



**Delaware Thoroughbred Racing Commission  
Minutes of Meeting Held On  
August 22, 2018**

The Delaware Thoroughbred Racing Commission held a meeting on  
Wednesday, August 22, 2018 at 9:05 a.m., in the Horsemen's Office,  
At 777 Delaware Park Blvd, Wilmington, DE 19804.

**The following Commission members were present:**

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

The following individuals also were present:

John F. Wayne, DTRC, Executive Director
Andrew Kerber, Deputy Attorney General, Commission Counsel
Oliver Cleary, Deputy Attorney General, Stewards Counsel
James A. Lages, DTRC, Chief State Steward
Cynthia L. Smith, DTRC, Steward
Robert E. Colton, DTRC, Safety Steward
Teena Appleby, DTRC, Chief Investigator/Inspector
Dr. Susan Botts, DTRC, Chief Commission Veterinarian
John E. Mooney, Executive Director of Racing, Delaware Park
Kevin DeLucia, Sr. Vice President & CFO, Racing-Administration, Delaware Park
Chris Sobocinski, Racing Information Coordinator, Delaware Park
Bessie Gruwell, Executive Director, DTHA
Alan Pincus, Attorney representing appellants
Angel Suarez, Jockey, Appellant
Trevor McCarthy, Jockey, Appellant
Feargal Lynch, Jockey, witness
Scott Silver, Jockey Agent
Kim Hurley, Wilcox and Fetzer, Court Reporter
Molly Church, DTRC, Administrative Asst. (recording minutes)

**1. WELCOME & CALL TO ORDER**

At approximately 9:12 A.M., Chairman Duncan Patterson called the meeting to order.

**2. APPROVAL OF MINUTES (JULY 18, 2018 MEETING)**

Upon a motion duly made (Levine) and seconded (Decker), the minutes from the July 18, 2018 meeting were approved.

### 3. PUBLIC HEARINGS ON APPEAL

#### **A. Mr. Angel Suarez – Appeal of Stewards’ Ruling 18-2018 Careless Riding – 7 Day Suspension (DTRC Rules 3.3, 14.15, and 14.16)**

At this time, Deputy Attorney General called upon appellant Mr. Angel Suarez. Mr. Suarez was appealing the Stewards’ Ruling 18-2018, with a penalty of a 7 day suspension. Mr. Suarez informed the Commission that he was being represented by Attorney Alan Pincus. Testimony was recorded verbatim by the court reporter.

At the conclusion of testimony and following the Commission’s public deliberations, Commissioner Henry Decker made a motion to uphold the decision of the Stewards’ Ruling 18-2018, with the penalty of a 7 day suspension. Commissioner Debra Killeen seconded. The vote was unanimous.

#### **B. Mr. Trevor McCarthy – Appeal of Stewards’ Ruling 35-2018 Careless Riding – 7 Day Suspension (DTRC Rules 3.4, 3.4.1.17, 3.4.1.17.1, 14.15, and 14.16)**

At this time, Deputy Attorney General called upon appellant Mr. Trevor McCarthy. Mr. McCarthy was appealing the Stewards’ Ruling 35-2018, with a penalty of a 7 day suspension. Mr. McCarthy informed the Commission that he was being represented by Attorney Alan Pincus also. Testimony was recorded verbatim by the court reporter.

At the conclusion of testimony and following the Commission’s public deliberations, Commissioner Richard Levine made a motion to uphold the decision of the Stewards’ Ruling 35-2018, with the penalty of a 7 day suspension, Commissioner Debra Killeen seconded. The vote was unanimous.

Commissioner Decker asked Deputy Attorney General Oliver Cleary what a possible solution could be for witnesses not attending hearings for which they have been subpoenaed. Mr. Cleary recited the following Commission Rules:

19.5.6 “If any person refuses to obey any subpoena or to testify or produce any books, papers or documents, then any Commissioner may apply to the Superior Court of the county in which he or the Commission may be sitting and, thereupon, the Court shall issue its subpoena requiring the person to appear and to testify or produce any books, papers or documents.”

19.5.7 “Whoever fails to obey or refuses to obey a subpoena of the Superior Court shall be guilty of contempt of court and shall be punished accordingly.”

