

## KENTUCKY HORSE RACING COMMISSION

February 15, 2012

1:30 PM

U.S. Dressage Federation Building  
Kentucky Horse Park  
Lexington, KY

### **MINUTES OF MEETING**

The meeting was called to order by Chairman Robert Beck. Chairman Beck then took the roll. Present were Mr. Edward "Ned" Bonnie, Mr. Alan Leavitt, Ms. Elizabeth Lavin, Mr. Frank L. Jones, Jr., Dr. Foster Northrop, Mr. John Ward, Mr. Burr Travis, Mr. Franklin S. Kling, Jr., Dr. Jerry Yon and Secretary Robert Vance representing the Public Protection Cabinet; Mr. William Dexter representing the Tourism, Arts, and Heritage Cabinet; and Mr. George Burgess representing the Cabinet of Economic Development. The presence of a quorum was recognized. Industry representatives also present were Mr. Corey Johnsen and Mr. Nick Hughes, Kentucky Downs.

The first item on the agenda was the approval of the minutes of the December 14, 2011 Kentucky Horse Racing Commission ("KRHC" or "Commission") meeting. Mr. Bonnie made a motion to approve the minutes and was seconded by Dr. Yon. All present voted aye and the motion was carried.

Next, Ms. Jamie Eads, KHRC Director of Breeders' Incentives and Development, presented the proposed 2012 Kentucky Sire Stakes Program race dates and purse structure. Ms. Eads noted that the dates presented at the December 14, 2011 meeting were incorrect and that the correct dates were: 1) the first leg of the two-year old races to be held on August 19 and the second leg on August 30; 2) the first leg of the three-year old races to be held on August 23 and the second leg on September 1; and 3) the Finals to be held on September 9. Ms. Eads stated that the Committee recommended approval of the corrected race dates. Mr. Leavitt moved to approve the Committee's recommendations and Mr. Travis seconded. All present voted aye, and the motion was carried. A copy of Ms. Eads January 31, 2012 cover memorandum was ordered to be attached to the minutes.

Next, Mr. Marc Guilfoil, KHRC Acting Executive Director, reported that by letter dated January 31, 2012, Keeneland requested approval of its date preference system and its roster of race officials for its Spring 2012 meet. Mr. Guilfoil advised that all the racing officials have been accredited and have previously performed the duties for which they were listed and the date preference system had been in place for several years. The staff recommended approval. Mr. Jones moved to approve the

recommendation and Mr. Bonnie seconded. All present voted aye and the motion was carried. A copy of the request was ordered to be attached to the minutes.

Next, Ms. Eads reported that by letter dated January 20, 2012, Keeneland requested approval of the Kentucky Thoroughbred Development Fund ("KTDF") purse structure for its 2012 Spring meet. Ms. Eads confirmed that Keeneland had a deficit of \$89,687.23 prior to the start of the 2012 Spring meet and would need to earn that amount prior to reimbursement. She stated that Keeneland also proposed to card KTDF purses in the amount of \$402,000 and requested permission to payout from first to last place. Ms. Eads stated that the KTDF Advisory Committee recommended approval of Keeneland's requests. Mr. Travis offered a motion to approve the recommendation and was seconded by Ms. Lavin. All present voted aye and the motion was carried. A copy of the request was ordered to be attached to the minutes.

Next, Ms. Eads reported that by letter dated January 23, 2012 Keeneland requested approval of the following backside improvement projects: 1) barn shed row replacements; 2) asphalt repair in barn and horse path areas; 3) replacement of tack room heaters (gas); 4) replacement of tack room heaters (electric); and 5) barn fire sprinkler piping repairs. Ms. Eads confirmed that Keeneland had an available balance of \$196,651.01 from both fiscal years 2009 and 2010. She stated that because the proposed projects would exceed the amount of Keeneland's available Backside Improvement Funds, Keeneland requested discretion with when the projects would be completed and the amount of funds to be allocated to each project. She noted that Keeneland had received bids for each of the proposed projects, but no bids had been awarded. She further reported that each project would be inspected by KHRC staff upon completion and all requests for reimbursement would be reviewed and submitted to the Commission for approval prior to releasing any funds. Ms. Eads stated that the staff recommended approval. Mr. Travis offered a motion to approve the recommendation and Dr. Yon seconded. All present voted aye and the motion was carried. A copy of the request and accompanying bids were ordered to be attached to the minutes.

