



Gaming Commission

January 26, 2015

Mr. 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. Appointment by the Governor, by and with the consent of the senate. Six members having been confirmed by the New York State Senate affords the commission the ability to establish a quorum and undertake action. This present meeting of the Commission is now called to order. Miss Secretary, will you please call the roll?

Miss Secretary: John Crotty? Mark Gearan?

Mark Gearan: Present.

Miss Secretary: Peter Moschetti?

Peter Moschetti: Here.

Miss Secretary: John Poklemba?

John Poklemba: Here.

Miss Secretary: Barry Sample?

Barry Sample: Here.

Miss Secretary: Todd Snyder?

Todd Snyder: Miss Secretary, please let the record reflect that a quorum of qualified members are present, thus, enabling the transaction of business. Please also let the record reflect that the Chairman Gearan is in Geneva and bilateral audio and visual communications have been established between the two meeting locations. Chairman Gearan?

Mr. Chairman: Great! Thank you, Rob, and thank you for the accommodation to remain here given the weather forecast. We have a fulsome agenda. So why do we not begin with the minutes of the Commission meetings conducted on December 22, 2014. They have been provided to members in advance. At this time, I would like to ask the members if there are any edits, corrections, or amendments.

Todd Snyder: Mr. Chairman, it is Todd Snyder. I would just ask that somebody on the staff take a look at item number three and just make sure that it is legible. I am not one thousand percent sure exactly what is being said. I mean could we just write it in a way that is clearer. I would be happy with that. Thank you.

Mr. Chairman: Thank you. Thank you, Todd. Anything else for the minutes? Madam Secretary, please let the record reflect that with Mr. Snyder's guidance that they were adopted as amended and circulated.

Next, we turn to the Executive Director's Report, Rob.

Mr. Rob Williams: Thank you. I would love to discuss four items today. First, briefly discuss the recent meeting of the Gaming Facility and Location Board. Second, to apprise you of some issues related to equine breakdowns of act about the racetrack. Third, to advise regarding Commission duties and responsibilities relative to video lottery gaming facility establishment in Nassau and Suffolk Counties. And finally, to discuss the establishment of three regulatory work groups regarding commercial casino gambling.

First, the Gaming Facility Location Board conducted a meeting on January 13 at which they provided a status on the final report and recommendation and considered Governor Cuomo's letter request that the board consider a new request for applications limited to Zone 2, Region 5.

In short, the Board indicated that they were still working their way through various revisions. And indicated that the anticipated release date of the final report would be by the end of the month. It also unanimously agreed to consider a new request for applications limited to Zone 2, Region 5 pending Commission review. To that end, they requested staff prepare a request for applications for their considerations at a later date. They have not scheduled their next meeting yet, by the way.

They strongly stated that their consideration of Region 5 was appropriate and consistent with their announced preliminary findings and recommendations in that the southern portion of the region contained a market that would not, with the potential addition of another gaming facility, economically conflict with the recommended projects.

They were also somewhat disturbed by the mischaracterization that the region was again being considered simply due to poor economic factors. A representation had been made by performance of gaming facilities from the City of Newburgh.

Relative to horse breakdowns at Aqueduct, since the winter moved to the Aqueduct Race Horse, NYRA (New York Racing Association) has experienced a state of breakdowns. The frequency of occurrence is alarming causing all recent participants to reflect back to 2011 – 2012 when NYRA faced a similar rash of catastrophic injuries. The 2011 – 2012 incidents, of course, went to the establishment of the Taskforce of Equines Health and Safety.

The rate of fatalities at this present Aqueduct meet actually exceeds the rate during those years. Staff is greatly concerned with the number of incidents and is thoroughly investigating the circumstances of each fatality so that the Commission can best address the situation. Understanding the causal loop of

the breakdowns is primary to measure an appropriate reaction.

To that end, State Equine Medical Director, Dr. Scott Palmer has been coordinating a comprehensive review of each equine fatality whether occurring during racing or during training. These reviews include necropsy reports, which did not exist prior to 2012, in an effort to identify the cause of injury and help identify factors that may have led to such occurrence. Dr. Palmer has also mandated that any horse that die on the grounds of Aqueduct, whether racing or not, be sent to Cornell for necropsy.

