



# Gaming Commission

**December 22, 2014**

Mr. Rob Williams: New York State Racing \_\_\_\_\_ [00:00:03] 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. Six members having been confirmed by the New York State Senate affords the Commission an 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?

John Crotty: Here

Miss Secretary: Mark Gearan?

Mark Gearan: Here.

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: Here.

Mr. Rob Williams: Miss Secretary, will you please have the record reflect that a quorum of qualified members is present. Thus, enabling the transaction of business. Mr. Chairman.

Mr. Chairman: Thank you Rob. Let's start with the consideration of minutes from our meeting on November 24<sup>th</sup>. Minutes of the Commission meeting conducted on November 24<sup>th</sup>, 2014 have been provided to members in advance. So at this time I'd like to ask members if there are any edits, correction, or amendments? Okay, hearing none. Madam Secretary please let the record reflect that the minutes were adopted.

Next on our agenda is the report from the Executive Director. Rob.

Mr. Rob Williams: Thank you. As you are all likely aware, the gaming facility location board issued its recommendations following the review of responses to their request for application to develop and operate a gaming facility in New York State. The board selected Montreign Operating Company, LLC

proposer of the Montreign Resort Casino in the town of Thompson in Sullivan County, Capital Region Gaming LLC proposers of Rivers Casino and Resort at Mohawk Harbor in the city of Schenectady in Schenectady County. And Lago Resort and Casino LLC. The proposer of Lago Resort & Casino in the town of Tyre in Seneca County.

Last Wednesday the board only released a summary selection document. They indicated that a comprehensive report would be released on or about 30 days from the issuance of that summary document. Commission staff however is not waiting for the delivery of the final report to move forward in the process. The New York State Police were strategically designated as the entity required to undertake the initial background investigations of the license applicants. While the State Police have been engaged in preliminary work on each applicant since July, they will now return to their work and finalize their product on each company and each principal and management employee of the recommended entities.

Late last week the Commission staff commenced review of all materials received from the three recommended applicants to verify that the State Police have every application and document necessary for their background finalization. Completion of the State Police tasks will be dependent upon the complexity of the materials requiring review. The Commission will also -- in early next year be considering a rulemaking that will establish the manner by which the new casinos -- commercial casino industry will operate. Staff has already commenced consideration of rules that will require prompt consideration. Such as facility and occupational licensing. As it's been previously mentioned, the concept is to divide the rules into sections that will enable the Commission to establish interested party work groups. This will enable us to obtain greater public involvement on the direction and consent to the rulemaking, enabling a better work product. We've publicly mentioned work groups for problem gambling and for accessibility. Other work groups will be established as staff identifies logical themes.

Both legal staff and the division of gaming have commenced development of a rule outline and have undertaken research on various jurisdictions approach to gaming regulation. It is likely at the January meeting we will see our initial rulemaking proposals or structure for the upcoming rules themselves.

\_\_\_\_\_ [00:04:14] you're all aware that the Commission is an interested party in each of the seeker reviews undertaken by the casino license applicants as it involves agency. The Commission must review the environmental impacts -- the final environmental impact statement for each of the selected applicants. And either adapt the findings of the seeker lead agency, which has usually been the town where the gaming facility site is located. And/or provide a summary of our own findings when the seeker process is completed, and once the lead agency and all involved agencies have adopted or provided their own findings based on the final environmental impact statements.

Staff has already engaged personnel from the Department of Environmental conservation and will tomorrow have a conversation that will lead to a fuller understanding of our duties and responsibilities under seeker. Once we have a better understanding we will provide a memo outlining the expected scope of the Commission's work.

Finally, the Commission's staff has a tremendous amount of materials that were submitted in both the RFA processor or created in the gaming facility location board review. Please let me know if there's any material that you would like in advance for your own review as we go down this process.

Great. Thank you Mr. Williams. Thank you and your staff for all the hard work as well as to the members of the gaming facilities \_\_\_\_\_ [00:05:40] board for all of their efforts. We next turn to rulemaking on our agenda. New York State Racing Pari-Mutuel Wagering breeding Law 104.19 authorizes the commission to promulgate rules and regulations that it deems necessary to carry out its responsibilities. So that regarding the Commissioner will from time-to-time, promulgate rules and rule amendments pursuant to the State administrative act. Today we have 12 rule-making items for

consideration. And Mr. Williams will outline the proposals.

Mr. Rob Williams: The first item 4A is relative to emergency and proposed rule-makings concerning the jockey injury compensation fund. This has become moot over this weekend due to the filing of an exemptible 2015 plan.

