

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, April 3, 2012 in the Enforcement Conference Room 110 at 1881 Pierce Street, Lakewood, Colorado. Commission Chairman Jack Pretti called the meeting to order at 9:45 a.m.

Members Present

Jack Pretti, Chairman
Mary Sharon Wells, Vice-Chair
Charles Vail, DVM, Member
Daniel J. Kester, Member
Sean Beirne, Member

Staff Present

Dan Hartman, Director, Division of Racing Events
Pam Kilgore, Division Auditor
Susan Cariveau, Division Licensing Supervisor
Ashley Leary, Division Investigator
Y. E. Scott, Senior Assistant Attorney General representing the Division of Racing Events
Sherry Gunnell, Assistant to the Division Director

Also Present

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

Approval of Minutes of March 16, 2012

A motion was thereupon made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to approve the minutes of March 16, 2012 as submitted.

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

Ms. Pam Kilgore, 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 \$146,000, 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 2012. Mr. Mark McGregor, President of the Colorado Thoroughbred Breeders' Association, appeared and spoke on behalf of his organization.

Ms. Kilgore explained that, by Rule, no breed organization could request more than 80% (eighty percent) of its total accrual. She stated that she had itemized the amounts accrued by the Colorado Thoroughbred Breeders' Association during the period of January through February 2012 and had prepared a report reflecting her projections, noting that the amount requested by the Colorado Thoroughbred Breeder's Association would approximate 15% of their annualized accrual and would be statutorily allowable. Ms. Kilgore stated that she was confident that sufficient funds would be available for the requested amount of \$146,000 to be distributed to the Colorado Thoroughbred Breeder's Association. Ms. Kilgore stated that she would perform another audit of the purse fund monies in order to confirm that the requested amount would be available for distribution by July 1, 2012.

A motion was made by Commissioner Kester, seconded by Commissioner Wells and unanimously carried to authorize early distribution of \$146,000 to the Colorado Thoroughbred Breeder's Association by July 1, 2012 conditioned upon confirmation of the availability of funds.

Recess of Regular Business Meeting/Convening of Continued Rule-Making Hearing

At 9:50 a.m., Chairman Pretti recessed the regular business meeting for the purpose of convening the continued Rule-Making Hearing.

Continued Rule-Making Hearing

The Rule-Making Hearing, which was originally convened on Tuesday, March 16, 2012, was continued until Tuesday, April 3, 2012 at 1881 Pierce Street, Conference Room 110, Lakewood, Colorado. Chairman Pretti convened the continued Rule-Making Hearing at 9:50 a.m.

Mr. Dan Hartman, Director of the Division of Racing Events, explained that the purpose for continuing the Rule-Making Hearing until today was to afford representatives of the Jockey's Guild and the Colorado Horse-Racing Association an opportunity to hold a mediated discussion concerning their opposing positions regarding proposed amended rule 7.218 in an attempt to resolve them. He advised that the discussion had not taken place per the Commission's mandate. However, Mr. Hartman stated that he had conversed with representatives of the Jockey's Guild and, after considering their views and acknowledging that their alternate rule proposal had been adopted by the Association of Racing Commissioners International, it would be the Division's recommendation that the Commission adopt this version of rule 7.218 with an additional modification proposed by Mr. Hartman.

Discussion ensued during which views, opinions and arguments for and against adoption of the different rule proposals were presented and considered by the Commission. During this time, the Commission expressed its disappointment that the two dissenting groups had not held the Commission-mandated consultation.

Following lengthy discussion and after taking into consideration the opinions that were expressed by all interested parties and, further, after acknowledging that the alternate proposed version of Rule 7.218 has been adopted as a Model Rule by the Association of Racing Commissioners International and is recommended for adoption by the Division of Racing Events, a motion was made by Commissioner Wells, seconded by Commissioner Vail and unanimously carried to adopt the proposed alternate version of Rule 7.218 of the Colorado Racing Commission Rules submitted by the Jockey's Guild and further modified by Mr. Hartman and, as part of the motion to adopt, the Commission incorporated the Statement of Statutory Authority, Basis and Purpose into the rules. A copy of the subject rule is attached hereto and made a part of these minutes.

