



CO L O R A D O

Department of Revenue

Specialized Business Group - Racing

**Colorado Racing Commission
Handbook**

2024

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What is a Racing Commission?

A racing commission is an administrative body that performs quasi-legislative and quasi-judicial functions. Commissioners have the authority to adopt rules and regulations, enforce those rules, and impose civil penalties (fines and license suspensions) on violators. Agencies such as public service commissions and real estate boards have the power to both adopt regulations and penalize violators.

However, because of this unique situation, every racing commissioner must be alert to possible challenges to this authority to act and be prepared to excuse himself/herself from any case in which there is an actual conflict. Whenever possible, a commissioner should also excuse himself/herself from any matter in which there is a possible or an apparent conflict of interest.

When a case has been appealed to the commission from the stewards or judges or when a case is pending before the commission on the basis of another form of complaint, each commissioner must be careful not to engage in ex-parte communications. Those are communications involving any one of the parties to the case and not conducted in the presence of all parties. Just as a judge should not discuss a case pending in a criminal or civil court outside of the judicial process, commissioners should not conduct their own investigation of a case or talk privately with anyone about a pending case.

Positions on racing commissions often are high-profile appointments. As such, racing commissioners are fair game for any reporter who wants to get his byline on the front page of a newspaper. In some newsrooms, a story about a commissioner getting a free beer and a hot dog at the local track may get equal or bigger headlines than a story about a congressman steering government contracts to his family owned business. Newly appointed commissioners should check with their legal counsel and become fully aware of any requirements and restrictions placed on them by the state's ethics laws or financial disclosure laws.

In its internal operation, the racing commission is similar to the board of directors of a corporation. The commission executive director (or executive secretary) is the equivalent of a corporate general manager or chief operating officer.

The size of the commission staff varies in each jurisdiction. Commission stewards, judges, veterinarians, investigators and administrative and fiscal officers serve as "department heads"

and report to the executive director. Depending on the law of the jurisdiction, racing commission employees may be civil service employees or may be political appointees or a combination.

Just as the board of directors of a corporation establishes corporate policy and then relies on management to carry out the details, it is generally advisable for part-time commissioners to concentrate on the adoption of rules and board policies and to resist the temptation to become involved in day-to-day administrative and personnel matters. They should rely on the commission staff and officials to implement policies, enforce rules and handle personnel matters.

Because of the nature of the manner in which a racing commission conducts its business, it is easy for a commissioner to overlook the vast majority of licensees who never appear before the commission. (An old adage of racing enforcement is that 5 percent of the licensees cause 95 percent of the problems.) The vast majority of licensees are honest, hardworking people who compete by the rules. Track management, drivers, jockeys, trainers, breeders and track employee unions have representatives who frequently appear before commissions to express the views of the groups they represent. The \$2.00 bettors rarely appear before the commissions or attend commission meetings and have no lobbyist to represent them. Above all else, a racing commissioner must always keep in mind the interest of the public -- the patrons who attend and wager on the races, and the taxpayers who receive the revenue from pari-mutuel taxes and who pay the commission's bills.

Because one cannot knowledgeably regulate a business that one does not understand, racing commissioners should make an effort to learn the general aspects of all segments of the pari-mutuel industry under their jurisdiction.

Things racing commissioners can do to learn more about the industry and become effective regulators include:

- A. Visit and tour racetracks, simulcast facilities and OTB parlors.
- B. Visit the various stable or kennel areas, inspect accommodations and review security controls.
- C. View a race from the vantage point of every official, namely, the stewards/judges, the placing judges, the paddock judge, the patrol judges, the starter, the identifier and the veterinarians. This will help commissioners to better understand the officials' various functions and duties.
- D. Observe the calculating room and totalisator control room, and remain there during a complete cycle from "off time" to "official." Commissioners should also tour the pari-mutuel lines.
- E. Observe the entire procedure of urine and blood sampling and laboratory testing.

- F. Occasionally observe a stewards'/judges' hearing or a hearing before a referee to assess the nature and propriety of the administrative justice process. (Note: In the event that this particular case is appealed to the commission, a commissioner who was present at the stewards'/judges' hearing should excuse himself/herself from acting on the appeal.)
- G. Read news articles dealing with racing matters and request further information on any matter requiring clarification.
- H. Spend a significant amount of time on memoranda and position papers furnished for background information prior to commission meetings and request clarifying information when necessary.
- I. Meet in public settings or workshops with representatives of racing associations, trade and professional organizations and employee organizations in order to understand their varying objectives.
- J. Attend conventions and participate in all matters important to the welfare of racing.

New Commissioner Orientation

Shortly after being appointed to a racing commission, a new commissioner should receive an orientation packet and briefing from the commission's executive director. The exact contents of this will depend on the number of tracks regulated by the commission and the commissioner's familiarity with ongoing activities of the commission. For example, in some states, by law, commission members must not have any financial interest in racing while in other states commission appointees represent certain segments of the industry such as horse owner or horse breeder. In those cases, newly appointed commissioners may have more first-hand knowledge about recent activities of the commission. This orientation packet should include the following items:

- A list of other commission members, phone numbers of chief staff persons and other governmental liaisons such as an Assistant Attorney General assigned to the commission.
- An organizational chart of the commission.

- A list of the regularly scheduled commission meetings for the upcoming months or years.
- A copy of the state law regulating the racing commission.
- A copy of the state's open meetings law.
- A copy of the state's Administrative Procedures Act.
- A copy of the rules of racing.
- Minutes of the meetings going back for approximately one year.
- A copy of the commission's working budget.
- A copy of any pending or recently adopted legislation that would affect the commission's activities.

Some states may require certain documents to be signed by the commissioner and filed with a state agency. These may include such things as a financial disclosure form or an oath of office.

The director should brief the newly appointed commissioner on state travel requirements. Usually the state will only reimburse a commissioner up to a certain amount for meals, lodging and out-of-state travel. (Insert travel rules link) A state may also have particular travel regulations covering such items as pre-paid tickets, pre-paid lodging, pre-paid registration fees and other expenses. In most cases commissioner's spouses or other family members are allowed to travel with the commissioners but not at any expense to the state.

The commissioner should become aware of the state's ethics laws particularly regarding acceptance of gratuities from individuals or corporations that the commission regulates. ((insert ethics link) The state may also have laws that limit the commissioner's activity for a period of time after his term expires.

For example, in some cases a commission member cannot go to work for an industry that he has regulated for a period of one to three years.

During this briefing, the newly appointed commissioner should feel free to ask any questions no matter how minor the details. What may appear to be a perfectly innocent business lunch could develop into a front page story alleging violations of the ethics law (for accepting a free lunch) and for violation of administrative procedures law by ex-parte communication.

The safest course of action for a commissioner is to avoid any appearance of impropriety. If the commissioner believes that anything in which he or a close family member or business partner is involved may in any way influence a decision, the commissioner's best course of action would be to excuse himself/herself from any participation in the discussion of that issue and any vote taken on that issue.

FUNCTIONS OF A COMMISSION

The mission of a racing commission is to regulate activities on which there is pari-mutuel wagering while:

- * Assuring protection of the public;
- * Encouraging agriculture and the breeding of horses and/or greyhounds in the state (province);
- * Generating public revenue;
- * Providing uniformity of regulation for each type of racing or other pari-mutuel activity (jai-alai).

Principal responsibilities of a commission are:

- * Promulgating and revising rules and regulations for the protection of the public;
- * Promulgating and revising rules and regulations for racing and pari-mutuel wagering;
- * Adjudicating controversies arising from the interpretation and application of laws and regulations dealing with racing and pari-mutuel wagering;
- * Licensing each racing association, each satellite (off-track) wagering facility, and all persons, other than the public at large, who participate in a race meeting with pari-mutuel wagering; and
- * Allocating racing and simulcasting dates.

In carrying out these responsibilities, racing commissioners are guided by their own rules and regulations and state laws, most significantly state racing and pari-mutuel statutes and administrative procedures acts.

Rulemaking:

State administrative procedures acts usually specify the manner in which rules and regulations can be promulgated.

Typical rulemaking process:

Step 1. Commission staff proposes new or amended regulations;

Step 2. Proposed rules are reviewed by the commission's legal counsel or the state attorney general's office;

Step 3. Proposed rules are published in an official government periodical (similar to the Federal Register) or in daily newspapers, thereby giving notice to the public of such proposed rules;

Step 4. There is a public comment opportunity, usually in the form of a public hearing to afford interested parties a chance to comment or suggest rule changes;

Step 5. There is a "waiting period" of 30 to 90 days during which time no action can be taken on proposed rules. This period allows for additional written comments from interested parties; and

Step 6. The proposed new or amended rules are adopted by the commission.

Adjudication:

When adjudication controversies arise from the interpretation and application of the commission's rules (or state racing laws), the racing commission acts as a quasi-judicial body, similar to a court. The commission can become involved in the adjudication of controversies in either of two ways: on appeal by a licensee from a decision of the stewards/judges or on its own initiative. In either case, the procedures for hearing and resolving these controversies are spelled out in the commission's rules and state administrative procedures acts. The same basic rights and procedures apply as if the case were being heard by a judge in a courtroom.

Typical adjudication process

Step 1. The person charged with a violation must be informed in writing of the specific rule or law he/she is alleged to have violated;

Step 2. All parties involved must be notified of the time and place of the hearing;

Step 3. Accused can elect to have either a formal or informal hearing with commission;

Step 4. At formal hearings, those accused must be given the right to call witnesses, make statements on their own behalf and question witnesses who testify against them. The accused at both a formal and informal hearing have the right to have legal counsel present;

Step 5. If a formal hearing is used, all witnesses should be given an oath and the entire proceeding should be audio-taped if a court reporter is not used;

Step 6. The Commission renders a decision. (Usually restricted to civil fine or penalty, such as monetary fine, suspension or revocation of license); and

Step 7. Persons who feel they have been treated unfairly by the commission may appeal to state civil court.

Licensing

Commission rules and racing laws provide the general procedures for the issuing of licenses to racetracks and persons who work at them. For example, state or provincial laws may specify certain minimum ages for those working at a racetrack and may contain some general statements of disqualification, such as one's having been convicted of a felony, or a crime involving racketeering, bookmaking or race fixing.

The licensing decisions regarding the issuance of licenses to racetracks are made at the commission level (by commissioners). Virtually all decisions regarding the issuance of individual licenses are made by commission representatives at the tracks, usually stewards/judges or license administrators. However, in most jurisdictions, stewards/judges or commission staff cannot deny a license. The denial must be made by the racing commission after a hearing.

Allocation of racing dates:

The allocation of racing dates can be one of the most important and often controversial matters to come before a commission. This is especially true in jurisdictions where two or more tracks are located in the same metropolitan area and compete for the same patrons and/ or stables-

In such circumstances, the request for dates should be handled in the same manner as if it were a contested case pending before the commission on appeal. That is, all of the testimony should be given at a meeting or hearing at which all interested parties have notice and can question witnesses. There should be no independent communication between any commissioner and interested party. The commission must ultimately make a decision based on its collective judgment of what is both best and fair for the public, the track investors, and the industry.

Allocation of simulcasting rights:

Racing commissions have the important and often controversial task of allocating simulcasting dates and rights. Commissioners should familiarize themselves with applicable federal and state laws in this area.

Open Meetings and Records Laws:

Nearly every state has “Open Meetings Laws”, sometimes called “Sunshine Laws”, which require that almost all of the business of a regulatory body be conducted in sessions be open to the public. The laws also require that every document filed with the racing commission or similar agency is a public record unless specifically exempted and treated as a confidential document by law. Requirements for public

notice of meetings and the types of documents that are to be treated as confidential vary from one jurisdiction to another. The general rule is that all meetings must be held in public session and most documents on file with the commission are public record.

Newly appointed commissioners should be aware that almost every document prepared by or mailed to a state agency is a public record that can be reviewed and copied by any interested citizen.

Meetings of public bodies are always conducted in open session and with a notice of meeting usually with a proposed agenda mailed to any interested person prior to the meeting. All meetings must be convened in open session. State law usually requires some method of recording the meeting. This may be with a court stenographer preparing a printed transcript or a simple audio tape recording may suffice depending on state law.

The commission may adjourn into executive session for a limited number of purposes. The general exceptions when commissions can legally meet in closed session include:

1. To discuss “the good name and character of an individual” in personnel actions;
2. To meet with legal counsel to discuss litigation; and
3. To deliberate a disciplinary matter when they are acting in a quasi-judicial manner, such as immediately following a hearing.

To reiterate, these purposes will be specified in the state law but are usually limited to items such as discussing personnel issues, discussing pending litigation, or deliberating on facts and testimony heard in open session before rendering a decision (like a jury deliberating after the testimony has been given in a trial.) However, any official action concerning matters that are discussed in executive session must be made at an open portion of the meeting. That means that after the discussion has been held behind closed doors, the commission must come back into a public area and a motion must be made, seconded and voted on in open session. No person should repeat any of the details or comments that were discussed in the executive session. In some states a violation of the open meetings law is a criminal offense.

The following, adapted from a paper prepared by the staff of the California Horse Racing Board, details that group's policies and procedures regarding open meetings and public records. While it makes specific reference to the California law and the policies of a particular racing board, the general requirements are similar in almost every state. Commission policy regarding dates of meetings, amount of advance notice and the time for submitting documents to commission members and staff varies depending upon the circumstances of each commission. Some commissions pre-determine meeting dates, such as the third Tuesday of every month, while other commissions set their meeting dates from one meeting to the next based on anticipated agenda items, special events requiring commission approval, and the individual calendars of the commissioners.

THE OPEN MEETINGS ACT, THE PUBLIC RECORDS ACT, AND THE INFORMATION PRACTICES ACT

GENERAL POLICIES AND PROCEDURES

Commissions have an important responsibility to educate the public about problems, developments and other horseracing issues under their jurisdiction.

In addition to legal requirements governing notice and conduct of board meetings, commissions should actively solicit public participation and encourage various points of view.

