

In the Matter Of:

INDIANA HORSE RACING COMMISSION MEETING

IHRC Meeting

September 04, 2014

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INDIANA HORSE RACING COMMISSION
MEETING

HELD ON
SEPTEMBER 4, 2014
9:00 A.M.

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APPEARANCES

William Diener, Chairman
George Pillow
Thomas Weatherwax
Greg Schenkel

Joe Gorajec, Executive Director

Lea Ellingwood, Esq.
Holly Newell, Esq.
INDIANA HORSE RACING COMMISSION
1302 North Meridian Street, Suite 175
Indianapolis, IN 46202

AGENDA

- 1. Consideration of IHRC Staff Report regarding the Regulation of Cobalt and emergency rules related thereto. 3
- 2. Review of Commission Rulings 55
- 3. Consideration of settlement agreement between IHRC Staff and James Eilers 56
- 4. Consideration of request from Indiana Grand to increase purse supplement 57

1 CHAIRMAN DIENER: We will call the meeting to
2 order of the Indiana Horse Racing Commission.
3 There is a quorum present today. We are changing
4 the agenda a little bit to address the subject of
5 cobalt at the beginning. Commissioner Schenkel has
6 a preexisting commitment and has to leave early.
7 So we are going to take cobalt first. And then we
8 will come back to the regular agenda.

9 The first item is to welcome Robin Martz.

10 (At this time the oath was administered to the
11 court reporter by Chairman Diener.)

12 CHAIRMAN DIENER: The first item on the agenda
13 is cobalt. And I'm going to turn the meeting over
14 to our executive director, Mr. Gorajec, who has
15 prepared a staff report on this issue. And there
16 are some experts here today that will address this
17 matter before the Commission as well as all
18 interested parties. At the conclusion of that, we
19 will hear from anybody in the audience who would
20 like to express their own thoughts about this
21 matter. Mr. Gorajec.

22 JOE GORAJEC: Thank you very much,
23 Mr. Chairman. The cobalt initiative started when
24 we decided to see if there was any abuse in our
25 state after hearing about potential or possible

1 abuse in other states. I know this has been on the
2 periphery of the racing industry's radar screen for
3 several years now. And the RMTTC has been looking
4 into moving forward with proposed regulations on
5 this matter.

6 The feedback we were getting initially is that
7 on a national level, that this was primarily a
8 Standardbred problem, Standardbred issue. So when
9 we decided to look at our own racing, we decided, I
10 decided to send Standardbred samples to a
11 laboratory to confirm whether cobalt was an issue.
12 So what we did is we selected a handful of days of
13 what I refer to as dead samples. Samples that our
14 primary lab, LGC, in Lexington had screened and had
15 passed the screening and samples that eventually
16 would otherwise be thrown away.

17 We had over a period of time, 12 days of
18 Standardbred samples sent to the University of
19 Kentucky. And they were sent to the University of
20 Kentucky because LGC has a relationship with them.
21 LGC is a drug testing lab. And drug testing labs
22 have equipment to test for drugs. And they are not
23 suited or they're not structured to test for these
24 minerals and heavy metals like the University of
25 Kentucky is.

1 So Kentucky took our samples, and we started
2 getting results. The results were concerning. So
3 we sent more samples. Then we decided, well, we
4 know we have an issue with the Standardbreds.
5 Let's send some Thoroughbred and Quarter Horse
6 samples and see what we get. Lo and behold, we get
7 high levels of those.

8 So when you look at the high levels that we've
9 received, and you just remember that the ones that
10 are reported in the report only represent 23 days.
11 That's less than one-tenth of our racing program.
12 And they only, we only test for approximately 15 or
13 20 percent of the horses. So whatever we find as
14 high levels, you can extrapolate into a number
15 that's relatively large. I put in my report that
16 if you extrapolate those 23 days and the number of
17 samples that we found high, we would probably get
18 over a hundred horses that have high levels of
19 cobalt in their system.

20 I'm going to let the scientists and the
21 veterinarians speak to the science. But one of the
22 things that concerned me most when I was looking at
23 the Standardbred numbers, one of the days we sent
24 were finals for Sires Stakes. And one of the Sires
25 Stakes finalists tested for high levels of cobalt.

1 And I got to thinking about how important the Sires
2 Stakes are to our Standardbred folks. This has
3 been a program that's longstanding. It's extremely
4 lucrative now with all of the slot machine money.

5 And everybody in Indiana who breeds a horse,
6 you know, they are shooting to have a horse that
7 races well in the Sires Stakes. And they are
8 looking for a Sires Stakes final. It's a big deal.
9 It's a real, real big deal. The fact that we had
10 at least one of our races, one of our finalists
11 tainted with high cobalt usage , it got me in a
12 position where I thought there were really no other
13 option than to not only stop it but stop it now.

14 And we are doing it for the Standardbred
15 horsemen. We are doing it for the horses because
16 there is a health and welfare issue. And,
17 obviously, we are doing the same for the other
18 breeds because we want to treat all breeds the same
19 on this particular issue.

20 So what I'll do now, if it's okay with the
21 Chairman, I want my report to speak for itself. If
22 the Commissioners have any questions about the
23 report, I will be glad to answer them. If not, I
24 would like to introduce the guests that can speak
25 in more detail about some of the nuances in the

1 report.

2 CHAIRMAN DIENER: That's fine. Let me say
3 from what I understand as to the non-science stuff
4 just as a layman, cobalt is a natural occurring
5 trace mineral. It often attaches to vitamin B12 as
6 a result of the horse's digestive system. But
7 depending on what kind of levels we are talking
8 about, it can have two things happening. One, it
9 stimulates the red blood cell production which can
10 enhance the performance and endurance of a
11 particular horse. And, two, also depending upon
12 the levels, it can be either toxic or certainly
13 injurious to the horse's cardiovascular as well as
14 nervous system.

15 So this is what's concerning the Commission
16 and the commission staff is high levels of cobalt
17 affecting two things; the integrity of racing so
18 that everybody, all the equine athletes are
19 competing on a level playing field. And, two, that
20 the horse is going to be healthy, and we look after
21 the health of that horse.

22 With that, I will turn it over to Joe for
23 introductions of Doctor Sams and Doctor Benson.

24 JOE GORAJEC: The three people that we're
25 going to have speak briefly are Doctor Angela

1 Demaree, our equine medical director. And I asked
2 her to talk, amongst other things, is what we are
3 going to be doing with the horsemen in helping them
4 ensure themselves that in the future that they
5 don't race with levels of high cobalt.

6 We also have Doctor Dionne Benson. Doctor
7 Benson is the executive director of the RMTTC. And
8 I have asked her and Doctor Sams to address two
9 major issues because these are the issues that have
10 come to me frequently since the report's been
11 issued. And one of them is the levels, why 25.
12 Well, the short reason is based upon the best
13 available science, 25 is the best number. I will
14 have Dr. Benson articulate why, also Doctor Sams.

15 The other question that comes up has to do
16 with feed supplements and vitamins. This horse
17 racing industry is a wash just swimming in horses
18 being fed vitamins and supplements and more
19 vitamins and more supplements. Because they are so
20 heavily relied upon, horsemen have the fear that
21 their regime of feeding these horses vitamins and
22 supplements and having them injected into the horse
23 will cause an inadvertent or accidental overage.
24 So I've asked Dionne and Doctor Sams to speak to
25 that.

1 Doctor Sams is our lab director. He's the lab
2 director at LGC, but he wears a lot of hats within
3 the industry. He is the chairman of the Veterinary
4 Pharmacology Subcommittee of the RCI's Drug Testing
5 and Standards and Practicing Committee. He's been
6 the chairman or has been on that committee for ten
7 years. He's also a technical consultant to the
8 RMTTC. And he is a member of the Veterinarian
9 Pharmacology Subcommittee of ASRCI Drug Testing
10 Standards and Practicing Committee.

11 So he wears a lot of hats. He is not only
12 sitting in his lab helping us with our drug testing
13 program, but he is out in the industry dealing with
14 and making decisions on issues such as cobalt. So
15 I would like to have our panel come to the table.

16 CHAIRMAN DIENER: Good morning, Doctor Benson,
17 Doctor Sams. Thanks for coming up this morning.
18 Angela, appreciate your being here. Just for the
19 purposes of the transcript, the RMTTC, Racing
20 Medications and Testing Consortium.

21 JOE GORAJEC: Who wants to start off?

22 COMMISSIONER PILLOW: I have a question. Is
23 Doctor Sams, is he with the Kentucky lab that we
24 are currently using?

25 JOE GORAJEC: Yes, he's the lab director at

1 LGC.

2 DOCTOR BENSON: Thank you again for having me.
3 It's been a few months since I've been here. I
4 appreciate the opportunity to speak with the
5 Commission.

6 The RMTC has yet to actually set a threshold
7 through its board. The Scientific Advisory
8 Committee has dealt with this issue and reviewed
9 the science behind it. They have looked at it a
10 couple of different ways. Cobalt, as the Chairman
11 indicated, is a naturally occurring substance in
12 the horse. So unlike a medication like Detomidine,
13 you have to come up with the threshold. And the
14 presence of it is not necessarily indicative of a
15 violation. So it's important that we set what
16 would constitute a normal level.

17 We went about this a few ways. First off, we
18 did an administration study where we took what was
19 a reported dose of cobalt chloride salts, a hundred
20 milligram dose of cobalt chloride, which is what we
21 understand is the low end of what's being
22 administered for the purposes of erythropoiesis.
23 And we administered that to 16 horses in
24 California. By doing that administration, we can
25 see how the cobalt was eliminated through the

1 horse's system. That kind of gives us an idea of
2 how long it takes and what the half-life is.

3 Doctor Knych did the research and already
4 submitted a paper. We anticipate that should be
5 out shortly. She's very quick. We anticipate
6 October or early November at the latest that we
7 should probably see that online.

8 So that's the first thing we did. The second
9 thing we did was to look at post-racing samples.
10 We took 521 horses in various states from four
11 different laboratories, including University of
12 Kentucky, Pennsylvania, Truesdail Laboratory, and
13 UC Davis. And they combined their cobalt results
14 and provided them to the RMTTC.

15 When we compared these results, we were able
16 to see basically the post-race results for 521
17 horses. Now, this does not mean these horses were
18 not treated with high levels of cobalt salt. This
19 just gives us an idea of what the existing
20 population was. And we had to take into account
21 there were a few very high values that we had to
22 essentially eliminate statistically in order to
23 process the data.

24 What we had to do is we looked at this data a
25 few different ways. First of all, we couldn't

1 normalize it. Normal data essentially forms the
2 bell curve. You can think of it as with grades.
3 You've got your median and then half on each point
4 with certain percentages falling into each area.
5 Because this data was skewed to the left, there is
6 a high peak at a very low value, and then it scales
7 off. We couldn't use that data in the normal way.

8 We had to actually hire a statistician, which
9 we don't normally do for our thresholds, to look at
10 this data. When she was able to look at the data,
11 she recommended that, she came up with several
12 recommendations and the relative risk of each
13 recommendation. The first one was a 25 part per
14 billion threshold. This was based on the only data
15 which could be normalized, which is Quarter Horse
16 data. They were the ones who had the most
17 consistent readings. Based on that information,
18 she came up with a 25 part per billion for a
19 normalized standard curve.

20 Additionally, she looked at all breeds and
21 took four standard deviations. That also came up
22 with the 25 part per billion threshold. That has a
23 risk of a false positive of one in 33,000. If you
24 look at a 35 part per billion threshold, which is
25 the next threshold she looked at, in all breeds you

1 have a one in 3.4 million risk of a false positive.
2 So certainly there is some -- I will tell you
3 internationally, they are looking at a 3.72
4 standard deviations from average, which would
5 likely be lower than the 25 we are recommending.

6 CHAIRMAN DIENER: Let me interrupt you. They
7 are looking international --

8 DOCTOR BENSON: The International Federation
9 of Horseracing Authorities, the IFHA, they make
10 recommendations for the majority of jurisdictions
11 around the world. We adopt some of them. We go
12 our own way on some, but they are doing an
13 international study that includes horses that have
14 not been supplemented in any way. They haven't
15 even had vitamin B12.

16 CHAIRMAN DIENER: It's your understanding
17 their recommendation would be something less than
18 the 25 parts per billion?

19 DOCTOR BENSON: Yes, my understanding is that
20 their recommendation will probably be about 15
21 parts per billion.

22 I will tell you on the Scientific Advisory
23 Committee we allowed the committee to vote on 25 or
24 35. And there was a split vote. We actually had
25 one person who thought that any of those values

1 were too high because we were using horses that may
2 have been treated.

3 We had of our committee seven voted in favor
4 of 25. Two voted in favor of 35. One saying she
5 would be happy with 25, but she felt 35 was
6 appropriate. Then we had a couple of people who
7 did not vote. This happens every time. No matter
8 what we do, you can't get everyone to vote because
9 you can only harass them so much, and they have
10 other jobs. Of the people that voted, seven of
11 them, the majority voted for a 25 parts per billion
12 threshold.

13 That will be taken to the RMTTC board. It
14 actually has already been voted on by the RMTTC
15 board in the past, but we are going to discuss it
16 at our October meeting.

17 I will tell you that based on the 521 samples
18 that we took, there are three of our horses that
19 would be, when you consider a measurement of
20 uncertainty, that would violate the 25 part per
21 billion.

22 CHAIRMAN DIENER: Do that again.

23 DOCTOR BENSON: We sampled 521 horses that
24 were under no restrictions, no limitation on what
25 cobalt they can use. There are three of them that

1 would be over 25 when you put the measurement of
2 uncertainty.

3 COMMISSIONER PILLOW: Now, these are Indiana
4 horses you're talking about?

5 DOCTOR BENSON: No, these are across the
6 United States. And they were more than double.
7 Each of them were more than double the proposed
8 threshold. They would have violated any threshold
9 that we had recommended.

10 There is certainly a break in the data that
11 you see. I can tell you based on a 25 part per
12 billion threshold, it translates into approximately
13 being able to regulate cobalt for seven to ten days
14 post administration of a 100-milligram dose of
15 cobalt chloride.

