MAINE STATE HARNESS RACING COMMISSION
MINUTES OF MEETING
MAY 19, 2017

Gambling Control Board Conference Room
Department of Public Safety
45 Commerce Drive, Augusta, Maine

Commission Members Present: William Varney, Chair, William McFarland, Gary Reed, and Michael Graham

Commission Members Absent: Alexander Willette

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Miles Greenleaf, Jaime Wood, Jennifer Flint, Dennis May, Ralph Canney and Zachary Matzkin

1. **Call the Meeting to Order and Introductions:** William Varney, Chair

2. **Review and Approval of Minutes**

   Commissioner McFarland made a motion to approve the minutes of March 30, 2017 as printed.
   Commissioner Graham seconded. Vote 3-0.

   Commissioner McFarland made a motion to approve the minutes of April 21, 2017 as printed.
   Commissioner Graham seconded. Vote 4-0.

**Review and Approval of Decision and Orders**

   Commissioner Graham made a motion to approve complaint number 2016 MSHRC 29 for Mitchell Cushing.
   Commissioner McFarland seconded. Vote 3-0.

   Commissioner McFarland made a motion to approve complaint number 2016 MSHRC 30 for Mitchell Cushing.
   Commissioner Graham seconded. Vote 3-0.

   Commissioner McFarland made a motion to approve complaint number 2016 MSHRC 32 for Ronald Cushing.
   Commissioner Graham seconded. Vote 3-0.

   Commissioner Graham made a motion to approve complaint number 2016 MSHRC 33 for Robert Lamarre.
   Commissioner McFarland seconded. Vote 3-0.

   AAG, Guay stated that on review of the Decision and Order for Scott Niles one of the Commissioners noticed that the decision that you made and the decision that was appealed pertained to driving violations; and it was also noted that Mr. Niles was not a driver. AAG, Guay stated that he did not detect that. One of the elements for the violation is that the person committing the violation would have to be a driver. He looked at the record, and the written testimony, and evidence provided did not specify that Mr. Niles was a driver. He stated to the Commissioners that they have 3 options in regard to Mr. Niles appeal. The first option would be that you can approve the decision and order as written. Option 2, you could have a reconsideration and the state could reopen the hearing in June. Option 3, you could withdraw the complaint. Mr. Jennings stated that he is ok with the options as stated by AAG, Guay. Commissioners Graham and McFarland agree that Mr. Niles deserves the fine and would like to reschedule Mr. Niles to come back. AAG, Guay stated that the Notice of Hearing was setup as the wrong chapter and the state would have to prove that Mr. Niles was licensed as a driver. After a brief discussion, the Commissioners decided to withdraw the complaint.

3. **Sire Stakes Base Purse Recommendation**

   Wendy Ireland and Diann Perkins were present and represented the Maine Standardbred Breeders and Owners Association. Ms. Ireland explained the handout sheet to the Commission. The Association recommends that the base purse for the sire stake races be $8,800.00. Commissioner McFarland made a motion to approve the base purse for 2017 of $8,800.00, and to also have finals for 3 year olds set at $70,000.00 and finals for the 2 year olds set at $50,000.00; and any additional monies that may be left at the end of the season may be added to the 3 year old finals, and if there is available funds and enough other horses that there would be a consolation final that would be
$12,000.00. Commissioner Reed seconded. Vote 3-0. Commissioner Graham abstained from the voting.