Commissions should assign a high priority to the dissemination of information concerning deceptive and fraudulent businesses or professional practices. The public also needs to know the laws and rules that guarantee their rights and how to redress abuses. Public interest is served by commissions promoting such industry knowledge.

INQUIRIES FROM THE NEWS MEDIA OR THE PUBLIC

On matters of commission or administrative policy, executive officers and commission members should not release preliminary data, speculate, interpret facts, predict possible or probable courses of action, or future courses of action on matters of departmental or administration policy to inquiries from the public or the press, radio or television. They should refer such inquiries to the Chairman.

THE OPEN MEETINGS ACT

The Open Meetings Act governs meetings of regulatory boards and meetings of committees of those boards when the committees consist of more than two members. It specifies meeting notice and agenda requirements and prohibits discussion or action on matters not included on the agenda.

Commission Policy

All meetings and examinations should be held in state buildings or similar meeting places for maximum accessibility by the general public and the disabled.

Meetings should be held as often as necessary, but certainly no less often than required by the statute. A "meeting" is any function in which a quorum is required for transaction of business. Examinations are not meetings.

Notices of each meeting must be provided to the public and to the commission members, in the time frame required by law, or at least ten (10) days prior to the meeting date. Commission members should receive their complete meeting packets at least seven (7) days in advance of the meeting to allow adequate time for review.

Open Meetings Requirements and Exceptions

The Legislature has indicated its intent regarding the meetings of state agencies: "It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and (that) proceedings of public agencies be conducted openly so that the public may remain informed." The Open Meetings Act applies to commission meetings as well as to meetings of committees when the committee has more than two members.

The Executive Secretary or other designated staff person must ensure that notices of meetings are mailed to persons who have requested notice at least ten (10) days in advance of the meeting. The Executive Secretary must also ensure that agendas are properly prepared and that any documents to be discussed at an open session of the meeting are made available to the public.

Although most meeting agenda matters must be conducted in open session, the Open Meetings Law provides exemptions where matters may be conducted in closed session. Only those matters specifically indicated by statute may be acted upon in closed session.

The exceptions most relevant to the racing commission are:

Personnel Matters

A board may convene in a closed session to consider the employment or dismissal of a public employee or to hear complaints or charges brought against an employee by another person. At least twenty-four (24) hours prior to holding such a closed session, the employee must be given notice of his/her rights to have the matter considered in open session. If the employee accepts this option, a closed session is prohibited. This exception does not apply to (board) employees who are appointed to their positions.

Examinations

A commission or its staff may meet in closed session to "prepare, approve, grade or administer examinations." Essentially, this includes any discussion regarding the actual content of examinations. In addition, where the commission or one of its committees convenes to consider a candidate's credentials for licensure or to determine initial eligibility to sit for examination, if the disclosure of eligibility information or credentialing information is deemed to involve an invasion of privacy of the candidate or other persons, the meeting is exempt from open meetings requirements.

Enforcement

A commission may go into closed session to deliberate upon a proposed decision, a stipulation or to decide an administrative disciplinary matter.

Litigation

A board may go into closed session to confer with its legal counsel regarding pending litigation.

The commission must conduct in open session all matters other than those specifically authorized by statute. The commission may not discuss items of business not included on the noticed agenda unless the item is raised in comments by the public during the meeting. In such a case, the item should be discussed only to the extent necessary to determine whether it should be an agenda item at a future meeting. On any matter where discussion, deliberation or action taken is required to be in open session, the vote cannot be taken by secret ballot.

Minutes - Public Meetings

Minutes of open meetings should be kept by the Executive Secretary or designee. Such minutes are intended to establish a public record of the proceedings and to summarize the actions taken at such meetings.

Minutes - Closed Sessions

Minutes of closed sessions must, as a matter of law, be recorded in a separate minute book maintained by a member of the Board or a designated employee.

Minutes should report topics discussed, actions taken and members in attendance. This book is a confidential document and should not be treated as a public record.

PUBLIC RECORDS ACT

The Public Records Act is based upon the premise that the business of the state is open to the public unless specifically exempted from disclosure. Records exempt from disclosure are set forth in the act. This act provides that the records of all public agencies shall be made available during business hours to any interested party. Exceptions to this rule include examination information, investigation or security files, records of litigation to which the board is a party, and other specific items. A board must determine, within ten (10) days of receipt of a request for public records, whether it will comply with the request and immediately notify the requester of its determination. The ten (10) day period may be extended by not more than ten (10) working days when specified, unusual circumstances exist. In order to assure compliance with this time limit, when a board has questions concerning a request for public records, the request should be submitted immediately for review to the Deputy Attorney General assigned to the commission.

INFORMATION PRACTICES ACTS

Information Practices Acts also govern the disclosure of records maintained by state agencies and are aimed at protecting the privacy of the subjects of those records. These statutes define what is "personal" information regarding data that the government requires to be submitted by individuals on a whole array of applications, documents and other government forms, and imposes limitations on the disclosure of that information, including criminal sanctions and civil penalties for wrongful disclosure of protected information. Because of the difficulty of reconciling the provisions of the Public Records Act with those of the Information Practices Act, commissions and their staff are advised to seek the assistance of their Deputy Attorneys General when conflicts appear regarding requests for information.

ADMINISTRATIVE PROCEDURES ACT

All state agencies must operate in conformance with state laws commonly known as an Administrative Procedures Act. This means that the state agency must have a particular rule or statute violation in mind before commencing an action. The individual who has been accused of wrongdoing must be given a notice of hearing usually at least fifteen (15) days in advance of the hearing. This notice must contain a statement of the time, place and nature of the hearing; a statement describing the act and rule or law which was violated.

The notice must include a statement of any action that is authorized by law. (For example, the commission may impose a fine, suspend or revoke your license as a trainer.)

The party must be informed that this is an adversarial proceeding and that the party charged has a right to be present at the hearing, to be represented by a lawyer and to make a statement in his/her own behalf, to call witnesses in his/her own behalf and to cross-examine any witnesses who testify against him/her. The notice should also contain a statement that these and other due process rights will be forfeited if they are not exercised at the hearing.

The party who has been accused of a rule violation will be given an opportunity to review any evidence that the commission has to present against him/her. In some states the person has a right to have copies of any written evidence. In other states the accused has the right only to review the commission's file.

A contested case is handled in the same general manner as a courtroom proceeding. The proceedings are recorded. All witnesses are sworn and the parties are usually represented by counsel. Each party examines his/her own witnesses or makes his/her own testimony and then is subject to cross-examination by the representatives of the other side. Usually the person who presides at the hearing has been trained as an attorney.

In almost every jurisdiction, a person who has exhausted his/her administrative avenues by appearing before the commission has a right to appeal the commission's decision to the state court system.

Commissioners should be extremely aware of ex-parte communication. That means that no commissioner should discuss any aspect of the case with any of the parties or any of the witnesses except in the hearing room where all questions and all answers are on the record and any statement is subject to cross examination. If a licensee or his/her representative attempts to discuss the facts of a case with a commissioner individually, the commissioner should immediately terminate the conversation. If the person persists, his/her actions should be reported to the hearing officer or to the legal counsel for the commission.

It is difficult for the commission staff to not tell the commissioners all the details of a pending issue, but if a commissioner engages in ex-parte communication and then votes on the issue, this may very well be a basis for an appeal of the commission's decision to the circuit court and a basis for the court to overturn the commission's decision.

Racing Officials: Stewards

RACING OFFICIALS-THEIR QUALIFICATIONS, DUTIES AND POWERS THE STEWARDS

By Marshall Cassidy

The responsibility of a steward to the public, to racing, and to the racing commission is tremendous. Actually, a steward and his colleagues have great power in all matters pertaining to racing at the race meeting.

As the stewards have superior jurisdiction over all other racing officials at a race meeting, they should be fully informed about the duties of each official. While not always possible, it would certainly be desirable for a steward to have had experience as a patrol judge, paddock judge, clerk of scales, and as a racing secretary.

As the stewards are required to judge the efficiency and behavior of a jockey's performance in a race, they should perceptibly have a thorough knowledge of horsemanship. As the stewards are required to demand consistency of performance in a race, they should have knowledge of the training and care of race horses.

Stewards should have enough legal knowledge and judgment to deal with matters indicating punishment by fines or suspensions, and should have experience and ability in conducting hearings. Stewards should have a thorough knowledge of the racing rules and regulations, as well as a complete understanding of the condition book and all types of races. Stewards should be mature, fearless, independent, dignified, considerate and fair.

A Steward's Day

At smaller tracks the stewards also serve as placing judges. At these tracks not only do the stewards review the films, watch the race but they also are responsible for determining the correct order of finish. The steward's duties will normally begin about 7:00 A.M. After the stewards have reviewed and approved all scratches, they will normally review license applications. They will hold film reviews with riders that may or may not have had infractions in the previous day's races. Once they have completed the film review, if there are any hearings that need to be held involving any rules infractions, those are normally conducted in the morning prior to the afternoon's races. After the hearings and other work have been completed in the morning, the stewards will be contacted by the state veterinarian in case there are any scratches off of the afternoon's program. If there are any scratches for that afternoon's program, the stewards then notify the mutuel department and the clerk of scales. During the afternoon races, the stewards must lock the betting windows once the horses break from the starting gate. They observe the running of each race for any rule infractions that may be incurred during the running of the race. When the race has been completed, they will determine the correct order of finish, and inform the mutuel department of the correct order of finish and then they will declare the race official.

While racing commissions deal with a variety of groups and organizations in the racing industry, their closest relationship outside the immediate staff is usually with the board of stewards.. The board of

stewards/judges traditionally is composed of three persons. One or more is a commission employee. Some jurisdictions have one commission steward/judge and two association stewards/judges. Some jurisdictions have two commission stewards/judges and one association steward/judge and others have all three who are commission stewards/judges. The board of stewards/judges acts as a tribunal and is the entity primarily responsible for enforcing commission rules and regulations. Regardless of the number of stewards/judges who are commission employees, commission approval is required of those selected and hired by track management. Keene Daingerfield, now a retired steward, spent much of his adult life as a thoroughbred racing official. At the time of his retirement, he was the most highly-regarded steward in the sport of thoroughbred racing. A commentary written by Mr. Daingerfield and published in the RCI's October, 1985 Bulletin, is reprinted below. It describes the attributes that stewards/judges should possess, how hearings should be conducted, and the desired relationship between stewards/judges and the racing commission. The article was written from the perspective of a thoroughbred steward, but the principles apply to stewards and judges at all types of racetracks.

(In a nutshell, the stewards "interpret and enforce the rules of racing.")

Appointment and/or Approval of Stewards

Today, rules in many states provide that all three stewards be named by the state racing authority, regardless of who is ultimately responsible for their remuneration. Some commissions name two, and others still adhere to the older system of naming one steward and approving the appointments of the two selected by the racing association.

Regardless of the method provided, the proper conduct of racing requires the services of not one, not two, but three competent stewards. Actually, the term "steward representing the racing commission" or the racing association is a misnomer. It is the prime responsibility of the stewards to reconcile the similar, but seldom identical interests of, first, the public, and then horsemen, jockeys, state, and management.

At this point, it should be noted that a commission is under no obligation to approve the nomination of any candidate whom it believes to be lacking in competence or independence. The term "house man" is one of opprobrium among racing officials, and I honestly believe that the issue of undue influence on the part of management has been exaggerated. Stewards worthy of their salt resent and resist all efforts to influence their decisions, and responsible management realizes that decisions made for the immediate profit of the track will eventually come back to haunt it.

The stewards' stand is very much a troika. The term "presiding steward" is something of an anachronism today. While in the nature of things, one individual is likely to emerge as spokesperson and apparent leader, one person's vote is worth no more than that of one's colleagues'.

The "one-man stand" is a situation fraught with danger, and a two-man stand is hardly better. The most congenial and capable stewards are capable of disagreement, and an impossible situation arises when the deciding vote must be cast by someone who might as well toss a coin to reach a decision.

While relatively few decisions are difficult to make, and stewards tend to agree in the great majority of cases, every experienced steward has, at some time or other, gone home unhappy after being outvoted only to re-examine the tapes next day, and thank his lucky star that wiser counsel had prevailed.

Qualifications for a good steward are many. First of all, obviously, is integrity. A man possessing the other requisite qualities but lacking integrity might be functionally an efficient steward, but would constitute a real and instant hazard to the well-being of racing.

Judicial temperament--the ability to see both sides of a question--is a must. It would appear to be an inborn quality, but I suppose it could be nurtured and developed.

Patience comes much higher on the list than one might suppose. A steward's job is not for hot-heads. A person who believes himself aggrieved, if not permitted to air his grievance, will repeat it with embellishments to the next dozen people he meets. Everyone who comes into the office, down to the lowest hotwalker, is entitled to courteous treatment. Direct confrontation should be avoided whenever possible without abandoning principle. Stewards must realize that once they issue a direct order to a licensee, they cannot back down. Stewards, like umpires, need not have "rabbit ears." The direct insult cannot be ignored, but it isn't really necessary to strain to hear what the loser mumbles as he slams the door.

The steward must cultivate his/her memory. One needs to be familiar with the rules in one's own state, and to have at least a minimal knowledge of the rules in other jurisdictions. One should maintain cordial relations and day-to-day contact with the racing secretary's office, various security agencies, the pari-mutuel department, and, as the occasion demands, with other facets of track management. One should stand ready to discuss racing matters with stewards and racing commissions in other states, especially those with whom there is a regular interchange of horses.

Traditionally, formal education has not been of prime importance, and many excellent stewards have come up through the ranks with a minimum of schooling. That condition is changing. With the expansion of racing, the increasingly litigious nature of its participants, and the fantastic amounts of money involved, the stewards' duties have become increasingly complex. One must be able to express oneself clearly and concisely, both orally and in writing. One must speak grammatically, as well as be familiar with racetrack patois. One must be capable of writing intelligible rulings and commission reports, which are necessary almost everywhere. One should be able to write a business letter, and to have some knowledge of the legal precedents that appear in the books on racing law issued by the RCI. More importantly, one must be able to conduct hearings in compliance with the rules.

