

Unidentified male: New York State Racing, Pari-Mutual 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 Senator necessary to afford the Commission an ability to establish a forum and to undertake action.

This present meeting of the Commission is now called to order. Ms. Secretary, will you please call the roll?

Secretary: John Crotty.

John Crotty: Here.

Secretary: Peter Moschetti?

Peter Moschetti: Here.

Secretary: John Poklemba?

John Poklemba: Here.

Secretary: Barry Sample?

Barry Sample: Here.

Secretary: Jerry Skurnik?

Jerry Skurnik: Here.

Secretary: Todd Snyder?

Unidentified male: Mr. Snyder has indicated he is serving the public through jury duty today and will not be able to attend. Ms. Secretary, will you please have a record reflect that a quorum of qualified members are present thus enabling the transaction of business?

Chairman Sample?

Barry Sample: The minutes of the Commission meeting conducted on March 25<sup>th</sup>, 2019 have been provided to the members in advance. At this time, I'd like to ask if member—members if there are any edits, corrections, or amendments?

Hearing none, may I have a motion to approve?

Unidentified male: So, moved.

Unidentified male: So, moved.

Unidentified male: Second?

Unidentified male: Second.

Unidentified male: All in favor?

Unidentified male: I. [In unison]

Unidentified male: The motion is passed.

Rule making will be our next item on the agenda. New York State Racing Pari-Mutual Wagering and Breeding Law 104.19 authorizes the Commission to palmitate rules and regulations that it deems necessary to carry out its responsibilities.

To that regard, the Commission will from time-to-time palmitate rules and rule amendments pursuant to the State Administrative Procedure Act. Today, we have three items for consideration. Rob, would you please outline?

Rob: Certainly. For Commission consideration is the adoption of a proposal making to allow the treatment of thoroughbred racehorses with ultrasonic diathermy—diathermanous or other electorol, mechanical equipment treatments until 24 hours before the scheduled post time of a horse's race.

Commission Rule 4043.13 currently permits the use of such equipment on race day until 24 hours before the start of the race program. The proposed amendment--which has the endorsement of the New York Thoroughbred Horseman's Association—authorizes the use of such equipment until 24 hours before each racehorse's scheduled post-time.

This change will conform use to the standards of the Commission's medication rules wherein there is a 24-hour restricted time period for substances administered to a horse before racing that are based upon the scheduled post time of the horse's race. No public comment was received. Staff recommends adoption of this rule proposal.

Unidentified male: Commissioners, any question on the adoption of the proposed treatment of thoroughbred horses with ultrasound or electromedical equipment before a race rule?

No questions? May I have a motion?

Unidentified male: So, moved.

Unidentified male: Second?

Unidentified male: I.

Unidentified male: All in favor?

Unidentified male: I. [In unison]

Unidentified male: Motion carries.

The next item?

Rob: For Commission consideration's the adoption of a proposal or proposed rulemaking to update the requirements for helmets and safety vests worn by persons loading horses into the starting gate or while mounted on a horse on the grounds of the thoroughbred racetrack.

The proposal would update the applicable standards for protective helmets and safety vests. The necessity to revise and update our rules to industry standards was noted in Marsh Risk Consulting's operational risk assessment report which was commissioned by the New York Jockey Injury Compensation Fund.

In addition to updating the standards for helmets, and requiring the starting gate \_\_\_\_\_[00:04:00] to wear helmets, the proposal also increases the maximum weight of a safety vest from 2 lbs. to 4 lbs. to permit newer vest models that provide enhanced safety. No comments were received. Staff recommends that the Commission adopt this proposed rulemaking.

Unidentified male: Any questions on the adoption of the proposed jockey safety helmet industrial?

Hearing none, may I have a motion?

Unidentified male: So, moved.

Unidentified male: Second?

Unidentified male: Second.

Unidentified male: All in favor?

Unidentified male: I. [In unison]

Unidentified male: Motion carries.

Next item, please?

