RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, January 13, 2009 at 1881 Pierce Street in Conference Room 110 (Gaming Conference Room), Lakewood, Colorado. Chairman David Lynn Hoffman called the meeting to order at 9:35 a.m.

Members Present

David Lynn Hoffman, Chairman Marilyn Alkire, Vice-Chair Jack Pretti, Member Mary Sharon Wells, Member

Commissioner Charles Vail, DVM, was excused from the meeting.

Staff Present

Dan Hartman, Director, Division of Racing Events
Mark Brown, Division Enforcement Coordinator
Robert "Duke" Mann, Horse Racing Coordinator
Michelle Bauman, Licensing Supervisor
Greg Lamb, Acting Division Auditor
Joni Smith, Veterinarian
Tina Bowman, Assistant Attorney General for the Division of Racing Events
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 December 19, 2008

A motion was made by Commissioner Alkire, seconded by Commissioner Pretti and unanimously carried to approve the minutes of December 19, 2008 as submitted.

<u>Announcement Regarding Former Greyhound Racing Coordinator Richard Mattson – Dan Hartman</u>

Mr. Dan Hartman, Director of the Division of Racing Events, announced that Mr. Richard Mattson, who had served as the Division's Greyhound Racing Coordinator for approximately twenty years, had succumbed to illness on Thursday, January 8, 2009. Mr. Hartman advised that anyone wishing to sign a sympathy card to be sent to Mr. Mattson's family was welcome to do so.

The Commission expressed its profound sadness upon learning of Mr. Mattson's death and requested that its sympathy be conveyed to Mr. Mattson's family.

Consideration of Scheduling Hearings Before the Commission – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, explained that, with respect to receipt of additional requests to appeal the Commission's decisions regarding disqualifications and purse redistributions, none of the owners or the jockey who had been sent Commission Orders to return all of their previously paid purse monies had complied. He noted that the deadline for payment had been no later than Monday, December 29, 2008 and that all parties had been given clear and explicit instructions regarding their responsibilities in these matters and, by failing to comply, they acted in defiance of the Commission's Orders.

Therefore, Mr. Hartman recommended that the Commission schedule hearings in each of these matters at the Commission's March 10, 2009 meeting at which time it could address the aforementioned violations of their Orders. Further, Mr. Hartman asked

that, at this time, the Commission decline to consider the requests to appeal its decisions submitted by Mr. Harry Veruchi and Mr. Keith Grinolds, which were designated as today's agenda items #3 and #4.

Following discussion during which the Commission expressed its belief that it is unacceptable for an order of the Commission to be disobeyed and that it would establish a dangerous precedent if the Commission did not take further action, a motion was made by Commissioner Alkire, seconded by Commissioner Pretti and unanimously carried to set hearings at the Commission's March 10, 2009 meeting to address violations of Commission Orders #08-15, 08-16, 08-17, 08-18, 08-19 and 08-20; and that all owners and the jockey are to be given notice of the meeting at which will be held formal adjudicatory hearings to determine appropriate action for violation of Commission Orders, including but not limited to license suspension of the respective parties; further, included in the motion is the fact that consideration of requests for appeals designated as items 3 and 4 on the Commission's agenda be deferred at this time pending resolution of the hearings on March 10, 2009.

The Commission declared that those parties seeking to be heard at today's meeting for the purpose of requesting appeals of Commission decisions in the matter of disqualifications of horses and redistributions of purses would not have standing before the Commission until such time as they have paid back the purses as ordered.

No further action was taken at this time.

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.

<u>Information Regarding Events and Legislative Proposal of the Colorado Horsemen's Legislative Coalition – Mark McGregor</u>

Mr. Mark McGregor, President of the Colorado Thoroughbred Breeders Association, and spokesperson for the Colorado Horsemen's Legislative Coalition, distributed information regarding upcoming events and its legislative proposal for Commission consideration. Mr. McGregor invited the Commission and Mr. Hartman to attend a special meeting on Monday, January 19, 2009 at Arapahoe Park at which representatives of the American Quarter Horse Association would be present to discuss the state of the racing industry on a national level as well as important topics, such as medications, safety and humane treatment and disposition of horses.

Additionally, Mr. McGregor announced that Tuesday, January 20, 2009 had been designated as Horsemen's Day at the State Capitol. He observed that the Colorado Horsemen's Legislative Coalition had obtained sponsorship of its bill and that the measure had been introduced. Mr. Tony Gasich, Vice-President of Racing for the Rocky Mountain Quarter Horse Association, requested that the Commission view a brief videotape regarding the Coalition's efforts to develop an economic package that would benefit the entire horse industry.

Mr. Hartman encouraged any entity or organization seeking or intending to pursue its own legislative initiative to provide its proposal(s) to the Division of Racing Events and to be willing to engage in preliminary review and discussions regarding any measure before proceeding to attempt to introduce the bill for legislative consideration. Mr. Hartman asserted that, in this way, the matter of fiscal impact could be assessed and any necessary modifications to the text and language could be made. Additionally, after being informed by Mr. Bruce Seymore, Director of Colorado Operations for Mile High Racing and Entertainment, that his association could be submitting its own separate legislative proposal, the Commission urged both Mr. Seymore and the Colorado Horsemen's Legislative Coalition to work together and to communicate with and support each other in a cooperative effort to benefit the industry.

Presentation Regarding Colorado State University Equine Research Fund

Dr. Torrance Nett, Associate Dean for Research and Graduate Education at the Colorado State University (hereinafter known as "C.S.U.") College of Veterinary Medicine and Biomedical Sciences, introduced himself and his colleagues, Dr. D. Paul Lunn, Head of the Department of Clinical Sciences, and Dr. Elaine Carnevale, Assistant Professor of Assisted Reproductive Technologies at the Animal Reproduction and Biotechnology Laboratory, to the Commission.

Dr. Nett explained that the funding provided by the Commission has been extremely beneficial to the University and is essential for the continued growth of the equine research program there. Dr. Nett informed the Commission that its annual financial contribution is leveraged approximately forty-fold to an estimated \$2,000,000, and that this amount, along with approximately \$2,000,000 forms the basis for obtaining grant funding for various research projects. He observed that the Commission's financial contribution of approximately \$110,000 has been applied to pilot research projects in horses at Colorado State University. Dr. Nett commented that, in order to select the research proposals to be funded, a committee evaluates the large quantity of research proposals that are submitted for consideration and ranks them in order of merit. He noted that this is an extremely competitive process with far more proposals being tendered than can be subsidized. Dr. Nett apprised the Commission that C. S. U. had also become involved in a technology transfer with two start-up companies that provide services to the equine industry.

Dr. Nett provided lay articles associated with research conducted by C.S.U. faculty during the 2007 fiscal year. The subject matter included reports on 1) equine herpesvirus research; 2) new research for the old mare; 3) what we know, and what we want to know regarding equine herpesvirus type 1 (EHV-1); 4) Can we accelerate the bone healing in horses? and 5) efforts by the Colorado Racing Commission to help identify the cause of catastrophic injury in racehorses. These articles were also made available to interested members of the audience. Dr. Nett expressed his appreciation to the Commission for its ongoing support of and contribution to equine research at Colorado State University.

Dr. Carnevale, an equine reproduction expert, advised that recent research advances have shown that as mares age, the quality of their eggs begins to decline and ultimately affects their ability to become pregnant. Dr. Carnevale, along with her fellow researchers at C. S. U. is studying the old mare with the goal of improving fertility. She observed that this research is being conducted in concert with a clinical program in assisted reproduction. These researchers are studying the changes associated with reproductive aging in the mare to determine the cause of reduced fertility in older mares and find ways to increase reproductive productivity in the mare.

Dr. Carnevale explained that, generally, a mare's fertility is only optimal until her teen years and, by the time, a mare reaches twenty years of age, it can become very difficult for her to become pregnant. (Research conducted more than ten years ago at the University of Wisconsin demonstrated that the embryos from old mares were unhealthy even before they arrived in the uterus. Recently, researchers have used a technique called intracytoplasmic sperm injection ((ICSI)) to study the eggs of old mares. This technique involves the use of a microscope and special instruments to manipulate the egg and sperm and to inject a single selected sperm directly into the egg.) Dr. Carnevale reflected that the research suggests that eggs from old mares may have problems with the natural process of fertilization, so, by injecting the sperm into the oocyte, it is possible to prevent some of these problems. She stated that additional research is planned in this area. Dr. Carnevale advised that the ultimate goal of this research is to find ways to help fertility in the mare as she ages and, along the way, hopefully to learn more about reproductive aging in women.

Dr. Lunn reported on equine herpesvirus research being conducted at C. S. U., specifically that related to equine herpesvirus-1 or EHV-1. He explained that, although infection with equine herpesvirus-1 usually causes a relative mild respiratory disease in young horses that is quite common and almost unavoidable, it can sometimes spread to the nervous system, typically the spinal cord, and cause a serious, often life-threatening neurological disease. He noted that EHV-1 could prove to be an emergent disease. Dr. Lunn advised that researchers have been frustrated by the failure of EHV-1 vaccines to provide the beneficial results for which they had hoped. He commented that, increasingly, scientists have come to focus on the ability of these sophisticated viruses to undermine the very host immune response that would normally protect horses from disease. (During the past ten years, scientists have come to realize that a specific component of the horse immune response is vital for protection from EHV. This component is called the cytotoxic T lymphocyte, or CTL. CTLs are cells of the horse immune system that can detect the EHV-1 virus and destroy it. However, evolution has equipped EHV-1 with powerful viral mechanisms to defend against attacks by CTLs. This process is known as immune evasion.)

Dr. Lunn informed the Commission that this research, sponsored by the Colorado Racing Commission, has brought together investigators from Colorado, Cornell University in New York, and the Free University of Berlin, in a multi-institutional research effort. This investigative team, headed by Dr. Lunn at the College of Veterinary Medicine and Biomedical Sciences at C. S. U., has been studying the viral genes of EHV-1 that control immune invasion defenses. During the first year of this work, the investigators studied two genes that seem to be pivotally involved in the virus defenses. New mutant equine herpesviruses were generated using molecular biological techniques from which these two genes were removed. The scientists then studied how differently these new mutant viruses behave when they were used to infect horses.

Dr. Lunn observed that, when these and similar studies are complete, scientists should have a much greater understanding than they have at this time of how EHV-1 manages to evade the horse immune response. With the newly acquired information, it should then be possible to develop new modified live EHV-1 vaccines that will generate far more protective immunity than has ever previously been possible. Dr. Lunn expressed his belief that three to five years of testing may be required before such a vaccine would be commercially available

Both Drs. Carnevale and Lunn presented slide presentations to illustrate the nature and focus of their research.

Drs. Nett, Carnevale and Lunn thanked the Commission for the opportunity to appear and report on a sampling of equine research projects being performed at Colorado State University. The Commission expressed its appreciation to each of them for their insights and informative presentations.

Adjournment

There being no further business to consider, the Commission adjourned its regular meeting at 11:50 a.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on Tuesday, February 10, 2009 in Conference Room 110 (Gaming Conference Room), 1881 Pierce Street, Lakewood, Colorado.

The undersigned hereby approve the foregoing Minutes.

DAVID LYNN HOFFMAN, CHAIRMAN
MARILYN ALKIRE, VICE-CHAIR
JACK PRETTI, MEMBER
(EXCUSED)
CHARLES VAIL, DVM, MEMBER
MARY SHARON WELLS, MEMBER

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, February 10, 2009 at 1881 Pierce Street in Conference Room 110 (Gaming Conference Room), Lakewood, Colorado. Chairman David Lynn Hoffman called the meeting to order at 9:40 a.m.

Members Present

David Lynn Hoffman, Chairman Marilyn Alkire, Vice-Chair Jack Pretti, Member Charles Vail, DVM, Member Mary Sharon Wells, Member

Staff Present

Dan Hartman, Director, Division of Racing Events Robert "Duke" Mann, Horse Racing Coordinator Greg Lamb, Division Auditor Mark Brown, Enforcement Coordinator Michelle Bauman, Licensing Supervisor 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 January 13, 2009

A motion was made by Commissioner Alkire, seconded by Commissioner Vail and unanimously carried to approve the minutes of January 13, 2009 as submitted.

<u>Presentation Regarding Distribution of Owners/Breeders Awards and Supplemental Purse</u> Fund Monies for Calendar Year 2008 – Greg Lamb

Mr. Greg Lamb, Auditor for the Division of Racing Events, introduced himself and informed the Commission that he 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 2008. Mr. Lamb observed that, this past year, the fund had suffered an appreciable loss (approximately 23%) of revenue due to the lowering of interest rates and the overall economic decline. In light of the ongoing fiscal upheaval, he expressed his belief that the fund would continue to be negatively affected in calendar year 2009. He explained that the law requires that the Owners/Breeders Awards and Supplemental Purse Fund accruals be retained as United States Treasury bills.

Mr. Lamb reported that: 1) the total earnings from wagering in 2008 amounted to \$729,058.74; 2) that the total earned from uncashed tickets on both live and simulcast races was \$298,851.12; 3) that the interest earned for 2008 was \$8,879.81 and, after the bank fee of \$3,500.00 was subtracted, the total Owners'/Breeders' Awards and Supplemental Purse Fund accrual for 2008 was \$1,033,289.67.

Mr. Lamb explained that the difference between the total amount of the accrual and the total amount to be distributed/retained in escrow (\$898,289.67) reflects the \$135,000 advance that was approved by the Commission in April 2008 for release to the Colorado Thoroughbred Breeder's Association in July 2008. He read into the record the individual totals to be disbursed to each breed organization.

After considering Mr. Lamb's final accounting of the Owners/Breeders Awards and Supplemental Purse Fund monies for distribution to the various breed organizations for calendar year 2008, a motion was made by Commissioner Alkire, seconded by Commissioner Vail and unanimously carried to grant approval to the Division to request issuance of State warrants for disbursal of the reported fund accruals pursuant to statute.

Colorado Thoroughbred Breeder's Association	\$691,631.74
Rocky Mountain Quarter Horse Association	109,283.00
Colorado Owners and Breeders of Racing Arabians	46,731.62
Rocky Mountain Paint Racing Club	4,795.71
Colorado Appaloosa Racing Association	1,201.47

The amount of \$43,838.25 due the Colorado Harness Horsemen's Association was excluded from distribution and will remain in escrow due to the cessation of live harness racing in Colorado several years ago. Additionally, the amount of \$807.88 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.

Scheduled Rule-Making Hearing

Pursuant to the published Notice of Rule-Making Hearing, Chairman Hoffman convened the scheduled Rule-Making Hearing at 9:50 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 Notices 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 workshops open to all interested parties had been conducted to allow industry participation in the initial phase of the rule review 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. Robert "Duke" Mann, who had assisted in the preparation of the rules for consideration at this time, observed that the packet of rules to be considered at this time contains a proposed new definition, proposed new rules, certain rules proposed for amendment and certain rules or portions of rules proposed for repeal/deletion.

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. Mann presented the following rules for individual consideration and Commission action.

• Consideration of Proposed New Definition "Associated Person" and Proposed Amended Rules 6.704 and 6.706: Mr. Mann presented the proposed new definition, "Associated Person", and reviewed its text. Discussion ensued during which the Commission voiced concerns regarding the language of the rule. Mr. Shannon Rushton, Executive Director of the Colorado Horse-Racing Association, expressed his belief that adoption of the proposed definition of "Associated Person" and of proposed amended rules 6.704 and 6.706 in their existing form

would be potentially harmful to the family nature of the racing business. Director Dan Hartman suggested that, until such time as the Association of Racing Commissioners International adopts this or a similar rule, the Commission defer further consideration of the definition of "Associated Person" and decline to amend rules 6.704 and 6.706. Following Commission review, a motion was made by Commissioner Alkire, seconded by Commissioner Vail and unanimously carried to deny adoption of proposed new definition "Associated Person" and proposed amended rules 6.704 and 6.706.

- Consideration of Proposed Amended Rule 3.602: Mr. Mann reviewed the text of proposed amended rule 3.602. Mr. Darrell Haire, a representative of the Jockeys' Guild, Inc., a national organization that exists to promote the health and safety of the licensed jockey community, recommended incorporation of additional amendments to the proposal. Following review and discussion during which the Commission endorsed the changes proposed by Mr. Haire and accordingly amended the rule and after ascertaining that there were no objections to formal action being taken at this time, a motion was made by Commissioner Alkire, seconded by Commissioner Pretti and unanimously carried to adopt amended rule 3.602 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 7.218: Mr. Mann reviewed the content of proposed amended rule 7.218. A lengthy discussion ensued during which members of the horse racing community, both the Jockey Guild representative, Mr. Darrell Haire, and representatives of the breed organizations and the Colorado Horse-Racing Association presented views, opinions and arguments for and against adoption of the proposed amended version of the rule. During the discussion, the Commission acknowledged that the rule in any form has created what may be an irresoluble dilemma and has resulted in inequity to the jockeys or the owners and/or trainers. Following review, a motion was made by Commissioner Pretti to deny proposed amended rule 7.218 with the stipulation that, prior to the 2009 Arapahoe Park live race meet, the Division seek some kind of amicable resolution. An amendment to the motion was then made by Commissioner Wells, seconded by Commissioner Alkire and unanimously carried to incorporate a modification into the text of original rule 7.218 on a permanent basis whereupon Commissioner Pretti withdrew his prior motion. 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. The Commission directed that, prior to the 2009 Arapahoe Park live race meet, the Division of Racing Events and the respective affected groups work together to formulate and establish some sort of procedure or protocol that could be applied to certain situations involving jockeys and the payment of jockey mount fees in order to avoid the conflicts and complications that any version of rule 7.218 seems to produce.
- Consideration of Proposed Amended Rule 7.604: After taking into consideration the comments of Jockey Guild Representative Darrell Haire regarding the lack of sufficiently durable material to produce a whip/riding crop that would meet the standards set forth in the amended version of the rule and after noting that sections A and B were not intended to become effective until January 1, 2010, the Commission elected to forego adopting proposed amended rule 7.604 at this time and to revisit it at its 2010 Rule-Making Hearing. A motion was made by Commissioner Alkire, seconded by Commissioner Pretti and unanimously carried to decline to accept proposed amended rule 7.604 at this time with the understanding that the Commission would review it again in 2010.
- <u>Consideration of Proposed Amended Rule 5.300</u>: Mr. Mann reviewed the content of proposed amended rule 5.300. Discussion ensued during which Dr. James Dysart, a practicing veterinarian who has served both as a private practitioner and at Colorado horse racecourses, voiced his objection to modifying the

classification of anabolic and/or androgenic steroids as proposed in the amended version of rule 5.300. After taking into consideration that this reclassification has been adopted by the Association of Racing Commissioners International as a Model Rule and previously has been recognized as an industry standard for unauthorized medication by the Colorado Racing Commission, a motion was made by Commissioner Hoffman, seconded by Commissioner Alkire and unanimously carried to adopt the amended rule 5.300 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 5.331: Mr. Mann reviewed the content of proposed amended rule 5.331 which seeks to define and to provide further clarification of the presence of androgenic-anabolic steroids in animals and the reporting protocol for male horses to the testing laboratories. Following review and after ascertaining that there were no objections to formal action being taken at this time, a motion was made by Commissioner Alkire, seconded by Commissioner Vail and unanimously carried to adopt the amended rule 5.331 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 5.440: Mr. Dan Hartman, Director of the Division of Racing Events, explained that the Division has sought to follow the recommendations of the Commission in preparing the proposed amended version of rule 5.440. 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 Alkire, seconded by Commissioner Pretti and unanimously carried to adopt the amended rule 5.440 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. Mann reviewed the content of proposed amended rule 5.502. 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 Alkire, seconded by Commissioner Pretti and unanimously carried to adopt the 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 Amended Rule 7.608: Mr. Mann reviewed the text of proposed amended rule 7.608. Discussion ensued regarding this proposal and views were expressed against adoption of the rule in its existing form. Mr. Dan Hartman, Director of the Division of Racing Events, recommended that the Commission take no action on proposed amended rule 7.608 at this time, but to continue the Rule-Making Hearing until the regular March meeting and to direct the Division to make any necessary changes to the current text of the rule in the meantime. Therefore, a motion was made by Commissioner Alkire, seconded by Commissioner Pretti and unanimously carried to table consideration of proposed amended rule 7.608 with the understanding that the Rule-Making Hearing would be continued until the Commission's March 10, 2009 meeting.
- Consideration of Proposed Amended Rule 7.646: Mr. Mann reviewed the content of proposed amended rule 7.646. After taking into consideration the views and opinions expressed by Jockey Guild Representative Darrell Haire and after incorporating an additional amendment into the proposed text, the Commission ascertained that there were no objections to formal action being taken at this time,

a motion was made by Commissioner Alkire, seconded by Commissioner Pretti and unanimously carried to adopt the amended rule 7.646 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 8.400: Mr. Mann reviewed the text of proposed amended rule 8.400. Following review and discussion and after incorporation of an additional amendment, the Commission ascertained that there were no objections to formal action being taken at this time. A motion was thereupon made by Commissioner Alkire, seconded by Commissioner Pretti and unanimously carried to adopt the amended rule 8.400 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 12.184, 12.186 and 12.198: Mr. Mann reviewed the content of proposed amended rules 12.184, 12.186 and 12.198. He explained that these proposed amended rules would allow for the creation of the outs book via electronic media without either the Commission's prior approval or the necessity for a Division representative to be present at the time of printing due to the location of the totalisator system. The Division assured the Commission that it maintains oversight of the totalisator system and conducts periodic on-site visits as part of its regulatory responsibilities. Following review, a motion was made by Commissioner Hoffman, seconded by Commissioner Pretti and unanimously carried to adopt proposed amended rules 12.184, 12.196 and 12.198 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 rule. A copy of the subject rules is attached hereto and made a part of these minutes.

At 12:05 p.m., the Commission continued this Rule-Making Hearing until its March 10, 2009 meeting. The continued Rule-Making Hearing is scheduled to resume at 9:30 a.m. in Conference Room 110 (Gaming Conference Room), 1881 Pierce Street, Lakewood, Colorado.

<u>Announcement Regarding "Animal Planet" Television Series about Jockeys – Dan</u> Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, announced that a twelve-part series focusing on jockeys was being broadcast on the "Animal Planet" television channel. He mentioned that one of the jockeys featured in the opening segment was Mr. Darrell Haire, representative of the Jockey's Guild, who was present at today's meeting.

<u>Discussion of Legislative Proposals and Initiatives – Bruce Seymore and Mark McGregor</u>

Mr. Bruce Seymore, Director of Colorado Operations for Mile High Racing & Entertainment, apprised the Commission that the legislative proposal being advanced by BLB, the parent corporation of Mile High Racing & Entertainment, had just been introduced in the Senate. He stated that it has received numerical designation as Senate Bill 09-174 and is being sponsored by Senator Kester. He offered some comments regarding features of the initiative and stated that it was not designed to counteract the measure being spearheaded by the Colorado Horsemen's Legislative Coalition.

Mr. Mark McGregor, President of the Colorado Horsemen's Legislative Coalition and the Colorado Thoroughbred Breeder's Association, updated the Commission on special events that have recently been held in order to bring attention and recognition to the Coalition, its mission and its proposed legislative initiative. He advised that the measure, House Bill 09-1152, being sponsored by Representative Sonnenberg and Senator Tochtrop, received a positive 8/3 vote in the House Agriculture Committee and was then forwarded to the House Finance Committee for its deliberation. Mr. McGregor

stated that, at this time, he is unaware of when further action may be taken on the bill. He observed that members of the Coalition were very pleased by the favorable vote given to the bill in the House Agriculture Committee and are hopeful that the bill will continue to receive support from legislators.

Mr. Hartman expressed his willingness to be available to provide assistance regarding legislation to either Mr. Seymore or Mr. McGregor and their organizations. Mr. Hartman assured the Commission and attendees that he would continue to monitor and report on the status of the measures.

Mr. Melvin Johnson, a representative of the Colorado greyhound colony, voiced his distress that the horse racing community had ignored the greyhound industry and its circumstances. He stated that the greyhound community in Colorado would oppose any type of legislative initiative that did not include any help for or reference to reviving live greyhound racing.

Adjournment

There being no further business to consider, the Commission adjourned its regular meeting at 12:50 p.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on Tuesday, March 10, 2009 in Conference Room 110 (Gaming Conference Room), 1881 Pierce Street, Lakewood, Colorado.

The undersigned hereby approve the foregoing Minutes.

DAVID LYNN HOFFMAN, CHAIRMAN
MARILYN ALKIRE, VICE-CHAIR
JACK PRETTI, MEMBER
CHARLES VAIL, DVM, MEMBER
MARY SHARON WELLS, MEMBER

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, March 10, 2009 at 1881 Pierce Street in Conference Room 110 (Gaming Conference Room), Lakewood, Colorado. Chairman David Lynn Hoffman called the meeting to order at 9:40 a.m.

Members Present

David Lynn Hoffman, Chairman Marilyn Alkire, Vice-Chair Jack Pretti, Member Charles Vail, DVM, Member Mary Sharon Wells, Member

Staff Present

Dan Hartman, Director, Division of Racing Events Robert "Duke" Mann, Horse Racing Coordinator Greg Lamb, Division Auditor Mark Brown, Enforcement Coordinator Michelle Bauman, Licensing Supervisor 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 February 10, 2009

A motion was made by Commissioner Alkire, seconded by Commissioner Vail and unanimously carried to approve the minutes of February 10, 2009 as submitted.

Continued Rule-Making Hearing

The hearing, which was originally convened on Tuesday, February 10, 2009, was continued until March 10, 2009 at 1881 Pierce Street, Conference Room 110, Lakewood, Colorado. Chairman Hoffman convened the continued Rule-Making Hearing at 9:45 a.m.

Mr. Dan Hartman, Director of the Division of Racing Events explained that the Rule-Making Hearing had been continued in order to afford the Division the ability to make any necessary changes to the text of proposed amended Colorado Racing Commission Rule 7.608 to ensure that it would be acceptable to all sectors of the Colorado horse racing community. Mr. Hartman stated that he had discussed the rule proposal with representatives of the horse racing community and had been advised that there were no objections to its adoption. Additionally, Mr. Hartman advised the Commission that the rule had been adopted as a Model Rule by the Association of Racing Commissioners International and had also been or was in the process of being adopted by numerous state racing jurisdictions.

During the course of this Rule-Making Hearing, all interested parties were afforded the opportunity to present views, opinions, comments and arguments for and against adoption of the rule proposal.

Discussion ensued during which the Commission inquired about whether there was scientific evidence that the use of toe grabs had been demonstrated to be injurious to certain racehorses. It was ascertained by the Commission that research reports and studies relating to this matter offered only theoretical and anecdotal evidence, not clear and conclusive proof concerning the likelihood of the occurrence of injuries. After incorporating additional amendments into the text of the rule and confirming that there

were no objections to its adoption, a motion was made by Commissioner Vail, seconded by Commissioner Alkire and unanimously carried to adopt of proposed amended rule 7.608 of the <u>Colorado Racing Commission Rules</u>, 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.

There being no further rules to consider the Rule-Making Hearing was adjourned at 9:55 a.m.