A few of the causes are evident. In one instance, necropsy identified a coronary blood vessel anomaly that had never been reported before in horses. But was associated with human exercise fatality. In another, a fatigued horse stepped poorly on its front leg. It landed badly, but with no fracture, tripped, collapsed, and drove his head into the racetrack breaking his neck. Several were precipitated at least in part by a paired [PH] jockey action. Many, however, simply experienced unexplained catastrophic limb fractures.

In 2011 – 2012, many of the deaths were attributed to first to claim ratios that incentivized brazen horses with potential health problems. This was promptly addressed. The Taskforce also identified structural issues within the racing operations that were addressed by NYRA. Additionally, the Taskforce identified factors that were present in many of the catastrophically injured horses. Research regarding factor identification continues.

The Office of Veterinary Affairs is undertaking a matched case controlled study seeking to identify high-risk horses before they race. Statistical analysis is underway and a consultation will be made with the Cornell University epidemiologist.

NYRA shares the concern with the breakdown trend as well. They engaged the services of renowned track surface expert, Dr. Michael Peterson, the Executive Director of the Racing Services Testing Laboratory at the University of Maine to examine the surface of the inner track in an attempt to identify issues with the physical track. Dr. Peterson has examined the track on four separate occasions since the start of the meet and has found no present abnormalities.

Additionally, NYRA veterinarians that are attending have full and independent authority to scratch horses at any time for any reason. They have identified 22 non-competitive horses and have barred them from participation. This aggressive review is a necessary component in protecting the equine athlete.

NYRA also announced that they are keeping a poor performance list of horses placed on this list after performing in a race at Aqueduct and losing by a margin of 25 lengths or greater to be placed on the list. Once on the list, the horse must complete one-half mile workout in 53 seconds or less to be permitted to race at a future date.

NYRA has also reduced weekday race cards to eight races and raised the bottom level from maiden claimers from 12,500 to 16,000 dollars – I am sorry, 12,500. And not accepting entries at Aqueduct for any horse that has not participated in a recognized race within 14 days of that last start.

Finally, the operations of Equine Safety Review Board have also been restructured to help improve its own tracking. Equine medical director will now schedule and run weekly meetings. These meetings

will include the equine medical director, the NYRA safety steward, the NYRA chief examining veterinary, and the vice-president of racing services.

The pathology report process will be expedited for gross pathology reports to be available for rapid review. Following meetings and depending upon outcome, the equine medical director and NYRA safety steward will meet with the trainer of the affected horse to discuss findings.

Finally, results from the ESRB (Equine Safety Review Board) analysis will be reviewed and summarized on a regular basis so as to assist the development policy recommendations to both the commission and to NYRA.

Since the initial meeting of the Gaming Commission, we have stressed our rule in ensuring equine health and safety as a primary concern. And there should be no doubt that our concerns remain primary.

For those of you who either reside locally or read the Long Island newspapers, you may be aware that the Nassau and Suffolk Regional Off-Track Betting Corporations have each identified locations where they want to site their video lottery gaming facility. If you recall, in 2013, the legislature authorized each of the off-track betting corporations to open a video lottery gaming facility in its respective region.

Nassau has identified a proposed location, the Fortunoff Mall, former Fortunoff Mall, in Westbury. Suffolk has identified a site Medford near the Long Island Expressway, Exit 64. There has been widespread media coverage regarding the proposed development. And as might be expected, not all of the reporting has been accurate.

The Commission has been portrayed by many as either having made the decision to locate the facilities at the Westbury or Medford sites or alternatively has final approval authority over the site selection itself. By law, the loan restriction in respective off-track betting corporation siting of the facility is that it must be located in a facility authorized pursuant to sections 1,008 or 1,009 of the Racing, Pari-Mutuel Wagering and Breeding Law. That punctually means that the facilities must be located either at an off-track branch office or within a simulcast theater.

