

## RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, February 9, 2010 at 1881 Pierce Street in Conference Room 110 (Gaming Conference Room), Lakewood, Colorado. Due to Commission Chairwoman Alkire's presence via teleconference, Commission Vice-Chairman Jack Pretti called the meeting to order at 9:33 a.m.

### Members Present

Marilyn Alkire, Chairwoman (present via teleconference)  
Jack Pretti, Vice-Chairman (Acting Chair)  
Charles Vail, DVM, Member  
Mary Sharon Wells, Member  
Daniel J. Kester, Member

### Staff Present

Dan Hartman, Director, Division of Racing Events  
Pam Kilgore, Division Auditor  
Mark Brown, Division Enforcement Coordinator  
Michelle Bauman, Licensing Supervisor  
Kit Spalding, Senior Assistant Attorney General (serving as Conflicts Counsel during Executive Session)  
Tina Bowman, Assistant Attorney General  
Sherry Gunnell, Assistant to the Director

### Also Present

An attendance sheet is attached hereto and made a part of these minutes.

### Approval of Minutes of November 9, 2009

A motion was made by Commissioner Wells, seconded by Commissioner Vail and unanimously carried to approve the minutes of November 9, 2009 as submitted.

The Commission stated that it would reconvene this meeting after conducting an Executive Session.

### Recess of Regular Meeting/Convening of Executive Session

At 9:34 a.m., a motion was duly made by Commissioner Vail, seconded by Commissioner Wells and unanimously carried to recess the regular meeting of the Commission for the purpose of meeting in Executive Session to discuss with counsel and conflicts counsel pending court action and, also, to receive legal advice on specific legal questions in the matter of Wafer vs. Colorado Racing Commission.

### Adjournment of Executive Session

At 10:15 a.m., the Commission adjourned the Executive Session and reconvened the regular business meeting.

Following discussion and deliberation, the Commission stated for the record that its final decision is to refer the aforementioned findings of the Court of Appeals to a hearing officer within the Department of Revenue for the conduct of an evidentiary hearing in order to obtain responses to certain questions set forth in the findings of the Court of Appeals and, subsequent to receiving the hearing officer's response, it would be the Commission's expectation that the matter would be referred to the Commission for its review.

Continuation of Scheduled Hearings – In the Matters of Andres Flores and Salvador Romero Nava -- Case No. 09-667 (Horse “Triffle”); Case No. 09-668 (Horse “Metalocalypse”) and Case No. 09-669 (Horse “Purely Prada”)

Mr. Dan Hartman, Director of the Division of Racing Events, informed the Commission that he had received a formal written request from Mr. Michael J. Norton, Attorney at Law, serving as legal counsel for Mr. Andres Flores and Mr. Salvador Romero Nava, to grant continuances of the scheduled hearings in the matters of Case Nos. 09-667, 09-668 and 09-669 until the Commission’s April meeting.

Based upon Mr. Hartman’s recommendation for approval, a motion was made by Commissioner Vail, seconded by Commissioner Wells and unanimously carried to continue the hearings in the aforementioned cases until the April 20, 2010 Commission meeting.

Scheduled Hearing – In the Matter of MARIA GONZALEZ

Acting Chairman Pretti convened the scheduled hearing in the matter of Owner Maria Gonzalez at 10:20 a.m. Ms. Gonzalez was not present and was not represented by legal counsel.

