

**MINUTES OF THE
NEW YORK STATE
GAMING COMMISSION MEETING
NOVEMBER 4, 2013
SCHENECTADY, NEW YORK**

A meeting of the New York State Gaming Commission was called to order on Monday November 4, 2013, at 1:12 p.m. at the Commission office located at 1 Broadway Center, Schenectady, NY 12305

1. Call to Order.

The meeting was called to order by Acting Executive Director Robert Williams. Establishment of a quorum was noted by Acting Secretary Buckley. In physical attendance were Commissioners John Crotty, John Poklemba, Barry Sample and Todd Snyder.

It was noted since the last meeting, Governor Cuomo designated Commissioner Sample as Chairman.

2. Approval of the Meeting Minutes for September 9, 2013

Minutes of the Commission meetings conducted on September 9, 2013 were considered. Chairman Sample requested edits, corrections or amendments. None were offered.

ON A MOTION BY: Commissioner Snyder
APPROVED: 4-0

3. Report of Acting Executive Director

Mr. Williams reported on the following matters previously discussed:

- a. Travers Stakes. At the meeting on September 9, 2013 a discussion of the Travers Stakes investigation occurred. Following that meeting Commission staff undertook a comprehensive investigation from a complaint by the trainer of the second-place finisher that the jockey of the winning horse used an electrical device. The Commission's investigation concluded that the winning jockey, Luis Saez, was not

carrying any sort of electrical device and that the allegation was wholly unsubstantiated. Mr. Williams acknowledged the participation and cooperation of various parties involved in the investigation, including the New York State Police, NYRA and NBC.

- b. Equine Medical Director. The Commission has not completed the hiring process to bring the identified candidate aboard. Mr. Williams noted that the recent increase in equine fatalities at Finger Lakes Race Course underscores the necessity to fill the position as soon as possible.
- c. Referendum. Mr. Williams noted that November 5 is Election Day. Proposal 1, if approved by the voters, would amend Section 9 of Article I of the Constitution to allow the Legislature to authorize and regulate up to seven casinos. The amendment is not self-executing, thus the legislature passed the Upstate New York Gaming and Economic Development Act of 2013. The Act is a comprehensive law that, pending approval of the referendum, would establish four destination gaming resorts in Upstate New York.

Mr. Williams further noted that one of the most significant duties of the Commission will be to establish a separate board to be known as the New York Gaming Facility Location Board. This Board is charged with selecting, through a competitive process, not more than four gaming facility license applicants. The selected applicants will be authorized to receive a gaming facility license, if found suitable by the Commission.

Finally, in the event that the gaming referendum does not pass, the Commission is authorized to competitively site up to four video lottery gaming facilities, one per region in the Capital District, Central-Southern Tier, Catskills, and one in Nassau County, based on revenue-generation and economic development criteria.

- d. Breeders' Cup Victory for New York-Bred. Mr. Williams recognized a historic racing result that occurred on November 1 when London Bridge, bred by Patricia S. Purdy, became the New York breeding program's first Breeders' Cup winner in the Grade 2 \$500,000 Marathon.

4. **Rulemaking**

- a. Permanent Adoption on Plasma Testing for Anabolic Steroids.
Chairman Sample introduced for consideration for permanent adoption a rule first proposed by action of the former Racing and Wagering Board on January 31, 2013. At the request of Chairman Sample, Commission General Counsel Edmund Burns, described three public comments that had been received.

ON A MOTION BY: Commissioner Poklemba
APPROVED: 4-0

- b. Permanent Adoption on VLT Advertising. Chairman Sample introduced for consideration for permanent adoption a rule first proposed by action of the Commission on August 1, 2013. The change is required to conform the rules of the Memorandum of Understanding by and between the Seneca Nation of Indians and the State of New York.

The Memorandum obliged the Commission to commence a rulemaking to prohibit the use of the terms “slots,” “slot machines,” and “casino” or “casinos” for marketing or other purposes by video lottery gaming device facilities or licensed agents of the State Lottery operating within the area west of State Route 14 from Sodus Point in the north to the New York-Pennsylvania border in the south.