Nassau is statutory limited or has already created their simulcast theater and has that established with the Race Palace at Plainview. So they will necessarily be limited to locating their branch office – a branch office at their gaming facility. The Commission standard review for the branch offices has been historically limited to a few different specifics generally relative to the lease document, review of personal history disclosure forms, examination of feasibility studies to ensure that the facility will generate incremental revenue to the regional corporations. And examination of various certificates of occupancy.

We also have some level of approvals relative each branch as well that are similarly situated. But the law is clear that we do not have a role in the selection of locations for either Nassau or Suffolk's proposed video lottery gaming facility itself. Those decisions on location are wholly and completed vested with each individual corporation, which are public benefit corporations with boards of directors selected by their respective country legislatures.

As to the workgroup advancement that previous discussed work orders, the Commission staff has been

contemplating the development of regulations necessary to govern the new casino gambling industry. To that end, staff has developed a framework, a table of contents for the regulatory scheme.

But rather than springing a cumulative set of proposed rules on the industry, we have determined to develop rules through a measured process by bringing topics into manageable portions and establishing informal working groups of interested parties to assist in home staff for this product.

Conceptual in that the staff would take a first pass at the proposed set of rules, circulate the same to members of the topical working group, meet with the working group if needed to develop a better product. And then bring it to the Commission for formal rule of proposal at which time the standard State Administrative Procedures Act requirements would apply.

Today, we are announcing the formation of the first three rule making working groups. The first work group regards problem gamble. The gaming law contains several specific requirements regarding prevention in outreach programs and controls on certain advertising.

We are seeking industry stakeholders and interested groups, individuals, and other concerned parties that would help with the refinement to draft regulations to govern that area. We also intend the specific outreach to disable to communities to ensure that there is an inclusive environment established that allows for all customers to enjoy the full spectrum of amenities offered by the Destination Game Resorts. So again, we are looking for industry stakeholders and interested parties to weigh in on the issue of access and utilization of commercial casinos by persons with disabilities.

Finally, one of the statutory factors for review of bitter applicants for the casino licenses was implementation of workforce development plans that among other things incorporated an affirmative action program of equal opportunity at which the licensee guaranteed to provide equal employment opportunities to all employees all by the licensure.

The development of workforce training programs that serve the underemployed and ensured and accessibility of employment at the gaming facilities and the establishment funding and maintenance of human resources hiring and training practices that promote the development of a skilled and diverse workforce. Then, we are likewise seeking to engage industry stakeholders, interested groups and individuals to assist with the development and refinement of workplace diversity regulations.

No later than Wednesday at the close of business, we will prominently post information on the Commission's webpage as to how to volunteer for these workgroups. We will also be contacting those who have previously indicated their interest in assisting in these endeavors. Chairman.

Mr. Chairman: Great, thank you, Rob. That was a wholesome report. I appreciate your work in the establishment, especially in the workgroup on problem gambling. I look forward to that report as well as your update and report from the Gaming Facilities Location Board. And we look to future updates from you as events allow for it. So thank you for that.

The New York State Racing, Pari-Mutuel Wagering and Breeding Law, Section 104.19, authorizes the Commission to promulgate rules and regulations that it deems necessary to carry out its responsibilities. To that end, the Commission will from time to time promulgate rules and amendments pursuant to the State Administrative Procedure Act. And today, we have two rule making items for

consideration. So let me ask Rob to outline the proposals.

Mr. Rob Williams: Item 4A regards rules pertaining to gaming facility requests for application and gaming facility license application. Specifically, on March 31, 2014, the Commission promulgated emergency rules prescribing both forms for the requested applications to develop and operate a gaming facility and several forms necessary to consider the in process applications for gaming facility licenses. By publication in the State Register on July 16, September 10, November 12, and now January 7, the Commission extended the emergency adoption. The present emergency rule will expire on February 16, 2015.

Accordingly, for Commission consideration is the re-adoption of Part 53 hundred as an emergency rule for such re-adoption to be filed with the Department of State prior to the expiration of the current emergency rule. The text of the rules has not changed since the initial emergency adoption on March 31, 2014. While the public comment period has expired and no public comment was received, permanent adoption of this rule should be considered when the Commission has before it a broader set of proposed commercial casino regulation that are still, as I mentioned, being drafted. Commission staff recommends re-adoption of this emergency ruling.

