

TEXAS RACING COMMISSION

MEETING

10:30 a.m.  
Tuesday,  
September 10, 2019

Texas Animal Health Commission  
Conference Room 1100  
2105 Kramer Lane  
Austin, Texas

COMMISSIONERS PRESENT:

JOHN T. STEEN III, Chair  
RONALD F. EDERER, Vice-Chair  
CONNIE McNABB, D.V.M.  
STEVEN P. MACH  
MIKE MOORE  
ROBERT C. PATE  
WALT ROBERTS  
ARVEL "A.J." WAIGHT, JR.

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P R O C E E D I N G S

1  
2 CHAIRMAN STEEN: Good morning. The time is  
3 now 10:30. At this time I'd like to call today's meeting  
4 of the Texas Racing Commission.

5 Robert, would you please call the roll?

6 MR. ELROD: Commissioner Martin?

7 (No response.)

8 MR. ELROD: Commissioner Mach?

9 COMMISSIONER MACH: Here.

10 MR. ELROD: Commissioner McNabb?

11 COMMISSIONER McNABB: Here.

12 MR. ELROD: Commissioner Roberts?

13 COMMISSIONER ROBERTS: Here.

14 MR. ELROD: Commissioner Moore?

15 COMMISSIONER MOORE: Here.

16 MR. ELROD: Commissioner Pate?

17 COMMISSIONER PATE: Here.

18 MR. ELROD: Commissioner Waight?

19 COMMISSIONER WAIGHT: Here.

20 MR. ELROD: Commissioner Ederer?

21 COMMISSIONER EDERER: Here.

22 MR. ELROD: Chairman Steen?

23 CHAIRMAN STEEN: Here.

24 Do we have a quorum?

25 MR. ELROD: Yes, sir.

1 CHAIRMAN STEEN: Thank you.

2 The next item is item II. Public comment.  
3 Robert, has anyone signed up for public comment?

4 MR. ELROD: No, sir.

5 CHAIRMAN STEEN: On to general business. Next  
6 is agenda item III.A.1. Budget and finance report.

7 Gerry will stand in for that. Thank you.

8 MR. DUBE: Good morning, commissioners. My  
9 name is Gerald Dube. I'm the administrator/director of  
10 the Texas Racing Commission.

11 On pages 5 through 9 of your agenda packet is  
12 the agency's fiscal year 2019 operating budget with  
13 revenue collection and expenditures estimated through the  
14 end of July 2019. With 91.7 percent of the 2019 fiscal  
15 year completed, the agency collected approximately \$6.55  
16 million, or 85.2 percent of projected revenue, and  
17 expended approximately \$6.36 million, or 84 percent of  
18 budgeted expenditures. Of the \$6.36 million in  
19 expenditures, approximately \$5.43 million are  
20 appropriated expenditures, and \$929,590 are  
21 unappropriated expenditures, such as the agency's share  
22 of retirement health care costs, employee insurance  
23 costs, and federal FICA costs.

24 This concludes the operating budget report.  
25 I'll be happy to answer any questions if possible.

1                   CHAIRMAN STEEN: Commissioners, do you have  
2 any questions?

3                   (No response.)

4                   CHAIRMAN STEEN: Thank you, Gerry.

5                   MR. DUBE: Thank you.

6                   CHAIRMAN STEEN: The next item is III.A.2.  
7 Wagering statistics report.

8                   Curley Trahan, would you please give us the  
9 report?

10                  MR. TRAHAN: Thank you, Mr. Chairman. Good  
11 morning, commissioners. For the record, I'm Curley  
12 Trahan, the director of pari-mutuels for the agency.

13                  In your meeting materials on pages 10 through  
14 12 is a comparison report on wagering statistics for the  
15 period ending May 31. The report is a comparison of 2019  
16 handle figures against those for the same period of  
17 calendar year 2018.

18                  The report shows that total wagering  
19 activities at the greyhound racetracks increased by 1.27  
20 percent over the same period of 2018, equating to just  
21 over \$237,000 in increased handle, with the increase  
22 coming in the export handle category. The report also  
23 shows that total wagering activities declined at the  
24 horse racetracks by 6.67 percent for 2019 as compared to  
25 2018. This represents decreased handle of approximately

1 of \$11.78 million.

2 Reflected in the number of live horse race  
3 dates is the fact that Lone Star Park had to cancel one  
4 entire performance earlier this year due to weather. Not  
5 included in that number is another weather-related  
6 cancellation of a large portion of a performance after  
7 wagering had begun. These cancellations would account  
8 for some of the decreases in live and export handle.

9 Overall, the report indicates that total  
10 wagering placed in Texas decreased by 5.58 percent, or  
11 just over \$7.10 million, while total wagers placed on  
12 Texas races decreased by 6.58 percent, or approximately  
13 \$5.14 million.

14 This concludes my report, and I'd be happy to  
15 answer any questions.

16 CHAIRMAN STEEN: Commissioners, do you have  
17 any questions?

18 (No response.)

19 CHAIRMAN STEEN: Thank you, Curley.

20 MR. TRAHAN: Thank you.

21 CHAIRMAN STEEN: The next item is agenda item  
22 III.A.3. Enforcement report.

23 Jim Blodgett, will you please present the  
24 report?

25 MR. BLODGETT: Mr. Chairman, commissioners,

1 good morning.

2           Commissioners, your enforcement report this  
3 morning can be viewed on pages 13 and 14 of your  
4 materials packet. This report highlights the violations  
5 handled by our personnel during the 2019 Lone Star Park  
6 Thoroughbred meet which concluded on July 21, the  
7 Gillespie County Fair meet, which concluded on August 25,  
8 and the Retama Mixed Breed meet, which concludes on  
9 September 11.

10           Please keep in mind when viewing these  
11 enforcement statistics that these numbers represent only  
12 the violations that were adjudicated by our judges during  
13 these specific periods and that there are violations not  
14 included that remain in the hearing process.

15           Commissioners, within this material you will  
16 notice that we report minimal medication violations,  
17 however, again, there are additional violations that  
18 remain under investigation at this time.

19           I'd be happy to answer any questions that you  
20 might have.

21           CHAIRMAN STEEN: Commissioners, any questions?

22           (No response.)

23           CHAIRMAN STEEN: Thank you, Jim.

24           The next item is agenda item III.B. Discussion  
25 and possible action to approve a memorandum of

1 understanding with the Texas Veterinary Medical  
2 Diagnostic Lab for 2020.

3 Joel Speight, will you please present the  
4 item?

5 MS. SPEIGHT: Good morning, Mr. Chairman and  
6 commissioners. I'm Joel Speight, deputy executive  
7 director for the Texas Racing Commission.

8 Sections 234.2 and .3 of the Texas Racing Act  
9 provide that drug testing on racing animals shall be  
10 performed by the Texas A&M Veterinary Medical Diagnostic  
11 Laboratory, TVMDL. The charges for testing shall be paid  
12 for by the association and the Commission shall review  
13 the invoices to make sure the charges are reasonable.

14 As part of that process, every year the agency  
15 enters into a memorandum of understanding, MOU, with  
16 TVMDL establishing the following services and prices for  
17 drug testing. On pages 15 through 20 of your agenda  
18 packet you will find the fiscal year 2020 MOU. The  
19 proposed MOU has two changes: a minor price increase for  
20 vet work testing, and TVMDL is proposing a greater  
21 percentage tolerance for the decrease in samples sent to  
22 the lab before they will adjust test fees.

23 The cost of vet work testing will increase  
24 from \$65 to \$70. In 2019 there were approximately 2,900  
25 horse blood samples and 400 canine urine samples sent to

1 TVMDL. Since the 2020 race calendar is essentially the  
2 same as the 2019 race calendar, and the price of post-  
3 race testing will stay the same at \$215 per tested horse  
4 and \$45 per tested greyhound, the total projected testing  
5 cost for fiscal year 2020 is approximately \$641,500.

6 If the number of equine samples, canine  
7 samples, and/or racing performance decrease by more than  
8 10 percent, previously 5 percent in the previous MOU,  
9 during the calendar year, TVMDL reserves the right to  
10 adjust test fees and will notify the Commission in  
11 writing 30 days before adjustments are made.

12 Staff recommends approval of the MOU, and Dr.  
13 Travis Mays from TVMDL is here also to answer any  
14 questions.

15 CHAIRMAN STEEN: Commissioners, do you have  
16 any questions?

17 COMMISSIONER McNABB: I don't have a question  
18 but a comment. I have had the opportunity to visit the  
19 lab, I've been in more than one lab, and I can say we can  
20 be very, very comfortable that we've got a lab that  
21 operates at the highest level.

22 What it does take for them to be able to  
23 maintain the profiles, the test samples and all of their  
24 processes to make sure that when they make a call on a  
25 test we can be very comfortable it is correct, all those

1 things cost money regardless of a flux or flow.

2 So I would say we are certainly getting our  
3 money's worth. They do an excellent job, their chain of  
4 custody is excellent, their expertise is excellent, and  
5 they also have got a level of experience, and that makes  
6 all the difference in the world. So the people that  
7 they've got working for them, this is not their first  
8 rodeo.

9 They understand the game. They know what  
10 they're looking for, and we've got a tremendous lab, so I  
11 think that we can be very, very comfortable with the lab  
12 that we have.

13 CHAIRMAN STEEN: Appreciate you going out  
14 there and taking a look for us.

15 COMMISSIONER McNABB: Very good.

16 COMMISSIONER MACH: Mr. Chairman, I move  
17 approval of the memorandum of understanding with the  
18 Texas Veterinary Medical Diagnostic Lab for fiscal year  
19 2020.

20 COMMISSIONER EDERER: Second.

21 CHAIRMAN STEEN: Motion made by Mach, seconded  
22 by Commissioner Ederer to approve the TVMDL memorandum of  
23 understanding for fiscal year 2020.

24 Commissioners, is there any other discussion  
25 on the item?

1 (No response.)

2 CHAIRMAN STEEN: If not, we'll take this up  
3 for a vote. All in favor please signify by saying aye.

4 (A chorus of ayes.)

5 CHAIRMAN STEEN: Any opposed?

6 (No response.)

7 CHAIRMAN STEEN: Motion carries.

8 Next we will take up item IV. Discussion and  
9 possible action on the proposal for decisions in the case  
10 of Judd Kearl, Jose Sanchez, and Brian Stroud.

11 Devon is conflicted out of advising us on this  
12 item because she prosecuted these cases before Mark  
13 retired, so Ted Ross from the Attorney General's Office  
14 is here to advise us.

15 Virginia Fields will be representing the  
16 staff, and is there anyone here on behalf of Mr. Kearl,  
17 Mr. Sanchez or Mr. Stroud?

18 MS. RUFFNER: My name is Elenor Ruffner. I  
19 represent Mr. Kearl and Mr. Sanchez.

20 CHAIRMAN STEEN: Welcome.

21 We'll start with Ms. Fields, if you want to  
22 present first, please.

23 MS. FIELDS: Yes. Good morning,  
24 commissioners. My name is Virginia Fields. I'm the  
25 director of Enforcement with the Racing Commission. I'm

1 here today to present to you for final action three cases  
2 involving a total of eight positives for a drug called  
3 nomifensine in seven horses from three trainers within  
4 three weekends of racing during the spring of 2017.

5 Nomifensine is a drug that was used or has  
6 been used as a human antidepressant many years ago but  
7 because of the serious side effects, the manufacturer  
8 withdrew it from the market in 1986 and in 1992 it lost  
9 its FDA approval. Nomifensine has never been approved  
10 for use in horses.

11 Before I get into the facts, I'd like to give  
12 you a quick overview of the enforcement process. I'm  
13 going to focus on drug-positive violations as we're  
14 dealing with today, but the process is essentially the  
15 same for all disciplinary matters.

16 After each race at least the top two horse  
17 have blood and urine taken for drug testing. Half of the  
18 sample goes to the drug testing lab at Texas A&M, and if  
19 the results come back positive, the trainer is given an  
20 opportunity to request testing of the other half which is  
21 referred to as the split sample. Should the split sample  
22 also come back positive or the trainer waive testing of  
23 that split sample, the case goes to the stewards to be  
24 set for hearing.

25 The hearing notice provides the licensee an

1 opportunity to accept the determination without a  
2 hearing. If the offer in the notice is accepted, the  
3 stewards issue their ruling and the case is closed. If  
4 the offer is not accepted, a board of three stewards  
5 conducts a hearing where the licensee has a right to  
6 counsel and to present evidence and witnesses.

7 After the hearing the stewards issue their  
8 ruling. If the ruling is not timely appealed, the case  
9 becomes final and is closed. If the licensee does appeal  
10 the ruling, the case is docketed for appeal with the  
11 State Office of Administrative Hearings, also known as  
12 SOAH. The administrative law judge, or the ALJ, reviews  
13 the stewards' rulings under the agency rules where a  
14 licensee has the burden of proving that the stewards'  
15 ruling was clearly in error.

16 After the SOAH hearing, the ALJ issues a  
17 proposal for decision, and then the parties have an  
18 opportunity to file any exceptions to the proposal for  
19 decision. After the ALJ reviews the parties exceptions,  
20 the judge notifies the parties by an exceptions letter  
21 whether he/she will change or amend any portion of that  
22 proposal for decision.

23 At that point the case comes before you to  
24 determine whether to accept, amend or vacate the proposal  
25 for decision based on certain factors. After the

1 Commission issues its final order, there is an  
2 opportunity to petition for re-hearing of that order, and  
3 thereafter, potential appeal to the district court.

4 Now to the case before us today. Judd Kearl  
5 had five positives for nomifensine, Jose Sanchez had two,  
6 and Brian Stroud had one. All eight positives were  
7 combined into a single stewards' hearing, and at the  
8 hearing evidence was presented about sample collection  
9 and testing.

10 Some of the evidence established that changes  
11 have been made to the sample collection procedures since  
12 the written instructions had been last updated, but these  
13 changes did not affect the validity of the collection  
14 process, the reliability of the testing, or the integrity  
15 of the samples. The two labs that tested the samples,  
16 TVMDL at Texas A&M and the Pennsylvania Toxicology and  
17 Research Lab, both found nomifensine in each of these  
18 samples.

19 Further, Mr. Kearl and his attorney, original  
20 attorney, Darrell Vienna, both testified that the  
21 trainer's veterinarian acknowledged administering  
22 nomifensine to his horses, so it's undisputed that the  
23 drug was present in the horses. Dr. Scott Stanley, an  
24 equine pharmacologist, who ran the University of  
25 California at Davis Equine Drug Testing Laboratory,

1 testified that nomifensine has the potential to affect  
2 the outcome of a race or the health of a horse.

3           Based on the evidence presented, the stewards  
4 issued eight separate rulings, all stating that each  
5 horse had nomifensine in its system on the day of the  
6 race, that nomifensine is a prohibited substance under  
7 the Act and the rules, and that the licensees were,  
8 therefore, responsible for the presence of the  
9 nomifensine and the violations under the absolute insurer  
10 rule. This rule provides, basically, that licensed  
11 trainers are responsible for insuring that the horses  
12 they train race free from all prohibited drugs,  
13 chemicals, or other substances.

14           The rulings against Mr. Kearl suspended him  
15 for a total of 19 years and assessed \$110,000 fine. The  
16 rulings against Mr. Sanchez suspended him for four years  
17 and a fine of \$35,000. And the ruling against Mr. Stroud  
18 suspended him for one year and a fine of \$10,000.

19           The licensees appealed to all of these rulings  
20 to SOAH, which also combined the cases into a single  
21 hearing. The administrative law judge considered all the  
22 evidence from the stewards' hearing, determined that the  
23 stewards' rulings were not clearly in error, and issued a  
24 proposal for decision, or a PFD, upholding those rulings  
25 that are before you today.

1           The PFD is in your materials beginning on page  
2 23. There are two samples of the rulings. They all  
3 generally say the same thing except for horse and  
4 trainer. Those are included as exhibits starting on  
5 pages 61 to 64 and 92 to 94.

6           Staff filed exceptions to minor errors in the  
7 proposal for decision, and Mr. Kearl and Mr. Sanchez also  
8 filed exceptions raising a host of issues and seeking  
9 reversal of the PFD. The judge responded making some  
10 minor changes to the PFD but did not change his ultimate  
11 recommendation to uphold the rulings in full. The ALJ's  
12 exceptions letter is in your materials beginning on page  
13 38.

14           That basically brings us here today. Staff's  
15 position is very simple. The administrative law judge  
16 reviewed the case, applied the clear errors standard from  
17 the rules, and concluded that there was no basis to  
18 recommend reversing the stewards' rulings. We ask you  
19 today to adopt the PFD upholding the stewards' rulings in  
20 each of the three trainers' respective cases and the  
21 changes that are noted in the ALJ's exceptions letter,  
22 dated July 11.

23           Finally, under the Government Code  
24 2001.058(e)(3), we ask that you correct a technical error  
25 in finding of fact 19 in the exceptions letter that

1 refers to Appellant Kearn when actually it should refer  
2 to Appellant Sanchez.

3 The proposed orders are also in your packet  
4 reflecting our request and it starts page 40 for  
5 Appellant Kearn, page 45 for Appellant Sanchez, and page  
6 49 for Appellant Stroud.

7 I'm happy to provide any rebuttal or answer  
8 any questions.

9 CHAIRMAN STEEN: Any questions, commissioners.

10 COMMISSIONER PATE: I have a question. You  
11 make no mention of Dr. Robinson, and in reading the  
12 materials filed by the appellants, it's clear -- it seems  
13 to me be clear, and even in the findings by the  
14 administrative law judge it's clear, that Dr. Robinson --  
15 apparently he was the individual who administered these  
16 drugs.

17 Is there any linkage of Dr. Robinson's  
18 instruction by these individuals to administer that drug,  
19 or is it something on his own? Did you interview Dr.  
20 Robinson? Is he being prosecuted for his involvement?

21 MS. FIELDS: I can't really elaborate on any  
22 prosecutions of other individuals on these cases,  
23 however, I can say that the appellants raised the issue  
24 that Dr. Robinson did, but we had no direct evidence in  
25 these cases that Dr. Robinson supplied it, other than the

1 testimony by the appellants who said that he later, after  
2 the fact, admitted to them, certain of them.

