

MINUTES
WV RACING COMMISSION
Friday, July 25, 2014
WV Racing Commission Buch Conference Room

The WV Racing Commission met on July 25, 2014 to conduct business and consider administrative matters. Roll call was taken. Commissioner Bill Phillips and Commissioner Greg McDermott were available via conference call. Commissioner Greg McDermott chaired the meeting in Chairman Jack Rossi's absence. Counsel was represented by Kelli Talbott.

Consideration/Action on Public Comments received on Thoroughbred Rule Change

John Myers stated there were no public comments received on the rule changes. Mr. Phillips made the motion to file the rules as they were put out for public comment, seconded by Mr. McDermott. Motion passed.

Watson Appeal

Kelli Talbott stated the recommended decision from the Hearing Examiner for Richard Watson was deferred at the last Commission meeting to further review the record in that case. She has circulated to the Commissioner's a recommended Order that would remand Mr. Watson's case back to the Hearing Examiner for consideration of the issue that's been raised about whether or not the rule in question would disqualify Mrs. Watson from entering horses if Mr. Watson remains ejected from the track. Mr. Phillips asked if this matter is remanded back, is there any way it can be handled with great dispatch and not dragged out? Ms. Talbott replied the Order sent to the Commissioner's indicated the Hearing Examiner would conduct all proceedings he deemed necessary to consider the issue and to have a recommendation back to the Commission within 60 days of entry of the Order. Motion was made by Mr. Phillips to remand the recommended decision back to the Hearing Examiner, seconded by Mr. McDermott. Motion passed.

Possible change of designated test lab

John Myers stated in the past the Racing Commission has used Dalare Labs as the test lab for drug testing the horses. Effective with the new rule on July 9th, the lab is required to be accredited by RMTC. Dalare Labs did not achieve this accreditation by the deadline. As an interim, the Racing Commission has used Truesdail Labs to do a second test on anything that comes back positive and Truesdail is an accredited lab. His recommendation is to make a permanent change to Truesdail Laboratories for the testing facility. They are located in California, they have submitted a proposal that Mr. Myers has looked over, and is a slight cost reduction from the past facility. After comparing the Kentucky lab which can do tests for \$120, the Ohio lab which stated they could not take the additional volume, and Truesdail lab stating they can do a standard test for \$54 and they can also do the graded stakes testing and TCO2 testing, he recommends Truesdail be selected.

Mr. Phillips inquired what Mr. Myers has done to assure this particular lab at \$54 is giving us what we are getting from our current lab as far as high level service? Mr. Myers replied he has gone through the proposal provided by Truesdail and saw the majority of what

Diane Benson was asking to be looked at was answered by their proposal in a positive nature. Kelli Talbott stated she took some pieces from some other states' contracts, Delaware and Maryland, as far as what kinds of terms and conditions they require their labs to meet, and came up with a draft Memorandum of Understanding with certain terms and conditions. She added she did reach out to Diane Benson and Ed Martin, head of RCI, and they had some questions to pose about what Truesdail was proposing and she forwarded those questions to Mr. Myers. Mr. Phillips stated he is not comfortable with the amount of due diligence that has been done to select this lab.

Mr. Phillips asked if this has been discussed with the tracks and the horsemen? He wants to make sure we are not going to get a low cost service. Mr. Myers stated he can only speak to the fact of the testing methods they tell him are used, the machines they have to do the testing, and the level of technology they have. It seems to be an improvement over what we've had rather than a decrease. Mr. Phillips asked if it wouldn't make sense to reach out to our State Vets and see what they think before making this decision? Mr. Myers replied we can do that but currently we are operating in a way that we do not have an accredited lab doing the initial test.

Mr. Phillips added he did not see any proposal from Kentucky. He asked Mr. Myers to explain what they can do in comparison to Truesdail? He would have liked to have seen the pros and cons of all the labs and not just one. Kelli Talbott stated both the lab in Kentucky and Truesdail are accredited by RMTTC, which means they have met certain standards. She feels that both Truesdail and the Kentucky lab probably have better technology, better testing, and higher level testing than what Dalare is capable of. Mr. Phillips asked if Dr. Benson saw the proposal from Truesdail and did she have any other recommendations? Kelli said she did not have the whole proposal to give her, she just had her look at some limited information that Mr. Myers had provided to her. There were several sheets that laid out the prices and had some technical information, and that's what she saw. Mr. Phillips asked if she said anything about the other levels of testing that were outlined in the proposal in terms of price? Kelli replied there was another level of testing for \$116, which is the graded stakes testing, and she did tell Kelli that price was consistent with that level of testing, and that level of testing was being done by some other states. Delaware performs that level of testing on all samples. She did indicate that level of testing would probably test for more drugs and provide better testing than what appeared on the other level, but she had more questions on the \$54 level of testing before she could provide a definitive judgment. She believed the Racing Commission would get more for their buck with the \$116 level of testing. Mr. Phillips asked how the \$116 price compares with the Kentucky lab? Mr. Myers responded he did not get a graded stakes level of testing from the Kentucky lab, but a standard test there was \$120.

Mr. Phillips inquired if it would make sense to engage the Kentucky lab while Mr. Myers discusses with Dr. Benson the questions she had relating to the \$54 test from Truesdail, and also discuss this with the State Vets? Mr. McDermott asked if Mr. Myers had talked to the Kentucky lab at all? He replied only through conversations with Dr. Samms there, and he talked with him on several occasions. Mr. McDermott commented that through the process, at this time, more is known by Mr. Myers about the California lab than the Kentucky lab. Mr. Myers stated he agrees. Kelli added the Kentucky lab now does testing for Kentucky and Delaware. Mr. Myers also noted Kentucky has had a lot of turnover and were running quite behind in their testing, increasing the wait times.

Maria Catagnini, CT HBPA, stated there has been a rash of positives at Charles Town and Mountaineer to the tune of over 30 positives since July 9th. One of her concerns is they don't truly know the process of how the positives are called and which lab is calling the positive. Another concern is the length of time it is taking for results to come back so the horsemen can actually get paid. She added Maryland and Pennsylvania both have horsemen that run in this state and some of the same horsemen that have run in WV in the past week have not gotten

positives from Pennsylvania or Maryland so there is clearly an issue of what's going on with the testing. Maryland uses Truesdail and since January 1 they have not had 1 positive. She thinks there should be a full blown request for proposal from all of the labs in order to establish a long term plan. She asked the Commission to ensure these labs get the results back within 3-10 days.

Motion was made by Mr. Phillips to defer this issue until the August 1st meeting to allow Mr. Myers to do more research on the Kentucky lab and consult with the State Vets, tracks, and horsemen and the Commissioners to see proposals from each of the labs with pros and cons of each, seconded by Mr. McDermott. Motion passed.

William Wehrman decision and appeal

Kelli Talbott stated a decision was received from the Circuit Court of Kanawha County which overturned the Commission's decision which revoked Mr. Wehrman's racing official permit for two years. The Order also directed opposing counsel to submit an itemization of attorney's fees for the Court to consider in awarding attorney's fees. Today is the deadline to appeal that decision to the Supreme Court and she recommends the Commission appeal this decision. Mr. Wehrman's attorney did submit an itemization of fees in the amount of approximately \$17,000. She filed an objection to any order being entered awarding that based upon there being no legal authority for the court to award attorney's fees in an administrative appeal. Mr. McDermott agreed with Ms. Talbott's recommendation. Mr. Phillips made the motion to appeal the decision as outlined, seconded by Mr. McDermott. Motion passed.

Adjournment

Motion was made by Mr. Phillips to adjourn, seconded by Mr. McDermott. Meeting adjourned.