4. Appeal of Presiding Judge Decision:

a. RE: William DuBois, Complaint Number 2016 MSHRC 14. Mr. DuBois is appealing the July 7, 2016 decision of Presiding Judge Ed Kelleher in which Judge Kelleher assessed a $500 fine for failing to submit his horse “When In Doubt” to the testing barn before leaving the paddock. William DuBois was present and representing himself. AAG, Guay opened up the hearing and gave Mr. DuBois his oath. AAG, Guay qualified the Commissioners. He asked questions of Wil DuBois. Mr. DuBois made a motion to dismiss the case against him. AAG, Guay asked William DuBois if he had an objection about this hearing. Mr. DuBois asked if he could file a motion to dismiss too. AAG, Guay stated as he recalls the facts really weren’t in dispute so is that a fair representation of what happened on the day of. Mr. Jennings stated that he believes that is an accurate assessment. It was really the penalty and who was penalized. AAG, Guay asked both licensees and Mr. Jennings “who was the trainer of record?” They all agreed that William A. DuBois was the trainer of record of the horse “When In Doubt”. AAG, Guay stated to Mr. Jennings that he would have to make a legal argument, and what section would he use. Mr. Jennings stated that he would use Chapter 7, Section 46 Duties of Trainer. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer License Application; Exhibit 3, Race Program; Exhibit 4, MSHRC Judges , and Exhibit 5, Appeal Form. AAG, Guay admitted the exhibits with no objection to either party. AAG, Guay stated that under Chapter 7, Section 46.3.F which says “The duties and responsibilities of a trainer shall include, but not be limited to, the following: The trainer shall be responsible for submitting any horse under his or her care to any pre- or post-race urine, blood, saliva or feces test, when such a test is required.” Mr. Jennings stated that even though William DuBois was not present as the trainer; he was still the trainer of record on paper. AAG, Guay stated to the licensees that the state’s position is if the trainer of record calls the judge and says this other person is going to be responsible for my horse on that day that doesn’t relieve the obligation of the trainer of record for the conduct of the person who’s been designated to be responsible for the horse that day. He asked the licensees if they had any argument about that legally. Wil DuBois stated no. It just means that they are informing the judges that the trainer of record will not be there and someone else would be. AAG, Guay asked William DuBois if he had any arguments he wanted to make about being held responsible for the action of Wil when he designates him as the responsible person under the rule. Do you have any arguments about that? William DuBois stated no. AAG, Guay asked if he accepts that’s the way it should work. William DuBois stated yes; it’s the trainer responsibility rule. He is not disputing that he is the trainer of record. AAG, Guay asked Mr. Jennings why he is keeping Wil DuBois in here. Mr. Jennings stated that he would like to move to dismiss the case against Wil DuBois. AAG, Guay granted the motion to dismiss the case against Wil DuBois. AAG, Guay stated that William DuBois didn’t stipulate because he wasn’t there. He stated to Mr. Jennings that he needs to call a witness. Mr. Jennings called Jennifer Flint. AAG, Guay gave Ms. Flint her oath. Mr. Jennings asked questions to Ms. Flint. Ms. Flint testified. AAG, Guay asked Mr. DuBois if he had any witnesses to present facts of what happened that day. Mr. DuBois stated no. AAG, Guay asked Mr. DuBois if he agrees that the horse left the paddock and went to the stable and that the horse did not report to the drug testing area. William DuBois stated yes. He also doesn’t agree to the amount of the fine. Mr. Jennings stated that this would be under Chapter 17, Section 5 a Level 1 penalty. AAG, Guay closed the hearing for deliberations. Commissioner Varney stated that the fine is not to exceed $500.00 and a minimum of $250.00. Commissioner Graham agreed with Commissioner Varney. Commissioner McFarland stated that the horse was tagged and he should have stayed. Commissioner Graham made a motion to uphold the judge’s decision. Commissioner McFarland seconded. Vote 4-0.
b. **RE: Edward Fournier, Complaint Number 2017 MSHRC 1.** Mr. Fournier is appealing the April 29, 2017 decision of Presiding Judge Ed Kelleher regarding the 8th race at Scarborough Downs in which Mr. Fournier protested for being drawn in unfairly. Edward Fournier was present and represented himself. AAG, Guay gave Mr. Fournier his oath. He also qualified the Commissioners. AAG, Guay stated that this is a de novo hearing and the Commissioners will make a decision based on what they hear today. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer/Owner License Application; Exhibit 3, Race Program; Exhibit 4, MSHRC Protest Form; Exhibit 5, Witness List of Judges Hearing; Exhibit 6, Judge’s Decision; Exhibit 7, Appeal Form, and Exhibit 8, Chapter 7, Section 3. AAG, Guay admitted the exhibits without objection. He stated that the Commission is going to need to decide if there were grounds for the judge’s decision and the judge ruled on a protest about the draw. Mr. Jennings called David Sawyer. AAG, Guay gave Mr. Sawyer his oath. Mr. Jennings asked questions to Mr. Sawyer. Mr. Sawyer explained the process of how he drew the race. AAG, Guay asked questions to Mr. Sawyer. Mr. Jennings called Ed Kelleher. AAG, Guay gave Mr. Kelleher his oath. Mr. Jennings asked questions to Mr. Kelleher. Mr. Kelleher stated that all the horses in that race were eligible for the class. AAG, Guay asked questions to Mr. Kelleher. Mr. Jennings called Charles Malia. AAG, Guay gave Mr. Malia his oath. Mr. Jennings asked questions to Mr. Malia. Mr. Malia stated that his job at the draw is to take the declarations all of which have been declared eligible at that time by the race secretary, and almost always now with the horse shortage races are drawn by lots such as inside outside. He does not have authority over the race secretary. There were two draws for that race. Mr. Fournier stated that his horse should have been in the first half of the race. AAG, Guay closed the hearing for deliberations. Commissioner Graham disagreed with Mr. Sawyer decision but understood how he did the draw. Commissioner McFarland agreed with Commissioner Graham. Commissioner Varney agreed with the judge’s decision. He also agrees with Mr. Fournier that the draw stinks and he hopes in the future the draw could be done a little better. AAG, Guay stated to the Commissioners that you are going to deny the appeal but as part of his opinion that you are going to say you are going to find that the way the draw was done is not how it should occur in the future. Commissioner Graham made a motion to deny the appeal with one stipulation that the race secretary will be a little bit more cautious. Commissioner McFarland seconded. Vote 4-0.

