

**NEW JERSEY RACING COMMISSION**  
**WEDNESDAY, MARCH 23, 2022**  
**TELEPHONE MEETING**

A public meeting of the New Jersey Racing Commission ("NJRC" or "Commission") was held on Wednesday, March 23, 2022 by telephone.

The following were present:

Pamela J. Clyne, Chairman  
Michael J. Arnone, D.D.S., Commissioner  
Lawrence DeMarzo, Commissioner  
Francis X. Keegan, Jr., Commissioner  
Charles E. Tomaro, Commissioner  
Glen Vetrano, Commissioner  
Judith A. Nason, Executive Director  
Jeffry Nielsen, Associate Counsel, Governor's Authorities Unit  
SDAG George Cohen

Executive Director Nason read the following resolution:

"This meeting today conforms with the Open Public Meetings Act, and as per the requirements of the statute, notification of this meeting has been filed with the Secretary of State and with the following newspapers: Daily Racing Form, Bergen Record, Asbury Park Press, Courier-Post and the Star Ledger.

WHEREAS, in order to protect the personal privacy and to avoid situations wherein the public interest might be disserved, the Open Public Meetings Act permits bodies to exclude the public from that portion of a meeting at which certain matters are discussed.

NOW, THEREFORE, BE IT RESOLVED that consistent with N.J.S.A. 10:4-12(b), the Commission will now adjourn to Executive Session to obtain legal advice protected from disclosure by the attorney-client privilege on the following matters:

1. Consider the initial decision in the matter of Marvin F. Callahan v. New Jersey Racing Commission, OAL Docket No. RAC 07398-21.
2. Consider interlocutory review of OAL order to consolidate Cleary, King, Jr., Fiumenero, Bena and Drennan v. New Jersey Racing Commission, OAL Docket Nos. RAC 05864-21N, 06047-21N, 07163-21S, 07217-21S and 07864-21N.
3. Consider whether to collect fees imposed by the Horseracing Integrity and Safety Authority.
4. Other legal advice.

Discussion of the above matters falls within the exceptions under the law; specifically, matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the Commission's attorney to exercise his ethical duties as a lawyer and/or matters involving pending or anticipated litigation."

Commissioner Keegan motioned to adjourn into Executive Session. Commissioner Arnone seconded the motion. All of the Commissioners voted to affirm. The Commission then adjourned to Executive Session.

Commissioner Vetrano made a motion to adjourn from Executive Session into the Public Session. Commissioner Tomaro seconded the motion and all of the Commissioners voted yes with the exception of Commissioner Arnone who was not present.

The Public Session resumed.

CONSIDER APPROVAL OF THE MINUTES OF THE JANUARY 26, 2022 COMMISSION MEETING.

Commissioner Keegan made a motion to approve the public and executive session minutes of the January 26, 2022 Commission meeting. Commissioner Tomaro seconded the motion and all of the Commissioners voted yes with the exception of Commissioner Vetrano who abstained and Commissioner Arnone who was not present.

CONSIDER RATIFICATION OF THE APPROVAL GRANTED TO NEW MEADOWLANDS RACETRACK TO CANCEL RACING ON JANUARY 28 AND 29, 2022 DUE TO ANTICIPATED BLIZZARD CONDITIONS AND STATE OF EMERGENCY.

Executive Director Nason stated that on January 28, and 29, 2022, the State of New Jersey experienced blizzard-like conditions, which resulted in the Governor declaring a state of emergency. She stated that after consulting with the Standardbred Breeders and Owners Association of New Jersey ("SBOANJ") President Mark Ford, General Manager and COO Jason Settlemoir requested approval to cancel racing at New Meadowlands Racetrack on January 28, 2022 due to travel safety concerns for the horsemen and horsewomen entered to race. The Executive Director approved the cancellation of racing on January 28, 2022 subject to the ratification of the Commission.

Executive Director Nason stated that due to the state of emergency and ongoing blizzard conditions, Mr. Settlemoir also requested approval to cancel racing on January 29, 2022. The Executive Director approved the cancellation of racing on January 29, 2022 subject to the ratification of the Commission.