Consideration of Request to Postpone Action and to Continue Scheduled Adjudicatory

Hearings Regarding Commission Orders #08-19 and #08-20 (#08-19-Return of Purses in

Connection with Commission Purse Redistribution Ruling #08-13 re. Horse "Man of the

Moment" and #08-20-Final Agency Action) --Susan Wafer, Owner, Wafer Thoroughbred

Ranch, Inc.

Mr. Dan Hartman, Director of the Division of Racing Events, advised the Commission that Ms. Susan Wafer, Owner of Wafer Thoroughbred Ranch, Inc., by and through her Attorney, Mr. James Kreutz, Attorney at Law, has filed an appeal of the Commission's Orders #08-13, #08-19 and #08-20 pursuant to original Case No. 08-654 with both the Colorado Court of Appeals as well as the Denver District Court. He stated that, in light of these filings, Ms. Wafer is requesting by and through her Attorney that the Commission defer taking any action until such time as the Colorado Court of Appeals has made its determinations.

Mr. Kreutz addressed the Commission regarding the basis for Ms. Wafer's appeal, namely that she had not been granted a hearing prior to issuance of a "Final Agency Action" (Commission Order #08-20) on a matter in which sanctions had been sought against her in the nature of the return of purse money. Mr. Kreutz explained that the filing with the Colorado Court of Appeals was to preserve Ms. Wafer's rights due to the forty-five day limitation period for compliance with the terms and conditions set forth in Commission Order #08-20 and that the Denver District Court filing was to seek a Stay of the Agency Action, namely the enforceability of the Commission's Order for Return of Purse Money.

Mr. Hartman observed that, had Ms. Wafer chosen to do so, she, through her Attorney, could have requested that the Commission grant a continuance of the purse payment and that any money that she had refunded would then have been held in escrow, but having failed to do so, the matter of the non-payment of the purse money remains to be addressed. Discussion continued during which Mr. Hartman asserted that Ms. Wafer would remain eligible to participate in the 2009 Arapahoe Park live race meet. Following discussion, a motion was made by Commissioner Alkire, seconded by Commissioner Pretti and carried by a majority vote, with four Commissioners voting in favor of the motion and one Commissioner abstaining, that, in the matter of the scheduled adjudicatory hearings regarding Commission Orders #08-19 and #08-20, a stay of the hearings and of the requirement of the return of the purses be granted pending action of the Colorado Court of Appeals following which the State of Colorado Division of Racing Events would then schedule further action as appropriate. Commissioner Vail abstained from voting due to a question of recusal.

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

Consideration of Request to Reconsider Commission Decisions Regarding
Disqualifications and Purse Redistributions in the Matters of the Horses, "Rasmussen"
(Commission Order #08-15), "Swordsmith" (Commission Order #08-16) and "Rosies
Kid" (Commission Order #08-18) – Harry Veruchi

Mr. Harry Veruchi, Owner of the disqualified horses, "Rasmussen", "Swordsmith" and "Rosies Kid", appeared before the Commission to request that the Commission reconsider its prior decisions concerning the disqualifications and purse redistributions ordered by the Commission.

Mr. Veruchi addressed the Commission concerning alleged communications breakdowns and mishandling of matters that had resulted in the disqualification of his horses and the ordering of the redistribution of the purse monies derived from their races. Mr. Veruchi voiced numerous concerns and raised various allegations to the Commission. He asserted that the Commission should take into consideration that, on or about June 11, 2008, a meeting was held by and between Trainer Jon Glenn Arnett, his Attorney, Allen Kincaid, Division Horse Racing Coordinator Robert "Duke" Mann, Colorado Horse-Racing Association Representative Shannon Rushton, Director of Racing Operations for Mile High Racing and Entertainment Bruce Seymore and Horse Owner Eli Diamante and him at which time, it had been agreed and stipulated that the thirteen horses that had also been administered Methocarbamol would not be stricken from races to be run the weekend of June 14, 2008, but would be allowed to race with the proviso that if any of them tested positive for the subject drug, a \$500 fine would be imposed. Mr. Dan Hartman, Director of the Division of Racing Events, observed that Mr. Veruchi's horses, "Rasmussen", "Swordsmith" and "Rosies Kid" had raced prior to the June 11, 2008 meeting.

Mr. Veruchi stated that his request for reconsideration of the disqualification of his horses and redistributions of the purses is based upon the failure of the Division of Racing Events/Colorado Racing Commission to uphold the prior agreement and stipulation as previously mentioned. Mr. Veruchi contended that the Commission had acted without regard to proper notice requirements, without conduct of formal hearings and without giving consideration to the pre-existing agreement and stipulation.

In making its determination as to whether to grant or deny Mr. Veruchi's request, the Commission considered the following matters:

• That the Colorado Racing Commission (hereinafter "the Commission") must abide by the Law and the interpretation of the Law that the Commission has put forward. For the record, Commission Chair David Lynn Hoffman read the text of Colorado Racing Commission Rule 5.502, which reads:

"The trainer shall be responsible for and the absolute insurer of the condition of the animals entered for his [her] kennel/stable regardless of the acts of third parties except as provided in these rules.

If the chemical analysis of a sample indicates the presence of an unauthorized drug which could affect the racing condition or the performance of an animal in a race, the trainer of the animal and any other person shown to have care or attendance of the animal or shown to have administered or conspired to have administered the drug are subject to disciplinary action. The owner of the animal shall not participate in the purse distribution of that race, a redistribution of that purse shall be ordered, and the animal shall be declared unplaced for every purpose except for pari-mutuel wagering and the grading system as it pertains to greyhound racing. A trophy received by the owner of the animal shall be returned."

- Further, Commission Chair Hoffman read, in pertinent part, the text of Colorado Racing Commission Rule #5.508 "Additionally, with respect to horses in his/her care or custody, the trainer is responsible for. . ."Subsection :9, which reads "Maintaining a knowledge of the medication record and status;" and Subsection :10, which reads "Immediately reporting to the stewards and the Division veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;"
- That the Division of Racing Events is not required either by statute or rules to notify an owner of an impending investigation, but only has to notify the trainer. The Division of Racing Events did fully comply with procedural due process by notifying the trainer which is what it is required to do.
- That the Division of Racing Events, including Mr. Dan Hartman, Division Director, and Mr. Robert "Duke" Mann, Horse Racing Coordinator/Criminal Investigator, are in a recommending capacity only. They can only recommend

appropriate punishment to the Board of Stewards and the Commission on the basis of their interpretation of applicable rules and statutes.

- That the Commission, at its July 2008 meeting, specifically took up the question of the meaning of Colorado Racing Commission Rule #5.502 and, specifically, the meaning of the word "could" and, in that meeting, made it very clear that it was the position of the Commission/Division that any amount of a forbidden substance, no matter how minute or trace, fit within the meaning of Colorado Racing Commission Rule #5.502 and within the meaning of "could affect the racing condition or performance of an animal within a race" and the Commission directed the Division of Racing Events from that point forward to apply that interpretation to any cases still pending or still being adjudicated. The cases that had been settled prior to that interpretation would not be affected. The cases that were still being adjudicated would be affected. Therefore, the cases that involved Mr. Jon Glenn Arnett, Trainer, from that point forward would be affected. The Commission directed the Division of Racing Events to apply that interpretation to the cases that were still being adjudicated which the Division did.
- That, had Mr. Jon Glenn Arnett accepted blame and responsibility for administration of a forbidden substance and had completed the adjudication prior to the July 2008 Commission meeting, the recommendation of Mr. Hartman and Mr. Mann would have been submitted at a hearing before the Board of Stewards. However, Mr. Arnett did not do that and, after the July 2008 Commission meeting, the cases were settled by stipulation with the trainer, and based upon a clear interpretation and the power of the Commission and, as a result of that settlement, the Commission ordered that the purses were to be redistributed.
- That these cases did not go before the Board of Stewards at Arapahoe Park because the Board was no longer sitting by the time that these matters could be heard. Therefore, with the agreement of the trainer, a hearing officer within the State of Colorado Department of Revenue was called upon to review and Stipulations and Agreements between Mr. Jon Glenn Arnett and the Division of Racing Events. It was the position and finding of the said hearing officer that they were acceptable.
- That, pursuant to Colorado Racing Commission Rule #5.502, the trainer is the agent of the owner and the Division has procedurally and substantively dealt with the trainer.
- That, with respect to the question of whether Mr. Hartman or Mr. Mann could have bound the Commission to another interpretation of Colorado Racing Commission Rule #5.502, it was the finding of the Commission that Mr. Hartman and Mr. Mann do not have that power.
- That the Commission finds that it is clear from the regulations that were read into the record that the focus and responsibility are on the trainer. Mr. Veruchi, being a licensed owner of horses that run in Colorado, should be fully familiar with the rules and regulations and has the ability to participate at any appointed time in any rule-making process that the Commission conducts.

After considering the facts and arguments presented and having been fully advised in the premises, the Commission concluded as follows:

- That the Commission has the authority to deny Mr. Veruchi's request for reconsideration and to deny his request for a hearing at which point this would be a final agency action and he could then seek additional relief under the statute as he deems appropriate or to grant Mr. Veruchi's request and schedule a reconsideration hearing or, further, to deem that such reconsideration has taken place at this time.
- That to countenance the administration of an illegal medication, drug or substance to a racing animal because it is "in the best interests of racing" should be

repugnant to anyone who knows the rules regarding racing, especially to owners and trainers.

- That, when the horses, "Rasmussen", "Swordsmith" and "Rosies Kid" were entered into their races and, particularly at the July 2008 Commission meeting, it was made very clear that the Commission was concerned with the use of forbidden substances in any sports venue and whether such administration is made to a human or an animal in any sport venue, it is absolutely repugnant. Further, that any backtracking on the part of the Commission with regard to its position would be detrimental to the sport as a whole and that the Commission must take a stand that the use of any substance is absolutely repugnant and absolutely forbidden.
- That, when he signed his license application, Mr. Veruchi had the opportunity to read and fully understand the rules of racing.
- That he hired an agent, a trainer, who should have known the rules of racing.
- That the Commission expressed its view that Mr. Veruchi has not suffered detrimental harm based upon the fact that if he had pulled his horses, "Rasmussen", "Swordsmith" and "Rosies Kid" from their respective races on May 30, May 31 and June 6, 2008 at Arapahoe Park, he would not have had the purses either.

After considering the arguments made by Mr. Veruchi, a motion was made by Commissioner Alkire, seconded by Commissioner Vail and unanimously carried to deny Mr. Veruchi's request for reconsideration of the Commission decisions regarding the disqualifications and purse redistributions in the matter of the Horses, "Rasmussen" (Commission Order #08-15), "Swordsmith" (Commission Order #08-16) and "Rosies Kid" (Commissioner Order #08-18) owned by Harry Veruchi.

Mr. Dan Hartman, Director of the Division of Racing Events, advised that, at the January 13, 2009 Commission meeting, the Commission had declined to consider Mr. Veruchi's request to appeal its decision based upon notification that Mr. Veruchi had failed to repay the purse money in question. However, Mr. Hartman explained that a misunderstanding had occurred which had resulted in Mr. Veruchi receiving inaccurate instructions regarding the repayment of the purse money. Mr. Bruce Seymore, Executive Director of Colorado Operations for Mile High Racing & Entertainment, informed the Commission that he had told Mr. Veruchi, who had sought to repay the entire outstanding sum on or about December 26, 2008 that he should wait until after the Commission's January meeting to do so. Mr. Seymore stated that he learned subsequently from Mr. Hartman that he should have accepted Mr. Veruchi's proffered payment. Mr. Hartman reported to the Commission that, due to Mr. Veruchi's attempt to pay, no Notices of Hearing had been issued to him. Mr. Hartman confirmed that Mr. Veruchi's payment of \$11,154 has been received. Thereupon, a motion was made by Commissioner Alkire, seconded by Commissioner Wells and unanimously carried to forego the conduct of a hearing(s) against Mr. Veruchi for non-payment of the purse monies.

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

The following Commission Order was disseminated:

BEFORE THE COLORADO RACING COMMISSION STATE OF COLORADO

Case Numbers: RAC 08-0505, RAC 08-0508 and RAC 08-0653

FINAL AGENCY ACTION --COMMISSION ORDER # 09-03

IN THE MATTER OF:

REQUEST FOR RECONSIDERATION – IN THE MATTER OF THE DISQUALIFICATION AND PURSE REDISTRIBUTION INVOLVING THE HORSES "RASMUSSEN", "SWORDSMITH" AND "ROSIES KID" OWNED BY HARRY VERUCHI

At the meeting of the Colorado Racing Commission held on Tuesday, March 10, 2009, the Commission discussed whether to grant or deny the request of Owner Mr. Harry Veruchi, to reconsider the disqualifications and purse redistributions in the matter of his horses, "Rasmussen", that ran in the seventh race on May 30, 2008 at Arapahoe Park, "Swordsmith", that ran in the eighth race on May 31, 2008 at Arapahoe Park and "Rosies Kid" that ran in the sixth race on June 6, 2008 at Arapahoe Park. Mr. Veruchi was present and was not represented by legal counsel.

In making its determination as to whether to grant or deny Mr. Veruchi's request, the Commission brought forward the following:

Findings of Relevant Facts

1. That the Colorado Racing Commission (hereinafter "the Commission") must abide by the Law and the interpretation of the Law that the Commission has put forward. For the record, Commission Chair David Lynn Hoffman read the text of Colorado Racing Commission Rule 5.502, which reads:

"The trainer shall be responsible for and the absolute insurer of the condition of the animals entered for his [her] kennel/stable regardless of the acts of third parties except as provided in these rules.

If the chemical analysis of a sample indicates the presence of an unauthorized drug which could affect the racing condition or the performance of an animal in a race, the trainer of the animal and any other person shown to have care or attendance of the animal or shown to have administered or conspired to have administered the drug are subject to disciplinary action. The owner of the animal shall not participate in the purse distribution of that race, a redistribution of that purse shall be ordered, and the animal shall be declared unplaced for every purpose except for pari-mutuel wagering and the grading system as it pertains to greyhound racing. A trophy received by the owner of the animal shall be returned."

- 2. Further, Commission Chair Hoffman read, in pertinent part, the text of Colorado Racing Commission Rule #5.508 "Additionally, with respect to horses in his/her care or custody, the trainer is responsible for. . ."Subsection :9, which reads "Maintaining a knowledge of the medication record and status;" and Subsection :10, which reads "Immediately reporting to the stewards and the Division veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;"
- 3. That the Division of Racing Events is not required either by statute or rules to notify an owner of an impending investigation, but only has to notify the trainer. The Division of Racing Events did fully comply with procedural due process by notifying the trainer which is what it is required to do.
- 4. That the Division of Racing Events, including Mr. Dan Hartman, Division Director, and Mr. Robert "Duke" Mann, Horse Racing Coordinator/Criminal Investigator, are

in a recommending capacity only. They can only recommend appropriate punishment to the Board of Stewards and the Commission on the basis of their interpretation of applicable rules and statutes. Ultimately, the Commission has the authority to interpret statutes and rules and set the actual punishments and disciplines.

- 5. That the Commission, at its July 2008 meeting, specifically took up the question of the meaning of Colorado Racing Commission Rule 5.502 and, specifically, the meaning of the word "could" and, in that meeting, made it very clear that it was the position of the Commission/Division that any amount of a forbidden substance, no matter how minute or trace, fit within the meaning of Colorado Racing Commission Rule #5.502 and within the meaning of "could affect the racing condition or performance of an animal within a race" and the Commission directed the Division of Racing Events from that point forward to apply that interpretation to any cases still pending or still being adjudicated. The cases that had been settled prior to that interpretation would not be affected. The cases that were still being adjudicated would be affected. Therefore, the cases that involved Mr. Jon Glenn Arnett, Trainer, from that point forward would be affected. The Commission directed the Division of Racing Events to apply that interpretation to the cases that were still being adjudicated which the Division did.
- 6. That, had Mr. Jon Glenn Arnett accepted blame and responsibility for administration of a forbidden substance and had completed the adjudication prior to the July 2008 Commission meeting, the recommendation of Mr. Hartman and Mr. Mann would have been submitted at a hearing before the Board of Stewards. However, Mr. Arnett did not do that and, after the July 2008 Commission meeting, the cases were settled by stipulation with the trainer, and based upon a clear interpretation and the power of the Commission, and, as a result of that settlement, the Commission ordered that the purses were to be redistributed.
- 7. That these cases did not go before the Board of Stewards at Arapahoe Park because the Board was no longer sitting by the time that these matters could be heard. Therefore, with the agreement of the trainer, a hearing officer within the State of Colorado Department of Revenue was called upon to review and Stipulations and Agreements between Mr. Jon Glenn Arnett and the Division of Racing Events. It was the position and finding of the said hearing officer that they were acceptable.
- 8. That, pursuant to Colorado Racing Commission Rule #5.502, the trainer is the agent of the owner and the Division has procedurally and substantively dealt with the trainer.
- 9. That, with respect to the question of whether Mr. Hartman or Mr. Mann could have bound the Commission to another interpretation of Colorado Racing Commission Rule #5.502, it was the finding of the Commission that Mr. Hartman and Mr. Mann do not have that power.
- 10. That the Commission finds that it is clear from the regulations that were read into the record that the focus and responsibility are on the trainer. Mr. Veruchi, being a licensed owner of horses that run in Colorado, should be fully familiar with the rules and regulations and has the ability to participate at any appointed time in any rule-making process that the Commission has.

Conclusions of Law

Having considered the facts and arguments presented and having been fully advised in the premises, the Commission hereby concludes:

- 1. That the Commission has the authority to deny Mr. Veruchi's request for reconsideration and to deny his request for a hearing at which point this would be a final agency action and he could then seek additional relief under the statute as he deems appropriate or to grant Mr. Veruchi's request and schedule a reconsideration hearing or, further, to deem that such reconsideration has taken place at this time.
- 2. That to countenance the administration of an illegal medication, drug or substance to a racing animal because it is "in the best interests of racing" should be repugnant to anyone who knows the rules regarding racing, especially to owners and trainers.

- 3. That, when the horses, "Rasmussen", "Swordsmith" and "Rosies Kid" were entered into their races and, particularly at the July 2008 Commission meeting, it was made very clear that the Commission was concerned with the use of forbidden substances in any sports venue and whether such administration is made to a human or an animal in any sport venue, it is absolutely repugnant. Further, that any backtracking on the part of the Commission with regard to its position would be detrimental to the sport as a whole and that the Commission must take a stand that the use of any substance is absolutely repugnant and absolutely forbidden.
- 4. That, when he signed his license application, Mr. Veruchi had the opportunity to read and fully understand the rules of racing.
- 5. That he hired an agent, a trainer, who should have known the rules of racing.
- 6. That the Commission expressed its view that Mr. Veruchi has not suffered detrimental harm based upon the fact that if he had pulled his horses, "Rasmussen", "Swordsmith" and "Rosies Kid", from their races on May 30, May 31 and June 6, 2008 at Arapahoe Park, he would not have had the purses either.

<u>Order</u>

The Commission hereby orders:

After considering the arguments made by Mr. Veruchi, the Commission moved by a unanimous vote to deny Mr. Veruchi's request for reconsideration of the disqualifications and purse redistributions in the matter of the horses, "Rasmussen", "Swordsmith" and "Rosies Kid", owned by Harry Veruchi; and to specify that this is a final agency action.

DONE this 16th day of March 2009.

BY ORDER OF THE COLORADO RACING COMMISSION

FOR THE COLORADO RACING COMMISSION

s/

DANIEL J. HARTMAN, Director Colorado Division of Racing Events

Consideration of Request to Reconsider Commission Decision Regarding

<u>Disqualification and Purse Redistribution in the Matter of the Horse, "Ecstatic Twist"</u>

(Commission Order #08-17) – Keith Grinolds for K & M Grinolds, LLC

Mr. Keith Grinolds, Managing Partner of K & M Grinolds, LLC, Owner of the disqualified Horse, "Ecstatic Twist", appeared before the Commission to request that the Commission reconsider its prior decision concerning the disqualification and purse redistribution ordered by the Commission. Mr. Grinolds' spouse also appeared to express her views regarding the Commission's decision.

As a preliminary matter, Mr. Dan Hartman, Director of the Division of Racing Events, explained that, at the Commission's January 13, 2009 meeting, it was ascertained by the Commission that no repayment of the outstanding purse had been made by Mr. Grinolds and, therefore, he did not have standing to present his request for reconsideration. Mr. Hartman informed the Commission that, on or about February 20, 2009, Mr. Grinolds had tendered a check in full payment of the \$3,510 purse to Mr. Bruce Seymore, Executive Director of Colorado Operations for Mile High Racing & Entertainment, which is currently in his possession. Based upon his current status, Mr. Hartman recommended that the Commission afford Mr. Grinolds the opportunity to present his request for reconsideration. Further, he advised that there were two matters to be considered: 1) Mr. Grinolds' request for reconsideration; and 2) the issue of the untimely payment of the purse money.

Mr. and Mrs. Grinolds voiced their distress regarding the Commission's decision and contended that the Commission had acted without regard to proper notice requirements and without conducting formal hearings. They expressed their belief that the purses should not have been released until such time as the test results were made known and that certain changes in rule interpretations during the 2008 Arapahoe Park

live meet had been made that created adverse conditions for members of the horse racing community. The Commission assured the Grinolds that it understood their frustration, but had made its decisions based upon sound and reasonable grounds.

In making its determination as to whether to grant or deny the request of Keith Grinolds, K & M Grinolds, LLC, the Commission considered the following matters:

• That the Colorado Racing Commission (hereinafter "the Commission") must abide by the Law and the interpretation of the Law that the Commission has put forward. For the record, Commission Chair David Lynn Hoffman read the text of Colorado Racing Commission Rule 5.502, which reads:

"The trainer shall be responsible for and the absolute insurer of the condition of the animals entered for his [her] kennel/stable regardless of the acts of third parties except as provided in these rules.

If the chemical analysis of a sample indicates the presence of an unauthorized drug which could affect the racing condition or the performance of an animal in a race, the trainer of the animal and any other person shown to have care or attendance of the animal or shown to have administered or conspired to have administered the drug are subject to disciplinary action. The owner of the animal shall not participate in the purse distribution of that race, a redistribution of that purse shall be ordered, and the animal shall be declared unplaced for every purpose except for pari-mutuel wagering and the grading system as it pertains to greyhound racing. A trophy received by the owner of the animal shall be returned."

- Further, Commission Chair Hoffman read, in pertinent part, the text of Colorado Racing Commission Rule #5.508 "Additionally, with respect to horses in his/her care or custody, the trainer is responsible for. . ."Subsection :9, which reads "Maintaining a knowledge of the medication record and status;" and Subsection :10, which reads "Immediately reporting to the stewards and the Division veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;"
- That the Division of Racing Events is not required either by statute or rules to notify an owner of an impending investigation, but only has to notify the trainer. The Division of Racing Events did fully comply with procedural due process by notifying the trainer which is what it is required to do.
- That the Division of Racing Events, including Mr. Dan Hartman, Division Director, and Mr. Robert "Duke" Mann, Horse Racing Coordinator/Criminal Investigator, are in a recommending capacity only. They can only recommend appropriate punishment to the Board of Stewards and the Commission on the basis of their interpretation of applicable rules and statutes.
- That the Commission, at its July 2008 meeting, specifically took up the question of the meaning of Colorado Racing Commission Rule #5.502 and, specifically, the meaning of the word "could" and, in that meeting, made it very clear that it was the position of the Commission/Division that any amount of a forbidden substance, no matter how minute or trace, fit within the meaning of Colorado Racing Commission Rule #5.502 and within the meaning of "could affect the racing condition or performance of an animal within a race" and the Commission directed the Division of Racing Events from that point forward to apply that interpretation to any cases still pending or still being adjudicated. The cases that had been settled prior to that interpretation would not be affected. The cases that were still being adjudicated would be affected. Therefore, the cases that involved Mr. Jon Glenn Arnett, Trainer, from that point forward would be affected. The Commission directed the Division of Racing Events to apply that interpretation to the cases that were still being adjudicated which the Division did.
- That, had Mr. Jon Glenn Arnett accepted blame and responsibility for administration of a forbidden substance and had completed the adjudication prior to the July 2008 Commission meeting, the recommendation of Mr. Hartman and

Mr. Mann would have been submitted at a hearing before the Board of Stewards. However, Mr. Arnett did not do that and, after the July 2008 Commission meeting, the cases were settled by stipulation with the trainer, and based upon a clear interpretation and the power of the Commission and, as a result of that settlement, the Commission ordered that the purses were to be redistributed.

- That these cases did not go before the Board of Stewards at Arapahoe Park because the Board was no longer sitting by the time that these matters could be heard. Therefore, with the agreement of the trainer, a hearing officer within the State of Colorado Department of Revenue was called upon to review and Stipulations and Agreements between Mr. Jon Glenn Arnett and the Division of Racing Events. It was the position and finding of the said hearing officer that they were acceptable.
- That, pursuant to Colorado Racing Commission Rule #5.502, the trainer is the agent of the owner and the Division has procedurally and substantively dealt with the trainer.
- That, with respect to the question of whether Mr. Hartman or Mr. Mann could have bound the Commission to another interpretation of Colorado Racing Commission Rule #5.502, it was the finding of the Commission that Mr. Hartman and Mr. Mann do not have that power.
- That the Commission finds that it is clear from the regulations that were read into the record that the focus and responsibility are on the trainer. Mr. Grinolds, K & M Grinolds, LLC, being a licensed owner of horses that run in Colorado, should be fully familiar with the rules and regulations and has the ability to participate at any appointed time in any rule-making process that the Commission conducts.

After considering the facts and arguments presented and having been fully advised in the premises, the Commission concluded as follows:

- That the Commission has the authority to deny Mr. Grinolds' request for reconsideration and to deny his request for a hearing at which point this would be a final agency action and he could then seek additional relief under the statute as he deems appropriate or to grant Mr. Grinolds' request and schedule a reconsideration hearing or, further, to deem that such reconsideration has taken place at this time.
- That to countenance the administration of an illegal medication, drug or substance to a racing animal because it is "in the best interests of racing" should be repugnant to anyone who knows the rules regarding racing, especially to owners and trainers.
- That, when the horse, "Ecstatic Twist" was entered into its race and, particularly at the July 2008 Commission meeting, it was made very clear that the Commission was concerned with the use of forbidden substances in any sports venue and whether such administration is made to a human or an animal in any sport venue, it is absolutely repugnant. Further, that any backtracking on the part of the Commission with regard to its position would be detrimental to the sport as a whole and that the Commission must take a stand that the use of any substance is absolutely repugnant and absolutely forbidden.
- That, when he signed his license application, Mr. Grinolds had the opportunity to read and fully understand the rules of racing.
- That he hired an agent, a trainer, who should have known the rules of racing.
- That the Commission expressed its view that Mr. Grinolds has not suffered detrimental harm based upon the fact that if he had pulled his horse, "Ecstatic

Twist" from its race on June 6, 2008 at Arapahoe Park, he would not have had the purse either.