3 COMMISSIONER PATE: The administrative law  
4 judge addressed the involvement of Dr. Robinson and a  
5 curious disappearance. Correct?

6 MS. FIELDS: Yes. Found that the allegations  
7 were serious against Dr. Robinson. I would agree.

8 COMMISSIONER PATE: All right. I had another  
9 question. In the application of the absolute insurer  
10 rule, is there any consideration in punishment for  
11 mitigating factors?

12 MS. FIELDS: Under the absolute trainer [sic]  
13 rule in the case of Hudson v. Texas Racing Commission,  
14 which upheld the absolute trainer, finding responsibility  
15 for the violations under the rule is an absolute. And  
16 you'll notice in the PFD the judge even says with regard  
17 to the challenge of the absolute trainer rule by the  
18 appellants that there's no exception to that, even when  
19 the circumstances --

20 COMMISSIONER PATE: I'm not asking for an  
21 exception to the rule, I'm asking how mitigation plays  
22 into the application of the absolute insurer rule

23 MS. FIELDS: And I'll say again, in Hudson v.  
24 Racing Commission, it's an absolute rule, it is a strict  
25 liability rule.

1                   COMMISSIONER PATE: Let me ask it one more  
2 time. The issue is mitigation that is determining  
3 punishment and the appropriateness of punishment.

4                   What occurs to me here in reading these  
5 materials is the stewards applied the maximum punishment  
6 for each one of these, and even though the administrative  
7 law judge recognized that there was some involvement by a  
8 third party, some culpability by a third party, and I'm  
9 curious as to whether or not there is a mitigation  
10 standard within the rules that is used, or when we apply  
11 this rule it simply means maximum punishment. Is that  
12 what you're saying it means?

13                   MS. FIELDS: I'm not saying that it says apply  
14 maximum. The penalty guidelines do provide for  
15 mitigating circumstances. Okay?

16                   Within the stewards' rulings themselves the  
17 stewards found that there might be an instance of so-  
18 called conspiracy -- I may be putting words in their  
19 mouth -- but in fact, they felt that there was some sort  
20 of concerted effort by all individuals, and so their  
21 finding at the stewards' hearing was that responsibility,  
22 at least in large part, lied with the trainers.

23                   You know, without going outside of what  
24 evidence there was, Dr. Robinson did become unavailable.  
25 We've not been able to find him, nor did the appellants

1 produce him as any sort of mitigating factor to testify  
2 at the stewards' hearing to say what they alleged, which  
3 was, in fact, that he was solely responsible. So without  
4 that sort of evidence to produce to be mitigating as to  
5 their responsibility, it was not absolutely proved at  
6 this hearing, at the stewards' hearing.

7 COMMISSIONER PATE: Within the documents that  
8 are prepared by the appellants there is a reference to a  
9 stewards' guideline that the stewards must consider  
10 mitigating factors. Did the stewards make a mitigating  
11 factor analysis?

12 MS. FIELDS: I'm sure they did because the  
13 penalty guidelines require the stewards to look at all  
14 the evidence, including any mitigating factors. And I  
15 believe that, again, they addressed those within the  
16 ruling themselves, finding that without that testimony  
17 directly from Dr. Robinson that it appeared more so to  
18 them to be a concerted effort by all the parties. And  
19 that's how at least the stewards addressed the evidence  
20 that they had presented to them.

21 Any other questions?

22 CHAIRMAN STEEN: Any other questions of Ms.  
23 Fields?

24 COMMISSIONER EDERER: I don't think you  
25 answered one of the questions that was just asked of you.

1 Are the activities of Dr. Robinson being reviewed by  
2 anybody, or is he just off the hook, or just because he  
3 didn't show up you just forgot about him.

4 MS. FIELDS: Well, typically we don't  
5 discuss --

6 COMMISSIONER EDERER: I'm not asking you that,  
7 I'm not asking you to discuss anything. Is it or is it  
8 not being pursued. It's a very simple question.

9 MS. FIELDS: Yes, sir, it is.

10 COMMISSIONER EDERER: All right.

11 MS. FIELDS: It certainly is.

12 COMMISSIONER EDERER: And you can't find him?

13 MS. FIELDS: Well, there's at least a couple  
14 of agencies that are reviewing Dr. Robinson's activities.

15 COMMISSIONER EDERER: I would hope so.

16 MS. FIELDS: Yes, sir. So we are working  
17 together, and you know, I'm really not at liberty to  
18 discuss the specifics as to how we've got Dr. Robinson at  
19 this point, but rest assured, there are investigations  
20 being conducted.

21 As well, if I can just interject, the rules  
22 and the law allow us to pursue, of course, Dr. Robinson  
23 for responsibility and his responsibility under the Act  
24 and the rules. It's our intent to do that.

25 CHAIRMAN STEEN: Thank you, Ms. Fields.

1 MS. FIELDS: Thank you, sir.

2 CHAIRMAN STEEN: Ma'am, the representative --  
3 would you please state your name again and then just who  
4 you're representing again because I know there was one  
5 that you're not representing.

6 MS. RUFFNER: Yes. My name is Elenor Ruffner,  
7 R-U-F-F-N-E-R. My clients are Mr. Kearl and Mr. Sanchez.  
8 Mr. Stroud was separately represented.

9 So forgive me, let me know when you're ready.

10 CHAIRMAN STEEN: Please proceed. Thank you.

11 MS. RUFFNER: The briefing that we provided to  
12 the State Office of Administrative Hearings, and in  
13 particular our requested exceptions, discusses pretty  
14 thoroughly with references to statutes and evidence about  
15 why we believe that this proposed decision is in error.  
16 In particular, the Honorable Judge Pate noted that there  
17 is no consideration of mitigating factors, and that Dr.  
18 Robinson was absent.

19 I would note that the treatment of Dr.  
20 Robinson, whom everybody believes to have been the  
21 individual who administered the medication, has not been  
22 addressed. In fact, shortly before we submitted our  
23 exceptions, we looked on the Texas Racing Commission  
24 website and noted that to this day he is still licensed,  
25 and I believe his most recent renewal of his license was

1 in between the time that my clients were summarily  
2 suspended upon receipt of the positive tests and this  
3 day. So not only has Dr. Robinson been summarily  
4 suspended, as my clients were, but he has continued to be  
5 a licensed veterinarian in all of the Texas racetracks.  
6 We did attempt to subpoena him. We received no  
7 assistance in that from the Texas Racing Commission, and  
8 despite the efforts of a process server, we could not  
9 track him down.

10 If that would be of assistance to the  
11 Commission, I would be happy to forward those documents  
12 to you showing our efforts to subpoena him. Although Ms.  
13 Fields noted that she didn't want to go outside the  
14 evidence, I do just want to bring to the Commission's  
15 attention the entire lack of evidence that our clients  
16 did anything wrong.

17 Contrary to Ms. Fields's assertion, we did  
18 present substantial mitigating factors. For example,  
19 that the barn search that was performed on both trainers'  
20 barns -- whom I represent -- without notice was  
21 completely clean. We had multiple witnesses who are  
22 themselves trainers and who have been practicing in the  
23 field a long time discuss whether or not our clients met  
24 the standards for trainers in terms of securing their  
25 barns, caring for their animals, and otherwise doing all

1 of the things that should have prevented a rogue  
2 veterinarian from injecting a strange substance into  
3 horses.

4 Our clients didn't know. There was absolutely  
5 no shred of evidence that they did. There was no shred  
6 of evidence of any conspiracy, no telephone records, no  
7 email communications, not text messages, no witnesses, no  
8 nothing.

9 So respectfully, although my clients may have  
10 erred by employing the wrong veterinarian, essentially  
11 terminating the career of Mr. Kearl and terminating the  
12 career of Mr. Sanchez for longer than he had even been a  
13 trainer is inconsistent with proportional penalties.  
14 These two gentlemen cannot be the worst of the worst that  
15 you've seen in your history of enforcing the rules of the  
16 Commission.

17 I am confident that people who use shocking  
18 devices or other known Class 1 substances deserve in some  
19 cases the maximum penalty. My clients do not.

20 And I do want to just note for the record that  
21 we have done everything we can to work with the Racing  
22 Commission and show them that our clients, if anything,  
23 were guilty only of not knowing what this crazy  
24 veterinarian was doing. And because it does end my  
25 clients' career, effectively, we're going to have to

1 appeal, and I would prefer that something short of the  
2 maximum penalty be proposed so that we can close the book  
3 on this chapter.

4 One thing that Ms. Fields didn't mention is  
5 that we've already gone to the Travis County District  
6 Court and noted that the procedures that were used in  
7 collecting and storing the samples were invalid. That  
8 has not been appealed by the Commission and that remains  
9 a final ruling, so there were no validly collected  
10 samples in this test.

11 Therefore, there are multiple bases on which  
12 we intend to go before the Commission and note that,  
13 number one, there was no expert testimony connecting  
14 nomifensine to any harm in any horse ever at any time,  
15 which means it cannot meet the definition of a prohibited  
16 substance; two, that there were no validly collected  
17 tests, which is a matter of res judicata at this point;  
18 and three, that even if everything they say about results  
19 of the tests were to be true, my clients had nothing to  
20 do with it and there is no shred of evidence that they  
21 did.

22 They strongly regret their actions. The  
23 evidence on the record confirmed that they are the kind  
24 of trainers who care very deeply about their horses and  
25 would not have permitted this kind of experimentation had

1 they known about it.

2           Therefore, we request that you reject the  
3 proposal for a maximum penalty and instead either treat  
4 this as time served, or in the alternative, something  
5 reasonable that my clients can work out. We've  
6 approached Ms. Bijansky and Ms. Fields and have gotten  
7 nowhere, so we just request that something reasonable and  
8 consistent with the activity that occurred and  
9 proportional be the result.

10           Thank you.

11           My apologies, if you have any questions, I'm  
12 happy to answer them.

13           COMMISSIONER PATE: I have a few questions.

14           MS. RUFFNER: Yes, sir.

15           COMMISSIONER PATE: First of all, what was the  
16 circumstance where y'all actually had to go to district  
17 court in order to get a hearing that you were allowed  
18 under our rules but you were denied? I want to  
19 understand what happened there.

20           MS. RUFFNER: I'm sorry. Can you ask that one  
21 more time.

22           COMMISSIONER PATE: Y'all went to district  
23 court --

24           MS. RUFFNER: Yes, sir.

25           COMMISSIONER PATE: -- to get a hearing, you

1 were supposed to get a hearing within seven days and you  
2 had not gotten a hearing, you had to go to district court  
3 and you got some kind of an order that then resulted in a  
4 hearing within 20 days, or whatever it was.

5 MS. RUFFNER: Sure. So in that circumstance,  
6 my clients were summarily suspended effective July 31 of  
7 2017. Under the rules they were entitled to an  
8 evidentiary hearing within seven days.

9 When that hearing was requested, we were  
10 advised that the hearing that had occurred before the  
11 summary suspension was the hearing to which they were  
12 entitled and they did not intend to give my clients  
13 another one. This was not our understanding of what the  
14 rules and the statute say and we presented that argument  
15 to a district court and the district court agreed.

16 COMMISSIONER PATE: And looking at the  
17 administrative law judge's findings, there's an actual  
18 finding by the administrative law judge that he says  
19 there is simply no empirical data that Dr. Stanley  
20 testified that establishes the manner and extent  
21 nomifensine may have on a horse.

22 MS. RUFFNER: That is what the ALJ said, yes,  
23 sir.

24 COMMISSIONER PATE: Okay.

25 MS. RUFFNER: In fact, my understanding is Dr.

1 Stanley had never heard of nomifensine until the  
2 representatives from the Racing Commission called him and  
3 asked him to testify that it was harmful.

4 COMMISSIONER PATE: With respect to your two  
5 clients, have they had prior violations?

6 MS. RUFFNER: Mr. Sanchez had not. There was  
7 an incident, I think, in 2014 in which Mr. Kearl had some  
8 levels where it was a permitted substance but it was  
9 above the permitted level. He paid his fine and served  
10 his suspension which I think was a maximum of eight  
11 weeks.

12 COMMISSIONER PATE: What mitigation was  
13 actually considered by the stewards in their hearing, to  
14 your knowledge?

15 MS. RUFFNER: I can only tell you what I  
16 presented. It's hard for me to know what they considered  
17 in coming to their ruling. The stewards acknowledged in  
18 their ruling that it does seem clear that Dr. Robinson  
19 and not our clients administered the substance. The  
20 stewards also acknowledged that my clients were not  
21 aware, and the same for Mr. Stroud, that there was no  
22 evidence -- in fact, they said that they were ignorant of  
23 what Dr. Robinson was doing. That strikes me as  
24 mitigating factors.

25 We also presented evidence that they took

1 exceptional efforts to ensure the safety and well-being  
2 of their animals and the security of their barns. Other  
3 than not knowing and taking efforts to prevent the thing  
4 that happened from happening, it's hard to know what  
5 other mitigating factors I could have presented that  
6 would have been persuasive to the stewards.

7 COMMISSIONER PATE: Have you been involved in  
8 other disputes like this with the Racing Commission, or  
9 is this something --

10 MS. RUFFNER: No, sir. This is, in fact, my  
11 first time in front of the Racing Commission.

12 COMMISSIONER PATE: So my question is based on  
13 your -- you probably checked around -- what kind of  
14 punishment is typical for this kind of thing? Is it  
15 typically the max, \$25,000 and five years' suspension?

16 MS. RUFFNER: That is not what I observed in  
17 looking through the history of the Texas Racing  
18 Commission website. In fact, I've never seen a  
19 suspension this long or a fine this high.

20 And one of the reasons that we went to the  
21 district court from the outset is that the summary  
22 suspension on July 31 was admittedly the first summary  
23 suspension of any trainer at any time for a drug issue or  
24 a positive test. Never before Mr. Sanchez and Mr. Kearl  
25 has the Racing Commission summarily suspended a trainer

1 simply because a test came back positive for a substance  
2 of some kind.

3 CHAIRMAN STEEN: How long have your clients  
4 been associated with Dr. Robinson?

5 MS. RUFFNER: So Mr. Sanchez had only been a  
6 trainer for about a year at the time of the events. My  
7 understanding is he had been his veterinarian for that  
8 entire period. I think Mr. Kearl had been working with  
9 Dr. Robinson for perhaps three years before that.

10 Dr. Robinson had been around racetracks for a  
11 long time. His mother is a veterinarian -- I think her  
12 name is Mary -- so he was familiar with racetracks but  
13 only became a veterinarian that was licensed by the  
14 Commission fairly recently, and Mr. Kearl used him, among  
15 a number of other veterinarians.

16 COMMISSIONER McNABB: Is there any dispute  
17 that this substance is a Class 1 substance categorized?

18 MS. RUFFNER: So I believe so, and the reason  
19 for that is that the definition of a prohibited substance  
20 is one that has the possibility of causing harm to an  
21 animal or influencing the outcome of a race. As has  
22 already been observed, or the acknowledgment by the ALJ  
23 was that there's no empirical evidence that this can do  
24 anything in an animal at all.

25 There's never been any testing on horses.

1 There's never been a horse that's alleged to have dropped  
2 dead or ran twice as fast all of a sudden, so there's no  
3 evidence that this particular substance meets the  
4 definition of a prohibited substance under the statutes.

5 However, I do understand that if a substance is not on  
6 the very, very long list of classified substances that it  
7 is treated as though it is a Class 1.

8 COMMISSIONER McNABB: Just from a veterinary  
9 point of view, this drug acts on the central nervous  
10 system in the serotonin dopamine triangle, so whether it  
11 acts as a severe stimulant or as a depressant, either way  
12 it can have an impact on a race. If a horse is too  
13 excited, a lot of times trainers will wish that they  
14 could do something to calm the horse down so they'll go.

15 Other times they're looking for something.

16 So in the black bag of magic things that can  
17 be pushed through a needle into a horse, someplace,  
18 somewhere along the line, someone will push something  
19 through a needle into a horse and if that horse wins a  
20 race or whatever, then it develops a black magic about  
21 it. So there's not going to be clinical testing on  
22 something, especially a drug that has already been known  
23 to be too dangerous to be given to humans.

24 But the drug is out there. It acts on the  
25 central nervous system. Because it acts on the central

1 nervous system in the parts of the brain that have to do  
2 with stimulation or sedation, that's where it can affect  
3 the behavior of a horse and whether it is empirically to  
4 say 5 cc's gives you another X miles an hour, in horse  
5 racing if this just gives a perceived notion of an edge,  
6 then the likelihood that somebody is going to push it  
7 through a needle into a horse someplace on the planet is  
8 pretty high.

9           Where that comes into the ARCI and those of us  
10 who have been in the industry knowing that if you are  
11 affecting a horse's mentation -- even the cleanest horse  
12 on a great day is a pretty volatile creature. 1,200  
13 pounds of muscle and they are going to go that way, and  
14 you put 12 of them on a track, you've got a potential for  
15 a lot of things happening.

16           If you are affecting that horse's ability to  
17 think and that horse's ability to be rational and  
18 possibly overstimulating or whatever, now you're  
19 jeopardizing the safety of everyone on that track, so the  
20 jockeys, the other horses, the gate crew, everyone else.

21           So whether there are studies out there on this much of  
22 this prohibited substance, this is a substance that isn't  
23 safe in humans.

24           The drug company says we're not doing it  
25 anymore, it's still floating around out there and there

1 are evildoers who say this has got to have some kind of  
2 magic and maybe I can get an edge. It might have just  
3 been a case of salesmanship, who knows the motivations,  
4 but on the piece that there's no scientific studies on  
5 the effect of this drug in horses, of course not.

6 Now, can someone shove it through a needle  
7 into a racehorse hoping that they can affect the outcome  
8 of a race one way or another -- horses have been known to  
9 be slowed down. Now, there's evildoers on the racetrack  
10 who have their own reasons, and there's one key player  
11 that we haven't been able to talk to.

12 But just from a veterinary perspective and the  
13 back side of the racetrack, there is reason that this  
14 drug is classified by ARCI as a Class 1 substance and  
15 given the health and welfare of the racing animals and  
16 the safety of the jockeys and everybody on the back side  
17 of the racetrack. It's a dangerous place to work on a  
18 good day. You start having people playing Mr. Wizard and  
19 sticking stuff into horses, it can get very, very  
20 dangerous.

