

Unidentified male: New York State recent _____ [00:00:02] wagering of reading law, section 102, provides that the New York State Gaming Commission consists of seven members appointment by the governor, by and with the consent and advice of the senate, four members confirmed by the New York State Senate are necessary to commission an ability to establish a quorum and then to take action. This present meeting of the commission is now called to order. Ms. Secretary, please call the role.

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?

Todd Snyder: Here.

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

Chairman Sample: First we'd like to is consider the meeting from our November 27 meeting, minutes of the commission, meeting conducted November 27 have been provided to members in advance. At this time I'd like to ask if members have any edits, corrections and/or amendments. Everybody is okay?

Unidentified male: Yes.

Chairman Sample: Let the record reflect that the minutes were accepted. Next on the agenda is the report of the acting executive director.

Unidentified male: Thank you Mr. Chairman. As per _____ [00:01:26] development there are three commercial casinos up and running in New York, _____ [00:01:30], Resorts World Catskill and announced last week the plans to open ahead of

schedule on February 8. The opening comes several weeks ahead of the previously announced opening date of March 1. The facility will offer patrons 150 live table games and 2,150 state of the art slot machines. Guest amenities will include 332 old suite luxury rooms, 12 penthouse suites, eight garden suites and seven two-story villas. Two indoor pools, a spa and fitness center and year-round 2,500 seat event center. Resorts World Catskill will feature extensive casino gaming options, first class amenities, luxury accommodations all within 90 miles of Manhattan. It is the cornerstone of a 1.2 billion dollar project that will include the casino resort. A planned entertainment village, indoor water park lodge for construction is now underway and expected to open early next year and an 18 hole Rees Jones designed golf course. The resort World Catskill Casino is expected to provide more than 1,400 jobs for the region. Resorts World Catskill will be open to the public 24 hours a day, seven days a week, 365 days a year.

I should also mention that the Oneida Nation will be opening their third casino, Point Place Casino in Bridgeport, near Syracuse on March 1. The 40 million dollar facility will offer 65,000 square foot casino and feature 500 slot machines and 20 table games.

Unidentified male: And comments following the report? One of the things that you may want to mention particularly if you get that information out publically as much as we can, and something we may want to work with communications on. You talk about the 1,400 jobs in the Catskill region. But from what I was hearing is we're having an issue in finding enough qualified candidates for the positions that are there. Can you give an overview of what that situation looks like?

Unidentified male: Yeah at the time right now we've been speaking with Resorts World Catskill and they have indicated that they are hopefully close to getting to the 1,400 by the opening date of February 8. So, we're hoping that they will get more people to apply between now and the opening date.

Unidentified male: Okay. The next item on the agenda is making New York State racing, wagering and breeders law authorized commission to promulgate rules and regulations as it deems necessary. To carry out its responsibilities and in that regard, the commission will from time to time promulgate rules and rule amendments pursuant to the state administrative procedure act. We have two items for consideration today. Ron will you please outline the first item?

Ron: Yes, for commission consideration is the adoption of a revised proposal making regard to additional time restrictions on the use of non-steroidal anti-inflammatory drugs, NSAID's before a horse race, races. NSAID's actually reduce pain by inhibiting the inflammatory process, which can improve healing and recover from injury. But it can also inhibit the effects of the natural healing process including swelling and associated pain that would prevent a horse from sustaining further injury. The intent of this rule making is to prevent the current and otherwise excessive administrations of NSAID's in race horses. This practice commonly known as stacking, could be

employed to enhance and disguise the presence of prohibitive substances in horses from regulated testing methods. This rule making proposal was published initially in the November 9, 2016 state register. At that time the proposal was intended to disallow the use of more than one NSAID within one week of racing. As NSAID's can be administered in combination that increase the potency and duration of the effect of the drugs. After consideration, the public comments from the racing medication and testing consortium and the New York thoroughbred horses association, the commission revised proposal to prevent up to two NSAID's within one week of racing provided that one is not used within 96 hours of the race and the other is not used within the current 48 hour restricted period. The revision preserved the intent of the initial proposal while addressing a legitimate concern raised in comments received. The revised proposal also includes the rule amendment to the _____ [00:05:51], formerly known as Arquel as an NSAID permitted to be administered within one week of racing. His substance is no longer marketed by any pharmaceutical company and it might be effacious for more than 48 hours. There is no veterinary necessity for its use within one week of racing and there is no national threshold for this drug. The revised rulemaking including the text of the revised proposed rule was published in the November 22, 2017 state register, a copy of which is attached. The public comment period for the revised proposal expired on December 22, 2017. Two comments were received one from the New York Racing Association and one from the horse trainer and chair of the New York Thoroughbred Horseman's Association, after care committee. Both supported the revised proposal. Separate _____ [00:06:41] the commission to adopt this revised proposal will maintain.

