

# MINUTES

## OREGON RACING COMMISSION December 21, 2006

The Oregon Racing Commission met on Thursday, December 21, 2006 at the Portland State Office Bldg, 800 NE Oregon Street, in Room 140. Commissioners in attendance were Chair Jeff Gilmour, Vice Chair Todd Thorne, Lisa Metcalf and Kerry Johnson. Commissioner Julianne Davis was excused.

*After commencing the meeting, Chair Gilmour announced that the Commission would enter into Executive Session. Upon their return, the meeting continued. The Agenda items were discussed in the following order with resulting actions:*

### **1. Approval of November 16, 2006 Minutes**

ACTION: MOTION (Metcalf) Approve minutes as submitted.

VOTE: 4 Aye, 0 Nay, 1 Excused

### **2. Approval of the Proposed Commission Meeting Schedule for 2007**

The 2007 calendar of scheduled meetings was reviewed by the Commissioners.

### **3. Portland Meadows Update Reports**

Dwayne Yuzik, General Manager, Portland Meadows, was present to answer questions. Information and discussions included the following:

The average daily handle, all source, is up 35 percent; the state wagering and all product is up 2.8%.

Oregon Breeder's Day was very successful; Turf Club was sold out with 300 plus patrons.

Last Tuesday ran 12 races and reached an all source handle record for Oregon of \$947,000.

Track Committee meetings continue; notes from those are being forwarded to Executive Director Hanson and Commissioner Metcalf.

The number of breakdowns has increased within the last couple of weeks and they are currently investigating the cause.

### **4. Sub-Committee Update Reports**

Hub Sub-Committee: Vice Chair Todd Thorne stated that a public hearing for Hub rule changes was held earlier as scheduled but no action will be taken today.

Medication Sub-Committee Update: The hearing on the permanent proposed medication rules was held earlier as scheduled and Chair Gilmour stated that they would be acted on later today.

### **5. ORC Press Release re: Unlawful Internet Gambling Enforcement Act of 2006**

Chair Gilmour explained that the press release will be made available to the public and is Oregon's legal opinion of the federal government's Internet Gambling Enforcement Act of 2006.

**6. Confirmation of Next Commission Meeting – January 18, 2007**

All Commissioners in attendance stated that they would be present at the next meeting.

**7. Commission Action on Proposed Permanent Rule OAR 462, Division 160 Horse Medication**

The following is a transcript of this agenda item.

Gilmour: Kelly, are you ready, we are going to start with, no public testimony during this period  
of time, on the proposed permanent medication rule OAR 462, Division 160.

Gablks: Mr. Chair, there's ways you can go. What I did between this morning and this afternoon's meeting is I looked at my notes and went through and collated everything together and I believe I came up with a list of all the rule changes to which the Commission and the Task Force are in agreement.

Gilmour: Okay, let's take that first. Is there a motion on that?

Gablks: If I may make a clarification, in several of these areas where there is agreement, there is agreement because certain things in the rules, there was agreement that they should be changed. So for example on – I'm just going to give you an example – so I don't know if you want me to read each of these for the record, Mr. Chair? Or, talk about each of the ones where the changes were agreed to as long as there were certain rule changes implemented.

Gilmour: I tell you what we're going to do. First of all, we're going to call on the good Commissioner Metcalf on the areas of agreement. The intent that I would hope to speed this up and jump - no you can't. Here's the way we're going to try to do it. We're going to try to adopt the one's we've agreed to, everybody, like you mentioned. There will be a printout at some time of what we have done once it's codified or whatever term you want to use.

Gablks: Yes.

Gilmour: We're not trying to hide anything here. Commissioner Metcalf.

Metcalf: May I make a suggestion just-

Gilmour: -Absolutely.

Metcalf: -in terms of trying to make this as expeditious as possible. We went over during lunch many of the things that have been discussed. What I'd like to do is propose the adoption of the rules that we have in the draft with the following modifications. Because even in those areas upon which we agreed, there are changes.

Gilmour: Okay.

Metcalf: Unfortunately, we will go through some of the points, point by point, but at this point this is what we're proposing and that might be the quickest. Our attorney has written all of these things down and will then make a draft with all of the changes in it, if it's adopted.

Gilmour: Is there any piece of paper that I could follow you on?

Metcalf: What I would do-

Gilmour: Do we have a whole stack here?

Metcalf: Yes, absolutely. The draft that we discussed.

Gilmour: Okay. Perfect.

Metcalf: I'm going to be going through our draft. And in front of me I have both the HBPA Consortium – so when I refer to the consortium that will be the HBPA Consortium – I have their –

[Unintelligible speaker]

Metcalf: -yes.

Gilmour: The color coded red and blue, right?

