



**Delaware Thoroughbred Racing Commission
Minutes of Regular Meeting Held On
March 19, 2015**

The Delaware Thoroughbred Racing Commission held a regular meeting on
Thursday, March 19, 2015, at 10:15 a.m., at Delaware Park,
777 Delaware Park Blvd, Wilmington, DE 19804
1st Floor Horsemen's Office

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
Austin Short, Deputy Secretary, DDA
John E. Mooney, Delaware Park, Executive Director of Racing
Chris Sobocinski, Racing Information Coordinator, Delaware Park
James Stewart, Security, Delaware Park
Michael Gorham, DTHA President
Bessie Gruwell, DTHA Executive Director
Shanon Epley, DTHA Board
Janet Ritchey, DTHA Board
Francis J. Swift, Jr., DTRC, Inspector
John T. Peters, D.V.M., DTRC, Chief Commission Veterinarian
Fritz Burkhardt, DTRC, Steward
Robert E. Colton, Delaware Jockey's Association, Director
Randy Nunley, Trainer
Pam Rash, DTRC, Administrative Asst. (Recording Minutes)

1. WELCOME & CALL TO ORDER

At approximately 10:11 a.m., Chairman Duncan Patterson called the meeting to order.

2. APPROVAL OF MINUTES

Commissioner Stegemeier noted a change to the Executive Meeting Notes of the February 25, 2015 RFP meeting. The letter being sent to the Director of OMB under all the Commissioners Signature was changed to go out under Chairman Patterson's signature only. It was agreed that this change would be made to the notes.

Upon a motion duly made (Killeen) and seconded (Stegemeier), minutes of January 14, 2015 were approved.

3. OLD BUSINESS

A. Engineer's Report: Stable Area, Delaware Racing Association

Mr. John Mooney indicated that all repairs have been approved and is satisfied that everything has been done to his satisfaction. Upon a motion duly made (Decker) and seconded (Killeen) the Engineer's Report was approved.

B. Approval of ARCI Stacking Rule incorporation into DTRC Regulations

Chairman Patterson indicated last year's DTRC rules still contained an anti-stacking rule and were not changed to conform with the ARCI Model Rules presented at the January meeting. The Commission has to move forward to incorporate them as part of its rules. Commissioner Stegemeier asked DAG Andrew Kerber if based on the wording "our rules would prevail," the Commission would have to get rid of its rules. DAG Kerber and Chairman Patterson indicated the model rules is more specific than the Commission's rule. DAG Kerber indicated the Commission would approve today as proposed, it would be submitted to the Registrar by April 1, there would be 30 days for public comment and would be effective in May before the racing meet begins. Delete the sentence "If any inconsistencies...", and delete the Commission's stacking rule when the ARCI goes into effect. If any changes/revisions made to the ARCI rule, we will need to adopt the new version. Commissioner Killeen questioned how often the ARCI rules would change. Chairman Patterson indicated changes to the ARCI rule will happen once a year in the Spring, approved in the Summer and would take effect the following racing year. Commissioner Decker questioned what if the ARCI passed an emergency rule modification? DAG Kerber confirmed that the Commission would follow its emergency regulations of the Delaware administrative code.

Upon a motion duly made (Decker) and seconded (Stegemeier) a motion was made and the Commission approved to delete last sentence about inconsistency between Commission regulations and ARCI provisions and to adopt the ARCI NSAID Stacking Rule and delete the Commission's current non-stacking rule

C. ARCI and RMTC Executive Committee January 28 Meeting on Merging

Chairman Patterson attended via telephone. He related that the bottom line is nothing will happen. There is another RMTC meeting next week in Florida. The ARCI will be forming a Scientific Advisory Committee that will include Dr. George Maylin, Director at New York Drug Testing and Research Program at Morrisville State College. Dr. Maylin has not been a part of the RMTC research, discussion and approval process. ARCI decided since New York is such an important part of overall racing they needed to have Dr. Maylin's input before any rules regarding drugs are approved. Especially as far as Cobalt which is still up in the air. It is a long way from determining at what point it is performance enhancing and at what point it is deleterious to the horse.