Mr. Kerber suggested that the Commission allow himself and Mr. Cleary time to review recent amendments to Commission rules and see if the Commission or Stewards have any authority to impose penalties in this regard; and if such a rule is not already in place, he draft a rule proposal stating that a person may be sanctioned if they do not appear when subpoenaed.

Chairman Patterson asked Mr. James Lages what the Stewards do when jockeys do not attend the films. Mr. Lages said that the Stewards will review the situation case-by-case and decide whether or not to sanction the jockey or jockeys in question. Chairman Patterson suggested that perhaps this issue be handled the same way.

Commissioner Decker made a motion to, pending the information Mr. Cleary and Mr. Kerber discover about current rules in place pertinent to this issue, fine the individual \$500 and suspend him or her for 7 days if the individual fails to attend a hearing that the Stewards subpoena them for.

Commissioner Killeen seconded this motion because she felt it was important for the Commission to discuss. Commissioner Levine did not second this motion.

Chairman Patterson said that he agreed with the \$500 fine, but not with the suspension. Commissioner Levine agrees that there needs to be a better rule about this issue, and it should be brought up at the next meeting.

Commissioner Decker agreed to amend his original motion, just to state that the \$500 fine be in place, and not the suspension, if the Stewards or the Commission have the authority to impose this penalty. Commissioner Killeen seconded. Commissioner Levine did not second. Commissioner Killeen asked Commissioner Levine about his opinion on the issue. Commissioner Levine answered that he would want to know the facts about the case before he agrees to issue a penalty. Also, he stated, \$500 may not be substantial enough for jockeys, trainers, or owners that miss a hearing at Delaware in order to race in another jurisdiction, where they may make much more than that.

Commissioner Decker suggested that if, in the event that the Stewards or Commission cannot impose a penalty on the individual, the Commission's Attorney should file a notification with Superior Court letting them know that the Commission's subpoena was ignored.

Mr. Wayne noted that the Commission must be careful about this matter; if jockeys are threatened with Superior Court, they may not come back to ride in Delaware again.

#### **4. OLD BUSINESS**

##### **A. Cell Phones in Jockeys' Room Rule Proposal**

Mr. Kerber put together a proposed rule, Rule 8.10.2, in regards to allowing cell phones in the confines of the jockeys' room. Cell phones are not to be allowed on the balcony, and use of the cell phones requires consent to search the phone at any time. Jockeys may also not use headphones while on their phones. Chairman Patterson asked Mr. Kerber if electronic tablets such as iPads should be allowed, and if so, should they be written into the rule? Mr. Colton suggested that Mr. Kerber change the words "Cell phone" in the rule to "Mobile electronic devices". Mr. Lages also suggest that the phrase "not to be allowed in the balcony" be changed to "...the balcony or any public setting."

Commissioner Decker suggested that the rule say, "Jockeys are not to use their devices outside of the jockeys' room until their duties are finished for the day."

To gain a more clear understanding of how the phrase should be worded, Commissioner Levine suggested that this rule be rewritten and reviewed at a later time since this rule will not be in effect until next spring.

##### **B. Athletic Trainer Update and Consideration of Proposed Rule**

At this time, Mr. Robert Colton announced that the Delaware Jockeys' Health and Welfare Benefits Board signed a contract with Premier Physical Therapy and Sports Performance to utilize one of their athletic trainers for the riders at Delaware Park. The athletic trainer will be able to diagnose and help treat concussions and assist with jockeys' overall health.

Chairman Patterson announced that there will be a house rule (until a Commission rule can be passed) which states that every jockey must agree to be examined by the athletic trainer. Premier requires a "consent to treatment" form from its patients. This consent form will be signed by the jockeys at the time of licensing. Mr. Kerber presented a proposal for rule 8.2.6, which would state that all jockeys must sign this consent form.

Commissioner Decker asked if the consent form could possibly list the services that the athletic trainer will provide. This way, he explained, the jockeys will have a more clear understanding of what duties the athletic trainer will perform. Mr. Colton answered that he can discuss this matter with Premier. Commissioner Decker also suggested that there should be a paragraph about HIPAA provided on the consent form. The athletic trainer will have to be able to communicate with the Stewards about the jockeys' health matters.

