

Colorado Racing Commission  
February 9, 2021  
Meeting Minutes

Call to Order

The regularly scheduled meeting of the Colorado Racing Commission (“Commission”) was held on Tuesday, February 9, 2021 via video conference provided by Zoom. The meeting was called to order at 9:32 AM.

Members Present

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

Staff Present

Donia Amick, Director of the Division of Racing Events  
Ed Kulp, Agent in Charge  
Zach Ceriani, Legal Assistant  
Bradford Jones, Senior Assistant Attorney General representing the Division of Racing Events/ General Counsel to the Commission  
Keenan Lorenz, Senior Assistant Attorney General representing the Commission as Conflicts Counsel  
Sue Kim, Senior Assistant Attorney General representing the Commission as Conflicts Counsel  
Suzanne Karrer, Communications Manager for the Specialized Business Group  
Janina Rivera, Executive Assistant to Division Director

1. Approval of Minutes of October, 2020

Minutes approved for October 13, 2020.

2. Approval of Minutes of November, 2020

Minutes approved for November 10, 2020.

3. Approval of Minutes of November, 2020

Minutes approved for November 18, 2020.

**DECISION ITEMS:**

4. Presentation and Approval of Commission Ruling 20-05 in the Matter of David Palafox

Proposed order presented for approval by conflicts counsel, Keenan Lorenz, Senior AAG.

Motion made by Commissioner Hoffman with a second made by Commissioner Scott to approve the decision in order.

Motion passed unanimously.

5. Consideration and approval of release of Owners/Breeders Awards Funds

Director Amick presented the total amount for dispersal was \$548,738.42

Motion made by Commissioner Bowen to distribute the funds. A second was made by Commissioner Estes.

Motion passed unanimously.

6. Consideration of request by Licensee Kerry Kemper to submit audio recording in lieu of transcript for appeal hearing

Conflicts counsel, Sue Kim, Senior AAG, discussed the request to accept the audio recording in lieu of the transcript for purposes of an appeals hearing, which will be held before the Commission at a later date. The licensees argued a financial hardship. She recommended the Commission go into executive session for any legal questions.

Ms. Kim recommended that the Commission table this matter until the Commission determined whether to go into executive session for a similar case on the Commission's agenda - Miguel Pena.

Consideration of request by Licensee Kerry Kemper to submit audio recording in lieu of transcript for appeal hearing was tabled by Chairwoman Inmann.

7. Consideration of request by Licensee Miguel Pena to submit audio recording in lieu of transcript for appeal hearing

Conflicts counsel, Sue Kim, Senior AAG discussed the request to accept the audio recording in lieu of the transcript for purposes of an appeals hearing, which will be held before the Commission at a later date. The licensees argued a financial hardship. She recommended the Commission go into executive session for any legal questions.

Conflicts counsel, Sue Kim, Senior AAG, asked if the Commission would like to enter into Executive session to discuss both matters (this matter and the Kerry Kemper matter) presented on agenda by Conflicts counsel.

Consideration of request by Licensee Miguel Pena to submit audio recording in lieu of transcript for appeal hearing was tabled by Chairwoman Inmann.

A motion made by Commissioner Hoffman with a second made by Commissioner Scott to enter into Executive session.

Motion to enter into executive session passed unanimously.

**EXECUTIVE SESSION ENTERED AT 9:56 A.M.**

**RETURNED FROM EXECUTIVE SESSION AT 10:18 A.M.**

**OPEN SESSION**

Motion made by Commissioner Estes with a second made by Commissioner Bowen to deny the request by licensee Kerry Kemper to submit audio recording in lieu of a written transcript for purposes of an appeal to the Commission of an initial decision..

Chairwoman Inmann discussed her concern about being the only agency to go to audio and that she was not ready to consider that at this time.

Motion to keep transcripts in written form passed unanimously.

A motion made by Commissioner Hoffman with a second made by Commissioner Estes to delegate authority to Director Amick to sign an order on behalf of the Commission regarding this matter.

Motion passed unanimously.

Motion made by Commissioner Estes with a second made by Commissioner Hoffman to deny the request by licensee Miguel Pena to submit audio recording in lieu of a written transcript for purposes of an appeal to the Commission of an initial decision and also to delegate authority to Director Amick to sign an order on behalf of the Commission regarding this matter.

Motion passed unanimously.