Metcalf: Yes, in deed. My proposal to the Commission is based on several things. If you will allow me two minutes just as an introduction here: I've served on this Commission for some five years and I've often wondered why they have a veterinarian on this Commission. As I've sat back very quietly through many, many meetings, I'm talking about things that did not have veterinary implications. Finally, I believe that I know why I'm on this Commission. It's for this very reason, for the first time, that I really need to be involved in the medication rules. Although, please understand that I'm a solo practitioner who is a fertility specialist, I have owned race horses. I have trained race horses and I'm not completely unfamiliar, even before I entered on this Commission, with racing. I enjoy watching racing, as well. As I make these comments, I believe, in all of the testimony that I have heard during the last month and even before, that we're all going in the same direction. I spent a considerable amount of time when I was in San Antonio at our American Association of Equine Practitioners meeting talking to regulatory bodies as well as veterinary – track vets, especially Rick Arthur who's been my colleague for a number of years and from whom you produced an affidavit, if you will, last meeting. He has gone over, as well, the proposed changes to our rules and made a number of comments on them. I've learned a great deal about where the model rules are going and the direction of this industry. In general, I believe that we're all headed in the same direction and that is to level the playing field. From my perspective, that is for the benefit and the welfare of the horse. For most of the other commission members' viewpoint, that's probably for the betting public. But we're all going in the same direction. As Dr. Arthur said to me, we are going for no medications except for anti-bleeder medications. That's our goal. And when they are all finished, this welfare of the horse, model rules consortium, whatever forms it will take, that's the direction it's going. Many of my comments it's important, I feel, to remain compliant with the model rules with thought to a few things that perhaps the consortium, HBPA, or I feel as a veterinarian are important to remain. There is no state that has adopted the model rules as they are. They have tweaked them in any number of different directions. However, the goal is to all stay on the same page, especially in the Northwest so horses can come back and forth between Washington, California, Oregon and not have to under go major changes in what they do. Taking all that I have learned at least in the last six weeks from the consortium and their concerns, from the national movement as to where racing's going and for the little I know as a solo practitioner, these are the recommendations that I'm going to propose for this. That said.

Gilmour: The areas of agreement.

Metcalf: The areas of agreement I'm probably - I'm proposing that we accept the draft, marked draft with the following changes. I will not discuss the areas of agreement.

Gilmour: That's fair.

Metcalf: The first change is on page one.

Gilmour: Let's just go page by page.

Metcalf: We are. We'll skip a lot of pages in the meantime.

Gilmour: Okay. Perfect.

**[OAR 462-160-0110]**

Metcalf: This is going to be at the bottom of the page. It is under the Vet Practices 0110 under number (C), (d) that begins "Veterinarians shall not have contact with an entered horse". This will be adopted as it is read except for the last sentence: "Contact shall be defined as any direct or indirect physical proximity." We will take out "visual observation". So it will now read: "Contact shall be defined as any direct or indirect physical proximity or examination."

Moving to (e) which states: "Any horse entered for racing must be present on the grounds 5 hours prior to the post time of the race they are entered in." We will, instead, adopt the consortium's recommendation because I feel that there is no reason for an un-medicated horse to arrive in this timeframe. I believe Kelly has the wording for that.

Gablks: That's right.

Metcalf: We will accept the recommendation from the HBPA Consortium.

**[OAR 462-160-0130]**

Metcalf: Moving to 462-160-0130 which begins on page three and yet the only area that we have - we're going to change. We're going to put all of the crossed out area into a directive from our Executive Director. So everything that has been crossed out and reworded by the consortium will become a directive and not in this document.

We will then move to (b) which is on page nine at the top. We have (a) and then (b): "The licensed trainer is responsible for notifying" that will remain as written in the draft.

However, for number (c), we will change the RCI Classification to 1, 2 or 3. Does that make sense to the Commission? That we are now, instead of having - we can either go with category A, but that doesn't include all classification 3 so we're going to 1, 2 or 3. Model rules have all three, by the way.

Moving down to the area - Most discussion this morning was the NSAIDs and that begins on [page] number ten, Non-Steroidal Anti-Inflammatory Drugs. In (4),(a),(A), the one area that we need to change in this paragraph is every time we mention phenylbutazone, which was lifted from old rules, it really should say NSAIDs instead of phnylbuatazone. It was changed later on. We will delete item-

Gabliks: Would that be permitted NSAIDs?

Metcalf: Permitted NSAIDs. Thank you.

Gabliks: Thanks.

Metcalf: Thank you.

Gilmour: What page is that?

Metcalf: We're on page ten.

Gilmour: That's what I thought.

Metcalf: Bold type (4).

Gilmour: Thank you.

Metcalf: And we just in the big (A) there. Every time we have phenylbutazone it should be permitted NSAIDs.

In (B), we have deleted it: that NSAIDs may be used in any age horse.

Johnson: We're deleting (B)?

Metcalf: We are deleting (B), the entire section. NSAIDs may now be used in any age horse.

Gilmour: So we now need to renumber that or re-letter it?

Metcalf: Right.

Gilmour: Okay, go ahead.

Metcalf: Moving down to (C) as far as any violation or penalty incurred. Instead of having specific penalties written in the model rules, it will instead be left up to the Stewards. As we move down to the end of the page.

Gilmour: How about the little (i) where we have the –

Gabliks: - two little (ii).

Metcalf: Sorry, oh yes. It's number (e)? Number (i)? Oh, the three to one ratio.

Gilmour: Right.

Metcalf: That stays.

Gabliks: Come up a little bit.

Metcalf: Okay. Where are we? Oh, I'm so sorry on (D) - I have some of these written in here – in (D) looking at permitted plasma or serum threshold concentrations. The Flunixin will go to 25 nanograms per milliliter, which is where I believe the model rules are going.

Gilmour: That's the little (i), 25, right?

Gabliks: Little (ii), right.

Metcalf: Flunixin.

Gilmour: Okay.

Metcalf: We discussed in big (F), big (C) as far as “at close of entries for the day”, it’s just – that’s statutory so there’s no reason to change that.