Commissioner Debra Killeen asked about the background of Premier and the athletic trainer. Mr. Colton answered that the athletic trainer will be certified with a Masters' Degree and must have passed the Delaware Boards for being an athletic trainer. They will be very well trained in concussion protocol and will also be able to assist the jockeys with not only injuries, but with their overall health. They can even help jockeys with diet and nutritional advice.

Commissioner Killeen asked Mr. Colton if the athletic trainer will be fluent in Spanish. Mr. Colton answered that he has put in a request for an athletic trainer who is Spanish-speaking.

Commissioner Decker commended Mr. Colton for his excellent work in putting this together.

### **C. Final Approval of ARCI Rules (DTRC Rules 15.25, 15.26, and 15.27)**

At this time, Mr. Kerber provided a final draft of DTRC Rules 15.25, 15.26, and 15.27 to the Commissioners. Mr. Wayne said that there were no public comments received on this draft. Upon a motion duly made (Levine) and seconded (Killeen), the Commission moved to adopt DTRC Rules 15.25, 15.26, and 15.27. The vote was unanimous.

## **5. NEW BUSINESS**

### **A. Report on Albany Law School Conference Training (August 7, 2018)**

At this time, Mr. John Wayne gave a report on the Albany Law School Training Conference attended by Teena Appleby, Sarah Crane, Cynthia Smith, and himself on August 7, 2018. Mr. Wayne stated that the one of the most prominent items discussed at the training was immigration policy. It was stressed that trainers are the ones responsible for hiring documented immigrants with valid I-9 forms. I-9 forms establish the identity of workers and their eligibility for employment.

Commissioner Decker asked what the current policy is for licensing immigrants. Mr. Wayne stated that if the applicant has a valid license from another jurisdiction or was licensed with Delaware the previous year, they are eligible for a license this year.

### **B. Report of the Jockey Club Round Table Meeting (August 12m 2018)**

At this time, Chairman Patterson gave a report of the Jockey Club Round Table Meeting attended by Mr. John Mooney, Mr. Wayne, and himself. Chairman Patterson noted that the meeting was more upbeat than in previous years. However, he added, Mr. Stuart Janney re-emphasized the "double down" on the Horseracing Integrity Act, and subsequent to the Congress hearings, the chances of the Bill being passed are now down to 3%.

Chairman Patterson spoke about some of the interesting initiatives discussed at the meeting. One of the speakers, head of the Jockey Club in the UK, discussed the British Jockey Club taking over ownership of tracks. Mr. Janney said that this is one of the American Jockeys' Clubs initiatives to take over ownership of tracks that may be struggling or facing closure. There have been 11 racetracks closed in 3 years. Mr. Mooney said that some of these tracks were Level 3 and only ran a few days. Some of the dates at these tracks were transferred to others. There were 3 tracks closed in

Cleveland alone. One became exclusively a harness track, where it had previously been both harness and thoroughbred.

Other matters discussed were high definition, implementing fixed odds, single pool wagering, takeout's for win/place/show wagering, and race day scheduling.

Mr. Wayne also noted that The Jockey Club is trying to eliminate the use of furosemide (Salix) and would implement a policy where all equine drug testing is performed by USADA. During a 2016 winter board meeting of the ARCI, Travis Tygart made a presentation indicating that sampling would take approximately four to six weeks, any split samples would be retested by USADA and the costs of such testing would be approximately \$1,000.00 per test, respectively.

Mr. Mooney added that the Jockey Club in the UK is controlled by the government, meaning that in the UK, the government takes over ownership of tracks that are suffering financially. Mr. Mooney said that he cannot imagine the Jockey Club taking over a private racetrack. Chairman Patterson said that he spoke to Mr. Jim Gagliano about this, who said that the Jockey Club would be interested in taking over ownership of tracks that would otherwise may not be able to continue business and that the industry could not afford to lose.

**6. REPORT FROM DTRC EXECUTIVE DIRECTOR**

At this time, Mr. Wayne presented his Summary of Activities report for the month of July, 2018.