8. **Consideration of Stipulation Agreement for in the Matter of Licensee John Muckey**

Motion made by Commissioner Hoffman with a second made by Commissioner Bowen to accept the stipulation agreement in the matter of licensee John Muckey which states the following:

The Division and the Licensee agree to the following penalties for the violations:

a. A fine of ONE THOUSAND DOLLARS (\$1,000.00) for the presence of altrenogest which, pursuant to CRCR 5.441, is the minimum allowable fine absent mitigating circumstances, due within twenty (20) days of this Settlement Stipulation being approved by the Colorado Racing Commission or the Board of Stewards at Arapahoe Park.

b. The ARCI Multiple Medication Violation penalty for a Class C substance is ONE HALF POINT for a Controlled Therapeutic Substance. ONE HALF POINT for this Class C substance will be assessed on the record of the Trainer licensee and reported to ARCI. Class C violation points will stay on the ARCI record of such Trainer for 1 year. The ARCI points can be combined over time to cause a suspension in all ARCI member jurisdictions. This ARCI suspension policy runs consecutively (in addition to) any penalties and/or suspension in the jurisdiction of Colorado for subsequent violations.

c. Pursuant to CRCR 5.441 and CRCR 5.612, based upon the positive sample confirmed by ILC, MASTERPIECE DAY shall be placed on the Veterinarian's list for 30 DAYS, starting from the date ILC confirmed the sample (July 9, 2020). MASTERPIECE DAY shall be required to pass a Commission-approved examination prior to being removed from the Veterinarian's List. MASTERPIECE DAY was eligible to come off of the Veterinarian's list on August 9, 2020.

d. Disqualification of MASTERPIECE DAY from the 6th race on June 24, 2020 at Arapahoe Park. The horse shall be declared disqualified and unplaced for every purpose except for the purpose of pari-mutuel wagering.

e. Loss of purse.

Motion passed unanimously.

9. Consideration of Commission Ruling 20-06 in the Matter of Licensee John Muckey

Motion made by Commissioner Hoffman with a second made by Commissioner Estes to accept the Commission Ruling 20-06 in the matter of licensee John Muckey which states the following:

DECISION AND ORDER

The Commission orders that the resolution agreed upon by Licensee and the Division take effect. Licensee has engaged in a violation of Colorado Racing Commission Rules 5.301 and 5.304 by administering or causing to be administered an unauthorized medication for which Licensee is responsible pursuant to CRCR 5.500 and 5.502.

THE COMMISSION ORDERS as follows:

1. Licensee JOHN MUCKEY shall be fined the amount of ONE THOUSAND DOLLARS (\$1,000.00),

the minimum allowable for a first offense per the sentencing guidelines contained in CRCR 5.441. The fine is due and payable in 20 DAYS (on or before March 1, 2021).

2. The ARCI Multiple Medication Violation penalty for a Class C substance is ONE HALF POINT for a Controlled Therapeutic Substance. ONE HALF POINT for this Class C substance will be assessed on the record of the Trainer licensee and reported to ARCI. Class C violation points will stay on the ARCI record of such Trainer for 1 year. The ARCI points can be combined over time to cause a suspension in all ARCI member jurisdictions. This ARCI suspension policy runs consecutively (in addition to) any penalties and/or suspension in the jurisdiction of Colorado for subsequent violations.

3. The horse MASTERPIECE DAY is declared disqualified and unplaced for the 6th race on June 24, 2020 for every purpose, except for pari-mutuel wagering. The new order of finish is as follows:

1st - #3 Smokin B  
2nd - #7 Full Sun  
3rd - #2 Johnnie B  
4th - #1 Call Me Mr Te  
5th - #4 Talk Big Money  
6th - #5 Law Breaker  
DQ - #6 Masterpiece Day (Unplaced)

4. Loss of purse for the race. The purse is also ordered to be redistributed according to the new order of finish listed above.

5. MASTERPIECE DAY was placed on the Veterinarian's list for 30 DAYS, starting from the date ILC confirmed the sample (July 9, 2020). MASTERPIECE DAY was required to pass a Commission-approved examination prior to being removed from the Veterinarian's List. MASTERPIECE DAY was eligible to come off of the Veterinarian's list on August 9, 2020.

Motion passed unanimously.