D. Equine Drug Testing Contract

Chairman Stegemeier indicated the Committee was expanded to include the entire Commission. The Committee met on February 25 to review the RFPs received from four labs: Dalare, Industrial Labs, Truesdail, and UC Davis. We took everything into consideration (prompt service, history, etc.). The Committee chose Truesdail and is in the process of selecting a second laboratory as back-up to help avoid any issues that might arise. Chairman Patterson emphasized that the Committee used a rating system and Truesdail rated far above the others. One of the more important aspects was the fact that Truesdail works with Maryland and New Jersey and therefore, there will be consistency with laboratory testing as far as those tracks and the horseman who participate at those tracks.

Commissioner Decker asked about the one non-selected laboratory that asked for information on the various bids and asked how that was resolved. DAG Kerber indicated the financial information on the bids will not be released until there is a signed contract, which is not in place with Truesdail at this point. Once that is signed, it will become public record and they can receive information at that time.

Robert Colton asked if Turesdail will be using the same technology as used for the other tracks? Chairman Patterson confirmed that the same testing protocol will be used at all three venues.

Shanon Epley questioned if all the split samples will go to an accredited lab. Chairman Patterson stated that is the Commission's hope. John Wayne indicated that last year several instances where accredited laboratories would not accept the split samples. Ms. Epley expressed concern that all laboratories would not be held to the same accredited standards. Chairman Patterson indicated the process is evolving and the testing will become uniform. Ms. Epley expressed concern of having tests come back negative from laboratories that are not accredited, especially since the testing is to such a minute degree (i.e. picograms vs. grams). This does not sit well with her or other horsemen. Chairman Patterson stated 9 times out of 10 it comes back confirming. Commissioner Killeen asked Ms. Epley if she could provide any instances where this might have happened. Ms. Epley thought there may have been a few in the past. Bessie Gruwell stated she felt the horsemen's concern is that the laboratories are not uniform in their protocol testing when the horsemen are being held to uniform medication rules. John Wayne shared that there was one instance last year where a split sample sent to an accredited laboratory came back at a lower level of detection. Chairman Patterson stated the RMTC and the laboratories are aware of this. Ms. Epley felt that there should have been a phase in system for this as there are lot of loop holes and maybe there could be a margin within this. Commissioner Levine questioned the procedure for sending split samples. Mr. Wayne answered there are three accredited laboratories to choose from and if those laboratories are not available there is a short list of alternate laboratories.

E. Randy Nunley Request for Review of Appeal

Randy Nunley was given the opportunity to speak before the Commission to ask them to reconsider reopening his appeal. Chairman Patterson confirmed with Mr. Nunley that he was charged with two Triamcinolone Acetonide post-race positives and confirmed that he did not request split samples. Chairman Patterson stated he spoke with Alan Foreman around September and that he relayed that he (Foreman) told Mr. Nunley he would not be able to represent him. In November, Mr. Nunley was advised that his appeal hearing was scheduled for January 14, 2015, but did not contact attorney Gary Katz until several days before the hearing in January. Mr. Nunley despite receiving verbal and written notice during November, 2014 asked for a continuance because Mr. Katz was not available to represent him. Furthermore, Mr. Katz, is not a member of the Delaware bar and would have to be sponsored by a Delaware attorney and file his admission Pro Hac Vice. Mr. Katz and Mr. Nunley were both appraised of Rule 19 of the DTRC that failure to secure counsel was not grounds for a continuance. Despite being told that his continuance was not granted by the Commission, he chose not to appear in person on January 14, 2015. At the January 14, 2015 meeting the Commission dismissed the appeal and thus the Stewards rulings prevailed. Mr. Nunley stated he went to Florida for the holidays and had no idea of the date of the hearing. The first he heard of the date was January 12. Alan Foreman was not going to represent him and Gary Katz indicated he would represent him.

Mr. Wayne stated that Mr. Nunley's comments contradicted what was on the record. Jack Houghton verbally advised Mr. Nunley on November 4, 2014 that it would be at the next meeting of the Commission which was January 14, 2015. Mr. Wayne sent out a letter to Mr. Nunley on November 14 to the address on file. Mr. Wayne received an email on January 9, 2015 acknowledging the hearing which contradicts his statement that he did not know about the hearing until January 12.