Stewards Hearings

Prevailing rules in various states establish procedures for the conduct of stewards' hearings. Usually, hearings involving routine riding offenses are treated informally, with stewards reviewing tapes of a race in which an infraction may have occurred with the riders involved, and, if the alleged offender wishes, a member or members of the Jockeys' Guild committee. This type of hearing is not, as a rule, recorded.

Offenses involving trainers, owners, stable employees and others require that the alleged offender be notified in writing as to the time and place set for hearing, and of the specific rule or rules which one is alleged to have violated. One is also notified that one may be represented by counsel. In practice, trainers involved in routine offenses carrying minor penalties are generally willing to waive formal hearings. They are, however, entitled to their day in court if they desire.

These hearings are taped, or, in cases in which a severe penalty may be evoked, a court reporter's services may be required. Witnesses are sworn. Conduct of such hearings is usually the responsibility of the state steward, or presiding steward, if one is so designated. The quasi-judicial nature of the proceedings should be stressed, and it should be made clear that rules of evidence such as might prevail in a court of law need not be observed. If counsel is present, he/she should not--repeat not--be permitted to take over the proceedings. One may make statements, present evidence, cross-examine witnesses, and may enter objections which will appear in the record; but one must not intimidate or inhibit the stewards.

It might be remarked here that today the stewards must be prepared to defend their every action, before the commission or court. They must not be discouraged in conduct of their duties by the threat of legal action. If due process is observed and the amenities are satisfied, it is highly unlikely that any court will overrule the decisions of a duly constituted regulatory body.

Watching the race: Disqualifications

Since from the public's point of view, the most important function of the stewards is to determine whether something has happened in a race that would justify an alteration of the order of finish, the watching of the race deserves some particular consideration.

The watching of the race may be said to begin when the entries are released and past performances are available. While the checking of weights and eligibility is primarily the responsibility of the racing secretary, that office is not infallible, and it is advisable for the stewards to run their own quick check. Rudimentary as it may appear, it is also wise to check distances on the racing program against the condition book and over-night entry sheet. The running of a race at a wrong distance is not unheard of, and is highly embarrassing to all concerned.

Stewards should also review the past performances, not to attempt to pick a winner, but to get some notion of how the race will be run: which horses have speed, which come from behind, which may have bad habits which might lead to interference.

Stewards should check the post parade to assure that all horses make their proper parade; to note deviations from programmed colors; to check apparent soundness; and, of course, to be on the alert for runaways and/or lost riders. Stewards must be equipped to communicate with the starter, veterinarian, and outriders in the event of an emergency.

In watching the actual running, stewards should focus on the contention, rather than watching a horse on the lonesome lead. Frequently, interference can be anticipated before it actually occurs. It is also wise to have some idea as to where the favorite, or favorites, are running.

It is customary for one steward to watch the head-on shots from the various camera positions, while the other two watch the running. With today's videotapes, it is possible to re-run a particular segment of tape several times before the horses have returned to the unsaddling area. If any steward feels that an inquiry is called for, the inquiry sign should be flashed as quickly as possible. The procedure involved in determining the outcome of an inquiry, or of an objection lodged by the rider, trainer, or owner of a losing horse, includes a check with the patrol judge nearest the point where the incident is alleged to have happened; conversation with the riders involved; and, of course, repeated re-running of the tapes

until a decision is reached. While time is of the essence, it is imperative that the time element not be permitted to force a hasty decision.

Contrary to the opinion of some, stewards--or at least those with whom I have worked--are not seeking an excuse to disqualify a horse, but rather a reason not to do so. In borderline cases, or cases where both horses may be partially at fault, it is greatly preferable to let the result stand. In many races, some incidental contact may take place which could conceivably justify the disqualification of the offender, but which should not do so. If horse "A," closing fast from last place, drops in towards the inner rail too quickly when assuming the lead and causes the tiring pace-setter, horse "B," to steady momentarily before "A" goes on to win by a substantial margin, while "B" holds on to be second, no action is warranted. Of course, if "B" is beaten for the place, things take on a different complexion. If the winner, going to the first turn, comes out to bump the horse which eventually finishes last, no action need be taken unless the interference is flagrant and endangers the safety of the bothered horse and its rider. If the bothered horse cannot be moved into a money position I personally am extremely reluctant to disqualify. An offending jockey may be penalized even if his/her number does not come down.

The Kentucky rules states, "If in the opinion of the stewards, a foul alters the finish of a race, any offending horses may be disqualified by the stewards." This rule comes under occasional fire as vesting too much authority in the stewards; but, after all, they are there to exercise their expertise. It is palpably impossible to draw up hard and fast rules, since every case is different. In a number of states, the stewards' decision in incidents taking place during the running of a race is not subject to appeal, just as the decision of an umpire concerning balls and strikes, safe or out, may not be appealed. Judgment calls are best left to those who are best qualified to make them.

Stewards and Racing Commissions:

The relationship between the commission and the stewards it appoints or approves should be cordial. While it is probably impolitic for the commission to be in a posture of looking over the stewards' shoulders, it is far better for a commissioner to ask questions, rather than listening to the comments and criticisms he will inevitably hear, without investigating them. An atmosphere of mutual trust and respect is necessary for the team to function effectively.

In the matter of penalties for those adjudged guilty of rule violations, I am convinced that penalties should be set by the stewards, rather than the offender being referred to the commission for its action. These penalties are, of course, subject to appeal to the commission. There are several reasons why stewards, not commissioners, should set penalties. First, and without intent to derogate commissioners, I would submit that the stewards are closer to the case, and should be better qualified to reach a determination. Second, most commissioners are busy people whose time need not be taken up with routine matters. Third, but not least, is the invidious legal position of the commission which hands down a suspension or fine, and is then put in the position of hearing an appeal from its own decision.

Appeals

"Justice deferred is justice denied." Every commission should adopt whatever legal means are at its disposal to avoid the unconscionable delays which occur all too often these days.

No one would suggest that stewards are always right, or that they merit support of the commission when they are demonstrably wrong; yet commissions should be supportive of the stewards whenever possible.

Rules and Rule-Making

A steward who takes no part, and no interest, in the rule-making process is shirking his duty. The argument that "We don't write the rules, we just enforce 'em," doesn't scan. Rules which are unenforceable, or which no one seriously intends to enforce, don't belong in the book. Rule books should be completely reviewed, and revised where necessary, at intervals no greater than five years. Rules enacted piece-meal on the basis of a real or fancied emergency are often found to be in direct contradiction of an existing rule. Rules enacted on the basis of expediency are apt to be bad rules.

The following article by the late Marshall Cassidy, was originally published in the first Racing Commissioners' Manual in 1966. It briefly describes the duties and qualifications of the key officials at thoroughbred, quarterhorse and harness tracks. It should be noted that in harness and quarter horse racing, it is a common practice for stewards/judges to serve as placing judges in addition to their other duties. This practice is also frequently followed at smaller thoroughbred tracks as an economy measure. Tracks which conduct only quarter horse racing usually do not have patrol judges, since the races are run for relatively short distances on the straight-away.

RACING OFFICIALS: VITAL PERSONNEL

The Veterinarian

Another key official is the commission veterinarian. The official veterinarian, who is sometimes employed by the commission and in other cases employed by the track, has the responsibility to inspect all horses which are running each day to be sure that they appear to be physically sound. During the racing performance, the veterinarian is also available to inspect horses that become lame or are injured in the paddock, post parade or starting gate to determine if the injury is minor or if the horse should be scratched (removed) from the race. The official veterinarian also draws the blood samples from winning horses and supervises the collection of samples for drug testing.

The primary duty of the commission veterinarian is to collect the test samples from horses after they have won a race and by doing this he/she will either collect a urine sample or a blood sample that is then sent into the proper testing laboratories. The commission veterinarian also examines the soundness of horses that are participating in the races and if in the veterinarian's opinion a horse is unfit to race, he/she will contact the stewards and inform them of this at which time the horse may be scratched.

Track Veterinarian

The track veterinarian examines sick or injured horses, maintains a list of sick or injured horses, evaluates horses during their warm-ups and examines all horses participating in the races to ensure that they are in good condition.

Commission Investigator

The commission investigator aids the stewards in determining whether or not anyone would be ineligible to receive a license. If a rule infraction occurs, he investigates and reports his findings to the stewards.

Racing Secretary

One of the association officials is the racing secretary. The racing secretary has a very broad set of duties, one of which is to keep a record of all of the horses that are stabled at the track. The racing secretary keeps the registration papers of all horses at the track and records all wins on those papers. He/she will also write conditions, accept entries in those races, and supervise the drawing of the races. The racing secretary then compiles the racing program for each afternoon's races and checks the racing program to make sure all the information is correct. At smaller tracks the racing secretary may also serve in other official capacities.

Although racing secretaries are employees of racing associations, they have an unrelenting responsibility to the public to write races that are fair and competitive. It is his/her duty to create stakes programs that will attract the best available quality of horses. He/she should strive to establish dates which are not in conflict with stakes races in nearby racing areas.

To be eligible to serve as the racing secretary, one should have had experience in a racing secretary's office. One should have sufficient experience handicapping horses to assure evenly matched horses that would satisfy the owners in handicaps. One should have had experience in several areas where different class racing is conducted.

The racing secretary should be amiable – open to conviction if proved wrong or questioned – dignified, impartial but firm in attitude, should know the duties of everyone working in his/her department and firmly control their employment activities. The racing secretary should never serve concurrently as a steward during any racing circuit.

Placing Judges

Placing judges are also association officials. It is the responsibility of the placing judges to ensure the correct order of finish following the running of each race. They then inform the stewards of the correct order of each race. (The duties of the placing judge and the stewards are usually combined at smaller racetracks.) While the placing judges are considered somewhat less important than before the installation of cameras and video patrol, they are indeed very important when the camera fails to identify each animal. Colors, of course, do not show in black and white pictures, and occasionally the saddle cloths and arm numbers are obscured. There is also the possibility that the camera may not function properly. Obviously, placing judges should have excellent eyesight, and should have an intimate knowledge of all racing colors. They should have sufficient experience and judgment to reach proper decisions, even under tense circumstances. Placing judges should study the equipment carried on each starter, such as blinkers and bandages, as well as the racing colors, so that in the event of need for identification, they will be well fortified.

Patrol Judges

Patrol judges are also association officials. The patrol judges are stationed at strategic positions around the racetrack and observe the race. During the running of the race, if they view an infraction, they will contact the stewards immediately following the race in order to aid the stewards in determining if a

disqualification may or may not be made. Patrol judges serve as the eyes of the stewards. It is very important that they have a comprehensive knowledge of racing riding. They should be able to determine the proper demeanor of the jockeys during the race. Their training should include locations where patrol judges are stationed. They should have knowledge of the horses committed to their observations in order to quickly decide whether such horses are properly ridden. They should be able to quickly recognize careless, rough, and inexpert riding; and review the videotapes for confirmation of their opinions. They must be experts in reading the videotapes for signs of improper or careless riding.

Paddock Judges

Paddock judges are in charge of all activities in the saddling paddock before each race. They are responsible for having all jockeys and valets in the paddock at the proper instant they are needed. They are also responsible for ensuring that all horses have arrived from the receiving barn and are in the paddock at the right time. They have control over the individuals who may be admitted into that area. It is also the paddock judge's responsibility to see to it that only the people that are associated with the horses are allowed to be in the paddock prior to the running of each race. They give the trainers orders necessary to take the horses to their stalls for saddling; to jockeys to mount the horses and to parade around the walking ring in the paddock. They start the parade to post.

The paddock judge is responsible to see to it that each horse is saddled with the proper post position number. The paddock judge will then send the horses on to the track for the running of each race at the assigned time and in the proper order.

Paddock and patrol judges are required to notice and to keep a record of every person that may either be in the saddling stalls with the horse or be in communication with the jockey, owner or trainer. They must be alert to any act that might affect the race.

The paddock judge, if serving as a patrol judge at the same time, leaves the paddock with the horses and proceeds to the specific tower to which he/she is assigned. In each tower, there is a phone that enables the patrol judge to make an instant report to the stewards of anything that may have happened in the area. (The paddock judge must have all the qualifications of a patrol judge, and must have the ability to determine the condition of a horse by vision.)

Clerk of Scales

Another association official is the clerk of scales. Clerks of scales hold very important positions in that they are in complete control of the jockeys' room and all who work there, as well as all equipment. The clerk of scales' main duty is to see to it that each jockey carries the weight that it is assigned for the horse he/she rides. The clerk will weigh the riders prior to the running of each race and again following each race to determine that they have the correct weight. At the larger racetracks, they normally have a crew consisting of an assistant clerk of scales; the custodian of the jockey room; a "colors man" who cares for and stores the racing colors; a masseur; a guard at the door; a counterman at the lunch counter; and sixteen (16) valets.

Jockey's Room Custodian

The jockeys' room custodian is another association official. These are not racing official positions, but ones which have responsibility to see that there is no connivance among riders or their valets; that number cloths, arm numbers, proper colors, and, in fact, all equipment is in order. The main responsibility of this official is to be certain that each rider has his or her tack prepared and placed with the proper saddle towel for the horse that they are going to ride in each race. The jockeys' room custodian maintains all of the racing colors and checks the riders for the correct colors for each race. The clerk of scales will send the riders out to the paddock, the paddock judge who is another association official, will call the riders to come out to the paddock to mount the horses.

Starter

Another racing association official is the starter. The duty of starters is to ensure a fair start for each race. It is the responsibility of the starter to have the horses loaded in the starting gate in the correct order. He is to keep a list of any horses that need to be schooled at the starting gate if they have been fractious in the gate. Once he has the horses loaded, he then dispatches them from the starting gate at which time the mutuel windows are locked and the race is on.

