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Current Issues and Points of Emphasis in Racing

SPEAKERS:

Dr. Jennifer Durenberger, Director of Racing, Massachusetts Gaming Commission and Accredited Steward

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Mr. Dan Fick: We'd like to update, and you'll see that's one of the key things we're doing in this one is we like to update them on new things that have happened, new technologies especially, new licensing protocols, things that are available out there on the websites. We ask that each continuing education program in the schools cover these as part of their agenda in order to be certified. What are the topics for this year that we've been teaching at the schools? Use of technology by stewards, the new multiple medication violation program that just was introduced first of the year to ensure clear and concise communication of stewards' decisions. Today's panel is a way of showing you how we do that.

It is also a way of showing you how we try to encourage consistency and uniformity in the enforcement of the interference rules. Then we're gonna talk about a problem that we all have at all the racetracks, and that's the addictive behavior programs. The programs aren't the problem. It's the people that need them. We see them every day. With that, I'll go ahead and start off. As far as the use of technology, the day of a steward stand where there's no community, no smartphones, no Internet access is hopefully headed out the door. Stewards need to have access to the Internet, both in their office and in the stand, need to be able to be contacted by e-mail.

I'll give you an example of that. The racetrack operating system, the InCompass system that runs the entry racing program, the whole process of how a race office

is managed, everybody refers to it as the RTO program. They have a system set up so anybody that the racing secretary wants to be notified, which would be him and the stewards, when an entry clerk overrides a horse that pops up on a vet's list, steward's list, paddock judge's list, and they went ahead and take the entry, I would immediately get an e-mail that this horse, the entry clerk override it. We'd look the horse up in the system, see why he's on the list, and then we'd get on the phone and start working together to see what we need to do is get the horse off the list.

They can be a wide range of situations. We'll see horses on a list in a state, on the vet's list in the state, on the steward's list in the state, and he ran six times in that state after he went on the list. Clearly, somebody forgot to take him off. Usually, a phone call will take care of that. We'll see other situations where the horse went on the list six months ago in another state, hasn't run since then, and shows up here. Those are the ones we've got to take care of. That's a technology why you have to have e-mail accounts, why you have to be able to get on the computer system.

Somebody in the stand ought to be good with Microsoft Office skills in order to do the rulings, notifications for hearings, need proficiency again, like I explained with the RCI and the RTO databases, and then just familiar with the resources that out there on the Internet for the stewards to see what's going on. Going to the RCI website, BloodHorse, Paulick Report. Also, the Jockey Club has a list of industry organizations where you click on them, you get that website.

If you need to get a hold of somebody, you can go to that page on the Jockey Club website and get a hold of the Horsemen's Association, any of the tracks, the commission in those states. You can immediately have access to it. The Internet's a huge resource to the stewards. I was just gonna ask the stewards we have here today to comment. Kim, what have you seen in the last five to ten years that's changed from the way you do your business as a steward in California because of technology?

Ms. Kim Sawyer: Actually a lot, even going back a little farther when InCompass was introduced was a great asset to the racing office. Every jurisdiction, of course, has different possibilities with InCompass. It just depends what they pay for. As far as computers, when I started in California in '05, I actually asked to have a computer downstairs. Then they got in the routine of — two of the three racetracks I work at now, the association provides us with a computer. Otherwise, we carry our own laptop.

We do have access upstairs to a computer, and as we went through with the race, when we need to look at a race trip to verify blinkers on a horse, you have that access. As you reminded me, Dan, you can always pull up a race. You always can go to the website, find a race from the racetrack where that horse ran if it's not in your jurisdiction, and see whether it actually raced with the blinkers or not. It's come a long ways, and I'm sure it's gonna continue.

Mr. Dan Fick: Eddie or Scot?

Dr. Scot Waterman: Six of my very extensive seven days of experience as a steward have occurred at the Santa Cruz County Fair, which is in Sonoita, Arizona. Sonoita is basically an 1890's cowboy town, so there's almost no technology. The biggest benefit for me is now having a cell phone that can double as a Wi-Fi hot spot so that I can — we can access the Internet should we need to look up an Equibase chart or something like that. Being able to now access the Internet in a location that has no Internet is a monumental leap forward in some of these smaller rural tracks.

Mr. Dan Fick: Any other comments?

Mr. Eddie Arroyo: Dan, what is usually at least — the new technology has provided us to address the last minute issues. However, our system that we have set up through the years and people before us set up, we have — especially when we went to three and sometimes four and five-day entries out, we are all set up to double check everything else that happens. Those things, when they happen, they do happen as a rarity.

A trainer doesn't assert that this horse wore blinkers last time when he didn't because everything is checked beforehand. The program is pre-approved. Everything is done to stop that from happening. What the technology has brought on is, every once in a while, you will have an incident where there is a difference of opinion, either in the paddock or wherever it might be, and you have the ability to address it within minutes.

Mr. Dan Fick: The next one is the National Uniform Medication Program, which has been adopted. It's a model rule that was put forth by RMTTC, approved and — worked on and approved by RCI and has been adopted, last time I looked, by about 23 of the states. The part that's new for all of us is the part with the multiple medication violations, the MMV. Part of the reason that was promulgated was because across the country, it's very difficult to achieve consistency in how stewards' rulings are adjudicated and issued and penalties determined. We had very firm guidelines. If you had a violation of this class of drug, and it was your first violation or it was your third violation, what the mitigating or aggravating circumstances were, we have a — we still have it — a sheet of what you should do, what the minimum penalty or the maximum penalty ought to be.

What we were finding was they tended — the stewards tended to be more looking at the mitigating circumstances, which is fine if they justify not giving a more severe penalty, but got to the point where we gave this guy 30 days and \$1,250.00. You'd see the next violation, 30 days, \$1,250.00. The next one, \$1,250.00. A lot of times, when it was that guy's second violation or that lady's second violation, they got the same thing. They didn't bounce them up. That's when, again, RMTTC, RCI got together and came up with the multiple mitigation program. Basically, very quickly if you're not familiar with it, the drugs are classified. If they're one of the 28 or 26 controlled, you come into that left-hand

column for points. If it's not a controlled substance, something that shouldn't be used in a horse on the racetrack, that's not currently has established threshold levels and withdrawal times, the penalties double. If you get three points in any — when you get three points in any 365-day period, you're gonna get 30 days suspension automatic. That's what it calls for.

The stewards would adjudicate the case, say he's gonna get 30 days and \$1,250.00 for this penalty, and then he'd get an additional 30 days because it's a multiple violation. You can see on the next screen, if you get an A, that six points stays on your record forever. If you get a half a point for a high bute, you got 30 days coming. It's a pretty substantial penalty system when you really start looking at it. Just to give you an example, we had a trainer that had his vet and shoer use some Rompun, xylazine, on a horse to set a shoe. That was a fairly common practice, but he had a horse whose shoe wasn't set, no reason for him to have xylazine, and came back with a xylazine positive.

The trainer had never had — was a very prominent trainer, had never had a medication violation, but that trainer now has two points. That sticks with him, as you can see. It's a B. That sticks with him for three years. If he, in a one year period, gets two high butes, he's got a 30-day suspension coming. I think this will do what it's intended to do very well if the trainers will follow it is, you've got to take care of your business. There's no reason with the thresholds being announced and the withdrawal times being there for the controlled medications that we should have a problem.