Rob: For Commission consideration is the adoption of a proposal that would amend the Commission's rules regarding multiple medication \_\_\_\_\_[00:04:40] to conform with the new national model rule standard. As you may recollect, the multiple medication penalty system was one of the components of the National Uniform Medication Program proposed by the Racing Medication and Testing Consortium and approved as model rules by the Association of Racing Commissioners International.

The ARCIMMV model rule was revised in 2016 because most states had found the original rule either too strident and controversial to adopt. Accordingly, a revised MMV rule was approved by ARCI in December of 2016. Since that revision, almost every state that had adopted the original MMV system has amended its rules to the revised MMV.

Sixteen states have adopted the MMV system—Arkansas, Delaware, Indiana, Maine, Maryland, Massachusetts, Michigan, Montana, New Jersey, Pennsylvania, Virginia, Washington, and West Virginia have all adopted the revised MMV system. The only states that maintain the original MMV system are New York, Colorado and North Dakota.

Under this proposal, the Commission would impose a minimum license suspension after the occurrence of an equine drug rule violation in New York when the Commission deems—determines that the offender meets the criteria to be considered a habitual or persistent violator.

The proposal assigns—in Section 4045.3—a specific number of points for each type of equine drug violation whether committed in New York or elsewhere. A drug that has a very high potential to affect race performance and no therapeutic reason to be given to a horse, for example would be assigned the most points. Points would remain on the person's licensing history for a period of time determined by the seriousness of the drug.

A minimum mandatory license suspension is assigned in Section 4045.4 based upon the accumulation of such points within a specified time period. The minimum mandatory penalty enhancement would be 30, 60, 180 or 365 days depending upon how many points have accumulated against the licensee.

A penalty enhancement would also apply for all—for—would all apply for only the most serious and persistent equine drug violators. The minimum penalty enhancement rules were designed to ensure that every state

imposes a mandatory minimum penalty whenever a horse person—typically the trainer—reaches a certain level of multiple equine drug violations.

The proposed amendment is intended to conform New York’s rules to changes in the national model rules adopted by the ARCI. While no public comments were received during this rule making proposal, staff believes it’s relevant to mention that when ARCI adopted its revised model rule, they received four comments—two of which were from New York entities—the New York Racing Association and the New York Thoroughbred Horseman’s Association—both of which supported the revisions. Staff recommends adoption of this rule proposal.

Unidentified male: Commissioners, any questions on the adoption of the proposed amendment of multiple medication violation penalty enhancement rule?

Hearing none, may I have a notion?

Unidentified male: So, moved.

Unidentified male: Second?

Unidentified male: Second. [In unison]

Unidentified male: All those in favor?

Unidentified male: I. [In unison]

Unidentified male: That’s three. Those opposed?

Peter Moschetti: Nay.

Unidentified male: Nay. Two—motion carries by a vote of 3-to-2. And those voting in the affirmative were Commissioner Skurnik, Commissioner, Crotty, Commissioner Poklemba and the negative Commissioner Moschetti and myself, okay?

Next item?

Rob: Next item on the agenda regards to Lago—a commercial casino licensee. Lago Resort and Casino, LLC. doing business as Del Lago Resort and Casino submitted a written petition on March 22<sup>nd</sup>, 2019 seeking to reduce the number of their operational slot and table assets below the minimum detailed within Exhibit 1 of their gaming facility license.

The stated purpose of the petition is to remove underperforming slot and table game assets, and to access the efficiency of asset utilization, and patron opportunity without negative effects on patron experience, facility employment or state revenue.

An evaluation of the request was undertaken by the Division of Gaming which considered the effect of the petition levels on capital investment made, facility employment and revenues to the state. Additional considerations of enhancing facility stability, eliminating inefficiencies, reducing operating expenses and its potential effect on the patron experience were also undertaken.

Staff found that the capital investment made exceeded that which was required. Its slot utilization data illustrated an over abundance of slot assets exposed for play. A proposed reduction of slot assets would have no negative impact on the state gaming tax revenue and that there would be no negative impact on the employment levels.

