

MINUTES

NEW YORK STATE RACING AND WAGERING BOARD

MEETING OF DECEMBER 15, 2005

A meeting of the New York State Racing and Wagering Board was held on Thursday, December 15, 2005 at 11:00 a.m. at the Racing & Wagering Board's Albany Office located at 1 Watervliet Avenue Extension, Albany, New York.

The meeting was called to order at 11:01 a.m.

In Attendance Were:

Cheryl Buley, Chairwoman

Michael J. Hoblock, Jr., Member

John Cansdale, Executive Director

Gail Pronti, Secretary to the Board

Robert Feuerstein, General Counsel

Joseph Lynch, Chief of Racing Operations

Thomas Casaregola, Audits and Investigations

Also in Attendance Were:

Daniel Toomey, NYSR&WB

Kristen Buckley, NYSR&WB

Vivian Davis, NYSR&WB

Kevin B. Molloy, Suffolk OTB

Bill Heller, Thoroughbred Times

Matt McArdle, Hinman Straub

Paul D'Onofrio, Monticello Raceway

Tom Precious, The Blood Horse

OPEN COMMENT PERIOD: No comments were made.

A. The Board approved the minutes of the Board meeting held on November 22, 2005.

B. ITEMS PREVIOUSLY APPROVED OR DEFERRED BY THE CHAIRMAN.

1. CAPITAL DISTRICT REGIONAL OTB – REQUEST TO OFFER PROMOTION

For entry into the minutes, on November 28, 2005, the New York State Racing and Wagering Board approved an application by the Capital District Regional Off-Track Betting Corporation to conduct a handicapping promotion in relation to its account holders participating via the telephone account wagering system. By this promotion, Phone-A-Bet account holders participate in the “Knock-Out Challenge” handicapping contest per the submitted rules from the November 21, 2005 application.

2. FINGER LAKES RACING ASSOCIATION – REQUEST TO AMEND PLAN OF OPERATION/ADD TWO DECEMBER RACE DATES

For entry into the minutes, on November 28, 2005, the New York State Racing and Wagering Board approved the addition of two racing dates in December, the 2nd and the 3rd as the concluding live racing dates for the year 2005 Finger Lakes racing season.

3. MONTICELLO RACEWAY – REQUEST TO SIMULCAST VARIOUS LOCATIONS

For entry into the minutes, on November 28, 2005, the New York State Racing and Wagering Board approved the Monticello Raceway request to import simulcast

thoroughbred racing programs from Beulah Park in Grove City, Ohio through an addendum that extends the terms of the current contract through December 22, 2006.

To continue past December 31, 2005, with a Beulah Park simulcast, new federally required letters of permission from the Ohio State Racing Commission and the duly representative horsemen's organizations at Beulah Park must be filed with the Board. This simulcast may be imported and wagering conducted whenever in accordance with the Racing Law.

4. NASSAU DOWNS OTB – REQUEST TO OFFER PROMOTION/HANDICAPPING CONTEST

For entry into the minutes, on November 16, 2005, the NYS Racing and Wagering Board approved a Nassau Downs OTB promotion involving a series of December no-fee harness handicapping contests involving the Nassau Downs branches named within the

November 9, 2005 application submitted to the Board. This approval is based on compliance with all submitted rules and all prizes awarded per the prize list as disclosed on the application dated November 9, 2005. This approval is effective immediately.

5. NASSAU REGIONAL OTB – REQUEST TO SIMULCAST VARIOUS LOCATIONS

For entry into the minutes, on November 9, 2005, the New York State Racing and Wagering Board approved the Nassau Regional OTB request to amend its simulcast plan of operation in relation to year 2005 acceptance of the harness simulcasts from Cal Expo in Sacramento, California.

This approval further extends to Suffolk Regional OTB.

6. NASSAU REGIONAL OTB – REQUEST TO SIMULCAST VARIOUS LOCATIONS

For entry into the minutes, on November 16, 2005, the NYS Racing and Wagering Board approved the Nassau Regional OTB request to amend its simulcast plan of operation in relation to year 2005-06 acceptance of thoroughbred simulcasts from Sunland Park in New Mexico.

This approval further extends in a like manner to the Capital District Regional, Catskill Regional, Suffolk Regional and Western Regional Off-Track Betting Corporations.