Mr. Dan Hartman, Director of the Colorado Division of Racing Events, advised the Commission that Ms. Gonzalez had been duly and properly notified of today’s hearing. He provided the following background information relating to this matter:

- 1) That, on December 3, 2009, the Colorado Division of Racing Events and Trainer Ramon Gerardo Marquez-Gonzalez stipulated to the facts concerning the horse “First to Blurr”, which placed third in the eighth race of the Arapahoe Park Speed Challenge on August 7, 2009, with the unauthorized medication, Clenbuterol, in its system. The horse in question was owned by Ms. Gonzalez;
- 2) That the stipulation stated that the horse, “First to Blurr”, shall be disqualified from its original third-place finish in the eighth race on August 7, 2009 at Arapahoe Park and declared unplaced due to the presence of an unauthorized medication in the system of the horse for every purpose, in the Arapahoe Park Speed Challenge, except pari-mutuel wagering;
- 3) That, pursuant to Colorado Racing Commission Rule No. 5.502, Ms. Gonzalez, the owner of the Horse, “First to Blurr”, shall not be allowed to participate in the purse distribution of any races associated with the Arapahoe Park Speed Challenge and a redistribution of the purse shall be ordered; and
- 4) That, at the time of the running of the Arapahoe Park Speed Challenge, Ms. Maria Gonzalez was duly licensed as an Owner by the Colorado Division of Racing Events.

Due to the fact that she had not received documentation relating to this matter, Commissioner Alkire recused herself from participation in the deliberation of the case.

Following review and deliberation of the issues reflected in the Division’s Notice of Hearing and Purse Redistribution (Case No. 09-706), a motion was made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to disqualify the horse, “First to Blurr” from its third place finish in the eighth race, the Arapahoe Park Speed Challenge, conducted on August 7, 2009 and declare the horse unplaced; and to notify Owner Maria Gonzalez that she is to return the amount that she received for the third-place finish of the horse “First to Blurr” and to notify Jockey Noe Garcia, the rider of the horse “First to Blurr” in the subject race, that he is to return the amount that he received for his third-place finish and is only able to be paid the minimum jockey mount fee. The Commission directed that an Order be issued to Ms. Gonzalez reflecting this decision and that Mr. Garcia be appropriately notified of today’s action.

The hearing concluded at 10:29 a.m.

Ms. Angela Smith, Court Reporter, recorded stenographically the above proceeding. A tape recording of the proceeding is on file in the Division's Lakewood office.

#### Closure of Regular Business Meeting

At 10:30 a.m., Commissioner Pretti closed the regular business meeting for the purpose of convening the continued Rule-Making Hearing.

#### Scheduled Rule-Making Hearing

Pursuant to the published Notice of Rule-Making Hearing, Acting Chairman Pretti convened the scheduled Rule-Making Hearing at 10:30 a.m.

Mr. Dan Hartman, Director of the Division of Racing Events, informed the Commission and attendees that the Division of Racing Events had complied with all preliminary rule-filing requirements, including submission of all rule proposals to the Office of the Secretary of State and the Department of Regulatory Agencies and publication of the Notice of Rule-Making Hearing in the Colorado Registry, whereupon he presented the packet of rules for Commission review. Mr. Hartman apprised attendees that copies of the rules were available both in written form and on the Division's website. He stated that two rule review workshops open to all interested parties had been conducted to allow industry participation in the initial phase of the rule consideration process and that rule proposals had been solicited and accepted from industry representatives for presentation during this Hearing.

At this time, it was acknowledged by the Division that an annual review of its entire rulebook is undertaken in order to: 1) ensure that its existing rules meet all statutory requirements; 2) determine whether the rules presently in effect accord with current industry practices; 3) correct any errors or deficiencies in the rules; and 4) consider new rule proposals and proposals to amend or repeal certain rules.

Mr. Hartman observed that the packet of rules to be considered at this time contains two proposed new definitions, proposed new rules and certain rules proposed for amendment.

During the course of this Rule-Making Hearing, the Commission entertained views and opinions from industry representatives and other interested parties. All attendees were afforded an opportunity to present arguments for and against adoption of each rule under consideration.