Items 4B - 4L all regard harness racing. In November 2013, the Commission proposed a variety of rules designed to protect the integrity of the Pari-Mutuel wagering system. And health and safety of Standardbred horses engaged therein. Specifically, the Commission has considered amending its existing rules to create regulatory thresholds for one, to perhaps as many as 24 drugs that have widely accepted beneficial effects. And can be effectively regulated by means of laboratory thresholds. The adoption of some or all of these same thresholds is occurring at other racing Commissions throughout the nation. Other proposed amendments related to the Commission's rules restricting the time period after various drug treatments before a horse may participate in a race and rules relative to specific drug utilization. These proposals are necessary to harmonize rules, which forewarn a trainer when to stop using each particular drug with the new drug thresholds.

The proposed rules for the subject of a public hearing conducted January 21<sup>st</sup> 2014. Information received at the hearing resulted in reconsideration of the rules relative to the regulation of corticosteroids and clenbuterol in Standardbred racing. The Commission had divided its corticosteroid rule making initially into three separate proposals. And Commission staff now recommends the adoption of one of these proposals. The Commission also revised its clenbuterol rulemaking for Standardbred racing at the Commission meeting conducted March 12<sup>th</sup> 2014. The revision will permit the appropriate use of clenbuterol to treat bronchial disorders of Standardbred horses without unnecessarily forcing a treated horse to miss weekly racing opportunities while protecting the sport from the long-term misuse of the drug for anabolic or muscle-building effects.

These revisions have been given the unqualified public support by the Standardbred Horseman's Organization at Yonkers Raceway. Overall, it is important to note that the centerpiece of the Standardbred rules, the adoption of 19 thresholds for medications that are routinely used during Standardbred horse's weekly racing schedule has not changed since the initial proposal in November of 2013.

Commission staff sought industry and general public input on the proposed rules no less than four times. Proposal, initial proposal, public hearing, and revised proposal. Substantive comments from leading Standardbred organizations research scientists and practicing veterinarians were received regarding Standardbred rule proposals. All were generally supportive of the drug testing changes as revised that are recommended today. As a result of the hearing, the Commission may make fact-findings in regard to rule making proposals. Staff strongly recommends that this action be given. As the rules present the first major, new regulatory approach in New York Equine drug testing since the New York State Racing and Wagering board adopted restricted time periods in 1982 and thus are likely to be challenged much as the restricted time periods were challenged back in 1982.

Findings of fact provide the best opportunity to ensure that there is a clear and concise record of the agencies' actions regarding the scientific consultant's analysis, and considerations in establishing these new rules.

If made, such findings affect would constitute result facts for all relative, adjudicatory proceedings before the Commission. The staff is prepared for consideration. A memorandum identifying 14 agents' findings for five rule proposals.

Staff recommends adopting of all the referenced proposed rule-makings and the 114 findings of fact. Staff also recommends that three proposed rules, two inappropriate corticosteroid proposals and the

nationally abandoned zero threshold for other medications be withdrawn given the rule-making proposals before the Commission. Today we have with us State Equine Medical Director Scott Palmer. Dr. Palmer would like to briefly address the science that underlies the proposals. Additionally, on the telephone we have the Director of Racing, Ron Ochrym. Assistant Counsel, Rick Goodell, who specializes in this rulemaking. Collectively they should be able to answer any specific questions relative to the rules that you have before you for adoption. Dr. Palmer.

Dr. Palmer: Thank you Rob. I did participate in the rule-making hearings in January and have reviewed all of their written submissions, public comments in order to prepare the agencies specific fact-findings with regard to the key issues. One, whether adapting thresholds are consistent with the agencies' regulatory approach. Two, whether these thresholds are consistent with their other rules. Three, whether we have proposed appropriate adjustments for restricted time periods to accommodate adopting the national thresholds. Dr. George Maylin, who is the long-time Director of the New York State Drug Testing and Research Laboratory has also reviewed these findings and the draft and reviewed these issues in the draft findings. With both sure that these findings represent the knowledge of the industry, having had input and the institutional knowledge of the Commission and that these findings are accurate and sufficient as set forth for the Commission's fact-findings for adopting these proposed rules. I personally support this approach to regulating medication in harness racing. And it is my own professional opinion that the adoption of these rules is a critical importance to New York State horse racing.

Adoption of these rules will position New York as a leader in concert with our neighboring Mid-Atlantic States in establishing uniform medication rules for standard bred horse racing throughout North America. These harnesses rule proposals are substantially the same as the Thoroughbred rules adopted by the Commission in November.

