

Colorado Racing Commission  
June 8, 2021  
Meeting Minutes

Call to Order

The regularly scheduled meeting of the Colorado Racing Commission (“Commission”) was held on Tuesday, June 8, 2021 via video conference provided by Zoom. The meeting was called to order at 9:33 AM.

Members Present

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

Staff Present

Donia Amick, Director of the Division of Racing Events  
Ed Kulp, Agent in Charge  
Zach Ceriani, Legal Assistant  
Bradford Jones, Senior Assistant Attorney General representing the Division of Racing Events and the Commission as General Counsel  
Sarah Killeen, Assistant Attorney General  
Janina Rivera, Executive Assistant to Division Director

1. Approval of Minutes for May 11, 2021

Minutes approved for May 11, 2021

**HEARINGS:**

2. Appeal Hearing in the Matter of Licensee Kerry Lee Kemper

Chris Matz, counsel for licensee Kerry Lee Kemper argued the respondents license was summarily suspended without a full investigation by the Division. He was therefore denied due process when the Division did not comply with their own rules and procedures. Mr. Matz noted the respondent was denied a split sample which would have released him of any responsibility.

Mr. Matz ended the argument stating that the Division did not follow their own rules and asked the Commission to overturn the decision.

Sarah Killen, AAG argued that the case was a straightforward medication violation matter and there were no factual disputes and no arguments regarding the findings of fact. Ms. Killen mentioned that the issuance of the summary suspension by the Board followed the rules setup by the Commission, Colorado law and case law by the Supreme Court.

Mr. Matz rebuttal that it was not Mr. Kemper's responsibility to develop evidence for the investigator but the investigator's responsibility. He also said the Division offering Mr. Kemper an alternative to the split sample, was not the same thing and not supported by the rule.

Ms. Killen's rebuttal by Colorado law, case law and Commission rule, all that was needed for a summary suspension was a positive test result. In correspondence to the split sample the samples that were at the laboratory were in conjunction with the samples that were taken post race.

**EXECUTIVE SESSION ENTERED AT 10:12 A.M.**

**RETURNED FROM EXECUTIVE SESSION AT 10:45 A.M.**

**OPEN SESSION**

Motion made by Commissioner Hoffman to accept the findings of fact with a second made by Commissioner Scott.

Motion passed unanimously.

Motion made by Commissioner Hoffman to accept the principle of law and the analysis from the hearings officer which concluded that the owner/trainer Mr. Kemper was responsible for the violation with a second made by Commissioner Estes.

Motion passed unanimously.

Motion made by Commissioner Hoffman to double the fine from \$2,500 to \$5,000 with a second made by Commissioner Estes.

Motion passed unanimously.

**3. Appeal Hearing in the Matter of Licensee Miguel Pena**

Chris Matz, counsel for licensee Miguel Pena argued the Division did not follow their own rules and that the hearings officer ignored the facts. Mr. Matz continued saying there was no full investigation before the issuance of the Summary Suspension. He said the Division claimed that there was a full investigation and all that was needed was a preliminary positive test.

Mr. Matz ended the argument stating that the hearings officer did not give reasonable consideration to the facts which they believed were clear and therefore the hearings officer's ruling should not be upheld and should be overturned.

Sarah Killen, AAG. argued this case was a straightforward medication violation matter. Ms. Killen mentioned the split sample was destroyed due to the test barn being broken into, at which point the Division did offer Mr. Pena a sample that did correspond to the primary sample that was still available at the state's laboratory. Mr. Pena declined to use the primary samples that were available. The Division did not deny Mr. Pena a split sample.

Mr. Matz's rebuttal stated that the Division did violate their own rules by not offering Mr. Pena a split sample and that the hearings officer did not give reasonable consideration to the full investigation. Mr. Matz stated the split sample that was offered to Mr. Pena did not correspond to the primary sample and that the chain of command had been broken. He stated the sample was leaking and dripping and Mr. Pena was only offered a blood sample. He also said he nor Mr. Pena had never been provided a police report of the alleged break in.

Ms. Killen's rebuttal was that the medication violation was known prior to the summary suspension. She also stated the investigation had testimony from Agent in Charge, Ed Kulp, of a potential burglary. Ms. Killen stated the Division did follow all processes regarding the medication violation and there was no deviation. She concluded by stating the Division complied with all rules and regulations.

A motion was made by Commissioner Hoffman to accept the findings of fact with a second motion made by Commissioner Scott.

The motion passed unanimously.

A motion was made by Commissioner Hoffman to accept the conclusions and analysis with a second motion made by Chair Inmann.

The motion passed unanimously.

A motion made by Commissioner Hoffman to double the fine from \$2,500 to \$5,000 with a second motion made by Commissioner Estes.

Motion passed unanimously.

## **PRESENTATION**

### 4. Colorado State University Presentation

Director Amick informed the commission the presentation would be delayed until further notice.

## **DISCUSSION ITEMS**

5. Director's Report

Director Amick had nothing further to report.

6. Public Comment

No public comment.

Adjourned

**Adjournment**

The June 8, 2021 meeting of the Colorado Racing Commission was adjourned at 12:13 p.m.

Minutes Approved by the Commission

*Janina Rivera*

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Janina Rivera, Executive Assistant to the Director

I certify these minutes were approved by the Commission on the 10th day of August,

2021