

Chairman: Good afternoon. The 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. Four members confirmed by the New York State Senate are necessary to afford the commission an ability to establish a quorum and to undertake action. This present meeting of the commission is now called to order.

This meeting is being conducted in conformity with Governor Andrew M. Cuomo's Executive Order 202.1, which is entitled "Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency." The order suspended portions of the Open Meetings Law and specifically allows the conduct of meetings by telephone or another similar service.

The Governor's executive order, in relevant part, reads, "Article 7 of the Public Officers Law, to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting the public in-person access to the meetings and authorizing such meetings to be held remotely, by conference call or similar service, provided that the public has an ability to view or listen to such proceeding, and that such meetings are recorded and later transcribed."

By Executive Order 202.107, Governor Cuomo extended the authority of Order 202 through June 7, I believe, of 2021.

Accordingly, this meeting of the commission is being conducted in conformance with such allowance and we are recording today's meeting for transcription as required.

Ms. Secretary, will you please call the roll?

Secretary: John Crotty?

John Crotty: Present.

Secretary: Peter Moschetti?

Peter Moschetti: Here.

Secretary: John Poklemba?

John Poklemba: Here.

Secretary: Barry Sample.

Barry Sample: Here.

Secretary: Jerry Skurnik.

Jerry Skurnik: Here.

Chairman: Ms. Secretary, please have the record reflect that a quorum of qualified members is present and thus enabling the transaction of business.

Minutes of the commission meeting conducted on March 15, 2021, have been provided to members in advance. At this time, I'd like to ask the members if there are any edits, corrections, or amendments? Any concerns or changes? Hearing none, Ms. Secretary, please reflect that the minutes have been accepted.

Rulemaking. 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 responsibility. In that regard, the commission rules will, from time to time, promulgate rules and rule amendments pursuant to the state administrator's Procedure Act.

Today, we have five rules for adoption and consideration. Rod, can you please outline the first item?

Rob Williams: Certainly. For commission consideration is the adoption of a rulemaking to control the improper use of the bronchodilator clenbuterol. Clenbuterol is a beta2 agonist that, in the United States, is not approved for human use; it is only approved for use in horses to treat lower airway disease. Clenbuterol has a secondary mode of action, a repartitioning effect that causes the body to build more muscle and reduce fat content to the body; this effect may last for two months after treatment is discontinued; while it is unclear whether the long-term use will improve race performance, the potential to abuse the drug for performance-enhancing effects is undeniable. We note that the World Anti-Doping Agency and the International Olympic Committee have banned its use in human athletes as a performance-enhancing drug.

Due to its potential use as a performance-enhancing drug, Clenbuterol has been regulated by the commission; with thoroughbred horses the commission allows the use of Clenbuterol under a therapeutic use exception. The commission rules provide that a horse may not race for at least 14 days following Clenbuterol administration. This requires a prescription by an intending veterinarian and recordation in veterinary records.

With standard-bred horses, Clenbuterol administration also requires a prescription by an attending veterinarian and recordation and veterinary records, but its administration is allowed until 96 hours before the

scheduled post time of the race in which the treated horse is to compete. This is allowed since harness horses generally race weekly which exposes a horse to drug testing that identifies Clenbuterol administration within the preceding two weeks through urinalysis and 96 hours through plasma testing.

The standard rule also provides an exception for horses required to qualify without a performance within 30 days or which has not yet raced after qualifying. These horses may not race for at least 14 days following administration of Clenbuterol. If a harness horse does not race for 30 days, it is subject to the 14 days following Clenbuterol administration prohibition.

This present rulemaking regarding acceptable use of Clenbuterol was born from data analyzed by Equine Medical Director, Scott Palmer, who reviewed out-of-competition samples from horses trained by individuals indicted by the United States government; recall that each horse was required to submit a hair sample to be tested for prohibited and impermissible substances prior to the horse being allowed to return to racing. The review found Clenbuterol was administered to a substantial number of these horses without evidence of medical prescription.