The reason, again, this was done was because we weren't quite nationally all of us doing our job the way they were supposed to do in terms of penalties. I wanted each one of the stewards, especially Kim and Eddie, who had a lot of experience with drug testing hearings and then the penalty stage, to talk about what they go through after they found out the split—it was uphill, the original sample, and they found out this guy definitely has a positive, how they go through the penalty phase. You want to go first, Eddie?

Mr. Eddie Arroyo: Yes. We have rules that dictate how we address this issue. We have rules that we have to follow in assessing a penalty. In most of our inquiries in the steward stand relative to a positive medication violation, we have to take into consideration things like the experience of the individual, the size of the stable, the quality of the stable, what process is in use to prevent anyone from tampering with his horse, previous violations that he's had in our jurisdiction or any other jurisdiction. We do that as part of required, and it has to be introduced into the record and is recorded. We balance that.

Now with this, we have a guide to address the issues rather than it being as subjective as it was in the past when we had to actually do a lot of research to see what — what we did up until last year we did, we went out and called ARCI. "Please give us the last two years of penalties for this particular drug." They would give us a printout of all the penalties. We would look at the penalties. We would take into consideration the experience of the trainer, his past record violation, and

then we would come up with a penalty.

Mr. Dan Fick: Kim?

Ms. Kim Sawyer: Yeah. We're pretty much the same way. We're lucky enough to have investigators that do all the investigating, put the complaint, pack it together. With due process in our rule book, they have ten days before it hits our calendar. We also go with the mitigating aggravating circumstances, the trainer's record. They have their option to appear with a representative or an attorney, listen to their story.

We are fortunate to have Dr. Rick Arthur, our medical director, and he signs off on all medications before we get to see them, as well as the main investigator. We do ask for the CHRB recommendation just to put on the record just—not that we use that. We go with the mitigating aggravating and then the guidelines as to the level and how many times it's happened in a 365-day period. There have been times we've gone up over the excess level, depending on the person's record.

Mr. Dan Fick: I know Dr. Waterman and Dr. Durenberger with the RMTC and the regulatory vets committee and RCI were very much involved in putting this process together, and especially the prior penalties that were in place. Do you all have any comments you'd like to make?

Dr. Jennifer Durenberger: I do, and I know Eddie's gonna want to chime in on this. Let me just clarify my role sitting at this table here. As Dan pointed out, I wear a number of hats, so I always try to clarify who I'm representing. I'm here because I'm on the education committee for the Racing Officials Accreditation Program, and I also have a recent appointment to the board, so I'm not speaking as any of my other employers or hats. One of the things that's very interesting — Eddie brought this up yesterday when he was receiving the Pete Peterson award — we have these uniform rules now that the states are doing a really good job of adopting, but we still work in a system where different states have different caps on the authority that the stewards and judges have to impose penalties on folks.

The classic example right now is that a category A recommended penalty is a minimum of one year. There are a number of states where the stewards, including where I worked as a steward, the stewards are constrained, and sometimes, this is in the statute, and the maximum penalty they can give is six months. What happens, and I'm sorry that there aren't more members of the press here, but the stewards impose a six-month penalty. It's the maximum they're allowed to do, and then it gets referred to the commission for further review. The recommendation from the stewards in Louisiana takes the form of — it's being referred to the commission because they believe—the stewards believe that the penalty is insufficient.

Unfortunately, when there is a high-profile medication finding, everybody in the industry is waiting for that steward's ruling. The first thing they see is, oh, my God. We've got this — dermorphin for example, and they only gave the guy six months.

There's not a lot of — I don't think we do a lot of education on why that is, And then it gets forgotten. The commission meeting might not be scheduled for two months or six months. There may be an appeals process. Really, what we, the industry, see is that this drug equated to a six-month penalty. Even if, five years later, it turns into something more significant, it's lost its following, if you will, in the media. Eddie, if you have more to say about that, cuz you're the one who was on the soapbox yesterday.

Mr. Eddie Arroyo: I agree with you. I understand that the commission — some commissions have a reluctance to give the stewards the authority to suspend—to do what they think and after they do the research, what the appropriate penalty is. They limit what you can do. I think on a class one penalty, six months is — it usually is more than six months. The commission makes the decision of giving them a year or two, but that happens six, eight months later. Nobody really cares. I think that the stewards should have — the commission should give the stewards the authority to give the medication penalty violation according to the guidelines.

Usually, we need to send a message out there. Perception sometimes has to be addressed that we are not rolling over on these things. We're actually taking them serious. That's why this penalty is this amount of days or years rather than six months and a referral. As we've changed the rules now, a lot of the states that have rules that restrict what stewards can do, they're gonna have to change because they can't possibly adhere to these guidelines. If you could only suspend six months, and this says this is a permanent suspension for a Class A, then where are you going?

Dr. Scot Waterman: I'll take that a step further. If we're gonna talk about this broadly, this penalty system is designed to weed out repeat offenders. That's the goal of this penalty system. I don't think personally — and I'm speaking personal opinion. These views do not reflect the Arizona Department of Racing. I don't think the problem is at the level of the stewards. I think every steward at every track in America knows who their problem children are. I think most stewards, if you gave them a vote, would send them as far away as they can for as long as possible because they account for probably 90 percent of their day-to-day work.

I think where we lose these cases is when they get outside of the stewards and when we have lay people that are involved that may or may not know the industry. They might be administrative law judges. They may be commission members that don't have any experience within the racing industry, and they're reluctant to make big penalties stick. It's easier to cut down a penalty on an appeal than it is to uphold or even aggravate that penalty. I guess personally, I'm skeptical whether or not this program will achieve the desired outcome because whether it's a point, whether it's a suspension, whether it's a fine, whether it's waterboarding, whether or not it's bamboo shoots under the fingernails, these will get appealed.

This will not end with the stewards, and in a lot of cases, they will not end at the commission. They're gonna go beyond. You're gonna have to justify this penalty, whether it's a point or a suspension, so we're right back into that same problem.

I'm skeptical. Putting on my Arizona Department of Racing hat, we've discussed this. We've looked at it. We've played with it. We are very eager to see how it works in the mid-Atlantic.

Mr. Dan Fick: Next topic. Communication. When we talk about communication on behalf of the stewards, we're talking about the public, the licensee, and the regulators. How do we communicate what we do not only to the licensees that are being penalized or were disqualified or for whatever other reason we had to deal with them, but are we letting the other licensees know what happened? Are we letting the public know? Do the commissions across jurisdictions know what's being done?

I think it's very key from the standpoint of, there's a lot of perception that we don't do as much as we should, when really, we are doing it. It's just not getting communicated. What's become a popular trend is stewards' daily reports or stewards' weekly reports and thank are being sent out on the Internet, being posted in the race office, being posted in the licensing office, where — in Massachusetts, we did this. We had what we called the steward's corner. It usually went up on the Internet within 30 minutes of the last race, and it was on the commission website and the track website. It detailed what happened during the course of the card.

