



**Delaware Thoroughbred Racing Commission
Minutes of Regular Meeting Held On
January 14, 2015**

The Delaware Thoroughbred Racing Commission held a regular meeting on Wednesday, January 14, 2015, at 11:15 a.m., at the Department of Agriculture, 2320 South DuPont Highway, Dover, DE, 19901

The following Commission members were present:

W. Duncan Patterson, Jr., Chairman
Edward J. Stegemeier, Secretary/Commissioner
Henry J. Decker, Commissioner
Debra M. Killeen, Commissioner
Richard A. Levine, Esq., Commissioner

The following individuals also were present:

John F. Wayne, DTRC, Executive Director
Andrew Kerber, Deputy Attorney General, Commission Counsel
John E. Mooney, Delaware Park, Executive Director of Racing
Kevin DeLucia, Sr. Vice President & CFO, Racing–Administration, Delaware Park
Chris Sobocinski, Racing Information Coordinator, Delaware Park
Jeff Ganc, Assistant Director of Security, Delaware Park
Michael Gorham, DTHA President
Bessie Gruwell, DTHA Executive Director
Francis J. Swift, Jr., DTRC, Inspector
Dr. John T. Peters, D.V.M., DTRC, Chief Commission Veterinarian
Dr. Susan Bolts, Veterinarian
Robert E. Colton, Delaware Jockey’s Association, Director
Edwin Kee, Delaware Secretary of Agriculture
Heriberto Rivera, Jr., Jockey’s Guild
Joe Strug, Dalare Associates, Inc.
Pam Rash, DTRC, Administrative Asst. (Recording Minutes)

1. WELCOME & CALL TO ORDER

At approximately 11:15 a.m., Chairman Duncan Patterson called the meeting to order.

2. APPROVAL OF MINUTES

Upon a motion duly made (Killeen) and seconded (Decker), minutes of November 13, 2014 were approved.

3. APPEALS

A. Public Hearing on Appeal of Randy Nunley

Chairman Patterson indicated Mr. Nunley was notified of the appeal date over 60 days in advance. Mr. Nunley was requested to attend the meeting regardless of whether the appeal was held to explain why he wanted a continuance. Mr. Nunley chose not to attend the meeting; therefore, Chairman Patterson entertained a motion to dismiss the appeal and allow the Steward’s decision to stand. The motion was made (Stegemeier) and seconded (Killeen). The Commissioners did not have any questions, so Chairman Patterson opened the floor for discussion.

Bessie Gruwell stated she was asked by Mr. Nunley to speak for him at the meeting. Ms. Gruwell stated that Mr. Nunley spoke with Attorney Alan Foreman within the last week to ask Mr. Foreman to represent him and Mr. Foreman said he could not. Mr. Nunley tried to hire another attorney and was able to get Mr. Gary Katz to represent them. Mr. Katz is in court with another case and could not be here today. Ms. Gruwell indicated that there were three different tests and all three were for the same medications. The test they received back first was the last one to come. The way the testing came back, was returned and two splits were sent out. She feels this case should be heard due to the way the testing was handled. That is why Mr. Nunley has asked for a continuance.

Chairman Patterson stated that his understanding was that Mr. Nunley contacted Mr. Foreman several months ago and was told at that time by Mr. Foreman that he would not be able to represent Mr. Nunley. Ms. Gruwell indicated that is not what she understood. She referred to letters that were sent between the Commission regarding this continuance. She felt that there were special circumstances around the testing that justify this case being heard.

John Wayne stated that Mr. Nunley was notified by Jack Houghton verbally on November 5, 2014, the day of the ruling that there were two violations (Triamcinolone Acetonide). The letter notifying him of the Appeal hearing scheduled for January 14, 2015 was mailed on November 14, 2014. Mr. Nunley was also advised verbally of the hearing. Mr. Wayne spoke with Mr. Foreman, who indicated he had been talking with Mr. Nunley throughout the summer and had told him that he could not represent him. Mr. Katz contacted Mr. Wayne January 12, 2015 and indicated he could not provide a letter of representation but that he had been retained. He was in Superior Court in Middlesex County, New Jersey all of this week through Thursday. Mr. Wayne shared with Mr. Katz the rules under DTRC Rules & Regulations, 19.6 Continuances. Mr. Wayne read the section 19.6 verbatim from the rules and regulations:

