

MAINE HARNESS RACING COMMISSION  
MINUTES OF MEETING  
June 12, 2014  
Gambling Control Board Conference Room  
Department of Public Safety Building  
45 Commerce Drive, Augusta, Maine

Commission Members Present: Barbara Dresser, Chair, James Tracy, Gary Reed and Michael Timmons. Absent: Commissioner Dirk Duncan.

Staff Members Present: Ron Guay, AAG, Henry Jackson, Miles Greenleaf, Zachary Matzkin, and Carol Gauthier.

Commissioner Timmons made a motion to approve the minutes for January 16, February 25, March 14 and April 10, 2014 as written. Commissioner Tracy seconded. Vote 4-0.

ADJUDICATORY HEARINGS:

1. Commissioner Dresser stated that they have two adjudicatory hearings both involving Davric Maine Corp. d/b/a Scarborough Downs. They will take action on a request to reopen the Downs 2014 race date assignment hearings and subsequence, they will take action on a request for the Downs to be awarded a race date of September 5, 2014. Attorney Guay asked Mr. Jackson procedurally why are there two adjudicatory hearings. Mr. Jackson stated because if they reopen the race date hearings then you're going to have an adjudicatory hearing following. It has to be a public hearing. Attorney Guay stated that it's one hearing on one question. Mr. Jackson stated that's correct, but the Commission has to vote to reopen first. Attorney Guay stated that was the point of order than. Commissioner Dresser asked for a motion to reopen the hearing. Commissioner Tracy made a motion that they reopen the race date hearings for the specific purpose of hearing action relating to Scarborough Downs race date. Commissioner Reed seconded. Vote 4-0. Attorney Guay hearing officer stated that this matter was initially discussed at the last meeting because there was a question of whether or not sufficient notice had been delivered to the intervenors. One of the intervenors present indicated they did not want to waive the notice section so we closed the hearing. The minutes in the Commission records may indicate this matter was discussed. In fact, the hearing did not occur. This is the hearing, so that also means that any testimony that was given at the last meeting is not before the Commission. We're now doing the hearing and with that the proceeding normally the State would go first. Mr. Jackson stated that he had two exhibits to enter. One is the request from Scarborough Downs and the second one is the Notice of Hearing that went to all the parties of the proceedings. Attorney Guay stated that notice was given to all the intervenors in the race date hearing. Mr. Jackson stated yes. Attorney Guay asked if there was any objection to the process of the hearing that has occurred so far to this point in time. There were none. He also asked if any one present would have any objection to these two documents submitted by Mr. Jackson. Seeing none, they were admitted. He stated to Mr. Jackson that he previously testified that the award of the additional date would not adversely affect the industry. Mr. Jackson stated that was correct. Attorney Guay asked Mr. Jackson if he has an opinion today for the hearing on the record. Mr. Jackson stated that the only opinion he would offer is that that date they are requesting in September is an open race date currently. It would be his recommendation to the Commission to award that date to Scarborough Downs in lieu of their giving up of the date in August. Attorney Guay asked if there were any questions from Scarborough and any intervenors. Seeing none from the intervenors. He asked if Scarborough had anything they wanted to say. Mr. Cobbett stated that they made the request to move the race date of August 23 to September 5, 2014 as to rent the entire property to a function that's