The harness rule proposal has differed from the recently adopted Thoroughbred Rules only with regard to regulation of clenbuterol and intra-articular corticosteroids. These differences reflect the Commission's efforts to address unique differences in which these two breeds are trained and raised.

The harness clenbuterol regulation will accomplish the same goal as in the thoroughbred rule which is to regulate the off label use of clenbuterol as an anabolic or repartitioning agent while still permitting its use to treat respiratory conditions under the direct supervision of a veterinarian. This has been accomplished by adding additional language to require direct supervision with a Veterinarian and limiting the duration of treatment to that appropriate for the management of respiratory conditions that is approximately about a two week for daily treatment.

The Thoroughbred corticosteroids rules were proposed in one package because there was strong nationwide consensus for adoption of these rules in a uniform and timely fashion. And there was a priority to reduce the use of intra-articular corticosteroids particularly Methylprednisolone in order to help reduce the number of catastrophic injuries in Thoroughbred racehorses.

There is no similar industry strong consensus or sense of urgency on the part of the Standardbred industry since the risk of catastrophic musculoskeletal injury in standard racehorses is a small fraction of that in Thoroughbred horses. The racing medication testing consortium position of corticosteroids states that no needless degeneration of joints aided by injudicious use of corticosteroids is a long-term concern with use of corticosteroids it is the masking of the potential for catastrophic injury where the presence of pharmacologic concentrations of corticosteroids sufficient to hide early anatomic disruption that is of most concern.

This is less of a concern with Standardbred horses because they do not experience the same degree of fatal musculoskeletal injury, as do the Thoroughbred horses.

The Commission staff is recommending the adoption of only one of the three harness corticosteroids proposals at this time. The strict regulation of Methylprednisolone in Standardbred racehorses proposed for adoption at this meeting for the same reasons as were cited for the adoption of Thoroughbred Methylprednisolone regulations in November. In November, the Commission approved the recommendations for strict regulation of betamethasone and triamcinolone in Thoroughbreds after the Commission used the ESAL program that's the Equine Steroid Administration Log. To gather data on the use of these medications. A similar approach that is recommended to the regulations of these drugs in Standardbred racehorses. This is the reason for proposing the ESAL reporting in corticosteroid regulations in Standardbred horses at this meeting. This process will then give the commission the opportunity to study the use of these cortical steroids in Standardbred horses before making a final recommendation. Because adoption of these rulemaking proposals represents a significant change in our approach to regulating certain classes of medications, it is important for the Commission to set a date for adoption that provides ample opportunity for licensing to prepare for these rule changes and take steps to comply with them. We recommend that these rules be adopted and take effect on April 1, 2015. We will announce these changes and provide guidance to horsemen and veterinarians on the Commission website in the same manner as we did for the recently adopted thoroughbred rules.

Since the last Commission meeting we have used email broadcast to inform licensees of these rule changes. We anticipate the use of social media to further expand our communication and education efforts in the near future.

Mr. Rob Williams: Thank you doctor. Any questions for Dr. Palmer or Rick and Ron on the phone? Any discussion or questions on materials in \_\_\_\_\_ [00:16:14]?

Unidentified male: Are we adopting the findings as well? Is that what's being asked of us?

Mr. Rob Williams: At this moment right now it's just a -- there's nothing in front of you, but I believe the Chairman will be asking for a motion to adopt the rules B - I. The findings are a separate motion that he would be asking for.

Unidentified male: Today?

Mr. Rob Williams: Today.

Unidentified male: Okay. And I thought I heard you say that you concurred with them or confident in the scope of the findings? Is that right doctor?

Dr. Palmer: Yes, that's correct.

Unidentified male: Any other questions?

Unidentified male: I would entertain, then a motion to adopt the rules listed as items 4B - 4I per se regulatory Standardbred thresholds for equine drugs per se regulatory Standardbred threshold in a restricted time period for Flunixin. Per se regulatory Standardbred threshold in a restricted time period for DMSO. Restricted time period for the Standardbred \_\_\_\_\_ [00:17:24] user. Restricted time periods for clenbuterol use on Standardbred uses. Restrictions on the use of clenbuterol in Standardbred racing. Reporting of Standardbred corticosteroid joint injections to the Commission in limiting the use of the corticosteroid Methylprednisolone acetate in Standardbred racing. Those various rules 4B-4I for a motion for adoption. Is there a second? Thank you. And discussion on the motion? All in favor?

All: I.

Mr. Chairman: Opposed? The motion carries. Next, are there any questions on the proposed findings of fact? So I would entertain the motion, then to adopt the 14 agency findings of fact-findings -- as fact-findings.