"19.6 Continuances:

- 19.6.1 *All applications for a continuance of a scheduled hearing shall be in writing, shall set forth the reasons therefore and shall be filed with the Commission's Administrator of Racing after giving notice of such application by mail or otherwise to all parties or their attorneys, including counsel for the stewards. The Commission will not consider any continuance request from counsel for an appellant unless counsel has filed a written entry of appearance with the Commission. For attorneys who are not members of the Delaware bar, those attorneys must comply with the provisions of Delaware Supreme Court Rule 72 for admission pro hac vice before the Commission. The Commission will not consider any continuance request from attorneys who are not members of the Delaware bar unless and until that attorney has been formally admitted under Delaware Supreme Court Rule 72 as the attorney of record for the appellant.*
- 19.6.2 *When application is made for continuance of a cause because of the illness of an applicant, witness or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.*
- 19.6.3 *An application for continuance of any hearing must be received by the Commission at least ninety-six (96) hours prior to the time fixed for the hearing. An application received by the Commission within the 96-hour period will not be granted except for extraordinary reasons. The Commission will not consider any request for a continuance absent evidence of good cause for the request. A failure by an appellant to take reasonable action to retain counsel shall not be considered good cause for a continuance.*
- 19.6.4 *If the Commission approves the application for continuance, it shall, concurrently with such postponement, set a date for the continued hearing."*

Chairman Patterson felt that because Mr. Foreman indicated to Mr. Nunley that he was not able to represent him in the summer which gave him ample opportunity to obtain other counsel, and Mr. Nunley was given the opportunity to request a continuance in person and he chose not to do that, there is no reason to grant a continuance.

Commissioner Stegemeier asked for confirmation of Ms. Gruwell's statement that there were three positive samples. Mr. Wayne stated that there were two rulings which were appealed.

Commissioner Decker asked for clarification on the split samples. Mr. Wayne indicated there were no split samples. Commissioner Decker asked Bessie Gruwell about the split samples that she mentioned. Ms. Gruwell indicated she knew the first test was a split. Mr. Wayne stated there is no record of any split samples for these two tests. (Copies of the official Steward's rulings indicated that Mr. Nunley waived his right to a split sample in the two matters under appeal.)

Bessie Gruwell stated there were three cloudy tests that came back at various times close to each other. She feels that based on the circumstances that happened with testing throughout the 2014 meet that this should be heard. There are two rulings that are being considered - are there two fines, one fine, are purses being taken away? There is a lot to be considered and she feels it would be a very big injustice to not grant this continuance. She referred to sitting through past hearings that were granted continuances. She indicated that Mr. Nunley just retained Mr. Katz and she felt the case should be heard.

Chairman Patterson stated that the past continuances were filed by the attorney representing the appellant. He could not think of any continuances granted strictly from the request of the appellant. Chairman Patterson asked Mr. Wayne if he had any comments about that. Mr. Wayne agreed and indicated Mr. Katz is not a member of the Bar and Rule 19.6.3 is very clear on that. The Commission should follow their rules under 19.6.

DAG Andrew Kerber restated Section 19.6.3 of the Rule: "... A failure by an appellant to take reasonable action to retain counsel shall not be considered good cause for a continuance." In Mr. Nunley's request for a continuance he specifically said he didn't have time to retain counsel over the holidays. DAG Kerber stated this is not sufficient reason under the Regulations and Mr. Katz has not filed his entry for appearance in this case because he has not filed his Delaware Supreme Court Rule 72 pro hac vice.

Commissioner Levine stated that while Ms. Gruwell's comments are well taken, the fact of the matter is this is a violation appeal. This is not a rule making matter, it is a violation matter. Mr. Nunley did not think it was very important as he did not do anything about it until the last minute. It is his rights that are being affected not anyone else's and he decided not to protect them. Commissioner Levine felt it was disrespectful to the Commission and the process and dismissal of the appeal is appropriate.

Commissioner Stegemeier stated that there is also the issue of purse money. Some people could be entitled to it and have not received it and it should be resolved.