Mr. Nunley indicated the referenced email address was his wife's and not his. Commissioner Decker questioned if they are equal partners/co-owners, does he have a legal connection where she can act on his behalf? He is trying to determine if there is a legal connection where she can act on Mr. Nunley's behalf. Mr. Nunley indicated that he was co-trainer. Mr. Wayne stated Mr. Nunley is listed as co-owner of the stables. Mr. Nunley stated he was not sure. Mr. Wayne confirmed his mailing address. Commissioner Decker indicated that Mr. Nunley was legally responsible for the mail sent to that address.

Commissioner Killeen advised Mr. Nunley that the actions his wife takes on his behalf is representative of him. She advised him that he and his wife need to work on their communications. She stated that the Commission has to be accountable as well. Commissioner Levine had felt that Mr. Nunley not showing up at the hearing was disrespectful to the Commission. He appreciates that he is here giving an explanation that it resulted from lack of communication within his family not that he was disrespectful. However, as a legal matter, that is his problem and not the Commission's.

Commissioner Stegemeier asked if the Steward's rulings have been enforced. Mr. Wayne confirmed they had and that Mr. Nunley paid the last of his fine last week and the purses will be distributed when the horsemen's

bookkeeper returns. Commissioner Stegemeier questioned what was being decided today. Chairman Patterson indicated the Commission needs to decide if it will agree to reopen the hearing and a motion will need to be made to that effect.

Commissioner Decker asked Mr. Nunley what outcome he is seeking. Mr. Nunley indicated he has gotten bad advice from the beginning and wants a second chance; for the Commission to hear the facts. Mr. Nunley referred to testing that was done on a test he had sent for a split sample that came back negative and that he felt the other two tests he should not have been charged because the one came back lower than the first one. Because of the problems with the Laboratory, he was not notified of the first positive until he already had two more. If he had known about the first positive within a proper time, he could have made adjustments that may have kept him from having the other two positives.

Chairman Patterson explained that the decision this day is not to discuss the merits of the case but based on the information that Mr. Nunley has provided determine whether to reopen the case. Commissioners Decker and Commissioner Stegemeier indicated they want a few more answers before they enter into a motion.

DAG Kerber explained in Rule 60 that deals with default and reopening cases for the courts, what they look for is a mistake, fraud, etc. A mistake is not one made by the appellant, but in this case would be a notice sent to the wrong address or the notice indicated the wrong date, not that it came to my house and I did not get it. Commissioner Levine agreed. On a human level, Mr. Nunley is explaining a valid good reason. On a legal basis not a good reason, it is an internal problem that he needs to work out. He would not be in favor of reopening the case. It is unfortunate but not the Commission's problem. Commissioner Killeen stated the Commission has done its due diligence; there were no mistakes, so there is not legal reason to reopen the case. Commissioner Decker asked if the purses have been ordered to be redistributed can that be reversed? DAG Kerber indicated the Commission could put an order in but may have trouble getting the order enforced.

Chairman Patterson entertained a motion (Decker) to reopen the hearing. The motion died due to lack of a second. Mr. Nunley thanked the Commission for giving him the time.

4. NEW BUSINESS

A. Dalare Proposal for Back-Up Laboratory

John Wayne shared that he received the proposal late the day before (3/18/2015). Mr. Wayne advised Joe Strug that there would be a retainer and laboratory costs. Commissioner Levine and Chairman Patterson both stated the proposal received is not what they expected. Commissioner Levine indicated their proposal is completely unacceptable in one major aspect. The proposal states "Dalare reserves the right to accept requests for testing based on availability and timing of request." The whole idea was that he would be a back-up and by paying him a fee up front he would be available. The pricing labels do not correspond with the labels in the original proposal. He also expressed a concern about the fact that the back-up laboratory is not an accredited laboratory even though there is past experience with them and past relationships. This can contribute to the confusion that the horsemen have and should be explained.

Chairman Patterson stated that he has asked Joe Strug to continue his accreditation process. The RMTC has agreed to allow him to continue his process and not penalize him.