The Commission expressed its confidence that all persons in the Colorado racing community affected by Rule 7.218 would continue to engage in a dialogue regarding the rule and seek resolution of their differing positions. The Commission urged all interested parties to bring their ideas concerning the subject rule forward during the next cycle of rule review workshops.

There being no further rules to consider, a motion was made by Commissioner Wells, seconded by Commissioner Vail and unanimously carried to adjourn the Rule-Making Hearing at 10:50 a.m.

Appreciation for Efforts of the Colorado Horse-Racing Association

Subsequent to the adjournment of the Rule-Making Hearing, the Commission expressed its gratitude to the members of the Colorado Horse-Racing Association for their ongoing efforts on behalf of the Colorado horse-racing community and voiced regret for any misunderstanding or confusion that may have occurred concerning the consultation.

Recess of General Session/Conduct of Hearings

At 11:10 a.m., a motion was made by Commissioner Wells, seconded by Commissioner Vail and unanimously carried to recess the general session and to declare the meeting opened for the purpose of conducting the continued appeal hearings.

As a preliminary matter, Mr. Dan Hartman, Director of the Division of Racing Events, observed that the Commission had received the closing briefs from Mr. James Kreutz, Attorney for the Appellants, and from Ms. Y.E. Scott, its Senior Assistant Attorney General, by the close of business on March 16, 2012 and had determined that it would render its decisions in each case at today's meeting. Mr. Hartman recommended that the Commission render separate decisions in each of the three cases and include on an individual basis the reasons and deliberations leading to its group determinations. The Commission accepted Mr. Hartman's recommendation.

Continued Appeal Hearing – In the Matter of Licensees Farrell Christoffersen (Trainer) and Willard Burbach (Owner) -- Case Number 11-0870

Chairman Pretti reconvened the continued appeal hearing in the matter of Trainer Farrell Christoffersen at approximately 11:10 a.m.

Commissioner Wells stated for the record that the members of the Commission had received the pre-hearing statements on behalf of both Mr. Christoffersen and the Colorado Racing Commission, the notices of appeal and complete transcripts of all relevant matters in this case and the closing briefs from the attorney representing the Division of Racing/Colorado Racing Commission and the Appellant's attorney. She observed that, in her estimation, the circumstances support the recommended penalty imposed by the hearing officer and, based upon her review of the transcripts and closing briefs, she found little in mitigation to support a lesser penalty, especially when Colorado Racing Commission Rules 5.301 and 5.304 were considered.

Further, Commissioner Wells asserted that the Commission does not believe that either the owner or the trainer of the affected horse was misled by the content of the document entitled "Colorado Division of Racing Events Therapeutic Medications Withdrawal Times". She noted that the document in question, which was made available to all concerned parties, contains a full disclaimer concerning medication usage and specifies that the information provided is merely a guideline and is not to be construed in any way to guarantee that other factors, such as weight, age, stress and so on, could not affect the horse.

Additionally, Commissioner Wells commented that the use of certain types of equipment by the Division's approved testing laboratory is not governed by contract and that the State is urged under the Commission's rules to seek innovative and efficient methods of testing to ensure compliance with, among other rules, Colorado Racing Commission Rule 5.301, which states in pertinent part "No person shall administer or apply or cause to be administered or applied to any animal participating in a race any unauthorized medication". She stated that this rule is in effect and means "zero tolerance. No medication." A motion was thereupon made by Commissioner Wells and seconded by Commissioner Vail to support the penalty recommended by the hearing officer and that it be imposed and adopted by the Commission.

At this time, the following comments on behalf of the motion were offered by the other members of the Commission:

- Commissioner Vail voiced his support for Commissioner Wells' conclusions, particularly with respect to "zero tolerance", noting that "we're right on the cusp of a firestorm about drugs and medications and horse racing, really worldwide" and that "zero tolerance makes sense to me".
- Commissioner Kester stated that "zero tolerance is the rule" and that the published guidelines were only guidelines and meant to assist, but not to be used otherwise.