Commissioner Keegan made a motion to ratify the approval granted to New Meadowlands Racetrack to cancel racing due to safety concerns caused by blizzard-like conditions and that state of emergency. Commissioner Vetrano seconded the motion and all of the Commissioners voted yes with the exception of Commissioner Arnone who was not present.

CONSIDER RATIFICATION OF THE APPROVAL GRANTED TO FREEHOLD RACEWAY TO CANCEL RACING ON JANUARY 29, 2022.

Executive Director Nason stated on the evening of January 28, 2022, General Manager Howard Bruno requested approval of the cancellation of racing at Freehold Raceway on January 29, 2022 due to the blizzard-like conditions. The Executive Director approved the cancellation of racing on January 29, 2022 subject to the ratification of the Commission.

Commissioner DeMarzo made a motion to ratify the approval granted to Freehold Raceway to cancel racing due to safety concerns caused by the snowstorm. Commissioner Vetrano seconded the motion and all of the Commissioners voted yes with the exception of Commissioner Arnone who was not present.

CONSIDER RATIFICATION OF THE APPROVAL GRANTED TO NEW MEADOWLANDS RACETRACK TO CANCEL RACING ON FEBRUARY 25, 2022 DUE TO UNSAFE TRACK CONDITIONS.

Executive Director Nason stated that on February 25, 2022, General Manager and COO Jason Settlemoir requested approval of the cancellation of racing that evening due to unsafe track conditions. She explained that after it rained, the racetrack froze and thereafter thawed, rendering the track unsafe. She stated that after consulting with the Track Superintendent and SBOANJ President Mark Ford, Mr. Settlemoir requested approval to cancel racing. The Executive Director approved the cancellation of racing on February 25, 2022 subject to the ratification of the Commission.

Commissioner Tomaro made a motion to ratify the approval granted to New Meadowlands Racetrack to cancel racing due to safety concerns caused by extreme weather conditions. Commissioner DeMarzo seconded the motion and all of the Commissioners voted yes.

CONSIDER THE REQUEST OF DARBY DEVELOPMENT, LLC TO AMEND THE APPROVED 2022 THOROUGHBRED RACING DATES FOR MONMOUTH PARK AND THE MEADOWLANDS RACETRACK.

Executive Director Nason stated that at the November 2021 meeting, the Commission allocated 60 thoroughbred days for Monmouth Park and 11 thoroughbred days at the Meadowlands Racetrack for 2022. She indicated that the Commission thereafter approved the 1-day steeplechase meet at Moorland Farm, bringing the total number of thoroughbred days issued to the New Jersey Thoroughbred Horsemen's Association ("NJTHA") to 72.

Executive Director Nason stated that by letter dated February 23, 2022, John Heims, In-House Counsel, filed a request to amend the 2022 race dates allocated for Monmouth Park and the Meadowlands. She explained that Mr. Heims specifically asked to move the October 28<sup>th</sup> and October 29<sup>th</sup> race dates from the Meadowlands to Monmouth Park. She indicated that these two race dates would be run at Monmouth Park, pursuant to the Monmouth Park permit, on September 11<sup>th</sup> and 18<sup>th</sup>.

Executive Director Nason indicated that if approved, this change would increase the allocation for Monmouth Park to 62 days and decrease the allocation for the Meadowlands to 9 thoroughbred days. She stated the overall total number of thoroughbred race dates would remain unchanged at 72.

Executive Director Nason noted that NJTHA Executive Director Mike Musto has indicated that the NJTHA is favor of the amended race date request.

Executive Director Nason pointed out an additional issue, which the Commission needed to consider. She stated that at the January meeting, the Commission approved Charity Race Dates for 2022. In doing so, the Commission designated October 29<sup>th</sup> to be a charity race date, under the Meadowlands' thoroughbred permit, to benefit the developmentally disabled. She explained that as a result, the Commission will need to select a different race date at the Meadowlands for this purpose. She indicated that NJRC staff recommend that the Commission designate September 23, 2022 to benefit the developmentally disabled.