Commissioner Decker agreed with Commissioner Levine that he thought there was going to be a retainer fee that would cover costs and that when it was used up, then we would refresh the retainer and that availability and timing is at a moments notice. Commissioner Decker suggested that we develop a proposal for a retainer and send to him. Chairman Patterson agreed that the Commission should show him what we want and ask him if this is acceptable.

Commissioner Decker asked if the Commission should continue pursuing with him or choose another laboratory. Mr. Wayne indicated Industrial laboratories but they are in Colorado. Commissioner Levine remembered it was a close call but the reason he was chosen was his close proximity and his close working relationship. Chairman Patterson recalled that we are looking for him to be willing to come and meet with us, also. He suggested we go back to him with a proposal and if he does not agree then look at other laboratories. Chairman Stegemeier agreed.

There was some confusion on the use of the retainer. Commissioner Decker sees the retainer as an availability retainer in addition to the cost of the services. Mr. Wayne, DAG Kerber and Chairman Patterson understood the same. The Commission agreed that is the best way. By offering a retainer he would agree to attend meetings and be paid for the laboratory services. Commissioner Killeen hoped that we would not have to use his services, but that it is a back-up in case there are issues as experienced last year. Maybe it was not clear to him and the offer should be made again.

Mr. Wayne asked Mr. Mooney what he thought of the idea. Mr. Mooney indicated there has never been a need to have a back-up laboratory and has a problem with it. If there is confidence in the laboratory chosen, then there should not be a need for a back up. The Commissioners all expressed their frustration with last year and do not want to have any issues this year. Commissioner Killeen felt we owed it to the horseman to make sure it is done in the proper way with backup. She indicated it may only be needed for this one year to see how the selected laboratory works out.

Mr. Wayne felt the offer should be a retainer and include the costs that were submitted in the RFP. DAG Kerber suggested a retainer of \$5,000 per year, testing priced and timed per his response to the RFP, and an agreement to attend up to 3 meetings per year. Mr. Wayne would like to have a discussion with him and see how he responds to that before we send anything out to him.

Commissioner Decker felt that there is a need to explain to the horseman the idea of accredited and non-accredited laboratories and the RFP process so they understand that there is nothing happening to their disadvantage. At some future time after the Commission has had time to discuss this issue, it should be addressed.

B. Colonial Downs

Chairman Patterson shared his phone conversation with Sarge Reynolds, Chairman of the Virginia Racing Commission, about their meet next year – are they having one? Mr. Reynolds had just had a meeting with Jeff Jacobs who still wants to do the 6 day meet. The horsemen want the meets at the Middleburg Training Center, the Gold Cup Course. There is still a lot of flux and it remains to be seen how this will impact Colonial Downs. There is still the possibility they will not have a meet next year.

C. Impact Assessment System (IAS)

Robert Colton shared a concept of a new sensor called an Impact Assessment System with the Commission. He will introduce it formally at the Jockey Health and Welfare Benefit Board and at the next Commission meeting. This device would be worn by jockeys and is a sensor that measures the impact to the head for concussions. Mr. Colton indicated he is not in favor of the impact software currently available. This device has an accelerometer and a tri-axis that measures the rotation of the head and measures the impact continuously for up to 12 hours while being worn. Coaches or ambulances can monitor up to 128 at a time with an iPhone, Android or iPad. The information is updated to the cloud and instantaneous results of an impact and an immediate email is sent to doctor, parent, etc. If it loses wireless connectivity, it has a sensor that will show an LED reading: Green=registered hit, impact not severe; Yellow=moderate hit, 25% chance of concussion; Red=severe hit, 50% chance of concussion. The company is BlackBox Biometrics that developed the blast gage the armed forces wears that measures the blast through 3 separate pieces to measure for traumatic brain injury. The cost is \$200 each, but Mr. Colton is hoping to get a discount. The device is worn in a skull cap or headband. The devices are chargeable with a standard USB charging system. It would be a volunteer program for at least a year and Mr. Colton would like to see it as a mandatory program down the road. The jockey safety meeting has discussed it. The Commissioners thought it was a good device.