A starter should know all the rules of racing pertaining to the start, and should have a very good knowledge of horses. Starters should be strict disciplinarians over their assistants and the jockeys. Starters should be able to properly teach young horses to behave at the starting post and to break away from the gate. They should study the behavior and characteristics of all horses which race in order that they may direct their assistants how best to handle them when fractious or sluggish to start. Starters should have experience as assistant starters. They should be required to attend the schooling of horses every racing day to properly direct the work of their assistants.

Assistant Starters

Each starter will supervise association officials called assistant starters. The responsibility of the assistant starter is to load the horses into the starting gate, maintain control of the horse in the starting gate and assist it in breaking from the gate correctly.

Identifier

The identifier is another association official. Horse identifiers are responsible for the correct identity of each starter. Before a race, horse identifiers examine all horses and compare them to the composite pictures that make up the animal's record. These pictures have a complete picture of each side of the horse, one from the front and one from the rear, and a record of any indentures, cowlicks, permanent scars, or other highlights.

Again, as the horse reaches the paddock for the race, it is examined for identity and soundness. The identifier will use the horse's registration certificate and tattoo number to verify the identity of each horse as the horses are brought to the paddock. Each horse must have been tattooed on its upper lip with the code letters and numbers of its registration. (These numbers are also examined, but are frequently faded and cannot be accepted as final authority for identification.)

Official Timers/Clockers:

Another association official is the official timer. The official timer will time each race from start to finish and keep a record so that this time can be published in the Daily Racing Form or other racing publications. In addition to timing the races in the afternoon, the timer also times each of the horse's

workouts in the morning so that an accurate record is kept of the morning workouts. Some bettors use this information to determine their wagers.

While the performance of official timers and the clockers is physically similar, the specific nature of their service is different. Official timers should be individuals of unquestioned competence, reliability and recognized good character. They must record the time of each race and verify electric timing by hand-timing in case of malfunction.

Workouts mean nothing to racing officials and to the public unless they are accurately determined and reported. It is self-evident, therefore, that clockers should be capable and absolutely reliable. They should not engage in touting, and should not be permitted to sell information about workouts. The importance of clockers cannot be overestimated.

Clockers worthy of the name must have the ability to identify all of the horses in training at the racetrack to which they are assigned. This means the color of the horse, markings, actions (“way of going”), age, sex, etc. Clockers must know the individual practices of the trainers. For example, in working their horses, some trainers have horses break from the 3/4 pole, some from the 5-1/2 pole, some from the 4-1/2 pole, some the 3/8 pole and some from the 1/16 poles. A clocker must be able to recognize horses certain trainers try to “hide”. Some examples of trickery used to deceive the clockers are: when normally green blinkers, containing the letter “F”, are associated with a certain horse and the horse appears with red blinkers, containing the letter “M”, deception is possible; when there is a switch in exercise boys, deception is possible; when bandages, not normally associated with a horse, appear on that horse, deception is possible; when the wrong name or names are given at the starting gate, deception is absolute.

With only rare exceptions, the ability of horses to perform in the afternoon is determined by the extensiveness of their training in the morning.

The racing public is entitled to all information obtainable regarding a horse’s condition, and this information must be accurate. The racing enthusiast, who makes an effort to handicap races, and the professional handicapper will determine selections by only two criteria: the horse’s past performance to indicate past capabilities, and the morning workouts as an index of the horse’s current condition.

Good clockers work from dawn to dusk. They maintain reference books with all the markings of the horses stabled at the race meeting at which they serve, and keep such records up-to-date by daily checking the claims and sales and the incoming and outgoing horses of the previous day. Clockers time and identify horses in the morning. This position requires individuals of great experience and integrity.

Outriders

The association will also have two official outriders. These are the “red coat” riders employed by the racing association to escort the starters to the post and to assist after the race if difficulty is encountered by a jockey. Outriders should be experienced horsemen and completely impartial. Their duties are to lead the post parade and assist any jockey should one of the horses in the race become unruly on the way to the starting gate. They will assist that rider in taking that horse to the starting gate. Outriders are not permitted to lead any horse that has not demonstrated fractious actions. They are duty bound, however, to lead a horse which might cause injury to the jockey or the horse itself. After the horses are

loaded in the starting gate, the outriders will assume a position on the track such that if any horse were to break through the front of the starting gate or get loose, they can regain control of that horse in order to prevent it from being injured or injuring anyone.

Pony Riders

These are mounted riders privately employed by an individual, either an owner or a trainer, to assist the horse to the post and back to the stand after the race. Pony riders are in the same general category as grooms or stable boys.

Handicapper

An official handicapper is another association official. It is the responsibility of the handicapper to determine the weights that are to be carried by horses in handicap and stakes races. (Often at smaller racetracks the handicapper and the racing secretary will perform the handicapper's duties.)

Horseman's Bookkeepers

Paymasters of Purses are employees of racing associations whose duties vary in accordance with the size of the organization. They normally keep horsemen's accounts placed with associations, and issue horsemen's badges. They accept claims and claiming money. They check on the eligibility of a claimant and present claims to the stewards, or their delegated representative. If more than one claim is received for the same horse, the stewards draw the winning claim by lot and issue an order for delivery to the new owner.

Mutuel Manager

The association is also responsible for having a mutuel manager. Once the stewards declare a race official, the mutuel manager must then make the proper pay off to the betting public after each race.

Horseshoers/Farriers

Farriers are required to be licensed. Most commissions have established tests and/or processes which determine the capabilities of horseshoer license applicants.

****Eye Tests For Officials:** Commissions should require eye examinations by competent oculists for officials charged with judging races. They should annually obtain signed statements that such officials have 20/20 vision and no color blindness.**

GLOSSARY OF RACING AND PARI-MUTUEL WAGERING TERMS

A

Across the Board: A method of betting whereby a horse is bet to win, place and show, usually in the same amount.

Added Money: The money added by the racing association conducting the race meeting to the various fees paid by the owners of the horses or greyhounds participating in the race. Added money forms part of the purse that is divided amongst the owners of the first three or more horses in a race. **Age:** Of a horse, its existence through a number of calendar years, calculated from the year in which it was foaled, it being presumed that the horse was foaled on January 1st of the year in which it was foaled. **Agent:** 1. A jockey's agent. 2. An authorized agent.

Allowance: Weights and other conditions of a race.

Allowance Race: A race where there are both allowances and penalties, according to the condition of the race; on monies won or races won, or on the date of the last race or races won.

Allowance Stakes Race: An allowance race with the usual stakes conditions, such as subscription, entrance and starting fees.

Also Eligible: A number of horses which have not been drawn for inclusion in a race, but which become eligible if entries which are eligible are scratched.

Also Ran: Of a horse's finish in a race, elsewhere than first, second or third; not in the money.

The American Racing Manual: An annual publication compiled and published by the Daily Racing Form, dealing exhaustively with racing events of the previous year, and recording in great detail the history of the sport in North America and elsewhere.

The American Stud Book: The record book of all North American thoroughbreds.

Ankle: That part of a horse's leg between the cannon bone and the pastern.

Appaloosa: Horses of this breed are identifiable by their distinctive color patterns. **Apprentice Jockey:** A jockey who is allowed by the rules to carry less than the prescribed weight because of his inexperience.

Arabian: It is widely believed that the Arabian horse is a descendant of the will Libyan horse that came from Africa. The breed was then taken to Palestine and eventually to Arabia.

Association: Person or persons, corporations or legal entity conducting a recognized race meeting.

Authorized Agent: An individual appointed by a written instrument to take on behalf of another person in matters pertaining to racing and the collection of purse money. **B**

Bandages: Wrappings around a horse's legs, used to brace and strengthen its legs.

Bar Bit: One in which the mouthpiece is an unjointed metal or leather bar.

Barn: See stable.

Bar Plate: A horseshoe with a bar across the heel, with or without stickers. Horses are shod with bar plates for the protection of quarter cracks.

Barren: Sterile.

Bars: On a jockey's colors, horizontal bands on the sleeves.

Battery: A small electrical hand battery, used to excite a horse to make it run faster, use of which is against the rules.

Bay: A color of a horse which varies from a light yellowish tan (light bay) to a rich dark shade, almost brown, and between these, a bright mahogany (blood bay). Bays invariably have black manes and tails and black points.

Bear In: Of a horse, to turn towards the inner rail.

Bearing: Part of the horseshoe in contact with the hoof.

Bear Out: Of a horse, to run towards the outside

Bell: 1. The signal that accompanies the opening of the starting gate. 2. The signal that accompanies the shutting off of betting on a race.

Belt: On a jockey's colors, a narrow strip at the bottom of the jacket.

Bend: Either end of an elliptical racetrack.

Bit: A metal bar or bars held in a horse's mouth by which, being attached to the reins, the horse is guided and controlled.

Blanket: The covering on which a greyhound's post position number is displayed.

Blanket finish: A close finish, in which it might appear that the leaders could be covered with a blanket.

Blaze: A white patch on a horse's forehead, larger than a star. If spread over the entire face, the horse could be described as having a white face.

Bleeder: A horse that bleeds from the nose after or during a race or workout.

Blinkers: Equipment of a horse, covering part of the horse's eyes, used to make the horse concentrate during a race.

Break: 1. The start of a race. 2. To leave the starting gate. 3. To prepare a horse for being ridden.

Breakage: In pari-mutuel wagering, the odd cents left over, after the successful bettors have been paid in multiples of .20 or .10 or .05 on the dollar. The amount of breakage varies among different racing jurisdictions. The breakage is retained by the racing association or split between it and the taxing authority unless otherwise specified by law.

Break A Maiden: Of a horse, to win its first race.

Break In: Of a horse at the start, to veer towards the inner rail.

Break In The Air: Of a horse, to leap up instead of ahead at the start from the starting gate, thus losing ground.

Break Out: Of a horse at the start, to veer towards the outer rail.

Bred: A horse is bred at the place of his birth. Also, the mating of a horse.

Breeder: 1. Owner of thoroughbred dam at time foal is dropped or the owner of a quarter horse dam at the time it is conceived. 2. The owner or lessee of a greyhound dam at the time the greyhound is whelped (born).

Breeding Place: The location of whelping.

Breeze: 1. An easily won race. 2. An easy pace at which a horse is worked.

Broodmare: A mare used for breeding purposes.

Brown: A color of a horse between dark bay and black, which can readily be distinguished from these colors by the fine tan or brown hairs on the horse's muzzle or flanks.

Bucked Shins: Inflammation of the membrane on the front of the cannon bone in a horse's legs.

Bug: Apprentice allowance, so called because the right to the allowance is indicated by an asterisk in the program, which race trackers think resembles a bug.

Bug Boy: A slang term for an apprentice jockey because of the asterisk by the jockey's name in the program.

C

Carryover: Non-distributed pool monies which are retained and added to a corresponding pool in accordance with these rules.

Chalk Horse: A. favorite.

Chart: The report of a race, giving all important details, as published in racing publications.

Chestnut: A color of a horse varying from a dark liver color to a light washy yellow, between which come the brilliant red and copper shades.

Chevrons: On a jockey's colors, arrowhead-like markings on the sleeve.

Chute: A straight prolongation of any part of the racing strip, from which a start may be made.

Circuit: 1. All the racetracks in a given jurisdiction. 2. A number of racetracks in a given geographical area which cooperate by agreeing on racing dates so that horsemen are inconvenienced as little as possible in shipping from one track to another as the season progresses.

Claiming Race: A race in which any horse starting may be claimed (purchased for a designated amount) in conformance with the rules.

Claiming Price: The amount of money for which a horse may be purchased out of a claiming race.

Commission: 1. The agency with the authority to regulate racing. 2. A fee for services rendered.

Condition: Of a race, one of the qualifications of a race which makes a horse eligible to enter.

Condition Book: A booklet published by a racing association, which sets out the conditions, purses and description of races to be run at a meeting conducted by it.

Conformation: Of a horse, its build and structure.

Coupled Entry: Two or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes.

Course: The track over which horses race.

D

Dead Heat: The finish of a race in which the noses of two or more horses reach the finish line at the same time.

Declaration: The act of withdrawing an entered horse from a race prior to the closing of entries.

Draw: 1. The process of assigning post positions. 2. The process of selecting runners in a manner to ensure compliance with the conditions of the rules of racing.

Driver: A person who is licensed to drive in standardbred races.

E

Ejection: The removal of a person from the premises of a racetrack, simulcast facility or other facility under the jurisdiction of the Commission.

Elimination Heats: The individual heats of a race in which the contestants must qualify for a final heat.

Entry: 1. A horse made eligible to run in a race. 2. Two or more horses entered in the same race, which have common ties of ownership, lease or training. **Exacta:** 1. In a designated race, the betting on two horses to finish first and second in that order. 2. The race designated as the one on which exacta betting is permitted. Also known as a perfecta.

Exclusion: The act of preventing a person from entering or remaining on the premises of any association and/or simulcast facility under the jurisdiction of the Commission.

Exhibition Race: A race on which no wagering is permitted.

Expired Ticket: An outstanding ticket that was not presented for redemption within the required time period for which it was issued.

F

False Start: Any race which fails to start as properly defined by the rules.

Feature: Of a day's racing, the most important race or races on the program.

Field: 1. All of the horses that compete in a race. 2. A number of horses that are grouped together as an entry for the purposes of pari-mutuel betting.

Finish: The order in which the runners complete the race.

Foreign Substance: Any drug, medication or other substance uncommon to a horse's body that can or may affect its performance or which does or may affect sampling or testing procedures.

Furlong: One-eighth of a mile.

Futurity Race: A race for younger horses, usually two-year-olds, in which nomination fees are paid and entries are made a considerable time before the running of the race, often before the entered horse is born.

G

Gait: Of a horse, its pace. A horse has three normal gaits: the walk, the trot and the canter (gallop).

Gate: 1. The starting gate. 2. The total paid and unpaid admissions to a racetrack.

Girth: A band around a horse's body to prevent the saddle from slipping.

Grounds: See premises.