After considering the arguments made by Mr. Grinolds, a motion was made by Commissioner Alkire, seconded by Commissioner Pretti and unanimously carried to deny Mr. Grinolds' request for reconsideration of the Commission decision regarding the disqualification and purse redistribution in the matter of the Horse, "Ecstatic Twist" (Commission Order #08-17) owned by K & M Grinolds, LLC.

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

The following Commission Order was disseminated:

BEFORE THE COLORADO RACING COMMISSION STATE OF COLORADO

Case Number: RAC 08-0603

FINAL AGENCY ACTION --COMMISSION ORDER # 09-04

IN THE MATTER OF:

REQUEST FOR RECONSIDERATION – IN THE MATTER OF THE DISQUALIFICATION AND PURSE REDISTRIBUTION INVOLVING THE HORSE "ECSTATIC TWIST", OWNED BY K & M GRINOLDS, LLC

At the meeting of the Colorado Racing Commission held on Tuesday, March 10, 2009, the Commission discussed whether to grant or deny the request of Owner Mr. Keith Grinolds, K & M Grinolds, LLC, to reconsider the disqualification and purse redistribution in the matter of his horse, "Ecstatic Twist", that ran in the eighth race on June 6, 2008 at Arapahoe Park. Mr. and Mrs. Grinolds were present and were not represented by legal counsel.

In making its determination as to whether to grant or deny Mr. Grinolds' request, the Commission brought forward the following:

Findings of Relevant Facts

1. That the Colorado Racing Commission (hereinafter "the Commission") must abide by the Law and the interpretation of the Law that the Commission has put forward. For the record, Commission Chair David Lynn Hoffman read the text of Colorado Racing Commission Rule 5.502, which reads:

"The trainer shall be responsible for and the absolute insurer of the condition of the animals entered for his [her] kennel/stable regardless of the acts of third parties except as provided in these rules.

If the chemical analysis of a sample indicates the presence of an unauthorized drug which could affect the racing condition or the performance of an animal in a race, the trainer of the animal and any other person shown to have care or attendance of the animal or shown to have administered or conspired to have administered the drug are subject to disciplinary action. The owner of the animal shall not participate in the purse distribution of that race, a redistribution of that purse shall be ordered, and the animal shall be declared unplaced for every purpose except for pari-mutuel wagering and the grading system as it pertains to greyhound racing. A trophy received by the owner of the animal shall be returned."

- 2. Further, Commission Chair Hoffman read, in pertinent part, the text of Colorado Racing Commission Rule #5.508 "Additionally, with respect to horses in his/her care or custody, the trainer is responsible for. . ."Subsection :9, which reads "Maintaining a knowledge of the medication record and status;" and Subsection :10, which reads "Immediately reporting to the stewards and the Division veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;"
- 3. That the Division of Racing Events is not required either by statute or rules to notify an owner of an impending investigation, but only has to notify the trainer. The Division of Racing Events did fully comply with procedural due process by notifying the trainer which is what it is required to do.
- 4. That the Division of Racing Events, including Mr. Dan Hartman, Division Director, and Mr. Robert "Duke" Mann, Horse Racing Coordinator/Criminal Investigator, are in a recommending capacity only. They can only recommend appropriate punishment to the Board of Stewards and the Commission on the basis of their interpretation of applicable rules and statutes. Ultimately, the Commission has the authority to interpret statutes and rules and set the actual punishments and disciplines.
- 5. That the Commission, at its July 2008 meeting, specifically took up the question of the meaning of Colorado Racing Commission Rule 5.502 and, specifically, the meaning of the word "could" and, in that meeting, made it very clear that it was the position of the Commission/Division that any amount of a forbidden substance, no matter how minute or trace, fit within the meaning of Colorado Racing Commission Rule #5.502 and within the meaning of "could affect the racing condition or performance of an animal within a race" and the Commission directed the Division of Racing Events from that point forward to apply that interpretation to any cases still pending or still being adjudicated. The cases that had been settled prior to that interpretation would not be affected. The cases that were still being adjudicated would be affected. Therefore, the cases that involved Mr. Jon Glenn Arnett, Trainer, from that point forward would be affected. The Commission directed the Division of Racing Events to apply that interpretation to the cases that were still being adjudicated which the Division did.
- 6. That, had Mr. Jon Glenn Arnett accepted blame and responsibility for administration of a forbidden substance and had completed the adjudication prior to the July 2008 Commission meeting, the recommendation of Mr. Hartman and Mr. Mann would have been submitted at a hearing before the Board of Stewards. However, Mr. Arnett did not do that and, after the July 2008 Commission meeting, the cases were settled by stipulation with the trainer, and based upon a clear interpretation and the power of the Commission and, as a result of that settlement, the Commission ordered that the purses were to be redistributed.
- 7. That these cases did not go before the Board of Stewards at Arapahoe Park because the Board was no longer sitting by the time that these matters could be heard. Therefore, with the agreement of the trainer, a hearing officer within the State of Colorado Department of Revenue was called upon to review and Stipulations and Agreements between Mr. Jon Glenn Arnett and the Division of Racing Events. It was the position and finding of the said hearing officer that they were acceptable.
- 8. That, pursuant to Colorado Racing Commission Rule #5.502, the trainer is the agent of the owner and the Division has procedurally and substantively dealt with the trainer.
- 9. That, with respect to the question of whether Mr. Hartman or Mr. Mann could have bound the Commission to another interpretation of Colorado Racing Commission Rule #5.502, it was the finding of the Commission that Mr. Hartman and Mr. Mann do not have that power.
- 10. That the Commission finds that it is clear from the regulations that were read into the record that the focus and responsibility are on the trainer. Mr. Grinolds, being a licensed owner of horses that run in Colorado, should be fully familiar with the rules and regulations and has the ability to participate at any appointed time in any rule-making process that the Commission has.

Conclusions of Law

Having considered the facts and arguments presented and having been fully advised in the premises, the Commission hereby concludes:

- 1. That the Commission has the authority to deny Mr. Grinolds' request for reconsideration and to deny his request for a hearing at which point this would be a final agency action and he could then seek additional relief under the statute as he deems appropriate or to grant Mr. Grinolds' request and schedule a reconsideration hearing or, further, to deem that such reconsideration has taken place at this time.
- 2. That to countenance the administration of an illegal medication, drug or substance to a racing animal because it is "in the best interests of racing" should be repugnant to anyone who knows the rules regarding racing, especially to owners and trainers.
- 3. That, when the horse, "Ecstatic Twist" was entered into its race and, particularly at the July 2008 Commission meeting, it was made very clear that the Commission was concerned with the use of forbidden substances in any sports venue and whether such administration is made to a human or an animal in any sport venue, it is absolutely repugnant. Further, that any backtracking on the part of the Commission with regard to its position would be detrimental to the sport as a whole and that the Commission must take a stand that the use of any substance is absolutely repugnant and absolutely forbidden.
- 4. That, when he signed his license application, Mr. Grinolds had the opportunity to read and fully understand the rules of racing.
- 5. That he hired an agent, a trainer, who should have known the rules of racing.
- 6. That the Commission expressed its view that Mr. Grinolds has not suffered detrimental harm based upon the fact that if he had pulled his horse, "Ecstatic Twist", from its race on June 6, 2008 at Arapahoe Park, he would not have had the purse either.

<u>Order</u>

The Commission hereby orders:

After considering the arguments made by Mr. Grinolds, the Commission moved by a unanimous vote to deny Mr. Grinolds' request for reconsideration of the disqualification and purse redistribution in the matter of the horse, "Ecstatic Twist", owned by K & M Grinolds, LLC; and to specify that this is a final agency action.

DONE this 16th day of March 2009.

BY ORDER OF THE COLORADO RACING COMMISSION

FOR THE COLORADO RACING COMMISSION

s/

DANIEL J. HARTMAN, Director Colorado Division of Racing Events

Scheduled Adjudicatory Hearing – In the Matter of Commission Order #08-17 (Return of Purses in Connection with Purse Redistribution Ruling #08-11 Regarding the Horse "Ecstatic Twist"

Chairman Hoffman convened the scheduled adjudicatory hearing in the matter of Commission Order #08-17 at 11:00 a.m. Mr. Keith Grinolds representing K & M Grinolds, LLC, was present and was not represented by legal counsel.

The Commission confirmed that, on or about February 20, 2009, Mr. Grinolds had tendered a check in full payment of the \$3,510 purse to Mr. Bruce Seymore, Executive Director of Colorado Operations for Mile High Racing & Entertainment, which is currently in his possession. However, the Commission also took notice that Mr. Grinolds had failed to refund the purse payment in a timely manner.

A motion was made by Commissioner Alkire, seconded by Commissioner Vail and unanimously carried not to pursue this matter further with the understanding that the outstanding purse money has been fully paid by Mr. Keith Grinolds, K & M Grinolds, LLC. The Commission directed that an Order be issued to K & M Grinolds, LLC reflecting this action.

The Commission expressed its position with respect to the question of repayment. In light of the fact that no stays of execution had been granted, the parties affected by the disqualifications and purse redistributions were obligated to make repayment of the outstanding purse money in accordance with the orders of the Commission. Further, the Commission observed that a dangerous precedent is established when there is a failure to uphold an order of the Commission. Following discussion, the Commission elected unanimously to uphold its prior motion.

The hearing concluded at 11:10 a.m.

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

Scheduled Adjudicatory Hearings-In the Matter of Jockey Travis Wales (Commission Orders #08-15, #08-16, #08-17, #08-18 and #08-19)

Chairman Hoffman convened the scheduled adjudicatory hearings in the matter of Jockey Travis Wales (Commission Orders #08-15, #08-16, #08-17, #08-18 and #08-19) at 11:12 a.m. Mr. Wales was not present and was not represented by legal counsel.

Mr. Harry Veruchi informed the Commission that Mr. Travis Wales had contacted him via telephone to request that he explain his absence and financial circumstances to the Commission. Mr. Veruchi stated that Mr. Wales, who is currently participating in an out-of-state race meet, is unable to refund the entire amount of the outstanding purse money as ordered by the Commission. Mr. Veruchi advised that Mr. Wales expressed his willingness to repay the money in installments.

Mr. Dan Hartman, Director of the Division of Racing Events, stated that, despite Mr. Veruchi's comments on behalf of Mr. Wales, Mr. Wales has not contacted or communicated with the Division of Racing Events or Arapahoe Park at any time regarding his inability to pay back the outstanding purse money or to request a stay of execution or a continuance. Further, Mr. Hartman asserted that, based upon Mr. Wales' failure to report his status or make any effort to refund the purse money, he had violated the orders of the Commission.

The Commission considered the comments of Mr. Veruchi and Mr. Hartman in its deliberations and expressed its willingness to give some leeway to Mr. Wales in order to resolve the matter. Therefore, a motion was made by Commissioner Alkire, seconded by Commissioner Vail and unanimously carried to continue the adjudicatory hearings relating to Jockey Travis Wales and Commission Orders #08-15, #08-16, #08-17, #08-18 and #08-19 for a thirty-day period with the understanding that, in the interim, Mr. Wales must contact the Division of Racing Events in order to develop an agreed-upon payment schedule. The Commission stressed that this matter would be brought forward again, but that it is the hope of the Commission that there will be an amicable resolution to it; however, should there be no resolution, the Commission would need to make alternative arrangements. The Commission directed that Mr. Wales be notified of this action.

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

Update on Status of Legislative Initiatives – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, informed the Commission that, to date, two legislative initiatives supported by the racing community/industry had been defeated.

Mr. Hartman announced that Senate Bill 09-174, the measure supported by Mile High Racing & Entertainment (BLB) had passed out of the Senate Agriculture Committee on Thursday, February 19, 2009 by a favorable vote of 5/2 after which it was sent to the Senate Appropriations Committee. He stated that on Friday, March 6, 2009, the Senate Appropriations Committee has passed the measure by a vote of 8/1 and it would be advancing to the full Senate for second reading, probably on Friday, March 13, 2009. The Commission offered its support for Senate Bill 09-174. Mr. Hartman assured the Commission and attendees that he would continue to monitor and report on the status of the measure.

<u>Acknowledgment of Senate Confirmations -- New Appointment of Commissioner Mary</u> Sharon Wells and Re-Appointment of Jack Pretti – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, announced that, on Monday, March 9, 2009, the full Senate had confirmed the appointment of Ms. Mary Sharon Wells to serve her first four-year term on the Commission through July 1, 2012 and the re-appointment of Mr. Jack Pretti to serve his second four-year term on the Commission, also through July 1, 2012. The Commission congratulated both of them on their confirmations.

Adjournment

There being no further business to consider, the Commission adjourned its regular meeting at 11:15 p.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on Tuesday, April 14, 2009 in Conference Room 110 (Gaming Conference Room), 1881 Pierce Street, Lakewood, Colorado.

The undersigned hereby approve the foregoing Minutes.

DAVID LYNN HOFFMAN, CHAIRMAN
MARILYN ALKIRE, VICE-CHAIR
JACK PRETTI, MEMBER
CHARLES VAIL, DVM, MEMBER
MARY SHARON WELLS, MEMBER

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, April 14, 2009 at 1881 Pierce Street in Conference Room 110 (Gaming Conference Room), Lakewood, Colorado. Chairman David Lynn Hoffman called the meeting to order at 9:40 a.m.

Members Present

David Lynn Hoffman, Chairman Jack Pretti, Member Mary Sharon Wells, Member

Commissioners Marilyn Alkire and Dr. Charles Vail were excused from the meeting.

Staff Present

Dan Hartman, Director, Division of Racing Events Robert "Duke" Mann, Horse Racing Coordinator Greg Lamb, Division Auditor Mark Brown, Enforcement Coordinator Michelle Bauman, Licensing Supervisor 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 March 10, 2009

A motion was made by Commissioner Pretti, seconded by Commissioner Wells and unanimously carried to approve the minutes of March 10, 2009 as submitted.

Rescheduled Adjudicatory Hearings --In the matter of Jockey Travis Wales (Commission Orders #08-15, #08-16, #08-17, #08-18 and #08-19)

Chairman Hoffman convened the rescheduled adjudicatory hearings in the matter of Jockey Travis Wales (Commission Orders #08-15, #08-16, #08-17, #08-18 and #08-19) at 9:42 a.m. Mr. Wales was not present and was not represented by legal counsel. Mr. Dan Hartman, Director of the Division of Racing Events, advised that, at the direction of the Commission, the Division had issued Commission Order #09-02 whereby Mr. Wales was duly and properly notified that the Commission had continued the above-referenced hearings until this date subject to the following conditions: 1) that Mr. Wales is to contact the Division of Racing Events in order to establish an agreed-upon payment schedule; and 2) if Mr. Wales fails to contact the Division and there is no resolution to this issue, then, the Commission will revisit the matter and make a decision based upon the available evidence.

Mr. Dan Hartman, Director of the Division of Racing Events, stated that, since the issuance of Commission Order #09-02 dated March 16, 2009 with Certificate of Mailing dated March 17, 2009 and accompanying receipt of hand delivery signed and dated by Mr. Travis Wales on March 20, 2009, Mr. Wales had not contacted or communicated with the Division of Racing Events or Arapahoe Park at any time regarding either his intention to pay back the outstanding purse money or to develop an agreed-upon payment schedule, to request a stay of execution or another continuance. Further, Mr. Hartman asserted that, based upon Mr. Wales' failure to contact the Division, report his status or make any effort to refund the purse money, he had continued to violate the orders of the Commission.

Mr. Hartman explained that the Division had issued five separate Notices of Hearing to Mr. Wales relating to the five individual disqualifications and purse redistributions affecting him. Mr. Hartman requested that the Commission consider these matters collectively and the outstanding purse monies as a cumulative amount. Mr. Hartman listed the Notices by case number and enumerated the individual amounts that were originally due and payable on or before December 29, 2008 as follows:

•	Commission Case No. 08-505:	\$714
•	Commission Case No. 08-508:	\$427
•	Commission Case No. 08-603:	\$390
•	Commission Case No. 08-653:	\$55
•	Commission Case No. 08-654:	\$660
	Total amount owing:	\$2,246

Discussion and deliberation of the evidence ensued during which the Commission took into consideration that 1) Mr. Travis Wales had failed to comply with Orders of the Commission by failing to pay the outstanding amount of \$2,246 and, further, that 2) Mr. Travis Wales had violated the Commission's order to contact the Division of Racing Events to establish an agreed-upon payment schedule. The Commission took notice of the fact that Mr. Wales is currently licensed and riding at a New Mexico race meet and that, should the Commission take action regarding Mr. Wales' riding privileges, New Mexico could be expected to reciprocate and uphold the decision of the Colorado Racing Commission. In response to Mr. Hartman's query, the Commission determined that, until such time as Mr. Wales pays the total amount of \$2,246 due in purse monies and said funds are received in the Arapahoe Park Horsemen's Bookkeeper's Office, Mr. Wales' license is to be deemed suspended. Following consideration of the Findings of Fact and Conclusions of Law relating to Jockey Travis Wales' non-compliance with an Order of the Commission, a motion was made by Commissioner Wells, seconded by Commissioner Pretti and unanimously carried to order that Mr. Travis Wales is hereby suspended from participating as a jockey until he complies with the Commission's Order and pays the total amount of his outstanding purse monies, which is \$2,246; and, further, to specify that this amount must be made to and received by the Arapahoe Park Horsemen's Bookkeeper's Office before the suspension would be lifted; additionally, once Mr. Wales has made complete restitution of the purse monies, he is required to appear before the Colorado Racing Commission prior to being allowed to participate in racing in Colorado.

The Commission deliberated the matter of Jockey Travis Wales' disobedience and express disregard of a Commission Order by failing to pay the outstanding purse monies in a timely manner and, subsequently, by failing to contact the Division regarding his financial status and develop a payment schedule. Mr. Hartman advised the Commission that each of the owners of horses that had been disqualified from races in which Mr. Wales had ridden had taken some action and had made contact with the Division of Racing Events. Mr. Hartman emphasized that Mr. Wales had made no effort to respond to the Commission's directive and Order. The Commission determined that a dangerous precedent would be set if an additional penalty was not assessed against Mr. Wales at this time and discussed with Mr. Hartman what an appropriate fine amount would be. Thereupon, a motion was made by Commissioner Pretti, seconded by Commissioner Wells and unanimously carried to impose a fine of \$500 (five hundred dollars) against Mr. Travis Wales for disobeying a Commission Order with the proviso that Mr. Wales is still required to appear before the Colorado Racing Commission before resuming riding in Colorado; however, once Mr. Wales has made complete restitution as described in this motion and in the Commission's previous motion, he would be permitted to ride races in another racing jurisdiction prior to appearing before the Colorado Racing Commission.

The hearing concluded at 10:00 a.m.

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

The following Commission Order was disseminated:

BEFORE THE COLORADO RACING COMMISSION STATE OF COLORADO

Case Numbers: 08-505, 08-508, 08-603, 08-653, 08-654

COMMISSION ORDER # 09-05

IN THE MATTER OF:

TRAVIS E WALES

License Type: Jockey

License Number: 200913211

HEARING

Having been duly notified of the hearing to be held on March 10, 2009, and the subsequent continuance of that hearing to be heard on April 14, 2009, the Commission held its regularly scheduled meeting at the appointed time. Mr. Wales did not appear, nor was he represented by anyone.

Legal Citation(s): You have been charged with violating the following Statutes and/or Rules:

1. § 12-60-503 (2) (a), C.R.S., which states:

Every person holding a license or registration under this article, every person operating an in-state simulcast facility, and every owner or trainer of any horse or greyhound licensed to enter any racing contest under this article shall comply with all rules and orders issued by the commission.

2. § 12-60-507 (1), C.R.S., which states (in relevant part):

In addition to its authority under any other provision of this article, the commission may issue a letter of admonition to a licensee, fine a licensee, suspend a license, deny an application for a license, or revoke a license, if such person has committed any of the following violations:

(g) Failure to comply with any order or rulings of the commission, the stewards, the judges, or a racing official pertaining to a racing matter.

3. § 12-60-802, C.R.S., which states:

In case of a willful violation of this article by a person holding a license, the commission, upon conviction of the offender, may cancel the offender's license, and such cancellation shall operate as a forfeiture of all rights and privileges granted by the commission and of all sums of money paid to the department of revenue through the division by the offender, and the action of the commission in this respect shall be final.

FINDINGS OF FACT

- 1. At all times relevant to this Case, TRAVIS WALES (hereafter, the "Licensee") was licensed by the Division of Racing Events (hereafter, the "Division") as a Jockey.
- 2. On November 28, 2008, the Colorado Racing Commission (hereafter, the "Commission"), in Commission Orders # 08-15, #08-16, #08-17, #08-18, #08-19, ordered that Jockey Travis Wales pay back all purse money earned from 5 races in which the horses he rode, were declared disqualified and therefore unplaced.
- 3. The Commission Orders required the Licensee to return the Licensee's Portion of Purse Monies to the Arapahoe Park Horsemen's bookkeeper "within THIRTY (30) calendar days of notification", which, as specified in the Order, meant a return of purse monies no later than December 29, 2008.
- 4. As of the date of this Order, the Licensee has not returned any of the Licensee's Portion of Purse Monies.
- 5. The hearing regarding the failure to repay the purse money was originally scheduled for March 10, 2009, before the Colorado Racing Commission.
- 6. Upon petition by Harry Veruchi on Mr. Wales behalf, requesting a continuance in this matter for good cause shown, the Colorado Racing Commission ordered that the hearing be continued until the Commission meeting scheduled for April 14, 2009, with the following conditions:
 - a. Mr. Wales was to contact the Division of Racing Events in order to set up an agreed upon payment schedule.
 - b. If Mr. Wales did not contact the Division and there was no resolution to the issue, the Commission would revisit the matter and make their decision based upon the evidence available to them at the time.
- 7. Mr. Wales failed to contact the Division and has not made any attempt to set up a payment plan, nor has he offered any testimony on his behalf.

CONCLUSIONS OF LAW

Based upon deliberation of the Facts and the Law, the Commission determines and concludes the following:

- 1. Travis Wales, a Licensee of the Colorado Division of Racing Events, is under the Jurisdiction of the Colorado Racing Commission.
- 2. The Colorado Racing Commission has jurisdiction over the subject matter of the case.
- 3. Travis Wales has violated C.R.S. 12-60-503 (2) (a), 12-60-507 (1), 12-60-802.

ORDER

BASED UPON THE CONCLUSIONS OF LAW, THE COMMISSION ORDERS:

- 1. Travis Wales is hereby suspended until such time as the amount of \$2,246 due in purse monies, is repaid.
- 2. All monies must be received in the Arapahoe Park Bookkeepers office before the suspension will be lifted. Payment should be mailed to the following address:

26000 E. Quincy Avenue Aurora CO 80016

- 3. Mr. Wales is ordered to appear before the Commission before being allowed to participate in racing in Colorado.
- 4. It is also ordered that Travis Wales is hereby fined \$500 for disobeying a Commission Order.

All fines are due and payable within TWENTY (20) calendar days of notification of this Order, pursuant to <u>Colorado Racing Commission Rule</u> #6.700. Notification shall be the date of hand-delivery or the date the ruling was placed in the mail as determined by the certificate of service attached to this ruling. If both methods of service were used, the earliest date shall be the date of notification.

IT IS FURTHER ORDERED, if the total fine is not paid in a timely manner:

- A. Pursuant to <u>Colorado Racing Commission Rule #6.700</u>, a penalty fine, equal to the amount of the total fine, shall be imposed automatically, which total fine and penalty shall be immediately due and payable; and,
- B. The license of Mr. Wales shall be automatically suspended for one hundred and twenty (120) days, or until the fine and penalty amount are paid, whichever is less; and,
- C. The matter will automatically be referred to the Colorado Racing Commission for such further sanction, including fine, suspension, or revocation of license privileges, as it may deem appropriate, at which time you will be notified of your opportunity to appear before the Colorado Racing Commission to show cause why you should not be sanctioned further.

DONE this 14th day of April 2009.

FOR, AND BY ORDER OF, THE COLORADO RACING COMMISSION

s/

DANIEL J. HARTMAN, Director Colorado Division of Racing Events

<u>Consideration of Request for Early Distribution of Portion of Owners/Breeders Awards</u> <u>Funds and Supplemental Purse Fund Monies – Colorado Thoroughbred Breeders'</u> <u>Association</u>

Mr. Greg Lamb, Division Auditor, informed the Commission that, in accordance with and as permitted by statute, the Colorado Thoroughbred Breeder's Association had submitted a formal written request for early release of \$123,000, a portion of their Owners/Breeders Awards and Supplemental Purse Fund accrual for the purpose of supplementing the Colorado Bred Stakes schedule at Arapahoe Park in 2009. Mr. Mark McGregor, President of the Colorado Thoroughbred Breeders' Association, appeared on behalf of his organization.

Mr. Lamb explained that, by statute, no breed organization could request more than 80% (eighty percent) of its total accrual. He itemized the amounts accrued by the Colorado Thoroughbred Breeders' Association during the period of January through March 2009. Mr. Lamb stated that he would anticipate that sufficient funds would be available for the requested amount of \$123,000 to be distributed to the Colorado Thoroughbred Breeder's Association, noting that this would be contingent upon continuation of Arapahoe Park's simulcast operations after April 20, 2009. However, he observed that, should simulcasting cease as of April 20, 2009, it would be questionable whether the amount of \$123,000 would be available for early distribution. Mr. Lamb stated that he would perform another audit of the purse fund monies in order to confirm whether the requested amount would be available for distribution by July 1, 2009.

A motion was then made by Commissioner Pretti, seconded by Commissioner Wells and unanimously carried to authorize early distribution of \$123,000 to the Colorado Thoroughbred Breeder's Association by July 1, 2009 conditioned upon confirmation of the availability of funds.

<u>Scheduling of 2010 Race Dates Hearing – Dan Hartman</u>

A motion was made by Commissioner Pretti, seconded by Commissioner Wells and unanimously carried to schedule the 2010 Race Dates Hearing on Tuesday, July 14, 2009 in conjunction with the Commission's regular July meeting. The location of both of these sessions will be 1881 Pierce Street, Conference Room 110, Lakewood, Colorado.

Consideration of Conditional Approval of Arapahoe Park's Proposed 2009/10 Simulcast Schedule – Robert "Duke" Mann

Mr. Robert "Duke" Mann, Investigator and Horse-Racing Coordinator for the Division of Racing Events, stated that it would be appropriate and allowable for the Commission to consider granting conditional approval of Arapahoe Park's 2009/2010 proposed simulcast schedule for the period of April 21, 2009 through April 20, 2010 because Arapahoe Park has complied with the requirement that its renewal application to conduct a live race meet in 2009 be received by the Division of Racing Events sixty days prior to the planned opening of the meet. (Mr. Mann reported that, on February 3, 2009, the Division of Racing Events had received a signed and notarized renewal application from Racing Associates of Colorado d.b.a. Arapahoe Park to commence live racing on May 23, 2009 through August 9, 2009 for a total of thirty-six (36) race days. Mr. William Powers, Director of Racing for Arapahoe Park, appeared on behalf of the Association.

