

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, February 14, 2012 in the Directors' Room at Arapahoe Park, 26000 East Quincy Avenue, Aurora, Colorado. Commission Chairman Jack Pretti called the meeting to order at 9:45 a.m.

Members Present

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

Commissioner Sean Beirne arrived subsequent to the commencement of the meeting.

Staff Present

Dan Hartman, Director, Division of Racing Events
Robert "Duke" Mann, Horse-Racing Coordinator
Pam Kilgore, Division Auditor
Y. E. Scott, Senior Assistant Attorney General representing the Division of Racing Events
Skippere S. Spear, Senior Assistant Attorney General serving as Conflicts Counsel
Sherry Gunnell, Assistant to the Division Director

Also Present

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

All items addressed at this meeting were stenographically recorded by Court Reporter, Janna Fuentes.

Approval of Minutes of November 10, 2011

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

Consideration of Request to Establish Fine Payment Plan – Arnulfo Ascencio

Mr. Robert "Duke" Mann, Horse-Racing Coordinator for the Division of Racing Events, presented Mr. Arnulfo Ascencio's written request for consideration of establishment of a fine payment plan. As a preliminary matter, Mr. Mann reviewed for the Commission the relevant history concerning Mr. Ascencio in which he advised as follows:

1. On August 11, 2011, the Arapahoe Park Board of Stewards had issued Ruling #11-37 that imposed a \$2,500 fine against Mr. Ascencio, which he failed to pay within twenty days as required by rule. Therefore, Mr. Ascencio's outstanding indebtedness was automatically doubled to \$5,000 and the matter was referred to the Colorado Racing Commission for consideration of further sanction.
2. On November 10, 2011, the Colorado Racing Commission reviewed Mr. Ascencio's case and the status of his fine and penalty assessments and determined that no additional fine should be imposed. Therefore, the total amount that Mr. Ascencio owes the Division of Racing Events is \$5,000.
3. On December 1, 2011, the Division of Racing Events received a written request dated November 29, 2011 from Mr. Ascencio to approve the establishment of a fine payment schedule whereby he would agree to pay \$250 per month to the Division until his entire \$5,000 indebtedness has been remitted. This matter was

thereupon placed on the February 14, 2012 Racing Commission meeting agenda for review.

Mr. Ascencio, who had been duly notified that this matter would be addressed, was not present.

Mr. Mann explained that, to date, Mr. Ascencio has not made any payment(s) on his outstanding indebtedness to the Division of Racing Events. Mr. Mann reviewed with the Commission the terms set forth in the Division's proposed Director's Order (#11-08) reflecting the payment schedule specifically requested by Mr. Ascencio and the conditions that Mr. Ascencio would be required to meet in order for the payment plan to remain in effect.

Following its review and after taking into consideration that Mr. Ascencio's racing license would continue to be suspended until such time as his outstanding fines and penalty assessment had been paid in full to the Division of Racing Events, and, therefore, he could not be restored to good standing until total payment of the \$5,000 indebtedness had been received by the Division of Racing Events, a motion was made by Commissioner Wells, seconded by Commissioner Vail and unanimously carried to approve Director's Order #11-08 as presented and to accept the Division's recommendation of a payment schedule and restoration to good standing of the racing license of Mr. Arnulfo Ascencio upon completion of the payment plan.

Presentation Regarding Distribution of Owners/Breeders Awards and Supplemental Purse Fund Monies for Calendar Year 2011 -- Pamela Kilgore

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 2011. 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 reductions in the amount of revenue derived from 2010 simulcast and live uncashed tickets.

Ms. Kilgore reported that: 1) the total earnings from wagering in 2011 amounted to \$1,047,369.44; 2) that the total earned from 2010 uncashed tickets on both live and simulcast races was \$184,639.65; 3) that no interest was earned in 2011 and, after subtracting the bank fee of \$3,500.00, the total Owners'/Breeders' Awards and Supplemental Purse Fund accrual for 2011 was \$1,228,509.09.

Ms. Kilgore observed that the difference between the total amount of the accrual and the total amount to be distributed/retained in escrow (\$82,661.87) reflects the \$136,000 advance that was approved by the Commission in April 2011 for release to the Colorado Thoroughbred Breeder's Association in July 2011 and a distribution of \$44,327.24 that 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	\$840,002.66
Rocky Mountain Quarter Horse Association	153,055.50
Colorado Owners and Breeders of Racing Arabians	85,702.10
Rocky Mountain Paint Racing Club	2,799.58
Colorado Appaloosa Racing Association	1,226.84

The Commission took notice that a balance of \$9,722.41 remains from the escrowed harness purse monies. Notice was taken that in 2008, 2009 and 2010, but not in 2011, Arapahoe Park accepted Mule races from California. An escrow account in the amount of \$305.48 accrued from those Mule races was established and has been retained 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 2011, a motion was made by Commissioner Vail, seconded by Commissioner Beirne 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.

Recess of General Session/Conduct of Hearings

At 10:00 a.m., a motion was made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to recess the general session and to declare the meeting opened for the purpose of conducting the continued appeal hearings.

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

Chairman Pretti convened the continued appeal hearing in the matter of Trainer Farrell Christoffersen at approximately 10:00 a.m. Mr. Christoffersen and Mr. Burbach were present and were represented by James Kreutz, Attorney at Law, who entered his appearance on behalf of the Appellants. Ms. Y. E. Scott, Senior Assistant Attorney General, appeared on behalf of the Division of Racing Events.

At the outset of the hearing, Mr. Kreutz thanked the Commission for continuing the subject cases until this date. He requested that the Commission consolidate the testimony from the three individual cases into a single presentation based upon his position that the underlying facts in each case would essentially be the same, that each of the cases involved the administration of the same therapeutic medication outside the time frames published by the State and the detection of said medication in the samples taken from each of the subject horses and, further, that there is no dispute of the facts in each of the cases relative to the administration of the medication. Mr. Kreutz stated that the testimony to be presented in each case would be very repetitive due to their fundamental similarities and that, in the best interests of time and convenience, these cases should be consolidated. Ms. Scott entered her appearance and voiced her objections to Mr. Kreutz's request. She stated that these matters were not consolidated at the hearing officer level and separate decisions were rendered in each case. Further, Ms. Scott asserted that it would not be desirable for the cases to be consolidated since the cases may be appealed beyond the Commission level and, therefore, the record should reflect that each case was separately heard and deliberated.

Recess of Appeal Hearing /Convening of Executive Session

At approximately 10:05 a.m., a motion was duly made by Commissioner Beirne, seconded by Commissioner Wells and unanimously carried to recess the subject appeal hearing for the purpose of meeting in Executive Session to consult with and obtain legal advice from Conflicts Counsel, Mr. Skippere S. Spear, regarding the aforementioned request and objection.

Adjournment of Executive Session

At approximately 10:15 a.m., the Commission adjourned the Executive Session and reconvened the subject hearing. Mr. Spear entered his appearance and advised that, before proceeding further, there is a jurisdictional issue that needs to be resolved prior to proceeding with the subject of consolidation. The matter to be addressed is whether the Commission has the authority to hear Mr. Christoffersen's case. Ms. Scott stated that Mr. Christoffersen's appeal of the findings in Case Number 11-0870 was not filed in a timely manner and, therefore, should not be heard by the Commission at all. She cited Colorado Racing Commission Rule 6.404, which reads in pertinent part “. . . Any party who fails to properly file a notice of appeal within ten (10) days shall be deemed to have waived forever the right to appeal”, which appears on page 6 of Division's Exhibit 10, the initial decision of the hearing officer in this case dated September 19, 2011. Further, Ms. Scott cited Division Exhibit 11, the Notice of Appeal submitted by James K. Kreutz, Esq. issued on behalf of Petitioners Farrell Christoffersen, Trainer, and Willard Burbach, Owner, was dated and sent via facsimile to the office of the Division of Racing Events on September 30, 2011, which was not within the allowable ten-day time frame for

submission of an appeal and, therefore, the Commission should not proceed to hear the case. Mr. Kreutz objected to Ms. Scott's contention that the Notice of Appeal was not filed in a timely manner and asserted that 10-day notice requirement was met. The Commission recessed briefly to confer with its Conflicts Counsel. After reconvening, the Commission announced that it would allow the presentation of both the State and the Appellant and, also, that, on advice of Conflicts Counsel, it would hear each case individually.

Ms. Scott presented another pre-trial motion to strike the Amended Notice of Appeal that was filed in the subject case based upon the lack of a provision for said Amended Notice of Appeal in the Commission's rules. Further, she stated that the Appellant had failed to request the Commission's permission to file any Notice of Appeal. Additionally, Ms. Scott declared that the Amended Notice of Appeal reflects a substantive change in the original appeal and is an attempt to establish a precedent by setting aside the 10-day notice filing requirement. Mr. Kreutz objected to this characterization of the Amended Notice of Appeal by asserting that it corrected the erroneous race date given in the original Notice of Appeal and did not, in any way, represent a substantive change. Ultimately, Ms. Scott and Mr. Kreutz stipulated to the fact that the appeal and all statements in the subject Notice of Appeal relating to Case Number 11-0870 apply to the eighth race on August 6, 2011 and, therefore, the Amended Notice of Appeal is to be withdrawn. The Commission took notice of and accepted this stipulation.

The following persons gave sworn testimony:

- Farrell Christoffersen, Licensed Trainer of the horse in question, "Natalie E" and an Appellant in this matter;
- Willard Burbach, Licensed Owner of the horse in question, "Natalie E" and an Appellant in this matter;
- Amy Jergens, DVM;
- Robert "Duke" Mann, Horse Racing Coordinator for the State of Colorado Division of Racing Events; and
- Joni Smith, DVM, State Veterinarian for the State of Colorado Division of Racing Events

During the hearing, the following Appellants' exhibits were entered into the record by stipulation of Ms. Scott and Mr. Kreutz:

- Exhibit A: Copy of Colorado Division of Racing Events Therapeutic Medications Withdrawal Times effective May 24, 2011; and
- Exhibit B: Copy of contract between Industrial Laboratories and the Department of Revenue Division of Racing Events for testing of samples.

The following State's exhibits were entered into the record by stipulation of Ms. Scott and Mr. Kreutz:

- Exhibit 1A: Copy of State of Colorado Division of Racing Events' license application for Trainer/Authorized Agent Farrell Rex Christoffersen dated May 30, 2009 (with personal information covered);
- Exhibit 1B: Copy of State of Colorado Division of Racing Events' license application for Owner Willard Theodore Burbach dated May 29, 2010 (with personal information covered);
- Exhibit 2: Copy of page of Arapahoe Park Board of Stewards Official Program for the eighth (8th) race on August 6, 2011;
- Exhibit 3: Copy of Industrial Laboratories sample tag card for the horse, "Natalie E", tag number E104504, dated August 6, 2011 signed by Trainer Christoffersen, F; tag indicated that the urine sample was taken by Sarah Smith and that the blood sample was taken by Joni Smith, DVM; additionally, a copy of the Division of Racing Events Daily Sample Tag Report was attached and is to be considered part of Exhibit 3;

- Exhibit 4A: Copy of Notice of Hearing issued by the Arapahoe Park Board of Stewards in the matter of Case Number 11-0870 dated August 13, 2011;
- Exhibit 4B: Copy of a notarized Affidavit signed by Petra G. Hartmann, Director, Drug Testing Services for Industrial Laboratories dated August 12, 2011;
- Exhibit 4C: Copy of the Colorado Division of Racing Events 2011 Split Sample Policy signed by Farrell Christoffersen dated August 14, 2011;
- Exhibit 4D: Copy of Colorado Division of Racing Events Advisement of Rights in the matter of Case Number 11-0870 signed by Farrell Christoffersen dated August 14, 2011;
- Exhibit 5: Copy of Request for Split Sample and Continuance of Hearing signed by Farrell Christoffersen and Duke Mann, Horse Racing Coordinator on August 14, 2011 and signed by Joni Smith, Division Veterinarian on August 18, 2011;
- Exhibit 6: Copy of Split Sample Chain of Custody signed by Farrell Christoffersen dated August 18, 2011 with attached copies of FedEx receipt and FedEx Express US Airbill;
- Exhibit 7: Copy of letter reflecting split sample test results signed by Scott D. Stanley, PhD, Professor, University of California-Davis dated August 31, 2011 showing delivery date of August 19, 2011;
- Exhibit 8: Copy of Notice of Hearing signed by Tim Weber, Chief Hearings Officer, Department of Revenue Hearings Division dated September 2, 2011;
- Exhibit 9: Copy of Colorado Division of Racing Events Therapeutic Medications Withdrawal Times effective May 24, 2011;
- Exhibit 10: Copy of Findings of Fact, Conclusions of Law and Order in the matter of Case Number 11-0870 signed by Timothy J. Weber, Chief Hearing Officer, Division of Hearings, Colorado Department of Revenue dated September 19, 2011;
- Exhibit 11: Copy of Notice of Appeal in the matter of Case Number 11-0870 submitted by James K. Kreutz, Esq. dated September 30, 2011, with attachments (Exhibit A – Colorado Division of Racing Events Therapeutic Medications Withdrawal Times effective May 1, 2011 and Certificate of Mailing signed by Sara Conway dated September 30, 2011);
- Exhibit 12: Copy of pages from Arapahoe Park Board of Stewards' Official Program for the Quarterhorse Derby, the sixth (6th) race on August 21, 2011;
- Exhibit 13: Copy of pages from Arapahoe Park Board of Stewards' Official Program for the fourteenth (14th) race on August 5, 2011, a Mile High Derby Trial; and
- Exhibit 14: Copies of Chapter 5-“Veterinary Practices, Animal Health and Medication” and Chapter 6-“Practice and Procedures” of the Colorado Racing Commission Rules

Following presentation and deliberation of the testimony and evidence and after closing arguments had been made by both attorneys Kreutz and Scott, the Commission considered the recommendations of Conflicts Counsel Spear with respect to submission of closing briefs for Commission review. Mr. Spear observed that, in order for the Commission to address certain unresolved procedural issues and the outstanding jurisdictional issue as well as to render its final decisions, it would be helpful for the Commission to have the closing briefs in a timely manner. Discussion ensued during which it was decided that the closing briefs would be provided to the Commission by the close of business (5:00 p.m.) on Friday, March 16, 2012 and a determination meeting would be conducted on Tuesday, April 3, 2012.