16 The other thing we looked at in determining
17 the threshold were several normal containing
18 components. Doctor Mary Robinson of the University
19 of Penn looked at three different compounds. One
20 was vitamin B12 injected IV, 10 milligrams, which
21 is about a half a milligram total dose of cobalt
22 chloride.

23 She looked at a product called Red Cell, which
24 is about two milligrams per dose of cobalt
25 chloride. That's an oral product.

1 She also looked at a product called Vita 15,
2 which is an IV product which is about
3 two milligrams of cobalt gluconate. And looking at
4 all three of these products, I can tell you that
5 none of them approach the 25 part per billion at
6 any time post administration. With vitamin B12,
7 the highest was a one part per billion post
8 administration. And the samples were taken between
9 zero and 24 hours. And there were about 15 samples
10 taken, so quite a few samples taken in that period.
11 And it never registered above one part per billion.

12 CHAIRMAN DIENER: Can we draw a conclusion the
13 risk of a false positive is unlikely or am I
14 stretching that?

15 DOCTOR BENSON: It is reasonable to say that
16 the risk of a positive from administration of B12
17 in the normal way that it's administered, which is
18 not every day, once a week post race, the way I
19 have seen it administered, I would say the risk is
20 exceedingly low.

21 Red Cell, the highest total value was at six
22 hours, and that was six parts per billion. So,
23 again, not anywhere near the 25 part per billion
24 threshold that we are discussing.

25 And, finally, the Vita 15 was the one that got

1 the closest. That one had a 13 part per billion at
2 45 minutes. And it went down from there very
3 quickly. At 24 hours it was nine parts per
4 billion.

5 So this will all be presented at the
6 International Conference of Racing Analysts and
7 Vets. This will be published actually within the
8 month. Doctor Robinson offered to send me her
9 abstract, but she has been out on vacation and
10 hasn't had time to do it yet.

11 So based on this information with low content
12 cobalt products two milligrams, the ones that are
13 normal supplements, the likelihood of a positive
14 based on using those supplements is very low, I
15 would say.

16 CHAIRMAN DIENER: Just as a layman, can you
17 tell us how cobalt is administered to a horse? I
18 mean, I understand there's vitamins or mineral
19 supplements. But are we talking about an IV just
20 cobalt dumped into the bag or are we talking about
21 something different?

22 DOCTOR BENSON: There are several different
23 ways. There are oral products like Red Cell.
24 There are also some very high containing cobalt
25 products. One of the ones I came across is a

1 product called Ferrabalt (phonetic), which has 86
2 grams of cobalt per dose. It's also supposedly
3 only labeled for external use even though they give
4 oral instructions on dosing.

5 CHAIRMAN DIENER: Why would a horse need that?

6 DOCTOR BENSON: There is no need for that high
7 level of cobalt administration. I can't even cite
8 a case of cobalt deficiency in a horse. You don't
9 need to supplement with those high levels.

10 Most horses get their dietary requirement of
11 cobalt through the normal feed. These horses are
12 some of the best fed athletes in the world. They
13 are certainly fed much better than my own horse.
14 And my own horse isn't suffering from a cobalt
15 deficiency.

16 There are other products that are IV. So you
17 have got IV products like a vitamin supplement
18 would contain vitamin B12. And that would contain
19 10 mls of vitamin B12, which is about two
20 milligrams of cobalt, which as I discussed is a
21 very low level.

22 There are also high levels of cobalt chloride
23 compounded product. We actually had to purchase
24 our cobalt for injections from a compounder because
25 they are not commercially available on the market

1 other than from a compounding pharmacy.

2 With that, we found that a 100-milligram dose
3 of cobalt chloride would contain about 49
4 milligrams of cobalt. Again, 25 times what the
5 non-high dose products contain. With that product,
6 it's generally given IV in a syringe. We gave it
7 in a bag of fluids because we were concerned about
8 the health of the horse, but it's generally given
9 IV bolus in a 10 cc syringe in the horses anywhere
10 from once a week to two to three times per week
11 depending on the regimen the horse was on.

12 COMMISSIONER WEATHERWAX: Doctor, a question
13 because if we're going to put this emergency rule
14 in, we have to be aware of the time factor because
15 we know our goal is to stop this practice right now
16 and to get our act together. I won't go to the
17 point to say it looks like, as an amateur, that you
18 can't have a violation this high unless it's a
19 premeditated decision.

20 DOCTOR BENSON: Yes, I think it's very hard to
21 get this without injecting high levels of cobalt.

22 COMMISSIONER WEATHERWAX: Having said that, if
23 we implement this emergency rule, are we being
24 realistic about the time factor to get the blood
25 levels of all these horses that are coming into our

1 state plus our own down to .25 or less?

2 DOCTOR BENSON: Sure. Essentially the
3 halflife of cobalt is about seven days. We have
4 seen horses getting as much as 600 milligrams of
5 cobalt chloride. That horse is going to take a
6 long time to fall below the 25 part per billion
7 threshold. I will tell you that with the horses
8 that we gave the 100 milligram cobalt chloride
9 dose, virtually all of them were below at seven to
10 ten days. It's not unrealistic to expect those
11 horses to comply. If they are giving those high
12 doses, those extremely high doses even beyond the
13 100, then they are going to have to wait longer.

14 COMMISSIONER WEATHERWAX: Thank you.

15 COMMISSIONER PILLOW: Dr. Benson, this is the
16 second time in a year that we've had to come up
17 with an emergency rule. What else is out there
18 that we don't know about that we're going to be in
19 here three months from now with another emergency
20 rule?

21 DOCTOR BENSON: If I only knew. Honestly,
22 we're trying to work on the therapies. There are
23 two kinds of categories; the therapeutic
24 medication, which we know there are some coming
25 that we're going to have a process through RCI

1 where they all get done once a year. That shouldn't
2 fall into your emergency rule making.

3 The second category is emerging drugs. To be
4 frank with you, it really depends on what comes up.
5 I know we are working on a threshold right now for
6 a product called Gaba, which is gamma immune
7 sulphuric acid, which is used on race day about
8 four hours out. And they've come out with a
9 threshold for that. We certainly encourage the
10 commissions to get something like that passed as
11 quickly as possible.

12 I assure you we are not trying to come up with
13 thresholds quickly to get them to make your life
14 more complicated. Where we see a concern, we go
15 after it. When we find something with our tactical
16 research program that bears concern, we focus on
17 it. I can tell you there are certainly, I could
18 come up with a list of several products that if we
19 could come up with a threshold tomorrow, I would be
20 back in front of you next month.

21 COMMISSIONER PILLOW: These are enhancing
22 drugs.

23 DOCTOR BENSON: They have the potential to
24 increase the erythropoiesis, which means more red
25 blood cells which means more oxygenation. I would

1 love to stand up here and say we've done that
2 research on the horse. We know it happens. It
3 just hasn't. It's been done in other mammals.

4 Cobalt used to be used in humans before we had
5 EPO. So, actually, if you look at the standard
6 measurement for EPO, it's based on grams of cobalt.
7 It certainly is logical and reasonable to say it
8 has the same effect on the horse. Has it been
9 proven? No. By the same token, if we have to do
10 the science on every substance that we know
11 increases the capacity in every other mammal, we
12 are going to be working for a long time before we
13 actually get control of it.

14 COMMISSIONER PILLOW: You are saying we will
15 probably have more emergency meetings in the next
16 couple of years.

17 COMMISSIONER WEATHERWAX: That's why we get
18 paid the big bucks.

19 COMMISSIONER PILLOW: That's why we get paid
20 the big bucks. Okay. Thank you.

21 CHAIRMAN DIENER: Thank you very much.

22 JOE GORAJEC: Who's next?

23 DOCTOR SAMS: I'll go next. Thank you for
24 inviting me to attend this meeting. I will address
25 a couple issues that have been mentioned

1 previously.

2 One has to do with the relationship between a
3 blood threshold and a urine threshold. As you are
4 aware, a urine threshold of 200 parts per billion
5 has been adopted in some regions. So the question
6 is how does that relate to the 25 parts per billion
7 threshold in the blood sample.

8 If we look at the time required for
9 concentrations to fall below the 200 part per
10 billion threshold in the study that Dr. Benson
11 referred to, concentrations in urine were at or
12 below 200 parts per billion at the end of 24 hours
13 after administration. By 48 hours, they were all
14 well below that 200 part per billion threshold.

15 So the detection period with the 200 part per
16 billion threshold is substantially shorter than the
17 detection period corresponding to the 25 or 35 part
18 per billion threshold in the blood sample.

19 CHAIRMAN DIENER: I think I understand but try
20 it one more time.

21 COMMISSIONER PILLOW: I didn't get it.

22 CHAIRMAN DIENER: I was trying to think, are
23 we comparing apples and oranges? In some respects
24 we are, urine versus blood or serum.

25 DOCTOR SAMS: Yes. There is not a direct

1 correlation between the 25 part per billion
2 threshold in the blood sample and the 200 part per
3 billion threshold in the corresponding urine
4 sample. If the Commission were to adopt a 25 parts
5 per billion threshold in the blood sample, the
6 detection period after administration of a dose of
7 cobalt salt would be substantially longer than if
8 the Commission adopted a 200 part per billion
9 threshold in the urine sample. The detection
10 period, 200 parts per billion in the urine sample
11 would be about one day given the doses that we've
12 studied.

13 CHAIRMAN DIENER: Thank you. I'm sorry to
14 make you repeat. I'm a little slow.

15 JOE GORAJEC: Mr. Chairman, if you don't mind
16 if I just piggyback on Doctor Sams' comments. That
17 regulation based upon what Doctor Sams says, is it
18 New Zealand or is it Australia?

19 DOCTOR SAMS: New Zealand.

20 JOE GORAJEC: If they can detect cobalt at
21 their limit for one day, it is a regulation that is
22 ineffective to near useless because in order to
23 find it, you have to actually go and find a horse
24 that got that administration within the last day.
25 So if you're taking post-race samples, all they

1 have to do is give it two days out, and you'll
2 never find it.

3 That's why, one of the reasons why the 25 was
4 chosen, other than it's the best available science,
5 that seven to ten days fits absolutely perfectly in
6 a Standardbred schedule because those horses race
7 every seven to ten days. So if they get it, if
8 they get cobalt in excessive levels after a race,
9 it will show up in their next race. So going with
10 the 25 effectively keeps the Standardbred folks
11 from even attempting to use cobalt as a performance
12 enhancer. Thoroughbreds and Quarter Horses are a
13 little different because they spread their races
14 out a little more. Like I said, the New Zealand
15 regulation is near meaningless.

16 DOCTOR BENSON: Just another thing, because
17 you do so much out of competition testing, and all
18 of your out of competition testing is blood, a
19 urine threshold would eliminate your ability to
20 test for this out of competition.

21 JOE GORAJEC: Very good point.

22 DOCTOR SAMS: One of the other questions I
23 would like to address is the potential for cobalt
24 to actually affect performance. The ability of
25 cobalt to stimulate erythropoiesis in humans has

1 been known for about 50 to 60 years. And, in fact,
2 cobalt was used therapeutically in anemic
3 individuals because it stimulates the production of
4 red blood cells in them. And it was observed that
5 the stimulation of red blood cells took place after
6 repeated administration of cobalt salts to them.
7 And after prolonged periods of time of cobalt
8 treatments, a good number of human patients
9 suffered various toxicities associated with the
10 administration of cobalt.

11 The mechanism by which cobalt stimulates the
12 production of erythropoiesis has now been well
13 established. It appears to be a phenomenon that is
14 common to mammals. And so we have every reason to
15 believe that it will produce the same kind of
16 effect in horses as it produces in people and in
17 other mammals. We have not yet demonstrated
18 conclusively that it does that, but there's no
19 reason to believe that it would not.

20 So the administration of cobalt salts is very
21 similar in terms of effect to the administration of
22 EPO. They both cause the production of new red
23 blood cells.

24 The other question has to do with toxicity. I
25 just referred to that from the human studies. The

1 use of cobalt in human medicine was discontinued
2 because of toxicity and in the early '90s because
3 of the commercial availability of human recombinant
4 EPO. So EPO can be used instead of cobalt in human
5 medicine to produce erythropoiesis.

6 In the 1960s cobalt was actually added to beer
7 by a number of brewers around the country. And
8 they did it to preserve the foam head on beer. The
9 foam was disappearing rapidly because of the
10 detergents that were being used to clean glass.
11 The brewers found that they could add cobalt salt
12 to the beer, and the head would stay present
13 longer. But what was observed within a very short
14 period of time was a particular form of
15 cardiovascular disease in those individuals who
16 drank the beer that had been modified by the
17 addition of cobalt.

18 So there is toxicity associated with excessive
19 use of cobalt. As the Chairman mentioned early in
20 his presentation, cobalt is an essential trace
21 mineral. We all require trace quantities of cobalt
22 in our diets. Bacteria in our GI tract use the
23 cobalt to produce vitamin B12. Vitamin B12 is an
24 essential vitamin that we all require in order to
25 function normally. But the quantities of the

1 cobalt that are required to meet those needs are
2 met through dietary sources. And it is not
3 necessary to supplement with additional cobalt.
4 And cobalt in those quantities does not produce
5 toxicity.

6 CHAIRMAN DIENER: Can I ask a question just
7 for the panel? I'm not sure who to address it to.
8 When the staff did their kind of spot testing
9 recently here in Indiana, we came up with about a
10 six percent, around six percent for all breeds in
11 the aggregate that would have been higher than the
12 25 part per billion threshold. Did that surprise
13 you? Did you expect something greater, something
14 less? I'm trying to get a feel if you had any red
15 flags that came up when you saw that or you just
16 thought, well, that's kind of to be expected.

17 DOCTOR BENSON: There aren't many
18 jurisdictions that are actually testing for cobalt.
19 Of those that are, I would say that's not, your
20 rate is not out of line with other states.
21 Minnesota has recently enacted a rule that's kind
22 of an interim step until the RCI threshold is
23 developed. That involves putting horses on the
24 vet's list. And from what I understand, there have
25 been a significant number of horses added to the

1 vet's list as a result of cobalt testing.

2 California has started testing horses. And
3 they are seeing a similar. Of course, the
4 Standardbred population has more than other breeds,
5 but they are seeing a similar number.

