

RECORD OF PROCEEDINGS

The regularly scheduled meeting of the Colorado Racing Commission was held on Tuesday, September 10, 2019 in the Red Rocks Conference Room at 1707 Cole Blvd. Suite 300. The meeting was called to order at 9:39AM.

Members Present

Pam Inmann, Chairwoman
Tina Estes, Vice-Chairwoman
Sandra Bowen, Member
David Lynn Hoffman, Member
Lori Scott DVM, Member

Staff Present

Cory Amend, Senior Director of Enforcement Division
Donia Amick, Director of the Division of Racing Events
Ed Kulp, Agent in Charge
Zach Ceriani, Legal Assistant
Bradford Jones, Assistant Attorney General representing the Division of Racing Events
Suzanne Karrer, Communications Manager for Enforcement Division
Ashley Leary, Criminal Investigator for the Division of Racing
Breanne Rodlin, Assistant to Division Director

Also Present

Johnny Mac Hayes, Legal Counsel for Mr. Manuel Almanza Jr.

Approval of Minutes of July 9, 2019

After establishing that a quorum of Commission members was present, discussion began regarding edits that needed to be made to the minutes from the July 9th Commission meeting. Mr. Bradford Jones, Assistant Attorney General, stated that on page 6, in the second full paragraph, there should be a change. This change was to remove the word 'the' between 'that' and 'again' the sentence "Mr. Hartman then replied that the again, the horse did not receive a positive test, the test was suspect with extremely trace amounts of methamphetamine which levels could not even be determined because they were so low." Chairwoman Pam Inmann stated that on page 7, second paragraph, line 9, the statement "Mr. Rushton certained" should be edited to "Mr. Rushton confirmed." Seeing as no further edits needed to be made, a motion was thereupon made by Commissioner Bowen, seconded by Commissioner Estes, and unanimously carried to approve of the minutes from July 9, 2019 with the suggested edits from Mr. Jones and Chairwoman Inmann.

Following the minutes approval, Chairwoman Inmann asked for a motion to temporarily adjourn the public session and open the appeals hearing in the matter of Mr. Manuel Almanza Jr. A motion was made by Commissioner Estes, seconded by Commissioner Scott, and unanimously carried to temporarily adjourn the meeting and open the hearing for Mr. Almanza Jr.

Hearing in the Matter of Mr. Manuel Almanza Jr

Chairwoman Inmann turned the floor over to Mr. Bradford Jones to discuss the consideration of continuance for Mr. Almanza. Mr. Jones took the floor and introduced Mr. Skip Spear, Conflicts Council for the Attorney General's Office, as aid to the Commission during the appeal hearing. He also introduced Mr. Johnny Mac Hayes, attorney representing licensee Mr. Manuel Almanza Jr., and explained that Mr. Hayes would be representing his client pro hac vice in front of the Commission.

Mr. Jones invited Mr. Spear to speak to the Commission. Mr. Spear explained that he was the Conflicts Council with the Attorney General's (AG) office and his role was to give the Commission separate legal advice from Mr. Jones, who prosecuted the case. He also detailed that he and Mr. Jones had not discussed the case and that a physical separation by means of office location had also limited their contact with one another.

Commissioner Hoffman asked Mr. Skip Spear to explain the process of the hearing. Mr. Spear responded stating that the hearing presented was an appeals hearing. He explained that each side was permitted ten minutes to present their legal arguments. He stated that representation of Mr. Almanza, as the individual who filed exception, would go first. Mr. Spear explained that Mr. Johnny Mac Hayes would begin by giving a ten minute argument. Mr. Spear stated that if the Commission required any legal advice from him, they were permitted to go into executive session. He then handed Chairwoman Inmann an executive session script to use if the need arose.

Commissioner Hoffman clarified whether questions were permitted during either side's presentations. Mr. Spear responded stating that no questions were to be asked during presentations unless they were process related. He stated that if a Commissioner is not specifically seeking legal advice, then a question may not be asked during open session. He explained that if a question other than legal advice is asked during open session, then the privilege between himself and the Commission was therefore waived. Mr. Spear stated that to preserve privilege, questions should be asked during executive session. Chairwoman Inmann then turned the floor over to Mr. Hayes, legal representative for Mr. Manuel Almanza Jr.

Mr. Johnny Mac Hayes began by introducing himself to the Commission. He stated that he had represented individuals in Colorado in the past and that his primary practice involved representing horse trainers and jockeys in Oklahoma, Colorado, and New Mexico. He then explained that the Colorado Racing Commission (CRC) Rules stated that licensees are entitled to legal counsel. Mr. Hayes declared that he took Mr. Almanza's case at a discounted fee, as he looked at the facts and he felt that for the benefit of the racing

industry, Mr. Almanza needed a lawyer to take his case. He explained that the CRC rules required that in order for the Commission to hear the appeal, the licensee was required to pay for half of the transcript from the initial hearing in front of the Board of Stewards. Mr. Hayes detailed that the fee for the transcript to be paid by licensee Manuel Almanza Jr was \$900.00. Mr. Hayes explained that he would have been willing to pay the transcript fee for his client but to be compliant with the state, he did not pay, and left the fee at the responsibility of the licensee. He then stated that he walked his client, Mr. Almanza through the payment making process but the payment was never made. Mr. Hayes described that when he filed for continuance, he was under the impression that the payment had been made; however, when he was informed the payment was still unaccounted for; the briefing deadline had already passed. He apologized to the Commission for being unable to collect the money from Mr. Almanza in a timely manner. He also apologized for being unable to have the Commission hear his brief which included an explanation of conflicting business he had in August, which was the main reason for the continuance filing.