7. NEW YORK CITY OTB – REQUEST TO SIMULCAST VARIOUS LOCATIONS

For entry into the minutes, on November 9, 2005, the New York State Racing and Wagering Board approved an amendment to the NYC OTB simulcast plan of operation in the form of an addendum to a currently approved agreement enabling import of simulcasts from the thoroughbred racetrack known as Hawthorne Park Racecourse located in Cicero, Illinois. This addendum adjusted downward the rate of payment based on net pari-mutuel wagering at NYC OTB on Hawthorne Park simulcasts to be made by NYC OTB to Hawthorne Park for the use of their simulcasts.

These simulcasts may be utilized whenever in compliance with the Racing Law.

8. NEW YORK CITY OTB – REQUEST TO SIMULCAST VARIOUS LOCATIONS

For entry into the minutes, on November 18, 2005, the New York State Racing and Wagering Board approved an amendment to the NYC OTB simulcast plan of operation enabling the import of simulcasts from the thoroughbred racetrack known as The Fair Grounds located in Louisiana. This approval is for the 2005-2006 Fair Grounds abbreviated race meeting that will take place at Louisiana Downs in Bossier City as the Fair Grounds racetrack in New Orleans was recently destroyed by a hurricane.

This approval further extends to Capital District, Catskill, Nassau, Suffolk and Western OTBs. This simulcast may be utilized whenever in compliance with the Racing Law.

9. NYRA – REQUEST TO ADD RACING OFFICIAL - BUTLER

For entry into the minutes, on November 22, 2005, the New York State Racing and Wagering Board approved the NYRA request to appoint Dr. Judson L. Butler to a position as one of the New York Racing Association's examining veterinarians. This approval is in compliance with Board Rule 4005.1.

10. MONTICELLO RACEWAY – REQUEST TO SIMULCAST VARIOUS LOCATIONS

For entry into the minutes, on December 6, 2005, the New York State Racing and Wagering Board approved an amendment to the Monticello Raceway simulcast plan of operation enabling the import of the simulcast from Freehold Raceway in New Jersey during the calendar year 2006 whenever permitted under current Racing Law.

11. NEW YORK CITY OTB – REQUEST TO SIMULCAST VARIOUS LOCATIONS

For entry into the minutes, on December 6, 2005, the New York State Racing and Wagering Board approved an amendment to the NYCOTB simulcast plan of operation in the form of an addendum to a currently approved agreement enabling the import of simulcasts from the thoroughbred racetracks known as Turfway Park and Kentucky Downs, both operated by Turfway Park LLC and both located in Kentucky. This addendum adjusted downward the rate of payment made to Turfway Park LLC on most race days from the previous rate paid. However, on days that a NYRA racetrack incurs a partial or full cancellation of a scheduled live racing card, the rate paid by NYCOTB to Turfway Park LLC is raised upward with that rate of payment based on net pari-mutuel wagering at NYCOTB on Turfway Park and Kentucky Downs simulcasts for the use of their simulcasts.

This approval is valid through December 31, 2005, to coincide with the federally required letters of simulcast permission issued by the Kentucky Horse Racing Authority and the Horsemen's Benevolent and Protective Association (Kentucky Division). To continue after December 31, 2005 on this agreement, the two applicable letters of permission covering all or a portion of 2006 must be filed with the Board. These simulcasts may be utilized whenever in compliance with the Racing Law.

12. NEW YORK CITY OTB – REQUEST TO SIMULCAST VARIOUS LOCATIONS

For entry into the minutes, on December 6, 2005, the NYS Racing and Wagering Board approved an amendment to the NYCOTB simulcast plan of operation in the form of an addendum to a currently approved agreement enabling the import of simulcasts from the thoroughbred racetrack known as Tampa Bay Downs located in Oldsmar, Florida. This addendum adjusted downward the rate of payment based on net pari-mutuel wagering at NYCOTB on Tampa Bay Downs simulcasts to be made by NYCOTB to Tampa Bay Downs for the use of their simulcasts with a further downward rate adjustment upon attaining a certain net handle amount for the 2005-06 season.

These simulcasts may be utilized whenever in compliance with the Racing Law.

13. CATSKILL REGIONAL OTB – REQUEST TO SIMULCAST VARIOUS LOCATIONS

For entry into the minutes, on December 6, 2005, the NYS Racing and Wagering Board approved the import of simulcast signals from Tampa Bay Downs in Oldsmar, Florida during their 2005-06 racing season that extends from Saturday, December 10, 2005 through May 7, 2006. This approval is effective immediately.