These proceedings concluded at approximately 1:30 p.m.

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

Chairman Pretti convened the continued appeal hearing in the matter of Trainer Wesley Giles and Owners Melvin and Marty Neugebauer at approximately 1:45 p.m. Mr. Giles and Messrs. Neugebauer were present and were represented by James Kreutz, Attorney at Law, who entered his appearance on behalf of the Appellants. Ms. Y. E. Scott, Senior Assistant Attorney General, appeared on behalf of the Division of Racing Events.

The following persons gave sworn testimony:

- Wesley Todd Giles, Licensed Trainer of the horse in question, “Unashamed” and an Appellant in this matter;
- Robert W. Moak, DVM;
- Robert “Duke” Mann, Horse Racing Coordinator for the State of Colorado Division of Racing Events; and
- Joni Smith, DVM, State Veterinarian for the State of Colorado Division of Racing Events

During the hearing, the following Appellants’ exhibits were entered into the record by stipulation of Ms. Scott and Mr. Kreutz:

- Exhibit A: Copy of Colorado Division of Racing Events Therapeutic Medications Withdrawal Times effective May 24, 2011;
- Exhibit B: Copy of contract between Industrial Laboratories and the Department of Revenue Division of Racing Events for testing of samples

The following exhibit was introduced, but was disallowed:

- Exhibit C: Copy of document entitled “Equine Drugs, Medications, and Performance Altering Substances: Their Performance Effects, Detection, and Regulation”

The following State’s exhibits were entered into the record by stipulation of Ms. Scott and Mr. Kreutz:

- Exhibit 1A: Copy of State of Colorado Division of Racing Events’ license application for Trainer Wesley Todd Giles dated August 3, 2011 (with personal information covered);
- Exhibit 1B: Copy of State of Colorado Division of Racing Events’ license application for Owner Marty Wayne Neugebauer dated July 3, 2011 (with personal information covered);
- Exhibit 1C: Copy of State of Colorado Division of Racing Events’ license application for Owner Melvin Neugebauer dated August 6, 2010 (with personal information covered);
- Exhibit 2: Copies of pages of Arapahoe Park Board of Stewards Official Programs for the fourteenth (14th) race on August 5, 2011;
- Exhibit 3: Copy of Industrial Laboratories sample tag card for the horse, “Unashamed”, tag number E104488, dated August 5, 2011 signed by Trainer Giles, W; tag indicated that the urine sample was taken by Dusty Smith and that the blood sample was taken by Joni Smith, DVM;
- Exhibit 4A: Copy of Notice of Hearing issued by the Arapahoe Park Board of Stewards in the matter of Case Number 11-0869 dated August 13, 2011;
- Exhibit 4B: Copy of a notarized Affidavit signed by Petra G. Hartmann, Director, Drug Testing Services for Industrial Laboratories dated August 12, 2011;
- Exhibit 4C: Copy of the Colorado Division of Racing Events 2011 Split Sample Policy signed by Wesley Giles dated August 17, 2011;
- Exhibit 4D: Copy of Colorado Division of Racing Events Advisement of Rights in the matter of Case Number 11-0869 (unsigned), accompanied by

Certificate of Mailing to Trainer Wesley Giles c/o Ruidoso Downs Racetrack, Ruidoso, New Mexico dated August 13, 2011;

- Exhibit 5: Copy of Request for Split Sample and Continuance of Hearing signed by Wesley Giles on August 17, 2011;
- Exhibit 6: Copy of Split Sample Chain of Custody signed by Joni Smith, DVM dated August 18, 2011;
- Exhibit 7: Copy of letter reflecting split sample test results signed by Scott D. Stanley, PhD, Professor, University of California-Davis dated August 31, 2011 showing delivery date of August 19, 2011;
- Exhibit 8: Copy of Colorado Division of Racing Events Therapeutic Medications Withdrawal Times effective May 24, 2011;
- Exhibit 9: Copy of Findings of Fact, Conclusions of Law and Order in the matter of Case Number 11-0869 signed by Timothy J. Weber, Chief Hearing Officer, Division of Hearings, Colorado Department of Revenue dated September 23, 2011;
- Exhibit 10: Copy of Notice of Appeal in the matter of Case Number 11-0869 submitted by James K. Kreutz, Esq. dated September 30, 2011, with attachments (Exhibit A – Colorado Division of Racing Events Therapeutic Medications Withdrawal Times effective May 1, 2011 and Certificate of Mailing signed by Sara Conway dated September 30, 2011);
- Exhibit 11: Copy of Chapter 5-“Veterinary Practices, Animal Health and Medication” and Chapter 6-“Practice and Procedures” of the Colorado Racing Commission Rules

Following presentation and deliberation of the testimony and evidence and after closing arguments had been made by both attorneys Kreutz and Scott, the Commission affirmed its prior decision that the closing briefs are to be submitted to the Commission by the close of business (5:00 p.m.) on Friday, March 16, 2012 and that a determination meeting is to be conducted on Tuesday, April 3, 2012.

These proceedings concluded at approximately 4:00 p.m.

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

Chairman Pretti convened the continued appeal hearing in the matter of Owner/Trainer and Authorized Agent Elizabeth Brand at approximately 4:10 p.m. Ms. Brand was not present, but was represented by James Kreutz, Attorney at Law, who entered his appearance on behalf of the Appellant. Ms. Y. E. Scott, Senior Assistant Attorney General, appeared on behalf of the Division of Racing Events.

The following persons gave sworn testimony:

- Robert W. Moak, DVM;
- Robert “Duke” Mann, Horse Racing Coordinator for the State of Colorado Division of Racing Events; and
- Joni Smith, DVM, State Veterinarian for the State of Colorado Division of Racing Events

During the hearing, the following Appellant’s exhibits were entered into the record by stipulation of Ms. Scott and Mr. Kreutz:

- Exhibit A: Copy of Colorado Division of Racing Events Therapeutic Medications Withdrawal Times effective May 24, 2011;
- Exhibit B: Copy of contract between Industrial Laboratories and the Department of Revenue Division of Racing Events for testing of samples

The following State’s exhibits were entered into the record by stipulation of Ms. Scott and Mr. Kreutz:

- Exhibit 1A: Copy of State of Colorado Division of Racing Events' license application for Owner/Trainer Marian Elizabeth Brand dated May 4, 2009 (with personal information covered);
- Exhibit 1B: Copy of State of Colorado Division of Racing Events' license application for Owner Jane R, Teutsch dated May 28, 2011 (with personal information covered);
- Exhibit 1C: Copy of State of Colorado Division of Racing Events' license application for Owner Morris Ray Teutsch dated May 28, 2011 (with personal information covered);
- Exhibit 2: Copies of pages of Arapahoe Park Board of Stewards Official Programs for the seventh (7th) race on August 20, 2011;
- Exhibit 3: Copy of Industrial Laboratories sample tag card for the horse, "TM Super Bird", tag number E104590, dated August 20, 2011 signed by Trainer Brand, E; tag indicated that the blood sample was taken by Joni Smith, DVM and was witnessed by Laurie Clark; additionally, a copy of the Division of Racing Events Daily Sample Tag Report was attached and is to be considered part of Exhibit 3;
- Exhibit 4A: Copy of Notice of Hearing issued by the Arapahoe Park Board of Stewards in the matter of Case Number 11-0895 dated September 2, 2011;
- Exhibit 4B: Copy of the Colorado Division of Racing Events 2011 Split Sample Policy (unsigned and undated);
- Exhibit 4C: Copy of Colorado Division of Racing Events Advisement of Rights in the matter of Case Number 11-0895 (unsigned and undated);
- Exhibit 4D: Copy of a notarized Affidavit signed by Petra G. Hartmann, Director, Drug Testing Services for Industrial Laboratories dated September 1, 2011, accompanied by Certificate of Mailing to Elizabeth Brand in both Littleton, Colorado and Selma, Texas signed by Duke Mann, Horse Racing Coordinator dated September 9, 2011;
- Exhibit 5: Copy of Request for Split Sample and Continuance of Hearing signed by Elizabeth Brand on September 12, 2011;
- Exhibit 6: Copy of Split Sample Chain of Custody signed by Jim D. Weimer (Trainer contact) and Duke Mann (Division Representative) dated September 22, 2011 with attached copies of FedEx detailed delivery results, Fedex receipt and FedEx Express US Airbill;
- Exhibit 7: Copy of letter reflecting split sample test results signed by Margaret H. Wilding, Acting Director, University of Florida, College of Veterinary Medicine Racing Laboratory, Gainesville, Florida dated September 28, 2011 showing delivery date of September 23, 2011;
- Exhibit 8: Copy of Notice of Hearing in the matter of Case Number 11-0895 signed by Tim Weber, Chief Hearing Officer dated October 3, 2011;
- Exhibit 9: Copy of Colorado Division of Racing Events Therapeutic Medications Withdrawal Times effective May 24, 2011;
- Exhibit 10: Copy of Findings of Fact, Conclusions of Law and Order in the matter of Case Number 11-0895 signed by Beth McKendree, Assistant Chief Hearing Officer, Division of Hearings, Colorado Department of Revenue dated November 4, 2011;
- Exhibit 11: Copy of Notice of Appeal in the matter of Case Number 11-0895 submitted by James K. Kreutz, Esq. dated November 10, 2011, with attachment (Exhibit A – Colorado Division of Racing Events Therapeutic Medications Withdrawal Times effective May 1, 2011); and
- Exhibit 12: Copies of Chapter 5-"Veterinary Practices, Animal Health and Medication" and Chapter 6-"Practice and Procedure" of the Colorado Racing Commission Rules

Following presentation and deliberation of the testimony and evidence and after closing arguments had been made by both attorneys Kreutz and Scott, the Commission affirmed its prior decision that the closing briefs are to be submitted to the Commission by the close of business (5:00 p.m.) on Friday, March 16, 2012 and that a determination meeting is to be conducted on Tuesday, April 3, 2012.

These proceedings concluded at approximately 5:25 p.m.

Closure of Hearings/Reconvening of General Session

At 5:25 p.m., a motion was made by Commissioner Wells, seconded by Commissioner Vail and unanimously carried to close the hearings and to reconvene the general session for the purpose of considering any other matters to come before the Commission.

Adjournment

There being no further business to consider, a motion was made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to adjourn the regular meeting of the Colorado Racing Commission at 5:25 p.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on **Friday, March 16, 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

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Friday, March 16, 2012 in the Enforcement Conference Room 110 at 1881 Pierce Street, Lakewood, Colorado. Commission Chairman Jack Pretti called the meeting to order at 9:45 a.m.

Members Present

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

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

Staff Present

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

Also Present

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

All items addressed at this meeting were stenographically recorded by Court Reporter, Janna Fuentes.

Approval of Minutes of February 14, 2012

A motion was thereupon made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to approve the minutes of February 14, 2012 as amended.

Recommendation for Establishment of Standing Order Concerning Corrections to Minutes

Based upon the recommendation of Ms. Y.E. Scott, Senior Assistant Attorney General for the Division of Racing Events, a motion was made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to establish a standing order that authorizes the staff of the Division of Racing Events to make corrections of typographical errors to any forthcoming set of Commission meeting minutes.

Scheduling of 2013 Race Dates Hearing – Dan Hartman

Mr. Dan Hartman, 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 Kester and unanimously carried to schedule the 2013 Race Dates Hearing on Tuesday, July 10, 2012 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.

Consideration of Conditional Approval of Arapahoe Park's Proposed 2012/13 Simulcast Schedule – Dan Hartman

Mr. Dan Hartman, Division of the Division of Racing Events, reported on Arapahoe Park's proposed 2012/13 simulcast schedule. Mr. William Powers, Arapahoe Park's Property Facility Manager/Director of Racing and Simulcasting, appeared on behalf of the Racing Association.

Mr. Hartman stated that it would be appropriate and allowable for the Commission to consider granting conditional approval of Arapahoe Park's 2012/2013 proposed simulcast schedule for the period of April 21, 2012 through April 20, 2013 because Arapahoe Park has complied with the requirement that its renewal application to conduct a live race meet in 2012 be received by the Division of Racing Events sixty days prior to the planned opening of the meet. Mr. Hartman advised that, on February 14, 2012, 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 26, 2012 through August 19, 2012 for a total of thirty-nine (39) race days.

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

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

Further, he 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, including the simulcasting of Arapahoe Park's live signal during the 2012 live race meet.

Mr. Hartman noted that a Simulcast Calendar indicating the simulcast race days, including live racing days, has yet to be submitted to the Division of Racing Events, but will be provided to the Division in the near future.