Mr. Hayes continued by stating if the transcript had been paid for in a timely manner, a brief would have been available to read and would have provided mitigating circumstances. He stated that this was “not a straight doping case” and that there were circumstances of the case that the Commission would want to hear. He began by describing that a year of the 3 year suspension given to Mr. Almanza was due to multiple undisclosed names on his licensing application. He explained that this was due to “Hispanic Americans dropping their surname” and that this did not suggest that he was hiding his past violations on his licensing application, rather he was just using a different version of his legal name. Mr. Hayes then referred to the medication violation stating that the drug found—Modifiinal Acid—would have no therapeutic effect on the horse. He explained that per the State’s evidence, the horse in question had received negative tests through Industrial Laboratories four times prior to current Class II violation. Mr. Hayes went on to explain that nine years ago, Mr. Almanza received a serious medication violation in Iowa and was suspended for one year. He then stated that for the past nine years, Mr. Almanza had not had any violations and had developed his program to serve outside clients. He stated that he brought up the prior violations in order to “[ask the] Commission to not amplify the prior violation because it is not necessary based on the mitigating evidence.”

Mr. Hayes stated that his client was compromised on the \$900.00 and that the state had objected his motion for continuance. He suggested to the Commission that if the members were to hear the case in October there would be no prejudice and that the board granted a stay based on the evidence of the case. He explained that in his motion, he suggested the circumstances of the case had not changed from the time the stay was granted to the present hearing. Mr. Hayes stated that it was in the best interest of the sport of racing, the Commission, and the licensee that he had a chance to receive and review the transcript and prepare a concise brief explaining why the 3 year suspension should be reduced based on mitigating evidence. He repeated that even if the transcript had been properly paid for and received, a heavy work load from the All-American Futurity would not have allowed him to see to Mr. Almanza’s case properly and preparedly. Chairwoman

Inmann thanked Mr. Hayes for his statement and turned the floor over to Mr. Bradford Jones, Assistant Attorney General representing the Division of Racing.

Mr. Jones began his response to Mr. Hayes' motion for continuance by stating that the standard in Colorado to grant or deny a continuance was that there must be exceptional or unforeseen circumstances. He explained that according to Mr. Hayes' motion he was unable to review Mr. Almanza's case due to his large August case load and that the case at hand had been pending an appeal and penalty review in front of the Commission since August 1, 2019. He described that in the August 1, 2019 notice of hearing and penalty review signed by Chairwoman Inmann, all requirements, processes, and applicable rules had been laid out under the CRC rules. He stated that the notice of hearing indicated that the Commission would conduct the appeals hearing on September 10, 2019 at 9:30 AM and that the transcript would be released to Mr. Hayes upon payment per the party's agreement to split the cost. He confirmed that the deadline set for the party's brief was in accordance with CRC rule 6.632 and that both parties were granted ten minutes of oral arguments under CRC rule 6.610. He added that the notice also outlined the potential outcomes and provided that a continuance may be granted dependent upon whether good reason was provided.

Mr. Jones clarified that he understood Mr. Hayes' difficulty in taking on Mr. Almanza's case; however, the motion to continue was submitted after the deadline for his brief. He stated that the deadlines were clearly stated in the notice of hearing. Mr. Jones explained that the continuance could have been filed earlier in August had the conflict been brought to the attention of the Division. He stated that the circumstances of the continuance were ultimately foreseen and unexceptional, as Mr. Hayes was able to anticipate the conflicting workload and could have made arrangements with the Division earlier in the month of August. He also described that in the matter of the transcript, Mr. Hayes' client had plenty of time to give payment as it was an issue Mr. Jones and Mr. Hayes had communicated about back in July of 2019. He confirmed that the State was prepared to present their oral argument for ten minutes. He also understood that they paid for transcript and received it prior to the present hearing. Mr. Jones declared that it had been very clear what Mr. Hayes' and Mr. Almanza's expectations were as stated in the notice of hearing and laid in the CRC rules. He then again explained that the expectations of the notice of hearing were not met and that there were not sufficient circumstances that could establish good cause for a continuance and the state would request that the commission move forward with the hearing and not grant continuance.

Mr. Jones stated that if the continuance was granted, the state would request not moving the briefing date. He confirmed that Mr. Almanza missed the first deadline as laid out in the notice of hearing which would unduly prejudice the Division, as it would not be fair to give him another chance when his circumstances were unjustified. He then repeated that the state would recommend the Commission deny the motion for continuance and move forward with the proceedings.

Chairwoman Inmann asked when the transcript payment was made by Mr. Almanza and when he received the copy. Mr. Jones responded stating that he would have to refer to the division; however he believed the payment was made on Thursday September 5th.

Chairwoman Inmann then wanted clarification about whether or not the transcript was released to Mr. Almanza and Mr. Hayes upon payment. Mr. Jones replied stating that he had no authority over the transcript and that the Division would be the body who was aware of the release. Mr. Zach Ceriani, Legal Assistant for the Division of Racing, stated that according to Calderwood Mackelprang—the company which produced the transcript—it had been released immediately after payment was received. Chairwoman Inmann asked if the Commission had any questions or comments. After none were had, Commissioner Hoffman asked if the floor could be opened for discussion.

Mr. Hayes began discussion stating that payment was in fact made on September 5; however, the transcript had not yet been received. He stated that if a sanction were placed on the brief, that “would destroy the idea of a meaningful appeal” because in order to produce a meaningful hearing, a small brief must be presented with evidence followed by ten minutes of argument. Chairwoman Inmann stated that this matter was serious and missing deadlines was a large error. Commissioner Hoffman commented that he understood Mr. Hayes’ client’s right to due process and he believed that Mr. Almanza was granted due process by the Division, as he had ample time to prepare. Commissioner Hoffman recommended that the Commission deny the continuance and move forward with the evidence for suspension. Seeing as no further discussion was made, a motion was thereupon made by Commissioner Hoffman to deny the motion for continuance and move forward with the evidentiary hearing for the case of suspension of Mr. Almanza. Before a second was made, Mr. Hayes asked if he could speak once again.

