RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, February 8, 2011 at 1881 Pierce Street in Conference Room 110, Lakewood, Colorado. Commission Chairman Jack Pretti called the meeting to order at 9:35 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 Robert "Duke" Mann, Horse-Racing Coordinator Mark Brown, Division Enforcement Coordinator Pam Kilgore, Division Auditor Donald Burmania, Division of Gaming Y. E. Scott, Senior Assistant Attorney General Sherry Gunnell, Assistant to the Director

Also Present

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

Approval of Minutes of November 9, 2010

A motion was thereupon made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to approve the minutes of November 9, 2010 as submitted.

<u>Scheduled Adjudicatory Hearing – In the Matter of MARIA GONZALEZ (Failure to Comply with Commission Order #10-01)</u>

Chairman Pretti convened the scheduled adjudicatory hearing in the matter of Owner Maria Gonzalez at 9:40 a.m. Ms. Gonzalez was not present and was not represented by legal counsel. Ms. Y. E. Scott, Senior Assistant Attorney General, served as legal counsel for the Division of Racing Events.

Sworn testimony was given by Mr. Robert "Duke" Mann, Horse-Racing Coordinator for the Division of Racing Events.

During the course of the hearing, the following exhibits were entered into the record:

Exhibit A: A copy of a Notice of Hearing and Purse Redistribution dated and

sent via surface mail on January 8, 2010 advising Ms. Gonzalez

that an adjudicatory hearing would be conducted at the

Commission's February 9, 2010 meeting. The Commission took notice that Ms. Gonzalez did not respond to the Notice of Hearing

and failed to appear for the hearing.

Exhibit B: A copy of Commission Order #10-01 dated March 5, 2010 and

sent via surface mail on March 9, 2010 ordering the return of the third-place purse of \$1,580 for the Arapahoe Park Speed Challenge from which Ms. Gonzalez' horse "First to Blurr" was disqualified

and to which Ms. Gonzalez did not respond.

Exhibit C: A copy of a cover letter dated October 15, 2010 indicating that Ms.

Gonzalez had failed to honor Colorado Racing Commission Order

#10-01; and

Exhibit D: A copy of a Notice of Hearing and Purse Redistribution dated and

sent via surface mail on December 3, 2010 advising Ms. Gonzalez

that an adjudicatory hearing would be conducted at the

Commission's February 8, 2011 meeting. The Commission took notice that Ms. Gonzalez did not respond to the Notice of Hearing

and has failed to appear for the hearing.

The Commission affirmed that Ms. Gonzalez was in violation of 12-60-503(2)(a), 12-60-507(1) and 12-60-802 of the Colorado Revised Statutes. After taking notice that Ms. Gonzalez had failed to comply with a direct Order of the Colorado Racing Commission and had failed to notify or communicate with the Division Director or any Division staff member regarding this matter, a motion was made by Commissioner Vail that Ms. Maria Guadalupe Gonzalez should not be licensed until such time as her outstanding indebtedness has been settled. The motion failed for lack of a second.

Further discussion ensued during which the Commission considered whether to suspend or revoke any racing license held by Ms. Gonzalez and expressed its view that Ms. Gonzalez should be required to appear before the Commission prior to being allowed to re-apply for any form of racing license. The Commission deliberated the matter and concurred that the racing license(s) should be revoked, noting that, pursuant to this revocation, under no circumstances would Ms. Gonzalez be considered eligible to seek licensure with the Colorado Division of Racing Events for a minimum of one year from the date of this Order and at no time prior to making full restitution of her outstanding indebtedness. Commissioner Vail amended his original motion to reflect that any and all occupational racing licenses issued to and held by Ms. Maria Guadalupe Gonzalez are hereby revoked until such time as she has remitted full payment of the outstanding thirdplace purse money amounting to \$1,580; and, further, that, should Ms. Gonzalez desire to be relicensed in Colorado after she has made full restitution, she is required to appear before the Commission before being considered eligible to re-apply for licensure. The motion as amended was seconded by Commissioner Wells and unanimously carried. The Commission directed that an Order be issued to Ms. Gonzalez reflecting this decision.

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.

Schedule March 2011 Commission Meeting

Pursuant to Division Director Dan Hartman's recommendation, a motion was made by Commissioner Beirne, seconded by Commissioner Vail and unanimously carried to schedule a Commission meeting on Tuesday, March 8, 2011 at 9:30 a.m. in Conference Room 110 at 1881 Pierce Street, Lakewood, Colorado.

Consideration of Report and Recommendation of the Race Review Committee: In the Matter of the Disqualification of the Horse "MOULIN ROUGE MAF" – Robert "Duke" Mann

As a preliminary matter, Division Director Dan Hartman provided a brief history concerning the establishment of the "Race Review Committee". He advised that, approximately three to four 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, Executive Director of Colorado 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", acting exclusively in an advisory capacity, 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 to 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 November 15, 2010, the Race Review Committee had met and conducted a hearing in the matter of Case No. 10-0944, the objection of Owner-Trainer Kenneth Danyluk to the decision of the Arapahoe Park Board of Stewards in Ruling #10-26 issued on August 22, 2010. The decision of the Board of Stewards in Ruling #10-26 had been to disqualify the horse "Moulin Rouge Maf", which ran in post-position #2 in the sixth race on August 22, 2010. On August 24, 2010, Mr. Danyluk filed a Statement of Objection under Colorado Racing Commission Rule #6.401.

Mr. Mann presented for Commission consideration the following background information relating to this matter:

- 1) That on August 22, 2010, the Board of Stewards at Arapahoe Park issued Ruling #10-26, "Disqualification Based Upon Running of a Race";
- 2) That the Board in the Disqualification Ruling disqualified the horse, "MOULIN ROUGE MAF", racing in the 2nd post position in the sixth race at Arapahoe Park Racetrack on August 22, 2010 and established a new official order of the finish for the subject race;
- 3) That, prior to the Disqualification Ruling, "MOULN ROUGE MAF" finished in first place in the subject race;
- 4) That, as a result of the Disqualification Ruling, "MOULIN ROUGE MAF" was demoted to second place in the subject race;
- 5) That, as a result of the Disqualification Ruling, "CAITLYNS HOT" was elevated to first place in the subject race;
- 6) That, on August 24, 2010, Kenneth Danyluk, a duly licensed Owner-Trainer in good standing with the Colorado Division of Racing Events and the trainer of record for the horse "MOULIN ROUGE MAF", filed a Statement of Objection with respect to the Disqualification Ruling. Mr. and Mrs. Robert Vickers were the duly licensed owners of the horse "MOULIN ROUGE MAF" and Mr. Travis Wales, a duly licensed jockey, was the rider aboard "MOULIN ROUGE MAF" in the subject race;
- 7) That, the Director of the Division of Racing Events performed the required review of the Objection for compliance with the "Race Review Committee Policy and Procedural Directive" and determined that the Division must establish and convene a Race Review Committee;
- 8) In response to the Objection, the Division established the Committee in accordance with the terms and guidelines of the Policy and set the hearing for November 15, 2010 at 10:30 a.m. at the Office of the Division of Racing Events, 1881 Pierce Street, Suite 108, Lakewood, Colorado 80214;
- 9) 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, Executive Director of Colorado Operations for Mile Hi Racing and Entertainment), and Jackie Weimer (duly licensed Owner-Trainer, Member of the Colorado Horse-Racing Association serving as the Horseperson's Representative); and

10) Robert J. ("Duke") Mann acted as the Chairperson of the Race Review Committee.

Mr. Mann advised the Commission that, after thorough review and after concluding that the Trainer's Objection set forth a meritorious claim, it was the unanimous decision of the Race Review Committee to request that the Colorado Racing Commission overturn the actions and decisions of the Board of Stewards regarding the disqualification of the horse, "MOULIN ROUGE MAF" in Case No. 10-0944 and to restore the horse, "MOULIN ROUGE MAF" to its original first place finish and to place the horse, "CAITLYNS HOT", in its original second place position in the order of finish. Therefore, the Committee's recommendation is that the Colorado Racing Commission overturn the decision of the Board and uphold the findings of the Race Review Committee as set forth in its report and determine that the original order of finish was correct and should be made the official order of finish.

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 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 and that no objections had been raised to the decision of the Race Review Committee, a motion was made by Commissioner Beirne, seconded by Commissioner Wells and carried by a majority vote to adopt the recommendation of the Race Review Committee in the matter of the horse, "Moulin Rouge Maf" (Case Number 10-0944). Commissioner Wells voted against the motion. Commissioner Vail abstained.

The Commission directed that an Order be issued reflecting that the official order of finish shall be the following:

First Place: "MOULIN ROUGE MAF"

Second Place: "CAITLYNS HOT"

Third Place: "MUST BE BURNING" Fourth Place: "STATUS SUMBOLL"

"ZELLS FRED" Fifth Place: Sixth Place: "GOLLY BRET" Seventh Place: "CHRISS SWA" Eighth Place: "ZELL OF HEARTS" Ninth Place: "CLUNK"

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

<u>Scheduled Appeal Hearing – In the Matter of the Objection to the Assessment of a</u> Double Jockey Mount Fee Filed by Licensee DONNA EATON

Chairman Pretti convened the scheduled appeal hearing in the matter of Owner Donna Eaton at 10:30 a.m. Ms. Eaton was present pro se via teleconference call, but was not represented by legal counsel. Ms. Y. E. Scott, Senior Assistant Attorney General, entered her appearance on behalf of the Division of Racing Events.

As a preliminary matter, Commissioner Vail recused himself from participation in the subject hearing.

The following persons gave sworn testimony:

- Robert "Duke" Mann, Horse Racing Coordinator and Investigator for the State of Colorado Division of Racing Events;
- Randy Blaseg, State Steward at Arapahoe Park's 2011 live race meet;
- Donna Eaton, Appellant in this matter;
- Dwain Eaton, Spouse of the Appellant in this matter; and
- Bruce Seymore, Executive Director of Colorado Operations for Mile High Racing & Entertainment

During the hearing, the following State's exhibits were entered into the record:

- Exhibit 1: Copy of State of Colorado Division of Racing Events' license application for Jockey Glen Murphy dated August 22, 2010 (with personal information covered);
- Exhibit 2: Copy of State of Colorado Division of Racing Events' license application for Owner Donna Eaton dated May 30, 2010 (with personal information covered):
- Exhibit 3: Copy of State of Colorado Division of Racing Events' license application for Jockey John Rochabrun dated July 21, 2010 (with personal information covered);
- Exhibit 4: Copy of Arapahoe Park Board of Stewards; Official Program for the tenth (10th) race on August 22, 2010 indicating the addition of Jockey Glen Murphy and the removal of Jockey John Rochabrun. Additionally, Program indicates "Equal DJM"*; 1
- Exhibit 5: Copy of Entry Blank dated August 19, 2010 for the Gold Rush Futurity, the tenth (10th) race on August 22, 2010, naming Jockey John Rochabrun to ride the horse "Behold De Buy" and listing Licensee Jimmy Jones as the horse's Trainer;
- Exhibit 6: Copy of Arapahoe Park's Horseman's Bookkeeper's Statement of Account for Jockey John Rochabrun crediting the account \$6,000 for a Double Jockey Mount for August 22, 2010;
- Exhibit 7: Copy of letter dated September 30, 2010 from Owner Donna Eaton protesting the imposition of the Double Jockey Mount fee;
- Exhibit 8: Copy of Supplemental Report composed by Investigator Robert "Duke" Mann reflecting his interview of State Steward Randy Blaseg concerning the Arapahoe Park Board of Stewards' decision to order payment of a Double Jockey Mount fee for the horse "Behold De Buy", when it raced on August 22, 2010;
- Exhibit 9: Copy of certified letter dated December 3, 2010 from Owner Donna Eaton requesting to appeal the Arapahoe Park Board of Stewards' Order of a Double Jockey Mount fee;
- Exhibit 10: Copy of three-page Notice of Hearing dated January 5, 2011 regarding Case No. 10-0953 in the matter of the appeal by Owner Donna Eaton of Arapahoe Park Board of Stewards' decision concerning the imposition of a Double Jockey Mount fee for the horse "Behold De Buy", when it raced in the Gold Rush Futurity on August 22, 2010;
- Exhibit 11: Copy of signed document entitled "Advisement of Rights" from Owner Donna Eaton;
- Exhibit 12: Copy of a letter and accompanying document entitled "Entry of Appearance" dated January 11, 2011 from Mr. Larry Porter, Attorney representing Owner Donna Eaton;
- Exhibit 13: Copy of a letter and accompanying document entitled "Withdrawal of Appearance" dated January 27, 2011 from Mr. Larry Porter, Attorney at Law;
- Exhibit 14: Copy of Colorado Racing Commission Rule #7.218;
- Exhibit 15: Copy of Colorado Racing Commission Rule #6.102; and
- Exhibit 16: Copy of Colorado Racing Commission Rules #6.120, 6.122 and 6.124

¹ - "Equal DJM" is abbreviation for "Equal Double Jockey Mount"

The following Appellant's exhibit was entered into the record:

• Exhibit A: Copy of statement from Trainer Jim Jones, the trainer of record for the horse, "Behold De Buy";

(Ms. Scott objected to the admission as Exhibit B of an article from The Thoroughbred Times that Mr. Jimmy Jones submitted with his personal statement. The Commission upheld Ms. Scott's objection and declined to accept and take notice of the document.)

Following review and consideration of the testimony and evidence presented, a motion was made by Commissioner Wells, seconded by Commissioner Kester and carried by a majority vote to uphold and sustain the findings of the Arapahoe Park Board of Stewards and to approve the Board's decision to order payment of a Double Jockey Mount fee of \$6,000 to Jockey John Rochabrun for the Gold Rush Futurity run at Arapahoe Park on August 22, 2010. Commissioner Beirne voted against the motion. The Commission directed that an Order reflecting its decision be issued by the Division of Racing Events.

At this time, Commissioner Vail rejoined the meeting.

The hearing concluded at 12:25 p.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>Request for Preparation of Declaratory Order – In the Matter of Colorado Racing</u> Commission Rule #7.218

Based upon the Commission's determination that the language of Colorado Racing Commission Rule #7.218 requires clarification, a motion was made by Commissioner Beirne, seconded by Commissioner Kester and unanimously carried to direct that the Rules Committee address the conflicting language in the rule and bring forward proposed modifications to eliminate any textual ambiguities in it.

Director Dan Hartman apprised the Commission that it would not be possible to affect necessary amendments to correct the text of this rule before the commencement of the 2011 Arapahoe Park live race meet and, therefore, it would be his recommendation that the Commission request Senior Assistant Attorney General Scott to prepare a Declaratory Order for Commission review establishing the interpretation of the subject rule to be in effect during the upcoming live racing season and, at the following Rule-Making Hearing, present the proposed revised version of the subject rule for further action. The Commission concurred with Mr. Hartman's recommendation and proceeded to direct that such a Declaratory Order be prepared and presented to the Commission at its March 8, 2011 meeting.

Closure of Regular Business Meeting

At 12:26 p.m., Chairman Pretti closed the regular business meeting for the purpose of convening the continued Rule-Making Hearing.

Scheduled Rule-Making Hearing

Pursuant to the published Notice of Rule-Making Hearing, Chairman Pretti convened the scheduled Rule-Making Hearing at 12:26 p.m.

Mr. Dan Hartman, Director of the Division of Racing Events, informed the Commission and attendees that the Division of Racing Events had complied with all preliminary rule-filing requirements, including submission of all rule proposals to the Office of the Secretary of State and the Department of Regulatory Agencies and

publication of the Notice of Rule-Making Hearing in the Colorado Registry, whereupon he presented the packet of rules for Commission review. Mr. Hartman apprised attendees that copies of the rules were available both in written form and on the Division's website. He stated that two rule review workshops open to all interested parties had been conducted to allow industry participation in the initial phase of the rule consideration process and that rule proposals had been solicited and accepted from industry representatives for presentation during this Hearing.

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

Based upon the inclement weather conditions and the inability of industry representatives to attend and participate in today's Rule-Making Hearing, it was the decision of the Colorado Racing Commission to continue the scheduled Rule-Making Hearing until its regular March 8, 2011 meeting. The Commission elected to entertain the comments of Jockey Guild representative, Mr. John Beech, regarding Colorado Racing Commission Rule #7.219.

At 12:35 p.m., a motion was made by Commissioner Well, seconded by Commissioner Kester and unanimously carried to continue this Rule-Making Hearing until the Commission's March 8, 2011 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.

Re-Opening of Regular Business Meeting

At 12:35 p.m., Chairman Pretti re-opened the regular business meeting.

Recess and Reconvening of Afternoon Session

The Commission recessed for lunch at 12:36 p.m. and reconvened for the afternoon session at 1:25 p.m. The Commissioners remained in attendance. An attendance sheet for the afternoon session is attached hereto and made a part of these minutes.

<u>Presentation Regarding Distribution of Owners/Breeders Awards and Supplemental Purse Fund Monies for Calendar Year 2010 -- Pamela Kilgore</u>

Ms. Pamela Kilgore, Division Auditor, informed the Commission that she had prepared a final accounting of the Owners/Breeders Awards and Supplemental Purse Fund monies for distribution to the various breed organizations for calendar year 2010. The Commission observed that, this past year, although some improvement in the accruals for all breeds was apparent, the fund sustained a loss of revenue due to significantly reduced interest rates and continued unsettled economic conditions. After acknowledging that the general economic climate remains precarious, the Commission observed that the fund would most likely continue to be negatively affected in calendar year 2011. Mr. Hartman explained that the law requires that the Owners/Breeders Awards and Supplemental Purse Fund accruals be retained as United States Treasury bills.

Ms. Kilgore reported that: 1) the total earnings from wagering in 2010 amounted to \$989,966.57; 2) that the total earned from 2009 uncashed tickets on both live and simulcast races was \$277,704.05; 3) that the interest earned in 2010 was \$6.83 and, after subtracting the bank fee of \$3,500.00, the total Owners'/Breeders' Awards and Supplemental Purse Fund accrual for 2009 was \$1,264,177.45.

Ms. Kilgore observed that, in 2008, the Commission released the funds in the Appaloosa escrow account to the Colorado Appaloosa Racing Association based upon its compliance with the by-law requirement for disbursement of its accrual. Also, in 2008,

2009 and 2010, Arapahoe Park accepted Mule races from California and, thus, an escrow account was established and will be maintained for that breed until such time as a Mule Breed organization in Colorado is recognized by the Commission to receive those funds. The difference between the total amount of the accrual and the total amount to be distributed/retained in escrow (\$117,266.70) reflects the \$137,000 advance that was approved by the Commission in April 2010 for release to the Colorado Thoroughbred Breeder's Association in July 2010 and a distribution of \$52,864.69 was made to Arapahoe Park pursuant to 12-60-704(5) of the Colorado Revised Statutes.

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

Colorado Thoroughbred Breeder's Association	\$874,341.95
Rocky Mountain Quarter Horse Association	178,668.91
Colorado Owners and Breeders of Racing Arabians	56,520.34
Rocky Mountain Paint Racing Club	3,959.17
Colorado Appaloosa Racing Association	884.92

The Commission took notice that a balance of \$12,496.68 remains from the escrowed harness purse monies. Additionally, the amount of \$305.48 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.

After considering Ms. Kilgore's final accounting of the Owners/Breeders Awards and Supplemental Purse Fund monies for distribution to the various breed organizations for calendar year 2010, a motion was made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to grant approval to the Division to request issuance of State warrants for disbursal of the reported fund accruals pursuant to statute.

Division Director Dan Hartman explained that a 2010 statutory change authorizes Colorado to enter into interstate compacts and collect Source Market Fees from out-of-state simulcast activity.

