

MEETING  
STATE OF CALIFORNIA  
HORSE RACING BOARD

BAY MEADOWS RACE TRACK  
THE LONGCHAMPS ROOM  
2600 SOUTH DELAWARE STREET  
SAN MATEO, CALIFORNIA

THURSDAY, MARCH 24, 2005

9:15 A.M.

JAMES F. PETERS, CSR, RPR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 10063

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMITTEE MEMBERS

Mr. John C. Harris, Chairperson  
Mr. William A. Bianco, Vice Chairperson  
Ms. Sheryl L. Granzella, Member  
Mr. Richard B. Shapiro, Member  
Mr. John C. Sperry, Member

STAFF

Ms. Ingrid J. Fermin, Executive Director  
Mr. Roy Minami, Assistant Executive Director  
Mr. Paige Noble, Chief of Administration  
Dr. Ron Jensen, Equine Medical Director  
Mr. John Reagan, Senior Management Auditor  
Ms. Jacqueline Wagner

ALSO PRESENT

Dr. Rick Arthur, Dr. Rick Arthur D.V.M. & Associates  
Mr. Steve Bieri, Capitol Racing  
Mr. Rodney Blonien, Los Alamitos Race Course  
Mr. Richard Castro, Pari-Mutuel Employees Guild  
Mr. Drew Couto, Thoroughbred Owners of California  
Mr. Charles Dougherty, California Thoroughbred Trainers  
Mr. Richard English

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Albert Fiss, The Jockeys' Guild

Dr. Norman Hester, Truesdail Laboratory

Mr. Alan Horowitz, Capitol Racing

Mr. Jack Liebau, Bay Meadows Racing Association

Mr. Tom Robbins, Del Mar Race Track

Mr. Daniel Schiffer, Pacific Coast Quarter Horse Racing  
Association

Mr. David Shell

Dr. Scott Stanley, U.C. Davis

Mr. Jeff True, Youbet.com

Mr. Ron Warren, California Jockeys' Guild

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

## INDEX

## PAGE

## AGENDA

## Action Items

1.	Discussion and action by the Board on the approval of the minutes of the Regular Board meeting of January 20, 2005.	2
	Motion	2
	Vote	2
2.	Discussion and action by the Board on the proposed change in venue for the 2005 State Fair meet.	2
3.	Discussion and action by the Board on the allocation of 2005 race dates for harness racing at:	3
	A. The California Exposition and State Fair (Cal-Expo).	
	B. The Los Angeles County Fair (Fairplex).	
	Motion	9
	Vote	10
4.	Discussion and action by the Board on the request of the California Jockey's Guild, Inc. (a recently established jockeys group), to address the Board regarding their deep dissatisfaction with the administration of the California Jockeys Health and Welfare Fund.	10
	Motion	35
	Vote	37
5.	Discussion and action by the Board on the primary drug testing contract for the 2005/2006 fiscal years.	38
	Motion	53
	Vote	53
6.	Discussion and action by the Board on the regulatory amendment to CHRB Rule 1663(a) Entry of Claimed Horse.	53
	Motion	67
	Vote	67

## INDEX CONTINUED

	PAGE
7. Discussion and action by the Board on the uniformity of TCO2 testing, the notification of trainers and the requirement of detention barns for trainers between meets.	67
8. Discussion and action by the Board on the employment of Pari-Mutuel Employees Guild Local 280 members at advance deposit-wagering facilities in California.	81
9. Discussion and action by the Board on the location and display of the satellite signal of the harness meet (at Cal-Expo) at Los Alamitos.	98
Motion	130
Vote	130
10. Report on the status of handle and attendance for all 2005 California race meets.	131
11. Staff report on the following concluded race meetings:	132
A. Capitol Racing, LLC. at Sacramento from September 24, 2004 through December 18, 2004.	
B. Pacific Racing Association at Golden Gate Fields from December 26, 2004 through January 30, 2005.	
Committee Reports	
12. Report of the Race Dates Committee	141
Commissioner Richard Shapiro, Chairman	
Commissioner Marie Moretti, Member	
Commissioner John Sperry, Member	
13. Report of the Medication Committee	141
Chairman John Harris, Chairman	
Vice Chairman William Bianco, Member	
Commissioner Richard Shapiro, Member	
Other Business	
14. General Business: Communications, reports, requests for future action of the Board.	141

## INDEX CONTINUED

	PAGE
15. Old Business: Issues that may be raised for discussion purposes only, which have already been brought before the Board.	141
16. Executive Session: For the purpose of receiving advice from counsel, considering pending litigation, reaching decisions on administrative licensing and disciplinary hearings, and personnel matters, as authorized by Section 11126 of the Government Code.	2
A. Personnel.	
B. Board may convene an Executive Session to consider any of the attached pending litigation.	
C. The Board may also convene an Executive Session to consider any of the attached pending administrative licensing and disciplinary hearings.	
Adjournment	141
Reporter's Certificate	142

1 PROCEEDINGS

2 EXECUTIVE DIRECTOR FERMIN: Ladies and gentlemen,  
3 would the meeting come to order.

4 This is a regular meeting of the California Horse  
5 Racing Board on Thursday, March 24th, 2005, at the Bay  
6 Meadows Racetrack, 2600 South Delaware Drive, San Mateo.

7 Present at today's meeting are Chairman John  
8 Harris, Vice Chairman William Bianco, Commissioner Sheryl  
9 Granzella, Commissioner Richard Shapiro, and Commissioner  
10 John Sperry.

11 Before we go on to the business, I'd like  
12 everyone to -- please state your name if you're going --  
13 but we're not going on to the business at this point. So  
14 we'll skip that part until a little later.

15 The Board is going to go into Executive Session  
16 immediately. And they're going to be going to another  
17 room, so everybody can stay right where they are. Just to  
18 announce that one of the -- the matter that's going to be  
19 discussed, that Commissioner William Bianco will be  
20 recusing himself. And I will also be recusing myself and  
21 then I served on the Board of Stewards for the decision  
22 when it initially came down.

23 So with that, we'll take a temporary adjournment,  
24 then be back.

25 CHAIRPERSON HARRIS: It should be about 15

1 minutes.

2 (Thereupon the meeting recessed  
3 into closed session.)

4 CHAIRPERSON HARRIS: Okay. We're going to  
5 reconvene the meeting of the California Horse Racing Board  
6 after our break for Executive Session.

7 The meeting's being held at the Bay Meadows  
8 Racetrack.

9 The First item is the discussion and action by  
10 the Board on approval of the minutes of the regular Board  
11 meeting of January 20th, 2005.

12 Any corrections, additions to those minutes?

13 Keep in mind that it's -- anything anyone wants  
14 to go back and research, which both the minutes and the  
15 transcripts of the meeting are on our website. So if you  
16 want to go back and see how profound your statement was,  
17 you can take a look at it.

18 COMMISSIONER SPERRY: Move adoption of the  
19 minutes, Mr. Chairman.

20 COMMISSIONER GRANZELLA: Second.

21 CHAIRPERSON HARRIS: All in favor?

22 (Ayes.)

23 CHAIRPERSON HARRIS: Okay. The second item is  
24 discussion and action by the Board on the proposed change  
25 in venue for the 2005 State Fair.

1 SENIOR PARIMUTUEL EXAMINER REAGAN:

2 Commissioners, John Reagan, CHRB staff.

3 As indicated in the staff analysis, the next item  
4 and this item are kind of intertwined in a sense that in  
5 order for the Board to select, for instance, A. The Cal  
6 Expo State Fair for the harness meet, the State Fair  
7 standard meet -- the standard fair mixed breed meet, which  
8 has been held in Sacramento for a number of years, would  
9 have to be adjusted somehow. In this particular case it  
10 appears that the State Fair is prepared to change the  
11 venue, in other words the location of the State Fair, and  
12 that's what this item deals with.

13 COMMISSIONER SHAPIRO: What are we supposed to  
14 do -- what's being asked of us right now?

15 SENIOR PARIMUTUEL EXAMINER REAGAN: We believe  
16 that the State Fair is prepared to ask the Board to  
17 approve the concept of allowing the State Fair to change  
18 its venue.

19 CHAIRPERSON HARRIS: Do they have a place to  
20 change it to in mind?

21 SENIOR PARIMUTUEL EXAMINER REAGAN: At this point  
22 I think they're still in negotiations. I have not been  
23 told of a particular location that they have arranged --  
24 made arrangements with.

25 CHAIRPERSON HARRIS: I'm not really clear. How

1 much latitude do they have in where they could move it  
2 and --

3 SENIOR PARIMUTUEL EXAMINER REAGAN: The horse  
4 racing law has a code section, 19549.1, that allows a  
5 combined fair meet where one -- where two or more fairs  
6 can work together to work through maybe a joint powers  
7 agency and then conduct their fair meets in a joint  
8 combined way.

9 CHAIRPERSON HARRIS: And the combined, does that  
10 mean it could be consecutive dates or could you have it  
11 one week one place and one week another place? Or how  
12 broad is that definition?

13 SENIOR PARIMUTUEL EXAMINER REAGAN: We've never  
14 done this before under that code section, so we've never  
15 really tested that concept and those particular words.  
16 Personally, John Reagan, if I was to look in the  
17 dictionary, I believe "combined" means probably  
18 contiguous. But, once again, that's only a dictionary  
19 type definition. And, like I say, having not done this  
20 before, we probably have a number of issues to address if  
21 this was to happen.

22 COMMISSIONER SHAPIRO: Well, why aren't we  
23 dealing with it then at a time where somebody has  
24 something to bring to us? As I understand it, the State  
25 Fair -- during the State fair -- the next item is going to

1 deal with this -- that there's the proposal that the dates  
2 will be running there with harness racing.

3 SENIOR PARIMUTUEL EXAMINER REAGAN: Right.

4 COMMISSIONER SHAPIRO: Now, if there is something  
5 else to come before us, why don't we deal with it when  
6 they have an option or a plan that we can consider rather  
7 than theoretically.

8 SENIOR PARIMUTUEL EXAMINER REAGAN: Yeah, I think  
9 the -- at the point this was put on the agenda there was  
10 the feeling or there was some confidence that those type  
11 of issues would be resolved by now and there would be some  
12 proposal on the table. Apparently that hasn't happened.

13 COMMISSIONER SHAPIRO: Well, then I would suggest  
14 that we hold this issue over until there is something that  
15 we know what we're talking about.

16 CHAIRPERSON HARRIS: Yeah, I don't think we're  
17 going to take action on something that's really -- have a  
18 proposal. I guess conceptually we're not opposed to the  
19 concept.

20 Okay. If there's nothing else on that from the  
21 Commissioners, let's move on to three, which ties into it,  
22 the allocation of 2005 race dates for harness racing.

23 SENIOR PARIMUTUEL EXAMINER REAGAN: John Reagan,  
24 CHRB staff.

25 I believe Mr. Shapiro, who's the Chairman of the

1 Dates Committee, has some information on that.

2 COMMISSIONER SHAPIRO: Right. We met  
3 yesterday -- the Race Dates Committee met yesterday. And  
4 it was a follow-up meeting to a prior Race Dates Committee  
5 meeting. The Race Dates Committee voted unanimously that  
6 the harness -- to recommend that harness racing shall be  
7 conducted at Cal Expo. And, therefore, we recommended  
8 that the Board adopt the Race Dates Committee's decision.

9 CHAIRPERSON HARRIS: I wasn't really clear on  
10 this. Is part of these dates actually Cal Expo dates and  
11 then part are private associations dates?

12 COMMISSIONER SHAPIRO: Well, there's two issues.  
13 At the first Race Dates Committee meeting we did vote,  
14 again unanimously, that during the period that the State  
15 Fair operates, and for the break between the current  
16 harness meet, which ends August 31st through September --  
17 and I don't have the exact dates -- that Cal Expo would  
18 operate harness racing during that period of time.

19 CHAIRPERSON HARRIS: So they would operate --

20 COMMISSIONER SHAPIRO: -- during the State Fair.

21 CHAIRPERSON HARRIS: I mean there's fair dates --  
22 I was just wondering. Legislatively do they have the  
23 authority to operate fair dates, say, as harness and then  
24 also operate fair dates at a surrogate facility someplace?

25 COMMISSIONER SHAPIRO: That's a different issue.

1 And I can't tell you whether or not the law provides that.  
2 What the Race Dates Committee did was it simply approved  
3 that Cal Expo had come forth on a one-year experimental  
4 basis to operate during dates that traditionally were  
5 thoroughbred dates at the State Fair, they're going to run  
6 them as harness racing dates. And that's what we  
7 approved.

8 As a subsequent matter, the Race Dates Committee  
9 approved -- decided between should the harness racing  
10 dates be allocated for the balance of 2005 to Fairplex or  
11 Cal Expo. And the Race Dates Committee voted to allocate  
12 those dates to Cal Expo. And that's as far as our  
13 decisions went.

14 CHAIRPERSON HARRIS: So you're the same as --  
15 that Cal Expo has a location, but not necessarily --

16 COMMISSIONER SHAPIRO: Correct, we did not deal  
17 with who the licensee would be. That would come up  
18 subsequently when whoever makes an application to race  
19 those dates comes forward.

20 SENIOR PARIMUTUEL EXAMINER REAGAN: Correct.

21 Commissioner, just a slight correction there.

22 The current harness meet runs through the end of  
23 July. Then there's an opening in August and most of  
24 September for this option of Cal Expo to run some harness  
25 dates. On or about September 23rd, I believe it is, then

1 the Sacramento Harness Association would come in and  
2 apply. But, like I say, that's for later consideration.  
3 Right now the Committee has simply recommended harness  
4 dates at Cal Expo for the remainder of 2005.

5 CHAIRPERSON HARRIS: Yeah, I don't really have a  
6 problem with that. But I was thinking that there was some  
7 number of days that a fair meet could operate, like 14  
8 days in the north.

9 SENIOR PARIMUTUEL EXAMINER REAGAN: I think the  
10 situation there is, as the fair meet there is 14 days per  
11 law. As harness, I believe the Code Section 19531 allows  
12 25 weeks in the north, and those can be operated by  
13 anyone. And then there's additional code sections in  
14 19549 that talk about that Cal Expo may lease its  
15 facilities for additional weeks. But there are enough  
16 weeks to cover a couple of months of Cal Expo operating a  
17 harness meet, I believe.

18 COMMISSIONER SHAPIRO: Correct.

19 CHAIRPERSON HARRIS: So officially the meet that  
20 was operating while the State Fair was going on might not  
21 be utilizing their 14 days of their fair meet because they  
22 want to -- or whatever days it is because they might be  
23 utilizing that someplace else?

24 SENIOR PARIMUTUEL EXAMINER REAGAN: Right. Right  
25 now we're anticipating a harness meet over the -- before

1 and after the fair meet -- the fair meet time. The fair  
2 meet itself of course is what some people call mixed  
3 breed, thoroughbred, quarters and what not. And that is  
4 the subject of the 19541.1 where they may combine with  
5 another fair to conduct that as another operator, so to  
6 speak.

7 CHAIRPERSON HARRIS: Okay. Do we have any other  
8 comments on this item?

9 Anything from the Board?

10 Do we have a motion to --

11 COMMISSIONER SHAPIRO: I'll so move that we  
12 accept it.

13 VICE CHAIRPERSON BIANCO: I'll second it.

14 CHAIRPERSON HARRIS: Do we have a comment?

15 MR. HOROWITZ: Yes.

16 CHAIRPERSON HARRIS: Yeah, go ahead.

17 MR. HOROWITZ: Alan Horowitz, Capitol Racing.

18 I'd like to comment for the Board that we think  
19 that harness racing deserves an opportunity to be back in  
20 southern California. And to that end -- to that end we  
21 submitted a request along with Fairplex Park to race  
22 there.

23 Obviously our racing program has for the last ten  
24 months and ten years -- has raced ten months a year in  
25 northern California. And we still feel strongly that it

1 should be in southern California. Fairplex Park has  
2 stepped forward this year and made their facility  
3 available. We understand that the Committee didn't think  
4 that that was the most satisfactory solution to the  
5 industry.

6 But we do want to continue to wish the industry  
7 good luck in northern California. And hopefully in the  
8 future there'll be an opportunity to get back into  
9 southern California.

10 Thank you.

11 CHAIRPERSON HARRIS: Anything else?

12 We had a motion and a second to approve this  
13 allocation.

14 All in favor?

15 (Ayes.)

16 CHAIRPERSON HARRIS: Opposed?

17 So moved.

18 The next item is discussion and action by the  
19 Board on the request of the California Jockey Guild, Inc.,  
20 a recently established jockey group, to address the Board  
21 regarding their deep dissatisfaction with administration  
22 of the California Jockeys' Health and Welfare Fund.

23 SENIOR PARIMUTUEL EXAMINER REAGAN:

24 Commissioners, as you know, for quite some time now  
25 there's been a lot of discussion and concern about the

1 conduct of the Jockeys' Guild located in southern  
2 California. And they take care of a lot of items,  
3 including the health and welfare program for California  
4 jockeys that's mandated by our law.

5           There's been a lot of difficulty getting the  
6 information out of the Guild. There's been change in  
7 management and a lot of difficulties, to say the least.  
8 And when we received this letter from the newly formed  
9 jockeys' group with a similar name, but a different group,  
10 California Jockeys' Guild, Incorporated, the one item that  
11 jumped out and concerned me greatly was the fact for the  
12 first time ever I heard about some unpaid bills. This was  
13 a first and a very serious matter I'm concerned about.

14           We spoke with Mr. Ron Warren. He's here today, I  
15 understand, and will probably speak to that. But there's  
16 so much going on with the Guild. We've certainly taken --  
17 as staff of the CHRB, we've taken a couple of different  
18 looks at it. There's a lot of commingling. I guess you  
19 could just say sloppy accounting. Some of the separate  
20 funds may be commingled. The point is, that it probably  
21 needs a very serious intense look, and we think a forensic  
22 audit is in order.

23           COMMISSIONER SHAPIRO: I'd like to underscore  
24 exactly what Mr. Reagan just said.

25           We have been having discussions with the Guild.

1 We've met with the Guild while they've offered to open up  
2 their books and records, and we took them up on that. We  
3 went down to the Guild and we waited for the Labor  
4 Management Board to complete their audit. Frankly, we've  
5 tried to accommodate in every way that we could, not  
6 getting into any -- and we don't want to get into any  
7 hostile situation with them. But there's no alternative  
8 left to us but to do a forensic audit through an outside  
9 firm. Their recordkeeping is lacking.

10           And when you add to it this California Jockeys'  
11 Guild has been formed, I've had numerous discussions with  
12 Mr. Warren, I've spoken with other jockeys who support the  
13 notion here, which is essentially that this group is being  
14 formed not to replace the Jockeys' Guild, but to create a  
15 new body to represent California jockeys. And this group  
16 is hoping to be able to be the recognized party to  
17 administer the funds that California gives to it for the  
18 health and welfare of jockeys.

19           I think that they're going -- they're taking all  
20 the right steps. They're moving forward very  
21 intelligently. Some of the southern California jockeys  
22 are involved and being consulted. And I know that they're  
23 making an outreach effort to the Los Alamitos jockeys and  
24 any jockeys throughout the state.

25           So I -- this is I believe just for informational

1 purposes. But we intend to move forward with the forensic  
2 audit as quickly as possible and get to some of the  
3 answers. In the meantime we've not disbursed any more  
4 money to the Jockeys' Guild.

5 I've asked Mr. Warren to provide copies to me of  
6 all of the unpaid or bills that are all the jockeys who've  
7 had difficulty making collections, because in my  
8 conversations with the Guild, they have asked that  
9 anything be brought to their attention.

10 So we're proceeding in that manner.

11 CHAIRPERSON HARRIS: Why don't we -- I know  
12 there's going to be some debate on this from different  
13 sides. Just to get a feel for the fund itself -- this  
14 fund is funded by something, uncashed tickets or  
15 something, isn't it?

16 SENIOR PARIMUTUEL EXAMINER REAGAN: Uncashed  
17 refunds.

18 CHAIRPERSON HARRIS: Uncashed refunds.

19 And how much money a year are we talking about  
20 here?

21 SENIOR PARIMUTUEL EXAMINER REAGAN: Well, the  
22 last couple of years we've been generating about a million  
23 dollars a year in uncashed refunds.

24 CHAIRPERSON HARRIS: And it goes into a fund, as  
25 I understand, to not completely pay for the jockeys'

1 insurance but to basically provide a subsidy to a jockey  
2 insurance program.

3 SENIOR PARIMUTUEL EXAMINER REAGAN: That is  
4 correct.

5 CHAIRPERSON HARRIS: Why don't we have -- since  
6 the Ron Warren group is the one that requested the item,  
7 why don't we have Ron go ahead and comment first, and then  
8 we'll get back to Mr. Vincent.

9 MR. WARREN: Yeah, this is Ron Warren.  
10 The California Jockeys' Guild would request the  
11 Board to give us these funds because we're a little  
12 dissatisfied with the way the Guild's managed the funds  
13 that they received. And then we feel that all these funds  
14 haven't been totally directed at the California Riders  
15 like they were intended to. And we'd like to see these  
16 funds go towards riders' health and welfare and use every  
17 penny of that instead of just portions of it.

18 CHAIRPERSON HARRIS: Okay.

19 COMMISSIONER SHAPIRO: Mr. Reagan, can I ask you,  
20 of every dollar that's allocated from California for this,  
21 do we have a sense of how much of that dollar goes to the  
22 actual benefit of the jockey versus how much is used in  
23 administrative and oversight?