This rulemaking requires written regulatory approval before a horse in training may be treated with a prescribed Clenbuterol, required daily submission of the administration of any Clenbuterol treatment; requires the treated horse to be placed on the veterinarian's list; and bars a horse from resuming racing until it tests negative for Clenbuterol in both blood and urine.

A notice of proposed rulemaking was published in the March 3, 2021 state register meaning the public comment period expired on May 3rd. Two public comments were received. Will Alempijevic, the Executive Director of the New York Thoroughbred Horsemen's Association, simply provided a written comment indicating that the organization supports the proposed rulemaking. The New York Racing Association Inc. stated that it supports the objective of the proposed rulemaking, but it sought certain clarifications. Specifically, NYRA seeks an understanding on how urine will be collected to comply with the rule, and they recommended that guidance be provided for the horsemen with regard to withdrawal periods for Clenbuterol for both blood and urine.

Staff notes that the rule does not mandate any particular collection methodology and that the state test foreign and staff can be used for the collection of samples if collection arrangements are made in advance.

As for withdrawal periods, any horse undertaking a Clenbuterol treatment plan is required to test clean of Clenbuterol before resumption

so there is no need to establish withdrawal periods. Staff also notes that horsemen raised no concern with withdrawal guidelines in their written comments; staff recommends that the commission adopt this rulemaking.

Chairman: Commissioners, any questions on the adoption of a rule regarding restrictions on Clenbuterol use in thoroughbred racing? Hearing no questions, do we have a motion to adopt?

Commissioner: So move.

Chairman: Any second?

Commissioner: Second.

Chairman: Any discussion of the motion? Hearing none, all in favor?

Chorus: Aye.

Chairman: Any opposed? Any opposed? Motion carries. Next item, please.

Rob Williams: For commission consideration is the adoption of a rulemaking to conform to the commission rules on the thresholds for controlled therapeutic medications. The national model rule amendments made by the Association of Racing Commissioners International. Specifically, ARCI modified the rule thresholds for three drugs based on new research. These drugs are detomidine, omeprazole, and xylazine. ARCI also added to the list of threshold amounts for four routine therapeutic medications; three of these--cetirizine, cimetidine, and ranitidine--are antihistamines; and the fourth, guaifenesin, is a muscle relaxant used in anesthetic protocols.

These amended and newly-proposed thresholds are consistent with New York's restricted time periods meaning that trainers who comply with such restricted time periods will be assured of not violating such thresholds. A notice of proposed rulemaking was published in the March 3rd state register meaning the public comment period expired May 3rd, 2021. One public comment was received. Will Alempijevic, the Executive Director of the New York Thoroughbred Horsemen's Association, provided a written comment indicating the organization supports the proposed rulemaking. Staff recommends that the commission adopt this rulemaking.

Chairman: Commissioners, any questions on the adoption of a rule regarding thresholds for controlled therapeutic medications in horse racing? Hearing none, may I have a motion to adopt this rule.

Commissioner: So move.

Commissioner: So move.

Chairman: Second?

Commissioner: Second.

Chairman: Any discussion of the motion? Hearing none, all in favor?

Chorus: Aye.

Chairman: Any opposed? Hearing none, the motion carries. Next.

Rob Williams: For commission consideration is the adoption of several changes to the casino table games regulations to improve operations and conform with industry standards. These changes include allowing the local area progressive controllers to be implemented to coordinate the payments of a shared progressive jackpot between two or more tables at the same facility, adding additional chips denominations of two 25,000 and two 100,000, clarifying dealer and patron wagering, and a discrete wager offered in the game of blackjack providing a non-generic optional wager of match the dealer and pay tables for the Spanish 21 table game; adding pay tables for the baccarat game dragon bonus wager; requiring midi baccarat tables to have a form of a discard rack; clarifying the rules for our optional bonus wagers and optional dragon bonus wagers in mini and midi baccarat games; and moving definitions for non-value chip and value chip to the general definition section.