Executive Director Nason asked the Commissioners if there was a motion to approve the request to amend Monmouth Park's and the Meadowlands' thoroughbred race dates.

Commissioner Tomaro made a motion to approve Monmouth Park's and the Meadowlands' thoroughbred race dates. Commissioner Arnone seconded the motion and all of the Commissioners voted yes.

Executive Director Nason then asked the Commissioners if there was a motion to designate September 23, 2022 as a Charity Race Date to benefit the developmentally disabled.

Chairman Clyne made a motion to designate September 23, 2022 as a Charity Race Date. Commissioner Tomaro seconded the motion and all of the voted yes.

#### CONSIDER APPROVAL OF THE RACING AND WAGERING FORMAT FOR THE 2022 MONMOUTH PARK MEET.

Executive Director Nason stated that on March 3<sup>rd</sup>, Vice President of Business Operations Bill Knauf filed a request seeking approval of Monmouth Park's racing and wagering format in 2022.

Executive Director Nason stated that the Monmouth Park meet is scheduled to begin on May 7, 2022, post-time on Saturdays and Sundays will continue to be 12:50 pm with the exception of Haskell Day on Saturday, July 23<sup>rd</sup> which will be noon. The post-time on Fridays and on Mondays in August will be 2:00 pm. Monmouth Park requested permission to offer up to 14 races per day. Executive Director Nason informed the Commissioners that the program and parking prices as well as minimum wagers and other format details were included in their meeting packet. She stated all races will offer win, place, show, exacta, trifecta, superfecta, Pick 3, and Double wagering per management's discretion. Pick 4 wagers will also be offered in various races.

She noted that the racing officials are the same as those approved in 2021 with the exception of the Director of Group Sales, who will now be Audrey Cassidy.

Commissioner Tomaro motioned to approve the race and wagering format for the 2022 Monmouth Park race meeting. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER THE REQUEST OF DARBY DEVELOPMENT, LLC TO CONTINUE THE WAIVER OF N.J.A.C. 13:70-6.5 TO ALLOW THE UNCOUPLING OF HORSES AT THE 2022 MONMOUTH PARK AND MEADOWLANDS MEETS.

Executive Director Nason stated that on January 18th, the Commission received a written request from Mr. Heims asking that the Commission continue to waive the thoroughbred coupling rule for 2022 to allow separate betting interests in the case of common ownership or a common trainer during the thoroughbred meets at Monmouth Park and the Meadowlands. She noted that the Commission waived this rule each year since 2018 on an experimental basis. Mr. Heims reported that there have not been any identifiable issues with uncoupling.

She stated that in a prior certification, General Manager William Anderson, indicated that waiving the coupling rule will benefit horse racing by allowing the tracks to offer more marketable races, increasing the wagering handle and generating additional purse money.

Executive Director Nason explained that the request for a waiver is made pursuant to N.J.A.C. 13:70-1.39(b) which states, in part, that the Commission may grant a waiver if it determines that such a waiver will benefit the horse racing industry in this State. She indicated that Commission staff are unaware of any negative impact from prior waivers of the coupling rule.

Commissioner Keegan made a motion to waive N.J.A.C. 13:70-6.5 for 2022 and grant the Executive Director the authority to terminate the waiver if at any point if she believes it is warranted. Commissioner Arnone seconded the motion and all Commissioners voted yes.

Executive Director Nason noted that the Commission voted to propose amendments to the thoroughbred and standardbred coupling rules at the January 26<sup>th</sup> meeting. The proposed amendments are at the Office of Administrative Law and will likely be published in the April 4<sup>th</sup> New Jersey Register for public comment.

CONSIDER APPROVAL OF THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION'S STATUTORY BUDGET FOR 2022

Executive Director Nason explained that the NJTHA has submitted its proposed 2.9% statutory budget for calendar year 2022. The statutory budget is funded by statutes, such as N.J.S.A. 5:10-7, which direct that a portion of sums deposited in pari-mutuel wagering pools be directed for programs designed to aid the horsemen.