5. **Adjudicatory Hearings:**
AAG, Guay stated that he issued an order where Nicholas Diflorio’s hearing was going to be today, but his understanding from Mr. Jennings is that Mr. Diflorio is making payments. Mr. Jennings is seeking another continuation but not a dismissal. AAG, Guay stated that in the matter of Nicholas Diflorio complaint number 2015 MSHRC 082 there has been a request for further continuance of this case based on a payment arrangement that is currently being met, but is not ready for final dismissal because it has not been completely met. Motion is granted until the regular meeting in August.

AAG, Guay stated that this is the matter of Scott Niles complaint number 2016 MSHRC 28. This proceeding was fully adjudicated through deliberations and a decision that hearing occurred on April 21, 2017. The result of the hearing was that Mr. Niles appeal was denied on the bases of a finding of fact that he had provoked a confrontation. Subsequence to drafting the decision and order, one of the Commissioners had found that Mr. Niles had been cited for a rule that is a driving violation. After review of the record, there was no evidence introduced that Mr. Niles was a driver. AAG, Guay stated that the state would not be able to prove that Mr. Niles was a driver. Mr. Jennings made a motion to dismiss the case. AAG, Guay stated that based on the unopposed motion to dismiss the appeal; his appeal will be granted. AAG, Guay stated that he will issue an order reflecting that.
a. **RE: Stanley Whittemore, Complaint Number 2016 MSHRC 26.** Mr. Whittemore is alleged to have violated MSHRC Rules Chapter 11. Mr. Whittemore is the trainer of record for the horse “Daniel Semalu”. A blood sample obtained from Daniel Semalu following the seventh race at Bangor Raceway on October 17, 2016 disclosed the presence of Cobalt. Stanley Whittemore was present and represented himself. AAG, Guay opened up the hearing. He gave Mr. Whittemore his oath. AAG, Guay qualified the Commissioners. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Owner/Driver/Trainer’s License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Certificate of Analysis Report; Exhibit 8, Split Sample Report, and Exhibit 9, ARCI Guidelines. AAG, Guay admitted the exhibits with no objection from Mr. Whittemore. AAG, Guay asked Mr. Whittemore if he admits to the violation of the trainer responsibility rule based on the presence of Cobalt in the horse on that race day. Mr. Whittemore stated yes. AAG, Guay stated that they will move to the penalty phase. Mr. Jennings recommended in Chapter 17 for a minimum penalty as a Class B violation for a 1st offense is a 15 day suspension, $500 fine, and loss of purse. Mr. Whittemore stated that he did not give his horse Cobalt knowingly. AAG, Guay closed the hearing for deliberations. Commissioner Graham stated that they don’t have much choice as far as loss of purse. Commissioner McFarland stated that the rules are in place, and the current Class B penalty that you would fall under is a minimum of a 15 day suspension, a minimum of $500 fine absent mitigating circumstances, and the loss of purse. We don’t have a whole lot of choice. Commissioner Reed stated that he agrees with the other Commissioners that the minimum needs to be applied. Commissioner Varney asked for a motion. Commissioner Graham made a motion to a fine Mr. Whittemore the minimum standards of a $500 fine, 15 day suspension, and loss of purse to be paid back in 30 days. Commissioner Reed seconded. Vote 4-0.

