

OKLAHOMA HORSE RACING COMMISSION

RAN LEONARD, CHAIR

KEITH SANDERS, VICE-CHAIR

BECKY GOUMAZ, SECRETARY

STANTON HARRELL, ESQ., MEMBER

PHILLIP KIRK, MEMBER

JOE LUCAS, MEMBER

MONTY MARCUM, MEMBER

REVISED* AGENDA

***AGENDA TOPIC J [PAGES 10-11]**

**Regularly Scheduled Meeting
Thursday, May 18, 2017, 9:30 a.m.**

**Agriculture Board Room
Department of Agriculture, Food and Forestry
2800 N. Lincoln Boulevard
Oklahoma City, OK 73105**

New Address of the:

OKLAHOMA HORSE RACING COMMISSION
2800 N. LINCOLN BLVD., SUITE 220
OKLAHOMA CITY, OKLAHOMA 73105

(Located in Department of Agriculture, Food and Forestry building)

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AGENDA POSTED IN ACCORDANCE WITH THE OKLAHOMA OPEN MEETING ACT

All customers who attend public meetings of the Commission who need special accommodations, i.e., Sign Language Interpreter, amplification device, large print materials, Braille materials, audio cassette materials, readers or other special accommodations must notify the Commission by the deadline date and time for acceptance of agenda requests.

CALL TO ORDERMr. Leonard, Chair

ROLL CALLMr. Leonard, Chair

BUSINESSMr. Leonard, Chair

A. MINUTES

The drafted Minutes of the March 30, 2017 Regularly Scheduled Commission Meeting [Item A.1] will be considered for approval.

THE FOLLOWING MATTERS ARE PRESENTED FOR CONSIDERATION AND ACTION, IF ANY, DEEMED APPROPRIATE BY THE COMMISSION.

B. LEGISLATIVE UPDATE

Chairman Leonard and Commissioner Lucas, as Chair of the Ad Hoc Committee on Legislation, will provide an update on the current status of legislation affecting the agency and industry. **Item B.1** is the updated legislative tracking report.

C. PROPOSED CONTRACT WITH ATTORNEY GENERAL'S OFFICE

The Attorney General's Office has submitted a contract for legal services, one for the remainder of FY-2017, starting May 1, 2017 [Item C.1] and one for FY-2018 [Item C.2]. The contract would provide legal services of an assigned Assistant Attorney General to the Commission regarding its official duties, including representation in legal proceedings, provision of legal advice and assistance, appearance at meetings of the Commission as necessary and other legal needs in exchange for Commission payment of .20 FTE salary and benefits of the assigned Assistant Attorney General.

Possible Action:

Possible action may include, but is not limited to: taking no action, authorizing the Executive Director to approve the proposed contracts, authorizing the Executive Director to amend the proposed contracts and then approve the contracts, or continuing the matter.

D. FY-2018 AGENCY BUDGET

Commissioner Sanders, as Chair of the Ad Hoc Committee on Budget and Finance, Technology and Facilities, will present the FY-2018 agency budget.

Possible Action:

Possible action may include, but is not limited to: taking no action, approving the budget proposal, amending the budget proposal, or continuing the matter.

E. PROPOSED AMENDMENTS TO DIRECTIVE ON COMMISSION-SANCTIONED THRESHOLDS

Background

The Ad Hoc Committee on Rules and Medication proposes the following amendments of the Directive on Commission-Sanctioned Thresholds, including:

Page 1: Changing the (2) introductory paragraph

Page 1: Changing two threshold levels for Non-Steroidal Anti-Inflammatory Medications

Page 2: Changing three threshold levels for Corticosteroid Medications

Page 2: Changing six threshold levels for Other Medications; moving Salicyclic Acid to Environmental Contaminants; adding 11 medications to Other Medications list

Page 3: Changing the statement about Albuterol and Clenbuterol being prohibited substances for Quarter Horses, Paints and Appaloosas

Page 3: Adding '/plasma' to Caffeine; moving Lidocaine under Environmental Contaminants to Other Medications; adding 7 substances to Environmental Contaminants

Page 4: Changing levels for all 4 Anabolic Steroids; removing language about 60 day withdrawal for levels

Item E.1 contains the Directive on Commission-Sanctioned Thresholds with the proposed changes. If approved, the proposed effective date is August 15, 2017.