The Commission took notice of the following matters: 1) that Arapahoe Park is requesting permission to conduct 250 days of simulcasting, which is allowable by statute; 2) that thirty-six (36) of these simulcast days are to be presented in conjunction with Arapahoe Park's live race meet; and 3) that, in conjunction with its live meet, Arapahoe Park will provide horse simulcasting on its non-live days.

Mr. Hartman observed that Arapahoe Park's request for approval of its simulcast schedule includes an open letter asking for blanket approval to send and receive interstate wagers and simulcasts from the following sources subject to contract and Division approval, excluding specific listing of racecourses and simulcast dates:

- All racetracks representing the United States and Canada;
- All racetracks in the International jurisdiction;
- All affiliated off-track wagering venues;
- Nevada pari-mutuel books; and
- Common pooling

Further, Mr. Mann stated that the Division recommends that the Commission grant conditional approval for the range of dates and for the simulcasting proposal submitted by Arapahoe Park. The Commission acknowledged that the Division had received copies of two approval letters from the Colorado Horse-Racing Association, the organization representing a majority of the horse racing community at Arapahoe Park, signed by President Harry Veruchi on September 3, 2008, one supporting the sending out of the live signal from Arapahoe Park and the second supporting the simulcast calendar and schedule for the period of April 21, 2009 through April 20, 2010. Mr. Mann, observed that a Simulcast Calendar indicating the simulcast race days, including live racing days, has yet to be submitted to the Division of Racing Events, but will be provided to the Division in the near future.

Additionally, the Commission took notice that unforeseen circumstances might necessitate that modifications be made to prospective simulcast dates and/or racing schedules and, therefore, the Division Director or his designee has been delegated authority to approve such changes. Mr. Hartman assured the Commission that final approval for simulcasting from any racecourse would not be given unless the Division had received both

a racing schedule and a simulcast contract. He noted that the Division would apprise the Commission of the racing dates and schedules, as they are made available. Further, Mr. Hartman advised the Commission that, in the event that Senate Bill 09-174 is enacted, Arapahoe Park might seek to offer simulcasts of greyhound races in which case he would bring this matter before the Commission for its review.

Following its review and after acknowledging that the Division of Racing Events has recommended conditional acceptance of Arapahoe Park's proposed simulcast wagering schedule as presented, a motion was made by Commissioner Pretti, seconded by Commissioner Wells and unanimously carried to approve Arapahoe Park's request on a conditional basis to commence simulcast wagering on April 21, 2009 and to continue simulcast wagering through April 20, 2010 subject to the following terms and conditions:

- 1) That Arapahoe Park will submit its proposed Simulcast Calendar reflecting the simulcast race days, including the live racing days, to the Division of Racing Events as soon as possible.
- 2) That Arapahoe Park will inform the Division at least ten (10) days prior to adding a new track to its schedule. This will be followed by all required contracts.
- 3) That fully executed signed contracts and agreements for each racetrack from which broadcasts are to be received are provided to the Division no later than forty-eight (48) hours prior to the commencement of simulcasting from that site;
- 4) That adequate advance notice of the actual dates and simulcasting schedules for any and all venues to be made part of Arapahoe Park's 2009/2010 roster be provided to the Division of Racing Events prior to the start of racing from that site;
- 5) That the Division of Racing Events may, in its discretion, 1) require any totalisator link that has not been tested to be tested prior to the date of operation and 2) approve the telephone lines to be used;
- 6) That Arapahoe Park comply with all terms and conditions contained in the Interstate Horse Racing Act with regard to receipt of simulcast signals, presentation of approved simulcasts and broadcasting of its races to out-of-state venues;
- 7) That the Commission delegate authority to the Director or his designee to approve schedules for pre-approved tracks when a specified envelope is determined and to approve any adjustments or amendments to the simulcast schedules as needed; and
- 8) That the Commission will consider the complete renewal application for Arapahoe Park's 2009 live race meet, including specific approvals on the number of simulcast races to be offered on live race days, at its May 12, 2009 meeting.

The Commission directed that the Division monitor compliance with these requirements and ensure receipt of all necessary contracts prior to commencement of simulcasting from any racetrack.

<u>Update on Status of Legislation – Dan Hartman</u>

Mr. Bruce Seymore, Director of Racing Operations-Colorado for Mile High Racing & Entertainment, reported to the Commission on the status of Senate Bill 09-174. He advised the Commission that the measure had passed out of the Senate and had been sent to the House of Representatives where it had been addressed by certain committees and was still undergoing review. Mr. Seymore stated that he remains hopeful regarding prospects for enactment of Senate Bill 09-174.

Commissioner Hoffman advised for the record that he had testified before two legislative committees on behalf of Senate Bill 09-174. He stated that he had not represented himself as a Commission member, but as an independent citizen.

Mr. Dan Hartman, Director of the Division of Racing Events, assured the Commission and attendees that he would continue to monitor and report on the status of the measure.

Adjournment

There being no further business to consider, the Commission adjourned its regular meeting at 10:25 a.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on Tuesday, May 12, 2009 in Conference Room 110 (Gaming Conference Room), 1881 Pierce Street, Lakewood, Colorado.

The undersigned hereby approve the foregoing Minutes.

DAVID LYNN HOFFMAN, CHAIRMAN
(EXCUSED)
MARILYN ALKIRE, VICE-CHAIR
JACK PRETTI, MEMBER
(EXCUSED)
CHARLES VAIL, DVM, MEMBER
MARY SHARON WELLS, MEMBER

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, May 12, 2009 at 1881 Pierce Street in Conference Room 110 (Gaming Conference Room), Lakewood, Colorado. Chairman David Lynn Hoffman called the meeting to order at 9:40 a.m.

Members Present

David Lynn Hoffman, Chairman Marilyn Alkire, Vice-Chair Jack Pretti, Member Charles Vail, DVM, Member Mary Sharon Wells, Member

Staff Present

Dan Hartman, Director, Division of Racing Events
Robert "Duke" Mann, Horse Racing Coordinator/Investigator
Greg Lamb, Division Auditor
Mark Brown, Enforcement Coordinator
Michelle Bauman, Licensing Supervisor
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 April 14, 2009

A motion was made by Commissioner Pretti, seconded by Commissioner Vail and unanimously carried to approve the minutes of April 14, 2009 as submitted.

Scheduled Referral Hearing – In the Matter of GUADALUPE MARTINEZ

Commission Chairman Hoffman called the scheduled hearing to order at 9:42 A.M. Ms. Martinez was not present and was not represented by legal counsel. Assistant Attorney General Tina Bowman appeared on behalf of the Division of Racing Events. Division Investigator/Horse Racing Coordinator Robert "Duke" Mann reviewed the case on behalf of the Division of Racing Events.

Mr. Mann apprised the Commission that Ms. Martinez had been duly and properly notified of today's hearing. He explained that Ms. Martinez had failed to appear at a hearing before the Department of Revenue Hearings Division scheduled on November 25, 2008 to answer charges of financial responsibility relating to a past due veterinary bill from practicing veterinarian Dr. Robert Moak, which indebtedness was

incurred for various veterinary services rendered during the 2008 Arapahoe Park horse racing meet. Pursuant to Colorado Racing Commission Rule #6.340, a hearing was held and the hearing officer ruled that Ms. Martinez was responsible for the unpaid bill for veterinary services and, thereupon, suspended her license for a period of one hundred twenty days (120) or until such time as the bill in question was paid in full, whichever was less. Further, Mr. Mann informed the Commission that the bill has not been paid and, therefore, this matter has been referred to the Colorado Racing Commission with a recommendation for Ms. Martinez' continued suspension and any further sanctions that the Commission desires to impose. The Commission took notice that the entire amount of the outstanding indebtedness was \$987.56 (the bill amount of \$958.59 plus 1.5% per month service charge as of the statement date of September 30, 2008). Additionally, the Commission took notice of Director's Order #09-02 and the Notice of Hearing Before Commission pertaining to Case Number L/R 08-0808 in the matter of Guadalupe Anjelica Martinez.

Discussion ensued during which a motion was made by Commissioner Vail and seconded by Commissioner Alkire to continue the term of Ms. Martinez' suspension for another one hundred twenty days from this date and, additionally, that if her license expires prior to settlement of this outstanding indebtedness, she would be ineligible for relicensure in Colorado. Commissioner Vail expressed his belief that the Commission should revisit Ms. Martinez' case once live horse racing resumes at Arapahoe Park. After entertaining differing viewpoints and taking into consideration remarks made by Commissioner Pretti and Division Director Dan Hartman, the aforementioned motion was amended by Commissioner Vail, seconded by Commissioner Alkire and unanimously carried to continue the suspension of any and all Colorado racing licenses issued to Ms. Guadalupe Martinez until such time she pays the full amount of her outstanding indebtedness to Dr. Robert Moak for veterinary services or until expiration of her current racing license(s); and, further, that if her license(s) expire(s) prior to settlement of this outstanding indebtedness, she would be ineligible for relicensure in Colorado. Therefore, the unpaid indebtedness totaling \$987.56 and the suspension of the racing license(s) of Guadalupe Martinez are hereby upheld. The Commission directed that an Order be issued to Ms. Martinez reflecting this action.

The hearing concluded at 9:54 A.M.

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

Scheduled Referral Hearing – In the Matter of JUVENAL SANCHEZ

Commission Chairman Hoffman called the scheduled hearing to order at 9:55 A.M. Mr. Sanchez was not present and was not represented by legal counsel. Assistant Attorney General Tina Bowman appeared on behalf of the Division of Racing Events. Division Investigator/Horse Racing Coordinator Robert "Duke" Mann reviewed the case on behalf of the Division of Racing Events.

Mr. Mann apprised the Commission that Mr. Sanchez had been duly and properly notified of today's hearing. He explained that Mr. Sanchez had failed to appear at a hearing before the Department of Revenue Hearings Division scheduled on November 25, 2008 to answer charges of financial responsibility relating to a past due veterinary bill from practicing veterinarian Dr. Robert Moak, which indebtedness was incurred for various veterinary services rendered during the 2008 Arapahoe Park horse racing meet. Pursuant to Colorado Racing Commission Rule #6.340, a hearing was held and the hearing officer ruled that Mr. Sanchez was responsible for the unpaid bill for veterinary services and, thereupon, suspended his license for a period of one hundred twenty days (120) or until such time as the bill in question was paid in full, whichever was less. Further, Mr. Mann informed the Commission that the bill has not been paid and, therefore, this matter has been referred to the Colorado Racing Commission with a recommendation for Mr. Sanchez' continued suspension and any further sanctions that the Commission desires to impose. The Commission took notice that the entire amount of the outstanding indebtedness was \$1,702.60 (the bill amount of \$1,679.99 plus 1.5% per month service charge as of the statement date of August 31, 2008). Additionally, the Commission took notice of Director's Order #09-03 and the Notice of Hearing Before Commission pertaining to Case Number L/R 08-0809 in the matter of Juvenal Sanchez-Sanchez.

Following review and deliberation of the testimony and evidence presented, a motion was made by Commissioner Alkire, seconded by Commissioner Vail and unanimously carried to continue the suspension of any and all Colorado racing licenses issued to Mr. Juvenal Sanchez until such time he pays the full amount of his outstanding indebtedness to Dr. Robert Moak for veterinary services or until expiration of his current racing license(s); and, further, that if his license(s) expire(s) prior to settlement of this outstanding indebtedness, he would be ineligible for relicensure in Colorado. Therefore, the unpaid indebtedness totaling \$1,702.60 and the suspension of the racing license(s) of Juvenal Sanchez are hereby upheld. The Commission directed that an Order be issued to Mr. Sanchez reflecting this action.

The hearing concluded at 10:00 A.M.

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

<u>Scheduled Referral Hearing – In the Matter of GREGORY ZIEGLER</u>

Commission Chairman Hoffman called the scheduled hearing to order at 10:01 A.M. Mr. Ziegler was not present and was not represented by legal counsel. Assistant Attorney General Tina Bowman appeared on behalf of the Division of Racing Events. Division Investigator/Horse Racing Coordinator Robert "Duke" Mann reviewed the case on behalf of the Division of Racing Events.

Mr. Mann apprised the Commission that Mr. Ziegler had been duly and properly notified of today's hearing. He explained that Mr. Ziegler had failed to appear at a hearing before the Department of Revenue Hearings Division scheduled on November 25, 2008 to answer charges of financial responsibility relating to a past due veterinary bill from practicing veterinarian Dr. Robert Moak, which indebtedness was incurred for various veterinary services rendered during the 2008 Arapahoe Park horse racing meet. Pursuant to Colorado Racing Commission Rule #6.340, a hearing was held and the hearing officer ruled that Mr. Ziegler was responsible for the unpaid bill for veterinary services and, thereupon, suspended his license for a period of one hundred twenty days (120) or until such time as the bill in question was paid in full, whichever was less. Further, Mr. Mann informed the Commission that the bill has not been paid and, therefore, this matter has been referred to the Colorado Racing Commission with a recommendation for Mr. Ziegler's continued suspension and any further sanctions that the Commission desires to impose. The Commission took notice that the entire amount of the outstanding indebtedness was \$878.79 (the bill amount of \$815.00 plus 1.5% per month service charge as of the statement date of September 30, 2008). Additionally, the Commission took notice of Director's Order #09-04 and the Notice of Hearing Before Commission pertaining to Case Number L/R 08-0811 in the matter of Gregory John Ziegler.

Following review and deliberation of the testimony and evidence presented, a motion was made by Commissioner Alkire, seconded by Commissioner Vail and unanimously carried to continue the suspension of any and all Colorado racing licenses issued to Mr. Gregory Ziegler until such time he pays the full amount of his outstanding indebtedness to Dr. Robert Moak for veterinary services or until expiration of his current racing license(s); and, further, that if his license(s) expire(s) prior to settlement of this outstanding indebtedness, he would be ineligible for relicensure in Colorado. Therefore, the unpaid indebtedness totaling \$878.79 and the suspension of the racing license(s) of Gregory Ziegler are hereby upheld. The Commission directed that an Order be issued to Mr. Ziegler reflecting this action.

The hearing concluded at 10:04 A.M.

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

<u>Scheduled Appeal Hearing – In the Matter of TRAVIS WALES (Commission Order #09-05)</u>

Chairman Hoffman convened the scheduled hearing in the matter of Jockey Travis Wales' appeal of Commission Order #09-05 at 10:05 a.m. Mr. Wales was present, but was not represented by legal counsel. Mr. Robert "Duke" Mann, Division Investigator/Horse Racing Coordinator, advised the Commission that, on April 16, 2009, Mr. Wales had submitted his request for a stay of the fine of \$500 until such time as he could appear before the Commission.

Mr. Wales was afforded the opportunity to address the Commission regarding his failure to repay in a timely manner the amount of \$2,246 due in purse money to Arapahoe Park and his failure to obey a Commission Order. Mr. Wales explained that he had not intended to violate a Commission Order. He stated that he had been confused about what course of action to take concerning the repayment of the outstanding purse monies and, additionally, had received misinformation from persons other than Division employees about how to proceed. Further, Mr. Wales stated that, should the Commission uphold the \$500 fine, he would be able to pay it in full at this time. Mr. Dan Hartman, Division Director, confirmed that the total amount of the purse monies had been remitted to Arapahoe Park.

Mr. Hartman observed that the Division of Racing Events had demonstrated through its notification process that Mr. Wales was given clear and direct instructions and guidance on what actions to take in order to be in good standing in Colorado and, if he had followed the directions that he was given and contacted the Division of Racing Events, he would have been given accurate information about what he needed to do.

Following discussion and consideration of Mr. Wales' comments, a motion was made by Commissioner Alkire, seconded by Commissioner Vail, and unanimously carried to mitigate the fine amount due and payable to two hundred fifty dollars (\$250); and, upon payment of this revised fine amount, the suspension of Jockey Travis Wales' racing license will be lifted and he will be restored to good standing and authorized to participate in racing in Colorado. The Commission directed that an Order be issued to Mr. Wales reflecting this action.

The hearing concluded at 10:15 A.M.

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

Consideration of 2009 Renewal Application – Arapahoe Park – Robert "Duke" Mann

Mr. Robert "Duke" Mann, Horse Racing Coordinator, presented his report concerning Arapahoe Park's 2009 renewal application. Mr. Bruce Seymore, Executive Director of Colorado Operations for Mile High Racing & Entertainment and General Manager of Arapahoe Park, and Mr. William Powers, Arapahoe Park's Property Facility Manager/Director of Racing, appeared on behalf of the Racing Association.

Mr. Mann advised the Commission that Arapahoe Park intends to conduct a thirty-six (36) day live race meet beginning on Saturday, May 23, 2009 and concluding on Sunday, August 9, 2009, with live performances to be offered on Friday, Saturday and Sunday throughout the meet, including a special program to be conducted on Monday, May 25, 2009 (Memorial Day commemoration). Additionally, the Commission noted that Arapahoe Park intends to offer nine races per day as well as full simulcast race cards

from numerous venues throughout the season. Mr. Mann stated that Arapahoe Park proposes to offer diverse racing programs composed of Thoroughbred, Quarterhorse, Appaloosa, Paint and Arabian races.

Mr. Mann advised the Commission that a copy of Arapahoe Park's proposed wagering format had been submitted. He stated that Arapahoe Park's proposed take-out rates would be the same as they were in 2008: 18.5% on Win, Place and Show wagers; 23.0% on Daily Double, Exacta and Quiniela wagers and 24.0% on Trifecta, Superfecta and Pick 3 wagers.

Mr. Mann mentioned that Arapahoe Park would be sending its live signal out-of-state. He stated that contracts with out-of-state associations and simulcast providers are in the process of being negotiated. Mr. Mann advised the Commission that Arapahoe Park would need to notify the Division and seek approval of any future export contracts and agreements with out-of-state associations and simulcast providers forty-eight (48) hours prior to sending/receiving a simulcast signal.

Mr. Mann advised the Commission that the Division had received a copy of the agreement from the Colorado Horse-Racing Association endorsing both Arapahoe Park's request to send its signal out-of-state and its request to offer more than the four statutorily designated simulcast races on live race days. Notice was taken that Arapahoe Park intends to simulcast out-of-state horse races into Colorado five (5) days a week on both its live and non-live race days. Notice was also taken that a copy of the agreement between the Colorado Horse-Racing Association and Arapahoe Park giving approval for and support of Arapahoe Park's intention to send its signal to out-of-state locations was provided with the renewal application, as was a copy of the purse structure.

Mr. Mann reported that a copy of the Horsemen's Contract between the Colorado Horse-Racing Association and Arapahoe Park, effective through April 20, 2010, was provided with the application.

The Commission reviewed the list of racing officials for Arapahoe Park's upcoming meet. Mr. Mann apprised the Commission that Mr. Tuck Miller, an accredited Steward from Farmington, New Mexico, would serve as the Senior State Steward, Ms. Francy Martin would again serve as the Presiding State Steward and Mr. Gale Davey would return as the Association Steward. The Commission took notice that, at the present time, the position of Jockey Room Custodian remains unfilled. Mr. Mann reported on the backgrounds and experience of persons who are working at Arapahoe Park for the first time. He observed that persons new to their positions this season are: Mr. Tuck Miller, the aforementioned Senior State Steward; Mr. Tom Figueroa, who will hold the positions of Assistant Racing Secretary/Clerk of Scales; Mr. John Pedraza, who will be the Director of Security; Ms. Brandy Flanders, who will serve as one of the two Clockers; Ms. Toni Graves, who will be one of the Outriders; and Mr. Craig Braddick, who will serve as the Announcer. Mr. Mann commented that the Division is in receipt of resumes and has performed initial background checks on these officials and recommends that they be approved to serve at the 2009 Arapahoe Park live meet.

Mr. Mann stated that Commissioner Hoffman and Division Auditor Greg Lamb had completed a preliminary review of Arapahoe Park's most recent financial statements. Commissioner Hoffman offered some observations regarding Arapahoe Park's financial status. He advised that, since his last review of Arapahoe Park's financial statements, it appears that the Association has incurred a significant loss of revenue, that its shareholder equity has decreased and that it has experienced some additional monetary losses from its unsold properties. Commissioner Hoffman expressed his concern regarding Arapahoe Park's lack of profitability and its total reliance on BLB, its parent corporation, to subsidize its continued operation, noting that it would be unable to survive as a standalone company. With Mr. Lamb's concurrence, Commissioner Hoffman gave a qualified favorable opinion of Arapahoe Park's financial statements, noting that there was no indication of which auditing firm was conducting the audit.

Mr. Mann reported that Arapahoe Park is required to submit copies of its certified health/sanitation inspection and fire inspection reports no later than five (5) days prior to the commencement of the meet.

The Commission took notice that the insurance binder for on-track accident coverage for Jockeys was submitted with the renewal application. Mr. Mann stated that Arapahoe Park has indicated that it would provide an insurance binder for Jockeys, but not for Exercise Riders or Pony Persons, who are independent contractors. The term of validity for this insurance binder is from April 19, 2008 through April 19, 2010. Additionally, Mr. Mann informed the Commission that Arapahoe Park's public liability insurance policy, which was provided with the renewal application, expires on July 1, 2009 and a Certificate of Insurance will need to be provided to the Division no later than that date.

Mr. Mann advised the Commission that the Association would be scheduling a pre-meet meeting with the members of the Board of Stewards, Arapahoe Park management and the video operators to address the needs and expectations of the Board for their race review. Mr. Seymore stated that, this year, Arapahoe Park would not offer any split screen broadcasting.

With respect to upgrades and improvements to the communications features in the Racing Office, Mr. Seymore and Mr. Powers informed the Commission that Arapahoe Park was in the process of installing new web-based software identified as the Encompass system. This system will afford Arapahoe Park the opportunity to collaborate with the Colorado State University School of Veterinary Medicine and other participating racing jurisdictions, racetracks and organizations in the collection and monitoring of injury data and in the development of alternate training methods and techniques. Division Director Dan Hartman stated that, by agreeing to participate in these research studies, Arapahoe Park would be part of a nationwide trend vested in promoting and advancing the safety and welfare of the racing animal.

With regard to the soil sampling and depth measurement of the racing surface, Mr. Seymore advised that Soil & Plant Laboratory, Inc. had performed a favorable soil analysis of the track surface on February 12, 2009. The Commission expressed its desire for Arapahoe Park to continue to perform these functions as it has previously done. It was agreed that the Association should continue to ensure that soil sampling is performed and depth measurements are taken at regular intervals as deemed necessary.

In order to ensure that all horses entering the grounds at Arapahoe Park have a current health certificate signed by a Veterinarian as well as a current Coggins Test (within the previous twelve ((12)) months), no matter whether the horse(s) is/are from within or outside of Colorado, the Division investigative staff is in the process of contacting and notifying trainers bringing horses to Arapahoe Park of these requirements. The investigators will then apprise the stable gate personnel of its expectations regarding said medical documentation. The veterinary staff will be given all essential health-related information and will be responsible for contacting those trainers coming to Arapahoe Park at any time during the meet concerning these matters.

Mr. Mann advised the Commission that Arapahoe Park management has selected Mr. John Pedraza to be its Director of Security. He observed that a Memorandum of Understanding was approved by the Division and will be attached to Mr. Pedraza's Key License Application that identifies his responsibilities and the consequences to him for failure to perform his duties as required by rule. Further, Arapahoe Park management has strongly encouraged Mr. Pedraza to accept and provide training for himself and the security staff from Division Enforcement personnel and other sources that management may deem necessary to enforce the Colorado Racing Commission Rules and policies and to provide a safe environment for licensees and patrons. Additionally, this season, Arapahoe Park has retained the services of an independent employment agency that will screen and hire security guards to serve at the racetrack. Mr. Seymore commented that Arapahoe Park intends to train more security guards than it will need in order to ensure that sufficient personnel are available at all times during the meet to oversee and monitor the racetrack premises.

Mr. Mann stated that Arapahoe Park submitted most of the required exhibits with its renewal application and, therefore, he would recommend that the Commission grant conditional approval of Arapahoe Park's 2009 renewal application.

Mr. Mann reviewed the list of recommendations set forth in Arapahoe Park's 2008 end of meet report, noting that Arapahoe Park had complied with each of them.

Following review and discussion, a motion was made by Commissioner Alkire, seconded by Commissioner Pretti and unanimously carried to approve Arapahoe Park's 2009 renewal application to operate as a Class B racetrack during the period specified in the application; further, to allow Arapahoe Park to offer additional simulcast races above the statutorily permitted level of four simulcast races per live race day; and to approve the takeout rates as specified in Arapahoe Park's renewal application; and to make this approval contingent upon satisfaction of the following conditions:

- 1) That Arapahoe Park will submit copies of its current certified health/sanitation inspection and fire inspection reports for the racetrack and all simulcast or track facilities no later than five (5) days prior to the commencement of the meet. Further, any additional health/sanitation reports received for Arapahoe Park and its facilities are to be provided to the Division.
- 2) That Arapahoe Park will submit to a full and complete pre-meet facility inspection by the Division of Racing Events. If it is determined via the inspection that there are areas of concerns or matters to be addressed, specific time frames for compliance will be imposed.
- 3) That Arapahoe Park will apprise the Division of the names of any Association employees not listed as Racing Officials no later than ten (10) days after the commencement of the meet.
- 4) That Arapahoe Park will notify the Division of the name of the person who will be serving as the Jockey Room Custodian no less than three (3) days prior to the commencement of the meet. In the event that any "Racing Official" position(s) is/are vacated, Arapahoe Park is to provide the name(s) of the replacement(s) no less than three days prior to the commencement of the meet.
- 5) That Arapahoe Park will ensure that its public liability insurance policy is in effect and will provide a copy of the renewed Certificate of Insurance to the Division on or before its July 1, 2009 expiration date.
- 6) That Arapahoe Park will provide copies of all intrastate simulcast contracts and/or agreements entered into by the applicant to the Division no later than five (5) days prior to receipt of the simulcast signal.
- 7) That Arapahoe Park will provide copies of all service contracts not presently on file with the Division no later than five days prior to the commencement of the meet.
- 8) That the Commission may determine in its discretion to impose additional conditions at any time prior to or during Arapahoe Park's live meet.

The following Notice of Issuance of Meet License with Conditions was provided to Arapahoe Park in accordance with the Commission's motion:

BEFORE THE COLORADO RACING COMMISSION

STATE OF COLORADO

NOTICE OF ISSUANCE OF MEET LICENSE WITH CONDITIONS

IN THE MATTER OF THE ISSUANCE OF A MEET LICENSE FOR:
RACING ASSOCIATES OF COLORADO, LTD. DBA ARAPAHOE PARK
26000 EAST QUINCY AVENUE
AURORA, COLORADO 80016

Pursuant to Colorado Revised Statute 12-60-505, the Colorado Racing Commission has reviewed and conducted a public meeting concerning the application for a race meet license.