Thorne: What about the 3.1 on this –

Metcalf: And 3 to 1 – I’m sorry I’m jumping around here – The (E) little (i) the 3 to 1 rule stays, even though we have a very, very low incidence of any violations here, it absolutely protects the betting public. There are a number of bettors who would much prefer to have this rule stay even though it is almost a mute point. However, it protects the betting public.

Gilmour: Next.

Metcalf: Finally, when we look at (e) at the very bottom of the page: “If the same horse has three (3) overages”, although I feel this is not really written well and I take Dr. Root’s point completely to heart that the horse doesn’t take the drugs, they are given the drugs. There is no way otherwise to protect the horse against this so we actually, not only kept this in, but we left it for one year – is what we add at the end. So it will now read: “If the same horse has three (3) overages of any permitted NSAID during a 365 day period the commission veterinarian shall rule the horse off all NSAIDs for a period of one year.” Basically, the likelihood of this ever happening is extremely rare. However, it allows the horse a rest period which is why we left it in there and it adds an entire year to it.

The next changes will be made in Furosemide, on page eleven. If we move down to (A) at the very bottom where we are labeling the horses, on how to label them and dealing with our computer system the way it already is. The best way that I can recommend that we label them is continue to have a “1-L” for the first time on lasix, a”0-L” for the first time off lasix and a simple “L” for on lasix.

Gilmour: That’s probably the best we can do with computer science.

Metcalf: Unfortunately, it requires rewriting programs.

Gilmour: I understand.

Metcalf: And it’s most important, again, for the betting public and that is what they understand.

Thorne: I have a question. Top of the page, little (f), does that stay?

Metcalf: Yes.

Thorne: Okay.

Metcalf: Moving to page twelve, we’re still on furosemide. We are adding here as per the consortium’s recommendation, [(A)] “Furosemide shall be administered no more than five hours, but no less than four hours prior to the schedule for the race for which the horse is entered.”

We move down to (B), the doses of furosemide will be raised to 500 mg as per the consortium’s recommendation.

We leave what is now termed (e) was termed (d) as far as the “Test results must show a detectable concentration of the drug in the post-race serum, plasma or urine sample.” We leave that as is, however, we change - moving down to the next section of (B) - those that are over. Little (f) “Unauthorized use of furosemide shall result in a penalty to the horse trainer” period.

Gilmour: Period?

Metcalf: Period.

Gilmour: Okay.

Metcalf: Moving on to page thirteen under the [(7)] Anti-Ulcer Medications. I recommend that we do not include ranitidine in the allowed medications only because it interferes with testing.

Gilmour: What line is that on?

Metcalf: That is number (7) and it basically is that we adopted as, but the reason we are – ranitidine is not in there, but it was a proposal by the consortium to include it. Because it interferes with testing, I don't feel that we should include at this time.

Gilmour: Okay.

**[OAR 462-160-0140]**

Metcalf: Going down to the [(1)] Reporting to the Test Barn, we're going to add (g). This is where we're going to address the claimed horse. According to the consortium's sentence – we are going to add here: “A claimed horse shall remain in the care and custody of the original trainer or his representative until after post race test has been taken.”

Gilmour: Okay.

Gablks: Madam Commissioner, that is 0140 sub (1) sub little (g), is that correct?

Metcalf: Yes.

Gablks: Thank you.

Metcalf: That will go over to page fourteen.

Gablks: Right.

Metcalf: At the very bottom of the page, we're just changing the wording here big (A) –

Gilmour: - Page fourteen?

Metcalf: - Page fourteen, big (A) “The commission will not release a horse's specimen” that paragraph, instead of “the reference laboratory shall be borne by the horse's trainer”, it will be changed to “shall be borne by the horse's representative.”

Gilmour: Okay. On to page fifteen, in the [(7)] Presence Of A Prohibited Substance, number (7), little (c) we are simply deleting the (7) in parenthesis as the consortium suggested so that it will now just be ORS 462.415, no (7) in there.

**[OAR 462-160-0150]**

Gilmour: We proposed to, as discussed during the public session, that the Trainer's Responsibilities and Duties, eligibility, etcetera, etcetera has otherwise been addressed elsewhere and that we should leave this for another time. We have the claiming issue already put into these rules. I believe that we have the time in the paddock, fifteen (15) minutes, is elsewhere, as well as, the representative instead of employee that's just spelled out. That way we don't have to bother with rewriting the trainer's responsibilities.

I adopt that those changes take place in the draft and we adopt the draft as is with the changes.

Gilmour: Okay. You, as stated are representing these as the "agreed to" by both parties with your blessing. I guess is the only way to put it?

Metcalf: No. I'm not stating that.

Gilmour: How would you like to put the motion?

Metcalf: I propose that the Commission adopts the draft with the proposed changes.

Gilmour: Okay, that's the motion. Before I call a vote on the motion, Kelly, would you point out, page by page, areas of which there was discussion in the sub-committee, not including these that we've discussed, areas of disagreement.

Gablks: Areas of –

Gilmour: You want me to rephrase that?

Gablks: Sorry, I thought for sure you were going to say agreement and I was ready.

Gilmour: No, we've done agreements. We've covered that and there's a motion on the table. And before I call for a vote, I would like to go through, page by page, and point out the areas that were not included in the motion.