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

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 Wells, seconded by Commissioner Beirne and unanimously carried to approve Arapahoe Park's request on

a conditional basis to commence simulcast wagering on April 21, 2012 and to continue simulcast wagering through April 20, 2013 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 2012/2013 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 Proposed Change to Application Protocol for Greyhound Purse, Welfare, Adoption and Promotion Fund

Mr. Dan Hartman, Director of the Division of Racing Events, requested that the Commission consider requiring each of the adoption agencies/organizations to record and retain the following information in their files as part of their application process for release of monies from the Greyhound Purse, Welfare, Adoption and Promotion Fund: a listing of the name of each greyhound that has passed through the organization, the ear tattoo number (if identifiable) for each greyhound, the date that a greyhound arrived and departed and whether a greyhound was spayed or neutered. He recommended that, in the event that the Commission endorses this suggestion, the agencies/organizations in question would become accountable for recording and maintaining this information as of a specified date, such as April 1, 2012, after which it would be the organization's responsibility to have the required information available for inspection upon request of the Division of Racing Events.

Discussion ensued during which representatives of the Colorado Greyhound Breeder's Association and various greyhound adoption organizations presented views and opinions regarding this proposed change in the application process. Questions and concerns were voiced during this discussion period. In response to a question regarding the form in which the information would need to be kept, Mr. Hartman replied that he and the Commission would be receptive to looking at methods of handling and retaining

records in the future and would consider electronic maintenance to be a reasonable approach.

The Commission took notice that certain comments made by Mr. Melvin Johnson, President of the Colorado Greyhound Breeder's Association, were not applicable to the subject under consideration. Therefore, the Commission directed that any comments that were not a reflection of the matters being addressed should not be made part of the minutes of the meeting.

Mr. Hartman affirmed that the current application process for release of monies from the Greyhound Purse, Welfare, Adoption and Promotion Fund would remain in effect, but that the adoption agencies/organizations would need to begin collecting the aforementioned information on April 1, 2012. He stated that it would not be necessary for any of the accumulated information to be submitted to the Commission or Division as part of the application protocol.

Following consideration of Mr. Hartman's proposal and after acknowledging that the representatives of each affected greyhound adoption agency/organization endorsed the proposal as presented, a motion was made by Commissioner Beirne, seconded by Commissioner Kester and unanimously carried to accept the change to the application protocol as presented by Division Director Hartman.

Closure of Regular Business Meeting/Convening of Rule-Making Hearing

At 10:15 a.m., Chairman Pretti closed the regular business meeting for the purpose of conducting the scheduled Rule-Making Hearing. A motion was thereupon made by Commissioner Beirne, seconded by Commissioner Vail and unanimously carried to convene the scheduled 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 10:15 a.m.

Mr. Dan Hartman, Director of the Division of Racing Events, informed the Commission and attendees that the Division of Racing Events had complied with all preliminary rule-filing requirements, including submission of all rule proposals to the Office of the Secretary of State and the Department of Regulatory Agencies and publication of the Notice of Rule-Making Hearing in the Colorado Registry, whereupon he presented the packet of rules for Commission review. Mr. Hartman apprised attendees that copies of the rules have been made 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.

Mr. Hartman stated that he had met separately with representatives of the Colorado Greyhound Breeder's Association in order to discuss their rule proposals with them. He advised that he had informed them that the rules that they wished to have promulgated exceeded the scope of the Commission's statutory authority and, therefore, could not, in their existing form, be made part of the packet of published rules. Mr. Hartman observed that he had explained to the Colorado Greyhound Breeder's Association representatives that, should they desire to bring their rule proposals before the Commission at some future time, they would need to revise them and bring them into conformity with and adherence to the Racing Statute.

Additionally, Mr. Hartman advised the Commission that a representative(s) of the Jockey's Guild would be participating in a portion of the Rule-Making Hearing via a teleconference call.

At this time, acknowledgment was made by both the Commission and the Division that an annual review of its entire rulebook is undertaken in order to: 1) ensure that its existing rules meet all statutory requirements; 2) determine whether the rules presently in effect accord with current industry practices; 3) correct any errors or

deficiencies in the rules; and 4) consider new rule proposals and proposals to amend or repeal certain rules. Mr. Hartman explained that any published rule proposal brought forward for consideration may be modified during this Rule-Making Hearing.

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.

As a preliminary matter, Mr. Bruce Seymore, Executive Director of Colorado Operations for Mile High Racing and Entertainment-Arapahoe Park, informed the Commission that he and the membership of the Colorado Horse-Racing Association, the organization that represents the majority of the horsepersons participating in Arapahoe Park's race meet(s), are in unanimous support of all of the rule proposals relating to horse-racing that are to be addressed during this Rule-Making Hearing, except proposed modified Rule #5.320. He noted that this is the only rule about which there is any disagreement between the racing association and members of the horse-racing community.

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

- Consideration of Proposed New Definitions "Greyhound Adoption" and "Greyhound Rescue": Mr. Hartman reviewed the text of the proposed new definitions, "Greyhound Adoption" and "Greyhound Rescue". Mr. Melvin Johnson, President of the Colorado Greyhound Breeder's Association, the organization responsible for the promulgation of the subject definitions, requested that the Commission expand its adoption of these definitions to include a document identified as "Greyhound Disposition Form". Mr. Hartman advised the Commission that the Division of Racing Events does not intend to require the greyhound adoption agencies/organizations to fill out such a form, but only to record and retain the previously specified information on the greyhounds that they tend. Discussion ensued during which views and opinions were presented by interested representatives of the greyhound community. It was suggested by a representative of the greyhound adoption community that the Colorado Greyhound Breeder's Association members be required to maintain records comparable to those being required of the greyhound adoption agencies/organizations, but the Commission explained that it did not have the statutory authority to mandate this in its rules.

Following discussion and after entertaining various comments and position statements, a motion was made by Commissioner Beirne to hold in abeyance the adoption of the subject definitions until the Commission's April 3, 2012 meeting and request that, in the interim, Ms. Y.E. Scott, Senior Assistant Attorney General for the Division of Racing Events, verify that there is no conflict between these proposed definitions and those in effect in the Department of Agriculture. Ms. Scott assured the Commission that she does not believe that further clarification would be necessary and is confident that no conflict exists between the two sets of rules. After ascertaining that there were no objections to formal action being taken at this time, Commissioner Beirne amended his motion as follows: to adopt new definitions "Greyhound Adoption" and "Greyhound Rescue" 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 rules. The motion was seconded by Commissioner Vail and unanimously carried. Copies of the subject definitions are attached hereto and made a part of these minutes.

- Consideration of Proposed Modified Rules 5.317 and 5.319: Mr. Hartman explained that, based upon conversations with racing association management representatives and practicing veterinarians relating to the administration of Lasix to two year-old horses, Arapahoe Park's management had determined that it would not pursue the prohibition of the administration of Lasix to two year-old horses for its 2012 live race meet. Mr. Hartman recommended that the Commission consider adopting proposed alternative versions of Rules 5.317 and

5.319, both of which remove references to two year-old horses. He stated that, as the industry evolves with respect to the use of Lasix, he would encourage the Commission to reconsider these rules and entertain possible changes to them. Mr. Hartman stated that he would anticipate that conversations regarding Lasix usage would continue to be conducted on an industry-wide basis and he assured the Commission that he would provide updated information on this subject as it becomes available. After ascertaining that there were no objections to formal action being taken at this time and acknowledging the Division's recommendation, a motion was made by Commissioner Wells, seconded by Commissioner Vail and unanimously carried to adopt the proposed alternative versions of modified rules 5.317 and 5.319 as presented to all of the Commissioners in their agenda packets and as 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 rules. Copies of the subject rules are attached hereto and made a part of these minutes.

- Consideration of Proposed Modified Rule 5.320: Mr. Hartman reviewed the text of proposed modified rule 5.320 and the alternative version of the rule proposal. He advised the Commission that both the racing association and the membership of the Colorado Horse-Racing Association had endorsed the alternative version of Rule 5.320. After ascertaining that there were no objections to formal action being taken at this time and acknowledging the Division's recommendation, a motion was made by Commissioner Wells, seconded by Commissioner Vail and unanimously carried to adopt the proposed alternative version of modified rule 5.320 as presented to all of the Commissioners in their agenda packets and as 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 rules. A copy of the subject rule is attached hereto and made a part of these minutes.
- Consideration of Proposed Modified Rule 5.330: Mr. Hartman reviewed the text of proposed modified rule 5.330. After ascertaining that there were no objections to formal action being taken at this time and acknowledging the Division's recommendation for adoption, a motion was made by Commissioner Kester, seconded by Commissioner Wells and unanimously carried to adopt modified rule 5.330 as proposed and, as part of the motion to adopt, the Commission incorporated the Statement of Statutory Authority, Basis and Purpose into the rules. A copy of the subject rule is attached hereto and made a part of these minutes.
- Consideration of Proposed Modified Rule 7.608: Mr. Hartman reviewed the text of proposed modified rule 7.608. He explained that the proposed modified version of rule 7.608 is intended to disallow the use of types of traction devices on racehorses that have not been tested or approved on an industry-wide basis and that may result in horses being injured during training or racing. After ascertaining that there were no objections to formal action being taken at this time and acknowledging the Division's recommendation for adoption, a motion was made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to adopt modified rule 7.608 as proposed and, as part of the motion to adopt, the Commission incorporated the Statement of Statutory Authority, Basis and Purpose into the rules. A copy of the subject rule is attached hereto and made a part of these minutes.
- Consideration of Proposed Modified Rule 7.218: As a preliminary matter, Mr. Shannon Rushton, Executive Director of the Colorado Horse-Racing Association, informed the Commission that he had been unaware that the Jockey's Guild intends to propose an alternative version of Rule 7.218, which was not brought forward during the rule review workshops and has not been provided to the members of his organization. Based upon the lack of prior notice regarding the alternative rule proposal and his inability to review it before now, Mr. Rushton requested that the Commission defer action until the members of the Colorado Horse-Racing Association have had sufficient time to review the content of the

rule to be presented by the Jockey's Guild. After considering Mr. Rushton's comments and noting Mr. Hartman's observation that the Jockey Guild's version of rule 7.218 has been adopted as a Model Rule by the Association of Racing Commissioners International, the Commission elected to proceed with discussion of both the published text and the alternative version of the subject rule.

- Discussion ensued regarding the subject rule proposals during which Mr. Terence Meyocks, National Manager of the Jockey's Guild, and Ms. Mindy Coleman, In-House Counsel for the Jockey's Guild, participated via teleconference call. Additionally, certain association and industry representatives expressed views and opinions for and against adoption of each version of proposed modified rule 7.218.

Mr. Hartman requested that the Commission allow him to attempt to mediate a compromise between the Jockey's Guild and the Colorado Horse-Racing Association representatives regarding the subject rule via a teleconference discussion to be held prior to the April 3, 2012 Commission meeting. The Commission endorsed Mr. Hartman's suggestion. A motion was thereupon made by Commissioner Beirne, seconded by Commissioner Vail and unanimously carried to table further consideration of proposed modified rule 7.218 until the April 3, 2012 Commission meeting in order to afford Mr. Hartman, the horse-racing community and the Jockey's Guild an opportunity to conduct a discussion of the different rule proposals in an effort to resolve their conflicting positions. No further action was taken at this time.

At 12:05 p.m., a motion was made by Commissioner Beirne, seconded by Commissioner Vail and unanimously carried to continue this Rule-Making Hearing until the Commission's April 3, 2012 meeting. The continued Rule-Making Hearing is scheduled to resume at 9:30 a.m. in Conference Room 110 (Enforcement Conference Room), 1881 Pierce Street, Lakewood, Colorado.

Ms. Janna Fuentes, Court Reporter, recorded stenographically recorded the above Rule-Making Hearing. A digital recording of the proceeding is on file in the Commission's Lakewood office.

Re-Opening of Regular Business Meeting

At 12:05 p.m., a motion was made by Commissioner Wells, seconded by Commissioner Beirne and unanimously carried to re-open the regular business meeting.

Adjournment

There being no further business to consider, a motion was made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to adjourn the regular meeting of the Colorado Racing Commission at 12:05 p.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on **Tuesday, April 3, 2012** in Conference Room 110 (Enforcement Conference Room), 1881 Pierce Street, Lakewood, Colorado.

The undersigned hereby approve the foregoing Minutes.

JACK PRETTI, CHAIRMAN

MARY SHARON WELLS, VICE-CHAIR

CHARLES VAIL, DVM, MEMBER

DANIEL KESTER, MEMBER

SEAN BEIRNE, MEMBER

RECORD OF PROCEEDINGS

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

Members Present

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

Staff Present

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

Also Present

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

Approval of Minutes of March 16, 2012

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

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

Ms. Pam Kilgore, Division Auditor, informed the Commission that, in accordance with and as permitted by statute, the Colorado Thoroughbred Breeder's Association had submitted a formal written request for early release of \$146,000, a portion of their Owners/Breeders Awards and Supplemental Purse Fund accrual for the purpose of supplementing the Colorado Bred Stakes schedule at Arapahoe Park in 2012. Mr. Mark McGregor, President of the Colorado Thoroughbred Breeders' Association, appeared and spoke on behalf of his organization.

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

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

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

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

Continued Rule-Making Hearing

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

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

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

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

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

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

Appreciation for Efforts of the Colorado Horse-Racing Association

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

Recess of General Session/Conduct of Hearings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Commissioner Pretti stated that the Commission would entertain a motion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Closure of Hearings/Reconvening of General Session

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

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

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

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

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

Adjournment

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

Next Regularly Scheduled Meeting

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

The undersigned hereby approve the foregoing Minutes.