Guest Association: 1. The racetrack that receives the simulcast signal of races that are conducted at another track. 2. An association that offers licensed pari-mutuel wagering on contests conducted by another association (the host) in either the same state or another jurisdiction.

H ---

Hand: The unit of measurement approximately four inches in length of the height of a horse.

Handicap: A race in which the weights to be carried by the horses are assigned by the racing secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.

Handle: 1. The amount of wagers placed in a pari-mutuel pool or the total of all pools. 2. The aggregate of all pari-mutuel pools, excluding refundable wagers.

Horse: 1. Any equine (including and designated as a mare, filly, stallion, colt, ridgeling or gelding) registered for racing; specifically 2. An unneutered (entire) male five years of age or older.

I ---

In Harness: Occurs when horses are hitched to a dual shaft, dual wheeled racing vehicle.

Inquiry: An investigation by the stewards of potential interference in a race prior to their declaring the result of said race official.

Interference: A physical act of a horse that obstructs or impedes the running of another in a manner which appears to be intentional and other than normal bumping.

Intertrack Wagering (ITW): Wagering on simulcasts from a "host" racetrack by patrons at a "receiving" racetrack. If both the host and receiving racetracks are located in the same state, ITW is more narrowly defined as intra-state ITW.

J ---

Jockey: A professional rider licensed to ride in races.

K ---

L ---

Laminitis: Inflammation of the sensitive part directly under the horny wall of a horse's foot.

Lead: A strap or rope attached to a horse's halter to lead it.

Lead Pony: A horse used to lead horses in the post parade.

Lessee: A person holding a registered lease certificate or notarized lease agreement for the racing or breeding of a horse or greyhound in his/her name.

Lease Agreement: A lease or other written document stating the names of the lessee and lessor and the terms and purpose of the lease.

Licensee: Any person or entity holding a license from the Commission to engage in racing or a regulated activity.

M

Maiden: A horse that has never won an official or recognized race as defined in breed registry rules.

Maiden Race: A contest restricted to non-winners.

Matinee: A schedule of races conducted in the afternoon.

Meeting: The specified period and dates each year during which an association is authorized to conduct racing by approval of the Commission.

Minus Pool: Occurs when the amount of money to be distributed on winning wagers is in excess of the amount of money comprising the net pool.

Mutuel Field: Two or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes because the total number of betting interests exceeds the number that can be handled individually in the pari-mutuel system.

N

Net Pool: The amount of gross ticket sales less refundable wagers and statutory commissions.

No Race: A race canceled for any reason by the stewards.

Nominator: The person or entity in whose name a horse is nominated for a race or series of races.

O

Objection: 1. A written complaint made to the stewards concerning a horse entered in a race and filed not later than two hours prior to the scheduled post time of the first race on the day in which the questioned horse is entered. 2. A verbal claim of foul in a race lodged by the horse's jockey, trainer, owner or the owner's authorized agent before the race is declared official.

Off Time: The moment the timing device starts at the beginning of a race.

Official Order of Finish: The order of finish of the horses in a contest as declared official by the stewards.

Official Race: A race in the presence of duly appointed racing officials for which purse monies are paid and/or pari-mutuel wagering is conducted.

Official Schooling Race: Trial races supervised by the Commission which are conducted for qualification purposes, but on which pari-mutuel wagering is prohibited.

Official Starter: The official responsible for dispatching the horses for a race.

Official Time: The elapsed time from the moment the first horse crosses the starting point until the first horse crosses the finish line.

Owner: A person who holds any title, right or interest, whole or partial in a horse or greyhound, including the lessee and lessor of a horse or greyhound.

P

Pacer: Of a horse in harness racing, one which paces, as opposed to one which trots.

Paddock: 1. An enclosure in which horses are saddled or greyhounds are weighed prior to the running of a race. 2. An enclosure in which horses scheduled to compete in a contest are saddled prior to racing.

Paint: This breed has broken or spotted color; was a favorite of Native Americans.

Pari-Mutuel System: The manual, electro-mechanical, or computerized system and all software (including the totalisator, account betting system and off-site betting equipment) used to record bets and transmit wagering data.

Payoff: The amount of money payable to winning wagers.

Performance: A schedule of contests conducted on the same day as authorized by the Commission.

Place: Of a race, to come in second.

Post Parade: The procession of horses from the paddock along the first stretch, usually passing the stewards' stand and the grandstand twice.

Post Position: The pre-assigned position from which a horse will leave the starting gate.

Post Time: The scheduled starting time for a race (contest).

Preferred List: A list of horses which have been excluded from previous races, each exclusion moving them up in preference for the next race for which they are entered.

Pre-race Examination: The inspection and examination of horses or greyhounds on the morning of the day they race/prior to the race by a veterinarian to ensure that they are fit and ready for racing and that their identities are as represented.

Program: The published listing of all contests and contestants for a specific performance.

Purse: The total cash amount for which a race is contested.

Q

Quarter Horse: Some historians believe that it is the oldest breed of horse in the United States. These blocky horses are of Spanish extraction. This breed is known for its great speed at one quarter of a mile.

R

Race: A contest between horses at a licensed meeting.

Racing Commission: A body charged with the duty of regulating and supervising the conduct of racing in its jurisdiction.

Racing Secretary: The racetrack official whose duty it is, broadly speaking, to write the races and to keep the registration papers and records of horses while they are on the racetrack.

Result: That part of the official order of finish used to determine the pari-mutuel payoff of pools for each individual contest.

Revoke: To withdraw a privilege or all privileges granted by any Commission through the issuance of a license, which results in the cancellation of the license.

Rule Off: The act of denying all racing privileges and barring a licensee or a horse or greyhound from the premises of the association for the violation of rules or other conduct that is undesirable.

S

Saddlecloth: The piece of fabric or plastic placed between the horse and the saddle.

Safety Helmet: The protective cap jockeys and other mounted persons must wear in races and workouts.

Sash: Of a jockey's colors, a diagonal stripe running from the right shoulder to the bottom left of the jacket on front and back.

Savage: Of a horse, to bite or attempt to bite another horse usually during a race.

Scratch: The act of withdrawing an entered horse from a contest after the closing of entries.

Show: Of a horse, to come in third in a race.

Simulcast: The live audio and visual transmission of a contest to another location for pari-mutuel wagering purposes.

Stable Name: A name used other than the actual legal name of an owner or lessee and registered with the Commission.

Stakes Race: A contest in which nomination, entry and/or starting fees contribute to the purse.

Standardbred: This breed became prominent in the United States during the period of colonial development when roads created the need for horse drawn wagons and carriages. Standardbred racing involves horses pulling drivers in two-wheeled sulkies at a trot or pace.

Steeplechaser: A horse mounted by a jockey that runs over a course on which jumps or other obstacles are placed.

Steeplechase Race: A contest in which horses mounted by jockeys run over a course on which jumps or other obstacles are placed.

Steward: A duly appointed racing official with powers and duties specified by rules.

Sulky: A dual wheeled racing vehicle upon which a driver sits to drive standardbred horses.

Suspend: The temporary withdrawal of any racing privilege granted to a licensee by the officials of a race meeting or by a Commission.

T

Tack Room: A room in which riding equipment is kept and often on a racetrack where stable employees live and sleep.

Tag: Claiming price.

Takeout: The total amount of money, excluding breakage, withheld from each pari-mutuel pool, as authorized by statute or rule.

Tattoo: The indelible marking of letters (to indicate year of foaling) and four numbers assigned to a horse on the inside of its upper lip or greyhound to assist in identification of the animal.

Teletimer: An electronic device that times the running of a race and the fractional times of the race, and flashes the times on the odds board automatically and immediately.

Thoroughbred: A breed of horse that originated from crosses between English mares of unknown ancestry and three stallions brought to England from the Mediterranean Middle East.

Totalisator: The system used for recording, calculating and disseminating information about ticket sales, wagers, odds and payoff prices to patrons at a pari-mutuel wagering facility.

Track: 1. A racing association that conducts a race meeting. 2. The grounds of a racing association upon which a race meeting is conducted.

Track Odds: The pari-mutuel odds paid on bets made at the racetrack.

Trainer: The employee of an owner who supervises, conditions and cares for racehorses or greyhounds and in many cases is charged as well with the duty of entering horses or greyhounds in his/her care in races which suit those horses or greyhounds. A trainer is licensed by the racing commission or governing body of racing.

Training Track: An auxiliary racetrack on the grounds of a racing association or on private property, used for workouts, schooling, starts and the like.

Trotter: Of a horse in harness racing, one that trots as opposed to one that paces.

V

Veer: Of a horse, swerving sharply to the right or left, particularly at the start of a race.

Vendor: A person who solicits the sale of goods or services to owners or trainers.

W

Walkover: A race in which only one horse starts or in which all the starters are owned by the same interest.

Weigh In: The presentation of a jockey to the clerk of scales for weighing after a race.

Weigh Out: The presentation of a jockey to the clerk of scales for weighing prior to a race.

Wire: The finish line of a race.

Workout: The exercising of a horse for the purpose of exercise, or to ascertain speed, usually in the morning.

Appendix A: Being a Board Member for the State of Colorado

KEY GUIDELINES FOR BOARD SERVICE

The following guidelines are intended to protect board members from any appearance of conflict or impropriety and to protect the credibility of the board as a body with regard to its processes, procedures, and conduct. Please do not hesitate to direct any questions or concerns directly to the Program Director or Division Management:

- ❖ Board members may NOT serve as expert witnesses for any Colorado civil cases. Please discuss any out of state expert witness work with the Program Director PRIOR to accepting a case to determine if there may be a conflict or appearance of conflict.
- ❖ While membership with professional organizations is encouraged, board members may NOT sit in a position of leadership in professional organizations. This includes, but is not limited to, being an officer of the organization or chairing a committee that makes policy related decisions, such as chair of a legislative committee. It is expected that a board member would discuss accepting a position within his or her professional organization with the Program Director PRIOR to making a decision to do so.
- ❖ Board members shall NOT discuss confidential board matters with others outside of the board. Do not talk about complaints against respondents or pending applications with *anyone* outside of the board.
- ❖ Case materials are sent electronically via secure means to board members and are confidential. All case materials shall be maintained in a secure location that is ONLY accessible by you as a board member. After the case materials have been reviewed, the documents should be deleted and destroyed.
- ❖ The Assistant Attorney General (AAG) represents the board and not the individual board members. Any questions for the AAG should be routed through the Program Director.
- ❖ Do NOT discuss board business with other board members outside of publicly noticed board meetings as doing so violates the Colorado Open Meetings law.
- ❖ At the conclusion of each board meeting, members will be required to attest that they have maintained the confidentiality of the business of the board since its last meeting and have disclosed any known conflicts during the meeting.
- ❖ Review only the case materials that are included in the packet that is sent to all board members. Do not conduct external research as this might subject you to be called as a witness in a court proceeding.

- ❖ Board members shall NOT represent a particular opinion or position as that of the board unless the board voted in a public meeting to issue the opinion or to take the position. Please contact the Program Director for guidance. Board members may certainly express their personal opinions, but need to be sure and qualify that it is a personal opinion or position and not that of the board. Be aware that when you are identified as a board member in the public or business settings, we find many people will assume your opinion is that of the board's so it is imperative you make the distinction clearly and often in these settings.
- ❖ All DORA positions to support or oppose legislation must be approved before such testimony is offered. Any board member seeking to offer a position in support of or opposed to legislation should seek authorization, PRIOR to offering a position, through DORA's legislative liaison using DORA's Legislative Review Form.
- ❖ Refer legal questions or questions regarding a complaint or the complaint process to the Program staff. Do NOT answer the questions on behalf of the board.
- ❖ Do NOT engage in individual conversations with a respondent or applicant who has a pending complaint or pending application. Refer all such calls to the Program Director. Please note that if such a conversation inadvertently occurs it MUST be reported to the Program Director immediately.
- ❖ Refer any media calls or inquiries to the Program Director. If you receive a media inquiry unrelated to board business that you believe is appropriate for you to respond to, please discuss with the Program or Director PRIOR to talking to the media.
- ❖ Please remember to notify the Program Director any time you have been asked to speak before a group regarding the board. It is often appropriate and helpful to have the Program Director or other staff person accompany you as a team approach is encouraged.
- ❖ Board members should be mindful of any appearance of impropriety or conflict when accepting gifts or other types of remuneration or reimbursement. For example, it would be inappropriate for a board member to accept tickets to a sporting event from an attorney who represents licensees before the board, even if the board member knew the attorney personally prior to serving on the board.
- ❖ Travel expenses related to service as a board member must be reasonable and necessary. Expense reports are subject to review by the Office of the State Auditor and outside entities, such as the media. Travel expenses should also be submitted timely so that staff can properly monitor the board's expenditures and budget.

- ❖ Remember that you were appointed by the Governor to your position on the board. If anything happens in your personal or professional life that could become public and reflect negatively on the board, the Division, the Department or the Governor, please contact the Program Director to discuss.

BOARD MEMBER ETHICS & RESPONSIBILITIES

Ethics

Each person appointed to a board is agreeing to be a part of the public trust. This means that he or she must put aside personal interests while undertaking these duties, and serve on behalf of the public at large. This promotes confidence in the honesty and integrity of the government. Board members are not to advocate on behalf of professionals or to protect professionals that they regulate. Neither are they to punish professionals or take action that is not authorized by the statutes and rules of the board. When determining the proper sanction in a matter, it is important to be impartial, thoughtful, and fair. As a Board member, this public trust role may be difficult to assume at first, as it may differ from your individual roles.

In general, you must not have any financial or other personal interest or stake in the matters or cases that come before the board. You must refrain from talking with complainants, respondents, or applicants about cases before the board. You must keep confidential all matters discussed with the board attorney in executive session and otherwise, so as not to waive the attorney/client relationship and privilege in court. Perception is paramount; even if you do not have an actual conflict, if it could be perceived as a conflict, you should behave as though a conflict has been identified.