Staff also reviewed the proposed reduction of table games and found no evidence that since opening Del Lago ever reached 80 tables in operation and that the proposed reduction in tables should have no associated state revenue impact either.

Accordingly, staff recommends approval of an amended gaming facility license—Exhibit 1 Item 5—to reflect the requested slot assets of 1,650 tables of 80 including 14 poker tables conditioned on the monthly submission of various written reports detailing—among other things—that the results of the proposed floor amendments—and that the reports list relevant data including slot utilization percentages, win per unit per day, table gaming employment levels, and changes in measurable efficiencies gained as the result of the proposed floor amendment.

If approved, staff also seeks the authority to conform the operating certificate issued to Del Lago Resort and Casino, LLC. for the new licensed conditions.

Unidentified male: Any questions on the consideration of gaming facility license amendment toward Lago Resort and Casino, LLC. as outlined?

No questions? May I have a motion?

Unidentified male: So, moved.

Unidentified male: Second?

Unidentified male: Second.

Unidentified male: All in favor?

Unidentified male: I. [In unison]

Unidentified male: Motion carries.

The next item are three adjudications that we have on the agenda for today. Rob, could you start with the first one?

Rob: Sure. On September 27<sup>th</sup>, 2018 the Bureau of Licensing denied the application of Cory Ueland for an occupational license to work as a cook at the Empire City Casino at Yonkers Raceway. While applicant Ueland had disclosed certain criminal convictions in his application, the result of the required federal and state criminal fingerprint history revealed additional undisclosed convictions.

When the applicant was given the opportunity to resubmit his application, he again failed to disclose the additional convictions. Accordingly, his application for license was denied.

Mr. Ueland requested a hearing which was conducted on November 30<sup>th</sup>, 2018. The hearing officer submitted a report to the Commission Secretary dated February 11<sup>th</sup>, 2019 recommending that the license denial be upheld on the grounds of Mr. Ueland's criminal history, but not on the basis of his failure to disclose convictions.

The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of New York Public Officer's Law Section 108.1.

Unidentified male: The Commission duly deliberated, and considered this matter, and determined upon a 5-to-0 vote to uphold the hearing officer's report, but modify to add the grounds based on non-disclosure.

Next item?

Rob: Thoroughbred horse Wildcat Bell competed in and won the fifth race at Aqueduct Racetrack on February 8<sup>th</sup>, 2018. Following the race, the steward's determined that Wildcat Bell had run 2 lbs. less than required by the conditions of the race.

Accordingly, the horse was disqualified and unplaced. Horse owner Ben Mondello challenged the disqualification and requested a hearing which was conducted December 13<sup>th</sup>, 2018. The hearing officer submitted a report dated February 19<sup>th</sup>, 2018 recommending that the decision of the

stewards to disqualify the horse, reorder the finish of the race, and determine purse money according to the reordered finish be upheld.

The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of New York Public Officer's Law Section 108.1.

Unidentified male: The Commission duly deliberated, and considered this matter, and determined upon a 5-to-0 vote to sustain the hearing officer's report and recommendations.

Rob: On January 25<sup>th</sup>, 2019 the Bureau of Licensing issued a Notice of License Suspension and ordered the immediate temporary suspension of the license agent—the sales agent license of Zara Convenience Deli and Grocery and—which conducts business at 7820 101<sup>st</sup> Street, Ozone Park, Queens.

The notice then informed Zara that the suspension was for a failure to remit funds due to the state lottery. The notice stated that unless the suspension—the suspension could become a revocation unless Zara requested a hearing.

Zara requested a hearing which was conducted on March 21<sup>st</sup>, 2019. The hearing officer submitted a report to the Commission's Secretary dated March 25<sup>th</sup>, 2019 recommending that the license be revoked and that the period from the date of suspension to the Commission's decision be a suspension of the license.

The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of New York Public Office's Law Section 108.1.

Unidentified male: The Commission duly deliberated, and considered this matter, and determined upon a 5-to-0 vote to sustain the hearing officer's report and recommendation. I think that concludes our judications for today.

And the next item on the agenda is old business.