Presentation by Melvin Johnson

Mr. Melvin Johnson, President of the Colorado Greyhound Breeders' Association, addressed the Commission regarding a proposal to amend enacted Senate Bill 09-174. Mr. Johnson expressed his desire for the Commission and the Division of Racing Events to endorse his proposed amendment and assist in gaining legislative support for it. He contended that, by virtue of language contained in its mission statement, the Commission is obligated "to promote the best interests of racing", which he maintained are being compromised by a lack of live greyhound racing in Colorado.

Mr. Johnson urged the Commission to intercede with the Legislature on behalf of his organization's potential legislative initiative(s), but the Commission declined to do so stating it was not the proper entity to undertake sponsorship or endorsement of the proposal(s). The Commission and Division Director Dan Hartman explained to Mr. Johnson that, prior to proceeding with his plans to submit a proposal for consideration by the Legislature, he would need to obtain legislative sponsorship for an initial version of the measure that had been prepared by the Legislative Drafting Office. Further, the Commission stated that it could not advocate for Mr. Johnson's current proposal and declared that it would be inappropriate for it to offer any endorsement of it.

Mr. Johnson inquired whether the Commission could authorize the granting of race dates to the Colorado Greyhound Breeders' Association for the purpose of conducting a live greyhound meet at the Pueblo Greyhound Park facility. The Commission advised Mr. Johnson that, should a group/organization with a viable business plan to conduct a live greyhound race meet in Colorado submit a legitimate license application accompanied by complete financial disclosure statements reflecting fiscal stability, the Commission would gladly entertain it. However, the Commission

declared that, absent receipt of a license application and a specific request for live race dates, it would be unable to make such a business decision. Mr. Hartman advised Mr. Johnson that he would provide a new race meet license application form to him in the near future.

Consideration of Report and Recommendation of the Race Review Committee: In the Matter of the Disqualification of the Horse "HEATHER'S FANTASY" – Robert "Duke" Mann

Mr. Robert "Duke" Mann, Horse-Racing Coordinator for the Division of Racing Events, advised the Commission that, on November 15, 2010, the Race Review Committee met and conducted a hearing in the matter of Case No. 10-0943, the objection of Owner-Trainer Elizabeth Brand to the decision of the Arapahoe Park Board of Stewards in Ruling #10-23 issued on August 22, 2010, wherein the Board had disqualified the horse "Heather's Fantasy", which ran in post position #3 in the first race on August 22, 2010. On August 24, 2010, Ms. Brand filed a Statement of Objection under Colorado Racing Commission Rule #6.401.

Mr. Mann presented for Commission consideration the following background information relating to this matter:

- 1) That on August 22, 2010, the Board of Stewards at Arapahoe Park issued Ruling #10-23, "Disqualification Based Upon Running of a Race";
- 2) That the Board in the Disqualification Ruling disqualified the horse, "HEATHER'S FANTASY", racing in the 3rd post position in the first race at Arapahoe Park Racetrack on August 22, 2010 and established a new official order of the finish for the subject race;
- 3) That, prior to the Disqualification Ruling, "HEATHER'S FANTASY" finished in first place in the subject race;
- 4) That, as a result of the Disqualification Ruling, "HEATHER'S FANTASY" was demoted to fourth place in the subject race;
- 5) That, as a result of the Disqualification Ruling, "SLEW'S BET", was elevated to first place in the subject race;
- 6) That, as a result of the Disqualification Ruling, "MEADOW DANCER, was elevated to second place in the subject race;
- 7) That, as a result of the Disqualification Ruling, "LADY OF MISCHIEF, was elevated to third place in the subject race;
- 8) That, on August 24, 2010, Elizabeth Brand, a duly licensed Owner-Trainer in good standing with the Colorado Division of Racing Events and the owner and trainer of record for the horse "HEATHER'S FANTASY", filed a Statement of Objection with respect to the Disqualification Ruling. Mr. Jose Figueroa, a duly licensed jockey, was the rider aboard "HEATHER'S FANTASY" in the subject race;
- 9) That, the Director of the Division of Racing Events performed the required review of the Objection for compliance with the "Race Review Committee Policy and Procedural Directive" and determined that the Division must establish and convene a Race Review Committee;
- 10) In response to the Objection, the Division established the Committee in accordance with the terms and guidelines of the Policy and set the hearing for November 15, 2010 at 9:00 a.m. at the Office of the Division of Racing Events, 1881 Pierce Street, Suite 108, Lakewood, Colorado 80214;
- 11) 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, Executive Director of Colorado Operations for Mile Hi Racing and Entertainment), and Jackie Weimer (duly licensed Owner-Trainer, Member of the Colorado Horse-Racing Association serving as the Horseperson's Representative); and
- 12) Robert J. ("Duke") Mann acted as the Chairperson of the Race Review Committee.

Mr. Mann advised the Commission that, after thorough review and after concluding that the Owner-Trainer's Objection failed to set forth a meritorious claim, it was the unanimous decision of the Race Review Committee to request that the Colorado Racing Commission uphold the actions and decisions of the Board of Stewards regarding establishment of the official order of finish. Therefore, it is the Committee's recommendation that the Colorado Racing Commission uphold the decision and findings of the Board and retain the Board's Ruling #10-23 with the results the Board determined to be correct.

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 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 and that no objections had been raised to the decision of the Race Review Committee, a motion was made by Commissioner Kester, seconded by Commissioner Vail and unanimously carried to adopt the recommendation of the Race Review Committee in the matter of the horse, "Heather's Fantasy" (Case Number 10-0943).

The Commission directed that an Order be issued reflecting that the official order of finish shall be the following:

First Place: "SLEW'S BET"

Second Place: "MEADOW DANCER"
Third Place: "LADY OF MISCHIEF"
Fourth Place: "HEATHER'S FANTASY"

Fifth Place: "TIGERTUDE"

Sixth Place: "LIGHTNING FAST"

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

<u>Consideration of Health Document Requirements for Arapahoe Park's 2011 Live Race Meet – Robert "Duke" Mann</u>

Mr. Robert "Duke" Mann, Horse-Racing Coordinator for the Division of Racing Events, presented to the Commission a proposed policy regarding equine health documents required for horses to gain entry to the stable area at Arapahoe Park. He advised that, once the Commission determined what health documentation should be in effect for the upcoming live racing season, he would prepare an Order for submission to track management and inclusion in the 2011 condition book. Mr. Mann recommended that the Commission retain all of its previous health documentation requirements, including the requirement added in 2010 that all horses coming to Arapahoe Park would need to be tested and obtain negative test results for Equine Piroplasmosis within thirty (30) days prior to entry onto the grounds of Arapahoe Park and that the tests to be administered would need to be for both types of protozoa, Theileria equi and Babesia caballi. Further, Mr. Mann recommended that, in the event that a horse leaves the Arapahoe Park stable area for any reason, it should be required to be re-tested for Equine Piroplasmosis and obtain another negative test result prior to being permitted re-entry to the stable area.

Discussion ensued during which Mr. Mark McGregor and Mr. Vaughn Cook, representatives of the Colorado Horse-Racing Association, requested the Commission to grant some flexibility regarding the imposition of the aforementioned Equine Piroplasmosis testing requirement. Division Director Dan Hartman commented that, should an epidemic of Equine Piroplasmosis occur at Arapahoe Park, it might necessitate a complete quarantine of all horses there and the cessation not only of all live racing, but

of simulcast operations as well. Mr. McGregor objected to this characterization as extreme and contended that it would be unnecessary to insist upon re-testing a horse if it had been away from the Arapahoe Park grounds for a brief period of time. Also, he and Mr. Cook expressed their mutual belief that it would be unlikely that such a virulent outbreak of the disease would occur that a complete quarantine of the entire Arapahoe Park horse population would be necessary. They asked that the Commission and Arapahoe Park management consider extending the length of the validity of the negative Equine Piroplasmosis test result and permit those persons who have removed a horse from the grounds for a brief length of time to be allowed to return and have an "in and out" privilege granted to them. Mr. Bruce Seymore, Executive Director of Colorado Operations for Mile High Racing and Entertainment, acknowledged the potential hardship that re-testing might create and expressed his willingness to work with the members of the horse racing community as much as possible, but would adhere to the Commission's determination in this matter.

In a separate request, Mr. McGregor and Mr. Cook requested that Arapahoe Park provide an area other than the parking lot for horse vans entering the stable area to be unloaded. The Commission expressed its desire for Mr. Mann and Mr. Seymore to address this matter.

In rendering its decision, the Commission took into consideration the viewpoints and observations of Mr. McGregor, Mr. Cook and Mr. Bruce Seymore, Executive Director of Colorado Operations for Mile High Racing and Entertainment as well as those of Division Director Dan Hartman and Mr. Mann. Following discussion, a motion was made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to continue to keep in effect for 2011 the same policy regarding required equine health documentation that the Commission adopted for the 2010 Arapahoe Park live race meet.

Observations Regarding Prospective Sale of Arapahoe Park – Dan Hartman

Division Director Dan Hartman advised the Commission that ongoing discussions are underway regarding the prospective sale of Arapahoe Park. However, he observed that, although the Division is in receipt of an initial race meet license application, numerous issues remain to be addressed, most notably those relating to financing and the financial viability of the potential buyers to perpetuate track operations in the future. Mr. Hartman stated that he would continue to update the Commission on any developments as they take place.

Adjournment

There being no further business to consider, the Commission adjourned its regular meeting at 2:40 p.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on **Tuesday, March 8, 2011** in Conference Room 110 (Gaming 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

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, March 8, 2011 at 1881 Pierce Street in Conference Room 110, Lakewood, Colorado. Commission Chairman Jack Pretti called the meeting to order at 9:40 a.m.

Members Present

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

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

Staff Present

Dan Hartman, Director, Division of Racing Events
Donald Burmania, Director pro tem, Division of Racing Events
Mark Brown, Division Enforcement Coordinator
Pam Kilgore, Division Auditor
Y. E. Scott, Senior 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 8, 2011

A motion was thereupon made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to approve the minutes of February 8, 2011 as submitted.

Review of Final Commission Order #11-01 and Ratification of Director's Order #11-01 — In the Matter of MARIA GUADALUPE GONZALEZ

Ms. Y. E. Scott, Senior Assistant Attorney General, in her capacity as legal counsel for the Division of Racing Events, apprised the Commission that, following the hearing in the matter of Ms. Maria Gonzalez held at the Commission's February 8, 2011 meeting at which time the Commission voted to revoke any and all Colorado racing license(s) held by Ms. Maria Gonzalez for her failure to respond to and comply with Commission Order #10-01, the Division of Racing Events was notified and received proof that, in August 2010, Ms. Maria Guadalupe Gonzalez had remitted to the Arapahoe Park Horsemen's Bookkeeper the third-place purse money in the amount of \$1,580 paid out in error. Thereupon, the Division issued emergency temporary Director's Order #11-01 rescinding the subject license revocation. Ms. Scott observed that, at this time, the Division is requesting the Commission to ratify its temporary Order and approve issuance of a permanent Order to this effect and, further, to address the issue of Ms. Gonzalez's failure to respond to an official Commission Order.

Mr. Dan Hartman, Director of the Division of Racing Events, reported to the Commission that Mr. Robert "Duke" Mann, the Division's Horse Racing Coordinator, had been advised prior to the scheduling of Ms. Gonzalez's February 8, 2011 hearing that she had not paid her outstanding indebtedness. He recommended that, in light of the corrected information and after consulting with Commission Chairman Pretti, the Commission rescind on a permanent basis its prior revocation of Ms. Gonzalez's racing license(s). A motion was made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to rescind the revocation of Final Commission Order #11-01 dated February 17, 2011 and to ratify the issuance of Director's Order #11-01 dated February 18, 2011 that temporarily rescinded the prior license revocation.

Discussion ensued during which the Commission considered whether to require Ms. Gonzalez to appear to explain her failure to respond to Commission Order #10-01 and, if so, whether she should be required to appear before the Commission or the Arapahoe Park Board of Stewards. As a result of its deliberations, Commissioner Beirne amended the prior motion to include in the Final Commission Order that, if Ms. Maria Guadalupe Gonzalez desires to race in Colorado in the future, she must appear before the Arapahoe Park Board of Stewards to explain her failure to respond to Commission Order #10-01 as a condition of her license validation. The motion as amended was then seconded by Commissioner Wells and unanimously carried.

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

Announcement Regarding Appointment of Mr. Don Burmania to Be the New Director of the Division of Racing Events – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, announced that, effective April 1, 2011, he would become the full-time Director of the Medical Marijuana Enforcement Division within the Department of Revenue. Mr. Hartman introduced Mr. Don Burmania, former Director of Communications for the Division of Gaming, who will assume the directorship of the Division of Racing Events at that time.

The Commission thanked Mr. Hartman for his many years of dedicated service to the citizens of Colorado and the sport of racing in the State as well as for his active participation in and outstanding contributions to the Association of Racing Commissioners International.

The Commission congratulated Mr. Burmania on his appointment and welcomed him.

Recess of Regular Business Meeting

At 10:05 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, February 8, 2011, was continued until Tuesday, March 8, 2011 at 1881 Pierce Street, Conference Room 110, Lakewood, Colorado. Chairman Pretti convened the continued Rule-Making Hearing at 10:05 a.m.

Mr. Dan Hartman, Director of the Division of Racing Events, explained that the Rule-Making Hearing had been continued due to inclement weather conditions that had prevented some interested parties from attending and participating in the rule-making process.

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

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

• Consideration of Proposed Modified Rule 3.105: Mr. Hartman reviewed the text of proposed modified rule 3.105. After ascertaining that there were no objections to formal action being taken at this time, a motion was made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to adopt modified rule 3.105 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 Repeal of Rule 5.312: Mr. Hartman explained that, after conducting rule review workshops and discussing the proposed repeal of existing rule 5.312 in its entirety and adopting proposed new rule 5.312, the Division is recommending that the Commission make no change to existing rule 5.312 at this time and table consideration of this rule until the 2012 rule review workshop(s). Therefore, based upon this recommendation and after confirming that there were no comments or objections to deferring action on rule 5.312, a motion was made by Commission Kester, seconded by Commissioner Beirne and unanimously carried to table consideration of proposed repeal of existing rule 5.312 and proposed new rule 5.312 until the 2012 rule review workshop(s).
- Consideration of Proposed New Rule 5.433: Mr. Hartman advised the Commission that proposed new rule 5.433 incorporates a therapeutic medication list and the Division recommends adoption of the proposed rule in the form submitted by the Division. He explained that the Division has received comments from industry representatives and an alternative version of the proposed rule from Mr. Mark McGregor, President of the Colorado Horse-Racing Association. At this time, Mr. McGregor and Mr. Shannon Rushton, Executive Director of the Colorado Horse-Racing Association, who was present via teleconference call, offered their views and opinions regarding both of the proposed versions of the subject rule. Discussion ensued during which numerous views and opinions were offered concerning each version of the rule.

Recess of Open Rule-Making Session/Convening of Executive Session: At 10:50 a.m., a motion was duly made by Commissioner Wells, seconded by Commission Kester and unanimously carried to recess the open rule-making session for the purpose of meeting in Executive Session to discuss with counsel the legal implications of adopting either version of proposed new rule 5.433 that are subject to attorney-client privilege and its impact on litigation.

Adjournment of Executive Session: At 11:15 a.m., a motion was made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to exit from Executive Session and reconvene the regular open rule-making session.

A motion was made by Commissioner Wells and seconded by Commissioner Kester and unanimously carried to adopt proposed new rule 5.433 as presented to all of the Commissioners in their agenda packets and that was discussed at today's meeting 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. Mr. Hartman recommended and the Commission concurred that, in light of the proliferation in the volume of therapeutic medications and the evolution of enhanced testing capabilities, the Commission, Division and all interested members of the racing community should continue to hold annual reviews and discussions relating to rule 5.433 and work collaboratively to gather information that would ensure that the rule conforms to current standards and practices.

The Commission thanked Mr. McGregor, Mr. Rushton and any involved industry members for their participation in the development of alternative proposed rule 5.433, but explained that, absent Dr. Vail's input regarding this rule proposal as well as the lack of time that the Commission had had to consider fully its implications, it would not have been prudent for this version of the rule to be adopted.

• Consideration of Proposed Modified Rule 6.120: Mr. Hartman reviewed the text of proposed modified rule 6.120. Discussion ensued during which objections were raised to certain proposed modifications to the rule. Following consideration of the views and opinions that were expressed and making

additional modifications to the rule in accordance with the positions voiced by industry representatives and after ascertaining that there were no further objections to formal action being taken at this time, a motion was made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to adopt modified rule 6.120 on a permanent basis and, as part of the motion to adopt, the Commission incorporated the Statement of Statutory Authority, Basis and Purpose into the rule. A copy of the subject rule is attached hereto and made a part of these minutes.

- Consideration of Proposed New Rule 7.219: Mr. Hartman explained that proposed new rule 7.219 has been adopted as a Model Rule by the Association of Racing Commissioners International. Mr. Mark McGregor, President of the Colorado Horse-Racing Association, distributed copies of a proposed modified jockey fee schedule for Commission consideration. Discussion ensued during which the Commission, Mr. Hartman and certain association and industry representatives offered views and opinions for and against adoption of proposed new rule 7.219 as submitted. After deliberating whether to adopt proposed new rule 7.219 at this time, a motion was made by Commissioner Pretti, seconded by Commissioner Beirne and unanimously carried to table consideration of proposed new rule 7.219 for the purpose of affording the horse-racing community and the Jockey's Guild the opportunity to conduct further discussions and, thereafter, to establish a written contractual agreement regarding acceptable jockey mount fees. The Commission expressed its belief that it would be advisable for the groups in question to implement a written agreement in order to resolve conflicts concerning the subject fees and, further, to assess the agreement on an annual basis. No further action was taken at this time.
- Consideration of Proposed Modified Rule 9.410: Mr. Hartman reviewed the text of proposed modified rule 9.410. He explained to the Commission that the recommended changes would give preference to "Colorado entities" when considering to what organization(s) to release monies from the Greyhound Promotion and Welfare Fund. Discussion ensued during which Senior Assistant Attorney General Scott advised that the term "Colorado entities" requires clarification and during which certain objections were raised by Mr. Melvin Johnson, President of the Colorado Greyhound Breeders' Association, to adoption of the rule at this time. As a result of the discussion and after determining that further consideration should be given to this rule prior to adoption, a motion was made by Commissioner Beirne, seconded by Commissioner Kester and unanimously carried to table further consideration of proposed modified rule 9.410 until the 2012 rule review workshop(s) and, additionally, to direct that specific instructions be included to clarify what is intended by the term "Colorado entities".

At 12:05 p.m., Commissioner Kester was excused from the remainder of the meeting.

Consideration of Proposed New Chapter #10 consisting of Rules 10.102, 10.104, 10.106, 10.108, 10.110, 10.112, 10.114, 10.116, 10.118, 10.120, 10.122, 10.124, 10.126, 10.128, 10.130, 10.132, 10.134, 10.136, 10.138, 10.140, 10.202, 10.204, 10.206 and 10.208: Mr. Hartman explained that proposed new Chapter #10 contains definitions of certain terms to provide standard and consistent meaning with regard to words utilized within the rules. He observed that, in amending the Colorado Revised Statutes to allow for out-of-state wagering on simulcast races, the State Legislature sought to provide an avenue for the State of Colorado to enter into interstate compacts governing racing and to allow for the collection of source market fees from out-of-state simulcast activity and, because of these actions, the Commission has been given the responsibility to adopt rules to license and regulate such interstate wagering on horse and greyhound racing and the collection of source market fees in order to prevent illegal interstate pari-mutuel wagering on racing. Mr. Hartman recommended adoption of the aforementioned rules comprising new

Chapter #10. After ascertaining that there were no comments or objections to formal action being taken at this time, a motion was made by Commissioner Wells, seconded by Commissioner Pretti and unanimously carried to adopt Chapter #10 containing definitions and proposed changes to the rules regulating electronic account wagering, allowing for entry into interstate compacts governing racing and the collection of source market fees that have been determined to be comparable to those being assessed in other racing jurisdictions. As an addendum to this action, Senior Assistant Attorney General Scott recommended that the Commission delegate authority to the Division Director to make any necessary corrections to the language and nonsubstantive grammatical changes to the newly adopted rules comprising Chapter #10.