24 SENIOR PARIMUTUEL EXAMINER REAGAN: Not entirely.  
25 And let me explain that.

1           When we first started this program in 1996-'97  
2 when the concept was established, then put into law, I  
3 think a lot of people, and myself included, thought that  
4 there would be a separate program for California jockeys,  
5 and just California jockeys, for instance. But what  
6 actually happened was the Guild found that was difficult  
7 or expensive. And what they did was they created a  
8 national program for all of their Guild members and  
9 jockeys that wanted to join the health program. And what  
10 they did was they included the California jockeys in that  
11 program. And then they adjusted the premiums that were  
12 charged to the California jockeys based on the amount of  
13 money that was contributed by the State of California and  
14 so on and so forth.

15           CHAIRPERSON HARRIS: I think isn't an issue too  
16 what constitutes a California jockey? As I understand it,  
17 now it's riding 50 mounts a year.

18           SENIOR PARIMUTUEL EXAMINER REAGAN: Right.

19           CHAIRPERSON HARRIS: Is that a threshold?

20           SENIOR PARIMUTUEL EXAMINER REAGAN: I think it's  
21 a hundred mounts a year, fifty of them in California. But  
22 that particular -- those type of criteria are actually  
23 established in an agreement that the TOC made with the  
24 Jockeys' Guild. And that was required in the initial  
25 legislation, that the horsemen's organization that makes

1 contracts and takes care of other matters should make an  
2 agreement with the Guild. And that came before the Board  
3 and was approved at that time. And of course as we moved  
4 along, we've all known that there's huge increases in the  
5 cost of health care for everyone, and of course jockeys  
6 are a fairly high risk group, so some of those premiums  
7 have gone up faster than others.

8           But the whole point is that the Guild itself is  
9 in charge of the program. We contribute some money. And  
10 we are trying -- we have always endeavored to track that  
11 money and to make sure that it was being spent on the  
12 California jockeys appropriately. And, like I said, with  
13 the difficulty in information being provided and so on and  
14 so forth, it's difficult to make sure that's a hundred  
15 percent the case, but we still strive to do that.

16           CHAIRPERSON HARRIS: But the actual details of  
17 the program were negotiated by TOC and the jockeys. And  
18 then the Racing Board basically disburses the money. But  
19 I'm not sure how much discretion we have in that.

20           SENIOR PARIMUTUEL EXAMINER REAGAN: Well, when we  
21 say disburse the money, first of all, the refunds are  
22 actually held by the tracks themselves. They hold those.  
23 And if they aren't used within three years, they escheat  
24 to the State of California as unclaimed personal property.

25           The way we disburse those funds is at a given

1 time when we decide we're going to give the jockeys X  
2 number of dollars, we then prorate that based on handle  
3 and -- I mean based on the total number of refunds that  
4 each track has or received in a given year. And then the  
5 Horse Racing Board does send letters to the various tracks  
6 indicating, "Your portion of this X number of dollars is  
7 these. Please submit that to the health and welfare  
8 trust." That money is sent to the trust. And then the  
9 Jockeys' Guild draws on that. As they use the money, it's  
10 audited and we have -- the audited reports are then the  
11 cause of the payment to be made.

12 COMMISSIONER SHAPIRO: But going back to my  
13 question. Do you have any sense of how much of every  
14 dollar is actually being paid to jockeys for benefits  
15 versus other expenses?

16 SENIOR PARIMUTUEL EXAMINER REAGAN: We haven't  
17 been able to determine that, no. That's one of the items  
18 that a forensic audit would show us, we hope.

19 COMMISSIONER SHAPIRO: All right. Because when I  
20 looked at the numbers, it appeared that nearly two-thirds  
21 of every dollar that was allocated was being spent for  
22 things other than actual benefits paid to jockeys.

23 SENIOR PARIMUTUEL EXAMINER REAGAN: In a recent  
24 review that was done of that program of those costs, we  
25 did find that the administrative expenses, not only of the

1 Guild but of some of the other providers, were very high.  
2 And we're approaching maybe 40, 50 percent of the total  
3 monies that had been paid.

4 VICE CHAIRPERSON BIANCO: I've been concerned. I  
5 was wondering, John, has there been a drop off since we've  
6 had the ADW in place of the amount of, you know, this  
7 money? And how much of a drop-off has that been?

8 SENIOR PARIMUTUEL EXAMINER REAGAN: Actually, Mr.  
9 Bianco, at this point we haven't really seen a significant  
10 change in that number. And what I mean to say, of course  
11 any number like your outs or your refunds it's not a set  
12 number, a set percentage. There's like a -- it's kind of  
13 like the temperature. You have annual highs, annual lows,  
14 and everything's always somewhere in between there. And  
15 at this point we haven't seen a hard drop-off.

16 We certainly anticipate, as more and more people  
17 have the account wagering where the uncashed tickets and  
18 refunds are automatically taken care of and they don't  
19 have to make any effort to cash those and get credit for  
20 them, that we would see that. But at this point we are  
21 still generating around a million dollars a year,  
22 sometimes nine hundred, sometimes a million two, whatever,  
23 but right around a million.

24 And we actually still do have a few extra refund  
25 dollars on the table from prior years. So we can

1 certainly accommodate a few more years of increase. But  
2 at some point we are reaching that equilibrium where the  
3 amount of refunds will at some point be exceeded by the  
4 actual costs in a given year.

5 VICE CHAIRPERSON BIANCO: Thank you.

6 CHAIRPERSON HARRIS: One issue too, John, that  
7 you mentioned was that you felt that jockeys were a high  
8 risk -- I mean a higher cost health group. I don't know  
9 if I'd agree with that. I think they're high -- as far as  
10 occupational injuries for workers' comp they're a higher  
11 rate of cost than, you know, somebody who was doing  
12 something in an office. But as far as a health group --  
13 is there any evidence that they -- actually as a  
14 population, are they a higher health risk, setting aside  
15 their occupational injuries?

16 SENIOR PARIMUTUEL EXAMINER REAGAN: I only know  
17 this from what I've been told by others. But I think  
18 perhaps in terms of the jockeys themselves, their overall  
19 health, some of the things they have to do to stay in  
20 shape -- to meet the weight and other such things may  
21 eventually cause health problems down the road that are  
22 covered -- that would make them a higher risk group. Yes,  
23 I do believe they are in that sense a somewhat higher risk  
24 group. And I think the insurance industry knows that.

25 COMMISSIONER SHAPIRO: I think one of the things

1 that maybe Mr. Warren would like to hear from us on, and  
2 I'd like to ask Derry -- Mr. Knight is, pursuant to  
3 Section 19612.9, I guess it would be, for us to recognize  
4 the California Jockeys' Guild, it's my understanding that  
5 they have to have a majority of the jockeys licensed by  
6 the Board.

7 How does that work and what do we need -- what is  
8 needed by either group to be the recognized body?

9 DEPUTY ATTORNEY GENERAL KNIGHT: Well --

10 COMMISSIONER SHAPIRO: How would that be done?

11 DEPUTY ATTORNEY GENERAL KNIGHT: There's two  
12 requirements. They have to have an office in California  
13 and they have to have -- they shall represent a majority  
14 of the jockeys licensed by the Board. There's nothing in  
15 either the statute or regulations of the Board that spell  
16 out how you make that determination of the eligibility of  
17 that body.

18 It seems to me that the way you would do that,  
19 you would compare the new organization's membership to the  
20 licensees of the Board that are California jockeys. And I  
21 realize that -- I understand that there may be some issues  
22 about that. But that's -- certainly looking at the  
23 statute, that's the only way that I can suggest that you  
24 would make that determination.

25 COMMISSIONER SHAPIRO: But you said licensees.

1 So does that mean current licensees of the Board? In  
2 other words, there may be 400 members of the Jockeys'  
3 Guild out there, but that's not what we're talking about.  
4 We're talking about licensees of the CHRB. So it would be  
5 current licensees and then a majority of those current  
6 licensees?

7 DEPUTY ATTORNEY GENERAL KNIGHT: That's how the  
8 statute seems to read, yes.

9 SENIOR PARIMUTUEL EXAMINER REAGAN: And,  
10 Commissioners, so you know, back in '96-'97 when we  
11 established this program, that's pretty much what we did.  
12 We took a list of the California licensed jockeys. We did  
13 delete a number of them because they really weren't  
14 active, mostly -- some of them were mainly pony riders  
15 that also had a jockey's license because they were hoping,  
16 you know, to make a career move, that type of thing. But  
17 we did come up with a list of the California jockeys and  
18 then looked for the majority, which at that particular  
19 time the Guild was really the only organization that was  
20 even in the game, so to speak.

21 CHAIRPERSON HARRIS: It's not -- going to be some  
22 inequities too where if a jockey only had to ride 50  
23 mounts a year here in California but was an active rider  
24 nationwide, then he is fully qualified under the  
25 California program and is equal weighted with somebody

1 that was maybe riding, you know, a thousand horses or so a  
2 year.

3           SENIOR PARIMUTUEL EXAMINER REAGAN: And as  
4 suggested by this new group -- the current agreement with  
5 the TOC and the Guild to support this program is good  
6 until the end of June 2006. So it would certainly be  
7 within the power of this Board and others to suggest  
8 perhaps that there are better criteria for California --  
9 you know, to determine a California jockey, and those  
10 could be incorporated into a new agreement if that's what  
11 the industry -- this Board and others decided would be  
12 more appropriate. We can certainly do that.

13           COMMISSIONER SHAPIRO: But since there's an  
14 existing agreement till June 2006, if, for instance, we  
15 find cause to terminate that agreement, we do our audit,  
16 we find that things are not in order, do we have the  
17 ability to terminate that agreement, do you know?

18           SENIOR PARIMUTUEL EXAMINER REAGAN: Since we're  
19 not a party to it but we did approve it, I would look to  
20 Mr. Knight and others I guess to let me know about that  
21 particular item. But to be quite honest, I find time  
22 moves pretty quickly these days; I would expect that by  
23 the time we get the audit in progress, we find out what's  
24 going on, we furthermore -- I mean I think June of 2006  
25 will be here pretty fast. And as we prepare for that,

1 it'll take a new months ahead of that before -- you know,  
2 as we put together the new agreement so it's ready on July  
3 1st of 2006.

4           So I think the time we have is probably just  
5 about right, to get the audit done, to figure out what's  
6 going on, and then to go ahead and make the changes we're  
7 talking about. I mean they would have to be done by July  
8 1st of 2006, and it will take some time.

9           CHAIRPERSON HARRIS: We have a representative of  
10 the Jockeys' Guild here.

11           Albert, would you like to make comment?

12           MR. FISS: Albert Fiss, Jockeys' Guild.

13           First off I'd like to -- I come to these meetings  
14 and I continue to hear inflammatory remarks from Mr.  
15 Shapiro with regards to the Jockeys' Guild and the way  
16 that we handle the plan with regards to the uncashed  
17 ticket money.

18           Unfortunately, it becomes an education process on  
19 our part to the Commission members. And we have to go  
20 through this cycle every single time a new commissioner  
21 gets on board and it's, quite frankly, very frustrating.

22           To address a couple of issues that he brought up,  
23 with regards to any unclaimed -- or unpaid claims on  
24 jockeys. Understand that about a year and a half ago the  
25 California jockeys came to the Guild with their

1 dissatisfaction with the network that they were involved  
2 in. It was a network that every other jockey that's in  
3 the Guild and in the health insurance plan is in. It's  
4 the way -- the only way that we can create a plan that  
5 allows for jockeys who are transient and move from track  
6 to track over the course of a given year to continue to  
7 participate in a plan.

8           If you create a plan only for California jockeys  
9 and, let's say, you use Blue Cross of California, and it's  
10 restricted so that you can't use another -- another  
11 network provider or another hospital in another state,  
12 well, that really doesn't do a lot of jockeys any good  
13 that happen to travel extensively.

14           So what happened last year with regard to the  
15 jockeys that formed this committee, which included Russell  
16 Baze and Chance Rollins from up here up north, they came  
17 up with the suggestion -- in fact, they came up with the  
18 recommendation to the Senate of the Jockeys Guild that  
19 they remove themselves from the network that all the other  
20 participants in the plan enjoy and move to a new plan  
21 called CCN. That was the decision of the California  
22 jockeys.

23           Now, the problem with that decision is that there  
24 takes some time to get a new network provider, an  
25 administrator to understand the complexities of this

1 industry. When we first started working for the Jockeys  
2 Guild, what we recognized was that almost 25 percent of  
3 all claims under the old health insurance plan that the  
4 Guild had for its members were claims that should have  
5 been charged to either a track because it was a non-track  
6 related injury or to the -- or to a workers' comp policy  
7 because it was in a workers' comp state.

8           And so what we did was we created a plan where we  
9 have a lot more control and understanding of each and  
10 every claim.

11           With regards to the new plan that the jockeys are  
12 involved in here in California, that process is in --  
13 we're in the process of educating the administrators of  
14 the plan on how it actually works to make sure that we're  
15 not paying for claims that we shouldn't be paying for.

16           COMMISSIONER SHAPIRO: Well, Mr. Fiss, first of  
17 all, I'm sorry that sometimes you find the truth to be  
18 inflammatory. The truth is that what I said was that  
19 there have been allegations that many jockeys are having  
20 trouble collecting on claims. I sat -- and I suggest you  
21 sit -- with Mr. Warren, and he will give you a list of  
22 jockeys who have been sent to collections because their  
23 health benefits have not been paid. Now, that's not being  
24 inflammatory. That's simply telling you the truth.

25           MR. FISS: But do you know in fact whether those

1 claims are claims related to family health insurance  
2 issues or claims related to a work-related injury?

3 COMMISSIONER SHAPIRO: Well --

4 MR. FISS: Do you know that?

5 COMMISSIONER SHAPIRO: No, I don't know it.

6 MR. FISS: Of course you don't know it.

7 COMMISSIONER SHAPIRO: Do you know it?

8 MR. FISS: You don't know it; I don't know it.

9 I'm the administrator of the plan. But to make that kind  
10 of a statement just blindly is inflammatory.

11 COMMISSIONER SHAPIRO: Well, it's a concern to us  
12 when we hear that jockeys are having trouble collecting  
13 when the state provides a million dollars to the Guild for  
14 a health and benefit plan. Now, all we're saying is that  
15 we keep hearing of these problems. We don't hear that  
16 there's a separate fund. The monies are being commingled.

17 MR. FISS: Not with regards to the million  
18 dollars, not with regards to the uncashed tickets. Mr.  
19 Reagan will tell you unequivocally that that money is not  
20 commingled.

21 And then to suggest that you're going to withhold  
22 money when you know full well that that money can't be  
23 released until August anyways is again inflammatory, it's  
24 a meaningless statement.

25 COMMISSIONER SHAPIRO: Well, until we get

1 satisfaction that the money's been spent properly, I for  
2 one would not be in favor of releasing the money to the  
3 Jockeys' Guild. And that's why we're going to do the  
4 forensic audit, which you in the past have welcomed.  
5 Maybe not you personally, but other representatives of the  
6 Guild. And we look forward to doing that, and be very  
7 happy to hear what the truth is.

8           CHAIRPERSON HARRIS: Do we have other --  
9 Commissioners would like to ask any questions or anyone  
10 else from the audience?

11           Does TOC have a position on this? Really TOC is  
12 basically -- their membership are the employers of the  
13 jockeys, and they're the ones that basically negotiate the  
14 contracts, that I think they need to be -- they definitely  
15 have a dog in this fight and we need to make their  
16 feelings known.

17           MR. COUTO: Good morning, Chairman Harris,  
18 members of the Board. Drew Couto with Thoroughbred Owners  
19 of California. That's C-o-u-t-o.

20           I believe in november this issue was raised  
21 before the Board. And Mr. Fiss stood in front of you and  
22 said, "Don't worry, we'll provide every document to TOC.  
23 We'll open the books. We'll allow them to look at it." I  
24 know this because I reviewed the record transcript fairly  
25 recently.

1           This Board asked us to send a letter to the  
2 Jockeys' Guild requesting disclosure of the information.  
3 Mr. Fiss didn't respond, but a lawyer on behalf of the  
4 Guild responded and denied all requests to look at any  
5 records.

6           We share the concerns based on the allegations  
7 that there may be some problems with the way in which this  
8 money is managed. Mr. Warren has pointed out some  
9 obviously valid concerns. And since we are a party to the  
10 contract and we have tried to obtain the information and  
11 we have been rebuked, I think under the statute it is  
12 appropriate for the Horse Racing Board -- we'll be  
13 involved as a party if the Board so wishes. But I think  
14 it is appropriate that a very close look be taken at these  
15 finances, the use of the public money, for the benefit of  
16 the California Riders. We definitely support that and  
17 would participate if requested to do so.

18           CHAIRPERSON HARRIS: Do you feel that the TOC  
19 could make a case that your contract with the Jockeys'  
20 Guild has been breached?

21           MR. COUTO: I don't think it's -- I think it's  
22 premature to come to any conclusion at this point. What I  
23 do know is Mr. Fiss again represented to this Board and to  
24 us that we would have access to the documents. It's in  
25 the transcript. Nothing was provided. We've been told by

1 counsel that it's inappropriate for us to do that. But I  
2 think it's -- it's necessary and we feel it's appropriate.  
3 So I cannot tell you if the contract's been breached until  
4 we've had a chance to look at everything.

5 CHAIRPERSON HARRIS: I mean the contract -- I'm  
6 just not clear if the contract really called for your  
7 ability to access information or addressed that at all.

8 MR. COUTO: You know, now we get into legal  
9 arguments whether the expressed language provides for  
10 audit or whether it's within the intent of the document  
11 obviously that the money be managed appropriately and that  
12 we as the statutory party designated would have the right  
13 to review this. That would be for a court to decide. And  
14 as a lawyer, I would think we would have that right.  
15 Another lawyer may think differently. But I think if the  
16 Horse Racing Board requests that this be done, we again as  
17 the party statutorily responsible would participate if  
18 asked to do so.

19 VICE CHAIRPERSON BIANCO: Drew, when you  
20 negotiated with the Jockeys' Guild, was there any ceiling  
21 that you put on what type of G&A could be charged into  
22 this particular fund?

23 MR. COUTO: I personally was not involved in the  
24 negotiations. It was my predecessor. And I do not  
25 believe that the contract specifies -- has that degree of

1 specificity.

2 CHAIRPERSON HARRIS: Another issue is that  
3 there's only so much money to go around. So the more  
4 people that are eligible, that it lessens the amount per  
5 person. So this 50-mount rule seems on the low side.

6 Was that a negotiation point or is there some  
7 logic to why 50 was a good number for a rider to ride  
8 during a year?

9 MR. COUTO: Again, I would defer to Mr. Van de  
10 Kamp. That was something that he negotiated.

11 But whether or not it's sufficient or not,  
12 there's no way to tell until there's an audit of the funds  
13 to determine if it's being used properly. And if, as Mr.  
14 Reagan said, that in the future we could expect a  
15 reduction because of the impact of ADW, that money that's  
16 not being -- that's not necessary today should probably be  
17 set aside as a reserve for future needs for the riders  
18 rather than used for any other purpose that it may be  
19 currently used for. We don't know until we get a look at  
20 that.

21 Thank you.

22 MR. FISS: Another point with regards to the  
23 current contract. I've stated publicly that I have  
24 absolutely no problem with actually agreeing with the TOC  
25 to terminate the contract at any point where they feel

1 like it should be handled by somebody else, including the  
2 California Jockeys' Guild, Inc., organization. I made  
3 this comment to Mr. Warren before the meeting here today.  
4 I'm going to cooperate in any way I can with the jockeys  
5 that ride here in California.

6 CHAIRPERSON HARRIS: Any other comments on this  
7 issue?

8 I don't know if we resolved -- I think in total  
9 California has the best program for total benefits with  
10 the workers' comp and this program and several others.  
11 But we just need to make sure that there's fairness and  
12 equity in all administration. But I guess the problem  
13 would be that we really -- the way the legislation is, we  
14 really only can give the money to one group. We couldn't  
15 give some to one group and some to another group.

16 SENIOR PARIMUTUEL EXAMINER REAGAN: Correct.

17 CHAIRPERSON HARRIS: So it's sort of a  
18 representation of what represents the majority of the  
19 jockeys.

20 SENIOR PARIMUTUEL EXAMINER REAGAN: Right.

21 CHAIRPERSON HARRIS: Okay. Anything else on  
22 this? Do you have anything else, Ron?

23 MR. WARREN: The only other thing is that I would  
24 request you guys going back over and defining the  
25 qualifications for a California jockey. The group that

1 I'm representing feels that a hundred mounts would be more  
2 appropriate than 50, and that maybe -- hopefully the CHRB  
3 could determine that a rider to be a California rider  
4 would have to ride a hundred mounts in the state to be  
5 eligible for it.

6 CHAIRPERSON HARRIS: Yeah, I think that's a -- I  
7 mean especially it sounds like the Jockeys' Guild is  
8 willing to reopen the contract. And that's something that  
9 TOC -- I think just on an equity standpoint, it's not  
10 really fair for some rider to come in from Canada or  
11 Florida or someplace and ride a month or so here and be  
12 completely -- and have exactly the same benefits as a  
13 rider that rides 12 months a year here.