Unidentified male: So moved.

Mr. Chairman: Do I have a second? Sure, great. Any discussion on the motion? All in favor?

All: I.

Mr. Chairman: Opposed? Motion carries. As Rob indicated then, I have a motion to withdraw the three previously proposed rules. Two of which were relative to the standards and restricted time periods for certain corticosteroid injections. And the third of which regarded corticosteroid detection thresholds. These rules are listed as items 4J-4L in your materials. That is, per se regulatory Standardbred threshold in a restricted time period for Betamethasone and Triamcinolone acetonide. The second one, per se regulatory Standardbred threshold in a restricted time period for dexamethasone and prednisolone. Thirdly, per se regulatory Standardbred threshold limited to 24 drugs, special corticosteroid rules. Do I have a motion?

Mr. Chairman: Withdrawal those, yes.

Unidentified male: second.

Unidentified male: Second.

Mr. Chairman: Discussion on the motion? All in favor?

All: I.

Mr. Chairman: Opposed? The motion carries. Next is proposed rule making. Mr. Williams, if you could discuss the next item on our agenda.

Mr. Williams: Certainly. Item 4N is a new rule proposal that would require specific minimum penalties for multiple medication violations. The new rules are designed to ensure that every state imposes a mandatory minimum penalty whenever a horseperson, typically the trainer reaches a certain level of multiple equine drug violations. At the heart of the proposal is the assignment of the specific number of points for each type of drug violation. Along with a minimum mandatory license suspension based on the accumulation of such points within specified time frames. The proposal is similar in concept to a suspension by the Department of Motor Vehicles of a driver's license when a motorist accumulates a total of 11 points of moving violations within 18 months. The points would remain on the person's license history for a period of time determined by the seriousness of the drug based upon how many points they accumulated a licensee would be subjected to a minimum mandatory enhancement of 30,60,180, or 365 days. This rulemaking is recommended nationally by the Association of Racing Commissioners International and the concept has been widely supported by other nongovernmental entities including the New York Racing Association, the Jockey Club, and the New York Thoroughbred Horsemen's association.

Staff recommends proposal of this rule making.

Mr. Chairman: Thank you Rob. Are there any questions relevant to this proposal? Okay, I would entertain a motion to propose the rule regarding equine doping, multiple violator, and minimum penalties.

Unidentified male: Motion.

Mr. Chairman: Motion has been made. Second it? Thank you.

Unidentified male: Can I just ask about the comment period?

Unidentified male: Certainly.

Mr. Rob Williams: Sure. Once you authorize the proposal, we submit the text and the associated

documents to the regulatory review until in the executive branch and once we get clearance for that it gets published in the state register and then once published in the state register it would open up a 45-day comment period.

Unidentified male: Thank you.

Mr. Chairman: Any other discussion on the motion that has been made and seconded? Okay, all in favor?

All: I.

Mr. Chairman: Opposed? The motion carries. Our next item on our agenda, we turn to adjudications. And the Commission has six hearing officer reports for consideration today. And Mr. Williams will outline the first case.

Mr. Williams: In the matter of Charlie Amaro, Finger Lakes 55, 2014. The State Stewards at Finger Lakes Race Track suspended Jockey Charlie Amaro for ten days for interfering with another horse during the race on September 20th, 2014 in violation of Commission rule 4035.2 following Mr. Amaro's appeal the hearing was conducted on October 23<sup>rd</sup> 2014. The hearing officer report and recommendation were delivered on December 10<sup>th</sup>. It recommended that the suspension be upheld. 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: The Commission duly deliberated and considered this matter. And determined upon a unanimous vote to sustain the hearing officers report and recommendations. Next.

Mr. Rob Williams: In the matter of Charlie Amaro Finger Lakes 67, 2014 the State Stewards at Finger Lakes Race Tracks suspended Jockey Charlie Amaro for ten days for interfering with another horse during the fourth race on October 24<sup>th</sup> 2014 in violation of Commission rule 4035.2. Following Mr. Amaro's appeal, the hearing was conducted on November 14<sup>th</sup> 2014. The hearing officer report and recommendation delivered on December 11<sup>th</sup>, 2014 recommended that the suspension be upheld. At a meeting conducted pursuant to the judicial or quasi-judicial proceedings exception of the New York Public Officers Law section 108.1 the Commission considered this matter.

Mr. Chairman: The Commission duly deliberated and considered this matter and determined upon a unanimous vote to sustain the hearing officers report and recommendations. Next.