JACK PRETTI, CHAIRMAN

MARY SHARON WELLS, VICE-CHAIR

CHARLES VAIL, DVM, MEMBER

DANIEL KESTER, MEMBER

SEAN BEIRNE, MEMBER

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, May 8, 2012 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
Mark Brown, Enforcement Supervisor
Robert "Duke" Mann, Horse Racing Coordinator
Pam Kilgore, Division Auditor
Susan Cariveau, Division Licensing Supervisor
Ashley Leary, Division Investigator
Y. E. Scott, Senior Assistant Attorney General representing the Division of Racing Events
Sherry Gunnell, Assistant to the Division Director

Also Present

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

Approval of Minutes of April 3, 2012

A motion was thereupon made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to approve the minutes of April 3, 2012 as submitted.

Consideration of 2012 Renewal Application – Arapahoe Park – Robert "Duke" Mann

Mr. Robert "Duke" Mann, Horse Racing Coordinator, presented his report concerning Arapahoe Park's 2012 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 26, 2012 and concluding on Sunday, August 19, 2012, with live performances to be offered on Friday, Saturday and Sunday throughout the meet, including a special program to be conducted on Monday, May 28, 2012 (Memorial Day observance). Mr. Powers informed the Commission that Arapahoe Park's racing schedule does not include a performance on Wednesday, July 4, 2012 as part of its official complement of race days. However, he commented that he might wish to add a Fourth of July matinee performance. The Commission delegated authority to Division Director Dan Hartman to approve such a request. 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.

The Commission took notice that Arapahoe Park would be sending its live signal to the ten (10) in-state simulcast facilities and to numerous out-of-state venues. He stated

that some contracts with out-of-state associations and simulcast providers are still 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. Additionally, 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 apprised 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 2011: 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. Powers confirmed that the majority of the Arapahoe Park racing officials were returning from last year and that all of these officials are in good standing and hold current Colorado Racing licenses. Mr. Mann apprised the Commission that Mr. Randy Blaseg, who served as the Senior State Steward during the 2011 Arapahoe Park race meet, would hold the position of Presiding Steward at the upcoming meet and that Mr. Walter Soes, also an accredited Steward, would act as the new State Steward. He observed that the following persons are new to their positions this season: Mr. Gil Romero, who will serve as the Assistant Racing Secretary and Ms. Sally Rushton, who will be the Horsemen's Bookkeeper. 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 2012 Arapahoe Park live meet.

Notice was taken that Mr. William Powers would also serve as the Director of Security. Mr. Mann observed that Mr. Powers delegated responsibility to Mr. Alan Holder to oversee and supervise grandstand security personnel and assigned responsibility to Mr. Keith Munson to oversee and supervise security personnel in the stable area, including the Division's test barn. Both Mr. Holder and Mr. Munson are experienced former racetrack employees. Mr. Mann reported that a meeting with security personnel has already been conducted.

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 2012 renewal license application and that Division Auditor Pam Kilgore and Commissioner Daniel Kester had reviewed the subject documents and had found them to be complete, in order and prepared in accordance with generally accepted accounting principles. Further, Mr. Mann observed that Twin Rivers Management Group, which owns 100% of Mile High USA, Inc., would be overseeing the Racing Association's financial matters. Commissioner Kester observed that, although the Association's financial status remains tenuous, it is in a positive cash flow position and has paid off all of its debts from the sale of the Mile High Greyhound Park property. Commissioner Kester stated that he is confident that the Association would be able to continue to meet its financial obligations. He expressed his opinion that increased

advertising of the race meet would be helpful and would bring new patrons to the racetrack. Commissioner Kester commended Mr. Bruce Seymore and his staff on their ongoing efforts to make Arapahoe Park a successful and prosperous venture. Mr. Mann stated that the Division recommends that the financial statements dated December 31, 2011 and 2010 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, 2012, 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;
- Current health/sanitation inspection reports for Arapahoe Park and some of its in-state simulcast facilities have not yet been 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 2012 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 2011 end of meet report, noting that Arapahoe Park had complied with or is in the process of addressing each of them. 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.

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. He commented that, approximately one week prior to the commencement of the race meet, a complete inspection of the entire facility and grounds will be conducted.

Mr. Mann affirmed that the same racing surface maintenance protocols in effect during the 2011 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 2012 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 2012 renewal application.

Following review and discussion, a motion was made by Commissioner Beirne, seconded by Commissioner Wells and unanimously carried to approve Arapahoe Park's 2012 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 delegate authority to Division Director Hartman to approve a request for Arapahoe Park to conduct an additional day of live racing on Wednesday, July 4, 2012 in the event that such a request is submitted, 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, 2012 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.

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; and H) 2012 New Rules (effective April 30, 2012) – Robert "Duke" Mann

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 in the Arapahoe Park Division office for trainers and other interested parties participating in the upcoming Arapahoe

Park race meet as well as in the Arapahoe Park Racing Office and would, also, be placed on the Division's website for access by all interested owners. Thereupon, the Commission reviewed the contents of the subject packet:

- 1) Stewards' Guidelines and Groundrules: The Commission reviewed the proposed Stewards' Guidelines and Groundrules for 2012. 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 version is unchanged from the 2011 edition. 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(s) 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. The Commission took notice that, during the upcoming Arapahoe Park race meet, a Division representative shall witness the administration of a furosemide (Lasix) injection to any horse specified to race on it. Additionally, pursuant to revised Colorado Racing Commission Rule 5.320, a Division designee shall arrange for a Division representative to accompany each practicing veterinarian while in the restricted barn area on race days.

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 months) no matter whether the horse(s) is/are from within or outside of Colorado.

- 3) Split-Sample Policy: The Commission reviewed the proposed Split-Sample Policy for 2012. Mr. Mann explained the protocol associated with the handling of a request for split-sample testing. He observed that the 2012 Split-Sample Policy has been updated and contains some new material, including the addition of a new testing laboratory, a new split sample testing scheduling form and a specification that any blood serum would be poured into a separate vial before being shipped to a split-sample laboratory.

Mr. Mann called the Commission's attention to the addition of HFL Sport Science, Inc., a new testing laboratory selected by Ms. Petra Hartmann, Director of Drug Testing Services at The Industrial Laboratories Company, Inc., the Division's primary testing laboratory. Mr. Mann advised that Mr. Rick Sams, Laboratory Director for HFL Sport Science, Inc., has agreed to accept samples from Colorado and will be submitting his testing protocol to the Division. Mr. Sams has given assurance that HFL Sport Science, Inc. will be using the same testing methodology that Industrial Laboratories uses.

Mr. Mann advised that, as is customary, he and Ms. Petra Hartmann 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) Stable Roster: 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) Stable Inspection Procedures: 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. Mr. Mann advised that Division personnel conduct a minimum of one complete inspection of every stable in the barn area during the live race meet and the inspection report is kept on file. He noted that the Division may conduct an inspection of a stable at any time.
- 7) Stable Inspection Report: The Commission took notice of the inclusion of this document in the Horsemen's Information Packet.
- 8) Copies of New Rules (Effective April 30, 2012): 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.

Following discussion, a motion was made by Commissioner Wells, seconded by Commissioner Beirne and unanimously carried to accept the aforementioned documents, rules and pertinent supplementary material contained in the "2012 Horsemen's Information Packet" as presented by Mr. Mann and to direct that any typographical errors be corrected prior to distribution of the subject packet.

Consideration of Proposed Changes to and Decision Regarding Future Publication and Issuance of Document Entitled "Colorado Division of Racing Events Therapeutic Medications Withdrawal Times" – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, tendered a proposed revised version of the document entitled "Colorado Division of Racing Events Therapeutic Medications Withdrawal Times" for Commission review. He expressed his belief that it would be desirable for this or a similar document approved by the Commission to be available for use by horse racing participants at Arapahoe Park's 2012 race meet. He observed that, by making such a document available to trainers and/or owners as well as practicing veterinarians, the Division would be allowing them to

determine what would be potentially appropriate time frames for any administration of a therapeutic medication and would also be emphasizing the Commission's zero tolerance message.

Mr. Hartman explained that, in preparing the subject document, he had consulted with Ms. Petra Hartmann, Director of Drug Testing Services at The Industrial Laboratories Company, Inc., the Division's primary testing laboratory, regarding suggested withdrawal times and, also, used various research studies and guidelines as source material. Additionally, Ms. Y. E. Scott, Senior Assistant Attorney General for the Division of Racing Events, revised the text of the "Special Notice" portion of the document. Mr. Hartman informed the Commission that he wrote to Dr. VandeWoude of the Colorado State University School of Veterinary Medicine, to inquire about the feasibility of applying some of the funds provided by the Commission for equine research projects to the development of a protocol to gauge withdrawal times of certain drugs and medications, therapeutic as well as performance-enhancing, from racehorses. He observed that, should this proposal be accepted, the research time frame would most likely be six to nine months from inception and, therefore, no data would be available for this racing season.

Discussion ensued during which the Commission expressed its desire to afford all sectors of the Arapahoe Park horse-racing community, including practicing veterinarians, an opportunity to voice their views and opinions regarding the subject document and proposed medication withdrawal times. Mr. Hartman advised that the Commission could schedule a special teleconference meeting for this purpose. (Subsequently, the Commission scheduled and conducted a special teleconference meeting relating to this matter, which was held on Friday, May 18, 2012.)

Comments Regarding New Division of Racing Events' Procedures – Dan Hartman

Mr. Hartman stated that, this year, the Division of Racing Events has adopted many new procedures, including new pre-race and sample testing protocols. He apprised the Commission that he and Ms. Hartmann are in the process of developing a new program, similar to one in place in Minnesota, whereby an owner could elect to have a horse that is entered to race pre-tested, either by the Division veterinarian or a practicing veterinarian, to ascertain whether the horse has any unauthorized medication in its system and, if so, the horse could then be withdrawn from its race without penalty. In response to queries from the Commission, Mr. Hartman replied that, in the event that a stakes race entrant was the subject of such pre-race testing and was found to have medication in its system, the owner could decide whether to allow the horse to race or not knowing the risk involved. Mr. Hartman observed that the Division would request that all pre-race samples, which are expected to cost approximately \$50 each, be taken by Wednesday, so that the test results would be available by Friday. In the event that an owner decides to remove his/her horse from a race based upon a pre-race positive test result, such removal would be considered a veterinarian's scratch and the trainer of the horse would not be subject to any type of penalty.

Additionally, Mr. Hartman reported that the Division has recently begun to use a new licensing program, MyLicenseOffice (MiLO). He explained that Division licensing personnel hope that license applicants will be patient with them as they become familiar with the new program.

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, commended the greyhound welfare and adoption organizations and acknowledged that they deserve to receive compensation for their outstanding work and service. He reported that the Division is in receipt of five applications for release of money from the Greyhound Purse, Welfare, Adoption and Greyhound Racing Promotion Fund. He observed that the requesting organizations are: 1) Colorado Greyhound Adoption; 2) The Colorado Greyhound Breeders' Association; 3) Friends of Retired Greyhounds; 4) Greyhound Connection; and 5) Rocky Mountain Greyhound Adoption, Inc. Mr. Hartman advised

that he and Division Auditor Pam Kilgore have reviewed each of the subject applications. He apprised the Commission that, currently, there is approximately \$40,000 in the Fund.

Mr. Hartman explained that the Division is recommending a new distribution methodology based upon comments made over the year since the last distribution. This methodology reimburses organizations based upon the number of greyhounds placed in the six-month application period divided into the available amount of fund money. He stated that, during the subject six-month period, there were 344 greyhounds placed by the applicants. This would mean that the organizations would receive \$116.28 per placed greyhound ($\$40,000/344=\116.28). Before distribution of the fund, the Division would again review the paperwork from the requesting organizations to ensure that accurate numbers have been reported and used in all calculations.

Prior to offering the Division's recommendation concerning fund distributions, Mr. Hartman voiced his opinion that the request from The Colorado Greyhound Breeders' Association for the release of \$1,484 fails to meet the standards set forth in the rules (#9.400 and #9.410) to qualify to receive Fund money. He advised that the Division does not believe that The Colorado Greyhound Breeder's Association's submission of receipts for transportation to and from Racing Commission meetings and requests for reimbursements for meeting with legislators, National Greyhound Association membership dues and attorney fees constitutes a reasonable or defensible interpretation of the rule(s) relating to distribution of monies from this Fund, noting that, although the Commission voted to disburse some money to this organization last year, he would not recommend repeating this practice. Thereupon, Mr. Hartman recommended that the Commission decline to distribute any money to The Colorado Greyhound Breeders' Association at this time and until such time as the organization complies with the Commission's rule(s) relating to said distribution.