Mr. Hayes stated that he would like to discuss the economics of the situation at hand. He explained that a three year suspension caused Mr. Almanza to lose approximately eighty percent (80%) of his business, causing his client to suffer significant financial hardship. Mr. Hayes then stated that he was surprised the Commission would not take this into consideration and take the matter into the October meeting. He stated that neither the state, nor the board would be prejudiced by moving the matter to October and that the hearing would be more meaningful if a concise brief could be created by the defense and heard by the Commission. Chairwoman Inmann thanked Mr. Hayes for his statements and then confirmed that a motion to deny the motion for continuance was still on the table. The motion, which was previously made by Commissioner Hoffman, was seconded by Commissioner Estes and unanimously passed to deny the motion for continuance in the matter of Mr. Manuel Almanza Jr.

Chairwoman Inmann explained that after the continuance denial, the hearing had to be started. She stated that each party had ten minutes for their arguments. She then directed the floor to Mr. Hayes so that he may begin his argument.

Mr. Hayes initiated his ten minute argument by stating that he would not be able to refer to the transcript and that the Commission should consider his statements as fair representation of the record. Mr. Hayes stated that he wanted to begin by discussing the terms of Mr. Almanza’s 3 year suspension placed by the Board of Stewards at Arapahoe Park. He explained that it was a 2 year suspension for a Class II drug violation and a one year suspension for Mr. Almanza defrauding his licensing application by not disclosing all of his aliases.

Mr. Hayes started with the falsifying of the application and stated that Agent-in-Charge for the Division, Ed Kulp, testified that he was not familiar with the way in which Spanish surnames were used. Mr. Hayes described that in the transcript, the Commission would notice six or seven different names used by Mr. Almanza but that there was no evidence that he used those names to avoid disclosing charges from past violations at an Iowa racetrack. He contested that although there was a discrepancy in differences of names with or without hyphens, the lack of punctuation was most likely human error or forgetfulness rather than deception. He explained that some versions of the name were first then last, first, middle, then last or even first name, last name, and surname. He detailed that these different versions were just multiple ways the name could have been listed and not fraud; however, Mr. Almanza still received a year-long suspension. Mr. Hayes stated that the aforementioned suspension was well worth review.

Mr. Hayes then described the 2 year medication violation received by Mr. Manuel Almanza Jr. He explained that the drug found (Modafinil Acid) was a “poison” and not a drug used for any therapeutic effect. He stated that the initial claim would be the assumption that Mr. Almanza altered the horse with performance enhancing drugs to increase his chances of winning the contest and that he, Mr. Hayes, would now have to provide the mitigating evidence. He first detailed that Mr. Almanza had not had a violation in nine years. He then went on to discuss the horse in question. He stated that the horse which received the positive test had ran at Remington Park (Oklahoma) 3 previous times in the maiden, trials, and finals for the futurity and that the horse tested negative all three times at Mrs. Petra Hartmann’s test lab (Industrial Labs). He explained that Industrial Labs was also used by Arapahoe Park. He then explained that the horse ran in the trials at Arapahoe Park and made the finals, once again completing a negative drug test with Industrial Labs. He stated that it would “make no sense that a world class horse” would need drugged to win \$100,000 at Arapahoe Park when it just ran against horses competing for \$1,000,000 in Oklahoma.

Mr. Johnny Mac Hayes went on to describe that when he cross-examined Mrs. Petra Hartmann during the hearing in front of the Board of Stewards at Arapahoe Park, she could not determine a concrete withdrawal time for Modafinil Acid. He explained that due the incalculable withdrawal time, a trainer would not risk his reputation trying to take advantage of the system when they knew they could not “pass the state’s [drug] test.” Mr. Hayes then recalled the incident of the violation received by Mr. Almanza in 2010. He stated that the incident occurred due to Mr. Almanza allowing another trainer from a different track to send their horse to him and run said horse under Mr. Almanza’s name. He explained that Mr. Almanza did not pre-test the horse from the other trainer before entering and running it in a race and when the horse tested positive, he received the drug violation in 2010. He said as a combination of the collective mitigating evidence, this was not cheating. He reiterated that his own expert confirmed it was impossible to calculate a withdrawal time for the Modafinil Acid and that it would be “foolhardy” for a trainer to experiment or use the drug on any horse since there would be no guarantee it could pass a drug test. He repeated that the horse had been to Mrs. Petra Hartmann’s lab (Industrial labs) 4 previous times and collected 4 negative tests just prior to receiving the positive during the futurity finals at Arapahoe Park.

Mr. Hayes stated that the Board of Stewards ignored the mitigating evidence and applied excessive consequences and suspensions towards Mr. Almanza. He stated that the case needed review, as the Board's ruling suggested that the State proved presence of the drug and they decided to give Mr. Almanza a two year suspension regardless of Mr. Hayes' presentation of mitigating evidence. He declared that the Board of Steward's ruling presumed that Mr. Almanza was blatantly attempting to cheat the contest and was one hundred percent liable for the drug being found in his horse's system. Mr. Skip Spear, conflicts council, interrupted Mr. Hayes stating that his ten minutes of argument had expired and Mr. Hayes thanked the Commission for their time.

Chairwoman Inmann then turned the floor over to Mr. Bradford Jones for his ten minutes of argument. Mr. Jones explained that the standard of review involved reviewing the case to ensure that the evidence reported both the findings of fact and conclusions of law. He stated that the Commission should not set aside any agency decision on review unless the findings of evidentiary fact were contrary to the weight of the evidence, as laid out in the Administrative Procedure Act in Colorado under 24-4-105 (15) (b). He explained that with respect to the Conclusions of Law, the Commission may substitute its own judgment on ultimate Findings of Fact and Conclusions of Law only if: 1) there is reasonable basis in law and 2) there is support by substantial evidence in the record to do so, as supported by Case Law: State Board of Medical Examiners v. McCroskey 880 P.2d 1188 (Colorado Supreme Court, 1994).