14 MR. WARREN: Yeah, because we don't want to see  
15 guys losing business just because somebody comes during  
16 the fairs or something and rides a month and establishes  
17 the 50 mount minimum and then, you know, goes back and  
18 rides in Kentucky or something like that. We want to take  
19 care of California riders, riders that are supporting the  
20 cause here, guys that are day in and out in California,  
21 supporting California horse racing. And that's what our  
22 group is trying to do, is make California horse racing  
23 better.

24 CHAIRPERSON HARRIS: Okay. Mr. Fiss.

25 MR. FISS: Well, to the extent -- with regard to

1 that last comment. The 50/100 issue, it takes some  
2 looking into. That original proposal was actually made  
3 because of the very fact that you had a number of jockeys  
4 from Arizona and Oregon and Washington that would come in  
5 and ride the fair meet during the fair season. Now,  
6 another way of restricting the money to ensure that it  
7 goes to California riders only is to use a residency  
8 restriction. That obviously is something that can be  
9 discussed amongst all of the stakeholders on this thing.

10 My job, quite frankly, is to get similar plans in  
11 other states so that it doesn't really matter where you  
12 meet your 50/100 criteria; there's money in those states  
13 that provide for subsidies for health insurance for  
14 jockeys.

15 CHAIRPERSON HARRIS: Now, that would be the  
16 ultimate solution. But as of now, I mean this is a unique  
17 program to California, as I understand it. The other  
18 states -- this is not something that's done on a national  
19 basis.

20 MR. FISS: No, it's not. But it is done in  
21 Delaware. And Delaware also has the same 50/100 criteria.  
22 Delaware runs for, I believe -- and, Ron, you might be  
23 able to correct me if I'm wrong -- about six months out of  
24 the year. And obviously Delaware, because of the high  
25 concentration of states surrounding, it would have a much

1 greater -- has a much greater susceptibility to riders  
2 going in there and riding the 50-mount requirement and  
3 then just leaving the state and going right into the  
4 regular track again. And they don't seem to have a  
5 problem with it.

6 CHAIRPERSON HARRIS: Well, it's something I think  
7 needs to be looked at, because I can see there's a  
8 legitimate concern that people are basically taking  
9 advantage of our program, and doing so are harming more  
10 full-time people riding out here.

11 EXECUTIVE DIRECTOR FERMIN: Mr. Chair, I have a  
12 question on whether or not -- do we need some kind of  
13 action from the Board in order to move ahead with and  
14 authorize the audit and to explore a firm? Or is this  
15 something that we can just go ahead and -- that it's your  
16 desire that we go ahead with with staff?

17 COMMISSIONER SHAPIRO: I thought it was already  
18 basically approved and implied as a result of our prior  
19 meetings and discussions, that we have the obligation and  
20 a fiduciary responsibility to provide the oversight to  
21 make sure that the funds are being allocated properly and  
22 that's part of our job.

23 So if our staff is unable to do it, I believe  
24 that it extends to the point of having the right to  
25 perform the forensic audit. I don't know --

1           DEPUTY ATTORNEY GENERAL KNIGHT: Yeah, you could  
2 take action. This is as action item. You have the option  
3 of directing staff to do it themselves or to seek  
4 outside --

5           EXECUTIVE DIRECTOR FERMIN: We would be seeking  
6 obviously, you know, an outside firm. But if it is an  
7 action item, then I think we need to that --

8           DEPUTY ATTORNEY GENERAL KNIGHT: Well, it could  
9 be an action item the way it's agendized.

10          COMMISSIONER SHAPIRO: Then I'll make a motion  
11 that we instruct staff to select a forensic auditing firm  
12 to perform a forensic audit of the Guild and the finances  
13 that are provided by California in the health and welfare  
14 plan of our California jockeys.

15          VICE CHAIRPERSON BIANCO: I second it.

16          COMMISSIONER SPERRY: My only question is:  
17 What's the fastest way to get it done? So that if the  
18 cases are -- and the jockeys aren't being properly taken  
19 care of, that they can be. And if an outside audit will  
20 expedite it -- and I presume the gentleman from the Guild  
21 has -- even though his attorney has said that they're not  
22 going to open the books, that he seems to be willing to do  
23 so. That we'd just need to get it done fast.

24          MR. FISS: With regards to the uncashed ticket  
25 money, absolutely, we'd be willing to do so. In fact, a

1 member of the CHRB Board, Carl -- and I forget his last  
2 name -- was at the Guild offices last week and in fact  
3 performed the very audit I believe that you are speaking  
4 about. So I'm not really sure where this Board is going.

5 COMMISSIONER SHAPIRO: No. This is a different  
6 audit. What he was there doing was -- he was a staff  
7 member that went down to look at the books and records and  
8 determine whether we had the capability to do a forensic  
9 audit or not. What we're talking about is a full forensic  
10 audit by an outside accounting firm. It's not the same  
11 thing.

12 MR. FISS: And has his report been submitted to  
13 the CHRB?

14 COMMISSIONER SHAPIRO: I believe he reported back  
15 to Mr. Reagan. And I will tell you that I have had  
16 numerous conversations with Mr. Broad. And I forgot your  
17 CFO's name.

18 MR. FISS: Gevork.

19 COMMISSIONER SHAPIRO: Yeah. And we met with  
20 them, and they had no problem with our performing the  
21 forensic audit. In fact, welcomed it, just so you know.  
22 But --

23 SENIOR PARIMUTUEL EXAMINER REAGAN: And,  
24 Commissioners, so you know, we have already been making  
25 inquires of CPA firms as to who would be interested. And

1 I can tell you, when given a brief, broad thumbnail sketch  
2 of the situation, a lot of them say, "No thank you." You  
3 know, they say, "This is fraught with litigation," and so  
4 on and so forth.

5           So we're doing the best we can. And we will  
6 certainly select a firm as soon as possible. But it is  
7 interesting that so many firms nowadays are being very  
8 careful about their clientele.

9           CHAIRPERSON HARRIS: Okay. We've got a motion  
10 and a second to move forward with the audit.

11           All in favor?

12           (Ayes.)

13           CHAIRPERSON HARRIS: Opposed?

14           So moved.

15           SENIOR PARIMUTUEL EXAMINER REAGAN: We will do  
16 so.

17           Thank you.

18           CHAIRPERSON HARRIS: The other issue I think too  
19 is that I -- I don't think we really need a motion for,  
20 but I'd sure like to see the parties pursue, is TOC, the  
21 Jockeys' Guild and then the new group, the California  
22 Jockeys' Guild -- which I think they should change their  
23 name to something that's not quite as -- distinguish  
24 themselves a little better.

25           But, anyway, all the groups try to get together

1 and maybe reopen that contract and see if there's flaws in  
2 the contract between TOC and the group that can be  
3 addressed, that that could move things along a lot better  
4 than some of the audits and all this. And I think we just  
5 need to get everybody together and see what a fair  
6 solution is.

7 Okay. Well, let's move on to -- thank you, Ron.

8 Move on to discussion and action by the Board on  
9 the primary drug testing contract for the 2005-2006 fiscal  
10 years.

11 We have Dr. Jensen.

12 EQUINE MEDICAL DIRECTOR JENSEN: Dr. Ron Jensen,  
13 the Equine Medical Director for the Board.

14 Yesterday the Medication Committee met for the  
15 purpose of discussing the primary drug testing contract  
16 for the Fiscal Year 2005-2006. After that discussion the  
17 Committee recommended -- the Committee voted to recommend  
18 to the Board that all CHRB samples be sent to the Maddy  
19 Lab at UC Davis under an interagency agreement.

20 And the staff recommends that the Board hear from  
21 the Chair of the Medication Committee.

22 CHAIRPERSON HARRIS: Okay. Several of you were  
23 here yesterday when we discussed this.

24 Any other discussion by the Board or the audience  
25 on this issue?

1           COMMISSIONER SPERRY: Mr. Chairman, I just  
2 wondered, was there a problem with the Truesdail  
3 Laboratories previously as to a reason as to why we're  
4 looking into eliminating them completely?

5           And then the other thing, my understanding is,  
6 there is a major difference in expense. And was that  
7 addressed?

8           CHAIRPERSON HARRIS: Well, I think that would --  
9 the interagency agreement would have to address the  
10 expense. I'm not sure if it's clear there is a major  
11 difference.

12          COMMISSIONER SPERRY: Well, I believe there is  
13 currently, isn't there?

14          EQUINE MEDICAL DIRECTOR JENSEN: There's  
15 currently a difference in price. And it was not -- my  
16 sense was that the Committee did not feel that it was a --  
17 anyway, a knock on Truesdail Laboratories. It was just  
18 felt that the needs of the Board could be better fulfilled  
19 by utilizing one laboratory that's a state-of-the-art  
20 laboratory, a new ISO-accredited laboratory; and that the  
21 financial part of it could be worked out under an  
22 interagency agreement, agreeable to both parties, under  
23 the guidelines of the interagency agreement rules by the  
24 State of California.

25          CHAIRPERSON HARRIS: But are the -- the concept

1 would be if you enter into negotiations effectively on the  
2 interagency agreement and the costs are -- you know,  
3 there's unknown costs that make it untenable for us or  
4 their ability to phase in this higher number of samples,  
5 we would be able to look at other alternatives also.

6 EQUINE MEDICAL DIRECTOR JENSEN: I believe that's  
7 correct, yes.

8 CHAIRPERSON HARRIS: Okay. Did you have  
9 something?

10 DR. HESTER: Yes. My name is Dr. Norman Hester  
11 from Truesdail Laboratories. And I'd like to thank the  
12 Medication Committee for a patient hearing of my viewpoint  
13 yesterday. And I've given all of you again a copy of sort  
14 of the outline that I went through at the Medication  
15 Committee yesterday.

16 And lest you panic, I don't intend to go through  
17 every item again. But I would like to just kind of  
18 summarize some of the points that we raised yesterday. I  
19 think there was a lot of issues raised that they were  
20 worth repeating.

21 First of all, the original reason why there were  
22 two labs is so that you would have a diversity of testing  
23 that would be applied to the samples. And by having two  
24 labs doing two different types of testing, you are  
25 applying two samples here in California a good

1 representation of the different types of testing that are  
2 being done around the U.S. and not just focusing on one  
3 particular type.

4           Another valid reason is that when you have part  
5 of your work bid competitively, you do have the  
6 marketplace that helps you control costs. And our  
7 contract is not just awarded or negotiated. It's a  
8 competitively bid process. We have lost the bid on  
9 occasions in previous years. So you do have the  
10 marketplace working on making sure that you're getting  
11 cost effectiveness in what you're doing. And you will  
12 lose some of that if you just go to a negotiated-type  
13 contract.

14           I went through some of the strengths and  
15 weaknesses. I won't go through all of those again today.  
16 I hope you will look at what we've provided.

17           There is no perfect way to do drug testing. You  
18 know what we do here is limited by budget. You could  
19 spend ten times what you're doing and still not test for  
20 every drug on every horse. But you have to look at what  
21 your resources are and how you expend them. And the  
22 current cost differential in terms of what's billed to the  
23 Board, okay, is that Davis is on a horse-by-horse basis  
24 costing you about twice what we're billing. They're  
25 getting something like 600,000 for one-third of the

1 samples. We're getting around 550, 575,000 for two-thirds  
2 of the samples. So there is a substantial cost difference  
3 that you need to weigh in your processing of what you're  
4 doing here.

5 I did point out yesterday there are some tests  
6 that we have access to that Davis has not had access to.  
7 In particular, part of the sheet that I've put there is  
8 the tests from Testing Components Corporation or  
9 particular types of alizes that Truesdail has access to  
10 that have not been employed by UC Davis for -- shall we  
11 say, for lack of any better argument or political  
12 reasons -- they haven't been able to employ those tests  
13 and we have.

14 I know they were talking about the super-testing  
15 that was talked about Davis being able to do, certain --  
16 being the contract lab for some of that. But one of the  
17 drugs that was identified in that super-testing is a test  
18 that's only available from Testing Components Corporation,  
19 and we have been able to employ that test and California  
20 was free of those drugs.

21 The other thing is that if you're paying twice as  
22 much, are you getting a lot more for your money? And the  
23 number of positives that have been reported for the last  
24 couple of years have indicated that both technologies are  
25 very effective. We are both reporting positives.

1 Truesdail has in fact reported more, but then we test more  
2 samples. So that -- you know, statistically we are doing  
3 a job, we are finding drugs, we are reporting drugs and we  
4 are effective.

5           My argument is we are cost effective; that is,  
6 you're not getting twice as many positives per dollar for  
7 the twice as much amount of money that you're spending  
8 with UC Davis. So there's issues there that you  
9 rightfully ought to consider in the things that you're  
10 evaluating here before you make your final decision.

11           Now, again, I don't know what your budgets are.  
12 Your staff is better able to make that evaluation. But if  
13 in your wisdom and in your recommendation from Dr. Jensen  
14 that you are fully convinced that direct instrumental is  
15 the way you're going to go, but you do have budget issues,  
16 does it not make more sense to try to work out some sort  
17 of transition rather than doing it all at once?

18           And I will tell you, and anyone who does this  
19 work will tell you, drug testing is not a commodity that  
20 you just buy off the shelf. You can go into a car dealer  
21 and if you want one car or three cars, they're really glad  
22 to see you. But if you try to triple the amount of  
23 testing that's going to be done at UC Davis -- and I know  
24 you've got your reassurances that they're going to be able  
25 to do this, and I wouldn't expect them to say otherwise --

1 but there is going to be an impact in tripling the amount  
2 of work that goes there that is going to be difficult to  
3 overcome in the short term.

4           Isn't it more reasonable to make some transition?  
5 For example, they currently do one-third. Just for sake  
6 of argument, why not move them up to half if there's  
7 budget issues. And the way the contracts are written,  
8 it's one-year contracts with three or -- options with an  
9 indefinite quantity. That if you do a commercial  
10 contract, you can decrease the number of samples without  
11 even negotiations. That's quite possible. Okay?

12           There were some issues raised yesterday with  
13 regard to service. And I'm not going to repeat those, but  
14 there were some issues raised by CHRB staff with regard to  
15 issues in terms of just getting information they wanted  
16 from UC Davis. And I want to remind you that at the last  
17 Medication Committee meeting one of the things that you  
18 did was you increased the number of days allowed for  
19 reporting into the trainers. That was an 18-day issue in  
20 the past. And you decided to increase that to 21. I  
21 think that's a wise decision, by the way.

22           But one of the issues -- one of the driving  
23 forces that caused that to come about was the fact that  
24 many times Davis has been up to the last day in getting  
25 reports. And we have occasionally ourselves. Okay, it's

1 a tight squeeze. But if Davis has been having that  
2 problem already, how much more of a problem is it going to  
3 be if you triple the amount of work that they get with  
4 just a couple, three months notice?

5           So I'm hoping that you'll just kind of give some  
6 thought to this kind -- these issues. You will lose some  
7 things if we go away. I think your staff was very clear  
8 that we have serviced your people who work at the tracks.  
9 We're very easy to access. We provide them a lot of  
10 information.

11           I pointed out yesterday having a lab in the south  
12 has helped a lot with the southern racing in that we do  
13 provide some same-day results for those trainers who are  
14 trying to make sure their horses have cleared certain  
15 drugs before they run in big race.

16           We've been able to get the same-day clearances on  
17 clenbuterols, procaines and issues like that. And that  
18 won't happen if you got to ship them overnight. Sorry.  
19 Even if they're willing to get them as soon as they --  
20 analyze them as soon as they come in, You simply can't do  
21 same-day kind of service down there.

22           So I do hope you'll reflect on these a little  
23 bit, these comments that I'm making, and perhaps agree to  
24 have some sort of transition program rather than an  
25 all-or-nothing decision.

1           And I do thank you for your time. Regardless of  
2 your decision, I do want to say it's been a privilege  
3 working for this Board. We have worked for you for 50  
4 years, and myself for over 20.

5           So thank you very much.

6           CHAIRPERSON HARRIS: Thank you. I think anything  
7 we do is definitely no reflection on anything -- any  
8 problem with Truesdail. I think Truesdail's done a great  
9 job for us over the years. And I think we're just looking  
10 at a different way to proceed.

11           Do we have a motion on this?

12           VICE CHAIRPERSON BIANCO: I would just like to  
13 ask Ron -- I have some concerns about the costs. And I  
14 know I should be asking this to Scott. But my biggest  
15 problem is: Are we opening up Pandora's Box by not having  
16 a ceiling on what we're going to be paying?

17           EQUINE MEDICAL DIRECTOR JENSEN: It's my  
18 impression that under an interagency agreement, that it  
19 can all be worked out. You can include a ceiling -- in  
20 other words, there's only so many dollars available for  
21 drug testing. And that would be the figure that we'd be  
22 working with.

23           CHAIRPERSON HARRIS: I agree we have to be  
24 prudent. But I don't -- we've got a, you know,  
25 multi-billion dollar industry here. I don't think we can

1 try to skimp on testing just on cost.

2           VICE CHAIRPERSON BIANCO: I don't want to skimp.  
3 I just don't want to actually just open up where, if we're  
4 paying right now -- the numbers I heard, these are just  
5 estimates -- were about 1.1 million. You know, if you  
6 turn around and tell me it's going to be \$2 million, you  
7 know, what can I live with?

8           COMMISSIONER SHAPIRO: It was my understanding of  
9 the process that, again, what we're doing in the  
10 interagency negotiation is we're simply moving forward, at  
11 which point we'll be able to establish what the cost will  
12 be, what we're going to get for it. And if we don't find  
13 it acceptable, we still have the opportunity to go back  
14 out and go to rebid it.

15           In the conversations that I've had with Dr.  
16 Stanley, it appeared as if the tests were at a competitive  
17 value. But, again, I don't think we're making a final  
18 decision. We're just moving forward with an interagency  
19 agreement procedure to see if we can negotiate something  
20 that's palatable and that we are able to improve our  
21 testing procedures. That was all.

22           EQUINE MEDICAL DIRECTOR JENSEN: Yes. And Mr.  
23 Minami just reminded me that in developing the interagency  
24 agreement, there will be a -- whatever money's available  
25 for drug testing for the current -- or for the upcoming

1 year will be the target date. And that will be the -- I  
2 mean the target amount, that that will be the ceiling that  
3 will be put on it. In other words there's going to be so  
4 much money available, and the interagency agreement will  
5 be worked out to reflect that.

6 COMMISSIONER SPERRY: Well, wouldn't you cut the  
7 number of tests down if you're running out of money?

8 EQUINE MEDICAL DIRECTOR JENSEN: Absolutely, yes.

9 And I think the -- the interagency agreement  
10 would allow the flexibility to do that, and also to  
11 address problems as they arise in a more timely manner  
12 than if you have a strict number of samples that have to  
13 be tested under a contractual agreement.

14 COMMISSIONER SHAPIRO: Wait a minute. I'm not  
15 sure -- I understood what Commissioner Sperry was saying.  
16 If you have to cut the number of tests to meet budget,  
17 which I thought was the point he was making --

18 COMMISSIONER SPERRY: That's what I'm asking.

19 COMMISSIONER SHAPIRO: -- that would be  
20 detrimental to us. Well, wouldn't we in fact be saying  
21 that we want at least the same number of tests for that  
22 value so that we're not having to cut the number of tests  
23 to meet the value?

24 Is that right, Commissioner Sperry?

25 COMMISSIONER SPERRY: Yes.

1 EQUINE MEDICAL DIRECTOR JENSEN: I'm sorry. I  
2 may have misunderstood the question.

3 I think that -- what I'm saying is that we  
4 wouldn't cut the number of tests. But if budgetary  
5 problems arose, we may be able to reduce the number of  
6 samples that are tested.

7 You understand what I'm saying?

8 COMMISSIONER SHAPIRO: No.

9 EQUINE MEDICAL DIRECTOR JENSEN: There has been a  
10 move in the industry and recommendation of various groups,  
11 including the McKenzie report which was commissioned by  
12 the Jockey Club about six or seven years ago, that drug  
13 testing should focus more on the quality of testing, the  
14 amount of testing done on a sample, as opposed to  
15 increasing the number of samples that are collected -- not  
16 are collected but that are tested.

17 COMMISSIONER SHAPIRO: Well, okay. I think  
18 that's a separate issue. But going to Commissioner  
19 Sperry's point, what we don't want to do is hear that we  
20 have a million dollars available for testing and because  
21 we're using UC Davis, "Sorry, you can only do a thousand  
22 tests," whereas at Truesdail we used to get 1500 tests.  
23 In essence, that's increasing the cost per test.

24 I understand what you're talking about. It's a  
25 different issue, which is the qualitative aspect of the

1 testing. And that I think is one of the reasons, by going  
2 to instrument testing, we are looking at making this  
3 change. I'd like to hear from Dr. Arthur on this because,  
4 again, what's important here is, as new medications are  
5 developed, as we continue to find new things and we have  
6 to strengthen our testing and our procedures, it's my  
7 understanding we're taking a move to doing that. With no  
8 knock on Truesdail. We're not saying anything  
9 inflammatory towards Truesdail.

10 Do you want to comment?

11 DR. ARTHUR: Dr. Arthur, Oak Tree Racing  
12 Association.

13 I really think that we're kind of hitting on a  
14 key point. As long as you're looking at the cost per test  
15 sample, Truesdail will probably be the Maddy Laboratory  
16 any day of the week. They're a commercial laboratory.  
17 They're able to keep their costs low. But what we're  
18 really talking about is qualitative testing.

19 I think we're really at a crossroads. It's  
20 bewildering to me that we have the Maddy laboratory, with  
21 all the assets they have, all the capabilities, and are  
22 not utilizing that facility to the utmost.