She further explained that the THA anticipates \$580,000 in revenue which is \$58,000 higher than its 2021 budget. Given the anticipated increase in revenue, the budget includes

\$489,000 for direct benefits, which is an increase of \$40,000 over last year's budget. She indicated that the 2.9% statutory budget appears to be in compliance with N.J.A.C. 13:70-1.30, which requires that a minimum of 70% of the statutory revenue be spent on benevolence programs. Pursuant to the 2022 budget, 84.31% of the statutory revenue will be spent on benevolence programs.

Commissioner Keegan motioned to approve the NJTHA's proposed budget for the year 2022. Chairman Clyne seconded the motion and all Commissioners voted yes.

#### CONSIDER APPROVAL OF THE 2022-2023 BUDGET OF THE NEW JERSEY JOCKEY'S HEALTH AND WELFARE TRUST.

Executive Director Nason stated that the Jockey's Health and Welfare Trust's estimated budget is for May 1, 2022 through April 30, 2023. The estimated budget is \$208,275.48, which is \$29,510.88 higher than last year's approved budget. She stated that this is an increase of 16.5%.

Executive Director Nason explained that pursuant to statute, \$150,000 of breakage from off-track wagering and account wagering and uncashed ticket monies on out-of-state races are distributed to the jockey's health and welfare trust. She further explained that in addition to the annual statutory contribution of \$150,000, the trust has estimated that it will receive contributions of \$77,457 from active and retired riders resulting in a projected net surplus of \$19,181.52.

Commissioner Tomaro motioned to approve the 2022-2023 budget of the New Jersey Jockey's Health and Welfare Trust. Commissioner DeMarzo seconded the motion and all Commissioners voted yes.

#### CONSIDER APPROVAL OF THE NEW JERSEY RACING COMMISSION'S FY2022 PROGRAM BUDGET

Executive Director Nason stated that the estimated program budget for FY2022 is \$7,438,240 which is an increase of \$423,503 over last year's budget. She stated that this is a 6.04% increase over last year's budget.

Executive Director Nason explained that the increase in the budget is primarily due to a 7.8% increase in the cost of fringe benefits for State employees. She explained that the budget also includes a projected increase of \$223,503 in the cost of legal representation, which corresponds to the increased billing rates for the Deputy Attorneys General, who are also State employees, and the increased number of contested cases pending at the Office of Administrative Law.

Commissioner Keegan made a motion to approve the NJRC's FY2022 program budget. Commissioner Vetrano seconded the motion and all of the Commissioners voted yes.

#### CONSIDER THE INITIAL DECISION IN THE MATTER OF MARVIN F. CALLAHAN V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 07398-21.

Executive Nason noted for the record that John Tomasello, Deputy Director of the NJRC, recused himself from this matter and he left the room during executive session when this matter was considered.

Executive Director Nason explained that on February 11, 2022, the Office of Administrative Law issued an initial decision, which upheld the Commission's denial of licensure to Petitioner, Marvin F. Callahan. The Administrative Law Judge ("ALJ") determined that there was insufficient evidence to sustain Petitioner's burden of proof that he possessed the required character, reputation and temperament to become licensed in New Jersey. No exceptions were filed and the record closed. As a result, consideration of the initial decision is timely.

She explained that on April 29, 2021, Petitioner applied for a standardbred owner and trainer license. State Steward Richard O'Donnell did not recommend Petitioner for licensure and Deputy Director John M. Tomasello conducted an informal hearing on July 22, 2021. Deputy Director Tomasello found that Petitioner's penalty history clearly identifies a pattern of complete disregard for the rules of racing which strongly militates against granting him a New Jersey license.

Executive Director Nason explained that the penalty history includes a 5-year suspension and \$5,000 fine imposed when Petitioner, together with another licensee, injected two horses with foreign substances in a rest area of the New Jersey Turnpike while transporting the horses to race at the Meadowlands Racetrack on March 1, 2014. Petitioner's penalty history also includes a 30-day suspension and \$1,000 fine imposed by the Pennsylvania Horse Racing Commission for possession of needles and syringes in his vehicle on the grounds of Harrah's Philadelphia Racetrack in 2012 as well as two pre-race blood gas positives and four post-race positives.