Thereupon, Mr. Hartman presented the following rules for individual consideration and Commission action:

- Consideration of Proposed New Definition "Associated Person": Mr. Hartman presented the proposed new definition of "Associated Person", and reviewed its text. Following Commission review and after ascertaining that there were no objections to formal action being taken at this time, a motion was made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to adopt the new definition of "Associated Person" on a permanent basis and, as part of the motion to adopt, the Commission incorporated the Statement of Statutory Authority, Basis and Purpose into the definition. A copy of the subject definition is attached hereto and made a part of these minutes.
- Consideration of Proposed New Definition "Traction Device": Mr. Hartman presented the proposed new definition of "Traction Device", and reviewed its text. Discussion ensued during which certain concerns were expressed regarding whether adoption of this proposed definition should be deferred until the Commission would also be able to review and consider amending its existing rule regarding the use of toe grabs. Mr. Hartman explained that the current definition

does not affect the height of toe grabs. He observed that discussions have been conducted at the national level regarding whether to modify the Association of Racing Commissioners International (ARCI) Model Rule relating to the use of toe grabs and, once a decision regarding what course of action to take is made, the Commission could consider amending its current toe grab rule. Following Commission review and after ascertaining that there were no objections to formal action being taken at this time, a motion was made by Commissioner Wells, seconded by Commissioner Vail and unanimously carried to adopt the new definition of "Traction Device" on a permanent basis and to incorporate an amendment proposed by Commissioner Vail to include the proviso that the Commission desires to revisit its toe grab rule in the future in order to bring its rule into conformity with any changes made to the ARCI Model Rule. As part of the motion to adopt, the Commission incorporated the Statement of Statutory Authority, Basis and Purpose into the definition. A copy of the subject definition is attached hereto and made a part of these minutes.

The Commission entertained comments from Mr. Vaughn Cook, a member of the Arapahoe Park horse racing community, relating to horses being scratched in the saddling paddock based upon the height of their toe grabs. The Commission emphasized that, prior to saddling a horse, it is important for the toe grabs to be checked to ensure that they are the proper height.

- Consideration of Proposed Amended Rule 3.402: Mr. Hartman reviewed the text of proposed amended rule 3.402. Mr. Hartman stated that the version of the rule being presented is a nationally approved Model Rule and has also been endorsed by the Jockey Guild. Discussion ensued during which Ms. Polly Robson, a jockey licensed to ride in Colorado, voiced her concerns regarding the stringency with which the amended rule would be enforced. The Commission and Mr. Hartman assured her that every effort would be made to employ a sensible and reasonable approach in determining whether a jockey's gear met the required safety standards. Following review and discussion and after ascertaining that there were no objections to formal action being taken at this time, a motion was made by Commissioner Wells, seconded by Commissioner Vail and unanimously carried to adopt amended rule 3.402 on a permanent basis and, as part of the motion to adopt, the Commission incorporated the Statement of Statutory Authority, Basis and Purpose into the rule. A copy of the subject rule is attached hereto and made a part of these minutes.
- Consideration of Proposed New Rule 3.508: Mr. Hartman reviewed the content of proposed new rule 3.508. Discussion ensued during which some members of the horse racing community questioned the rationale for implementing a continuing education requirement as a condition for licensure. Mr. Hartman explained that the rule as proposed is a nationally approved Model Rule and has also been endorsed by the Jockey Guild, although it has not yet been adopted by all racing jurisdictions. It was the Commission's view that, should other racing jurisdictions decline to adopt the same or a similar rule, the Colorado Racing Commission could revisit the rule at a later time. Following review and discussion and after ascertaining that there were no objections to formal action being taken at this time, a motion was made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to adopt new rule 3.508 on a permanent basis and, as part of the motion to adopt, the Commission incorporated the Statement of Statutory Authority, Basis and Purpose into the rule. A copy of the subject rule is attached hereto and made a part of these minutes.
- Consideration of Proposed Amended Rule 3.638: Mr. Hartman reviewed the content of proposed amended rule 3.638. After taking into consideration the comments of Ms. Polly Robson, a jockey licensed to ride in Colorado, and after ascertaining that there were no objections to formal action being taken at this time, a motion was made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to adopt amended rule 3.638 on a permanent basis and, as part of the motion to adopt, the Commission incorporated the

Statement of Statutory Authority, Basis and Purpose into the rule. A copy of the subject rule is attached hereto and made a part of these minutes.