23 The McKenzie report -- it's actually been well  
24 over ten years ago -- came out with a conclusion that  
25 we're spending -- testing too many samples and not

1 spending enough time on each individual sample.

2           What I think is a real attractive aspect of this,  
3 it allows us to totally reevaluate our drug testing  
4 program. Drug testing is a deterrent. And the McKenzie  
5 report very effectively analyzed statistical probabilities  
6 of finding positives under different scenarios. And their  
7 basic conclusion is that we should be spending much more  
8 money on each individual sample.

9           It also gives us an opportunity, particularly  
10 with some of the experience we had with the database with  
11 TCO2 testing. We can freeze some samples. We may not  
12 test as many samples in the future, but we'll do a better  
13 job with those samples. And if we find, for example, that  
14 trainer X has a positive for a particular drug, we're  
15 still able to -- with maintaining those samples, to go  
16 back and examine those. I don't know if that's what the  
17 Maddy Laboratory has in mind, but it's one of the  
18 scenarios we can do. This is an opportunity to take drug  
19 testing to a different level.

20           We have the assets of the university. We have  
21 access to toxicologists, epidemiologists, botanists, no  
22 matter what you want, at the university. And I think we  
23 should utilize that.

24           There's nothing against Truesdail Laboratory.  
25 They're a very competent laboratory and they're cost

1 effective.

2           But the Maddy Laboratory is one of only two A2LA  
3 accredited Laboratories to ISO 17025, an international  
4 standard. There's only one other racing laboratory. Dr.  
5 Catlin's laboratory, who does olympic testing at UCLA, is  
6 accredited.

7           And, frankly, if it wasn't for the quality of the  
8 Maddy Laboratory we could not have done the TCO2 testing  
9 we did at the levels we do. In fact, you will hear where  
10 many states use a 39 millimole level. And a lot of that  
11 is because they don't have the laboratory quality that the  
12 Maddy Laboratory offers us.

13           The bottom line is that if we implement -- if we  
14 move all the testing to the Maddy Laboratory, if -- we  
15 have to remember it's a research laboratory. The  
16 instrument at testing was innovative when it was done,  
17 when the Maddy Laboratory first started. It was actually  
18 the first laboratory to do wide -- a large number of  
19 instrumented testing as they did. We're going to need to  
20 look at protein peptides, the EPO's, the growth hormones,  
21 the synthetic hemoglobins. And you're going to need a  
22 research laboratory that's going to have to be able to  
23 adapt very quickly. You can't be tied tide into a  
24 commercial contract.

25           Nothing against Truesdail. It's in their

1 contract. But they're using thin layer chromatography as  
2 their major screening method. That is a method that when  
3 I took biochemistry as an undergraduate in the late '60s,  
4 that wasn't even a new technology then. So, you know,  
5 it's just the fact that this gives us an opportunity to be  
6 a world-class jurisdiction in terms of drug testing.

7 And I think we need to take the opportunity, and  
8 this is the first step.

9 CHAIRPERSON HARRIS: Okay. Any other comments  
10 from the Commissioners?

11 Do we have a motion on this?

12 COMMISSIONER SHAPIRO: I'll so move that we  
13 proceed with a -- to an interagency agreement with the  
14 Maddy Lab at UC Davis.

15 CHAIRPERSON HARRIS: I'll second.

16 Any other discussion?

17 All in favor?

18 (Ayes.)

19 CHAIRPERSON HARRIS: Any opposed?

20 It passes.

21 The next item is the discussion and action by the  
22 Board on a regulatory amendment to CHRB Rule 1663(a),  
23 Entry of Claimed Horse, item 6.

24 Do we have somebody to present this?

25 MS. WAGNER: Jacqueline Wagner, CHRB staff.

1           The proposal before you to amend Rule 1663 would  
2 amend the rule to make horses that are claimed in a  
3 claiming race ineligible to run out of state until 90 days  
4 after the close of meeting except in a stakes race.

5           As you know, this issue has been discussed a  
6 number of times before this Board. Beginning in July of  
7 2000 the issue was heard with a proposal almost identical  
8 to what we have here today, except for the time -- of jail  
9 time would be 60 days. At that time proponents of the  
10 proposal was -- the intent of the amendment was to keep  
11 horses that are claimed here -- to keep them in  
12 California. At that time TOC opposed the amendment on the  
13 grounds that it would restrict an owner's ability to use  
14 his property to his best advantage.

15           We also received an informal opinion from the  
16 Attorney General at that time that the rule prohibiting a  
17 horse claimed in California from participating in any  
18 out-of-state race for an extended period of time would be  
19 unconstitutional as a violation of the commerce clause of  
20 the United States -- of the Constitution. We also heard  
21 this issue in 2001, again in 2003 and in 2004.

22           As a result of the last Board meeting where staff  
23 was instructed to go ahead and review this proposal, we  
24 did some checking with several other racing jurisdictions  
25 to get their take and their rules as to how they will

1 handling the situation.

2           Our research resulted in finding that there are a  
3 number of jurisdictions that do have restrictions on  
4 horses claimed out of state -- claimed in their states,  
5 remaining in the state for a period of time. The results  
6 were showing that the average was 60 days, versus what  
7 we're proposing here for 90 days. As a result of that,  
8 staff would recommend that we amend our current proposal  
9 and require that the horses be required to remain in the  
10 State of California for 60 days.

11           CHAIRPERSON HARRIS: Okay. When this originally  
12 came up a few years ago I was not sure if it was a good  
13 idea or not. But it seems to me that now we really do  
14 need something like this to protect our horse population  
15 in California. Because we have so many new states coming  
16 on that really were not competitors to California.  
17 California had racing that would hold the horses here.  
18 But now there are a number of horses being claimed to exit  
19 the state. And we're an island out here. And once we  
20 lose a horse, there's no -- it's hard for us to replenish  
21 our supply.

22           So I think -- you know, there are a lot of  
23 commerce issues and all. But if other states are doing  
24 this, I think especially if we amend it to 60 days, it's  
25 not a burden on anyone that claimed a horse that -- but it

1 will discourage horses leaving the state.

2           We'd like to hear from audience on their feelings  
3 on this.

4           MR. DOUGHERTY: Charlie Dougherty, California  
5 Thoroughbred Trainers.

6           As you know, in previous times CTT did oppose  
7 such a rule. However, given the change of circumstances,  
8 we have seen a dramatic increase in the amount of horses  
9 leaving once they've been claimed. So at this time we  
10 would support the proposed rule change. We think it is in  
11 the best interests of California to help keep horses  
12 within the State of California. The increasing shortage  
13 of horses and field size is starting to have a devastating  
14 effect here in California, so we do support the rule  
15 change.

16           MR. COUTO: Good morning again. Drew Couto on  
17 behalf of Thoroughbred Owners of California.

18           TOC also supports this measure, not as an  
19 anti-competitive restraint on the flow of these horses,  
20 but for several factors, including the fact that we  
21 subsidize stabling and vanning in the state. We have to  
22 budget over a period of time. The uncertainty and the  
23 flow of horses creates some issues for us, particularly in  
24 the long run. And so we feel that we're better protecting  
25 the budget, the stabling and vanning funds and this

1 resource here in the state. And so at this time we would  
2 support the regulation.

3 Thank you.

4 COMMISSIONER SHAPIRO: Can I ask for a  
5 clarification. Maybe I misheard.

6 We're talking about extending it for an  
7 additional 60 days to 90 days, is that --

8 CHAIRPERSON HARRIS: Well, I think -- if the  
9 original proposal was 90, I think this is judged to now,  
10 which I think is probably prudent, that we reduce the 90  
11 days after close of a meet to 60 days. Because currently  
12 there's no -- I mean when a given meet is concluded. For  
13 instance, if Santa Anita, say, concludes on April 21st,  
14 someone could enter the horse in Prairie Meadows or  
15 someplace the next week if they wanted to, that --

16 COMMISSIONER SHAPIRO: Well, I'm in favor of this  
17 rule. But what I don't understand is why -- I'm in favor  
18 of it being 90 days. But why is it -- I'm just kind of  
19 surprised in -- I thought I heard staff say 60 days. And  
20 yet when I looked at the staff's analysis, it was 90 days.  
21 And the rule amendment that's in front of me was 90 days.  
22 And, frankly, I favor the 90 days. So I don't know why  
23 it's being changed to 60.

24 Would the prior speakers also support 90 -- well,  
25 Mr. Minami's up fast, so there must be something wrong.

1 EXECUTIVE DIRECTOR FERMIN: One of the things  
2 that -- now it says at the end of the meet. And as has  
3 been mentioned, we've gotten people who have come in and  
4 suddenly cleaned us out within the last couple of weeks of  
5 a meet. So we thought 90 days sounded good. When we  
6 started looking at the other states, it looked like the  
7 longest period of time was 60 days. And Mr. Knight has  
8 cautioned us that really if somebody were to decide to  
9 take us to court, it might be a difficult situation.

10 So we thought we would maybe be better off being  
11 in line with what some of the other states are doing.

12 CHAIRPERSON HARRIS: I would think 60 days -- I  
13 mean in a way I could see 90 days. But I think 60 days  
14 would achieve the same result, that somebody's not going  
15 to claim a horse if it's going to be tied up for 60 days  
16 if they leave the state. So I think it's kind of  
17 academic, but 60's probably enough.

18 COMMISSIONER SHAPIRO: Well, could we ask the  
19 prior speakers if they would feel the same way if it was  
20 90 days? I mean we're out here on our island, and I  
21 have -- I'm just concerned that it's a lot of --

22 EXECUTIVE DIRECTOR FERMIN: They're probably not  
23 going to do it, you know. They're going to be discouraged  
24 at 60 or 90 probably. But I think part of it was the  
25 influence of Mr. Knight.

1           CHAIRPERSON HARRIS: I think it's important we  
2 don't get something that someone challenges us on. I  
3 think at 60 days there's maybe less likelihood of a court  
4 challenge. It's something that's just a rational move.

5           Mr. Robbins.

6           MR. ROBBINS: Tom Robbins, Racing Secretary at  
7 Del Mar.

8           I'm okay with 60 days. I'm probably better at 90  
9 days.

10           I think the other part of this issue is what the  
11 other states are going to recognize, and if they're going  
12 to be supportive or honor what our rule is. And certainly  
13 I think 60 days is probably easier to swallow than 90  
14 days. And I think that's pretty critical. We can do  
15 whatever we want. And if they don't honor it, then I  
16 guess we don't have any support for -- or what we're  
17 trying to achieve, and that is to keep out-of-state  
18 interests or owners from coming in to California with the  
19 sole purpose of claiming horses, no intention of running  
20 them in California, simply to take them out of California  
21 and run them in other states. It's bad for our business.  
22 It's not good.

23           The only thing I would add is that this  
24 problem -- and I'm thrilled to hear the support of TOC and  
25 CTT, which we're not in support in the last several

1 presentations of this modification. It is a particular  
2 problem that's only going to get worse. We had a wake-up  
3 call last year when an owner came from out of state and  
4 essentially took about a hundred horses out of California  
5 in a six-month period. And with all these slots-fueled  
6 racetracks that are opening up offering purse structures  
7 double what they have been, it's just going to become  
8 worse.

9           So 60, 90, I'm thrilled with 60. Thank you.

10           And speaking on behalf of all other racing  
11 secretaries in California as well and the racing  
12 associations.

13           Thank you.

14           MR. DOUGHERTY: Charlie Dougherty, CTT.

15           In regards to your question, Mr. Shapiro. I  
16 believe that 60, 90 is a big enough disincentive for  
17 somebody to come in. So we would be willing to accept the  
18 60 day.

19           And we agree with the rationale that as long as  
20 we're in line with other states, there might be less  
21 likely litigation involved if somebody were to challenge  
22 that.

23           MR. LIEBAU: Jack Liebau from the Bay Meadows  
24 Racing Association.

25           We also favor the rule. I think the problem is

1 more acute in the north than even in the south, because of  
2 the ability to move lower priced claiming horses into  
3 jurisdictions that have much higher purses.

4           The one thing that maybe needs some clarification  
5 is it's my understanding that in the past the fair circuit  
6 has been considered to be one meet. And I think that that  
7 is of some importance, and would hope that the rule might  
8 incorporate that. And I'm not sure as to the origin of  
9 that concept. But I think that that has been the  
10 understanding in the past.

11           Thank you.

12           CHAIRPERSON HARRIS: That would be important, I  
13 agree.

14           MR. LIEBAU: Pardon me?

15           CHAIRPERSON HARRIS: Could we just incorporate  
16 that into the rule somehow or --

17           MS. WAGNER: I could address that in the  
18 amendment.

19           CHAIRPERSON HARRIS: Okay. So now that we're  
20 changing it -- this has to go out for public notice --

21           MS. WAGNER: Correct.

22           CHAIRPERSON HARRIS: -- and then come back. So  
23 we're not really enacting it at this point. But we're  
24 going to change it to 60 days and clarify that a meeting  
25 to include the northern California fairs as one race

1 meeting.

2 Do I have a motion to put this out?

3 DEPUTY ATTORNEY GENERAL KNIGHT: Excuse me. I  
4 just -- I'm not clear. What Jackie had mentioned was --  
5 the proposal was that the horse be required to stay in the  
6 State of California.

7 CHAIRPERSON HARRIS: No, you don't have to stay  
8 here. You can go any place you want. You just can't  
9 start someplace else.

10 DEPUTY ATTORNEY GENERAL KNIGHT: Well, okay. But  
11 my understanding was that was the proposal that she made,  
12 which is what the other states have, as I -- am I correct  
13 on that?

14 MS. WAGNER: Correct. We're recommending that  
15 the 90 days be amended to 60 days.

16 CHAIRPERSON HARRIS: Sixty. But it's not -- we  
17 need to clarify, the horse does not have to stay in  
18 California. It just cannot --

19 MS. WAGNER: No, he would just be ineligible to  
20 race.

21 CHAIRPERSON HARRIS: -- the sanction is it just  
22 can't start. So it would be sort of a disincentive for  
23 people to take them out. But clearly too someone could  
24 purchase a horse privately and take it out. But they just  
25 can't claim a horse and start it in another state. And

1 we're dependent on the other states honoring California's  
2 rules, which I guess there is precedent for.

3 DEPUTY ATTORNEY GENERAL KNIGHT: Can I just  
4 clarify?

5 My understanding from this was that the  
6 out-of-state states that you did survey, that their rule  
7 didn't preclude racing in another state, but rather it  
8 precluded removing a horse from that state for a set  
9 period of time.

10 MS. WAGNER: That's correct.

11 DEPUTY ATTORNEY GENERAL KNIGHT: Okay. And the  
12 reason I raise that is that makes a difference in terms  
13 of -- the issue that we've been concerned with is  
14 California trying to regulate a race in another state.  
15 And of course that's a concern that this may not raise.  
16 Indirectly it raises the same kind of an issue. But we  
17 haven't looked at the issue of holding it within the  
18 state. We've only looked at the issue of, and we have a  
19 concern about, trying to restrict what another state can  
20 do with a horse that's been removed from California.

21 CHAIRPERSON HARRIS: Yeah. That issue has been  
22 ongoing. I mean we would have that now. If someone  
23 claimed a horse on December 26th at Santa Anita and then  
24 decided they were going to run it in some other state  
25 today, they would not be able to do it. And other states

1 have not challenged that.

2 EXECUTIVE DIRECTOR FERMIN: That would be if the  
3 other association is going to honor our rule, which they  
4 generally do. Very often the stewards will get a phone  
5 call from Washington and say, "There's a horse entered up  
6 here. What is your rule?" And they'll scratch the horse.

7 CHAIRPERSON HARRIS: If we do approve this to go  
8 to the rule-making process, when would be able to actually  
9 have this in place?"

10 MS. WAGNER: The normal timeframe, as soon as we  
11 get back to the office, I will prepare the text based on  
12 what we've discussed here. It will go to the Office of  
13 Administrative Law and have that 45-day comment period  
14 that we will have to have. That's the normal procedure.  
15 Once the 45-day comment period has concluded, we will come  
16 back before this Board for adoption. Once it has reached  
17 that level, then we'll prepare the final rule-making file.

18 So we're talking probably two, three months.

19 CHAIRPERSON HARRIS: Yeah. So possibly by about  
20 June we'd have the --

21 MS. WAGNER: Hopefully, yes.

22 CHAIRPERSON HARRIS: Okay. Well, do we have a  
23 motion to put this out for comment as amended?

24 COMMISSIONER SHAPIRO: Can I just ask one more  
25 question?

1           Would it be possible for us to -- in the event  
2 that horse is removed from the state, is there a way for  
3 us to calculate the amount of money that is spent for  
4 vanning and stabling and have, in essence, some form of  
5 a -- whoever is removing that horse, that in addition to  
6 the -- they would have to repay the amount of money that's  
7 been spent on vanning and stabling costs? Again, I'm  
8 trying to keep horses in the state here.

9           CHAIRPERSON HARRIS: No. I'd hate to get that  
10 tied into this rule. That is sort of a separate issue.

11           COMMISSIONER SHAPIRO: I don't know if it can  
12 be -- I'm trying to see if -- can it be tied into this  
13 rule?

14           CHAIRPERSON HARRIS: Well, I think it would just  
15 complicate this rule. I mean there's so many different  
16 situations that -- this rule is easier to enforce, because  
17 the horse either starts someplace else or it doesn't. But  
18 there's so many horses that are turned out or this or  
19 that, I'd hate to get it complicated into this rule.

20           Maybe there -- that's sort of a different area  
21 that we could look at, that there be some sort of account  
22 that people had. But that's something we need to look at  
23 on another day.

24           VICE CHAIRPERSON BIANCO: I'd like to recommend  
25 to Ingrid and Roy that we look into this and bring it back

1 to us, what type of costs we're looking at on these  
2 claimed horses that are moved out. You know, are we  
3 looking at a couple hundred thousand dollars a year or,  
4 you know, are we looking at \$25,000 a year?

5 CHAIRPERSON HARRIS: Yeah. Well, I think that  
6 really the oversight for that should be the -- the tracks  
7 and the horsemen are really in charge of the -- it's  
8 really their fund. This stable and vanning fund is  
9 administered by them. I think they need to take a look  
10 and see if they're leaving money on the table that they  
11 could better utilize other places. We sort of have  
12 oversight of it. But I think we need to get --

13 COMMISSIONER SHAPIRO: Yeah, I'm kind of  
14 responding to Drew's comment, which is that they have an  
15 investment in these horses and keeping them and money's  
16 allocated to them. And if there's a way to quantify that  
17 it comes out to so much money, and in fear of somebody  
18 that swoops in and takes a hundred horses, he also gets a  
19 bill for a million dollars that he has to pay back any  
20 stabling and vanning that was invested in that horse over  
21 the last year. Maybe that's a further disincentive to  
22 come in and raid our horses.

23 CHAIRPERSON HARRIS: Yeah. Well, I'd like to get  
24 this rule done first.

25 COMMISSIONER SHAPIRO: No, I'm not trying to

1 change this rule.

2 CHAIRPERSON HARRIS: Well, let's get a motion --  
3 we've got a motion to approve this rule, I think.

4 VICE CHAIRPERSON BIANCO: Second it.

5 CHAIRPERSON HARRIS: All in favor?

6 (Ayes.)

7 CHAIRPERSON HARRIS: And then let's look at the  
8 other -- the other issue's a valid issue, but it gets  
9 pretty complicated.

10 CHAIRPERSON HARRIS: If you want to take a quick  
11 break, we can.

12 We're taking a quick break here.

13 (Thereupon a recess was taken.)

14 CHAIRPERSON HARRIS: Okay. I'll call the meeting  
15 back to order. There are a few people still coming back.

16 The next item on the agenda is the discussion and  
17 action by the Board on the uniformity of TC02 testing, the  
18 notification of trainers and the requirement of detention  
19 barns for trainers between meets.

20 DR. ARTHUR: Dr. Arthur, Oak Tree Racing  
21 Association.

22 The TC02 program is -- between the TOC, CTT and  
23 the individual racetracks. All racetracks have agreed to  
24 the conditions of the TC02 testing, either contractually  
25 or intend to do so. And the penalties will be held over

1 from track to track.

2           These are maximum penalties and they include:

3 The first offense, 30 days in detention barn; the second  
4 offense allows for 15 days of refusal of entry; and the  
5 third offense, the trainer can be removed from the  
6 racetrack. These are the maximum penalties. What  
7 penalties will be imposed will depend on the relevant  
8 circumstance. However, the time is passed where any  
9 sympathy or special understanding is due to any of these  
10 trainers.

11           We do review each case. And we compile a  
12 database with all test results, with the horse's trainer,  
13 date, race. And we examine those results when they meet  
14 with the trainers. And it actually has been a very  
15 powerful tool and something that should be continued.

16           For example, one trainer had the explanation of  
17 a -- got a muffin mix in a gift basket they just happened  
18 to feed to this horse that tested high. But we could  
19 actually review his record and see that it was actually  
20 giving gift baskets back in Del Mar.

21           (Laughter.)

22           DR. ARTHUR: We did incidentally administer a  
23 muffin mix to a horse at UC Davis, which is another  
24 example of the advantage of working with that particular  
25 facility. And it doesn't make much difference.

1           The trainers that have tested high to date are:

2           Puppeteer in the seventh race on January 22nd,  
3 trained by Jeff Mullins.

4           Terpsichore, first race, January 14th, trained by  
5 Julio Canani.

6           Smuggler's Run in the fifth race on February 5th,  
7 trained by Vladimir Cerin. He also had a horse named  
8 Bless Her Heart in the third race on February 3rd.

