

## MINUTES

### OREGON RACING COMMISSION August 19, 2004

The Oregon Racing Commission met on August 19, 2004, at 1:30 p.m. in Room 140 of the Portland State Office Building located at 800 NE Oregon Street, Portland, OR. Commissioners in attendance were Steve Walters, Chair, Jeff Gilmour, Lisa Metcalf and Julianne Davis. Commissioner Todd Thorne was excused. Agenda items were discussed in the following order with resulting actions:

#### **1. Approval of June 18, 2004, Minutes**

Chair Walters noted that the July meeting was cancelled.

ACTION: MOTION (Metcalf): Minutes are approved as submitted

VOTE: 4 Aye, 0 Nay, 1 Excused

#### **2. Multnomah Greyhound Park Race Meet Report & Portland Meadows Status Report**

Jeff Grady: For the meet to date at Multnomah Greyhound Park the live handle is down 32%, attributed to the 18 less live days but on a day-to-day basis they are still down 10% which seems to be the average decline. Export is down close to 50% due to Phoenix which last year featured them on Wednesday evenings which brought in close to 1 million dollars to date. Simulcast is only down 3% which is great considering they closed a couple of OTBs including the Rialto. Lifting the surcharge at Portland Meadows is up 50%, some shifted over rather than going to the other live meet at Multnomah and some taken from Art at the Rialto before he closed down. Weiner dog weekend averaged just over 8,000 people per day and handle was good. The Derby is this weekend. Grady noted that they have the lowest greyhound injury rate in the country so Lisa Schaefer was asked to be the keynote speaker at the Track Superintendent Conference in Texas. Simulcast handle on import greyhounds is down a little due to Kennel Cough problem around the country.

Still in negotiations with the HBPA and there is no contract yet. Chair Walters asked if the Portland Meadows application was awaiting a deal with the HBPA and Grady said it was. Walters suggested they submit their application and the Commission could act on it subject to an agreement with the HBPA so that might remove some of the uncertainty in the industry. Grady agreed and said they would try to get that application in by Tuesday. Chair Walters asked if they picked up exports from Phoenix and possibly Gulf. Grady said they have had Phoenix from the start but they no longer feature them on Wednesday nights and it has really affected their Wednesday evenings but they are catching up. On Wednesdays they take MGP only on track, signal not sent to OTBs. Even though there are commercials showing, people just aren't coming out during the week. Jodi Hanson asked Grady to report on the improvements at Portland Meadows. They had hoped to have the backside improvements finished by the start of the race meet but they likely won't be done until next year. The EPA is not a problem because it was scheduled to be a two year project anyway.

#### **3. Discussion on Proposed Order for Daniel R. Boag**

Daniel Boag introduced himself to the Commission noting that he has been a rider here for over 17 years as one of the leading riders in Oregon and has had only minor riding infractions in all that time. He apologized for the infraction and expressed his regret that it happened at all. Boag said he didn't mean to bet on the horse the way he did and cooperated with investigators when they approached him. He promised that it will never happen again.

Chair Walters thanked Mr. Boag for his statement and noted that while they can't add evidence to the record at this time he feels the Commission should be able to consider his statement. Charlie Williamson (attorney for Mr. Boag) asked that the Commission supplement the record with the additional cases that they submitted with the exceptions so that information would be in the record. Chair Walters asked for a response from the Assistant Attorney General Robyn McGinnity on the issue. Chair Walters first wanted to ask Mr. Williamson about one of the exceptions which involve an exclusion of exhibits R3 – R6 as to why those exhibits are relevant. Mr. Williamson said those exhibits tend to show a bias by Bob Blair against jockeys and Mr. Boag as the representative of the Jockey's Guild in Oregon and could

reflect on the credibility of his testimony. Chair Walters asked how Mr. Blair's credibility factors in to the proceeding because he was not a witness to any of these facts and he doesn't see how his testimony would have anything to do with the issue of penalty which is the main issue here. Mr. Williamson pointed to Mr. Blair's opinion testimony that this infraction warranted and permanent revocation of Mr. Boag's license.