taken place in Westbrook. Attorney Guay asked if the Department had any questions of Scarborough. There were none. He also asked if any intervenors had questions of Scarborough. Let the record reflect that there are no questions from any intervenors. He stated that there doesn't seem to be any dispute so they could forgo any closing statements unless there is anything from the members of the public that want to make comment. Seeing none so that reopening of the awarding of a race date of September 5, 2014. Again, let the record reflect the reopening was for a very limited purpose for the awarding of the date of September 5, 2014 to Davric Maine Corp. d/b/a Scarborough Downs. Commissioner Tracy made a motion that they award a race date on September 5, 2014 to Scarborough Downs in lieu of the race date of August 23, 2014 which is not going to be raced. Commissioner Timmons seconded. Commissioner Dresser asked for any discussion. There was none. She called for a vote. Vote 4-0. Attorney Guay stated that he has a decision and order if the Commissioners would like to take a look at it. There is a certain amount of time and given the meeting schedule it would be wise to issue the decision and order. There is a 30 day appeal period in case someone wants to appeal it. Commissioner Dresser asked for a motion to close the hearing. Commissioner Tracy made a motion to close the hearing. Commissioner Timmons seconded. Vote 4-0. Commissioner Dresser stated that the decision and order has been signed. Mr. Jackson stated that the normal procedure is that the Commission would vote to accept the written decision as presented. Commissioner Tracy made a motion to accept the written decision as presented. Commissioner Reed seconded. Vote 4-0.

#### UNFINISHED BUSINESS:

1. Commissioner Dresser stated that they are taking action on a series of complaints that were continued from February 25, 2014 to June 12, 2014. The decision was made by the Commission in February to "file" these matters and the understanding was that if no new medication violations had occurred between then and now that these matters would be dismissed this month. She read the following names and complaint numbers.

**Donald Lemieux, Complaint Number 2013 MSHRC 012; Crystal MacDonald, Complaint Number 2013 MSHRC 015; Louis Gasbarro, III, Complaint Number 2013 MSHRC 020; Stephen Murchison, Complaint Number 2013 MSHRC 021; Richard Belisle, Sr., Complaint Number 2013 MSHRC 022; Richard Belisle, Sr., Complaint Number 2013 MSHRC 022; Ryan Hall, Complaint Number 2013 MSHRC 0023; Ryan Hall, Complaint Number 2013 MSHRC 0023; Philip Sowers, Jr. Complaint Number 2013 MSHRC 0024; Philip Sowers, Jr. Complaint Number 2013 MSHRC 0024; Philip Sowers, Jr. Complaint Number 2013 MSHRC 0024; Adrian Wisher, Complaint Number 2013 MSHRC 0025; Adrian Wisher, Complaint Number 2013 MSHRC 0025; Steven Vafiades, Complaint Number 2013 MSHRC 0026; Ronald Dinsmore, Complaint Number 2013 MSHRC 0027; Franklin Hiscock, Complaint Number 2013 MSHRC 0028; James C. Smith, Complaint Number 2013 MSHRC 029; Lisa Saindon, Complaint Number 2013 MSHRC 030; Lisa Saindon, Complaint Number 2013 MSHRC 030; Richard Tourangeau, Sr., Complaint Number 2013 MSHRC 031; Richard Tourangeau, Sr., Complaint Number 2013 MSHRC 031; Richard Tourangeau, Sr., Complaint Number 2013 MSHRC 031; Richard Bartlett, Sr., Complaint Number 2013 MSHRC 032; Neal Grass, Complaint Number 2013 MSHRC 033; Marc Tardif, Complaint Number 2013 MSHRC 034; and Stanley Whittemore, Complaint Number 2013 MSHRC 011.**

Mr. Jackson stated that there have been no violations reported to all of the above. They have complied with the issue of the Commission on February 25, 2014. Commissioner Dresser stated that in light of the fact that we have no new violations for these complaints she would welcome a motion

for dismissal pursuant to our ruling in February. Commissioner Timmons made a motion to dismiss these matters as presented by the Chair and the executive director that they have had no new violations and that they do comply with the rules of the Commission. Commissioner Dresser asked if he was referring to the all of those matters that we read off and appeared on today's agenda. Commissioner Timmons stated that was correct with the associate numbers. Commissioner Tracy seconded. Vote 4-0. Commissioner Dresser stated that the motion passed and all of these matters have been dismissed.