A notice of proposed rulemaking was published in the March 3rd, 2021 state register, meaning the public comment period expired on May 3rd. No public comments were received. Staff recommends that the commission adopt this rulemaking.

Chairman: Commissioners, any questions on the adoption of these casino table game rules? Hearing none, may I have a motion?

Commissioner: So, move.

Chairman: Second.

Commissioner: Second.

Chairman: Any discussion of the motion? Hearing none, all in favor?

Commissioner: Aye.

Chairman: Any opposed? Motion carries. Next item.

Rob Williams:

For commission consideration is adoption of rules to formalize the practice that race day Furosemide administration be provided by independent third-party veterinarians who are not caring for the horses, or the trainer or owner, who participates at a race meeting. Furosemide or Lasix is a diuretic administered to horses to prevent exercise-induced pulmonary hemorrhage, a condition wherein pulmonary bleeding occurs when capillaries and the horse's lungs burst as a result of exertion from intense exercise or racing.

The recommendation that Lasix be administered by a third-party veterinarian and not a trainer's private veterinarian is one of the four key elements of the National Uniform Medication Program which was developed by the Racing Medication and Testing Consortium and approved in 2013 by the Association of Racing Commissioners International. The purpose of the rulemaking is to prevent private practice and veterinarians employed by trainers and owners from administering any race day medication and place responsibility for administration of the only allowable race day medication on independent veterinarians who otherwise have no business affiliation with those owners and trainers. In fact, the American Association of Equine Practitioners strongly advocated for third-party administration of race-day Lasix to negate any premise that support of race-day Lasix was in any way based upon the racetrack veterinarian's financial interest.

Third-party Lasix administration is being conducted in every state in the Northeast and Mid-Atlantic region that conducts racing. Delaware, Maryland, Massachusetts, New Jersey, and Pennsylvania. Several other major jurisdictions such as California, Florida, and Kentucky have also adopted the standard.

A notice of proposed rulemaking was published in the March 3rd, 2021 state register, meaning the public comment period expired on May 3rd. Seven public comments were received. Three comments were received from private practicing veterinarians at Finger Lakes Gaming & Racetrack; these were from Brian Hobson, Brendan Warnell, and Robin Zack who works towards Dr. Hobson. Another comment was received from Dr. Beth Albrecht, the Chief Examining Veterinarian employed by Finger Lakes. All four suggested that the rules for Finger Lakes should be different than other race tracks due to unique circumstances such as the difficulty in recruiting veterinarians to work on track or the lack of familiarity a third party might have with a specific horse to be treated.

Staff reiterates that the third-party license administration standard has been adopted by numerous states and notes that the law verification system has been used in five jurisdictions in America. Three states simply require the administering veterinarian to swear appropriate administration occurred while the remaining two require that it be

administered before a regulatory official three doctors Hobson, Warnell, and Zach also raised financial considerations indicating.

Three doctors, Hobson, Warnell, and Zack, also raised financial considerations indicating their practice relied upon the revenue derived from Lasix administration and that the loss of revenue might make their respective practices unsustainable. These three also suggested that the state-authorized third-party verification wherein a third party accompanies the private veterinarian during the rounds to observe the administration and verify no wrongdoing occurs. As I mentioned, there are five states that do that, three of which simply require a veterinarian to verify and two require that the state otherwise have a person verify the administration. None of them are in the northeast.

Staff recognizes the potential financial implications and suggests that the three comments underscore the necessity for third party administration, in that a business model that places a veterinarian's practice in jeopardy due to the loss of income from race day medication is unsustainable; conflicts with the current nationwide industry of philosophy of medication reform; and is ultimately not in the best long-term interest of the sport. Staff also notes that with the impending establishment of the Horseracing Integrity and Safety Authority, the future general use of Lasix appears to be limited.

One comment from Dr. Hobson indicated disagreement with the commission's language used in the regulatory impact statement; staff disagrees with Dr. Hobson and stands by the explanatory information as provided.