b. **RE: Gerald Laughlin, Complaint Numbers 2016 MSHRC 22 & 23.** Mr. Laughlin did not return his purse of $480.00 from July 16, 2016 at the Oxford Fair or his purse of $2,500.00 from July 23, 2016 at the Farmington Fair. He was instructed to do so per the Purse Repayment Required letter which requested they be returned by April 27, 2017. Gerald Laughlin was not present. AAG, Guay asked Mr. Greenleaf if Mr. Laughlin actually received the notice of hearing. Mr. Greenleaf stated that he spoke to Mr. Laughlin on the phone and Mr. Laughlin said that he was out of the state and would try to make it. AAG, Guay asked Mr. Jennings if he wanted to proceed today and not a continuance. Mr. Jennings stated yes to proceed with the hearing. AAG, Guay opened the hearing and qualified the Commissioners. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Decision and Order; Exhibit 3, Race Programs; Exhibit 4, Letter Regarding Purse Return; and Exhibit 5, 2016 Owner/Limited Trainer’s Application. AAG, Guay reviewed the exhibits and admitted them. Mr. Jennings stated that Exhibit 4, Letter for Repayment of Purse given a deadline. The purses have not been returned. Mr. Laughlin has not applied for a 2017 license. AAG, Guay asked Mr. Jennings if he has personal knowledge if purses are paid. Mr. Jennings stated that he receives an email from Carol Gauthier once a purse has been paid. Mr. Jennings called Ms. Gauthier. AAG, Guay gave Ms. Gauthier her oath. Mr. Jennings asked Ms. Gauthier if the purse repayment has been received from Mr. Laughlin. Ms. Gauthier stated no it has not. AAG, Guay asked Ms. Gauthier if she is typically the person who would receive the purse repayments. Ms. Gauthier stated yes. AAG, Guay asked Mr. Jennings what he would like the Commissioners to do. Mr. Jennings stated that he wasn’t 100% certain what the most effective action is. AAG, Guay asked Mr. Jennings if Mr. Laughlin is licensed in other jurisdictions. Mr. Greenleaf stated that he doesn’t know if Mr. Laughlin is licensed but he is a co-owner of another horse that is racing outside of the state. AAG, Guay stated that if there is a
violation, other jurisdictions would follow. Commissioner Varney asked what they could do that would suspend his license in other states. Mr. Greenleaf stated that they can inform the USTA that he has failed to return purses and they can indefinitely suspend his license until purses have been returned. Mr. Jackson stated that he would recommend to the Commission to suspend Mr. Laughlin’s 2016 license because that is when the violation occurred, and notify the USTA and other jurisdictions if they have reciprocity they will do the same thing. If Mr. Laughlin’s license is under suspension then he cannot get licensed in 2017.

