



**Delaware Thoroughbred Racing Commission  
Minutes of Meeting Held On  
December 16, 2015**

The Delaware Thoroughbred Racing Commission held a meeting on Wednesday, December 16, 2015, at 10:15 a.m., in the Horsemen's Office, at Delaware Park, 777 Delaware Park Blvd, Wilmington, DE 19804

**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, Esq., Deputy Attorney General, Commission Counsel
Edward Black, Deputy Attorney General, Stewards Counsel
Kevin DeLucia, Sr. Vice President & CFO, Racing-Administration, Delaware Park
John E. Mooney, Delaware Park, Executive Director of Racing
Chris Sobocinski, Delaware Park, Racing Information Coordinator
Michael Gorham, DTHA President, Trainer
Bessie Gruwell, DTHA Executive Director
Robert E. Colton, Delaware Jockey's Association, Director
Fritz Burkhardt, DTRC, Steward
Alan Pincus, Attorney admitted Pro Hac Vice to represent Ramon Preciado
Ramon Preciado, Trainer – Appellant
Hamilton Smith, Trainer, interested party in appeal hearing
Deborah S. Greene, Owner, interested party in appeal hearing
Gary Katz, Esq, Trainer
Ron Alfano, Trainer, Interested party in appeal hearing
Mark Reid, Owner/Trainer
Keli Rizer Peterson, Trainer
Arthur F. Stauffer, Sr., Trainer
Darci Rice, Owner - Trainer
David Smith, Assistant Trainer/Exercise Rider
Jennifer M. Guy, RPR (Recording Appeal)
Pam Rash, DTRC, Administrative Asst. (Recording Minutes)

**1. WELCOME & CALL TO ORDER**

At approximately 10:13 a.m., Chairman Duncan Patterson called the meeting to order.

**2. APPROVAL OF MINUTES**

Upon a motion duly made (Levine) and seconded (Decker) minutes of November 17, 2015 were approved (Commissioner Killeen abstained).

### 3. PUBLIC HEARING AND APPEAL

- A. Mr. Ramon Preciado - Appeal Numbers: ASR-100-2015 - Appeal of Stewards Ruling 100-2015 and ASR-109-2015 - Appeal of Stewards Ruling 109-2015

At approximately 10:15 a.m. DAG Andrew Kerber opened appeal proceedings on the record. Ms. Jennifer M. Guy, RPR recorded the proceedings. Verbatim testimony was recorded by the Court Reporter. At approximately 11:50 a.m. the proceedings went off record for Commission deliberation. The proceedings resumed on record at approximately 12:02 p.m. The motion was made (Decker) and seconded (Stegemeier) and the Commission voted unanimously to uphold the Stewards' Rulings and release the purse moneys. The hearing was closed and went off record at 12:02 p.m.

The meeting returned to public session at approximately 12:10 p.m.

DAG Kerber will have the Decision and Order prepared and ready for signature at the January 13, 2016 meeting with the 21 day suspension to be effective January 14, 2016. Purse money could be released following today's meeting.

### 4. OLD BUSINESS

None

### 5. NEW BUSINESS

- A. Claiming Rule – Voiding of Claims

Bessie Gruwell indicated the DTHA Board voted unanimously to adopt a rule mimicking the Voiding of Claims rule that is in place in Pennsylvania and Maryland. There was discussion about a horse being sent to the test barn, vanning off the track, etc. Ms. Gruwell and John Wayne will work together on wording and will prepare a draft for the January 13, 2016 meeting. Chairman Patterson asked Ms. Gruwell and Mr. Wayne to contact Parx and ask them what problems they have had with this rule.

- B. Worker's Compensation Insurance

Commissioner Levine asked for follow-up on the Worker's Compensation Insurance issue and wanted to clarify that the Commission will not be doing anything further with this issue.

Mr. Wayne indicated the issue with the Worker's Compensation claim by the Hot Walker was hand delivered to the Insurance Commissioner's office by DAG Andrew Kerber. The employee had her medical evaluation on December 8. Ms. Gruwell stated she has had two evaluations and both evaluations determined she needs surgery but nothing has been done.

DAG Kerber stated he did not understand what has been going on. He spoke with the Department of Insurance and they stated he needed to file a consumer claim. He contacted the deputy of the Department of Insurance. She told him to not just send it, but to give her the person's name and she will see that it got fast tracked. He did that, but it took a month to get the completed information from the claimant and her lawyer to submit to the Insurance Department. DAG Kerber will follow-up with the Department of Insurance.

There was discussion about Worker's Compensation coverage for the back-side workers who are not employees but are independent contractors. Fritz Burkhardt indicated the rule should be evaluated. The rule states that owners and trainers need to carry Worker's Compensation. It should read owners and/or trainers and should have explanation if the trainer is an employee of the owner, etc.

Mr. David Smith addressed the Commission regarding the worker who was injured. Many years ago, the owner involved had his farm manager give all the workers a paper to sign stating they were not employees but were independent contractors and indemnified him from any liability. They were told to sign the form if they wanted to continue working on his farm. They were told if they did not sign it, they would be fired and

would have to leave. Mr. Smith stated that most of the workers did not speak English. He felt it was not fair that the owners are allowed to do this and then the workers have to suffer the consequences.

Commissioner Levine stated his concern is that owners look at these workers as independent contractors, and he does not feel the allocation of risk is appropriate without a blanket Worker's Compensation policy. There are workers working in a hazardous industry on our track at low rates and if they get injured, it is their bad luck. Kevin DeLucia stated the workers should not be here unless they are on the trainer's list.