We expanded on what a normal steward's daily report would be that would be just sent to the commission the next day talking about scratches, jockey changes, equipment updates, but we got into more detail on explanation of fouls and no calls. What the case was, who called the foul, did we call an inquiry, what we saw, what cameras we looked at, who did we talk to, and then what was our decision, and why did we take that decision, and then referenced the rule that applied. We felt that this would increase the transparency of what the stewards were doing. As I said, it's being done in California. I'll let Kim tell you what they do to enhance the transparency and get the news out.

Ms. Kim Sawyer: Yeah. Surprisingly enough, I had never — we did dailies when I worked in Ohio that were put out, but they were put out weekly. When I got to California, they had their weekly minutes that are very in-depth about what happens every day as far as scratches, claims, inquiries, objections, medication hearings. We write about it. They're put out weekly. Our rulings that go out are sent to Sacramento daily.

I'm not sure how quickly they post them, but we do send the rulings, directly go to the publicity, so they have access to who's got days or who's been fined or what penalty. At that point, nine times out of ten, somebody from the daily racing forum will come down and ask questions about the ruling and delve into it more so that way. We tell them anything we want to know. Yes, California does do a good job at trying to put out the information as soon as possible.

Mr. Dan Fick: Eddie?

Mr. Eddie Arroyo: We do have daily minutes. Our minutes are composed daily. Again, they include mostly what she said or all of what she said, except we include scratches in our minutes, why a horse is scratched. We also include what the veterinarian's report is into the minutes. Therefore, when our minutes are sent on a daily basis down to the commission electronically, they do not publish those minutes because of the medical records that we have in them. They have so far not addressed the issue of becoming more transparent. Therefore, our minutes are not open to the public unless they're subpoenaed.

Ms. Kim Sawyer: Can I just add one thing? California has the new voided claim rule. In our minutes, we put down horses that are claimed, and then we put in there whether the claim was voided or not. It's good for trainers as well as the public to realize what claims were voided because the horse was unsound.

Mr. Dan Fick: Jennifer or Scot, do you want to add anything?

Dr. Scot Waterman: I'll just say I'm jealous of what Massachusetts has been able to do with their website. We don't do a great job here in Arizona with this. Speaking from the standpoint of a smaller agency, everybody that works at the Arizona Department of Racing wears multiple hats, so this is one of those deals where you have to try to figure out who's gonna pick up this hat. It is time-consuming. You've got to have somebody that's responsible for it. You've got somebody that can help the already overloaded stewards to create these reports and edit them and make sure that they're in good shape for the general public.

That's a little bit more difficult for a smaller agency, I think, than a larger agency, but it's certainly something that personally, again, I think is incredibly important. I get sick of the comparisons to Hong Kong, but if you want to see some really nice stewards' reports, look at the Hong Kong Jockey Club. They're in a completely different boat than we are, but that's, I think, what we should all aspire to. Whether or not we can get there, I don't know.

Mr. Dan Fick: I think Hong Kong has a journalist as a secretary cuz it's like a book.

Dr. Scot Waterman: Yeah.

Mr. Dan Fick: Another thing we put in ours is who went to the test barn. Going back to the last panel, guys, we forgot to send the horses to the test barn. The test barn just called, and they're waiting for them from those last two races. One of the audience asked me, "What's your criteria for sending horses to the test barn?" There's been a number of articles about that over the years. It goes all the way back to the 1991 McKinsey report that the Jockey Club did about what horses should be going to the test barn.

What we teach in the school is, the winner has to go cuz that's by rule, and then if you have two that you can send, the second one, look for a reason first. Long shot that finished second or third, 10-to-1, 20-to-1, a badly beaten favorite, even money

favorite that finished last. Those are your obvious ones that you should send. Then some jurisdictions send every claimed horse. We were lucky enough in Massachusetts we've sent the claimed horse and the winner, but we also have the prerogative if we wanted to special another horse cuz you might have two in one race besides the winner you want to send. We could do that too.

Random really doesn't do you any good. You shake the pills, and we're gonna send the horse that finishes fourth and the fifth, and the horse that finishes fifth and the fourth. You're better off trying to target ones you think might be — need to go for a reason. The other thing we would do is, we keep a spreadsheet on each trainer, how many times he went to the test barn. If we had a situation where we couldn't decide who was gonna go, and we had a trainer that hadn't been, then he was the lucky ticket holder, and he got to go see our test barn for the first time. We try to give everybody the opportunity to go through the test barn process.

Dr. Jennifer Durenberger: Dan, can I add one thing?

Mr. Dan Fick: Yup.

Dr. Jennifer Durenberger: To the testing of claimed horses, that's a resource issue. There's a number of states, California being one of them, that has had to reduce the testing. I don't know what the current state is. There's at least two jurisdictions that I know of where the rule's in place that if a claimed horse has a medication finding, then the new owner is able to void the claim, has the ability. I think that's hugely important when we — for the reason why we're revisiting the claiming rule. We're trying to protect owners. We're trying to encourage new people to come in the game. If you get a bad claim, that certainly puts a bad taste in your mouth. I think that that's an important piece, but it costs money to do that.

There are states where the claiming activity is so incredible — by the way, the two states that do permit this are New York and Massachusetts. New York will have days where they have 17 horses claimed. They all go to the test barn, so you can imagine New York's testing budget is incredible. It's the envy of jurisdictions everywhere. That's an important piece that I don't think we talk about a lot. I think that's a good thing — a good rule to have in place.

Mr. Dan Fick: Those of you that are familiar with quarter horse racing, when they have futurities and they have time trials for those horses, they try to also send probable qualifiers, so they're usually sending the first, second, third horse, especially in a fast race. Your first race went off in 20 flat. Your second race went off in 20:20. Your third race went off, and it was a tight bunch in 19:85, and you think you might have two, three, or four out of that race, then they'll go ahead and send at least three of them. You're trying to make sure — you can't always do it — that all your qualifiers had the opportunity to go to the test barn.

The other aspect of this is dealing with the media, and I'm sorry Ray left because Ray has been very helpful with the ROAP continuing education programs. In

Kentucky, he regularly attends the November one at Louisville. Two years ago, he gave us some tremendous advice on how to deal with the media. Basically, it was when they ask, you respond. For a lot of us in the smaller jurisdictions, we're surprised if somebody wants to know something. Always respond, be accurate with them, straightforward. Explain the rules that are involved because in most cases, especially if you're picking up the football reporter in your town who has been asked because you had a big race or something to come over and cover a disqualification or some incident that raised it to the level above their radar that they wanted to go take a look at it, make sure they understand the rules of racing.

Then if there's a reason you can't respond, which a lot of times there is because it's a positive lab report or it's a disqualification and an appeal's been filed or some other reason, don't just say, "I can't tell you." Tell them why you can't tell them, tell them when that appeal might be heard, and encourage them to contact you back. Maybe even go the extra step and say, "Give me your number, and I'll give you a call when we have some information that I can give you." Always follow up with them. Develop good relationships with the media because they're our friends. A lot of times, it's said there's no bad publicity. There's just publicity.

If you're skilled in dealing with media questions, you can usually find some good about a bad situation. You can always expand upon the good situations and tell the good stories that we have everywhere on the backside. Having the stewards being involved with the media is essentially very important. You all want to talk a little bit about your media experiences and dealing with the media?