Rob: There's two items of old business that should be discussed. The first is on January 28<sup>th</sup>, 2019 the Commission unanimously adopted a proposed rule that would add flexibility to the thoroughbred claiming price rule on a case-by-case basis for all or a portion of a race meeting while requiring the track to meet increased requirements to ensure the competitiveness, soundness and safety of the horses that enter such races.



While Chairman Sample directed the State Equine Medical Director Scott Palmer to carefully examine each request, and for staff to report back at the May meeting regarding the effect of the rule, I can offer a few preliminary observations following the close of the aqueduct winter meet which ended on March 31<sup>st</sup>.

As you are aware, the Office of the Equine Medical Director worked with NIRA veterinary staff to establish new required levels of equine health and safety scrutiny. At a functional level, these protocols supplemented the existing horse examinations which were intended to ensure increased attention to horses with certain characterized risk in certain types of races.

The additional protocols require identification of the at-risk horses using methods beyond the standard pre-race routine. During the required pre-race examination, a NIRA regulatory veterinarian is also required to secure information regarding the horse health and fitness.

Finally, a supervising NIRA veterinarian must undertake an additional physical examination as necessary based upon the information secured and upon review of historical findings prior to the pre-race inspection.

The Director of the NIRA's Veterinary Department or the Chief Examining Veterinarian is required to send a horse with abnormal clinical findings of sufficient concern discovered during any of the above cap mentioned expectations to be evaluated with diagnostic imaging such as ultrasound, radiography, or other advanced imagining.

If the nature of severity of the abnormality is not able to be determined by observation and clinical inspection alone, each horse, of course will also be scratched. Following the rules effective date, the first race was run under the new protocols on March 9<sup>th</sup>, 2019.

During the balance of the aqueduct meet, NIRA carded 11 races with enhanced first prize ratios. Some 80 horses were entered into these races—seven were scratched pre-race. There were no catastrophic injuries evident in any of the races. However, one horse was eased and walked off. This horse had sense been entered and finished another race without significant incident.

Dr. Palmer—who's with us today—is planning on making a more refined analytical presentation at our next meeting.

Unidentified male: Doc, do you have any comments?

Dr. Palmer: I would just say that I'm very, very pleased with the performance of the NIRA Regulatory Veterinarian Group and in additional scrutiny that they

provided. I think the fact that they scratched seven horses out of approximately 80 entries in this period of time indicates that they're doing their due-diligence and I'm very comfortable with the process.

And I think also the fatality rate at this aqueduct meet this year was 0.88 per 1,000. Last year it was 1.5. So, we've got some terrific progress in that area as well.

Unidentified male: I know you're planning on a more formal presentation at our next meeting, but any of the members have questions for Dr. Palmer while he's with us today? No?

Okay. Thank you. Next item is Santa Anita?

Rob: Yeah. The other piece that I would like to talk about is Santa Anita. Last month, Commissioner Crotty requested the staff analyze proposals advanced by the Stroh Act for Santa Anita Park and Golden Gate Park to determine whether the Commission should consider undertaking similar initiatives.

Before I begin, I want to note that since our last meeting, a coalition of thoroughbred racing associations and organizations announced a new initiative wherein all committed to phasing out the use of Lasix beginning in 2020 and eliminating the use of Lasix in state's races at their tracks beginning in 2021.

Under the new initiative, beginning in January 1<sup>st</sup>, 2020, two-year-old's would not be allowed to be treated with Lasix within 24 hours of a race. Beginning in 2021, the same prohibition would extend to all horses in stakes races at coalition racetracks.

The coalition includes all tracks owned or operated by Churchill Downs, NIRA, the Stroh Act Group, as well as Delmar, Kingsland, Lonestar, Remington Park, Los Alamedas Thoroughbred Race Course, Oakland Park, and Tampa Bay Downs.

With the Commission's permission, I'd like to walk through each of the dozen Stroh Act initiatives and compare with what occurs here in New York State. Is that okay?

Unidentified male: Please.

Unidentified male: Yes.