Executive Director Nason stated that in affirming the denial of licensure, the ALJ correctly noted that the Commission's rules place the burden of proof squarely and exclusively on the applicant to show that he or she is qualified in every respect to receive the license applied for and that Petitioner failed to meet this burden.

Executive Director Nason indicated that the initial decision is before the Commission to adopt, reject or modify.

Chairman Clyne made a motion to adopt the initial decision. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER INTERLOCUTORY REVIEW OF OAL ORDER TO CONSOLIDATE CLEARY, KING, JR., FIUMENERO, BENA AND DRENNAN V. NEW JERSEY RACING COMMISSION, OAL DOCKET NOS. RAC 05864-21N, 06047-21N, 07163-21S, 07217-21S AND 07864-21N.

Executive Director Nason explained that the Office of Administrative Law ("OAL") issued an Order, which consolidated 5 different contested cases that involve 5 different trainers, 6 different races and 6 different horses that tested positive for aminocaproic acid ("AMICAR"). The Deputy Attorney General representing the Commission filed a request for interlocutory review asking that the NJRC overturn the consolidation of these cases and issue an order mandating that

they be heard separately. N.J.A.C. 1:1-17.3, which applies to a motion to consolidate, requires the consideration of six factors. These factors include: the identity of parties; the questions of fact and law respectively involved; the saving in time, expense, duplication and inconsistency if heard together; the danger of confusion, delay or undue prejudice to any party; and the advisability of handling the controversies in a single proceeding.

She explained that the DAG representing the Commission points out that the identities of the parties are different and there are different questions of fact in each matter. Each matter involves a different horse, trainer, samples, chains of custody, test results and test reports. Arguing that consolidation would highly prejudice Respondent, the DAG points out that there is a significant likelihood of mass confusion if these matters were all tried together.

Executive Director Nason pointed out that counsel for the trainers did not file a response or oppose the DAG's request for interlocutory review.

Executive Director Nason indicated that the matter before the Commission is to decide if the cases should remain consolidated as ordered by the ALJ.

Chairman Clyne moved that the Commission reverse the Order that consolidates these cases and authorize the Executive Director to issue the draft Final Determination and Order on the Commission's behalf. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

#### CONSIDER WHETHER TO COLLECT FEES IMPOSED BY THE HORSERACING INTEGRITY AND SAFETY AUTHORITY.

Executive Director Nason explained that the Horseracing Integrity and Safety Act of 2020 ("Act") authorized the creation of the Horseracing Integrity and Safety Authority ("HISA"), which is a private, independent, self-regulatory, nonprofit corporation. She explained that the Act grants HISA authority to implement a horseracing anti-doping and medication control program and a racetrack safety program applicable to thoroughbred racing starting on July 1, 2022.

Executive Director Nason explained that the Act authorizes HISA to impose fees on "covered persons" to collect the cost of the anti-doping and racetrack safety programs. "Covered persons" is defined to include all trainers, owners, breeders, jockeys, racetracks, veterinarians, persons licensed by a State racing commission.

She explained that HISA has the authority to require that each State's horse racing industry fund the State's proportionate share of the horseracing anti-doping and medication control program and the racetrack safety program for the next calendar year and to pay the State's proportionate share of any loan.

The Executive Director noted that the Act provides that a State racing commission may elect to collect HISA's fees from that State's racing industry and remit the fees to HISA. A State



racing commission that decides to do so must notify HISA of this decision by May 1, 2022. The Act requires that if a State racing commission elects to collect HISA's fees, the commission shall determine the method by which the requisite fees shall be allocated, assessed, and collected pursuant to the applicable laws, regulations, and contracts of the State.

Executive Director Nason explained that currently, no New Jersey statute, rule or contract addresses how the Commission would allocate, assess and collect fees from racing licensees. Therefore, the Commission would have to propose and adopt rules detailing how fees would be assessed to and collected from "covered persons." She informed the Commissioners that the rulemaking process, which typically takes longer than a year to complete, could not be accomplished prior to July 1, 2022.