As Mr. Nunley had not been granted a continuance and failed to appear before the Commission at the time set for his appeal hearing, the Commission voted unanimously to dismiss the appeal to let stand the Stewards' ruling of \$1,000 and loss of purse for each offense.

4. OLD BUSINESS

A. SIGN DECISION AND ORDERS FROM NOVEMBER MEETING

The Decision and Orders for the D. Scott Peck and Julio Cartagena appeals held on November 13, 2014 were signed by the Commissioners.

5. NEW BUSINESS

D. Status of 2014 Equine Drug Testing Results, Discussion and Resolution

Chairman Patterson discussed the letter that was sent to Mr. John Mooney and Ms. Bessie Gruwell regarding the final position of finish for the outstanding drug test results from LGC Science, Inc. All races that involved these outstanding suspicious tests would be final and official. This decision was made because the delay in confirmation of the results would compromise any adjudication that could be taken. Chairman Patterson reviewed all the tests and confirmed that all the drugs involved were therapeutic and no egregious drugs were involved; nothing more than Class 3 and most were Class 4. Although there was no meeting held, all Commissioners were advised of this letter and all gave their support. Chairman Patterson asked that a motion be made for ratification of this decision. The motion was made by Commissioner Decker to accept the actions taken and was seconded by Commissioner Stegemeier. Chairman Patterson asked if there was any discussion.

John Wayne indicated there were 10 tests that were confirmed and that the Stewards have not had a chance to hold hearings on. They were not part of the original 54 tests referenced in the letters. Commissioner Decker stated he would rather review them before taking any action on them. DAG Andrew Kerber indicated it would be best to have DAG Edward Black review these cases and make a decision on whether to prosecute. It was decided that the Stewards should also review these tests. Mr. Wayne stated he could arrange a conference call to review these cases. The Commission unanimously agreed to this review. Secretary Kee indicated the dates of these samples are as important as the facts. Commissioner Decker said to take the Chairman's wording egregious into account during the review. Even if it is a therapeutic drug violation, if it is a severe violation and if it is anything other than therapeutic, Class 1 for example, it should definitely be reviewed for action.

A. Delaware Racing Association: Application for Live Racing Dates for 2015

Mr. Wayne reported that John Mooney provided a letter, a stakes schedule and has presented a check for \$5,000 for the license fee that will be submitted to the Division of Revenue. Chairman Patterson asked Mr. Mooney if they have given any consideration to adjusting the schedule due to Laurel running their turf meet in August? Mr. Mooney stated they did give it consideration. It would be very difficult to have a radical schedule by not running on certain Saturdays and move to a weekday to not run against them. It is unavoidable to not conflict with their schedule. One change made is to run on Tuesdays rather than Thursdays. Based on last years schedules, tracks that ran on Tuesdays had the least competition. If it is needed, an adjustment may be made there. Commissioner Decker asked the reason for dropping Tuesdays in the fall. Mr. Mooney stated that most people go to Laurel to run on Turf and Delaware Park loses the benefit of drawing from Maryland. He believes it will help to fill the cards. He wants the meet to run as far into the fall to help the horseman who may have no where to go until Tampa Bay Downs or other tracks open. Commissioner Decker asked if consideration had been given to extending the meet longer into the fall. Mr. Mooney stated there is not enough money to do that and the purse structure restricts them from doing that. The fall is a very difficult time to fill races. Delaware Park does not have the turf course and they lose a lot of horses to other tracks that have turf racing all fall. Mr. Wayne asked if the closing of Suffolk Downs will help with filling the stable area somewhat. Mr. Mooney indicated no one from Massachusetts has expressed a desire to come to Delaware. There are not a lot of outfits that fit our program. It would be nice to get more riders here. Riders are very difficult to get because they go where the high purse money is. Chairman Patterson felt the decline in foal crop will impact the next couple of years. Mr. Mooney feels the economy has hurt the most because we lost the owners and without owners there is no breeding because foals will not sell. Also in the Eastern United States, there is more racing days because of the casino activity.

The racing season will open on May 16, and run through October 17. Upon a motion duly made (Decker) and seconded (Stegemeier), the racing schedule was unanimously approved.