21 MS. RUFFNER: Dr. McNabb, may I respond  
22 briefly?

23 With permission, I have no doubt that you're  
24 correct and I don't want to suggest that the Racing  
25 Commission should ignore that this drug may have that

1 kind of effect on an animal. And in fact, what our  
2 client testified to is unless you know what a substance  
3 is going to do to an animal, he would never have  
4 permitted it to be introduced into his animals, and that  
5 testimony went unchallenged.

6 And that, I suppose, is another mitigating  
7 factor that we introduced unchallenged testimony that  
8 confirmed that because of the issues that you raised  
9 there is no way that our client would have authorized any  
10 veterinarian or anybody in his stable to introduce a  
11 substance where he didn't know exactly what it was going  
12 to do and know that it was okay.

13 COMMISSIONER WAIGHT: What would be the reason  
14 for administering that drug?

15 MS. RUFFNER: I'm sorry, sir?

16 COMMISSIONER WAIGHT: What was the reasoning  
17 for administering that drug?

18 MS. RUFFNER: Respectfully, I would have to  
19 ask Dr. Robinson. The best guess that we can make is  
20 that there was some hope that because this drug was so  
21 uncommon that it could fly under the radar, that Dr.  
22 Robinson could create a track record of assisting horses  
23 to excel with a magic cocktail and be able to sell that  
24 cocktail to other clients, in which case he did not have  
25 my client's authorization to experiment on his horses.

1                   COMMISSIONER MOORE: Has this happened before  
2 with Dr. Robinson that you found out?

3                   MS. RUFFNER: Again, he had only been in the  
4 field for about three years and he didn't have a  
5 particularly long track record. But no, sorry, the  
6 direct answer to your question, sir, I do not know of any  
7 other instances other than these seven horses, these  
8 eight races, these three trainers.

9                   COMMISSIONER McNABB: In the larger world of  
10 racing, if a veterinarian thinks that he's got the magic  
11 go, then it means it's a marketable service just in the  
12 folklore of the back side of the racetrack.

13                   COMMISSIONER PATE: But he has a financial  
14 motivation.

15                   COMMISSIONER EDERER: This happened on five  
16 occasions to Kearn?

17                   MS. RUFFNER: Yes. For one horse it happened  
18 twice and then there were three other horses, so five  
19 separate race dates.

20                   COMMISSIONER McNABB: Over what period of  
21 time?

22                   MS. RUFFNER: I think the first one was at the  
23 end of May and the last one was towards the end of June.

24                   COMMISSIONER EDERER: And you said that the  
25 trainer did not know it was being injected and he was

1 allowing it to happen?

2 MS. RUFFNER: No, sir. He was not aware that  
3 these injections were happening and anything that he knew  
4 would be injected into his horse, he knew exactly what it  
5 was and would have authorized it.

6 COMMISSIONER EDERER: So he did not know there  
7 was any injection they injected into his horse?

8 MS. RUFFNER: He had no idea that Dr. Robinson  
9 was introducing the substance into any of the seven  
10 horses at issue.

11 COMMISSIONER PATE: I think the record was  
12 also he wasn't even at the track three of the times,  
13 either.

14 COMMISSIONER EDERER: It's just amazing to me  
15 that a vet is going to come and inject a horse and the  
16 trainer not know what he's injecting if the trainer has  
17 any security around his horses whatsoever.

18 MS. RUFFNER: Yes, sir, I would have had the  
19 same question, which is why, at the hearing in front of  
20 the Board of Stewards, we asked the two other trainers  
21 who testified about their practices and procedures  
22 whether it would be common for the trainer to be present  
23 at all administrations by a veterinarian.

24 And the answer is no, it is not common for a  
25 trainer to be present each time a therapeutic substance

1 is administered to their horse.

2 COMMISSIONER EDERER: I've lived back there,  
3 I've practiced at the racetrack. Whether the trainer  
4 himself or herself is there, there is a person who is  
5 with that horse, and the trainer is responsible. So if  
6 indeed that veterinarian was coming in and shooting the  
7 horse up, that trainer is responsible and has a chain of  
8 custody, or if they're allowing a veterinarian to come in  
9 and just walk into a stall without one of his staff  
10 there, then I've got an issue with that.

11 So whether this veterinarian was coming in,  
12 whether these were Lasix horses or not, which there would  
13 be one injection to be given, but if there's two, the  
14 trainer should have known because his staff would know  
15 the horse gets an injection. Hey, Doc, what's that other  
16 needle?

17 These things don't happen by accident. How  
18 things happen on race day are very regimented, they are  
19 very time-driven. It is very important and I don't think  
20 it's lost on anybody that it's important what goes on  
21 when the horse is in the stall on race day. Everybody  
22 knows how important it is.

23 CHAIRMAN STEEN: The first instance of this,  
24 the time that transpired between the first instance and  
25 the last instance of the injection, did your client

1 become aware that there was any sort of issue or  
2 suspicion of any sort of issue?

3 MS. RUFFNER: No. There were two sets. There  
4 was about a three-week lag between the race itself and  
5 then notification of the positive test, so there was one  
6 set of positive tests and then there was a second set, I  
7 think, of two horses. So three positive tests and then  
8 two others, and the two others came from races that  
9 occurred between that first race at issue and the  
10 notification of Mr. Kearl. Since Mr. Kearl was notified  
11 and Mr. Sanchez and Mr. Stroud were notified and Dr.  
12 Robinson went on the lam, there have been no other  
13 positive tests.

14 Yes, Doctor.

15 COMMISSIONER McNABB: And there's no way of  
16 knowing if this drug actually caused these horses to win  
17 the races, but the fact that these horses were getting  
18 tests, they ran first or second more than likely. Is  
19 that true?

20 MS. RUFFNER: Yes, I think that they were  
21 awarded horses.

22 COMMISSIONER McNABB: So whether it was a  
23 cause and effect or a happy circumstance, but that would  
24 reinforce the behavior that if it worked once, it would  
25 again. So whether that was Dr. Robinson, that's

1 conjecture.

2 But the fact that these horses were getting  
3 tested, we weren't reaching down into the field testing  
4 horses randomly, these horses were coming through to the  
5 test barn because due to standard practice they were  
6 being tagged to be tested due to their performance. Is  
7 that correct?

8 MS. RUFFNER: That's correct. We have no idea  
9 how many horses who didn't win a purse would have tested  
10 positive, there's just no way to know that. I do want to  
11 note, though, if the suggestion is that Mr. Kearl or Mr.  
12 Sanchez needed to do this to win or for the money, Mr.  
13 Kearl was the most successful jockey in Quarter Horse  
14 racing in 2016.

15 He had no reason to put this all at risk, he  
16 was doing fine. There was no motivation for him to  
17 threaten his very successful career by trying a strange  
18 drug that had no relevance to anything that he would have  
19 authorized medically for his horses.

20 COMMISSIONER EDERER: Can't say. There's a  
21 missing person here that we haven't been able to  
22 question. All I can say is the fact that this popped up  
23 multiple times, somebody had some positive reinforcement  
24 that it popped up again would be my guess.

25 MS. RUFFNER: I have no reason to think that

1 you would be incorrect. I would love to talk to Dr.  
2 Robinson. I can only speak on behalf of my clients who I  
3 think are not the kind of people, if you look at the  
4 record, that you should ban indefinitely and end their  
5 careers.

6 CHAIRMAN STEEN: Are your clients here today?

7 MS. RUFFNER: They are not. Mr. Kearl and Mr.  
8 Sanchez, neither of them are local.

9 COMMISSIONER PATE: Are what?

10 MS. RUFFNER: Neither of them are local, they  
11 don't live in Austin.

12 COMMISSIONER PATE: How old are they? What's  
13 their age?

14 MS. RUFFNER: Mr. Kearl, I think, is in his  
15 40s. I haven't asked him; as a woman I tend not to ask  
16 people their ages. And Mr. Sanchez is somewhat younger,  
17 in his 30s.

18 Are there any other questions I can help you  
19 guys with?

20 (No response.)

21 MS. RUFFNER: Thank you so much.

22 CHAIRMAN STEEN: Thank you.

23 MS. RUFFNER: Thank you for your time.

24 MS. FIELDS: Commissioners, with leave I'd  
25 like to address a few of the issues that she raised.

1                   CHAIRMAN STEEN: Sure.

2                   MS. FIELDS: First and foremost, the testimony  
3 that Mr. Kearl testified that he would have never  
4 permitted the administration of this substance was  
5 certainly rebutted by other evidence of positives that he  
6 had in the past. This is at least a second offense.

7                   She brought up three separate issues. First,  
8 that nomifensine is not a prohibited substance under the  
9 rules of the Act as defined. The expert witness, Dr.  
10 Stanley, again, a renowned expert in equine pharmacology,  
11 it was argued that his opinion was speculative and  
12 based -- he had no basis because of the studies of the  
13 effects of nomifensine. But if you'll note in the  
14 proposal for decision, the ALJ found that Dr. Stanley's  
15 opinion was credible, persuasive and reasonable, and that  
16 the presence of nomifensine could in fact affect the  
17 horse, and as so, affect the outcome of the race.

18                   The ALJ found Dr. Stanley's testimony was  
19 credible, that the drug was an antidepressant, that a  
20 human and a horse would react similarly to the substance  
21 because they share the same dopamine receptor mechanism.

22                   The ALJ also found that the expert's testimony was  
23 persuasive and reasonable that a drug that lacked FDA  
24 approval would be harmful to any human or animal that  
25 ingested it.

1           Dr. Stanley testified at the stewards' hearing  
2 that nomifensine, again, had never been approved for use  
3 in any veterinary species and the only approval was for  
4 human use, which was withdrawn decades prior. He  
5 testified nomifensine could reasonably and potentially  
6 affect the health of a horse or the outcome of a race in  
7 part for the reason that the FDA had to approve  
8 medications based on studies, and that certainly studies  
9 would be conducted to ensure the safety of equine use,  
10 and that had not been done with nomifensine.

11           The Class 1 definition is that the substance  
12 should not be in a horse, any portion, any part. Dr.  
13 Stanley, who sits on the ARCI advisory group for ARCI  
14 drug classification guidelines, testified that  
15 nomifensine was not listed on the guidelines but unknown  
16 drugs or drugs like nomifensine that were known but not  
17 available for many, many years are classified as 1  
18 because there is generally no acceptable purpose for a  
19 Class 1 drug to be in a racehorse.

20           The ALJ concluded, as the stewards did, that  
21 nomifensine met both the Act and rules definition of a  
22 prohibited substance. The petitioners will next contend  
23 that the positive test results should not be considered  
24 because the test barn employees who drew and stored blood  
25 samples deviated from those procedures --

1                   COMMISSIONER EDERER: Excuse me. In the  
2 interest of time, aren't you just repeating what's been  
3 submitted to us already?

4                   MS. FIELDS: Potentially. I would just argue  
5 at the end on the sole responsibility that the absolute  
6 insurer's rule has been upheld by Hudson v. the Racing  
7 Commission. It says that they are ultimately responsible  
8 for the substance and that the horse races substance-  
9 free.

10                   And I appreciate it.

11                   COMMISSIONER EDERER: Thank you.

12                   CHAIRMAN STEEN: Ted Ross. I don't know if  
13 Scott Wells is here, I'm not sure if he's allowed to  
14 testify on this item or not.

15                   MR. T. ROSS: No. The record was closed, and  
16 the Commission is limited to the record.

17                   CHAIRMAN STEEN: Okay.

18                   Commissioners, any discussion on the item?

19                   COMMISSIONER PATE: I don't have any issue  
20 really with the three principal findings and the  
21 liability. I have an issues in light of the  
22 participation. I mean, it's all over even the ALJ  
23 findings of the appropriateness of the punishment, and I  
24 think to me that's what I'm struggling with.

25                   CHAIRMAN STEEN: Mr. Ross, can you comment at

1 all?

2 MR. T. ROSS: To the extent it involves any  
3 legal advice, I would have to do that in closed session.

4 CHAIRMAN STEEN: Any other discussion? I  
5 think we'll go into executive session unless there's  
6 further discussion.

7 (No response.)

8 CHAIRMAN STEEN: Okay. Thank you, Mr. Ross.

9 The Commission will now enter into executive  
10 session under Government Code Section 551.071(2) to seek  
11 the advice of its attorney as privileged communications  
12 under the Disciplinary Rules of Professional Conduct.  
13 The time is now 11:23.

14 (Whereupon, at 11:23 a.m., the meeting was  
15 recessed, to reconvene this same day, Tuesday, September  
16 10, 2019, following conclusion of the executive session.)

17 CHAIRMAN STEEN: The Commission is now  
18 reconvening after concluding executive session under  
19 Government Code 551.071(2). The time is now 11:40. We  
20 have made no decisions while in executive session.

21 Commissioners, is there any further  
22 discussion?

23 COMMISSIONER MACH: Chuck, do we have any  
24 historical data regarding penalties assessed in similar  
25 situations?

1 MR. TROUT: To my knowledge, I don't believe  
2 we've ever had anybody have five Class 1 positives. I  
3 would have to do research for you if you wanted to have  
4 that kind of information, because I just don't know.

5 COMMISSIONER MACH: It's possible?

6 MR. TROUT: I'm sorry, sir?

7 COMMISSIONER MACH: It's possible, you just  
8 don't recall.

9 MR. TROUT: That's correct.

10 COMMISSIONER EDERER: It hasn't happened in  
11 the last 12 years. I've been here for 12 years, and I  
12 know it has not happened in 12 years.

13 COMMISSIONER PATE: The unusual thing here is  
14 the close proximity of the races and the testing and when  
15 the results were first known.

16 COMMISSIONER WAIGHT: But this was not an  
17 isolated instance, there were multiple, isn't that  
18 correct, with this trainer?

19 COMMISSIONER McNABB: A point of  
20 clarification. One trainer had one horse that tested  
21 positive, another trainer had three positives, and  
22 another trainer had five. Is that correct?

23 COMMISSIONER MOORE: The second one had two,  
24 and the other had five.

25 COMMISSIONER EDERER: One, two, and five.

1                   COMMISSIONER PATE: Mr. Chairman, I'd make a  
2 motion to table consideration of this order until the  
3 next meeting until such time as Mr. Trout can give us  
4 some information on the historical sense of the  
5 offenders.

6                   CHAIRMAN STEEN: One other question I had is  
7 do we have historical information as was mentioned on Mr.  
8 Kearl, the previous violations? Do you have information?

9                   Perhaps, Ms. Fields, do you have information  
10 on the previous violations that were mentioned about Mr.  
11 Kearl? I think it was during Ms. Ruffner's testimony.

12                   MS. FIELDS: Yes, and she may, as well, want  
13 to supplement that, but they were appealed through SOAH  
14 and there was a docket in 2015, and I think those were  
15 for seven budesonide.

16                   MR. TROUT: Budesonide, seven positives.

17                   MS. FIELDS: And it's my understanding 2015 is  
18 about four years but that Dr. Robinson was the vet then  
19 and of course, he was the vet after these positives came  
20 up.

21                   MR. TROUT: He was not mentioned in that first  
22 case.

23                   MS. FIELDS: There was no vet allegations.  
24 That was just for the therapeutic.

25                   CHAIRMAN STEEN: I'm sorry. That was five

1 years ago?

2 MS. FIELDS: The case was docketed in 2015  
3 with SOAH, so I don't remember exactly. I'm having  
4 trouble downloading the whole document from the SOAH  
5 website, but it was filed with SOAH in 2015, so it could  
6 have been September of 2014.

7 COMMISSIONER MACH: And we believe that to be  
8 the same vet, or we don't know?

9 MS. FIELDS: I don't have any direct evidence  
10 of that. I'd have to go back and confirm that through  
11 the record.

12 COMMISSIONER EDERER: And the case that we're  
13 talking about was in '17, two years later?

14 MS. FIELDS: Yes, sir.

15 COMMISSIONER EDERER: This has been going on  
16 for two years.

17 MS. FIELDS: Yes, sir.

18 COMMISSIONER EDERER: So this was just two  
19 years after the first incident and he's there again.

20 MS. FIELDS: Yes, exactly.

21 COMMISSIONER EDERER: And then I have a  
22 question for Chuck. Chuck, if we were to table this and  
23 we would ask you for any history that you can give us,  
24 first off, do you know of any history off the top of your  
25 head? You've been here for 10-12 years yourself, you've

1       been here a lot longer than that.

2                   MR. TROUT:  You mean something similar as far  
3       as --

4                   COMMISSIONER EDERER:  Punishment is concerned,  
5       punishment history for trainers, for that matter,  
6       trainers or jockeys.

7                   MR. TROUT:  Well, I think that if you looked  
8       at the punishment that was given, say, for the first  
9       violation, that's what we would normally do for a first  
10      violation, and then when you have a second violation,  
11      there's guidelines as to what you give for the second  
12      violation, the third violation and the fourth violation.

13

14                   I don't think we've ever had -- off the top of  
15      my head I don't believe we've ever had one where a  
16      trainer had five positives.  But if you look at the first  
17      penalty that was given to him for his first violation, I  
18      think you will find that that's in line with what we give  
19      people for their first violation.

20                   CHAIRMAN STEEN:  And you're referring to 2015  
21      when you say first violation?

22                   MR. TROUT:  Yes, sir.

23                   CHAIRMAN STEEN:  And when you're compiling the  
24      number of violations, if we're thinking about it that  
25      way, there's been two previous ones, is that what we're

1 saying, prior to this case?

2 MS. FIELDS: If I may? Technically, because  
3 all those were brought together, and I think what the  
4 executive director is referring to is that they're  
5 graduated. So in this case with the five positives, just  
6 like with Mr. Stroud having one violation, Mr. Kearl got  
7 one year, \$10,000, then it graduated to three and \$25-,  
8 then five and \$25-. And an aggravating circumstance  
9 would be prior offenses.

10 CHAIRMAN STEEN: But these all happened within  
11 a compressed time period to where potentially it was  
12 unknown that the first one had happened when the fifth  
13 one happened.

14 MS. FIELDS: That could have been potentially  
15 it. I'd have to go back and look at the specific dates,  
16 but as I recall the evidence, they were not aware until  
17 all the positives of those first ones had come. That's  
18 when it stopped.