Another comment was received from Vieden Zahariev, the Assistant General Manager of Finger Lakes Racetrack. Mr. Zahariev made financial arguments against the proposal indicating the financial burden of independent veterinarians would provide no significant benefit; he also argued that third-party Lasix administration monitoring would be sufficient, noting that in 2019, the National Thoroughbred Racing Association recommended this as an option in their review of Finger Lakes certification.

Staff believes that Mr. Zahariev is overbroad in his statement regarding the NTRA; we reviewed the 2019 NTRA safety audit and finds that the NTRA did not endorse a monitor in practice and specifically raised concern that Finger Lakes veterinarians all provide varying descriptions of how their monitoring program work, noting that the explanation provided by two veterinarians was "completely incorrect". Staff notes that third party Lasix administration monitoring is not authorized by either the National Uniform Medication Program or the ARCI model rule. Staff further notices that the NTRA has representation on the

RMTC with the NTRA's President and Chief Executive Officer serving in the capacity of RMTC chairman, meaning that a conflict with interpretation is unlikely.

We also received one comment from Peter Kanter, racetrack veterinarian at Buffalo Raceway and Batavia Downs. Dr. Kanter questioned the necessity for the rule and raised concern that he would be prohibited from performing surgery. Staff believes that the purpose for the rule proposal is clear and necessary, and notes that the rule allows urgent veterinary care and the capacity of a tract veterinarian made available by the racetrack operator; staff does not believe that the adoption of this rule will prohibit Dr. Kanter from performing such surgery.

The seventh comment was received by the New York Thoroughbred Horsemen's Association, whose Executive Director, Will Alempijevic, provided a written comment indicating that the organization supports the proposed rulemaking.

Chairman: Commissioners, any questions on the adoption of a rule regarding Lasix administration on race day? Hearing none, may I have a motion to adopt this rule?

Commissioner: So move.

Chairman: Second?

Commissioner: Second.

Chairman: Any discussion of the motion? Hearing none, all in favor?

Commissioner: Aye.

Chairman: Any opposed? Motion carries. Next item?

Rob Williams: The last rule for consideration today is a change to implement various provisions of legislation and to update various charitable gambling regulations. The rulemaking addresses prize limits and advertising while making other stylistic edits to conform charitable gaming regulations to other commission regulations. A notice of the proposed rulemaking was published in the March 3rd, 2021 state register, meaning the public comment period expired on May 3.

No public comments were received. Staff recommends the commission adopt this rulemaking.

Chairman: Any questions on the adoption of a rule regarding regulation of bingo? Hearing none, may I have a motion?



Commissioner: So move.

Chairman: Second?

Commissioner: Second.

Chairman: Any discussion of the motion? Hearing none, all in favor?

Commissioner: Aye.

Chairman: Any opposed? Motion carries. Next item on the agenda is adjudication; the next item, the scheduled business regarding adjudication. Today, we have one matter for adjudication. Rob?

Rob Williams: On November 29, 2019, the commission issued a notice of hearing to Linda Rice to conduct a hearing to determine whether her license to participate in the thoroughbred racing should be suspended or revoked and should be fined for actions inconsistent with and detrimental to the best interest of racing generally and corrupt and improper practices in relation to racing from on or about the 2011/2012 Aqueduct Race Meet through March of 2015.

Ms. Rice requested a hearing which was conducted over eight days. During the hearing, 60 exhibits were received into evidence and 15 witnesses testified. The hearing officer submitted a report to the commission secretary dated April 13, 2021, concluding that Ms. Rice's conduct involved the receipt of and request for confidential entry information and overnight races which was intentional, serious, and extensive, and that her actions constituted improper and corrupt conduct in relation to racing and violation of Commission Rule 4042-1F and were inconsistent with and detrimental to the best interests of horse racing.

The hearing officer recommended the commission impose a fine of \$50,000 and immediately revoke her license to participate in thoroughbred racing in New York State, restricting her ability to apply for a new license for a period of no less than three years.

The commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of New York Public Officers Law Section 108.1. The commission duly deliberated and considered this matter and determined, upon a 5-0 vote, to modify the hearing officer's report and recommendation. The commission concurs with the penalty recommended, but modifies the report to specifically reflect that the hearing officer found multiple violations which, under New York Racing, Pari-Mutuel Wagering and Breeding Law, of Section 116, allows for a penalty of up to \$25,000 per violation.

The commission unanimously determined a fine of \$50,000 dollars to be appropriate for these multiple violations.

Chairman:

Our next item today are decisions and it's in the matter of the claim of Noble Thoughts thought. Trainer Bruce Levine filed a protest upon the request of Flying B Stables over the claiming of a horse, Noble Thoughts, which raced the Aqueduct Racetrack on April 10, 2021. After the horse was claimed, it was determined that the NYRA racing office allowed the winning participant to make a claim despite being unlikely. The steward unanimously voided the claim and returned the horse to its original owner, Beast Mode Racing LLC, and his trainer, Robert Falcone. Mr. Levine believes a new shape should have occurred.

The commission conducted a hearing on April 29 2021 pursuant to Commission Rule Section 4039.5, with Commissioner Moschetti designated to hear and rule upon this matter. Following the hearing, Commissioner Moschetti reversed the decision of the stewards not to conduct the second shake and ordered a new drawing among the remaining eligible claimants to determine ownership of the horse. He also directed the stewards to immediately deliver the horse to the winner of the new drawing upon payment of the claiming price and further ordered the new winner to reimburse Beast Mode Racing and Mr. Falcone for cost and care for the time the horse spent in their custody until being turned over.

That's the list of the major items we had on our agenda today. Is there any old business that anyone would like to raise? Hearing none, is there any new business that anyone would like to raise?

Commissioner:

I mean I would like to comment on what we saw go on down in between Kentucky... it does bear noticing that--what happened there is a tarnish on the sport itself. But more importantly, we have to think about how we can do a better job of not allowing those things to occur as a general matter. I'm proud of what we put in the place here, Mr. Chairman, in terms of our regulatory regime, and I think we've been very clear about it and constantly working with the veterinarians and different people to make sure we're up on what needs to go on.

But those things really hurt the industry--and I'm proud of what we've been able to put together so far in terms of a regulatory regime and want to keep sort of making sure we're going out there. It's unfortunate that this happened, but it's worth noting that we have been trying with the best science available to make sure we were staying in front of this stuff. And I do think it is worth noting that. I know you, Mr. Chairman and you, Rob, spend a fair amount of time talking to various veterinarians about this stuff and what the sort of cutting edge is; and I think it's commendable the work--and I think it helps New York avoid some of

those issues that come up in some of these other jurisdictions more regularly than they do here. It is worth noting that a lot less of that occurs up here than it does in other places.

Chairman: Do you have any suggestions of things that we have not done that we should be doing?

Commissioner: Well, there is a list of things but we've talked about them in terms of different elements with Lasix, some we've implemented; we've allowed the track to implement some we've not done from a regulatory point of view which there was some conversation about whether or not we should do it as a codified rule versus allowing the tracks to sort of operate like that, and some other issues.

And it wasn't one particular thing, but it is worth noting some of the work that has been put in and it's sort of the continuous work. I don't think there's been that many meetings where some regulation or stipulation hasn't come up; I mean it's a lot of effort and I think that a lot of it has been done quite well.

Chairman: I think if any of us have any ideas or suggestions of things that we need to be doing that we have not thought about, or need to think more about, if we could send them to Rob and folks and we could think in terms of addressing them at some future session.

Commissioner: Great. Thank you.

Chairman: That concludes today's published agenda. We'd like to thank everyone for participating; we would like to thank everyone for preparing us for today, there were a number of things that we had to go through, particularly some of the rules and regs which were quite expensive.

We've normally met on--Kristen will coordinate the date that we're going to need for our next meeting. With that, there are no other items, I think we can adjourn for the day. Thank you.

Commissioner: Thank you.

Commissioner: Thank you.