Mr. Chairman: So any questions from Commissioners on the re-adoption of the rules pertaining to the gaming facility request for application gaming license and such re-adoption to be filed with the Department of State prior to the expiration to the current emergency ruling. Any questions for Rob or staff? Gather them.

Okay. So may I have a motion then to re-adopt the rules pertaining to the gaming facility request for application and facility license application?

Unidentified Male: So moved.

Unidentified Male: So moved.

Mr. Chairman: It has been moved, a second?

Unidentified Male: Second.

Unidentified Male: Second.

Mr. Chairman: Great. Any discussion on the motion? All in favor say I?

All: I.

Mr. Chairman: Opposed? The motion carries. The next item, Rob.

Mr. Rob Williams: Item 4B is proposed amendments for a Thoroughbred Out of Competition Testing Rule designed to stylistically conform the Thoroughbred and Standardbred Out of Competition Rules, clarify the existing rule, and to add improvements that conform with amendments to the Standardbred Out of Competition Rule that took effect on August 6, 2014. Relative to improvements, the proposed rule adds several new blood and gene-doping agents including cobalt. The proposal

prohibits all substances that are capable of abnormally enhancing the oxygenation of body tissues. This is a particular import safeguard to health of horses and to protect the integrity of the race. Commission staff recommends the proposal of these amendments to the Thoroughbred out of Competition Testing Rule.

I want to mention that on the phone, we have Rick O'Dell, one of the assistant counsels that work on rule making relative to the thoroughbred rules. We also have with us at the meeting here, Dr. Scott Palmer, who also assisted in this.

Mr. Chairman: That is helpful. Any questions on the proposed rulemaking in the matter as Rob outlined? Any questions, comments or – okay. Well then, I would entertain a motion to adopt the proposed rulemaking on Thoroughbred out of Competition Testing. Do I have a motion?

Unidentified Male: So moved.

Mr. Chairman: Is there a second?

Unidentified Male: I second.

Mr. Chairman: Great, the motion has been made and seconded. Any discussion on the motion? Great, then I will call for a vote. All those in favor say I.

All: I.

Mr. Chairman: Opposed? Motion carries. Our next item on the agenda here is adjudications and the Commission has two hearing officer reports for consideration today. And we will ask Mr. Williams to outline the two cases starting the matter of Steven Kazmore [PH]. Rob?

Mr. Rob Williams: On September 22, 2014, the Bureau of Licensing declined to license Steven J. Kazmore as a totalizator employee for thoroughbred and harnessed pari-mutuel wagering. The denial was based on the grounds that Mr. Kazmore made false statement on his license application. After Mr. Kazmore appealed, a hearing was conducted. The hearing officer's report and recommendation were delivered to the Commission Secretary on December 16, 2014. The hearing officer recommended that the license be granted. 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.

Mr. Chairman: Thank you. The Commission duly deliberated it and considered this matter and determined upon a unanimous vote to reject the hearing officer's report and recommendations on the basis of representations made on a license application in violation of the Commission's rules. Next Rob?

Mr. Rob Williams: On September 22, 2014, the Bureau of Licensing declined the license for Ann [PH] Lewis as a harnessed racing trainer rider. The denial was based on the grounds that Mr. Lewis's experience, character, and general fitness are such that his participation in racing or related activities would be inconsistent with the public interest, convenience, or necessity or with the best interest of racing generally. After Mr. Lewis appealed, a hearing was conducted. The hearing officer's report and recommendation were delivered to the Commission Secretary on December 23, 2014. The hearing

officer recommended that the denial be upheld.

Mr. Chairman: The Commission duly deliberated and considered this matter and determined on a unanimous 5-0 vote to sustain the hearing officer's report and recommendations. Okay. That concludes adjudications. And before we get to any new business, if there is any – given that this is the first meeting of 2015 and I regret that I am not there in person with you. But I think it is timely to reflect on some of last years articulated goals that we have been working on that I have prepared some comments on.