A motion was made by Commissioner Wells, seconded by Commissioner Beirne and unanimously carried to adopt the new rules in Chapter 10, on a permanent basis and, as part of the motion to adopt, including the addendum, the Commission incorporated the Statement of Statutory Authority, Basis and Purpose into the rules. A copy of the subject rules is attached hereto and made a part of these minutes.

There being no further rules to consider, a motion was made by Commissioner Wells, seconded by Commissioner Beirne and unanimously carried to adjourn the Rule-Making Hearing at 12:15 p.m.

Ms. Deanna Baysinger, Court Reporter, recorded stenographically the above Rule-Making Hearing. A tape recording of the proceeding, except for the Executive Session, is on file in the Commission's Lakewood office.

Consideration of Applications for Release of Monies from the Greyhound Purse, Welfare, Adoption and Greyhound Racing Promotion Fund – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, explained that this is the third time that applications for the release of funds from the Greyhound Purse, Welfare, Adoption and Greyhound Racing Promotion Fund have been brought before the Commission for its consideration. He observed that funds generated by the simulcasting of greyhound races, which would have originally been deposited in the Colorado State University Equine Research Fund, are now being diverted to the Greyhound Purse, Welfare, Adoption and Greyhound Racing Promotion Fund.

Mr. Hartman advised that the Division of Racing Events received four applications for the release of money from the Greyhound Promotion and Welfare Fund, which he had forwarded to the Commission for its consideration. He stated that the subject applications were submitted by the following organizations: 1) Colorado Greyhound Adoption; 2) Friends of Retired Greyhounds; 3) Greyhound Connection; and 4) Recycled Racers, Inc. Mr. Hartman noted that he and Division Auditor Pam Kilgore had reviewed these applications. Additionally, he reported that, at this time, there is an accrual of approximately \$40,000 in the Fund.

Mr. Hartman verified that all of the applications meet the criteria set forth in the Commission's rule. However, he noted that one application was submitted with receipts for salaries that could not be considered for reimbursement and that another application lacked a substantial number of tangible receipts. He noted that, in their applications, Colorado Greyhound Adoption requested \$30,000; Friends of Retired Greyhounds requested \$25,000; Greyhound Connection requested \$25,000 and Recycled Racers, Inc., a previous recipient of Fund money, requested an additional \$25,000. Mr. Hartman explained that, since the total accrual in the Fund is insufficient for full payments of the requested amounts to be made to each organization, the Division would recommend that partial disbursements from the Greyhound Promotion and Welfare Fund be distributed to the following organizations as specified below:

To Colorado Greyhound Adoption: \$10,000.00
 To Friends of Retired Greyhounds: \$10,000.00

To Greyhound Connection: \$10,000.00

• To Recycled Racers, Inc: \$ 4,500.00

Mr. Melvin Johnson, a member of the Colorado Greyhound Breeders' Association, voiced his objections to release of any money from the Fund to an organization that accepts or cares for greyhounds coming from outside of Colorado. He recommended that the Commission deny all of the subject applications for release of Fund monies, retain those funds in escrow and allow the members of the Colorado greyhound colony to decide how the funds should be used. Discussion ensued during which representatives of Friends of Retired Greyhounds and Colorado Greyhound Adoption addressed the Commission regarding the benefits that the funds would provide to their organizations. The Commission expressed its support for the efforts of the welfare and adoption organizations requesting financial assistance.

The Commission stipulated that all fund recipients would be required to submit the following information/documentation to the offices of the Division of Racing Events for subsequent Commission review: 1) a preliminary report specifying how the organization intends to utilize the subject funds; and 2) subsequent to expending the funds, a follow-up accounting that reflects how the money allotted to the organization was used.

After ascertaining that there were no further comments to be made and no objections to formal action being taken at this time, a motion was made by Commissioner Beirne, seconded by Commissioner Wells and unanimously carried to release \$10,000 to Colorado Greyhound Adoption; \$10,000 to Friends of Retired Greyhounds; \$10,000 to Greyhound Connection; and \$4,500 to Recycled Racers, Inc., which totals \$34,500, with the proviso that each organization is to provide preliminary and follow-up reports relating to the use of the subject funds.

Consideration of Petition for Declaratory Order – In the Matter of Interpretation of Colorado Racing Commission Rule 7.218 to Be in Effect During Arapahoe Park's 2011 Live Race Meet

Mr. Dan Hartman, Director of the Division of Racing Events, distributed a document to the Commission giving reasons for the Division's prior interpretation of Colorado Racing Commission Rule 7.218. He requested guidance from the Commission regarding the formulation of a petition for Declaratory Order relating to the interpretation of Colorado Racing Commission Rule 7.218 to be in effect during the upcoming Arapahoe Park live race meet. Mr. Hartman advised that the Division could prepare a preliminary document for Commission review and, once the Commission approved the content of that document, it could then be submitted to Ms. Scott, its legal advisor, for creation of the subject Declaratory Order. The Commission expressed its desire to have the petition for Declaratory Order include 1) a written definition of "double jockey mount fee"; 2) a standardized contractual agreement between owners and jockeys that would specify the reason(s) for any removal or substitution of jockeys; and 3) a written acknowledgment regarding whether a single or double jockey mount fee would be payable.

Mr. Hartman stated that Rule 7.218 assumes that a minimum jockey mount fee is to be paid under all circumstances. He explained that the only issue to be clarified is whether a jockey who has been removed from a horse and is prevented from taking another mount should be paid a double jockey mount fee, noting that the rule language affords sufficient flexibility for the Board of Stewards to have been able to render such an interpretation in a case resulting from an incident that occurred during last season's Gold Rush Futurity. Mr. Hartman summarized for the Commission the events and circumstances surrounding the interpretation of the rule made by the 2010 Arapahoe Park Board of Stewards. Mr. Hartman observed that it is vital for the Board of Stewards to be given a clear and unequivocal directive from the Commission to avoid any complications in interpretation of the rule at the upcoming Arapahoe Park live meet. He stated that the petition could be drafted to reflect that if a jockey fails to ride a mount for any reason, the jockey would only be paid the minimum jockey mount fee.

Discussion ensued between representatives of the Colorado Horse-Racing Association, Mr. Bruce Seymore, Executive Director of Colorado Operations for Mile High Racing and Entertainment, Mr. Hartman, with Ms. Y. E. Scott, Senior Assistant Attorney General, providing legal advice, and members of the Commission regarding what position should be reflected in the petition for Declaratory Order. Various observations were offered for and against retention of certain provisions in the petition as initially recommended by the Commission. Mr. Scott observed that the Commission has the authority to either accept or reject the proposed petition, to rule on the petition and direct how the Declaratory Order should be written and to direct the Division how the rule is to be interpreted. She advised that the Declaratory Order as adopted by the Commission would have the full force and effect of a rule until such time as the cited rule could be reviewed.

One item that received considerable attention was whether, if it could be legally demonstrated that an owner's "intent" in removing a jockey from a mount was to prevent that jockey from taking another mount in the same race, the jockey in question would then be eligible to receive a double jockey mount fee. Ms. Scott observed that the subject of "intent" would be very difficult to prove and could be legally problematic. She commented that the "effect" of a situation was often very different from the "intent" that produced it.

Following deliberation of the views, opinions and arguments presented, a motion was made by Commissioner Beirne, seconded by Commissioner Wells and unanimously carried to direct that the interpretation of Colorado Racing Commission Rule 7.218 to be in effect during the 2011 Arapahoe Park live race meet and to be reflected in the Declaratory Order to be prepared by Senior Assistant Attorney General Scott would specify that, no matter what the intent or effect, a jockey who, for whatever reason, is removed from a mount would only receive a losing jockey mount fee.

Observations Regarding Possible Legislative Proposals/Initiatives – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, reported to the Commission that, for 2011, no legislative proposals or initiatives had been brought forward for consideration by the Legislature.

<u>Update – Sale of Arapahoe Park – Dan Hartman</u>

Mr. Dan Hartman, Director of the Division of Racing Events, advised that the Division had received formal written confirmation that the proposed sale of Arapahoe Park had been abandoned.

Acknowledgment and Recognition of Division Director Dan Hartman

Commissioner Sean Beirne offered a special personal tribute to Division Director Dan Hartman in which he thanked Mr. Hartman for his assistance, helpfulness and courtesy when Mr. Beirne moved to Colorado to work for the racing association here.

The Commission expressed its collective appreciation for the outstanding leadership, knowledge and expertise demonstrated by Mr. Dan Hartman, not only during his term as Director of the Division of Racing Events, but throughout his many years of dedicated service in various capacities as a staff member of this Division. A motion was made by the entire Commission and adopted by acclamation to acknowledge Mr. Hartman and thank him for his service on the local level as the Director of the State of Colorado Division of Racing Events and, also, on the national level, as the Executive Director of the Association of Racing Commissioners International. The Commission applauded Mr. Hartman and wished him well in his future endeavors and in his leadership role with the Medical Marijuana Enforcement Division.

Adjournment

There being no further business to consider, the Commission adjourned its regular meeting at 1:40 p.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on **Tuesday, April 12, 2011** in Conference Room 110 (Gaming Conference Room), 1881 Pierce Street, Lakewood, Colorado.

The undersigned hereby approve the foregoing Minutes.

JACK PRETTI, CHAIRMAN

MARY SHARON WELLS, VICE-CHAIR

(EXCUSED)
CHARLES VAIL, DVM, MEMBER

DANIEL KESTER, MEMBER

SEAN BEIRNE, MEMBER

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, April 12, 2011 at 1881 Pierce Street in Conference Room 110, Lakewood, Colorado. Commission Chairman Jack Pretti called the meeting to order at 9:35 a.m.

Members Present

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

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

Staff Present

Donald Burmania, Director, Division of Racing Events Robert "Duke" Mann, Horse-Racing Coordinator Mark Brown, Division Enforcement Coordinator Pam Kilgore, Division Auditor Helen Romero, Licensing Supervisor Michelle Bauman, former Licensing Supervisor Y. E. Scott, Senior Assistant Attorney General Sherry Gunnell, Assistant to the Director

Also Present

Dan Hartman, Director of the Medical Marijuana Enforcement Division and Former Director of the Division of Racing Events

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

Approval of Minutes of March 8, 2011

A motion was thereupon made by Commissioner Wells, seconded by Commissioner Beirne and unanimously carried to approve the minutes of March 8, 2011 as submitted.

<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>

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 \$136,000, 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 2011. Mr. Mark McGregor, President of the Colorado Thoroughbred Breeders' Association, appeared on behalf of his organization.

Ms. Kilgore explained that, by statute, 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 March 2011 and had prepared a report reflecting her projections, noting that the amount requested by the Colorado Thoroughbred Breeder's Association would approximate 17% 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 \$136,000 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, 2011.

A motion was made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to authorize early distribution of \$136,000 to the Colorado Thoroughbred Breeder's Association by July 1, 2011 conditioned upon confirmation of the availability of funds.

Scheduling of 2012 Race Dates Hearing – Don Burmania

Mr. Don Burmania, Director of the Division of Racing Events, recommended that the Commission continue its practice of conducting the annual Race Dates Hearing at its July meeting.

A motion was thereupon made by Commissioner Beirne, seconded by Commissioner Wells and unanimously carried to schedule the 2012 Race Dates Hearing on Tuesday, July 12, 2011 in conjunction with the Commission's regular July meeting. The probable location of both of these sessions will be Arapahoe Park, 26000 East Quincy Avenue, Aurora, Colorado.

<u>Consideration of Conditional Approval of Arapahoe Park's Proposed 2011/12 Simulcast Schedule – Robert "Duke" Mann</u>

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 2011/2012 proposed simulcast schedule for the period of April 21, 2011 through April 20, 2012 because Arapahoe Park has complied with the requirement that its renewal application to conduct a live race meet in 2011 be received by the Division of Racing Events sixty days prior to the planned opening of the meet. Mr. Mann reported that, on November 30, 2010, 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 28, 2011 through August 21, 2011 for a total of thirty-nine (39) race days. Mr. Bruce Seymore, Director of Colorado Operations for Mile High Racing & Entertainment, appeared on behalf of the Association.

The Commission took notice that Arapahoe Park is requesting permission to: 1) conduct thirty-nine (39) days of live and simulcast racing as well as greyhound and horse simulcasting throughout the entire year; and 2) that, in conjunction with its live meet, Arapahoe Park will provide horse simulcasting on its non-live days.

Mr. Mann 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 Mark McGregor on July 30, 2009, 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, 2010 through April 20, 2013. 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. Mann 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.

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 Beirne, seconded by Commissioner Kester and unanimously carried to approve Arapahoe Park's request on a conditional basis to commence simulcast wagering on April 21, 2011 and to continue simulcast wagering through April 20, 2012 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 2011/2012 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; and
- 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.

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.

Consideration of Declaratory Order 11-01 – In the Matter of Interpretation of Colorado Racing Commission Rule #7.218 to be in Effect During Arapahoe Park's 2011 Live Racing Season – Don Burmania

Division Director Don Burmania advised that he had prepared proposed Declaratory Order 11-01, in consultation with Senior Assistant Attorney General Y. E. Scott, for Commission consideration. The Commission entertained view and opinions from interested industry representatives regarding the Declaratory Order.

Notice was taken that the Commission had received the petition for issuance of a Declaratory Order at its March 8, 2011 meeting. Mr. Burmania stated that, based upon the facts presented in the petition and upon oral arguments made at the March 8, 2011 meeting, the subject Declaratory Order was being presented at this time. Additionally,

Mr. Burmania explained that the Commission has the authority to issue a Declaratory Order that would not only give direction and guidance to the Racing Office and to the Board of Stewards, but would have the full force and effect of a rule until such time as the rule that has been cited could be reviewed.

Specifically, the issue as presented by the petitioner relates to the portion of Colorado Racing Commission Rule 7.218 that states a "jockey shall not be engaged for the purpose of preventing another jockey from riding in a race", and whether the compensation or sanction differs if the violation occurs either (1) by intent, or (2) by effect. Mr. Burmania read for the record the text of the following Ruling and Order contained within the subject Declaratory Order:

- 1) If a jockey is prevented from riding in a race, either by intent to prevent that jockey from riding in the race or by effect due to timing or other factors, the jockey prevented from riding in the race shall be paid a jockey mount fee that is equivalent to the minimum jockey mount fee;
- 2) No further compensation or sanction is to be considered pursuant to Colorado Racing Commission Rule 7.218 or any other Colorado Racing Commission Rule;
- 3) This ruling and order shall only apply for the 2011 live horse racing season; and
- 4) Any ambiguity in Colorado Racing Commission Rule 7.218 should be addressed in the next rule-making process.

Following discussion and after ascertaining that there were no objections to adoption of proposed Declaratory Order 11-01 as presented, a motion was made by Commissioner Wells, seconded by Commissioner Beirne and unanimously carried to accept Declaratory Order 11-01 and to assert that the interpretation of Colorado Racing Commission Rule 7.218 presented in Declaratory Order 11-01 will remain in effect throughout the 2011 Arapahoe Park live racing season.

The Commission expressed its hope that, during the next rule-making process, it would be possible to develop a coherent and easily understandable version of Colorado Racing Commission Rule 7.218.

Recess

The Commission recessed the regular business meeting for the purpose of perusing a newly submitted document provided by Mr. Melvin Johnson of the Colorado Greyhound Breeders' Association. Following a brief review, the Commission resumed its regular business meeting.

Consideration of Request to Discuss the Subject of "Colorado Entities" – Melvin Johnson

Mr. Melvin Johnson, President of the Colorado Greyhound Breeders' Association, appeared to request that the Commission provide its comments and recommendations concerning the subject of the term "Colorado entities" at today's meeting. He noted that, at the Commission's March 8, 2011 meeting during its 2011 Rule-Making Hearing, Senior Assistant Attorney General Y. E. Scott had advised that the term "Colorado entities" requires clarification. In an effort to clarify his position and that of the Colorado Greyhound Breeders' Association concerning their interpretation of the meaning of the term "Colorado entities" as well as offer views, opinions and arguments on behalf of their proposed amendments to existing Colorado Racing Commission Rules, Mr. Johnson tendered an explanatory document for the Commission's review.

The Commission afforded Mr. Johnson the opportunity to express his views and opinions regarding the aforementioned subjects. Mr. Johnson advised that the Colorado

Greyhound Breeders' Association should be given consideration for receipt of funds from the Colorado Greyhound Welfare and Promotion Fund based upon three "(3) important STEPS or PHASES" relating to greyhound racing: They are: "PHASE-(1) Breeding, raising and training of greyhound[s] in Colorado; PHASE-(2) Live greyhound racing in Colorado; PHASE-(3) Adoption of Colorado bred greyhounds." He asserted that, when there is no live greyhound racing being conducted in Colorado, the monies that are accrued in the Fund should be disbursed to Phase #1 and Phase #3. Mr. Johnson contended that the Commission, under Colorado Racing Commission Rule 2.108, must recognize the Colorado Greyhound Breeders' Association as the official registry for the Colorado bred greyhounds and, pursuant to Colorado Racing Commission Rule 9.410, the Commission should render an interpretation of this rule that would give preference in the disbursal of funds from the Greyhound Welfare and Promotions Fund to the Colorado Greyhound Breeders' Association. In response to some queries made to him by the Commission, Mr. Johnson stated that, should his organization be given an allotment of fund monies, it would pursue reviving live greyhound racing in Colorado. The Commission informed Mr. Johnson that, at the present time, the Colorado Greyhound Breeders' Association does not meet the criteria established for receipt of a disbursement of funds from the Colorado Greyhound Welfare and Promotion Fund.

The Commission assured Mr. Johnson that it has seriously considered his views, opinions and arguments, but informed him that it would not be appropriate or beneficial to continue to discuss the subjects that he had raised and advised him that it would postpone further consideration of these topics until the 2012 rule review workshop(s), noting that, at that time, a thorough consideration of possible interpretations of the term "Colorado entities" could be undertaken by the staff of the Office of the Attorney General. The Commission recommended that Mr. Johnson plan to participate in the upcoming rule review workshop(s) and bring forward his recommendations for a definition of "Colorado entities" and his proposals for amendments to certain rules at that time. The Commission confirmed that these subjects would be brought forward for consideration at its 2012 Rule-Making Hearing.

The Commission took no formal action at this time.

<u>Introduction of Newly Appointed Racing Division Licensing Manager, Ms. Helen</u> Romero

Mr. Don Burmania, Director of the Division of Racing Events, introduced Ms. Helen Romero, newly appointed Racing Division Licensing Manager, to the Commission. He observed that Ms. Romero had previously been employed for the Regional Transportation Department's "Fast Tracks" project and had recently transferred to the Division of Racing Events. Mr. Burmania observed that Ms. Michelle Bauman, former Licensing Supervisor for the Division, had been and would continue to instruct and/or assist Ms. Romero in the performance of her new duties. The Commission congratulated Ms. Romero on her new position and welcomed her to the Division.