This approval further extends to Capital District, Nassau Downs, Suffolk Regional and Western Regional OTBs.

C. ITEMS PREVIOUSLY APPROVED, DENIED OR DEFERRED BY THE BOARD

1. NYRA – REQUEST TO ADD INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT – URBACH HACKER YOUNG INTERNATIONAL (UHY)

For entry into the minutes, on December 1, 2005, the New York State Racing and Wagering Board (Board) approved the request by NYRA for Urbach Hacker Young International (UHY) as the independent certified public accountant for purposes of conducting the annual audit for calendar year 2005, pursuant to Section 231-a of the Racing, Pari-Mutuel Wagering and Breeding Law.

Approval is granted only for the calendar year 2005. The request for approval of the 2006 independent certified public accountant must be filed with the Board no later than October 2, 2006.

2. EMERGENCY RULEMAKING – VETERINARIAN MEDICATION RULE

For entry into the minutes, on December 1, 2005, the New York State Racing and Wagering Board (Board) approved the submission to the Department of State of an emergency rule allowing veterinarians employed by the New York State Racing and Wagering Board and licensed thoroughbred racing associations to administer race day medications to horses. The rule is necessary to allow the administration of medications to horses stabled in limited access security barns.

Upon submission to the Department of State, the emergency rule will be in effect for 90 days.

3. EMERGENCY RULEMAKING – EXCESS TCO2 TESTING

For entry into the minutes, on December 1, 2005, the New York State Racing and Wagering Board (Board) approved the submission to the Department of State of an emergency rulemaking for testing of excess TCO2 in thoroughbred and harness racehorses, penalties for excess TCO2 and procedures for guarded quarantine and voidable claims.

Upon submission to the Department of State, the emergency rule will be in effect for 90 days.

4. **APPLICATION FOR REINSTATEMENT OF TRAINER'S LICENSE – BRICE**

For entry into the minutes, on December 1, 2005, the New York State Racing and

Wagering Board approved the application for reinstatement of the trainer's license of Michael Brice with the condition that the reinstatement be a valid receipt rather than issuance of the license so that his compliance with financial responsibility requirements can be monitored prior to actual licensing.

5. **NASSAU OTB – REQUEST TO AMEND PLAN OF OPERATION FOR APPROVAL OF NEW PRESIDENT - AMOROSO**

For entry into the minutes, on December 6, 2005, the NYS Racing and Wagering Board conditionally approved the amendment of the plan of operation to reflect the election of Mr. Dino Amoroso as the new President and Chief Executive Officer at the Nassau Regional Off-Track Betting Corporation. The approval is conditioned upon a receipt of the print report with no disqualifying information from the Federal Bureau of Investigation.

D. ITEMS TO BE APPROVED, DENIED OR DEFERRED BY THE BOARD

1. **DESIGNATION OF WILLIAM A. SEKELICK TO ADMINISTER OATHS & ISSUE SUBPOENAS**

The New York State Racing and Wagering Board approved the designation of William A. Sekellick to administer oaths and issue subpoenas pursuant to Section 101(9) of the Racing, Pari-Mutuel Wagering and Breeding Law. The law provides that each member of the Board and those officers, employees and agents designated by the Board shall have the power to administer oaths, examine witnesses and issue subpoenas to compel attendance and for the production of documents.

2. **ADOPTION - EQUINE MEDICATION RULE**

The New York State Racing and Wagering Board adopted the previously published proposed amendments to the equine medication rules for thoroughbred and harness racing.

The Board received one public comment during the proposed rulemaking public comment period, which concluded on November 21, 2005. The Legislative Bill Drafting Commission identified two typographical errors. The following nonsubstantive changes have been made to the rule text with the approval of the Board:

- Section 4043.2, new subdivision (e), paragraph 5, the comma before “trichlormethiazide” is now deleted.
- Section 4120.2, new subdivision (e), paragraph 5, the comma before “trichlormethiazide” is now deleted.
- Section 4120.2, new subdivision (e), paragraph 6, the original text did not contain a hyphen in the word “adrenaline,” so the amendment to delete the hyphen is unnecessary and removed.

The amendments eliminate obsolete drugs or medications from the Board’s rules, add rules for the administration or prohibition of new drugs and medications, and reclassify the timeframes for administration of permissible drugs or medications used to treat horses prior to a race.