There was discussion around the situation of the Worker's Compensation coverage for the back-side worker who was injured. It was again mentioned that her name was crossed off the employee list the day she was injured. Allegedly the trainer told the insurance company that she was an independent contractor not an employee. DAG Kerber stated the Commission has a regulation about whether a worker is an independent contractor or an employee. The insurance company does not decide if the employee is an independent contractor or an employee; the Commission's findings are given deference by the courts. If an owner or trainer here is taking the position that people working for them are independent contractors when the Commission might consider them employees, that is a rule violation and they should be brought before the Commission and have that settled.

Chairman Patterson asked DAG Kerber if this was under the Commission's purview. DAG Kerber stated yes, it was. There are two regulations that state that owners and trainers shall maintain Worker's Compensation insurance on their employees. DAG Kerber stated there is an owner who is not maintaining Worker's Compensation insurance on an employee. Chairman Patterson would like DAG Kerber to send a letter to the owner and state charges will be brought by the Commission if he does not show proof of coverage by a specified date.

Commissioner Decker would also like to know what the problem is with the Worker's Compensation board. Bessie Gruwell indicated that the employee also had an appointment to determine if the costs were not covered by Worker's Compensation would it be covered by Medicaid. Commissioner Decker asked DAG Kerber if he could follow up with Worker's Compensation Board as well as the Department of Insurance. DAG Kerber indicated he would.

Mr. Wayne will share a copy of the investigation report with the Commissioners.

Mr. Wayne reported that at the symposium in Arizona, Delaware received kudos on their jockey insurance and the cooperation with the hospital when there are jockey injuries. There was very little discussion about Worker's Compensation at the symposium but all jurisdictions stated that it was a financial problem for everyone.

#### ARCI Meeting

Chairman Patterson shared some information from the ARCI meeting in Tucson, AZ. Mark Lamberth established a compliance committee to determine what jurisdictions complied with the therapeutic medication program and to find out what the reasons were for the jurisdictions that were not complying. There are about eight on the committee. They shared their findings at a meeting during the ARCI conference. The meeting developed into a strategic planning meeting and the committee has now become the Compliance/Strategic Planning Committee.

There was a presentation at the board meeting given by Travis Tygart, Chief Executive Officer, USADA (United States Anti-Doping Agency). Chairman Patterson reported that USADA has not developed a business plan and Mr. Tygart had no idea what he was getting into and has no idea about the horse racing industry. When asked by Mr. Wayne at the meeting as to how long it would take to get a test back Mr. Tygart indicated 4-6 weeks at a cost of approximately \$1,000 per test with no split samples. An arbitration group (3 member panel) would review all positive tests and establish the penalties. There were many comments shared that indicated there is no understanding of the industry.

Commissioner Stegemeier asked Bessie Gruwell what the horsemen felt about the proposed legislation. Ms. Gruwell stated she did not know of any horseman in favor of it. There are too many holes and it is not well written. It is written only for Thoroughbreds and it misses many points. The concept is good, but it is not written well and there is not enough information for it to do any good. Chairman Patterson felt that a compact would be good and should be consistent through all states.

Mr. Wayne felt it was a good symposium. One panel discussion was 45 ideas in 45 seconds. Mr. Wayne responded to a comment from the audience about who is responsible for the integrity of racing. Mr. Wayne answered that it was everyone's responsibility – the president of the race track, the director of racing, the racing secretary, the stewards, the director of security, the commission, the patrons, trainers, jockeys, stable employees, the veterinarians. Everyone who has a connection with the industry has a moral responsibility to report any wrongdoing. He felt everyone there agreed with that assessment and the comments were picked up by Frank Angst in a Blood Horse article.

## **6. REPORT FROM DTRC EXECUTIVE DIRECTOR**

Mr. Wayne indicated that since there has not been a December meeting, the November & December Summary of Activities report will be presented at the January meeting. He did give the following summary update:

### **Summary of Activities Report for November 30, 2015**

ARCI National Surveys answered	5
Contacts from Police Agencies	21
Contacts from Video Lottery Enforcement	2
Freedom of Information Act Request for Info	0
National Racing Compact Reviews	0
National Racing Compact Applications Rec'd	41
Contacts from Racing Industry Groups	8
Contacts from other Racing Commissions	21
Contacts from other Race Associations	17
Contacts from the General Public	16
Contacts from Horsemen	11
Media Contacts	3
Contacts from Racing Officials Accreditation Program (ROAP)	13

## **7. REPORT FROM DTRC CHIEF COMMISSION VETERINARIAN**

### **Health Report**

There was no report from the Commission Vet's office for November or December activities.

## **8. FROM DELAWARE THOROUGHBRED HORSEMEN'S ASSOCIATION** **Delaware Certified Thoroughbred Program Report**

DTHA Executive Director, Bessie Gruwell filed their final report at the last meeting. She reported that there have been 12 more applications since November's meeting and there should be a few more to come.

## **9. PUBLIC COMMENT**

None

## **10. EXECUTIVE SESSION**

Upon a motion duly made (Decker) and seconded (Levine), the meeting was adjourned and moved to Executive Session at approximately 1:20 p.m.

## **11. ADJOURNMENT**

The meeting returned to public session at approximately 2:30 p.m. and upon a motion duly made (Levine) and seconded (Decker) the meeting was adjourned.