First, is the reform of the hearing process, one of the consistent theme of our fellow Commissioners discussed last year was the necessity to reform the hearing process. I think most of us expressed concern with the length that it took from the initial citation or the violation charge until a hearing officer's report and recommendation was before this body for final agency action. And I think substantial advances have been made. First, we issued a request for qualification for outside hearing officers resulting in the engagement of four individuals, which has brought flexibility in the scheduling of hearings, the required hearing officer reports to be submitted in a timely fashion, establishing a deadline for their completion following the conclusion of an administrative hearing.

We were also addressing a problem not just seen in New York, but in other jurisdictions around the country as well. We have taken important steps to prevent the gaming of the administrative hearing process. Rule violators have long request adjournment after adjournment until it was convenient for them to face a potential suspension or other penalty. All participants in the administrative process tolerated these delays. And I am pleased that we have started to make measures to effectively eliminate their permissiveness.

Obviously, and of course, the process can already have refinement and it continues. Actually, just last month, several Commissioners requested an adjustment in what violations are actually appealed. They want to ask staff to consider an assessed cost for unprosecuted appeals, particularly reflecting on this whole process. And I would like to thank Commissioner Moschetti and General Counsel Ed Burns and Assistant Counsel Rick O'Dell for their continued and diligent work in this area.

Secondly, drug rules, a key tenant of our mission statement in regards to health of ray sources. Strict regulation of drugs has long been a primary concern of part of the Commission. And I am proud that New York has the strongest equines drugs regulations in the nation. And we all recognize the importance of the adoption of the Uniform Drug Standards. I think we are all pleased that we have taken measures to ensure that New York continues to lead the way while being consistent with other important national racing jurisdictions.

Obviously, consideration of uniformity and adoption of other drug prohibitions remains important. Hence, our earlier consideration just this afternoon of yet another adjustment and a new drug prohibition proposal. Similarly, I would like to congratulate Assistant Counsel, Rick O'Dell and our Equine Medical Director, Doctor Scott Palmer for their leadership in this important area.

Which brings me finally to the Equine Medical Director in a final thought regarding Dr. Palmer. The Commission is hiring Scott Palmer as the Equine Medical Director in and of itself was arguably one of the most significant advances addressing equine health and safety. While I appreciate, I think we all do, his work regarding drug rules. That is only one small portion of his portfolio. It is my understanding

that Dr. Palmer has been working on several important measures including a statistical analysis of the epidemiological data collected from NYRA Racetracks in the development of a virtually stable software program that we will name on the Commission automatically. Notify a claiming trainer of corticosteroid injections reported on the Commission's Equine Steroid Administration Law.

Additionally, it is my understanding from Rob and others that Dr. Palmer will be focusing on standardizing pre-racehorse inspections with the intention of increased use of information and technology. And I see that Dr. Palmer is there in the room with us this afternoon. So I would like to afford him the opportunity to share a brief overview of his office from the past year with our gratitude for your considerable work. Dr. Palmer.

Dr. Scott Palmer: Thank you, Mr. Chairman. Inaugural year of the Office of Veterinary Affairs was defined large part by creating goals and objectives of this new office. After meeting with the Secretary of Racing from the Governor's office as well as the dean of Cornell College of Veterinary Medicine, the Executive Director of the Gaming Commission, and the Chief Executive Officer of NYRA, I created a list of consensus priorities identified by these stakeholders. And designed a strategic plan to address them.

One of the top priorities was the creation of a comprehensive biosecurity plan for New York racetracks to prevent and limit the spread of infectious disease. I established a working group of veterinarians from Cornell University and the New York State Department of Agriculture and Markets. Together, we drafted the biosecurity tool kit with unique documents. The racetrack operators, veterinarians, and horsemen. This biosecurity plan was successfully used four times during the year to manage the outbreaks of contagious disease at the New York racetracks with minimal interruption of racing throughout the state and in the region.

Another top priority was reform of the New York State Medication Rules to embody the scope of the ARCI National Uniform Medication Rules. This has been accomplished in a collaborative effort for both thoroughbred and standardbred horsemen, veterinarians, and racetrack operators. The support of the Commissioners in this area is very much appreciated.

I have also been with the New York State Drug Testing Research Laboratory to achieve accreditation by the Racing Medication and Testing Consortia. And we instituted an aggressive out of competition testing program this past year to detect the administration of substances and drugs that could influence the outcome of the race to get the undetectable by conventional undetectable by conventional race day testing.