6 COMMISSIONER WEATHERWAX: Thank you,
7 Mr. Chairman. Maybe it's because I'm new at this.
8 But I read in this report where horses if they are
9 detected in the rules we will be putting forth will
10 be put on the vet's list. What is the vet's list?

11 DOCTOR BENSON: Sure. The vet's list is
12 essentially a list -- oh, well, Doctor Demaree can
13 probably talk about that.

14 DOCTOR DEMAREE: Any horse that is found to be
15 lame or unfit to race or have a medication that
16 would make the horse unfit to race, then it gets
17 put on the veterinarian's list. And the only way
18 to release that horse so it can be entered into a
19 race is to have a veterinarian release it.

20 This is something that can't be circumvented.
21 I think all the other racing jurisdictions pretty
22 much work together. So we may get a horse in from
23 Kentucky on the veterinarian's list. We'll call
24 them and ask what are your requirements to get off
25 the vet's list. We will work that horse off the

1 vet's list in accordance with Kentucky's
2 requirement. Many of the states have that sort of
3 mutual working together.

4 COMMISSIONER WEATHERWAX: So it's got a very
5 broad enforcement capability.

6 COMMISSIONER PILLOW: Doctor Sams, in Kentucky
7 what is the cobalt ratios, maybe for lack of a
8 better term?

9 DOCTOR SAMS: Kentucky has just started
10 testing samples for cobalt. Is that what you're
11 referring to?

12 COMMISSIONER PILLOW: Basically, yes.

13 DOCTOR SAMS: There are some samples that have
14 substantially elevated concentrations of cobalt. I
15 saw one yesterday over 400, for example. Most of
16 those in which we've seen elevated concentrations
17 are from Standardbred racing.

18 COMMISSIONER PILLOW: So is Kentucky doing
19 anything about it?

20 DOCTOR SAMS: Yes. Kentucky is investigating
21 it. Their focus at the moment is on out of
22 competition testing because of the particular rules
23 that they operate under because out of competition
24 testing provides for the testing for substances
25 that affect the erythropoiesis.

1 COMMISSIONER PILLOW: Explain that one to me.

2 DOCTOR SAMS: Drugs that affect red blood cell
3 production are covered specifically under the out
4 of competition testing rule. So the Kentucky
5 commission is looking at that rule as a means of
6 regulating cobalt over the short term before it
7 considers a rule change.

8 COMMISSIONER PILLOW: Thank you.

9 CHAIRMAN DIENER: Based upon what you've seen
10 here in Indiana, the spot testing we've done, do
11 you think it's appropriate that we just sit and do
12 nothing and wait for RCI to do something or would
13 you like to stay out of that and not make a
14 recommendation?

15 DOCTOR BENSON: I mean, I think that the first
16 time that I was -- we've been working on this
17 project for almost a year and a half. The first
18 time that the media hit me was a year ago. I can
19 tell you I was interviewed about a year ago, and I
20 don't know where I was flying, but what are we
21 doing about cobalt.

22 And the different jurisdictions are starting
23 to recognize the importance of getting out in front
24 of this issue as not only a course of safety and
25 integrity issue, also looking at a public relations

1 issue. It's certainly a concern when we know there
2 are horses that have gotten a substance that's
3 toxic, at near toxic or toxic levels. I don't
4 think that you are out of step by acting.

5 CHAIRMAN DIENER: I'm going to go a step
6 further and ask for your comments. Based upon the
7 national scientific data and our own testing here
8 in Indiana, wouldn't this Commission be remiss if
9 it did nothing?

10 DOCTOR BENSON: I think based on the levels
11 you've seen, you would be remiss.

12 CHAIRMAN DIENER: I never thought I would get
13 a yes or no but thank you.

14 JOE GORAJEC: Good job, Mr. Chairman.

15 CHAIRMAN DIENER: As I understand it, were
16 this Commission to adopt the proposed emergency
17 rules, as well as the staff recommendations, we
18 have this 25 per billion threshold. Testing on
19 that you can see 25, that's a positive, purse
20 redistribution, etc. But in terms of sanctions for
21 a trainer, the judges, stewards always have the
22 flexibility to consider mitigating factors with
23 respect to any sanctions that might be levied.
24 That's not new. That's always been the case, but
25 this would be part and parcel of it.

1 Twenty-five, if you hit 26, that's it. But
2 with respect to the trainer, that's a different
3 matter. He or she still has their opportunity to
4 explain what happened.

5 And the second thing, and Joe ought to give
6 specifics. I'm getting out of it. Today's the
7 4th. We are proposing this be put into effect
8 September 30th, the end of this month, for the
9 current race meet and put it into effect the
10 beginning of next year for out of competition
11 testing. There's a window period here where the
12 trainers can see, have an opportunity to see what
13 the cobalt levels may be in their horses before
14 they get entered.

15 JOE GORAJEC: What I will do is I will defer
16 to Doctor Demaree and then maybe piggyback along
17 with some of her statements.

18 DOCTOR DEMAREE: Mr. Chairman, I would like to
19 address some of the concerns I have heard from our
20 horsemen here in Indiana, some of the veterinarians
21 as well. Some of the concerns are with some of
22 these sample numbers that we found. One example
23 would be in the Thoroughbred data in Exhibit A
24 where it's 25.9. These are without the measurement
25 of uncertainty. This is from a diagnostic

1 laboratory. These were reported out under
2 diagnostic conditions. So any reported positive
3 would also be positive with a measurement of
4 uncertainty. So when you're getting that close,
5 you know, it wouldn't be as close as some of these
6 show.

7 And then also, you know, I've heard multiple
8 concerns that these horses might be receiving
9 multiple supplements. They might be receiving jugs
10 with vitamins and a liter of fluid 24 to 48 hours
11 before a race. With the information that
12 Dr. Benson provided to us, I don't believe that
13 these practices will create a positive over the 25
14 part per billion threshold.

15 With that said, I would recommend to the
16 horsemen and to the trainers and to the
17 veterinarians that they read the labels on the
18 supplements, that they know what's going into the
19 horse, and that they take advantage of the
20 opportunity to test their horses if they are
21 concerned about the program. Next Tuesday at
22 Hoosier Park, September 9th, we will be offering
23 testing from 10 a.m. to noon. At Indiana Grand, we
24 will be offering the same opportunity to get your
25 horse tested for cobalt, Wednesday, September 10

1 from 10 a.m. to noon. The process will be for the
2 trainers to bring their horses to the test barn.
3 They will need to have completed the University of
4 Kentucky submission forms. We would have extra
5 copies if they need them. We will draw the blood.
6 We will pack it and ship it to the University of
7 Kentucky. The University of Kentucky will be
8 emailing me the results. And I will be returning
9 those results to the trainers. The University of
10 Kentucky reports results to veterinarians. So they
11 have the opportunity to work through their
12 practicing veterinarian or they have the
13 opportunity to work through the test barn. Cost is
14 \$20 a sample.

15 CHAIRMAN DIENER: Further questions of
16 anybody? Mr. Gorajec, do you have any additional
17 remarks before we receive input from horsemen?

18 JOE GORAJEC: No, I would like to thank the
19 panel, and particularly Dr. Benson and Doctor Sams
20 who got up at the wee hours of the morning to drive
21 up here. Appreciate all your help. They've been
22 instrumental in working with myself and the staff
23 in assisting us in drafting of the staff report.
24 Quite frankly, without their good work, we wouldn't
25 be where we would be. And we wouldn't be able to

1 address the situation. So thank you all.

2 CHAIRMAN DIENER: Also throw in our equine
3 medical director, thank you very much, Angela.
4 Thank you.

5 We will now open up the floor to hear
6 comments. We have received written comments from
7 the Standardbred association. We have received
8 written comments from the Indiana Thoroughbreds. I
9 think we have a written comment from the Quarter
10 Horses. And there may be some individuals that are
11 interested in expressing their views.

12 So have at it. Somebody come up here and
13 introduce themselves. I didn't have you on my
14 list.

15 BRIAN ELMORE: You didn't mention me, did you?

16 CHAIRMAN DIENER: But you're walking. That's
17 good.

18 BRIAN ELMORE: I'm back in training. Brian
19 Elmore, Vice-president of Racing Centaur. Centaur
20 respectfully urges the Commission to promulgate the
21 cobalt rules on an emergency basis because the
22 company believes prompt adoption will, number one,
23 be in the best interest of racing; number two,
24 maintain the integrity of pari-mutuel wagering; and
25 thirdly and most importantly, protect the safety

1 and welfare of the human and equine athletes.

2 And I do understand if the Commission passes
3 this today, it will be effective September 30th.

4 I would like to make note that on Saturday,
5 October 4th is the Thoroughbred signature race of
6 the year, the Indiana Derby held at Indiana Grand.
7 There will be four other open stakes on that day.

8 There will be several trainers from outside of
9 the state bringing horses in to participate in
10 that. What I would respectfully ask is if this
11 passed today, there is some kind of notice go out
12 as soon as possible so trainers that are nominating
13 horses to participate in the open stakes race, we
14 always send them a packet when they have to be
15 here, about they need to bring their health
16 certificates, things of that nature. And this will
17 be something we would include in the packet to make
18 sure they understand the cobalt rule that's in
19 place in Indiana.

20 And just some information, I sat here and
21 calculated while we were talking about the
22 thresholds and things like that, just for your
23 knowledge, there will be approximately 20,160
24 Standardbred horses start the race meet at Hoosier
25 Park this year. There will be approximately 9,120

1 Thoroughbred start at Indiana Grand, and about 1686
2 Quarter Horses start at Indiana. So in total when
3 we were talking about threshold levels and
4 potential false positives, we'll start about 31,000
5 horses in the state of Indiana this year. Thank
6 you very much.

7 CHAIRMAN DIENER: Thank you. Appreciate your
8 comments. We have received comments from the ISA,
9 written comments, also from IHBPA. Obviously, we
10 are aware of those and consider those, but if
11 somebody has additional comments.

12 JACK KIENINGER: Jack Kieninger, president
13 of the ISA. It's K-I-E-N-I-N-G-E-R. I just wanted
14 to let the Commission know that the board took a
15 vote, our board. It was unanimous 15 to zero to
16 back this proposal. There are a few bad apples in
17 everything that there is in the world. And, you
18 know, all the horsemen don't do this. This is just
19 a very few horsemen that do it, and we want to stop
20 it. So thank you.

21 CHAIRMAN DIENER: Thank you, Jack. Appreciate
22 it.

23 MIKE BROWN: Mike Brown from Indiana HBPA.
24 You have written comments from me that have already
25 demonstrated my lack of competence in this area.

1 When the Chair referred to experts, he didn't have
2 me in mind.

3 My people have some concerns largely related
4 to potential for trainers, owners of horses who are
5 just using normal products to flip this level. We
6 believe that even a one in 30,000 possibility is
7 too many. I don't want to be that horseman. And I
8 don't think that we should have a standard that
9 engenders that possibility.

10 My members agree with the IHRC staff. We want
11 the bad apples out. We don't want them to be able
12 to jeopardize our horses. We don't want them to be
13 able to have an unfair competitive advantage. We
14 just differ when it comes to where this line is
15 drawn. My folks are not experts in pharmacology.
16 Nor am I. They are not experts in
17 pharmacokinetics. Neither am I. They are not
18 experts in veterinary medicine. Certainly, neither
19 am I, but they are out there using everyday
20 products that do have cobalt in them.

21 And they are worried that simple
22 normally-accepted practices could generate
23 positives the people just simple don't deserve. I
24 look at it like when essentially you're assembling
25 a regulatory threshold, the idea is to put together

1 a net, gaps that catch precisely the fish you want
2 to catch and larger. We don't want small fish
3 getting caught. We don't think that's right.

4 We heard the Chairman say that stewards always
5 have discretion. And we hope that's the case
6 because there are people who will trip this level
7 who did not use cobalt to gain an advantage and did
8 not use cobalt excessively.

9 In the substances that were mentioned earlier,
10 this one wasn't mentioned. This is -- I don't mean
11 to single out any feeding manufacturer. This is
12 Tribute. It's widely used. It's called Tribute
13 Performance Advantage. It's a simple feed. It has
14 two different types of cobalt in its ingredients.

15 The cobalt in this is not in the first ten
16 ingredients. It's probably not a high
17 concentration, but it's there. And there were
18 other substances that include this. My members
19 worry about that. They think you've drawn this
20 line too low.

21 We heard about this essentially two weeks ago.
22 Had a trainer who was concerned at hearing about
23 this at that point in time. This particular
24 trainer decided to run a test of horses selected
25 working with the vet, 14 horses. They gave zero

1 vitamins to one level, one group of horses. They
2 gave what would be essentially a normal one
3 treatment of vitamin B12, B6, and a couple other
4 substances. To another group of horses, and they
5 gave them double.

6 JOE GORAJEC: Can you get closer and speak up.
7 I'm not sure everyone can hearing you.

8 MIKE BROWN: That's on purpose. And they gave
9 double to another group of horses. And then at
10 their own expense they sent samples off to Kentucky
11 to be tested. Those samples came back. And two of
12 the horses were way over the standard. One was 59
13 and one was at 43. This trainer doesn't use
14 cobalt. This trainer doesn't abuse it.

15 This represents a risk to the horsemen, and we
16 are concerned about that. We also hear as this is
17 being discussed, we hear the phrase fairly certain.
18 We hear appears to. We hear seems like a logical
19 inference. For something that has the potential to
20 ban a horseman for more than a year, those are
21 scary phrases.

22 We think that there is research going on that
23 will establish a more solid basis for this
24 particular standard. And we think that there is
25 not enough science out there to truly support the

1 25 level and guarantee the horsemen won't get
2 hooked in when they shouldn't be.

3 As I said in my letter, the fact that
4 something needs to be done isn't a justification
5 for doing the wrong thing. We think this is the
6 wrong thing. We hope you don't do it. Thank you.

7 CHAIRMAN DIENER: Thank you, Mr. Brown.

8 JOE GORAJEC: Mr. Chairman, may I ask Mike a
9 question?

10 MIKE BROWN: That's just mean.

11 JOE GORAJEC: You had mentioned a trainer has
12 received some vitamin shots.

13 MIKE BROWN: I meant their horses.

14 JOE GORAJEC: Just vitamins?

15 MIKE BROWN: As far as I know just vitamins.

16 JOE GORAJEC: As far as you know. And you
17 said this trainer, what about this trainer? What
18 comment did you make about this trainer?