**[OAR 462-160-0110]**

Gablks: Well, okay. Then let's start with, page by page, page one, 0110 sub (2) sub (d) that's a disagreement.

Gilmour: Okay. I'm numbering these on my pages for everybody. Okay, number two.

**[OAR 462-160-0130]**

Gablks: The second disagreement would be in 0130, because the others were agreement.

Gilmour: What page is it?

Gablks: On page three. All of the deletions that the Commission proposed were almost to a word, opposed, there's one or two exceptions, but those were all opposed.

Gilmour: Okay. Now were on number three.

Gablks: Right. The third one would be in 0130 sub (1), little (b) there's disagreement on who would be responsible for the notification.

Gilmour: What page?

Gablks: Page nine.

Gilmour: Okay. Who was involved in the notification?

Gablks: Right, the way the rules now read.

Gilmour: Okay, that's right that was "The licensed trainer is responsible for notifying."

Gablks: There was a disagreement on 0130 sub (2) sub (b), but that was explained that that's required by statute and in order to change that –

Gilmour: We won't go there. We won't count that as four.

Gablks: Okay. The next one was again in 0130 sub (2) little (b) sub (E) that is not included. There's a dis -

Gilmour: - Which page?

Gablks: Again on page nine there was a proposal to insert a new sub big (E)

Gilmour: Right.

Gablks: So that also was not adopted. The next areas of disagreement would be on page ten, 0130 sub (4), little (a), big (E), little (i) the ratio. There was not agreement on that.

Gilmour: On the?

Gablks: On the ratio requirements, not agreement on that. And there was also not agreement on – there was a proposal under 0130 under (4) and it would be (C), little (c). There was an additional proposal by the task force, none of which was adopted. None of which are shown in this draft.

Gilmour: And what was that issue?

Gablks: That relates to what the penalties should be.

Gilmour: The penalty area.

Gablks: It also provided concentration threshold amounts. I'm referring to the blue information that's on the bottom of page ten and the top of page eleven of the material from the task force.

Gilmour: That's the penalty for first offense, second offense, okay. So that begs the question, then we go back to our penalty stage for this –

Gablks: - Yes.

Gilmour: - which is currently in the deal. Okay. Do you know the difference between the two?

Gablks: Our's currently allows for a maximum of 500 and a loss of license and a purse, too.

Gilmour: Okay and their's start at 300 and go to 1,000.

Gabliks: My advice to you is that you could not, even if you wanted to, you can not adopt that because your statutes only allow you to impose a maximum \$500.00 civil penalty.

Gilmour: Then, we're not going to number that because we can not do it in rule. Is that a correct answer?

Gabliks: That would be correct. You would have to change your statutory authority to greater than \$500.00.

Gilmour: We won't mark that as number four because we can't do it in rules, any change. That's my point. Next.

Gabliks: The next area of disagreement is in – now we're in Furosemide, I know I'm mispronouncing it, I'm sorry – Lasix.

Gilmour: This is not the lettering is it?

Gabliks: The areas of disagreement are in – so that would be 0130 sub (5), (d) – I'm sorry there was an agreement on that one, sorry. Big (D), Roman (iv).

Gilmour: Roman (iv)?

Gabliks: There's not agreement on that. Yes.

Gilmour: Big (D), Roman (iv).

Thorne: Big (D), Roman (iv), sub (5).

Gilmour: Okay, I found it, page twelve.

Gabliks: Right. The next disagreement was 0130 sub (5) and it looks like it says (d), but it really should be (e). There was a disagreement there. This again does not provide for a penalty or it also does not provide for a threshold. The proposal from the task force did have that in there.

Gilmour: Okay, read that number one more time to me. I follow you right up to the -

Gabliks: 0130 sub (5)

Gilmour: Right, I'm that far.

Gabliks: Little (e). Now it's on here, it says little (d), but it really should be little (e) because we already have a little (d). It starts with "Test result must show a –"

Gilmour: Got it. Should be little (e).

Gabliks: Right, so that will have to be a change. Then, given what she has recommended there's not disagreement.

Gilmour: This is the one if there's not detected and it should be detected there's a loss of purse, right?

Gabliks: Correct.

Gilmour: Okay, I'm going to mark that as number six. I believe we're at six, right?

Gabliks: The next one is 0130 sub (7), there's a disagreement on adding generic name Zanax to the allowed anti-ulcer medication.

Gilmour: That will be number seven.

Gabliks: Correct. 0130 sub (8), there is a disagreement over adding benzoyleegonine and morphine.

Gilmour: That's number eight.

Thorne: Cocaine.

Gabliks: Cocaine and morphine.

Gilmour: That's eight.

Gabliks: I don't know if you want me to call this a disagreement, or not. There was the addition of –

Gilmour: How about just a difference.

**[OAR 462-160-0140]**

Gabliks: Difference. There was some agreement in the morning about that there would need to be some discussion about what you do with claimed horses and what she did is she took it out of 015 and it's now in 0140, sub (1), sub (g). So that's just a difference.

Gilmour: That's the one where the guy takes the horse to the test barn and the claimer picks the horse up after the test barn. I don't think that's a disagreement anymore. Okay.

Gabliks: But, it is a difference and I –

Gilmour: A difference in how, then, where it's placed?

Gabliks: Where it's placed, yes.

Gilmour: Okay, I'm not worried about where it's placed. That's not a difference. It's been resolved.

Gabliks: And then, page 15.