- Consideration of Proposed Amended Rule 5.317: Mr. Hartman reviewed the content of proposed amended rule 5.317. After taking into consideration the comments of Mr. Bruce Seymore, Director of Racing Operations for Mile High Racing and Entertainment, and after ascertaining that there were no objections to formal action being taken at this time, a motion was made by Commissioner Vail, seconded by Commissioner Wells and unanimously carried to adopt amended rule 5.317 on a permanent basis and, as part of the motion to adopt, the Commission incorporated the Statement of Statutory Authority, Basis and Purpose into the rule. A copy of the subject rule is attached hereto and made a part of these minutes.
- Consideration of Proposed Amended Rule 5.502: Mr. Hartman reviewed the content of proposed amended rule 5.502. Discussion ensued during which members of the Commission and industry representatives presented views, opinions and arguments regarding the text of the proposed rule and recommended that additional amendments be made to the rule proposal. Following review and after incorporating additional amendments into the proposed amended rule and finding that there were no objections to formal action being taken at this time, a motion was made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to adopt amended rule 5.502 on a permanent basis and, as part of the motion to adopt, the Commission incorporated the Statement of Statutory Authority, Basis and Purpose into the rule. A copy of the subject rule is attached hereto and made a part of these minutes.
- Consideration of Proposed New Header: Mr. Hartman explained that it would be desirable to insert a new header designated “Penalties” to identify the subsection of new rules under “Trainer Responsibility”. Following review and after ascertaining that there were no objections to formal action being taken at this time, a motion was made by Commissioner Wells, seconded by Commissioner Vail and unanimously carried to adopt the new header “Penalties” on a permanent basis and, as part of the motion to adopt, the Commission incorporated the Statement of Statutory Authority, Basis and Purpose into the header. A copy of the subject header is attached hereto and made a part of these minutes.
- Consideration of Proposed New Rule 5.503: Mr. Hartman reviewed the content of proposed new rule 5.503 and the accompanying tables reflecting penalty categories “A”, “B” and “C” and their related schedules for trainers and owners. Mr. Hartman discussed with the Commission the recommended penalty sanctions for use of unauthorized medications, noting that the rule as proposed is a nationally approved Model Rule. Mr. Hartman observed that the rule proposal is designed to give the Commission, Board of Stewards and/or a Hearing Officer greater discretion in determining what sanction(s) to impose for medication violations and should enable whichever authority to make more consistent and uniform decisions regarding penalty assessments than previously possible. Following review and after ascertaining that there were no objections to formal action being taken at this time, a motion was made by Commissioner Vail, seconded by Commissioner Wells and unanimously carried to adopt new rule 5.503 on a permanent basis and, as part of the motion to adopt, the Commission incorporated the Statement of Statutory Authority, Basis and Purpose into the rule. A copy of the subject rule is attached hereto and made a part of these minutes.
- Consideration of Proposed Amended Rule 5.612: Mr. Hartman presented the proposed amended rule 5.612 and reviewed its text. Following Commission review and after ascertaining that there were no objections to formal action being taken at this time, a motion was made by Commissioner Kester, seconded by Commissioner Wells and unanimously carried to adopt amended rule 5.612 on a permanent basis and, as part of the motion to adopt, the Commission incorporated

the Statement of Statutory Authority, Basis and Purpose into the rule. A copy of the subject rule is attached hereto and made a part of these minutes.

