

NEW JERSEY RACING COMMISSION
WEDNESDAY, JANUARY 26, 2022
TELEPHONE MEETING

A public meeting of the New Jersey Racing Commission (“NJRC” or “Commission”) was held on Wednesday, January 26, 2022 by telephone.

The following were present:

Pamela J. Clyne, Chairman
Michael J. Arnone, D.D.S., Commissioner
Lawrence DeMarzo, Commissioner
Francis X. Keegan, Jr., Commissioner
Charles E. Tomaro, Commissioner
Judith A. Nason, Executive Director
Jeffry Nielsen, Associate Counsel, Governor's Authorities Unit
SDAG George Cohen

Executive Director Nason read the following resolution:

"This meeting today conforms with the Open Public Meetings Act, and as per the requirements of the statute, notification of this meeting has been filed with the Secretary of State and with the following newspapers: Daily Racing Form, Bergen Record, Asbury Park Press, Courier-Post and the Star Ledger.

WHEREAS, in order to protect the personal privacy and to avoid situations wherein the public interest might be disserved, the Open Public Meetings Act permits bodies to exclude the public from that portion of a meeting at which certain matters are discussed.

NOW, THEREFORE, BE IT RESOLVED that consistent with N.J.S.A. 10:4-12(b), the Commission will now adjourn to Executive Session to obtain legal advice protected from disclosure by the attorney-client privilege on the following matters:

1. Legal advice concerning the initial decision in Sean Smithpeters v. New Jersey Racing Commission, Office of Administrative Law (“OAL”) Docket No. RAC 11408-19.
2. Legal advice concerning the initial decision in Kelvin Harrison v. New Jersey Racing Commission, OAL Docket No. RAC 07202-20; Kelvin Harrison v. New Jersey Racing Commission, OAL Docket No. RAC 09996-20; Brett Pelling v. New Jersey Racing Commission, OAL Docket No. RAC 07203-20; Jeffrey Cullipher v. New Jersey Racing Commission, OAL Docket No. RAC 07204-20; Jeffrey Cullipher v. New Jersey Racing Commission, OAL Docket No. RAC 07849-20; Kevin McDermott v. New Jersey Racing Commission, OAL Docket No. RAC 07841-20; Marcus Melander v. New Jersey Racing Commission, OAL Docket No. RAC 07843-20; Marcus Melander v. New Jersey Racing Commission, OAL

Docket No. RAC 03580-21; Keith Torro v. New Jersey Racing Commission, OAL Docket No. RAC 07845-20; Richard Johnson v. New Jersey Racing Commission, OAL Docket No. RAC 07854-20; and Richard Norman v. New Jersey Racing Commission, OAL Docket No. 07861-20.

3. Legal advice concerning the settlement agreement in Linda Schadel v. New Jersey Racing Commission, OAL Docket No. RAC 03990-21.
4. Other legal advice.

Discussion of the above matters falls within the exceptions under the law; specifically, matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the Commission's attorney to exercise his ethical duties as a lawyer, and/or matters involving pending or anticipated litigation."

Commissioner Keegan motioned to adjourn into Executive Session. Commissioner Arnone seconded the motion. All of the Commissioners voted to affirm. The Commission then adjourned to Executive Session.

Chairman Clyne made a motion to adjourn from Executive Session into the Public Session. Commissioner Arnone seconded the motion and all of the Commissioners voted yes.

The Executive Session ended.

CONSIDER APPROVAL OF THE MINUTES OF THE NOVEMBER 17, 2021 COMMISSION MEETING.

Commissioner Arnone made a motion to approve the public and executive session minutes of the November 17, 2021 Commission meeting. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER RATIFICATION OF THE CANCELLATION OF RACING AT FREEHOLD RACEWAY ON JANUARY 7, 2022.

Executive Director Nason stated that on January 7, 2022, General Manager Howard Bruno requested approval to cancel racing at Freehold Raceway due to safety concerns caused by the snowstorm, which had started the previous evening. Governor Murphy had declared a state of emergency asking residents to stay off the roads. In addition, the forecast for Freehold predicted 6 inches of snow throughout the day, thereby negatively impacting Freehold Raceway's ability to prepare the racetrack surface and ensure safe racing conditions. The Executive Director approved the cancellation of racing on January 7, 2022 subject to the ratification of the Commission.

Chairman Clyne made a motion to ratify the approval granted to Freehold Raceway to cancel racing due to safety concerns caused by the snowstorm. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER APPROVAL OF CHARITY DAYS FOR 2022.