- Commissioner Beirne concurred with the previous observations and noted that several comments had been made throughout the hearing process regarding a “level playing field”. His view was that the Commission was “providing a level playing field with zero tolerance.” Commissioner Beirne advised that, in his opinion, the hearing officer had addressed the mitigating circumstances and, therefore, his opinion should be upheld.
- Commissioner Pretti endorsed the motion by stating that many statements within the Colorado Racing Commission Rules address the use and presence of unauthorized medications as a result of testing and, in every instance, such usage is prohibited. He observed that, throughout the hearing in question, the presence of Methylprednisolone was never disputed in the testimony that was given and that given the mere presence of unauthorized medication in the system of a racing animal means that the animal is disqualified for the race for all placing purposes and for participating in the purse and awards. Commissioner Pretti declared that, in his view, the hearing officer was correct in his determination.

Commissioner Pretti called for a vote and each Commissioner responded “aye”. The motion was declared to have passed by a unanimous vote.

At approximately 11:20 a.m., a motion was made by Commissioner Vail, seconded by Commissioner Beirne and unanimously carried to close the hearing in the matter of Licensee Farrell Christoffersen and Owner Willard Burbach.

The above proceeding was stenographically recorded by Ms. Angela Smith and a copy of the transcript is on file in the main office of the State of Colorado Division of Racing Events.

Continued Appeal Hearing – In the Matter of Licensees Wesley Todd Giles (Trainer) and Melvin Neugebauer and Marty Neugebauer (Owners) -- Case Number 11-0869

Chairman Pretti reconvened the continued appeal hearing in the matter of Trainer Wesley Giles and Owners Melvin and Marty Neugebauer at approximately 11:20 a.m.

Commissioner Pretti stated that the Commission would entertain a motion.

- Commissioner Wells provided her reasons for reaching her decision in this case. She stated for the record that, during the hearing in question, there was no denial of the presence of the unauthorized medication, Methylprednisolone, and no testimony that denied zero tolerance. Additionally, she observed that there was no testimony presented to indicate that there were any mitigating circumstances that would have warranted granting a lesser penalty. Further, she expressed her belief that the testing methods used by Industrial Laboratories’ are appropriate and are in keeping with the State’s commitment to seeking innovative and efficient testing methods. A motion was thereupon made by Commissioner Wells and seconded by Commissioner Vail to support the penalty recommended by the hearing officer and that it be imposed and adopted by the Commission.
- Commissioner Vail reaffirmed the Commission’s longstanding trainer responsibility rule that asserts that the trainer “absolutely ensures the health, the presence or absence of medications in the racing animal”.

At this time, the following comments on behalf of the motion were offered by the other members of the Commission:

- Commissioner Beirne voiced his support for the motion as made by Commissioners Wells and Vail. He stated that he agreed with their statements regarding zero tolerance and, also, with the hearing officer’s consideration of all mitigating factors involved and the correctness of his decision.
- Commissioner Kester supported the motion without further comment.
- Commissioner Pretti endorsed the determination of the hearing officer and observed that the question of threshold limitations or acceptance of unauthorized medications has been clearly established and the threshold level is zero.

Commissioner Pretti called for a vote and each Commissioner responded “aye”. The motion was declared to have passed by a unanimous vote.

At approximately 11:25 a.m., a motion was made by Commissioner Kester, seconded by Commissioner Vail and unanimously carried to close the hearing in the matter of Licensee Wesley Giles and Owners Melvin and Marty Neugebauer.

The above proceeding was stenographically recorded by Ms. Angela Smith and a copy of the transcript is on file in the main office of the State of Colorado Division of Racing Events.

Continued Appeal Hearing – In the Matter of Licensee Elizabeth Brand (Owner/Trainer and Authorized Agent) -- Case Number 11-0895

Chairman Pretti reconvened the continued appeal hearing in the matter of Owner/Trainer and Authorized Agent Elizabeth Brand at approximately 11:25 a.m.

Commissioner Wells stated for the record that the members of the Commission had received the pre-hearing statements on behalf of both Ms. Brand and the Colorado Racing Commission, the notice of appeal and a complete transcript of the hearing in this case conducted in February 2012 along with the closing briefs from the attorney representing the Division of Racing/Colorado Racing Commission and the Appellant’s attorney. She observed that, in her estimation, the circumstances support the recommended penalty imposed by the hearing officer, noting that the hearing officer had identified some mitigating factors, which could support a lesser penalty in the case. Commissioner Wells asserted that the Commission does not believe that either the owner or the trainer of the affected horse was misled by the content of the document entitled “Colorado Division of Racing Events Therapeutic Medications Withdrawal Times”. She noted that the document in question, which was made available to all concerned parties, contains a full disclaimer concerning medication usage and specifies that the information provided is merely a guideline and is not to be construed in any way to guarantee that other factors, such as weight, age, stress and so on, could not affect the horse.