19 MIKE BROWN: This trainer doesn't abuse
20 cobalt, doesn't use cobalt, but does use products
21 that obviously have cobalt in it.

22 JOE GORAJEC: Did the trainer administer these
23 vitamins?

24 MIKE BROWN: My presumption is that the vet
25 did.

1 JOE GORAJEC: The vet did. So when you speak
2 about the trainer not abusing cobalt, you didn't
3 make the statement that the vet's not abusing
4 cobalt.

5 MIKE BROWN: I don't represent the vets. I
6 don't represent the trainers and owners. And I can
7 only speak to the veracity of this particular
8 trainer.

9 JOE GORAJEC: Well, there's more to a positive
10 test or an overage in a horse for cobalt than the
11 horse and trainer. It's also the vet. So I would
12 keep that in mind when you are talking about horses
13 that supposedly get just low level of vitamins and
14 then have high levels of cobalt. Maybe they just
15 didn't get low levels of vitamins.

16 MIKE BROWN: The relationship between a vet
17 and trainer, I assume it's understood by the
18 trainer. The point is valid. I have no idea what
19 the vet did. I know what the vet told the trainer.
20 I know what the trainer does.

21 JOE GORAJEC: Thank you.

22 CHAIRMAN DIENER: Any additional comments from
23 horsemen, public?

24 DWAYNE RHULE: Dwayne Rhule. I'm chairman of
25 the Breed Advisory Committee for the Standardbreds.

1 I'm a breeder, owner, and trainer. I would like to
2 commend the Commission here today for looking at
3 this issue. It's an issue that has been brought to
4 my attention numerous times at the racetrack about
5 what we were going to do about it, especially since
6 I'm in charge of looking at the Sires Stakes
7 conditions.

8 So, therefore, I want to commend you for what
9 you're doing, if you're going to pass it because it
10 absolutely needs to be done. We know there's been
11 some horses that have won on it. And I think
12 that's good enough to be said.

13 There is one issue. We are not the first to
14 do anything. The Meadowlands basically has banned
15 two trainers for using cobalt. So this would be
16 the first commission that I believe will pass this.
17 I want to commend you for doing that. Thank you.

18 CHAIRMAN DIENER: Thank you.

19 COMMISSIONER PILLOW: I have one other
20 question. This is for Doctor Demaree and
21 Doctor Sams and Dr. Benson. Mr. Brown said there
22 had not been enough research on cobalt to make a, I
23 guess, a good decision on whether we should ban
24 this or not. I just need a yes or no. I don't
25 idea need a...

1 DOCTOR BENSON: I think the only research that
2 hasn't been done is out of the Europeans. And that
3 will recommend lower threshold than what you are
4 looking at here.

5 CHAIRMAN DIENER: In other words you think
6 there has been enough research done and research
7 yet to be concluded in Europe would probably come
8 up with something less than 25 parts per billion?

9 DOCTOR BENSON: We looked at more horses than
10 we looked at with anabolic steroids.

11 CHAIRMAN DIENER: Doctor Demaree.

12 DOCTOR DEMAREE: I would like to draw your
13 attention to Exhibit A in the staff report. There
14 is a clear demarcation with these numbers in the
15 levels of cobalt in the horses. The Quarter Horses
16 it jumps from 17 to 217. With Thoroughbreds, it
17 jumps from 9 to 12. And so then there's another
18 demarcation at 25 or 26 to 240.

19 With the Standardbreds, you know, you've got
20 all the way up to 22, and then it jumps up to 43.
21 So I believe our demarcation and threshold at 25 is
22 appropriate for our jurisdiction in the information
23 we have currently.

24 COMMISSIONER WEATHERWAX: Doctor Demaree, just
25 for the benefit of my understanding, there is this

1 thing called false positive. If that happens, the
2 horse detects above .25, how do you determine if
3 that was a false positive? Do you go back and
4 reexamine the sample or do you look at the overall
5 situation?

6 DOCTOR DEMAREE: The laboratories before they
7 call it positive always make sure that they have a
8 measurement of uncertainty for every sample. So
9 they put together a data packet, and they review
10 their results. They make sure all their quality
11 controls and quality standards are appropriate.
12 And Doctor Sams can elaborate on this. But they
13 put together a data packet that they feel will hold
14 up a positive in a court of law, and that they have
15 looked and done their job appropriately. That
16 there is a measurement of uncertainty that would
17 put that above the threshold.

18 And the horseman always has the opportunity to
19 have a split sample analysis. When you're talking
20 about something 26, 27, 28, they're welcome to
21 split off the split and see if the other lab's
22 measurement of uncertainty may yield a different
23 result.

24 CHAIRMAN DIENER: Further comments from
25 anybody the room? Well, I will start off. As I

1 mentioned, the first time I ever heard about this
2 was in the BloodHorse in January this year where
3 the owner of Meadowlands had barred from doing out
4 of competition two trainers and all the horses
5 under their care. To the best of my knowledge, New
6 Jersey has not adopted any rule, but the track did
7 that on its own.

8 I wasn't aware of Minnesota's interim
9 measures. I was aware of California, Kentucky,
10 Maryland, they are all looking into this.

11 We have the RMTTC what their recommendation was
12 and is likely it will be. It has not been adopted
13 by the board or by RCI. If that was all there was,
14 I would probably say, well, okay, let's kind of
15 muddle along and wait and see what happens. But
16 the spot testing that's been done in Indiana
17 coupled with the wealth of scientific data
18 convinces me this commission would be putting its
19 head in the sand and be very remiss if it didn't do
20 something. We have enough evidence that something
21 needs to be done.

22 We have got our Sires Stakes program coming up
23 with the harness, Standardbreds, I mean. Excuse
24 me. We have the big stakes races coming up with
25 our Thoroughbreds. The last thing I want to do is

1 have some horses loaded up with cobalt and winning
2 some of these big races and are dropping dead in
3 the barn. I'm just convinced we need to move
4 forward. Clearly, RCI will act on this issue
5 sometime. We may need to modify our rule for the
6 future. But I don't feel that we can wait for that
7 action. I think we need to go forward.

8 And for purposes of just discussion, action,
9 we have five recommendations of the staff. What I
10 would like to do is just focus on number one right
11 now which is the promulgation of emergency rules
12 establishing a 25 part per billion threshold of
13 cobalt. This will be both for post race and out of
14 competition testing and identifying cobalt as a
15 Class A substance.

16 Now, the threshold levels will be for races
17 beginning on September 30th of this year and the
18 remainder thereafter. The thresholds for the out
19 of competition testing will be done based on
20 effective date of December 31st of this year and
21 sampling to be done January 1st, 2015.

22 And I would like to just take that one before
23 we go to the other recommendations if that's okay
24 with the Commissioners. And I vote aye.

25 COMMISSIONER WEATHERWAX: I vote aye.

1 COMMISSIONER PILLOW: Aye.

2 CHAIRMAN DIENER: Quorum action by three of
3 the Commissioners, emergency rule is adopted.

4 There are four other recommendations in the
5 staff report, which I believe are supportive of
6 what we've just done. We would approve the
7 University of Kentucky Veterinary Diagnostic
8 Laboratory as the primary testing lab, and the
9 University of California Davis as the split sample
10 testing lab for cobalt.

11 Number two, we would waive our rule at 71 IAC
12 8-4-3, which requires accreditation of the split
13 sample lab at UC Davis. Just as a parenthetical,
14 not all labs are set up to do cobalt testing. We
15 have to use the labs that are available for
16 whatever kind of equipment is required.

17 Number three, we would direct the staff to
18 report to the Commission results of all cobalt
19 testing completed pursuant to the rules we have
20 just adopted after the conclusion of our race meets
21 here at Hoosier Park and Indiana Grand.

22 And then the last one would be that before
23 live racing commences next year, we will receive a
24 commission staff report on what's been going on
25 with RCI, what further progress has been made

1 nationally, what additional scientific research has
2 been done that could cause us to reassess or
3 reconsider these rules. Those are the four other
4 items that I would like to have the Commission to
5 go forward with if that's all right. Joe.

6 JOE GORAJEC: I would like to add something to
7 number two. We would be down under the scenario to
8 one lab for cobalt testing as a primary lab and one
9 lab as a split sample lab. I would like to ask the
10 Commission to give me the discretion under some
11 circumstances where for whatever reason one of
12 those two labs can't perform those services, for
13 example, if one of their machines malfunctions or
14 breaks down. It is not uncommon for that to
15 happen. Typically, these machines would get on
16 line rather quickly and wouldn't cause any
17 difficulty on a long-term basis. But to the extent
18 we have an issue where one of these two labs cannot
19 perform the services for an extended period of
20 time, I would like to have the authority to go and
21 choose a backup lab under the circumstances.

22 CHAIRMAN DIENER: You would amend your
23 recommendation number two for the authority to be
24 granted to the executive director to make
25 arrangements with a backup laboratory in the event

1 that the primary testing lab or the lab for the
2 split samples are unable to do the testing in a
3 timely manner.

4 JOE GORAJEC: Correct.

5 CHAIRMAN DIENER: Is that acceptable,
6 Commissioners?

7 COMMISSIONER WEATHERWAX: Yes.

8 COMMISSIONER PILLOW: Yes.

9 CHAIRMAN DIENER: I would propose that we
10 adopt the recommendation number 2 as amended, 3, 4,
11 and 5. All in favor.

12 MS. ELLINGWOOD: Chairman, before you vote,
13 with respect to the staff recommendation number
14 three, I think we may want to add the Thoroughbred
15 regarding the ISO certification.

16 JOE GORAJEC: Fair enough.

17 MS. ELLINGWOOD: I would recommend you amend
18 staff recommendation number 3 to reflect 8.5-3-3.

19 CHAIRMAN DIENER: Okay.

20 JOE GORAJEC: Good catch.

21 CHAIRMAN DIENER: Any problem with that?

22 COMMISSIONER WEATHERWAX: What was the code
23 section?

24 MS. ELLINGWOOD: 71 IAC 8.5-3-3. The rule
25 that you've got there is the Standardbred rule

1 requiring ISO certification. The cite that I just
2 gave you is the Thoroughbred equivalent so the
3 Thoroughbreds can also be tested by U of K and UC
4 Davis.

5 JOE GORAJEC: Thoroughbred and Quarter Horse.

6 MS. ELLINGWOOD: Sorry.

7 CHAIRMAN DIENER: With that further amendment,
8 no more amendments.

9 JOE GORAJEC: I don't think so.

10 CHAIRMAN DIENER: You guys need to get your
11 act together before me.

12 All in favor say "aye".

13 THE COMMISSION: "Aye."

14 CHAIRMAN DIENER: Opposed, same sign.

15 (No response.)

16 CHAIRMAN DIENER: Motion carried. Thank you,
17 Commissioners, staff. Thank you very much
18 horsemen. I appreciate it. It's time for a
19 morning break, and then we'll get back to the
20 regular agenda. Take about ten minutes.

21 (A brief recess was taken.)

22 CHAIRMAN DIENER: We will reconvene the
23 meeting. The first item on the agenda is the
24 consideration by the Commission of the minutes of
25 the June 26, 2014 meeting, which has been

1 distributed to each Commissioner and which there
2 are a few corrections which will be noted.

3 MS. ELLINGWOOD: Chairman, specifically with
4 respect to the corrections, on page two under
5 paragraph four, the second sentence or the sentence
6 that begins with "Executive Director Joe Gorajec
7 said the Commission Staff proposed the petition."
8 The petition was actually proposed by Centaur. So
9 the "proposed" needs to be changed to the word
10 "supported."

11 And then the second change is on page three,
12 the fourth full paragraph, item number four says
13 "The corrective action plan will be amended to
14 finesse the complaint policy." That entry is with
15 respect to the HBPA's corrective action plan
16 supplementing their initial application. And the
17 word "finesse" should be changed to say modify.

18 CHAIRMAN DIENER: With those two amendments,
19 are the revised minutes acceptable to the
20 Commissioners?

21 COMMISSIONER WEATHERWAX: Yes.

22 COMMISSIONER PILLOW: Yes.

23 CHAIRMAN DIENER: All in favor say "aye."

24 THE COMMISSION: "Aye."

25 CHAIRMAN DIENER: Thank you. Motion carried.

1 It's not on the agenda but Steve Schaefer for
2 personal reasons has resigned from the horse racing
3 commission. It's tradition to have a Schaefer
4 here. His father was the first chairman. Steve's
5 no longer able to carry on his responsibilities
6 here. I say this with a great deal of personal
7 regret that he won't be here, but also his
8 professional advice and counsel on horse racing
9 will be sorely missed. And so I wanted everybody
10 to be aware of that.

11 And on a related matter, I have asked
12 Commissioner Schenkel if he would agree to be
13 vice-chairman. That tasks involves the same
14 remuneration that each of us receive here. In case
15 I get run over on the way to a meeting, there's at
16 least a person designated to preside at that
17 meeting. And I believe Commissioner Pillow and
18 Weatherwax will consent to the appointment of Greg.
19 And he's absent but he is aware that this will
20 happen. So Greg Schenkel is our vice-chairman.

21 That's in keeping, let me just say, with my
22 strong belief that this commission, with the
23 exception of one blip in its history, has always
24 been completely nonpolitical and nonpartisan. And
25 we want to continue that tradition here and assure

1 everybody that that's a decision made by this
2 commission.

3 Review of Commission rulings. Miss Newell,
4 you've got a ton of them here.

5 MS. NEWELL: Yes, sir. We are in the midst of
6 a race season. So you have a couple of pages that
7 cover the past two months of racing. If you have
8 any questions about any of these, we would be happy
9 to address them. They are at tab two.

10 COMMISSIONER WEATHERWAX: I have a question.
11 I circled this thing. What does it mean when we
12 have a violation of Indiana Grand Racing for
13 unauthorized access?