Gilmour: Right.

Gabliks: Quite frankly, my notes are a little unclear. I think there might be a slight disagreement in 0140 sub (6), little (a). I know there was exact word for word with the sulfa drugs, but I think there was a question about who should bear the cost.

Metcalf: No, there's no difference.

Gabliks: There's not, so we're okay then. Sorry, then that is an agreement.

Gilmour: Perfect. I love it when we're solving these. We're down to – I'm looking for number eight now, aren't we, on differences.

Gabliks: I think that's it. I think that's now it. Unless

Cartney: [unintelligible] cost [unintelligible]

Gabliks: I did think there was some.

Cartney: In small (a) [unintelligible]

Gabliks: Right.

Gilmour: What page?

Cartney: Fifteen, section C, small (a) we didn't agree to [unintelligible]

Gilmour: The cost incurred.

Cartney: [Unintelligible]

Gabliks: Right. I thought there – little (a), right? I did think there – yeah so that was a disagreement, that's what I thought.

Gilmour: We're talking about the split sample, right?

Cartney: We're talking about [unintelligible]

Gabliks: Do you have a question you'd like to direct to me?

Gilmour: Yes, we're talking about the split sample, we're not talking about the initial sample, is that a correct answer?

Gabliks: That's what it looks like to me.

Metcalf: No.

Cartney: No.

Metcalf: That's not correct.

Gilmour: We're talking about the sample?

Gabliks: So how would you change what I just said, Commissioner Metcalf?

Metcalf: We're talking about *the* sample. Your changes of difference are correct. However, his interpretations are incorrect. We're talking about *the* sample.

Gilmour: The sample. I'm trying to get clarification. Who pays for *the* sample.

Metcalf: Right.

Gilmour: That would be – what are we up to eight now? Or, nine?

Metcalf: That was nine.

Johnson: I thought it was eight.

Gilmour: I'm just going to put eight.

Metcalf: Eight sounds good.

Gilmour: Okay, nine, it is technically nine.

Gabliks: My sense is that there was not a disagreement on sub (7). We had one typo in there. I think the rest of it is – if the Commission goes with the notion that we're not going to go into Trainer Responsibilities and Duties -

Gilmour: No, we're not going there today. It's going to be done soon. Okay, here's the way I thought we'd do it. We have a motion on the table to adopt by Commissioner Metcalf the areas covered in this document not including the differences which I've numbered nine. So, I'll call for the vote.

Gabliks: Actually I guess I would correct you. My sense is that her motion is total and complete and, in fact, she is disregarding the differences and in fact –

Gilmour: That's correct.

Gabliks: Right, okay.

Gilmour: What I'd like to do is this - stop me if I'm wrong. I would like to vote on Commissioner Metcalf's motion.

Gabliks: And that would be a sum total - would take care of all rules before you.

Gilmour: But, I wouldn't be done then.

Gabliks: Yes, you would be.

Gilmour: Then, I don't want to do it quite that way. What I'd like to do is I'd like to take them one at a time as an amendment to the motion.

Gabliks: Well, that would be a legislative way to do it, but that would not be a permissible rule under Oregon Public Meetings Laws.

Gilmour: That's why you're here.

Gabliks: My recommendation to you would be to take her motion as is and vote it up or down and then you could go from there.

Gilmour: We can do that. It would be my intent that we take a vote on her motion. If that motion does not pass by three votes, then we will accept other motions which would include numbers, one at a time, all at once or none of the above.

Gabliks: Whatever everyone wants to do.

Gilmour: Smorgasbord, Commissioner Thorne. Those of the opinion that the motion on the floor, which excludes one through nine, and becomes the full document, will answer 'aye'.

Metcalf: Aye.

Thorne: Aye.

Gilmour: I heard two votes. Motion has failed. Chair would move that we adopt the document that include item number one as stated, item number three, trainer responsible, number four, – Jump in Kelly anytime, I've just marked them here.

Gabliks: So, you want to do an omnibus motion as well.

Gilmour: Yes, I do.

Gablks: Thank you. You would substitute all her entire motion for the changes of nine. For all the –

Gilmour: - I didn't want all of nine.

Gablks: I'm sorry, for all the areas that you saw were different.

Gilmour: That's correct. I don't want to do four, the ratio, in my motion. Maybe you can mark these down. I don't want to have in my motion the ratio.

Metcalf: Just your ratio so far is what you want to leave –

Gilmour: I want to leave it the way you had it with the ratio.

Metcalf: With the ratio deleted?

Gilmour: That's correct. And I believe that ulcer medication one that you had; I want to go with your way on that.

Metcalf: Wait, I'm still confused. Go back. You want to include the 3 to 1 ratio or you want to delete it?

Gilmour: It stays the same as in your motion.

Metcalf: Okay, so you want to keep that. But you want to delete number one?

Gilmour: Number one is the?

Metcalf: The contact.

Gilmour: The contact. Let's leave it the way you had it in the contact.

Metcalf: That's okay.

Gilmour: Winning friends and influencing nobody. And in my other list of trainer's responsible positively, page nine. You okay with that? That's included in my motion. That's on the top of page nine. I think the next item after that was the -

Metcalf: Three to one.

Gilmour: Three to one. Keep it as your motion. I'm not making any motion on that one. I'm not going to screw with the lettering of 'OL' or O – off. I understand that. The next was violations of scratch or something here? Page twelve.