Possible Action:

Possible action may include, but is not limited to: taking no action; adopting the recommendations, in whole or in part; deciding not to adopt the recommendations; or continuing the matter.

F. PROPOSED OPENING OF THE PERMANENT RULEMAKING PROCESS TO CONSIDER RULE AMENDMENTS FOR THE OHRC RULES OF RACING AS PROPOSED BY THE AD HOC COMMITTEE ON RULES AND MEDICATION

The Ad Hoc Committee on Rules and Medications proposes opening the permanent rulemaking process to consider amendments in Chapter 40, Veterinarian Practices, and Chapter 45, Medication and Equine Testing Procedures, in the *Rules of Racing*.

Possible Action:

Possible action may include, but is not limited to: taking no action; approving the beginning of the permanent rulemaking process to consider amendments in the cited chapters as proposed, or as modified at the meeting, by authorizing publication in *The Oklahoma Register* and scheduling a Public Hearing; or continuing the matter.

G. RECOMMENDATIONS FROM THE OKLAHOMA-BRED ADVISORY COUNCIL

The Oklahoma-Bred Advisory Council met on May 3, 2017 and forwarded the following recommendations for Commission consideration:

1. Renewal of Veterinary Medical Diagnostic Program [Necropsy Study]

Dr. Keith Bailey, Director of the Oklahoma Animal Disease Diagnostic Laboratory at Oklahoma State University (OSU), submitted a May 8, 2017 request **[Item G.1]** for continued funding of the Veterinary Medical Diagnostic Program (Necropsy Study).

The current financial commitment to the Necropsy Study is \$50,000. OSU proposes the following charges as compared to the current contract:

Service	Current Contract	Proposed Contract
Necropsy with evaluation of any limb injuries [including histopathology, if indicated]	\$250.00	\$225.00 ¹
Disposal of horse remains Based on weight of horse: < 1,000 lbs. / > 1,000 lbs.	\$120.00-\$140.00	\$135.00-\$150.00
Transportation of horse to OSU based on location of racetrack		
Remington Park	\$265.00	\$190.00-\$250.00 ²
Fair Meadows at Tulsa	\$330.00	\$350.00 ³
Will Rogers Downs	\$450.00	\$350.00 ³
Emergency/after-hours fee on horses submitted outside routine business hours	-0-	\$100.00

¹Fees are based on OADDL Fee Schedule [exception: fee for transporting horses to OADDL are established by courier services utilized]. The Fee Schedule is generally revised annually.

²\$190.00 on Monday-Friday; \$250.00 on weekend or holiday. Additional \$100 applied to each additional horse if more than 1 horse is transported at a time.

³Additional \$50 applied to each additional horse if more than 1 horse is transported at the same time.

The request includes additional testing required on a case-by-case basis including microbiology and toxicology. This ancillary testing would be performed at the discretion of the attending pathologist or at the request of the Commission in order to confirm diagnosis.

The Oklahoma-Bred Advisory Council unanimously recommends continuation of the Necropsy Study for a \$50,000 financial commitment.

Possible Action:

Possible action may include, but is not limited to: taking no action, approving, in whole or in part, the funding request, disapproving the funding request, in whole or in part, amending the funding amount, or continuing the matter.

2. Commission Staff Recommendation to Increase Check Reissue Fee

Currently, the Commission charges a \$5.00 fee to reissue an Oklahoma-Bred check when the horseman didn't cash it during the 90 days before the payment is cancelled-by-statute.

Ms. Shonna Gore, Director of Operations, recommended that the fee be increased to \$25.00, the fee the Commission charges when a check is returned by the bank for insufficient funds.

The Oklahoma-Bred Advisory Council unanimously recommends the Oklahoma-Bred check reissue fee be increased to \$25.00.

Possible Action:

Possible action may include, but is not limited to: taking no action, approving the request, disapproving the request, amending the fee amount, or continuing the matter.