The boards do business as an entity. Board decisions need to be made by the group, after discussion and deliberation. Depending on the board's statutory mandate, the meetings may or may not be open to the public. If the board meetings are conducted in a public forum, the public may attend and hear the board's discussion in order to gain a better understanding of the ultimate decision. Discussions between board members or with the public prior to the meetings undermine the governmental process and the public's confidence in government as a neutral decision maker.

Amendment 41 is a constitutional amendment that prohibits any public officer, government official, or government employee from soliciting, accepting, or receiving any gift or other thing of value having either a fair market value or aggregate actual cost greater than \$50 in any calendar year from a person unless the person has received lawful consideration of equal or greater value in return from the officer, member, official, or employee who solicited, accepted, or received the gift or thing of value. "Public officer" does not include a member of the general assembly, a member of the judiciary, any local government official, **or any member of a board**, commission, council or committee **who receives no compensation other than a per diem allowance or necessary and reasonable expenses**. In general, since DPO boards and commissions receive only a per diem and actual expenses, the gift ban does not apply. However, the gift ban does apply to board members who are also:

- ❖ State employees
- ❖ Local government officials
- ❖ Members of the General Assembly
- ❖ Public officers

Responsibilities

In furtherance of the boards' statutory duty to protect the public through effective licensure and regulation, board members must conduct themselves, as a body and as an individual member, in accordance with the Division of Professions and Occupations' Board Member Code of Ethics and section 24-3.7-102(2), C.R.S.

Specifically:

- ❖ Board members are expected to review the Division's Board Member Code of Ethics (see appendix) and execute and submit the acknowledgment form before serving in his or her appointed capacity. Each member will adhere to the Division's Board Member Code of Ethics and other applicable ethical obligations imposed upon public servants.
- ❖ Board members are expected to maintain a working knowledge of the board's laws, rules, policies and procedures and will at all times maintain a perspective consistent with the enforcement of the relevant law in the interest of consumer protection.
- ❖ Board members are expected to comply with conflicts of interest requirements, including but not limited to, Article 18 of Title 24, C.R.S., the Department of Regulatory Agencies' (DORA) Conflicts of Interest Policy, and the Division's Board Member Code of Ethics. Through recusal, members will decline to deliberate, participate, or otherwise attempt to affect the outcome of any matter before the board when doing so may result in a conflict of interest or the appearance of a conflict of interest. The boards may invoke the Rule of Necessity if recusal of a member or members results in a lack of the necessary quorum to make a determination on the matter.
- ❖ Board members are expected to comply with open meetings law as set forth in Article 6 of Title 24 and the individual board's practice act. Communications regarding board business with, and between, board members outside of board meetings is not permissible. Communications are to be directed to the Program Director. If a member of the public contacts a board member regarding board business, the board member should decline to engage in the conversation and refer the person to the Program Director. The board member may be required to recuse from further participation in the particular matter, depending on the contact. In addition, board members are expected to follow all other applicable communication protocols regarding dissemination of board or Division information, including maintaining confidentiality of privileged or confidential information, matters discussed in closed or executive session, and information subject to the attorney-client privilege.
- ❖ Board members are expected to attest and affirm at the end of each meeting that all conflicts of interest have been disclosed and that confidentiality of all board matters deemed confidential by law have been maintained since the previous meeting.

- ❖ Board members are expected to comply with the requirements of public records laws of this state regarding all board communications, including, but not limited to, correspondence, emails, social media, and telephone messages.
- ❖ Board members are expected to prepare for and attend scheduled board meetings.
- ❖ Board members are expected to attend annual training, including ethics training, provided by Division staff.

BOARD MEETINGS

Boards hold regularly scheduled meetings to address licensure and enforcement matters, policy issues, key communications to the board, rulemaking and other matters as necessary to carry out the provisions and purpose of its practice act.

- ❖ Board meetings are scheduled approximately one year in advance and are publicly noticed in accordance with section 24-6-402(2), C.R.S.
- ❖ Board meetings are open to the public except when the board enters into executive session as set forth in section 24-6-402, C.R.S, or the board, by virtue of its practice act, meets in closed session.
- ❖ Emergency or special meetings may be called at any time by the board's chair or president. Such meetings will be noticed in accordance with section 24-6-402(2), C.R.S.
- ❖ The public place or places for posting notice of board meetings is designated annually at the boards' first regular meeting of each calendar year in accordance with section 24-6-402(2)(c), C.R.S.
- ❖ Board meeting agendas are publicly posted in accordance with section 24-6-402(2)(c), C.R.S, and the board's practice act.
- ❖ Board staff will electronically transmit the agenda and materials to each board member for review at least 10-14 days prior to the meeting. Laptop computers are provided for each member's use during the board meeting in order to view the agenda. Board members are welcome to bring their personal laptop computers or tablets for use during the meeting.

- ❖ Minutes are taken by board staff at all regular, emergency and special meetings. The minutes are available for public inspection once approved by the board and in accordance with section 24-6-402(2)(d), C.R.S., and the board's practice act.
- ❖ At a regularly scheduled, noticed board meeting, the board will elect board leadership (Chair, Vice-Chair, Secretary, or President, Vice-President, etc.) in accordance with its practice act.
- ❖ To the extent practicable, "Robert's Rules of Order" (see appendix) govern the normal proceedings of the boards.
- ❖ All members of a board, with the exception of the Chair/President, may vote and make or second motions. A majority vote of those present is required to pass a motion. The Chair/President will only participate in making or seconding motions or voting as a member of a board as necessary to ensure a quorum or in other defined circumstances.

DIVISION'S BOARD MEMBER CODE OF ETHICS

Division of Professions and Occupations ***POLICY 80-30***

*BOARD MEMBER CODE OF ETHICS Effective Date: August 2, 2018 Reviewed: References: Sections 24-18-101, et. seq., and 24-3.7-102, C.R.S., DORA's Conflict of Interest Policy No. 2011-DORA-GEN-007, Federation of Associations of Regulatory Boards (FARB) "Model Board Member Code of Conduct" and

the relevant provisions of each organic act for those professions and occupations regulated by the Division of Professions and Occupations. Approval: Ronne Hines, Division Director*

I. PURPOSE OF POLICY

This policy establishes a code of conduct particular to members serving on Division of Professions and Occupations' (the "Division") professional and occupational regulatory boards, advisory committees, commissions or task forces that defines the expected character and conduct of such individuals and establishes a standard for removal from serving in order to sustain public confidence in the ability of a regulatory program to carry out its mission to protect the public health, safety, and welfare through the regulation of professions and occupations in the state of Colorado. In the interest of consumer protection and to set forth the mandates of the relevant agency of the state legislatively delegated with the authority to enforce laws and promulgate rules or assist the Division Director in doing so, members of a Division board, advisory committee, commission or task force shall at all times maintain a perspective consistent with the enforcement of the relevant law in the interest of consumer protection. They are required to adhere to the code of conduct set forth herein and other applicable ethical obligations imposed upon public servants.

II. POLICY

Board, commission and task force members are appointed by, and accountable to, the executive branch of the state government. Advisory Committee members are appointed by, and accountable to, the Division of Professions and Occupations within the Department of Regulatory Agencies or designated by a Board or Commission by virtue of its enabling Act to assist the Board with matters requiring technical or other expertise. It is expected that each board/advisory committee/commission/task force member (hereinafter "member") will read this policy and execute and submit the acknowledgment form before serving in his/her appointed capacity.

A. Definitions:

1. **Gifts** - loans, rewards, promises or negotiations of future employment, favors, services, honoraria, travel, entertainment or special discounts.
2. **Good Standing** – a license that is not restricted in any manner and which allows the licensee full practice privileges.
3. **Member** – any individual appointee to a board, advisory committee, commission, or task force within the Division of Professions and Occupations, whether a licensed member of the regulated profession or a public member.
4. **Recusal** - the formal process by which a member removes him/herself from participation, deliberation and any attempt to affect the outcome of any matter before the regulatory program.

5. **Regulatory Program** - the collective name for Type I Boards and Director Model Programs within the Division of Professions and Occupations.

B. Personal Performance of Duties – Practice

1. A member shall:

- a. Maintain a working knowledge of the laws, rules, policies, and procedures under the jurisdiction of the regulatory program on which he/she is serving or assisting;
- b. Maintain a working knowledge of and adhere to Open Meetings and Open Records law;
- c. If practicing as a member of the regulated occupation or profession, be licensed/certified/registered in good standing;
- d. Act professionally in all interactions with other members, the Division Director, Deputy Division Directors, Program Directors, Division staff, consultants, other state officers and employees, and the public;
- e. Regularly attend and meaningfully participate in regulatory program meetings and other program proceedings that may be required;
- f. Attend annual member training, including ethics training, provided by Division staff: and,
- g. Attest and affirm at the end of each program meeting that all conflicts of interest have been disclosed and that confidentiality of all program matters deemed confidential by law have been maintained since the previous meeting.

C. Conflict of Interest – Ethics

1. A member shall:

- a. Comply with ethics laws and conflict of interest requirements, including but not limited to Article 18 of Title 24 of the Colorado Revised Statutes and DORA’s Conflict of Interest Policy;
- b. Decline to deliberate, participate, or otherwise attempt to affect the outcome of any matter before the regulatory program when doing so may result in a conflict of interest or the appearance of a conflict of interest;
- c. Comply with the requirements of the open meetings and public records laws of this state in accordance with Articles 6 and 72 of Title 24 regarding all communications, including, but not limited to, correspondence, emails, social media, and telephone messages;
- d. Follow applicable communication protocols regarding dissemination of regulatory program or Division information, including maintaining confidentiality of privileged or confidential information, matters discussed in closed or executive session, and information subject to the attorney-client privilege; and
- e. Exercise licensing, rulemaking and policy decisions independent of external influences.

2. A member shall not:

- a. Have private contracts or business dealings with the regulatory program with which he/she is serving or assisting other than compensation and reimbursement for participating as a member or as may be otherwise provided by law;

- b. Receive any payment or benefit from transactions of the regulatory program other than the benefit derived from licensure/certification/registration by the program if the member is also a licensee/certificate holder/registrant;
- c. Solicit or receive a gift or favor from any person, company, organization, or any intermediary interest which may compromise or appear to compromise the independent judgment of the member regarding fulfillment of any regulatory program or member obligations;
- d. Attempt to obtain favorable treatment by a Board, Advisory Committee, Commission, Task Force, the Division or Department for any individual or entity; and
- e. Use his/her position with the regulatory program to advance any private interest.

D. Membership in Professional Organizations – Industry Trade Association Prohibitions

1. In fulfilling his/her responsibilities to the regulatory program, a member shall at all times maintain a perspective consistent with the enforcement of the relevant laws and rules in the interest of consumer protection, and not in protection of the professional interests of the regulated professionals.
2. A member shall not be an officer or hold any leadership position in state or national industry associations or other organizations serving the profession regulated by the regulatory program during the term of his/her appointment to the regulatory program unless otherwise required by law. In this capacity, a leadership position is defined as including, but not limited to, a voting member of the executive board, service on an ethics committee, membership committee, examination committee, or other committee or similar position of the association or organization. This does not apply to regulatory associations.
3. A member shall not be a registered lobbyist for any professional organization or industry trade association.

E. Communication Protocols

1. As a member of a regulatory program, legislatively delegated with the authority to enforce laws and promulgate and enforce rules, the member shall recognize the parameters of the regulatory program's authority and ensure it maintains its consumer protection mission in undertaking all of its duties and responsibilities.
2. Within the parameters of the regulatory program's authority, members shall:
 - a. Ensure the effectiveness and efficiencies of the program;
 - b. Delegate to and rely on the Program Director to oversee administrative functions of the Division staff, including certain activities identified to occur between regulatory program meetings;
 - c. Select leadership of officers of the regulatory program to preside over the customary program activities including, but not limited to, meetings, committee structures, application processing, complaint processing, and rulemaking;

- d. Coordinate with other boards or commissions, state agencies, industry and educational institutions where responsibilities and interests overlap; and,
- e. Recognize the importance of communications related to program business and adopt policies that establish communication protocols and assure that the majority opinion of the program is promoted.

3. A member shall:

- a. Authorize and provide general direction to the Program Director to establish a meeting agenda;
- b. Make requests for Division staff and Office of the Attorney General assistance through approved procedures through the Program Director;
- c. Refer members of the public who attempt to use individual members as an avenue to influence program decisions to the Program Director; and
- d. Provide other general direction and delegate functions and tasks to the Program Director as appropriate in accordance with law.

F. Disclosure of Board Information

1. A member shall:

- a. Refer all inquiries related to a regulatory or legislative position to the Director for handling to ensure that he/she is not speaking on behalf of the regulatory program or the Division;
- b. Promptly refer any requests for comment by the media to the Director; and
- c. Exercise due diligence to avoid any breach of duty as a member arising out of negligence, intentional action or omission, or unauthorized communication with any individual.

2. All information disseminated by members shall be factual and limited to information that is otherwise public information, i.e. directing inquiring parties to relevant statutes, rules, and/or policies.

3. This shall not be construed to limit the freedom of expression of a member as an individual member of the public; however, if expressing an opinion related to the regulatory program on which he/she serves, it should be clearly stated that the member is not speaking on behalf of the regulatory program.

G. Board Member Attestation and Affirmation

1. At the conclusion of each board meeting prior to adjournment the board chair shall ask the board members to attest and affirm by an “AY” vote that all conflicts of interest have been disclosed and that confidentiality of all board matters has been maintained since the previous board meeting.

H. Removal from Service – For Cause

- 1. A member may be removed from the regulatory program for cause including, but not limited to:
 - a. Ceasing to meet the qualifications for regulatory program membership;

- b. A conviction of any crime other than a minor traffic offense. For the purpose of this Policy a conviction includes entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence;
- c. Being found guilty of malfeasance, misfeasance, or nonfeasance in relation to regulatory program duties;
- d. Being declared mentally incompetent by a court of competent jurisdiction;
- e. A final adjudication by a recognized body, including the courts, that the member has violated this policy or the regulatory program's practice act, or that the member has misused the position to obtain any financial or material gain, or any advantage personally or for another, through such office;
- f. The refusal or inability for any reason to perform the duties of a member in an efficient, responsible, and professional manner; or
- g. Failing to attend three successive regulatory program meetings without just cause as determined by the Division and applicable law.