Metcalf: The furosemide?

Gilmour: Yes.

Metcalf: May I just make a comment on that?

Gilmour: Go ahead.

Metcalf: I'm not sure were in such disagreement on that. Basically, the consortium had proposed a blanket statement on any violations where as here we've split them. So those who are racing – the non-detectable post race sample, that's where a penalty may be imposed, but without loss of purse. The difference perhaps lies in those that are over –

Gilmour: That's the issue.

Metcalf: That we have proposed that there "may" be a loss of purse.

Gilmour: Okay. It says right here "may be imposed". I did not honestly see the "may".

Metcalf: What we actually deleted after hearing the consortium, we said "Unauthorized use of furosemide shall result in a penalty to the horses trainer" period. We didn't say anything, so it goes to the steward's discretion.

Gilmour: You win that one. Next. We're not including that. Now we are on the anti-ulcer medication. As I said before, that difference is not included in my motion, so just your original motion.

Metcalf: Okay.

Gilmour: Next I believe we're on – we're almost done here.

Metcalf: The cocaine and morphine. Do you want that in there?

Gilmour: I don't know why, but yes.

Metcalf: You want them allowed to have that?

Gilmour: Yes. I don't think it's an issue at the track. Jump in if you think -

Metcalf: - May I –

Gilmour: Yes.

Metcalf: I just want to remind you about why I asked the *joint* injection, that it absolutely deadens the joint. It's inexpensive in small amounts and it will not be detected or it will fall below the threshold levels if used in that manner. Now, I'm not saying any vets are going to do that, but a lot of the reasons that we allow these NSAIDs to be used is to keep people out of the joints where much more harm can be done. Basically, even though it's an environmental contaminant, my recommendation to exclude it was because, if it's used in a joint, it can cause far greater damage to the entire horse.

Gilmour: You won that; not included. One last issue. Was this about the DMSO, the last one?

Thorne: DMSO wasn't a difference.

Gilmour: Okay.

Gablks: DMSO wasn't a difference.

Gilmour: Okay, I got a nine down here.

Johnson: It was the cost difference.

Gilmour: That was the factor. Thank you very much.

Thorne: It was the cost of the testing.

Gilmour: Commissioner Metcalf, talk to me about the cost.

Metcalfe: This was not even something that we discussed. I hadn't realized it was a point of contention. I'm sorry that I missed that. If you would like to change that, that would be just fine with me.

Gilmour: I love the way the give and take works. Okay. Kelly?

Thorne: Can we review what this motion is now so I can understand it?

Gilmour: Yes. This motion is to include this as a document.

Thorne: We're going to start with what Commissioner Metcalfe originally proposed.

Gilmour: Yes.

Gablks: Okay.

Gilmour: Yes, number one her motion has been – I'm making a motion now because it failed.

Gablks: Okay.

Thorne: Okay.

Gilmour: My motion is the same as Commissioner Metcalfe's with -

Thorne: - some exceptions.

Gilmour: Some differences included.

[There was some confusion as to what Chair Gilmour was requesting, once it was determined, the motion continued.]

**[OAR 462-160-0110]**

Thorne: Mr. Chairman, the first difference that we're talking about is something that was proposed by the Committee. Is that correct?

Gilmour: That's correct.

Thorne: That would be - they proposed 0110 big (C), little (d) and little (e), off their page.

Metcalfe: And we have become in agreement with the little (e), we're okay on the different times, both the consortium and - we're in agreement on that. The disagreement is on (d) and I would like Chair Gilmour to read off how he would like that to read.

Gablks: Okay.

Thorne: That would help quite a bit.

Metcalfe: Okay, how do you want that to read?

Gilmour: We're down at the bottom where it says "Contact shall be defined"?

Metcalfe: No, "Veterinarians shall not have contact."

Gilmour: Not have contact with any horse entered on the day of the race. Okay. Let's put down here so everybody knows exactly what we're doing. "Veterinarians shall not have additional contact with any entered horse on race day after administration."

Metcalfe: That's a very short time period.

Gilmour: I know that. Without - let me finish the sentence - without first notifying the state veterinarian. That's what they say they do now. I'd like to put it in writing.

Metcalfe: I don't think it's what they do. Now it's after entry. We were more debating 24 hours versus after entry and now we're really shortening it, after furosemide. The debate was between the consortium – they would like to have it after furosemide, but the big debate with the model rules is: shall it be after entry or 24 hours. It's my understanding it was after entry because that was 24 hours until –

Gilmour: Oh, that's right. This is the whole entry deal. In laymen terms, this is what I want in language. A vet has the right, by trainer's request, to look at any horse at any time. The only condition is during this window of opportunity, the veterinarian has got to have made a request to the state vet.

Metcalfe: Commission vet.

Thorne: Commission vet.

Gilmour: Commission vet. Yes.

Metcalfe: Within 24 hours or –

Gilmour: Yes. During that window.

Metcalfe: Within 24 hours, not after entry.

Gilmour: Yes.

Metcalfe: Basically what you want is: Veterinarians shall not have contact with an entered horse 24 hours prior to post time of with the horse is entered except for the administration of permitted medication and/or furosemide under the guidelines what contact – with out the permission – unless approved by the official vet. Contact shall be defined... Because I do believe we need to define contact.

Gilmour: Okay. But, you do. "Contact is defined" by.