At the request of Chairman Sample, Mr. Burns described the one public comment received, which was submitted by the Seneca Nation. The comment supported the purpose and intent of the proposed regulation, and suggested the text of the rule be revised to clarify that no video lottery agent based outside of the described geographic area could be permitted to market a video gaming facility within the described geographic area using the prohibited terminology. Staff agreed a clarification to address the concern was prudent and revised the proposed rule accordingly.

ON A MOTION BY: Commissioner Snyder
APPROVED: 4-0

- c. Proposed Rulemaking for Regulation of Shock Wave and Similar Therapies. Chairman Sample introduced for consideration a proposed rulemaking restricting the use of extracorporeal shock wave therapy, radial pulse wave therapy and similar physiological treatments on thoroughbred racehorses. Shock wave therapy involves the application of external pressure waves to an area of a horse to promote healing, but the concern is that the therapy also makes the area numb for several days. It is not known or suspected to create a similar danger to a slower-moving horse, such as one engaged in standardbred racing. This rule would closely regulate the use of shock wave treatments so that thoroughbred horses could not be breezed or raced until the resulting numbness wears off.

It was discussed that this rulemaking is similar but not identical to a November 2012 proposal by the predecessor entity, the N.Y.S. Racing and Wagering Board. This prior proposal was not adopted, after consideration of concerns raised regarding the lack of out-of-state regulation. This current proposal addresses the concerns that had been raised.

ON A MOTION BY: Commissioner Crotty
APPROVED: 4-0

- d. Proposed Rulemaking for Thoroughbred Equine Drug Thresholds. Chairman Sample introduced for consideration a proposed rulemaking regulating the treatment of thoroughbred race horses with 24 drugs that have been identified as useful and necessary for horse racing and studied to determine appropriate regulatory laboratory threshold values.

These 24 drugs were first identified by the Racing Medication and Testing Consortium and are meant to encompass those drugs whose beneficial effects are widely accepted, that provide a sufficient range of treatments to ensure good veterinary care and that can be regulated effectively by means of laboratory thresholds. RMTC's recommendations have been reviewed, revised and adopted as a model rule by the Association of Racing Commissioners International. Commission staff has participated throughout this process and

generally supported these proposals with due regard to New York's existing reliance on restricted time periods and other circumstances.

Staff also recommended that several amendments be made to the Commission's rules restricting the time period before which a horse may participate in a race after various drug treatments. These proposals were sent to persons and organizations on the Commission's Thoroughbred mailing list and comments were received in favor of the changes.

Mr. Burns noted that proposal would be split into several proposed rulemakings, in order to facilitate moving forward on the adoption of uncontroversial aspects of the proposal, should the Commission later decide to give more consideration to other aspects of the proposal. Mr. Burns suggested that the Commission might wish to hold public hearings on the subject, to establish the scientific basis for the proposed rules and to permit the industry to express views in that forum. Commissioner Poklemba stated that the Commission staff should move forward on a public hearing schedule.

ON A MOTION BY: Commissioner Poklemba

APPROVED: 4-0

- e. Proposed Rulemaking for Standardbred Equine Drug Thresholds. Chairman Sample introduced for consideration a proposed rulemaking restricting the treatment of standardbred racehorses with 24 drugs that have been identified as useful and necessary for horse racing and studied to determine appropriate regulatory laboratory threshold values.

The primary amendment is the creation of regulatory thresholds for each of these 24 drugs, together with a prohibition against finding in a race horse on race day any amount of any other drug or medication that can affect the performance of the horse. A violation of these thresholds would constitute an automatic per se, violation of the Commission's equine drug rules

This proposal was sent to persons and organizations on the Commission's standardbred mailing list and that there were

significant concerns raised by horsemen's organizations and by United States Trotting Association. The comments were focused on the different impact that the proposed regulations would have on clenbuterol and corticosteroids for standardbred racing, where the horses race much more often, and have far fewer breakdowns, compared to thoroughbred racing.