I. Conflict with Other Laws

1. The provisions of this policy shall not excuse any member from adherence to any other state or federal law or rule and to the extent this policy conflicts with such law or rule, the state or federal law or rule shall prevail.
2. To the extent possible, the provisions of a regulatory program's practice act shall be interpreted to coincide and be read to coexist with this policy and all other laws of Colorado. In the event the applicable practice act is alleged to conflict with any other provisions of law or this policy, the practice act shall prevail to the extent the statutory provisions at stake involve substantive issues related to the practice of that profession. If the alleged conflict addresses procedural issues related to administrative processes, the Administrative Procedures Act (Title 24 of the Colorado Revised Statutes) shall prevail. In all other respects, conflict of laws issues shall be determined by interpretation and construction principles.

PER DIEM AND REIMBURSEMENTS

For most programs, each member will be paid a \$50 per diem for each meeting, mediation, hearing, and/or examination they attend, and are also reimbursed for travel expenses. For example, mileage, food, airfare, hotel, parking, cab fare, etc., are reimbursed in accordance with the parameters set forth in the State's Fiscal Rules. Please contact the Program Director or staff if you have questions regarding these items and if you believe you will have out-of-city travel expenses PRIOR to incurring those costs.

Please note, the \$50 per day per diem will not be paid to State employees during working hours or while on paid administrative leave.

The forms for payment of per diem and reimbursement of travel expenses are usually prepared in advance of the meeting by staff and provided to each member at the meeting for completion and signature. On average, it takes approximately two weeks before you will receive your reimbursement via electronic funds transfer into your bank account. Prior to submitting the forms to our Accounting Department for processing, we will need itemized receipts for hotel, airfare, etc., if appropriate. Because the state requires itemized receipts, credit card receipts are not accepted as receipts.

Mileage

Members are reimbursed at a standard rate per mile. The current rate is listed on the travel reimbursement form.

Parking

Members are reimbursed for parking at meetings at actual cost. Receipts are required for any parking reimbursement over \$25.

Accommodations/Lodging

Members are reimbursed for lodging costs at the government rate. ***Please ask for the government rate when making lodging reservations.*** You must submit an itemized receipt from the hotel with your reimbursement request form. A list of local hotels that offer the government rate will be provided to each member. If you are unable to obtain lodging at the government rate, please contact your Program Director for additional guidance.

Meals

Members may be reimbursed for actual and necessary meal expenses incurred in the performance of their duties. Itemized receipts must be submitted if requesting actual reimbursement. Non-specific credit card transaction slips may not be submitted in lieu of an itemized receipt.

If an itemized receipt is not submitted, members will be reimbursed the maximum per diem allowed based on their specific destination.

Appendix B: Processes and Duties of Boards

LICENSURE

The Office of Licensing processes all applications for licensure or reinstatement of licensure filed with the Division. The Office of Licensing processes approximately 50,000 applications per year and functions to ensure that only qualified individuals and facilities are permitted to operate and practice in the regulated professions and occupations. It accomplishes that function by utilizing the statutes, rules, and policies of the profession to assess whether applicants possess the statutorily mandated knowledge, skills and abilities to practice professions and occupations through document review and verification.

Boards review applications in which the applicant answers “YES” to any of the screening questions or otherwise fails to demonstrate the statutorily mandated requirements for licensure.

THE COMPLAINT PROCESS

Enforcement is an important function for boards/programs and staff. It includes processing complaints and the board’s decisions as to discipline, as well as discipline compliance monitoring. The Division processes approximately 6,000 complaints per year.

Boards review complaints and make determinations regarding the need for discipline according to applicable law. The processes for handling complaints and discipline are found in each board’s statutes, rules and policies, and the Administrative Procedure Act, section 24-4-101, *et seq.*, C.R.S. Although there are differing statutes and board rules, the basic process is as follows:

Intake Process

When a complaint/inquiry against a respondent (i.e., a licensee, certificate holder, or registrant) is received, several steps are followed by staff. All steps in the process have timelines defined by Division policy.

- ❖ The respondent is sent the complaint with a “30-day letter” and is given 30 days to provide a written response.
- ❖ If the matter presents an imminent risk of harm to the public, the matter is referred directly to the Office of Investigations for priority investigation.
- ❖ Once the response is received from a respondent or the 30-day time period has passed, whichever occurs first, the complaint and response will be prepared for review at the next board meeting.
- ❖ In some rare instances, the complaint is first presented to the board to determine whether a 30-day letter should be initiated.

When a complaint alleges unlicensed practice, the complaint is reviewed to determine whether the respondent is engaging in unqualified/unlicensed practice, use of a protected title, or practicing on an expired license. In accordance with board and Division policy, the Program Director determines whether there is sufficient evidence of the unlicensed practice and imminent harm that requires immediate

action via the issuance of a Cease and Desist Order or whether additional information is necessary requiring the case to be referred to the Investigations Program (OI). Thirty-day letters are not issued to unlicensed persons.

Board Review

The Boards review cases at board meetings to determine the appropriate outcome. Upon review, boards may take the following actions regarding the complaint:

- ❖ **Dismiss:** If the board determines that the respondent did not violate any statutes or rules or that there is insufficient evidence to substantiate a violation of statutes or rules, then the case is dismissed. If the board does not have jurisdiction over the person or facts that were the basis of the complaint, the complaint must be dismissed. If it is a clear situation of being outside the board's jurisdiction, board staff may dismiss the complaint administratively.
- ❖ **Dismiss with a Confidential Letter of Concern (LOC):** If the board is concerned about the respondent's practice or conduct, but there is not a supportable violation, the board may issue a confidential letter of concern to the respondent. The case is dismissed, however the LOC remains on file with the board for five years from the date of issuance.
- ❖ **Table:** The case is "stayed" pending the receipt of additional information from the complainant, the respondent, board staff or an outside entity such as a mental status evaluator. Once the information is received, the case will be re-presented to the Board for review.
- ❖ **Refer to Investigations Program (OI):** If the board needs additional information, then it can refer the case to OI to have an investigator interview witnesses, obtain records, obtain expert review, etc., and prepare a Report of Investigation (ROI) for board review.
- ❖ **Refer for Discipline:** When the boards seek disciplinary action against a respondent this is typically executed through the Office of Expedited Settlement (ESP). Cases that do not settle through ESP will be referred to the Office of the Attorney General (OAG).
- ❖ **Issue a Letter of Admonition (LOA):** If a board finds the respondent violated any rules or statutes, it can issue an LOA admonishing the respondent for his/her conduct. This is the lowest form of public discipline.
- ❖ **Issue a Cease and Desist Order (CDO):** For cases involving unlicensed practice or use of a protected title in violation of statute, a board can issue a cease and desist order. Depending on the specific practice act, some boards may refer the case immediately to the Office of the Attorney General for injunctive relief while other boards must find that a CDO was violated before the case can be referred to the Office of the Attorney General for injunctive relief. All

cases of unlicensed practice that result in a CDO are referred to OI for follow up enforcement and are referred to law enforcement.

- ❖ **Order of Suspension:** When a board finds objective and reasonable grounds that a respondent is not safe to practice with reasonable skill and safety to patients and the public health, safety, and welfare imperatively requires emergency action or finds a willful violation of the practice act, the board can summarily suspend a respondent's credential and immediately remove the respondent from practice. The respondent's case is referred to the OAG for filing of the Notice of Charges on an expedited basis as the respondent is entitled to a prompt post-deprivation hearing.

- ❖ **Order for Mental Health Examination (MSE):** If a board finds that it has reasonable cause to believe that the respondent may be unable to practice his/her profession with reasonable skill and safety, the board can order the respondent to undergo a mental status evaluation with a board approved provider to assess whether the respondent is safe to practice. Once the evaluation is received, the matter is represented to the board to determine the most appropriate resolution based on the options listed above.

Please note: Not all options are available to all boards. Some boards have other options, such as diversion programs and the ability to inspect premises and assess fines. Discuss such details with your Program Director and staff.

HEARINGS, INITIAL DECISIONS AND FINAL AGENCY ORDERS

When a case is "Referred for Discipline" as detailed in *The Complaint Process* section of these materials, it may eventually proceed to an administrative hearing. If the respondent or applicant does not agree to the proposed discipline or resolution or if the respondent or applicant appeals the board's decision, a hearing is held at the Office of Administrative Courts. Upon conclusion of the hearing, an Initial Decision is submitted to the board for review and the issuance of a final agency order.

Hearings

Administrative hearings are held at the Office of Administrative Courts (OAC) by an Administrative Law Judge (ALJ). This hearing is similar in many respects to a proceeding in a civil or criminal matter. At hearing, the board is represented by an Assistant Attorney General and both parties, the board and the respondent, may call witnesses to testify and provide evidence before the court. The hearing is conducted in accordance with the Administrative Procedure Act (APA).

Initial Decisions and Exceptions

After the conclusion of the hearing, the ALJ issues an Initial Decision. This generally occurs within 60 days of the hearing. The Initial Decision contains three sections: (1) Findings of Fact, (2) Conclusions of Law, and (3) Recommended Sanctions. The Initial Decision is not a final agency order. The board is the ultimate arbiter in such matters, and therefore must review the Initial Decision.

Once the Initial Decision is received by the Division, the Office of Legal Affairs issues a Procedural Order outlining each party's right to file exceptions, or objections, to the ALJ's Initial Decision, designate portions of the record entered during the administrative hearing, and in some cases, make arguments before the board as it reviews the Initial Decision and exceptions. Once the exceptions have been received or the time period to file such objections has expired, the Initial Decision and any exceptions are presented for board review.

Through the review of an Initial Decision, the board's Program Director and assigned AAG do not participate in the process. Instead, the board is represented by conflicts counsel and either the Deputy Director for Legal Affairs or another member of the Office of Legal Affairs sits in as Program Director. This prevents any actual or perceived conflict in the exceptions process.

Upon review of the Initial Decision and any filed exceptions, the board must weigh the evidence in the hearing record and determine if the findings of fact are supported by the record, if the conclusions of law are supported by the record and/or the law, and if the recommended sanction is proportionate to the violations and is necessary to protect the public.

- ❖ **Findings of Fact:** The findings of fact reflect a summary of all facts established at the hearing. Generally, the board will not change the findings of facts found by the ALJ. The board must uphold those findings unless the findings are "clearly erroneous or unsupported by substantial evidence when the record is considered as a whole." Also, as specified in section 24-4-105(15)(b), C.R.S., of the Administrative Procedure Act (APA), evidentiary facts shall not be set aside unless they are "contrary to the weight of the evidence." The board must review the record to determine whether the findings are erroneous. This requires reading trial transcripts and exhibits. The party challenging the findings of fact must indicate where evidence exists in the record to show an error. If an error was found, the Board could change the findings of fact.
- ❖ **Conclusions of Law:** These are the ALJ's findings on how the law relates to the findings of fact. A common example is the question of whether or not an act by the respondent constitutes a "commonly accepted standard of practice." The board can change these conclusions when there is evidence to support the board's view and the board's finding has a reasonable basis in law. Determination of the Conclusions of Law determines the violations of the board's law.
- ❖ **Recommended Sanction:** The legal criteria for the determination of sanctions includes that which is necessary to protect the public and reasonable consideration of the nature and degree of the offense. The board should be reasonably consistent in such determinations. In other words, the board should not revoke a license of one person and give a one-year probation sanction to another person when very similar fact patterns exist. That does not mean that the board cannot, and should not, take the individual facts of each case into consideration when determining a penalty. The board must do so as that is its responsibility.

For boards that operate on a “panel system,” one panel will review the complaint and “prosecute” the matter at hearing. After hearing, the other panel will act as a “hearings panel” for the case and review the ALJ’s Initial Decision and determine the final order.

Boards that do not utilize a panel system wear two “hats” in these matters- both prosecutor and judge. The board determines the violation, the recommended sanction and “prosecutes” the case and later reviews the Initial Decision and arrives at a final agency order.

Final Agency Order

A Final Agency Order (FAO) is an order of a state licensing authority (board or Division Director) issued in accordance with the Administrative Procedure Act. The board issues a Final Agency Order following review of the Initial Decision and any exceptions filed thereto. The FAO details the board’s determination regarding the findings of fact, conclusions of law and recommended sanction as set forth in the Initial Decision. Conflicts counsel and/or the Office of Legal Affairs assists the Board in the issuance of this order. The FAO is subject to appeal by a court of competent jurisdiction, which, in most cases, is the Colorado Court of Appeals.

Robert’s Rules of Order for Meetings and Hearings

Parliamentary procedure is a set of rules for conduct at meetings that allows everyone to be heard and to make decisions without confusion. One well-established system of parliamentary procedure is known as “Robert’s Rules of Order” or “Robert’s Rules.” Following the procedure outlined by Robert’s Rules is helpful and can lead to a more orderly, fair and productive meeting. It is important to realize that boards are not legally required to follow Robert’s Rules. Under no circumstances should "undue strictness" be allowed to intimidate members or limit full participation. The following are a few helpful pointers to assist a chair in running a meeting.

Quorum: Substantive action cannot be taken in any meeting without a quorum. For a state agency, a quorum may be defined in statute, but if not, it is usually a majority of the members. If at any time during the meeting there are insufficient members to constitute a quorum, no substantive business can be conducted as it will be invalid. The only actions that can be taken are setting the time for a new meeting, taking a recess, trying to find more members to obtain a quorum, or adjourning the meeting. Unlike other concepts discussed in this outline, having a quorum is legally required for a valid board action.

Beginning a Meeting: The chair states, “The meeting will come to order.” (This is also used to call a meeting back from recess stating, “The meeting will come back to order.”)