H. CONSIDERATION OF MANUEL ANGEL MATA'S MOTION REQUESTING THE COMMISSION TO GRANT A SECOND HEARING ON THE WILL ROGERS DOWNS' BOARD OF STEWARDS' REFERRAL OF THREE CASES TO THE COMMISSION FOR ASSESSMENT OF PENALTIES

Background

At the March 30, 2017 meeting, a Referral Hearing was held regarding the Board of Stewards at Will Rogers Downs' referral of cases in which Mr. Mata was found to be in violation of OAC 325:35-1-5, Trainer Responsibility, and OAC 325:45-1-4, Drugs or Medication, for horses that tested positive for the following prohibited medications:

<u>HORSE'S NAME</u>	<u>RACETRACK, DATE & RACE</u>	<u>MEDICATION(S)</u>
TIMBERLEIGH	Fair Meadows at Tulsa 7/29/16, 9 th Race	Ractopamine
TIME FOR BIG FEET	Will Rogers Downs 10/7/16, 7 th Race	Caffeine Albuterol Nalbuphine
TIME FOR BIG FEET	Will Rogers Downs 9/18/16, 11 th Race	Diazepam Nordiazepam

In the resultant three Stewards' Orders [2017-FMT-001, 2017-WRD-005 and 2017-WRD-006, dated March 2, 2017], the Board of Stewards at Will Rogers Downs recommended that the Commission assess a suspension greater than one year and a fine greater than \$2,500 as allowed in OAC 325:1-1-7, Jurisdiction of Stewards to Suspend or Fine. Mr. Mata did not appeal any of the Stewards' Orders.

The Commission took preliminary action to affirm that the Commission had received and reviewed the parties' briefs and found that no evidence existed for the arguments in Mr. Mata's brief and that trainer responsibility outweighed any mitigating factors. Regarding penalties, for Stewards' Order 17-FMT-001, set Mr. Mata's suspension at 5 years and a \$10,000 fine; for Stewards' Order 17-WRD-005, set Mr. Mata's suspension at 5 years and a \$10,000 fine; and for Stewards' Order 17-WRD-006, set Mr. Mata's suspension at 1 year and a \$5,000 fine. The suspension penalties would run consecutively for a total of 11 years; the fines would total \$25,000. The horse involved in each case was disqualified from the respective race results. Any pending cases against Mr. Mata should have the penalties run consecutively to the three cited cases. Commission Staff was asked to prepare an Order, with Findings of Facts and Conclusions of Law as discussed during the Executive Session, with the drafted Order to be placed on the May 18, 2017 meeting agenda for continued deliberations.

Current Consideration

On April 20, 2017, the Commission received Mr. Mata's Motion to Vacate and Combined Motion to Reconsider and/or Provide New Trial **[Item H.1]**. On April 27, 2017, Mr. Bennett Abbott, Special Counsel for the Boards of Stewards, submitted a Response Brief to the Licensee's Motion **[Item H.2]**. A Notice of Hearing was distributed on April 28, 2017 **[Item H.3]**. On May 10, 2017, Mr. Mata submitted a Licensee's Reply to OHRC Response Regarding the Motion to Vacate and Combined Motion to Reconsider and/or Provide New Trial **[Item H.4]**.

As no final order has been issued, Licensee's Motion to Vacate and Combined Motion to Reconsider and/or Provide New Trial are premature. The Commission considers Mr. Mata's motion to be a Request for Reopening and will hear arguments on that motion prior to consideration of the issuance of any final order on sanctions.

The Hearing on Mr. Mata's Motion to Reopen will be conducted pursuant to the authority and jurisdiction of the Oklahoma Administrative Procedures Act, Title 75 O.S. § 301 et seq., the Oklahoma Horse Racing Act, Title 3A O.S. § 200 et seq., and OAC 325 (OHRC Rules of Racing).

The procedure for the hearing on Mr. Mata's Licensee's Motion to Reopen is as follows:

1. Mr. Mata and the Boards of Stewards at Will Rogers Downs and Fair Meadows are entitled to be present and present arguments.
2. Mr. Mata or his counsel will present oral arguments first, with the Boards of Stewards or their special counsel proceeding next. Each party will be allowed ten (10) minutes to present its case. Oral arguments are limited to the arguments set forth in Mr. Mata's motion and Counsel for the Boards of Stewards' response to the motion.
3. All parties are subject to questioning by Commissioners, Commission Staff, and Commission Legal Advisor.