Rob: The Stroh Act initiatives can be broken down into two categories—general, process-oriented changes and changes to medication use.

Walking through the general changes—the Stroh Act Group will be increasing the time required for horses to be on site prior to a race. The Commission maintains shipping barns where the horses are detained and observed before racing.

The Stroh Act Group also proposes a significantly increased out of state—or out of competition testing program. The Commission of course, has an out of competition program of our own.

The Stroh Act Group is now requiring regular review of their racing surface retaining the University of Kentucky's Mac Peterson—an expert on racetrack surface testing. The Commission consults with Mr.—Dr. Peterson on an—ah!—on an as-needed basis. For instance, we consulted in 2018 regarding the Finger Lakes in Saratoga Surfaces.

The fourth item in the general category, the Stroh Act Group intends to invest in diagnostic equipment to detect preexisting conditions. On the Gaming Commission side, while we don't have any diagnostic equipment, we do know that Cornell University's College of Veterinary Medicine operates the fully equipped roughing and equine clinic across the street from Belmont Park.

On 5) the Stroh Act Group has proposed limiting the use of the crop. The Commission has significant limitations on the permitted use of the crop and it actually—before the incidences at Santa Anita—had talked about exploring some additional alternatives to both the crop itself and utilization of the crops. It's an ongoing process that we're still studying.

The last in the general category—the Stroh Act Group would like mandatory transfer of veterinary records to the new owner or trainer of a horse. The Commission of course, requires disclosure of all corticoid steroid joint injections to a claimant of any horse.

Relevant to medications, the Stroh Act Group has opposed an immediate suspension on the race day use of the—of anti-inflammatory—non-steroidal anti-inflammatory drugs. The Commission, of course, permits no painkillers within a time period where the drug may be efficacious.

The Stroh Act Group has opposed a ban on the use of in articular joint treatments 14 days preceding a race. The Commission does not allow corticoid joint injections within one week of racing.

The Stroh Act Group has also suggested strictly limiting the use of shockwave therapy. The Commission has such restrictions and does not

allow working at speed or racing within 10 days after a shockwave treatment therapy.

The Stroh Act Group also has suggested strictly limiting the use of anabolic steroids. The Commission has a strict anabolic steroid threshold mandating a six-month placement on the veterinary's list after any use and bans all non-indigenous steroids.

The Stroh Act Group also will only allow therapeutic medications only after a qualified veterinary diagnosis. The Commission, of course, forbids every drug administration unless pursuant to a veterinarian holding a valid patient/client relationship.

And then, finally, the most important one is from the point of the press that it's received. The Stroh Act Group will effectively phase out all race day medication for all horses born in or after 2018 barring such horses from race day Lasix, but allowing older horses to use Lasix at dosages 50% less than currently permitted down to 2.5 cc's.

The Commission permits only Lasix to be used on race day at a dose under 10 cc's. But review of the injections finds that typically, trainers do not treat with more than three cc's in New York. No?

Unidentified male: As you move along with your process, do any of the commissioners have any guidance, or additional input, or suggestions on where we go from here?

John: We had briefly discussed informally on the issue of Lasix, why we wouldn't propose that as a rule at this point. There was a concept of soliciting some more input from the industry specifically here in New York.

As it relates, I hope that we get that by the next meeting and if we do, I'd like to be in a position at that point to propagate rules which one could argue maybe would be the right way to do it now, but certainly, you know, taking a couple of days to get at all the insiders input on where they think this should come out would be useful.

I think as a body, it'd be very important for us to act. At this rate, the industry is going to take some concept of self-regulation. But as a Commission, we should not divest that authority to them in the hope that it goes in their best—in the best interest.

I think that was what we were intended to be and to do. And we should take that up at the proper time when we have some more of the facts in front of us. I would hope that we would.

Unidentified male: I'm in total agreement with John.

Unidentified male: Certainly, and that in the realm of solicitation of input, we talked about the thoroughbred breeders specifically. Now are there other entities that we would suggest that we need to reach out to? And doing that sooner rather than later?