19 COMMISSIONER EDERER: I make a motion that we  
20 accept the findings.

21 MR. T. ROSS: Excuse me. We have another  
22 motion on the table with no second.

23 COMMISSIONER ROBERTS: I second Judge Pate's  
24 motion to table.

25 CHAIRMAN STEEN: So we have a motion on the

1 table to table the ruling. I guess what I would say is  
2 I'm not quite clear if we do table it what additional  
3 information that we're going to be able to get from what  
4 we're requesting or what is even available if we table.  
5 And so if we were to have a vote on that, I would at  
6 least like to know where we're going with it as far as  
7 additional information that's possible to obtain.

8 COMMISSIONER WAIGHT: Is this something for  
9 discussion?

10 CHAIRMAN STEEN: Yes.

11 COMMISSIONER WAIGHT: I guess it's not clear  
12 to me, there are multiple violations with this  
13 individual. I mean, if the other two it's a first  
14 offense but in the case of the one he's got multiple  
15 offenses. When do you stop this, you know? I just don't  
16 understand.

17 If you want to table it for the two first  
18 violators, I can understand that, but for a guy that's  
19 been penalized three times, I don't understand. It's a  
20 violation of the rules.

21 CHAIRMAN STEEN: I guess the question in my  
22 mind is if you would call this violation number three or  
23 if you call it violation number six because of the tight  
24 period in which those five violations occurred, it was  
25 potentially unknown. That's the question in my mind.

1                   COMMISSIONER WAIGHT: How often is it that  
2 trainers administer different types of drugs to horses to  
3 have an effect on the race? How often does that happen?

4                   COMMISSIONER McNABB: As often as they can get  
5 away with it.

6                   COMMISSIONER WAIGHT: But I mean, I would  
7 think as a trainer you would want to have some type of  
8 approval before you administer a drug that wasn't  
9 acceptable to the industry. Am I being very naive?

10                  COMMISSIONER McNABB: I'll give you -- the  
11 dark back side is if rumor or popular culture or belief  
12 is that you can get the intended effect and a lab isn't  
13 going to pick it up, bingo.

14                  COMMISSIONER WAIGHT: You can cheat and get  
15 away with it.

16                  COMMISSIONER McNABB: You get a ticket. And  
17 so there's always the "doesn't test" or "the lab's not  
18 testing for this," so it's the holy grail for those that  
19 are looking to cash a ticket. I mean, it's a  
20 hardscrabble business, trying to make a living on the  
21 back side is a hard business, but the holy grail is you  
22 get something that you can get a purse and the lab is not  
23 testing for it, you get it, and then you just pray that  
24 nobody gets killed or the horse doesn't break down.

25                  And so how many things have gotten through

1 labs that stuff has been shoved through a needle and put  
2 into a horse? Not every trainer is out there doing evil  
3 things. There's a lot of good horsemen and people who  
4 are honest folks trying to make a living, but the holy  
5 grail on the back side of a racetrack is something that  
6 if rumor has it that there's a magic shot and they can  
7 get there and get by and they can get a win and maybe  
8 have some side effects going, it certainly happens.

9 COMMISSIONER EDERER: I have a question for  
10 you, Chuck, as far as Strouse received a one-year  
11 suspension. Right?

12 MS. FIELDS: Right. It's Stroud.

13 COMMISSIONER EDERER: And that's already gone.

14 MS. FIELDS: Yes, sir. Time served and  
15 penalty paid.

16 COMMISSIONER EDERER: There you go.

17 Sanchez has got three years, so two of his  
18 years are gone.

19 MS. FIELDS: He had two violations, so one was  
20 for a year and \$10- and then the second ruling was for  
21 three and \$25-, so a total of four. He had two rulings.

22 COMMISSIONER EDERER: Okay. So he's still got  
23 two years to go.

24 MS. FIELDS: I believe it's 2022, yes, sir.

25 COMMISSIONER EDERER: Kearl, he's got a long

1 time.

2 MS. FIELDS: Yes, sir, 19, and I believe it  
3 goes to 2036.

4 COMMISSIONER EDERER: Okay.

5 CHAIRMAN STEEN: And that's based on five  
6 violations?

7 MS. FIELDS: That's based on five. The first  
8 ruling was a year and \$10-, the second was three and \$25-  
9 , and the other three were five and \$25-.

10 COMMISSIONER MACH: And Kearl has a previous  
11 history.

12 MS. FIELDS: Yes, sir. That was an  
13 aggravating circumstance.

14 CHAIRMAN STEEN: You don't have the specifics  
15 on the previous history. Is that correct?

16 MS. FIELDS: I couldn't download it on my  
17 phone. It was appealed at the State Office of  
18 Administrative Hearings on his other five previous. It  
19 was a therapeutic overdose.

20 COMMISSIONER ROBERTS: Are we asked to rule on  
21 all three of these as one, or take them separately?

22 MS. FIELDS: I'm sorry?

23 CHAIRMAN STEEN: Attorney Ross, the question  
24 is do we have to rule on all three as one or can we rule  
25 on them separately?

1           MR. T. ROSS: I would recommend that you rule  
2 on them separately.

3           I'm just reminding you you have a motion to  
4 table.

5           COMMISSIONER PATE: I'm going to withdraw the  
6 motion.

7           COMMISSIONER ROBERTS: I'll withdraw the  
8 second.

9           COMMISSIONER PATE: And let's proceed with  
10 Stroud and Sanchez.

11           CHAIRMAN STEEN: Okay. Motion withdrawn,  
12 seconded. Commissioner Pate has withdrawn, Commissioner  
13 Roberts seconded withdrawal of the motion.

14           Would you like to make a new motion,  
15 Commissioner Pate?

16           COMMISSIONER PATE: I would move that we  
17 accept the recommendation and the findings of the  
18 administrative law judge as to the appellants Sanchez and  
19 Stroud.

20           CHAIRMAN STEEN: Motion made to accept the  
21 findings of the administrative law judge -- is that the  
22 correct terminology, Mr. Ross?

23           MR. T. ROSS: Yes. It's to uphold the  
24 findings and conclusions and to adopt and incorporate the  
25 findings and conclusions of the administrative law judge

1 in the PFD as to those two persons.

2 COMMISSIONER PATE: That's the motion.

3 COMMISSIONER ROBERTS: Second.

4 CHAIRMAN STEEN: Motion made by Commissioner  
5 Pate.

6 MS. FIELDS: Commissioners, if I may? There  
7 was an exceptions letter that changed some of those PFD  
8 findings of fact, and the exceptions letter had one error  
9 in it on finding of fact 19. We would ask that the  
10 commissioners also incorporate those exceptions and  
11 changing finding of fact 19 to Appellant Sanchez.

12 COMMISSIONER PATE: I would make that  
13 amendment.

14 CHAIRMAN STEEN: Motion amended by  
15 Commissioner Pate.

16 Do we have any further discussion?

17 (No response.)

18 CHAIRMAN STEEN: If there's no further  
19 discussion, we'll take it up for a vote. All in favor  
20 please signify by saying aye.

21 (A chorus of ayes.)

22 CHAIRMAN STEEN: Any opposed?

23 (No response.)

24 CHAIRMAN STEEN: That motion carries.

25 So we still have the matter of Mr. Kearl open.

1           COMMISSIONER PATE: I want to get some clarity  
2 here because before we went to closed session, I  
3 understood his lawyer to say that there had been one  
4 prior violation, and when we come back out here now we're  
5 talking about five prior violations. I'm trying to make  
6 sure I understand what's being talked about.

7           CHAIRMAN STEEN: My understanding is -- Ms.  
8 Ruffner would you mind stepping back up? -- that there  
9 was a previous violation and the current would be counted  
10 as five but there was one unrelated to this case.

11           COMMISSIONER PATE: And that's where the six  
12 comes from.

13           CHAIRMAN STEEN: Or seven.

14           COMMISSIONER PATE: Seven. Okay.

15           CHAIRMAN STEEN: Do you have that information?

16           MS. RUFFNER: I can get it pretty quickly.  
17 Previously there was a set of instances that were treated  
18 as a single matter before the Board of Stewards, and that  
19 was, I believe, paid and accepted. But if you'll give me  
20 a minute, I'll get on the internet and pull up exactly  
21 what that was. That was included in the record before  
22 the ALJ.

23           CHAIRMAN STEEN: Can we table this and come  
24 back to it after that's been looked up?

25           MR. T. ROSS: You're talking about at the next

1 meeting?

2 CHAIRMAN STEEN: I'm talking about moving it  
3 back -- re-addressing it in today's meeting. Yes.

4 COMMISSIONER MACH: He's not tabling it, just  
5 skipping it down the agenda and come back.

6 MR. T. ROSS: Just moving it down the agenda,  
7 you can do that.

8 CHAIRMAN STEEN: Do I need a vote to do that?

9 MR. T. ROSS: No.

10 CHAIRMAN STEEN: Okay. Then we'll move that  
11 down the agenda.

12 Next is item V. Proceedings on rules. Devon  
13 will be presenting these items.

14 MS. BIJANSKY: Yes, sir. V.A.1. is 16 TAC  
15 309.8, Racetrack License Fees.

16 Commissioners, these amendments have four main  
17 components. First, subsection (b) lays out altogether  
18 new racetrack license fees in light of House Bill 1995  
19 which diverts the simulcast tax that's been collected  
20 over the years. Going forward, the simulcast tax will go  
21 to the agency to offset the track fees.

22 Based on the amount of the simulcast tax  
23 collected last year -- well, we're actually waiting on  
24 '19, but in previous years and the overall trend showing  
25 about a 4 percent reduction every year, our finance folks

1 estimated the total reduction in track fees will still  
2 cover our expenses and then the tracks themselves  
3 actually negotiated the amounts per class of track.

4 So those fees are reflected in subsection (b)  
5 on page 127 of the materials. For reference, the current  
6 fees are shown on page 129 in the strike-through version  
7 of the text.

8 Next subsection (c) (1) changes the number of  
9 race days included in the base license fee. The current  
10 rule provides for 75 days among the three Class 1 tracks,  
11 with a fee of \$3,750 per additional day beyond the base.  
12 And this would provide for 84 days per Class 1 track, or  
13 144 days total among the Class 1s, with a per day fee of  
14 \$5,345 beyond the base which reflects our actual cost to  
15 regulate a day of horse racing.

16 There's also a provision that a track that  
17 isn't using all of its days can share its unused days  
18 with another track. We're recommending one change from  
19 the draft that's before you and that would add language  
20 that at track receiving days cannot be required to pay  
21 the track that's donating those days.

22 So that sentence would read: "If a Class 1  
23 horse racetrack does not intend to use all of the race  
24 days allotted to it, it may share the unused days with  
25 another Class 1 track, providing that the track receiving

1 the unused days is not required to compensate the track  
2 sharing the days."

3 Then subsection (c) (2) has a trigger for an  
4 automatic fee increase in the event that simulcast tax  
5 declines more than the projected 4 percent. Each fiscal  
6 quarter the agency will prepare the last quarter's total  
7 simulcast tax collected with that same quarter the year  
8 before. If it's down by more than 4 percent, the  
9 difference would be allocated among the tracks on a pro  
10 rata basis for that next quarter.

11 The last subsection (c) (3) changes the current  
12 provision that allows the executive director to impose a  
13 moratorium on fees in the event of an excess of revenue,  
14 and instead it will say that he shall impose the  
15 moratorium in that case.

16 If you propose these amendments today, they  
17 would be eligible for adoption at your next meeting, and  
18 we expect that they would take effect in time for the  
19 December 1 payment.

20 CHAIRMAN STEEN: Commissioners, do you have  
21 any questions?

22 COMMISSIONER EDERER: At the Rules Committee  
23 meeting this was called and discussed with all the tracks  
24 and most of this proposal actually came from the tracks.

25 We adjourned that meeting and the tracks then, I know,

1 did get together and they did submit to the Commission a  
2 lot of these proposals. So they are going to be  
3 acceptable to the tracks, and it's my understanding  
4 they're acceptable to you.

5 COMMISSIONER MACH: Mr. Chairman, I move that  
6 we propose the amendments under item V. Proceedings on  
7 rules, A.1. 16 TAC Section 309.8 Racetrack License Fees.

8 CHAIRMAN STEEN: I do have people signed up  
9 for public comment, so I need to get to that.

10 Do you have a question?

11 COMMISSIONER MOORE: So everything in here was  
12 already agreed to with the tracks, the days, the fees,  
13 everything. What are the tracks, just so I understand.  
14 How many tracks are there, three?

15 MS. BIJANSKY: There are a total of ten  
16 racetrack license holders.

17 COMMISSIONER MOORE: License holders. So all  
18 ten agreed to all this?

19 MS. BIJANSKY: It was a little more  
20 complicated than Commissioner Ederer outlined.

21 (General talking and laughter.)

22 MS. BIJANSKY: After the meeting the industry  
23 continued to work on an agreement as to the fees. As  
24 discussed, at the meeting we didn't get a proposal from  
25 the industry as to a trigger on increasing fees if

1 revenue was down, so we put that together among the  
2 staff. So I think that's been run by the industry but I  
3 can't say that everyone is on board.

4 CHAIRMAN STEEN: Maybe we'll just have Scott  
5 and Bruce. Scott Wells and Bruce Bennett, would you  
6 guys -- both speaking on behalf of Lone Star Park on the  
7 issue.

8 MR. BENNETT: Commissioners, my name is Bruce  
9 Bennett, and I'm here representing Lone Star Park at  
10 Grand Prairie.

11 Our problem with the proposed rule that's  
12 before you on page 127 is the burden it places on live  
13 racing. At the August 1 Rules Committee meeting,  
14 Commissioner Ederer urged the tracks to work with the  
15 staff and to "give a little" on the amount of the annual  
16 fees.

17 All ten racetracks did agree on language in  
18 the proposed fee rule that provided that fees paid by the  
19 Class 1 tracks would cover the regulatory costs of the  
20 number of live racing dates that each Class 1 track was  
21 granted in 2019. The tracks' overriding goal was to  
22 encourage live racing which helps the horsemen, it  
23 increases the amount of simulcast taxes paid to the  
24 Commission.

25 If I may approach, I would like to give you a

1 copy of the proposed rule that the ten tracks agreed  
2 upon. (Handing document.) And you can see kind of  
3 highlighted in yellow is the problem that we have,  
4 because we had agreed that the number of days that had  
5 been granted to the Class 1 tracks in 2019 would be the  
6 number of days that were covered by the annual fee. And  
7 as you can see, Lone Star Park was granted 60 days in  
8 2019, Lone Star Park has been granted 60 days for 2020.  
9 Sam Houston was granted 52 days, Retama was granted 28  
10 days.

11 The proposed rule before you today, though, in  
12 your meeting materials is that the Class 1 tracks would  
13 have 144 live days, but that proposal provides for only  
14 48 days per Class 1 track. So what does this mean?

15 This means that Lone Star Park, which plans to  
16 host 60 live racing days for 2020, must pay \$5,345 for  
17 each of the 12 days over the 48 covered by the annual fee  
18 of \$200,000. In other words, those 12 days, if run, will  
19 cost Lone Star Park an additional \$64,149 over the annual  
20 fee that we would pay.

21 As I said, the proposed rule agreed to by the  
22 tracks encourages live racing, but the proposal in your  
23 materials penalizes it and discourages live racing. What  
24 we're asking you to do is to amend the proposed rule to  
25 include the language the tracks agreed to, and that's the

1 highlighted language that we gave you in yellow.

2 That's what we would ask. That was the  
3 agreement. That does not penalize live racing, it  
4 encourages it, and we think that amendment should be  
5 made.

6 I'll be happy to answer your questions.

7 CHAIRMAN STEEN: Devon, do you have something  
8 to say?

9 MS. BIJANSKY: Well, it's my understanding --  
10 and I'm not the expert here -- that Retama has actually  
11 requested more days than they had this past year, so they  
12 would be in a position of having to pay additional days.  
13 Additionally, allocating a different number of days to  
14 each track in the rule, I'm not sure that that's  
15 appropriate for an agency to be doing.

16 I understand absolutely where Mr. Bennett is  
17 coming from, and I thought it was a good compromise that  
18 a track that wasn't using its days would share with a  
19 track that needed more. We're in a situation where if we  
20 said every track had 60 days, well, if a track wasn't  
21 planning to use as many and our budget was based on that,  
22 decides to run more, then we don't have the revenue to  
23 cover the staff and everything that we need for those  
24 days.

25 So I would certainly be open to another way of

1 structuring this that would satisfy his concerns, but  
2 writing in a different number of days for each licensee  
3 doesn't seem to be the best way to address that.

4 CHAIRMAN STEEN: Is there a representative  
5 from Retama here today?

6 MR. BENNETT: I would note that in the meeting  
7 packet the race dates that have been granted for 2020  
8 said 28 for Retama, so I think the same number of days  
9 they had in 2019. And I know there's a sharing provision  
10 in there but it says "may."

11 That means it may not be shared, it depends on  
12 the discretion of the track with the unused days, and so  
13 that's a problem too. I mean, Retama and Sam Houston  
14 share common ownership. We're not part of that, we are  
15 stand-alone.

16 COMMISSIONER EDERER: Well, it seems that the  
17 problem here -- I'm not aware, I didn't get my packet, so  
18 I'm not aware of the discrepancy until you just bringing  
19 it up right now. It sounds to me like it goes to the  
20 wording, not necessarily the substance, but everyone is  
21 agreeing. Is that correct, Devon?

22 CHAIRMAN STEEN: Well, the question is whether  
23 Retama is sharing the days that it is granted, in other  
24 words, 48, and under the rule willing to share those days  
25 with Lone Star at no cost in order for Lone Star to be

1 able to run its 60 days at the same cost.

2 MS. COOPER: (Not at mic.) This is the first  
3 I'm hearing that, so I apologize. We asked for 28 days,  
4 I knew nothing about the other until now. I apologize.  
5 This is the first I'm hearing about this.

6 MR. S. ROSS: (Not at mic.) It's not only that  
7 it is the same as we were allocated --

8 MR. ELROD: Excuse me --

9 MS. COOPER: (Not at mic.) We raced 25 days  
10 in 2017 and in 2018 --

11 MR. ELROD: Could y'all step to the mic and  
12 identify yourselves?

13 MS. COOPER: Last year in 2018 we raced 28  
14 days and we raced 28 days this year. The confusion might  
15 have been that in 2017, I believe, we didn't.