Robyn McGinnity, Assistant Attorney General: The issues of the case were largely admitted and what became the substance of the hearing became what the severity of the sanction should be. Her understanding is that there is not another case that is incredibly similar in her assessment of this case. Both sides included a lot of testimony as how severe this was to try to assess what action is appropriate. Ms. McGinnity summarized points that were stipulated in the case. She also noted that this case might open to interpretation of 462-140-340 sub 2 in which jockey wagering is discussed. The two interpretations that came up are that (1) no jockey shall wager on any race or (2) no jockey shall wager on any race in which he or she is riding. The Commission may elect review that issue in this case or not. Chair Walters clarified that the rule interpretation doesn't really matter in deciding this case and Ms. McGinnity agreed. Regarding Mr. Williamson's request that the record be supplemented with the material attached to the exceptions, she ruled that technically no new or additional evidence can be considered unless the hearing is reopened, but she noted that there may be some leeway if both parties agreed to it. Ms. McGinnity agrees with the ALJ on the determination that exhibit R3 – R6 are not relevant to this hearing and that even if they were admitted they wouldn't make any difference to the case.

Mr. Williamson noted that Mr. Blair called around the country trying to find precedent for cases like this and couldn't find any. Williamson asked the Commission to consider that the exhibits in question include cases they have found that they feel are relevant. Commissioner Gilmour asked if the precedent they found from other states coincide with the rules of Oregon and Williamson answered that the rules are not exactly the same but have to do with rules against betting.

Chair Walters announced that the Commission will conduct deliberations on this case and the other two cases in Executive Session, excluding the general public, as explained by General Counsel Raul Ramirez. The Commission first heard information on the other two cases before them that could include the general public.

#### **4. Proposed Order for Karen R. Knapp**

Raul Ramirez, General Counsel: The proposed order was issued by the Administrative Law Judge (ALJ) and there were exceptions filed by Ms. Knapp. The exceptions were argumentative. The proposed order showed a difference in the testimony presented by Ms. Knapp and ORC investigator Irene Rickey. The proposed order includes a credibility finding which was needed to arrive at the proposed sanction of revocation in the case. Mr. Ramirez proposed that prior to adopting any of the proposed order that the draft should include some discussion of rules 462-130-00103bC and under the same rule 1 sub G and 2 sub H. those rules have to do respectively with the failure to take a urine test when requested or failure to obey reasonable orders of Commission staff which were not specifically spelled out in the proposed order.

#### **5. Default Order for James W. Wooten**

Raul Ramirez, General Counsel: The licensee did initially appear for a hearing that was scheduled on July 15, but ultimately Mr. Wooten walked out of the hearing before the evidentiary record was opened. The notice he had been served with indicated that in the event he failed to appear -- and he ultimately did fail to appear by leaving early -- he waived his right to a hearing. The Commission can enter an order by default making the included findings of fact and the conclusions of law which result in the sanction of revocation based on the information contained in the Agency file. Mr. Ramirez noted that several dates in the draft are incorrect and summarized their correction. Chair Walters asked if the proposed order has been served on Mr. Wooten and how to handle the issues of a lack of exception from him on the issues that he failed to appear by walking out. As a matter of record Mr. Wooten indicated that he was waiving his right to a hearing as he walked out, and he had been previously advised in his notice to appear that doing that could result in the Commission entering a default order so he is not entitled to see a version of the default order prior to the Commission taking any action on it. Commissioner Gilmour asked Mr. Ramirez to clarify if the meeting had officially started when Mr. Wooten walked out. He

indicated that the evidentiary portion of the meeting had not started but the preliminary housekeeping matters had been presented and the tape for the hearing reflects Mr. Wooten walking out before it actually go started.