Possible Executive Session

Pursuant to 25 O.S. § 307 (B)(8) and 311 (B)(1), an Executive Session may be proposed **for the purpose of deliberations in an individual proceeding regarding the Licensee's Motion to Reopen.**

1. **Motion and Vote to Go Into Executive Session for the Purpose Stated Above**
2. **Vote to Reconvene in Open Session**

Possible Action:

Possible action may include, but is not limited to: denying the motion; granting the motion, in whole or in part; or continuing the matter to the June 15, 2017 Commission meeting.

IF THE COMMISSION GRANTS MR. MATA'S MOTION, THE PROCEDURE WILL BE HANDLED AS FOLLOWS:

1. Mr. Mata or his counsel will have twenty (20) minutes to present oral argument on the issue of the proposed sanctions for Stewards' Orders 17-FMT-001, 17-WRD-005, and 17-WRD-006. Oral argument is limited to the arguments made in Mr. Mata's Licensee's Brief in Response to Referrals and the information in the record of the Board of Stewards' Hearing.
2. Counsel for the Board of Stewards may have five (5) minutes to respond.
3. All parties are subject to questioning by Commissioners, Commission Staff, and Commission Legal Advisor. All prior briefs and arguments on the issue of sanctions will be considered.

I. CONTINUED DELIBERATIONS ON THE WILL ROGERS DOWNS' BOARD OF STEWARDS' REFERRAL OF THREE CASES TO THE COMMISSION FOR ASSESSMENT OF PENALTIES

Background

As noted in Agenda Topic H, at the March 30, 2017 meeting, the Commission took preliminary action in the matter of the Will Rogers Downs' Board of Stewards' Referral of three cases to the Commission for assessment of penalties against Manuel Angel Mata.

Current Consideration

The Commission will continue deliberations on findings of fact and conclusions of law, penalties, and issuance of a final order in the matter of the three cases referred by the Stewards.

Possible Executive Session

Pursuant to 25 O.S. § 307 (B)(8) and 311 (B)(1), an Executive Session may be proposed **for the purpose of continued deliberations in an individual proceeding regarding the Board of Stewards at Will Rogers Downs' referral on three Stewards' Orders: 17-FMT-001, 17-WRD-005 and 17-WRD-006.**

1. **Motion and Vote to Go Into Executive Session for the Purpose Stated Above**
2. **Vote to Reconvene in Open Session**

Possible Action:

Possible action may include, but is not limited to: taking no action, taking final action, or continuing the matter to the June 15, 2017 Commission meeting.

J. HEARING ON DISTRIBUTION OF BREAKAGE AND UNCLAIMED TICKET PROCEEDS GENERATED OUTSIDE OF A RACE MEETING

Background

The two horsemen's representative organizations, the Oklahoma Quarter Horse Racing Association (OQHRA) and the Thoroughbred Racing Association of Oklahoma (TRAO), wish to discuss the percentage calculations used in the distribution of breakage and unclaimed ticket proceeds **generated outside of a race meeting.**

Mr. Joseph Bocock, OQHRA counsel, submitted a Brief in Support of Maintaining the Integrity of the Oklahoma-Bred Program **[Item J.1]**. Mr. Mark Ramsey, TRAO counsel, submitted a Brief on May 10, 2017 **[Item J.2]**.

The Hearing

The Hearing before the Commission will be conducted pursuant to the authority and jurisdiction of the Oklahoma Administrative Procedures Act, Title 75, Section 301 et seq.; the Oklahoma Horse Racing Act, Title 3A O.S. Section 200 et seq.; the State-Tribal Gaming Act, Title 3A O.S. Section 261 et seq.; and the Commission *Rules of Racing*, OAC 325.