16 MR. S. ROSS: Last year it was 25 days, this  
17 year is 28 days, the proposed 2020 is also 28 days, so  
18 there's no increase from 2019 to 2020, the same 28 days.

19 COMMISSIONER MACH: So you could effectively  
20 give 12 days.

21 MR. S. ROSS: We could give away 20 days.

22 COMMISSIONER MACH: Twenty days.

23 CHAIRMAN STEEN: Are you going to give away  
24 your 12 days so that Lone Star can race at 60?

25 MS. COOPER: Today I'm not willing to say

1 that. This is the first I'm hearing it so I'd like to  
2 have an opportunity to discuss that with my team and my  
3 boss.

4 MR. S. ROSS: I would just say that our  
5 intention is to run 28 days. If we have 48 days, I'll  
6 leave that up to my boss, but any common sense would say  
7 we would do it.

8 MS. COOPER: I'm not saying that we wouldn't  
9 give away some, but I'm not willing to say we're giving  
10 all the days away.

11 COMMISSIONER MACH: But you are paying for  
12 them, you're paying as if you were running 48 days.

13 MR. S. ROSS: Yes. We are allotted -- we are  
14 given the opportunity to run 48 without any additional  
15 payment, and we're only planning to run 28. Yes, we have  
16 no --

17 COMMISSIONER MACH: And if you don't run those  
18 20 days, then you're overpaying for the race days.

19 CHAIRMAN STEEN: Well, the spirit of this  
20 agreement here between the tracks is that -- I think the  
21 spirit was -- I don't want to put words into people's  
22 mouths, but that Lone Star should be -- as the track  
23 racing for today should be rewarded for that fact or for  
24 encouraging live racing, and so that the three Class 1s  
25 would bear the same cost even though one is to the

1 benefit of Lone Star for actually racing more days.  
2 That's what I understand the spirit of this language to  
3 be.

4 I guess what -- apologies if this is the first  
5 time you guys are hearing about this. I guess it's a  
6 little bit of -- if Retama were to agree to allocate  
7 those days over, I think we'd accomplish the same thing  
8 in a different manner.

9 I think what Devon is saying is it's very  
10 strange to have a Class 1 racetrack rule that is specific  
11 to a racetrack rather than to the class of racetrack.  
12 And so this would accomplish the same thing in a  
13 different -- in a manner that allows the rules to read  
14 the Class 1 racetrack -- here are the rules for a Class 1  
15 racetrack.

16 COMMISSIONER EDERER: Devon, this would be  
17 posted, that's what we're doing today?

18 MS. BIJANSKY: Yes, sir.

19 COMMISSIONER EDERER: To be voted on next  
20 meeting so that it can go into effect in January.

21 MS. BIJANSKY: December 1.

22 COMMISSIONER EDERER: December. If not, we've  
23 got a problem.

24 MS. BIJANSKY: If it weren't proposed this  
25 meeting.

1           COMMISSIONER EDERER: Because it will come out  
2 in January then, and that's going to cause a lot of  
3 problems as far as the funding is concerned. Is that  
4 correct?

5           MS. BIJANSKY: Well, the current fees are  
6 higher so it would actually result in additional revenue  
7 to the agency, but I think everyone's expectation is that  
8 we'll continue on the schedule that gets the fee  
9 reduction in place for December 1.

10           COMMISSIONER WAIGHT: Is this something they  
11 can work out between them?

12           COMMISSIONER EDERER: That's what we're trying  
13 to find out right now.

14           Lone Star, where are we?

15           MR. BENNETT: Well, you asked the question and  
16 you didn't get your answer. Well, maybe, maybe not.

17           COMMISSIONER EDERER: Well, Retama has said  
18 they're going to run 28 days.

19           MR. BENNETT: Yes.

20           COMMISSIONER EDERER: And so they have 12 days  
21 sitting out there.

22           MR. BENNETT: They have more than that. They  
23 have 28, they have four I assume they're going to give to  
24 Lone Star -- I'm sorry -- Sam Houston says they're going  
25 to run 52, so that's four over the 48, so I assume

1 they're going to give four to Sam Houston. They've got  
2 48, 28, how many does that leave them? They've got 16  
3 left.

4 COMMISSIONER EDERER: I assumed this had been  
5 worked out before we came in here, and that's why we had  
6 the meeting August 1 so that this could all be settled.

7 MR. BENNETT: Well, Commissioner, we thought  
8 we had it worked out until we got the meeting  
9 materials -- at least that's my understanding. We  
10 thought we had it worked out, and it was a surprise to us  
11 to see it changed from the way we had it.

12 Now, if there's a problem with putting the  
13 actual number in there, you could delete the  
14 parenthetical, and just say you get the regulatory cost  
15 for each Class 1 to conduct as many live horse-racing  
16 days per annum as it was authorized in 2019, period. If  
17 that's the reluctance, I don't know of anything that  
18 would prevent you from putting in those days that we had  
19 in the agreed proposal.

20 So again, I think it should be worked out. I  
21 don't think we should be penalizing running more live  
22 races. Why should we have to pay 64,000 more dollars?  
23 But I think the rule right now says may.

24 Maybe you can play with the lines of the rule  
25 and just make "may" to "shall." You've got unused days

1 you're not going to use, you shall, upon request,  
2 transfer those to the track that wants them.

3 And I like the addition today of providing no  
4 compensation will be demanded for that transfer, so I  
5 heard that added today. But the problem is leaving -- to  
6 me, the problem is leaving the word "may" in there,  
7 because that gives discretion, "may" means may or may  
8 not.

9 COMMISSIONER MOORE: Do you need to change the  
10 word "may" or "shall" if you get what you put in this  
11 highlight, or could that just stand on its own?

12 MR. BENNETT: So it would read, if I'm  
13 understanding it: If a Class 1 horse track does not  
14 intend to use all of the race days allotted to it, it  
15 would say, potentially, it shall share the unused days  
16 with another Class 1 track provided the track receiving  
17 the days is not required to compensate. I think that's  
18 fine. If you want to change "may" to "shall," that means  
19 they must do it and they can't charge for it.

20 COMMISSIONER EDERER: Let's do it.

21 COMMISSIONER MOORE: Do we still need to  
22 change what's in section 2 here?

23 CHAIRMAN STEEN: This is a proposal by them to  
24 the Commission, this is not in our Commissioner material  
25 now.

1                   COMMISSIONER EDERER: Devon, can you change  
2 the wording for us?

3                   MS. BIJANSKY: Yes, sir.

4                   COMMISSIONER EDERER: And that wording would  
5 be what?

6                   MS. BIJANSKY: Just like Mr. Bennett said: If  
7 a Class 1 horse racetrack does not intend to use all the  
8 race days allotted to it, it shall share the unused days  
9 with another Class 1 track, provided that the track  
10 receiving the unused days is not required to compensate  
11 the track sharing the days.

12                   COMMISSIONER EDERER: Retama, okay?

13                   MS. COOPER: Yes.

14                   COMMISSIONER WAIGHT: This is agreement  
15 between the tracks. Right?

16                   COMMISSIONER EDERER: Well, and the  
17 Commission, yes.

18                   MS. COOPER: (Not at mic.) And again, options  
19 are still open for Retama so we're not signed in just for  
20 the 28 days. It may change between now and then.

21                   COMMISSIONER EDERER: We're kind of into  
22 unknown territory here to a certain extent, in that we  
23 have -- all of a sudden the legislature for the first  
24 time in at least 12 years has done something that will  
25 benefit the racing industry.

1           We don't know when the money is coming exactly  
2           or how it's coming, we're learning that. But what we're  
3           trying to do as an industry is to be able to facilitate  
4           that money coming to the tracks and to the Commission as  
5           soon as possible, and we've got race dates and we've got  
6           problems come January 1, so it's important that this be  
7           done today.

8           COMMISSIONER MACH: But, Devon, should we put  
9           a deadline on there, as well, for those days to be  
10          submitted, that the ones aren't being used must be  
11          offered to the other racetracks -- shall be offered to  
12          the other racetracks by X date? That way they can plan  
13          their calendars accordingly, because you don't want  
14          tracks sitting on days until the last minute and then  
15          nobody has used them.

16          MS. BIJANSKY: Right. I'm not sure what that  
17          date would be, but I see the value in that.

18          VOICE: We're bringing in the experts now.

19          MR. WELLS: We have this collaborative  
20          relationship with Retama. We want to run our 60 days,  
21          and we don't want to have to be penalized for running  
22          more days. And things are going to get much better next  
23          year, as Commissioner Ederer just pointed out, so I don't  
24          think we're going to have any problem. You know, if you  
25          pass the rule as it was just read, we're going to be

1 fine. We're going to have the flexibility to know what  
2 12 dates, so -- pardon me?

3 COMMISSIONER MOORE: What date do you need to  
4 know what 12 dates?

5 MR. WELLS: Pardon me?

6 COMMISSIONER MOORE: What date do you need to  
7 know and then what 12 dates -- or when you get the full  
8 12 days to make your schedule for next year?

9 MR. WELLS: Whatever staff requires. What are  
10 the dates for Retama?

11 MS. BIJANSKY: We expect that that will be on  
12 the next agenda, which -- to clarify as to your comment,  
13 the race date allocations made at the next meeting will  
14 be before these changes are in effect, so that will be  
15 done under the current rules. So these changes won't  
16 matter in terms of the actual allocation. In terms of  
17 additional days that may need to be paid for, yes.

18 COMMISSIONER EDERER: But as far as the  
19 allocation of dates, that will occur at the next meeting.  
20 So where are we now?

21 MR. S. ROSS: Dates are not being allocated  
22 today?

23 COMMISSIONER EDERER: No.

24 MS. BIJANSKY: I'm sorry. They're at the next  
25 meeting. Yes, sir. In any event, before this will take

1 effect, the race date allocations.

2 COMMISSIONER EDERER: So the purpose to this  
3 is where are we now? Can you word this sufficiently to  
4 accomplish what we all want to accomplish by changing the  
5 wording as requested by Lone Star?

6 MS. BIJANSKY: Yes, sir. And if you'd like to  
7 add a date, I would just need someone to tell me what  
8 date that should be.

9 CHAIRMAN STEEN: Could that date be added in  
10 between -- amended to the rule between now and the next  
11 if there needs to be discussion on what that date should  
12 be?

13 MS. BIJANSKY: I think that would be fine.

14 MR. WELLS: We could defer to the executive  
15 director on that as far as a deadline.

16 COMMISSIONER EDERER: Everyone is all right?  
17 Okay, Retama?

18 MS. COOPER: Yes. We'll have a discussion.  
19 Thank you.

20 COMMISSIONER EDERER: Good. Then you can put  
21 the wording in there that we can vote on in the next  
22 meeting, or can you do that now?

23 MS. BIJANSKY: Yes. What I read would be what  
24 it will say. I'm understanding that Chuck will be  
25 allowed to establish a deadline, and so that doesn't need

1 to be in the rule.

2 VOICES: Yes.

3 COMMISSIONER EDERER: So what you have read  
4 and what's been given to all the commissioners is what we  
5 would be voting on now.

6 MS. BIJANSKY: Yes.

7 COMMISSIONER EDERER: And the vote that we  
8 would be having now is to post it for final vote.

9 MS. BIJANSKY: Post it for public comment,  
10 yes.

11 COMMISSIONER EDERER: For public comment.

12 MS. BIJANSKY: With final action at the next  
13 meeting.

14 COMMISSIONER EDERER: I propose that we post  
15 for public comment.

16 COMMISSIONER McNABB: I second the motion.

17 CHAIRMAN STEEN: Motion made by Commissioner  
18 Ederer, seconded by Commissioner McNabb to post.

19 Devon, is there any other clarification we  
20 need to make to the posting or to the motion?

21 MS. BIJANSKY: Did you say that it's being  
22 proposed with the changes as discussed?

23 COMMISSIONER EDERER: Yes.

24 CHAIRMAN STEEN: Any further discussion?

25 COMMISSIONER WAIGHT: I have a question.

1                   CHAIRMAN STEEN:  Sure.

2                   COMMISSIONER WAIGHT:  Is it safe to say that  
3 no other tracks want additional days, so that somebody is  
4 not being deprived, that this is just between these two  
5 tracks?

6                   CHAIRMAN STEEN:  There are three tracks.

7                   COMMISSIONER EDERER:  Sam Houston is agreed,  
8 they're just not here.  Three horse tracks, one dog  
9 track, ten licensees.

10                  CHAIRMAN STEEN:  Sir, please identify  
11 yourself.

12                  MR. BERUBE:  Dwight Berube, Sam Houston Race  
13 Park.

14                  COMMISSIONER EDERER:  There you go.

15                  MR. BERUBE:  Did you have a question?

16                  COMMISSIONER EDERER:  You are comfortable with  
17 everything.  Is that correct?

18                  MR. BERUBE:  We are comfortable with the  
19 language being changed, as you suggested.  to "shall."  
20 Yes.  This was somewhat of a surprise to us, too.  But  
21 I'll tell you that personally I do agree that there did  
22 seem to be an inconsistency with three Class 1 tracks  
23 paying the same base fee but each track was given a  
24 different amount of free days, so to speak, so I'm glad  
25 to see that issue being addressed.

1 COMMISSIONER EDERER: So everything is okay?

2 MR. BERUBE: Everything is good.

3 COMMISSIONER EDERER: So all three tracks  
4 agree. Thank you.

5 MR. BERUBE: Thank you.

6 CHAIRMAN STEEN: Any further discussion?

7 (No response.)

8 CHAIRMAN STEEN: If not, I'll take the motion  
9 up for a vote. All those in favor please signify by  
10 saying aye.

11 (A chorus of ayes.)

12 CHAIRMAN STEEN: Any opposed?

13 (No response.)

14 CHAIRMAN STEEN: Motion carries.

15 Okay. So Devon, we covered through --

16 MS. BIJANSKY: Just A.1.

17 CHAIRMAN STEEN: Just A.1. Okay. All right.  
18 So would you please present A.2?

19 MS. BIJANSKY: Did you want to go back to the  
20 other item?

21 CHAIRMAN STEEN: Let's go through these and  
22 then come back to it.

23 MS. BIJANSKY: So V.A.2. 16 TAC 309.51,  
24 Designation of Active and Inactive Racetrack Licenses.

25 This is just a minor change resulting from

1 House Bill 2463, which we'll discuss more in detail  
2 later. This just is to change the name of the Escrow  
3 Purse Account to the Horse Industry Escrow Account. This  
4 is set by HB 2463. And there's also an update so I  
5 sincerely hope it's the very last reference in the rules  
6 to the old statutes.

7 CHAIRMAN STEEN: Should we take this up  
8 separately or with the other one to follow? Are they all  
9 conforming?

10 MS. BIJANSKY: It's on its own.

11 CHAIRMAN STEEN: It's on its own. Okay.

12 Commissioners, do you have any questions?

13 (No response.)

14 CHAIRMAN STEEN: If no further discussion,  
15 I'll entertain a motion to propose amendments to Section  
16 309.51, Designation of Active and Inactive Racetrack  
17 Licenses.

18 COMMISSIONER MACH: So moved.

19 CHAIRMAN STEEN: Motion made by Commissioner  
20 Mach.

21 COMMISSIONER PATE: Second.

22 CHAIRMAN STEEN: Second by Commissioner Pate.  
23 Any further discussion?

24 (No response.)

25 CHAIRMAN STEEN: All those in favor please

1 signify by saying aye.

2 (A chorus of ayes.)

3 CHAIRMAN STEEN: Any opposed?

4 (No response.)

5 CHAIRMAN STEEN: Motion carries.

6 Devon, will you please present item 3.

7 MS. BIJANSKY: Yes, sir.

8 309.119 [sic], Regulatory Office Space and  
9 Equipment. These changes were requested by our licensing  
10 staff to do an update of the technology that tracks  
11 provide for our staff to use for credit card machines and  
12 for general internet access, and the current rules still  
13 provide for dial-up access, so this would just bring us  
14 into the 21st Century.

15 CHAIRMAN STEEN: Any questions on that,  
16 commissioners?

17 (No response.)

18 CHAIRMAN STEEN: If no further discussion,  
19 I'll entertain a motion to propose amendments to Section  
20 309.118, Regulatory Office Space and Equipment.

21 COMMISSIONER MACH: So moved.

22 CHAIRMAN STEEN: Motion made by Commissioner  
23 Mach.

24 COMMISSIONER PATE: Second.

25 CHAIRMAN STEEN: Second by Commissioner Pate.

1 Any further discussion?

2 (No response.)

3 CHAIRMAN STEEN: All those in favor please  
4 signify by saying aye.

5 (A chorus of ayes.)

6 CHAIRMAN STEEN: Any opposed?

7 (No response.)

8 CHAIRMAN STEEN: Motion carries.  
9 Devon.

10 MS. BIJANSKY: Next is 319.3, Medication  
11 Restricted. These changes add albuterol to clenbuterol  
12 as a prohibited substance and also provide that a horse  
13 undergoing a drug test to get off the vet's list after  
14 being put on for a valid medical treatment has been  
15 cleared for clenbuterol, albuterol and any other  
16 beta-agonist drug. The provisions for putting a horse on  
17 the vet's list for a positive are also being deleted  
18 because they've proven to be impossible to administer.

19 CHAIRMAN STEEN: Commissioners, any questions?

20 (No response.)

21 CHAIRMAN STEEN: No one is signed up to speak  
22 on this item.

23 If no further discussion, I'll entertain a  
24 motion to propose amendments to Section 319.3, Medication  
25 Restricted.

1 COMMISSIONER MACH: So moved.

2 CHAIRMAN STEEN: Motion made by Commissioner  
3 Mach.

4 COMMISSIONER EDERER: Second.

5 CHAIRMAN STEEN: Seconded by Commissioner  
6 Ederer.

7 Any further discussion?

8 (No response.)

9 CHAIRMAN STEEN: We'll take this up for a  
10 vote. All in favor please signify by saying aye.

11 (A chorus of ayes.)

12 CHAIRMAN STEEN: Any opposed?

13 (No response.)