Additionally, Commissioner Wells commented that the use of certain types of equipment by the Division’s approved testing laboratory is not governed by contract and that the State is urged under the Commission’s rules to seek innovative and efficient methods of testing. Whereupon, a motion was made by Commissioner Wells and seconded by Commissioner Vail to support the penalty recommended by the hearing officer and that it be imposed and adopted by the Commission. Commissioner Vail quoted a portion of text from the hearing officer’s recommendation: “After careful consideration of all the evidence submitted, there is little mitigation to suggest a lesser penalty is warranted.”

At this time, the following comments on behalf of the motion were offered by the other members of the Commission:

- Commissioner Kester supported the motion without further comment.
- Commissioner Beirne observed that the hearing officer addressed the mitigating factors in this case and he would support the motion.
- Commissioner Pretti stated that he would support the hearing officer’s final determination. He advised that the post-race specimen samples taken from the horse confirmed the presence of an unauthorized medication in its system and, therefore, he would vote to uphold the hearing officer’s determination in its entirety.

Commissioner Pretti called for a vote and each Commissioner responded “aye”. The motion was declared to have passed by a unanimous vote.

At approximately 11:30 a.m., a motion was made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to close the hearing in the matter of Licensee Elizabeth Brand.

The above proceeding was stenographically recorded by Ms. Angela Smith and a copy of the transcript is on file in the main office of the State of Colorado Division of Racing Events.

Closure of Hearings/Reconvening of General Session

At 11:30 a.m., a motion was made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to close the hearings and to reconvene the general session for the purpose of considering any other matters to come before the Commission.

Discussion Regarding Document Entitled “Colorado Division of Racing Events Therapeutic Medications Withdrawal Times” – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, requested comments from the Commission regarding the document entitled “Colorado Division of Racing Events Therapeutic Medications Withdrawal Times”, as published in 2011 and made available to the racing community at Arapahoe Park for its 2011 live race meet. He inquired whether it would be the Commission’s desire to review and give further consideration to the existing document and determine what, if any, changes might need to be made to it prior to the upcoming live race meet.

Discussion ensued during which the Commission and certain members of the Arapahoe Park horse-racing community offered views and opinions concerning the document and its usefulness. Certain Commission members voiced some reservations regarding the value of the subject document and questioned whether it has been and/or might be confusing to racing participants at Arapahoe Park. Additionally, the Commission observed that it did not believe that the document in question should have been issued and distributed to the horse-racing community without prior Commission approval, which was not sought in 2011.

Commissioner Vail stated that, prior to the commencement of live racing at Arapahoe Park, he intends to conduct a meeting with all practicing veterinarians who will be active at the racetrack to review the document known as “Horse Racing Medication Guidelines and Veterinary Practices” and, also, any supplementary material to be included in the Horsemen’s Information Packet. During the course of its discussion, the Commission determined that it would be advisable for Mr. Hartman to review the document in its current form and, if possible, bring his proposed changes before the Commission for due consideration prior to Commissioner Vail’s meeting with the practicing veterinarians. Mr. Hartman agreed to review the document entitled “Colorado Division of Racing Events Therapeutic Medications Withdrawal Times” and offer suggested modifications to it after which the Commission could make a final decision regarding its continued publication and issuance. Mr. Hartman stated that he would place this subject on the Commission’s May 8, 2012 meeting agenda. No further action was taken at this time.

Adjournment

There being no further business to consider, a motion was made by Commissioner Vail, seconded by Commissioner Wells and unanimously carried to adjourn the regular meeting of the Colorado Racing Commission at 11:45 a.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on **Tuesday, May 8, 2012** in Conference Room 110 (Enforcement Conference Room), 1881 Pierce Street, Lakewood, Colorado.

The undersigned hereby approve the foregoing Minutes.

JACK PRETTI, CHAIRMAN

MARY SHARON WELLS, VICE-CHAIR

CHARLES VAIL, DVM, MEMBER

DANIEL KESTER, MEMBER

SEAN BEIRNE, MEMBER