<u>Legislative Update – Don Burmania</u>

Mr. Don Burmania, Director of the Division of Racing Events, provided an informational report on a measure, Senate Bill 11-233, that was introduced in the Senate on April 7, 2011 and assigned to the Business, Labor and Technology Committee. He distributed copies of the Bill for Commission review and summarized the features of the initiative. In his summary, Mr. Burmania explained that the measure, if enacted, would provide the following:

• It would give the Colorado Lottery Commission discretionary authority to license no more than two lottery retailers to install and operate video lottery terminals (VLTs), would establish the qualifications to be a lottery retailer, would prohibit a lottery retailer from installing or operating a video lottery terminal (VLT) unless certain conditions are satisfied and would specify that video lottery terminals (VLTs) may be installed and operated by a single lottery retailer at a limited number of sites within Colorado.

- It would specify that a lottery retailer must be a pari-mutuel licensee, which would involve the Colorado Racing Commission as the pari-mutuel licensing authority. Further, the Colorado Lottery Commission is given authority to approve up to 2,500 video lottery terminals (VLTs) at each of two sites, one of which may be at a licensed horse racetrack location.
- It would create the Colorado Lottery Higher Education Fund in the State Treasury; said Fund monies would be subject to annual appropriation by the General Assembly to provide postsecondary education financial assistance.

In response to the Commission's query, Mr. Burmania expressed some doubt regarding the potential for enactment of this measure based upon the failure of similar pieces of prior legislation to be enacted. However, he observed that, because of the current budgetary crisis, the creation of a fund to provide financial assistance for postsecondary education might be sufficiently appealing to enable the measure to advance.

Mr. Burmania advised that he would attend the initial hearing on the Bill scheduled to take place on Wednesday, April 13, 2011 before the Business, Labor and Technology Committee. He assured the Commission and attendees that he would continue to monitor and report on the status of this initiative.

Report on Association of Racing Commissioners International Conference – Don Burmania and Mary Sharon Wells

Mr. Don Burmania, Director of the Division of Racing Events, reported that he, former Racing Division Director Dan Hartman and Commissioners Mary Sharon Wells and Charles Vail had recently attended the annual meeting of the Association of Racing Commissioners' International. He stated that certain issues that were prominently discussed, such as license reciprocity and standardization of rules, were very familiar to him from his lengthy service for the Colorado Division of Gaming. Mr. Burmania commented that he had been impressed by the willingness of the Association affiliates to work collaboratively to resolve difficult issues. Further, Mr. Burmania distributed a press release relating to the challenge made to the racing industry and member regulators by Mr. Hartman, the outgoing Chair of the Association of Racing Commissioners International, and the incoming Chair of this Association, Mr. William Koester (Ohio) to "embrace a strategy to phase out drugs and medication in horse racing." Mr. Burmania commended Mr. Hartman's outstanding leadership of the Association of Racing Commissioners International as its 2010-11 Chairman and observed that Mr. Hartman was highly esteemed by his colleagues in the organization.

Commissioner Wells advised that one of the major topics of discussion was the expansion of various types of wagering to be made available to the wagering public, many of which would require rule changes in most racing jurisdictions, both in the United States and abroad. Additionally, Commissioner Wells seconded Mr. Burmania's comments regarding Mr. Hartman's excellent service and numerous contributions to the racing industry, locally, nationally and internationally.

Recognition of Outgoing Racing Division Director Dan Hartman

Commission Chairman Jack Pretti observed that, effective April 1, 2011, Dan Hartman's term of service as Director of the Division of Racing Events had officially ended and that, now, he would devoting himself on a full-time basis to the directorship of the Medical Marijuana Enforcement Division.

Mr. Matt Cook, Senior Director of the Enforcement Lines of Business for the Department of Revenue, read for the record a letter of recognition from the Commissioners praising Mr. Hartman's achievements and contributions to the State of Colorado, the citizens of Colorado, the racing industry, the Colorado Racing Commission, the Division of Racing Events and to the national and international racing communities through his leadership of the Association of Racing Commissioners International. Those in attendance, including Mr. Cook, the Commissioners and industry

representatives offered touching tributes and reflections in honor of Mr. Hartman. He was acknowledged for his outstanding guidance, leadership and decision-making ability during his tenure as both the Manager of Racing Operations (1992-2004) and as the Director of the Division of Racing Events (2004-2011). Mr. Hartman was also honored for being a consummate gentleman, a person of great honesty, integrity, excellent common sense, good judgment, compassion and humanity.

The Commission extended warmest regards and special thanks to Mr. Hartman for his outstanding service to the Division, the Commission, the racing industry and the citizens of Colorado. On behalf of the entire Commission, Commission Chairman Pretti presented a commemorative plaque and a Certificate of Recognition to Mr. Hartman. These acknowledgments were greeted by a rousing ovation in honor of Mr. Daniel J. Hartman.

Mr. Hartman responded that he had enjoyed his association with both the Division and the Commission throughout the years and appreciated the support and helpfulness that he had been given by the Commissioners, members of the racing industry and the Division staff.

Adjournment

There being no further business to consider, the Commission adjourned its regular meeting at 10:35 a.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on **Tuesday, May 10, 2011** in Conference Room 110 (Gaming Conference Room), 1881 Pierce Street, Lakewood, Colorado.

The undersigned hereby approve the foregoing Minutes.

JACK PRETTI, CHAIRMAN

MARY SHARON WELLS, VICE-CHAIR

(EXCUSED)
CHARLES VAIL, DVM, MEMBER

DANIEL KESTER, MEMBER

SEAN BEIRNE, MEMBER

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, May 10, 2011 at 1881 Pierce Street in Conference Room 110, Lakewood, Colorado. Commission Chairman Jack Pretti called the meeting to order at 9:35 a.m.

Members Present

Jack Pretti, Chairman (present via teleconference) Charles Vail, DVM, Member Daniel J. Kester, Member Sean Beirne, Member

Commissioner Mary Sharon Wells was excused from the meeting.

Staff Present

Don Burmania, Director, Division of Racing Events Robert "Duke" Mann, Horse Racing Coordinator Mark Brown, Division Enforcement Coordinator Pam Kilgore, Division Auditor Helen Romero, Licensing Supervisor Christina Chapman, Licensing Assistant Eden Ignea, Licensing Assistant Joni Smith, Veterinarian Y. E. Scott, Senior 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 12, 2011

A motion was thereupon made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to approve the minutes of April 12, 2011 as submitted.

Consideration of 2011 Renewal Application – Arapahoe Park – Robert "Duke" Mann

Mr. Robert "Duke" Mann, Horse Racing Coordinator, presented his report concerning Arapahoe Park's 2011 renewal application. Mr. William Powers, Arapahoe Park's Property Facility Manager/Director of Racing, appeared on behalf of the Racing Association. Mr. Bruce Seymore, Director of Racing Operations Colorado for Mile High Racing & Entertainment, was also present to represent the Racing Association.

Mr. Mann advised the Commission that Arapahoe Park intends to conduct a thirty-nine (39) day live race meet beginning on Saturday, May 28, 2011 and concluding on Sunday, August 21, 2011, with live performances to be offered on Friday, Saturday and Sunday throughout the meet, including special programs to be conducted on Monday, May 30, 2011 (Memorial Day observance) and Monday, July 4, 2011. Additionally, the Commission noted that Arapahoe Park intends to offer nine races per day with a 1:00 p.m. post time on all live race days 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 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 Arapahoe Park's request to send its signal out-of-state. Notice was taken that Arapahoe Park intends to simulcast out-of-state horse races into Colorado seven (7) 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 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 2010: 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.

Additionally, Mr. Mann explained that "Mile High USA, Inc." was organized as a corporation under the laws of the State of Delaware on December 8, 1989 and that the company is a wholly owned subsidiary of the Twin River Management Group, Inc. Further, he stated that Mile High USA, Inc. owns 100% of Racing Associates of Colorado, doing business as Arapahoe Park Racetrack in Aurora, Colorado. Mr. Mann observed that Racing Associates of Colorado was organized as a limited partnership under the laws of the State of Colorado on March 8, 1991 and that the ownership of Racing Associates of Colorado, Ltd. complies with Colorado Racing Statutes.

The Commission reviewed the list of racing officials for Arapahoe Park's upcoming meet. Mr. Mann apprised the Commission that the majority of the racing officials for the 2011 racing season were returning from last year and all of the returning officials are in good standing and hold current Colorado Racing licenses. He observed that Mr. Randy Blaseg, who had served as the Senior State Steward at the 2010 Arapahoe Park race meet, would hold the position of Presiding Steward at the upcoming meet. Mr. Mann commented that Mr. Blaseg had previously served as the Director of Racing for the North Dakota Racing Commission and is an accredited Steward in Texas, Kansas, Alabama and Nebraska. He reported that the new State Steward would be Mr. Timothy Williams, who has held numerous positions at various racecourses, notably as the Assistant Racing Secretary (2010-2011) at Sunland Park in New Mexico and, respectively, as a Steward, Placing Judge, Paddock Judge and Identifier (2007-present) at Zia Park, Sunland Park, Lone Star Park and Louisiana Downs. Mr. Mann advised that Mr. Hank Demoney would be returning as the Association Steward/Placing Judge. Mr. Mann reported on the backgrounds and experience of persons who are either working at Arapahoe Park for the first time or are new to their current positions. He observed that the following persons are new to their positions this season: Mr. Williams, the aforementioned Steward; Ms. Katie Templin, who will be one of the Outriders; and Mr. Jonathan Horowitz, 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 2011 Arapahoe Park live meet. Additionally, Mr. Mann apprised the Commission that Arapahoe Park's management would continue to employ Ms. Stephanie Bishop as the Security Director.

The Commission took notice that the consolidated financial statements for Mile High USA, Inc., doing business as Racing Associates of Colorado Ltd. had been submitted to the Division of Racing Events with Arapahoe Park's 2011 renewal license application and that Division Auditor Pam Kilgore, Commissioner Daniel Kester and Division Director Don Burmania had reviewed the subject documents and had found them to be complete and in order. Further, Mr. Mann observed that Twin Rivers Management Group, which owns 100% of Mile High USA, Inc., would oversee the financial matters of the Racing Association. Commissioner Kester offered some observations concerning certain changes in the financial oversight of the racing operations at Arapahoe Park, noting that a new consortium of managers would be providing resources that had not previously been available. He commented that the consolidated financial statements had been prepared in

accordance with generally accepted accounting principles. Commissioner Kester stated that it is his belief that, despite continued monetary losses, there are some positive indicators that could lead to a potential "break-even" point for Mile High USA, Inc. and Arapahoe Park, such as the improved handle totals for Arapahoe Park's 2010 meet at both the on-site location and the off -track wagering venues, the full fields of horses racing during the 2010 live meet, along with the anticipated sale of the Mile High Greyhound Park property. Commissioner Kester commended Mr. Bruce Seymore and his staff on their ongoing efforts to make Arapahoe Park a successful and prosperous venture and to reduce its indebtedness. Mr. Mann stated that the Division recommends that the financial statements dated December 31, 2010 and 2009 be accepted as presented.

Mr. Mann apprised the Commission that the following required exhibits had either been submitted with the renewal application or would be provided in a timely manner:

- An insurance binder for on-track accident coverage for the jockeys has been submitted:
- A copy of the current proof of adequate public liability insurance coverage to protect the public was also provided. However, since the expiration date on the Certificate of Insurance is June 1, 2011, a copy of the renewal contract must be submitted upon issuance;
- A current fire inspection report was submitted and no major issues were reported.
 Any subsequent fire inspection reports must be provided to the Division when issued;
- A current health/sanitation inspection reports for Arapahoe Park and some of its instate simulcast facilities have yet to be received by the Division. These reports for Arapahoe Park and all affiliated in-state off-track wagering facilities must be submitted to the Division no later than five days prior to the opening of the meet;
- Copies of the most recent contracts between the Association and its service providers for video patrol, photo finish and totalisator services, products and materials have been provided for the upcoming race meet; and
- A copy of the Horsemen's Contract between the Colorado Horse Racing Association and Arapahoe Park, effective through April 20, 2013, was submitted with the application.

A surety bond to cover the Horsemen's Bookkeeper will not be required for the 2011 race meet. Mr. Mann commented that the Division would release purse funds from the Escrow Account throughout the race meet upon the Association's request in order to satisfy the purse money owed and, in the event that any derogatory actions are subsequently brought against the Horsemen's Bookkeeper, the Commission would have the ability to reinstate the bond requirement on the Horsemen's Bookkeeper Account.

Mr. Mann reviewed the list of recommendations set forth in Arapahoe Park's 2010 end of meet report, noting that Arapahoe Park had complied with or is in the process of addressing each of them. With respect to the operation of the Security Department, Mr. Mann commented that management has arranged for Ms. Bishop, the Security Director, to continue to accept and provide training for the security staff from the Division's enforcement personnel and other sources as needed to enforce the Colorado Racing Commission Rules and policies relating to the admittance of horses into the stable area as well as to provide a safe environment for licensees and patrons. Again this season, the Division of Racing Events will be providing a Compliance Investigator to assist with the intake of horses, the preparation of associated paperwork and the facilitation of access to the restricted stable area. Notice was taken that Arapahoe Park would continue to employ an off-duty sheriff's deputy on live race days.

In response to a query from Commissioner Vail, Mr. Mann explained that certain security measures are being implemented either in or in the vicinity of the test barn. He reported that video surveillance cameras will be installed in the test barn office, that a security guard will be monitoring entry to any restricted areas and will be taking names and verifying that any entrants to a restricted area are properly licensed. Further, Mr. Mann observed that, following a race, only one licensee per horse will be allowed in the test barn.

Mr. Mann advised the Commission that the Association would, again this season, 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.

With regard to the soil sampling and depth measurement of the racing surface, Mr. Seymore advised that Soil & Plant Laboratory, Inc. performed a favorable soil analysis of the track surface on November 8, 2010. Mr. Mann affirmed that the same racing surface maintenance protocols in effect during the 2010 race meet would be utilized during the upcoming live racing season. He observed that the Track Superintendent, Mr. William Byers, has been consistently scrupulous in his care, preparation and maintenance of the racing surface during each meet at which he has served. The Commission expressed its endorsement of the continuation of the subject maintenance routines. Further, 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.

Mr. Mann stated that the renewal license application submitted by Racing Associates of Colorado, Ltd. (Arapahoe Park) to conduct a 2011 live race meet appears to comply with the Colorado Revised Statutes and the Colorado Racing Commission Rules and, therefore, the Division of Racing Events would recommend that the Commission grant conditional approval of Arapahoe Park's 2011 renewal application.

Following review and discussion, a motion was made by Commissioner Vail, seconded by Commissioner Beirne and unanimously carried to approve Arapahoe Park's 2011 renewal application to operate as a Class B racetrack during the period specified in the application; to approve the retention and hiring of all Racing Officials noted in the renewal license application; to approve the take-out 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 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 concern or matters to be addressed, specific time frames for compliance will be imposed.);
- 2) That, in the event that a vacancy occurs among the Racing Officials for longer than one racing day, the Association shall fill the vacancy with an official approved by the Division and shall notify the Division in writing of the substitution prior to making the change;
- 3) 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 June 1, 2011 expiration date;
- 4) 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;
- 5) That Arapahoe Park will submit copies of its certified health/sanitation inspection no later than five (5) days prior to the commencement of the live meet, and, further, any additional health/sanitation and fire inspection reports for Arapahoe Park's in-state simulcast or track facilities are to be provided to the Division when completed;
- 6) That Arapahoe Park will provide copies of all new service contracts not presently on file with the Division no later than five days prior to the commencement of the meet; and
- 7) That the Commission may determine, in its discretion, to impose additional conditions at any time prior to or during Arapahoe Park's live meet.

A Notice of Issuance of Meet License with Conditions will be provided to Arapahoe Park in accordance with the Commission's motion.

<u>Consideration of Assignment of Two Additional Off-Track Wagering Facilities to</u> <u>Arapahoe Park – Bruce Seymore/Don Burmania</u>

Mr. Bruce Seymore, Executive Director of Colorado Racing Operations for Mile High Racing & Entertainment, advised the Commission that he has not only been receiving numerous inquiries and expressions of interest from parties seeking to learn about opening and operating off-track betting facilities at various locations in Colorado, but is currently engaged in negotiations to open some new facilities in the foreseeable future, most likely in the Fort Collins area. He commented that the off-track wagering facilities have proved to be outstanding financial resources for the Association because they provide opportunities for tapping into new markets and developing new revenue streams. Further, Mr. Seymore explained that the same types of wagers are offered at both off-track betting facilities and at Arapahoe Park. Therefore, Mr. Seymore requested the ability to have two (2) additional off-track betting facility licenses assigned to Arapahoe Park. Mr. Don Burmania, Director of the Division of Racing Events, 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 only be assigned to Arapahoe Park. Mr. Burmania recommended approval of Mr. Seymore's request, noting that Arapahoe Park would now be assigned ten (10) off-track betting facility licenses with a total of three (3) potential off-track betting facility licenses being left unattached.

Discussion ensued during which Mr. Seymore advised that he is exploring the possibility of opening future off-track betting facilities in Montrose, Ouray and Black Hawk. Mr. Burmania informed the Commission that those desiring to open and operate off-track betting facilities would be required to undergo thorough background checks and meet all criteria to obtain a Major Business License from the Division of Racing Events.

Following discussion, a motion was made by Commissioner Vail, seconded by Commissioner Beirne and unanimously carried to accept the recommendation of Division Director Burmania and authorize the assignment of two (2) additional off-track betting facility licenses to Arapahoe Park, bringing the total of off-track wagering facility licenses thus assigned to ten (10); and to acknowledge that three (3) potential off-track betting facility licenses are also being held in abeyance and are not attached to any racetrack.

Consideration of Contents of "Horsemen's Information Packet": A) Proposed Stewards' Guidelines and Groundrules; B) Medication Guidelines and Veterinary Practices; C) Split Sample Policy; D) Stable Roster; E) CRC Rule 11.544; F) Stable Inspection Procedures; G) Stable Inspection Report; H) 2011 New Rules (effective April 30, 2011); and I) Determination of whether a change in the number of live races per day should be allowed during Arapahoe Park's 2011 live race meet – Robert "Duke" Mann

The Commission acknowledged the presence via teleconference call of Mr. Shannon Rushton, Executive Director of the Colorado Horse Racing Association.

Mr. Robert "Duke" Mann, Horse Racing Coordinator, presented and identified each of the documents contained in the "Horsemen's Information Packet". He commented that, not only is the packet a reference tool, but it serves as a study guide for new trainers who must take their trainer's tests. Mr. Mann stated that, upon Commission acceptance, the subject packet would be made available at the Arapahoe Park Division office for trainers and other interested parties participating in the upcoming Arapahoe Park race meet as well as at the Arapahoe Park Racing Office and would, also, be placed on the Division's website for access by interested owners. Thereupon, the Commission reviewed the contents of the subject packet:

1) <u>Stewards' Guidelines and Groundrules</u>: The Commission reviewed the proposed Stewards' Guidelines and Groundrules for 2011. 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 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) 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. Mr. Mann called attention to new rule 5.433 of the Colorado Racing Commission Rules adopted in March 2011 that addresses the subject of therapeutic medications and directs the Division of Racing Events to publish a list of acceptable withdrawal times for therapeutic medications with the goal of allowing the use of such medications and providing sufficient time for the medications to leave a horse's system. Mr. Mann observed that the list of published withdrawal times compiled by the Division and incorporated into this document are only a guideline and veterinarians and trainers are responsible for ensuring that any administered therapeutic medications are undetectable at race time. (Further discussion of this subject took place subsequent to presentation of the remaining documents in the "Horsemen's Information Packet".)