Next, Ms. Eads reported on Period III applications for the Kentucky Horse Breeder's Incentive Fund (the "KHBIF"). Ms. Eads stated that the KHBIF operates on a 3-year cycle and the applications received covered the 3-year period of 2012, 2013 and 2014. She stated that 12 applications were received and nine had been reviewed by the KHBIF Advisory Committee (the "Committee") and were recommended by the Committee for approval. She explained that the remaining three applications are under consideration by the Committee and would be presented to the Commission at its March meeting. A Summary of Applications and Distribution Proposals Recommended for Approval (the "Summary"), along with Ms. Eads cover memorandum dated February 7, 2012, were provided in the agenda book. The nine applicants included in the Summary were: 1) Kentucky Appaloosa Owners Association; 2) Kentucky Arabian and Half-Arabian Breeders Alliance; 3) Kentucky Miniature Horse Breeders; 4) Kentucky Morgan Horse Association; 5) Kentucky Paint Horse Club; 6) Kentucky Quarter Horse Association; 7) Rocky Mountain Horse Kentucky Breeders Association; 8) Kentucky

Saddlebred Owners and Breeders Association; and 9) Kentucky Walking Horse Association. Ms. Eads explained that the nine applications were being presented for review so those breed groups would not be disadvantaged by having to wait on the three remaining breed organizations to complete their applications. She further stated that if any of the three remaining applications were not approved by the Commission at the March meeting, the money would be redistributed among the approved applicants according to the percentage they represented. Mr. Ward offered a motion to approve the recommendation of the Committee for the approval the nine applications as listed above and Ms. Lavin seconded. All present voted aye and the motion was carried. A copy of Ms. Eads cover memorandum and the Summary were ordered to be attached to the minutes.

Ms. Eads further noted that the Committee recommended that each approved applicant be required to establish and incorporate drug testing requirements for any show eligible for KHBIF awards and that drug testing be mandatory for approval in the next application period (Period IV) covering 2015, 2016 and 2017. Ms. Eads stated that the KHBIF regulation (811 KAR 2:120) did not currently include a provision for mandatory drug testing. Chairman Beck raised a possible legal issue whether the Committee could require drug testing without an amendment to the KHBIF regulation. Mr. Bonnie indicated that the Committee would explore that issue before its next meeting. A copy of Ms. Eads' February 7, 2012 cover memorandum was ordered to be attached to the minutes.

Next, Ms. Susan Speckert, KHRC General Counsel, reported that by letter dated January 10, 2012, Turfway Park ("Turfway") requested approval to change its Saturday post time from 5:30 PM to 1:10 PM, with the exception of Spiral Stakes Day and Kentucky Cup Day. She explained that Turfway's traditional post time had been 1:10 PM; however, they had requested to change to a 5:30 PM post time in an effort to increase wagering levels. The change did not result in increased wagering; therefore, Turfway wished to return to a 1:10 PM post time. Ms. Speckert explained that because Turfway began racing before the next scheduled Commission meeting, pursuant to KRS 230.230, the Acting Executive Director approved the request and that the Commission was asked to ratify his action. Mr. Travis offered a motion to ratify and Ms. Lavin seconded. All present voted aye and the motion was carried. A copy of the request was ordered to be attached to the minutes.

Next, Ms. Speckert reported that by letter dated January 16, 2012, Churchill Downs ("CDI") informed the Commission that Churchill had entered into an agreement to buy out Bluegrass Hall, LLC's ("Bluegrass") approximate 5% interest in Kentucky Downs. Ms. Speckert stated that CDI had filed a Change of Control Application ("Application") and requested approval of the transaction. Ms. Speckert noted that because the Application was essentially identical to the license application filed by race tracks to conduct live racing, CDI incorporated responses from its 2012 race track application and that the staff approved that format. She explained that if approved, the ownership interest of Kentucky Downs would be:

Kentucky Downs Partners, LLC – 85%;  
CDI – 10%; and  
Turfway – 5%.

Ms. Speckert further stated that the staff had reviewed the request and recommended approval. Ms. Lavin offered a motion to approve the recommendation and Mr. Travis seconded. All present voted aye and the motion was carried. A copy of the request was ordered to be attached to the minutes.

Next, Mr. Tim West, KHRC Assistant General Counsel, reported that by letter dated January 23, 2012, Kentucky Downs requested permission to add 75 terminals to the designated area where it offers wagering on historical horse racing. Mr. West stated that 20 terminals would be added during Phase 1 and 55 additional terminals would be added during Phase 2. Mr. West explained that the 20 additional terminals in Phase 1 had passed functionality testing performed by Gaming Laboratories International (“GLI”) and that KHRC staff had inspected the camera surveillance and security protocols for the designated area. Mr. West further explained that Kentucky Downs was still waiting on the additional 55 terminals to be included in Phase 2 to either be manufactured or delivered. He stated that KHRC staff and GLI would again conduct the same due diligence steps for Phase 2. Mr. Corey Johnsen, President of Kentucky Downs, and Mr. Nick Hughes, Senior Vice President of Kentucky Downs, addressed the Commission.

Mr. West noted that pursuant to KRS 230.230, the Acting Executive Director had approved Phase 1 and the staff recommended the Commission ratify his action. He further stated that subject to the KHRC staff’s inspection and GLI’s testing of terminals, the staff also recommended approval of Phase 2. Mr. Travis offered a motion to approve the both recommendations in one motion and Ms. Lavin seconded. All present voted aye and the motion was carried. A copy of the request was ordered to be attached to the minutes.