The Colorado Racing Commission finds the application to be acceptable and orders said meet license to be issued to:

Racing Associates of Colorado, Ltd. d.b.a. Arapahoe Park 26000 East Quincy Avenue Aurora, Colorado 80016

with the following conditions:

- 1. This approval is granted from the opening day of the live race meet, which is May 23, 2009 through the closing day of the meet, which is August 9, 2009 for an envelope of thirty-six days. The following racing schedule was requested by the Association and approved by the Commission: Friday, Saturday and Sunday: ten (10)-race matinee performances per day. A ten (10)-race matinee program is to be conducted on Monday, May 25, 2009 (Memorial Day commemoration).
- 2. The Association shall keep in force a public liability insurance policy at all times. Although a copy of the current proof of adequate public liability insurance was included with the renewal application, a copy of the Certificate of Insurance must be submitted to the Division prior to expiration and no later than July 1, 2009.
- 3. The Association shall keep in force adequate insurance coverage for the protection of the Jockeys. Copies of the insurance binder for the on-track accident coverage for the Jockeys were submitted with the application with the effective dates of April 19, 2008 through April 19, 2010. (NOTE: It is essential that the Association provide appropriate notice to all Exercise Riders and Pony Persons that, because they are considered independent contractors, they must obtain their own insurance coverage.)

- 4. All employees shall be properly licensed prior to conducting any activities. In addition, all Association Racing Officials, including replacement officials, must be approved by the Division of Racing Events prior to conducting any activities. Their names are to be submitted for approval no less than three (3) days before the commencement of the race meet. All racing official positions shall be filled no later than five days (5) prior to the commencement of the meet.
- 5. All monies derived from live race monies due for horse purses shall be deposited by the licensee directly into the horsemen's purse account. All horsemen's nominations and sustaining fees shall be handled through the Horsemen's Bookkeeper account.

All monies due from simulcast races due for horse purses shall be deposited by the licensee in a "Colorado Racing Association Escrow" trust account in a commercial bank located in Colorado until such date as the purse funds are paid to the horse owners or to the host track for payment to the horse owners. The moneys deposited in any such trust account shall be invested in a fund that invests in obligations of the United States Government with maturities of less than one year or that is account insured in full by an agency of the Federal Government. All trust accounts shall be interest-bearing accounts with the interest payable as horse purses.

The Association shall make a full accounting to the Department of Revenue through the Division each week of all amounts due purse funds from simulcast and live races and paid out from the purse funds as specified by Statute and contracts.

- 6. All funds due Colorado State University for allocation to its School of Veterinary Medicine shall be paid weekly with a full accounting to the Colorado Racing Commission yearly.
- 7. The facility shall meet the "Totalisator Standards" as adopted by the Commission.
- 8. All required facility improvements deemed necessary for the protection, health and safety of the public, the Division of Racing Events' employees and the race participants shall be completed prior to opening. Successful completion and compliance with a Division pre-meet inspection of the facility is required.
- 9. The Association shall have a fully operational totalisator system (tested and approved at least three (3) days prior to start of wagering on live races) capable of:
 - a. Handling pari-mutuel wagers on horse races;
 - b. Producing CRC reports on a timely basis; and
 - c. Common pool wagering on both an intrastate and interstate level.

10. Any change from the approved simulcast schedule for each in-state and out-of-state simulcast facility, which the Association proposes to simulcast from or to, including its live races, shall be approved by the Division of Racing Events prior to any simulcasting activity at such simulcast facility. All simulcast contracts must specify how purse percentages are to be calculated. (The Commission granted approval for Arapahoe Park to exceed the statutory limit of four (4) simulcast races per live race day during its live race meet through August 9, 2009.) The Commission delegates to the Director or his designee the ability to approve schedules for pre-approved tracks when a specified envelope is determined.

Copies of all intrastate simulcast contracts and/or agreements entered into by the applicant will be submitted no later than five (5) days subsequent to the beginning of the simulcast signal.

- 11. Current certified fire and health/sanitation inspection reports shall be submitted to the Division and, if not current, then within five (5) days prior to the commencement of the live meet for the entire racetrack operations.
- 12. Approval of the renewal application and simulcast race programs, even if the above conditions are met, shall be subject to the Colorado Legislature granting an appropriation for funding and spending authority to the Commission for its fiscal year 2009/2010 and subsequent budget years.
- 13. A list of all Association employees not listed as Racing Officials shall be submitted to the Division no later than ten (10) days after the opening of the meet.
 - A list of all security staff, including copies of their qualifications and firearm certificates, shall be kept on file in the Division of Racing office at Arapahoe Park.
- 14. To permit the Division to coordinate staffing for simulcast programs, the applicant shall provide the Commission with all modifications to its simulcast program as approved by the Commission one week prior to the proposed modifications.
- 15. That all service contracts that are not presently on file with the Division be submitted no later than five days prior to the opening of the meet.
- 16. That Arapahoe Park and its facilities comply with the Division of Racing Events' Video Surveillance Policy throughout the 2009 Arapahoe Park race meet.
- 17. That the Stable Superintendent shall make every effort to ensure that all horses entering the grounds at Arapahoe Park shall have a current health certificate signed by a Veterinarian.

- 18. The Racing Secretary shall require that all horses entering the grounds at Arapahoe Park, whether from within or outside of Colorado, have a current Coggins Test (within the previous twelve (12) months) and have the document attached to the foal certificates when they are submitted to the Racing Office.
- 19. The Association will oversee and ensure that the mandated times of closure of the Stable Gate entrance to vehicle traffic are maintained. However, certain limited exceptions, such as an emergency call by a veterinarian, will be allowed. Exceptions will only be permitted on a case-by-case basis.
- 20. The Racing Secretary and/or Stable Superintendent shall be responsible for the arrival and departure of all horses from the premises and maintain records for the Division's inspection.
- 21. Arapahoe Park will make arrangements to satisfy the Colorado Racing Commission and the Division in providing an adequate water supply to the racetrack, stable area and grandstands at all times.
- 22. That the walking surface must be completed with the installation of new dirt and ground rubber to repair ruts and soften the walking surface for the horses and their handlers. Further, as part of its required test barn maintenance, the water valve to the Misting System for the testing stalls must be replaced since the existing valve does not regulate the water pressure or flow and leaks onto the walking area.
- 23. The Commission, in its discretion, may determine that additional conditions need to be imposed at this time or at any time during the live meet.

Failure to comply with the applicable conditions prior to or during the 2009 meet may result in a fine, suspension or revocation of the meet license for Racing Associates of Colorado, Ltd., d.b.a. Arapahoe Park.

DATED this 22nd day of May 2009.

BY ORDER OF THE COLORADO RACING COMMISSION

Dan Hartman, Director,

Division of Racing Events

Consideration of 1)Arapahoe Park's Stewards' Guidelines and Groundrules; 2) Split Sample Policy; and 3) Horse Racing Medication Guidelines and Veterinary Practices for 2009 Live Race Meet – Robert "Duke" Mann

Mr. Robert "Duke" Mann, Horse Racing Coordinator, presented the following documents for Commission consideration:

- 1) Stewards' Guidelines and Groundrules: The Commission reviewed the proposed Stewards' Guidelines and Groundrules for 2009. Mr. Mann read for the record Colorado Racing Commission Rule #11.541, which reads as follows: The Division will adopt policy and guidelines for the conduct of licensees while in restricted and secure areas of the racetrack, simulcast facilities, kennel compounds and stable areas. These policies and guidelines governing smoking, drinking, eating, and use of cell phones and pagers while in certain areas of the paddock, test bar, sample collection areas, lockout kennels and on the track surface during post parades." Mr. Mann observed that this document, which is informational in nature, is intended to provide all track license-holders with generic instructions regarding conduct, restrictions and prohibitions. He stated that the current edition is essentially unchanged from last year's version. Those in attendance were afforded an opportunity to comment on the document and offer views and opinions relating to it. No objections were raised to acceptance of this document as presented.
- 2) Split Sample Policy: The Commission reviewed the proposed Split Sample Policy for 2009. Mr. Mann explained the protocol associated with the handling of a request for split sample testing. The Commission took notice of the removal of Truesdail Laboratories, Inc. from the list of approved testing laboratories. After considering Mr. Mann's comments, the Commission found the document to be acceptable as presented.
- 3) Horse Racing Medication Guidelines and Veterinary Practices: Mr. Mann explained that, prior to each live horse racing season, the Division staff veterinarian(s) prepare an informational bulletin designed to provide updated information to all horse owners, trainers and practicing veterinarians concerning medication rules, regulations, policies and procedures of the Colorado Racing Commission. Discussion ensued during which the Commission recommended that the Division make available an informational packet for owners similar to that distributed to trainers. Mr. Mann and Division Director Hartman stated that such material could be offered on the Division's website. Mr. Hartman observed that it would be beneficial for owners and veterinarians as well as trainers to be made aware of the rules. regulations and health, safety and welfare issues involved in racing. Mr. Mann mentioned that, on May 20, 2009, a meeting would be conducted at Arapahoe Park to familiarize owners and trainers with the information provided in these documents as well to discuss other matters of significance with them. No objections were made to acceptance of this document as presented.

Mr. Mann concluded his presentation by recommending that the Commission approve the aforementioned documents. He stated that, upon Commission acceptance, they would be incorporated into the trainers' packets along with copies of the rules and other pertinent supplementary material and would be placed on the Division's website for access by interested owners. A motion was thereupon made by Commissioner Vail,

seconded by Commissioner Alkire and unanimously carried to accept the 2009 Stewards' Guidelines and Groundrules, the 2009 Split Sample Policy and the 2009 Horse Racing Medication Guidelines and Veterinary Practices as presented.

<u>Update on Legislation</u>

Mr. Dan Hartman, Director of the Division of Racing Events, reported to the Commission that, despite some opposition and after the incorporation of certain amendments, Senate Bill 09-174 had received favorable votes from legislators in both the Senate and the House of Representatives. He stated that, although the bill has yet to be signed by Governor Ritter, he remains hopeful that the bill would be enacted into law in the near future. Mr. Bruce Seymore, Executive Director of Colorado Operations for Mile High Racing & Entertainment, explained that he was advised that it is necessary for bills, once they have been passed out of both legislative houses, to undergo a review process known as "enrollment", in order to ensure that they do not conflict with any other legislation.

Discussion ensued during which Mr. Melvin Johnson, a representative of the Colorado Greyhound Breeder's Association, presented certain requests regarding Senate Bill 09-174 for Commission consideration. After taking notice that, once Senate Bill 09-174 has been officially enacted, rule-making workshops and an open rule-making process/hearing would be undertaken in order to address the various changes made to the Statute and to bring the rules into conformity with those modifications.

Commissioner Hoffman advised for the record that he had corresponded with both Senator Kester, the Senate sponsor of Senate Bill 09-174, and with Governor Ritter on behalf of Senate Bill 09-174. He stated that he had not represented himself as a Commission member, but as an independent citizen.

Mr. Dan Hartman, Director of the Division of Racing Events, assured the Commission and attendees that he would continue to monitor and report on the status of the Senate Bill 09-174.

Mr. Seymore stated that he was making the following requests in anticipation of enactment of Senate Bill 09-174. Mr. Hartman stated that he believed that it would be appropriate for the Commission to consider these matters at this time and, if it desired to do so, to grant approval of them contingent upon enactment of Senate Bill 09-174.

Consideration of Request from Arapahoe Park for Greyhound Simulcasting (Contingent upon Enactment of Senate Bill 09-174) – Bruce Seymore

Mr. Bruce Seymore, Executive Director of Colorado Operations for Mile High Racing & Entertainment, presented his request to receive horse and greyhound simulcast signals seven days a week contingent upon enactment of Senate Bill 09-174.

Following discussion, a motion was made by Commissioner Alkire, seconded by Commissioner Pretti and unanimously carried to affirm that, upon the effective date of Senate Bill 09-174, Mile High Racing & Entertainment, through its Class B horse track license, (Arapahoe Park) may request the ability to receive horse and greyhound simulcast signals seven days per week subject to the terms and conditions set forth by the Commission. Additionally, the Commission stipulated that Mr. Seymore and Division Director Dan Hartman would be responsible for coordination and implementation of the new simulcast schedule.

<u>Consideration of Request from Arapahoe Park for Release of Escrowed Harness Purse</u> Money (Contingent upon Enactment of Senate Bill 09-174) – Bruce Seymore

Mr. Bruce Seymore, Executive Director of Colorado Operations for Mile High Racing & Entertainment, presented his request for the release of a portion of the escrowed harness purse monies contingent upon enactment of Senate Bill 09-174.

Following discussion, a motion was made by Commissioner Alkire, seconded by Commissioner Wells and unanimously carried to authorize the release of up to \$172,753.56, the total amount of escrowed harness funds through 2005, for deposit into the horse purse fund upon the effective date of Senate Bill 09-174 subject to agreement between Arapahoe Park and the Colorado Horse-Racing Association with respect to the amount and nature of the distribution of funds. The Commission directed that, once Senate Bill 09-174 has become effective, Mr. Seymore is to submit to Division Director Dan Hartman a formal written request specifying the amount to be released.

Comments Regarding Association of Racing Commissioners' International Annual Meeting – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, reported that he had recently attended the annual meeting of the Association of Racing Commissioners' International at which the attendees had scheduled a Summer Association of Racing Commissioners International (RCI) Board of Directors' Meeting and Model Rules Meeting to be held at Delmar Park. Additionally, Mr. Hartman advised that the membership would be conducting another meeting in December in Tucson, Arizona in conjunction with the University of Arizona Symposium on Racing. Mr. Hartman stated that there would also be an Association of Racing Commissioners International (RCI) New Commissioner and Senior Staff Training, which had previously proved to be beneficial to newly appointed Commission members.

Mr. Hartman apprised the Commission that he had been elected Chair of the Association of Racing Commissioners' International for 2010. The Commission congratulated Mr. Hartman on this prestigious honor.

Adjournment

There being no further business to consider, the Commission adjourned its regular meeting at 12:10 p.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on Tuesday, June 9, 2009 in Conference Room 110 (Gaming Conference Room), 1881 Pierce Street, Lakewood, Colorado.

The undersigned hereby approve the foregoing Minutes.

DAVID LYNN HOFFMAN, CHAIRMAN
MARILYN ALKIRE, VICE-CHAIR
JACK PRETTI, MEMBER
CHARLES VAIL, DVM, MEMBER
MARY SHARON WELLS, MEMBER

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, June 9, 2009 at 1881 Pierce Street in Conference Room 110 (Gaming Conference Room), Lakewood, Colorado. Chairman David Lynn Hoffman called the meeting to order at 9:35 a.m.

Members Present

David Lynn Hoffman, Chairman Marilyn Alkire, Vice-Chair Charles Vail, DVM, Member Mary Sharon Wells, Member

Commissioner Jack Pretti was excused from the meeting.

Staff Present

Dan Hartman, Director, Division of Racing Events Greg Lamb, Division Auditor Mark Brown, Enforcement Coordinator Michelle Bauman, Licensing Supervisor 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.

Memorial Tribute to Dr. Francis Ozog

The Commission, Division of Racing Events' staff members and industry affiliates acknowledged with profound regret the recent death of Dr. Francis J. Ozog, the original Official Racing Chemist for the Colorado Racing Commission. Commissioner Vail reflected on Dr. Ozog's life and his achievements. He advised that Dr. Ozog had taught chemistry at Regis University for forty years, had collaborated with Dr. Gene Bierhaus on the theory of controlled medications and had been instrumental in the development of sound quantitative and qualitative testing methodologies for detection of medications in racehorses.

A motion was made by Commissioner Vail, seconded by Commissioner Alkire and unanimously carried to send a message of sympathy and condolence to Dr. Ozog's family on behalf of the Colorado State Racing Commission and the Division of Racing Events.

<u>Notification Regarding Department Modifications to Electronic Messaging Server – Dan</u> Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, advised for the record that, due to significant changes that are in the process of being made to the Department of Revenue's electronic messaging server, it had not been possible for him to send today's agenda to all parties included on the Division's agenda mailing list. He observed that the agenda was posted on the Division's internet website. He explained that the Division of Racing Events does not have control over this situation. Mr. Hartman stated that he is hopeful that the Department's Information Technology Division would be able to finish the necessary repairs to the server in the near future.

Approval of Minutes of May 12, 2009

A motion was made by Commissioner Alkire, seconded by Commissioner Vail and unanimously carried to approve the minutes of May 12, 2009 as submitted.

Consideration of Request to Obtain License Validation – ALBERTO CANO

Mr. Dan Hartman, Director of the Division of Racing Events, informed the Commission that, although Mr. Alberto Cano had been duly and properly notified of the time, date and location of today's Commission meeting, he was not present and had not contacted the Division to offer any explanation for his absence. Mr. Hartman observed that, at its November 2008 meeting, the Commission had directed that an order be issued to Mr. Cano stipulating that he must appear before the Commission prior to being restored to good standing and eligible to have his license validated for racing at Arapahoe Park's 2009 live race meet. Additionally, the Commission had fined Mr. Cano the sum of one hundred dollars (\$100) for giving incorrect information on prior license applications. Mr. Hartman reported that Mr. Cano had paid the \$100 penalty assessed by the Commission. Further, Mr. Hartman stated that, to the best of his knowledge, Mr. Cano had not been involved in any trouble with the Division of Racing Events. Mr. Hartman suggested that the Commission hold this matter in abeyance until the conclusion of the meeting.

Following consideration of all other matters to come before the Commission, the Commission took notice that Mr. Cano had not appeared and had not notified the Division or Commission of any reason for his failure or inability to be present. Mr. Hartman advised that Mr. Cano, who is currently in possession of an owner's license, may not participate in racing in any way, including entering horses to race, until such time as his racing license is validated.

After concurring that Mr. Cano should be given another chance to appear before the Commission, a motion was made by Commissioner Alkire, seconded by Commissioner Vail and unanimously carried to defer the request of Mr. Alberto Cano to obtain validation of his racing license until such time as he appears before the Colorado Racing Commission.

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

<u>Consideration of Proposed Settlement Stipulation in the Matter of Jon Glenn Arnett –</u> Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, presented a proposed Stipulation and Agreement in the matter of Trainer Jon Glenn Arnett for Commission consideration. Ms. Genevieve M. Bernal, Attorney at Law from the law firm of Burns Figa & Will, P.C., appeared on behalf of Mr. Jon Glenn Arnett. Ms. Tina Bowman, Assistant Attorney General, appeared on behalf of the Colorado Racing Commission and the Division of Racing Events.

Mr. Hartman enumerated the following terms and conditions set forth in the document:

- That Mr. Arnett stipulates and agrees that, within five (5) business days after the entry of this Stipulation and Agreement as an order by a Hearing Officer of the Hearings Division, he shall pay, in care of the Colorado Department of Revenue, Division of Racing Events, the total sum of one thousand dollars (\$1,000.00).
- That the Division of Racing Events and Mr. Arnett stipulate and agree to a sixty (60) day suspension of Mr. Arnett's license, which suspension shall run concurrently with, and not consecutive to, suspensions recently, separately stipulated and agreed to by the same parties hereto in Case Nos. 08-505, 08-508, 08-603 and 08-653. Mr. Arnett and the Division of Racing Events further stipulate and agree that, insomuch as Mr. Arnett was summarily suspended by the Board of Stewards of the Arapahoe Park Racetrack on July 12, 2008, which suspension shall be credited against the sixty (60) total days of suspension as is agreed upon herein, and that the

- remaining twelve (12) days of suspension shall be served on November 23, 2009 through December 4, 2009.
- 3) That, if Mr. Arnett violates this Stipulation and Agreement and the Division of Racing Events proves the violation, Mr. Arnett will be immediately suspended for an additional five (5) days.
- 4) That Mr. Arnett and the Division of Racing Events stipulate and agree that, if this Stipulation and Agreement is approved as a Final Agency Order, it may not be used to enhance any penalty which may be imposed against Mr. Arnett whether in Case No. 08-727 or in any other case preceding Case No. 08-727.
- That, with regard to Case No. 08-727, Mr. Arnett understands and knowingly and voluntarily waives the following rights: A) the right to a formal hearing on the merits of the matters forming the basis of this Stipulation and Agreement with respect to Case No. 08-727 and the right to require the Division of Racing Events to meet its burden of proof in a formal hearing; B) the right to confront and cross-examine all witnesses against the Licensee at a formal hearing; C) the right to subpoena witnesses, present evidence and to testify on the Licensee's behalf at a formal hearing; and D) the right to engage in pre-hearing discovery of the Division of Racing Events' evidence which may be presented at such a hearing.

Mr. Hartman stated that, should this Stipulation and Agreement be rejected, in whole or in part, by the Colorado Racing Commission, Mr. Arnett and the Division of Racing Events stipulate and agree that the jurisdiction shall immediately return to the Colorado Supreme Court as it was prior to the date of execution of this Stipulation and Agreement, by filing a status report in the Colorado Supreme Court on or before June 12, 2009 stating that settlement negotiations have failed.

Discussion ensued during which Ms. Bowman summarized the background of the case. During its lengthy review and consideration of the aforementioned terms and conditions contained in the proposed Stipulation and Agreement, concerns were raised regarding whether the penalties to be imposed upon Mr. Arnett might not be sufficiently stringent and punitive. Mr. Hartman responded that he believes that acceptance of the proposed Stipulation and Agreement as a Final Agency Order is in the best interests of the State of Colorado. Some dissenting views were offered and Commissioners Vail and Hoffman stated that they would vote to accept the Stipulation and Agreement under protest. A motion was thereupon made by Commissioner Hoffman, seconded by Commissioner Alkire and unanimously carried to accept the Stipulation and Agreement in the matter of Jon Glenn Arnett, Case Number 08-727, as presented.

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

<u>Legislative Wrap-Up – Dan Hartman</u>

Mr. Dan Hartman, Director of the Division of Racing Events, advised the Commission that, on Thursday, May 21, 2009, Governor Ritter signed into law Senate Bill 09-174. Mr. Hartman observed that, in light of certain amendments made to the Racing Statute, the Division of Racing Events would conduct a rule review workshop in the near future and would begin preparing to schedule a formal Rule-Making Hearing. He reflected that enactment of Senate Bill 09-174 has already been and would continue to be positive for the Colorado racing industry and the Division of Racing Events. He noted that Mile High Racing & Entertainment has begun to take greyhound simulcast signals. No action was taken by the Commission.

Query Regarding Scheduling of Future Commission Meetings

Pursuant to the statutory change to the number of mandated Commission meetings and the Commission's query regarding scheduling of upcoming meetings, Mr. Dan Hartman, Director of the Division of Racing Events, advised that, at the Commission's July meeting, consideration could be given to planning for the remaining 2009 meetings. He expressed his belief that the Commission may need to meet approximately six or seven times during each calendar year in order to continue to transact essential business and meet its regulatory obligations.

Request to Discuss Statutory and Proposed Rule Changes – Melvin Johnson

Mr. Melvin Johnson, a representative of the Colorado Greyhound Breeder's Association, presented certain requests regarding Senate Bill 09-174 for Commission consideration. Mr. Johnson expressed his desire to be involved in the rule review workshop and rule-making process.

After taking notice that the matters brought forward by Mr. Johnson would be considered during the upcoming rule review workshop(s) and would be made part of the open rule-making process/hearing, the Commission and Mr. Dan Hartman, Director of the Division of Racing Events, recommended that Mr. Johnson either contact Mr. Hartman regarding the subject matter of the rules that he and his organization wish to have promulgated, submit the ideas and/or text of the rules to the Division or bring them to the rule review workshop.

Mr. Hartman stated that he would announce the date, time and location of the rule review workshop at the Commission's July meeting and would ensure that appropriate anticipatory notice would be given in order to afford all interested parties from both the horse and greyhound racing communities an opportunity to participate in the rule review workshop and, ultimately, in the rule-making process/hearing.

Acknowledgment of David Lynn Hoffman – Dan Hartman

Division Director Dan Hartman observed that, on June 30, 2009, the second full term served by Commissioner David Lynn Hoffman would officially end and, therefore, this would be the final Commission meeting that he would be attending.

Mr. Hartman, Dr. Hoffman's fellow Commissioners and numerous industry representatives offered touching tributes and reflections in honor of Dr. Hoffman. He was acknowledged for his outstanding guidance, leadership and decision-making ability during his tenure as a Commissioner and, notably, for his willingness to appear before the Legislature and offer his support of the industry as a private citizen. Dr. Hoffman was also honored for being a consummate gentleman, a person of great honesty, integrity, excellent common sense, good judgment, compassion and humanity.

Mr. Hartman extended warmest regards and special thanks to Dr. Hoffman for his outstanding service to the Division, the Commission, the racing industry and the citizens of Colorado. At this time, Mr. Hartman presented a commemorative plaque and a Certificate of Recognition to Dr. Hoffman. These acknowledgments were greeted by a rousing ovation in honor of Dr. David Lynn Hoffman.

Dr. Hoffman responded that he had enjoyed his terms as a Commissioner and that he had appreciated the support and helpfulness of his fellow Commissioners, members of the racing industry and the Division staff throughout the previous eight years.

<u>Adjournment</u>

There being no further business to consider, the Commission adjourned its regular meeting at 10:30 a.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on Tuesday, July 14, 2009 at Arapahoe Park, 26000 East Quincy Avenue, Aurora, Colorado.

The undersigned hereby approve the foregoing Minutes.

DAVID LYNN HOFFMAN, CHAIRMAN
MARILYN ALKIRE, VICE-CHAIR
(EXCUSED) JACK PRETTI, MEMBER
CHARLES VAIL, DVM, MEMBER
MARY SHARON WELLS MEMBER

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, July 14, 2009 in the Directors' Room at Arapahoe Park, 26000 East Quincy Avenue, Aurora, Colorado. Vice-Chair Marilyn Alkire called the meeting to order at 9:35 a.m.

Members Present

Marilyn Alkire, Vice-Chair Jack Pretti, Member Mary Sharon Wells, Member Daniel J. Kester, Member

Charles Vail, DVM, Member, arrived subsequent to the commencement of the meeting.

Staff Present

Dan Hartman, Director, Division of Racing Events Greg Lamb, Division Auditor Robert "Duke" Mann, Horse-Racing Coordinator Mark Brown, Division Enforcement Coordinator Michelle Bauman, Licensing Supervisor 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.

Introduction of Newly Appointed Commissioner Daniel J. Kester

Vice-Chair Marilyn Alkire introduced Daniel J. Kester, who was recently appointed by Governor Ritter to serve a four-year term as a Commission member through July 1, 2013. Mr. Kester stated that he is pleased to be serving as the Commission's business representative. He assured the racing community and his associates that he desires to work for the perpetuation of a strong and vibrant racing industry in Colorado and would support its efforts to thrive.

Each of the Commissioners and meeting attendees welcomed Mr. Kester and congratulated him on his appointment.

Election of Officers

A motion was made by Commissioner Pretti, seconded by Commissioner Wells and unanimously carried to appoint Marilyn Alkire to serve as Chair of the Commission. A motion was made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to appoint Jack Pretti to serve as Vice-Chair of the Commission through June 2010.

Approval of Minutes of June 9, 2009

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

2010 Race Dates Hearing

Chairwoman Alkire convened the 2010 Race Dates Hearing at 9:40 a.m.

Mr. Dan Hartman, Director of the Division of Racing Events, presented the requested 2010 race date envelope for Arapahoe Park for thirty-nine days of live horse

racing on unspecified dates between May and September 2010. Mr. Hartman observed that no greyhound race date requests had been submitted.