Mr. Jones began by turning to the findings of fact and first establishing which pieces of evidence were supportive. He stated that it was clear that the findings of fact in the Board of Steward's ruling 19-01 were supported by the weight of evidence and record from the exhibits which were presented by both parties, as well as the testimonies of the witnesses. He described that the party stipulated to the authenticity and admissibility of the Division's exhibits 1-17, as well as Mr. Almanza's exhibits A and B. He stated that all exhibits mentioned were considered by the Board of Stewards and that they also may be considered by the Commission. He again stated that the findings of fact were supported by the evidence in the record, which he then detailed.

Mr. Jones stated that with respect to exhibit 1, Mr. Almanza's licensing application submitted July 22, 2018, in looking at the full application—Exhibit 2—on page 0068, Mr. Almanza only disclosed the name Manuel Almanza Jr. Mr. Jones stated that no other names or aliases for Mr. Almanza were listed and that he admitted as such in the transcript provided to the commission and Mr. Almanza by the Division. He continued that in exhibit 2, the subsections listed were indicative of other names or aliases used by Mr. Almanza. Mr. Jones confirmed that Mr. Almanza completed a name change in 2013, shown in Exhibits A and B; however, he failed to disclose that name on his licensing application. Additional names for Mr. Almanza were also declared by Mr. Jones as he referred to Oklahoma Racing license issued in 2018, as shown in exhibit 5 pages 0066-0067.

Mr. Jones continued by stating that exhibits 4 and 5 were in reference Mr. Almanza's responses to questions on Colorado Racing License Application page 2 in box 13. Mr. Jones directed the Commission to look at exhibit 2, page 0073, stating that Mr. Almanza failed to disclose his previous suspension from the Oklahoma Racing Commission for a period of 30

days, as shown in exhibit 17 on pages 280-281, as well as a 14 day suspension on December 15, 2018 from Oklahoma Racing, and the October 15, 2010 one year suspension by the Iowa Racing Commission. He repeated that all records of the suspensions were found in exhibit 17.

In reference to exhibits 6 and 7 of the findings of fact, Mr. Jones stated that Mr. Almanza certified and signed his Colorado Racing application when submitting it, confirming that no false information had been provided and that he understood he was making those representations under penalty of perjury—found in exhibit 2. He stated that Mr. Almanza admitted to signing and certifying his licensing application in his testimony found on page 215 of the provided transcript. Mr. Jones explained that Mr. Almanza also had multiple aliases which were found in exhibit 5 and exhibit 6.

Mr. Jones then moved to the medication violation, declaring that Mr. Almanza was the owner and trainer of the horse that received a positive drug test for Modafinil Acid, as was shown in the Industrial Labs report in exhibit 4. He stated that extensive testimony from Petra Hartmann and Dr. Mary McAllister confirmed that the Modafinil Acid was a Class II drug as found on transcript pages 84 and 66, respectively. He stated that both Mrs. Hartmann and Dr. McAllister also identified the drug as a stimulant. Mr. Jones then went on to explain that Mr. Almanza had the right to request a split sample; however, he failed to request the split, as found in paragraph 23 of the Findings of Fact. Mr. Jones described that Mr. Almanza admitted to failing to request a split sample on page 216 of the transcript. Mr. Jones confirmed that the aforementioned information demonstrated that there was significant evidence in the record to support the Findings of Fact and that there was nothing in the evidence that showed the Findings of Fact were contrary to the weight of the evidence.

Mr. Jones advised the Commission that he was going to turn to the Conclusions of Law. He stated that there was substantial evidence to support the Conclusions of Law which were found in the Board of Stewards ruling. He explained that the evidence to support the ruling began in paragraph 32 which provided that the drug violation was a second lifetime offense for Mr. Almanza. He stated that Mr. Hayes acknowledged there was a previous offense in Iowa, as shown in exhibit 17, and under promulgated CRC rule 5.441 concerning a second lifetime offense for a Class A violation. Mr. Jones reiterated that the Conclusions of Law were significantly supported by the record. He explained that no split sample was requested, as admitted by Mr. Almanza on page 216 of the transcript, and that Mr. Hayes admitted several times throughout the hearing in front of the Stewards that “he was unable to prove sabotage.” He also described that Mr. Almanza was the absolute insurer and that there was a presumption if a drug were found in a horse, as admitted by Mr. Almanza on page 217 of the transcript. Mr. Jones continued describing that the Board of Stewards found that Modafinil Acid was a stimulant as heard in testimony from Dr. McAllister as well as Dr. Rudy Garrison, expert witness for Mr. Almanza, shown on page 197 of the transcript.

Mr. Jones then moved on to the “name issue” regarding Mr. Almanza. He stated that in particular with paragraphs 38 and 39 of the Conclusions of Law, Mr. Almanza absolutely did not disclose any of his other aliases or names, nor did he reference his name change

made in 2013. He stated that the failure to disclose was the concern of the Division. Mr. Jones explained that Mr. Almanza also failed to disclose past suspensions, even though he acknowledged the suspension in Iowa during his hearing testimony found on page 208 of the transcript. He stated that with respect to the violations of the statutory provisions 12-60-507 (1)(d) & (1)(f), Mr. Almanza's actions were willful misrepresentations in connection with a racing matter because it was on an application for a Colorado Racing License. He described that the misrepresentations were shown in exhibits 2 and 17 and in Mr. Ed Kulp's testimony found on page 142.

Conflicts Council, Mr. Skip Spear, stated that Mr. Jones' time for arguments had run out and Chairwoman Inmann thanked him for his statements. Chairwoman Inmann then asked both attorneys whether or not a trainer would know the drug test panel included Modafinil Acid. Mr. Hayes answered stating that the trainer would not have been aware of the existence of the substance as a cheating mechanism or as a therapeutic drug. He explained that Mr. Almanza had not even heard of the drug until he received the notice. He stated simply that to answer Chairwoman Inmann's question, yes, a trainer would be conscious of the fact that the particular substance could possibly be tested for, as it would be listed in the ARCI penalty schedule.