Unidentified male: Commissioners, do you have any questions on the adoption of the revised rule making regarding additional time restrictions on the use of non-steroidal anti-inflammatory drugs before horse races? Any questions?

Unidentified male: No.

Unidentified male: May I have a motion to adopt the rule?

Unidentified male: So moved.

Unidentified male: Second?

Unidentified male: Second.

Unidentified male: All those in favor?

Group: Aye.

Unidentified male: The motion carries. Ron will you please outline the second item?

Ron:

For commission consideration is a proposal to allow a claimant to void a claim of a thoroughbred horse that is discovered to have become lame or experienced epistaxis due to exercise induced _____ [00:07:26] hemorrhage in a claiming race. Under the historical gaming rules up to the starting gate of a race is open, the ownership of a claimed horse was transferred to the new owner before the risk of injury during the race. Although the owner who entered the horse perceives that he first won. The commission has modified the tradition of claiming role in recent years from to promote equine safety. In 2013 for example, the commission amended the rules to permit a claimant to void a claim if the horse was banned from the race track. This action followed the recommendation of Governor Andrew Cuomo's New York Task Force on race horse health safety in 2012. Under this new proposal a claimed horse would go to the test barn. After an appropriate cooling out period before which lameness is not always apparent. The state veterinarian who supervised the test barn would examine the horse for lameness, i.e. an alteration of the horse's gait. Such an examination would include a visual appraisal of the horse at rest and in motion on hard and soft surfaces. The veterinarian would determine whether the horse had grade II or higher lameness. The guidelines of the American Association of Equine Practitioners defines grade II as lameness that is consistently apparent under certain circumstances, circling hard surface. By comparison, grade I lameness is not consistently apparent and grade III lameness is observable at a trot under all circumstances.

The same standard of grade II lameness is used to put a horse on the veterinarians list to prevent a horse from entering races. The state veterinarian would also examine the horse for epistaxis leading from the nostrils caused by EIPH. If the state veterinarian determines that the horse has one or more of these conditions he or she would inform the claimant or represented of the claimant who is present to take the horse. The claimant would then be permitted to elect to void the claim rather than take the horse from the test barn. If the claimant voids the claim, then the owner who entered the horse in the race and whose representative took the horse to the test barn would continue to be responsible for the horse. The claimant would also decide not to void the claim and may take the horse. This decision would not waive any other objections, i.e. the proposal race positive and might later be identified as a possible objection to the claim.

The proposal is intended to provide further protections for the welfare of race horses by removing the incentive to enter a horse prone to such conditions and hope that the horse might be claimed. A claiming race provides the opportunity to unload a horse that is prone to EIPH or a lameness upon participating in high speed exercise. Conditions that would not be apparent to the examining veterinarian during a standard pre-race examination. This proposal will make it less likely that a horse will be entered to race if the owner or trainer has concern about the soundness of the horse to race. That the owner or trainer cannot shift the ownership of the horse prone to lameness or epistaxis due to the rigors of racing to a claimant, then the incentive to race

such a horse in a claiming race is reduced. The proposal also provides a medical benefit to claimed horses by introducing an appropriate lameness examination of a claimed horse before they are taken to the new barn. A horse with a significant injury might not show clinical signs of the injury immediately following the race due to the presence of elevated levels of endorphins, which are natural pain killers in the horses system. It is not unusual for a horse to leave the racetrack without lameness, only to show clinical sign of lameness by pulling out. A claimed horse otherwise might be put into a stall before the lameness is noticed and not receive appropriate medical and other care. The proposal would provide additional protection for the horse by creating an additional opportunity for detection of significant lameness following a race, while under the direct supervision of an independent regulatory veterinarian.