Mr. Hartman confirmed that all of the remaining applications meet the criteria set forth in the Commission's rule(s). In those applications, Colorado Greyhound Adoption has requested \$25,000, Friends of Retired Greyhounds has requested \$15,000, Greyhound Connection has requested \$26,327, and Rocky Mountain Greyhound Adoption, Inc. has requested \$8,574. Notice was taken that each of these organizations has previously received Fund money. Mr. Hartman stated that the Division of Racing Events would recommend that the Commission approve the following disbursements totaling \$40,000 from the Greyhound Promotion and Welfare Fund:

• To Colorado Greyhound Adoption:	\$ 8,953.00
• To Friends of Retired Greyhounds:	\$ 4,535.00
• To Greyhound Connection:	\$20,698.00
• To Rocky Mountain Greyhound Adoption, Inc.	\$ 5,814.00
	<hr/>
	\$40,000.00

Discussion ensued during which Mr. Melvin Johnson, a member of the Colorado Greyhound Breeders' Association, voiced his objections to the denial of his organization's request for release of funds. He stated that he believes that his organization has complied with the Commission's rules and regulations and deserves to be a recipient of money from the subject fund. The Commission disputed Mr. Johnson's assertions and informed him that his organization did not meet the necessary standards and criteria for receiving fund money. Further, Mr. Bruce Seymore, Director of Racing Operations Colorado for Mile High Racing & Entertainment, clarified the original intent of the Legislature in establishing the Greyhound Promotion and Welfare Fund. He stated that the Legislature was attempting to alleviate the problems relating to the placement of greyhounds that resulted from the closure of Mile High Greyhound Park and the cessation of live greyhound racing in 2008.

Representatives from Friends of Retired Greyhounds and Colorado Greyhound Adoption assured the Commission that the funds have and continue to provide significant benefits to their organizations. However, they observed that, unlike their organizations that primarily handle in-state adoptions, Greyhound Connection serves as a "pass-through" site for greyhounds that are being transported outside of Colorado to be

adopted. Commissioner Beirne observed that, in light of this information, the Division's formula for distributing money from the Greyhound Promotion and Welfare Fund should be carefully re-examined. Further, he commented that, in the future, the Division and the Commission need to be focusing attention upon the final destination and permanent placement of greyhounds. The Commission directed Mr. Hartman to take these matters into consideration when assessing future requests for distribution of funds.

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, a motion was made by Commissioner Kester, seconded by Commissioner Wells and unanimously carried to release \$8,953.00 to Colorado Greyhound Adoption; \$4,535.00 to Friends of Retired Greyhounds; \$20,698.00 to Greyhound Connection; and \$5,814.00 to Rocky Mountain Greyhound Adoption, Inc., which totals \$40,000.00, with the proviso that each organization is to provide preliminary and follow-up reports relating to the use of the subject funds and, further, to assert that Commissioner Beirne's comments and recommendations are relevant to future evaluation of applications for release of money from the Greyhound Promotion and Welfare Fund.

Adjournment

After determining that there was no further business to consider, a motion was made by Commissioner Beirne, seconded by Commissioner Kester and unanimously carried to adjourn the meeting at 11:00 a.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on **Tuesday, July 10, 2012** at Arapahoe Park, 26000 East Quincy Avenue, Aurora, 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

A special meeting of the Colorado Racing Commission was held via teleconference on Friday, May 18, 2012 at 1881 Pierce Street, Lakewood, Colorado in Conference Room 110 (Enforcement Conference Room), for the purpose of considering proposed estimated therapeutic medication withdrawal times for 2012. A Notice of Special Meeting is attached hereto and made a part of these minutes.

Due to the fact that the Commissioners were present via teleconference calls, each Commission member in attendance identified him/herself for the record.

Chairman Jack Pretti convened the meeting at 11:10 a.m.

Members Present Via Teleconference

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

Commissioner Dan Kester was excused from the meeting.

Y. E. Scott, Senior Assistant Attorney General for the Division of Racing Events, was present via teleconference.

Staff Present

Dan Hartman, Director, Division of Racing Events
Sherry Gunnell, Assistant to the Director

Also Present

Shannon Rushton, Executive Director, Colorado Horse-Racing Association

Consideration of Proposed Revision of "Estimated Therapeutic Medication Withdrawal Times" – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, explained that the Commission had directed the Division to revise the 2011 document relating to therapeutic medication withdrawal times and to present it for their consideration. Mr. Hartman affirmed that, in preparing the subject document, he had consulted with Ms. Petra Hartmann, Director of Drug Testing Services at The Industrial Laboratories Company, Inc., the Division's primary testing laboratory, regarding suggested withdrawal times and, also, used various research studies and guidelines as source material. Additionally, he observed that Ms. Y.E. Scott, Senior Assistant Attorney General for the Division of Racing Events, had revised the text of the "Special Notice" portion of the document.

Discussion ensued during which the Commission exchanged views and opinions and made additional revisions to the document. Following its consideration and after ascertaining that there were no further revisions to be made to the subject document, a motion was made by Commissioner Wells, seconded by Commissioner Vail and unanimously carried to accept the revised version of the "Colorado Division of Racing Events' Estimated Therapeutic Medication Withdrawal Times" for 2012.

Commissioner Beirne expressed some trepidation about recommending medication withdrawal times. However, following further discussion, the Commission acknowledged that it would be helpful for the Arapahoe Park Board of Stewards to have therapeutic medication withdrawal guidelines in place for the 2012 live horse racing season that had been endorsed by the Commission.

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

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 11:30 a.m.

The undersigned hereby approve the foregoing Minutes.

(PRESENT VIA TELECONFERENCE)
JACK PRETTI, CHAIRMAN

(PRESENT VIA TELECONFERENCE)
MARY SHARON WELLS, VICE-CHAIR

(PRESENT VIA TELECONFERENCE)
CHARLES VAIL, DVM, MEMBER

(EXCUSED)
DANIEL KESTER, MEMBER

(PRESENT VIA TELECONFERENCE)
SEAN BEIRNE, MEMBER

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, July 10, 2012 in the Directors' Room at Arapahoe Park, 26000 East Quincy Avenue, Aurora, Colorado. Chairman Jack Pretti called the meeting to order at 10:05 a.m.

Members Present

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

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

Staff Present

Dan Hartman, Director, Division of Racing Events
Robert "Duke" Mann, Horse-Racing Coordinator
Mark Brown, Enforcement Supervisor
Leanne Gardner, Legal Assistant
Randy Blaseg, Senior State Steward
Herbert Walter Soes, State Steward
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 May 8 and May 18, 2012

A motion was made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to approve the minutes of May 8, 2012 as submitted.

A motion was made by Commissioner Wells, seconded by Commissioner Beirne and unanimously carried to approve the minutes of May 18, 2012 as submitted.

Scheduled Referral Hearing – In the Matter of NATHAN THOMAS BARROW

The scheduled referral hearing in the matter of Licensee Nathan Thomas Barrow was called to order by Commission Chairman Pretti at 10:10 a.m. Mr. Barrow was not present and was not represented by legal counsel. Senior Assistant Attorney General Y.E. Scott appeared on behalf of the Division of Racing Events. Division Director Dan Hartman reviewed the case on behalf of the Division of Racing Events.

Mr. Hartman apprised the Commission of the following facts in this matter:

- On June 13, 2012, the Arapahoe Park Board of Stewards had held a hearing in the matter of Mr. Nathan Thomas Barrow, Case No. 12-0079, during which the Board determined that Mr. Barrow had violated Colorado Racing Commission Rules #5.220, 7.206 and 12-60-507(1)(d) of the Colorado Revised Statutes and 1 CCR 208-1, Chapter 1, *Definitions*, **MISREPRESENTATION**. As a result of its findings, the Board of Stewards issued Ruling No. 12-02 suspending Mr. Barrow's license for a period of thirty days from June 13, 2012 during which time he was denied the privileges of the grounds and, also, fining him the sum of \$500. Further, Ruling No. 12-02 reflected that this matter was referred to the Colorado Racing Commission for any additional sanction that the Commission might deem appropriate.

- On June 13, 2012, a Notice of Appeal and Request for Stay was filed with the Division of Racing Events by Mr. Shaun Kaufman, Attorney at Law, on behalf of Mr. Barrow. Thereafter, Mr. Hartman explained that he had polled the Commission regarding the request for a stay of the suspension and a majority of the Commission determined that the request should not be granted. The Division notified Mr. Barrow, by and through his Attorney, that the request for a stay of the suspension had been denied, and that, in order to proceed with the appeal, Mr. Barrow would need to obtain a transcript of the Arapahoe Park Board of Stewards' hearing from the official recording.
- On or about June 22, 2012, Mr. Kaufman delivered a document entitled "Motion to Dismiss Appeal" to the office of the Division of Racing Events. Mr. Hartman attested to the fact that no other documents had been submitted by either Mr. Kaufman or Mr. Barrow to the Division of Racing Events. Mr. Hartman stated that, on July 5, 2012, he had notified Mr. Kaufman and Mr. Barrow that the appeal has been deemed abandoned.

Mr. Hartman informed the Commission that the Division of Racing Events believes that the thirty day suspension served by Mr. Barrow and the \$500 fine imposed by the Board of Stewards, which has been paid, are sufficient penalties and, therefore, the Division is not recommending that the Commission impose any additional penalties in this matter. A motion was thereupon made by Commissioner Wells, seconded by Commissioner Kester and unanimously carried to accept the recommendation of the Division of Racing Events and to uphold the findings and decision of the Arapahoe Park Board of Stewards set forth in Ruling 12-02 and to deem that the matter of Mr. Nathan Thomas Barrow has reached a successful conclusion and that no further action needs to be taken.

The hearing concluded at 10:20 a.m.

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

In accordance with the motion of the Commission, the following Director's Order was issued and disseminated by the Division of Racing Events:

BEFORE THE DIVISION OF RACING EVENTS

COLORADO RACING COMMISSION

Case Number: 12-0079

DIRECTOR'S ORDER #12-05

IN THE MATTER OF:

NATHAN BARROW
LICENSE #: 201310218
LICENSE TYPE: Owner/Trainer

Licensee.

Ruling #12-02 issued in this case by the Board of Stewards on June 13, 2012 suspended any and all Colorado racing licenses held by Nathan Barrow for a period of thirty (30) days and imposed a fine of Five Hundred dollars (\$500.00). Records of the Division of Racing Events reflect that Mr. Barrow has served the full period of suspension and has paid the amount of Five Hundred dollars (\$500.00) on June 27, 2012 in satisfaction of the fine imposed against him.

Accordingly, it is hereby **ORDERED** that Owner/Trainer License #201310218 issued to Nathan Barrow is reinstated and is effective as of the date of signature of this Director's Order set forth below.

BY ORDER OF THE DIVISION OF RACING EVENTS

s/	<u>07/13/12</u>
DANIEL J. HARTMAN	Date
Director	

Status Report – Arapahoe Park's 2012 Live Race Meet – Robert "Duke" Mann

Mr. Robert "Duke" Mann, Horse Racing Coordinator for the Division of Racing Events, and Mr. Bill Powers, Facilities Manager/Director of Racing at Arapahoe Park, addressed the Commission regarding the current live race meet. Mr. Mann commented that Arapahoe Park is having a very successful race meet. He observed that, although he was unable to provide exact handle and attendance figures at this time, all figures, including the on-track, in-state and out-of-state handles, are higher this season than they were for the same period in 2011 with the most significant increase being in the out-of-state handle. Mr. Powers advised the Commission that, not only are the off-track wagering facilities prospering and contributing to the excellent handle, but the popularity of telephone and internet account wagering has resulted in substantial increases to the out-of-state and overall handle totals. He noted that, although the handles derived from live horse racing are up by 7% on a nationwide basis, Arapahoe Park's live handle is up by almost 10%.

Mr. Mann reported as follows:

- As of Sunday July 8, 2012, Arapahoe Park had conducted 21 days of live horse racing this season. Through the first weekend of July, Arapahoe Park had conducted a total of 181 live races, 115 of which were Thoroughbred races, 47 of which were Quarterhorse races, 16 of which were Arabian races and 3 of which were "mixed" races, including Thoroughbreds, Quarterhorses and Paints. To date, 1,303 horses have started with 54 horses having been scratched from races.
- There have been three medication violations, thus far, of which one for the detection of a non-steroidal anti-inflammatory drug plus a Class 4 drug (Vetalog) has been adjudicated involving a fine and a suspension; the results of split sample testing on the two remaining violations are currently pending. One of these violations involved the discovery of the presence of Clenbuterol and the other involved the finding of an anesthetic.
- To date, four horses have sustained catastrophic injuries:
 - One horse suffered a broken neck during training;
 - One horse died as the result of an infection;
 - One horse died in its stall while preparing to race. Medication was found with the horse. This matter is currently under investigation (a necropsy report was submitted by Dr. Chris Kawcak of the Colorado State University School of Veterinary Medicine indicating bruising around the horse's head and shoulders. The Division is awaiting receipt of the blood sample report); and
 - One horse broke its fetlock while on the racetrack.
- There have been 284 blood samples taken through July 8, 2012, of which 280 tested horses placed "in the money" -- from first through fourth place. Some random test sampling is being conducted.
- Several investigations are currently underway.
- The injury rate is lower than it was in 2011.

- The racetrack surface is being properly maintained.
- Licensing has been progressing well with many new license applicants coming to Colorado, most notably from Arizona.
- This season, there have been no water-related issues, either on the racetrack surface or inside the buildings/facilities despite the exceptionally dry/ hot weather and occasional torrential downpours. To date, no races or race days have been lost. There have not been any major problems associated with bugs or insects this season.

Mr. Mann noted that there were no major complaints or incidents to report and that the meet has been progressing very smoothly.

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

Recess of Regular Meeting

At approximately 10:30 a.m., a motion was made by Commissioner Vail, seconded by Commissioner Beirne and unanimously carried to recess the regular meeting in order to convene the 2013 Race Dates Hearing.

2013 Race Dates Hearing

Chairman Pretti convened the 2013 Race Dates Hearing at 10:30 a.m.