14 MS. NEWELL: We are going to address that at
15 tab three, but it is a situation where we had an
16 individual on the backside of Indiana Grand who was
17 not licensed. We dealt with that individual
18 separately. And we will talk about that when we
19 get to tab three. But with respect to Indiana
20 Grand's participation of that event, they agreed to
21 a waiver of hearing and accepted that penalty.

22 COMMISSIONER WEATHERWAX: So even though they
23 were with Indiana Grand, they had no business being
24 there.

25 MS. NEWELL: No, the Indiana Grand penalty

1 relates to the fact that Indiana Grand has the
2 responsibility for keeping the backside secure.
3 And we had an unlicensed person on the backside.

4 CHAIRMAN DIENER: Further questions from
5 Commissioners? Anything that you want to highlight
6 to us that's particularly remarkable there?

7 MS. NEWELL: I don't think so.

8 CHAIRMAN DIENER: Thank you for the review of
9 Commission rulings.

10 Next item was a settlement agreement between
11 the commission staff and James Eilers.

12 MS. NEWELL: Yes, sir. Commission staff
13 entered into this agreement with Mr. Eilers. He
14 applied for and was refused licensure earlier in
15 the spring. After he was refused, he continued to
16 work on the backside of Indiana Grand. Once the
17 Commission determined he was doing this, the
18 executive director excluded him from the premises.
19 We were able to work out an agreement wherein
20 Mr. Eilers will not apply for licensure at Indiana
21 for the next five years. He is, however, free to
22 work anywhere else he may choose to go.

23 COMMISSIONER PILLOW: He applied for a
24 license?

25 MS. NEWELL: He applied to be a groom and

1 exercise rider, dual licensure. And he was refused
2 on both counts.

3 CHAIRMAN DIENER: Is it public knowledge why?

4 MS. NEWELL: It related to some criminal
5 background issues.

6 CHAIRMAN DIENER: Any other questions? I make
7 a motion to approve the settlement agreement
8 between staff and James Eilers.

9 All in favor.

10 THE COMMISSION: "Aye."

11 CHAIRMAN DIENER: Opposed, same sign.

12 (No response.)

13 CHAIRMAN DIENER: Motion carries.

14 Agenda item number four readoption of many
15 expiring rules, that's pulled from the agenda to be
16 considered at another time. There is some
17 discussions going on with the Register, Secretary
18 of State, whoever is involved in this. And we will
19 figure that out at the next meeting.

20 And the item number five is a petition request
21 for Indiana Grand to amend a rule to increase the
22 purse supplements. Mr. Schuster.

23 JON SCHUSTER: Thank you, Mr. Chairman,
24 Commissioners, staff. My name is John Schuster,
25 S-C-H-U-S-T-E-R, Indiana Grand Racing and Casino.

1 I'm here before you today to request an increase in
2 the Thoroughbred purse supplement that applies
3 currently to any Indiana-bred horse that runs in an
4 open race. This has been in place for a number of
5 years. That percentage has been 40 percent. We
6 are requesting an increase to 60 percent.

7 What this purse supplement was designed for
8 and has been successful at doing is to give a nice
9 valid incentive for Indiana-bred horses to compete
10 in open races. And there's a number of benefits
11 that come from that.

12 First of all, it gives more and better
13 opportunities for Indiana-bred horses to race.
14 You've heard a lot of debate and testimony over
15 your tenures here about the breed development
16 program. This is a supplement not only to the
17 purse but a supplement to that program. These are
18 monies that come from the open purse, what we call
19 the open purse account at the track, and do not
20 have any impact on breed development monies or that
21 situation.

22 With these supplements, in general, the vast
23 majority of the time, the better horses are getting
24 reward for competing in better races. That's a
25 positive. This will help with increase in our

1 field size with a larger incentive for an
2 Indiana-bred horse to run with open. It helps us
3 maximize the horse population that we have
4 available.

5 We have already seen this working with the
6 40 percent. As you also heard earlier this spring,
7 and as we just had a conversation with Chairman
8 Diener, with Churchill Downs back open, we are back
9 in the situation where we are having difficulty at
10 the entry box. This supplement increase will help
11 with that. We think it gives us more opportunities
12 where some of these open horses are going other
13 places, Indiana-bred horses have a better, more
14 realistic opportunity to step in and advance the
15 program for all of us.

16 Along with increased field sizes comes the
17 opportunity for increased number of races carded.
18 That helps our handle which benefits purses which
19 also benefits the State in the form of pari-mutuel
20 taxes.

21 This should, as mentioned a little bit ago,
22 raise the stature of Indiana bred and speaks to
23 the quality issue, which we are all in favor of.
24 Once again, no impact on the breed development
25 monies.

1 And one final component earlier this spring,
2 the Commission allowed us to go back to our model
3 where Indiana-bred races receive a premium over
4 open races. This increased incentive helps to
5 eliminate one of the, I'll call it an unforeseen
6 deficiency when we did that. It eliminated some
7 small portion of the incentive for Indiana-bred
8 horses to run open. This reinstates that and
9 enhances it beyond that.

10 I would be glad to answer any questions.

11 CHAIRMAN DIENER: Staff have a position on
12 this?

13 JOE GORAJEC: I think Jon has shown very sound
14 judgment in bringing this forward. I know that
15 this is a breed development issue. So if Wendy or
16 Jessica choose to weigh in, as far as I'm
17 concerned, they are more than welcome to. But I
18 looked at the rationale behind it, and I think it's
19 sound.

20 CHAIRMAN DIENER: Anything else?

21 WENDY BROWN: I think it's a good thing. I
22 applaud Indiana Grand for doing this.

23 CHAIRMAN DIENER: I was going to say I concur.
24 Anything we can do to give an incentive for the
25 Indiana bred to get out of restricted races and

1 race in open company is in my opinion good for the
2 breed. Go ahead.

3 COMMISSIONER PILLOW: Jon, does this help us?
4 I understand that Ohio is raising their purses or
5 making them larger next year. Does this have
6 anything to do with that or does it keep us on par
7 with our surrounding states that we are competing
8 against?

9 JON SCHUSTER: Actually, I'm familiar with one
10 track in Ohio that's cutting purses, Belterra,
11 which is the old River Downs actually just went
12 through a cut. This will help us, I believe, and
13 the horsemen believe that horses that will
14 ordinarily go and run other places may still do
15 that, but with this incentive, now Indiana breeds
16 can step in and fill that void for some of these
17 open horses that are becoming less available to us.

18 COMMISSIONER PILLOW: Thank you.

19 CHAIRMAN DIENER: I would make a motion to
20 approve the request from Indiana Grand to increase
21 purse supplement pursuant to 71 IAC13.5-3-5(b) as
22 in boy.

23 COMMISSIONER WEATHERWAX: Second.

24 CHAIRMAN DIENER: All in favor.

25 THE COMMISSION: "Aye."

1 CHAIRMAN DIENER: Opposed, same sign.

2 (No response.)

3 CHAIRMAN DIENER: Motion carries.

4 JON SCHUSTER: Thank you.

5 CHAIRMAN DIENER: Thank you, Jon. There is no
6 old business I'm aware of.

7 New business, we are looking at meetings. The
8 next meeting would be mid October. Among other
9 things, we are going to consider the registration
10 application for the horsemen's breeds at that time.
11 And then a meeting early, mid December will have
12 some licenses and permits to renew and some race
13 dates.

14 I hope there will be some consideration to not
15 do rolling over 2014 races into calendar 2015 maybe
16 starting a little earlier, concluding a little
17 later, maybe having fewer days per week, things
18 like that. But you all are the experts. You can
19 cogitate those things.

20 With that, this meeting is adjourned. And
21 thank you for attention today.

22 (The Indiana Horse Racing Commission meeting
23 was adjourned at 10:41 a.m.)

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STATE OF INDIANA
COUNTY OF JOHNSON

I, Robin P. Martz, a Notary Public in and for said county and state, do hereby certify that the foregoing matter was taken down in stenograph notes and afterwards reduced to typewriting under my direction; and that the typewritten transcript is a true record of the Indiana Horse Racing Commission meeting;

I do further certify that I am a disinterested person in this; that I am not a relative of the attorneys for any of the parties.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 15th day of September 2014.

Robin P. Martz



My Commission expires:
March 2, 2016
Job No. 91768

<hr/> \$ <hr/>	<hr/> 28 46:20 <hr/>	<hr/> 8 <hr/>
\$20 35:14	<hr/> 3 <hr/>	8-4-3 49:12
<hr/> 1 <hr/>	3 51:10,18	8.5-3-3 51:18,24
10 15:20 18:19 19:9 34:23,25 35:1	3.4 13:1	86 18:1
100 20:8,13	3.72 13:3	<hr/> 9 <hr/>
100-milligram 15:14 19:2	30,000 39:6	9 45:17
10:41 62:23	30th 33:8 37:3 48:17	9,120 37:25
12 45:17	31,000 38:4	90s 27:2
13 17:1	31st 48:20	9th 34:22
14 40:25	33,000 12:23	<hr/> A <hr/>
15 13:20 16:1,9,25 38:15	35 13:24 14:4,5 23:17	a.m. 34:23 35:1 62:23
16 10:23	<hr/> 4 <hr/>	ability 25:19,24
1686 38:1	4 51:10	absent 54:19
17 45:16	40 58:5 59:6	absolutely 25:5 44:10
1960s 27:6	400 30:15	abstract 17:9
1st 48:21	43 41:13 45:20	abuse 41:14 42:19
<hr/> 2 <hr/>	45 17:2	abusing 43:2,3
2 51:10	48 23:13 34:10	acceptable 51:5 53:19
20,160 37:23	49 19:3	accepted 55:21
200 23:4,9,12,14,15 24:2,8,10	4th 33:7 37:5	access 55:13
2014 52:25 62:15	<hr/> 5 <hr/>	accidental 8:23
2015 48:21 62:15	5 51:11	accordance 30:1
217 45:16	50 26:1	account 11:20 58:19
22 45:20	521 11:10,16 14:17,23	accreditation 49:12
24 16:9 17:3 23:12 34:10	59 41:12	acid 21:7
240 45:18	<hr/> 6 <hr/>	act 19:16 48:4 52:11
25 8:11, 12:13,18,22 13:5,18,23 14:4,5,11,20 15:1,11 16:5,23 19:4 20:1, 23:6,17 24:1,4 25:3, 10 28:12 32:18,19 34:13 42:1 45:8,18,21 46:2 48:12	60 26:1 58:6	acting 32:4
25.9 33:24	600 20:4	action 48:7,8 49:2 53:13,15
26 33:1 45:18 46:20 52:25	<hr/> 7 <hr/>	add 27:11 50:6 51:14
27 46:20	71 49:11 51:24 61:21	added 27:6 28:25
		addition 27:17
		additional 28:3 35:16 38:11 43:22 50:1
		Additionally 12:20

- address** 8:8 22:24 25:23 28:7
33:19 36:1 55:9,14
- adjourned** 62:20,23
- administer** 42:22
- administered** 10:22,23 16:17,
19 17:17
- administration** 10:18,24 15:14
16:6,8,16 18:7 23:13 24:6,24
26:6,10,20,21
- adopt** 13:11 24:4 32:16 51:10
- adopted** 23:5 24:8 47:6,12 49:3,
20
- adoption** 36:22
- advance** 59:14
- advantage** 34:19 39:13 40:7,13
- advice** 54:8
- Advisory** 10:7 13:22 43:25
- affect** 25:24 30:25 31:2
- affecting** 7:17
- agenda** 52:20,23 54:1 57:14,15
- aggregate** 28:11
- agree** 39:10 54:12
- agreed** 55:20
- agreement** 56:10,13,19 57:7
- ahead** 61:2
- allowed** 13:23 60:2
- amateur** 19:17
- amend** 50:22 51:17 57:21
- amended** 51:10 53:13
- amendment** 52:7
- amendments** 52:8 53:18
- anabolic** 45:10
- analysis** 46:19
- Analysts** 17:6
- anemic** 26:2
- Angela** 7:25 9:18 36:3
- anticipate** 11:4,5
- appears** 26:13 41:18
- applaud** 60:22
- apples** 23:23 38:16 39:11
- application** 53:16 62:10
- applied** 56:14,23,25
- applies** 58:2
- apply** 56:20
- appointment** 54:18
- approach** 16:5
- appropriately** 46:15
- approve** 49:6 57:7 61:20
- approximately** 15:12 37:23,25
- area** 12:4 38:25
- arrangements** 50:25
- articulate** 8:14
- ASRCI** 9:9
- assembling** 39:24
- assisting** 35:23
- association** 36:7
- assume** 43:17
- assure** 21:12 54:25
- athletes** 7:18 18:12 37:1
- attaches** 7:5
- attempting** 25:11
- attend** 22:24
- attention** 44:4 45:13 62:21
- Australia** 24:18
- Authorities** 13:9
- authority** 50:20,23
- availability** 27:3
- average** 13:4
- aware** 19:14 23:4 38:10 47:8,9
54:10,19 62:6
- aye** 48:24,25 49:1 52:12,13
53:23,24 57:10 61:25
-
- B**
-
- B12** 7:5 13:15 15:20 16:6,16
18:18,19 27:23 41:3
- B6** 41:3
- back** 21:20 36:18 38:16 41:11
46:3 52:19 59:8 60:2
- background** 57:5
- backside** 55:16 56:2,3,16
- backup** 50:21,25
- Bacteria** 27:22
- bad** 38:16 39:11
- bag** 17:20 19:7
- ban** 41:20 44:23
- banned** 44:14
- barn** 35:2,13 48:3
- barred** 47:3
- based** 8:12 12:14, 14:17 17:11,
14 22:6 24:17 31:9 32:6,10
48:19
- basically** 11:16 30:12 44:14
- basis** 36:21 41:23 50:17
- bears** 21:16
- beer** 27:6,8,12,16
- beginning** 33:10 48:17
- begins** 53:6
- belief** 54:22
- believes** 36:22
- bell** 12:2
- Belterra** 61:10
- benefit** 45:25
- benefits** 58:10 59:18,19
- Benson** 7:23 8:6,7,14 9:16 10:2
13:8,19 14:23 15:5 16:15 17:22
18:6 19:20 20:2,15,21 21:23
23:10 25:16 28:17 29:11 31:15
32:10 34:12 35:19 44:21 45:1,9
- big** 6:8,9 22:18,20 47:24 48:2
- billion** 12:14,18,22,24 13:18,21
14:11,21 15:12 16:5,7,11,22,23
17:1,4 20:6 23:4,6,10,12,14,16,
18 24:1,3,5,8,10 28:12 32:18
34:14 45:8 48:12
- bit** 59:21

blip 54:23
blood 7:9 19:24 21:25 23:3,7,
 18,24 24:2,5 25:18 26:4,5,23
 31:2 35:5
Bloodhorse 47:2
board 10:7 14:13,15 38:14,15
 47:13
bolus 19:9
box 59:10
boy 61:22
break 15:10 52:19
breaks 50:14
breeds 59:22 60:25 61:15
breed 43:25 58:15,20 59:24
 60:15 61:2
breeder 44:1
breeds 6:5,18 12:20,25 28:10
 29:4 62:10
brewers 27:7,11
Brian 36:15,18
briefly 7:25
bring 35:2 37:15
bringing 37:9 60:14
broad 30:5
brought 44:3
Brown 38:23 41:8 42:7,10,13,
 15,19,24 43:5,16 60:21
bucks 22:18,20
business 55:23 62:6,7