#### NEW BUSINESS:

1. Commissioner Dresser stated that the Commission will review and establish the base purse for the 2014 Sire Stakes program. Ms. Perkins representing the Maine Standardbred Breeders and Owners Association presented the worksheet for the base purse. She stated that there would be 100 divisions for the 3 year olds and 80 divisions for the 2 year olds. Money from the Sire Stakes Program has to be spent that year, it cannot be carried over. She also stated that it is a guessing game each year and last year they over spent by \$7,600.00. The base purse she presented was for \$7,200.00. Commissioner Dresser asked for a motion. Commissioner Tracy made a motion that they approve the recommended base purse of \$7,200.00 as submitted. Commissioner Timmons seconded. Commissioner Timmons stated to Ms. Perkins that she has 180 legs total at \$7,200.00 each. He wanted to see if that number compares to the total that you said you have to spend. Mr. Jackson stated that the total was \$1,286,000.00. Commissioner Dresser stated that you have to remember that she set aside the finals and the consolation. She called for a vote. Vote 4-0.

#### REPORTS:

1. Commissioner Dresser asked for the Executive Director's report. Mr. Jackson stated that they are still trying to hire for the Vet Tech positions in Bangor and Scarborough. He also stated that OTB Facilitators in Sanford we have an applicant to purchase that facility from Pioneer Gaming LLC owned by Don Barberino who also is owner and operator of Favorites OTB in Waterville. The application is going before the town council on June 17. The decision will be made at that time and forwarded to our office and after that occurs and the background investigation is completed we will put that on the agenda.

Mr. Jackson stated that Mr. May, State Racing Steward, at Scarborough Downs filed a report on the fire with the starting gate at Scarborough Downs. He stated that apparently there was an electrical issue with the normal starting gate causing a fire malfunction. They brought out the second backup starting gate and the starting judge was not familiar or had not used it. Nobody was hurt. Mr. Cobbett stated that on the main gate one of the resistors in the back over heated causing a fire. They grabbed the backup gate and did a test run to make sure the gate was opening and closing. When they stopped, he in adversely had turned off the power switch to the rear gate. At that point when they went to start the next race, the power was off. Luckily, they have a procedure in place where they went down the shoot and discovered what the problem was and rectified that problem. As a way of hopefully being able to detect that problem in the future, Mr. Ward is installing a light on top of the panel so that when the power is on the light is lit. Commissioner Dresser asked if there could be fire extinguishers in each vehicle from this point on. Mr. Cobbett stated that there are fire extinguishers in two vehicles but not the third and he doesn't know why. Commissioner Dresser asked if he could make sure that before races today there are fire extinguishers are in place. Mr. Cobbett stated that that has already been corrected.

Mr. Jackson stated that Mr. Canney returned to work on May 26. He is on light duty for now and Mr. Greenleaf has been helping with his duties. He also stated that the drug testing program has been

down because of the lack of vet techs. He has been informed that some individuals are using a nonhuman penis for the collection of urine. Attorney Guay stated that the urine itself if it's not from the individual his understanding is you do temperature testing the urine will not be the right temperature so you will be able to detect it. Mr. Jackson stated that they do have temperature strips available. The strips are attached to the external cup. Commissioner Dresser asked if he has looked into alternatives to urine testing. Commissioner Dresser stated that the Commission members would like to receive results from the Health and Environmental Testing Laboratory on the human drug testing.

