



Minutes
Oregon Racing Commission
August 17, 2017

Meeting Detail

The Oregon Racing Commission (ORC) met on Thursday, August 17, 2017, in Room 1D of the Portland State Office Building (PSOB), 800 N.E. Oregon St., Portland, OR.

Call to Order

Chair Charles Williamson called the meeting to order at 1:32 p.m.

In Attendance

Commissioners: Chair Charles Williamson; Vice Chair Jan Palmer, DVM; Commissioner Christopher Dudley; Commissioner Michael Huber, DVM (by phone); Commissioner Diego Conde (by phone).

Staff

Executive Director Jack McGrail, Catriona McCracken, Assistant Attorney General (AAG).

Agenda Items

Approvals:

Action: Approval of the meeting agenda, amended to move Public Comment before Contested Cases.

Moved by: Commissioner Christopher Dudley

Seconded: Vice Chair Jan Palmer

Vote: Commissioners Williamson, Palmer, Conde, Dudley and Huber voted AYE, and the motion carried unanimously (5:0).

Action: Approval of the July 19, 2017, meeting minutes.

Moved by: Commissioner Christopher Dudley

Seconded: Commissioner Diego Conde

Vote: Commissioners Williamson, Palmer, Conde, Dudley and Huber voted AYE, and the motion carried unanimously (5:0).

Old Business:

Best Practices Sub-committee report

Commissioner Dudley reported that all Commissioners had returned their responses to the Best Practices scorecard. Results showed that all agreed unanimously that the Commission is meeting its 15 Best Practices criteria. Noting that Vice Chair Palmer was the only Commissioner to put her name on the form, Commissioner Dudley suggested the form be modified next year to include a place for the respondent's name.

He noted that criteria involving the Executive Director's performance state that the Commissioners are to establish clear performance expectations for the Director, with a goal of improving overall performance.

Commissioner Dudley reported that in the past, the Commission had asked Executive Director McGrail to put together a statement about his expectations and goals for the next year, which the Commission used in evaluating his performance. He suggested asking Director McGrail to prepare such a document, and Chair Williamson asked for it to be submitted in 30 days. Commission Dudley noted that time frame puts the Commission in compliance with the criteria.

He added that in its meeting this morning, the Best Practices Sub-committee discussed how to institutionalize the process to stay on track in meeting deadlines. Members decided to meet on a quarterly basis to review the Commission's actions to date and how they align with criteria in order to develop the memo for the next year's evaluation process. The Committee plans to meet in November, February and May.

Executive Director's report

Executive Director McGrail introduced Juan Tena, who has been hired as an ORC investigator to fill Michelle Barry's position while she is on a 7-month job rotation. Director McGrail noted that Mr. Tena has a background in law enforcement and is bilingual.

Director McGrail noted that the commercial meet at Portland Meadows is not far off: Stall applications are due today, the barns open August 27 and the track opens for training September 1. Opening race day is October 2.

The final fair meet, the Harney County Fair, begins September 8. Director McGrail noted some concerns about the jockey colony, as two riders – constituting 20 to 25 percent of the rider population -- have indicated they are unlikely to attend. The horsemen are soliciting riders to go to Burns, and he noted that Presiding State Steward Mike Twiggs updated jockeys at the Tillamook County Fair meet on their bonuses, encouraging them to attend the Burns meet.

Fair meets so far have been successful, Director McGrail reported. Tillamook concluded with a record-setting single-day handle on Saturday of \$55,167 (no simulcasting). The four-day handle of \$160,183 also set a record. He noted that on opening and closing day, the races were filled to capacity (seven starters) – an accomplishment when races all over the country have seen short fields. The track was in good shape, and Director McGrail credited Director of Racing Don Averill with making sure the track was watered and groomed. He noted one jockey suffered a minor injury Wednesday, but rode Thursday.

Director McGrail noted that four summer meets have been held so far with no breakdowns, which he attributed partially to luck, but also to the horses being in the right spots, horsemen ensuring the animals are fit to race, and ORC vet inspections. A lot goes into safe racing, he stated, including the legwork done by people in the industry in Oregon.

ADW handle numbers are in. The larger licensees continue to grow, he noted, and the smaller ones continue to garner a significant market share. Director McGrail stated that the issue for the ORC is fostering a regulatory environment that allows for development and regulation of new wagering products so the ADWs can expand. The agency must find ways to regulate in an evolving environment and to allow wagering menus to expand so the ADWs can prosper. To that end, the ORC is pursuing education and training. Supervisor of Pari-Mutuels Josh Dieringer will attend a conference on wagering and security technology in Texas in October, with a focus on new technological developments affecting pari-mutuels. ADW Supervisor Connie Winn will attend a seminar in the fall dealing with SSAE-18 audits.

The Audits Division of the Secretary of State's Office audited ORC operations, and noted only a few minor issues, Director McGrail added. He stated that he has addressed those issues and the agency's internal controls have been strengthened following the audit's recommendations.

Commissioner Dudley asked what the audit issues were. Director McGrail stated they involved security at Portland Meadows and SOC training, both of which have been addressed.

Chair Williamson noted that Commission's work to have experts look at starting gates and tracks may have contributed to the lack of breakdowns at the fairs. Having attended the Tillamook meet, he encouraged all Commissioners to get to a fair meet, noting that putting on a race meet is a minor miracle.