Chairman Patterson shared that Steeplechase is enforcing a new rule that each rider has to have 2 helmets, one being brand new. When a rider has a fall, they will need to utilize the brand new helmet. The problem will be enforcing. John Wayne indicated that they could possibly confiscate the used helmet.

Mr. Colton will be preparing a proposal. He would like to see this be utilized industry wide. This device will be seen throughout the sports industry.

5. REPORT FROM DTRC EXECUTIVE DIRECTOR

Summary of Activities Report for January 1 to January 31 , 2015

Executive Director Wayne submitted his written report to the Commission for the period January 1 to January 31, 2015. February’s report will be combined with March’s report and will be submitted for the April meeting. Points of interest read into the record included:

	<u>January 2015</u>	<u>Year-To-Date</u>
Number of Persons Fingerprinted	8	8
Fingerprint Fees Collected	\$632	\$632
DTRC Licenses Issued	834	834
Fines & Appeal Fees Collected	\$0	\$0
License Fees Collected	\$13,440	\$13,440

Other Statistics During April

ARCI National Surveys answered	2
Contacts from Police Agencies	8
Contacts from Video Lottery Enforcement	2
Freedom of Information Act Request for Info	3
National Racing Compact Reviews	3
National Racing Compact Applications Rec’d	143
Contacts from Racing Industry Groups	23
Contacts from other Racing Commissions	13
Contacts from other Race Associations	11
Contacts from the General Public	6
Contacts from Horsemen	14
Media Contacts	5
Contacts from Racing Officials Accreditation Program (ROAP)	12

Mr. Wayne acknowledged that Deputy Secretary Short was in attendance for Secretary Kee who was not able to attend.

Commissioner Stegemeier acknowledged and recognized Mr. Wayne for being elected Chairman and Mr. Fran Swift for being elected Secretary of the Organization of Racing Investigators (ORI). Mr. Wayne indicated the 2015 meeting was held in the Meadowlands and was successful in spite of the weather issues. The 2016 meeting will be hosted at Delaware Park. There were several news items regarding the appointment and several congratulatory letters have been received.

6. REPORT FROM DTRC CHIEF COMMISSION VETERINARIAN

Health Report

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

No official report for January or February. Chairman Patterson asked if there was anything to be concerned about with the horse coming in? Dr. Peters indicated horses were there. He shared there was one problem when he asked a practicing vet to get a health certificate for a horse but that has been taken care of.

7. REPORT FROM DELAWARE THOROUGHBRED HORSEMEN’S ASSOCIATION

Delaware Certified Thoroughbred Program Report

DTHA Executive Director, Bessie Gruwell filed the following report:

The balances are on the back. The money has been transferred for the year. Starting out with \$1,049,468.32 in bonus money for the year. The percentages remain the same: 25% DCTP and 25% Certifier

8. PUBLIC COMMENT

Cobalt

Janet Ritchey brought up the issue of Cobalt, which has no standard or threshold. She referred to the trainer in Oaklawn who had a very high level of Cobalt and had a subsequent hold on his horses until all his horses were retested and the levels for all the horses were below 25. She questioned if this is an option for our jurisdiction as it is something not healthy for the horses. Chairman Patterson indicated there was a discussion about this and this would have to be a house rule (Delaware Park). The Commission is supportive of this and asked John Mooney to make a comment. Ms. Ritchey felt the Horsemen were supportive of this.

Mr. Mooney asked if the laboratory is testing for Cobalt. Chairman Patterson and Commissioner Decker stated that yes if we ask them. Mr. Mooney said if the laboratory will be testing for Cobalt then, yes they would deal with it if the levels came in high. He indicated the ruling in Arkansas was written by the state steward not the race track. Ms. Ritchey asked if that is something the stewards could do? Fritz Burkhardt stated he would have to discuss with the other stewards. Chairman Patterson indicated they could emulate what they did.

Chairman Patterson felt there will be a threshold level soon. Everyone is frustrated with the lack of progress. Trying to establish at what level is it a performance enhancer, what level is it deleterious to the horse. Commissioner Stegemeier indicated he was not comfortable that jurisdictions are putting it at levels that are not consistent. The levels being used are all over the place.