C

calculated 37:21
calendar 62:15
California 10:24 29:2 49:9
call 29:23 46:7 58:18 60:5
called 15:23 18:1 21:6 40:12
 46:1
capability 30:5
capacity 22:11

carded 59:17
cardiovascular 7:13 27:15
care 47:5
carried 52:16 53:25
carries 57:13 62:3
carry 54:5
case 18:8 32:24 40:5 54:14
Casino 57:25
catch 40:1,2 51:20
categories 20:23
category 21:3
caught 40:3
cell 7:9 15:23 16:21 17:23 31:2
cells 21:25 26:4,5,23
Centaur 36:19 53:8
certificates 37:16
certification 51:15 52:1
Chair 39:1
chairman 6:21 7:2 9:3,6,16
 10:10 13:6,16 14:22 16:12 17:16
 18:5 22:21 23:19,22 24:13,15
 27:19 28:6 29:7 31:9 32:5,12,14,
 15 33:18 35:15 36:2,16 38:7,21
 40:4 42:7,8 43:22,24 44:18 45:5,
 11 46:24 49:2 50:22 51:5,9,12,
 19,21 52:7,10,14,16,22 53:3,18,
 23,25 56:4,8 57:3,6,11,13,23
 59:7 60:11,20,23 61:19,24 62:1,
 3,5
change 31:7 53:11
changed 53:9,17
charge 44:6
chloride 10:19,20 15:15,22,25
 18:22 19:3 20:5,8
choose 50:21 56:22 60:16
chosen 25:4
Churchill 59:8
circled 55:11
circumstances 50:11,21
circumvented 29:20

cite 18:7 52:1
Class 48:15
clean 27:10
clear 45:14
close 34:4,5
closer 41:6
closest 17:1
cobalt 6:11 7:4,16 8:5 9:14
 10:10,19,20,25 11:13,18 14:25
 15:13,15,21,24 16:3 17:12,17,
 20,24 18:2,7,8,11,14,20,22,24
 19:3,4,21 20:3,5,8 22:4,6 24:7,
 20 25:8,11,23,25 26:2,6,7,10,11,
 20 27:1,4,6,11,17,19,20,21,23
 28:1,3,4,18 29:1 30:7,10,14
 31:6,21 33:13 34:25 36:21 37:18
 39:20 40:7,8,14,15 41:14 42:20,
 21 43:2,4,10,14 44:15,22 45:15
 48:1,13,14 49:10,14,18 50:8
code 51:22
cogitate 62:19
combined 11:13
commences 49:23
commend 44:2,8,17
comment 36:9 42:18
comments 24:16 36:6, 38:8,9,
 11,24 43:22 46:24
commercial 27:3
commercially 18:25
commission 7:15,16 10:5 24:4,
 8 31:5 32:8,16 36:20 37:2 38:14
 44:2,16 49:18,24 50:4,10 52:13,
 24 53:7,24 54:3,22 55:2,3 56:9,
 11,12,17 57:10 60:2 61:25 62:22
Commissioner 9:22 15:3
 19:12,22 20:14,15 21:21 22:14,
 17,19 23:21 29:6 30:4,6,12,18
 31:1,8 44:19 45:24 48:25 49:1
 51:7,8,22 53:1,21,22 54:12,17
 55:10,22 56:23 61:3,18,23
Commissioners 6:22 48:24
 49:3 51:6 52:17 53:20 56:5
 57:24
commissions 21:10
committee 9:5,6,10 10:8 13:23

14:3 43:25
common 26:14
company 36:22 61:1
compared 11:15
comparing 23:23
compete 58:9
competence 38:25
competing 7:19 58:24 61:7
competition 25:17,18,20
 30:22,23 31:4 33:10 47:4 48:14,
 19
competitive 39:13
complaint 53:14
completed 35:3 49:19
completely 54:24
complicated 21:14
comply 20:11
component 60:1
components 15:18
compounded 18:23
compounder 18:24
compounding 19:1
compounds 15:19
concentration 40:17
concentrations 23:9,11 30:14,
 16
concern 21:14,16 32:1
concerned 19:7 34:21 40:22
 41:16 60:17
concerns 33:19,21 34:8 39:3
concluded 45:7
concluding 62:16
conclusion 16:12 49:20
conclusively 26:18
concur 60:23
conditions 34:2 44:7
Conference 17:6
consent 54:18

consideration 52:24 62:14
considered 57:16
considers 31:7
consistent 12:17
Consortium 9:20
constitute 10:16
consultant 9:7
content 17:11
continue 54:25
continued 56:15
control 22:13
controls 46:11
conversation 59:7
convinced 48:3
convinces 47:18
copies 35:5
Correct 51:4
corrections 53:2,4
corrective 53:13,15
correlation 24:1
Cost 35:13
counsel 54:8
country 27:7
counts 57:2
couple 10:10 14:6 22:16,25
 41:3 55:6
coupled 47:17
court 46:14
cover 55:7
covered 31:3
create 34:13
criminal 57:4
current 33:9
curve 12:2,19
cut 61:12
cutting 61:10

D

data 11:23,24 12:1,5,7,10,14,16
 15:10 32:7 33:23 46:9,13 47:17
date 48:20
dates 62:13
Davis 11:13 49:9,13 52:4
day 16:18 21:7 24:11,21,24 37:7
days 15:13 20:3,10 25:1,5,7
 62:17
dead 48:2
deal 6:8,9 54:6
dealing 9:13
dealt 10:8 55:17
debate 58:14
December 48:20 62:11
decided 40:24
decision 19:19 44:23 55:1
decisions 9:14
defer 33:15
deficiency 18:8,15 60:6
demarcation 45:14,18,21
Demaree 8:1 29:12,14 33:16,18
 44:20 45:11,12,24 46:6
demonstrated 26:17 38:25
depending 7:7, 19:11
depends 21:4
Derby 37:6
deserve 39:23
designated 54:16
designed 58:7
detail 6:25
detect 24:20
detected 29:9
detection 23:15,17 24:6,9
detects 46:2
detergents 27:10
determine 46:2

- determined** 56:17
determining 15:16
Detomidine 10:12
developed 28:23
development 58:15,20 59:24 60:15
deviations 12:21 13:4
diagnostic 33:25 34:2 49:7
Diener 7:2 9:16 13:6,16 14:22 16:12 17:16 18:5 22:21 23:19,22 24:13 28:6 31:9 32:5,12, 35:15 36:2,16 38:7,21 42:7 43:22 44:18 45:5,11 46:24 49:2 50:22 51:5,9,19,21 52:7,10,14,16,22 53:18,23,25 56:4,8 57:3,6,11,13 59:8 60:11,20,23 61:19,24 62:1, 3,5
dietary 18:10 28:2
diets 27:22
differ 39:14
difficulty 50:17 59:9
digestive 7:6
Dionne 8:6,24
direct 23:25 49:17
director 8:1,7 9:1,2,25 36:3 50:24 53:6 56:18
disappearing 27:9
discontinued 27:1
discretion 40:5 50:10
discuss 14:15
discussed 18:20 41:17
discussing 16:24
discussion 48:8
discussions 57:17
disease 27:15
distributed 53:1
Doctor 7:23,25 8:6,8,14,24 9:1, 16,17,23 10:2 11:3 13:8,19 14:23 15:5,18 16:15 17:8,22 18:6 19:12,20 20:2,21 22:23 23:25 24:16,17,19 25:16,22 28:17 29:11,12,14 30:6,9,13,20 31:2,15 32:10 33:16,18 35:19 44:20,21 45:1,9,11,12,24 46:6, 12
dose 10:19,20 15:14,21,24 19:2, 5 20:9 24:6
doses 20:12 24:11
dosing 18:4
double 15:6,7 41:5,9
Downs 59:8 61:11
drafting 35:23
drank 27:16
draw 16:12 35:5 45:12
drawn 39:15 40:19
drive 35:20
dropping 48:2
drug 9:4,9,12
drugs 21:3,22 31:2
dual 57:1
dumped 17:20
Dwayne 43:24
-
- E**
-
- earlier** 40:9 56:14 59:6 60:1 62:16
early 11:6 27:2,19 62:11
effect 22:8 26:16,21 33:7,9
effective 37:3 48:20
effectively 25:10
Eilers 56:11,13,20 57:8
elaborate 46:12
elevated 30:14,16
eliminate 11:22 25:19 60:5
eliminated 10:25 60:6
ELLINGWOOD 51:12,17,24 52:6 53:3
Elmore 36:15,18,19
emailing 35:8
emergency 19:13,23 20:17,19 21:2 22:15 32:16 36:21 48:11 49:3
emerging 21:3
enacted 28:21
encourage 21:9
end 10:21 23:12 33:8
endurance 7:10
enforcement 30:5
engenders 39:9
enhance 7:10
enhancer 25:12
enhances 60:9
enhancing 21:21
ensure 8:4
entered 29:18 33:14 56:13
entry 53:14 59:10
EPO 22:5,6 26:22 27:4
equine 7:18 8:1 36:2 37:1
equipment 49:16
equivalent 52:2
erythropoiesis 10:22 21:24 25:25 26:12 27:5 30:25
essential 27:20,24
essentially 11:22 12:1 20:2 29:12 39:24 40:21 41:2
establish 41:23
established 26:13
establishing 48:12
Europe 45:7
Europeans 45:2
event 50:25 55:20
everyday 39:19
evidence 47:20
exceedingly 16:20
exception 54:23
excessive 25:8 27:18
excessively 40:8
excluded 56:18

Excuse 47:23
executive 8:7 50:24 53:6 56:18
exercise 57:1
Exhibit 33:23 45:13
existing 11:19
expect 20:10 28:13
expected 28:16
expense 41:10
experts 39:1,15,16, 62:18
expiring 57:15
explain 31:1 33:4
expressing 36:11
extended 50:19
extent 50:17
external 18:3
extra 35:4
extremely 6:3 20:12

F

fact 6:9 26:1 42:3 56:1
factor 19:14,24
factors 32:22
Fair 51:16
fairly 41:17
fall 20:6 21:2 23:9
falling 12:4
false 12:23 13:1 16:13 38:4
 46:1,3
familiar 61:9
father 54:4
favor 14:3,4 51:11 52:12 53:23
 57:9 59:23 61:24
fear 8:20
fed 8:18 18:12,13
Federation 13:8
feed 8:16 18:11 40:13
feeding 8:21 40:11

feel 28:14 46:13 48:6
felt 14:5
Ferrabalt 18:1
fewer 62:17
field 7:19 59:1,16
figure 57:19
fill 61:16
final 6:8 60:1
finalists 6:10
finally 16:25
find 21:15 24:23 25:2
fine 7:2
finesse 53:14,17
fish 40:1,2
fits 25:5
flags 28:15
flexibility 32:22
flip 39:5
floor 36:5
fluid 34:10
fluids 19:7
flying 31:20
foam 27:8,9
focus 21:16 30:21 48:10
folks 6:2 25:10 39:15
form 27:14 59:19
forms 12:1 35:4
forward 48:4,7 50:5 60:14
found 19:2 27:11 29:14 33:22
fourth 53:12
frank 21:4
frankly 35:24
free 56:21
frequently 8:10
front 21:20 31:23
full 53:12
function 27:25

future 8:4 48:6

G

Gaba 21:6
gain 40:7
gamma 21:6
gaps 40:1
gave 19:6 20:8 40:25 41:2,5,8
 52:2
general 58:22
generally 19:6,8
generate 39:22
GI 27:22
give 18:3 25:1 33:5 50:10 58:8
 60:24
giving 20:11
glad 6:23 60:10
glass 27:10
gluconate 16:3
goal 19:15
good 9:16 25:21 26:8 32:14
 35:24 36:17 44:12,23 51:20
 60:21 61:1
Gorajec 7:24 9:21,25 22:22
 24:15,20 25:21 32:14 33:15
 35:16,18 41:6 42:8,11,14,16,22
 43:1,9,21 50:6 51:4,16,20 52:5,9
 53:6 60:13
grades 12:2
grams 18:2 22:6
Grand 34:23 37:6 38:1 49:21
 55:12,16,23,25 56:1,16 57:21,25
 60:22 61:20
Grand's 55:20
granted 50:24
great 54:6
greater 28:13
Greg 54:18,20
groom 56:25
group 41:1,4,9

guarantee 42:1**guess** 44:23**guests** 6:24**guys** 52:10

H

half 12:3 15:21 31:17**half-life** 11:2 20:3**handle** 59:18**happen** 50:15 54:20**happened** 33:4**happening** 7:8**happy** 14:5 55:8**harass** 14:9**hard** 19:20**harness** 47:23**hats** 9:2,11**HBPA** 38:23**HBPA'S** 53:15**head** 27:8,12 47:19**health** 6:16 7:21 19:8 37:15**healthy** 7:20**hear** 36:5 41:16,17,18**heard** 33:19 34:7 40:4,21 47:1
58:14 59:6**hearing** 40:22 41:7 55:21**heavily** 8:20**held** 37:6**helping** 8:3 9:12**helps** 59:2,18 60:4**high** 6:11 7:16 8:5 11:18,21 12:6
14:1 17:24 18:6,9,22 19:18,21
20:11,12 40:16 43:14**higher** 28:11**highest** 16:7,21**highlight** 56:5**hire** 12:8**history** 54:23**hit** 31:18 33:1**hold** 46:13**Honestly** 20:21**hooked** 42:2**Hoosier** 34:22 37:24 49:21**hope** 40:5 42:6 62:14**horse** 6:5,6 7:11,20,21 8:16,22
10:12 12:15 17:17 18:5,8,13,14
19:8,11 20:5 22:2,8 24:23 29:14,
16,18,22,25 34:19,25 43:10,11
46:2 52:5 54:2,8 58:3 59:2,3
62:22**horse's** 7:6,13 11:1**horseman** 39:7 41:20 46:18**horsemen** 6:15 8:3, 33:20
34:16 35:17 38:18,19 41:15 42:1
43:23 52:18 61:13**horsemen's** 62:10**Horseracing** 13:9**horses** 6:15 8:17,21 10:23
11:10,17 13:13 14:1,18,23 15:4
18:10,11 19:9,25 20:4,7,11 25:6,
12 26:16 28:23,25 29:2,8 32:2
33:13 34:8,20 35:2 36:10 37:9,
13,24 38:2,5 39:4,12 40:24,25
41:1,4,9,12 42:13 43:12 44:11
45:9,15 47:4 48:1 58:9,13,23
59:12,13 60:8 61:13,17**hours** 16:9,22 17:3 21:8 23:12,
13 34:10 35:20**human** 26:8,25 27:1,3,4 37:1**humans** 22:4 25:25**hundred** 10:19