Mr. Dan Hartman, 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 2013 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. Hartman stated that Arapahoe Park tendered its request for a 2013 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 2013. He noted that, by allowing Arapahoe Park's scheduling to be left open-ended until submission of its renewal application, the Commission would be affording Arapahoe Park's management the opportunity to compare the dates of other racetracks and determine what the best available dates would be upon which to conduct the 2013 meet. In response to Commissioner Vail's query, Mr. Hartman replied that Arapahoe Park must conduct a minimum of thirty days of live racing in order to continue simulcasting of races.

In order for the Division to be able to plan for calendar year 2013, Fiscal Year 2013 and Fiscal Year 2014, to develop an appropriate staffing plan for the proposed meet and to have a clear idea about what its budgetary needs would be, Mr. Hartman recommended that the Commission approve 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.

Based upon Mr. Hartman's recommendation, the Commission proceeded to consider the proposed race date request for Arapahoe Park for 2013. A motion was thereupon made by Commissioner Beirne, seconded by Commissioner Vail and unanimously carried to accept Arapahoe Park's 2013 requested race dates envelope 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, 2013 and August 31, 2013, with the proviso that the conditions set forth above apply to any specific dates of racing.):

* - 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, a motion was made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to close the 2013 Race Dates Hearing. The 2013 Race Dates Hearing was adjourned at approximately 10:35 a.m.

Re-opening of Regular Commission Meeting

A motion was made by Commissioner Vail, seconded by Commissioner Wells and unanimously carried to rejoin the regular Commission meeting.

Election of Officers

A motion was made by Commissioner Vail, seconded by Commissioner Kester and carried by acclamation to appoint Mary Sharon Wells to serve as Chair of the Commission. A motion was made by Commissioner Wells, seconded by Commissioner Kester and carried by acclamation to appoint Commissioner Beirne to serve as Vice-Chair of the Commission. Both appointments will remain in effect through June 2013.

Consideration of 1) Proposed Policy Regarding Commission-Approved Examinations for Eligibility for Entry; and 2) Proposed Form for Designation of a Horse to the Division of Racing Events' Veterinarian's List – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, reviewed the text of a proposed policy relating to Commission-approved examinations for eligibility of horses for entry. Mr. Hartman advised the Commission that, currently, there is no "Commission-approved" mechanism in effect for removing horses that have been placed on the veterinarian's list for a confirmed medication violation to be removed from the veterinarian's list. He tendered for Commission review a proposed policy statement and a form designed to ensure compliance with Colorado Racing Commission Rules #5.612, 5.441 and 5.610 relating to placement on and removal of horses from the veterinarian's list.

Mr. Hartman discussed with the Commission and recommended adoption of the following terms and conditions set forth in the document entitled "Policy of the Colorado Racing Commission Regarding Commission-Approved Examinations for Eligibility for Entry":

1. For violations due to the presence of a drug carrying a Penalty Class A, B or C according to the *Uniform Classification Guidelines for Foreign Substances* as published in the Association of Racing Commissioners International ("the *Guidelines*"):
 - (a). Be on the Veterinarian's list until eligible for entry but no less than four (4) days after the day initially placed on the Veterinarian's list;
 - (b). A horse placed on the Veterinarian's list must perform a workout before the Division Veterinarian;
 - (c). Produce the horse to the Division Veterinarian for the purpose of providing within one (1) hour of the workout a blood and/or urine sample for testing purposes; and
 - (d). The Division Veterinarian may perform a physical examination of the horse to any extent the Division Veterinarian deems necessary, which may require further testing to include x-ray by the horse's practicing veterinarian.
2. For violations due to the presence of a drug carrying a Penalty Class C or D according to the *Guidelines* for violations that do not result in a loss of purse:

- (a). Be on the Veterinarian's list until eligible for entry but no less than four (4) days after the day initially placed on the Veterinarian's list;
 - (b). A horse placed on the Veterinarian's list must perform a workout before the Division Veterinarian;
 - (c). If, in the discretion of the Division Veterinarian, a blood and/or urine sample is requested for testing purposes, the requested sample shall be provided within the time specified by the Division Veterinarian or will be deemed a refusal of testing for purposes of further disciplinary action.
3. Sample testing shall be conducted by the Commission's official laboratory. Any sample testing or additional physical examination shall be at the owner's or trainer's expense.
4. The Commission-approved examination shall be conducted by the Division Veterinarian or a veterinarian designated by the Division Veterinarian who has no connection to or association with the horse which has been placed on the Veterinarian's list, the horse's trainer or the horse's owner.

Discussion ensued during which Mr. Bruce Seymore, Executive Director of Colorado Operations for Mile High Racing and Entertainment, and Mr. Shannon Rushton, Executive Director of the Colorado Horse-Racing Association, voiced their support for and endorsement of this policy and the accompanying form. They emphasized their concern for the well-being of the racing animals and for the integrity of horse racing. Mr. Hartman asserted that he believes that the new medication withdrawal times and pre-race testing are proving to be beneficial in reducing the number of violators and in ensuring, to the greatest possible extent, that the systems of horses that are racing are free from any prohibited substances. He observed that, with the support of Arapahoe Park's management and the horse-racing community, the Division is striving to achieve a level regulatory playing field.

During the course of the review and discussion of the subject documents, Mr. Rushton explained that, in the interests of preventing cheating, the Rocky Mountain Quarter Horse Association had inserted language into its stakes nomination form that he believed would preclude a horse that had been placed on the Veterinarian's list for a medication violation from being able to participate in the finals of a stakes race and would, alternatively, allow the eleventh-place finisher in the trials to race in the stakes finals. Mr. Rushton requested that the Commission provide its interpretation of the text. In response to Mr. Rushton's request, Ms. Y. E. Scott, Senior Assistant Attorney General for the Division of Racing Events, stated that she would need to review the document in question before rendering her interpretation of the text. Also, Mr. Rushton advised that the Rocky Mountain Quarter Horse Association had stipulated that the horse's owner must sign the form as confirmation of acceptance of all nomination/participation criteria.

Mr. Hartman requested that the Commission adopt the subject policy and associated form on a retroactive basis to the beginning of the 2012 live race meet. Ms. Y. E. Scott, Senior Assistant Attorney General for the Division of Racing Events, expressed her view that this was allowable since the Division discovered belatedly that such a Commission-approved policy was not in effect at the outset of the meet, but should have been.

Commissioner Vail proposed that a provision be incorporated into the subject policy specifying that any proxy veterinarian who performs an examination for the Commission veterinarian should be licensed by the Division of Racing Events. The Commission concurred unanimously with this recommendation and directed that this provision be inserted into the text of the policy. Mr. Hartman noted that the Division may make certain changes to the policy and form as circumstances necessitate.

Following discussion and after making certain modifications to the text of the subject policy and form, a motion was made by Commissioner Pretti, seconded by Commissioner Kester and unanimously carried to adopt and implement the policy entitled "Policy of the Colorado Racing Commission Regarding Commission-Approved Examinations for Eligibility for Entry" retroactive to the commencement of the 2012 Arapahoe Park live race meet and, further, to approve the immediate use of the

accompanying form entitled “Designation of a Horse to the Division of Racing Events’ Veterinarian’s List” for the remainder of the 2012 live racing season.

Ms. Suzanne Reid, Court Reporter, recorded stenographically all of the preceding matters that came before the Commission during this meeting.

Acknowledgment of and Farewell to Commissioner Jack Pretti – Dan Hartman

Division Director Dan Hartman observed that the second full term served by Commissioner Jack Pretti had officially ended whereupon, Commissioner Vail introduced a resolution from the Colorado Racing Commission commending retiring Commissioner Jack Pretti for his commendable and outstanding service, his diligence and fairness and for being a mainstay throughout his terms as a Commission member.

Mr. Hartman, Mr. Pretti’s fellow Commissioners and numerous industry representatives offered tributes and reflections in his honor. Mr. Pretti was acknowledged for his dedication, his excellent guidance, exceptional decision-making ability, humility and devoted leadership throughout his tenure as a Commissioner.

The Commission, members of the horse racing community and Mr. Hartman extended warmest regards and special thanks to Mr. Pretti for his outstanding service to the Division, the Commission, the racing industry and the citizens of Colorado. At this time, Mr. Bruce Seymore, Executive Director of Colorado Operations for Mile High Racing and Entertainment, presented a stunning statue of a horse and jockey to Mr. Pretti. Mr. Hartman presented a commemorative plaque and a Certificate of Recognition to Mr. Pretti. These acknowledgments were greeted by a rousing ovation.

Mr. Pretti responded that he had enjoyed his terms as a Commissioner and that he appreciated deeply the support and helpfulness of his fellow Commissioners, members of the racing industry and the Division staff throughout the previous eight years. He mentioned that he was impressed by the progress that the industry has made and the milestones that have been achieved during the past eight years, although he expressed his regret at the loss of greyhound racing.

Thanks to Mr. Seymore for Hosting the Meeting

The Commission extended its warmest thanks to Mr. Bruce Seymore and his staff for hosting today’s meeting and for their hospitality and courtesy to everyone in attendance.

Adjournment of Regular Business Meeting

There being no further business to consider, the meeting was adjourned by acclamation at 11:30 a.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on **Tuesday, October 9, 2012** in Conference Room 110 (Enforcement Conference Room), 1881 Pierce Street, Lakewood, Colorado.

The undersigned hereby approve the foregoing Minutes.

MARY SHARON WELLS, CHAIR

SEAN BEIRNE, VICE-CHAIR

CHARLES VAIL, DVM, MEMBER

DAN KESTER, MEMBER

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, October 9, 2012 in Conference Room 110 (Enforcement Conference Room) at 1881 Pierce Street, Lakewood, Colorado. Chairwoman Wells called the meeting to order at 9:40 a.m.

Members Present

Mary Sharon Wells, Chairwoman
Charles Vail, DVM, Member
Dan Kester, Member

Commission Vice-Chairman Sean Beirne was excused from the meeting.

Staff Present

Dan Hartman, Director, Division of Racing Events
Robert "Duke" Mann, Horse-Racing Coordinator
Mark Brown, Enforcement Supervisor
Pam Kilgore, Division Auditor
Ashley Leary, Division Investigator
Leanne Gardner, Legal Assistant
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 10, 2012

A motion was made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to approve the minutes of July 10, 2012 as submitted.

Recess of Regular Business Meeting

At 9:42 a.m., Chairwoman Wells recessed the regular business meeting for the purpose of convening the scheduled adjudicatory hearing.

Scheduled Adjudicatory Hearing – In the Matter of RAMON MARQUEZ-GONZALEZ

The scheduled adjudicatory hearing in the matter of Licensee Ramon Marquez-Gonzalez, Case Number 12-0734, was called to order by Chairwoman Wells at approximately 9:42 a.m. At the commencement of the hearing, the Commission was notified that a Settlement Stipulation had been reached between the Licensee and the Division of Racing Events. Based upon the stipulation and agreement reached in this matter, Licensee and his attorney, Mr. James K. Kreutz, chose not to appear in person before the Commission at the scheduled hearing. Further, the Commission took notice that Ms. Maegan Cavasos, the owner of the affected horse, MR. GOLDEN RULER, had been duly and properly notified of today's hearing, but did not appear. The Commission recorded the hearing.

Mr. Hartman apprised the Commission of the following facts in this matter:

- That the Horse, MR. GOLDEN RULER ran in the 8th race on July 13, 2012 at Arapahoe Park and finished in 2nd place in the race. At the time of the race, Licensee Marquez-Gonzalez was the trainer of record for MR. GOLDEN RULER.
- Following the Race, Division employees properly took and labeled blood and urine samples from MR. GOLDEN RULER, which were then properly and securely transferred to the Commission's official chemist, Industrial Laboratories

Company, Inc. The samples taken from MR. GOLDEN RULER were properly analyzed utilizing sample-analysis procedures consistent with the recommendations of the Association of Official Racing Chemists.

- The sample-analysis determined that the blood sample taken from MR. GOLDEN RULER contained Dimethylsulfoxide (DMSO), an unauthorized medication ranked as a Class 4, Penalty Class C drug according to the Colorado Racing Commission Rule #5.300 and the *Uniform Classification Guidelines for Foreign Substances* as published by the Association of Racing Commissioners International.
- Licensee submitted a timely request pursuant to Commission Rules for split sample testing of the blood sample from the Horse, MR. GOLDEN RULER. Licensee elected to have the blood sample in question tested at the Pennsylvania Equine Testing and Research Laboratory. The sample was properly and securely transferred to the subject split sample testing laboratory with the Licensee being present as provided by Commission Rules. The split sample testing determined that the blood sample from the Horse, MR. GOLDEN RULER, contained Dimethylsulfoxide (DMSO). The presence of this unauthorized substance in the system of the Horse, MR. GOLDEN RULER, carries a mandatory loss of purse and disqualification of the horse from the race.
- Further, the Licensee committed the following prior relevant violations within a 365-day period:
 - The presence of the unauthorized medication Clenbuterol, a Class 3, Penalty Class B drug in the system of a horse that ran in the 2011 Arapahoe Park race meet.
 - The presence of the unauthorized medication Clenbuterol, a Class 3, Penalty Class B drug in the system of another horse that ran in the 2011 Arapahoe Park race meet.
 - The presence of the unauthorized medication Methylprednisolone, a Class 4, Penalty Class C drug in the system of a horse that raced in the 2012 Arapahoe Park race meet.

The Commission was assured by Mr. Hartman and Ms. Scott that all mitigating and aggravating factors present in this case had been considered and that the parties agree that the aggravating factors far outweigh any mitigation. The terms and conditions of the stipulation reached between the parties in question were thereupon placed on the record by Division Director Daniel J. Hartman, with clarification given by Ms. Y. E. Scott, Senior Assistant Attorney General, on behalf of the Division of Racing Events, and the written Settlement Stipulation provided to the Commission.