In order for the Division to be able to plan for calendar year 2010, Fiscal Year 2010 and Fiscal Year 2011, to develop an appropriate staffing plan for the proposed meet and to have a clear idea about what its budgetary needs would be, Mr. Hartman recommended that the Commission approve the date request as submitted. He declared that it is evident that this is a very difficult time for the racing industry and it is more important than ever before that the Division and the Commission be able to prepare for the continuation and perpetuation of live racing in Colorado. Additionally, he recommended that approval of the proposed envelope be conditioned on available resources, sufficient staff and budget.

Commissioner Alkire inquired whether the Commission would be able to consider a request to conduct live greyhound racing in 2010 if one were submitted. Mr. Hartman responded that the Commission could entertain any request for live race dates tendered by a group/organization with a viable business plan. However, he cautioned that, given the State's current budgetary climate and the potential revenue that could be derived from vacancy savings, the Division might be compelled to revert some, or all, of the funds designated for greyhound operations and staffing. Additionally, Commissioner Alkire asked whether Mr. Hartman believed that the Division of Racing Events would be subject to further budgetary and staffing reductions in the near or immediate future. Mr. Hartman replied that he did not believe that the Division of Racing Events would be compelled to sustain such cutbacks since the agencies and programs that appear to be most vulnerable at this time are those that are subsidized by General Fund revenue. Notice was taken that the Division of Racing Events is a cash-funded agency.

Commissioner Alkire also inquired about the likelihood of the racecourse/casino at Raton, New Mexico being open and operational during the same period in 2010 as Arapahoe Park. Mr. Hartman explained that, although the ground-breaking has taken place at Raton, Arapahoe Park would be able to adjust its schedule accordingly depending upon the timing of Raton's racing events and the locales from which the Arapahoe Park horse-racing community is coming.

Discussion ensued during which Mr. Melvin Johnson, a representative of the Colorado Greyhound Breeder's Association, presented certain queries and comments for Commission consideration. Mr. Johnson stated that his goal is to ascertain how to revive live greyhound racing in Colorado. Mr. Johnson expressed his desire to know the ownership of all racing facilities, including off-track wagering/simulcast operations, in Colorado and, further, to be provided with daily statistical breakdowns/totals on all Colorado racing/simulcast wagering. Mr. Hartman responded to Mr. Johnson's queries and explained that BLB owns and operates the simulcast facilities at Mile High Greyhound Park (Commerce City), Havana Park (Aurora) and Arapahoe Park, while a limited liability company owned by the Cloud family owns and operates the Red and Jerry's (Sheridan) simulcast facility. Further, Mr. Hartman advised that sites formerly occupied by Rocky Mountain Greyhound Park (Colorado Springs) and Pueblo Greyhound Park (Pueblo) either had been or were being sold for non-racing purposes to unknown parties.

In response to Mr. Johnson's assertion that he and his associates in the greyhound community should be given wagering data on a daily basis in order to determine how to proceed with their stated mission of bringing back live greyhound racing, Mr. Hartman commented that he does not have staffing resources available to dedicate to the preparation of such a daily statistical report. However, he stated that he and Division Auditor Greg Lamb would be able to prepare and provide a statistical report of the previous month's wagering activity to the Commission on a meeting-by-meeting basis. Mr. Hartman advised that the Division is statutorily required to prepare an Annual Report containing statistical data derived from live racing and simulcast wagering. The Commission expressed its appreciation to Mr. Johnson for offering his comments and voicing his concerns.

Commissioner Pretti observed that, historically, the greyhound track operators provided statistical information on greyhound racing activity to the press and/or other media sources, but because no live greyhound racing is currently being conducted in Colorado, no reports are being published in local newspapers or reported via other media avenues. He asserted that the State Division of Racing Events, as is true with all State agencies, is required by law to perform proper accounting and record-keeping and to produce an annual statistical report, but is not required to prepare or provide a unique or specialized type of statistical report to any party or organization.

Based upon Mr. Hartman's recommendation, the Commission proceeded to consider the proposed race date request for Arapahoe Park for 2010. Mr. Hartman advised that Arapahoe Park is requesting the ability to conduct thirty-nine (39) days of live racing on dates to be determined between May and September 2010. He stated that Arapahoe Park is not required to submit a proposed envelope of race dates and that, in the absence of an alternative application, Arapahoe Park's scheduling is allowed to be left open-ended. A motion was thereupon made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to approve Arapahoe Park's 2010 date request on a contingency basis subject to submission of actual race dates as well as availability of Division funding and staffing. (Notice was taken that Arapahoe Park may request the ability to conduct live racing on any days that it desires between May 1, 2010 and September 30, 2010, with the proviso that the conditions set forth above apply to any specific dates of racing.):

ARAPAHOE PARK

MAY – SEPTEMBER, 2010*

(Unincorporated Arapahoe County)

* - Actual race days to be determined

(APPROVAL GRANTED SUBJECT TO AVAILABILITY OF DIVISION FUNDING AND STAFFING)

There being no further race date requests to consider, the 2010 Race Dates Hearing was adjourned at 10:10 a.m.

<u>Consideration of Report and Recommendation of Race Review Committee – In the Matter of the Horse "Shazooms Doll" –Robert "Duke" Mann</u>

As a preliminary matter, Division Director Dan Hartman provided a brief history concerning the establishment of the "Race Review Committee". He advised that, approximately two years ago, the Commission had adopted a rule that declared that the decisions of the Board of Stewards with respect to race-related matters were final and could not be appealed to the Commission. The purpose for the adoption of the rule was to relieve the Commission of the burden of having to review races and make decisions regarding them after the Board had already ruled on them. However, the rule created dissent and controversy among members of the horse racing community and, therefore, in order to preserve the rights of anyone who wished to object to a Board decision regarding the running or outcome of a race, the Commission instituted the "Race Review Committee", a three-member body composed of a representative of the Association, most often, Mr. Bruce Seymore, Director of Racing Operations for Mile High Racing and Entertainment, a representative of the Colorado Horse-Racing Association and Mr. Robert "Duke" Mann, Horse-Racing Coordinator for the Division of Racing Events. The "Race Review Committee" is assigned the responsibility for reviewing videotapes of the race in question and rendering a decision either in support of or in opposition to the finding of the Board of Stewards. The party who has objected to the Board's decision is then allowed to appeal the decision of the "Race Review Committee" and be heard by the Commission. Mr. Hartman stated that each "Race Review Committee" has been attentive to and deliberate in the performance of its duties and the Commission has been very pleased with how well the "Race Review Committee" concept has been implemented.

Mr. Robert "Duke" Mann, Horse-Racing Coordinator for the Division of Racing Events, advised the Commission that, on June 11, 2009, the Race Review Committee met and conducted a hearing in the matter of Case No. 09-066, the objection of Trainer John Hammes to the decision of the Arapahoe Park Board of Stewards in Ruling #09-01 issued

on May 24, 2009, wherein the Board had disqualified the horse "Shazooms Doll", which ran in post position #7 in the ninth race on May 24, 2009. Mr. Mann presented the following background information relating to this matter for Commission consideration:

- 1) That on May 24, 2009, the Board of Stewards at Arapahoe Park issued Ruling #09-01, "Disqualification Based Upon Running of a Race";
- 2) That the Board in the Disqualification Ruling disqualified the horse, "SHAZOOMS DOLL", racing in the 7th post position in the 9th Race at Arapahoe Park Racetrack on May 24, 2009 and established a new official order of the finish for the Race.
- 3) That, on May 24, 2009, John Hammes, trainer of "SHAZOOMS DOLL", filed a Statement of Objection with respect to the Disqualification Ruling.
- 4) In response to the Objection, the Division established the Committee and set the hearing for June 11, 2009 at 1:00 p.m. at the Office of the Board of Stewards at Arapahoe Park.
- 5) The Director of the Division of Racing Events established the Committee with the following members: Robert J. ("Duke") Mann (Horse Racing Coordinator, Division of Racing Events), Kenneth B ("Bruce") Seymore, Director of Racing Operations for Mile Hi Racing and Entertainment), and Ricky Houghton (Member, Colorado Horse-Racing Association).
- 6) Robert J. ("Duke") Mann acted in the role of the Chairperson of the Committee.
- 7) The parties present at the Committee Hearing were the Complainant John Hammes, Trainer, and Timothy Weeder, Trainer.

Mr. Mann presented the following: A) Statement of Jurisdiction, Scope of Hearing, B) Findings of Relevant Facts, C) the Conclusions of Law and D) the Recommendation of the Race Review Committee to the Commission for its review:

Statement of Jurisdiction, Scope of Hearing

- 1. The jurisdictional basis of the Committee's action is Colorado Racing Commission Rule #6.401.
- 2. Colorado Racing Commission Rule #6.401's substantive jurisdictional limit for the Committee Hearing is:

The race review committee and the Commission may only address the issues raised in the appeal filed.

- a. In response to the matters brought to the Committee's attention in the course of the Hearing, the Committee found it necessary to render decisions on the Scope of the Hearing based upon reasons that are set forth in the document entitled "Race Review Committee Report and Recommendation".
- b. Therefore, the Committee based its decision and recommendation regarding the race solely upon matters directly related to the Trainer's Objection.

Findings of Relevant Facts

- 1. All findings of fact as set out in the Board's Ruling are adopted.
- 2. No other Horse or Jockey in the race caused the foul.

Conclusions of Law

1. All conclusions of law as set out in the Board's Ruling are adopted.

Recommendation

The Race Review Committee has concluded that the Trainer's Objection failed to set forth a meritorious claim. Therefore, the Committee recommends that the Colorado Racing Commission uphold the Board and retain the Board's Ruling with the results the Board determined to be correct.

[It was the determination of the Board of Stewards at Arapahoe Park that the official order of finish shall be the following:

First Place: "Shurnuf Streakin", in Post Position #4
Second Place: "Lone Star Stoli", in Post Position #9
Third Place: "Bestfoot Foreword", in Post Position #8
Fourth Place: "Chick Chasin Cowboy", in Post Position #6
Fifth Place: "Shazooms Doll", in Post Position #7

Fifth Place: "Shazooms Doll", in Post Position #7
Sixth Place: "A Royal Dervish", in Post Position #3
Seventh Place: "Sweet Macho", in Post Position #1
Eighth Place: "Iza Flyin Bye", in Post Position #10
Ninth Place: "Leadin the Class", in Post Position #5
Tenth Place: "Capitan Nuevo", in Post Position #2]

After noting that Section III(J)(I) of the Race Review Committee Policy and Procedural Directive requires the Commission "to take final agency action on any Objection that has progressed through the Committee process to Commission review. . .", Mr. Mann requested and recommended that the Commission accept the Report and Recommendation of the Race Review Committee at this time.

After being advised by Mr. Hartman and Mr. Mann that the deliberation and decision-making process of the Race Review Committee in the aforementioned matter had been properly executed, a motion was made by Commissioner Vail, seconded by Commissioner Pretti and unanimously carried to adopt the Report and Recommendation of the Race Review Committee in the matter of the horse, "Shazooms Doll" (Case Number 09-066). The Commission directed that an Order be issued reflecting this action.

A tape recording of this proceeding is on file in the Division's Pierce Street office.

The following Commission Order was disseminated:

BEFORE THE COLORADO RACING COMMISSION STATE OF COLORADO

Case Number: 09-066

COMMISSION ORDER # 09-14

IN THE MATTER OF:

JOHN DAVID HAMMES

License Type: Owner/Trainer License Number: 201010543

On July 14, 2009, this matter was heard by the Colorado Racing Commission, upon the appeal of Owner/Trainer JOHN HAMMES to the Race Review Committee, of the Arapahoe Park Board of Stewards Ruling #09-01. The Race Review Committee met on June 11, 2009 and upheld the decision of the Stewards ruling #09-01.

Having considered the testimony and evidence presented and being fully advised in the premises, the Commission hereby unanimously sustains the findings of the Race Review Committee.

FOR, AND BY ORDER OF, THE COLORADO RACING COMMISSION

s/

DANIEL J. HARTMAN, Director Colorado Division of Racing Events

<u>Consideration of Report and Recommendation of Race Review Committee – In the Matter of the Horse "Hot Covers" –Robert "Duke" Mann</u>

Mr. Robert "Duke" Mann, Horse-Racing Coordinator for the Division of Racing Events, advised the Commission that, on July 8, 2009, the Race Review Committee met and conducted a hearing in the matter of Case No. 09-0242, the objection of Trainer Ramon Marquez to the decision of the Arapahoe Park Board of Stewards in Ruling #09-07 issued on June 28, 2009, wherein the Board had disqualified the horse "Hot Covers", which ran in post position #7 in the first race on June 26, 2009. Mr. Mann presented the following background information relating to this matter for Commission consideration:

- 1) That on June 28, 2009, the Board of Stewards at Arapahoe Park issued Ruling #09-07, "Disqualification Based Upon Running of a Race";
- 2) That the Board in the Disqualification Ruling disqualified the horse, "HOT COVERS", racing in the 7th post position in the 1st Race at Arapahoe Park Racetrack on June 26, 2009 and established a new official order of the finish for the Race.
- 3) That, on June 28, 2009, Ramon Marquez, trainer of "HOT COVERS", filed a Statement of Objection with respect to the Disqualification Ruling.
- 4) In response to the Objection, the Division established the Committee and set the hearing for July 8, 2009 at 1:00 p.m. at the Office of the Board of Stewards at Arapahoe Park.
- 5) The Director of the Division of Racing Events established the Committee with the following members: Robert J. ("Duke") Mann (Horse Racing Coordinator, Division of Racing Events), Kenneth B ("Bruce") Seymore, Director of Racing Operations for Mile Hi Racing and Entertainment), and Shannon Rushton (Executive Director, Colorado Horse-Racing Association).
- 6) Robert J. ("Duke") Mann acted in the role of the Chairperson of the Committee.
- 7) The parties present at the Committee Hearing were the Complainant Ramon Marquez, Trainer, Owner Francisco Dominguez, Jockey Joseph Dominguez and Gary Goodrich, Owner/Trainer.

Mr. Mann presented the following: A) Statement of Jurisdiction, Scope of Hearing, B) Findings of Relevant Facts, C) the Conclusions of Law and D) the Recommendation of the Race Review Committee to the Commission for its review:

Statement of Jurisdiction, Scope of Hearing

- 1. The jurisdictional basis of the Committee's action is Colorado Racing Commission Rule #6.401.
- 2. Colorado Racing Commission Rule #6.401's substantive jurisdictional limit for the Committee Hearing is:

The race review committee and the Commission may only address the issues raised in the appeal filed.

a. In response to the matters brought to the Committee's attention in the course of the Hearing, the Committee found it necessary to render decisions on the Scope of the Hearing based upon reasons that are set forth in the document entitled "Race Review Committee Report and Recommendation".

b. Therefore, the Committee based its decision and recommendation regarding the race solely upon matters directly related to the Trainer's Objection.

Findings of Relevant Facts

- 1. All findings of fact as set out in the Board's Ruling are adopted.
- 2. No other Horse or Jockey in the race caused the foul.

Conclusions of Law

1. All conclusions of law as set out in the Board's Ruling are adopted.

Recommendation

The Race Review Committee has concluded that the Trainer's Objection failed to set forth a meritorious claim. Therefore, the Committee recommends that the Colorado Racing Commission uphold the Board and retain the Board's Ruling with the results the Board determined to be correct.

[It was the determination of the Board of Stewards at Arapahoe Park that the official order of finish shall be the following:

First Place: "DG Royal Snow", in Post Position #8 Second Place: "Jess for You", in Post Position #1 Third Place: "Panther Canyon", in Post Position #5 Fourth Place: "Its Up to Me", in Post Position #2

Fifth Place: "Coronas Specialeagle", in Post Position #9 Sixth Place: "Driving Miss Janie", in Post Position #3 Seventh Place: "GG Mike N Ike", in Post Position #6 Eighth Place: "Hot Covers", in Post Position #7]

After noting that Section $\mathrm{III}(J)(I)$ of the Race Review Committee Policy and Procedural Directive requires the Commission "to take final agency action on any Objection that has progressed through the Committee process to Commission review. . .", Mr. Mann requested and recommended that the Commission accept the Report and Recommendation of the Race Review Committee at this time.

After being advised by Mr. Hartman and Mr. Mann that the deliberation and decision-making process of the Race Review Committee in the aforementioned matter had been properly executed, a motion was made by Commissioner Pretti, seconded by Commissioner Vail and unanimously carried to adopt the Report and Recommendation of the Race Review Committee in the matter of the horse, "Hot Covers" (Case Number 09-0242). The Commission directed that an Order be issued reflecting this action.

A tape recording of this proceeding is on file in the Division's Pierce Street office.

The following Commission Order was disseminated:

BEFORE THE COLORADO RACING COMMISSION STATE OF COLORADO

Case Number: 09-242

COMMISSION ORDER # 09-15

IN THE MATTER OF:

RAMON GERARDO MARQUEZ-GONZALEZ

License Type: Trainer License Number: 200913524

On July 14, 2009, this matter was heard by the Colorado Racing Commission, upon the appeal of Trainer Ramon Marquez-Gonzalez to the Race Review Committee, of the Arapahoe Park Board of Stewards Ruling #09-07. The Race Review Committee met on July 8, 2009 and upheld the decision of the Stewards ruling #09-07.

Having considered the testimony and evidence presented and being fully advised in the premises, the Commission hereby unanimously sustains the findings of the Race Review Committee.

DONE this 11th day of August 2009.

FOR, AND BY ORDER OF, THE COLORADO RACING COMMISSION

s/

DANIEL J. HARTMAN, Director Colorado Division of Racing Events

Consideration of Request to Obtain License Validation – ALBERTO CANO

Mr. Alberto Cano, who had submitted a formal written request to the Commission to obtain validation of his horse owner's license, was present. Mr. Mark Brown, Enforcement Coordinator for the Division of Racing Events, advised that, at its November 2008 meeting, the Commission had directed that an order be issued to Mr. Cano stipulating that he must appear before the Commission prior to being restored to good standing and eligible to have his license validated for racing at Arapahoe Park's 2009 live race meet. Additionally, the Commission had fined Mr. Cano the sum of one hundred dollars (\$100) for giving incorrect information on prior license applications, which fine has been paid in full.

Division Director Dan Hartman stated that, to the best of his knowledge, Mr. Cano had not been involved in any trouble with the Division of Racing Events and he and Mr. Brown recommended that the Commission grant Mr. Cano's request to obtain validation of his horse owner's license.

A motion was thereupon made by Commissioner Pretti, seconded by Commissioner Vail and unanimously carried to accept Mr. Alberto Cano's written statement and to grant his request to obtain validation of his license to participate in horse racing in the State of Colorado. Mr. Cano thanked the Commission for its consideration of his request.

Consideration of Scheduling of Remaining 2009 Commission Meetings – Dan Hartman

Commissioner Alkire explained that, pursuant to enactment of Senate Bill 09-174, the Commission was no longer mandated to conduct monthly meetings and, therefore, was considering amending its meeting schedule for the remainder of 2009. Mr. Dan

Hartman, Director of the Division of Racing Events, noted that, due to the scheduling of a mandatory furlough day for all State employees on the day after Labor Day (September 8th), a day that had previously been designated as a Commission meeting day, it would be necessary for the Commission to cancel or reschedule its September meeting.

Mr. Hartman advised that the Governor has alerted all State employees that they will be required to take three additional furlough days before December 31, 2009, but the dates have yet to be announced. Mr. Hartman commented that he believes that these furlough days will most likely be set immediately before or after State holidays.

Discussion ensued during which the Commission made the following modifications to its 2009 meeting schedule: 1) the August 11, 2009 meeting is to be canceled; 2) the September meeting is to be rescheduled and held on Friday, September 4, 2009; 3) the October 13, 2009 meeting is to be canceled; 4) the November meeting is to be rescheduled and held on Monday, November 9, 2009; and 5) the December meeting is to be canceled. (The September and November meetings will be conducted in the Gaming Conference Room at 1881 Pierce Street, Lakewood, Colorado.) These decisions were made with the proviso that, should the Governor require a furlough to be taken on a Commission meeting date, an adjustment would need to be made. Mr. Hartman observed that, should the need arise to schedule an additional meeting, it would be possible for the Commission to do so.

Mr. Hartman suggested that, at the September Commission meeting, the Commission determine in what months to hold its 2010 meetings recognizing that occasions may unexpectedly arise that would necessitate that scheduling adjustments be made.

Report Regarding Early Distribution of Owners/Breeders Awards and Supplemental Purse Funds to Colorado Thoroughbred Breeders Association – Gregory Lamb

Mr. Greg Lamb, Auditor for the Division of Racing Events, informed the Commission that he had completed an audit of the accumulated funds of the Colorado Thoroughbred Breeders Association pursuant to their formal written request for early release of \$123,000, which is a portion of their Owners/Breeders Awards and Supplemental Purse Fund accrual as permitted by statute. Mr. Lamb stated that he had verified that sufficient funds were available for this amount to be distributed to the Colorado Thoroughbred Breeders Association for the purpose of supplementing the 2009 Colorado Bred Stakes schedule at Arapahoe Park as soon after July 1, 2009 as possible. Additionally, Mr. Lamb apprised the Commission that he had requested that a warrant in the aforementioned amount be issued to the Colorado Thoroughbred Breeders Association and had confirmed with that organization that the transfer of funds had been successfully made and the money received on July 2, 2009.

Mr. Lamb advised that, due to the current economic situation, no interest was accrued by the Supplemental Purse Fund for the most recent period. He noted that the transfer of the funds into a private trust account would permit a modest amount of interest to be accumulated over time. Mr. Hartman observed that, should the horse racing community desire to do so, it could seek a change to the Racing Statute that would allow for another savings method.

<u>Status Report – Arapahoe Park's 2009 Live Race Meet – Robert "Duke" Mann/Bruce</u> Seymore

Mr. Robert "Duke" Mann, Division Horse-Racing Coordinator, informed the Commission that twenty-four of the thirty-six days of live racing at Arapahoe Park have been conducted and that the meet has progressed without major problems. He noted that, despite the significant amount of rain, the condition of the racing surface has, for the most part, been very good. Mr. Mann stated that, to date, two horses have had to be euthanized, which is comparable to losses sustained in previous years.

Mr. Mann responded to Commission inquiries regarding various matters. He reported that, to date, four medication violations have occurred, two of which are for

caffeine and two for clenbuterol. He observed that the Division is currently awaiting the results of split sample testing on two of the samples. Additionally, Mr. Mann informed the Commission that Division staff has routinely been conducting toe grab checks and, as a result, detected one violation that resulted in a horse being scratched from its race.

Mr. Mann and Mr. Bruce Seymore, Executive Director of Colorado Operations for Mile High Racing & Entertainment and General Manager of Arapahoe Park, discussed the current handle and attendance figures with the Commission. They commented that the out-of-state handle is up while the in-state and on-track handles are slightly down from last year. Mr. Mann and Mr. Seymore advised that Sunday has been the most popular day in terms of both handle and attendance while Friday has been a relatively quiet day.

Mr. Seymore expressed his positive views regarding the meet. He stated that, for the first time since the opening of Arapahoe Park, it has been possible for him to raise purses on many types of races and most races are carrying full fields, some with twelve horses in a race.

Mr. Seymore apprised the Commission of various marketing efforts and strategies that have been undertaken this season, noting that he believes they have proved to be very successful. He elaborated on some of the ways that Arapahoe Park has been encouraging public interest, such as offering admission-free Friday performances, "true" handicapping, advertising on computer internet sites, streaming of races over computers, employing bilingual mutuel tellers, providing special events for persons working on the backside of the track as well as having celebrations on holidays (Independence Day and Father's Day), holding a "fan appreciation day" at the end of the season. Additionally, Mr. Seymore stated that the simulcasting of greyhound races has been very popular and has generated considerable revenue.

Commissioner Alkire advised that, recently, she, Commissioners Wells and Pretti had been privileged to attend the annual "Day at the Races" sponsored by the Rocky Mountain Quarter Horse Association and had had a very enjoyable time at this special event.

<u>Announcement Regarding Scheduling of Discussion Regarding New Greyhound Purse</u>

<u>Money Rule (Tuesday, July 21st, 10:00 AM, Racing Office Conference Room) – Dan</u>

<u>Hartman</u>

Mr. Dan Hartman, Director of the Division of Racing Events, announced that a rule review workshop would be held on Tuesday, July 21, 2009 in the Division's 1881 Pierce Street Conference Room (#108) at 10:00 a.m. for the purpose of affording all interested parties an opportunity to present views and opinions, offer rule recommendations and draft proposals and to consider what the content of a greyhound purse money rule(s) should include. Mr. Hartman asserted that only a rule or rules pertaining to this subject would be considered at this workshop. Mr. Hartman advised that, once the rule review workshop has been held, the formal Rule-Making Hearing would be scheduled.

<u>Announcement Regarding Status of BLB – Dan Hartman</u>

Mr. Dan Hartman, Director of the Division of Racing Events, reported that BLB, the parent company of Mile High Racing & Entertainment, had recently filed a Chapter 11 bankruptcy petition in Rhode Island. Mr. Hartman explained that this filing for reorganization affects only BLB's Rhode Island holdings, none of its Colorado properties. He stated that, with respect to the funding and distribution of monies for the Arapahoe Park meet, the Division had proceeded in its normal manner to make transfers in May for the meet start-up. However, he advised that, pursuant to the Division's fiduciary obligations and regulatory oversight, he and Division Auditor Greg Lamb had believed that it was prudent and responsible to move money back into the trust account and allow for its release to Arapahoe Park as needed and requested.

Mr. Hartman stated that a new requirement mandated by the enactment of Senate Bill 09-174 is that the Division report to the Senate and House Agriculture Committees on the revenues that have been generated from racing and simulcast wagering activity. He advised that he and Mr. Lamb are carefully monitoring BLB's financial status. He commented that the Division is hopeful that BLB will be able to resolve its financial concerns and make whatever adjustments are necessary to continue its operations.

Query by Horse Racing Participant Reed Jenkins

Mr. Reed Jenkins, a participant in horse racing at Arapahoe Park, inquired whether the Commission had adopted a rule mandating the presence of a handler in the stall during the sample collection process. He stated that he had been informed that such a rule was in effect and, as a result of it, a handler had been compelled to stay in a stall while sample collection was taking place. Mr. Jenkins stated he felt that it was essential to confirm the accuracy of the report that he had been given. Additionally, Mr. Jenkins commented that he believed that it would not be advisable or logical for such a requirement to be imposed because a handler could be injured if forced to remain in a stall while sample collection was being performed.

Mr. Robert "Duke" Mann, Horse-Racing Coordinator, apprised Mr. Jenkins that no such rule was in effect and that the report that he had been given was erroneous. Mr. Dan Hartman, Director of the Division of Racing Events, and Mr. Mann assured Mr. Jenkins that they would investigate and ascertain what had transpired and correct any misunderstandings and misinformation relating to this matter. Mr. Hartman observed that it is imperative for the members of the horse racing community to contact Mr. Mann with any questions regarding what is and is not mandatory, lawful or permissible before taking action.

Mr. Jenkins thanked the Commission and Division staff members for their attention to this matter.