B. Engineer's Report – Grandstand/Patron Area, Delaware Racing Association

The report from Steinle Construction Engineers (SCE) was reviewed. Mr. Wayne stated he would get an update on the stable area before the racing season starts. Mr. Mooney indicated there are items and photographs in the report that show deterioration and cracks in concrete, etc. Those repairs will be made and inspections will be done when the weather improves. The report will be finalized as soon as repairs are completed. Stable area inspections are done prior to the beginning of training which is March 1. Upon a motion duly made (Decker) and seconded (Killeen), the Engineer's Report was unanimously approved.

C. RMTC/DTSP Committee update by Chairman Patterson

Chairman Patterson reported the Racing Medication and Testing Consortium meeting took place in October. The main topic was the compounding of drugs which he feels is one of the greater problems being faced right now. Many jurisdictions do not have the ability to confiscate compounding drugs because there is not a formal regulation of that. In order to move forward with that, the following rules were approved at the RMTC meeting and were then sent to the DTSP where they were approved. (Chairman Patterson read the rules.)

K. Compounded Medications on Association Grounds

- (1) *The possession or use of a drug, substance, or medication on Association Grounds that has not been approved by the appropriate federal agency (e.g., the United States Food and Drug*

Administration in the United States) for any use in (human or animal) is forbidden without prior permission of the Commission or its designee.

- (2) It is a violation of this regulation to possess, use, or distribute a compounded medication on Association Grounds if there is an FDA approved equivalent of that substance available for purchase. A difference in available formulations or concentrations does not alleviate the need to use FDA approved products.*
- (3) It is a violation of this regulation to possess, use, or distribute a compounded medication on Association Grounds made from bulk substances if an FDA approved equivalent is available for purchase.*
- (4) Combining two or more substances with pharmacologic effect constitutes the development of a new drug. This may only be done in accordance with state and local laws and must contain FDA approved medications, if available.*
- (5) Compounded veterinary drugs. Veterinary drugs shall be compounded in accordance with all applicable state and federal laws. Compounded medication shall be dispensed only by prescription issued by a licensed veterinarian to meet the medical needs of a specific horse and for use only in that specific horse*
- (6) Labels on compounded veterinary drugs. All compounded medications must be labeled in accordance with section ARCI-011-020(D) : Medical Labeling*
- (7) Possession of an improperly labeled product by any person on Association Grounds is considered a violation of this section.*

ARCI-011-020 AND ARCI-025-020

Medical labeling was not approved based on the fact that additional conversation would occur with the HBPA (National Horsemen's Benevolent & Protective Association). One concern is the prescription going across the state lines from jurisdiction to jurisdiction.

Chairman Patterson provided the report to DAG Andrew Kerber for review in determining if these rules need or should be incorporated into the DTRC regulations.

Chairman Patterson stated that no action was taken on Cobalt as research has not been completed. There will also be discussions with the HTA and the Harness tracks of America. Indiana instituted a 25 ng/ml regulation which they enforced and have a bunch of positives, Minnesota put through a 50 ng/ml. There is no national recommendation.

Chairman Patterson said there was discussion on testing. He brought up that the accreditation of labs should ensure the same methodology and protocol being utilized by labs. There was some agreement and some disagreement. There is obviously some discrepancies that need to be worked out.

RMTC has some problems including accreditation of labs and cobalt. There's concern about the undo influence by the Jockey Club in the RMTC. They are trying to restructure the scientific advisory committee. Chairman Patterson will share this information in the section for ARCI.

The ARCI Drug Testing Standards and Practices Committee (DTSP) approved the classification of Firocoxib to Class 3 and approved modification to the stacking rule. Chairman Patterson feels the stacking rule should be incorporated into the DTRC regulations. He asked DAG Kerber if it would have to go through the full process. DAG Kerber confirmed we would have to go through the process by approving the rules, then having a second meeting to adopt as final. Chairman Patterson confirmed with DAG Kerber that we would be able to have these approved prior to the 2015 meet by approving them at the March meeting and then adopting them at the May meeting. DAG Kerber confirmed that they would be.

DTSP also approved the compounding regulation as read earlier.

