Aye. Any opposed? No. The motion carries and the report is approved. Is there any old business for us to consider. I'm hearing none. Is there any new business for us to consider. Hearing none. Unless there's any other matters that anybody wishes to bring, that'll conclude the business of this meeting, and I will take a motion to adjourn the meeting by Dennis, seconded by Stew. All in favor to adjourn, Aye.

Male: Aye.

Male: Aye.

Female: Aye.

Male: This meeting is adjourned. Thank you all for your service.

[End of Audio]