I

IAC 49:11 51:24**IAC13.5-3-5(B)** 61:21**idea** 11:1,19 39:25 43:18 44:25**identifying** 48:14**IFHA** 13:9**IHBPA** 38:9**IHRC** 39:10**immune** 21:6**impact** 58:20 59:24**implement** 19:23**importance** 31:23**important** 6:1 10:15**importantly** 36:25**inadvertent** 8:23**incentive** 58:9 59:1 60:4,7,24
61:15**include** 37:17 40:18**includes** 13:13**including** 11:11**increase** 21:24 57:21 58:1,6,25
59:10 61:20**increased** 59:16,17 60:4**increases** 22:11**Indiana** 6:5 15:3 28:9 31:10
32:8 33:20 34:23 36:8 37:6,19
38:1,2,5,23 47:16 49:21 55:12,
16,19,23,25 56:1,16,20 57:21,25
60:22,25 61:15,20 62:22**Indiana-bred** 58:3,9,13 59:2,13
60:3,7**indicative** 10:14**individual** 55:16,17**individuals** 26:3 27:15 36:10**industry** 8:17 9:3,13**ineffective** 24:22**inference** 41:19**information** 12:17 34:11 37:20
45:22**ingredients** 40:14,16**initial** 53:16**injected** 8:22 15:20**injecting** 19:21**injections** 18:24**injurious** 7:13**input** 35:17**instructions** 18:4

instrumental 35:22
integrity 7:17 31:25 36:24
interest 36:23
interested 36:11
interim 28:22 47:8
international 13:7,8,13 17:6
internationally 13:3
interrupt 13:6
interviewed 31:19
introduce 6:24 36:13
introductions 7:23
investigating 30:20
inviting 22:24
involved 57:18
involves 28:23 54:13
ISA 38:8,13
ISO 51:15 52:1
issue 6:16,19 10:8 31:24,25
 32:1 44:3,13 48:4 50:18 59:23
 60:15
issued 8:11
issues 8:9 9:14 22:25 57:5
item 52:23 53:12 56:10 57:14,20
items 50:4
IV 15:20 16:2 17:19 18:16,17
 19:6,9

J

Jack 38:12,21
James 56:11 57:8
January 47:2 48:21
jeopardize 39:12
Jersey 47:6
Jessica 60:16
job 32:14 46:15
jobs 14:10
Joe 7:22,24 9:21,25 22:22
 24:15,20 25:21 32:14 33:5,15
 35:18 41:6 42:8,11,14,16,22

43:1,9,21 50:5,6 51:4,16,20
 52:5,9 53:6 60:13
John 57:24
Jon 57:23 60:13 61:3,9 62:4,5
judges 32:21
judgment 60:14
jugs 34:9
jumps 45:16,17,20
June 52:25
jurisdiction 45:22
jurisdictions 13:10 28:18
 29:21 31:22
justification 42:4

K

K-i-e-n-i-n-g-e-r 38:13
keeping 54:21 56:2
Kentucky 9:23 11:12 29:23
 30:6,9,18,20 35:4,7, 41:10 47:9
 49:7
Kentucky's 30:1
Kieninger 38:12
kind 7:7 11:1 26:15 28:8,16,21
 37:11 47:14 49:16
kinds 20:23
knew 20:21
knowledge 37:23 47:5 57:3
Knych 11:3

L

lab 9:1,12,23,25 49:8,10,13
 50:8,9,21 51:1
lab's 46:21
labeled 18:3
labels 34:17
laboratories 11:11 46:6
laboratory 11:12 34:1 49:8
 50:25
labs 49:14,15 50:12,18

lack 30:7 38:25
lame 29:15
largely 39:3
larger 40:2 59:1 61:5
latest 11:6
law 46:14
layman 7:4 17:16
left 12:5
letter 42:3
level 7:19 10:16 18:7,21 39:5
 40:6 42:1 43:13
levels 7:7,12,16 8:5,11 11:18
 18:9,22 19:21,25 25:8 32:3,10
 33:13 38:3 43:14, 45:15 48:16
levied 32:23
LGC 9:2 10:1
license 56:24
licensed 55:17
licenses 62:12
licensure 56:14,20 57:1
life 21:13
likelihood 17:13
limit 24:21
limitation 14:24
list 21:18 28:24 29:1,10,11,12,
 17,23,25 30:1 36:14
liter 34:10
live 49:23
loaded 48:1
logical 22:7 41:18
long 11:2 20:6 22:12
long-term 50:17
longer 20:13 24:7 27:13 54:5
longstanding 6:3
looked 10:9 11:24 12:20,25
 15:16,19,23 16:1 45:9,10 46:15
 60:18
lot 9:2,11 58:14
love 22:1

low 10:21 12:6 16:20 17:11,14
18:21 40:20 43:13,15

lower 13:5 45:3

lucrative 6:4

M

machine 6:4

machines 50:13,15

made 49:25 55:1

maintain 36:24

major 8:9

majority 13:10 14:11 58:23

make 13:9 21:13 24:14 29:16
31:13 37:4,17 42:18 43:3 44:22
46:7,10 50:24 57:6 61:19

making 9:14 21:2 61:5

malfunctions 50:13

mammal 22:11

mammals 22:3 26:14,17

manner 51:3

manufacturer 40:11

market 18:25

Mary 15:18

Maryland 47:10

matter 14:7 33:3 54:11

maximize 59:3

Meadowlands 44:14 47:3

meaningless 25:15

means 21:24,25 31:5

meant 42:13

measurement 14:19 15:1 22:6
33:24 34:3 46:8,16,22

measures 47:9

mechanism 26:11

media 31:18

median 12:3

medical 8:1 36:3

medication 10:12 20:24 29:15

Medications 9:20

medicine 27:1,5 39:18

meet 28:1 33:9 37:24

meeting 14:16 22:24 52:23,25
54:15,17 57:19 62:8,11,20,22

meetings 22:15 62:7

meets 49:20

member 9:8

members 39:10 40:18

mention 36:15

mentioned 22:25 27:19 40:9,10
42:11 47:1 59:21

met 28:2

mid 62:8,11

midst 55:5

Mike 38:23 42:8,10,13,15,19,24
43:5,16

milligram 10:20 15:21 20:8

milligrams 15:20,24 16:3 17:12
18:20 20:4

million 13:1

mind 24:15 39:2 43:12

mineral 7:5 17:18 27:21

Minnesota 28:21

Minnesota's 47:8

minutes 17:2 52:20,24 53:19

missed 54:9

mitigating 32:22

mls 18:19

model 60:2

modified 27:16

modify 48:5 53:17

moment 30:21

money 6:4

monies 58:18,20 59:25

month 17:8 21:20 33:8

months 10:3 20:19 55:7

morning 9:16,17 35:20 52:19

motion 52:16 53:25 57:7,13
61:19 62:3

move 48:3

muddle 47:15

multiple 34:7,9

mutual 30:3

N

national 32:7

nationally 50:1

natural 7:4

naturally 10:11

nature 37:16

necessarily 10:14

nervous 7:14

net 40:1

Newell 55:3,5,14,25 56:7,12,25
57:4

nice 58:8

nominating 37:12

non-high 19:5

non-science 7:3

nonpartisan 54:24

nonpolitical 54:24

noon 34:23 35:1

normal 10:16 12:1,7 16:17
17:13 18:11 39:5 41:2

normalize 12:1

normalized 12:15,19

normally-accepted 39:22

note 37:4

noted 53:2

notice 37:11

November 11:6

nuances 6:25

number 8:13 26:8 27:7 28:25
29:5 36:22,23 48:10 49:11,17
50:7,23 51:10,13,18 53:12
57:14,20 58:4,10 59:17

numbers 33:22 45:14**numerous** 44:4

O

observed 26:4 27:13**occurring** 7:4 10:11**October** 11:6 14:16 37:5 62:8**offered** 17:8**offering** 34:22,24**Ohio** 61:4,10**online** 11:7**open** 36:5 37:7,13 58:4,10,18,19
59:2,8,12 60:4,8 61:1,17**operate** 30:23**opinion** 61:1**opportunities** 58:13 59:11**opportunity** 10:4 33:3,12
34:20,24 35:11,13 46:18 59:14,
17**Opposed** 52:14 57:11 62:1**option** 6:13**oral** 15:25 17:23 18:4**oranges** 23:23**order** 24:22 27:24**ordinarily** 61:14**overage** 8:23 43:10**owner** 44:1 47:3**owners** 39:4 43:6**oxygenation** 21:25

P

pack 35:6**packet** 37:14,17 46:9,13**pages** 55:6**paid** 22:18,19**panel** 9:15 28:7 35:19**paper** 11:4**par** 61:6**paragraph** 53:5,12**parcel** 32:25**parenthetical** 49:13**pari-mutuel** 36:24 59:19**Park** 34:22 37:25 49:21**part** 12:13,18,22,24 14:20 15:11
16:5,7,11,23 17:1 20:6 23:9,14,
15,17 24:1,2,8 28:12 32:25
34:14 48:12**participate** 37:9,13**participation** 55:20**parts** 13:18,21 14:11 16:22 17:3
23:4,6,12 24:4,10 45:8**pass** 44:9,16**passed** 21:10 37:11**passes** 37:2**past** 14:15 55:7**patients** 26:8**peak** 12:6**penalty** 55:21,25**Penn** 15:19**Pennsylvania** 11:12**people** 7:24 14:6,10 26:16 39:3,
23 40:6**percent** 28:10 58:5, 59:6**percentage** 58:5**percentages** 12:4**perfectly** 25:5**perform** 50:12,19**performance** 7:10 25:11,24
40:13**period** 16:10 23:15,17 24:6,10
27:14 33:11 50:19**periods** 26:7**permits** 62:12**person** 13:25 54:16 56:3**personal** 54:2,6**petition** 53:7,8 57:20**pharmacokinetics** 39:17**pharmacology** 9:4,9 39:15**pharmacy** 19:1**phenomenon** 26:13**phonetic** 18:1**phrase** 41:17**phrases** 41:21**piggyback** 33:16**Pillow** 9:22 15:3 20:15 21:21
22:14,19 23:21 30:6,12,18 31:1,
8 44:19 49:1 51:8 53:22 54:17
56:23 61:3,18**place** 26:5 37:19 58:4**places** 59:13 61:14**plan** 53:13,15**playing** 7:19**point** 12:3 19:17 25:21 40:23
43:18**policy** 53:14**population** 11:20 29:4 59:3**portion** 60:7**position** 6:12 60:11**positive** 12:23 13:1 16:13,16
17:13 32:19 34:2,3,13 43:9 46:1,
3,7,14 58:25**positives** 38:4 39:23**possibility** 39:6,9**post** 15:14 16:6,7,18 48:13**post-race** 11:16 24:25**post-racing** 11:9**potential** 25:23 39:4 41:19**practice** 19:15**practices** 34:13 39:22**practicing** 9:5,10 35:12**precisely** 40:1**premeditated** 19:19**premises** 56:18**premium** 60:3**presence** 10:14