The California Horseracing Board had a similar rule. California, however permits a claimant to accept the horse notwithstanding post-race epistaxis or lameness only by indicating on the claim form before the race that the claimant will take the horse regardless of such condition. The proposal before the commission allows the claimant to determine whether to void the claim. The claimant would be permitted to make this determination after the state veterinarian reports his or her findings in the presence of the claimed horse, to the claimant or a representative of the claimant. This option continues the advantage of the report of permitting a claimant who may wish to accept the horse in view of his quality and specific condition of the horse to accept the claimed horse. The proposal would further require the original owner to remain responsible for the claimed horse until the horse has been examined and released to the new owner. The proposal also makes some _____ [00:12:00] changes. Commission authorized the disposal of this rule making.

Unidentified male: Commissioners do you have any – does anyone have any questions or comments on the proposal?

Unidentified male: One question Mr. Chairman. In 2017 what percentage of on track fatalities involved horses that entered in claiming races?

Unidentified male: I will defer to Dr. Palmer; is Dr. Palmer on the line?

Unidentified female: Yes.

Dr. Palmer: Yes I am Ron. And Ron I'm not sure – I can look that up because I don't know for sure how many were in claim races. But I can tell you that claim races have a higher percentage of fatalities than do non-claiming races for sure. So, without giving a precise number I can tell you that there are more horses that experience fatal musculoskeletal injury in claiming races than in any type of race at the track.

Unidentified male: So Doctor, would you say that this proposal would benefit the effort to reduce fatalities?

Dr. Palmer: Yes, I believe it would.

Unidentified male: Thank you.

Unidentified male: I'm concerned about the type of you know, disputes that we're invited in the future. Right now we have a nice clear rule and we're giving up the nice clear rule for probably good and valuable reasons. But what we're inviting is a great deal of complexity in future disputes where someone says the circumstances of the exam or the person that gave it or the way it was administered weren't appropriate.

Unidentified male: To piggy back, the timeline you race, you go to the veterinarian barn.

Unidentified male: Test barn.

Unidentified male: Everyone who races.

Unidentified male: Only the ones that are claimants –

Unidentified male: Okay. So then the vet looks at them there and says he's okay.

Unidentified male: They would grade it one, two, three.

Unidentified male: Cool down and then grades him.

Unidentified male: And then whatever he grades it then the determination is made to accept the claim or not.

Unidentified male: And is there a set number that –

Unidentified male: Scott can you explain the level of one, two and three?

Unidentified male: Certainly. The levels one, two and three are standard universal guidelines prepared by the American Association of equine practitioners and what Ron read the proposed memo he described each one of these conditions. The issue of the – I'd like to just mention take a little bit broader look at the question. And the question really is as I understand it, are we inviting opportunities for disagreement about whether or not the horse meets criteria for rejection of claim, that's the core issue I believe. I think the most important thing to understand about the use of the grade II lameness is that is the grade that's used by the examining veterinarian, regulatory exam veterinarian when they do their pre-race inspections to determine whether or not the horse is going to run that day. And then they put – the horse is found to be grade II lame, the horse goes on the vets list. Now once the horse is on the vets list he can't race until he is removed from the vets list at a later time. Now if we applied – by using the same criteria in the test barn, the regulatory veterinarian who will be doing that examination will look at the horse and trot the horse on a hard

surface for example, which is one of the criteria for a grade II lameness. If the horse is lame at the trot in that regard, he will call these stewards and recommend the horse be put on the vets list. Now the fact of the matter is as it is right now we also have possibility that without this rule we had the possibility of equal disputing whether or not a horse should be on the vets list. But it's no different than the examination that's performed in the hours before the race. That – once the veterinarian looks at the horse and puts him on the vets list that is not a – debatable subject. He's on the vets list. And then it is just a matter of making sure that he is sound to get off the vets list. So actual fact, the fact that the horse is going to be placed on the vets list is the criteria – the substantive criteria to void the claim. There will not be a discussion about whether it's grad one, two or three. Once the horse is put on the vets list by our veterinarian and stewards will do that, then the issue is closed at that point. There's no more discussion.

[Cross talking]

Unidentified male: I could add sort of a lay person's comment too, which is that the definition of grade II as you see in the memo is that the defect in the gait is consistently apparent. Meaning that when the state veterinarian for example has the horse going in a circle on a dark – on a hard surface, the state veterinarian won't say "Oh there you see it. There you see it again". It would be consistently apparent. And this examination would be performed in the presence of a representative, both of the original owner of the horse and the claimant.