Additionally, Mr. Mann advised that the use of extracorporeal shock wave therapy or radial pulse wave therapy, both of which are new types of treatments designed to promote healing of horses' muscles and bones, would be permitted subject to compliance with the following conditions:

- Any treated horse shall not be permitted to race for a minimum of ten (10) days following such treatment;
- The use of extracorporeal shock wave therapy or radial purse wave therapy machines shall be limited to veterinarians licensed to practice by the Commission;
- Any extracorporeal shock wave therapy or radial pulse wave therapy machines on the Association grounds must be registered with and approved by the Commission or its designee before use; and
- All extracorporeal shock wave therapy or radial pulse wave therapy treatments must be reported to the Division veterinarian on the prescribed form not later than the time prescribed by the Division veterinarian.

Mr. Mann stated that, as in the past, all horses entering the grounds at Arapahoe Park will need to 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. Additionally, all horses coming to Arapahoe Park for the meet will need to be tested and obtain negative test results for equine piroplasmosis within thirty (30) days prior to entry onto the grounds of Arapahoe Park. The tests to be administered need to be for both types of protozoa, Theileria equi and Babesia caballi. Negative test results are to be attached to the health certificate, along with the Coggins test results and any other required documentation, and these must accompany the foal certificates when they are submitted to the Racing Office.

3) Split-Sample Policy: The Commission reviewed the proposed Split-Sample Policy for 2011. Mr. Mann explained the protocol associated with the handling of a request for split-sample testing. Mr. Mann advised that he and Ms. Petra Hartmann, Director of Drug Testing Services at The Industrial Laboratories Company, Inc., the Division's primary testing laboratory, will ensure that all of the "pre-approved reference laboratories" (those laboratories

that the Division has approved for Split-Sample Testing on the basis that these laboratories are 1) capable of professionally performing all of the necessary laboratory tests; and 2) are willing, generally, to receive Split-Samples for the purpose of confirmation testing) provide written verification from their laboratory managers that they are using the same equipment and testing methodology for every test that Industrial Laboratories uses.

Mr. Mann cited the following conditions that are applicable to all Split-Sample testing: 1) that communication should be restricted to the Commission designee and the split-sample laboratory representative; 2) that the split-sample laboratory shall be sent a copy of the affidavit describing the substance detected and the analytical procedure used for identification. The split-sample laboratory shall limit its analysis to the analysis conducted by the primary laboratory; and 3) communication between the primary testing laboratory and the split-sample laboratory is limited to the exchange of the analytical method and the threshold level used to confirm the identity of the drug(s) or its/their metabolites. The split-sample laboratory shall be instructed to contact Ms. Hartmann at The Industrial Laboratories.

Mr. Mann noted that, should the Division receive advance notification of a positive test result in a trial race, it would be sufficient reason for the horse to be disqualified from racing in the finals. Mr. Mann observed that most of the breed organizations have stringent requirements for nomination and entry of horses into special races, such as stakes races.

The Commission took notice that the Division has included owners as recipients of notices of hearing/medication violations in order to prevent communications lapses between owners and trainers. After considering Mr. Mann's comments, the Commission found the document to be acceptable as presented.

- 4) <u>Stable Roster</u>: Following its review, the Commission found this document to be acceptable.
- 5) Colorado Racing Commission Rule #11.544 Pertaining to Stable Inspections: The Commission reviewed the text of Rule #11.544 and took notice of its inclusion in the "Horsemen's Information Packet".
- 6) <u>Stable Inspection Procedures</u>: Mr. Mann stated that the current edition is 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.
- 7) <u>Stable Inspection Report</u>: The Commission took notice of the inclusion of this document in the Horsemen's Information Packet.
- 8) <u>Copies of New Rules (Effective April 30, 2011)</u>: The Commission took notice of the inclusion of these documents in the Horsemen's Information Packet.

Mr. Mann concluded his presentation by recommending that the Commission approve the aforementioned documents.

At this time, Mr. Mark McGregor, President of the Colorado Horse Racing Association, requested the ability to address the Commission concerning certain documents contained in the subject "Horsemen's Information Packet", primarily those pertaining to therapeutic medications, therapeutic medication withdrawal times and the probable effect that newly adopted rule 5.433 of the Colorado Racing Commission Rules would have on racing participants at Arapahoe Park's upcoming meet. He expressed his belief that, prior to endorsing the list of recommended withdrawal times for the removal of horses from therapeutic medication usage, the Commission should obtain definitive

scientific evidence that exact withdrawal times for the removal of horses from therapeutic medication usage could be confidently established that would guarantee that there would be no detectable levels of therapeutic medication in a horse's system. Mr. McGregor proposed that the Commission revisit the appropriateness of establishing threshold levels for medication usage until further scientific data is available. Mr. McGregor advised that he, Mr. Shannon Rushton, Executive Director of the Colorado Horse Racing Association, present via teleconference call, and multiple industry veterinarians, who were in attendance, would appreciate being allowed to present their views and opinions to the Commission regarding the aforementioned subjects. The Commission entertained the comments of Mr. McGregor, Mr. Rushton and Veterinarians Robert Moak, James Dysart, Alan Chastain and Happy Fluitt. The Commission emphasized that Colorado has established and intends to continue to enforce its zero tolerance position concerning medication usage and detection.

Following discussion, the motion that was previously made by Commissioner Kester and seconded by Commissioner Vail to accept the aforementioned documents, rules and pertinent supplementary material contained in the "2011 Horsemen's Information Packet" with the proviso that the date that appears on page 14 of the document entitled "Horse Racing Medication Guidelines and Veterinary Practices", is to be changed from "March 2010" to "March 2011", was unanimously carried.

Adjournment

After determining that there was no further business to consider, a motion was made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to adjourn the meeting at 11:30 a.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on **Tuesday**, **July 12**, **2011** at Arapahoe Park, 26000 East Quincy Avenue, Aurora, Colorado. (Subsequently, the date of the meeting was re-scheduled to Tuesday, July 19, 2011 due to lack of a quorum.)

The undersigned hereby approve the foregoing Minutes.

JACK PRETTI, CHAIRMAN
(EXCUSED)
MARY SHARON WELLS, VICE-CHAIR
CHARLES VAIL, DVM, MEMBER
DANIEL KESTER, MEMBER
SEAN BEIRNE, MEMBER

(PRESENT VIA TELECONFERENCE)

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, July 19, 2011 in the Directors' Room at Arapahoe Park, 26000 East Quincy Avenue, Aurora, Colorado. Chairman Jack Pretti called the meeting to order at 9:35 a.m.

Members Present

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

Commissioner Dan Kester was excused from the meeting.

Staff Present

Don Burmania, Director, Division of Racing Events Robert "Duke" Mann, Horse-Racing Coordinator Pam Kilgore, Division Auditor Y. E. Scott, Senior 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 in Honor of Former Racing Commissioner W. Gale Davey, Jr.

The Commission, Division of Racing Events' staff members and industry affiliates acknowledged with profound regret the recent death of Mr. W. Gale Davey, Jr., who had served as a member of the Racing Commission for two full terms (1995-2002) and had, at the age of 80, taken on the new career of Association Steward at Arapahoe Park, a position he held for four years. The Commissioners offered tributes to Mr. Davey and reflections on his life and achievements after which all present observed a moment of silence in his honor.

(A message of sympathy and condolence was sent to Mr. Davey's family on behalf of the Colorado State Racing Commission and the Division of Racing Events.)

Election of Officers

A motion was made by Commissioner Wells, seconded by Commissioner Beirne and unanimously carried to appoint Jack Pretti to serve as Chair of the Commission. A motion was made by Commissioner Pretti, seconded by Commissioner Vail and unanimously carried to appoint Mary Sharon Wells to serve as Vice-Chair of the Commission. Both appointments will remain in effect through June 2012.

Approval of Minutes of May 10, 2011

A motion was made by Commissioner Vail, seconded by Commissioner Beirne and unanimously carried to approve the minutes of May 10, 2011 as submitted.

<u>Consideration of Proposed Stipulated Agreement and Order – In the Matter of</u> Owner/Trainer BRADLEY BOLEN

Division Director Don Burmania advised the Commission that the horse, Executive Wrangler, trained by Mr. Bradley Bolen and owned by Ms. Debra Gotovac, ran in the second race on June 10, 2011 and finished in second place. Standard testing of blood and urine samples taken from the horse indicated the presence in the system of the horse of the unauthorized medication, Clenbuterol, a Class 3 drug according to Colorado Racing Commission Rule #5.300 and the Uniform Classification Guidelines for Foreign

Substances as published by the Association of Racing Commissioners International. The results of the aforementioned tests represent violations of Colorado Racing Commission Rules 5.500, 5.502, 5.300, 5.301 and 5.304.

Mr. Burmania apprised the Commission of the terms and conditions set forth in a proposed Stipulated Agreement and Order prepared by the Colorado Division of Racing Events in the matter of Mr. Bradley Bolen. He explained that, as a result of investigations performed by Division staff, charges were filed against Mr. Bolen before the Arapahoe Park Board of Stewards in Case No. 11-0325. Mr. Burmania advised the Commission that Mr. Bolen and Mr. Shannon Rushton, Executive Director of the Colorado Horse-Racing Association, had approached him to request a settlement agreement, noting that Mr. Bolen had not denied that the horse Executive Wrangler had run with Clenbuterol in its system. Mr. Burmania observed that, based upon the Division's statutory authority to propose the subject Order and prepare the subject Stipulated Agreement, including the disciplinary terms contained therein, he would recommend that the Commission accept the document in question as a means of resolving Case No. 11-0325 without the necessity of further proceedings, including possibly prolonged and unpredictable litigation.

A motion was made by Commissioner Vail to approve the Stipulated Agreement and Order. The motion failed for lack of a second.

Discussion ensued during which the Commission inquired of Ms. Y. E. Scott, Senior Assistant Attorney General serving in her capacity as legal counsel for the Division of Racing Events, what options the Commission would have and what the probable consequences of either accepting or rejecting the proposed Stipulated Agreement and Order would be. Ms. Scott informed the Commission that it could approve the document in its present form, modify it or reject it, but, should the Commission reject the Stipulated Agreement and Order, the matter would revert to the Board of Stewards for the conduct of a hearing. She advised the Commission that the Stipulated Agreement and Order had been brought before the Commission because the penalty reflected therein of a \$1,500 fine and loss of the purse is in excess of the penalty that the Board of Stewards would be able to impose. As part of its deliberation, the Commission considered the fact that the Association of Racing Commissioners International guidelines provide suggested penalties for Class 3 Penalty Class B drug violations of a "minimum 15-day suspension (maximum of a 60-day suspension) and a minimum fine of \$500 (maximum fine of \$1,000)" and "disqualification and loss of purse and the horse must pass a commission-approved examination before becoming eligible to be entered." The Commission took notice that the Stipulated Agreement and Order did not propose any suspension of Mr. Bolen's racing license. Additionally, in determining how to proceed in this matter, the Commission considered what penalties had been assessed for two similar medication violations during the meet and, also, whether approval of the proposed Stipulated Agreement and Order would establish a precedent for any future decisions relating to similar violations. Ms. Scott assured the Commission that each individual case would be separately considered.

The Commissioners raised concerns about a possible inconsistency in granting approval of the subject Stipulated Agreement and Order in its existing form based upon the lack of any provision for a suspension of Mr. Bolen's racing license. Mr. Burmania observed that, in his view, the primary reason for proceeding with approval of the subject Stipulated Agreement and Order would be that the document reflects Mr. Bolen's admission of guilt and penalizes him both by the imposition of a fine amount in excess of the Association of Racing Commissioner's International guideline and by the loss of the purse.

At 10:05 a.m., the Commission recessed the regular session and at 10:10 a.m., the Commission reconvened the regular meeting.

The Commission commended Mr. Burmania and his efforts to resolve this case without the necessity for engaging in further legal actions. However, the Commission stated that it would have preferred to have a different outcome. Following lengthy consideration and discussions with Mr. Burmania and Ms. Scott, a motion was made by

Commissioner Wells, seconded by Commissioner Vail and carried by a majority vote to accept the Stipulated Agreement and Order with regard to Case No. 11-0325 in the matter of Mr. Bradley Bolen, trainer of record of the horse in question, Executive Wrangler. Commissioner Beirne voted against the motion.

Consideration of Report and Recommendation of the Race Review Committee: In the

Matter of the Disqualification of the Horse, "FOREST MOUSE" -- Robert "Duke" Mann

Mr. Robert "Duke" Mann, Horse-Racing Coordinator for the Division of Racing Events, advised the Commission that, on June 9, 2011, the Race Review Committee met and conducted a hearing in the matter of Case No. 11-0913, the objection of Owner/Trainer Mark Jensen to the decision of the Arapahoe Park Board of Stewards in Ruling #11-01 issued on May 29, 2011. The decision of the Board of Stewards in Ruling #11-01 had been to disqualify the horse Forest Mouse, which ran in post-position #4 in the 8th race on May 29, 2011. On June 2, 2011, Mr. Jensen filed a Statement of Objection under Colorado Racing Commission Rule #6.401.

Mr. Mann presented for Commission consideration the following background information relating to this matter:

- 1) That on May 29, 2011, the Board of Stewards at Arapahoe Park issued Ruling #11-01, "Disqualification Based Upon Running of a Race";
- 11) That the Board in the Disqualification Ruling disqualified the horse, FOREST MOUSE, racing in the 4th post position in the 8th race at Arapahoe Park Racetrack on May 29, 2011 and established a new official order of the finish for the subject race;
- 12) That, prior to the Disqualification Ruling, FOREST MOUSE finished in first place in the subject race;
- 13) That, as a result of the Disqualification Ruling, FOREST MOUSE was demoted to second place in the subject race;
- 14) That, as a result of the Disqualification Ruling, WALLY VAN was elevated to first place in the subject race;
- 15) That, on June 2, 2011, Mark Jensen, a duly licensed Owner/Trainer in good standing with the Colorado Division of Racing Events and the trainer of record for the horse FOREST MOUSE filed a Statement of Objection with respect to the Disqualification Ruling. Mr. Jensen was also the duly licensed owner of the horse FOREST MOUSE and Mr. Perry Whetstone, a duly licensed jockey, was the rider aboard FOREST MOUSE in the subject race;
- 16) That, the Director of the Division of Racing Events performed the required review of the Objection for compliance with the "Race Review Committee Policy and Procedural Directive" and determined that the Division must establish and convene a Race Review Committee;
- 17) In response to the Objection, the Division established the Committee in accordance with the terms and guidelines of the Policy and set the hearing for June 9, 2011 at 1:00 p.m. at the Office of the Board of Stewards at Arapahoe Park, 26000 East Quincy Avenue, Aurora, Colorado;
- 18) 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), William Powers (Director of Racing at Arapahoe Park), and Shannon Rushton (Executive Director of the Colorado Horse-Racing Association); and
- 19) Robert J. ("Duke") Mann acted as the Chairperson of the Race Review Committee.

Mr. Mann advised the Commission that, after thorough review and after concluding that the Objection of the Owner-Trainer failed to set forth a meritorious claim, it was the unanimous decision of the Race Review Committee to request that the Colorado Racing Commission uphold the actions and decisions of the Board of Stewards

regarding the disqualification of the horse FOREST MOUSE in Case No. 11-0913 and to establish the new order of finish whereby the horse FOREST MOUSE is disqualified from first place and placed second behind the horse WALLY VAN. Mr. Mann requested that the Commission accept the recommendation of the Race Review Committee at this time.

After being advised by Mr. Mann that the deliberation and decision-making process of the Race Review Committee in the aforementioned matter had been properly executed and that no objections had been raised to the decision of the Race Review Committee, a motion was made by Commissioner Beirne, seconded by Commissioner Vail and unanimously carried to adopt the recommendation of the Race Review Committee in the matter of the horse Forest Mouse (Case Number 11-0913).

The Commission directed that an Order be issued reflecting that the official order of finish shall be the following:

First Place: "WALLY VAN"
Second Place: "FOREST MOUSE"
Third Place: "NO IT AIN'T"

Fourth Place: "OOPS AND A HALF" Fifth Place: "ALERT THE PRESS" Sixth Place: "SECRET CITY"

Seventh Place: "SUPERCARLS REMEDY"

Eighth Place: "TIGER BAY"

Ninth Place: "BRAHMS INFERNO"
Tenth Place: "NORTHERN TWIST"

The Commission expressed its support for and confidence in the Race Review Committee process, noting that it has proved to be a very effective and functional tool for affording all affected parties in cases of disputed race results an opportunity to present their views and arguments.

Status Report - Arapahoe Park's 2011 Live Race Meet - Robert "Duke" Mann

Mr. Robert "Duke" Mann, Horse Racing Coordinator for the Division of Racing Events, and Mr. Bill Powers, Racing Secretary/Facilities Manager at Arapahoe Park, addressed the Commission regarding the current live race meet. Mr. Mann commented that the Division staff had been as busy as last year processing licenses for many new and renewing applicants and handling the work associated with the even greater volume of horses coming to and being stalled at the racetrack than were there in 2010. Mr. Mann stated that many trainers from Colorado as well as from Arizona, New Mexico, Idaho, Utah, Wyoming and Texas have come to Arapahoe Park this year. Mr. Powers observed that the stalls are filled and he has 1,400 head of horses with 1,250 racehorses at Arapahoe Park at the present time. Mr. Mann observed that, as of Sunday, July 17, 2011, Arapahoe Park had conducted 24 days of live racing this season, including an extra day on July 1, 2011 upon which the Rocky Mountain Futurity Trials had been run. He noted that there were no major complaints or incidents to report and that the meet had been progressing very smoothly. Additionally, Mr. Mann advised the Commission that the racetrack surface was being properly maintained.

Mr. Powers commented that Arapahoe Park intends to hold two very prestigious events, the Mile High Futurity and Mile High Derby. He stated that the 15 race trials for both competitions would be held on Friday, August 6, 2011 with the finals being conducted on August 21, 2011, the final day of the meet.

Mr. Mann reported that, to date, the total in-state and out-of-state gross handle is \$2,881,190. Also, he advised that the total attendance and handle figures thus far, except for the out-of-state handle, are in excess of those for the same time last year. Mr. Powers commented that once Arizona off-track wagering is on schedule, the out-of-state handle figures should considerably increase. Further, Mr. Powers stated that he has not increased the number of races per program that he is offering this year over last year, but he has increased the size of the fields. He commented that the monetary success of the

meet could be, in part, attributable to the quantity of quality horses participating at the meet. He and Mr. Mann noted that, not only are the off-track wagering facilities contributing to the excellent handle, but telephone and account wagering are proving to be very popular as well.

The Commission thanked Mr. Mann and Mr. Powers for their observations.

2012 Race Dates Hearing

Chairman Pretti convened the 2012 Race Dates Hearing at 10:30 a.m.

Mr. Don Burmania, Director of the Division of Racing Events, advised the Commission that, in keeping with its established protocol, the Division extended invitations to any interested groups to submit race date requests for 2012 for consideration at this time. He observed that no greyhound race date requests had been received by the Division and only Arapahoe Park had submitted a request for dates. Mr. Burmania stated that Arapahoe Park tendered its request for a 2012 race date envelope consisting of 39 days of live horse racing to be conducted on unspecified dates over a 13-week period from May through August 2012.

In order for the Division to be able to plan for calendar year 2012, Fiscal Year 2012 and Fiscal Year 2013, to develop an appropriate staffing plan for the proposed meet and to have a clear idea about what its budgetary needs would be, Mr. Burmania recommended that the Commission approve Arapahoe Park's race date request as submitted. He declared that it is very important for the Division and the Commission to 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 upon available resources, sufficient staff and budget.