Adjournment

There being no further business to consider, the Commission adjourned its regular meeting at 11:00 a.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on <u>Friday, September 4, 2009</u> in Conference Room 110 (Gaming Conference Room), 1881 Pierce Street, Lakewood, Colorado.

The undersigned hereby approve the foregoing Minutes.

MARILYN ALKIRE, CHAIRWOMAN
JACK PRETTI, VICE-CHAIR
CHARLES VAIL, DVM, MEMBER
MARY SHARON WELLS, MEMBER
DANIEL KESTER, MEMBER

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Friday, September 4, 2009 in Conference Room 110 (Gaming Conference Room) at 1881 Pierce Street, Lakewood, Colorado. Commission Chairwoman Marilyn Alkire called the meeting to order at 9:35 a.m.

Members Present

Marilyn Alkire, Chairwoman Jack Pretti, Vice-Chairman Charles Vail, DVM, Member Mary Sharon Wells, Member Daniel J. Kester, Member

Staff Present

Dan Hartman, Director, Division of Racing Events Greg Lamb, Division Auditor Robert "Duke" Mann, Horse-Racing Coordinator Mark Brown, Division Enforcement Coordinator Michelle Bauman, Licensing Supervisor 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 July 14, 2009

A motion was made by Commissioner Pretti, seconded by Commissioner Vail and unanimously carried to approve the minutes of July 14, 2009 as submitted.

<u>Scheduled Referral Hearing – In the Matter of BRIAN JAY STIVERS</u>

Chairwoman Alkire convened the scheduled referral hearing in the matter of Owner-Trainer Brian Jay Stivers at 9:35 a.m. Mr. Stivers was present, but was not represented by legal counsel.

Mr. Dan Hartman, Director of the Division of Racing Events, advised the Commission that, on August 2, 2009, the Arapahoe Park Board of Stewards issued Ruling No. 09-13 in which the horse "Major Billy", owned and trained by Brian Jay Stivers, was disqualified from its second-place finish in the eighth race on June 12, 2009 and declared unplaced, based upon the detection of the unauthorized medications, Caffeine and Theobromine, in a urine sample taken from the horse, "Major Billy" and analyzed by the Commission's official chemist, Industrial Laboratories. Additionally, the Commission took notice that, on August 2, 2009, the Arapahoe Park Board of Stewards issued Ruling No. 09-14, whereby a second horse owned and trained by Brian Jay Stivers, "Notimetobemad", the original winner of the fifth race on June 14, 2009, was disqualified and declared unplaced due to the presence of the unauthorized medications, Caffeine and Theophylline, detected in a urine sample taken from this horse and analyzed by Industrial Laboratories.

The Commission elected to combine the two hearings and consider both matters simultaneously.

Mr. Hartman observed that the Commission would be setting a precedent in making a determination regarding whether to impose a more severe penalty upon Mr. Stivers than that imposed by the Board of Stewards. Mr. Hartman advised that the Classification Guidelines set forth by the Association of Racing Commissioners International recommended that, for a Class 2 medication violation like those sustained

by Mr. Stivers' horses, the penalty assessment could range from a six-month to one-year suspension and a fine between \$1,500 to \$2,500 per offense. He noted that the Board of Stewards had suspended Mr. Stivers' racing license for a total of thirty-three days through September 4, 2009 and had not fined him for either offense. Further, the Board of Stewards in its Rulings 09-13 and 09-14 had recommended that the Commission take into consideration certain mitigating circumstances in these cases and be lenient toward Mr. Stivers.

Mr. Stivers was afforded the opportunity to address the Commission regarding the disqualifications and positive test results. Mr. Stivers commented that he had no knowledge of how the prohibited substances might have been ingested by or administered to his horses and could only surmise that the horses in question could have grazed in a contaminated area near their stables at Arapahoe Park. Additionally, other parties observed that the test barn Association personnel might have failed to comply scrupulously with certain procedures relating to food and beverage handling in the test barn lounge area. Mr. Hartman stressed that it was highly unlikely that test barn office personnel had permitted any food substances or beverages to be in the Division's testing area. Mr. Shannon Rushton, Executive Director of the Colorado Horse-Racing Association, attested to Mr. Stivers' good character and spoke on his behalf. Additionally, the Commission took notice that Mr. Stivers had had no previous violations and that he had suffered the loss of purse monies totaling approximately \$20,000 as a result of the disqualifications of the subject horses.

Mr. Hartman emphasized that the Rules of the Colorado Racing Commission assert categorically that the trainer is the absolute insuror of the horses in his/her care and bears complete responsibility for their condition. He recommended that the Commission consider its decision and findings in light of its rules, its "zero tolerance policy" and in accordance with the aforementioned Classification Guidelines.

Following review and deliberation of the testimony and evidence presented, a motion was made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to accept the recommendations of the Arapahoe Park Board of Stewards in Ruling Nos. 09-13 and 09-14 dated August 2, 2009 and to suspend the racing license of Mr. Brian Jay Stivers for a total of thirty-three days, which time has been served and has elapsed, and that no further penalties be assessed against him.

The combined hearing concluded at 10:00 a.m.

A tape recording of this proceeding is on file in the Pierce Street office of the Colorado Division of Racing Events.

The following Commission Order was disseminated:

BEFORE THE COLORADO RACING COMMISSION STATE OF COLORADO

Case Number: 09-243, 09-244

COMMISSION ORDER # 09-16

IN THE MATTER OF:

BRIAN JAY STIVERS

License Type: Owner/Trainer License Number: 201010141

The Colorado Racing Commission heard this matter on September 4, 2009 upon the referral recommendation of the 2009 Arapahoe Park Board of Stewards in their Ruling #09-13 and #09-14. Mr. Stivers did appear. The Commission decided to hear

both matters concurrently due to the similar relation of the two violations and Stewards referral order. Division Director Dan Hartman and Horse Racing Coordinator Robert "Duke" Mann represented the Division of Racing Events. Testimony was taken by Mr. STIVERS and Colorado Horse-Racing Executive Director Shannon Rushton.

In both orders the Board of Stewards found BRIAN JAY STIVERS in violation of C.R.C.R. #5.500, #5.502, and #5.300 and suspended the license of Mr. Stivers on August 2, 2009 until the Commission meeting on September 4, 2009. They also recommended leniency in the Commission's Order due to the mitigating circumstances that they found in their hearing and his first medication violation.

Having considered the testimony and evidence presented and being fully advised in the premises, the Commission hereby unanimously sustains the findings of the Board of Stewards in Ruling #09-13 and #09-14 suspends the license of BRIAN JAY STIVERS for the period of thirty-three days which ends on September 4, 2009 and the redistribution of purses as set forth in Rulings #09-15 and #09-16. No additional penalties were imposed by the Commission.

DONE this 10th day of September 2009.

FOR, AND BY ORDER OF, THE COLORADO RACING COMMISSION

s/

DANIEL J. HARTMAN, Director Colorado Division of Racing Events

<u>Scheduled Rule-Making Hearing – In the Matter of Proposed New Rules #9.400 and #9.410 of the Colorado Racing Commission Rules</u>

Pursuant to the published Notice of Rule-Making Hearing, Chairwoman Alkire convened the scheduled Rule-Making Hearing at 10:00 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 and was bringing proposed new rules 9.400 and 9.410 before the Commission at this time in accordance with statutory changes resulting from the enactment of Senate Bill 09-174. He stated that a rule review workshop had been conducted at which time all interested parties had been afforded the opportunity to express views and opinions relating to the content of the rule proposals. He noted that, subsequent to the rule review workshop, he had received a comment and a recommendation for an amendment.

Mr. Hartman read for the record portions of the proposed new rules, which relate to the establishment of a Colorado Greyhound, Purse, Welfare, Adoption and Greyhound Racing Promotion Fund and the means for deriving and distributing the monies invested in this fund. Mr. Greg Lamb, Division Auditor, apprised the audience that, to date, \$14,717.84 had been accrued in the subject Fund.

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. Members of and spokespersons for the greyhound racing community recommended that additional amendments be made to the rule proposals. As a result, certain amendments were incorporated into the rules as proposed.

Mr. Hartman reviewed the texts of proposed new rules 9.400 and 9.410. Following review and after ascertaining that there were no objections to formal action being taken at this time, a motion was made by Commissioner Pretti, seconded by Commissioner Vail and unanimously carried to adopt the new rules 9.400 and 9.410 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.

The scheduled Rule-Making Hearing concluded at 10:35 a.m.

<u>Announcement Regarding Date of Final 2009 Commission Meeting – Commissioner</u> Alkire

Commissioner Alkire announced that the final Commission meeting of 2009 would be conducted on Monday, November 9, 2009 at 1881 Pierce Street, Lakewood, Colorado in Conference Room 110 and would commence at 9:30 a.m.

Consideration and Approval of 2010 Commission Meeting Dates

Mr. Dan Hartman, Director of the Division of Racing Events, noted that, in order to facilitate conference room booking, he was presenting a proposed 2010 Commission meeting schedule for the Commission to review. He noted that, since the Commission does not have a statutory mandate to meet on a monthly basis, it could decide when to meet based upon the times of the year when substantive matters have historically been brought forward, such as Arapahoe Park's renewal application review, the annual Rule-Making Hearing, approval of distribution of Owners/Breeders' Award monies and the annual Race Dates Hearing. Mr. Hartman explained that, in his recommendation to the Commission, he had highlighted/underscored some prospective meeting months/dates because of the likelihood that the aforementioned subjects would need to be addressed at these times. However, he observed that the Commission would retain the ability to meet on optional dates in case of need.

Following review and discussion of the list of proposed 2010 Commission meeting dates, a motion was made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to hold the Commission's meetings on the following dates, all of which are a second Tuesday of a given month: February 9; May 11; July 13; September 14 and November 9; and, further, that a meeting will be scheduled in April, but the date and location will be determined and announced at the November 9, 2009 meeting.

Consideration of Assignment of Off-Track Betting Facilities – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, advised that, pursuant to statutory changes affected by the enactment of Senate Bill 09-174, the allowable number of off-track betting facilities had been increased to the same level as authorized in 1991. He explained that, because Colorado has only one operating racetrack at the present time, all off-track betting facilities, those that are active and those that may be opened, could be assigned to Arapahoe Park. Mr. Hartman recommended that, at this time, the Commission authorize him to transfer the three (3) active off-track betting facilities to Arapahoe Park on a permanent basis, these being Red & Jerry's, Havana Park and Mile High Greyhound Park's simulcast site, and, additionally, to allow him to make a permanent assignment of two (2) extra unopened off-track betting facilities to Arapahoe Park. He stated that a total of seven (7) potential off-track betting facilities would be left unattached.

Discussion ensued during which it was ascertained that some interest has been expressed regarding the opening and operating of a new off-track betting facility, although apparent cost issues have delayed further action. Additionally, queries were raised regarding 1) the statutory restriction on how close one off-track betting facility could be to another; and 2) the contractual arrangements and business license requirements necessary to open and operate an off-track betting facility. Following discussion, a motion was made by Commissioner Pretti, seconded by Commissioner Vail and unanimously carried to accept the recommendation of Division Director Hartman and give him authorization to make a permanent transfer of five (5) off-track betting facility licenses (three ((3)) active and two ((2)) held in abeyance pending further action) to Arapahoe Park; and to acknowledge that seven (7) potential off-track betting facility licenses are also being held in abeyance and are not attached to any racetrack.

Ms. Karen Cloud, Owner/Operator of Red & Jerry's off-track betting facility, inquired whether it would be necessary for her to obtain approval from an active racetrack to open an off-track betting facility within the same sixty-mile radius of said racetrack. Mr. Hartman advised that the Racing Statute mandates that any off-track betting facility in Colorado must be allied to a "live" active race meet license/racetrack and that any formal request to apply for a business license to operate an off-track betting facility would need to be sponsored by a duly licensed racetrack.

<u>Discussion Regarding Proposed Format for Reporting Handle/Wagering Data – Dan Hartman/Greg Lamb</u>

Mr. Dan Hartman, Director of the Division of Racing Events, advised that Division Auditor Greg Lamb had prepared a statistical report depicting wagering activity on greyhound simulcast races for the period of May through the latter part of August 2009. He observed that this document is intended to serve as a visual reference tool reflecting how the revenue generated from wagering on these races is benefiting various funds.

Mr. Lamb stated that, based upon the Commission's request at its July 2009 meeting, he had compiled the subject statistical summary of greyhound wagering activity/fund contributions by establishing major categories and breaking down the accumulated data on a monthly basis. He noted that the statistical report would always reflect the previous month's wagering activity. Mr. Lamb observed that the total handle generated from greyhound simulcast wagering has been a consistent \$2,000,000 each month and that the total handle derived from live horse racing and wagering on simulcast horse races has been a consistent \$4,400,000. Mr. Lamb stated that he has been working with Mr. Ruben De Los Santos, Auditor for Mile High Racing & Entertainment, to verify the accuracy of the statistical data. He expressed his appreciation for Mr. De Los Santos' cooperation and assistance.

Mr. Lamb inquired whether the Commission wished to have additional data/information provided and stated that he would be willing to make any modifications or adjustments to the report/format at the Commission's direction. Commissioner Vail requested that Mr. Lamb include comparable information regarding revenue generated from live and simulcast horse racing on future reports. Additionally, Commissioner Vail advised that it would be desirable for all reported data to be clarified and for percentages to be included as references or footnotes. Mr. Lamb expressed his appreciation for the Commission's guidance, noting that it is important for the Commission to establish parameters and guidelines for this statistical compilation since it would be impossible to provide material that would meet the specific needs of every industry group. Additionally, he and Mr. Hartman assured those in attendance that this information would be made publicly available to all interested parties.

Mr. Hartman informed the Commission that, at its November 2009 meeting, the Division would provide the final version of the subject report, which he would then place on the Division's website. No action was taken at this time.

<u>Comments by Shannon Rushton, Executive Director of the Colorado Horse-Racing</u> Association

Mr. Shannon Rushton, Executive Director of the Colorado Horse-Racing Association, advised the Commission that he intends to request the opportunity to discuss various topics relating to the 2009 Arapahoe Park race meet with the Commission at its November meeting. He stated that, prior to the November 9, 2009 meeting, he and other representatives of the Colorado Horse-Racing Association, wished to meet with Mr. Hartman to discuss constructive approaches and possible solutions to problems that occurred during the 2009 Arapahoe Park race meet. Mr. Rushton emphasized that his organization wishes to address issues and matters of concern in a positive manner and is only seeking to ensure that necessary improvements are made and that certain problems that occurred this year do not recur in 2010.

Adjournment

There being no further business to consider, the Commission adjourned its regular meeting at 11:15 a.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on <u>Monday</u>, <u>November 9</u>, <u>2009</u> in Conference Room 110 (Gaming Conference Room), 1881 Pierce Street, Lakewood, Colorado.

The undersigned hereby approve the foregoing Minutes.

MARILYN ALKIRE, CHAIRWOMAN
JACK PRETTI, VICE-CHAIRMAN
CHARLES VAIL, DVM, MEMBER
MARY SHARON WELLS, MEMBER
DANIEL KESTER MEMBER

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Monday, November 9, 2009 in Conference Room 110 (Gaming Conference Room) at 1881 Pierce Street, Lakewood, Colorado. Commission Chairwoman Marilyn Alkire called the meeting to order at 9:30 a.m.

Members Present

Marilyn Alkire, Chairwoman Jack Pretti, Vice-Chairman Charles Vail, DVM, Member Mary Sharon Wells, Member Daniel J. Kester, Member

Staff Present

Dan Hartman, Director, Division of Racing Events Greg Lamb, Division Auditor Robert "Duke" Mann, Horse-Racing Coordinator Mark Brown, Division Enforcement Coordinator Michelle Bauman, Licensing Supervisor 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 September 4, 2009

A motion was made by Commissioner Pretti, seconded by Commissioner Vail and unanimously carried to approve the minutes of September 4, 2009 as submitted.

Memorial Tribute to George Wafer, Owner-Trainer of Thoroughbred Horses

The Commission, Division of Racing Events' staff members and industry affiliates acknowledged with profound regret the recent death of Mr. George Wafer, a lifetime Colorado resident, the second generation of his family to be so distinguished, and Owner of the Wafer Thoroughbred Ranch, Inc. Commissioner Vail reflected on Mr. Wafer's life and his accomplishments. He praised Mr. Wafer's significant contributions as both an enthusiastic supporter of and participant in the Thoroughbred horse racing industry in Colorado and nationwide.

A motion was made by Commissioner Wells, seconded by Commissioner Pretti and unanimously carried to send a message of sympathy and condolence to Mr. Wafer's family on behalf of the Colorado State Racing Commission and the Division of Racing Events.

<u>Scheduled Appeal/Referral Hearing – In the Matter of ANDRENNA CRYSTAL FLORES</u>

At 9:35 A.M., Commission Chairwoman Alkire convened the scheduled appeal/referral hearing in the matter of Owner-Trainer Andrenna Flores at which time she announced that Division Director Dan Hartman had distributed for Commission consideration a proposed Settlement Agreement that he and Ms. Flores' Attorney, Mr. James K. Kreutz, Esq., had negotiated. Mr. Hartman presented a summary of background information relating to the case (Case No. 09-376) involving Ms. Flores and the general terms of the Settlement Stipulation.

Mr. Hartman explained that, on August 12, 2009, the Arapahoe Park Board of Stewards provided Board Ruling No. 09-17 to Ms. Flores, wherein the Board found that she had violated Colorado Racing Commission Rules 5.502, 5.301 and 5.304. Specifically, as the trainer of record, Ms. Flores was cited for having the unauthorized substance, Clenbuterol, in the system of the horse, "Specially Alluring", the original winner of the second race at Arapahoe Park on June 27, 2009, when it ran in the subject race. Mr. Hartman advised that, on August 18, 2009, Ms. Flores, through her Attorney, Mr. Kreutz, responded to the Ruling with a Request for Appeal and Stay of the penalty until such time as the Colorado Racing Commission could hear her request for appeal on the severity of the suspension. The Commission was polled in accordance with Colorado Rules of Racing and the Stay was granted.

Mr. Hartman asserted that he had used the Association of Racing Commissioners International Model Rules for Penalties as a guideline and all penalties specified in the Settlement Stipulation are commensurate with the recommended penalties for a Class III Medication Violation. In consideration of the original duration of the suspension and the costs and uncertainties of litigation, Ms. Flores, by and through her Attorney, and the Division had stipulated and the Division of Racing Events agreed to each of the following penalties for the violation: a) That Ms. Flores' Colorado racing license shall be suspended for a period of thirty (30) days beginning November 21, 2009; b) That Ms. Flores shall be fined the sum of five hundred dollars (\$500); and c) That, due to the presence of Clenbuterol, an unauthorized drug that could have affected the racing condition or the performance of the horse, "Specially Alluring", in the subject race, which violated Colorado Racing Commission Rule 5.502, and, further, that a redistribution of the purse respective to the race was ordered and the horse, "Specially Alluring, was declared unplaced for every purpose except pari-mutuel wagering.

Following review of the terms and conditions set forth in the proposed Settlement Stipulation, a motion was made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to accept the Settlement Stipulation as presented.

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.

<u>Scheduled Adjudicatory Hearing – In the Matter of RAYMUNDO VILLARREAL-GUTIERREZ</u>

Commission Chairwoman Alkire convened the scheduled adjudicatory hearing in the matter of Owner Raymundo Villarreal-Gutierrez at 9:40 A.M. Mr. Villarreal-Gutierrez 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 Mr. Villarreal-Gutierrez had been duly and properly notified of today's hearing. He provided the following background information relating to this matter:

- 1) That, on August 25, 2009, the Colorado Division of Racing Events issued Director's Order No. 09-06 concerning the Horse "Specially Alluring", owned by Mr. Villarreal-Gutierrez;
- 2) That Director's Order 09-06 stated that the Horse, "Specially Alluring", had been disqualified from its original first-place finish in the second race on June 27, 2009 at Arapahoe Park and declared unplaced due to the presence of an unauthorized medication in the system of the horse, and, therefore, was rendered ineligible to race in the Bayer Legend West/Southwest Derby Challenge Finals run on July 12, 2009 at Arapahoe Park;
- 3) That, pursuant to Colorado Racing Commission Rule No. 5.502, Mr. Villarreal-Gutierrez, the owner of the Horse, "Specially Alluring", was notified that he would not be allowed to participate in the purse distribution of

any races associated with the Bayer Legend West/Southwest Derby Challenge and a redistribution of the purse was ordered;

- 4) That, upon further inquiry, it was ascertained by the Colorado Division of Racing Events that the first place purse money earned for the Horse, "Specially Alluring", in the final race of the Bayer Legend West/Southwest Derby Challenge of \$20,203.20 was erroneously released to Owner Villarreal-Gutierrez on July 18, 2009. Upon such determination, Mr. Villarreal-Gutierrez was ordered to return the entire amount to the Arapahoe Park Horsemen's Bookkeeper no later than September 14, 2009 and, further, to return any and all trophies and prizes related to both the trial (qualifying) race run on June 27, 2009 and to the final race of the Bayer Legend West/Southwest Derby Challenge. To date, Mr. Villarreal-Gutierrez has failed to return the purse money, prizes and/or trophies or contact the Colorado Division of Racing Events; and
- 5) That, at the time of issuance of Director's Order No. 09-06, Mr. Raymundo Villarreal-Gutierrez was duly licensed as an Owner by the Colorado Division of Racing Events.

Following review and deliberation of the issues reflected in the Division's Notice of Hearing (Case No. 09-376), and after determining that a firm stance should be taken in light of Mr. Villarreal-Gutierrez's failure to comply with an explicit Director's Order, a motion was made by Commissioner Pretti, seconded by Commissioner Vail and unanimously carried to suspend any and all Colorado racing licenses issued to Mr. Raymundo Villarreal-Gutierrez until such time as he repays the full amount of \$20,203.20 in purse money that he received in error and until such time as he returns any and all prizes and trophies relating to the race from which his Horse, "Specially Alluring", was disqualified; and, additionally, should his license(s) expire(s) prior to repayment of the outstanding purse money and return of trophies and/or prizes, he would be ineligible for relicensure in the State of Colorado; and, further, that Mr. Villarreal-Gutierrez must appear before the Colorado State Racing Commission prior to being considered for reinstatement. The Commission directed that an Order be issued to Mr. Villarreal-Gutierrez reflecting this decision.

The hearing concluded at 9:45 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.

Presentation Regarding Colorado State University Equine Research Fund

Dr. Torrance Nett, Associate Dean for Research and Graduate Education at the Colorado State University (hereinafter known as "C.S.U.") College of Veterinary Medicine and Biomedical Sciences, introduced himself and his colleagues, Dr. Christopher Kawcak, Professor in the Department of Clinical Sciences at the Equine Orthopaedic Research Laboratory, and Dr. Gabriele Landolt, Assistant Professor of Equine Medicine in the Department of Clinical Sciences, to the Commission.

Dr. Nett explained that the funding provided by the Commission has been extremely beneficial to the University and is essential for the continued growth of the equine research program there. Dr. Nett informed the Commission that its annual financial contribution is leveraged approximately fifty-fold to an estimated \$2,000,000, which, along with the \$3,336,412 in research funds generated by equine researchers and annual donations to equine research programs totaling approximately \$2,000,000, forms the basis for obtaining grant funding for various research projects. He observed that the Commission's financial contribution in 2008 racing receipts of approximately \$107,000 has been applied to fund small, often "pilot" research projects in horses at Colorado State University. Dr. Nett explained that the Commission's funding is especially important because it affords researchers at C.S.U. the opportunity to work on projects that larger funding agencies would not accept without prior data to support such efforts. The data

generated are then used to show funding agencies that the research plan is realistic and to form the foundation for larger grants to pursue the research. He commented that, in order to select the research proposals to be funded, a committee of researchers in the College of Veterinary Medicine and Biomedical Sciences evaluates the large quantity of research proposals that are submitted for consideration and ranks them in order of merit with funds being distributed until they are exhausted. He noted that this is an extremely competitive process with far more proposals being tendered than can be subsidized. Dr. Nett apprised the Commission that C. S. U. had also become involved in a technology transfer with two start-up companies that provide services to the equine industry. Dr. Nett observed that the economy has taken a toll on the amount of money contributed annually by the Commission and he expressed his hope that there would be an increase in its funding level in the near future. Division Director Dan Hartman advised that the amount of the Commission's contribution correlates directly to the amount of revenue generated in handle. He stated that the Division would be looking at the impact of greyhound simulcasting on its revenue stream. Additionally, he commented that he is encouraged by the prospect of the opening of some new off-track wagering facilities in Colorado.

Dr. Nett reported that the following equine research projects are currently funded and being performed at C.S.U.: 1) Effect of Aging and Oocyte Maturity on mRNA Content of Maternal Affect Genes in the Equine Oocyte; 2) Effect of Two Different Sources of Omega-3 Fatty Acid Supplementation Circulating Inflammatory Markers in the Horse; 3) Development of Equine Model to Study Equine Herpes Myeolencephalopathy; 4) Colorado Racehorse Postmortem Project; 5) Of Horses and Dogs – Species Specificity of H3N8 Influenza A Virus; and 6) Comparison of Ultrasound Using Oblique and Perpendicular Angle of Incidence to MRI and Histology for Identification of the Normal Anatomy of the Suspensory Ligament in the Equine Forelimb. Dr. Nett expressed his appreciation to the Commission for its ongoing support of and contribution to equine research at Colorado State University.

Dr. Kawcak, reported on the status of the Colorado Racehorse Postmortem Program. He presented a slide presentation illustrating the nature and focus of the research and the materials and methods used in this study. He explained that samples are taken from every horse that breaks down at a Colorado racecourse and research is then conducted in order to determine possible reasons why the life-ending injury occurred. He commented that there is much controversy and concern over the effect of artificial racing surfaces on the racehorse and, as a result of its use, new types of injuries are being observed. Additionally, postmortem examinations have shown that undetected condylar fractures and injuries to the fetlock joint actually begin to occur long before the horse reaches the racetrack. Dr. Kawcak described the research methodologies that include taking measurements of the surface area of lateral and medial condyles as well as measuring the radius of curvature and, then, reporting the ratio of the total surface area and recording the condylar width to ascertain whether osteochondral geometry changes occur over time. Results have shown that there is variability in bone density, which predisposes a horse to career and/or life-threatening injuries. Dr. Kawcak advised that work currently being conducted entails 1) exploring other sites of damage because of the concern about catastrophic injuries arising as secondary problems; and 2) studying developmental abnormalities leading to joint surface asymmetry. Dr. Kawcak stated that he believes that it may be possible in the future to overcome the effects of certain abnormalities that appear after a horse's birth, noting that such findings could have a positive impact on the treatment of human beings. He commented that two issues are of the great significance to program researchers: 1) identifying which horses are most likely to breakdown by detecting possible life and/or career-ending injuries/abnormalities long before resultant damage occurs; and 2) determining how to prevent such injuries. He noted that it is a vital component in the success of this research for veterinarians practicing at the Colorado racetrack to communicate their views, concerns and beliefs about problems contributing to horses breaking down to the staff at C.S.U., noting that there has been a disconnect in this area.