Ms. Kim Sawyer: Once again, California thrives on trying to be transparent. We only have one rule in our rule book where we have to say no comment, and it's the new random testing for jockeys. If something comes back positive, we say no comment. Obviously, they know it's in that category. Other than that, I do believe that the quick — the more quickly you can answer a question by media or an unhappy better and let them vent, let them ask their questions, try to answer them to the best of your ability. I also see TV, HRTV, and I know my colleague, Scott Cheney, goes on there and does the Hold All Tickets. I filled in for him a couple of times where we try to explain controversial calls that have happened that week. I think it's good for the public to learn.

Mr. Dan Fick: Any other comments? Our next topic is encouraging consistency and uniformity in the enforcement of interference rules. It's one of those oxymorons where you're trying to be consistent with something that is inherently inconsistent in terms of no two races are the same. There's a lot of different factors that are involved. What's changed over the years is, with the model rule being added that, did the incident affect the outcome of the race? In the past, there had been some states, and it wasn't clearly defined — and this is going back 15, 20 years — where a foul is a foul and you're coming down.

In other states, they did look, did it affect the outcome of the race? Coming out of the gate, a horse interferes with another horse slightly, similar to maybe what we saw in the Breeders' Cup, and then goes out as a galloping winner by 20 lengths.

That horse that he interfered with finished seventh. A foul is a foul. That galloping winner is coming down. Did it affect the outcome of the race? He's staying up. We had inconsistency across the country. I think now Kathy told me we've got 22 or 23 states that have, did it affect the outcome of the race, worded one way or another. As I said, it's — there's a lot of factors that are involved. No two races are the same.

When I went to school here, we had a professor, Gary Amundson, that said, "You'll find in racing especially in interference rules, that there's a little black over here, and there's a little white over here, and everything else is in that gray area where it's very difficult to be consistent." Stewards find themselves looking at things like — and you'll see these comments in the charts cuz the chart callers are looking at the same thing. Was there contact? Was he intimidated? Did he have to alter course? Did he check? Did he pull up? Did he clip heels? Did he have any room? Blocked, herded, forced wide, those type of things are what we look at as stewards when we try to evaluate what happened.

Sometimes, it looks like this horse clipped heels. Whose fault was it? Was it the horse behind that was getting up to where he didn't belong, had more horse than he could handle, and he was in a tight spot. Maybe the horse in front was tiring and backing up. You've got to watch all of that, as you saw here today, when you watch a race as the horses' speeds change. I thought I'd throw it open to the panel. You saw them today work through one, but what things do you look at? What would you like to add to that?

Ms. Kim Sawyer: Just the fact that there are — a lot of our calls are in the gray area. They are judgment calls. My colleagues and myself, we try to — one thing for sure is if I can't make up my mind, I vote to not change it. When I vote to change something, I'm adamant in my mind I know it's the right thing, right call in my mind. To me, I'm consistent with my calls.

Mr. Dan Fick: Eddie?

Mr. Eddie Arroyo: I kind of agree with her. I think that we — not kind of. I agree with her. Let me get a — to tell you something else. We work as a panel. When we come out with a decision, it's a decision that was voted on, discussed as you saw and agreed to by those stewards. I might not have agreed 100 percent. Maybe I could have argued one way or the other, but after discussion, I felt that I'd been convinced, and I'm confident that my decision, I agree with my decision, and I agree with the decision of the group. We work as a panel. It's a team. We're no different than a — as you all know, a basketball is a no-contact sport. We've all watched the games. You address that issue as the game is played.

You don't want to take away from the jockeys the ability to be aggressive. When I mean aggressive, I mean tried hard. Not interfere with another horse, but they have to take their chances. They have to ride as best they can for that connections that they're working for at the time. We don't want to take that away from them, but at the same time, you have to agree with the safety. Interference is an

interference. Most of our calls, today, we saw some real softballs out there, but a lot of our calls are in the gray area, that sometimes you can go one way or the other. Sometimes, you look at a race so long that you just can't come to a decision. I have to agree with her that she — if you're not convinced that there was a reason for a disqualification, then you have to leave it alone.

Mr. Dan Fick: In working with the horsemen and the jocks, of course, you have movies the next day, and you go over the films with the jocks and listen to their perspectives of it before you determine if you're gonna give them days or a fine or something. Then you get the horseman right after the race that calls up and says, "How could you do that?" Part of the problem is the jock sitting on the back of the horse, which in one instance, he knows a whole lot more about what's going on than we do as stewards cuz he's right there. The other thing is, he can't really see what's going on around him, and he's a little bit biased.

I might digress a minute. I was asked earlier about listening to jockeys when they call you up on the phone from the winner's circle, and you ask them how you rode in that race. It's my experience that most often, the jocks will tell you exactly what happened and tell you the truth. They might not tell you all of it. I've had jocks tell me, "My horse would — he really didn't cost me a spot. He came over, but my horse was backing up. It really didn't bother me." I had another one say, "Yeah, I got him. The horse got away from me, and I got him." I've seen more often than not the jocks — and it depends on the rapport that you have with them to some extent, but the jocks typically will tell you what exactly happened.

How can we, working with the jocks in the races, in the movies the next day, and then with the irate trainer that calls up and didn't think he should come down and wants to appeal, but he can't appeal in that state, or the owner that calls you the next day and wants to know where you did it, or the irate better from Wyoming that complains, how would you be more consistent and let people show that you really are more consistent than they think you are at your track?

Dr. Jennifer Durenberger: I'm happy to start on that one. I served one year in the steward stand, and it was at Delta Downs. I did a quarter horse meet and a thoroughbred meet. Then I was pressed into service, so I left, but before I left, one of the things that I had suggested we do, and you can do this with a seasonal meet was, let's take some films that were like what we saw earlier today. Let's take some black and white things where everybody agrees, no problem, and have those on hand for the start of the next meet. Then get some that have a little bit of gray introduced, and then have some that are truly, we really washed out about how make this decision.

When we all get together next year at the start of that meet, let's just show those films. Let's just all sit together with the colony and the stewards and remind everybody of where the bar is set, because I really do believe that licensees can conform their behavior to our expectations, but they have to know what the expectations are. That's true of presenting horses in the morning to the veterinarians as being racing sound. You can establish that bar. Once the trainers

know where that bar is, they won't show you a bad horse. Just the same thing with riding in the afternoon. Now you're riding 1200-pound animals, so there are things that happen, but to the extent that some of these fouls are in the rider's control, if everybody has a clear expectation, you can conform your behavior to meet that expectation.

There's creep, right, that comes in, I think, when you have year-round racing, or towards the end of the long seasonal meet where everybody's tired, and maybe you look the other way a little bit more than you did at the beginning. I think the beginning of the year at a seasonal meet, if I was there, that would be one thing I would do is, I would pull some films from last year and just sit with everybody and say, "Look, when you start — we all agree here. We all agree here. When we start seeing this, we're gonna have a conversation, and when we get here —" so I think that's one thing we could do.