Executive Director Nason indicated that pursuant to statute, the Commission must designate 5 race days per permit as charity racing days: 3 days to benefit the developmentally disabled, 1 day for backstretch benevolency programs and 1 day to benefit the Horse Park and retired race horses. She stated in 2021, the designated racing days generated a little over \$26,000 for the charities. NJRC staff prepared a proposed list of charity racing days intended to result in the highest amount of revenue for the charities.

Commissioner Keegan motioned to approve the charity days for 2022. Commissioner Arnone seconded the motion and all of the Commissioners voted yes.

CONSIDER THE GRANT OF A SPECIAL STEEPLECHASE PERMIT TO THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION ("NJTHA") FOR THE STEEPLECHASE MEET AT MOORLAND FARM ON OCTOBER 15, 2022.

Executive Director Nason explained in October 2021, the NJTHA filed an application for a special permit to conduct the steeplechase meet at Mooreland Farm on October 15, 2022. The Commission needed to table this matter at the November meeting because the statutory notice period was still pending. The notice period concluded on December 4, 2021. Neither the Borough of Far Hills nor Bedminster Township filed an objection to the special steeplechase meet.

Commissioner Keegan made a motion to approve the special steeplechase permit to the NJTHA. Commissioner Arnone seconded the motion and all of the Commissioners voted yes.

CONSIDER THE NOTICE OF READOPTION OF THE OFF-TRACK AND ACCOUNT WAGERING RULES AT N.J.A.C. 13:74-1.1 ET SEQ.

Executive Director Nason stated that the Commission's rules, which regulate off-track and account wagering, are scheduled to expire on March 18, 2022. She indicated that the Commissioners received a draft Notice of Readoption for their review and approval. Executive Director Nason explained that if the draft Notice of Readoption is approved it will be filed with the OAL. She further explained that the Notice of Readoption will ensure that the off-track and account wagering rules in Title 13, Chapter 74 will remain in effect for the next seven years.

Chairman Clyne made a motion to readopt the off-track and account wagering rules. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER THE PROPOSED AMENDMENTS TO N.J.A.C. 13:70-6.5 (COUPLED HORSES).

Executive Director Nason stated that each year since 2018, the Commission has granted the thoroughbred permit holder's request to waive the coupling rule and allow horses with common owners or common trainers to race uncoupled, with no negative effects being observed. She explained that NJRC staff have drafted proposed amendments to N.J.A.C. 13:70-6.5 and is requesting approval so that they can be advertised for public comment.

She indicated that the rule currently requires that all horses trained by the same trainer or owned by the same owner, or the spouse of any such owner, shall be coupled as an entry for wagering purposes when entered in the same race in New Jersey. The proposed amendments will result in a substantial change by requiring that all horses owned by the same owner, spouse of any such owner, or trained by the same trainer shall run as separate wagering interests. The proposed amendments grant the presiding steward the discretion to require coupling where the presiding steward believes it necessary to protect the public interest.

In addition, she explained that the proposed amendments require the racing association to take such actions as are necessary to adequately inform the public regarding common owners or trainers by prominently publishing the name of the owner(s) or trainer in the official program and announcing the common trainer or ownership interests over the public address system. The Executive Director noted that NJRC staff recommend that the Commission approve the proposed amendments for publication in the New Jersey Register to obtain public comment.

Commissioner Arnone made a motion to adopt the draft proposed amendments. Commissioner Keegan seconded the motion.

Chairman Clyne asked the Executive Director if the NJRC has received any complaints about the waiving of the coupling rule. The Executive Director responded that the NJRC has not received any complaints and the stewards have not observed any problems from the uncoupling. She pointed out that the Commission has been waiving the coupling rule since 2018 on an experimental basis and staff believed it was time to propose amendments to change the rules.

Commissioner Arnone asked if the wagering pool would increase because of the rule. Executive Director Nason responded that the racetracks have been requesting uncoupling, which increases wagering interests, increases long shots, and results in a higher wagering handle.

Executive Director Nason asked if there were any additional comments or discussion. Hearing none, she then polled the Commissioners. All of the Commissioners voted yes.

CONSIDER THE PROPOSED AMENDMENTS TO N.J.A.C. 13:71-4.1 (DEFINITIONS), N.J.A.C. 13:71-7.13 (REGISTERED STABLE, MEMBER), N.J.A.C. 13:71-16.5 (ENTRIES), N.J.A.C. 13:71-20.8 (VIOLATIONS INVOLVING ENTRIES, COMPLAINTS, PENALTIES) AND N.J.A.C. 13:71-27.16 (ENTRY DEFINED).