Mr. Bradford Jones then added a response to Chairwoman Inmann's question. He stated that according to multiple witnesses, the Modafinil Acid was confirmed to be a Class II violation as listed in the ARCI penalty schedule. Chairwoman Inmann explained that she was under the impression that Petra Hartmann (Industrial Labs) changed the drug testing panel from time-to-time and she described that since the drug in question had not been popular for 30 years, she wanted to know if a horsemen would be aware that the drug would be included in a modern testing panel. Mr. Johnny Mac Hayes replied stating that during hearing, he asked Ms. Hartmann how long and how often she had been testing for Modafinil Acid. He described that during Ms. Hartmann's 30 year career as a chemist, the sample in question was the only instance in which she had ever had a positive test for Modafinil Acid and that she claimed Industrial Labs had also been testing for the drug for years—including the period of time in which Mr. Almanza's horse raced in Oklahoma.

Mr. Hayes continued by stating that he believed it would befit the Commission, in order to have a meaningful hearing, that the matter be tabled until the next meeting so he could create a detailed brief. He alleged that the State provided no mitigating evidence toward their claim that presence was found and admitted to. He stated that the key to the case was the identification and explanation of the mitigating evidence.

Chairwoman Inmann then referred to Mr. Jones for his argument. Mr. Jones explained that there was extensive consideration by the Board of Stewards regarding the mitigating evidence beginning in paragraph 43 and ending in paragraph 48 of the Stewards ruling. He stated that the Board considered 5 separate pieces of mitigating information presented by Mr. Hayes on behalf of Mr. Almanza. He asserted that the Board gave some weight to the mitigating evidence, which they noted in their decision taking the 3 year suspension down to a 2 year suspension. He explained that the medication suspension was separate from the name change issue and that it was completely inaccurate to claim that

the mitigating evidence had not been considered, as there was a full page dedicated to mitigation in the decision of the Board of Stewards.

Chairwoman Inmann thanked Mr. Jones and allowed Mr. Hayes to give his argument. Mr. Hayes stated that the Commission had preliminary review of the Stewards' decision and that the Commission members should look at the mitigating evidence separate from the Board in order to determine an appropriate sanction. Chairwoman Inmann asked if there were any questions or comments from the Commission. Commissioner Hoffman suggested that in order to sift through all of the presented information, the Commission look first at the Findings of Fact. Commissioner Hoffman then made a motion to accept the Findings of Fact as provided by the Board of Stewards due to the significant evidence in the record that the findings were accurate and sufficient and no evidence was provided by counsel that those findings were error. He also suggested a motion for the Commission to accept the Conclusions of Law seeing as there was no evidence in the record that the conclusions provided were inappropriate. He stated that if the Commission were to pass both motions, the next item to be considered would be mitigating circumstances to determine appropriateness of the suspension period. Seeing as there was no discussion, a motion was thereupon made by Commissioner Hoffman, seconded by Commissioner Estes, and unanimously carried to accept the Findings of Fact and Conclusions of Law provided by the Board of Stewards and supported by evidence from the State.

Commissioner Hoffman then asked Chairwoman Inmann if the Commission could focus on the mitigating circumstances. He referred to Exhibit A which stated that the Commission has the power to uphold the ruling, modify the ruling, and/or the power to vacate the ruling. Commissioner Hoffman asked both counsels to give their statements and reasoning as to why or why not the suspension ruling should stand. He stated that this would be the time where the mitigating circumstances were heard by the Commission. Mr. Jones then wanted to confirm that the Commission had approved the Findings of Fact and the Conclusions of Law and that the parties were then focused on the penalty. Commissioner Hoffman responded to Mr. Jones stating that he was correct and that the Commission wanted to hear arguments regarding the penalty issued to Mr. Almanza by the Board of Stewards. Mr. Jones then turned the floor over to Mr. Hayes.

Mr. Hayes began by declaring that if the horse had been intentionally drugged, the trainer would be the absolute insurer and that many animal cruelty laws would be breached by an individual who has the responsibility of caring for and looking out for the welfare of animals. He also again stated that the same horse in question passed four prior Industrial Labs drug tests before having a positive. He described that the question to be asked was whether or not Mr. Almanza deliberately used Modafinil Acid—a substance that he did not even know existed—in the \$100,000 futurity, yet not in the \$1,000,000 futurity, all the while risking a compromise of his license. Mr. Hayes also asserted that between Ms. Petra Hartmann and Dr. Garrison, an expected withdrawal time could not be calculated for the drug, further proving that a trainer would not risk using it because they would not be able to calculate a time period in which it would leave a horse's system before a race. He emphasized that the initial assumption would have to be that Mr. Almanza cheated; however after the presented evidence of an excellent record for nine years after a major

violation and an unknown, incalculable withdrawal time of an outdated drug, he claimed that it would not warrant the idea of deliberately cheating on Mr. Almanza's behalf. He again stressed that the Commission, independently, had the authority to determine a penalty for Mr. Almanza and in his opinion, the two year suspension given by the Board of Stewards was "way out of line." He explained that per the ARCI rules as well as the CRC rules, the mitigating evidence could allow the Commission to take the penalty from a two year suspension to no suspension at all. He also stated that the Board of Stewards placed a \$25,000 fine on Mr. Almanza, who couldn't even afford to pay a \$900 transcript fee due to loss of clients and business based on his suspension from Arapahoe Park. Mr. Hayes argued that he needed the ruling body to recognize the mitigating evidence and understand that the circumstances of the current case were different from evidence of a standard "doping case." Mr. Hayes explained that if more positives had been found in Mr. Almanza's barn, or anywhere else on grounds, then it would be evident that there was a Modafinil Acid epidemic; however, the single positive proved that was not the case. He asserted that this drug coming "out of nowhere" that had not ever been seen by himself, nor Ms. Hartmann, did not constitute a 2 year suspension.