Mr. Eddie Arroyo: I'll go next. Number one is, when you get a call after the race from either an owner trainer or a fan or a jockey or whoever it may be, we do — and by the way, we are — you can call us up. We will answer the phone. We do take calls. I'm not encouraging anybody here,

[laughter]

but we do take calls. We've found that the best thing for us to — that works for us is, we listen. We let the person uninterrupted to tell us what his concerns are. Some of them will go on for ten minutes, but once we — the fellow has voiced his opinion, then we will tell them why we did it.

If it's a trainer or an owner, then the next step for us to do is tell him, "As soon as we deal with the jockeys tomorrow morning, come into our office. We'll be happy to sit down and go over the race with you stride by stride, any way you want to watch it." I think the idea is to — I think that it's important to let that person express his opinion without challenging him, without insulting him. Most of the time, after they get to talking, I say, "Now, do you want to hear my opinion on this?" Click. Now they're not interested. They said what they wanted to say. Whether they're happy or not, we don't know, but we do allow them the ability to voice an opinion.

Ms. Kim Sawyer: We basically do it the same way that Eddie just explained. Hopefully, we try to avoid irate people in the afternoon and give them that 24-hour cooling down period. If our steward's aide takes a phone call, they ask if we can return the call, and we every time call them back the next morning and try and go over it. At the beginning of each meet, we always have a meeting with the jockey colony, tell them what we expect.

Basically, we're very lucky. We have great jockeys. This year, Del Mar was crazy with all the catastrophic breakdowns, and we really got hard on them on not even rubbing. Stay away from each other constantly. It was probably one of the cleanest riding meets I've seen at Del Mar. I agree with Eddie. You let people

vent. Let them get it out of their system. Sometimes, then they do listen to your opinion, and then you agree to disagree is what it comes down to, politely as you can.

Mr. Dan Fick: The one thing I've found is, the more time you spend with the jockeys, giving them the opportunity to talk to you one-on-one at the movies, in your office, to listen to what they've got to say and the questions, number one, as I said, when they are involved in a foul, they'll normally tell you exactly what happened. Number two, they ride better. Number three, they appreciate it. The old days when that'll be five days or that'll be 250 are long gone. There's the old reps, there's leaders in the jocks' room, especially if you work with those guys. They're working with the apprentices and the people coming from other jurisdictions. The colony can really help you police itself. The more communication and interaction you have, I think, is better. Eddie?

Mr. Eddie Arroyo: Dan, another thing we use with the jockeys is that we have movies a lot. It doesn't mean for — I think for every time we suspend a jockey for an infraction, we probably have 30 films, races that we review with different jockeys. Anytime that there is a movie list, jockeys are put for whatever reason on a movie list, all the apprentices, all the young riders have to come in. There's no excuse for them not coming. Most of the time, they just sit there and listen, but they listen and they learn.

We have these jockeys come into our office the next day. They have to explain their actions, what they did, or what they didn't do is usually the case. "The horse is lugging in." "Yes, of course. We see it. What did you do to prevent that horse from lugging in?" We need an explanation for that. What happens is that once we have that jockey once or twice, now — and he continues to do the same thing, he's going to realize that I'm going in there today. This might not come out the way I'd like it to. These guys might give me days. They start adhering to the idea that — what they can and cannot do.

Speaking from the experience of a jockey, the worst thing you could do is put you on the movie list because you don't know what those guys are gonna do. You're liable to walk in there and come out of there with three days or five days or a \$1,500.00 fine, so you don't ever want to be — your name appear on that list. That is the punishment in itself. It works, the more time you spend reviewing films with them. Also, they're very embarrassed to have someone call to their attention a mistake when all their other peers are there. It really bothers them to do that. You use what you have available to you, and that is a very good tool. We meet directly with our riders routinely.

Ms. Kim Sawyer: Dan, I just want to say one thing, and it's something that I've found with the jockey colony. Some of the top-notch riders really appreciate it when you call them up and tell them, brag on them, pat them on the back for doing something right. Say, "Wow, what a great job you did. It's really great for the young riders to see you do this. We really appreciate it." It helps them do it again

the next time. I think that's a plus.

Mr. Dan Fick: I'm glad you said that. In any business, people want praise more than a raise in a lot of cases. To go down to the room to the jock that had one in two weeks and he wins a race and have a steward come up to him the next morning or in between races and say, "Nice ride, jock," or, "Good job in pulling that horse up," or, "You've run two today. You're on a hot streak." Those type of things. Acknowledge the fact, as Kim says, that they're doing a great job. They appreciate that.

Dr. Jennifer Durenberger: If we're okay on time, can I throw one more thing in here?

Mr. Dan Fick: Yeah.

Dr. Jennifer Durenberger: Frank Lamb has left, and he's the historian on these things, but I think these things are interesting. Hopefully, someone out there will find them interesting as well. First of all, we say this at the continuing education all the time. There is a little bit different audience here today. There is no rule that a foul is a foul. There's no rule book that has that. The outcome the new rule with the, did it determine the outcome of the race, the outcome that was trying to avoid was a situation where you have — there was an incident — I was in New York when this rule changed, in fact.

There was an incident where there was a 2-to-1 favorite, Much the Best. There was a foul. There was no question in anyone's mind. That horse went on to win by 22 lengths or something like that. The rule in New York at the time was the foul is a foul rule, which I just said doesn't exist, but the point was, there was interference. Nobody questioned that. The stewards had to disqualify the horse. Is that a just outcome? The horse was 2-to-1, had a boatload of money on him. Because of that incident, the betting public lost out on their wagers, the owners of the horse, the connections who had worked so hard to get him there.

Because of the injustices that can occur, that was why — is my understanding, that was why this flexibility of a new rule was introduced. Maybe we didn't do the best job of explaining that and explaining how the rule operates. It seems to operate a little bit differently in different jurisdictions, but it was there for a reason. I think we need to just go back to think about that if we want to live in a world where something as egregious as a 22-length victory can be evaporated for all the people that wagered on that horse and for the horse's owners because of something that maybe was out of everybody's control.

There's no question if there was careless riding involved that something may need to be done. There's always the ability — we don't always publicize this very well either, but as a result of movies, there's — there can be no disqualification, but there be certainly be suspensions and fines in post. Don't think that just because there's a non-call, it doesn't mean that action isn't taken against the licensees. That can just take the form of a reprimand, or it can take its — it can take the form

of a fine or a suspension.

Mr. Dan Fick: Yeah, absolutely. It used to be, to some extent years ago, if you got DQ'ed, you were getting days. If you were making every effort and the horse bolted or did something and it was — you were standing up, trying to pull him off, in this day and age, you may not get days cuz you did what you could do. It was really the horse's fault. It also used to be, if there wasn't a disqualification, you didn't get days. As Dr. Durenberger just said, that's not the case either. There can be no DQ because it didn't affect the outcome of the race, but your riding was very careless, and you're gonna get some days.

The other aspect of it is that — what is affected the outcome of the race? I didn't mention that. Internationally, it's basically — in most countries other than the United States and France, it's, did it cost that horse the opportunity to win the race? For us, it could be, did it cost that horse from finishing in the money, in the purse money? You interfered with him. You outran him six lengths, but he gets beat a nose for third, and it's a stakes race or an overnight race. You've affected the outcome of the race. You can have, to some extent, a galloping winner that does come down because he cost that horse a place in the race, in the outcome of the race.