Executive Director Nason stated that the proposed amendments before the Commission are to the standardbred coupling rules. These rules require that horses owned by the same owner, or the spouse of any such owner, or trained in the same stable or management, be coupled as an entry for wagering purposes when entered in the same race in New Jersey. She pointed out that each year since 2019, the Commission has granted the standardbred permit holders' requests to waive the coupling rules and no negative effects have been observed.

Executive Director Nason reported that NJRC staff have drafted proposed amendments to the rules and is requesting approval so that they can be advertised for public comment. The proposed amendments to N.J.A.C. 13:71-16.5 will require horses with common interests to run as

separate wagering interests. The proposed amendments grant discretion to the presiding judge to require coupling where the presiding judge believes it necessary to protect the public interest. She noted that like the thoroughbred amendments, the proposed amendments will require that the racing association adequately inform the public of the common interests. Executive Director Nason explained that the standardbred rules are a little bit more involved because multiple rules reference the standardbred coupling rule.

The proposed amendments to N.J.A.C. 13:71-4.1 change the definition of “entry” to be consistent with the language proposed for N.J.A.C. 13:71-16.5. The proposed amendments to N.J.A.C. 13:71-7.13 delete the language that requires horses to be coupled as an entry. The proposed amendments to N.J.A.C. 13:71-20.8 extend the applicability of the rule to persons driving horses that previously would have been coupled. Finally, the proposed amendments to N.J.A.C. 13:71-27.16 conform the rule to apply to those instances where the presiding judge requires the coupling of horses to protect the public interest.

Executive Director Nason noted that NJRC staff recommend that the Commission approve the proposed amendments for publication in the New Jersey Register to obtain public comment.

Commissioner Keegan made a motion to approve the proposed amendments. Commissioner DeMarzo seconded the motion and all of the Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN SEAN SMITHPETERS V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 11408-19.

Executive Director Nason explained that in April 2019, the post-race samples for two horses trained by Sean Smithpeters (“Petitioner”), tested positive for propantheline, which is a Class 3 drug. On April 5th, the horse “Fancy Creek Jolene” finished second in the seventh race at the Meadowlands Racetrack. On April 6th, the horse “Spaghetti Eddie” won the eleventh race at the Meadowlands. The trainer requested that the April 6th sample be sent for split sample testing and Industrial Laboratories confirmed the presence of propantheline in the horse’s urine sample.

She stated that the NJRC’s Board of Judges conducted a hearing and considered both positives at the same time. On August 1, 2019, the judges issued Ruling No. 19MDH59 finding that Petitioner violated N.J.A.C. 13:71-23.1, N.J.A.C. 13:71-23.6 and N.J.A.C. 13:71-23.7 and imposing a 90-day suspension, \$2500 fine, disqualification of the horse, loss of purse and 2 Multiple Medication Violation (“MMV”) points for each post-race positive. Petitioner appealed and staff transmitted the matter to the OAL on August 16, 2019.

Executive Director Nason stated that on November 4, 2021, the Administrative Law Judge (“ALJ”) issued the initial decision which concluded that Petitioner violated the Commission’s rules when he raced the two horses at the Meadowlands with propantheline in their systems. However, the ALJ reduced the fine and suspension imposed by the NJRC’s Board of Judges for the first violation from a 90-day suspension and \$2500 fine to a 30-day suspension and \$500 fine. The ALJ agreed with the penalties imposed for the second violation and did not change the ordered disqualification of the two horses, loss of the purses or the 4 MMV points that the judges imposed.

Executive Director Nason stated that the ALJ explained her reasons for lowering the penalty for the first violation and pointed out that the Association of Racing Commissioners International (“ARCI”) recommends a Class B penalty for propantheline. *Id.* at 14. For a Class B penalty, the recommends a 15 to 60 day suspension and a fine between \$500 and \$1,000 for a first violation. Although the ALJ recognized that the NJRC is not bound by these penalty guidelines, she noted that the NJRC did use them in this case to determine the penalty. *Ibid.* Pointing out that these are Petitioner’s first offenses in his twenty-plus years as a trainer, the ALJ concluded that the NJRC’s imposition of a 90-day suspension and \$2,500 fine for the April 5, 2019 offense, which was the trainer’s first offense, is excessive and a more reasonable penalty would be a 30-day suspension and \$500 fine. As a result, the ALJ reduced the total suspensions and fines from a 180-day suspension and \$5,000 fine to a 120-day suspension and \$3,000 fine. As already indicated, the ALJ did not change the ordered disqualification of the two horses, loss of the purses or the 4 MMV points.

Executive Director Nason indicated that the initial decision is before the Commission to adopt, reject or modify and that NJRC staff recommend that the Commission adopt the initial decision.