Future of Racing in Oregon Group (FROG) Report

Vice Chair Palmer stated that the group met this morning and discussed the jockey issue. Randy Evers of the Oregon Horsemen's Benevolent and Protective Association will meet with a representative of the Jockeys' Guild to discuss the incentive program. FROG also discussed the fair meets, she stated, and the backside improvements at Portland Meadows, where ditch-cleaning and stall-leveling are under way.

New Business:

None

Public Comment:

None

Contested Cases:

Chair Williamson announced that the Commission would hear an oral exceptions presentation in the case of Nick Lewis Lowe, OAH Contested Case #2016-ABC-00163/ORC Case No. 862 SC16-044. Chair Williamson declared a potential conflict of interest by reporting that he and Matthew Ellis, attorney for Mr. Lowe, had worked at the same law firm more than seven years ago. Chair Williamson explained that Mr. Lowe and Mr. Ellis had been allocated 10 minutes to address the Commission, during which time they were not permitted to introduce anything not already in the record. After that, the Commission would have 10 minutes to ask questions.

Mr. Ellis stated that Mr. Lowe objects to the proposed order on two bases: 1) whether Oregon races can set rules for drug-testing on entry that arguably are in conflict with ORC rules; and 2) split sample procedure at the time the Clenbuterol rule was implemented.

Mr. Ellis gave the following background on the case: CM Woody Blue was treated therapeutically with Clenbuterol for a lung issue in February 2016. ORC rules did not prohibit the use of Clenbuterol at that time; they prohibited it being in the horse's system such that it was detectable in blood or urine, with a general understanding that the out-time for testing was 21 days. The ORC amended its rule in June 2016 to include hair-testing, effective immediately. The hair test has a 6-month out-time. Director McGrail instituted a 6-month moratorium for most races, allowing horses that had legitimately been treated with Clenbuterol to race without being punished.

CM Woody Blue ran in two races not covered by the moratorium because they had advertised they would do hair-testing. The proposed order states that is OK – races can change rules for entry on a case-by-case basis. Mr. Lowe and Mr. Ellis contest that, contending that races can change conditions and entry requirements, but cannot impose new means of drug testing not authorized by ORC rules. At the time, rules called for blood and urine testing; by adding hair testing, the stakes racing were violating the rules.

Regarding the split sample issue, Mr. Ellis stated he and Mr. Lowe agreed with the proposed order's finding that the following are true: Race participants have a right to request a split sample of any failed test be verified by a separate, independent lab. Mr. Lowe requested a split sample for the test. No such sample was collected.

Mr. Ellis continued: When the ORC made the Clenbuterol rule, it did not identify a second lab for split tests. When Mr. Lowe asked for a split test, he was told no split was collected, because there was nowhere to send it. Mr. Lowe had a right to request a second test, but because the Commission did not identify a second lab, he had no right. The proposed order acknowledges this right exists and was violated, but indicates there should be no remedy for this violation of rights and no ramification for the Commission not following its own rules.

Mr. Ellis stated that for every wrong, there needs to be a remedy, and in this case the only sensible remedy is to throw out the tests and modify the order. Permitting the proposed order to stand sends a message that the split sample rules are a suggestion and the Commission can ignore them at will. Mr. Ellis called on the Commission to modify the proposed order and find that CM Woody Blue was not disqualified from the stakes races at Grants Pass and Crooked River Roundup and revise the orders of finish. The Commission should find that the purse moneys, totaling about \$3,000, be returned.

Mr. Ellis noted there are no ramifications outside the current situation, because the rule has been in place for well over six months and everyone has had time to make sure their horses are clean. In addition, the ORC now collects a split sample of hair and has a lab in place to do testing. Modifying the order has no impact, he stated, beyond communicating to the horsemen that ORC rules mean something and to right the wrong as it pertains to Mr. Lowe.

Chair Williamson asked how much Clenbuterol was in the sample. Mr. Lowe responded that he believed the test identifies the presence of Clenbuterol, but not an amount. Mr. Ellis added that no Clenbuterol was detected in the blood and urine tests on both races.

In response to a question, Counsel Catriona McCracken noted that the record showed the races were July 4 and July 16, 2016.

The Commission recessed and went into Executive Session at 2:08 p.m., pursuant to ORS 192.660(2)(f) and ORS 192.502(9), Consideration of Exempt Public Records and Advice of Counsel. Following the Executive Session, the Commission was to meet privately to deliberate, pursuant to ORS 192.690(1)

The Commission emerged from Executive Session and reconvened at 3 p.m.

Action: Adopt ALJ ruling in Case #2016–ABC-00163 with modifications as discussed by the Commission with a finding of a violation of the conditions of a race and not a medication violation. The order of the race will be as stated by the Administrative Law Judge and purses as redistributed.

Moved by: Commissioner Christopher Dudley

Seconded: Vice Chair Jan Palmer, DVM

Vote: Commissioners Williamson, Palmer, Conde, Dudley and Huber voted AYE, and the motion carried unanimously (5:0).

Confirmation of the Next Commission Meeting:

The next Oregon Racing Commission meeting will be Thursday, September 21, 2017, at 1:30 p.m. in Room 1C of the Portland State Office Building (PSOB), 800 N.E. Oregon St., Portland, OR.

Adjournment:

There being no further business, the meeting was adjourned at 3:02 p.m.