**A. Summary of Activities Report for July 2018**

	<u>July 2018</u>	<u>Year-To-Date</u>
Number of Persons Fingerprinted	195	364
Fingerprint Fees Collected	\$13,825.00	\$27,176.00
DTRC Licenses Issued	518	3,079
Fines & Appeal Fees Collected	\$3,699.47	\$10,166.24
License Fees Collected	\$21,101.00	\$108,005.00

- 5 National Surveys from ARCI
- 11 Police Organization Contacts
- 1 National Racing Compact Application for Review
- 66 Approved NRC Applications
- 18 Inquiries from Commission
- 6 from Industry Groups
- 7 Other Associations
- 3 ROAP Contacts
- 7 Horsemen Contacts
- 11 Media Contacts
- 7 Public Comments
- 0 FOIA Requests

Mr. Wayne reported that a major drug ring was halted at Delaware Park on the previous Saturday. He commended Chief Investigator Teena Appleby and Investigator Sarah Crane for their good work. Delaware State Police of the unit from the Governor's Drug Task Force apprehended the subjects. Chief Investigator Appleby initially found a large quantity of crystal methamphetamine (58.1 grams) on one of the subjects, an Assistant Trainer. The other subject

was a stable employee which resulted in a dorm room inspection which netted 412.9 grams of methamphetamine and 67.7 grams of Cocaine. Both subjects were arrested by DSP and held on \$70,000 and \$140,000 cash bond, each respectively. Commissioner Richard Levine wanted to know the occupations of the subjects. Mr. Wayne answered that one was an assistant trainer that had shipped in from Monmouth Park and the other was a groom working for a trainer at Delaware Park. Commissioner Levine noted that this was probably a wake-up call for trainers to be more diligent in hiring and supervising their staff. Commissioner Decker asked how long the subjects have been working at the track. Ms. Appleby said that they have been present around the track for quite a while, which indicates that there may be a colony of users present as well. The Governor's Drug Task Force will also be monitoring the situation. There are 3 different racetracks involved in this ring: Delaware Park, Monmouth Park, and Parx Racetrack. Commissioner Debra Killeen said that the Commission is sending out a clear message that this type of activity will not be tolerated.

## **7. REPORT FROM DTRC CHIEF COMMISSION VETERINARIAN – HEALTH REPORT AND INFORMATION**

Chief Commission Veterinarian Dr. Botts had to leave the meeting, however, Mr. Wayne referred to the mortality reviews listed in his Summary of Activities report. UNBRIDLED GIFT was humanely destroyed after suffering a catastrophic injury in the 1<sup>st</sup> race on July 13th. The horse sustained a left-front medical comminuted basal sesamoid fracture.

The horse REBEL RITHMS suffered a catastrophic injury while grazing outside its barn, flipping and landing on its neck. The horse suffered a broken neck and was humanely destroyed.

The horse MY GIANT suffered what appeared to be cardiac arrhythmia near the finish line. The horse was removed to the holding area to be sent to New Bolton Center for necropsy, the results of which are pending.

## **8. REPORT FROM THOROUGHBRED HORSEMEN'S ASSOCIATION**

### **A. Delaware Certified Thoroughbred Program Report**

At this time, Ms. Bessie Gruwell presented the Delaware Certified Thoroughbred Program Report. In this quarter, there were 3 horses brought into the program. This makes a total of 47 applications received in 2018 so far. In July, 186 different horses started 271 times with 43 wins, 40 seconds, and 47 thirds. \$107,297.50 was paid out to certifiers and owners, making the July payout total \$214,595.00. In July, \$822.93 was accumulated in the Special Account bringing the total balance to \$1,052,290.42.

The racing office was recently able to make a Delaware Certified Restricted race run. The race was a 9 horse field. The Delaware Certified Stakes are coming up on September 29<sup>th</sup>, Owners' Day. An advertisement was placed in Mid-Atlantic Thoroughbred. The Golf Classic with the Delaware Thoroughbred Horsemen's Assistance Fund is also coming up.

## **9. PUBLIC COMMENT**

Commissioner Decker asked Mr. Kevin DeLucia how sports betting was going. Mr. DeLucia answered that sports betting has “both good and bad days”. No one else had any public comments at this time.

## **10. EXECUTIVE SESSION**

Upon a motion duly made (Killeen) and seconded (Levine), public session was moved to executive session at the upper floor of the Horsemen’s Office at approximately 12:25 am to discuss legal matters.

## **11. ADJOURNMENT**

Upon a motion duly made (Levine) and seconded (Decker), public session was moved back to order and adjourned at approximately 12:50 pm.