Mr. Hayes then shifted to discussion regarding the different names and non-disclosure of said names by Mr. Almanza. He stated that the forgetting multiple spellings and hyphenations of his name did not mean Mr. Almanza was attempting to defraud his application or conceal past offenses. He claimed that Mr. Almanza had no education regarding legalities of documents or contracts; therefore, he was not intentionally concealing his names by forgetting to list them. Mr. Hayes declared that Mr. Almanza was not hiding prior suspensions from years past and that his intentions were not egregious. He explained that Mr. Almanza completed a legal name change in 2013 after completing his citizenship. Mr. Hayes stated that during the hearing in front of the Stewards, Mr. Almanza explained that the surname is typically dropped after citizenship change in order to align with more customary American last names. He again stated that the idea of Mr. Almanza concealing his names to deceive the state of Colorado was untrue and unjustified. Chairwoman Inmann thanked Mr. Hayes for his arguments and then referred to Mr. Bradford Jones.

Mr. Jones began his response to the arguments made by Mr. Hayes beginning with the mitigation evidence. He again explained that the mitigating evidence presented by Mr. Hayes was considered as a part of the Conclusions of Law and was outlined in paragraphs 43 through 48 of the Board of Stewards Ruling. He stated that Mr. Hayes referred to the test that Petra Hartmann (Industrial Labs) performed four times and that he was referring specifically to an item shown in exhibit 10 which was a program listing the previous races Mr. Almanza's horse had competed in. He explained that in the transcript, it showed that he (Mr. Jones) objected to this program evidence as it was subject to major speculation. He confirmed that the Modafinil Acid had no withdrawal time, meaning no one could determine when the drug would have been administered to the horse; however, he stated that it did not matter when it was administered, as it was still presented in the horse as a Class II drug and was not permitted whatsoever. He stated no evidence was presented by Mr. Almanza that mitigated the fact that the drug was absolutely present in the horse and no witnesses were brought forward explaining that the drug was prescribed to neither the

horse, nor humans handling the horse. He also explained that there was no challenge to the chain of custody. Additionally he described that the Board of Stewards did not find Mr. Almanza credible during their discussions and deliberations, as he did not take accountability for or explain why the drug was present and he did not take accountability for failing to list his multiple aliases. He also stated that credibility for Mr. Almanza was low because he appeared to the hearing by telephone, showing the Stewards that the matter was not taken as seriously as expected.

Mr. Jones explained that, considering the history, it was important to note that under CRC rule 5.441 it states that a minimum of a 3 year suspension—absent of mitigating circumstances—was recommended. He explained that the Board of Stewards lowered the recommended suspension from 3 to 2 years, as they gave credence to Mr. Almanza that he had no medication-related, serious violations over a 9 year period. He stated that the Stewards also gave consideration to the fact that the “Iowa decision” seemed somewhat mitigated based on the find, which was mentioned in paragraph 46 of the Steward’s ruling. Mr. Jones confirmed that Mr. Almanza did legally change his name in 2013, as shown in Exhibits A and B, but he failed to disclose that name. Mr. Jones stated that Mr. Almanza knew that he was applying for a racing license with a disciplinary history and he failed to disclose his name, as found in exhibit 17. Mr. Jones stated that his final point regarded the request for \$25,000 mentioned by Mr. Hayes. He described that yes, the Division requested that sum of money; however, the Board of Stewards reduced the fine down to \$10,000. He stated that these reductions presented by the Stewards clearly showed that they took the mitigating evidence into consideration.

Mr. Jones stated that the name change violation was a significant violation because Mr. Almanza signed the application and certified that he was not deceiving anyone, so his failure to disclose his additional aliases violated that certification and warranted a one year suspension. Mr. Jones stated that on behalf of the Division, he was requesting that the Commission uphold the decision made by the Board of Stewards following the six-hour evidentiary hearing.

Chairwoman Inmann thanked Mr. Jones and asked for discussion from the Commission members. Commissioner Hoffman commented that the Commission had accepted the Findings of Fact as well as the Conclusions of Law and that the current matter was whether or not the penalties assigned by the Board of Stewards were appropriate—2 years for the medication violation, 1 year for the name change, and \$10,000. He stated that he had heard both arguments and he found both counsels very persuasive and that Mr. Hayes could report back to his client [Mr. Almanza] that he was partially successful, as the Commission had initially been considering a very lengthy sentence but Mr. Hayes provided information to sway the opinion otherwise. Commissioner Hoffman stated that he wanted to hear from the other Commission members whether or not the penalties should stand. Chairwoman Inmann responded that she thought the penalties were appropriate as a Class II drug was found in Mr. Almanza’s horse and the trainer is responsible for their horse. She stated that Mr. Almanza falsified his licensing application in 2 manners: 1) he did not list all of his aliases and 2) he did not list his previous violations. She also “found it curious that he

[Mr. Almanza] did not ask for a split [sample] to have it tested in another lab.” She then confirmed that the Stewards’ ruling should stand.

Mr. Hayes requested that he address the matter of the split sample. Chairwoman Inmann stated that the Commission was finished with discussion regarding mitigation. Mr. Hayes asserted that she stated her interest in the split sample and that he would like to comment upon that interest. Mr. Hayes stated that Mr. Almanza did not request the split, as if the presence was admitted, then there would have been no difference made in sending a split sample to be tested. Chairwoman Inmann asked if any other comments were to be made by the Commission. Seeing as there was no further discussion, a motion was thereupon made by Commissioner Estes, seconded by Chairwoman Inmann, and unanimously carried to uphold the ruling put in place by the Board of Stewards in the matter of Mr. Manuel Almanza Jr. requiring he be suspended from racing at Arapahoe Park for 3 years and pay the Division of Racing a \$10,000 fine.