- present** 27:12
- presentation** 27:20
- presented** 17:5
- preserve** 27:8
- preside** 54:16
- president** 38:12
- presumption** 42:24
- pretty** 29:21
- previously** 23:1
- primary** 50:8 51:1
- problem** 51:21
- process** 11:23 20:25 35:1
- produce** 26:15 27:5,23 28:4
- produces** 26:16
- product** 15:23,25 16:1,2 18:1, 23 19:5 21:6
- production** 7:9 26:3,12,22 31:3
- products** 16:4 17:12,23,25 18:16,17 19:5 21:18 39:5, 42:20
- professional** 54:8
- program** 6:3 9:13 21:16 34:21 47:22 58:16,17 59:15
- progress** 49:25
- project** 31:17
- prolonged** 26:7
- prompt** 36:22
- promulgate** 36:20
- promulgation** 48:11
- proposal** 38:16
- propose** 51:9
- proposed** 15:7 32:16 53:7,8,9
- proposing** 33:7
- protect** 36:25
- proven** 22:9
- provided** 11:14 34:12
- public** 31:25 43:23 57:3
- published** 17:7
- pulled** 57:15
- purchase** 18:23
- purpose** 41:8
- purposes** 9:19 10:22 48:8
- purse** 32:19 57:22 58:2,7,17,18, 19 61:21
- purses** 59:18 61:4,10
- pursuant** 49:19 61:21
- put** 15:1 19:13 29:10,17 33:7,9 39:25 46:9,13,17
- putting** 28:23 29:9 47:18
-
- Q**
-
- quality** 46:10,11 59:23
- quantities** 27:21,25 28:4
- Quarter** 12:15 25:12 36:9 38:2 45:15 52:5
- question** 8:15 9:22 19:12 23:5 26:24 28:6 42:9 44:20 55:10
- questions** 25:22 35:15 55:8 56:4 57:6 60:10
- quick** 11:5
- quickly** 17:3 21:11,13 50:16
- Quorum** 49:2
-
- R**
-
- race** 8:5 16:18 21:7 25:6,8,9 29:15,16,19 33:9 34:11 37:5,13, 24 48:13 49:20 55:6 58:4,13 61:1 62:12
- races** 6:7,10 25:13 47:24 48:2, 16 58:10,24 59:17 60:3,4,25 62:15
- racetrack** 44:4
- racing** 8:17 9:19 17:6 29:21 30:17 36:19, 49:23 54:2,8 55:7, 12 57:25 62:22
- raise** 59:22
- raising** 61:4
- rapidly** 27:9
- rate** 28:20
- rationale** 60:18
- ratios** 30:7
- RCI** 20:25 28:22 31:12 47:13 48:4 49:25
- RCI'S** 9:4
- read** 29:8 34:17
- readings** 12:17
- readoption** 57:14
- real** 6:9
- realistic** 19:24 59:14
- reason** 8:12 26:14,19 50:11
- reasonable** 16:15 22:7
- reasons** 25:3 54:2
- reassess** 50:2
- receive** 35:17 49:23 54:14 60:3
- received** 36:6,7 38:8 42:12
- receiving** 34:8,9
- recently** 28:9,21
- recess** 52:21
- recognize** 31:23
- recombinant** 27:3
- recommend** 34:15 45:3 51:17
- recommendation** 12:13 13:17, 20 31:14 47:11 50:23 51:10,13, 18
- recommendations** 12:12 13:10 32:17 48:9,23 49:4
- recommended** 12:11 15:9
- recommending** 13:5
- reconsider** 50:3
- reconvene** 52:22
- red** 7:9 15:23 16:21 17:23 21:24 26:4,5,22 28:14 31:2
- redistribution** 32:20
- reexamine** 46:4
- referred** 23:11 26:25 39:1
- referring** 30:11
- reflect** 51:18

refused 56:14,15 57:1
regime 8:21
regimen 19:11
regions 23:5
Register 57:17
registered 16:11
registration 62:9
regret 54:7
regular 52:20
regulate 15:13
regulating 31:6
regulation 24:17,21 25:15
regulatory 39:25
reinstates 60:8
relate 23:6
related 39:3 54:11 57:4
relates 56:1
relations 31:25
relationship 23:2 43:16
relative 12:12
release 29:18,19
relied 8:20
remainder 48:18
remarkable 56:6
remarks 35:17
remiss 32:8,11 47:19
remuneration 54:14
renew 62:12
repeat 24:14
repeated 26:6
report 6:21,23 7:1 29:8 35:23
 45:13 49:5,18,24
report's 8:10
reported 10:19 34:1,2
reports 35:10
represent 43:5,6
represents 41:15

request 57:20 58:1 61:20
requesting 58:6
require 27:21,24
required 23:8 28:1 49:16
requirement 18:10 30:2
requirements 29:24
requires 49:12
requiring 52:1
research 11:3 21:16 22:2 44:22
 45:1,6 50:1
resigned 54:2
respect 32:23 33:2 51:13 53:4,
 15 55:19
respectfully 36:20 37:10
respects 23:23
response 52:15 57:12 62:2
responsibilities 54:5
responsibility 56:2
restricted 60:25
restrictions 14:24
result 7:6 29:1 46:23
results 11:13,15,16 35:8,9,
 46:10 49:18
returning 35:8
review 46:9 55:3 56:8
reviewed 10:8
revised 53:19
reward 58:24
Rhule 43:24
rider 57:1
risk 12:12,23 13:1 16:13,16,19
 41:15
River 61:11
RMTC 8:7 9:8,19 10:6 11:14
 14:13,14 47:11
Robinson 15:18 17:8
rolling 62:15
room 46:25

rule 19:13,23 20:17,20 21:2
 28:21 31:4,5,7 37:18 47:6 48:5
 49:3,11 51:24,25 57:21
rules 29:9 30:22 32:17 36:21
 48:11 49:19 50:3 57:15
rulings 55:3 56:9
run 40:24 54:15 59:2 60:8 61:14
runs 58:3

S

S-c-h-u-s-t-e-r 57:25
safety 31:24 36:25
salt 11:18 24:7 27:11
salts 10:19 26:6,20
sample 23:7,18 24:2,4,5,9,10
 33:22 35:14 46:4,8,19 49:9,13
 50:9
sampled 14:23
samples 11:9 14:17 16:8,9,10
 24:25 30:10,13 41:10,11 51:2
sampling 48:21
Sams 7:23 8:8,14,24 9:1,17,
 22:23 23:25 24:17,19 25:22
 30:6,9,13,20 31:2 35:19 44:21
 46:12
Sams' 24:16
sanctions 32:20,23
sand 47:19
sat 37:20
Saturday 37:4
scales 12:6
scary 41:21
scenario 50:7
Schaefer 54:1,3
schedule 25:6
Schenkel 54:12,20
Schuster 57:22,23,24 61:9 62:4
science 8:13 10:9 22:10 25:4
 41:25
scientific 10:7 13:22 32:7 47:17
 50:1

season 55:6
Secretary 57:17
section 51:23
secure 56:2
selected 40:24
send 17:8 37:14
sentence 53:5
separately 55:18
September 33:8 34:22,25 37:3 48:17
serum 23:24
services 50:12,19
set 10:6,15 49:14
settlement 56:10 57:7
ship 35:6
shooting 6:6
short 8:12 27:13 31:6
shorter 23:16
shortly 11:5
shots 42:12
show 25:9 34:6
shown 60:13
sign 52:14 57:11 62:1
signature 37:5
significant 28:25
similar 26:21 29:3,5
simple 39:21,23 40:13
single 40:11
sir 55:5 56:12
Sires 6:1,7,8 44:6 47:22
sit 31:11
sitting 9:12
situation 36:1 46:5 55:15 58:21 59:9
size 59:1
sizes 59:16
skewed 12:5
slot 6:4
slow 24:14
small 40:2 60:7
solid 41:23
sorely 54:9
sort 30:2
sound 60:13,19
sources 28:2
speak 6:21,24 7:25 8:24 10:4 41:6 43:1,7
speaks 59:22
specifically 53:3
specifics 33:6
split 13:24 46:19,21 49:9,12 50:9 51:2
spot 28:8 31:10 47:16
spread 25:13
spring 56:15 59:6 60:1
staff 7:16 28:8 32:17 35:22,23 39:10 45:13 48:9 49:5,17,24 51:13,18 52:17 53:7 56:11,12 57:8,24 60:11
stakes 6:2,7,8 37:7,13 44:6 47:22,24
stand 22:1
standard 12:19,21 13:4 22:5 39:8 41:12,24
Standardbred 6:2,14 25:6,10 29:4 30:17 36:7 37:24 51:25
Standardbreds 43:25 45:19 47:23
standards 9:5,10 46:11
start 9:21 37:24 38:1,2,4 46:25
started 29:2 30:9
starting 31:22 62:16
state 20:1 37:9 38:5 57:18 59:19
statement 43:3
statements 33:17
states 11:10 15:6 28:20 30:2 61:7
statistically 11:22
statistician 12:8
stature 59:22
stay 27:12 31:13
step 28:22 32:4,5 59:14 61:16
steroids 45:10
Steve 54:1
Steve's 54:4
stewards 32:21 40:4
stimulate 25:25
stimulates 7:9 26:3,11
stimulation 26:5
stop 6:13 19:15 38:19
stretching 16:14
strong 54:22
studied 24:12
studies 26:25
study 10:18 13:13 23:10
stuff 7:3
Subcommittee 9:4,9
submission 35:4
submitted 11:4
substance 10:11 22:10 32:2 48:15
substances 30:24 40:9,18 41:4
substantially 23:16 24:7 30:14
successful 58:8
suffered 26:9
suffering 18:14
sulphuric 21:7
supplement 18:9,17 28:3 58:2, 7,16,17 59:10 61:21
supplemented 13:14
supplementing 53:16
supplements 8:16,18,19,22 17:13,14,19 34:9,18 58:22
support 41:25
supported 53:10

supportive 49:5
supposedly 18:2 43:13
surprise 28:12
surrounding 61:7
swimming 8:17
syringe 19:6,9
system 7:6,14 11:1

T

tab 55:9,15,19
table 9:15
tactical 21:15
tainted 6:11
takes 11:2
taking 24:25
talk 8:2 29:13 55:18
talking 7:7 15:4 17:19,20 37:21
 38:3 43:12 46:19
tasks 54:13
taxes 59:20
technical 9:7
ten 9:6 15:13 20:10 25:5,7 40:15
 52:20
tenures 58:15
term 30:8 31:6
terms 26:21 32:20
test 34:20 35:2,13 40:24 43:10
tested 34:25 41:11 52:3
testimony 58:14
testing 9:4,9,12,20 25:17,18
 28:8,18 29:1,2 30:10,22,24 31:4,
 10 32:7,18 33:11 34:23 47:16
 48:14,19 49:8,10,14,19 50:8
 51:1,2
therapeutic 20:23
therapeutically 26:2
therapies 20:22
thing 11:8,9 25:16 42:5,6 46:1
 47:25 55:11 60:21

things 7:8,17 8:2 37:16,22 62:9,
 17,19
thinking 6:1
thirdly 36:25
Thoroughbred 33:23 37:5 38:1
 51:14 52:2,5 58:2
Thoroughbreds 25:12 36:8
 45:16 47:25 52:3
thought 6:12 13:25 28:16 32:12
threshold 10:6,13 12:14,22,24,
 25 14:12 15:8,12,17 16:24 20:7
 21:5,9,19 23:3,4,7,10,14,16,18
 24:2,3,5,9 25:19 28:12,22 32:18
 34:14 38:3 39:25 45:3,21 46:17
 48:12,16
thresholds 12:9 21:13 37:22
 48:18
throw 36:2
time 14:7 16:6 17:10 19:14,24
 20:6,16 22:12 23:8,20 26:7
 27:14 31:16,18 40:23 47:1 50:20
 52:18 57:16 58:23 62:10
timely 51:3
times 19:4,10 44:4
today 37:3,11 44:2 58:1 62:21
Today's 33:6
token 22:9
told 43:19
tomorrow 21:19
ton 55:4
total 16:21 38:2
toxic 7:12 32:3
toxicities 26:9
toxicity 26:24 27:2,18 28:5
trace 7:5 27:20,21
track 47:6 58:19 61:10
tract 27:22
tradition 54:3,25
trainer 32:21 33:2 40:22,24
 41:13,14 42:11,17,18,19,22
 43:2,8,11,17,18,19,20 44:1

trainers 33:12 34:16 35:2,9
 37:8,12 39:4 43:6 44:15 47:4
training 36:18
transcript 9:19
translates 15:12
treat 6:18
treated 11:18 14:2
treatment 41:3
treatments 26:8
Tribute 40:12
trip 40:6
Truesdail 11:12
Tuesday 34:21
turn 7:22
Twenty-five 33:1
types 40:14
Typically 50:15

U

UC 49:13 52:3
unable 51:2
unanimous 38:15
unauthorized 55:13
uncertainty 14:20 15:2 33:25
 34:4 46:8,16,22
uncommon 50:14
understand 7:3 10:21 17:18
 23:19 28:24 32:15 37:2,18 61:4
understanding 13:16,19 45:25
understood 43:17
unfair 39:13
unfit 29:15,16
unforeseen 60:5
United 15:6
University 11:11 15:18 35:3,6,
 7,9 49:7,9
unlicensed 56:3
unlike 10:12

unrealistic 20:10**urges** 36:20**urine** 23:3,4,11,24 24:3,9,10
25:19**usage** 6:11**useless** 24:22

V

vacation 17:9**valid** 43:18 58:9**values** 11:21 13:25**vast** 58:22**veracity** 43:7**versus** 23:24**vet** 40:25 42:24 43:1,11,16,19**vet's** 28:24 29:1,10,11,25 30:1
43:3**veterinarian** 9:8 29:19 35:12**veterinarian's** 29:17,23**veterinarians** 33:20 34:17
35:10**veterinary** 9:3 39:18 49:7**vets** 17:7 43:5**vice-chairman** 54:13,20**Vice-president** 36:19**views** 36:11**violate** 14:20**violated** 15:8**violation** 10:15 19:18 55:12**virtually** 20:9**Vita** 16:1,25**vitamin** 7:5 13:15 15:20 16:6
18:17,18,19 27:23,24 41:3 42:12**vitamins** 8:16,18,19,21 17:18
34:10 41:1 42:14,15,23 43:13,15**void** 61:16**vote** 13:23,24 14:7,8 38:15
48:24,25 51:12**voted** 14:3,4,10,11,14

W

wagering 36:24**wait** 20:13 31:12 47:15 48:6**waive** 49:11**waiver** 55:21**walking** 36:16**wanted** 38:13 54:9**wash** 8:17**ways** 10:10,17 11:25 17:23**wealth** 47:17**wears** 9:2,11**Weatherwax** 19:12,22 20:14
22:17 29:6 30:4 45:24 48:25
51:7,22 53:21 54:18 55:10,22
61:23**Wednesday** 34:25**wee** 35:20**week** 16:18 19:10 62:17**weeks** 40:21**weigh** 60:16**welfare** 6:16 37:1**Wendy** 60:15,21**widely** 40:12**window** 33:11**winning** 48:1**won** 44:11**word** 53:9,17**words** 45:5**work** 29:22,25 35:11,13,24
56:16,19,22**working** 21:5 22:12 30:3 31:16
35:22 40:25 59:5**world** 13:11 18:12 38:17**worried** 39:21**worry** 40:19**written** 36:6,8, 38:9,24**wrong** 42:5,6

Y

year 20:16 21:1 31:17,18,19
33:10 37:6,25 38:5 41:20 47:2
48:17,20 49:23 61:5**years** 9:7 22:16 26:1 56:21 58:5**yesterday** 30:15**yield** 46:22

Z

Zealand 24:18,19 25:14