14 CHAIRMAN STEEN: That motion carries.  
15 Devon.

16 MS. BIJANSKY: Yes. 319.102, Veterinarian's  
17 List. The change in subsection (d) would require a horse  
18 that's doing a workout or a qualifying race to get off of  
19 vet's list would have no detectable level of any  
20 permissible level of therapeutic medication other than  
21 furosemide.

22 CHAIRMAN STEEN: Any questions, Commissioners?

23 (No response.)

24 CHAIRMAN STEEN: No one is signed up to speak.  
25 No further discussion. I'll entertain a motion to

1 propose amendments to 319.102, Veterinarian's List.

2 COMMISSIONER McNABB: So moved.

3 COMMISSIONER MACH: Second.

4 CHAIRMAN STEEN: Motion made by Commissioner  
5 McNabb, second by Commissioner Mach.

6 Any further discussion?

7 (No response.)

8 CHAIRMAN STEEN: All those in favor please  
9 signify by saying aye.

10 (A chorus of ayes.)

11 CHAIRMAN STEEN: Any opposed?

12 (No response.)

13 CHAIRMAN STEEN: Motion carries.

14 MS. BIJANSKY: 319.333. Specimen Tags. These  
15 changes would remove much of the specific language about  
16 what a specimen tag has to include.

17 It would instead allow those details to be  
18 specified by the executive director in written  
19 corresponding instructions so the requirements could be  
20 changed more quickly as lab requirements change. The  
21 only requirement that would remain in the rule is the  
22 specimens have to be labeled in a way that the Commission  
23 can identify whose samples they are and the lab cannot  
24 identify whose sample it is.

25 CHAIRMAN STEEN: Any questions, commissioners?

1 (No response.)

2 CHAIRMAN STEEN: No one is signed up to speak.

3 If no further discussion, I'll entertain a motion to  
4 propose amendments to Section 319.333, Specimen Tags.

5 COMMISSIONER McNABB: So moved.

6 COMMISSIONER MACH: Second.

7 CHAIRMAN STEEN: Motion made by Commissioner  
8 McNabb, seconded by Commissioner Mach.

9 Any further discussion?

10 CHAIRMAN STEEN: If not, we'll take this up  
11 for a vote. All those in favor please signify by saying  
12 aye.

13 (A chorus of ayes.)

14 CHAIRMAN STEEN: Any opposed?

15 (No response.)

16 CHAIRMAN STEEN: Motion carries.

17 MS. BIJANSKY: And 321.313, Select Three,  
18 Four, or Five. This is a request from Sam Houston Race  
19 Park, with the agreement of Retama and Lone Star Park,  
20 and it would change the way the select three, four, or  
21 five wager work when conditions on a turf track warrant a  
22 change in racing surface.

23 I believe Frank Hopf is here and can address  
24 it more fully.

25 MR. HOPF: Mr. Chairman, commissioners. My

1 name is Frank Hopf. I'm the senior director of racing  
2 operations at Sam Houston Race Park.

3 This rule proposal is regarding the pick  
4 three, four, or five, or select three, four, or five.  
5 Currently in Texas we have a Fortune 6 wager or Fortune  
6 (n) wager, so in that particular wager if races come off  
7 the turf course because of weather or some unknown reason  
8 to the track before the wager starts, it becomes an all  
9 situation.

10 The existing select three, four, and five  
11 wager here in Texas, that portion about coming off the  
12 turf course and becoming an all does not exist. So we've  
13 got two different rules for our multi-lane wagers here in  
14 Texas. This would make it consistent and a lot more  
15 friendlier to the betting public.

16 I'll answer any questions you have. I know  
17 there may be a little more explanation needed.

18 CHAIRMAN STEEN: Commissioners, any questions?

19 (No response.)

20 CHAIRMAN STEEN: If no further discussion,  
21 I'll entertain a motion to propose amendments to Section  
22 321.313, Select Three, Four, or Five.

23 COMMISSIONER ROBERTS: Second.

24 CHAIRMAN STEEN: Moving this one?

25 COMMISSIONER MACH: So moved.

1                   CHAIRMAN STEEN: Motion made by Mach, seconded  
2 by Commissioner Roberts.

3                   Any further discussion?

4                   (No response.)

5                   CHAIRMAN STEEN: We'll take this up for a  
6 vote. All those in favor please signify by saying aye.

7                   (A chorus of ayes.)

8                   CHAIRMAN STEEN: Any opposed?

9                   (No response.)

10                  CHAIRMAN STEEN: Motion carries. Thank you.

11                  All right. I'm going to propose that we take  
12 a ten-minute break here. The time is now 12:29. We'll  
13 reconvene at 12:40.

14                  (Whereupon, a brief recess was taken.)

15                  CHAIRMAN STEEN: The time is now 12:40. I  
16 bring this Commission meeting back to order.

17                  Devon will present on B.

18                  MS. BIJANSKY: Commissioners, as you probably  
19 know, House Bill 2463 provides up to \$25 million a year  
20 in support to the horse industry. New Subchapter G of  
21 Chapter 303 replaces Section 321.509 which is the current  
22 Escrow Purse Account rule because HB 2463 expanded the  
23 purpose of the account from just a purse fund from  
24 simulcast wagers.

25                  The new Horse Industry Escrow Account combines

1 the roughly \$700,000 a year from simulcasting that's been  
2 going to purses with the new \$25 million from a variety  
3 of agriculture-related taxes and provides that up to 70  
4 percent of the total each year goes to purses with the  
5 remaining 30 percent plus going to breed registries for  
6 events that further the horse industry. These rules would  
7 implement that bill.

8 The first section 303.301 defines some terms.  
9 That's on page 152 of your materials. 303.302 is  
10 General Provisions, including some of what's in current  
11 rule 321.509, and also restating the 70/30 split.

12 And in Division 2 of Subchapter G, 303.311 is  
13 about the purse money. It's pretty much straight from  
14 321.509, nothing new. And 303.312 is limitations on the  
15 use of that money, just restating that it's for purses  
16 only.

17 Division 3 addresses the portion of the funds  
18 going to the breed registries. 303.321 establishes the  
19 process and the requirements for a breed registry to  
20 receive funds from the account, who can apply for funds,  
21 the application process, and a provision that for this  
22 calendar year only through December, Chuck can approve  
23 requests so that funds can potentially get distributed  
24 more quickly.

25 Next, 303.322 establishes limitations on the

1 use of funds by breed registries. We restate the  
2 requirement that funds be used only for events that  
3 further the horse industry, establish a 12-month time  
4 frame for using any particular grant of funds, and then  
5 lists various things the funds cannot be used for.

6 I won't go through the entire list with you,  
7 but you can see it on page 155 of your materials. That  
8 list was written with the idea that every possible penny  
9 goes out into the industry. The last part of that  
10 section requires that expenditures be reasonable and  
11 adequately documented.

12 Section 303.323 addresses changes that may  
13 come up after funds are allocated to a breed registry and  
14 establishes which types of changes can be approved by the  
15 executive director, relatively minor ones, and which  
16 changes need to come back before you for approval.

17 Section, 303.324 establishes recordkeeping  
18 requirements, allows the Commission and certain other  
19 agencies to conduct audits, and requires funds from the  
20 account to be included in the breed registry annual  
21 audit.

22 Last, Section 303.325 requires breed  
23 registries receiving funds from the account to submit  
24 quarterly reports updating the agency on their use of the  
25 funds, and also certifying that everything has been done

1 in accordance with the statute and the rules.

2 And then current rule 321.509, which you can  
3 see on pages 158 and 159, would be repealed because  
4 everything in it is moved over into the new rules.

5 Commissioners, I worked with the industry on  
6 these rules and I think we've got a pretty good  
7 consensus, although I do expect some of them will want to  
8 address certain parts with you today.

9 CHAIRMAN STEEN: Thank you, Devon.

10 Mr. Ederer, would you like to discuss any  
11 additional, or would you rather I call up the industry  
12 first?

13 COMMISSIONER EDERER: Call the industry will  
14 be fine.

15 CHAIRMAN STEEN: I'm going to first call up  
16 Marsha Rountree on behalf of the Texas Horsemen's  
17 Partnership, who wishes to testify on V.B.1 through 9.

18 MS. ROUNTREE: Mr. Chairman, commissioners.  
19 I'm Marsha Rountree, the executive director of the Texas  
20 Horsemen's Partnership. For our new commissioners, the  
21 Texas Horsemen's Partnership is the officially recognized  
22 organization representing owners and trainers of races  
23 horses in Texas.

24 Who knew it could be so difficult and so  
25 complicated to spend \$25 million? What a problem to

1 have. Right?

2 We met at the Rules Committee meeting with  
3 Chairman Ederer and the industry had a proposed set of  
4 rules regarding how this money is to be allocated and  
5 spent. At that time, Commissioner Ederer suggested that  
6 the industry meet with Devon and come up with a set of  
7 rules that were acceptable to the industry and that would  
8 work for the regulatory body as well.

9 We want to thank Devon and Chuck, as well, for  
10 working with us on the rules. These rules are not the  
11 rules that we submitted or suggested; however, we want to  
12 move forward and we don't want to be a stumbling block  
13 because this is a very important issue.

14 The Commission has an opportunity to assist  
15 the industry, particularly the horsemen and the breeders,  
16 by adopting rules that allow regulation but also allow  
17 the industry to do what the legislators intended when  
18 they passed House Bill 2463, and that is to grow Texas  
19 racing and thus grow the Texas economy. Now, while there  
20 are some parts of the proposed rules that we are not in  
21 agreement with, such as the criteria and factors for the  
22 tracks to be allocated the purse funds, we would like to  
23 see the rules posted and adopted so that the new funds  
24 begin to flow quickly. This money is no use to the  
25 industry at all if it's sitting in a bank account.

1 All in all, there are certainly worse problems  
2 to have than how to allocate and spend this purse money,  
3 but let's do it right. Allow the industry to grow  
4 without unnecessary restrictions, without placing undue  
5 burdens on our industry organizations. We can and should  
6 all work together so that this shot in the arm for our  
7 industry benefits all its stakeholders and all its  
8 participants.

9 And in light of the conversation that just  
10 took place about racing fees and the rules that are being  
11 promulgated about the license fees for the racetracks,  
12 it was discouraging for me to hear, as a representative  
13 of the horsemen, what appears to be rules that are not  
14 encouraging live racing and rules that appeared in a  
15 packet that were a surprise to one segment of the  
16 industry. So I'm just asking you to please remember when  
17 you're writing rules and deciding to post rules there are  
18 a lot of parties in this industry that are going to be  
19 affected by what you do.

20 So rather than object or sit here and name  
21 portions of these rules that we object to or that we  
22 don't agree with, again, we would like to see these rules  
23 posted and adopted so that we can move forward as an  
24 industry and do what we've been charged by the  
25 legislators to do, which is to grow racing and grow the

1 Texas economy.

2 Thank you.

3 CHAIRMAN STEEN: Commissioners, any questions?

4 COMMISSIONER EDERER: Just thank you.

5 CHAIRMAN STEEN: Next I'll call Mary Ruyle,  
6 representing the Texas Thoroughbred Association, wishing  
7 to testify on B.1 and B.5 specifically.

8 MS. RUYLE: Good morning, commissioners. I'm  
9 Mary Ruyle, executive director for the Texas Thoroughbred  
10 Association.

11 We also appreciate the opportunity to work  
12 with the Commission staff to develop proposed rules. I  
13 would like to offer some comments on Sections 303.301,  
14 Definitions, and 303.321, Allocations to Breed  
15 Registries.

16 Recognizing the critical need for all of our  
17 organizations to work in harmony so that horses and  
18 horsemen return to Texas and to encourage the economic  
19 investment in Texas breeding and racing, these rules are  
20 the first step in developing a strategy for investing the  
21 economic incentive funds in ways that will improve the  
22 Texas horse industry for all of the stakeholders.

23 Named in the Texas Racing Act is the official  
24 breed registry for Thoroughbred Horses. We are now  
25 tasked with using these funds in the very best ways

1 possible to grow the industry to the benefit of horse  
2 owners and breeders and to provide a positive economic  
3 impact to the State of Texas.

4 Increased purses are a vital factor in  
5 returning Texas racing to a competitive state and should  
6 provide measurable increases in field size, handle and  
7 attendance rather quickly. Increased purses should also  
8 provide an impetus to growing our breeding industry.

9 Standing stallions in Texas are bringing mares  
10 to the state to be bred and foal out is a long-term  
11 economic investment with a measure of risk thrown in with  
12 at least three years from time of breeding to when a  
13 resulting foal competes on the racetrack. We need to  
14 focus on measures to make that investment of time and  
15 money more attractive to stallion and mare owners, and we  
16 will be submitting fund requests at the appropriate time.

17 Much as basketball's Sweet 16 is an event over  
18 a period of time, or a race meet at a Texas track is an  
19 event composed of many individual events from the time  
20 when the barn area opens to the time when the barn area  
21 closes, I encourage you to consider a breeding season to  
22 be an event, composed of many breedings and births on  
23 various dates with a specific beginning and ending date  
24 each year. February 15 is when it begins, July 15 is  
25 when it ends. And in order to grow our Texas foal crops

1 and participation, we have to do what we can to promote  
2 the breeding industry in Texas.

3 Thank you. I'm happy to answer any questions.

4 CHAIRMAN STEEN: Any questions, commissioners?

5 (No response.)

6 CHAIRMAN STEEN: If not, I'll call Rob  
7 Worstler, on behalf of the TQHA, wishing to testify on  
8 B.5.

9 MR. WORSTLER: Good afternoon, Mr. Chairman,  
10 commissioners. My name is Rob Worstler with Texas  
11 Quarter Horse Association.

12 Just basically echoing what these ladies  
13 before me stated, we would like to thank the chairman and  
14 staff for expediting these rules and getting them  
15 proposed as fast as possible. While we don't have any  
16 problems, we would like to get these proposed quickly so  
17 we can get this money put to work for us as quickly as  
18 possible as we all sort of need.

19 We do see some issues. We feel the rules are  
20 a work in progress, so we would like to still be a part  
21 of any changes or rulemaking process as far as these  
22 rules going forward.

23 Do you have any questions?

24 CHAIRMAN STEEN: Any questions?

25 (No response.)

1           CHAIRMAN STEEN: And I guess a question for  
2 Devon and for Vice Chair Ederer. Between the proposal  
3 now, if we were to propose the rules, and the final, we  
4 can make tweaks to these rules if there are some issues  
5 that need to be ironed out without slowing down the  
6 process.

7           MS. BIJANSKY: It depends on the nature of the  
8 changes. At a certain point they rise to the level that  
9 they would need to be reposted, but yes, there's some  
10 flexibility.

11           COMMISSIONER EDERER: And we'll do everything  
12 we can to expedite the process.

13           CHAIRMAN STEEN: And so we would plan to have  
14 a rules meeting between now and the next Commission  
15 meeting where we kind of iron through some of these  
16 issues?

17           COMMISSIONER EDERER: Yes.

18           CHAIRMAN STEEN: Any further discussion or  
19 questions by the commissioners?

20           (No response.)

21           CHAIRMAN STEEN: If not, I'll entertain a  
22 motion to propose new Subchapter G, Horse Industry Escrow  
23 Account, and the repeal of Section 321.509, Escrowed  
24 Purse Account.

25           COMMISSIONER EDERER: So moved.

1 CHAIRMAN STEEN: Motion made by Ederer.

2 COMMISSIONER MACH: Second.

3 CHAIRMAN STEEN: Second by Commissioner Mach.

4 Any further discussion?

5 (No response.)

6 CHAIRMAN STEEN: If not, we'll call this to a  
7 vote. All those in favor please signify by saying aye.

8 (A chorus of ayes.)

9 CHAIRMAN STEEN: Any opposed?

10 (No response.)

11 CHAIRMAN STEEN: Motion carries.

12 The next item is agenda item VI.A. Allocation  
13 of live race dates for horse racetracks under 16 TAC  
14 Section 33.41 for the period beginning January 1, 2020  
15 and ending August 1, 2021.

16 There is a typo in the agenda. We're only  
17 able to allocate race dates through August 1, 2021.  
18 We'll have to put this back on the agenda to allocate the  
19 dates in the rest of August '21 at the next meeting.

20 Ricky, will you please present the item?

21 MR. WALKER: Good afternoon, commissioners.  
22 My name is Ricky Walker, chief steward for the Texas  
23 Racing Commission.

24 On pages 161 to 162 are race date calendars  
25 for 2020 and 2021 that show the horse racetracks'

1 requested and previously granted race dates. All four  
2 tracks requested the same number of race dates during the  
3 same time period as this year's racing schedule.

4 On pages 161 through 168, Lone Star Park  
5 requested 44 Thoroughbred dates from April 16, 2020, and  
6 ending on July 19, 2020, and 16 Quarter Horse dates  
7 beginning on September 25, 2020, and ending on November  
8 14, 2020. Lone Star Park did not request dates for 2021.

9 There will be another opportunity for the tracks to  
10 request 2021 dates.

11 At this time the only organization supporting  
12 Lone Star's request is the Texas Thoroughbred  
13 Association. The Texas Quarter Horse Association, the  
14 Texas Arabian Breeders Association, and the Texas Paint  
15 Horse Association have not submitted any correspondence.

16 On pages 190 to 217, Retama Park requests a mixed meet  
17 that includes 14 Quarter Horse dates and 14 Thoroughbred  
18 dates.

19 At this time two organizations support this  
20 request, the Texas Thoroughbred Association and the Texas  
21 Arabian Breeders Association. The Texas Quarter Horse  
22 Association and the Texas Paint Horse Association have  
23 not submitted any correspondence. Retama did not request  
24 dates for 2021.

25 On page 218, Sam Houston was previously

1 granted 32 Thoroughbred days and a 20-day Quarter Horse  
2 meet for 2020. Sam Houston did not request dates for  
3 2021.

4 On pages 219 to 236 Gillespie County Fair  
5 Association was previously granted eight race days in  
6 2020. Gillespie County has requested a similar schedule  
7 for 2021, eight race dates during the summer.

8 The Texas Thoroughbred Association, the Texas  
9 Quarter Horse Association, the Texas Paint Horse  
10 Association, and the Texas Arabian Breeders Association  
11 all support Gillespie's 2020-2021 request. On page 238,  
12 the Texas Horsemen's Partnership states they cannot  
13 support any of the applications as currently submitted as  
14 the effects of HB 2463 and HB 1995, which will provide  
15 additional purse funds, have yet to be determined.