Unidentified male: One follow up. The way this would work, if in the post-race exam no lameness or insufficient evidence of lameness is found by the state vet the transfer occurs. Can we assume that's not reviewable? That there is no complaint that is going to come to us? He should have – the vet should have found lameness. That's not going to come back to us in the form of some sort of dispute, is it?

Unidentified male: It should not.

[Cross talking]

Unidentified male: Show signs of lameness; he would not show the test form. It's unlikely that that would happen, but it's possible –

[Cross talking]

Unidentified male: Walk all the way back to the barn and then show signs of lameness, but the actual fact is that that's –

[Cross talking]

Unidentified male: Lameness examination whether it's pre or post-race is a snap shot in time. And the point is this gives the horse a fairly significant amount of time. By

the time it walks off the race track he is going to have an examined in the morning, be examined before the race, be examined during the race, be examined under regulatory supervision after the race, as he walks over to the test barn, cool out in the test barn, he'll be examined by our veterinarian in the test barn and if after all that he's okay, appears to be all right, then the claim is valid. Now there's no guarantee that something couldn't show up later on and that is not going to change the definition of terms. By the rule the claim will have been declared official at that point.

Unidentified male: Can the claimer say he understands that the veterinarian said and take the horse? You said, yes right?

Unidentified male: Yes.

Unidentified male: What if they say no? Okay, I agree the claim is valid? That two people rolled for it. Two claims go in –

Unidentified male: The shake would have happened –

Unidentified male: The shake occurred. They go do the test. Winner says no. Loser says –

Unidentified male: The cover –

[Cross talking]

Unidentified male: Once the shake happens the cover –

Unidentified male: Okay.

Unidentified male: I see.

Unidentified male: Okay.

Unidentified male: I move to accept the _____ [00:19:40]

Unidentified male: Second?

Unidentified male: Sure.

Unidentified male: Discussion on the motion?

Unidentified male: We're sending it out for public comment.

Unidentified male: Discussion on the motion? All those in favor?

Group: Aye.

- Unidentified male: Oppose? Motion carries. The next item on the agenda are adjudications and we have three of them today.
- Unidentified male: In the matter of Andy Hernandez on October 30, 2017 state stored at Finger Lakes Racetrack issued a seven day suspension of jockey Andy Hernandez for foul riding during the fourth race on October 25, 2017 and violation of commission rule 4035.2. Mr. Hernandez requested a hearing which was conducted on November 10, 2017. The hearing officer submitted a report dated November 28, 2017. The hearing officer recommended that the suspension ruling at the track be upheld. The commission considered this matter at a meeting conducted pursuant to judicial or quasi-judicial proceed in exemption of the New York Public Offices Law Section 108.1.
- Unidentified male: The commission duly deliberated and considered this matter and determined upon a majority vote, no I guess it was a unanimous vote, okay that the hearing officer's report and recommendation should be sustained. Next case?
- Unidentified male: In the matter of Jorge Melendez, on June 30, 2017 the commission issued a summary suspension of Jorge Melendez who worked at Finger Lakes Race Track because Mr. Melendez was found to have marijuana on his body in violation of commission rule 4042.5A. Mr. Melendez was offered a prompt hearing but service at the address listed on his occupational license and the farm at which he worked was unsuccessful. The hearing was held on the adjourned date of October 6, 2017 after further attempts to serve Mr. Melendez with notice. The hearing was conducted in Mr. Melendez absence. The hearing officer submitted a report dated November 19, 2017. The hearing officer recommended that Mr. Melendez license be suspended for the remainder of the license period unless and until he participates in treatment and/or counseling satisfactory to the commission. This matter is now ready for final agency determination. The commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of the New York Public Officers Rule Section 108.1.
- Unidentified male: The commission duly deliberated and considered this matter and voted to reject the hearing officer's report and recommendations. Next case.
- Unidentified male: In the matter of William Mott. On January 23, 2015 the state steward issued a 15 day suspension and imposed a \$1,000 fine on thoroughbred trainer William Mott for being responsible under the trainer responsibility rules for the presence of flumixen and an overage of furosemide in the horse Saratoga Snags in the fourth race at Belmont Park on September 20, 2014. In violation of commission rule 4043.2D1 and 4043E14 with respect to flumixen and violation of commission rule 4043.2B6 and 4043.2E5 with respect to furosemide. Mr. Mott through his attorney challenged the stewards ruling on January 23, 2015 the same day it was issued. Commission staff on February 13, 2015 issued a notice for a hearing to begin on March 31, 2015. The hearing was adjourned to May 6, 2015 but Mr. Mott instead sued the commission, each of the then six commissioners, the commissioners then,