Chairman Patterson told Ms. Ritchey the answer is yes and he put the onus on the Stewards to write a proposal. Commissioner Decker indicated he would like this to be discussed further in the Executive Session.

John Wayne mentioned the Jockey Club has an out of competition testing program for graded stakes up to \$250,000 that can be utilized to offset the cost to Delaware Park. Mr. Wayne will find out the application process for that. John Mooney stated that they looked into it last year. The problem is that the horses are not here on the grounds. It is hard to ask them to do this testing off a nomination list. Hal Handle is handling this and has had conversation with Mr. Fasy. The Commission would have to draft a memorandum of understanding with jurisdictions to handle out of competition testing of horses that are not stabled at Delaware Park.

9. ADJOURNMENT TO EXECUTIVE SESSION

Upon a motion duly made (Decker) and seconded (Killeen), the meeting was adjourned and moved to Executive Session to discuss personnel issues at approximately 11:50 a.m.

Tuesday, March 17, 2015

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	56	86
	Total Applications	52	172	225

2015	DCTP Applications	Foals	Yearlings	Totals
	Jan - Mar	0	2	2
	Apr - Jun	0	2	2
	Jul - Sept	0	0	0
	Oct - Dec	0	0	0
	Total Applications	0	4	4

Total DCTP Applications to date: 3565

2015 DCTP Horses of Racing Age: 3508

233 (2 yr. olds), 213 (3 yr. olds), 244 (4 yr. olds), 2818 (older horses),

Year	# of Starters End of Meet	# of Starts	1st	2nd	3rd	25% DCTP Earnings	25% Certifier Awards	Total Annual Awards
<u>2015</u>								
2014	271	779	105	105	112	\$ 473,564.57	\$526,814.57	\$ 1,000,379.14
2013	270	713	97	99	102	\$ 416,504.00	\$470,722.00	\$ 887,226.00
2012	318	943	138	140	146	\$ 437,340.00	\$409,503.00	\$ 846,843.00
2011	414	1331	166	189	181	\$ 715,099.86	\$773,251.86	\$ 1,488,351.72
2010	364	1150	142	180	146	\$ 705,631.25	\$778,203.75	\$ 1,483,835.00
2009	287	922	105	120	121	\$ 511,810.00	\$584,382.50	\$ 1,096,192.50
2008	210	690	94	82	109	\$ 367,963.60	\$433,265.20	\$ 801,228.80
2007	271	608	90	87	102	\$ 331,809.00	\$355,609.00	\$ 687,418.00
2006	139	476	68	61	72	\$ 201,286.80	\$214,936.80	\$ 416,223.60
2005	99	366	52	49	53	\$179,690.00	\$193,340.00	\$ 373,030.00
2004*	56	134	20	19	19	\$ 44,947.00	\$ 44,947.00	\$ 89,894.00
2003*	9	17	7	3	2	\$ 13,505.00	\$ 13,505.00	\$ 27,010.00
							Total DCTP	\$9,197,631.76

* DCTP owners and certifiers received 10% each bonuses in 2003 & 2004

* DCTP owners and certifiers received 15% each bonuses in 2005 thru May 2008

* DCTP owners and certifiers received 20% each bonuses beginning June 1, 2008

* DCTP owners and certifiers received 25% each bonuses beginning April 25, 2009

* DCTP owners and certifiers received 20% each bonuses beginning April 30, 2011

* DCTP owners and certifiers received 15% each bonuses beginning May 12, 2012

* DCTP owners and certifiers received 20% each bonuses beginning May 18, 2013

* DCTP owners and certifiers received 25% each bonuses beginning May 17, 2014

Current Delaware Farms enrolled:

Delaware Certified Monthly Balance - 2015

	Transactions	Balance
Ending Balance - 2014		\$ 99,275.84
2015 Jan Interest	\$ 17.39	\$ 99,293.23
Feb Interest	\$ 175.09	\$ 99,468.32
2015 Annual Bonus - 2/11/15	\$ 1,000,000.00	\$ 1,099,468.32
Admin 5%	\$ (50,000.00)	\$ 1,049,468.32
Available Funds - 3/17/15		\$ 1,049,468.32