The third top priority was to perform a gap analysis of the recommendations of the New York Taskforce on Race Horse Health and Safety. I am pleased to report that this process has moved forward with full cooperation of all relative stakeholders. I would emphasize that this is not a checklist, however, but rather an ongoing and meaningful commitment to equine rider and driver safety that requires consistent vigilance, scheduled reviews, and adjustments with internal controls along the way. In a very real sense, it is a quality control process.

The formation of the equine necropsy program at Cornell University and the Equine Safety Review Board at NYRA and Finger Lakes Racetrack were important components of this process. Both of these efforts, I think, can be fairly characterized as works in progress. We have learned a great deal from the

two years of data from the necropsy program that is currently undergoing scientific analysis and will be published.

The Commission has recently assumed administrative control of the Equine Safety Review Board and will continue to work with NYRA and the Finger Lakes racing officials to increase the effectiveness in the investigative process and the Review Board operations.

Finally, in March of this year, PIDA [PH] presented the Commission with nearly 8 hours of video and approximately 285 pages of written notes from an undercover investigation by PIDA alleging multiple rule violations and widespread animal abuse by the ____ [00:30:17] Stable. This required the Commission to undertake a comprehensive investigation of the circumstances surrounding the day to day operations of the _____ [00:30:25] Stable and the care of their horses during the 2013 Saratoga race week meet as well as some circumstances that had bearing on these complaints that occurred in other racing jurisdictions as well. This investigation is now complete and the report is currently in the final stages of review prior to presentation to the Commissioners.

In the coming year, I will address a number of known issues. From the internal perspective and in consultation with Commission staff, I will create a series of internal controls to the Office of Veterinary Affairs in order to identify areas of exposure to the department, design appropriate interventions to address them.

Externally, I will collaborate with Jockey Club to create an online continuing education program for trainers. And will propose rule making that will require completion of a defined number of hours of continuing education as a requirement for trainer licensure in 2016.

I have created international working group of veterinary researchers and clinicians who will collaborate in the coming year to examine the appearance of unexplained cardiac deaths at the racetrack. Expecting our examining veterinarians to identify horses that will sustain a catastrophic injury in a race with one hundred percent accuracy by performing nearly one hundred physical examinations in the morning hours of each and every race day. It is in practical terms mission impossible.

In the coming year, I will conduct a pilot study of the use of inertia motion sensor technology to provide an objective measure of soundness of these horses by examining veterinarians. I will develop evidence-based recommendations to more accurately identify horses with risk of repetitive overuse injury. Finally, I will conduct a comprehensive review of all the circumstances surrounding winter racing at Aqueduct. I will make additional recommendations to prevent the occurrence of another spite of injuries during the 2015 Aqueduct fall and winter meets. Thank you very much.

Mr. Chairman: Great! Thank you, doctor. Any follow up questions or comments to Dr. Palmer from fellow Commissioners? Well relatedly, as we look ahead, I would invite any Commissioner to take some time and reflect on any policy procedural objectives that they would like to see considered in the upcoming year. I think we have heard certainly Dr. Palmer's reflections and wholesome report from our Executive Director on some of the things coming up.

And looking back just in the past year, I am grateful for the initiative in and around problem gambling, the hearing that we had in Albany, which continues to have relevance as we move forward. Any new or old business to consider in the committee? We had Rob's report. We look to follow up as he outlined as

well.

Next, turning to scheduling of our next meeting, today's meeting consistent with our practice. The next meeting is scheduled for February 23, 2015. That would be the fourth Monday of the month. And again, we ask you to advise Ms. Buckley of your availability. Any other matters, Rob, anything else?

Mr. Rob Williams: No.

Mr. Chairman: Not being in the room, I just want to make sure we are getting everything done. Okay. Well that concludes our today's published agenda. In hearing nothing else, this meeting of the New York State Gaming Commission is officially adjourned. Thank you all for joining us and safe travels to all of you.

Unidentified Male: Thank you.

Unidentified Male: Thank you.

Unidentified Male: Thank you.