Mr. Bruce Seymore, Executive Director of Colorado Racing Operations for Mile High Racing and Entertainment, advised the Commission that he would anticipate that the race dates and racing schedule for Arapahoe Park's 2012 live meet would be identical to those in effect this season. He commented that, for the 2012 live racing season, he intends to implement a new policy that will forbid the use of any race-day medication on two-year old horses.

Based upon Mr. Burmania's recommendation, the Commission proceeded to consider the proposed race date request for Arapahoe Park for 2012. He stated that Arapahoe Park is not required to designate its actual race dates at the present time and that, in the absence of an alternative application, Arapahoe Park's scheduling is allowed to be left open-ended until submission of its renewal application. A motion was thereupon made by Commissioner Wells, seconded by Commissioner Vail and unanimously carried to approve Arapahoe Park's 2012 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, 2012 and August 31, 2012, with the proviso that the conditions set forth above apply to any specific dates of racing.):

ARAPAHOE PARK
(Unincorporated Arapahoe County)

MAY – AUGUST, 2012* (39 UNSPECIFIED DATES)

* - 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 2012 Race Dates Hearing was adjourned at 10:40 a.m.

Consideration of Request for Reimbursement of Funds Paid by the Colorado Horse-Racing Association to Transport Deceased Horse to Colorado State University – Shannon Rushton

Mr. Shannon Rushton, Executive Director of the Colorado Horse-Racing Association, explained to the Commission that, prior to the commencement of this season's live meet and before an agreement with Colorado State University had been finalized, two horses had died at Arapahoe Park. He stated that, at that time, there were no arrangements in place for payment of transportation charges from the racetrack to Colorado State University's veterinary facilities, but because immediate action was required, the Colorado Horse-Racing Association had paid the \$450 hauling fee. Mr. Rushton inquired whether the Colorado Horse-Racing Association could be reimbursed this amount, either from the Equine Research Fund accrual or from another source.

Mr. Don Burmania, Director of the Division of Racing Events, advised the Commission that neither the Commission nor the Division control the Equine Research Fund, which reimburses the hauler of horse carcasses from Arapahoe Park to the Colorado State University facilities in Fort Collins. Ms. Pam Kilgore, the Division's Auditor, confirmed Mr. Burmania's statement that the Division did not have any control over the funds. Both Mr. Burmania and Ms. Kilgore also stated that the Division did not have the budgetary resources to make a reimbursement to the Colorado Horse-Racing Association, but they would research how it may be possible to make the reimbursement. Based upon Mr. Burmania's and Ms. Kilgore's comments, the Commission informed Mr. Rushton that it would take this matter under advisement and would attempt to make some arrangements for reimbursing the Colorado Horse-Racing Association. The Commission expressed its appreciation to the members of the horse-racing colony for intervening in and taking steps to resolve this situation.

Discussion Regarding Pending Sample Test Results – Don Burmania

Mr.Temple Rushton, horse trainer at Arapahoe Park, expressed a desire to discuss enforcement of potential medication violations in light of a meeting held on July 8 between Mr. Don Burmania, Director of the Division of Racing Events, and horse trainers. Mr. Burmania explained that, once samples are sent to Industrial Laboratories for testing, blanket tests for numerous medications and drugs are routinely performed. Subsequently, the laboratory notifies the Division either that there is no evidence of any substance in a horse's system or there is the possibility that something has been detected and, at this stage, the sample testing is considered "pending" until the laboratory can complete further analysis and attest that there is either no violation or there is a quantifiable amount of a drug or medication present in the horse's system.

Mr. Burmania observed that certain issues were raised by the trainers regarding the following: 1) whether the Division should construe a medication violation to have occurred only when the laboratory is able to attest to a quantifiable level of a drug or medication being in a horse's system; or 2) whether the Division should construe a medication violation to have occurred when the laboratory analysis reflects the presence, or detectable amount, of a drug or medication, but not a quantifiable level of said drug or medication. Mr. Burmania advised that he would be hesitant to bring a potential medication-related case before the Commission to be prosecuted unless Industrial Laboratories could attest that there was a quantifiable amount of a substance present in a horse's system.

Mr. Shannon Rushton, Executive Director of the Colorado Horse-Racing Association, acknowledged Mr. Burmania's intentions and complimented him on his scrupulous approach to prosecuting medication cases. However, Mr. Rushton expressed his belief that the Commission has established by rule a zero tolerance position regarding medication usage and, therefore, does not use threshold or quantifiable levels as a determining factor in prosecuting medication cases. During the course of the discussion, the Commission afforded all interested parties an opportunity to offer any views, opinions and arguments for its consideration. Members of the horse racing public as well as Mr. Bruce Seymore, Executive Director of Colorado Racing Operations for Mile High Racing and Entertainment, presented their thoughts on this subject. Additionally, the

Commission requested advice from its legal counsel, Ms. Y.E. Scott, who observed that, absent confirmation of the presence of a certain level of a medication in a horse's system, it would be very difficult to proceed with a court action.

Certain Commissioners expressed their beliefs regarding how their zero tolerance position should be construed. Commissioner Pretti recommended that Division Director Burmania continue to prosecute any cases in which the presence of a substance is detected by the testing laboratory in a horse's system despite the potential difficulty that such prosecution could produce. Commissioner Pretti rejected the idea of having or needing to have quantifiable levels of medication in place to proceed with legal action. Mr. Burmania acknowledged the Chair's directive. No action was taken at this time.

Comments Regarding Need for Monitoring of Horses' Deaths/Removal of Deceased Horses from Arapahoe Park

Mr. Jack Rumsey, a trainer at Arapahoe Park, expressed his belief that there has been negligence at Arapahoe Park this season in monitoring the removal of deceased horses from the grounds of the facility and, also, in ensuring that they are promptly transported from the racetrack to Colorado State University. In response to Mr. Rumsey's query concerning the prompt hauling of deceased horses, the Commission emphasized its support for and understanding of the crucial importance of obtaining expeditious removal of deceased horses from the racetrack premises. The Commission endorsed allowing the Division of Racing Events to undertake negotiations and make arrangements with Colorado State University to ensure that such removal/hauling may be promptly performed.

Additionally, Mr. Rumsey inquired whether autopsies are routinely performed on a deceased horse's liver and kidneys to determine the exact cause of its death to which the Commission replied that this matter would need to be clarified. No action was taken at this time.

Adjournment

After determining that there was no further business to consider, a motion was made by Commissioner Vail, seconded by Commissioner Wells and unanimously carried to adjourn the meeting at 11:15 a.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on **Tuesday, September 13, 2011** 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

(EXCUSED)
DANIEL KESTER, MEMBER

SEAN BEIRNE, MEMBER

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, September 13, 2011 in Conference Room 110 (Enforcement Conference Room) at 1881 Pierce Street, Lakewood, Colorado. Commission Chairman Jack Pretti called the meeting to order at 9:30 a.m.

Members Present

Jack Pretti, Chairman Mary Sharon Wells, Vice-Chair Sean Beirne, Member

Commissioners Charles Vail, DVM, and Daniel Kester were excused from the meeting.

Staff Present

Don Burmania, Director, Division of Racing Events Pam Kilgore, Division Auditor William Johnson, Division Investigator Y. E. Scott, Senior 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 19, 2011

A motion was made by Commissioner Wells, seconded by Commissioner Beirne and unanimously carried to approve the minutes of July 19, 2011 as amended.

<u>Consideration of Report and Recommendation of the Race Review Committee: In the</u>

Matter of the Disqualification of the Horse MISS ROYAL SIXTY SIX – Don Burmania

Due to the absence of Horse Racing Coordinator Robert "Duke" Mann, Mr. Don Burmania, the Director of the Division of Racing Events, reported on the subject deliberation of the Race Review Committee on August 20, 2011 in the matter of the disqualification of the horse MISS ROYAL SIXTY SIX. Mr. Burmania informed the Commission that, on August 20, 2011, the Race Review Committee had met and conducted a hearing in the matter of Case No. 11-0865, the objection of Owner/Trainer Gene Prendergast to the decision of the Arapahoe Park Board of Stewards in Ruling #11-28 issued on August 12, 2011. The decision of the Board of Stewards in Ruling #11-28 had been to disqualify the horse MISS ROYAL SIXTY SIX, which ran in post-position #5 in the 1st race on August 12, 2011. On August 14, 2011, Mr. Prendergast filed a Statement of Objection under Colorado Racing Commission Rule #6.401.

Additionally, Mr. Burmania advised the Commission that a second horse, GK THE DUCK, racing in post-position #3 in the 1st race on August 12, 2011 had been disqualified from its original 4th place finish and demoted to 6th place. Mr. Burmania explained that the owner of GK THE DUCK, Ms. Kathy Stoker-Hill, who was present, had submitted an untimely request for reconsideration of the disqualification of her horse. Ms. Stoker-Hill advised the Commission that she had received erroneous information regarding her ability to submit a request for review of the race in question and believed that she had acted in accordance with the Commission's rules and within the established time frame for tendering her request. However, it was the Commission's determination to disallow Ms. Stoker-Hill's request for review of the subject race on behalf of her horse, GK THE DUCK, after clarifying the matter with Mr. Burmania and obtaining confirmation from Ms. Y.E. Scott, Senior Assistant Attorney General serving as legal counsel for the Colorado Racing Commission, that Ms. Stoker-Hill's request had not been submitted in a timely manner.

Mr. Burmania presented for Commission consideration the following background information relating to this matter:

- 1) That, on August 12, 2011, the Board of Stewards at Arapahoe Park issued Ruling #11-28, "Disqualification Based Upon Running of a Race";
- 20) That the Board in the Disqualification Ruling disqualified the horse, MISS ROYAL SIXTY SIX, racing in the 5th post position in the 1st race at Arapahoe Park Racetrack on August 12, 2011 and established a new official order of the finish for the subject race;
- 21) That, prior to the Disqualification Ruling, MISS ROYAL SIXTY SIX finished in third place in the subject race;
- 22) That, as a result of the Disqualification Ruling, MISS ROYAL SIXTY SIX was demoted to fifth place in the subject race;
- 23) That, as a result of the Disqualification Ruling, RA NON STOP was elevated to fourth place in the subject race;
- 24) That, on August 14, 2011, Gene Prendergast, a duly licensed Owner/Trainer in good standing with the Colorado Division of Racing Events and the trainer of record for the horse MISS ROYAL SIXTY SIX filed a Statement of Objection with respect to the Disqualification Ruling. Mr. Prendergast and Martha Prendergast were the duly licensed owners of the horse MISS ROYAL SIXTY SIX and Mr. Elliot Bachicha, Jr., a duly licensed jockey, was the rider aboard MISS ROYAL SIXTY SIX in the subject race;
- 25) That, the Director of the Division of Racing Events performed the required review of the Objection for compliance with the "Race Review Committee Policy and Procedural Directive" and determined that the Division must establish and convene a Race Review Committee;
- 26) In response to the Objection, the Division established the Committee in accordance with the terms and guidelines of the Policy and set the hearing for August 20, 2011 at the Office of the Board of Stewards at Arapahoe Park, 26000 East Quincy Avenue, Aurora, Colorado;
- 27) 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), William Powers (Director of Racing at Arapahoe Park), and Kelly Brooks (Licensed Horse Owner at Arapahoe Park); and
- 28) Robert J. ("Duke") Mann acted as the Chairperson of the Race Review Committee.

Mr. Burmania advised the Commission that, after thorough review and after concluding that the Objection of the Owner-Trainer set forth a meritorious claim, the Race Review Committee rendered its unanimous decision to request that the Colorado Racing Commission overturn the actions and decisions of the Board of Stewards regarding the disqualification of the horse MISS ROYAL SIXTY SIX in Case No. 11-0865 and to establish the original order of finish as the official order of finish whereby the horse MISS ROYAL SIXTY SIX is restored to third place and the horse RA NON STOP is restored to fifth place. Mr. Burmania requested that the Commission accept the recommendation of the Race Review Committee at this time.

After being advised by Mr. Burmania that the deliberation and decision-making process of the Race Review Committee in the aforementioned matter had been properly executed and that no objections had been raised to the decision of the Race Review Committee other than those made by Ms. Stoker-Hill, a motion was made by Commissioner Wells, seconded by Commissioner Beirne and unanimously carried to adopt the recommendation of the Race Review Committee in the matter of the horse MISS ROYAL SIXTY SIX (Case Number 11-0865).

The Commission directed that an Order be issued reflecting that the official order of finish shall be the following:

First Place: A MERE BABE Second Place: FLASH POINT

Third Place: MISS ROYAL SIXTY SIX

Fourth Place: Gg SUMMERTIME GAL

Fifth Place: RA NON STOP Sixth Place: GK THE DUCK

Seventh Place: FLYBYEAPPROACH
Eighth Place: TWELVE NOTES
Ninth Place: KATELYNNS SONG

Tenth Place: SPECIAL BLACK MAMBA

The Commission expressed its support for and confidence in the Race Review Committee process, noting that it has proved to be a very effective and functional tool for affording all affected parties in cases of disputed race results an opportunity to present their views and contentions.

Consideration of Disciplinary Matters – Don Burmania

Mr. Don Burmania, Director of the Division of Racing Events, explained that material relating to two disciplinary actions had been forwarded to the Commissioners in their agenda packets. He noted that the Arapahoe Park Board of Stewards in its rulings had referred the cases to the Commission with recommendations for the imposition of further sanctions. After being advised by Mr. Burmania that both parties in these cases would be given proper thirty days' advance notification of "show cause" hearings to be scheduled for the Commission's November 8, 2011 meeting, no action was taken by the Commission at this time.

Update on 2011 Arapahoe Park Race Meet -- Don Burmania

Mr. Don Burmania, Director of the Division of Racing Events, updated the Commission on the handle and attendance totals for the 2011 Arapahoe Park race meet, which concluded on August 21, 2011. He reported that the total mutuel handle amounted to \$5,357,368, an 8.6% increase over the 2010 meet handle of \$4,935,199. The total attendance was 2,050,439, up from 1,805,514 in 2010. (Arapahoe Park has since provided amended attendance figures showing attendance was 64,610, up from 51,094 in 2010.) Mr. Burmania observed that the Division will present its complete final race meet report at the November 8, 2011 Commission meeting.

Additionally, Mr. Burmania informed the Commission that the Division had performed 590 sample tests of which 20 produced a positive test result. He advised the Commission that the final race meet report will include a breakdown of the types of medications detected by means of sample testing.

The Commission inquired whether the Division had been able to reimburse the Colorado Horse-Racing Association for paying the \$450 transportation fee for hauling two deceased horses from the racetrack to Colorado State University before an agreement for such service had been finalized. Mr. Burmania advised that the Division had been given permission to make the subject reimbursement from its operating budget.

The Commission acknowledged the 2011 Arapahoe Park Board of Stewards, specifically Randy Blaseg who was in attendance, and complimented their efforts.

No action was taken by the Commission.

<u>Presentation and Discussion of EasyCare Shoes/Boots – Don Burmania and Garrett Ford</u>

Mr. Don Burmania, Director of the Division of Racing Events, advised that Mr. Garrett Ford, the Owner of EasyCare, a manufacturer of glue-on urethane horse shoes and boots, had requested to address the Commission regarding his product.

Mr. Garrett Ford introduced himself and explained to the Commission the goals of his presentation. He stated that it was his intention to discuss with and display for the Commission the types of hoof protection that have been in use at Arapahoe Park and, then, compare the allowable hoof protection to the current Easyboot Race Shoe. He expressed his desire to apprise the Commission of the features of the Easyboot Race Shoe

and the process/ability to race that it would afford at Arapahoe Park's 2012 race meet. Further, he advised that, in the event that the Easyboot Race Shoe would not be allowable given the current Commission rules, he would like to find out how it could be changed to bring it into conformity with them. Mr. Ford advised the Commission that his company, EasyCare, manufactures and distributes equine products designed to enhance performance, provide protection, increase comfort for the horse and rider and enrich the overall human-horse experience. He stated that the company's main product line is focused upon hoof protection and that EasyCare is currently in the process of developing a lightweight urethane shoe for the equine flat track racing industry, the Easyboot Race Shoe.

Discussion ensued during which the Commission expressed its belief that, prior to endorsing or consenting to the use of any new type of product designed to be worn by or applied to a race horse at a meet, it would need to have compelling scientific data, evidence and documentation that the product would protect the health, safety and welfare of the race horse. The Commission recommended that Mr. Ford and his business associates contact veterinarians at the Colorado State University College of Veterinary Medicine and request their guidance concerning the Easyboot Race Shoe before pursuing any rule changes during the rule-making process.

The Commission entertained comments from Mr. Bruce Seymore, Colorado Director of Operations for Mile High Racing & Entertainment. Mr. Seymore expressed his unwillingness to permit the use of the Easyboot Race Shoe at Arapahoe Park. He asserted that, until any type of new product, including the Easyboot Race Shoe, had been approved and recommended for use by the Association of Racing Commissioners International, he would oppose its use at Arapahoe Park. Additionally, Mr. Seymore expressed his distress at the favorable portrayal by Mr. Ford of comments made by Mr. Burmania and the stewards concerning the Easyboot Race Shoe, stating that neither Mr. Burmania nor the stewards were endorsing the use of the subject product. Further, Mr. Seymore objected to and denied the accuracy of comments made by Mr. Ford on his blog in which he denounced certain current allowable products and practices at racetracks, including Arapahoe Park, as injurious and potentially life-threatening to race horses.

After taking all views and opinions into consideration and after emphasizing that it would not encourage experimentation with any type of new racing-related product, including the Easyboot Race Shoe during a live race meet, the Commission recommended that Mr. Ford and his business colleagues proceed to enlist the aid from the Association of Racing Commissioners International and veterinarians at Colorado State University. No further action was taken by the Commission.

Approval of 2012 Commission Meeting Dates

Following review of the list of proposed 2012 Commission meeting dates, a motion was made by Commissioner Wells, seconded by Commissioner Beirne and unanimously carried to continue to hold the Commission's meetings on the second Tuesday of any given month with the proviso that, if unexpected circumstances should necessitate a change of meeting date, the Commission would modify its regular schedule. It was agreed that meetings would continue to be conducted in February, April, May, July, September and November 2012.

Inquiry Regarding Equibase Reporting Service – Horse Owner Kathy Stoker-Hill

Ms. Kathy Stoker-Hill inquired whether comments published by Equibase and/or The Daily Racing Form, international race reporting services, regarding a horse's performance in a race would be adjusted in the event of a change to the official outcome of a race. The Commission recommended that Ms. Stoker-Hill contact Equibase regarding this subject. After being informed by Mr. William Powers, Director of Racing at Arapahoe Park, and Mr. Shannon Rushton, Executive Director of the Colorado Horse-Racing Association, that Equibase has not made revisions to its comments when an order of finish has been changed, the Commission recommended that Mr. Powers contact Equibase to request that its information be updated to reflect changes that were made to the official orders of finish of certain prior stakes races at Arapahoe Park.

Adjournment

After determining that there was no further business to consider, a motion was made by Commissioner Wells, seconded by Commissioner Beirne and unanimously carried to adjourn the meeting at 10:35 a.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on **Tuesday, November 8, 2011** 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

(EXCUSED)

CHARLES VAIL, DVM, MEMBER
(EXCUSED)

DANIEL KESTER, MEMBER

SEAN BEIRNE, MEMBER

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, November 8, 2011 in Enforcement Conference Room 110 at 1881 Pierce Street, Lakewood, Colorado. Commission Chairman Jack Pretti called the meeting to order at 9:30 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

Don Burmania, Director, Division of Racing Events Robert "Duke" Mann, Horse-Racing Coordinator Susan Cariveau, Licensing Supervisor Ceri Williams, Senior 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 14, 2010

A motion was thereupon made by Commissioner Beirne, seconded by Commissioner Kester and unanimously carried to approve the minutes of September 13, 2011 as submitted.