Mr. Jackson stated that there were some issues that were raised from the drivers at Scarborough Downs concerning the condition of the track as it relates to the surface that are being applied to the track are large enough in size to be kicked up and apparently causing some minor abrasions to some of the driver's faces. He brought this to Mr. Cobbett's attention. Mr. May will be meeting with Mr. Cobbett today or tomorrow. Mr. Jackson also stated that he did go down and look at the materials that were being used and it's a little coarser than stone dust. He doesn't think it's a safety issue at this point but it could become an issue if the stone gets a little bigger than it is. He is not an expert in that area. Commissioner Dresser asked Mr. Cobbett if there are any plans to grade the track or take the pylons out and get rid of the berm. Mr. Cobbett stated that the track was graded about a month ago and there are plans to grade it within the next day or two. He also stated that they haven't used stone dust since the 1990's. They did notice that the crushed stone is larger than usual. Quality control is being used at the plant. Commissioner Dresser asked why the drag truck goes around too fast. Mr. Cobbett stated that they are taking precautions to correct that. Commissioner Timmons asked Mr. Jackson because of the vet tech that the testing program might not include every horse that either finishes first or third. Mr. Jackson stated that what he was indicating is that with the veterinarian trying to keep track of the horses that are on the track as well as trying to draw the samples back he might not get the winner or the second horse in that race. Commissioner Dresser stated that her observation is that they have been testing the winner and a special in each race. She thinks where Dr. Matzkin has had to scale back is where some races where he might test every horse, prerace testing and he hasn't been able to do that. Mr. Jackson stated that knowing that they have a staffing issue do the best you can. He doesn't expect the veterinarian to be running back and forth. He doesn't believe that the integrity of the testing program has been compromised at all.

Commissioner Dresser asked what do they need to do so that they can accomplish what they need to. Attorney Guay stated that they are adopting the findings that go into the basis statement. Commissioner Dresser stated that if we are comfortable with the basis statement as presented we can make a motion to say that our findings are as presented in the basis statements. Attorney Guay stated yes. Commissioner Tracy stated that he has reviewed and he is totally satisfied that the basis statements meet the requirements and actually constitute the reasoning of the findings of approval. Commissioner Dresser stated that would be Chapter 5, Section 7; Chapter 7, Section 8; Chapter 9, Section 4; Chapter 11, Section 2; Chapter 11, Section 7; Chapter 11, Section 8 and Chapter 11, Section 9. Commissioner Timmons seconded. Vote 4-0.

Commissioner Timmons stated that two individuals approached him and said that in the past that vendors that are owed a lot of money by doing business by horse people and trainer's that have signed an agreement, and in that trainer's application says there able to meet their obligations and then they fail to do that that nothing can be done on this end to take care of that. He was wondering if that's still true. Commissioner Dresser stated that without a court judgment or a stipulation by the person who owes the funds we are not a collection agency; however, that being said we had a hearing with a horseman, we had a judgment from another jurisdiction and it was forwarded to Mr. Jackson and then

we brought that individual in and surprisingly the bill was paid later that day. We have the ability to review someone's license if there are factual bases or evidence. We have to have it proven that that money is owed before we can pursue any. Commissioner Timmons stated that what you are saying is that individuals that are in that situation and it happens to be a trainer, and they go through the proper procedure it could come here. Commissioner Dresser stated that they could go through a small claims court or some sort of collection process and it could come in front of the Commission. Attorney Guay stated that the alternative would be to have the person that gave a bill to the licensee that wrote the check and sort through all of that stuff but it sounds like it's a judgment, but upon evidence where a judge has sorted it out and you're going to accept the finding of the judge and act on the licensee. Mr. Jackson stated that the issue the Commission has is Chapter 1, Section 10, subsection 1-A financial responsibility. If we have a complaint where someone has an unpaid obligation, he asked them to submit that in writing and resubmit the bill and copy the Commission on it. If we have a court judgment and we have to wait 30 days after that assigned, once they've defaulted on that court judgment their license is automatically suspended pending a hearing before the Commission. He also stated that he lets these people know that. More often than not this people will beg with the individual to make a deal with them so that they can get licensed. He asked Commissioner Timmons if that answered his question. Commissioner Timmons responded with yes. He wanted to answer back to them correctly. Attorney Guay stated that you can take action under the law, but the Commission does not want to dedicate your resources. He wants to make it clear that there's nothing that would prevent the Commission on any individual case. Commissioner Dresser stated that they can't devote a half day.