16 Thank you.

17 CHAIRMAN STEEN: Commissioners, do you have  
18 any questions for Ricky?

19 (No response.)

20 CHAIRMAN STEEN: At this time I'd like to call  
21 up Marsha Rountree, representing the Texas Horsemen's  
22 Partnership, wishing to testify against VI.A.

23 MS. ROUNTREE: Commissioners, Mr. Chairman.  
24 Again, Marsha Rountree, Texas Horsemen's Partnership. I  
25 almost withdrew my card on this topic because I feel like

1 maybe it's a moot point for me to testify about this, but  
2 I'm going to go ahead and do it anyway.

3           When the Commission opened the application  
4 period for race dates, it did so about a week before the  
5 Governor signed these bills, and so at that time the  
6 tracks were asked to submit race days when they had no  
7 idea whether this money was going to materialize or not.

8           So in your packet is a letter from the horsemen's  
9 organization that does not support nor agree with the  
10 current race dates which had been requested by these  
11 Class 1 racetracks.

12           The bills that were passed during the last  
13 legislative session should be sufficient justification to  
14 restore race dates, at a minimum to 2017 levels. The  
15 allocation of the simulcast tax to the Commission caused  
16 the track license fees to be reduced, and with the  
17 addition of up to \$17.5 million in new purse money every  
18 year, there's no reason not to return to 2017 race dates,  
19 which was prior to the increased race fees which caused  
20 the race dates to be cut in the first place.

21           Purse money which will be allocated as a  
22 result of House Bill 2463 comes with a price. It's the  
23 responsibility of this industry to prove to our elected  
24 officials without any doubt that in trusting the Texas  
25 racing industry with \$50 million was a good investment.

1           We have to have measurable success and that  
2 means growing Texas racing. More racing opportunities,  
3 along with larger purses, is what will bring industry  
4 participants back to Texas and incentivize those who  
5 remained during all those hard years to revitalize their  
6 racing programs.

7           We've asked each one of the racetracks to  
8 consider, thoughtfully consider adding race dates, so  
9 that the Horsemen's organization, the breed registries  
10 can make decisions about what percentages of this new  
11 purse money will go to each track. The race dates that  
12 the tracks have requested simply don't provide enough  
13 racing opportunities. We have purse money now, so I urge  
14 that the commissioners ask that the tracks amend their  
15 race date requests.

16           If you have any questions, I'll be happy to  
17 answer.

18           CHAIRMAN STEEN: Commissioners, any questions?

19           COMMISSIONER WAIGHT: I'm a little confused.  
20 By adding additional dates, you're basically spreading  
21 out that money over a longer period of time, and I  
22 thought the objective was to increase the purses to bring  
23 people back into the state.

24           MS. ROUNTREE: Yes, sir. The problem is that  
25 when 2017 ended and the Commission proposed an increase

1 in license fees for the racetracks, the racetracks all  
2 cut race days, and right now, for instance, Retama Park  
3 is running a 14-day meet for each one of their breeds.  
4 Lone Star Park is running a 16-day meet for Quarter  
5 Horses in the fall.

6 Those are not the length of meets that will  
7 draw people to come back. It's very, very expensive to  
8 move a stable of horses and to go somewhere for 14 days  
9 or 16 days is simply not financially responsible or even  
10 doable.

11 So we're not asking to add 25 days at each  
12 track for each meet, we're just asking to restore the  
13 meets to what they were in 2017, and it's not that many  
14 days. So with 70 percent of the \$25 million a year,  
15 \$17.5 million can be used for purses.

16 That's a lot of money to spread over three  
17 Class 1 tracks and Gillespie County Fair. So even if  
18 each one of them only added two or three days to their  
19 meets, the purse levels at those tracks would still be  
20 sufficient to draw people back to our meets.

21 Thank you.

22 CHAIRMAN STEEN: Thank you.

23 Commissioners, any further questions or  
24 discussion on this item?

25 COMMISSIONER WAIGHT: I'm not sure I still

1 understand. I mean, it seems to me like this may be a  
2 little counterproductive because you're taking this money  
3 and distributing it over a longer period of time, so it's  
4 not any more money in the purses, so to speak, but  
5 there's more opportunities for participating in more  
6 races. Is that the agenda?

7 CHAIRMAN STEEN: I think it depends on who you  
8 ask.

9 COMMISSIONER McNABB: As participation in  
10 racing, it can be more race days. A lot of it depends on  
11 how many sound horses there are available. We'd like to  
12 think that with the increased money coming in that more  
13 horses will either return to Texas or come in from other  
14 states, but it's also the business decisions from the  
15 tracks because they have a whole staff and a facility to  
16 run too.

17 So there's about a half a dozen chickens and  
18 eggs going on here, and I think the overall is a  
19 positive. If more people find that the purses are  
20 better so they want to come back to Texas or come into  
21 Texas and they're filling the cards, and with a bigger  
22 card then there's more simulcasting so then there's more  
23 money put in, so then there's more interest in racing, as  
24 opposed to having races go off with five horses.

25 The same horses that run against each other

1 three times is not very interesting. So there's a lot of  
2 dynamics, so thank you, Texas, and thank you, Governor,  
3 for pushing that along, but I think there's a lot of  
4 business decisions to be made.

5 Unless the tracks are ready for more, I think  
6 we need to be as responsive to the industry as we can,  
7 and the industry as a whole. Breeders are just as much a  
8 part of the industry as the track owners.

9 COMMISSIONER MACH: Do you need a motion on  
10 this?

11 CHAIRMAN STEEN: Yes. The motion would be  
12 potentially to allocate race dates as indicated on the  
13 calendars on pages 161 and 162, and the materials from  
14 January 1, 2020, through August 1, 2021.

15 COMMISSIONER MACH: I'll make that motion.

16 CHAIRMAN STEEN: Motion made by Commissioner  
17 Mach.

18 COMMISSIONER EDERER: Second.

19 CHAIRMAN STEEN: Second by Commissioner  
20 Ederer.

21 Any further discussion?

22 (No response.)

23 CHAIRMAN STEEN: If not, I'll bring this  
24 matter to a vote. All in favor please signify by saying  
25 aye.

1 (A chorus of ayes.)

2 CHAIRMAN STEEN: Any opposed?

3 (No response.)

4 CHAIRMAN STEEN: That motion carries.

5 The next item is agenda item VI.B. Allocation  
6 of live race dates for greyhound racetracks under 16 TAC  
7 Section 33.41 for the period beginning January 1, 2020,  
8 and ending August 1, 2021. This item has the same typo  
9 so we can only allocate race dates through August 1,  
10 2021. We're going to put this back on the agenda for the  
11 next meeting.

12 Ricky, would you please present this item as  
13 well?

14 MR. WALKER: Good afternoon again,  
15 commissioners. My name is Ricky Walker, chief steward  
16 for the Commission.

17 On pages 240 to 241 are race date calendars  
18 for 2020 and 2021 that show the greyhound racetrack  
19 requested and previously granted race dates.

20 On pages 242 to 248, Gulf Greyhound requests  
21 36 live performances in 2020, beginning on January 2,  
22 2020, and asking to supersede their previously granted  
23 five performances in August of 2020. The Texas Greyhound  
24 Association supports Gulf's request. Valley Race Park  
25 also supports Gulf's request as the date would be in lieu

1 of Valley Race Park's previously granted performances  
2 from late December '19 through February 2020.

3 On pages 247 to 256, Valley Race Park requests  
4 five performances in 2021, from August 20 through August  
5 28. As of this date, the Texas Greyhound Association has  
6 not submitted a letter of support. These dates will be  
7 taken up at the next Commission meeting due to a typo on  
8 the agenda.

9 Gulf Coast Racing was previously granted five  
10 performances in 2020 from August 4 through August 8.  
11 They did not submit a request for 2021 performances.

12 Thank you.

13 CHAIRMAN STEEN: Thank you.

14 Any questions, commissioners?

15 (No response.)

16 CHAIRMAN STEEN: I have no one signed up to  
17 speak on the item. Is that correct, Robert?

18 MR. ELROD: Yes, sir.

19 COMMISSIONER MACH: Mr. Chairman, I move we  
20 approve the allocation of live race dates for greyhound  
21 tracks under 16 TAC Section 33.41 for the period  
22 beginning January 1, 2020 and ending August 1, 2021.

23 CHAIRMAN STEEN: Motion made by Commissioner  
24 Mach.

25 COMMISSIONER McNABB: Second.

1 CHAIRMAN STEEN: Second by Commissioner  
2 McNabb.

3 Any further discussion?

4 (No response.)

5 CHAIRMAN STEEN: If not, we'll take this up  
6 for a vote. All in favor please signify by saying aye.

7 (A chorus of ayes.)

8 CHAIRMAN STEEN: Any opposed?

9 (No response.)

10 CHAIRMAN STEEN: Motion carries.

11 Now we will return to item IV. Proceedings on  
12 occupational licenses.

13 Ms. Fields.

14 MS. FIELDS: Yes. Commissioners, you  
15 requested a prior history that was entered at these  
16 stewards' hearings with regard to Mr. Kearl. There were  
17 actually eight rulings for races that occurred in October  
18 of 2014.

19 The rulings were entered in February.  
20 February 21 were six rulings, beginning LSP3039,  
21 consecutive through to LSP3045, and then on February 26  
22 we entered rulings LSP3046 through LSP3047. This was for  
23 a prohibited substance, budesonide, and the sanctions on  
24 all of these, the appellant was fined \$500 and his  
25 license was suspended for 15 days in each ruling, and the

1 suspensions ran concurrently -- or in succession, and the  
2 race purse was redistributed.

3 Those were the prior offenses. They were  
4 entered at these stewards' hearings.

5 CHAIRMAN STEEN: So how many were there? I'm  
6 sorry.

7 MS. FIELDS: Eight.

8 CHAIRMAN STEEN: Eight. All for the same  
9 substance?

10 MS. FIELDS: All for the same substance, and  
11 the races all occurred in one month in 2014, October.  
12 The rulings were issued in February 2015.

13 CHAIRMAN STEEN: Could you please repeat the  
14 numbers of the usual, or at least how they were  
15 allocated? You said for the first it's a certain?

16 MS. FIELDS: In these current rulings?

17 CHAIRMAN STEEN: Yes.

18 MS. FIELDS: Yes, sir. I don't have the  
19 rulings right handy, but the first ruling for Mr. Kearl  
20 was one year and \$10,000, the second ruling was three  
21 years and \$25-, and then the subsequent three were for  
22 five years and \$25-.

23 CHAIRMAN STEEN: So each of them for five  
24 years?

25 MS. FIELDS: The last three were 15 years

1 total.

2 CHAIRMAN STEEN: Okay.

3 MS. FIELDS: And then the four years for the  
4 first two combined.

5 CHAIRMAN STEEN: And the previous, the  
6 budesonide, those were each 15 days?

7 MS. FIELDS: And \$500. The penalty matrixes  
8 were changed.

9 COMMISSIONER McNABB: Budesonide is a drug  
10 that's given for ulcerative colitis or so forth, so if  
11 horses are nervous or whatever, it makes them more  
12 comfortable. That's why it's a prohibited substance,  
13 it's not a central nervous system.

14 COMMISSIONER EDERER: So then it's similar to?

15 COMMISSIONER McNABB: It's one of those if the  
16 horse isn't feeling well, you probably shouldn't run it,  
17 but it's not like something that a horse -- you're giving  
18 them something that is endangering the horse and the  
19 jockeys and everybody in the back side of the racetrack  
20 like the central nervous system stuff.

21 COMMISSIONER WAIGHT: It's not going to  
22 enhance his opportunity to win?

23 COMMISSIONER McNABB: Oh, yeah, if he feels  
24 better. That's why they use the purse. It's one of  
25 those if the horse is not feeling well, it ought to be

1 scratched. If it makes the horse feel better and can go  
2 out there and run a race, he's in the business again.

3 CHAIRMAN STEEN: The current ruling is for 19  
4 years of suspension. Is that correct?

5 MS. FIELDS: Yes, sir. That began the end of  
6 July of 2017.

7 COMMISSIONER WAIGHT: Were all of these  
8 rulings made on the same date covering the different  
9 periods?

10 MS. FIELDS: The rulings in this case were all  
11 issued on the same date.

12 COMMISSIONER WAIGHT: But they would have  
13 covered different races prior to that date?

14 MS. FIELDS: Yes. The three or so weekends in  
15 May and June of 2017. It was the end of May -- as I  
16 understand, it was the end of May to the end of June,  
17 roughly, three weekends of racing.

18 COMMISSIONER WAIGHT: I'm just curious because  
19 I'm kind of new on this, but after the first test were  
20 they warned, or all of a sudden we're going back 30 days  
21 and fining them three amounts for three different  
22 violations?

23 MS. FIELDS: I might be a little bit confused  
24 on your question, but it takes some time for the lab to  
25 produce the results from each of the tests from each

1 race. It's typically consecutive, the first race  
2 submitted would be those first results you get back.

3 And too, the evidence in this case was that  
4 nomifensine is a substance that had not been found in a  
5 horse before and the equipment that was purchased through  
6 Hong Kong came up with the results but the lab had to  
7 obtain certain reference materials in order to better  
8 study the substance, and so I think that there was an  
9 additional delay in the results coming back to obtain  
10 those reference materials on the substance.

11 COMMISSIONER McNABB: There's no question that  
12 the substance was in the sample.

13 MS. FIELDS: There's no question that the  
14 substance was in the original sample and the split.

15 COMMISSIONER McNABB: And so if it was given,  
16 you got a purse, survived another weekend, ran another  
17 race next week. As far as he knows -- or someone,  
18 whichever person it was, whether the trainer or  
19 veterinarian, but still with the absolute insurer, the  
20 substance was in the horse one weekend, nothing bad  
21 happened. The substance was in horses the next weekend,  
22 nothing bad happened.

23 In the meantime the lab is going through this  
24 because this is -- I wasn't in the lab at the time, but  
25 just how things work they're saying there's something

1 here, we can see something here, but it takes time to pin  
2 it down. In the experience of the lab guys, they're  
3 talking within their own networks, who has various  
4 reagents in the network, let's call our friends in Hong  
5 Kong -- that's probably where it came from -- and boom.

6 COMMISSIONER EDERER: After the first finding  
7 was Kearl told?

8 MS. FIELDS: After the first finding in these  
9 cases?

10 COMMISSIONER EDERER: Yes.

11 MS. FIELDS: He was advised that the positive  
12 results had come through and given the opportunity to  
13 have the splits tested. But there was no warning, we're  
14 going to warn you, and if it comes up again we'll go  
15 after you. No, sir.

16 COMMISSIONER EDERER: I understand. But once  
17 it was found the first time and he was notified --

18 COMMISSIONER McNABB: It takes time to be  
19 confirmed.

20 COMMISSIONER EDERER: I understand that. I  
21 was just wondering if it was even closer.

22 COMMISSIONER MACH: Is it possible that all  
23 the samples were collected before he was first notified  
24 that they were possibly positive, or was he notified  
25 there was a positive and then samples were taken after

1 that point that continued to show this drug?

2 COMMISSIONER McNABB: The lab is not going  
3 to -- if the lab is even still working on something, they  
4 may -- and this is pure conjecture, you're not even call  
5 something as suspicious until you really get some clue  
6 because it might just be some random thing. You know, it  
7 could be a weed in the hay.

8 CHAIRMAN STEEN: Ms. Ruffner, do you have a  
9 timeline, a concrete timeline for us?

10 MS. RUFFNER: Yes. Ms. Fields asked me to  
11 step up.

12 CHAIRMAN STEEN: Okay.

13 MS. RUFFNER: So just two clarification  
14 points. The first is that, yes, all of the samples that  
15 ultimately were the subject of this proceeding were  
16 collected before Mr. Kearl was first notified that there  
17 had been a positive.

18 CHAIRMAN STEEN: The samples are collected at  
19 the winning.

20 MS. RUFFNER: Yes.

21 CHAIRMAN STEEN: So normal course of business  
22 to have those samples collected.

23 COMMISSIONER McNABB: If they ran first or  
24 second.

25 CHAIRMAN STEEN: Okay.

1                   COMMISSIONER McNABB: All those horses ran  
2 first or second?

3                   MS. RUFFNER: That's my understanding. I'd  
4 have to go back and check for each of them, but those  
5 materials should be included in the reports -- I'm  
6 sorry -- the PFD.

7                   With respect to the timeline, the samples are  
8 collected, and then approximately two weeks pass and they  
9 do two different types of tests. And I'm not a scientist  
10 and I'm definitely not a veterinarian, so I may have been  
11 misremembering some of the testimony.

12                   But my understanding is they have what's  
13 called a library of about 300 substances and the first  
14 test will sort of check for that library if anything  
15 peaks. I think they do gas chromatography first. And so  
16 then if there's anything that's indicated as being  
17 present in the sample that's among the 300 substances in  
18 the initial library, then they go back and they do  
19 confirmation qual and quantitative testing, and I think  
20 that's when they do liquid chromatography.

21                   So my recollection from the testimony of the  
22 lab veterinarian -- I'm sorry -- the lab staff was that  
23 nomifensine was added to the 300-item library in 2012 or  
24 2014, and so it's not my understanding that because it  
25 hadn't been detected before it caused it to take a longer

1 period of time.

2 I would have to go back and check, but my  
3 understanding was that because it was in the library it  
4 was notified -- they found out that there was a  
5 preliminary positive and then they did a second  
6 confirmatory test. And only after the second  
7 confirmatory test, which takes about one more week, only  
8 then is the trainer notified.

9 And so the timeline was the first test there  
10 was a set of nomifensine-indicating samples, that those  
11 were then retested for confirmation and quantitative  
12 testing, and then Mr. Kearl was notified.

13 And so of the tests that have been the subject  
14 of this proceeding, none of the races and none of the  
15 horses at issue, those samples, none of them post-date  
16 the first time that Mr. Kearl was notified that there was  
17 some issue with his horses.

18 And in fact, all three gentlemen were notified  
19 on the same day, and on that day they ran barn searches,  
20 and my understanding from my client -- and I believe his  
21 testimony is in the record on this point -- was that he  
22 notified the veterinarian at that point that there had  
23 been positive samples.