executive director, another commission employee, the state steward and then hearing officer and the New York State Attorney General, each by name and their official capacity. The Morrisville Auxiliary of State University of College of Agriculture and Technology at Morrisville and Dr. George Malin, the director of the commission drug testing program. The law suit was brought in federal court on Long Island and alleged federal law violation based on the unavailability of residual blood samples from the horse for testing by the laboratory of Mr. Mott's choosing. After the commissions laboratory had returned positive drug test results. Mr. Mott alleged the commission had a constitutional duty to preserve samples for him to test. The judge stayed the agency hearing law considering the defendant's motion to dismiss. The court eventually dismissed the case on March 31, 2016 on the grounds that the federal extension doctrine applied. Commission staff then worked with Mr. Mott and the hearing officer that scheduled the agency hearing, which was set for September 16, 2016. For purporting to cooperate scheduling the hearing, Mr. Mott instead filed a lawsuit in state court in Nassau County. Again naming the same defendants including the then five commissioners by name and their official capacities. He did not serve the summons in this new case until early September; however waiting until approximately two weeks before the scheduled commissioners January 11, 2018 agency hearing date to serve papers relating to the new lawsuit. The judge in Nassau County denied Mr. Mott's request for a temporary restraining order and preliminary injunction concluding that Mr. Mott had failed to show that the unavailability of a residual blood sample from the horse wasn't _____ [00:25:09] or intentional or that proceeding with an _____ [00:25:12] who cause Mr. Mott irrefutable harm. The case was transferred to Schenectady County by an order dated December 9, 2016 at the request of the defendants. The judge presiding over the court case has stayed activity in the law suit pending determination of this agency hearing. The hearing was conducted on January 30, May 10, May 11, May 12, July 19, July 20 and August 11, 2017. The hearing officer requested post-hearing briefing which was completed on November 10, 2017. The hearing officer submitted a report dated January 10, 2018. The hearing officer recommended that the penalties assessed by the state steward for improper administration of flu nexin be affirmed. The hearing officer also concluded that Mr. Mott presented substantial _____ [00:25:58] finding of an improper administration of furosemide at Saratoga Snags. This matter is now ready for final agency determination. The commission considered this matter at a meeting conducted pursuant to judicial order or quasi-judicial proceeding exemption of the New York Public Office Law, section 108.1.

Unidentified male: The commission deliberated and considered this matter and voted to sustain the hearing officer's report and recommendations. I think that closes out everything we have for adjudications. Any old business, that's our next item on the agenda? No old business? Okay. Hearing then will move to new business. Any new business?

Unidentified male: Casinos opening up by the time we meet next time?

Unidentified male: Yes, February 8 the casino opens up as Ron was referring earlier they're still going through their hiring phase. So if you meet somebody who needs a job, doesn't mind going up to the Catskills a couple days a week they're very anxious to consider applications if anyone else can get the word out. I think they're also interested in having as many of us that we can to be there that day. I don't quite know what that –

Unidentified male: Remind me the date again?

Unidentified male: February 8. I don't know what day of the week that is; it's a Thursday but that's when the ribbon cutting – they spent a lot of time, energy and it's going to be different than some of their other casinos. They're trying to make it more of a resort destination in terms of the type of clientele that they want to have at the facility. But if someone can free up, all of us can free up that day to be there, I think they'd be very happy to have us there. Anything else you want to comment on? Okay.

I guess the next item is working with Kristen on scheduling our next meeting. Tentatively we're scheduled when Kristen?

Kristen: February 26.

Unidentified male: Okay. That's the last Monday of that month, okay. I think we've already had one person say they're out of town that day, so if you can canvas everyone to try to get a fix on what works for – what will work and what will not work.

Kristen: Okay.

Unidentified male: Next is adjournment. That concludes our public schedule.