F. ARCI Board Meeting in Tucson, Arizona by Chairman Patterson

Chairman Patterson reported on the ARCI meeting held in December in Tucson. They approved Firocoxib, stacking and compounding. In light of what is going on with RMTC it was decided ARCI would

constitute its own scientific advisory committee to include chemists from the top jurisdictions in the country including George Malin, Rick Sams, Scott Stanley and Mary Robinson. An offer was made to the RMTC to merge with them. RMTC has turned that down. There is a meeting scheduled for January 28, 2015 in Lexington, KY of the Executive Committees of the ARCI and the RMTC to discuss where this is going.

Robert Colton asked for confirmation that we will be following the RMTC stacking rules. Chairman Patterson confirmed yes that has already gone through the process and has been approved by the ARCI. The process is: recommendations of the RMTC go to the DTSP Committee, then to Model Rules, then to full board approval. The stacking rule has gone through that process. DAG Andrew Kerber will review the rules and will see that it goes through the process and is incorporated into our rules before the start of the 2015 meet.

E. RFP Drug Testing Contract – Progress Report by Committee Chair, Stegemeier and Deputy Attorney General Andrew G. Kerber, Esquire

DAG Andrew Kerber indicated that all the Commissioners have seen the draft RFP. DAG Kerber provided a copy of the RFP today to Mr. Wayne which includes all the changes that have been requested, with corrected typos and all the references for categories for scoring have been matched up to what has been suggested, proposed dates for publication and for response. Mr. Wayne reviewed the dates initially proposed by DAG Kerber as: notice goes out on January 19, 2015, deadline for receiving proposals is March 2, 2015, and notification of award is April 10, 2015.

John Mooney asked when he would know who the lab is as he has horseman who have said they are not coming to Delaware if they use the same lab as last year. He would like to know something sooner than April 10. He needs a guarantee to provide to the horseman that LGC would not be used. Chairman Patterson restated that since they did not complete the testing within the timeframe they will not be able to bid. Ms. Gruwell stated that she thought there would be some point of reference so a press release could go out to allow horseman to know the purses have been paid out and what steps have been taken to not use the same lab.

Commissioner Levine suggested the Commission pass a resolution to confirm that the lab did not meet the conditions set forth in our letter last fall therefore we will not consider them a qualified bidder. Mr. Mooney was hoping that this would be resolved and the lab would be chosen by the end of January. His barn area opens March 1.

Secretary Kee felt that upon ratification that his Department and public information people working with the Commission could put out a release or letter to the community about the action that was taken in December and essentially saying that the lab used last year will not be back. This will confirm to them there is a bidding process, review, etc. He feels strongly that communication needs to go out and his Department is ready to handle that. Chairman Patterson indicated that going with Commissioner Levine's resolution suggestion would be a good choice.

There was discussion of the need for a lab to be RMTC accredited. Upon a motion duly made (Levine) and seconded (Decker), and unanimously agreed, the RMTC accredited and RMTC compliant requirement will be removed from the RFP process.

The final agreed upon steps are: the RFP will be released to website January 15, 2015, responses will be due February 19, 2015, a meeting will be held February 25, 2015 at 10:30 a.m. to make a final decision.

The Committee asked John Mooney if having an answer on who the lab will be by March 1 would be soon enough. Mr. Mooney agreed that would be fine. Chairman Patterson told Mr. Mooney that if asked he can tell them LGC will not be allowed to bid.

6. REPORT FROM DTRC EXECUTIVE DIRECTOR

A. Summary of Activities Report for November 1 to December 31 , 2014

Executive Director John Wayne submitted his written report to the Commission for the period November 1 to December 31, 2014. Points of interest read into the record included:

	<u>Nov/Dec 2014</u>	<u>Year-To-Date</u>
Number of Persons Fingerprinted	0	156
Fingerprint Fees Collected	\$0	\$12,324
DTRC Licenses Issued	3	4,890
Fines & Appeal Fees Collected	\$450	\$20,768
License Fees Collected	\$95	\$153,675

Other Statistics During April

ARCI National Surveys answered	1
Contacts from Police Agencies	10
Contacts from Video Lottery Enforcement	9
Freedom of Information Act Request for Info	2
National Racing Compact Reviews	3
National Racing Compact Applications Rec'd	117
Contacts from Racing Industry Groups	5
Contacts from other Racing Commissions	38
Contacts from other Race Associations	11
Contacts from the General Public	6
Contacts from Horsemen	11
Media Contacts	10
Contacts from Racing Officials Accreditation Program (ROAP)	4

The 117 NRC licenses received during this period will be processed during January 2015 and will be counted as 2015 renewals.