24 Does that clarify the questions you have  
25 regarding timing?

1                   CHAIRMAN STEEN: Yes.

2                   MS. RUFFNER: Okay.

3                   COMMISSIONER McNABB: Number one, because the  
4 testing is in stages, the screening says there's  
5 something and it looks kind of like this, so it could be.  
6 Even if they ate a bunch of poppy seeds, there's  
7 something that looks like this. You don't call it until  
8 you can do the confirmatory test, and this was something  
9 that, wow, there's something here that we haven't seen  
10 before but do we even have the reagents because this is  
11 something that's new.

12                   The other part, as I said earlier, the holy  
13 grail on the back side of the racetrack is if there's  
14 something that is perceived or actually -- because  
15 there's a lot of smoke and mirrors and theater going on  
16 in the back side of the racetrack, you know -- if  
17 something is perceived this is the go juice, then give me  
18 some of that, I've got to win some races.

19                   COMMISSIONER EDERER: Would the trainer know  
20 that there was an investigation going on?

21                   COMMISSIONER McNABB: The trainer knew that  
22 his horses went to the test barn.

23                   COMMISSIONER EDERER: Correct.

24                   COMMISSIONER McNABB: The assumption on the  
25 responsibility clause is that anything that was in that

1 horse, the trainer is responsible to know is in that  
2 horse. So it's not a matter of you're only guilty if  
3 you've been warned and you do it anyway, you're guilty if  
4 your horse had a prohibited substance.

5 COMMISSIONER EDERER: I understand, but would  
6 the trainer know that there was an investigation going  
7 on, other than normal?

8 COMMISSIONER McNABB: Probably not, probably  
9 not.

10 MR. TROUT: May I address that? Generally  
11 speaking, the trainers are notified on Thursday or Friday  
12 after the race weekend what the results are. If they're  
13 negative, the purses are released. However, those that  
14 she's talking about, where you have something come up in  
15 the test, are put in a pending status, and at that point  
16 I think most trainers have a hint that --

17 COMMISSIONER EDERER: That's what I was  
18 wondering.

19 CHAIRMAN STEEN: He would know that it was in  
20 pending status.

21 COMMISSIONER EDERER: He would know that it  
22 was pending.

23 MR. TROUT: He would know that it was in  
24 pending status. Yes.

25 CHAIRMAN STEEN: The time between 2017 and

1 now, is that time served under this or not?

2 MR. TROUT: Yes.

3 COMMISSIONER PATE: Do these penalties by  
4 statute stack, or can they be run concurrently, or do you  
5 know?

6 MS. RUFFNER: So I can only refer to the  
7 equine medication classification policy and penalty  
8 guidelines, which state that for a Class 1 Penalty A  
9 substance the first offense is, as Ms. Fields described  
10 it, one year and \$10,000, second is three years and  
11 \$25,000, and subsequent offenses are five years and  
12 \$25,000.

13 COMMISSIONER PATE: So that's by statute.

14 MS. RUFFNER: It's by policy.

15 COMMISSIONER PATE: By policy.

16 MS. RUFFNER: Subject to mitigation or  
17 aggravation.

18 COMMISSIONER McNABB: Again, from having lived  
19 on the back side of the racetrack and you're surrounded  
20 by deadly weapons in these horses all the time, they're  
21 already very -- they're capable of a lot and they're very  
22 quick and they're very strong, and just how much their  
23 thinking is, but then if you're using something that you  
24 have some reason to believe that this is going to affect  
25 a horse's mentation, their brain is not as big as your

1 fist so there's not much going on in there.

2 But if you're going to give something to a  
3 horse that is going to affect that horse's ability to  
4 stop or reason and they're just going to go run straight  
5 and run into a wall and hope the jock jumps off in time,  
6 I've got some real heartburn with that.

7 You know, having had -- watching in a test  
8 barn horses that have been hopped up, it's something to  
9 see, and it is an extremely dangerous situation.

10 So this isn't like, well, we numbed his leg  
11 and that's bad or we dealt with his belly. It's the  
12 health and welfare not just of the horses but all those  
13 people that are on the back side of the track.

14 COMMISSIONER PATE: I don't endorse in any way  
15 the abuse of the system, but it's complicating, in my  
16 view here, the timeline in terms of notice, the stacking  
17 that occurs, and then the whole Robinson underscore, and  
18 the severity of the punishment as to this individual. It  
19 just seems -- if he did it, he certainly deserves the  
20 whole punishment, and he is responsible; I understand the  
21 absolute insurer.

22 But the mitigating factor, it seems to me, in  
23 my opinion, ought to be considered here, particularly the  
24 absent party that apparently the administrative law  
25 judge, as well as others, thinks is in some way directly

1 responsible.

2 COMMISSIONER McNABB: It takes two to tango.

3 COMMISSIONER PATE: Maybe.

4 CHAIRMAN STEEN: So there's 17 years remaining  
5 for him to serve?

6 MS. RUFFNER: Yes, sir.

7 COMMISSIONER MACH: And most of that's wrapped  
8 up in three instances, five years each. Right?

9 MS. RUFFNER: Yes, sir. Fifteen of those 17  
10 years, yes.

11 COMMISSIONER EDERER: I would like to make a  
12 motion. Is that proper at this time?

13 CHAIRMAN STEEN: Yes.

14 COMMISSIONER EDERER: I make a motion we  
15 accept the findings.

16 COMMISSIONER McNABB: You mean sustain the  
17 letter?

18 COMMISSIONER EDERER: Sustain, yes.

19 COMMISSIONER McNABB: I'll second.

20 COMMISSIONER WAIGHT: Can there be any more  
21 discussion on this?

22 CHAIRMAN STEEN: Yes. Motion made by  
23 Commissioner Ederer, second by Commissioner McNabb, but  
24 open for discussion.

25 COMMISSIONER WAIGHT: I guess what I'm

1 questioning is -- I don't question what happened is  
2 wrong, probably knowingly, but something that happened 30  
3 days ago, 21 days ago, and 15 days ago, we hit him with  
4 three penalties at one time just because that's when we  
5 discovered what the problem was, that may be a fallacy of  
6 the system.

7 COMMISSIONER McNABB: And I've gone past, I've  
8 focused on a different part, but as Chuck said, when they  
9 don't get their purse released that, makes a statement.

10 COMMISSIONER PATE: None of that's in  
11 evidence, none of that's in evidence.

12 COMMISSIONER EDERER: Well, we don't really  
13 know what's in evidence.

14 COMMISSIONER PATE: Well, there's not one  
15 mention of the purse, except that it was redistributed,  
16 in the ALJ findings. That's the only, which is, of  
17 course, after the fact.

18 COMMISSIONER McNABB: If it's a matter of what  
19 is the process that happens, every time when a horse runs  
20 a race, a trainer has that horse, the horse gets tested,  
21 the tests clear, and then the purse is released. That is  
22 the sequence.

23 If that sequence was broken, you can be sure  
24 that that trainer when he went to get his money, no, it's  
25 held up, he knew something was up. If he's an

1 experienced trainer, he would know there's something  
2 going on. Why? Tests haven't been cleared.

3 COMMISSIONER PATE: Well, if you accept that  
4 logic, then he wouldn't have entered the horses in the  
5 last three races because it would have been just two  
6 weeks, and you're suggesting if the money would have been  
7 held up and if that was a fair warning, then he wouldn't  
8 have entered the horses, so you're exonerating the guy.

9 COMMISSIONER McNABB: Or he thought it would  
10 get through, the lab can't find it. Whoever the evildoer  
11 is that this substance made it into our world that that  
12 has gotten by in someplace in some jurisdiction  
13 somewhere. Because that's what goes to the holy grail is  
14 here's something, here's the go juice, and it doesn't  
15 test.

16 COMMISSIONER WAIGHT: Is there a procedure  
17 that you have to follow like going back and fining him  
18 for race one and two before he was fined for three. Why  
19 wouldn't you, if you have knowledge of three violations,  
20 why wouldn't you just have a larger fine for the third  
21 one? Can you not do that?

22 MS. RUFFNER: I mean, in my client's interest  
23 I would say, oh, absolutely not, that's terrible. But  
24 honestly, I do think that the policy gives a lot of  
25 flexibility.

1           The policies treat Class 1 different than  
2 Class 4, which was the budesonide. In Class 4 they only  
3 look back 365 days but for a Class 1 substance it's a  
4 lifetime matter, and so with respect to those kind of  
5 penalties, my understanding, my expectation would be that  
6 one isn't enough, that you do it once is enough of a  
7 fine. It's much more significant wallop than a Lasix  
8 violation or something like that.

9           So if you just strictly read them the way that  
10 they are written, it seems like that would be the maximum  
11 penalty that one could impose for a set of five Class 1  
12 substance violations.

13           CHAIRMAN STEEN: I know that we've got a  
14 motion on the table. I'm inclined to -- given the 17  
15 years remaining, I'm inclined to knock one of the five-  
16 year sentences off.

17           That would be the twelve-year remaining would  
18 still be very substantial, but given the mitigating  
19 circumstances, allows, potentially, Mr. Kearl to come  
20 back at some point. And I don't know that we have the  
21 timeline how those bunch together to know enough around  
22 the final three five-year terms as well.

23           MS. FIELDS: I have the timeline.

24           CHAIRMAN STEEN: As far as when he may or may  
25 have not known.

1                   COMMISSIONER PATE: How many more years does  
2 he have?

3                   CHAIRMAN STEEN: He has 17 years left.

4                   COMMISSIONER PATE: Seventeen? I appreciate  
5 that. I guess in my mind I'm sitting here thinking if you  
6 took ten off. Right now he's looking at he's been out  
7 two, he's going to have, what, seven more. In a way, the  
8 way I am looking at this, it's almost as if it's one  
9 instance. I mean, it's all these races but just to me  
10 it's problematic.

11                   And underlying all this, too, just the way the  
12 case started off procedurally. He got the hearing but he  
13 didn't get it like he was supposed to, so it's one thing  
14 after another.

15                   But I agree with Dr. McNabb. I mean, I don't  
16 have any issue with the rule, I don't have any issue with  
17 the determination that it's a bad substance, I don't have  
18 any determination with the way the testing was conducted,  
19 so those aspects of the case, which is a two-part case,  
20 doesn't bother me.

21                   It's the consideration of mitigation and how  
22 that applies to these rules. It just seems to me that  
23 this is excessive in this particular unique set of facts.

24                   COMMISSIONER EDERER: This trainer has been in  
25 business for a long time and he obviously had been very

1 successful in the past. Every trainer knows the problems  
2 with injecting horses with any type of substance and he  
3 knows the danger that that creates for the people in the  
4 back, as well as the jockeys and the horses themselves.

5 This has been in the courts or in the system  
6 for over two years and has been reviewed by a number of  
7 sources, including the administrative law judge who could  
8 have called and listened to evidence and witnesses and  
9 testimony. He made his rulings. I support those  
10 rulings.

11 CHAIRMAN STEEN: So any further discussion, or  
12 should we bring it to a vote?

13 (No response.)

14 CHAIRMAN STEEN: Okay. Can you put the motion  
15 up for me, please, Mr. Ross?

16 MR. T. ROSS: Well, as I heard Commissioner  
17 Ederer's motion, it was to accept the ALJ findings on the  
18 penalty. There are a couple of things on that is I would  
19 recommend as part of the motion -- and I'm not  
20 recommending how you vote -- but that the penalty finding  
21 as contained in the stewards' ruling, as adopted by the  
22 administrative law judge, be voted on per Commissioner  
23 Ederer's motion, so he would be making that  
24 recommendation, if that's clear.

25 And then there's subject of the matter of the

1 edit with respect to --

2 MS. FIELDS: The exceptions letter and the  
3 changes.

4 MR. T. ROSS: -- the exceptions letter that  
5 we talked about earlier. That's on finding of fact --

6 MS. FIELDS: -- 19 in the exceptions letter  
7 on page 38 in your materials.

8 CHAIRMAN STEEN: So we'll take this up for a  
9 vote. All in favor please signify by saying aye. Mr.  
10 Elrod, we should do a roll call.

11 MR. ELROD: Commissioner Mach?

12 COMMISSIONER MACH: No.

13 MR. ELROD: Commissioner McNabb?

14 COMMISSIONER McNABB: Aye.

15 MR. ELROD: Commissioner Roberts?

16 COMMISSIONER ROBERTS: No.

17 MR. ELROD: Commissioner Moore?

18 COMMISSIONER MOORE: Aye.

19 MR. ELROD: Commissioner Pate?

20 COMMISSIONER PATE: No.

21 MR. ELROD: Commissioner Waight?

22 COMMISSIONER WAIGHT: Aye.

23 MR. ELROD: Commissioner Ederer?

24 COMMISSIONER EDERER: Aye.

25 MR. ELROD: Chair?

1 CHAIRMAN STEEN: No.

2 MR. ELROD: Five to three.

3 CHAIRMAN STEEN: Does that pass?

4 MS. BIJANSKY: Are you sure? I think I

5 mis-heard.

6 CHAIRMAN STEEN: Let's go again.

7 MR. ELROD: Okay. Commissioner Mach?

8 COMMISSIONER MACH: No.

9 MR. ELROD: You said no?

10 Commissioner McNabb?

11 COMMISSIONER McNABB: Aye.

12 MR. ELROD: Commissioner Roberts?

13 COMMISSIONER ROBERTS: No.

14 MR. ELROD: Commissioner Moore?

15 COMMISSIONER MOORE: Aye.

16 MR. ELROD: Commissioner Pate?

17 COMMISSIONER PATE: No.

18 MR. ELROD: Commissioner Waight?

19 COMMISSIONER WAIGHT: Aye.

20 MR. ELROD: Commissioner Ederer?

21 COMMISSIONER EDERER: Aye.

22 MR. ELROD: Chairman Steen?

23 CHAIRMAN STEEN: No.

24 So it doesn't pass with a tie. Is that

25 correct?

1 MR. T. ROSS: Yes.

2 CHAIRMAN STEEN: That's correct. So the  
3 motion did not pass. Do we have another?

4 COMMISSIONER MACH: Mr. Chairman, I move we  
5 sustain the finding as in the previous motion with a  
6 reduction of five years from his sentence.

7 CHAIRMAN STEEN: Motion made by Commissioner  
8 Mach.

9 COMMISSIONER PATE: I'll second.

10 CHAIRMAN STEEN: Second by Commissioner Pate.

11 Any further discussion?

12 (No response.)

13 CHAIRMAN STEEN: We'll do a roll call again.

14 MR. ELROD: Commissioner Mach?

15 COMMISSIONER MACH: Aye.

16 CHAIRMAN STEEN: Sorry.

17 MR. T. ROSS: I think it might be a good idea  
18 if you specify which one of those -- it could be  
19 confusing -- of the five-year penalties that you'd be  
20 reducing.

21 COMMISSIONER MACH: The final count, the last  
22 of the three, 2691.

23 MS. FIELDS: So if I may clarify for the  
24 record. The last two rulings were Retama 2690, which  
25 ends in 7/31/31, then the last one is Retama 2691, it

1 goes from 7/30/31 to 7/30/36, so you would actually be  
2 ending suspension 7/30/31.

3 COMMISSIONER MACH: The one that ends in '36.

4 MR. TROUT: 7/31/31.

5 MS. FIELDS: 7/31/31.

6 MS. FIELDS: 7/31/31. Removing the suspension  
7 from Retama 2691?

8 MR. T. ROSS: And it might also be good if you  
9 clarified if the motion says anything about the penalty  
10 on that.

11 CHAIRMAN STEEN: The monetary penalty?

12 MR. T. ROSS: The monetary penalty.

13 COMMISSIONER MACH: What is the monetary  
14 penalty?

15 MS. FIELDS: Five and \$25-.

16 COMMISSIONER PATE: Right now he owes \$100-  
17 and how much?

18 MS. FIELDS: Ten, \$110-.

19 COMMISSIONER PATE: \$110,000.

20 COMMISSIONER MACH: I think you can strike the  
21 whole, I think you can strike the \$5,000 also.

22 CHAIRMAN STEEN: Is that clear?

23 MR. T. ROSS: You're striking the penalty on  
24 that particular stewards' ruling?

25 COMMISSIONER MACH: Correct.

1                   CHAIRMAN STEEN:  It sounds clear to me if  
2 that's what the motion is.

3                   So no further discussion, we'll take it up for  
4 roll call vote.

5                   MR. ELROD:  Commissioner Mach?

6                   COMMISSIONER MACH:  Aye.

7                   MR. ELROD:  Commissioner McNabb?

8                   COMMISSIONER McNABB:  Nay.

9                   MR. ELROD:  Commissioner Roberts?

10                  COMMISSIONER ROBERTS:  Aye.

11                  MR. ELROD:  Commissioner Moore?

12                  COMMISSIONER MOORE:  Aye.

13                  MR. ELROD:  Commissioner Pate?

14                  COMMISSIONER PATE:  Aye.

15                  MR. ELROD:  Commissioner Waight?

16                  COMMISSIONER WAIGHT:  Aye.

17                  MR. ELROD:  Commissioner Ederer?

18                  COMMISSIONER EDERER:  Aye.

19                  MR. ELROD:  Chairman Steen?

20                  CHAIRMAN STEEN:  Aye.

21                  That motion passes.

22                  The next meeting -- we're not going to enter  
23 into executive session again -- the next meeting is  
24 scheduled for October 29.

25                  Sorry.  One item before we adjourn.

1                   COMMISSIONER MACH: I have a real quick  
2 question. Where do we stand with the vet in question on  
3 this? What action has been taken against him?

4                   MR. TROUT: I'd like to cover that with you in  
5 private. We're not supposed to discuss an ongoing  
6 investigation.

7                   COMMISSIONER MACH: Okay.

8                   CHAIRMAN STEEN: The time is now 1:38. With  
9 all business concluded, we are now adjourned. Thank you.

10                   (Whereupon, at 1:38 p.m., the meeting was  
11 adjourned.)

C E R T I F I C A T E

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MEETING OF: Texas Racing Commission

LOCATION: Austin, Texas

DATE: September 10, 2019

I do hereby certify that the foregoing pages, numbers 1 through 132, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Racing Commission.

DATE: September 19, 2019

/s/ Nancy H. King  
(Transcriber)

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