Mr. Rob Williams: In the matter of Jose Baez, the state Stewards at Finger Lakes Race Track suspended jockey Jose Baez for ten days for interfering with another horse during the second race on July 21<sup>st</sup> 2014. In violation of Commission, rule 4035.2. Following Mr. Baez's appeal, the hearing was conducted on August 20<sup>th</sup> 2014. The hearing officer report and recommendation were delivered to the Commission Secretary on December 10<sup>th</sup>, 2014 and it recommended that the suspension be upheld. 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: The Commission duly deliberated and considered this matter and determined upon a unanimous vote to sustain the hearing officers report and recommendations. Next

Mr. Rob Williams: In the matter of disqualification of always for you. On August 24th, 2013 the Stewards at Finger Lakes Race Track disqualified the horse Always for you following a riding foul in violation of Commission rule 4035.2D. Always for you finished the race -- seventh race in first place. But was placed fifth by the judges pursuant to rule 43920.

Luis Gutierrez, the owner of Always for you appealed the disqualification. At a hearing, Commission council moved to dismiss the appeal on the grounds that the disqualification decision was within the

discretion of the stewards. Such factual judgments of the Stewards are not the proper subject of an appeal and that there were no genuine issues of material fact to be determined by a hearing concerning a mistake of law, ministerial error, or fraud. The hearing officer report and recommendation were delivered to the Commission Secretary on December 10<sup>th</sup> 2014. The hearing officer recommended that the Commission construe the council's motion as a motion for summary judgment. Grant the motion and sustain the Stewards placement decision. At a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of New York Public Officers Law section 108.1 the commission considered this matter.

Mr. Chairman: The commission duly deliberated and considered this matter. It was determined upon a unanimous vote to sustain the hearing officers report and recommendations. Next.

Mr. Rob Williams: In the matter of the disqualification of Kisses and kicks, on May 28<sup>th</sup>, 2014 the judges at Buffalo Raceway disqualified the horse Kisses and kicks for interference and violation of Commission rule 4117.4E. Kisses and kicks finished the ninth race in fourth place. Bu was placed sixth by the judges pursuant to rule 4117.12A. David P. McKnight Jr., the owner and trainer of Kisses and kicks appealed the decision. At a hearing commission council moved to dismiss the appeal on the grounds that the judge's placement decisions are not appealable as a matter of law, except for fraud, material mistake of fact, or mistake of law. And that there were no genuine issues of fact to be determined. The hearing officer report and recommendation was delivered to the commission Secretary on December 12<sup>th</sup> 2014. The hearing officer recommended that the Commission construe the commission council's motion as a motion for summary judgment. Grant the motion and sustain the judge's placement decision. 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: And the Commission duly deliberated and considered this matter and determined upon a unanimous vote to sustain the hearing officers report and recommendations. Next.

Mr. Rob Williams: In the matter of Pedro Rodriguez on September 23<sup>rd</sup>, 2014 the state Stewards at Finger Lakes Race Track suspended jockey Pedro Rodriguez for seven days for interfering with another horse from the eighth race. In violation of commission rule 4035.2. Following Mr. Rodriguez's appeal, the hearing was conducted on October 23<sup>rd</sup> 2014. The hearing officer's report and recommendation were delivered to the commission Secretary on December 10<sup>th</sup>, 2014. The hearing officer recommended that the suspension be upheld. 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: The commission duly deliberated and considered this matter. And determined upon a unanimous vote to sustain the hearing officers report and recommendation.

Okay, we now next turn on our agenda to any new business or old business. Does anyone have any new business to consider?

Unidentified male: Just one item Mr. Chairman. Because of our discussions regarding the adjudication, it appears that due to the limited scope of tour view or placement decisions that in the absence of fraud that it is really unnecessary to provide for an appeal of a placement decision. And I recommend that we do a proposed rule change to implement that change.

Mr. Chairman: Any other discussion on this as new business? So Mr. Williams, do you have that before we you.

Mr. Rob Williams: I do. We will undertake a review of that and get something for the next meeting.



Mr. Chairman: Thank you. Any old business to consider, anything else. For scheduling our next meeting given that our meeting concludes our calendar year of 2014. Unless anyone objects, I suggest that we maintain the present schedule of our meetings on the fourth Monday of every month. This would bring our next meeting to January 26<sup>th</sup> 2015. Obviously, we would appreciate your guidance. And to Miss Buckley -- your availability, but maintaining a regularized schedule seems best for planning purposes.

Mr. Rob Williams: So, this concludes our published agenda. Any -- Commissioner is there any other items for consideration? Hearing none, this meeting of New York State's Gaming Commission is adjourned and I wish everyone happy holidays. Thank you for joining us.