General Rules of Decorum: Any time a member other than the chair wishes to speak, he must raise his hand and be recognized by the chair. Recognition is not required when a member seconds a motion.

Approving the Minutes: The minutes are the official record of what happened in a previous meeting. If the minutes had previously been distributed, the chair will ask, “Are there any corrections to the minutes?” If not, the chair will ask for a motion, second and vote to approve the minutes. If there are corrections, the chair will ask for a motion, second and vote to approve the minutes as corrected.

Moving On to the Next Order of Business: The chair announces the business before the body in the order prescribed by the agenda. The chair may begin by saying, “The first order of business is . . .” After an agenda item is finished, the chairman states, “The next order of business is . . .”

Making a Motion: Motions are how the board makes a decision. It is a good plan to have the motion in writing in advance when practicable.

Seconding a Motion: Most motions must be accompanied by a second. The person seconding a motion states, “I second the motion.” Such a person does not need to agree with the motion. Without a second, motions cannot be considered.

Discussion: Once the motion has been made and seconded, the chair will ask if there is any discussion. If none, the motion will proceed to a vote.

Policy and Rules

Board Policy

Board policies provide a framework within which a board operates and executes its mission and statutory duties. Such policies are created and adopted by the board and serve as a guide for licensees and the public. Policies differ from rules in that policies do not have the force of law.

For more information, please see your board’s website at [DORA BOARDS](#) and click on Laws, Rules and Policies.

Board Rules

A rule, also called a regulation, is a statement that defines how a statute is interpreted and/or implemented. A board rule has the same legal force and effect as a statute. Rules are drafted by the board and are adopted in accordance with the rulemaking process prescribed by the Administrative Procedure Act. The board may only adopt such rules as are within its statutory authority.

For more information, please see your particular board’s website at [DORA BOARDS](#) and click on Laws, Rules and Policies.

Overview of Rulemaking Process

Rulemaking is an important process. State agencies are bound by the provisions in the Administrative Procedure Act (APA), located at §24-4-103, C.R.S., with regard to rulemaking. The APA ensures that the public will have adequate notice of, and the chance to comment on, proposed rules before they become effective through required filing requirements. In addition, boards must be cognizant of any Executive Orders which may limit a Board’s rulemaking authority or which require additional steps in order to conduct rulemaking.

Before beginning the formal rulemaking process, the boards go through a consensus building process with the affected stakeholders. This process encourages stakeholder engagement and results in more comprehensive rules. This process also alleviates having to reopen rules for critical elements that were missed. Consensus can be accomplished through committees/workgroups/task forces composed of interested parties who work through the specific language, or informal meetings with groups to discuss their concerns.

The Rulemaking Process

- ❖ **Step 1:** To begin the formal rulemaking process, the board moves to create, amend, or repeal a rule and then “**publish for rulemaking.**” Specific language to adopt, revise, and/or repeal the rule(s) are presented to the board at this time. Often this is the result of discussions at board meetings, a proposal from staff, and the aforementioned committee or meeting process with interested parties.
- ❖ **Step 2:** After the Board votes to publish for rulemaking, the process requires the board staff to file a “**Notice of Rulemaking Hearing**” (**Notice**) and the proposed rule changes with the Secretary of State. The Notice and the proposed rules must be published in the Colorado Register for a 20-day period before a rulemaking hearing is conducted. The Notice advises the public of the date, time, and location that the board will conduct the rulemaking hearing. The Notice should be published on the board’s website, and shared with stakeholders and those who have requested notification. In addition to filing the Notice with the Secretary of State, staff needs to file the Rule with DORA’s Office of Policy, Research and Regulatory Reform for review.
- ❖ **Step 3:** The board is required to hold an **open rulemaking hearing**. During the hearing (which was announced in the Notice), the board chair has a formal script in order to follow required procedures, and all interested persons are afforded the opportunity to give testimony on the proposed rule(s). A script will be provided to the Board chair by the staff. The hearing is recorded through the public testimony phase, after which the tape recorder is turned off and the board deliberates. If the rules are very high profile and there is a clear potential for a challenge to the rules, the board may elect to hire a court reporter to transcribe the proceedings.

While the hearing is being recorded, all parties must identify themselves for the record. The recording and the files must be retained until all administrative and judicial review procedures have been completed. Board staff is responsible for maintaining files and will know what items must be kept in the official rulemaking record.

At the conclusion of the hearing, the board formally adopts the rules and a statement of basis and purpose, which is incorporated therein, or may continue the deliberation if it feels additional time is necessary prior to making a final decision.

- ❖ **Step 4:** Once adopted, the rules must be **reviewed by the Office of the Attorney General (AGO)**, which issues a legal opinion as to the constitutionality of the rules. The adopted rules, along with the AGO opinion, are filed with the Secretary of State for publication in the Code of Colorado Regulations (CCR) for a period of 20 days before the rules can become effective.

- ❖ **Step 5:** Simultaneously, the adopted rules and the AGO’s opinion are **filed with the Office of Legislative Legal Services (OLLS) for review**. The OLLS staff reviews the rules to determine whether or not the rules are within the board’s statutory authority.

The minimum time period for rules to become effective and enforceable is at least three months from the filing of the Notice. The APA includes provisions to allow for the adoption of “emergency rules.” However, the rules can only be effective for a period of 90 days, and the reason(s) for the adoption of an emergency rule must be found to meet the criteria in the APA for emergency adoption.

The Legislative Process

The legislative process to make Colorado law is similar to the process in the U.S. Congress where federal law is made. The Colorado legislature is referred to as the “General Assembly” and is comprised of 65 Representatives and 35 Senators. Before entering the legislative process, newly drafted bills must get sponsorship by a State Senator or State Representative. In many instances, newly drafted legislation will be sponsored in both the House and Senate by multiple senators and representatives. Legislators have their bills drafted by the Office of Legislative Legal Services. Whenever a bill enters the legislative process, as part of that process, a fiscal note must be prepared in order to determine how much the new legislation could cost taxpayers and affected state agencies, and how the cost of the legislation will be paid. The success of a bill in the legislative process is very dependent on the information presented in the fiscal note as legislators are responsible for, but must strike a balance between, implementing new laws and programs and balancing the state budget.

Overview of Bill Process

A bill can be introduced in either the State House or State Senate depending on the sponsorship of the bill. A bill is introduced in the House of Origination, i.e., either the House or Senate, and is assigned by the House/Senate Speaker to a committee (or multiple committees, depending on the subject matter) within that chamber to review the bill closely. For example, if it is a healthcare related bill, it could be assigned to the Health and Human Services Committee. The Committee meets and holds a hearing on the bill and makes an initial vote. This is the opportunity for the public, including stakeholders, to give testimony regarding the subject matter of the bill. If the Committee votes to approve the bill it moves on in the legislative process. *All bills requiring spending must go to the Appropriations Committee and bills generating revenue usually go to the Finance Committee.*

The bill then has a Second Reading, including any amendments, and then a Third Reading, and a Final Passage in the whole chamber of the House of Origination. Once the bill moves through the first chamber, the process begins in the second chamber, and the bill, in its amended form, is introduced by the Speaker of the second chamber and is assigned to a committee (or multiple committees depending on the subject matter of the bill). The assigned committee holds a hearing at which the public, including stakeholders, may give testimony, and there is a vote. There is a Second Reading of the whole Committee and if it is approved it goes for a Third Reading and Final Passage to the whole second chamber (either the House or Senate).

If a bill is amended in the second chamber, it must go back to the first chamber where the following may occur: the first chamber will concur with the amendments made to the bill; the first chamber may reject the amendments and appoint a Conference Committee between the two chambers where an attempt to reach a compromise on the conflicts will occur; or, the first chamber could “adhere to its position,” which basically means they will not move on their position (no compromise can be met). If a bill goes to the Conference Committee, which is composed of three members from each chamber, the majority must agree to each amendment before the bill can move on in the process. A bill must pass in the same form in both chambers to advance to the Governor.

If the bill makes it to the Governor’s desk, he has a few options: the bill can be signed into law; or, in some cases the bill can become law without the Governor’s signature with time restrictions. The Governor can also veto the bill. A veto can be overridden by a two-thirds majority vote in both chambers of the legislature; however, the legislature cannot override a veto after the legislative session is adjourned.

Sunrise and Sunset Reviews

The Colorado legislature determines the need for regulation of the boards, commissions, and programs regulated by the Division of Professions and Occupations. The process of beginning regulation of any profession or occupation is regulated by the Colorado Sunrise Act. The legislature also determines the continued regulation of such boards, commissions, and programs. This process is called “Sunset Review.”

Sunrise Review Process

In order to begin the process of regulating a profession, a “Sunrise” review must be requested. Anyone from the public can request a Sunrise review of a profession.

Pursuant to the Colorado Sunrise Act, §24-34-104.1, C.R.S., the determination of the need for new regulation must be based upon the following criteria:

- ❖ Whether the unregulated practice of a profession or occupation clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent upon tenuous argument;
- ❖ Whether the public needs, and can be reasonably expected to benefit from, an assurance of initial and continuing professional or occupational competence; and,
- ❖ Whether the public can be adequately protected by other means in a more cost-effective manner.

Sunset Review Process

When laws are passed to regulate a profession, a “Sunset Review” date is placed in the statute. The legislature must act to continue regulation of the profession as the sunset date approaches. If this doesn’t happen the profession goes through a year-long process of “wind down” and then ceases to be regulated. Prior to this sunset date, COPRRR once again prepares and submits a report addressing the following:

- ❖ Whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- ❖ If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- ❖ Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters.
- ❖ Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;

- ❖ Whether the composition of the agency’s board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- ❖ The economic impact of regulation, and, if national economic information is not available, whether the agency stimulates or restricts competition;
- ❖ Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- ❖ Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative actions; and,
- ❖ Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Relevant Laws

Practice Acts

The organic statute that governs a particular profession or occupation. Typically enacted when the general assembly declares it to be in the interests of public health, safety and welfare to enact laws regulating and controlling a particular profession or occupation.

Administrative Procedure Act

The Administrative Procedure Act (APA) governs administrative law procedures. It sets forth the process by which we adopt rules, the procedures to be used in administering discipline, the rights of applicants for licenses, and the procedures applicable to our hearings.

Open Meetings Law (Colorado Sunshine Act)

Depending on the particular board, the board may conduct its business in an open or closed session. If the board is an open meetings board, the board must conduct its business and deliberations in open session. Any time two or more board members gather and discuss board business, formulate policy or decide about formal action there must be posted legal notice of such a meeting, and if members of the public attend, they must be admitted. Some boards are "closed," meaning they hold their meetings and deliberations in confidence. The public may not attend.

There is one situation in which all boards may hold proceedings in confidence. This is called “Executive Session.” During Executive Session, the board considers confidential information, discipline guidance, and attorney/client privileged matters. Colorado law requires that all matters discussed in Executive Session be recorded.

Open Meetings law also sets requirements for public meeting notice to the public and meeting minutes.

Colorado Open Records Act (CORA)

The Division of Professions and Occupations and each Board and commission is subject to the Colorado Open Records Act (CORA). This means that, unless specifically exempted by law, all records of the Division's Boards and programs are open to public inspection. Unless specifically exempted, all written material submitted on behalf of a complainant or respondent regarding a case for the Board's consideration is open to inspection by the public, except for a few exceptions that are listed in the Act (examination questions, marketing data, bona fide research project details, medical or mental health data on individuals, personnel files, etc.) However, the Division takes the position that such materials are not open for public inspection until the Board has acted on the matter formally at its Board meeting. After that time, the documents are open.

Conflicts of Interest Law

This law sets forth the rules of conduct and ethical standards that governmental officials and appointees must follow when conducting business on behalf of the public. Such rules address conduct by board members to avoid a conflict or an appearance of conflict in board responsibilities. Members may need to disclose a financial interest in a board matter, recuse at a meeting if a board member may not be or may not appear to be impartial in a situation, or take other steps to avoid the appearance of a conflict of interest.

Interest in Contracts

This law states that public officials may not contract or be employed by an employer who contracts with a state agency involving matters for which he/she was directly involved as a public official for at least six months after his/her public duties are completed.

The Americans with Disabilities Act

Congress passed the Americans with Disabilities Act (ADA) in 1991. The purpose of the ADA was to ensure that individuals with disabilities were treated fairly in our society and provided equal opportunity in the areas of employment, public accommodations, transportation, and telecommunications. Government and businesses are required to provide accommodations to these individuals to ensure their ability to participate fully if reasonable accommodations can be made.

This is relevant to the boards when applicants for licensure ask for accommodations during professional testing. Often, a disabled candidate may ask for extra time, a quiet room, a flat computer screen, or other such things, in order to take the licensing test. Division staff, including a psychometrician, the licensing program or board, or in some cases, an examination administrator, make decisions about accommodations. If an unusual situation arises, staff may ask the board to make that decision. Since the requests are time sensitive (answers must be given several weeks prior to testing), such board intervention might require an emergency meeting.

Federal Antitrust Law

Federal Antitrust laws promote vigorous competition and protect consumers from anticompetitive mergers and business practices. These laws essentially form the rules of the competitive market place, the foundation of a vibrant economy. Aggressive competition among sellers in an open marketplace gives consumers — both individuals and businesses — the benefits of lower prices, higher quality

products and services, more choices, and greater innovation. The Federal Trade Commission (FTC) is charged with enforcing federal antitrust laws.

In *North Carolina State Board of Dental Examiners v. FTC*, the United States Supreme Court held that when a controlling number of the decision makers on a state licensing board are active participants in the occupation the board regulates, the board can invoke state-action immunity only if it is subject to active supervision by the state. The FTC has defined active supervision by the state as requiring the state to hold veto power over all board actions, including policy, rules and disciplinary and licensing determinations accomplished through review of the evidentiary records of the board's action, supplementing the record through the gathering of additional information if necessary, undertaking a de novo review of the substantive merits of the board's action and issuing a written decision with approval, modification or veto of the action.

Colorado law does not currently address active supervision of its state licensing boards.