It gets very difficult, as we saw with the Breeders' Cup and all the discussion with that. In a thoroughbred race, going — something happens out of the gate, it's tough to have that crystal ball and decide, did that affect the outcome of the race a minute 30 seconds later? We're gonna give you guys plenty of time for questions. This is the last one. There we go. Understanding addictive behavior treatment programs available in your jurisdiction. Addictive behavior, what always quickly came to mind was alcohol and drugs, but those of us that work in racing know that there's anger management problems, the fights on the backside, jocks' room, to trainers, gambling. People can get into a lot of trouble if they have a gambling addiction.

Then depression. You're away from home. You're living on the backside of the racetrack. Your stable you work for is not doing very well. Depression can become a huge factor. The stewards need to be aware of this, but whose problem really is it? A lot of times, if it's groom's got a problem, the stewards or track management will say that's the trainer's problem. If it's a jockey that's got a problem, it's the jockey that's got a problem. Overall, it's really everybody that's on there that's involved with it being a problem. The horseman, track management, the commission, stewards, security, everybody that comes in contact. Especially in a lot of cases, the chaplain is the one that's helping you work with this.

I just wanted to briefly touch, what should you do in order to be prepared for these type of situations? When you're first working in your jurisdiction, know what kind of programs that are available out there. There may be a lot, there may not be very many, depending on what state you're located in. Eddie and Kim are gonna talk a little bit about the programs in their states. Know what's available out there.

In some of the states that now have expanded gaming, people were — had enough foresight to put in some benevolency funds in there.

When I worked in Indiana, the Horsemen, the HBPA had the funds to help people that needed to have treatment. You need to know where the programs are. If I've got a guy that's got a problem, where can I send him? If I've got a lady that's having severe depression problems, may be abusing some prescription medications, where can I send them? As I said, is there funding out there to do that? In most cases, they need a professional evaluation. We don't want to just pull their license and kick them off the racetrack and put them out into local society or send them back home when they've really got a problem that needs to be dealt with.

You will see a lot of stewards' rulings where there's been a violation for whatever reason. They're come into the steward's office. They were obnoxious, created a disturbance on the backside, needed some anger management, or they were drunk or they have — through testing, you find out they have an addictive behavior program. Usually, a lot of places, the chaplain will take them, get them to a professional evaluation, determine what they need, get that evaluation back. You're suspending them probably until you get that evaluation.

Then once you get that evaluation, you determine, can this guy get along? Is it not that severe? Can he get along? Can we give him back his license, he's not gonna be a danger, and set up a testing program? Is it something where they need to go for 30 days treatment, and their license needs to be suspended pending the completion of that treatment or re-examination and reconsideration in front of the board? I guess the bottom line is, we need to treat each one of these cases as an individual case, but we as stewards need to know what avenues there are in order to help those people. I might start off with Kim and talk about the Winners Federation or Foundation in California.

Ms. Kim Sawyer: Yes. We're very lucky. Anybody that has any one of these problems ends up in a complaint form on our desk, and we will — if we can ahead of time, get a representative from winners to sit in on the hearing. Depending on if it's a drug dependency or even an anger management, we will have them meet with Winners, sign up with them, get — Winners comes back and gives us an evaluation. At that point, we decide how to write the ruling, whether they're fined or how long they're suspended or the fact that they have to sign a testing agreement for the rest of their life as a licensee in California.

It depends on the level of what's in the hearing, and then what Winners recommends on top of that. Boy, they're a great facility for us because they do outstanding things, and they do need contribution to keep funded to keep going. It's an organization I wish more horsemen would donate to cuz it really helps these people survive and make a living.

Mr. Dan Fick: Eddie?

Mr. Eddie Arroyo: We have RICF, Racing Industry Charitable Foundation, and they offer a lot of services to the backstretch. Through the years, we've tried to fine tune addressing issues in the backstretch. The first contact that most of these people have is with the racetrack security. We work with the director of racetrack, the backstretch racetrack security to — we have a formula that has really worked well for us right now. Obviously, they have the ability before it comes to the stewards to address the issue because they represent management. Management has to write to exclude that individual if they feel that individual is not — that his presence on the ground is not in the best interest of their company.

However, it's not the course of action they usually use, but they do that if it's necessary. What they do is, they will bring — they will address the issue themselves. If they feel that it's necessary to bring the issue to us and they bring it as a security report, we address it with — we allow the racetrack security to have a recommendation. "We know this fellow. He is not a bad guy. He had a bad time. He's having issues at home or has issues with his family or issues with his trainer or whatever." Then we'll see what the — what we can do to help this fellow rather than hurt him. We will send him to RICF.

What we will do is, we could fine him or suspend him, or we could say to him, "We want you to go visit RICF. We cannot ask you or order you to adhere to whatever they want to come up for you. However, if you don't do it, and something does happen again, then you've already — you were at one strike. Two strikes and you're out. It is in your best interest to meet with a counselor or meet with clergy." We have several. It has worked well because it has — they have a way to resolve the issues that we really don't. We resolve issues by either we suspend you or we fine you. We threaten you. They have an issue to give them further help.

It's really worked well with us, especially when you have the racetrack security that it adheres to that formula and wants to work with them. It is in their best interest to keep the peace and harmony in the backstretch because it's a very tight community. What do you do after the last race until the last morning? You go back to your room. There's not that much. Most racetracks, they don't — the cities around us don't really like the environment of the backstretch, so they're isolated.

The other thing we do, they have to sign — when we refer them to RICF, for us to receive any information, they have to sign off, legally sign off a form that is sent to us and says, "This gentleman has agreed for us, RICF, to discuss his progress with us." If they come back with a good report, and then we — obviously, we will not do anything. If they come back, this fellow did not want to participate, and he was in another incident a couple days later, then we know how to address it. It has worked very, very well for us.

I threw a fit about two years ago, real big fit. Do you remember a jockey — I'm not even gonna use the name — that was riding in the Midwest, went to Hot Springs, went to Kentucky, and they found him in his car. He had overdosed. Everybody was very sad. The next day, we came to Arlington Park. Three or four days before the meeting, we — everybody's lamenting the passing of this

jockey and said, "Yeah, we — " three or four people said to me, "Yeah, we knew that something like this was gonna happen. It was just a matter of time." I blew it. I said, "We have programs that we can help people."

Then I went into the — when we had our meeting with the jockeys, I lost it a little bit. I said, "Because I think you are all responsible for what happened. You knew what was going on. You knew we had the ability to help. You could have gotten help for him or gone to someone that would approach him to get help, but you didn't. You sat there, and you allowed this to continue. I think everyone here shares responsibility of what happened to that kid because no one took the time to seek help for him. It's a shame, and it's on us for allowing this to happen when we have the ability to help. It doesn't mean we're going to help him, but we had the ability to try to help him with the problem that he had, but no one wanted to step up."

Apparently it worked because that — within several months, we did get a couple of calls. "Judge, I can't tell you — I don't want to tell you who I'm talking about, but when I tell you, you'll know. We have a problem here." We addressed it. We called the kid in. "You need to see someone." It has really worked well for us that we broke through that ground that nobody wants to be a snitch, but at the same time, there's responsibility for not snitching. Sometimes, you have to live with those decisions that you make. Sorry about that.