The Hearing procedure is scheduled as follows:

1. The Oklahoma Quarter Horse Racing Association or its counsel will have 20 minutes to present its position on distribution of breakage and unclaimed tickets **generated outside of a race meeting.**
2. The Thoroughbred Racing Association of Oklahoma or its counsel will have 20 minutes to present its position on distribution of breakage and unclaimed tickets **generated outside of a race meeting.**
3. All parties will be subject to questioning by Commissioners, Commission Counsel, Commission Staff and others as may be allowed by the Commission Chair.

Possible Executive Session

Pursuant to 75 O.S. § 312, 25 O.S. § 307 (B)(8) and 311 (B)(1), an Executive Session may be proposed **for the purpose of deliberations in an individual proceeding regarding distribution of breakage and unclaimed ticket proceeds generated outside of a race meeting.**

1. **Motion and Vote to Go Into Executive Session for the Purpose Stated Above**
2. **Vote to Reconvene in Open Session**

Possible Action:

Possible action may include, but is not limited to: taking no action, taking preliminary action, or continuing the matter to the June 15, 2017 Commission meeting.

K. Proposed FY-2018 Pari-Mutuel and Gaming Auditing Contracts Between the Commission and the Office of State Auditor and Inspector (SA&I)

Items K.1 and K.2 contain the proposed racing and gaming auditing contracts between the Commission and the Office of State Auditor and Inspector for FY-2018 [July 1, 2017 through June 30, 2018]. The pari-mutuel contract proposes a \$38,153.28 annual budget. The gaming contract proposes a \$172,606.56 annual budget. These proposed figures are the same since the FY-2015 auditing contracts.

Possible Action:

Pari-Mutuel Auditing Contract: Possible action may include, but is not limited to: taking no action; approving the proposed racing contract, in whole or in part; disapproving the proposed racing contract, in whole or in part; or continuing the matter.

Gaming Auditing Contract: Possible action may include, but is not limited to: taking no action; approving the proposed gaming contract, in whole or in part; disapproving the proposed gaming contract, in whole or in part; or continuing the matter.

L. APPOINTMENT OF NOMINATING COMMITTEE TO PRESENT A PROPOSED SLATE OF NOMINEES FOR COMMISSION OFFICERS FOR FY-2018

The Chair will appoint a Nominating Committee of three Commissioners to develop a slate of nominees for Commission Officers (Chair, Vice Chair and Secretary) to serve in FY-2018 (July 1, 2017 through June 30, 2018). At the June 15, 2017 Commission meeting, the Nominating Committee will present a proposed slate of nominees for the three positions for Commission consideration.

Possible Action:

Possible action may include, but is not limited to: appointing the Nominating Committee or continuing the matter.

M. ANY MATTER NOT KNOWN ABOUT OR WHICH COULD NOT HAVE BEEN REASONABLY FORESEEN PRIOR TO POSTING THE AGENDA

N. ANNOUNCEMENTS

1. The Thoroughbred Racing Association of Oklahoma will hold its annual awards program on Friday, August 4, 2017 at the Riverwind Casino and Hotel in Norman. The Commission will present CY 2016 Oklahoma-Bred Year-End Champion Awards for Thoroughbreds.

2. The current race meeting at Will Rogers Downs concludes on Saturday, May 20, 2017. Remington Park's current race meeting ends on June 3, 2017. Fair Meadows at Tulsa's CY 2017 race meeting begins on June 8, 2017.

ADJOURNMENT..... Mr. Leonard, Chair

PLEASE SEE CALENDAR ON NEXT PAGE

MID-MAY to JUNE, 2017 CALENDAR

5/20/17 – Will Rogers Downs's Thoroughbred race meeting is scheduled to end

5/29/17 – HOLIDAY [Memorial Day]

6/1/17 – Deadline for submitting CY 2018 racetrack racing and gaming renewal license applications

6/1/17 – Deadline for requesting agenda topics for the June 15, 2017 Commission meeting

6/3/17 – Remington Park's Quarter Horse, Paint and Appaloosa race meeting is scheduled to end

6/8/17 – Fair Meadows at Tulsa's Mixed Breed race meeting is scheduled to begin

6/15/17 – Commission's Regularly Scheduled Meeting, starting at 9:30 a.m., in Board Room, Oklahoma Department of Agriculture, Food and Forestry, 2800 N. Lincoln Boulevard, Oklahoma City, OK 73105