Chairwoman Inmann thanked Mr. Hayes, Mr. Jones, and Mr. Spear for their time and statements. A motion was then made by Commissioner Hoffman, seconded by Commissioner Bowen, and unanimously carried to close the hearing. Chairwoman Inmann called for a 2 minute break to clear the room for the Commissioner training session.

Commissioner Training Presentation—Zach Ceriani

Mr. Zach Ceriani, Legal Assistant for the Division of Racing, presented a power point with training materials for the Racing Commission members. He began by stating that approximately two legislative sessions prior to 2019, Colorado House Bill 18-1198 was passed, requiring all Boards and Commissions to complete a yearly training for educational purposes. He stated that there were nine bullet points in the statute, which was codified in Title 24 3.7102 to be covered by the training: 1) Understand and operate within the limits of statutory directives, and legislative intent; 2) Define the Board’s mission and role in oversight of projects or entities approved to receive public funding ; 3) Understand the goals of the program; 4) Identify and manage conflicts of interest ; 5) Understanding CORA: 6) Identify and secure sufficient data to make informed decisions; 7) Ensure appropriate involvement in reviewing key communications and policy-making activities; 8) Review management practices; 9) Coordinate with other boards or commissions where responsibilities and interests overlap.

Mr. Ceriani cited the mission statement of the Division of Racing, “To promote and foster public confidence in the pari-mutuel industry, protect the welfare of the participants through fair, consistent, proactive enforcement of appropriate policies, statutes, and Colorado Racing Commission rules.” He then explained that the Commission consisted of 5 members with requirements that 2 members have 5 years each of racing industry experience, 1 member who is a practicing veterinarian with at least 5 years of experience, 1 member who is a business representative with 5 years of experience in a management position, and a final member who is a registered elector of the state. He described that stipulations existed regarding the Conflicts of Interest statute. He explained that, simply

put, one cannot be an industry member while serving as a member of the Commission. He explained that the requirement for a Commission to hold a member from the Western Slope of Colorado had been eliminated from the statute. Commissioner Hoffman asked whether or not there was still a statute in place requiring the Commission to have members representative of different political parties. Mr. Ceriani responded stating that yes, Commission members must consist of representatives of different political parties and that they must reside in different political districts.

Mr. Ceriani then moved on to discuss Commissioner terms. He stated that a term was four years and a Commissioner may only serve two consecutive terms. It was explained that the Commission members must be US citizens and residents of Colorado for the past 5 years. Mr. Ceriani and Commissioner Hoffman described that after two consecutive terms were served by a Commissioner they were permitted to return, after a year off, to serve two more consecutive terms. Mr. Ceriani stated that the Commission was required to have one meeting per quarter with additional meetings such as rule-making and emergency meetings. He explained that typically, the Director and Division staff called/organized meetings; however, if the Commission wanted to call and organize its own meeting, it was allowed to do so. He stated that the only requirement for organizing a meeting was that a 72 hour notice must be given and that the meeting be announced to the public.

Commissioner removal was then discussed by Mr. Ceriani. He explained that Commissions are appointed by the Governor and that the Governor may remove Commissioners at his or her discretion. Mrs. Donia Amick, Director of the Division of Racing, pointed out that another reason for Commissioner removal was failure to attend meetings. She stated that it was important to mention meeting attendance because she wanted to ensure that all Commissioners were present; however, she explained that members were more than welcome to call in for meetings if they could not attend in person.

Mr. Ceriani stated that Commissioners received reimbursement for reasonable expenses and travel while on official Commission business. Mrs. Amick detailed that reimbursements were typically for mileage, hotel, and meals, for Commission business travel. Mr. Ceriani moved on to describe financial disclosure statements. He explained that the requirement in the statute was that the statements were filed with the Secretary of State and Commissioner Inmann stated that Breanne Rodlin, Assistant to the Director of Racing, was to prepare the documents. Mrs. Amick explained that the Division would follow up with the Secretary of State for more information regarding the requirements and details of the Financial Disclosure Statements for the Commissioners.

Conflicts of Interest were explained in more detail by Mr. Ceriani. He stated that an entire statute covered all situations which constituted a conflict of interest. Commissioner Estes asked whether she could own a race horse, as long as it didn't race in Colorado, while serving as a member of the Colorado Racing Commission. Mr. Ceriani responded that statute 42-32-401 subsection 1, explained that horse ownership would depend on financial interest percentages in the horse and/or in an out of state track. Director Amick stated that

if any Commissioners had direct questions, to send the facts to the Division to be presented to the Attorney General's office for guidance and clarification.

Mr. Ceriani explained that for the Racing Commission in particular, the Division acts to perform all administrative duties of the Commission. He explained that the Director was in charge of ensuring that the Division executed its functions faithfully and properly as well as usage of her staff to assist the Commission as much as possible. He then went through the titles and roles of each Division staff member: Licensing Supervisor-Kathleen Apodaca; Criminal Investigator-Ashley Leary; Business Analyst-Deb Allen; Agent-in-Charge Ed Kulp; Legal Assistant-Zach Ceriani; Auditor-Greg Lamb; Program Assistant-Breanne Rodlin; Director-Donia Amick. He explained that the Division employed 18 temporary staff throughout the racing season: 2 veterinarians, 8 veterinary assistants, 4 temporary licensing staff, up to 2 compliance investigators, and 2 Racing Stewards. He explained that the Stewards judge track rulings, check/approve programs, ensure all participants are licensed, and that they are the body which typically holds hearings for violations that occur at the racetrack.