7. REPORT FROM DTRC CHIEF COMMISSION VETERINARIAN

Health Report

John T. Peters, D.V.M., Chief Commission Veterinarian made the following report:

Lost one horse, JUST DO IT PLEASE" that foundered in both front feet and was subsequently euthanized by Dr. Johnson. Dr. Peters relayed that he also examined the horse and agreed that euthanasia was the best course of action. There were 3 shock wave therapies administered. There were 2 applications for certification for lasix.

8. NEW BUSINESS

G. Equine Econometric Study – Update by Cabinet Secretary Ed Kee

Secretary Ed Kee stated the survey to over 6,000 participants (owners and trainers primarily) goes in the mail today (January 14, 2015). He passed out copies to the Commission members. The University of Delaware Lerner College of Business and Economics, Center for Applied Business and Economic Research have been contracted to handle this survey. They have crafted the survey with a lot of help and input from both tracks as well as the two Horseman's Associations. This will cover both Thoroughbred and Standardbred. The first part covers economic impact on Delaware's economy; not only how much they spend but, they have the formulas of how that multiplies out through the economy. The second part is job creation. The third part is where do Delaware owners and trainers win their purses? In Standardbred the data shows Delaware Standardbred owners/trainer earns 70% of their purse money at Delaware tracks and 30% at out-of-state tracks. Do not have the numbers for Thoroughbred but we will be working with John Mooney and his team to get those numbers. The end result is the study should be ready mid-March or early April and report back to the commission that was established by legislation last spring. A major part of that Commission is looking at gaming in general, slot machines, all the gambling devises, and what the split is between state and tracks, etc. For the certified programs, the researchers at the University are looking at it in ways in addition to the survey. The associations are encouraging their members to complete and return the surveys. He is optimistic that it will paint a good picture.

9. REPORT FROM DELAWARE THOROUGHBRED HORSEMEN'S ASSOCIATION

A. Delaware Certified Thoroughbred Program Report

DTHA Executive Director, Bessie Gruwell filed the following report:

There were 219 horses come into the program in 2014. There will be 227 two year olds ready to race this year which is a higher number than last year. The report on the balance will be provided at the next meeting.

There were 271 horses start a total of 779 times with 105 firsts, 105 seconds and 112 thirds. Paid out \$1,000,379 to date. There is \$9,9,228.24 remaining in the account. This number should stay the same unless there are changes due to testing results.

10. PUBLIC COMMENT

None

11. EXECUTIVE SESSION

None

12. ADJOURNMENT

Upon a motion duly made (Decker) and seconded (Killeen), the meeting was adjourned at approximately 12:54 p.m.

DELAWARE CERTIFIED THOROUGHBRED PROGRAM

Thursday, January 01, 2016

2013	DCTP Applications	Foals	Yearlings	Totals
	Jan - Mar	2	15	17
	Apr - Jun	1	35	36
	Jul - Sept	8	32	40
	Oct - Dec	50	84	134
	Total Applications	61	166	227

2014	DCTP Applications	Foals	Yearlings	Totals
	Jan - Mar	0	27	27
	Apr - Jun	3	39	42
	Jul - Sept	19	50	69
	Oct - Dec	30	50	80
	Total Applications	52	166	219

2015	DCTP Applications	Foals	Yearlings	Totals
	Jan - Mar	0	0	0
	Apr - Jun	0	0	0
	Jul - Sept	0	0	0
	Oct - Dec	0	0	0
	Total Applications	0	0	0

Total DCTP Applications to date: 3555

2015 DCTP Horses of Racing Age: 3502

227 (2 yr. olds), 213 (3 yr. olds), 244 (4 yr. olds), 2818 (older horses),