Per a discussion and query made at the September 13, 2011 meeting by Ms. Kathy Stoker-Hill, Commissioner Beirne advised that Equibase, an international race reporting service, would willingly modify its charts to reflect any reported change in the official order of finish in a race once the Division provided the updated information to it.

<u>Scheduled Disciplinary Hearing – In the Matter of Licensee ARNULFO ASCENCIO</u>

Commission Chairman Pretti convened the scheduled disciplinary hearing in the matter of Owner/Trainer Arnulfo Ascencio, License Number 201310193, Case Number 11-0861, at 9:35 A.M. Mr. Ascencio was present and was not represented by legal counsel.

As a preliminary matter, Division Director Don Burmania introduced Senior Assistant Attorney General Ceri Williams, who acted as the Commission's interim legal advisor in Ms. Y. E. Scott's stead.

Mr. Burmania advised the Commission that Mr. Ascencio had been duly and properly notified of today's hearing. He provided the following background information relating to this matter:

- I. That, on August 17, 2011, the Arapahoe Park Board of Stewards issued Ruling No. 11-37 in which the Board made the following Conclusion of Law:
 - 1. That, under the provisions of Colorado Racing Commission Rule #5.502, Arnulfo Ascencio, as trainer of TANNERITE, TOP GUN B, SEE MY SIDE and RARE WAVES, is responsible for and the absolute insurer of the condition of TANNERITE, TOP GUN B, SEE MY SIDE and RARE WAVES, including the presence of an

unauthorized medication in the system of TANNERITE during the 5th race on August 5, 2011, at Arapahoe Park, of TOP GUN B during the 7th race on August 5, 2011, at Arapahoe Park, of SEE MY SIDE during the 11th race on August 5, 2011, at Arapahoe Park, and of RARE WAVES during the 14th race on August 5, 2011, at Arapahoe Park.

- 2. Violation #1: Arnulfo Ascencio has violated Colorado Racing Commission Rule #5.500, Colorado Racing Commission Rule #5.502, Colorado Racing Commission Rule #5.301, Colorado Racing Commission Rule #5.304 and Colorado Racing Commission Rule #5.300 by allowing TANNERITE to run in the 5th race with an unauthorized medication.
- 3. Violation #2: Arnulfo Ascencio has violated Colorado Racing Commission Rule #5.500, Colorado Racing Commission Rule #5.502, Colorado Racing Commission Rule #5.301, Colorado Racing Commission Rule #5.304 and Colorado Racing Commission Rule #5.300 by allowing TOP GUN B to run in the 7th race with an unauthorized medication.
- 4. Violation #3: Arnulfo Ascencio has violated Colorado Racing Commission Rule #5.500, Colorado Racing Commission Rule #5.502, Colorado Racing Commission Rule #5.301, Colorado Racing Commission Rule #5.304 and Colorado Racing Commission Rule #5.300 by allowing SEE MY SIDE to run in the 11th race with an unauthorized medication.
- 5. Violation #4: Arnulfo Ascencio has violated Colorado Racing Commission Rule #5.500, Colorado Racing Commission Rule #5.502, Colorado Racing Commission Rule #5.301, Colorado Racing Commission Rule #5.304 and Colorado Racing Commission Rule #5.300 by allowing RARE WAVES to run in the 14th race with an unauthorized medication.

Mr. Burmania advised that the ruling of the Board reflected the following mitigating factors:

- 1. That all four violations occurred on the same date, August 5, 2011, which did not allow for the administration of corrective actions after the first violation.
- 2. That the *Uniform Classification Guidelines for Foreign Substances* as published by the Association of Racing Commissioners International does not present penalty recommendations for a fourth offense by a trainer for a Class 3, Penalty Class B drug violation.

Notice was taken that the Board's ruling ordered the following:

- 1. That Arnulfo Ascensio was to be fined a total of \$2,500.00 in accordance with Colorado Racing Commission Rule #5.440 and Colorado Racing Commission Rule #5.441. The total fine amount includes the following fines:
 - (a) \$500.00 for a first-offense Class 3, Penalty Class B drug violation for Violation #1;
 - (b) \$500.00 for a second-offense Class 3, Penalty Class B drug violation for Violation #2;
 - (c) \$500.00 for a third-offense Class 3, Penalty Class B drug violation for Violation #3;
 - (d) \$500.00 for a fourth-offense Class 3, Penalty Class B drug violation for Violation #4; and

- (e) \$500.00 for a first-offense Class 4, Penalty Class C drug violation for Violation #4.
- 2. Further, that the trainer's license of Arnulfo Ascencio was to be suspended for a period of 6 months in accordance with Colorado Racing Commission Rule #5.440 and Colorado Racing Commission Rule #5.441 with the suspension period to commence on August 13, 2011 (commencement of Order of Summary Suspension) and conclude on February 13, 2012. The total suspension amount of 180 days was to include the following suspensions to be run concurrently;
 - (a) 15-day suspension for a first-offense Class 3, Penalty Class B drug violation for Violation #1;
 - (b) 30-day suspension for a second-offense Class 3, Penalty Class B drug violation for Violation #2;
 - (c) 60-day suspension for a third-offense Class 3, Penalty Class B drug violation for Violation #3; and
 - (d) 75-day suspension for a fourth-offense Class 3, Penalty Class B drug violation for Violation #4.

The Board of Stewards referred this case to the Colorado Racing Commission for any further action that the Commission might deem necessary and ordered Mr. Ascencio to appear before the Commission to show cause why further action should not be taken against him.

Mr. Burmania advised the Commission that, to date, Mr. Arnulfo Ascencio has not paid any portion of the original \$2,500 fine and, therefore, his outstanding indebtedness has automatically doubled to \$5,000. Notice was taken by the Commission that, despite an issue concerning receipt of the Order, the Division was able to verify that the Order, sent to Mr. Ascencio via certified mail, was received on October 10, 2011. Mr. Burmania stated that the Commission has been delegated statutory authority to increase the current fine and penalty amounts and, in light of this, he recommended that the Commission consider imposing an additional penalty of \$4,500 for a total assessment of \$9,000. In its deliberations, the Commission expressed its desire to address the subject of "aggravating circumstances", such as those reflected in this case, at its upcoming Rule-Making Hearing.

Sworn testimony was given by Mr. Arnulfo Ascencio.

Following consideration of the evidence and testimony presented, a motion was duly made by Commissioner Vail to accept Mr. Burmania's recommendation and impose an additional penalty amount of \$4,500 bringing the total fine and penalty assessment to \$9,500. Commissioner Beirne recommended that the motion be amended to retain Mr. Ascencio's current fine and penalty assessments for a total outstanding indebtedness of \$5,000; and, further, to extend the dates of Mr. Arnulfo Ascencio's suspension from 180 days to 365 days with the suspension to conclude on August 13, 2012. The motion was unanimously carried. The Commission directed the Division of Racing Events to issue an Order reflecting its decision.

The hearing concluded at 9:50 A.M.

A digital recording of the proceeding is on file in the Division's Lakewood office.

<u>Scheduled Disciplinary Hearing – In the Matter of Licensee HECTOR HERNANDEZ-QUEZADA</u>

Commission Chairman Pretti convened the scheduled disciplinary hearing in the matter of Trainer Hector Hernandez-Quezada, License Number 201410475, at 9:50 A.M. Mr. Hernandez-Quezada was not present and was not represented by legal counsel.

Mr. Don Burmania, Director of the Division of Racing Events, advised the Commission that Mr. Hernandez-Quezada had been duly and properly notified of today's hearing. He provided the following background information relating to this matter:

- That, on July 20, 2011, the Arapahoe Park Board of Stewards issued two separate rulings (Ruling Nos. 11-17 and 11-18) in the matter of Hector Hernandez-Quezada in which he was fined a total of \$1,500.00. In these rulings, Mr. Hernandez-Quezada was informed that all fines would be due and payable within 20 days of notification of the rulings pursuant to Colorado Racing Commission Rule #6.700 and that failure to pay the fines in a timely manner would result in the imposition of a penalty fine equal to the amount of the total of the fines and the automatic 120-day suspension of the Colorado trainer's license issued to Mr. Hernandez-Quezada or, alternatively, a suspension until such time as the total fine and penalty assessment have been paid. Additionally, this matter would automatically be referred to the Commission for any further sanction that it might deem appropriate.
- That, on August 13, 2011, the day on which the fines were due, Mr. Hernandez-Quezada requested and was granted an extension until August 17, 2011 to pay the fines via mail.
- That, on August 23, 2011, the Arapahoe Park Board of Stewards issued Ruling No. 11-42 Order of Suspension and Assessment of Penalties since the fines had not been received by the Division of Racing Events by that date. Ruling No. 11-42 ordered the following:
 - The immediate payment of \$3,000 in fines and penalties (\$1,000 in fines as ordered in Ruling No. 11-17; \$500 in fines as ordered in Ruling No. 11-18; and \$1,500 in penalties pursuant to Colorado Racing Commission Rule #6.700);
 - O The suspension of the trainer's license of Mr. Hernandez-Quezada for 120 days or until the \$3,000 in fines and penalties are paid in full, whichever is less:
 - O The automatic referral of this matter to the Colorado Racing Commission for any further sanctions that it may impose.
- That, on September 1, 2011, the Colorado Division of Racing Events received the final installment of the \$3,000 fines and penalties assessed Mr. Hernandez-Quezada and, thereupon, reinstated his trainer's license. Notice was taken of the Arapahoe Park Board of Stewards' referral of this matter to the Commission pursuant to Colorado Racing Commission Rule #120.

After considering the evidence presented by the Division of Racing Events and after being apprised by Division Director Burmania that the Division did not recommend the imposition of any further sanctions against Mr. Hector Hernandez-Quezada, a motion was made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to accept the Division's recommendation and find that the payment of the total fines and penalty assessment of \$3,000 and the license suspension that Mr. Hernandez-Quezada served are deemed sufficient and, therefore, no further penalty will be imposed.

The Commission directed the Division of Racing Events to issue an Order reflecting its decision.

The hearing concluded at 10:00 A.M.

A digital recording of the proceeding is on file in the Division's Lakewood office.

End of Meet Report – Arapahoe Park's 2011 Live Race Meet – Robert "Duke" Mann

Mr. Robert "Duke" Mann, Horse Racing Coordinator, presented his end of meet report for Arapahoe Park's 2011 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 forty (40) day live meet at Arapahoe Park began on May 28, 2011 and ended on August 21, 2011. Mr. Mann observed that Arapahoe Park

had requested and had been approved to conduct one extra day of live racing to accommodate the Fourth of July weekend. Arapahoe Park was also granted permission by the Division of Racing Events to run ten races instead of nine starting on August 5, 2011. Eighty-six (86) days of out-of-state simulcasting of pari-mutuel horse and greyhound racing were also offered during the live meet. Mr. Mann observed that Arapahoe Park's 2011 live race meet was two days longer than the 2010 meet.

Mr. Mann reviewed various audited statistics for the 2011 live race meet, including those for out-of-state horse simulcasting, along with comparative figures for the 2010 live and simulcast race meet. Mr. Mann observed that this year's total mutuel handle, including simulcasting, of \$22,839,967 represented a significant increase from last year's total handle of \$21,804,751. He stated that the total number of live races in 2011 was 371 and that there were a total of 9,792 simulcast races offered during the live season. The average number of live races per day in 2011 was ten.

STATISTICAL DATA:

Mr. Mann reported the following: 1) that the 2011 on-track live handle was \$5,357,368; 2) that the 2011 in-state live handle was \$2,826,779; 3) that the out-of-state live portion was \$2,530,589; 4) that the on-track live handle was \$2,766,794; and 5) that the total simulcast handle was \$17,381,826.

Mr. Mann offered the following average daily handle figures for 2011: 1) the average daily handle on-track was \$69,170; 2) the average daily handle in-state was \$70,610; 3) the average daily out-of-state handle was \$63,324; and 4) that this season's average daily total handle was \$133,934.

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

	<u>Races</u>	Purses Paid with Fees Added
Thoroughbred	232 (62%)	\$2,560,180
Quarter Horse	111 (30%)	\$1,354,900
Arabian	28 (8%)	\$ 283,500
Totals	371	\$4,198,580

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

DIVISION ANIMAL WELFARE AND TEST BARN STATISTICS:

Mr. Mann informed the Commission that the members of the Division's veterinary staff at Arapahoe Park during the 2011 live racing season were Veterinarian Joni Smith, DVM and Veterinary Assistants Sara Smith and Dusty Smith.

In response to Commissioner Vail's query, Mr. Powers advised that there were approximately 1,450 horses on-site with 1,300-1,350 racing at Arapahoe Park during the season. He reported that, at one time, there were 1,200 sets of papers filed in the Racing Office.

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>2009</u>	<u>2010</u>	<u>2011</u>
Total Starts	2572	3295	3255
Total Injuries	41	79	64
Career ending injuries	2	2	1

Mr. Mann explained that the term "career-ending injuries" applies to various types of injuries, such as fractures, bowed tendons, that require the removal of a horse from racing and that the term "catastrophic" pertains to training-related injuries and/or conditions, including heart attacks. Mr. Mann stated that he could provide a breakdown by breed of horses that sustained catastrophic injuries this past season at Arapahoe Park as well as the types of injuries that those horses experienced. Mr. Mann explained that necropsies are performed on all horses that are euthanized at the racetrack. He advised the Commission that blood is usually not pulled for testing from horses that have been euthanized.

Additionally, Mr. Mann reported that eight (8) horses had died or had had to be euthanized due to sickness or accident. Commissioner Vail requested that Mr. Mann provide a breakdown of all catastrophic injuries by breed.

The Commission noted that the time frame for necropsy reporting has continued to improve and averages approximately one week, although preparation of a full report may require up to one month.

TESTING:

For the 2011 race meet, Mr. Mann reported that the veterinary staff took 590 total samples from all first-place winning horses and randomly selected horses from the racetrack.

MEDICATION VIOLATIONS:

Mr. Mann stated that Industrial Laboratories reported a total of twenty-three (23) positive tests resulting in twenty-seven (27) unauthorized medication violations during the 2011 meet, which violated Colorado Racing Commission Rule No. 5.301 – Unauthorized Medication. Mr. Mann observed that, in several instances, a horse was found to have multiple medications in its system at one time. The Commission expressed its concern regarding the volume of positive tests for unauthorized medications. The medication violation breakdown is:

- Two (2) violations were for the drug *Dexamethasone*.
- Six (6) violations were for the drug *Methylprednisolone*.
- One (1) violation was for the drug *Naproxen*.
- Twelve (12) violations were for the drug *Clenbuterol*.
- Two (2) violations were for *Dicoflenac*
- One (1) violation was for *Boldenone (Equipoise)*
- One (1) violation was for *Phenylbutazone* (threshold overage pursuant to Colorado Racing Commission Rule)
- One (1) NSAID violations two (2) NSAID drugs found in horse's system.
- One (1) *Caffeine and Methocarbamol* found in vitreous humor (fluid in eyeballs of horse that died as the result of a catastrophic injury)

Mr. Mann stated that all four of the Referee Laboratories for Split Sample Testing had been contacted before the Split Sample Policy was approved by the Colorado Racing Commission in order to ensure that their testing methodologies, methods and equipment would be comparable to those being used by the Division's Primary Testing Laboratory, Industrial Laboratories. The Commission took notice that Split Samples had been requested in nine cases and that a 100% Split Sample Confirmation Rate had been obtained. The breakdown of split samples taken by breed is as follows:

Thoroughbred – 7 violations Quarter Horse – 14 violations

REPORTED USE OF AUTHORIZED MEDICATION:

Authorized Medication

In 2010, the Colorado Racing Commission modified Rule 5.317 for the reported use of **first time Lasix** and, also, for the use of Lasix without being a certified bleeder. The rule allowed the person entering the horse to indicate properly that the horse would participate on Lasix and the Division Veterinarian would add the horse to the Lasix list database and monitor the usage during the live meet. There were several instances when the person entering the horse would not indicate Lasix usage, yet the horse would receive the drug. Several verbal and written warnings were issued. Repeated violations resulted in the issuance of administrative penalty citations.

The Division also had a similar problem with the person entering a horse on the wrong NSAID. Again, written/verbal and written warnings were issued along with administrative penalty citations. Mr. Mann informed the Commission that administrative penalty citations were issued in lieu of conducting hearings for such common offenses as making errors in reporting medication(s) being used. He stated that, typically, fines were imposed and, for repeated violations, an ascending penalty scale was employed. The Commission expressed its view that, as a possible deterrent to continued misreporting of medications, the Division might consider increasing its fine amounts for such offenses. The Commission endorsed Mr. Mann's recommendation that the matter of increasing fine amounts for offenses warranting the issuance of citations be considered during the upcoming Rule-Making workshops. Additionally, the Commission suggested that Mr. Mann should ascertain what penalties other states assess for such violations.

Notice was taken that, during the 2011 race meet, there was only one violation of Colorado Racing Commission Rule #5.317.

REGARDING ADMINISTRATIVE MATTERS AND DIVISION OF RACING EVENTS PERSONNEL:

The Board of Stewards for 2011 was composed of: Senior State Steward Randy Blaseg, State Steward Tim Williams and Association Steward Hank Demoney. The Board issued forty-two (42) administrative rulings and twenty-six (26) administrative citations. The administrative citations were issued for such offenses as being late to the paddock or to the jockeys' room. Mr. Powers and Mr. Mann commented that the 2011 Board of Stewards was especially competent, cooperative and effective in communicating with members of the jockey colony. Mr. Burmania commented that he was impressed with the excellent performance of the Board members and hoped that some, if not all of them, would return next season.

The Commission took notice that a significant proportion of the horses racing at Arapahoe Park were brought in from out-of-state. Mr. Powers advised that he believes this trend will continue and that the demand for stalls at Arapahoe Park is going to continue to increase.

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

The Division of Racing Events performed random drug testing pursuant to Commission Rule No. 3.437 during Arapahoe Park's 2011 race meet. The policy for the performance of this 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

One security guard was randomly selected, but refused to provide a urine sample to be tested. He admitted to the use of marijuana. The Board of Stewards suspended his license pursuant to Colorado Racing Commission Rule No. 3.437. Mr. Mann advised that the licensee was terminated from his position and remains ineligible to participate in racing.

REGARDING ARAPAHOE PARK ASSOCIATION RESPONSIBILITIES:

RACETRACK:

The Track Superintendent and his staff did a good job of maintaining a safe racetrack on hot and sloppy days. No water well issues were reported during the meet. No major complaints about the surface were reported to the racing officials or to the Division, but the trainers and practicing veterinarians discussed the periodic hardness of the racing surface. Notice was taken that several racetrack records were broken.

This season, the two-way telephone at the outside scale used by the Board of Stewards, Clerk of Scales and Jockeys for immediate communication was rewired and worked properly.

The Clerk of Scales had some difficulty tagging randomly selected horses coming off the track to be tested. Mr. Mann advised that this problem needs to be addressed at a future meeting of the 2012 racing officials at which time consideration could be given to the possibility of designating a horse valet to assist the Clerk of Scales.

American TeleTimer, the service provider of the timing system, oversaw the troubleshooting and digital camera operation. The system worked well with only a few problems with the electronic eyes during the longer races. The Board of Stewards indicated that the timer operator did an exceptional job with the system.

DIVISION OFFICES:

The Association serviced the air conditioning unit in the Division office and it kept the temperature at a comfortable level. However, since it was a very warm Summer, the system was taxed during the hot afternoons. Mr. Mann recommended that the Association undertake maintenance and/or replacement of window shades for upcoming race meets.