- Consideration of Proposed Amended Rules 6.704 and 6.706: Mr. Hartman recommended that the Commission consider proposed amended rules 6.704 and 6.706 simultaneously since these rules are similar in content. Following review and after ascertaining that there were no objections to formal action being taken at this time, a motion was made by Commissioner Wells, seconded by Commissioner Vail and unanimously carried to adopt the amended rules 6.704 and 6.706 on a permanent basis and, as part of the motion to adopt, the Commission incorporated the Statement of Statutory Authority, Basis and Purpose into each of the rules. A copy of the subject rules is attached hereto and made a part of these minutes.
- Consideration of Proposed New Rule 7.108: Mr. Hartman reviewed the text of proposed new rule 7.108. Discussion ensued during which members of the Commission and industry representatives presented views and opinions regarding the text of the proposed rule and recommended that additional amendments be made to the rule proposal. Following review and after incorporating additional amendments into the proposed new rule and finding that there were no objections to formal action being taken at this time, a motion was thereupon made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to adopt new rule 7.108 on a permanent basis and, as part of the motion to adopt, the Commission incorporated the Statement of Statutory Authority, Basis and Purpose into the rule. A copy of the subject rule is attached hereto and made a part of these minutes.

(At approximately 12:05 p.m., Commissioner Alkire concluded the teleconference call and left the meeting.)

As an addendum to the formal Rule-Making Hearing and in light of the adoption of new rule 7.108, Mr. Mark McGregor, President of the Colorado Horse-Racing Association, updated the Commission on the establishment of the task force to examine all testing procedures and the process by which samples are taken. He reported on visiting Industrial Laboratories in order to become acquainted with the protocols and methodology involved in sampling and testing racing animals. Mr. McGregor acknowledged that, because of the necessity for complying with due process requirements, timely adjudication of medication violations might not always be possible. He assured the Commission that all of the Colorado breed organizations desire to prevent persons who have had positive drug/medication tests from entering their horses. He urged the Director Hartman to facilitate proactive communications between the Division staff, the Board of Stewards and the members of the backside horseracing colony by posting notices, reports of rule review sessions and other updates in the Racing Office on a regular and timely basis. Ms. Gail Meisner requested and the Division agreed that, once the rules as adopted at this meeting were in effect, they would be forwarded to the Colorado Horse-Racing Association website for posting.

There being no further rules to consider the Rule-Making Hearing was adjourned at 12:15 p.m.

#### Re-Opening of Regular Business Meeting

At 12:16 p.m., Commissioner Pretti re-opened the regular business meeting.

Presentation Regarding Distribution of Owners/Breeders Awards and Supplemental Purse Fund Monies for Calendar Year 2009 and Introduction of Newly Appointed Division Auditor, Ms. Pamela Kilgore – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, introduced Ms. Pamela Kilgore, newly appointed Division Auditor, to the Commission. He observed that Ms. Kilgore had previously served as the Chief Budget Officer for the Department of Revenue's Enforcement Line of Business and had recently transferred to the Division of Racing Events from another section within the Department. Mr. Hartman stated that Mr. Greg Lamb, former Auditor for the Division, had been and would continue to be available to instruct and/or assist Ms. Kilgore in the performance of her new duties via teleconferences. He observed that Ms. Kilgore has already proved to be and would certainly continue to be a great addition to the Division staff. The Commission congratulated Ms. Kilgore on her new position and welcomed her to the Division.

Ms. Kilgore informed the Commission that she had prepared a final accounting of the Owners/Breeders Awards and Supplemental Purse Fund monies for distribution to the various breed organizations for calendar year 2009. The Commission observed that, this past year, the fund had again sustained an appreciable loss of revenue due to reduced interest rates and unsettled economic conditions. After acknowledging that the general economic climate remains precarious, the Commission observed that the fund would most likely continue to be negatively affected in calendar year 2010. Mr. Hartman explained that the law requires that the Owners/Breeders Awards and Supplemental Purse Fund accruals be retained as United States Treasury bills.