*\*\*\* The Commission conducted deliberations in Executive Session and cleared the room everyone except the Commissioners and the Executive Director. \*\*\**

Upon return to a public hearing Chair Walters announced that the Commission deliberated but did not take any action while in Executive Session and would do so now.

#### **6. Action on Proposed Order for James W. Wooten**

ACTION: MOTION (Gilmour): Moved that the Commission support the final order including the typographical corrections that Counsel suggested.

VOTE: 4 Aye, 0 Nay, 1 Excused

#### **7. Action on Proposed Order for Karen R. Knapp**

ACTION: MOTION (Metcalf): Moved that the Commission accept the final order including adding the references to the regulations that counsel proposed be included.

VOTE: 4 Aye, 0 Nay, 1 Excused

#### **8. Action on Proposed Order for Daniel R. Boag**

Chair Walters asked to make a brief statement: He feels this proposed order is influenced very heavily by Mr. Boag's record and lack of violations in the past. Were the record different at all this would have been a very different outcome. If it were not for the credibility finding of the ALJ who saw the witnesses testify, he would have had a lot of trouble believing that Mr. Boag did not know what he was doing. Chair Walters stated that the observation that there was a belief that the horse had been scratched for medical reasons by a jockey of Mr. Boag's experience he finds "literally incredible", but he is prepared to accept the ALJs finding on that point. The other observation Chair Walters wanted to make was that it would be a mistake to understate the seriousness of this violation. The honesty and integrity of racing has always been important and has never been more important than it is today as the industry is under siege from all sides. The last thing the sport of racing needs is to have the public believe that jockeys are betting on races and betting against their own horses. There is a substantial issue as to whether jockeys should be permitted to bet on any racing in a meet where they are riding. He feels that the Commission should decline at this time to make the clarification on the rule because the language is ambiguous, but they should look as a policy matter as to whether they should allow jockeys in Oregon to bet at all just as we don't let racing commissioners, officials and their families bet at race meets. They will leave that issue to another day. This is a very serious penalty and it should be because it is a very serious violation and goes to the heart of the integrity of racing.

ACTION: MOTION (Davis): Moved that the ALJ orders not be adopted as suggested instead that it be modified to a one year suspension and a \$1,000 fine.

VOTE: 4 Aye, 0 Nay, 1 Excused

Chair Walters announced the Commissions decisions as to the evidentiary issues that were raised. With respect to the request to supplement the record, the request is denied but the Commission would observe that had the documents been admitted it would not have changed their decision in any way. The same holds true of the request to overturn the ALJs decision on exhibits R3 – R6. The objection is overruled and the Commission agrees that they are not relevant but they have looked at them and there was no effect on the substantial rights of a party. He clarified that the suspension started on March 9, 2004 because there was no stay.

#### **9. Grants Pass End of Meet Report**

Bob Blair, Presiding Steward: The Grants Pass meet was successful. He was pleased with the new fence around he outside rail and the safety gate that was added. The new track surface yielded several track records but it has been untested as far as water is concerned. Management led him to believe that this may be a problem in the future. The timer boxes are still a problem and should be addressed before dates next year. Chair Walters clarified that this information would be in Mr. Blair's

written report which the Commission uses as a reminder of things that need to be fixed before the next year's application is approved. Mr. Blair noted that the jockey colony was extremely hard hit during this meet. They started with 18 riders, 8 were unseated and off for several days and 5 of them could not return. None of the injuries were the result of the action of another rider. Statistics: 115 starters, 182 races with an average of 6.12 horses per race. (2003 - 5.62; 2002 - 6.43; 2001 - 6.07; 2000 - 6.71 based on 10 head of horses running.) The Jockey Incentive Program is working and brought in a lot of riders. Executive Director Jodi Hanson noted that Al Westhoff lists the overall handle for 19 days at \$952,524 with the average daily handle being \$50,133 and the 2003 average daily handle last year with 18 days was \$49,160 so it's very similar. The off-track simulcast daily handle for 2004 was \$8,254 which was very similar to 2003 at \$8,124. Mr. Westhoff thanked the Commission for their support.