Next, Mr. West and Dr. Mary Scollay, KHRC Equine Medical Director, presented a request from the British Horse Racing Authority (“BHA”) for the EDRC to collaborate with the BHA on the funding of analysis of samples collected by the Racing Medication and Testing Consortium (“RMTC”). Mr. West explained that the research project was to determine if by drug testing, the presence of morphine in a biologic sample that is the result of intra-articular administration can be distinguished from the presence of morphine in a biologic sample that is the result of exposure by ingestion of morphine-containing plants. He stated that the total cost of the testing would be shared equally by the EDRC and BHA, each contributing \$5,000, and the EDRC funds would go to HFL Lexington. Mr. West stated that the project had been approved by the appropriate state authority and that the EDRC recommended approval. Following a discussion, Dr. Yon offered a motion to approve the recommendation and Mr. Travis seconded. All present voted aye and the motion was carried.

Next, Mr. Rick Williams, Acting Chief Steward, gave his report for thoroughbred racing and addressed questions asked by the Commissioners. A copy of the report was ordered to be attached to the minutes.

Next, Dr. Bryce Peckham, Chief State Veterinarian, gave the veterinary report for thoroughbred racing and addressed questions asked by the Commissioners. A copy of the veterinary report was ordered to be attached to the minutes.

Next, Dr. Scollay presented a report for drug testing for 2011 and race-related fatalities for 2012. Dr. Scollay stated that there had been no racing fatalities in 2012. She also stated that the total cost for drug testing in all breeds for 2011 was \$737,390.50, and due to the implementation of the post-race sampling and testing procedures represented a savings to the race tracks of \$93,800. Dr. Scollay's report also included a Reports of Finding for 2011 and a table of the RCI Drug Classifications. Dr. Scollay answered questions asked by the Commissioners. A copy of Dr. Scollay's report was ordered to be attached to the minutes.

Next, Mr. Greg Lamb, Supervisor of Pari-mutuel Wagering presented a report on pari-mutuel wagering. Mr. Lamb's report included totals for wagering on historical horse races for September 1, 2011 through January 31, 2012, with a specific breakdown for December 2011 and January 2012 and total handle on live racing for Turfway for December 2011 and January 2012. A copy of the report was ordered to be attached to the minutes.

Next, Chairman Beck noted that the Administrative Regulations and Litigation Status Report and Priority Schedule was included for informational purposes. A copy of the report was ordered to be attached to the minutes.

Next, Chairman Beck requested a motion to go into executive session, as permitted by KRS 61.810(1)(c) and (j). Dr. Yon offered the motion and was seconded by Mr. Travis. All present voted aye and the motion was approved.

At the conclusion of the executive session, Dr. Yon offered a motion to return to public session and Mr. Travis seconded. All present voted aye and the motion was carried. The Commission returned to public session.

Next, in the matter of *David Pate v. KHRC*, Administrative Action No. KHRC-TB-10-011, Ms. Lavin offered the following motion:

To adopt the finding of fact, conclusions of law and recommended order of the hearing officer including the recommendation of 180-day suspension and to impose the 180-day suspension from March 1, 2012 through and including August 27, 2012.

As of this date, February 15, 2012, entry of all horses owned or trained by Mr. Pate is denied pending transfer to persons acceptable by the stewards.

Mr. Kling seconded the motion. All present voted aye and the motion was carried. A copy of the materials provided in the agenda book was ordered to be attached to the minutes.

Next, in the matter of *KHRC v. John Veitch*, Administrative Action No. KHRC-TB-11-003, Mr. Bonnie offered the following motion:

Having thoroughly reviewed and considered the hearing officer's finding of fact, conclusions of law and recommendations, and the duly filed exceptions of Mr. Veitch and the KHRC, I move to adopt the hearing officer's finding of fact, conclusions of law, and recommend order and adopt all but one of the Kentucky Horse Racing Commission's exceptions.

Specifically the KHRC adopts all but exception (d) as outlined on page 12 of the Kentucky Horse Racing Commission's exceptions. The KHRC does not adopt that specific exception, but instead modifies paragraph 45 of the hearing officer's penalty recommendation as follows:

Veitch's original conduct was not proven to be intentional, although his failure to act before the race is grossly negligent and harmful to the purpose of the Commission. That level of intent must be considered in determining the appropriate penalty.

I further move to adopt the penalty recommended by the hearing officer. That is, the KHRC hereby suspends the licensing privileges of John Veitch for one year from February 16, 2012 through and including February 15, 2013.

Mr. Leavitt seconded the motion. All present voted aye and the motion was carried. A copy of the materials provided in the agenda book was ordered to be attached to the minutes.

Chairman Beck adjourned the meeting.