Mr. Dan Fick: No, that was excellent. Any other comments? We'll throw it open to y'all if you had any questions on what we've discussed. We do have a couple other issues we'd like to throw out to you and see what you think, but we want to answer your questions on these points of emphasis first.

Audience Member: Hey, Dan. This might be best for you. You mentioned that there is a model rule on interference, and I guess 22 or 23 states have it in place. Has there been any effort to get everybody on board and have the same rule in every racing jurisdiction on interference?

Mr. Dan Fick: There's constantly the effort at the RCI level and with ROAP, depending on the issue, RMTTC pushing the medication issues. We actually have surveyed — the University of Arizona did a survey for us, so we know what the rule is for every state. Cathy does that on a number of different issues, looks at the rule in every state so we can say, okay, we need to contact X state because they've got different — so we'll call the stewards and say, "What do you think? What do you do?" In most cases, as that number has come up, they're already looking at the outcome of the race. I wish we had a more concerted effort of following through on uniform rules. Any other questions? Don't be bashful. Dr. Durenberger wanted to throw up a few jump balls and see what we thought.

Dr. Jennifer Durenberger: Yeah, if I may indulge. I wanted to talk about — let me set the background for the audience. The majority of thoroughbred jurisdictions do not permit appeals of stewards' decisions regarding inquiries, objections, placing of horses. There are two states, and one of our panelists may be from one of

them, where appeals go to an expert panel, people with knowledge within the industry, as opposed to a hearing officer.

We have a minority of states where those appeals can be heard, and they're heard by a hearing officer, who is typically not anyone who has worked in the industry. Very rare that they would be — have any experience as a racing official, and I'm not sure there are any that have ever worked as a steward or judge. I just wanted to throw that out there. I wanted to find out how that expert panel works in a jurisdiction that has it, and then hear our other stewards' opinions on that matter. Then I've got some of my own I'm happy to share.

Ms. Kim Sawyer: It's your jurisdiction, Eddie.

[Laughter]

Dr. Jennifer Durenberger: We're all looking at Eddie.

Mr. Eddie Arroyo: What my jurisdiction does, we — they can appeal any steward's decision. The only thing they cannot appeal is a non-decision. If we didn't take any action, you can't appeal that there was no action taken. They do appeal. We go to a hearing officer where the — a council for the board under our rules, under hearing appeal rules, it is the board's burden to prove the disqualification, assuming it was a disqualification, that — why the horse was disqualified. We become a witness. We're cross-examined. We're only allowed to speak when we're spoken to. We answer questions.

A lot of places, we're not allowed to — a lot of times, we're not allowed to expound on an answer, depending on how the hearing officer wants to hear it. It's very similar to what you would do in a courtroom. Then that information is given. Then the hearing officer may or may not enter an opinion. Through the years, our commission has requested that the hearing officer not enter an opinion because this is just a hearing officer. It's a retired judge or a former attorney licensed as a hearing officer. The only information he has is what was on the record that was introduced, and he's gonna have to make a judgment on that.

Most of the time, they — after a few recommendations from a hearing officer that were completely away from the fact of the race, the board decided that they would assign a commissioner to review the case and send it to the full board with a recommendation. That's how it works in our jurisdiction. We had one case where the commission overturned — they've overturned the stewards several times, but in one case where the commission overturned the stewards, the owners of the horse took it to civil court. Civil court sent it back, said they've got no — they're not qualified to make that decision. The people that were qualified to make that decision made the decision. Case is over.

It did not get appealed to the appellate court obviously, but the civil court rules that the decision should have been made by — on the DQ should have been made by the stewards, and it shouldn't have been a — the board did not have the expertise

to make that decision, to overturn that decision. We've only had one of those cases, but that's basically how it works through our system. Our problem with this is because it's a legal proceeding and you have to get a hearing officer, you have to get the court reporter, you have to get all your witnesses in, from the time that the appeal is lodged, the final adjudication of the process could be four, five, six months up to a year.

Mr. Dan Fick: Kim?

Ms. Kim Sawyer: Luckily in California, our decision on a DQ or a non-DQ is final. It cannot be appealed. That's the way to go

[Laughter]

because experts have been hired to make these decisions.

Dr. Scot Waterman: In Arizona, I'm pretty sure it can be appealed, but I don't think the process is any different for the appeal of a DQ as it is for any other type of appeal. We're a little odd in Arizona in that the first level of appeal beyond the stewards is to the director of the Department of Racing, who essentially acts as an administrative law judge. It is a de novo hearing, so you start all over again. If they don't like the outcome of the director's decision, then they can appeal it to the commission. We've got a stair step process.

I don't know what happens when it goes beyond the commission because that's not happened in the time that I've been in Arizona. Fortunately now, the last couple of directors for the department have been industry veterans, and the person who's the director now was in the steward stand for 25 years. We've been fortunate to have people in that first appeal that understand the industry. That's critical. Somebody coming from a different state agency to the director role at Department of Racing probably would not have the advantage that the last few people have had.

Dr. Jennifer Durenberger: Ben Lehman, who most of you know, wrote an interesting article that Kathy reminded me of recently where he looked at this. This was in mid-2000s. He looked at the state of reviewing officials' calls in all sports, not just horse racing. It's an excellent article, and I'd be happy to get a link to anybody. I don't remember the name of it off the top of my head. I think it was in the Texas Law Journal. In that article, he points out that horse racing is pretty much the only sport where the actual — the calls on the field can be appealed in some jurisdictions.

That's not true of other professional sports. That's not true at the Olympic level. The International Olympic Committee has an arbitration agreement that — they have a process that they go through, but the calls on the field are the calls on the field. The authority, the governing body of that sport, do not interfere with the professional judgment. Again, it was said over here to my right, we hire stewards and judges for their professional judgment. You hear that there are experience

criteria before they go through the 60-hour steward school, and then they have to meet certain other experience criteria as they advantage through the profession.

There's a reason for that. We also have a way to deal with that. Stewards and judges are human. Mistakes happen. If there are patterns of bad judgment, we can deal with that, but I think the system where that appeal is not allowed, I think it does — in the end, on balance, I think it protects everyone's interest because you've got the people that have the experience and the wisdom making those determinations.

Mr. Dan Fick: One issue that I have with the no-call situation is the stewards made a decision not to disqualify. I think it's, to some extent, a 50/50 disqualify or don't disqualify, not that it happens at that ratio. It bothers me that you can appeal a disqualification, but you can't appeal a no-call in some jurisdictions. By a show of hands, how many in the audience think that a no-call — if you can appeal a disqualification, should you be able to appeal a no-call? Show of hands. If you can appeal, you got took down. You ought to be appealed, you didn't take me down. Next ball, next issue you'd like to —

Dr. Jennifer Durenberger: I can't believe there aren't more comments from the audience. Yeah.

Mr. Dayle Brown: I'm from Racing Victoria. My question's this. I've listened to you all speak about your individual jurisdictions. In relation to where expert panels hear matters and where there is a transcript of decision, has there been any cases where it has gone to a court of superior jurisdiction and an issue has been taken where there's been an error in law, and the courts have had to determine whether there has been in error in law in the making of the decision, taking into consideration the relevant facts, those types of issues. Have you had any experiences along those? I'm happy for any one of you to answer that.