The Executive Director indicated that NJRC staff do not recommend that the Commission elect to collect HISA's fees.

Commissioner Keegan made a motion that the Commission does not elect to collect HISA's fees. Chairman Clyne seconded the motion and all of the Commissioners voted yes.

#### CONSIDER RATIFICATION OF THE APPROVAL GRANTED TO FREEHOLD RACEWAY TO CANCEL RACING ON FEBRUARY 5, 2022 DUE TO UNSAFE TRACK CONDITIONS

Executive Director Nason stated that on February 5, 2022, General Manager Howard Bruno submitted a letter requesting approval of the cancellation of racing at Freehold Raceway due to the drivers' concerns of unsafe track conditions. Unseasonably warm temperatures on February 4, 2022, which caused the track to thaw, resulted in unsafe racing conditions on February 5, 2022. The Executive Director approved the cancellation of racing subject to the Commission's ratification.

Chairman Clyne made a motion to ratify the approval granted to Freehold Raceway to cancel racing due to unsafe track conditions. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

Executive Director Nason indicated that Part A of the formal agenda had been concluded and stated Part B contains items for discussion and information.

#### ITEMS FOR DISCUSSION AND INFORMATION

Executive Director Nason indicated that the Commission now uses Industrial Laboratories, which compiles data differently than the prior lab. For example, instead of reporting the number of tests performed on all samples, Industrial reports the number of samples tested. She stated as a result, the testing numbers for 2021 may appear lower than the testing numbers the Commission has reported for prior years. To give a meaningful comparison, NJRC staff went back and also calculated the number of samples tested in 2020.

The Executive Director reported that in 2021, the Commission tested 12,996 standardbred blood and urine samples, which resulted in 51 positives. In 2020, the Commission tested 11,981 blood and urine samples, which resulted in 38 positives. In 2021, the Commission tested 2,655 thoroughbred blood and urine samples which resulted in 17 positives. In 2020, the Commission tested 2,151 blood and urine samples which resulted in 8 positives. She reported in total, in 2021, the Commission tested 15,651 samples which resulted in 68 positives. In 2020, the Commission tested 11,981 samples which resulted in 46 positives. Lastly, regarding human testing, the Commission tested 74 samples in 2021 and there were no positives. This compares to 102 samples tested in 2020 with 2 positives.

The Executive Director acknowledged receipt of the audited financial statements of the SBOANJ for the year ended December 31, 2021.

Executive Director Nason announced that the Commission will be returning to in-person public meetings starting on Wednesday, May 18, 2022. The Commission will be asking Monmouth Park to host the May meeting.

Executive Director Nason then opened the telephone meeting to the public for any questions or comments.

General Manager and COO Jason Settlemoir thanked the Executive Director, Commissioners and staff for their prompt response to blizzard cancellations and weather related issues. Mr. Settlemoir also wanted to acknowledge and thank the NJRC for their work and dedication.

Executive Director Nason expressed her appreciation of Mr. Settlemoir and his staff for their professionalism and excellent work.

Mr. John Campbell asked what protocols HISA would use to collect money for drug testing.

Executive Director Nason responded that the federal law requires HISA to determine how they will collect fees within the parameters allowed in the Act.

Mr. Campbell asked if funding for drug testing will come from the State or the racetracks.

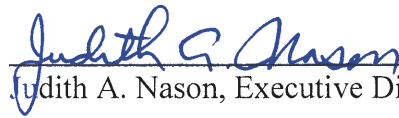
Executive Director Nason explained that State law allows the NJRC to assess the permit holders for racing costs. The Act allows HISA to collect its fees from racing licensees. The NJRC will not be able to bill the racing industry for drug testing costs if pre-empted by HISA.

Mr. Campbell thanked the Executive Director for her response.

Executive Director Nason asked if anyone had any other new business to discuss. Hearing none, she thanked everyone for attending the meeting and stated she looked forward to returning to in-person meetings in May.

Commissioner Keegan made a motion to adjourn the meeting. Commissioner Arnone seconded the motion and it was approved unanimously.

ATTEST:

  
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Judith A. Nason, Executive Director