Metcalfe: Right. And we've taken out "visual observation". "Contact shall be defined as any direct or indirect physical proximity or examination"

Gilmour: Right.

Metcalfe: Basically, you want the 24 hours, but delete the "after entry".

Gilmour: Yes.

Thorne: Can we do that statut-? I'm asking our lawyer. Didn't we have a question about statute there?

Gablisk: This is contact by the vet not administration of drugs.

Thorne: Okay.

Gilmour: I just want this whole issue cleared up because I don't want to have what you know is going on about difference of opinion on professional licenses whether they can look at their animal or not. That's what I'm trying to say.

Metcalf: It's of utmost importance, too, to the trainers to know what we are proposing here has got to be extremely clear. I agree with you.

Gilmour: I'm not picking on anybody but I think sometimes it needs to be clear.

Metcalf: Absolutely.

Gilmour: And, trainers don't read these rules.

Thorne: I think I understand it.

Gablks: If I may restate what you now want – what your proposal is little (d) will now say: "Veterinarians shall not have contact with an entered horse 24 hours prior to post time of which the horse is entered except for the administration of permitted medication and/or furosemide - lasix - under the guidelines set forth in blah, blah, blah, [OAR 462-160-0130(7, 8)] unless approved by the official veterinarian. Contact shall be defined as any direct or indirect physical proximity or examination."

Gilmour: Correct.

Gablks: Okay, got it.

Thorne: We got difference one down.

Gilmour: Next one, I apologize for the lengthiness.

Metcalf: It's important.

Gilmour: It's just an issue that I think needs to be spelled out without anybody having - go ahead.

Gablks: I believe the next area of difference was -

Gilmour: Medication.

Gablks: That's where I'm headed. And then you said you wanted to keep that the same. The next area of difference was the licensed trainer's responsible for notifying.

Gilmour: Yes.

Gablks: So, you want it the way she said.

Gilmour: Yes.

Gablks: Sub (C) added the three and you're okay with that?

Gilmour: I'm okay with that.

Gablks: The next difference was in -

Thorne: Was the ratio a different?

Gablks: It was a difference, but he said he wants – I'm sorry is that where we're at, ratio?

Gilmour: Yep.

**[OAR 462-160-0130]**

Gabliks: The next difference that there was disagreement on is the ratio: 0130(4) little (a) big (E) little (i).

Gilmour: I'm going to stick [to] just the way it is because this issue is going to come back every year.

Thorne: So there's no difference, you're happy there?

Gilmour: Yes. It's an issue over and over again. Trust me.

Gabliks: The next area of disagreement was -

Thorne: Penalties.

Gabliks: Penalties.

Gilmour: Yep.

Thorne: But you're okay with that correct?

Gilmour: With penalties?

Metcalfe: You were okay once I explained that we had split it and we have left it to the discretion of our stewards.

Gilmour: Yes.

Metcalfe: I know that's unclear, but we just split it compared to what they were lumping them all together.

Gilmour: Yep.

Gabliks: The next area of disagreement was –

Gilmour: Difference was:

Gabliks: Difference was I believe is: 0130, section (5), little (e), page twelve.

Gilmour: Yes, it was.

Gabliks: That was the next area of disagreement in which their version -

Metcalfe: No, that was what we just discussed. It was with the penalty.

Gilmour: Yep, I found the "may" remember?

Thorne: I think we're down there Roman numeral (iv), aren't we?

Gabliks: Yes. That's the next area of disagreement.

Gilmour: Okay.

Gabliks: You want that in or you want that to come out. That's something that the Commission could put in and the task force recommended that it come out.

Gilmour: That's Roman numeral (iv) on page twelve?

Gabliks: Correct.

Gilmour: Let's leave it the way it is.

Gabliks: The next area of disagreement I believe is 0130 sub (7) on page thirteen and you were agreeing with her on that?

Gilmour: Yes.

Gabliks: So that can stay out. Then sub (8) which was the Morphine and Cocaine and you were agreeing with her that that should stay on.

Gilmour: I've decided to agree with her.

**[OAR 462-160-0140]**

Gabliks: Then the last area of difference, not necessarily disagreement was in 462-0140 sub (1), sub (g) about the claiming.

Gilmour: Yes, we've agreed to the claiming, haven't we?

Metcalfe: I don't think that's a disagreement. Everybody's fine with putting the claimer

Gilmour: The claimer doesn't get it until after it comes out of the test barn. Period. You can't touch it, can't walk by it, can't look at it.

Gabliks: Then I believe the last area of disagreement was the cost issue.

Gilmour: Yes, which page was that on?

Gabliks: On page fifteen-

Gilmour: - And that wasn't the split sample -

Gabliks: -0130 - right, that was the initial. That's what started us down this road. Right. Sub (6), little (a), that's the one last area of disagreement.

Gilmour: Sub (6), little (e).

Gabliks: Little (a).

Gilmour: That's not on page thirteen, is it?

Gabliks: Yeah, sorry, fifteen.

Gilmour: Thank you. Commissioner Metcalfe, talk to me about this, please.

Metcalfe: This is the one about the cost, who shall incur the cost.

Gilmour: Of what?

Metcalfe: Of the original sample.

[There was confusion as to the interpretation of this part of rule and the Commission asked for clarification from Dyrk Schlingman, ORC Veterinarian.]