9           Adam Kitchingman trained Always The Best in the  
10 fifth race on February 16th.

11          Daniel Franko, Heat It Hot, second race, January  
12 27th, at Golden Gate Fields. He finished the detention  
13 barn sanctions at Bay Meadows.

14          J. R. Thomas who we met with yesterday with Seven  
15 Way Shake in the ninth race on March 12.

16          And Baylor's Yodeler, fourth race, January 12th  
17 also. That's a father and son team. And we met with  
18 them, and I -- we're quite confident we're not going to  
19 see any more problems from them.

20          In spite of what seems like a large number, I  
21 would like to point out that we tested 6,099 horses since  
22 the beginning of Santa Anita's meet. We've had five  
23 violations at Santa Anita. We've had none in the last  
24 five weeks. A violation is 37 millimoles or higher, which  
25 is a very tight level. And we've only had one violation

1 since the first trainer went into -- was announced  
2 publicly.

3           Not only that, but we've seen a decrease in the  
4 overall TCO2 levels, particularly amongst trainers who had  
5 abnormally high levels. We've seen that not only in  
6 people in detention barns. But people that we've been  
7 watching that have high TCO2's have dropped in general.  
8 In fact, one trainer we were concerned who had three  
9 horses over 36 millimoles, we can actually see by the  
10 database that he no longer gives any alkalizing agents to  
11 his horses.

12           This program has been very successful. And I  
13 think we're very happy with the response that we get, not  
14 only from our trainers but for the fans. The fans would I  
15 think like to see us pull away some of the trainers a  
16 little bit more. And unfortunately, as you know, we can't  
17 fine, we can't suspend, we can't disqualify, we can't  
18 redistribute the purse. And that's going to have to be in  
19 the purview of the Horse Racing Board.

20           I understand there's been some question about the  
21 effect of bicarbonate loading on performance. There  
22 obviously is some benefit to using bicarbonate under  
23 certain circumstances. But I will relate a website to you  
24 that you should take a look at. It's called sportsci.org.  
25 I'll send it to you all individually. And it shows the

1 effect of bicarbonate loading in human athletes. But let  
2 me just say that -- quite simply, that lactic acid buildup  
3 is the number one cause of fatigue in muscle. Bicarbonate  
4 buffers that lactic acid buildup. In one study humans  
5 where a -- there was a standard exercise test with a  
6 cycle, where an individual basically pumped as hard or  
7 cycled as fast as he could for a period of time,  
8 bicarbonate loading increased his time to exhaustion by 50  
9 percent.

10           The more relevant study in people, in an 800  
11 meter run, there was a three second difference in  
12 bicarbonate loaded athletes to non-bicarbonate loaded  
13 athletes. And as the author of that study pointed, in an  
14 800 meter run, which in time-wise is equivalent to a mile  
15 and a quarter race for our horses, it was the difference  
16 between finishing first and last.

17           There's also seen in all studies, both equine and  
18 human, an enormous individual variation. In other words,  
19 some horses and some humans it doesn't make much  
20 difference to, others it makes a big difference to.

21           The big problem is anecdotally, these horses can  
22 be run hot or cold, that is, when they're bicarbonate  
23 loaded, they perform well, when they're not, they run  
24 poorly. And as you know, that's a worst-case scenario for  
25 horse racing, particularly if it's used for gambling. And

1 if anybody doubts that this is of benefit to the horse,  
2 all you have to do is look at the data and see how hard  
3 some of these trainers are pushing to bicarbonate load the  
4 horses. Some obviously think the performance is tied to  
5 the amount of bicarbonate they have in their system.

6           But we are able monitor these quite carefully.  
7 And I'm happy to say that we've seen an overall drop in  
8 TC02 levels across the board. And our hope is that we  
9 will finish the Santa Anita meet without any further  
10 TC02's.

11           The two individuals who were confronted yesterday  
12 up here for their high TC02 on March 12th, that really  
13 discussing whether it seems like the same incident, I  
14 think it's an anomaly. I hope it is. Northern California  
15 has actually been relatively problem-free up until this  
16 particular point. But I think we've gotten the message  
17 out. And I know that Bay Meadows and the CTT and TOC are  
18 going to make sure that everybody understands that we're  
19 serious about this problem.

20           In a related issue, I'd like to announce that we  
21 did try a split-sample program, a dry run last week,  
22 sending samples to Ohio State for an independent analysis.  
23 And that worked out quite well. It is going to be a  
24 possibility to do.

25           We also tried an independent sample program with

1 taking duplicate samples and sending them out to the Maddy  
2 Laboratory as well. I haven't talked to Dr. Stanley about  
3 the results. It's not a true split-sample program, but  
4 certainly would be a little bit more cost effective if the  
5 trainer wanted to do this.

6 I will point out that a split-sample program is  
7 going to be expensive for trainers. Probably a couple  
8 hundred dollars at the very least. And unlike a regular  
9 split-sample program, you would not be able to wait until  
10 the first one comes back and it's negative. Those samples  
11 would have to be run in parallel. And that would mean  
12 they'd have to be paid in parallel.

13 Canada has a very similar program to what we will  
14 probably be suggesting. And the horsemen just don't use  
15 it. But the bottom line is if you don't bicarbonate load  
16 your horses or if you can live with other alkalizing  
17 agents, you don't have a problem.

18 So the bottom line is I think we have this  
19 problem well in hand. And it's something I think we're  
20 going to have to continue to keep an eye on, because some  
21 people do think it improves the performance of their  
22 horses. But I'm quite happy with the results to date.

23 COMMISSIONER SHAPIRO: Dr. Arthur, first of all I  
24 think you've done a remarkable job, you and your  
25 committee. And to get it what sounds to be less than one

1 percent --

2 DR. ARTHUR: It's actually 1/10 of 1 percent.

3 COMMISSIONER SHAPIRO: Sorry. Well, my math's  
4 not good.

5 But 1/10 of 1 percent is remarkable.

6 Is there a way that you can make these statistics  
7 public or available so that everybody in the industry and  
8 our fans realize that not only have you taken the lead,  
9 but I see other states are following vigorously, which I'm  
10 also encouraged to see. And I'm thrilled that you're  
11 going to continue with the oversight and all the tracks  
12 have gotten together on this. I think it's just great for  
13 racing.

14 DR. ARTHUR: Well, we actually put together a  
15 press release from Santa Anita, but with those particular  
16 statistics. Unfortunately good news doesn't play well,  
17 and I've seen none of it in the press, certainly not the  
18 newspapers in southern California. And some of the racing  
19 press don't pick it up. They like the controversy. And  
20 trying to get the good news out, it's hard to do. But  
21 we're going to continue to try to do that. We have had  
22 some discussions about how to get that message out.

23 This is a very successful program. I mean when  
24 you're talking about 1/10 of 1 percent, I would challenge  
25 any professional sport that has a problem with a specific

1 drug or entity like bicarbonate loading to get that  
2 problem down to 1/10 of 1 percent.

3           In fact, the commissioner of baseball was  
4 bragging that he only has a 1 to 2 percent problem in  
5 anabolic steroids in his human athletes, and saying what a  
6 great response that was.

7           So I think when you look at the extent of the  
8 problem that was identified last summer to where we are  
9 today, I think we can be very happy with this.

10           And hopefully the legislation -- enabling  
11 legislation is going to be in place when the Horse Racing  
12 Board takes it over. But the horsemen and the tracks have  
13 indicated they're going to continue this program until  
14 such a time it becomes the CHRB's responsibility.

15           We do have the advantage of -- our goal has been  
16 to eliminate the problem rather than try to discipline  
17 anyone. And in that sense we've been very successful.

18           The Horse Racing Board really has to take a  
19 little bit different approach as a policing agency. And  
20 we tell these people when we bring them in that, "You  
21 better figure out how to keep your TC02 levels down."  
22 Because, if not, when they face the sanctions of the Horse  
23 Racing Board the Class 3 violation will be a suspension  
24 and purse redistribution and the like.

25           I will say the one thing that is very clear from

1 this, that even though some trainers have tried to say,  
2 "Well, you know, I don't know what's happening," that when  
3 we put them in the detention barn, when we put sanctions  
4 on them, we can see their TCO2 levels drop. That is a  
5 clear indication that the trainers have control over this  
6 particular problem.

7           More interesting, even people who have not gone  
8 into the detention barn, who have not gotten over the 37  
9 millimole level, when you look at their records,  
10 particularly a few that we've been concerned about that  
11 have had the 36's, you actually see their levels drop as  
12 well.

13           In fact, as I said, one individual who had been  
14 milk shake -- or giving out the alkalizing agents actually  
15 gave it up altogether. And we can see that. We know what  
16 a normal pattern is. We know what a guy that feeds  
17 alkalizing agents to all of his horses does. In fact, one  
18 trainer I can tell him the horse he missed. I mean it's  
19 that effective of a tool, and some people just choose here  
20 or there.

21           It's a very, very tight control on this problem.  
22 And, you know, I'm very happy with the way things have  
23 turned out.

24           And the most rewarding part of it is, that the  
25 horsemen themselves, both owners and trainers, are very

1 responsive to this. I'm very pleased with the results.

2 CHAIRPERSON HARRIS: Thank you.

3 VICE CHAIRPERSON BIANCO: I spoke to Scott  
4 Stanley yesterday and also Mike Martin. Even if it costs  
5 us some money, we'd like to go public, even if we have to  
6 pay for, you know, media advertising, just to show --  
7 because I looked at stuff that Dr. Stanley showed me on  
8 the last 12 months of -- just about every four or five  
9 different horses he showed me actually what they've  
10 recorded and how they've recorded it.

11 You know, basically we can see there the drop,  
12 you know, in these readings. And I'd like to get some  
13 positive play out of this. I know you've done a hell of a  
14 job. But I'd like to see us pay for something to get it  
15 published rather than wait for the media to publish what  
16 the hell they want.

17 DR. ARTHUR: Well, that's right. I talked with  
18 Mike already and gave him some information. We'll do  
19 whatever we can. We'd like to get the good news out. And  
20 I know that Santa Anita -- Jack McDaniels is here today,  
21 has thought about the problem as well as the rest of the  
22 Santa Anita staff. So whatever we can do to get the good  
23 news out, we'd like to do it.

24 Unfortunately, they like controversy and that's  
25 just the reality of it. But we'll do whatever we can to

1 get that done, because there is a very positive story  
2 here --

3 CHAIRPERSON HARRIS: It really is -- it's a great  
4 story and a lot of people were involved in making it  
5 happen, and particularly you.

6 Could we say at this point -- thoroughbred --  
7 testing in California has the most aggressive program in  
8 the country?

9 DR. ARTHUR: We certainly have the most  
10 aggressive program in the country. And, again, the 37  
11 millimoles -- lot of states will actually use 39  
12 millimoles. We're using 37 millimoles. And a lot of that  
13 has to do with the job that Dr. Stanley does in the Maddy  
14 Laboratory. And we have a very rigorous system. The  
15 samples end up being tested ten times. We have a standard  
16 certainty adjustment. I mean when we have a trainer, we  
17 have them dead to rights.

18 And the most rewarding part of this has been that  
19 I know we have not gotten an innocent person. And that's  
20 always a problem in drug testing in horse racing. It's  
21 very easy for somebody to get wrapped up in this that  
22 didn't intend to. And, you know, I think that's been a  
23 real positive thing for us, that we're addressing the  
24 problem, we can see what it is, we know that we have the  
25 right person when we call the trainer in. And even though

1 sometimes they squirm a little bit about it, you know,  
2 they know we've got them.

3 EXECUTIVE DIRECTOR FERMIN: I want to just  
4 comment that we've been getting through our office weekly  
5 inquiries from different jurisdictions that want to come  
6 and visit, want to know how doing we're it. I'm very  
7 pleased and we're getting, you know, absolutely nothing  
8 but positive input.

9 CHAIRPERSON HARRIS: I think we -- the wagers --  
10 I've got a few E-mails from bettors -- and, as you know,  
11 everyone bets signals all over the country -- that say  
12 they weren't going to bet the California single because of  
13 the milk shake problem. I think we E-mailed back saying  
14 it's probably the one place you should be betting is  
15 the -- bicarb.

16 DR. ARTHUR: Absolutely.

17 Interestingly, we haven't heard trainers  
18 complaining about that claimed horse that all of a sudden  
19 becomes a wonder horse, seriously, since we started this  
20 program. I've talked to handicappers, and nobody's been  
21 able to identify a horse that's become the super horse  
22 from being claimed anymore. Which, you know, you've heard  
23 those rumors all the time. You know, we just have to put  
24 them behind us many times.

25 But we're moving in the right direction. And I

1 think industry's really worked together on this. And I  
2 can't say enough about the support from the Santa Anita,  
3 Hollywood Park, Del Mar, all the -- CTT and TOC, they all  
4 want to solve this problem. And I think it's been  
5 beneficial for all of us.

6 Thank you.

7 CHAIRPERSON HARRIS: Thank you.

8 DR. STANLEY: Scott Stanley, UC Davis. I just  
9 wanted to add to what Dr. Arthur was just saying. With  
10 the support of the associations, the TOC, the CTT,  
11 specifically the TOC providing us some funding and Oak  
12 Tree providing us some funding, we've been able to  
13 investigate many of the concerns of alkalizing agents,  
14 speed agents, things that are being added, certain things  
15 that are being purchased over the Internet, being able to  
16 provide that feedback back to Dr. Arthur when they've done  
17 the further communication with the trainers to find out  
18 what things are affecting the TCO<sub>2</sub> level and what things  
19 aren't affecting those levels.

20 So we're very quickly able to respond and give  
21 them additional information as to how to avoid this if  
22 they're concerned about it, with the feeding program.  
23 We're actively involved and communicating with them as  
24 well. And we're finding there's not quite as many things  
25 as it is perceived in the press that do affect those

1 levels. Most of them are very controllable, because you  
2 can see that with the -- once they go in detention.

3 Thank you.

4 CHAIRPERSON HARRIS: Thank you.

5 The next item is discussion on the employment of  
6 Pari-Mutuel Employees Guild Local 280 at advance DW  
7 facilities in California.

8 ASSISTANT EXECUTIVE DIRECTOR MINAMI: Roy Minami,  
9 Horse Racing Board staff.

10 Without rehashing the discussions of last month,  
11 I'll just start with this. At the last Board meeting in  
12 February the ADW companies as well as Local 280 were urged  
13 to meet and come to some kind of agreement that is  
14 mutually beneficial to each party. And this is in  
15 attempts for the Pari-Mutuel Employees Guild to secure  
16 employment at the ADW facilities.

17 The reason why this is on the Board item today  
18 is, I spoke with Mr. Castro. He's with Local 280. And  
19 he's indicated that there was no progress made, that the  
20 two parties were unable to meet.

21 Without attributing blame or responsibility to  
22 either party, I'll just say that they weren't -- they did  
23 not meet in the last month.

24 What the staff has done in order to facilitate  
25 some kind of resolution to the two parties is in our

1 recommendation we are asking the Board to direct both  
2 parties to meet within 30 days and submit a record of  
3 progress to the Executive Director, who in turn would  
4 report to the Board. It seems as though that the problem  
5 is just getting the two parties to the table.

6           So I've spoken to TVG, John Hindman, and Richard  
7 Castro of course with Local 280 and Jeff True of YOUBET.  
8 And each of them indicate a willingness to meet within the  
9 next 30 days.

10           I haven't spoken to anyone from Express Bet, but  
11 I do expect their participation.

12           So at this point, we ask the Board to direct the  
13 two parties to meet within 30 days and submit a progress  
14 report to the Executive Director. Because of some  
15 problems that the two parties have as far as meeting, I've  
16 offered -- taken the liberty of offering my services or  
17 the Executive Director, Ingrid Fermin's services to help  
18 facilitate a meeting at a time, place and date for the two  
19 parties.

20           So at this point basically the staff is asking  
21 the Board to direct the two parties and give them a 30-day  
22 deadline to meet.

23           CHAIRPERSON HARRIS: And come back at our April  
24 meeting with a report of the progress that's been made or  
25 what our resolution would be?

1 ASSISTANT EXECUTIVE DIRECTOR MINAMI: Yes.

2 CHAIRPERSON HARRIS: I think we're all pretty  
3 familiar with the issues and appreciate the different  
4 sides of it.

5 COMMISSIONER SHAPIRO: I don't understand. We  
6 heard at the last meeting the position of 280. It's very  
7 clear. And I think that we all were very sympathetic as  
8 to the plight and so forth. But what I don't understand  
9 is -- I'm not sure I understand what we're being asked to  
10 do. Okay. I agree, let's order them to meet, let's order  
11 them to talk.

12 But if they talk and they meet and if they make  
13 up and everybody's happy, great. But if they don't, I'm  
14 not sure what it is we're being asked to do given that our  
15 power I believe is limited in our ability to require hubs  
16 to be located here in California. So I'm not sure what  
17 the end plan is that you're asking for, Mr. Castro. I  
18 don't understand.

19 MR. CASTRO: My name is Richard -- can you hear,  
20 Commissioners. My name is Richard Castro representing  
21 Pari-Mutuel Employees Guild.

22 We feel that when you issued the ADW's license,  
23 they were not in compliance -- complete compliance with  
24 the intent of the statute that brought it in.

25 Basically we felt that as a condition of our

1 support we should have -- it should have been mandatory  
2 that there should have been telephone operator jobs, among  
3 other things, that we do not have here in California.

4 COMMISSIONER SHAPIRO: So is your ultimate goal  
5 for us to revoke those licenses? Is that your goal. If  
6 you can't reach an agreement, is that your ultimate goal?

7 MR. CASTRO: Well, our ultimate goal is to make  
8 them follow the statute of the law. Our ultimate -- we  
9 don't really want to hurt the revenue stream to the race  
10 track. We don't want to really hurt the profitability to  
11 a racetrack. However, if you and I made an agreement, we  
12 would expect you to abide by the agreement. And we don't  
13 feel that they're abiding by the agreement. And  
14 ultimately if they were not abiding by the agreement, yes,  
15 we would ask you to work something out with their license.  
16 Again, not necessarily shut them down. Because we do want  
17 to sit down, we do want to work this out. We feel that if  
18 we can get them to the table, and we feel that maybe some  
19 of the parties that are with these companies now were not  
20 aware of the history, maybe we can -- I'm sure we could  
21 work something out.

22 CHAIRPERSON HARRIS: Well, are you -- you refer  
23 to the agreements. Is the agreement -- do you mean the  
24 statute or are you referring to another agreement --

25 MR. CASTRO: The statute was that there would be

1 phone wagering jobs in California. What Dave Rosenfeld,  
2 our attorney, and myself did was go through and quote from  
3 the transcript the understanding -- Alan Landsburg backed  
4 it all up --

5 CHAIRPERSON HARRIS: Well, I mean the statute  
6 that the Legislature passed.

7 MR. CASTRO: Correct. That was the intent. And  
8 we understood when we went through the rules that brought  
9 in ADW that the hubs would be in California. That's what  
10 we understood.

11 COMMISSIONER SHAPIRO: But, Mr. Castro -- and  
12 understand, we were -- I feel that you guys kind -- got a  
13 raw deal. Okay? I do. From the last meeting, from what  
14 I heard, something was represented to you and you don't  
15 feel -- that it was wasn't -- that you didn't get what you  
16 thought you were bargaining for. I understand that.

17 But what happens when technology comes into play  
18 and there aren't those jobs? There used to be telephone  
19 operators, for example. We don't have telephone operators  
20 anymore. Okay. Everything's electronic.

21 Is your position that these companies should  
22 employ telephone operators if that is an obsolete process  
23 from their perspective in terms of doing this? Is your  
24 position that, regardless of the technology, they should  
25 be held to having telephone operators even if it's not the

1 preferred way of doing it, it's not the -- you know,  
2 people can punch numbers over the phone, they don't want  
3 to talk to a person. Are you still saying they are -- you  
4 want them to have to have people answering the phones?

5 MR. CASTRO: I'm not being adamant. I'm not  
6 putting their back against the wall the way you're  
7 presenting it.

8 COMMISSIONER SHAPIRO: I'm just asking.

9 MR. CASTRO: I think what most companies do when  
10 new technology comes in, they sit down and they bargain.  
11 There was a recent news article where YOUBET had a  
12 customer come to their facility and obtain a check. Now,  
13 someone had to write that check. It was ironic that I  
14 talked about that at the last meeting and then two weeks  
15 later we see in the newspaper that YOUBET actually did  
16 have a customer come to their facility. Someone wrote  
17 that check. That's customer service. That would be a  
18 same or similar kind of job. That is something that we  
19 would be interested in.

20 We don't know exactly what they do or don't have.  
21 But we are very comfortable that if telephone operators  
22 are obsolete, as you say, then we kind of think that there  
23 might be other avenues where we could pursue, and we would  
24 like to be involved in that.

25 What I would also like to do -- we will

1 participate in the meeting. That's not a problem for us.  
2 We welcome it. But what I would also like to have the  
3 Board do is maybe have a representative, one or two, of  
4 the TOC to also sit in these meetings, so I don't get  
5 myself in a position of "he said/she said". I would feel  
6 much more comfortable if we had someone like that sitting  
7 in these meetings as well. I would appreciate your  
8 consideration on that.