A motion was made by Commissioner Kester, seconded by Commissioner Vail and unanimously carried to accept and approve the Settlement Stipulation as presented and adopt it as the Final Agency Order. In accordance with the motion of the Commission, the following Final Agency Order was issued and disseminated by the Division of Racing Events:

Accordingly, it is hereby ORDERED as follows:

- 1) Licensee shall pay a fine of Four Thousand Dollars (\$4,000.00), due and payable to the Division of Racing Events on or before January 1, 2013.
- 2) Licensee's license shall be suspended for one (1) year commencing at 12:00 midnight (Mountain Time) on January 1, 2013 and terminating at 12:00 midnight (Mountain Time) on December 31, 2013.
- 3) While serving the one (1) year license suspension period, the Licensee shall not enter upon or be present at or in the restricted area and racetrack premises of Arapahoe Park racetrack or any other racetrack in the United States for any reason. Licensee understands and agrees that:
 - (a) "Restricted area" of the Arapahoe Park racetrack or any other track in the United States shall mean all areas of the racetrack where a current validated license badge is required for access including, but not limited to, the paddock, track area, totalisator room, mutuels area, money room, kennel compound, judges'/stewards' stand and roof, stable area, jockey's room and test barn.

- (b) "Racetrack premises" of the Arapahoe Park racetrack or any other track in the United States shall mean the entire area of the racetrack, including, but not limited to, simulcast facilities, parking lots, driveways, grandstands, out buildings, stable areas or kennel compounds and training facilities located on the racetrack premises or used by a licensed association to conduct a live and/or simulcast race meet.
- 4) If the Licensee enters upon or is present at or in the restricted area or racetrack premises of Arapahoe Park or any other racetrack in the United States as described in paragraph 3 above for any reason whatsoever during the one (1) year license suspension period, the Licensee does agree and stipulate to the immediate revocation of his license by the Commission. The sole issue at any hearing held concerning the automatic revocation of Licensee's license will be whether there was a violation of the stipulated restrictions in paragraph 3 above.
 - 5) Pursuant to Colorado Racing Commission Rule #5.441, while serving the one (1) year license suspension period, the Licensee shall not benefit financially from any and all related activities in the State of Colorado to include, but not be limited to, the transfer of the horses in his care and control to family members licensed by the Commission.
 - 6) The Horse, MR. GOLDEN RULER shall be declared disqualified and unplaced for every purpose with regard to the 8th race on July 13, 2012 except for pari-mutuel wagering.
 - 7) Loss of purse for the Race.

THE COMMISSION DOES FURTHER ORDER that in the event that the total fine is not paid in a timely manner:

- A. Pursuant to Colorado Racing Commission Rule #6.700, a penalty fine, equal to the amount of the Four Thousand Dollar (\$4,000.00) fine shall be imposed automatically, which total fine and penalty shall be immediately due and payable; and
- B. The matter will automatically revert to the Commission for such further sanction as it may deem appropriate, at which time the Licensee shall be notified of the Licensee's opportunity to appear before the Commission to show cause why the Licensee should be sanctioned further.

The hearing concluded at 9:50 a.m.

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

Re-opening of Regular Commission Meeting

At 9:50 a.m., Chairwoman Wells reconvened the regular Commission meeting.

Introduction of Newly Appointed Interim Executive Director of the Department of Revenue's Enforcement Line of Business, Mr. Ron Kammerzell

Mr. Dan Hartman, Director of the Division of Racing Events, introduced Mr. Ron Kammerzell, the former Director of the Division of Gaming, who was recently appointed to serve as the Interim Executive Director of the Enforcement Line of Business within the Department of Revenue. Mr. Hartman advised that Mr. George Thomson, who had formerly held this position, had chosen to return to private industry.

Mr. Kammerzell commented that he is looking forward to working with the Commission, Mr. Hartman and the staff of the Division of Racing Events. The Commission welcomed Mr. Kammerzell and congratulated him on his appointment.

End of Meet Report – Arapahoe Park’s 2012 Live Race Meet – Robert “Duke” Mann

Mr. Robert “Duke” Mann, Horse Racing Coordinator, presented his end of meet report for Arapahoe Park’s 2012 live race meet. Mr. William Powers, Plant Facilities Manager/Director of Racing at Arapahoe Park, and Mr. Bruce Seymore, Executive Director of Colorado Operations for Mile High Racing and Entertainment appeared on behalf of the Association. Mr. Shannon Rushton, Executive Director of the Colorado Horse-Racing Association, appeared on behalf of the Arapahoe Park horse racing community.

In his report, Mr. Mann informed the Commission that the thirty-nine (39) day live meet at Arapahoe Park had commenced on May 26, 2012 and had concluded on August 19, 2012. He stated that Arapahoe Park was granted permission by the Division of Racing Events to run eleven (11) races instead of nine (9) on June 29, 2012 to accommodate the Rocky Mountain Futurity and Derby Quarter Horse Trials. Additionally, Arapahoe Park was given permission to conduct ten (10) races instead of nine (9) on August 3, 2012 to accommodate the Mile High Futurity and Derby Trials. Arapahoe Park requested and was approved to run twelve (12) races on the closing weekend (last three days). 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 reviewed various audited statistics for the 2012 live race meet, including those for out-of-state horse simulcasting, along with comparative figures for the 2011 live and simulcast race meet. Mr. Mann observed that this year’s total mutuel handle, including simulcasting, was \$20,940,799, a slight decrease from the 2011 total mutual handle of \$22,839,967. However, he noted that, in 2011, Arapahoe Park had conducted one additional day of live racing. He stated that the total number of live races in 2012 was 363 and that there were a total of 10,725 simulcast races offered during the live season. The average number of live races per day in 2012 was nine.

STATISTICAL DATA:

Mr. Mann reported the following: 1) that the 2012 live handle was \$5,375,415; 2) that the 2012 in-state live handle was \$2,675,994; 3) that the out-of-state live portion was \$2,699,421; and 4) that the on-track live handle was \$2,196,441. He offered the following average daily handle figures for 2012: 1) the average daily handle on-track was \$54,564; 2) the average daily handle in-state was \$68,533; 3) the average daily out-of-state handle was \$69,299; and 4) that this season’s average daily total handle was \$137,831.

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

	<u>Races</u>	<u>Purses Paid with Fees Added</u>
Thoroughbred	232 (64%)	\$2,588,271
Quarter Horse	102 (28%)	\$1,239,500
Arabian	29 (8%)	\$ 269,200
Totals	363	\$4,096,971

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

INJURIES TO HORSES (Racing and Training-Related):

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

	<u>2010</u>	<u>2011</u>	<u>2012</u>
Total Starts	3295	3255	2994
Total Injuries	79	64	76
Career ending injuries	2	1	3
Catastrophic	5	6	5
Died or Euthanized due to sickness or accident (Non-Racing Related)		8	6

He 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. In response to Commissioner Kester’s query, Mr. Mann stated that no unauthorized medication had been found in the system of a two-year old horse in training that expired in its stall prior to the commencement of the meet and no determination had been made regarding the specific cause of this horse’s death.

TESTING:

For the 2012 race meet, Mr. Mann reported that the veterinary staff took 626 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 eight (8) positive tests resulting in eight (8) unauthorized medication violations during the 2012 meet, which violated Colorado Racing Commission Rule No. 5.301 – Unauthorized Medication. The medication violation breakdown is as follows:

- *Flunixin and Triamcinolone* (found in blood sample);
- *Methylprednisolone* (a Class 4 drug);
- Three (3) violations for *Clenbuterol* (a Class 3 drug);
- *Mepivacaine* (a Class 3 drug);
- *DMSO*, (a Class 5 drug); and
- One (1) violation for *Phenylbutazone* (threshold overage pursuant to Colorado Racing Commission Rule #5.312).

TEST BARN POLICIES:

LASIX ADMINISTRATION WITNESS PROTOCOL: Mr. Mann reported that, this season, the Division had instituted some new testing policies and procedures, one of which involved the witnessing of Lasix (Furosemide) administration. Mr. Mann explained that, pursuant to Colorado Racing Commission Rule #5.320, Division veterinary assistants would witness the Lasix (Furosemide) treatments being given by the practicing veterinarians. The trainer or his/her authorized representative was required to be present to present the correct horse for identification and to sign the appropriate form. The form (sample tag) would include the date, name of the horse in question, horse’s tattoo number, amount of Lasix (Furosemide) being given and the witnesses’ signatures, an “In Today” sign number which was attached to the horse’s stall and the veterinary assistant’s initials or signature. This form was then entered into a database. Once the races were over, the syringes from the horses that were tested were confiscated and retained until testing results were received from Industrial Laboratories. Mr. Mann stated that the witnessing program worked well and was a success.

PRE-RACE DRUG SCREEN TESTING: Another new protocol initiated during this racing season was the pre-race drug screen testing. Mr. Mann advised the Commission that a new guideline for therapeutic drug/medication withdrawal times was generated and provided to practicing veterinarians and trainers. A licensed trainer or owner was allowed, at his/her own expense, to have his/her horse tested for unauthorized medications before Wednesday, the week of the races. A Division staff member would then take possession of the sample and deliver it for testing, along with a sample card and chain of custody declaration, to Industrial Laboratories, the Division's primary testing laboratory. Payment for this testing was remitted to Industrial Laboratories by the owner or trainer in question at the time of testing and the results were forwarded to the Division of Racing Events. The Division's veterinarian provided the test results to the trainer's or owner's practicing veterinarian. A total of twenty-six (26) pre-race tests were performed and provided to Industrial Laboratories for analysis. Mr. Mann commented that most blood samples were clear, but some tests did detect trace amounts of unauthorized substances. In the event that a pre-race test detected the presence of an unauthorized substance or a high level of an allowable drug/medication, the trainer was afforded the opportunity to withdraw his/her horse from a race without incurring a penalty. He commented that this protocol protected both the trainers and the wagering public and proved to be very successful. In response to Commissioner Wells' query, Mr. Mann replied that the trainers reacted favorably to the pre-race drug screening option and that Industrial Laboratories had maintained a rapid turnaround time on testing. He assured the Commission that, during upcoming racing seasons, the Division will continue to offer pre-race drug screening.

Commissioner Vail inquired whether pre-race testing included testing for elevated levels of Lasix to which Mr. Hartman replied that it did. Commissioner Vail observed that some states are considering abolishing the use of Lasix altogether or are carefully monitoring dosage levels. Mr. Mann commented that the Division's protocol once Lasix was administered to a horse was to affix a magnetic sign to the horse's stall to alert anyone that entry to the stall would be prohibited for a four hour period after the injection was given.

UPDATED VETERINARIAN'S LIST and NEW SIGN-OFF FORM:

A third innovation was the preparation of a new sign-off form that was utilized in conjunction with the updated veterinarian's list. Pursuant to Colorado Racing Commission Rules #5.608, #5.610, #5.611 and #5.612, the subject form insures the following:

- Proper designation of a horse to the Division of Racing Events' veterinarian's list;
- Delegation of authority (pursuant to Colorado Racing Commission Rule #5.611) by the Division's veterinarian; and
- Implementation of a Commission-approved policy/procedure regarding examinations to establish eligibility for entry of a horse into a race.

Mr. Mann explained that whenever an unauthorized medication was detected in a horse's system, follow-up testing of the horse was required. Also, in the event that additional testing was necessary, any person involved with the care and custody of the horse was obligated to sign the aforementioned form. This procedure allowed everyone associated with the horse to be assured that the horse was in sound racing condition.

TEST BARN:

Mr. Mann commented that the Division and the Racing Association had continued to work together to address any maintenance issues that arose during the 2012 meet. He noted that all concerns and problems were handled in a timely manner by the plant maintenance supervisor and Arapahoe Park management. The Test Barn provided a safe and secure environment for the horses, trainers and their employees and for Division test barn personnel while they were performing their duties. Mr. Mann advised that the test barn was maintained in a clean and sanitary condition and that the whole area was also kept free from any weeds and unnecessary debris. A security guard at the gate required that anyone seeking to gain access to the test barn display a current validated license prior to being allowed to enter it.

ADMINISTRATIVE MATTERS AND DIVISION OF RACING EVENTS PERSONNEL:

The Board of Stewards for 2012 was composed of: Senior State Steward Randy Blaseg, State Steward Walter Soes and Association Steward Hank Demoney. The Board issued twenty-nine (29) administrative rulings and seven (7) administrative citations. The administrative rulings were most often issued for usage of unauthorized medication(s) and the administrative citations were issued for such offenses as being late to the paddock and using unacceptable language. The total amount of fines assessed to date from these rulings and citations was \$6,750.00.

DIVISION RANDOM DRAW – DRUG AND ALCOHOL TESTING

The Division of Racing Events performed random drug testing pursuant to Colorado Racing Commission Rule No. 3.437 during Arapahoe Park's 2012 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; and
- Racing Officials.

One groom, whose name was randomly drawn, tested positive for the presence of medical marijuana (THC). A hearing was conducted during which the Board of Stewards suspended her license in accordance with Colorado Racing Commission Rule No. 3.437. Mr. Mann advised that the licensee was terminated from her position and remains ineligible to participate in racing. (Subsequently, Mr. Hartman explained that a positive human alcohol/drug test result necessitates a mandatory follow-up test. The subject must produce a negative test result before being eligible to return to the racetrack and the performance of his/her prior duties. Mr. Hartman commented that this is true in all instances, whether a prescription or a non-prescription drug or medication is involved.) Mr. Mann observed that a total of fifty-four (54) random drug tests were conducted of which the sole positive test was mentioned above. For a total of ten (10) days during the meet, no random drug tests were conducted due to the unavailability for testing of those whose names were drawn and, also, because of the Independence Day holiday.