RACING OFFICE:

Arapahoe Park continued to use the Encompass Software for accepting entries and preparing programs. (This software is Internet-based and downloads past performance information from Equibase.)

Since Racing Office staff members did not always adequately proofread the program, occasional errors were reflected in the official racing program. All corrections were announced via the public address system and displayed on the video monitors. For the second straight year, there were missing entries for the multiple trial races. Mr. Mann voiced his opinion that Racing Office personnel should examine their procedure with regard to the acceptance of entries for multiple trial races prior to the commencement of the draw. Also, Mr. Mann remarked that the Board of Stewards may need to check entries as they are being taken.

Mr. Mann stated that, overall, Racing Office personnel provided a timely initial proof of the entries and jockeys to the Division and, therefore, complied with the Division's licensing policies. The Commission emphasized that it is very important that the data printed in the official racing program be accurately recorded.

REGARDING ARAPAHOE PARK SECURITY

Stable Gate: Arapahoe Park continued to employ the same Security Director and Assistant Director for the 2011 meet. The Association employed a temporary employee service to help maintain staffing of the Stable Gate and other areas of the racetrack. 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 full-time 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.

The Stable Gate Security staff was also assigned to verify negative Equine Piroplasmosis laboratory reports, current health certificates and Coggins test results for every horse that entered Arapahoe Park. Although Mr. Mann advised that some members of the horse racing community had requested that the Division discontinue its Equine Piroplasmosis testing requirement, Mr. Mann recommended that the Division's policy concerning testing for Equine Piroplasmosis remain in effect during the 2012 live race meet in light of the continued risk of exposure to and contraction of this disease. The Commission supported this recommendation and thanked Mr. Bruce Seymore, Director of Racing Operations for Mile High Racing and Entertainment, Mr. Bill Powers and Mr. Mann for their vigilance and concern for the welfare of the horses stabled at Arapahoe Park.

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.

Grandstand & Paddock: 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 incidents.

A Division Investigator was assigned to visit the Paddock during live racing to check licenses in order to ensure compliance in this restricted area. There were no issues reported by the Paddock Judge concerning horseshoes with toe grabs.

In summation, Mr. Mann offered the following list of recommendations for improvements to be made prior to the 2012 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 should continue to be added to the walking surface to repair ruts and ensure that, at all times, there is a flat walking surface for the horses and their handlers.
- That the Association needs to address the issue of drainage in the test barn rain gutter area to prevent water from pooling in the walking area.
- That dirt should be added to the inside of the testing stalls to level the surface with the outside shed row area.
- That the wash rack area should be resurfaced since there are areas that have holes, patched holes that have worn out or surface areas next to the shed row that have ledges that could cause a horse or its handler to trip or stumble and, potentially, be injured.
- That the misting system in the collecting stalls should be replaced.
- That the Association should provide stall shade covering on the west side of the test barn in order to cool the stalls and the horse handlers.
- That Arapahoe Park should to continue to maintain proper water drainage behind the wash rack areas.
- That the Association should ensure that the oscillating fans work properly and quietly. If necessary, an additional fan should be made available to ensure proper cooling of the testing stalls.

RECOMMENDATIONS RELATING TO THE RACETRACK:

 That, in order to avert the difficulties that the Clerk of Scales experienced tagging randomly selected horses coming off of the racetrack to be tested, the Association should decide at its 2012 meeting with all Racing Officials whether to designate a horse valet to assist the Clerk of Scales in this endeavor.

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 and there should be locking devices on all gates in this restricted area. The subject restricted area should include the Racing Secretary's office and access to this office through the Bookkeeper's office, which should also be locked during the time that entries are being taken. The Racing Secretary shall allow visitors to his office only by escort.
- That the Racing Secretary should continue to 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' lists and Veterinarians' lists are updated, properly posted and entered into the Racing Office's computer system.

• That the Racing Secretary should continue to supervise Racing Office staff in the proofing of the entries.

RECOMMENDATION REGARDING VIDEO PATROL:

• That the Board of Stewards, Arapahoe Park Management and the Video Operators continue to conduct a pre-meet meeting to address the needs and expectations of the Board for their race review.

RECOMMENDATIONS RELATING TO SECURITY:

- 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 rules and policies of the Division and the Colorado Racing Commission.
- That Arapahoe Park should continue the policy regarding the testing of all horses for the Equine Piroplasmosis virus and allow only those horses that have negative test results into the stable area.
- 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, and to Mr. Bruce Seymore, Director of Racing Operations for Mile High Racing and Entertainment, for solving problems when they arose and for being liaisons to the licensees. He thanked all of the Arapahoe Park and Division staff members as well. Mr. Mann also expressed his appreciation for the efforts of Mr. Shannon Rushton, Executive Director of the Colorado Horse-Racing Association, all of the Arapahoe Park staff members and all of the breed organizations, for their support, assistance and cooperation during Arapahoe Park's 2011 race meet. Mr. Mann stated that Arapahoe Park's 2011 season had been extremely successful thanks to all concerned. The Commission commended everyone associated with and involved in conducting and regulating the 2011 Arapahoe Park meet.

A motion was made by Commissioner Wells, 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 2011 live racing season as presented. The Commission complimented Mr. Mann on the comprehensiveness of his report.

Consideration of Applications for Release of Monies from the Greyhound Purse, Welfare, Adoption and Greyhound Racing Promotion Fund – Don Burmania

Mr. Don Burmania, Director of the Division of Racing Events, advised that, on September 13, 2011, he had met with potential recipients of the Greyhound Welfare, Adoption and Promotion Fund to discuss new program guidelines and the application process. He provided the Commission with copies of the program authority and guidelines along with a summary of the requests that were submitted, copies of the five applications and receipt summaries that were received for the current distribution cycle.

Mr. Burmania reported that the Division of Racing Events had received requests for receipt reimbursements totaling \$109,781 and a request for \$20,000 to be retained in escrow. He explained that, under the program guidelines, requests for funding are made on a reimbursement basis for goods and services already purchased within a 6-month period. He advised that, currently, there is an accrual of \$50,000 available for distribution. Ms. Kilgore stated that, at this time, there is approximately \$52,000 in the Fund. Mr. Burmania stated that applications were submitted by the following organizations: 1) Colorado Greyhound Adoption; 2) Friends of Retired Greyhounds; 3) Greyhound Connection; 4) Rocky Mountain Greyhound Adoption, Inc.; and 5) Colorado Greyhound Breeder's Association. Mr. Burmania noted that he and Division Auditor Pam Kilgore had reviewed each of these applications.

Discussion ensued concerning the request submitted by the Colorado Greyhound Breeder's Association, which included an attachment to its application indicating that the organization intends to sponsor a stakes race at the National Greyhound Association meets in the Spring and Fall of 2012 for the purpose of promoting greyhound racing in Colorado, showcasing Colorado-bred greyhounds and "attracting attention to Colorado live racing at a national meet with the hope of generating interest and investors for the purpose of opening a greyhound track and returning live greyhound racing to the State of Colorado*². This attachment reflected that the cost of funding each stakes race would be \$10,000 for a total of \$20,000. Mr. Melvin Johnson, President of the Colorado Greyhound Breeder's Association and other representatives of the organization, voiced their support for the retention of \$20,000 in escrow to subsidize this plan. Mr. Burmania referenced subsection: 2 of Colorado Racing Commission Rule 9.410 concerning "program authority" when there is no live greyhound racing being conducted and no request is made or granted for money to stay in escrow for payment of purses. He explained that the request for escrow retention of fund money by the Colorado Greyhound Breeder's Association did not comply with the terms and conditions set forth in Colorado Racing Commission Rule 9.401. Further, the Commission affirmed Mr. Burmania's previous reference to the program guidelines in which he stated that fund monies could not be applied to any such anticipatory request, but only to expenditures that had been made for goods or services within the previous 6-month period.

Mr. Burmania noted that the organizations in question had requested the following reimbursement amounts: Colorado Greyhound Adoption requested \$32,469; Friends of Retired Greyhounds requested \$16,335; Greyhound Connection requested \$47,300; Rocky Mountain Greyhound Adoption requested \$12,616 and the Colorado Greyhound Breeder's Association requested a cumulative amount of \$21,061, \$20,000 of which was to be retained in escrow and \$1,061 was to be paid to the organization for attorney fees and travel expenses. Mr. Burmania explained that, since the total accrual in the Fund is insufficient for full payments of the requested amounts to be made to each organization, the Division would recommend that partial disbursements from the Greyhound Welfare, Adoption and Promotion Fund be distributed.

Mr. Melvin Johnson, a member of the Colorado Greyhound Breeders' Association, and other representatives of this organization voiced their concerns about the criteria for adoption of greyhounds and the efficient operation of the welfare and adoption programs. They objected to the release of any money from the Fund to organizations that accept or care for greyhounds coming from outside of Colorado. Mr. Johnson recommended that the Commission deny all of the subject applications for release of Fund monies, retain those funds in escrow and allow the members of the Colorado greyhound colony to decide how the funds should be used. Discussion ensued during which representatives of Colorado Greyhound Adoption and Rocky Mountain Greyhound Adoption, Inc. addressed the Commission regarding the benefits that the funds would provide to their organizations. The Commission expressed its support for the efforts of the welfare and adoption organizations requesting financial assistance.

Additionally, the Commission recommended that representatives of the Colorado Greyhound Breeder's Association continue their dialogue with the Director of the Division of Racing Events, noting that the organization may meet some resistance to its proposal to sponsor any out-of-state racing events. The Commission advised that its primary objective is to ensure the perpetuation of those organizations involved in greyhound adoption and welfare endeavors.

After ascertaining that there were no further comments to be made and no objections to formal action being taken at this time, a motion was made by Commissioner Vail, seconded by Commissioner Wells and unanimously carried to release \$12,000 to Colorado Greyhound Adoption; \$12,000 to Friends of Retired Greyhounds; \$12,000 to Greyhound Connection; \$12,000 to Rocky Mountain Greyhound Adoption, Inc. and an adjusted amount reflecting the allowable mileage fee to the Colorado Greyhound Breeder's Association, (amount total was calculated to be \$983.50)

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² - Attachment to Application for Greyhound Funds, Colorado Greyhound Breeder's Association

<u>Consideration of Assignment of Two Additional Off-Track Wagering Facilities to Arapahoe Park – Bruce Seymore/Don Burmania</u>

Mr. Bruce Seymore, Executive Director of Colorado Racing Operations for Mile High Racing & Entertainment, presented his request for 2 additional off-track betting facility licenses to be assigned to Arapahoe Park, Colorado's only operating racetrack at the present time. Mr. Burmania recommended approval of Mr. Seymore's request, noting that Arapahoe Park would now be assigned 11 off-track betting facility licenses with a total of 2 potential off-track betting facility licenses being left unattached.

Discussion ensued during which Mr. Seymore advised that he is exploring the possibility of re-opening The Reserve in Cherry Creek (Denver) and was currently engaged in negotiations to open a future off-track betting facility in Steamboat Springs. Mr. Burmania informed the Commission that those desiring to open and operate off-track betting facilities would be required to undergo thorough background checks and meet all criteria to obtain a Major Business License from the Division of Racing Events.

Following discussion, a motion was made by Commissioner Beirne, seconded by Commissioner Vail and unanimously carried to accept the recommendation of Division Director Burmania and authorize the assignment of 2 additional off-track betting facility licenses to Arapahoe Park, bringing the total of off-track wagering facility licenses thus assigned to 11; and to acknowledge that 2 potential off-track betting facility licenses are also being held in abeyance and are not attached to any racetrack.

Announcement Regarding Rotations of Directorships within the Department of Revenue

Mr. Don Burmania, Director of the Division of Racing Events, advised that he has been reassigned to the position of Director of the Liquor/Tobacco Enforcement Division effective Monday, November 14, 2011. He explained that Mr. Dan Hartman would be returning from the Medical Marijuana Enforcement Division to head the Division of Racing Events and that Ms. Laura Harris, currently the Director of the Liquor/Tobacco Enforcement Division, would be assuming leadership of the Medical Marijuana Enforcement Division.

The Commission commended Mr. Burmania's performance and thanked him for his efforts on behalf of the racing industry.

Scheduling of December Commission Meeting – Don Burmania

Mr. Don Burmania, Director of the Division of Racing Events, requested that the Commissioners confirm their availability to hold a meeting on Tuesday, December 13, 2011 in order to conduct appeal hearings. This matter will be taken under advisement.

Presentation Regarding Colorado State University Equine Research Fund

Dr. Sue VandeWoude, 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 herself and her colleagues, Dr. Chris Kawcak, Associate Professor in the Department of Clinical Sciences, Dr. Paul Lunn, Head of the Department of Clinical Sciences, and Dr. Tod Hansen, Director of the Animal Reproduction Biotechnology and Equine Reproduction Laboratories, to the Commission.

Dr. VandeWoude 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. She informed the Commission that its annual financial contribution is leveraged approximately fifty-fold, which, along with the approximate \$3, 200,000 in research funds generated by equine researchers and annual donations to equine research programs totaling approximately \$1,500,000 to \$2,000,000 forms the basis for obtaining grant funding for various research projects. She observed that the Commission's financial contribution in 2011 racing receipts of approximately

\$89,000 has been applied to fund the post-mortem surveillance project with the balance being used to fund "pilot" research projects in horses at Colorado State University. Dr. VandeWoude 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 preliminary data generated are then used to demonstrate to funding agencies that a research plan is realistic and, thus, this data forms the foundation for larger grants for continuation of a research project. She 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, after receiving input from breed association veterinarians, evaluates the large quantity of research proposals that are submitted for consideration and ranks them in order of merit with funds being distributed to proposals in consideration of rankings and the best use of the available revenue. She noted that this is an extremely competitive process with far more proposals being tendered than can be subsidized. Dr. VandeWoude stated that, for 2011 funds, 17 proposals were received requesting a total of \$373,000.

Dr. VandeWoude reported that the following equine research projects are currently funded and being performed at C.S.U.: 1) Evaluation of serotonin as an inhibitor of hypertrophic differentiation during chondrogenesis of mesenchymal stem cells; 2) Effects of autologous conditioned serum and dexamethasone on the uterine inflammatory response after artificial insemination; 3) Gene therapy enhanced repair of articular cartilage using adeno-associated virus encoding insulin-like growth factor-1; 4) Measurement of kisspeptin in the horse; and 5) Colorado Racehorse Post-mortem Project. Dr. VandeWoude expressed her appreciation to the Commission for its ongoing support of and contribution to equine research at Colorado State University. She advised that, in 2012, the following changes in protocol are anticipated: 1) that C.S.U. will continue to offer racetrack visitations/exhibits that were begun this year; 2) that the postmortem management will be funded "up front" and the reporting mechanism will be standardized; and 3) that additional input on research topics relevant to the Colorado Racing Commission will be provided.

The following presentations were offered for Commission consideration:

Dr. Chris Kawcak presented a status report on the Colorado Racehorse 1) Post-mortem Program on behalf of Dr. Chris Kawcak. He offered 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 offered information regarding the types of injuries and illnesses that had been detected in 2011 and explained that drug screening is also involved in the evaluation process. Dr. Kawcak expressed serious concerns regarding diseases, such as Equine Herpesvirus-1, and the use of certain drugs that are now being detected in racehorses, such as Ractopamine, a Beta agonist compound used in the pork industry to reduce fat and increase muscle. He commented that, although toxicology testing can be performed on multiple tissues of a deceased horse, the window of opportunity is limited because whole blood is needed at the time of death and, also, no definitive or positive test result may be obtained. He commented that, in an effort to further this research, he and his colleagues are exploring the possibility of collaborating with researchers at the University of California-Davis.

Dr. Kawcak enumerated a list of plans for 2012 with regard to the Racetrack Post-mortem Surveillance Program. These include: 1) prepare a report for the Racing Commission that describes the program and its historical results for dissemination to the racing industry; 2) Commence post-mortem surveillance earlier than before due to having dedicated funds; 3) undertaking pre-emptive tissue collection in case drug screening is requested; 4) continue use of limbs to improve early diagnosis of injuries via such equipment as a low cost CT scanner; and 5) work on

trailer and first aid protocol. The Commission thanked Dr. Kawcak for his excellent report.

Dr. Paul Lunn reported on the widespread and devastating 2011 Equine Herpesvirus-1 outbreak. He provided a slide presentation depicting the epidemiology of the disease and its transmission routes. Dr. Lunn observed that this was an epidemic with an unprecedented spread in the United States, affecting ten states, including Colorado, and, perhaps, three provinces in Canada. He commented that most of the affected horses experienced neurological disease after their initial exposure to the virus, but there were secondary and tertiary cases reported as well. Dr. Lunn advised that there were a total of 242 premises exposed with confirmed cases of the virus at 42 of them. In response to the outbreak, many equine events were either canceled, rescheduled or restricted, travel warnings and transportation restrictions were imposed and voluntary and involuntary quarantines were implemented.

Dr. Lunn explained that, although there are available Equine Herpesvirus-1 vaccines and he would recommend their continued use, they are only limitedly effective. In an effort to avert any future epidemics, he outlined "biosecurity" measures, including key strategies that could minimize the risk of outbreaks and/or prevent their expansion. Dr. Lunn described the methods for diagnosing Equine Herpesvirus-1 and explained that clinical signs of it could be determined via nasal swabs or blood sampling. He apprised the Commission of the treatment protocol for the disease, noting such key elements as managing the neurological signs safely to prevent bladder paralysis; using anti-inflammatory medication, such as flunixin meglumine; undertaking antiviral treatment and/or supplementary treatment. Further, he explained that when Equine Herpesvirus-1 is detected, lesions are found in a horse's eye(s). This appears to be a transfer pathway or transmission route for infectious diseases in horses. A virus may then enter the respiratory track.

As a postscript, Dr. Lunn informed the Commission that the United States Department of Agriculture will be providing funding in the amount of \$499,998 for ongoing equine research to be performed from 2012-2016. The subject research relates to Equine Herpesvirus-1 suppression of immunity at the airway epithelium and the research is being conducted by Drs. Gisela Soboll, Gabi Landolt and Paul Lunn.

An announcement was made that Dr. Lunn would be leaving C.S.U. to assume the position of Dean of the College of Veterinary Medicine at the University of North Carolina. The Commission commended his outstanding contributions to equine research during his tenure at C.S.U. and wished him well in his new endeavors.

Dr. Tod Hansen updated the Commission on the rebuilding process of the Equine Reproduction Laboratory that has been underway for the past several months. He described the recovery efforts and features of the 2010-11 Equine Reproduction Laboratory's Strategic Planning which involves both a research plan and a clinical plan. Dr. Hansen explained that the Equine Reproduction Laboratory's Strategic Research Plan entails several features, including the hiring of a faculty member to assume the Alexander Chair in Large Animal Reproduction, the strengthening of the graduate research education plan and the development of strategic funding plans for research as well as the continued development of both the research and clinical services plans.

Dr. Hansen presented a slide presentation relating to the July 26, 2011 fire that extensively damaged the Equine Reproduction Laboratory. He advised that, to date, no cause of the fire has been determined. He elaborated on the aftermath of the fire and the process of handling all of

the legal and insurance-related issues, including the cost and feasibility of setting up temporary clinical services as well as continuing teaching and research in a new location. Dr. Hansen explained how, despite the impact of the fire, clinical services, teaching and research has continued. He provided diagrams and drawings reflecting both the current configuration of the various sites comprising the Equine Reproduction Laboratory's facilities as well as those for the prospective new facilities.

Drs. VandeWoude, Kawcak, Lunn and Hansen 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 12:25 p.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on **Wednesday**, **January 25**, **2012** in Conference Room 110 (Gaming 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