10. Arapahoe Park Letter re: 2021 Live Race Season

Director Amick discussed a letter that was received by the Division from Mile High Racing & Entertainment. The letter requested the Commission consider a delay to the racing season from this year and to 2022.

Director Amick recommended an executive session for legal advice.

Bradford Jones, Senior AAG, also recommended an executive session to advise the Commission on any legal matters.

Bruce Seymore, Director of Mile High Racing & Entertainment, stated his goal is not to race in 2021 and to ask for the protection of all his operation licenses to continue his OTB operations. He said he would lose \$1.4 million dollars this year if he had to put on a race meet. Mr. Seymore said COVID was an “Act of God” and referenced a newspaper article from Wednesday 1/27/2021 Denver Post titled “Maintaining Precautions Can Save Lives”.

Chairwoman Inmann asked how Arapahoe Park would get the horseman back next year if there was no meet this year.

Mr. Seymore responded that he would generate purse money from 2021 for his current operations and put 50% of MHRE profits into the purse fund to encourage the horsemen to come back in 2022.

Shannon Rushton, Colorado Horseman Association Executive Director (CHA), asked what Racing dates had been submitted.

Mr. Seymore gave the following dates:

Barn Area Open – May 3, 2021

Closing Day – June 18, 2021

Mr. Ruston expressed his concern on not having a meet this year and losing the horseman in 2022.

Kent Bamford, CHA Chairman, expressed his concern about the viability of the horse racing business in Colorado. He said if they did not race this year there was a high probability that a number of breeders within Colorado will cease to be in the business. He mentioned that Nebraska has approved Casino wagering which would attract more horsemen to Nebraska and possibly away from Colorado.

Motion made by Commissioner Hoffman with a second made by Commissioner Scott to enter into Executive session.

Motion to enter into executive session passed unanimously.

**EXECUTIVE SESSION ENTERED AT 11:35 A.M.**

**RETURNED FROM EXECUTIVE SESSION AT 2:01 P.M.**

**OPEN SESSION**

Commissioner Estes posed a question to the CHA and to the Rocky Mountain Quarter Horse Association (RMQHR) about their concerns regarding the letter.

Shannon Rushton, CHA Executive Director, stated the main concern was that the track would close down permanently.

Jodi Witt, RMQHR member, stated they would like to have the option for the RMQHR associations to have an emergency meeting with the board of directors to address the proposed dates.

Howie Chavers, Vice President of the RMQHR, expressed his concerns that the horseman would not be able to take a year off without any wages and would not want to come back in 2022.

Mark McGregor, President of the Colorado Thoroughbred Breeders Association, asked Mr. Seymore questions, including: if he could apply for an employed protection plan with the new stimulus package; would legislation help; and whether the track could liquidate some of the track assets to help with this season? He also expressed concerns with having a meet for six weeks five days a week.

Commissioner Hoffman requested from counsel more clarification on C.R.S. § 44-32-603(1), in reference to “acts of God”. He said he would like to know if any jurisdiction references COVID-19 as “acts of God” and C.R.S. § 44-32-505(7), in reference to “unforeseeable emergency”. He asked if what we are facing now is an unforeseeable emergency and how?

He also mentioned C.R.S. § 44-32-602(4)(b)(II), which states a requirement for thirty live race days for OTBs to receive simulcast signal.

Chairwoman Inmann emphasized the past collaboration between the track, the horseman and the Commission to resolve issues and hoped these groups would work together.

Motion made by Commissioner Hoffman with a second made by Commissioner Estes to table agenda item #10 Arapahoe Park Letter re: 2021 Live Race Season until the next commission meeting on March 9, 2021.

## **Discussion Item**

### **11. Director’s Report**

Director Amick welcomed criminal investigator Anthony Milne to the Racing team. She stated all staff are still remote. She gave an update on HISA developments. She said there were currently five OTBs that are still closed.

### **12. Public Comment**

Bruce Seymore, Director of Mile High Racing & Entertainment, thanked everyone for their time.

Pam Inmann, Chairwoman, called to end the meeting.

Adjourned

**Adjournment**

The February 9, 2021 meeting of the Colorado Racing Commission was adjourned at 2:59 p.m.

Minutes Approved by the Commission

*Janina Rivera*

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Janina Rivera, Executive Assistant to the Director

I certify these minutes were approved by the Commission on the 13<sup>th</sup> day of April, 2021