Mr. Hartman replied to Commissioner Vail's query concerning what laboratory performed the human drug/alcohol testing by saying that a Colorado-based laboratory other than Industrial Laboratories handled the analysis of these samples.

The Commission commended Arapahoe Park and the horse-racing community for supporting these programs and encouraging their perpetuation.

LICENSING:

At the commencement of the 2012 live racing season, new licensing system software was installed and the uniform licensing system known as MiLO, which is being used by all agencies in the Department of Revenue, was implemented. It was used in conjunction with the old software for licensees who were currently licensed and merely validating their existing licenses. Types of licenses being issued were:

- Key;
- Minor Business;
- Support (3 year);
- Registration (1 year);
- Additional license; and
- Duplicate

Mr. Dan Hartman, Director of the Division of Racing Events, advised the Commission that, during the 2012 live race meet, the Division had hired additional temporary employees to assist with licensing duties and become familiar with the new software. He noted that this proved to be very helpful.

PERFORMANCE OF STABLE INSPECTIONS: In accordance with Colorado Revised Statutes 12-60-501(a) and (b), the Division conducted a total of 107 barn/trainer inspections, including the required pre-meet inspection. All physical problems found during these inspections, including such items as broken glass, protruding hinges and electrical issues, were reported via memorandum to the backside maintenance manager and copied to the facilities manager and Mr. Mann. Work orders were also made available to trainers, who had specific problems that needed to be addressed in their stable areas. Mr. Mann observed that all issues and problems were handled in a timely manner.

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 regarding the racing surface were reported to Arapahoe Park management, the track superintendent or the Division. Arapahoe Park management was proactive in addressing any issues that arose during the meet and, also, kept the Division and the Board of Stewards informed of any actions that could have affected the condition of the racetrack. No major problems were reported. Mr. Mann commended the track superintendent for maintaining a safe racing surface throughout the live meet.

RACING OFFICIALS: The clerk of scales experienced some difficulty tagging randomly selected horses that were coming off the track to be tested. Mr. Mann advised that this problem would be addressed at the meeting of the 2013 Arapahoe Park racing officials and recommendations would be made by the Division concerning how to ensure that all horses that are randomly selected by the Board of Stewards and/or the Division veterinarian are properly tagged by the clerk of scales and/or his/her designee prior to reporting to the test barn for post-race testing. Mr. Mann suggested that the staff work with the clerk of scales to ensure that horses to be sent for testing are correctly identified. In reply to a query from Commission Vail concerning whether the Division should be responsible for tagging horses to be tested, Mr. Mann commented that this suggestion would be raised and considered during the off-season and that the Division would develop a policy/procedure for handling this situation. Mr.

Hartman stated that a horse that should have been, but was not tested, would not be released from the track. He advised that, if the Racing Association is unable to prevent recurrence of such problems, the Division staff must determine how to do so. Mr. Hartman stressed that a collective effort on the part of both the Association and the Division would be necessary to resolve this issue.

DIVISION OF RACING EVENTS OFFICES:

The Association handled effectively any maintenance issues that arose in the Division's offices and their internal facilities. However, future maintenance within the Division's offices needs to be undertaken prior to the return of Division staff for the 2013 live racing season. Mr. Mann advised that Division personnel will be consulting in the near future with Mr. Powers and his staff regarding improvements and upgrades to be performed and will update the Commission on the status of the work to be done during its review of Arapahoe Park's 2013 renewal license application.

ARAPAHOE PARK RACING OFFICE:

Arapahoe Park continued to use the Encompass Software for accepting entries and preparing programs. Mr. Mann commented that this software, which is an Internet-based program and downloads past performance information from Equibase, is excellent. He 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.

ARAPAHOE PARK SECURITY:

The Commission noted that Mr. Bill Powers, the Facilities Manager acted as the Security Director for the 2012 meet. He appointed two supervisors to handle incidents and staffing of the grandstand and stable gate/backside areas. An off-duty Arapahoe County sheriff was hired to assist in crowd control and routine patrol of the parking lot and perform surveillance on the backside. Additionally, Arapahoe County Sheriff's Office representatives made nighttime visits to the racetrack. No arrests were made during the course of the meet.

Division investigators performed random checks of the barn area for the purpose of citing unlicensed individuals and finding violators/violations of Division policies. During the meet, several persons were escorted out of the barn area for failing to be licensed, for failure to have visitor's passes and/or for violating Arapahoe Park's and/or Division's rules and policies. No major incidents were reported to either the Division enforcement staff or the Board of Stewards.

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 2012 race meet. Mr. Mann stated that Arapahoe Park's 2012 season had been extremely successful thanks to all concerned. The Commission commended everyone associated with and involved in conducting and regulating the 2012 Arapahoe Park meet.

The Commission approved Mr. Mann's recommendations and accepted the end of meet report for Arapahoe Park's 2012 live racing season as presented. The Commission complimented Mr. Mann on the comprehensiveness of his report.

Consideration of Request to Authorize Assignment of Remaining Off-Track Wagering Facility Licenses to Arapahoe Park – Bruce Seymore

Mr. Bruce Seymore, Executive Director of Colorado Racing Operations for Mile High Racing & Entertainment, advised the Commission that he has been engaged in negotiations to open off-track wagering facilities in various locations and hopes to finalize plans in the near future. He observed that, at this time, it would appear that the communities of Steamboat Springs, Holly or Ignacio would be probable locations. 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 that the remaining allotment of three (3) additional off-track wagering facility licenses be assigned to Arapahoe Park, noting that the additional sites and their operators would be required to undergo thorough background checks and meet all criteria to obtain a Major Business license from the Division of Racing Events and that, prior to being granted final approval from Division Director Hartman to open, Division personnel conduct a complete facility inspection and test all equipment to ensure that it is completely functional.

Mr. Dan Hartman, Director of the Division of Racing Events, informed the Commission that, in the event that Arapahoe Park desires to open additional off-track wagering facilities, a legislative initiative would need to be formulated and enacted to enable this to be done.

Mr. Seymore listed the existing facilities and their locations, excluding Arapahoe Park: 1) Havana Park (Aurora); 2) Red & Jerry's (Sheridan); 3) Sundance Steakhouse (Fort Collins); 4) Monte Cristo Lounge (Trinidad); 5) Southern Colorado Gaming & Event Center (Pueblo); 6-7) two facilities in Colorado Springs, Copperhead Road Saloon and Post Time; 8) Bank 8 Billiards (Grand Junction); 9) Softball Country (Denver); and 10) Whiskey River d/b/a Big D's OTB (Garden City).

Following discussion, a motion was made by Commissioner Vail, seconded by Commissioner Kester and unanimously carried to accept the recommendation of Division Director Hartman and authorize the assignment of the three (3) remaining additional off-track betting facility licenses under current legislation to Arapahoe Park, bringing the total of off-track wagering facility licenses so assigned to thirteen (13).

Presentation Regarding Source Market Fee Collection Efforts by the Division – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, advised the Commission that the Division was statutorily empowered to license and collect source market fees from out-of-state facilities that are broadcasting Colorado races and taking wagers from Colorado residents via the Internet. The Division had been able to obtain a list of the subject facilities and their locations and had, with the aid of our Legal Assistant, Ms. Leanne Gardner, sent letters to them directing that they need to be duly licensed in Colorado and remit fees to be deposited in the Racing Cash Fund. Mr. Hartman stated that several facilities in the United States have responded and are cooperating with the Division in this undertaking, but, to date, none outside of the United States have done so. He commented that, in this way, persons placing wagers by means of the Internet are appropriately taxed. Mr. Hartman commented that, once taxes from the locations in question are received, Arapahoe Park will be able to realize a reduction in its cash fund fee assessment since the subject sites would then be paying the same kind of tax that Arapahoe Park pays.

Approval of 2013 Commission Meeting Dates

Following review of the list of proposed 2013 Commission meeting dates, a motion was made by Commissioner Vail, seconded by Commissioner Kester 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 2013.

Discussion Regarding Applications and Time Frames 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, informed the Commission that a round table discussion/workshop had recently been held to consider with representatives from the various greyhound adoption and promotion-oriented organizations certain changes to be made to the fund request protocol and to the application form, the application process and time frames for the release of fund monies. Mr. Hartman noted that he had proposed that one modification to the application process be to discontinue requiring any organization to submit its receipts. He advised that the Division is not recommending any distribution or release of monies from the Greyhound Purse, Welfare, Adoption and Greyhound Racing Promotion Fund at this meeting. He noted that all of the organizations that had submitted applications for review were notified that no distribution would be approved at this time.

Mr. Hartman stated that the Division intends to review matters that were raised at the aforementioned workshop and determine what would be the most equitable approach to future distributions of funds. He stated that, in the next few weeks, he would be scheduling another discussion session and workshop with the greyhound organization representatives in order to evaluate how to proceed and to ascertain whether any new or amended rules might need to be presented at the upcoming Rule-Making Hearing. The Commission encouraged Mr. Hartman to proceed with the plan as described.

Discussion of Rule Review Process and Scheduling of Rule Review Workshop – Dan Hartman

Mr. Dan Hartman, Director of the Division of Racing Events, announced that, in anticipation of commencing the annual rule-making process and in accordance with standard procedure, the first rule review workshop would be conducted on Wednesday, October 17, 2012 at 9:00 a.m. in the Director's Conference Room at Arapahoe Park, 26000 East Quincy Avenue, Aurora, Colorado. He invited anyone wishing to participate in the rule review process to attend this discussion session. He requested that those persons wishing to discuss proposals for new rules, proposed amendments to existing rules or proposals for rules to be repealed bring their recommendations to the workshop.

Mr. Hartman stated that newly enacted legislation requires every State agency to undertake a thorough review of its rules to determine what revisions may need to be made to its existing rules. He observed that the Division of Racing Events performs periodically a comprehensive review of its entire set of rules and noted that Division staff have already begun to perform an internal analysis of the current rules in an effort to ascertain what rules may be obsolete or need to be revised in order to bring them into conformity with current practices and standards. Mr. Hartman emphasized that the Division desires to streamline its rules and eliminate any redundancies in the rule texts. He provided copies of a form that has been created for the purpose of affording interested parties an opportunity to suggest rule changes to the Divisions of the Department of Revenue.

Discussion Regarding Mr. Kenneth Danyluk

The Commission took notice of a letter dated October 2, 2012 signed by Mr. Dan Hartman, Director of the Division of Racing Events, addressed to Mr. Kenneth Danyluk, advising him that, pursuant to his written request, he would be permitted to address the Commission for a period of five (5) minutes at today's meeting via teleconference call.

Preliminarily, Mr. Hartman explained that Mr. Danyluk, a Canadian citizen and permanent resident of the United States, had objected to the Division's determination that he had failed to provide valid and timely documentation of his authorization to work in this country through the period of time relevant to the license for which he was applying. While notice was taken that Mr. Danyluk had made efforts to obtain a temporary extension of his Permanent Resident Card prior to the conclusion of the 2012 Arapahoe Park race meet, the extension period granted to him will end in May 2013, prior to the commencement of Arapahoe Park's 2013 live race meet and, also, prior to the anticipated expiration date in May, 2015 for term of the license for which Mr. Danyluk had applied. Additionally, notice was taken that the Division issued a temporary license to Mr. Danyluk on May 26, 2012, which expired ninety days thereafter. Further, Mr. Danyluk was informed prior to leaving the 2012 race meet that the issue of his immigration status would need to be resolved and that suitable documentation of his authorization to work in the United States would be required in order for the Division to continue processing his application. Despite Mr. Danyluk's assertion that he should not be subject to a denial of licensure, the Division of Racing Events had determined that Mr. Danyluk had not complied with the Division's requirements and, therefore, informed him that processing of his Colorado license application would not continue and a denial of his license application would be appropriate. However, due to the fact that Mr. Danyluk had then notified the Division that he would not consider racing in Colorado in the future, the Division rescinded Citation No. 1980 and canceled its associated penalty.

The Commission afforded Mr. Danyluk an opportunity to present his views, opinions and arguments concerning the Division's actions and allegations regarding his license status and his conduct. Following the conclusion of the teleconference call, Mr. Hartman advised the Commission that Mr. Danyluk had been granted a conditional license through May 2013 since he had shown a receipt for renewal of his permanent residency card with the proviso that, should he seek to be granted full licensure in Colorado in the future, he would need to present his Permanent Resident Card as verification of his status.

Mr. Hartman commented that this was an internal licensing issue and that no disciplinary action or hearing was pending in the matter of Mr. Kenneth Danyluk. No further action was taken by the Commission.

Adjournment of Regular Business Meeting

There being no further business to consider, the Commission adjourned its regular meeting at 11.35 a.m.

Next Regularly Scheduled Meeting

The next regularly scheduled meeting of the Colorado Racing Commission will be held on **Tuesday, February 12, 2013** in Conference Room 110 (Enforcement Conference Room), 1881 Pierce Street, Lakewood, Colorado.

The undersigned hereby approve the foregoing Minutes.

MARY SHARON WELLS, CHAIR

(EXCUSED)

SEAN BEIRNE, VICE-CHAIR

CHARLES VAIL, DVM, MEMBER

DAN KESTER, MEMBER