#### **10. Crooked River Roundup Race Meet Report**

Bob Blair, Presiding Steward: They have 2 new barns and have remodeled the Steward's stand. The new TV towers are some of the best you'll ever see. His concerns for the video quality at night were unfounded as they were able to capture races successfully. There were problems with not enough light on the photo finish, similar to the problems at Portland Meadows. The track was in good shape and everyone worked very hard to make it go smoothly. Commissioner Gilmour attended and witnessed some of these issues. The fair was only able to run 8 head of horses per race this year with starter 6.77 but based on previous years the number of starters are increasing (2003 - 6.5, 2002 - 6.32, 2001 - 6.08, 2000 - 5.50). The increase is due to the additional barns and getting more riders involved. They had 12 riders this year down slightly from previous years due to accidents and poor judgment of some of the riders.

#### **11. Tillamook County Fair Race Meet Report**

Bob Blair, Presiding Steward: The Tillamook fair was very impressive. The new 42 stall barn really drew attention and it even includes a racing office which we've never had. The Commission office staff cooked a free breakfast for the horsemen on all 3 days and served anywhere from 50 - 90 people a day. This is an ongoing tradition that is very popular. The new jockey silks with standard colors really stood out and showed up well. Using three cameras worked well, but the scissor lifts move a bit in the wind. Mr. Blair confirmed that this was a temporary fix and let them know that we expect permanent towers by next year. Racing issues included one gate that didn't open on the first part of a Daily Double race requiring the refund of a considerable amount of money. Blair also got video of the point on the inside rail that had been discussed previously with management. One rider was hurt in the first race on Saturday and another was out for other reasons. Weather was wonderful and everyone was happy to get away from the heat. Commissioner Gilmour was in attendance. In 3 days, they held 22 races, 122 starters with a handle of \$99,955 compared to \$99,749 the previous year. They were only able to run 6 head of horses; starters per race were 5.4 (2003 - 5.77, 2002 - 5.76, 2001 - 4.14, 2000 - 5.62).

Jodi Hanson: She commented that there have been several requests this year via email for race results and calls, even from people who are out-of-state, asking when the next race is coming up so it's nice to see that interest.

Commissioner Gilmour: Says he has noticed a significant change in the county fair meets with better horses and much better conditions and a high degree of volunteerism. The complaints from horsemen and attendees are going down but there are a couple of issues that seem to be repeated on a regular basis. He would like to see applications come in earlier so the Commission has a chance to review possible overlaps as was the case with Grants Pass and Crooked River. Also, the popularity of the new barns is leading to accusations of people stealing stalls and other boarding issues. Each meet uses a volunteer racing secretary and this may lead to some confusion and inconsistent application of the rules from year to year or track to track. Gilmour suggested having a racing secretary from the Commission that is in charge of the County to be sure that the same rules are followed at all races.

Bob Blair: The rule Mr. Gilmour is referring to is the eligibility rule which states that there must be an eligibility rule but leaves it up to the racing secretary to define. Many of the secretaries are first-time volunteers and Mr. Blair backs coming up with a uniform eligibility system. He's not sure if it should be addressed by the Commission or the HBPA and the Quarter Horse Association.

Commissioner Gilmour: He thanked Mr. Blair for the clarification. He also noted that there are no rules posted and when asked he was told they were the same as last year but nothing was posted.

Chair Walters: Commented that there are several ways of approaching the issue. One would be by rule where the horse racing rules are reviewed every year, another would be to have it as a part of the application process.

#### **14. Discussion on Proposal for Necropsy Project**

Chair Walters noted that this item would normally be discussed by Dr. Schlingman but in his absence asked Jodi Hanson and Commissioner Metcalf to explain it.