Appropriate forms will be submitted to the Department of State and these amendments will be effective upon publication in the *State Register*.

3. PROPOSED RULEMAKING (CONSENSUS) – VETERINARIAN MEDICATION RULE

The Board adopted the amendment allowing veterinarians employed by the New York State Racing and Wagering Board and licensed thoroughbred racing associations to administer race day medications to horses. The rule is necessary to allow the administration of medications to horses stabled in limited access security barns. No public comments were received. The rule amendment was adopted as a consensus rulemaking.

The amendment will become effective on the date of publication in the *State Register*.

4. IN THE MATTER OF TODD PLETCHER

The Board voted to adopt Hearing Officer Russell H. Baller, Jr.’s recommendation that the violation, suspension and fine be upheld, with these additional findings of fact:

- There is a reasonable degree of scientific certainty that the drug mepivacaine was administered within the seven-day prohibitory period.
- The drug mepivacaine was administered to TALES OF GLORY at a time and in a manner contrary to Board rules.

5. ADOPTION – PICK FOUR WAGER RULE

The New York State Racing and Wagering Board deferred until the December 28, 2005 meeting, consideration of the adoption of rules authorizing the Pick Four Wager for

thoroughbred racing and clarifying procedures for money ties among betting entries in Pick Four harness racing wagers.

6. ADOPTION – GRAND SLAM WAGER

The New York State Racing and Wagering Board deferred until the December 28, 2005 meeting, consideration of the adoption of the rule authorizing the Grand Slam Wager for thoroughbred racing.

**7. IN THE MATTER OF THE STEWARDS PLACING OF
“MONETARY DANCER” 3RD IN THE 7TH RACE AT
FINGER LAKES RACE TRACK ON SEPTEMBER 24, 2005**

On December 15, 2005, the New York State Racing and Wagering Board approved Hearing Officer Russell H. Baller, Jr.’s recommendation that the summary judgment motion to dismiss the appeal be granted and that the appeal of the trainer of MONETARY DANCER from the placement decision of the stewards at Finger Lakes Race Track, which disqualified MONETARY DANCER and placed that horse third based on interference with SHOALIHS TALE be dismissed, on the ground that such placement decisions are not reviewable. The Board indicated that it will support disposition by summary judgment motion in appeals of placement decisions absent proof of an outright mistake of law, a ministerial error or fact unrelated to judgment, or fraud.

8. IN THE MATTER OF JAMES N. BAILEY

The New York State Racing and Wagering Board approved Hearing Officer Creighton Brittell’s recommendation that the refusal of the harness racing trainer-driver license application of James N. Bailey be upheld. The Board’s determination is without prejudice to reapplication upon proof that Mr. Bailey has satisfied conditions for licensing related to substance abuse.

E. ITEMS FOR BOARD INFORMATION/DISCUSSION

1. GAMES OF CHANCE/BINGO REGISTRATION NUMBERS

List of Games of Chance and Bingo Registration Numbers authorized/denied by the Charitable Gaming Unit between November 9, 2005 – November 29, 2005.

2. GAMES OF CHANCE/BELL JAR TICKETS

List of bell jar tickets authorized/denied by the Charitable Gaming Unit between November 8, 2005 – November 29, 2005.

3. 2006 LICENSED SUPPLIERS

List of 2006 licensed suppliers and manufacturers for the time period of November 1, 2005 through November 29, 2005.

4. LICENSING – CURRENT RACING LICENSING COUNT

The current racing licensing counts as of November 30, 2005 are as follows: total receipts 14,761 and total licenses 11,692 for the year 2005.

5. INDIAN GAMING - LICENSING STATISTICS

Licensing statistics for October 1, 2005 through October 31, 2005. Also included are the certifications for Mohawk, Seneca Allegany, Seneca Niagara and Oneida.

F. FOLLOW-UP ON ITEMS PREVIOUSLY APPROVED

CONDITIONS MET _____

Date:

Conditioned date: 12/06/05

1. NASSAU OTB – REQUEST TO AMEND PLAN

OF OPERATION FOR APPROVAL OF NEW

PRESIDENT - AMOROSO

This approval is conditioned upon a receipt of the print report with no disqualifying information from the Federal Bureau of Investigation on Mr. Dino Amoroso.

The meeting was adjourned at 11:29 a.m.