Ms. Kilgore reported that: 1) the total earnings from wagering in 2009 amounted to \$810,843.81; 2) that the total earned from 2008 uncashed tickets on both live and simulcast races was \$336,034.17; 3) that the interest earned in 2009 was \$108.14 and, after subtracting the bank fee of \$3,500.00, the total Owners'/Breeders' Awards and Supplemental Purse Fund accrual for 2009 was \$1,143,486.12.

Mr. Hartman explained that, in 2008, the Commission released the funds in the Appaloosa escrow account to the Colorado Appaloosa Racing Association based upon its compliance with the by-law requirement for disbursement of its accrual. Also, in 2008 and 2009, Arapahoe Park accepted Mule races from California and, thus, an escrow account was established and will be maintained for that breed until such time as a Mule Breed organization in Colorado is recognized by the Commission to receive those funds. The difference between the total amount of the accrual and the total amount to be distributed/retained in escrow (\$157,329.23) reflects the \$123,000 advance that was approved by the Commission in April 2009 for release to the Colorado Thoroughbred Breeder's Association in July 2009 and a distribution of \$172,000 that was made to Arapahoe Park from the escrowed Colorado harness racing accrual.

Ms. Kilgore read into the record the following individual totals to be disbursed to each breed organization:

After considering Ms. Kilgore's final accounting of the Owners/Breeders Awards and Supplemental Purse Fund monies for distribution to the various breed organizations for calendar year 2009, a motion was made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to grant approval to the Division to request issuance of State warrants for disbursement of the reported fund accruals pursuant to statute.

Colorado Thoroughbred Breeder's Association	\$791,788.90
Rocky Mountain Quarter Horse Association	157,954.64
Colorado Owners and Breeders of Racing Arabians	50,818.90
Rocky Mountain Paint Racing Club	3,632.07
Colorado Appaloosa Racing Association	800.44

A balance of \$15,121.54 remains from the escrowed harness purse monies. Additionally, the amount of \$369.63 accrued from Mule races will be retained in an escrow account pending notification of whether a Mule racing organization exists and, if so, whether it has by-laws in effect for the purpose of distributing funds.

The Commission recommended that Director Hartman attempt to renegotiate the bank fees applied to this account due to the minimal amount of interest that the account accrued this calendar year.

#### Status Report on Legislation – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, apprised the Commission that two measures have been introduced, one in the Senate (Senate Bill 10-037) and one in the House of Representatives (House Bill 10-1134). He explained that, Senate Bill 10-037 would allow Colorado horse breeder associations to increase the administrative fee cap for registering and maintaining breeding records from five percent (5%) to ten percent (10%). Mr. Hartman observed that the initiative passed out of the Senate Agriculture and Natural Resources Committee and, by unanimous vote, has passed first and second readings in the Senate.

Further, Mr. Hartman advised that House Bill 10-1134 is intended to prevent illegal interstate pari-mutuel wagering on racing by authorizing Colorado to enter into interstate compacts governing racing and the collection of source market fees from out-of-state simulcast activity. He reported that this measure passed out of the House Agriculture, Livestock and Natural Resources Committee by unanimous vote and has since passed first and second readings in the House of Representatives. Mr. Hartman assured the Commission and attendees that he would continue to monitor and report on the status of both of these initiatives.

#### Adjournment

There being no further business to consider, the Commission adjourned its regular meeting at 12:45 p.m.

#### Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on **Tuesday, April 20, 2010** at **Red and Jerry's**, located at **1840 West Oxford Avenue, Sheridan, Colorado**.

The undersigned hereby approve the foregoing Minutes.

(PRESENT via TELECONFERENCE) \_\_\_\_\_  
MARILYN ALKIRE, CHAIRWOMAN

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JACK PRETTI, VICE-CHAIRMAN

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CHARLES VAIL, DVM, MEMBER

\_\_\_\_\_  
MARY SHARON WELLS, MEMBER

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DANIEL KESTER, MEMBER