Unidentified male: No, I don't know of any. But Rob may or the staff may. And if you do--

Unidentified male: Yeah.

Unidentified male: --by all means, reach out. I mean, I would think. But, you know, the rule process has solicited—we have solicited comments before for other topics--

Unidentified male: Yeah.

Unidentified male: --away from that. And I mean, we get them from various parties. I know the other states and localities are sort of going through this—some form of this process themselves to sort of flesh out exactly what this is going to be. But we should be able to get to a consensus position in the not so distant future to—there's some logistics to think through. But the broad construct is it's fairly simple.

Unidentified male: Yes, Mr. Chairman. I think we need to have an idea of the impact that this will have on the entire racing industry including Finger Lakes which as you know, is not under the NIRA jurisdiction. So--

Unidentified male: Okay.

Unidentified male: --if we could have some assessment of what this—what the impact would be on all of the participants in the horse racing industry.

Unidentified male: And I think it can include the standard breeds also and not just the thoroughbreds.

Unidentified male: Agreed.

Unidentified male: Agreed.

Unidentified male: Anything else?

Unidentified male: Well, I'll undertake a survey of breeders, racetracks, horsemen, owner's groups, veterinarians on both breeds.

Unidentified male: Okay. And we'll look through it.

Unidentified male: If anyone thinks of anything else during the course of the next week or so, please let me know.

Unidentified male: You know, and it's—it is more difficult to solicit responses in sort of the abstract. The particulars here will be very important, right?

So, the propagating rules eventually to say, "This is what we think we definitely want to do in getting back certain responses" I think will be as helpful as sort of getting this information ahead of time. It's hard to react to the generality with a specific theory.

Unidentified male: I can work with you on the content of the formal request.

Unidentified male: Yeah. I mean, however you want to do it. I think we know what we're trying to ask them, right?

The point is--

Unidentified male: Well, we know what the Coalition is, right?

Unidentified male: Right.

Unidentified male: It's recommending--

Unidentified male: Sure.

Unidentified male: --what we're going to do.

Unidentified male: Right.

Unidentified male: And assuming that was a--

Unidentified male: Yeah.

Unidentified male: --became a regulation of the Commission, what impact that would have.

Unidentified male: Right.

Unidentified male: Dr. Palmer, do you have anything to add there or any--

Dr. Palmer I think it's important to get veterinary input on this. I think that there's a lot of misconception about what this drug does and how it is used to control—like I say, it's used for pulmonary hemorrhage. And I think the medical conditions and the medical concerns have not been taken into

consideration by the coalition racetracks. And I think it's just something that should be heard from.

Unidentified male: Thank you, Doctor.

Unidentified male: Anything else?

Rob: That's all we have--

Unidentified male: Okay.

Rob: --for old business.

Unidentified male: The next item on the agenda is new business. We have nothing on the agenda for new business unless members have issues to raise. No?

That concludes our published agenda for the day unless others have things for consideration. But before we conclude for the day, I'd like to recognize the passing of George Para [PH], a presiding judge at Yonkers Raceway. George was a longtime standard bred horseman who had a passion for harness racing.

Prior to employment with the Commission, George trained and raced horses. In fact, he once served as President of the Saratoga Horse Harness Person's Association. He came to the Commission in 2012 serving as an associate judge at Saratoga before being promoted to presiding judge at Yonkers Raceway.

He served with great dedication and distinction. We offer our condolences to his wife, Joy and his son, Brandon. And I mispronounced his name. Yeah, I can't talk too straight, you know.

Unidentified male: Yeah.

Unidentified male: Karen [PH]—George Karen, sorry. And I apologize for that. I—but I would like to take a slight pause, so we could have a moment of silence please. Thank you.

Thank you. Our next scheduled meeting is for May 27<sup>th</sup> and if we could all work with Kristen to see if that date works for everyone?

Unidentified male: That's Memorial Day.

Unidentified male: That is Memorial Day. So, we're going to have to work with Kristen on a new date to schedule our next meeting, okay?

And hearing no additional issues or considerations, we adjourn immediately.