Mr. Burns noted that proposal would be split into several proposed rulemakings in order to facilitate moving forward on the adoption of uncontroversial aspects of the proposal, should the Commission later decide to give more consideration to other aspects of the proposal. Mr. Burns suggested that the Commission might wish to hold public hearings on the subject, to establish the scientific basis for the proposed rules and to permit the industry to express views in that forum. Mr. Burns noted that in particular, there is concern from horsemen that the proposed regulation of clenbuterol would have a significant impact on its use at all, given current standardbred practice.

Commissioner Poklemba stated that the Commission staff should move forward on a public hearing schedule as it will do for the previous thoroughbred rule discussed. Commissioner Crotty noted that standardbred horses had raced for more than 100 years without the administration of clenbuterol, which made him skeptical of claims that the drug is necessary for racing.

ON A MOTION BY: Commissioner Poklemba
APPROVED: 4-0

- f. Proposed Rulemaking for Account Wagering. Chairman Sample introduced for consideration a proposal for a new set of rules regulating telephone and internet wagering that will conform to and implement new statutory requirements that take effect on January 1, 2014. Mr. Burns stated that this proposal will be sent to the relevant persons and organizations on the Commission mailing list seeking comment.

ON A MOTION BY: Commissioner Crotty
APPROVED: 4-0

- g. Proposed Rulemaking on Penalties for Underage Gaming. Chairman. Sample introduced for consideration a proposal for a structure for sanctions for Commission licensees, agents and other regulated parties who violate prohibitions against underage play. This proposed rulemaking provide a graduated penalty structure, depending upon the type of license held. At the request of Chairman Sample, Mr. Burns described the proposed penalty structure.

Commissioner Poklemba stated that he would like to see an enforcement plan before the Commission considers permanent adoption of the proposed rule.

ON A MOTION BY: Commissioner Snyder
APPROVED: 4-0

5. Adjudications

- a. In the Matter of Scott Anderson. The matter involved the application for an occupational license as a mutual clerk. The Commission upheld the decision of the Hearing Officer.

ON A MOTION BY: Commissioner Crotty
APPROVED: 4-0

- b. In the Matter of David Cohen. The matter involved an appeal of a careless riding determination in a race conducted on April 13, 2013. The Commission upheld the decision of the Hearing Officer.

ON A MOTION BY: Commissioner Snyder
APPROVED: 4-0

- c. In the Matter of Pierre Tomas. The matter involved an appeal of a careless riding determination in a race conducted on May 4, 2013. The Commission upheld the decision of the Hearing Officer.

ON A MOTION BY: Commissioner Poklemba
APPROVED: 4-0

6. **Award Following Request for Proposal regarding Market Research Regarding Alternative Approaches for the Future of Lottery in New York State.**

The recommendation for award for the Market Research services RFP was approved the Commission

ON A MOTION BY: Commissioner Snyder

APPROVED: 4-0

7. **New Business/Old Business**

- a. **Extension of NYRA Wagers.** On August 1, 2013 the Commission approved a request by the New York Racing Association to conduct, on a temporary basis, two new wagers: the Pick 5 and Show Quinella. This approval was granted until the end of the Belmont fall meet. While the New York Racing Association has not offered the Show Quinella they requested the extension of the authorization for the Pick 5 wager so that it can gather additional data to analyze the wagers' effects on handle. The Commission approved the extension of the Pick 5 wager through December 31, 2013.
- b. **Delegation of Authority.** At the June 26, 2013 meeting certain Commissioners requested a modification of Resolution 03-2013, which concerns Delegation of Authority. At the request of Chairman Sample, Mr. Burns explained that a new resolution was proposed to address the concerns of the Commissioners to add more detail to the previous resolution. The new proposed resolution would be labeled Resolution No. 05-2013.

ON A MOTION BY: Commissioner Snyder

APPROVED: 4-0

8. **Scheduling of Next Meeting**

No meeting date was scheduled

9. **Adjourn**

Mr. Sample asked if any Commissioners had any additional items to discuss or present. Hearing none, the meeting was adjourned at 2:00 p.m.

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