Jodi Hanson: The Washington Racing Commission has a project they do for post-mortem examinations in conjunction with the Washington State University College of Veterinary Medicine. The purpose of the program is to determine the causes of these injuries and develop preventative strategies. Over the past year Dr. Schlingman has been looking into adopting a similar program for Oregon using a refrigerated trailer to attach to a truck. The initial cost estimate is about \$20,000. The question for the Commission is would they be interested in pursuing such a program.

Commissioner Metcalf: Dr. Schlingman started talking with Dr. Metcalf last year about how to prevent some of the breakdown injuries on the track. She spoke with Rick Arthur in December, who is the former Director of the Association of Equine Practitioners and also one of the track vets at Del Mar. They compared the incidents of breakdown injuries there and how they are diagnosed and prevented. They do a necropsy on every horse that dies on the track with the cooperation of a local veterinary college. The local vet college in Oregon is very receptive to this idea because it provides education to their students, is a benefit for prevention, and helps to develop a relationship between the vet college and the racing industry. The vet school would charge an estimated \$200/per horse and are willing to do greyhounds as well. With interest from many parties the question would be who would pay for the program and who would administer it.

Commissioner Walters and Gilmour both agree that it is a good idea and commented that it would also help satisfy the requests of groups that raise issues of health and welfare of racing animals. Chair Walters asked how the Commission should move forward. Dr. Metcalf said the Commission would need to decide who would pay for it while preparing rules based on those of other states. Chair Walters asked that the existing Vet Med sub-committee take on this task and move forward.

There was some discussion of Hub funds paying for the project and Commissioner Gilmour suggested it might make more sense for it to be a Commission budget item. The project was sent to the Vet Med sub-committee for discussion. Chair Walters thanked Dr. Schlingman and Dr. Metcalf for their research.

#### **15. Confirmation of Next Commission Meeting - September 16, 2004**

The OGA has asked to present an item at the next Commission meeting but September 16 is a Jewish Holy day Rosh Hashana that the presenter observes so they asked that the meeting be moved. The Commissioners agreed to move the meeting to Friday, September 17 and the meeting will have to be held elsewhere, TBD.

#### **16. Report on Hub Sub-Committee Meeting on August 18, 2004**

Commissioner Davis: The meeting was very well attended, between 30 – 35 people, with representatives from the hubs, the industry, and associations with an interest. A lively yet civil discussion went on for three full hours. One consensus from the meeting was that everyone agreed that the hubs contribute greatly to the industry and that Oregon was on the forefront in passing legislation to draw the hubs into Oregon. It is important to foster a business climate to encourage the hubs to continue to do business here. There was extensive discussion about cooperation between all interested parties and the issues surrounding hub taxation. Suggestions included tax rebates, caps and graduation fees. No resolution was reached, but they agreed to continue to meet and study the situation with the next meeting during the last week of September. There was also some advocacy at the meeting for the Racing

Commission to join with the industry to evaluate the needs and expectations and to do some serious fiscal planning. Commissioner Davis thought the meeting was quite successful and looks forward to continuing the discussion. Chair Walters noted that the committee will develop a framework to deal with the initial issues that were raised that will be circulated before the next meeting. Eventually they plan to bring a rule proposal or a policy proposal to the full Commission. There is no timetable on this yet but they hope to do it by the end of the year.

**17. Action on Proposed Amendments to Administrative Rules - OAR 462-200-0640**

The public hearing was held prior to the beginning of this Commission meeting, but Chair Walters reopened the hearing to allow additional testimony. He then proposed deferring final action of this proposed rule until the people at AmericaTab can talk to Steve Roden and Marty Miller to see how this wager could be implemented.

ACTION: MOTION (Gilmour): Action of the proposed amendment is deferred to the next Commission meeting

VOTE: 4 Aye, 0 Nay, 1 Excused

There being no further business, the meeting was adjourned.