#### OTHER BUSINESS:

1. Commissioner Dresser stated that they will continue discussion to establish an Ad Hoc Committee to review Title 8 Chapter 11 for possible changes. Mr. Jackson stated that they began the discussion at their May 12<sup>th</sup> meeting. Commissioner Dresser stated that she has not talked with anyone individually because she wanted to wait until they decide to go forward with or not. She has an idea of whom they should use on the committee which are a representative of the two commercial tracks, a representative of the OTB's, a representative of the MHHA, someone from the Department of Agriculture, someone from the fairs, someone from the MSHRC and Attorney Guay has agreed to sit in as legal counsel and maybe someone from the breeders. If anyone has any suggestions as to other entities that should be represented she would welcome that. Commissioner Reed stated that she has put together a fairly elective selection of people and we should proceed with that. Commissioner Timmons and Commissioner Tracy also agreed. Commissioner Dresser asked if they needed a motion. Attorney Guay stated that you can approve the subcommittee but it's not clear to him any proposed changes to legislation it's the Department with the Commission. You have to take another vote to make the recommendation as long as the subcommittee knows that. Mr. Jackson stated that any recommendations coming from the Department has to go to through the Governor's office. If those are unsuccessful, then he suggests we have a backup plan and we approach certain members of the Legislature to see if they would carry the water for them. Commissioner Dresser stated at this point what they are looking for is approval of establishing the committee looking for feedback and ideas on suggestions of proposed changes. Attorney Guay asked if it was one from each commercial track or one from both. Commissioner Dresser stated one from each. Commissioner Tracy made a motion to establish an Ad Hoc Committee for purpose of reviewing Title 8 Chapter 11 for possible changes. Commissioner Timmons seconded. Vote 4-0.

#### PUBLIC COMMENT:

Commissioner Dresser asked if anyone had any comments. Mr. Dillon addressed the Commission regarding the industry as a horseman. He stated that the infrastructure of this business is deteriorating

because of lack of money. Since the addition of slot revenues we have really got on the subsidy plan. There is too much racing. When Plainridge comes on line, they are going to offer the same type of racing for double or more the money. Where are you going to find the horses? Commissioner Dresser suggested to Mr. Dillon that he come to the licensing hearing and share this with them because that's when the race dates and the number of dashes are assigned. Ms. Perkins stated that her suggestion would be too she found that when they do the race dates that they come there with dates already set and it makes it very difficult to change anything. She knows that they are limited to what they could do now because of the statute. If a group could get together before the race dates, and then go back and work the race dates out. Commissioner Dresser stated that a consensus needs to be had. It's not necessarily the committee will look at the statute and that will potentially address the parameters. She thinks that without the industry working together our hands are somewhat tied.

Mr. Jackson stated that one of the drugs that are now beginning to appear in our testing program is what they refer to as "flecourt". They are going to put a notice out to go on the condition sheets and the overnight sheets starting this weekend that beginning with samples collected on June 23, 2014 and then there after any evidence of flecourt presents in those samples will be considered a positive test. Some of those individuals are using it as an injectable and it should be a topical. Commissioner Dresser stated that Mr. Jackson will send one to the MHHA and one to the MSBOA also. She also stated that Dr. Matzkin explained it to her that this is a substance that is not approved for use in the United States or for sale in the United States and is coming in in compounded fashion. It's not a drug that we would have a level for and you have to stay under the level. It's a drug that if the presence is detected it is a violation. Mr. Jackson stated that Ms. Perkins shared with him that Jeff Giroux who owns three racetracks in New York has instituted a policy that out of competition testing the presence of Cobalt sulfate will cause you to be unable to race at his three tracks in New York. He stated that he will talk with Dr. Sams about our ability to detect that. He stated that they are using this in place of EPO or other blood doping medications. Commissioner Dresser asked Mr. Jackson if we have plans for any more out of competition. Mr. Jackson stated that possibly by the end of this month. We will be doing it on a weekly basis. Something has to be worked out with staff. Commissioner Dresser asked for a motion to adjourn. Commissioner Reed made a motion to adjourn and Commissioner Timmons seconded. Vote 4-0.

The meeting adjourned at 11:15 a.m.

Respectfully submitted by:  
Henry W. Jackson  
Executive Director