9           CHAIRPERSON HARRIS: Okay. Well, I think  
10 that's -- we need to have the meetings and then come back  
11 and sort of -- I mean there's a bunch of different issues  
12 here that I'm not sure we're going to solve today. But at  
13 least let's get everybody together and see if there's  
14 different job categories that we would benefit both the  
15 employees and --

16           VICE CHAIRPERSON BIANCO: John, I was on the  
17 Board when Alan was very forceful in saying, when he was  
18 chairman, that we will guarantee that we will have  
19 California-based people doing a lot of the AD waging.  
20 And to be very frank with you, I even thought then that,  
21 you know, this is going to be hard to do. But then I was  
22 told that YOUBET had this type of operation already  
23 established in Woodland Hills at their offices. And I  
24 just thought we were going to go negotiate -- or you were  
25 going to negotiate with them and get a fair shake.

1           To me, you din't get a fair shake. We voted, you  
2 know, to support everything, the Board -- right? And I  
3 was misled, to be very frank, on my vote at that  
4 particular time.

5           CHAIRPERSON HARRIS: Well, clearly those workers,  
6 if they desire to form a union, they have that right.  
7 It's just I don't know if we want to impose that  
8 obligation on them.

9           VICE CHAIRPERSON BIANCO: No, I'm not trying to  
10 impose anything on anybody. What I'm trying to say is we  
11 were told one thing, and I think it swayed our vote on  
12 this Board at that time.

13          COMMISSIONER SPERRY: Mr. Chair -- go ahead.

14          COMMISSIONER GRANZELLA: I was also part of that  
15 and here at that time. And you're absolutely right. That  
16 was what swayed our votes, was to keep the jobs in  
17 California. The labor --

18          MR. CASTRO: Thank you. You're correct. I  
19 remember that as well. And I appreciate --

20          COMMISSIONER GRANZELLA: Marie and I both were  
21 adamant on that.

22          COMMISSIONER SPERRY: The implication as far as I  
23 understood at those meetings was that the companies would  
24 bring their locations into -- the hub into California as  
25 soon as it was feasible and possible to do so, not five

1 years from now or not because we have a contract in Oregon  
2 and have a facility there that we can't do it. It was the  
3 understanding that they were going to bring them to  
4 California.

5 MR. CASTRO: The person that spoke on that was  
6 Joe Lange. You're absolutely correct. He was their --  
7 for TVG.

8 COMMISSIONER SPERRY: And the implication was  
9 that there would be jobs for Local 280 from every one of  
10 those companies.

11 CHAIRPERSON HARRIS: I don't recall it exactly  
12 that way, but -- and some --

13 COMMISSIONER SPERRY: Well, I think the minutes  
14 indicate --

15 CHAIRPERSON HARRIS: We can research what it was.

16 MR. TRUE: Mr. Chairman, if I may.

17 My name is Jeff True. I'm with UBet.com, who  
18 seems to be the only ADW mentioned this morning. I  
19 hesitated to even get up and address this because we've  
20 been through this thing several times. But just a couple  
21 points of clarification.

22 First of all, YOUBET is the only company that's  
23 ever had a collective bargain agreement with Local 280.  
24 We did the local -- we did the agreement. The agreement  
25 lasted for two years. It specifically said, "Local 280

1 represents phone wagering tellers." Specifically the  
2 purpose for Local 280's employees is to receive telephone  
3 bets. We don't have any of those jobs at YOUBET. All of  
4 our phone operations are IVR.

5           The agreement said there are other factors  
6 outside the control of the parties that determine whether  
7 or not you're going to have phone operations. We all  
8 agreed, there may be a situation where you won't have a  
9 phone bank in California. That situation exists. That's  
10 why we don't have phone tellers. That's why we don't  
11 currently employ Local 280 members.

12           And now 280 says that they represent customer  
13 service employees. That's completely outside the  
14 collective bargaining agreement that we already had. And  
15 so I'm a little confused as to why we're now  
16 representing -- or why 280 now represents customer service  
17 people.

18           You mentioned the issuance of a check. I don't  
19 know about your businesses, but people who issue checks  
20 are accountants. And that's who issues checks at YOUBET.

21           We want phone wagering jobs, we want a live phone  
22 teller, because that's the way everybody wants to wager.  
23 I'm going to tell you, that the same legislation that  
24 enabled ADW in California also set up economic parameters  
25 for ADW in California. Those economic parameters are the

1 reason we don't have phone banks in California.

2           We're willing to -- we're willing to sit down  
3 with Richard and his union and talk about the issues and  
4 try to come to some resolution. But for U-Bet's part, we  
5 did the agreement, we agreed on the terms. The agreement  
6 even had specific and obvious terms for renewal, which the  
7 union never addressed, and so that agreement expired.

8           And then here lately, you know, 280 gets up and  
9 says U-Bet's a bunch of liars. Well, you know -- you  
10 know, we're a little bit weary of this whole argument  
11 because we think we've done everything we can do within  
12 the parameters of what we had to work with. Yet we're  
13 still being --

14           COMMISSIONER SHAPIRO: You said you want  
15 telephone operators in California --

16           MR. TRUE: Big bettors want to bet with a live  
17 person.

18           COMMISSIONER SHAPIRO: Okay. So why aren't there  
19 telephone operators in Woodland Hills that are Local  
20 280 --

21           MR. TRUE: Because we can't make it work  
22 economically.

23           COMMISSIONER SHAPIRO: Why is that?

24           MR. TRUE: Those are the factors -- why?

25           COMMISSIONER SHAPIRO: Why?

1           MR. TRUE: The same statute that passed ADW and  
2 said we had to deal with 280 says that there's going to be  
3 a limit on how much an ADW can make in California. It  
4 said that the horsemen's/owners' organization can further  
5 arbitrarily determine how much an ADW can make in  
6 California. Third, that same statute said that -- and  
7 actually it's not even a statute -- but the tracks in  
8 California gave their exclusive rights to other companies  
9 from which we didn't have a sublicense.

10           The economics in California do not work for phone  
11 tellers. We would lose money on every bet we took through  
12 a 280 member or for anybody else, for that matter.

13           CHAIRPERSON HARRIS: It sounds like one of the  
14 solutions --

15           MR. TRUE: The economics behind the 280  
16 agreement --

17           MR. CASTRO: I'd like to respond to some of his  
18 comments, if I may?

19           CHAIRPERSON HARRIS: Go ahead.

20           MR. CASTRO: May I?

21           He used the word "lie," so I'll use the word  
22 "lie".

23           The first lie he put out there was that we only  
24 had a contract with YOUBET. That's not correct. We had  
25 also a contract with Express Bet.

1           The reason why I believe we don't have phone  
2 operators at Woodland Hills is because when we were  
3 working this out, what was unknown to us is that they  
4 wanted us and only us to go back up to Sacramento and get  
5 the legislation changed to where it would be financially  
6 more favorable so that YOUBET could have the live phone  
7 operators. And we didn't feel that was our obligation, to  
8 go up there solely -- as the only person up there in  
9 Sacramento, the only group in Sacramento to try to change  
10 the law.

11           But what we did do, we would agree that we would  
12 work with them. As time went on things just kind of went  
13 the other way and, you know, we're here now.

14           CHAIRPERSON HARRIS: It seems like -- I think we  
15 need to have these meetings.

16           And one of the models that might work would be  
17 some surcharge on the customer to have a phone operator  
18 they're talking to. I mean that's the way other types of  
19 services work.

20           I mean I could see it's a pretty thin margin that  
21 these guys are working with. They can't increase expenses  
22 that dramatically. But, conversely, maybe there's a -- I  
23 think -- sit down and figure out some model that would  
24 work with everybody.

25           MR. CASTRO: But it's specifically to YOUBET and

1 only to YUBET. They were not approved at the first  
2 meeting. They came back to us and asked us for help. I  
3 was one of the principal speakers on that. And what they  
4 were asking for and what John Reagan presented to you was  
5 that they wanted an application to have live phone  
6 operators. And that is in the transcript.

7 I agree with your Commissioners. They  
8 misrepresented. They misrepresented to all of us.  
9 However, rather than go back and forth like this, we are  
10 more than willing to sit down. But now I am going to  
11 insist or I will let them know that I will have a TOC  
12 representative at the meeting.

13 CHAIRPERSON HARRIS: Well, that's why we want to  
14 do --

15 MR. TRUE: Final comment, Mr. Chairman, if I may.

16 CHAIRPERSON HARRIS: Yes.

17 MR. TRUE: Mr. Castro's demands for meetings in  
18 the past have been unreasonable. We're going to work with  
19 them to try to work this out. It's purely an  
20 economic-driven deal.

21 MR. CASTRO: I think you've got a copy of my  
22 letter. I must have gave 15 different dates to have  
23 meetings and they never responded.

24 COMMISSIONER SHAPIRO: Well, let's assume that --  
25 there's no reason to argue over meetings. There will be a

1 meeting and there should be a meeting. But should we be  
2 looking at a bigger picture? If the problem is the basic  
3 economics, that -- they got hoodwinked. I mean it sounds  
4 very clear, that the Board thought there was going to be a  
5 bunch of jobs and there aren't jobs.

6 CHAIRPERSON HARRIS: I never did think that there  
7 were going to be. And I think that ADW operators could  
8 offer phone -- you know, live operators, but you weren't  
9 compelled to. Then the Board wasn't in a position to  
10 compel live operators.

11 COMMISSIONER SHAPIRO: Okay. But they went along  
12 thinking they were going to have jobs and the jobs haven't  
13 panned out. So is the problem more -- at a deeper cause,  
14 which is from the ADW's perspective, by hiring those  
15 workers, they can't economically make any money on the  
16 wagers. So should the problem be looked at at a deeper  
17 level that incorporates their concerns and your concerns  
18 to try to find a remedy so that you can employ service  
19 people to be telephone operators in California, make some  
20 money and provide better service? I mean --

21 MR. TRUE: That's exactly what we tried to do  
22 with a legislative effort. I mean we spent a hundred  
23 thousand dollars trying to pass that legislation. And you  
24 know as well as I do, that we're not going to pass  
25 something in Sacramento that's not unanimously approved by

1 the industry. The Industry didn't want to allow for that  
2 phone wagering situation.

3 CHAIRPERSON HARRIS: Well --

4 MR. TRUE: That's -- I mean that's what we did.

5 In fact -- I'll take another step. We in fact  
6 had migrated some of our handle to a California hub.  
7 We've made that effort. We're handling some of our money  
8 at a California hub to the extent that we, YOUBET, are  
9 helping to employ 280 members, we're doing so at the Bay  
10 Meadows hub. And I don't know of any other ADW that's  
11 doing it. Yet YOUBET continually is brought up here as  
12 the whipping boy. I mean we have bent over backwards,  
13 frankly, trying to make this thing work. And it just  
14 doesn't.

15 And if there is a deeper problem that we can  
16 resolve, you know, let's sit around the table and talk  
17 about it. But from our perspective, that we attempted to  
18 solve that deeper problem before, and we couldn't get it  
19 done to the satisfaction of the entire industry. It  
20 doesn't mean we can't try it again. But that effort has  
21 been made.

22 CHAIRPERSON HARRIS: Well, let's take another 30  
23 days and come back and see where we are.

24 The best model would be where somebody could  
25 figure out something without cutting the percentages going

1 to the various parties now. And the tie is only so big.  
2 You start cutting off some here and there, there's going  
3 to be other impacts. But if somehow ADW's concept could  
4 include live operators that were funded by basically its  
5 customers because it's a better level of service to some  
6 people -- I mean a lot of people prefer the computer  
7 operation. But maybe there's a segment out there that  
8 would like a live operator --

9 MR. TRUE: There's a time and a place for live  
10 operators.

11 CHAIRPERSON HARRIS: -- they would pay for it. I  
12 think it just gets to the matter of who's going to pay for  
13 it and how it's going to be structured.

14 MR. CASTRO: My last comment. I haven't heard it  
15 said today -- come on, smile. This is going to be nice.

16 I haven't heard it said today. I would like to  
17 welcome everybody here to northern California -- I would  
18 like to all welcome you to the new house Jack Liebau is  
19 building here, and I hope he is here forever and ever.

20 Thank you very much.

21 CHAIRPERSON HARRIS: Thank you.

22 (Applause.)

23 CHAIRPERSON HARRIS: Actually it is great to be  
24 back at Bay Meadows, a good racetrack here. Enjoy it.

25 I'm sure Jack will be here for at least another

1 decade.

2           Okay. Let's get on to something less  
3 controversial, like the location and display of the  
4 satellite signal.

5           (Laughter.)

6           SENIOR PARIMUTUEL EXAMINER REAGAN: John Reagan,  
7 CHRB staff.

8           Mr. Harris, you're correct. This has been before  
9 us a couple times in the past. And we're still looking  
10 for a solution. After all of the situations have been  
11 reviewed and discussed at the CHRB among staff and our  
12 director, before recommending that we'd require that the  
13 same distribution of display of the audio-visual signals  
14 for every simulcast program be ordered by this Board for  
15 any location, but specifically in this case of course at  
16 Los Al.

17           CHAIRPERSON HARRIS: Are there any comments on  
18 this item from the audience?

19           MR. BIERI: Mr. Chairman, members of the  
20 Commission. My name is Steve Bieri B-i-e-r-i, Capitol  
21 Racing. And I'd like to start off with my comments on the  
22 staff report. This is -- the way they said it, where it  
23 talked about in the background in the third line stating  
24 that simulcast signal had been redesigned. We believe it  
25 has been restricted. Also, where they said that "We felt

1 it was an inconvenience to the Los Al patrons," we  
2 actually believe it's an outrage to the Los Al patrons.

3           And they do talk about the broad plenary powers  
4 that the Board has. But we don't believe that you need  
5 the broad plenary powers. Actually if you go to 19401,  
6 the very first section after declaring we have a racing  
7 law, the very first words are "assuring protection of the  
8 public." We do not believe that allowing an entity or an  
9 organization to restrict people to a certain area is a  
10 protection of the public.

11           Further, we believe that according to Section  
12 19605.3 -- it talks about the accommodations and equipment  
13 used in conducting wagering at the satellite wagering  
14 facility have been approved by the Board. We're not aware  
15 of any application that came in last May or before then  
16 where they came to deal with their accommodations.

17           And under the same section, 19605.3(c), it talks  
18 about the communications system and the ability to accept  
19 wagers and the way those wagers were accepted. We're not  
20 aware of any application that came before you that you  
21 approved what they did.

22           And, lastly, under the rules and regulations in  
23 205711, it talks about plans for new facilities or  
24 alternation of existing sites shall be submitted to the  
25 Board for prior review. We're not aware of any compliance

1 with any of those things that took place to give the Board  
2 an opportunity to act.

3           But let me just say this, that -- those are my  
4 preliminary comments -- we have testified in the past.  
5 You all know that. We've sent letters. We've submitted  
6 early numbers last year showing that the detriment to  
7 Capitol Racing and the harness horsemen would extrapolate  
8 to over a \$10 million per year loss in handle, costing  
9 Capitol Racing and the harness horsemen nearly \$1 million  
10 each in lost revenue. Unfortunately that has come true.

11           But at that time we just had the early numbers.  
12 We now have a full year of numbers.

13           These numbers -- the set of numbers that is  
14 labeled "Los Alamitos On-Track Live Racing Handled  
15 Comparison" was given to the CHRB staff. And John Reagan  
16 and his staff have gone through the numbers and have  
17 verified them.

18           The second group that I gave you, which is the  
19 decrease in the satellite betting at Los Al on our  
20 product, I had not given that to John in the past.

21           But let's just take a quick look at these  
22 numbers. If you go down to the very bottom you will see  
23 that in 2004 Los Alamitos handled a little over \$41  
24 million on their live on-track number. These numbers come  
25 right out of the Roland report that is produced as the

1 auditor of Los Alamitos. And in 2003, they did  
2 38,250,000. So between '03 and '04 they had a increase of  
3 \$2,848,000.

4           If you take a look at the line in the middle of  
5 the -- upper part of the page, between December and early  
6 May was the period of time that the signal was on at Los  
7 Al, as it was historically, which was still only about 10  
8 percent of the screens. And the line -- below the late  
9 May -- below where it says late May through December is  
10 what happened after they restricted us.

11           If you look again to the bottom of the page, you  
12 will see that during the time that we were fully up --  
13 well, not fully, but we were up at the prior to the  
14 segregation time, Los Al's handle of the two eight  
15 improved \$2 million. You will see that after they  
16 restricted our signal, their signal there only improved  
17 \$790,000. They had a 15.36 percent increase in their  
18 handle while we were up to the extent before the  
19 segregation and only a 3.18 percent. Now, we are talking  
20 about their live, on-track quarter horse handle because  
21 that's what we've been talking about.

22           If you take a look at the other sheet, this goes  
23 back to 1995. You can actually see at the very top the  
24 one time when Doc shut the signal off just after Capitol  
25 Racing reformed. We didn't handle much money in that

1 October to December '95. But as you go down the right  
2 hand side in the bold print, it's basically summing years.  
3 And you can see that we went 80,000, 100,000, 93,000, 114,  
4 105, 115, 118.

5           Then if you turn to the next page, during the  
6 time, at the top of that page, from March to July of '04  
7 is when they cut our signal. And before that time in the  
8 period -- the same period the year before we were handling  
9 121,000, they were handling on us, it went down to 87,000.

10           If you look at what happened at the end of our  
11 year, it went all the way down to \$48,000 from in a  
12 previous time period, time period for time period it was  
13 \$122,000.

14           One of the questions that I had for Cal Expo that  
15 I didn't get a chance to ask earlier is in their numbers,  
16 of the 25,760,000 that they were estimating, which comes  
17 out to about \$990,000 a night, which was nearly what we  
18 were averaging before Doc shut our signal off, I was  
19 wondering if they were assuming that the same situation  
20 implies as it does now and that they'd be able to average  
21 that without the signal, or if they were assuming that the  
22 signal would be fully reinstated. And if they were  
23 assuming that it would be fully reinstated to give the  
24 numbers to the horsemen that they're getting, on what  
25 basis is it going to be fully reinstated?

1 Well, what I'm here to really say is we do have a  
2 full year now and, as you can see, there is an impact when  
3 Capitol's signal is taken at Los Alamitos. And that  
4 impact is positive. They do better, not worse. We  
5 believe you should have acted last May when the situation  
6 first occurred. It is within your power to do so. If you  
7 again fail to act, the damages to Capitol Racing and the  
8 harness horsemen that they have already incurred will only  
9 continue to grow.

10 People have been bemoaning the sad affair at  
11 Capitol Racing and the harness industry. What has caused  
12 it and why the purses are where they are is because of  
13 what happened at Doc's signal. If we can turn it back on,  
14 we can build those purses back up. If not, we will  
15 continue to be choked off.

16 Thank you.

17 CHAIRPERSON HARRIS: Additional comments on this  
18 issue from anyone?

19 MR. BIERI: Are there any questions on that?

20 MR. SHELL: David Shell S-h-e-l-l. I've been a  
21 harness horse owner since 1980, a breeder since '81 of  
22 harness horses. I've been on the CHHA Board. I was the  
23 past CHHA Board President in 2000-2001.

24 And what Mr. Bieri didn't ask you for, and I  
25 will, is I would like an accusation or statement of issues

1 filed against Los Alamitos, and I want you to seek their  
2 license as a simulcast wagering facility.

3           Back in 1999, Los Al shut the signal off just  
4 completely on ten different occasions. The Board -- this  
5 Board found that was a violation of 2057 Sub 10. The ALJ  
6 recommended conditioning Los Al's license. This Board --  
7 not these particular Commissioners, but this Board threw  
8 that out and wrote their own decision and said, "Ed has to  
9 take the signal if Steve pays the money." That case is  
10 going to be heard in May.

11           The bottom line is that case started with a  
12 formal complaint by me to you to restrict Los Al's license  
13 for violation of the law. Twenty-five clear violations  
14 were shown. This Board did nothing.

15           Mr. Bieri has now pointed to you two laws, two  
16 regulations that they have violated. Now, if a trainer  
17 comes up with a positive test and it comes before you --  
18 actually the stewards -- and the trainer says, "Well, I'm  
19 sorry I did that, but I didn't mean it and I won't do it  
20 again," do you say, "Fine. Well, just don't do it again  
21 and we'll go forward"? No. There is a penalty associated  
22 with violating the horse racing law and you're the body to  
23 enforce it.

24           If you look at the regulations, before Ed Allred  
25 could change configuration for the accepting of wagers

1 under the simulcast wagering laws, he had to come to the  
2 Board for approval. He did not, unless some staff member  
3 here can show some miraculous letter from last May where  
4 says, "We wanted to do that."

5 Under the law, it says the same thing. When you  
6 approve his simulcast license, he has to come forward and  
7 tell you what he is doing with regard to accepting wagers  
8 and the accommodations. And I will guarantee you, if you  
9 look back in his application for this last year, no where  
10 in there does he say anything about "We are taking the  
11 live California harness signal and only displaying it and  
12 accepting wagers in this one little room. Whereas, we are  
13 importing harness signals from other jurisdictions and  
14 showing them throughout the entire facility and accepting  
15 wagers throughout the entire facility."

16 There is a provision in the law that you have to  
17 treat all breeds equally in this state. The purpose of  
18 this law is to promote agriculture and the breeding of  
19 horses in this state. It's not to promote Los Al doing  
20 whatever it can to hurt California harness while promoting  
21 imports on foreign harness signals or thoroughbred  
22 signals.