Schlingman: If we have a horse – goes to the barn and we collect A and B sample or a regular and a split sample. We keep the split sample here. We send our sample off to the lab. The lab goes through and they check it out and we find an interfering substance that is interfering with specific drugs that may be underneath that sample. There is an additional cost if the lab is able to either remove the interfering substance or use another method of testing in order to be able to look underneath it. That additional cost would be born by the Trainer in the way it's proposed. Not the entire original sample cost, strictly the cost of attempting to look around or underneath the interfering substance.

Gilmour: And that's based on, my words, it's based on that the trainer has inadvertently put something in the feed or whatever and the animal that would mask a drug you're checking for.

Schlingman: That is correct. And it may or may not be inadvertent.

Gilmour: Okay. It wouldn't have anything to do with the lab screwing up?

Schlingman: No.

Gilmour: I'm just covering all the bases.

Schlingman: The lab would be under our contract to do the testing the same way with all the rest of the samples.

Gilmour: Okay. Now, how often does this happen? One in a hundred, one in ten, one in a thousand?

Schlingman: I believe the last time we actually ended up having a trainer pay for a split sample was two years ago.

Gilmour: I'm not going to argue about it then. We're not going to include it.

Hanson: It was the feed issue, wasn't it?

Schlingman: Yes, it was Hordinine.

Gilmour: It's not an every day occurrence, correct?

Schlingman: No. It's a rarity. The cost though can potentially end up being substantial. Hordinine was \$150.00 to \$200.00, I believe.

Gilmour: That's not substantial.

Schlingman: Well, okay.

Gilmour: I mean, it is, it's all relative.

Schlingman: It's relative.

Gilmour: And it rarely happens.

Schlingman: Rarely.

Gilmour: I'm not going to put this in my motion.

Gablks: So, you want to leave it as by the licensee, you don't want to clarify –

Gilmour: Yes, I do.

Gablks: Okay.

Gilmour: That's all the issues, isn't it?

Metcalf: Would you like me to re-propose?

Gilmour: How bad is your heartburn with what I've stated?

Metcalf: I am just fine. As far as I can see, the proposal that I proposed that did not go through, the only change I see you making, other than clarifying many issues for us, which I appreciate, is on the first page and the 24 hour.

Gilmour: Yes.

Metcalf: Okay. So that's the only change I see to what I proposed. I'm okay with that.

Gilmour: Okay. Thank you very much for your patience, Dr. Metcalf. I'm sincere. Okay. That's the motion. Those who prove of the motion will say aye.

Thorne: Aye.

Metcalf: Aye.

Johnson: Aye.

Gilmour: Those opposed no. The aye's have it. Kelly, God be with you.

What we're going to do now is we're going to let Kelly, in her timeframe, write what we have done which it will be open to the public to review. We are stuck with it. But as you know, the Commission does provide opportunities, which we have and we have more on the way, to take a look at the Oregon Revised Rules. We can come back into rule making/hearing process, which includes the trainers, as we have agreed in that category, and problems that might or might not arise.

Hanson: It's my understanding that once Kelly revises these, then we can file them.

Gilmour: That is correct. I would suggest - and keep us out of jail - I would suggest, Kelly, that when you patiently have gone through all of your rules, and I think you can probably do this because it's public, is distribute them to those who want them because they are then going to be filed.

Gablks: Yes. I would recommend that once we complete those and I provide them to the Executive Director for her to go forward and submit them to the Secretary of State's Office for filing, at that point, we probably will have - but I want to look to Jodi for this - I assume then we'll have electronic copies so to the extent that people want to request an electronic copy they would be able to get that.

End Transcript.

**ACTION: MOTION (Gilmour)** Adopt the proposed changes as provided in the ORC Draft of revisions to include the stated modifications as provided by Commissioner Metcalf with the one additional amendment as stated by Chair Gilmour regarding 462-160-0110(2)(d).

**VOTE:** 4 Aye, 0 Nay, 1 Excused

## 5. Public Comment

- ⇒ Commission Veterinarian, Dr. Dyrk Schlingman stated his concern that there were many trainers not present and asked how soon the new medication rules would take effect. Chair Gilmour clarified that it would be about a month before they would take effect, needed to be filed first, and the goal would be approximately February first.
- ⇒ Athena Zeke, lobbyist for HBPA, wanted clarification of what had replaced the table that they had deleted which provided guidelines for the medications and prohibited substances. Commissioner Metcalf explained that it had been replaced by a directive to Executive Director Hanson for those to be made at her discretion. The directive will be included when the rules take effect.
- ⇒ Jim Ferguson and Dick Cartney stated that before now, a trainer has never had to pay for additional testing. Ferguson explained that an additional test would still use the same sample that was originally collected and that the trainer should not be charged. Cartney reiterated that no where else in the country are the horsemen charged for the original test.
  - Dr. Schlingman clarified that this was an old rule and that the trainer is responsible for the additional cost due to an interfering substance. It's happened one time in the last twelve years.
  - Commissioner Metcalf stated: "I wish we'd talked about this in the morning [during the hearing] because I understand your concern. It's not fair what happens here, when you get something like that in most samples, it's not fair because it's in the feed or something. I wish we'd talked about this; we've already adopted these [rules] as are. All I can tell you is that if it came up once in twelve years, that hopefully it's not going to come up again and if it does, I hope we hear about it as a Commission because we understand that there are some issues here."

There being no further business, the meeting was adjourned.