Chairman Clyne made a motion to adopt the initial decision. Commissioner Tomaro seconded the motion and all of the Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN *KELVIN HARRISON V. NEW JERSEY RACING COMMISSION*, OAL DOCKET NO. RAC 07202-20; *KELVIN HARRISON V. NEW JERSEY RACING COMMISSION*, OAL DOCKET NO. RAC 09996-20; *BRETT PELLING V. NEW JERSEY RACING COMMISSION*, OAL DOCKET NO. RAC 07203-20; *JEFFREY CULLIPHER V. NEW JERSEY RACING COMMISSION*, OAL DOCKET NO. RAC 07204-20; *JEFFREY CULLIPHER V. NEW JERSEY RACING COMMISSION*, OAL DOCKET NO. RAC 07849-20; *KEVIN MCDERMOTT V. NEW JERSEY RACING COMMISSION*, OAL DOCKET NO. RAC 07841-20; *MARCUS MELANDER V. NEW JERSEY RACING COMMISSION*, OAL DOCKET NO. RAC 07843-20; *MARCUS MELANDER V. NEW JERSEY RACING COMMISSION*, OAL DOCKET NO. RAC 03580-21; *KEITH TORRO V. NEW JERSEY RACING COMMISSION*, OAL DOCKET NO. RAC 07845-20; *RICHARD JOHNSON V. NEW JERSEY RACING COMMISSION*, OAL DOCKET NO. RAC 07854-20; AND *RICHARD NORMAN V. NEW JERSEY RACING COMMISSION*, OAL DOCKET NO. 07861-20.

Executive Director Nason reported that the OAL consolidated the eleven contested cases listed on the agenda for the purpose of considering a motion for summary disposition filed by counsel for the trainers, who are the petitioners, and a cross-motion for summary disposition filed by counsel for the respondent, which is the Racing Commission. The motion and cross-motion asked the ALJ to decide the cases based upon the documents submitted with the motion, without the need to conduct fact-finding hearings.

Executive Director Nason noted that the record is voluminous and she will summarize facts, the initial decision, exceptions and the reply to the exceptions.

Executive Director Nason explained that in each of these cases, the trainer entered a standardbred horse to race at the Meadowlands between June 5, 2020 and June 27, 2020. In each case, the trainer's horse tested above the allowed threshold of .3 micrograms per milliliter for phenylbutazone, which is a non-steroidal anti-inflammatory drug. In each case, the Commission's Board of Judges conducted a hearing, determined that the trainer violated N.J.A.C. 13:71-23.1, N.J.A.C. 13:71-23.6 and N.J.A.C. 13:71-23.8, and imposed a 15-day suspension, \$500 fine, disqualification of the horse, loss of purse and ½ MMV point. Each trainer appealed and requested a stay of the penalties, which was granted.

On November 19, 2021, the ALJ issued an initial decision denying petitioners' motion for summary disposition and granting respondent's cross-motion for summary disposition. Noting that all of the parties are relying on the same blood test results, which revealed the specific amount of phenylbutazone present in each horse on the day of each race in support of their arguments for summary disposition, the ALJ determined that each of the trainers violated N.J.A.C. 13:71-23.1, N.J.A.C. 13:71-23.6 and N.J.A.C. 13:71-23.8 and that the penalties imposed by the Commission's Board of Judges were proper and appropriate.

On December 10, 2021, counsel for petitioners filed exceptions to the initial decision arguing that the ALJ erred in deciding the notice issue by failing to follow the case law cited in their brief. Petitioners also argued that the ALJ overstepped its authority by deciding the validity of the lab testing and asserted that it was not an issue in these motions as it was left as an open issue that was to be dealt with separately from the notice issue.

On December 20, 2021, counsel for the Commission replied to Petitioners' exceptions. The DAG argued that the ALJ correctly found that there was no need or requirement for the NJRC to provide notice to Petitioners when the ARCI amended the thresholds in the Controlled Therapeutic Medication Schedule. The DAG also argued that the ALJ correctly decided that the case law cited by Petitioners is not applicable to this case.

Regarding Petitioners' exceptions related to the test reports, the DAG pointed out that by filing their motion for summary decision, Petitioners represented that no genuine issues of material fact existed and specifically relied upon the laboratory test results in support of their motion for summary decision. The DAG added that the Petitioners did not dispute any material facts, including the fact that each horse raced with a level of phenylbutazone in excess of .3 micrograms per milliliter of plasma. As a result, the DAG asserted that the ALJ's decision, which was properly based upon the undisputed evidence entered into the record by the parties, should be adopted by the NJRC.