23 I would ask, and Mr. Knight knows what I'm  
24 talking about, that under the APA -- and I'll put it in  
25 writing if you want -- a formal accusation be filed and

1 the license of Los Alamitos to operate as a simulcast  
2 wagering facility be revoked based upon the past  
3 violations. And come in May when we're done with that,  
4 and it's determined that they violated the law back then  
5 and you should have done something, I want you to consider  
6 that when considering the penalty for Los Al.

7           It's a tough step. But he did this without any  
8 permission from the Board, and he was required to do it.  
9 And the Board as far as I can tell for almost a year now  
10 has acquiesced. I understand that there was a meeting in  
11 June where it was brought up and there was a comment made  
12 that "We don't want to micromanage." This isn't  
13 micromanagement.

14           Look at what this is. Our handle at Los Al has  
15 gone down from \$120,000 a night to \$42,000 a night.  
16 That's in-state handle. That's horsemen's purse money.  
17 That's commissions. That's tax revenue for the state.  
18 This Board needs to do something more than just say,  
19 "Well, you've got to turn on the signal." You need to do  
20 something with that license to make sure he doesn't do  
21 anything like this again.

22           Thank you.

23           CHAIRPERSON HARRIS: Next speaker.

24           MR. BLONIEN: Mr. Chairman, members. Good  
25 afternoon. Rod Blonien -- and I think you've got my

1 spelling -- on behalf of Los Alamitos.

2           Let me -- I've got a lot to respond to I guess in  
3 terms of what the previous speaker said. But let me start  
4 off by saying that Dr. Allred has no axe to grind with the  
5 harness horsemen. We would like to see them do well. And  
6 it is in that regard that Dr. Allred just this week has  
7 agreed to the following:

8           To release \$262,000 that he is holding of the  
9 so-called 612 money to the harness horsemen immediately.  
10 In addition to that, we would also release the 612 money  
11 that has accrued January 1 to the present time, which is  
12 about another 40,000. So it would be 300,000 that would  
13 be going to the harness horsemen.

14           And please note, I'm saying the harness horsemen.  
15 We want this money to go into the purse pool. We want  
16 this money to go to the horsemen. And what we would like  
17 to do is, frankly, write a check to the California Horse  
18 Racing Board, have you make certain, monitor those funds,  
19 so that they go to help the horsemen, that they don't go  
20 to pay back overpayment of purses, that they don't go back  
21 into commissions, but they actually go to the horsemen and  
22 horsewomen who are up in Sacramento.

23           We also have agreed to sit down and try to reach  
24 agreement with the President of the Horsemen's  
25 Association, Mr. Ben Kenny. He and Dr. Allred have had a

1 number of conversations. And perhaps we would have had an  
2 agreement with Mr. Kenny except the fact that Mr. Kenny is  
3 out of the state on a well-deserved vacation.

4           So we're moving forward to try and resolve the  
5 issues with the harness horsemen. Dr. Allred has also had  
6 conversations with Mr. Scurfield, who is likely to be the  
7 new head of the organization running harness in  
8 Sacramento, in terms of the impact fees so that this issue  
9 will not be before you in the future. We intend to also  
10 sit down with Mr. Bartosick and work out an agreement in  
11 terms of what will happen in the future at Sacramento for  
12 that period of time that they will be conducting fair  
13 racing in terms of the impact fee.

14           So we're moving along to resolve this on as many  
15 fronts as we possibly can.

16           You notice, I haven't talked about Capitol  
17 Harness and Mr. Bieri. And, frankly, Dr. Allred and Mr.  
18 Bieri have had a number of conversations, a number of  
19 meetings, and they have gone nowhere. You may recall the  
20 meeting last year in February or March when you were over  
21 at Santa Anita. You were kind enough to take a recess for  
22 an hour or more while we kicked this thing around. We got  
23 nowhere. We would love to reach agreement with Mr. Bieri.  
24 But, frankly, we just don't think we're on the same page  
25 that he is in terms of resolving this issue.

1           And what is the issue? The issue is economics.  
2 The issue is hurting the quarter horsemen and women at Los  
3 Al and favoring the harness horsemen and horsewomen at  
4 Sacramento.

5           Let me just talk about the economics for a moment  
6 or two.

7           If you have someone going up to a window at Los  
8 Al and placing a hundred dollar bet on a race from  
9 Sacramento, there is \$2 available to Los Al for that  
10 wager. If the same person goes up to the window, puts a  
11 hundred dollars down on a live race at Los Al, there is  
12 \$18 to be spread amongst commissions and amongst the  
13 horsemen.

14           So when we take a bet from Sacramento for a  
15 hundred dollars, we get \$2. The law says that's Dr.  
16 Allred's money. But what Dr. Allred does is he gives one  
17 dollar to our horsemen and he keeps a dollar. So when  
18 somebody makes that same bet, there's -- ordinarily  
19 there's \$9 that goes to our horsemen and \$9 that goes to  
20 Los Alamitos. And you can see that it is substantially to  
21 our benefit and to help our horsemen to have people place  
22 wagers on live races at Los Al rather than bet harness  
23 races from Sacramento.

24           Now, today, you can go out here and bet a race  
25 from Santa Anita. Let's say you put a hundred dollars

1 through the machine on a race at Santa Anita. The  
2 take-out we'll say is 16 percent. So \$8 would go to the  
3 horsemen, \$8 would go here in terms of commissions. If  
4 you did a bet on a race here, the same would apply, \$8 and  
5 \$8.

6 In the thoroughbred industry, in the fair  
7 industry, the wagers that are conducted on satellite races  
8 when a racing association is running live, it's treated as  
9 if it is a wager made on the live race. So there's no  
10 distinction made between a satellite race and a live race.  
11 The economics are the same. The horsemen and the  
12 horsewomen benefit as much on a Santa Anita race here  
13 today as they would on a Bay Meadows race here today.

14 We have attempted to get that same agreement with  
15 Mr. Bieri for the last five years and have gone absolutely  
16 nowhere. We tried to get the Zumran agreement enforced.  
17 He's not willing to do that.

18 And so I don't really want to get into all of the  
19 stuff that has gone on before, except you need to  
20 recognize the economics and the disadvantage to our  
21 horsemen and our horsewomen in terms of wagers that are  
22 made on Sacramento without there being some consideration  
23 in terms of the impact that those wagers have on our purse  
24 pools.

25 Now, let me talk about our challenge at Los Al.

1 There are five major quarter horse racing states in this  
2 country: California, New Mexico, Texas, Oklahoma,  
3 Louisiana. Currently in Louisiana and New Mexico they  
4 have purses that are -- that are supplemented with slot  
5 machine wagers. Someone can take a horse -- a good horse  
6 from Los Al and maybe it would run for a \$10,000 purse.  
7 Take the same horse to New Mexico or Louisiana, probably  
8 run for something like a \$20,000 purse.

9           Oklahoma last year had slot machines authorized.  
10 They're going to be supplementing purse this year in  
11 Oklahoma from slot machine money. It's very tough for us  
12 to compete, for us to keep our pool of horses.

13           If we then take -- and as Mr. Bieri indicated,  
14 their handle has gone down since we have restricted --  
15 placed their wagers in a given area. It's gone down by  
16 ninety some thousand dollars a night. And our handle has  
17 gone up by about 10 percent. And so it's benefiting our  
18 horsemen to have that signal placed in a given area.

19           And so what the question really comes down to is  
20 do we benefit their horsemen or do we benefit our  
21 horsemen? And we need to benefit our horsemen and put as  
22 much money as we can in the purse pool, because we don't  
23 want them to go to New Mexico, Texas, Oklahoma, Louisiana.  
24 And so we have a real struggle to keep what we have there.

25           Now, there's been some talk about a motion being

1 made today to compel Dr. Allred to take the signal and  
2 spread it throughout Los Al and not just have it in a  
3 confined area. And I want to remind you that on  
4 Wednesdays Los Al is dark. So are you going to compel us  
5 to take that signal and put it throughout the whole  
6 facility, clean the whole facility, offer cocktail  
7 service, food service throughout the whole facility  
8 instead of having it in a given area?

9 Our handle on Wednesday in terms of harness in  
10 '04 was \$29,280, in '03 it was \$37,161. So we get two  
11 percent of, let's say, 30,000. So that is what, \$600? So  
12 we're going to open up all of Los Al, put the signal  
13 throughout the whole plant, have security service, have  
14 janitorial service, have food service, and our return is  
15 going to be concessions plus maybe \$600, because of Doc's  
16 agreement with the horsemen we get half of that, \$300? Is  
17 that good economics? Is that how we're going to keep Los  
18 Al open and have a place for quarter horses to race? I  
19 don't think so.

20 We talked about Mr. Bieri, and Mr. Bieri spoke  
21 about the decline at Los Al. He is absolutely correct.  
22 But he has also declined on track -- his on-track handle  
23 is down 10 percent in '04. The handle at Hollywood Park  
24 is down 17 percent in '04. The handle at the northern  
25 satellites combined is down 19 percent. The handle is

1 down. But it's not because Doc Allred is putting the  
2 signal in a given area at Los Al.

3           This thing is unfortunate. It's much more  
4 complex than you've heard today. And we can talk about  
5 the law. I mean I can show you -- in fact, I want to --  
6 section in Business and Professions Code Section 19605.4.  
7 "Any association that operates a satellite wagering  
8 facility may, but is not required to, accept an  
9 audio-visual signal. Notwithstanding any other  
10 provisions of this paragraph, any association that  
11 conducts a racing meeting in a fair that operates a  
12 satellite wagering facility may agree to provide an  
13 audio-visual signal and could accept wagering on less than  
14 all of the races."

15           So let's say you compel Doc to take the signal.  
16 Pursuant to this section, Doc could say, "Okay, I want to  
17 take the harness signal. I'm going to show one race. I'm  
18 going to show two races." We don't want to do that. We  
19 want to have a global settlement between Los Alamitos and  
20 the harness industry. And we're on the cusp of achieving  
21 that, I believe.

22           I really think that when Mr. Kenny gets back,  
23 after one or two meetings he and the Doc are going to  
24 reach agreement in terms of impact feed to help our  
25 horsemen and make it fair and that the issue will be over

1 with respect to our horsemen. And I think that -- in  
2 terms of former Chairman Scurfield, I think he and Doc  
3 will reach agreement and I think that Bartosick and Doc  
4 will reach an agreement. And we're anxious to have that  
5 happen.

6           Doc told Commissioner Shapiro last week that what  
7 he would like to do is have the signal throughout Los Al  
8 and he'd like to have an agreement and he would like to  
9 promote harness racing at Los Al in that area. And that  
10 he's sincere about that. I mean Doc has given this  
11 \$300,000 to the horsemen because he cares about them and  
12 he wants to see them survive. Mr. Shapiro and others have  
13 impressed upon us the fact that horsemen and women in  
14 Sacramento are living hand to mouth. We want to try and  
15 help them.

16           But we're not going to really be helpful if you  
17 compel the Doctor to do this now. Because, I'll tell you,  
18 he feels very strongly about it. He thinks it's a  
19 property rights issue and he's going to challenge it. I  
20 think if you let this matter be held over to your next  
21 meeting, we'll be able to get this behind us.

22           There's one issue that perhaps you need to give  
23 some thought to today and, that is: What we would like to  
24 do is the money that would ordinarily go to Capitol in  
25 terms of commissions, we think that all of that money

1 should be held in a trust fund at the Horse Racing Board.  
2 Currently you're holding about half of it. But we would  
3 like to see it all held, because I think there's some  
4 concern in terms of the other obligations that Capitol  
5 has, not only to Dr. Allred but to their own horsemen and  
6 horsewomen in terms of that half of a percent promotion  
7 issue and some other outstanding issues, that that money  
8 be held and be available.

9           Dr. Allred told me to tell you today that he is  
10 willing to meet with Mr. Kenny on Monday, Tuesday,  
11 Wednesday -- any day next week that Mr. Kenny has  
12 available. And I feel very confident after one or two  
13 meetings we will have an agreement. The Doctor's willing  
14 at that time to take the signal throughout the plant at  
15 Los Al. On Wednesdays we would restrict it to the given  
16 area, small area because they, frankly, don't handle much  
17 and there's no need to have them throughout the plant.  
18 And then any other darks days we would put them in a  
19 smaller confined area.

20           And, you know, this issue about we have to have  
21 equal for all breeds in all places, et cetera.

22           Right now if you were at Santa Anita today and  
23 you're sitting there and you're looking at the big  
24 screen -- we have live racing taking place here and those  
25 races are being simulcast down. But on the big screen,

1 what do they show? They're showing Gulf Stream, which  
2 they own. And after Gulf Stream is over, then they start  
3 showing on the big screen the Bay Meadows races.

4           So if you do this today, are you going to next  
5 month help Mr. Liebau get his races on the big screen if  
6 he wants that? If you're at Churchill Downs and you have  
7 racing at the county fair, I presume Churchill would have  
8 some other track racing at that time that they would  
9 prefer to put on their big screen rather than fair racing.  
10 Are you going to do the same for the Alameda County Fair?

11           I mean this is a complicated area. And I don't  
12 think we need to be sort of delving into this thing,  
13 because it gets very complicated. And, again, it's -- you  
14 know, when you're dealing with a corporation that owns two  
15 or three or four tracks, they want to maximize their  
16 profit.

17           In terms of our situation at Los Al, imagine if  
18 you are required by law to sell two types of sandwiches at  
19 your delicatessen, one that you make there that you're  
20 going to make a buck on and one that somebody else makes  
21 that you're going to make 10 cents on. Which sandwiches  
22 are you going to try to sell to your customers? The one  
23 you're going to make the most money on.

24           So I thank you for your attention. Doctor wants  
25 me to let you know that he is going to do his very, very

1 best to reach agreement with Mr. Kenny, Mr. Scurfield, Mr.  
2 Bartosick. And this is the third time you have heard this  
3 issue in the last 12 months. And hopefully it will be the  
4 last time you will have to hear it.

5 Thank you. And I'm available for any questions.

6 COMMISSIONER SHAPIRO: Mr. Chairman, can I  
7 respond?

8 CHAIRPERSON HARRIS: Yes.

9 COMMISSIONER SHAPIRO: As you know, Mr. Blonien  
10 is absolutely correct. This issue is a far deeper, far  
11 more complicated issue than this.

12 I have met with Dr. Allred, Mr. Blonien. But  
13 everybody related to this issue I've met with over the  
14 last three or four weeks to discussed this with.

15 I come from the position that what is being done  
16 is discriminatory. It's not an issue, in my view, of  
17 disadvantaging because they're harness people. What is  
18 being done is unfair. What is happening is -- I don't  
19 think the issue is that in a dark day you're required to  
20 open all of Los Al. Don't blame you a bit. All  
21 simulcasting should be held in one location on a dark day.  
22 But it is unfair that you promote out-of-state harness  
23 racing throughout the facility and do not promote  
24 intrastate harness racing at the same time. It is  
25 discriminatory and it is also very harmful. It denies the

1 state revenue and it's denied the horsemen revenue.

2           When you look at the effect -- I understand that  
3 the handle may be down 10 percent, as you say. But when  
4 you look at the result of before and after the signal was  
5 cut off, just looking at from a horseman's perspective,  
6 their purses decreased over 60 percent. The purse pools  
7 were greatly diminished.

8           Now, I understand Dr. Allred's position and I  
9 happen to agree with him, being an entrepreneur and a  
10 capitalist. I agree that if I can make a buck on this one  
11 and I'm going to make 10 cents on this one, I'm certainly  
12 going to want to sell this one. If there's a problem that  
13 needs to be fixed of a larger issue that's inequitable to  
14 him, then we need to change the law or we need to resolve  
15 this so that he has as much incentive to promote any breed  
16 within his plant.

17           But as the law is currently written, he is  
18 obligated to take the signal. He does not have the right  
19 and it was not -- when his license was held -- produced  
20 before this Board, was it ever understood, in my  
21 understanding, that he was going to take the signal and  
22 put it only in one part of the facility. It has  
23 disadvantaged the harness horsemen tremendously.

24           And I respect -- and do not feel that his  
25 horsemen should be disadvantaged.

1           What I'm concerned with is that I think we have a  
2 fiduciary responsibility to see that signal distributed  
3 throughout the plant. This issue unfortunately is wrapped  
4 up in much more serious and much more difficult issues  
5 having to do with the amount of impact fees. From my  
6 perspective, what I would like to see is that the signal  
7 be turned on throughout the plant.

8           I have no doubt that Mr. Kenny and Mr. Scurfield  
9 and Dr. Allred will come to an agreement and very quickly.  
10 I have spoken with Mr. Kenny, I've spoken to Mr. Hankins,  
11 I have spoken with Dr. Allred. I believe they're a  
12 whisker away from making an agreement or being able to  
13 make an agreement. There is no hostility there.

14           Notwithstanding, every day that the signal  
15 continues to be restricted into one area is denying the  
16 state revenue and disadvantaging harness horsemen further.  
17 What I have asked for, and Dr. Allred has not agreed to,  
18 is to turn the signal back on. I'm willing to say that  
19 all of the money can be escrowed and held by the CHRB  
20 until there is a resolution and agreement is reached. And  
21 then at least have those monies made available and  
22 distributed pursuant to such an agreement.

23           There is no reason to continue to harm innocent  
24 people. And the innocent people in this situation are the  
25 horsemen. They're dying on the vine.

1           So what I'm asking for is not something that's  
2 taking any money out of Dr. Allred's pocket. What I'm  
3 saying is at least make it a fair distribution. If he  
4 wants to apply for a racing license next time and he wants  
5 to as part of his license say that "I will only distribute  
6 the signal in this manner" or that manner, at least let  
7 the Board make that decision. It shouldn't be a  
8 unilateral decision made by any track operator to simply  
9 take a signal, because there is bad blood between people  
10 or they're not making as much money, and park it in a  
11 corner. It's wrong. It's just plain wrong. And I  
12 unfortunately do not agree that we should allow that to  
13 continue.

14           I don't know what authority he has to withhold  
15 612 money. I don't know where that comes from. Where is  
16 it -- where is he authorized to withhold money that he's  
17 now offering to give to the horsemen? What gave him the  
18 authority to hold that money in the first place? I don't  
19 understand that.

20           So what he's saying is "I'll give you back money  
21 that was yours that I've been holding." I appreciate -- I  
22 do not believe that Dr. Allred has any malice toward  
23 harness horsemen. He has been very clear about that. I  
24 think Dr. Allred has only good intent to promote racing.  
25 I don't think there's any malice there.

1           But I don't think this Board should allow this to  
2 continue, and I think that we should insist the signal be  
3 put back through the facility.

4           MR. BLONIEN:  If I could just respond to that.

5           CHAIRPERSON HARRIS:  We might want he quarter  
6 horsemen to respond to that too.

7           Mr. Schiffer, would you like to respond?

8           MR. SCHIFFER:  Members of the Board.  Good  
9 afternoon.  Daniel Schiffer on behalf of the Pacific Coast  
10 Quarter Horse Racing Association.

11           CHAIRPERSON HARRIS:  Do you represent the horse  
12 and not the racing --

13           MR. SCHIFFER:  I represent the horsemen, although  
14 Mr. Blonien spoke for them very eloquently.

15           But I do want to make a couple points.  First of  
16 all, Mr. Shapiro, with all due respect, the Board did find  
17 a solution to this problem, and that was their ruling that  
18 the harness horsemen pay the impact fee, which would have  
19 resulted in a benefit to quarter horsemen for the offset  
20 of the amount that was wagered on the harness races.

21           And unfortunately the harness interests have  
22 chosen to tie this ruling up in court.  And so that the  
23 quarter horsemen have not been able to benefit and are  
24 equally struggling for survival.

25           But I wanted to make -- I don't want to repeat

1 what Mr. Blonien said, but I do want to make a couple  
2 points. And it has to do with the law that we're talking  
3 about here.

4           The Horse Racing Board has been given plenary  
5 power by the Legislature over horse racing. And it's in  
6 the nature of a police power. And police power, when you  
7 study law, it's all about what they can govern. And in  
8 this instance it's about the -- to preserve and enhance  
9 the integrity of horse racing. That's in the statute.  
10 And that has to do with the honesty and integrity of the  
11 wager. That's the primary area where the police power has  
12 been given to this Board can be used.

13           The secondary area, which is specifically in the  
14 statutes, is track safety.

15           Those things are spelled out in the code -- in  
16 the B&P Code as the areas that this Board is to oversee  
17 when they're granting a license to a track operator such  
18 as Los Alamitos as a simulcast operator.

19           In other regards the code is very unspecific as  
20 to what the Board can do.

21           Now, the Board also can -- in the application  
22 process they can make inquiry about various things that  
23 the association is going to do in granting its license.  
24 And when Los Alamitos applied for its license to commence  
25 2005, the type of display that was going on at Los

1 Alamitos was already in place. Mr. Bieri knew that they  
2 were being displayed in a certain room only, that that was  
3 where the wagers were taking place. He didn't say  
4 anything, as was his obligation to do, at that time to  
5 raise the issue when the Board was considering granting  
6 that license to Los Alamitos. He did not raise that  
7 issue.

8           And the Board -- Los Alamitos was not required to  
9 put in their application on which monitors they were going  
10 to show certain races or otherwise. That's not a part of  
11 the application.