Mr. Eddie Arroyo: I didn't understand the question.

Ms. Kim Sawyer: Go ahead. Translate.

Mr. Dayle Brown: Do you understand what I'm saying, or was it a bit —

Mr. Dan Fick: As I understood it, what you're asking is, have we had any decisions where there's a decision that's been appealed —

Mr. Dayle Brown: On an error of law. On an error of law by the decision maker.

Mr. Dan Fick: The decision maker decides whether there's been an error in enforcing the law of that particular jurisdiction.

Mr. Dayle Brown: No. What I'm saying is, where there's a decision made by your expert appeals panel, whatever the case is in your jurisdiction, there's a decision of — obviously, a transcript of decision by your expert panel. Has that ever been

appealed to a civil — I'll use the term civil court — that's more the American term — where there's been an error of law in that decision, and the courts had to determine whether the decision should stand or not or be set aside? Is that a bit more clearer?

Mr. Dan Fick: I think Eddie just brought that very thing up, didn't you?

Mr. Dayle Brown: I'm just interested in other examples.

Mr. Eddie Arroyo: Yes. I think I understand what you're saying now. We've had several that have gone through the — in 30 years, several that have gone through the court system where — and it hasn't happened in about 15, 20 years, but it has happened where the courts — the decision of the stewards was — the board upheld a decision of the stewards. It went into civil court. The court held — heard it and reversed, sent it back to the commission, said, you need to either rehear this — basically, you have to come up with a different decision. Then the commission has then appealed that judge's ruling and has gone to the appellate level where the appellate level ruled that the commission had the right to do what they did.

Ms. Kim Sawyer: I know in California two that I can think of. One that was appealed several times and lasted for two or three years, and the defendant actually won on a medication — pertained to the amount of the penalty. Then there was another one a few years ago that they appealed our decision and went to court to get a stay. The judge said, "I'm not gonna grant you a stay," and it was done. They had to serve their time. I think it can go either way, depending on the judge you get when it goes out of our hands.

Mr. Dan Fick: Maybe Wendy can help me with this. There's a gentleman. His last name is Heleringer, is that right, who's written a volume on racing law and decisions. It's about this thick. That's available. He works with the University of Louisville. We can try to get him that information.

Dr. Jennifer Durenberger: I also left out one other variant of the rule that does — New York has it, and I think a couple of other states where normally, those decisions are not appealable except in cases of plain error, so if there is either an error of fact like actually placing the wrong horse, or if there's an error in the interpretation and application of the rule, they do permit appeal. That builds in an additional level of due process because certainly, if an honest mistake is made, it does allow the licensee to continue in the administrative process without having to go outside.

Mr. Dan Fick: I guess I'd add it is more usual than unusual for significant rulings by stewards on drug cases and other things that result in a heavy suspension and fine to end up in court and go all the way up the ladder.

Ms. Kim Sawyer: Yeah. I think right now in California, we're gonna have one of those. There's a repeat offender who just got — it came down from a proposed decision, but he was just issued three years and 60 days suspension and

\$140,000.00 fine, so I'm sure that's gonna be appealed.

Mr. Dan Fick: Hugh?

Audience Member: Yeah. We had a case in 2007 in Delaware where a trainer — this was in harness, Dayle — he had three buprenorphine positives. Obviously asked for all of them to be split. When the splits were taken to UPS 30 miles from the racetrack where they were split, he witnessed it. The samples were loaded onto a loading dock, and they never got to LSU. They disappeared. We looked into foul play within UPS and a number of things like that. The complication that I'm leading to is that the rules called for split samples to be taken. However, our language did say in the absence of a split being tested, the primary sample will be prima facie evidence that there indeed was a foreign substance or whatever in the sample.

That went through the judge's level, and they gave three first-time offenses for each one of those. Part of it was due to notification. One horse had raced the second time. Two horses, three positives. He lost when he appealed to the commission. At this point, due to the fact that there were some complexities in the case, they decided to appeal it to the superior court in the state of Delaware. Superior court heard it. Part of the argument for the defense attorney was that there were errors of law because the legislative-backed rules and regulations of the state of Delaware were not abided by. They were saying there was confusion there. The court did not take their argument and upheld the commission's decision.

They then went to the supreme court of the state. The supreme court held that the original hearing was done in a non-malicious manner in that they were given first-time offenses for each of the three instead of complicating it and saying the second one was double and the third was triple the offense. It said that the commission — that the commission as a body, including the judges that heard the case, acted judiciously and fair. They gave a fair and impartial treatment to the case. The fact that law was entered into as part of the problem, that was the only case that I can remember that we had. That's also published. I think that might be in Heleringer's book.

Mr. Eddie Arroyo: I believe we split the split sample. In our jurisdiction, when the split sample is sent, it's split. That portion is sent. We keep the other portion.

Mr. Dan Fick: There's a famous New Mexico case going way back with the All American futurity, but it was the case that we find ourselves in where — we know there's a new drug being used out there. We can't find it. The test clears initially, they freeze the samples, and they go back and test them down the road, develop the test for it, and came back and tried to make positives stick on those frozen samples. Unfortunately, the splits had — I don't know what the right word is, but I think the freezer got knocked off in a power storm. They deteriorated and the splits were no longer any good. A lot of those cases got thrown out. In fact, the winner of the All American still stands as the winner of the All American, but a civil

case — the guy that ran second won the purse. Next question?

Dr. Jennifer Durenberger: Model Rules Committee time.

Mr. Eddie Arroyo: Dan, can I go to — address a little bit about technology —

Mr. Dan Fick: Yeah.

Mr. Eddie Arroyo: — in what happened? We had an incident at Arlington Park several years ago. One of the jocks after the seventh race, let's say, walking back through the tunnel, finds a syringe and needle there and hands it to the veterinarian. Veterinarian calls the state vet, bring your kit to make sure no one gets any fingerprints on it or whatever. We send it to the lab. It came back that it had Lasix on it. We thought that we were dead, but we then decided that we would send it — I think we sent it to California.

They did DNA on it, and they came back about ten days later told us, "This is the horse." Look at the program. That horse ran three races before. We actually wound up assessing a penalty to a person for — because we were able to track that needle that was used on that horse on the day of the race. It was not used by a veterinarian. We ruled that out. The technology is there. We never thought that by finding a needle, you would be able to trace it back to a particular horse. This is what our world is changing. It's changing for the better, I think.

Mr. Dan Fick: That's a very good point, Eddie. The trainers now have, and a lot of them know it, at their disposal, if they think the samples got switched in the test barn or at the lab, they can send the split to UC Davis and have the DNA proved. It ain't cheap, but it's — when you're talking about significant purse amounts, it's very doable. I think it's \$500.00. I think a couple of our panelists have to go to Model Rules, and probably a few in the audience, but —

Dr. Jennifer Durenberger: I think they left already.

Dan Fick: Yeah. Thank you all very much. We appreciate it. We'll see you next year at Loews Ventana Canyon Resort.

[Applause]