Executive Director Nason stated that upon receipt of the exceptions and reply to exceptions, the record for the consolidated contested cases closed. On December 29, 2021, the NJRC received an extension of time to consider the initial decision. As a result, consideration of the initial decision is timely.

Executive Director Nason reiterated that in the initial decision, the ALJ determined that each trainer violated N.J.A.C. 13:71-23.1, N.J.A.C. 13:71-23.6 and N.J.A.C. 13:71-23.8 and that

the penalties imposed by the Commission's Board of Judges were proper and appropriate. She indicated that the initial decision is before the Commission to adopt, reject or modify.

Chairman Clyne stated she believes that the ALJ's decision is correct. She pointed out that all of the parties filed motions asking the judge to decide these cases based upon the documents they submitted. Counsel for the trainers filed the laboratory test results attached to his certification and relied upon them in his arguments. Counsel for the Racing Commission also relied upon the test results as well.

Chairman Clyne stated that the ALJ decided that these laboratory test results establish that each trainer's horse tested above the threshold, which is .3 micrograms per milliliter. She pointed out that the ALJ also found that the Commission provided all required notice when the rules were amended in 2014 to incorporate the thresholds in the Controlled Therapeutic Medication Schedule by reference, as amended and supplemented. Chairman Clyne also noted that although not required, Executive Director Nason provided written notice of the changed thresholds to the Standardbred Owners' and Breeders' Association by letter dated January 8, 2020.

Chairman Clyne motioned that the Commission adopt the initial decision. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER THE SETTLEMENT AGREEMENT IN LINDA SCHADEL V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 03990-21.

Executive Director Nason explained that on November 27, 2020, the horse "Focus Pocus," trained by Linda Schadel, finished second in the second race at the Meadowlands Racetrack. Post-race testing discovered the presence of Dextrophan in the horse's urine sample. Split sample testing by the laboratory at Texas A&M confirmed the positive.

She pointed out that after conducting a hearing, the Board of Judges issued a ruling on April 15, 2021, which determined that the trainer violated N.J.A.C. 13:71-23.1, N.J.A.C. 13:71-23.6 and N.J.A.C. 13:71-23.7 and imposed a 15-day suspension and \$500 fine, ordered loss of purse and issued ½ MMV point. The trainer appealed, requested a stay, which was granted, and the matter was transmitted to the OAL.

Executive Director Nason informed the Commission that counsel for the parties have negotiated a proposed settlement agreement. Pursuant to the proposed settlement, the trainer would withdraw her appeal, waive her right to a hearing, agree to a 7-day suspension and \$500 fine, forfeit the purse monies and receive ½ MMV point. In addition, the trainer would have a record of violating N.J.A.C. 13:71-23.1, N.J.A.C. 13:71-23.6 and N.J.A.C. 13:71-23.7.

Chairman Clyne made a motion to approve the settlement agreement. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER APPROVAL OF THE PROPOSED 2022 BUDGET OF THE THOROUGHBRED BREEDERS' ASSOCIATION OF NEW JERSEY ("TBA").

Executive Director Nason explained that on December 20, 2021, the TBA submitted a proposed budget for 2022. The budgeted income for 2022 is \$90,400 which compares to the budgeted income of 2021 that was \$61,300. The projected in-house revenue for 2022 includes \$20,000 for the New Jersey Thoroughbred Festival due to a sponsorship agreement with Malouf Auto Group and BCB Community Bank. The budget anticipates that the New Jersey Stallion Auction will generate \$50,000 for the 2022 breeding season. Other income includes membership dues, foal registrations and stallion registrations. The total proposed expense budget for 2022 is \$276,594.

Commissioner Keegan made a motion to approve the TBA's proposed 2022 budget. Commissioner Arnone seconded the motion and all of the Commissioners voted yes.

Executive Director Nason indicated that Part A of the formal agenda had been concluded and stated Part B contains items for discussion and information.

ITEMS FOR DISCUSSION AND INFORMATION

Executive Director Nason stated that the Commission acknowledges receipt of the TBA's audited financial statements for 2021. She also stated that the Commission acknowledges receipt of the independent auditor's report and financial statement for Betfair US, LLC regarding exchange wagering for the final period that ended October 1, 2020.

Executive Director Nason then opened the meeting to the public by phone for any questions or comments. There were no additional questions or comments.

Finally, Executive Director Nason asked if anyone had any other new business to discuss. Hearing none, Commissioner Keegan moved to adjourn the meeting. Commissioner Arnone seconded the motion and it was approved unanimously.

ATTEST:



Judith A. Nason, Executive Director