Mr. Ceriani referred to Mr. Bradford Jones to describe Board of Stewards hearings in comparison to hearings in front of the Commission. Mr. Jones stated that there were two ways in which a hearing would be presented to the Commission: 1) An evidentiary hearing where witnesses are presented along with evidence, which he stated was easier to do in front of a small Board of Stewards as opposed to 5 Commissioners. He stated that the evidentiary hearing would be a standard process where both sides would present opening statements, arguments—the side with the burden of proof going first—witnesses would be brought forward, cross examinations would be performed, and then closing arguments would be made. He described that during those hearings, a decision would be promulgated. He also noted that the Board of Stewards was under the Division and a specific statute stated that the Board of Stewards operates by the rules set by the Commission and that the Stewards must abide by those Commission rules. He explained that the Commission was different in that it must abide by the Administrative Procedure Act (APA), which generalizes and standardizes the processes used by agencies. He stated that Findings of Fact as well as the Conclusions of Law and the evidence supporting both are laid out in the Administrative Procedure Act.

Mr. Jones explained that the second type of hearing that could be heard by the Commission would be an appeals hearing. He stated that in the appeal context, the Commission is strictly reviewing the already heard evidence and the decision of the Board of Stewards which would include the Findings of Fact, the Conclusions of Law, and the penalties. He described that the Findings of Fact and Conclusions of Law were defined in the APA and that the sanctions and penalty review were under the Commission's authority per the Racing Rules. Mr. Ceriani stated that by rule, the Board of Stewards was limited to the penalties it could cite including a maximum fine of \$2500 and 180 days of suspension. He explained that any penalties recommended above those aforementioned thresholds had to be determined and/or confirmed by the Commission—which is not limited by the amount of penalties to be assigned. He described that case law existed which typically put a maximum suspension of a licensee at 10 years. Commissioner Hoffman asked whether or

not a lifetime suspension could be issued. Mr. Ceriani explained that lifetime suspensions were typically rejected as an idea existed, that after a certain amount of time, individuals should have the opportunity to rehabilitate their character and get another chance at licensure. Mr. Jones explained that licenses may be revoked but individuals are allowed to apply again after 3 years.

Commissioner Bowen asked if there was a rule that existed which denied licensure if an assigned fine is not paid by a licensee. Mr. Ceriani responded that a statute existed stating if a licensee failed to pay a fine, then they would be suspended for 180 days and referred to the Commission to determine good standing and licensure. He explained that the licensee may also request to go in front of the Commission and ask if their license may be reinstated. He also described that if the Division denies an individual a license, they may make an appeal and have their case heard in front of the Commission as another form of appeals hearing.

After a discussion regarding license issuance, Mr. Ceriani moved on to the topic of Rulemaking. He explained that the Commission is ultimately in charge of promulgating the rules as it provided oversight for the industry. He described that it was the responsibility of the Division Staff to confer and bring rules to the Commission's attention. He stated that the Commission had the authority to vote and decide whether or not an item could become a rule. He detailed that the Division was required to communicate rulemaking procedures with stakeholders and the public to seek rule proposals. He then explained that after proposals were presented, stakeholder and industry workshops were held to gain insight and perspective towards the drafting of the rules for the Colorado Racing Commission. Director Amick added that the Department of Revenue and the Governor's office was attempting to increase transparency by reaching out to stakeholders more often in order to gain awareness and participation.

Mr. Ceriani explained that according to new statute, it was required for the CRC rulebook to be renewed every 10 years. He described that the rule filings were required to be filed with the Secretary of State's office and then the rules would be sent to the Attorney General's office where they would be reviewed. Once the proposed rules had been approved by the AG's office, he stated that the rules would then go in front of the Commission, during a public hearing, to be voted on and added to the rule book. Mr. Jones provided a correction that the Commission would first promulgate the rules and then the rules would go forward to the AG's office for review. Commissioner Hoffman asked why the rules were reviewed by the Attorney General's office. Mr. Jones responded stating that the AG's office ensured that the proposed rules did not impede upon any constitutional rights. He explained that the Office of Legislative Services would review the rules as representatives of the general assembly in order to ensure that the Commission, Board, and AG's office was not abusing authority given out via statute.

The Colorado Open Records Act (CORA) was then explained by Mr. Ceriani. He described that an important piece of information to remember was that when an individual was acting as a Commissioner, their statements were subject to public scrutiny. He explained that was why all meetings and interactions were recorded in order to provide

the recordings to the public. He detailed that CORA was a statute that provided records to be open for public review and disclosure. He stated that all business conducted—emails and Commissioner discussions regarding business—were subject to review, meaning that someone who filed a CORA request would have access to all business communications between Commissioners and/or the Division for review. He stated that all executive sessions were recorded, yet not available for disclosure unless mandated by a court. Director Amick added that discussions with Conflicts Council would not be subject to CORA due to attorney-client privilege.

Mr. Ceriani concluded his presentation and turned the floor over to Mr. Bradford Jones. Mr. Jones followed-up the CORA discussion by stating that CORA was not necessarily an issue Commissions or boards would have to worry about, as the Division and/or Department would have its own individual to deal with CORA items. He stated that 2 or more Commissioners discussing business would constitute a meeting under the Open Meetings Law. He explained that Executive Sessions fell under attorney-client privilege as advice was being sought from an attorney. His final addition was stating that Commissioners may participate in stakeholder meetings, as such that they would not be participating in their capacity as a Commissioner. He described that Commissioners may listen to stakeholder meetings but not engage in their role as a Commissioner. He stated that if there were ever a situation where a conflict of interest may arise for a Commissioner, they should immediately inform Donia or himself so that they may be recused from the issue.

Adjournment and Next Scheduled Meeting

A motion was made by Commissioner Estes, seconded by Commissioner Hoffman, and unanimously carried to adjourn the regularly scheduled business meeting of the Colorado Racing Commission at 12:13PM.

The next CRC meeting was scheduled for Tuesday October 8, 2019 at 9:30AM in the Red Rocks Conference Room at 1707 Cole Blvd Suite 300 Lakewood, CO 80401.