Dr. Landolt presented her research summary entitled "Past the Point of No Return? Of Horses, Dogs and Influenza. She accompanied her report with a slide presentation depicting various aspects of her research, including, but not limited to, the following:

- 1) There are serious health impacts and economic consequences resulting from Equine Influenza;
- 2) Successful and unsuccessful efforts to control the spread of Equine Influenza via vaccination;
- 3) The Antigenetic Variation of Influenza, whereby an antigenetic shift occurs and there is the introduction of gene segment(s) or an entire virus from other host species that produces vaccination failure;
- 4) The virus host range of influenza by which viruses from one host occasionally infect another species, thus, producing a cross-species transmission of influenza examples: the "Spanish Flu" of 1918, the "Bird Flu" of 1997 and 2006 and the "Novel H1N1", or "Swine Flu" of 2009. Dr. Landolt explained that horses have been considered isolated or "dead-end" hosts;
- 5) The Canine Influenza Virus and its transmission, first isolated in greyhounds across the United States in 2004, and, by Winter 2005, documented in pet dog populations in humane shelters, in boarding facilities and in veterinary clinics. Genetic analyses have indicated the transmission and maintenance of the Equine H3N8 Influenza Virus. Thus, it can be hypothesized that there is a continued genetic evolution of the Canine Influenza Virus that poses an emerging threat to horses provided that the Canine Influenza Virus maintains its ability to infect horses;
- 6) The study objectives and design are: a) to examine the infectivity and pathogenicity of a Canine H3N8 Virus in horses; b) to examine the spread of a Canine H3N8 Virus among horses; and c) to examine, via sample collection and analysis, challenge viruses.
- 7) A summary of the findings derived from sample collection and analysis have indicated that the contemporary Canine H3N8 Virus Ca/WY virtually lost the ability to infect, replicate, cause clinical disease and spread among horses while, in contrast, the contemporary Equine H3N8 Virus Eq/CO infected, replicated and transmitted efficiently among horses; and
- 8) The conclusions to be drawn from these findings are: a) that Canine Influenza does not appear to be a threat to horses. (This finding is supported by surveillance data that does not indicate a canine-to-equine transmission of influenza in the field.); and b) it is unclear at this time whether the differences in transmission have to do with species adaptation or not because influenza species specificity is poorly understood. The equine-to canine transmission event represents a unique opportunity to study species specificity of influenza viruses.

Dr. Landolt discussed the future directions of the ongoing research. After observing that the differences in transmission do not appear to be a function of poor infectivity or poor growth of the Canine Influenza Virus, she stated that the infection characteristics of Ca/WY in dogs remains to be determined.

Dr. Nett informed the Commission that, at this time, there are approximately sixty candidates enrolled in C.S.U.'s veterinary doctoral program who intend to pursue academic careers.

Drs. Nett, Kawcak and Landolt thanked the Commission for the opportunity to appear and report on a sampling of equine research projects being performed at Colorado State University. The Commission expressed its appreciation to each of them for their insights and informative presentations.

Announcement of Division Auditor Greg Lamb

Division Director Dan Hartman apprised the Commission and meeting attendees that Mr. Greg Lamb, Auditor for the Division of Racing Events, had accepted a position with the Kentucky State Horse Racing Commission as its Auditing Director effective in late November 2009. Mr. Hartman and the Commission acknowledged and commended Mr. Lamb for his exemplary performance and expressed its thanks to him for his many years of outstanding service to the Commission and citizens of Colorado.

Mr. Robert "Duke" Mann, Horse Racing Coordinator, presented his end of meet report for Arapahoe Park's 2009 live race meet. Mr. William Powers, Plant Facilities Manager/Director of Racing at Arapahoe Park, appeared on behalf of the Association.

Mr. Mann reported that the thirty-five (35) day live meet at Arapahoe Park began May 23, 2009 and concluded on August 9, 2009. Seventy-seven (77) days of out-of-state horse simulcasting also occurred during the live meet for a total of seventy-four (74) days of both live and simulcast pari-mutuel horse racing being offered. Also, the increase in simulcast days was due to enactment of Senate Bill 09-174. The 2009 meet was approved for thirty-six (36) days, but one (1) live race day was canceled due to inclement weather. Live horse racing, along with simulcasting of out-of-state horse races occurred on Friday through Sunday.

Mr. Mann reviewed various audited statistics for the 2009 live race meet, including those for out-of-state horse simulcasting, along with comparative figures for the 2008 live and simulcast meet. Mr. Mann observed that this year's total mutuel handle, including simulcasting, of \$12,793,577 represented a decrease from last year. He stated that the total number of live races in 2009 was 319 and that the total number of simulcast races during the live season was 6,623. The average number of live races per day in 2009 was nine.

STATISTICAL DATA:

Mr. Mann reported the following: 1) that the 2009 on-track live handle was \$3,300,262; 2) that the 2009 in-state live handle was \$1,828.936; 3) that the out-of-state live portion was \$1,471,326; 4) that the on-track live handle was \$1,487,184; 5) that the total simulcast handle was \$9,493,315; and 6) that the total estimated attendance was 54,940 and that the average daily attendance during 2009 was 1,526.

Mr. Mann offered the following average daily handle figures for 2009: 1) the average daily handle on-track was \$42,228; 2) the average daily handle in-state was \$51,803; 3) the average daily out-of-state handle was \$39,871; and 4) that this season's average daily total handle was \$91,674.

Mr. Mann offered the following unaudited statistics relating to disbursement of purses by breed of race:

	Races	Purses Paid	<u>Fees</u>
Thoroughbred	199 (62%)	\$1,442,500	\$209,068
Quarter Horse	83 (26%)	\$528,000	\$488,920
Arabian	34 (11%)	\$263,200	\$18,100
Paint/Appaloosa	3 (1%)	\$24,300	\$30,953
Totals	319	\$2,258,800	\$747,041

Mr. Mann explained that the "fees" are those payments made to nominate horses to participate in special stakes or other types of races, including Colorado Bred races. The additional monies derived from fee payments are used to supplement such races and are paid out in purses.

In his report, Mr. Mann offered the following information and observations:

INJURIES TO HORSES (Racing and Training-Related):

Mr. Mann related the following racing and training-related injury statistics and observed that the injury rate is within reasonable levels:

	<u>2007</u>	<u>2008</u>	<u>2009</u>
Total Starts	2567	2574	2572
Total Injuries	45	52	41
Career ending injuries	2	0	2
Catastrophic	3	7	3

TESTING:

For the 2009 race meet, Mr. Mann reported that the veterinary staff took 491 total samples from all first-place winning horses and randomly selected horses from the racetrack. There were 491 blood samples taken, 413 urine samples taken and 441 samples taken from horses finishing in the money.

MEDICATION VIOLATIONS:

Mr. Mann reported as follows:

There were a total of eleven (11) unauthorized medication violations reported by Industrial Laboratories during the 2009 meet, which is a violation of Colorado Racing Commission Rule No. 5.301 – Unauthorized Medication. Of these,

- Two (2) violations reported were for the drug *Caffeine*, which is an ARCI Class II drug. No split sample testing was requested. Stipulations were entered into for both violations. A suspension was ordered along with disqualification of both horses and redistribution of the purses.
- Six (6) violations of the drug *Clenbuterol*, which is an ARCI Class III drug. (One case was heard by the Arapahoe Park Board of Stewards, a suspension was ordered as well as a five hundred dollar (\$500.00O fine and the disqualification of the horse and redistribution of the purse. A stay was requested and granted of the penalty phase of the order and the matter is awaiting final adjudication. The five (5) remaining violations are still being adjudicated.)
- One (1) reported violation for the drug *Methylprednisolone*, which is an ARCI Class IV drug. No split sample testing was requested and an administrative hearing was held before a Department of Revenue Hearing Officer. A five hundred dollar (\$500) fine was imposed and a fifteen (15) day suspension was ordered; the horse in question was disqualified and the purse was redistributed.
- Two (2) violations of the use of *Phenylbutazone*, above the threshold limits set in Colorado Racing Commission Rule #5.312. The Department of Revenue Hearing Office ordered the imposition of a two hundred dollar (\$200) and a five hundred dollar (\$500) fine as required by rule, along with the disqualification of one horse and redistribution of that purse because of the level of the overage and in accordance with the applicable Rule.

REPORTED USE OF AUTHORIZED MEDICATION:

Lasix

During the 2009 race meet, the authorization and reported use of **first time** Lasix was still confusing to the Practicing Veterinarians and Trainers. The Division Veterinarian required a form to be filled out and signed by the horse's trainer and practicing veterinarian indicating that both parties felt it

was in the best interests of the horse to be administered Lasix pursuant to Colorado Racing Commission Rule No. 5.317. Several horses that participated in racing were administered Lasix for the first time without the form being submitted. On several occasions, announcements had to be made to the public concerning the use of first time Lasix when no reference was made to it in the official program. Administrative penalties in the form of fifty-dollar (\$50) fines were issued to the horse's trainer for violations of this rule.

Mr. Mann assured the Commission that, during the off season, the Division would continue to work with the horsemen's rules committee and the practicing veterinarians during the rule review workshops regarding Colorado Racing Commission Rule No. 5.317 and would bring forward any proposed modifications to the Commission for its review.

REGARDING ADMINISTRATIVE MATTERS AND DIVISION OF RACING EVENTS PERSONNEL:

The Board of Stewards for 2009 was composed of: Senior State Steward Tuck Miller, State Steward Francy Martin and Association Steward Gale Davey. The Board issued twenty (20) administrative rulings. Of the twenty rulings, five (5) rulings ordered a penalty and/or racing license suspension. Total fines for the meet amounted to \$850.00.

- There were seven (7) disqualification/replacement rulings issued.
- There were twenty-seven (27) Administrative Citations issued. Total fines for the meet were \$3,300.00.

<u>REGARDING DIVISION RANDOM DRAW – DRUG AND ALCOHOL TESTING</u>

The Division of Racing Events performed random drug testing pursuant to Commission Rule No. 3.437 during Arapahoe Park's 2009 race meet. The policy for performance of said testing was the same as last year. A representative from the Colorado Horse-Racing Association or Arapahoe Park witnessed the drawing of the names. Five lists were generated from the license validation files. From these five lists, one name was drawn for each of the five days, Wednesday through Sunday, for the five (5) different job categories listed below:

- Trainers, Assistant Trainers, Owners/Trainers
- Jockeys
- Exercise Riders, Pony Persons, and Miscellaneous
- Grooms
- Racing Officials

There were two (2) licensees who were tested 'For Cause' pursuant to Colorado Racing Commission Rule No. 3.437. Both licensees tested negative for drugs and alcohol.

REGARDING ARAPAHOE PARK ASSOCIATION RESPONSIBILITIES:

RACETRACK:

This year, a significant amount of rain fell during the first several weeks of the race meet. There was even a tornado that caused the cancellation of one performance. The Track Superintendent and his staff did a good job in maintaining a safe racetrack on the sloppy days. The Track Superintendent reported on race days to the public that the depth of the racetrack cushion was three (3) inches. No water well issues were reported. Overall injuries were up. No major complaints about the surface were reported to the racing officials or the Division.

American TeleTimer, the service provider of the timing system, completed a rewiring of its system. The system worked well with a few problems with the electronic eyes during the longer races.

RACING OFFICE:

Arapahoe Park installed Encompass Software for its Racing Department, which included the Horseman's accounts. Due to the fact that it was a new product, it took the entire meet for those using this software to learn all of its functions and produce an accurate racing program every time. The Racing Secretary and his staff practically trained themselves with the help of an off-track consultant to work with the new product. The software is Internet-based and downloads past performance information from Equibase.

The Racing Office complied with Colorado Law and Division policies concerning the proper transfer of claimed horses receiving a brand inspection before the transfer of ownership occurred.

REGARDING THE VIDEO PATROL:

Again this year, International Sound Corporation, Arapahoe Park's contractor for video patrol, was able to provide some training for its video camera operators and, also, have its employees attend the pre-meet meeting with the Board of Stewards and Arapahoe Park Management as recommended by the Division. At this meeting, the Board was able to explain its needs to the video operators in capturing the running of the race. Most of the operators were returning employees from the 2008 live race meet. This was especially helpful during review of races with Division staff and patrons. On the whole, the Audio-Visual crew handled their duties very well and they were very cooperative.

REGARDING ARAPAHOE PARK SECURITY

Stable Gate: Arapahoe Park hired a temporary employee service to help maintain staffing of the Stable Gate. The Division's Enforcement Section and the Association provided training. There were several employees who returned from last year's meet. The Division also hired a temporary compliance investigator to help the Security staff and Division Test Barn personnel to ensure that proper health paperwork was provided before the horses entered the barn area. This temporary Division staff member helped greatly with the organization of the health records. There were a few instances when Division Investigators were assigned to verify health records of horses for compliance on race days.

Allowing only one guard to operate the Stable Gate makes it difficult for the guards to roam the backside in order to find and handle violations of Arapahoe Park's Stable Area Policies and/or the Stewards' Guidelines and Ground Rules, address reports of disorderly conduct or access to the Barn area by unlicensed or unescorted individuals as well as any horse welfare issues.

The graveyard shift closed the Stable Gate from 10:00 P.M. to 5:00 A.M. to all vehicle access accept in emergency situations.

Division Investigators performed random checks of the barn area for the purpose of citing unlicensed individuals and finding violators/violations of the above-referenced policies. Several individuals were escorted out of the barn area during the meet for failure to be licensed, for failure to have visitor's passes and/or for violating Arapahoe Park's and/or Division rules and policies.

<u>Grandstand & Paddock:</u> No serious incidents were reported to the Division from the Grandstand or Paddock. There were two reports of fighting among patrons. The off-duty Sheriff's Officer, Division Investigators and Association Staff handled both instances.

A Division Investigator was assigned to visit the paddock during live racing to check licenses to ensure compliance of the restricted area. The Paddock Judge and Division Staff enforced the new toe grab rule. Two horses were scratched for violating the new rule. Mr. Mann observed that plastic stall mats were installed this season. He stated that he was pleased that these violations of the toe grab rule were detected, but noted that it would be an ongoing process to determine whether the use of toe grabs is helpful to horses or not.

In summation, Mr. Mann offered the following list of recommendations for improvements to be made prior to the 2010 Arapahoe Park live race meet:

RECOMMENDATIONS RELATING TO TEST BARN MAINTENANCE:

- That, at the beginning and throughout any future racing seasons, new dirt and ground rubber continue to be added to the walking surface to repair ruts and soften the walking surface for the horses and their handlers.
- That the potholes should be repaired or that the wash rack surfaces be resurfaced.
- That Arapahoe Park be required to continue to maintain proper water drainage behind the wash rack areas.

RECOMMENDATIONS RELATING TO THE RACETRACK:

- That Arapahoe Park, through its timing service provider, should continue to troubleshoot, repair and/or replace the timing wiring system contained in the inside rail and the electronic track distance timing eyes throughout the racetrack, wherever necessary. If necessary, the timing wiring system should also be troubleshot and/or repaired up to the timing computer located in the Stewards' Stand.
- That the Track Superintendent not hold more than one Racing Official position.

RECOMMENDATIONS RELATING TO THE RACING OFFICE:

- That the Racing Secretary should ensure that only authorized persons are allowed to be behind the counter during the time that entries are being taken. All accesses to the Racing Office restricted area during the time of entry-taking should have locking devices. This restricted area should include the Racing Secretary's office and access to this office through the Bookkeeper's office should also be locked during the time that entries are being taken. The Racing Secretary shall allow visitors to his office by escort.
- That the Racing Secretary should have the Racing Office maintain and post to the licensees the written schooling lists for the Starter and Paddock. Additionally, the Racing Secretary should ensure that the Stewards' and Veterinarian's lists are updated properly and posted.
- That the Racing Secretary should continue to train and supervise Racing Office staff in the proofing of the entries. All Racing Office staff should be trained in the use of the new Encompass software.

RECOMMENDATION REGARDING VIDEO PATROL:

• That the pre-meet meeting continue to be held with the Board of Stewards, Arapahoe Park Management and the video operators. This meeting will address the needs and expectations of the Board for their race review.

RECOMMENDATIONS RELATING TO SECURITY:

- That Arapahoe Park management should review the Security Director position and responsibilities for future live racing meets.
- That Arapahoe Park should continue to review its staffing of the Stable Gate to ensure enforcement and compliance with the racetrack's internal policies and the policies of the Division and the Colorado Racing Commission.
- That Arapahoe Park should continue to employ an off-duty sheriff's deputy during live race days.

Mr. Mann expressed his appreciation to Mr. William Powers, Arapahoe Park's Director of Racing and Plant Facilities Manager, for solving problems when they arose, to all of the Arapahoe Park staff members and to Mr. Shannon Rushton, Executive Director of the Colorado Horse-Racing Association, as well as to all of the breed organizations, for their support, assistance and cooperation during Arapahoe Park's 2009 race meet. Mr. Mann stated that, overall, Arapahoe Park's 2009 season was quite successful thanks to all concerned. Mr. Powers noted that, despite the poor economic climate, Arapahoe Park continued to perform above the national average in terms of handle and attendance tallies. He observed that Arapahoe Park undertook various marketing and promotional ventures, such as the publication of coupons, in order to draw patrons to the racetrack.

Mr. Mark McGregor, President of the Colorado Horse-Racing Association, commented that, in general, members of the horseracing community had offered positive feedback concerning the conduct of the 2009 live Arapahoe Park race meet. He noted that the horseracing colony wishes to bring certain issues before the Commission regarding the testing and hearing processes.

A motion was made by Commissioner Pretti, seconded by Commissioner Vail and unanimously carried to approve all of Mr. Mann's recommendations and to accept the end of meet report for Arapahoe Park's 2009 live racing season as presented. The Commission complimented Mr. Mann on the comprehensiveness of his report.

Approval of Greyhound Welfare and Promotion Form – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, reviewed the text of a proposed application form for the release of monies from the Greyhound Purse, Welfare, Adoption and Greyhound Racing Promotion Fund with the Commission. He stated that, to the best of his knowledge, the draft application form contains all information requested by the Colorado Racing Commission Rules. Mr. Hartman recommended that, following its consideration of the subject document, the Commission grant approval for the Division to incorporate the text into a formal application format with the intention of making it available to fund applicants by mid-December via the Division's website (Internet) and electronic messaging and, then, set the April meeting date for fund disbursal.

Discussion ensued during which Mr. Melvin Johnson, a member of the Colorado Greyhound Breeders Association, and other interested parties asked for clarification of applicable terms and conditions relating to approval of fund disbursement.

Following review, a motion was made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to adopt the application form for release of monies from the Greyhound Purse, Welfare, Adoption and Greyhound Racing Promotion Fund as presented by Mr. Hartman.

Consideration of Request to Schedule Formal Rule-Making Hearing and Announcement Regarding Rule Review Workshop – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, announced that, in anticipation of commencing the annual rule-making process and in accordance with standard procedure, the first rule review workshop would be conducted on Tuesday, November 10, 2009 in the Gaming Conference Room (Conference Room 110) at 1881 Pierce Street, Lakewood, Colorado. He invited anyone wishing to participate in the rule review process to attend this discussion session. He requested that those persons wishing to discuss proposals for new rules, proposed amendments to existing rules or proposals for rules to be repealed bring to the workshop. Mr. Hartman noted that, at the present time, the Division would only be bringing forward a packet of proposed Model Rules from the Association of Racing Commissioners International for discussion.

Mr. Hartman requested that the Commission proceed with the scheduling of its annual Rule-Making Hearing. He advised the Commission that, subsequent to the rule review workshop, the Division of Racing Events would prepare a document containing proposed new rules and rules to be amended or repealed based upon recommendations made by staff and industry members, although the Division would anticipate receipt of additional rules for incorporation into the rules packet. Mr. Hartman stated that copies of this material would be made available in the near future via electronic messaging for those on the agenda mailing list and in printed form for distribution prior to the February 2010 Rule-Making Hearing.

Based upon Mr. Hartman's request, a motion was made by Commissioner Alkire, seconded by Commissioner Wells and unanimously carried to direct the Division to schedule a formal Rule-Making Hearing during the Commission's February 9, 2010 meeting, which will be held in Conference Room 110 (Gaming Conference Room) at 1881 Pierce Street, Lakewood, Colorado.

<u>Presentation by Representatives of the Colorado Horse-Racing Association Regarding Arapahoe Park's 2009 Live Race Meet – Mark McGregor, Shannon Rushton, et.al</u>

Mr. Mark McGregor, President of the Colorado Horse-Racing Association (CHA), introduced himself and numerous members and officers in the CHA and various Colorado breed organizations to the Commission. Mr. McGregor emphasized that the persons appearing before the Commission at this time wished to offer positive and constructive proposals for collaborative changes to be made with Commission and Division support to improve the existing sample testing and hearing procedures. He observed that the CHA desired to apprise the Commission of several critical issues that it believes need to be resolved in order for all horsepersons and jockeys to have a "level playing field" and in order to protect the integrity of the horse racing industry in Colorado. Specifically, Mr. McGregor asserted that the existing laboratory testing process, including that involving split sample testing, and the resultant hearing process need "corrective action, including a defined, rigid timeline."

Discussion ensued during which members of the CHA and representatives of the various breed organizations reported on several incidents involving lengthy delays in obtaining test results, especially those involving split sample testing, in stays of execution being granted that prevented hearings and adjudication of violations from taking place in a timely manner and other circumstances that afforded horses the opportunity to race when they should have been prevented from doing so.

Mr. Hartman recommended that the Commission consider establishing a task force comprised of a Commission representative, a limited number of representatives from the CHA/horse racing community, Assistant Attorney General Tina Bowman, Official Racing Chemist Petra Hartmann, Mr. Bruce Seymore, Director of Racing

Operations for Mile High Racing and Entertainment, and himself to examine and address the issues and alleged problems with the testing and hearing procedures. The Commission endorsed Mr. Hartman's recommendation. Commissioner Vail agreed to serve as the Commission representative on the task force.

Mr. Hartman inquired about the feasibility of holding a meeting of the task force this month (November 2009) and it was agreed by those delegates in attendance that this would be desirable. The Commission encouraged the task force members to proceed as expeditiously as possible to begin considering the matters that were raised today. Commissioner Pretti observed that, based upon this discussion, the Commission has been made aware of the unintended consequences that occur when members of the racing community operate under an unfair advantage, such as a lengthy postponement of a hearing or a delay in obtaining sample test results.

<u>Presentation by Melvin Johnson Regarding Simulcast Races, Greyhound Racing and Wagering</u>

Commission Chairwoman Alkire recognized Mr. Melvin Johnson, a representative of the Colorado Greyhound Breeder's Association, but cautioned that the Commission was aware of the history and status of the greyhound racing industry and was desirous of hearing potentially positive recommendations for its future.

Mr. Johnson stated that he would discuss the following topics: 1) proposals for new rules and a new definition relating to the Colorado Greyhound Purse, Welfare and Adoption Fund and eligibility to apply for release of funds; and 2) the trust fund application approved by the Commission. Mr. Johnson asked the Commission to request issuance of Attorney General's Opinions regarding the following: 1) the intent of the citizens of Colorado to authorize pari-mutuel wagering on live greyhound racing in 1948; 2) simulcasting of greyhound races in the early 1980's as a business decision; 3) the intent of Senate Bill 90-99; 4) additional issues relating to Senate Bill 09-99; 5) simulcast facilities and simulcast races; and 6) additional issues relating to simulcast facilities and simulcast races. The Commission declined Mr. Johnson's request for Attorney General's Opinions based upon its determination that Mr. Johnson's contentions and arguments failed to demonstrate a need for Attorney General's Opinions and, therefore, it would be inappropriate to seek them.

Mr. Johnson alleged that anti-trust violations had occurred and that both Wembley and BLB were responsible for creating a monopolies and "exploiting greyhound racing in the State of Colorado". The Commission asserted that it did not have the jurisdictional authority to pursue any inquiry into allegations of anti-trust violations and explained to Mr. Johnson that, in order to proceed with such an inquiry, he would need to contact the Department of Justice.

Discussion continued during which Mr. Johnson made allegations concerning the illegality of allowing money derived from greyhound simulcasting to be accrued or utilized for supporting or subsidizing any horse racing activity. He urged the Commission to compel that all out-of-state simulcasting of greyhound races be immediately discontinued. The Commission and Mr. Hartman, Director of the Division of Racing Events, responded to Mr. Johnson's queries and assertions. Additionally, the Commission expressed its deep regret that, at this time, no live greyhound racing is being conducted in Colorado. However, the Commission advised that it could not comply with Mr. Johnson's request and did not believe that it would be either reasonable or proper to force the cessation of simulcasting of out-of-state greyhound races.

The Commission expressed its appreciation to Mr. Johnson for offering his comments and voicing his concerns.

<u>Update on Preparation of Format for Reporting Handle/Wagering Data – Dan Hartman/Greg Lamb</u>

Mr. Greg Lamb, Division Auditor, presented his revised statistical report depicting wagering activity on live and simulcast horse racing and greyhound simulcasting through September 2009. He inquired whether the Commission wished to have additional data/information provided and stated that he would be willing to make any modifications or adjustments to the report/format at the Commission's direction. Mr. Lamb stated that he appreciated the cooperation and assistance that he had been given by members of Mile High Racing & Entertainment's financial department.

Mr. Lamb stated that, based upon the Commission's request at its July 2009 meeting, he had compiled the subject statistical summary of horse and greyhound wagering activity/fund contributions by establishing major categories and breaking down the accumulated data on a monthly basis. He noted that the statistical report would always reflect the previous month's wagering activity. Mr. Lamb observed that the total handle generated from greyhound simulcast wagering has been a consistent \$2,000,000 each month and that the total handle derived from live horse racing and wagering on simulcast horse races has been consistent at approximately \$4,400,000. He stated that, based upon the stability of the handle figures, he could project that, by February 2010, approximately \$40,000 would be generated for the Greyhound Purse, Welfare, Adoption and Greyhound Racing Promotion.

The Commission accepted the subject report as presented, noting that it had no recommendations for any modifications to be made to it. The Commission thanked Mr. Lamb for his efforts in compiling the statistical data and producing an outstanding visual tool. No further action was taken.

<u>Announcement of Date, Time and Location of April 2010 Commission Meeting -- Dan</u> Hartman

Following review and discussion, the Commission announced that its April 2010 meeting would be held on **Tuesday, April 20, 2010 at Red & Jerry's**, located at 1840 West Oxford Avenue, Sheridan, Colorado at the regular meeting time of 9:30 a.m.

Adjournment

There being no further business to consider, the Commission adjourned its regular meeting at 12:40 p.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on <u>Tuesday</u>, <u>February 9</u>, <u>2010</u> in Conference Room 110 (Gaming Conference Room), 1881 Pierce Street, Lakewood, Colorado.

The undersigned hereby approve the foregoing Minutes.

MARILYN ALKIRE, CHAIRWOMAN
JACK PRETTI, VICE-CHAIRMAN
CHARLES VAIL, DVM, MEMBER
MARY SHARON WELLS, MEMBER
DANIEL KESTER, MEMBER