12           We didn't know it was an issue. Mr. Bieri didn't  
13 raise it as an issue. The Board granted the license.

14           Now, you're coming back and arbitrarily asking  
15 Los Alamitos to put certain displays on certain monitors  
16 in certain parts of their facility. There is no rule,  
17 there is no law that says where these signals have to be  
18 displayed. It says they have to be displayed. Los  
19 Alamitos is complying with the law in that regard. It  
20 doesn't say they have to be displayed throughout the  
21 facility. It says displayed. That is an area not of  
22 enforcement of the integrity of racing or wagering is  
23 concerned. It's not a safety issue. It's an area that's  
24 left to the operator to decide, just as every operator  
25 who's running a track in this state does decide. They put

1 it on certain monitors according to what they feel their  
2 patrons are going to want and what is in their best  
3 interests. And that is what's done here.

4           So, first of all, there's a big due process issue  
5 here of whether you can tell Los Alamitos where they can  
6 show their signal, whether you have the power to tell  
7 them, and whether they know what rule that's going to  
8 govern them if you do tell them what to do.

9           A few years ago, when we started the satellites  
10 out in the Riverside County, they weren't too enamored  
11 with quarter horse racing and they chose to only display  
12 the quarter horse signal out in the parking lot, not  
13 inside the facility where the thing was done. The quarter  
14 horsemen came to the Horse Racing Board and they said,  
15 "Hey, this isn't fair. You know, we want our signal in  
16 with everybody else's signals."

17           Now, the Horse Racing Board at that time declined  
18 to act on the quarter horsemen's request and refused to  
19 order the satellite facility display the signal inside  
20 with everybody else's signal. And that's the same thing  
21 that you all should do here. You can't go in and meddle  
22 with the way a business is operating its business. You  
23 can't tell them, "Serve Coke instead of Pepsi." Let them  
24 make those decisions.

25           If Mr. Bieri wants to pay an impact fee, then

1 we -- then I'm sure Dr. Allred will make adjustments that  
2 are agreeable. But until he does so, we are complying  
3 with the law. And I don't believe you all have the  
4 power -- now, I say this respectfully -- to order him to  
5 display in any other way.

6 Thank you.

7 CHAIRPERSON HARRIS: Thank you.

8 Paige, can you close the door.

9 We need to -- I think we understand the issue.  
10 It is rather complex. But let's try to wind this up.

11 But go ahead with a short statement.

12 MR. ENGLISH: Thank you.

13 My name is Richard English, E-n-g-l-i-s-h. I'm  
14 an accountant that does work for Los Alamitos. I'd like  
15 to -- I'll do this briefly and discuss just a few matters,  
16 Mr. Chairman.

17 First, Mr. Shapiro asked how Dr. Allred has  
18 authority to keep that 612 money. Do you remember in  
19 front of the Board when Capitol was playing for more time,  
20 they agreed to meet the \$500,000 deposit, to send \$500,000  
21 to Los Alamitos to make a 50-percent deposit each week.  
22 They at the same time said that Dr. Allred could keep that  
23 1.8 million 612 money. That was done in front of the  
24 Board at the beginning. That's why he's got the money at  
25 this point in time.

1           Secondly, he said he didn't think it was reaching  
2 Dr. Allred's pocket. And it has additional race signal,  
3 coming out another signal. And I'd like to share some  
4 numbers as well.

5           Here you go.

6           John's already seen it.

7           Okay. This schedule shows the on-track live  
8 handle for each meet in the last two years in California  
9 in chronological order. And Mr. Bieri acknowledged in his  
10 testimony the handle at Los Alamitos, the light handle  
11 increased from 38 to 41 million. He says it's not a big  
12 deal. Unfortunately in the State of California these days  
13 that is a big deal.

14           If you go through meet by meet, you'll see that  
15 every other meet in southern California, with the noble  
16 exception of Del Mar, was down.

17           Both -- part meets were down about 6 or 7  
18 percent. Doe Tree meet, even adjusting for backing out  
19 the Breeders' Cup, is down 14 percent.

20           And most telling, right now racing the same zone  
21 with the same weather, Santa Anita's down 17 percent  
22 between the Stardust meet and this meet and March 14th.

23           Corresponding, Los Alamitos is up 1 percent.

24           To say that there's no impact on track is  
25 straining credulity, straining logic. There is an impact,

1 like restricting their signal. What's happened at Los  
2 Alamitos is they're not -- they've restricted the Capitol  
3 signal and their handle's gone up. There's no other  
4 variables that have changed. That's the only change. And  
5 here's the impact right there.

6 Two other comments.

7 Mr. Shell mentioned that Dr. Allred's behavior --  
8 he compared it to what's been done with the milk shakes.  
9 And I just think that's disgusting. Dr. Allred has never  
10 cut a corner, never been less than honest with anybody in  
11 the horse racing industry. And for that sort of analogy  
12 to stand is despicable. I just want to contradict it  
13 myself.

14 I'd be happy to answer any questions.

15 CHAIRPERSON HARRIS: Any questions from the  
16 Board?

17 I think we've all been exposed to this issue.

18 Any of the commissioners have a comment they'd  
19 like to make?

20 COMMISSIONER SHAPIRO: Mr. English, can I ask you  
21 a question?

22 If the signal is turned back on throughout the  
23 facility, how does that -- and the money is held so that  
24 it provides the opportunity for the harness people to  
25 recover any money, but that the agreement is held in

1 abeyance, you know, the money, how does that harm -- how  
2 would that harm Dr. Allred?

3 MR. ENGLISH: Because some money is taken out of  
4 circulation. It's sitting in your bank account. It's not  
5 in the bettors' hands and there's no multiplier effect of  
6 the money being bet through the windows. The money's then  
7 gone out of the betting pools. It's been set aside.

8 COMMISSIONER SHAPIRO: No, I guess what I'm  
9 saying is you just hold the period -- the amount that is  
10 in controversy.

11 CHAIRPERSON HARRIS: Well, it would be hard to  
12 calculate, wouldn't it?

13 MR. ENGLISH: Yes.

14 CHAIRPERSON HARRIS: An incremental amount or --  
15 how would you determine how much --

16 COMMISSIONER SHAPIRO: Well, you determine how  
17 much would be attributable to purses and how much is  
18 attributable to commissions. Then you simply hold that  
19 money rather than distributing it to Capitol Racing and  
20 the harness horsemen. It's held. That's not taking money  
21 out of the handle. That's money that's going to go out to  
22 the harness horsemen and the association. I'm not talking  
23 about increasing the --

24 MR. ENGLISH: Well, it's money that would have  
25 been at Los Alamitos to be bet, theoretically more on the

1 quarter horses than on the harness people -- than on the  
2 harness races. The money's no longer at Los Alamitos.

3           And if you take out what's held by the track and  
4 purses, that's -- for the harness industry maybe that's 18  
5 percent that slipped -- their effective take-out's about  
6 25 percent. So there's another 7 percent that goes away  
7 also.

8           So it's like 25 percent out of what's being bet  
9 there leaves the premises. And it is no longer in the  
10 pools.

11           CHAIRPERSON HARRIS: One issue that you brought  
12 up, for example, was the state -- the license fees. I  
13 understand that the state license fee on both harness and  
14 quarter is pretty low. I mean there's not really much of  
15 an impact on that.

16           MR. ENGLISH: No, it's negligible. I don't -- I  
17 forget the specific -- I'm sure John --

18           MR. BLONIEN: Four-tenths of 1 percent.

19           MR. ENGLISH: Four-tenths.

20           CHAIRPERSON HARRIS: What is it on --

21           MR. ENGLISH: It might be two-tenths on track but  
22 four-tenths of the satellites. It's very small.

23           CHAIRPERSON HARRIS: I don't think there's -- as  
24 far as the state's revenue there's much of an issue.

25           MR. ENGLISH: No, there's a negligible effect on

1 the state.

2 CHAIRPERSON HARRIS: Well, do we have comments  
3 from the Commissioners on this issue?

4 COMMISSIONER GRANZELLA: I feel like -- I  
5 personally feel like I've been in the middle of a tug of  
6 war for I don't know how many years now.

7 I just don't feel comfortable making a motion. I  
8 think that it should be tabled.

9 CHAIRPERSON HARRIS: Want to make a motion to  
10 table?

11 COMMISSIONER GRANZELLA: I make a motion to  
12 table.

13 COMMISSIONER SPERRY: I second.

14 CHAIRPERSON HARRIS: We've got a motion to table  
15 this till the next meeting and get a report back from  
16 the -- I guess the negotiations are ongoing.

17 All in favor?

18 (Ayes.)

19 CHAIRPERSON HARRIS: Opposed?

20 (No.)

21 CHAIRPERSON HARRIS: Note that Commissioner  
22 Shapiro is opposed.

23 Motion passes.

24 MR. ENGLISH: Thank you.

25 CHAIRPERSON HARRIS: Thank you.

1           Okay. We now report handle and attendance for  
2 2005 race meets.

3           SENIOR PARIMUTUEL EXAMINER REAGAN:

4           Commissioners, this was requested to be put on  
5 the agenda. And we just put some numbers together very  
6 quickly. But no surprises. We have been working with the  
7 race tracks, northern and southern California. Horrendous  
8 weather, torrential rains in southern California. So when  
9 the numbers showed a large percentage of decline, you  
10 know, 10 percent, 7 percent, and so on and so forth, we  
11 were not surprised. And I believe, like I say, pretty  
12 much weather-related this year. It has been a horrible  
13 year in terms of the rain and whatnot, the lost days and  
14 so on and so forth.

15           So here are the numbers. These the total numbers  
16 including account wagering. I do want to make that clear.  
17 I've had a number --

18           CHAIRPERSON HARRIS: That's right. I was the one  
19 that asked to put these on. Well, I agree they're  
20 somewhat weather related. But I think we've got a pretty  
21 sick industry here that's showing declines -- I mean  
22 obviously weather impacts, field size and things like  
23 that. But so much of the handle is not really, you know,  
24 at the live track anyway. That I think we've got to do  
25 something to turn around these trends.

1           Because at the same time we're losing revenues,  
2 we've got the overall industry, the tracks and the  
3 horsemen, are seeing increased costs. And I think it's  
4 just good to look at these numbers and be aware of them,  
5 that sometimes we, you know, deal into a lot of things  
6 that are arguably minutia, but we're kind of rearranging  
7 deck chairs on the Titanic as the whole ship is going  
8 down.

9           Okay. Hopefully I'd like to just do this, is  
10 every meeting just to sort of see how we're doing and sort  
11 of get a trend. Because a lot of times we look at the end  
12 of the meeting reports, but...

13           Okay. Let's go ahead to the staff report on the  
14 concluded meetings, which is Capitol and Pacific.

15           SENIOR PARIMUTUEL EXAMINER REAGAN: Yeah,  
16 Commissioners, this is the new version of the end-of-meet  
17 reports where we also include reports from the Board  
18 investigators, stewards and official vets. So we've  
19 included the numbers and the memos. If you will look  
20 through the package there, you have memos from Chief  
21 Investigator Frank Moore and Board of Stewards and the  
22 Board of Vets. So those are also included in the report.

23           And if you have questions, I'm sure that a number  
24 of people here might be able to answer them.

25           CHAIRPERSON HARRIS: Yeah, I think these would be

1 helpful. And we need to look at those as we look at the  
2 new -- you know, the new meets come up for licensing, that  
3 we assess how they address these different deficiencies.

4 COMMISSIONER SHAPIRO: John, can I ask you, in  
5 looking at the March 11th report from Frank Moore on Cal  
6 Expo, first --

7 SENIOR PARIMUTUEL EXAMINER REAGAN: Let me find  
8 that, sir.

9 COMMISSIONER SHAPIRO: Pardon me?

10 SENIOR PARIMUTUEL EXAMINER REAGAN: Okay. I  
11 have that here.

12 COMMISSIONER SHAPIRO: It says, "It should be  
13 noted that the soda barn and restricted area of the barn  
14 are not manned by any type of security. And there have  
15 been many instances where the CH administrators along with  
16 the police department had to respond and arrests were  
17 made." What is that?

18 SENIOR PARIMUTUEL EXAMINER REAGAN: I personally  
19 do not have any knowledge of that.

20 COMMISSIONER SHAPIRO: When they say -- what's  
21 a -- is the soda barn --

22 SENIOR PARIMUTUEL EXAMINER REAGAN: I believe  
23 that's your TCO2, but I'm --

24 COMMISSIONER SHAPIRO: Okay. And further in that  
25 same report it says -- and I think this -- it was

1 represented to us that they would be doing bicarb testing.  
2 And it says on Item No. 4, "This procedure has not taken  
3 place in 2005." I don't know why that's the case. I  
4 thought that there was testing.

5 MR. HOROWITZ: Alan Horowitz, Capitol Racing.

6 The two items in the case of the detention barn  
7 areas and the -- well, in the case of the testing barn,  
8 the CO2 testing program, we do not have State Fair Police  
9 manning that. We have a contract with a union that has --  
10 We've had this contractual arrangement with them. There  
11 is a -- the union essentially applies -- provides security  
12 at all of the gap gates and opens and closes the gap gate.  
13 They provide the -- they maintain the admission gate to  
14 the back stretch. And they also are posted outside the  
15 testing barn.

16 They are not -- in contrast to the testing -- or  
17 the detention barn program, which the State Fair Police  
18 monitor. And we've done that, because in the case of the  
19 detention barn, we were interested in having a higher  
20 degree of security. And that was communicated, if you  
21 will, to the horsemen through the use of the State Fair  
22 Police, because they were actually searching the  
23 horsemen -- as they went in, they were actually going  
24 through the feed and whatnot that was being provided.

25 COMMISSIONER SHAPIRO: Well, it says here it's

1 not manned by any type of security.

2 MR. HOROWITZ: If you're talking about State Fair  
3 Police, that is correct. If you're talking about a union,  
4 that is not correct.

5 COMMISSIONER SHAPIRO: Well, can we get  
6 clarification of that?

7 MR. HOROWITZ: Yeah, I mean I can show our books.

8 COMMISSIONER SHAPIRO: Because I read this as  
9 there's nobody there.

10 SENIOR PARIMUTUEL EXAMINER REAGAN: We will get  
11 clarification.

12 CHAIRPERSON HARRIS: Let us clarify what's  
13 happening.

14 COMMISSIONER SHAPIRO: And why are you not doing  
15 the TCO2 testing that was represented?

16 MR. HOROWITZ: We are.

17 COMMISSIONER SHAPIRO: Well, in this here it has  
18 not taken place this year.

19 MR. HOROWITZ: No, he's referring to the  
20 detention barn, not the CO2 testing. The CO2 testing has  
21 been maintained except for the last month when we shifted  
22 sending the samples over to UC Davis to be tested to see  
23 how that would work out.

24 COMMISSIONER SHAPIRO: Well, when you were here  
25 for a license you said to us that horses report to

1 detention barn 24 hours in advance of racing.

2 MR. HOROWITZ: Correct.

3 COMMISSIONER SHAPIRO: Okay. When I believe we  
4 made a stop up there, there was no such procedure.

5 MR. HOROWITZ: That was --

6 And what this is saying is it's still not going  
7 on. And that's not -- that's in violation of your  
8 license. You said you were going to do that.

9 MR. HOROWITZ: I'm not --

10 COMMISSIONER SHAPIRO: Not being done.

11 MR. HOROWITZ: I'm not sure that we communicated  
12 that in the license. But we were urged by our horsemen to  
13 discontinue the practice until such time as a detention  
14 barn is required by the CHRB.

15 If your pleasure is to reinstate it, we will --

16 COMMISSIONER SHAPIRO: Well, I don't think that's  
17 what was represented to us at all. I think that we were  
18 told that this is a procedure that's ongoing at Capitol  
19 Harness that you maintain this. And, you know, we look at  
20 it as the model of what was being done.

21 EXECUTIVE DIRECTOR FERMIN: Right. And I thought  
22 at first that it was a stake race, plus there were two  
23 other races that we were supposed to -- they were supposed  
24 to shake out. And then when we were there, there weren't  
25 any. And they said that it was because there wasn't a

1 stake race that night. But this indicates that they  
2 haven't been doing it at all.

3 MR. HOROWITZ: In the fall meet that began in  
4 late September, all of the stake events and late closing  
5 events were conducted out of the detention barn.

6 The overnight races where we had drawn two races  
7 at random, and those races were required each day to go in  
8 for the previous night, that was discontinued in the fall,  
9 again at the request of the horsemen.

10 Now -- and awaiting to see what the resolution of  
11 the detention barn would be by the California Horse Racing  
12 Board.

13 If it is the desire of the Board that we  
14 implement it again, it will be implemented for the first  
15 day of racing next week, and on the same basis that it was  
16 through the end of July, as opposed to during the fall.

17 COMMISSIONER SHAPIRO: I was really shocked to  
18 see this. This is what was represented to us. I don't --  
19 we can go back and have staff go back and look at your  
20 license. That's what you said. And you're not doing it.  
21 I think you should be doing it. That's what you had  
22 represented.

23 MR. HOROWITZ: Well, if you request it, you'll  
24 have it.

25 CHAIRPERSON HARRIS: Well, I think collectively

1 we need to feel that something is needed. If it's not  
2 needed, I don't think we're going to force people into  
3 something. But I think there need to be discussions with  
4 the horsemen and association and see what -- you know,  
5 what's really needed to run a meet.

6 MR. HOROWITZ: Well, you know, we implemented it  
7 because we felt that it was something that the horsemen  
8 wanted initially, that they were concerned that there was  
9 not a level playing field. And so we implemented it at  
10 least on two random races per evening.

11 When we came in a little bit before the fall, the  
12 response was a little different. We still continue to do  
13 the TCO2 testing on the first two finishers of every race,  
14 regardless of whether they're in the detention barn or  
15 not. And the horses in all of our stakes and late closing  
16 events continue to go into the detention barn; and even  
17 during this meet will continue to do so.

18 If the level -- if the Board would request that  
19 we go back to what we had in the spring where two races  
20 each night of horses are to be sent to and participate in  
21 the detention barn program, we can implement that.

22 EXECUTIVE DIRECTOR FERMIN: Well, I know when we  
23 went up we were hoping to see it as a model. Because you  
24 would have had the experience that a lot of the other  
25 tracks are looking at and, in fact, throughout the

1 country. And then we're disappointed to find out that,  
2 you know, it wasn't happening.

3 MR. HOROWITZ: I can understand that.

4 Had you fortunately come up on a night that we  
5 had the stakes or the late closing events, you would have  
6 seen it in operation. And we can arrange to put that back  
7 in. We're not trying to surprise the Board or not comply  
8 with an expectation that the Board has and where the Board  
9 desires to have that done for harness racing.

10 CHAIRPERSON HARRIS: Okay. Well, I don't know,  
11 for us to really order -- I don't know if we can just --

12 MR. HOROWITZ: It's not a matter of ordering. I  
13 mean if you tell me you would prefer we do it, well, it  
14 will be done.

15 COMMISSIONER SHAPIRO: Is the TCO2 testing being  
16 done now without fail?

17 MR. HOROWITZ: Yes. It is being done where the  
18 samples are being sent to UC Davis for testing.

19 COMMISSIONER SHAPIRO: Okay. I understand. It's  
20 not being done on the backside anymore.

21 MR. HOROWITZ: Correct. The samples are being  
22 taken on the backside by the same staff that was also  
23 conducting the testing. But we -- remember, we had an  
24 issue of in harness racing where there should be a higher  
25 level allowed for lasix? And we decided within the month

1 that we had from the last meeting to this meeting, if we  
2 sent the samples in, we could actually be seeing how  
3 sensitive the instrumentation is to pick up on lasix and  
4 non-lasix horses.

5           The interesting thing, as Dr. Stanley would  
6 comment, the procedure is sensitive enough to where his  
7 lab doesn't know -- not only doesn't he know who the  
8 horses are, but he doesn't know who the lasix versus  
9 non-lasix horses are. And the fact is that we've got no  
10 high tests for whether it's been on lasix or non-lasix at  
11 a 37 level.

12           COMMISSIONER SHAPIRO: Well, I'm fine with it  
13 being if -- as long as you're testing, you know, the top  
14 two horses or whatever you're doing. I just was surprised  
15 that what was represented to us wasn't being done.

16           MR. HOROWITZ: It had been done through July of  
17 last year.

18           COMMISSIONER SHAPIRO: It's up to others.

19           CHAIRPERSON HARRIS: Well, it seems to me you  
20 would work with the stewards and the horsemen and see what  
21 kind of program that would ensure you the best overall  
22 program. But -- I mean I kind of applaud the track for  
23 doing it voluntarily. I think that's good if you've had a  
24 program going for years. Just need to fake a look if you  
25 want to keep doing it or not.

1           Okay. Anything else on Cal Expo?

2           We also had the Golden Gate, a similar thing.

3           One thing I noticed on Golden Gate is the -- I  
4 guess they still don't have a head-on camera on the turf  
5 course. And I think that really is important for  
6 inquiries.

7           Does Bay Meadows have a head-on on the turf  
8 course?

9           Good. Maybe you could advise them on how to do  
10 that.

11          Okay. The Committee reports have been covered in  
12 the main agenda.

13          Anything under general business?

14          Anything under old business?

15          If not, thanks for everyone's participation.

16          And we're adjourned.

17          (Thereupon the California Horse Racing  
18 Board meeting adjourned at 2:15 p.m.)

19

20

21

22

23

24

25

## 1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing California Horse Racing Board meeting was  
7 reported in shorthand by me, James F. Peters, a Certified  
8 Shorthand Reporter of the State of California, and  
9 thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said meeting nor in any  
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 6th day of April, 2005.

15

16

17

18

19

20

21

22

JAMES F. PETERS, CSR, RPR

23

Certified Shorthand Reporter

24

License No. 10063

25