Commissioner Graham made a motion to suspend Mr. Laughlin’s 2016 license until the purses have been paid and notify the USTA of this action. Commissioner Reed seconded. Vote 4-0.

c.  **RE: Jason Vafiades, Complaint Numbers 2015 MSHRC 028, 043, 044 & 047.** Mr. Vafiades did not return his purse of $1,500.00 from March 29, 2015, his purse of $1,500.00 from April 26, 2015, his purse of $750.00 from April 26, 2015, or his purse of $1,500.00 from May 3, 2015 at Scarborough Downs. He was instructed to do so per the Purse Repayment Required letter which requested they be returned by April 21, 2017. Mr. Jennings made a motion for dismissal. AAG, Guay stated that the department has made a motion to dismiss the case for mootness. Mootness being that the purses have been returned. AAG, Guay will issue an order reflecting that.

d.  **Chris Shambo, Complaint Numbers 2015 MSHRC 044 & 047.** Mr. Shambo, co-owner with Mr. Vafiades, did not return his purse of $750.00 from April 26, 2015 or his purse of $1,500.00 from May 3, 2015 at Scarborough Downs. He was instructed to do so per the Purse Repayment Required letter which requested they be returned by April 21, 2017. Mr. Jennings made a motion for dismissal. AAG, Guay stated that the department has made a motion to dismiss the case for mootness because the purses have been returned. He will issue an order reflecting that.

6.  **Motion of Reconsideration regarding Decision and Order for Steven Vafiades, Complaint Numbers 2015 MSHRC 027, 028, 029, 030, 031, 032, 041, 042, 043, 044, 045, 046, 047, 048 and 049.**

AAG, Guay stated that the motion to reconsider Steven Vafiades decision and order through his attorney has been withdrawn. This motion is dead.

7.  **Other business:**

Letter from Oxford Fair concerning suspension of its 2017 Race Dates
Commissioner Varney stated that we would discuss the letter from Oxford Fair. Henry Jackson representing Oxford Fair addressed the Commission on behalf of Jackie Young, President of Oxford Fair. He stated that the letter was forwarded to the Commission indicating that Oxford Fair was not going to honor the license and awarding of their race dates for 2017. The fair was hoping to negotiate an opportunity to raise additional funds that would defray the expenses incurred. Unfortunately, they have not been able to do that to date. The Oxford Fair will not honor their race dates that were awarded. AAG, Guay stated that he thinks the proper venue would be a request to reopen the race date hearing. He doesn’t think that the association can just give up its race dates. After a brief discussion, Mr. Jackson stated that he would have Oxford Fair send a letter requesting to reopen the race date hearing for the purpose to withdraw their license and race dates. AAG, Guay stated that was fine, and you have made the request today. Commissioner Graham made a motion to reopen the race date hearings at our next meeting, and also send a letter to all racing venues in the state that these dates are open and would anybody like them. Commissioner Reed seconded. Vote 4-0.
Discussion of possible amendments to Chapter 17 relating to suspending horses until the purse is paid
Commissioner Varney stated that they would discuss Chapter 17. Mr. Jennings stated that this was discussed at one of our earlier meetings. He also stated that it would be better to do a serial amendment. The issue that was identified is if you suspend a horse until the purse is repaid what happens if that horse is sold or claimed. As staff talked it over in-house, it seems like that issue just carved out an exception for that circumstance, and the licensees will use another mechanism for purse return. AAG, Guay asked if the department approves ownership changes, and what if they transfer the horse to their wife? Commissioner Varney stated the concern more is if it’s done before the test comes back. Mr. Jennings stated yes. If the Commissioners agree on that we can go forward. Commissioner Graham stated that we should wait and do a group at a time.
Commissioner Varney asked for Mr. Jennings to bring a list of rules that we are considering changing.

Discussion of how the Commission interprets/implements suspension days
Mr. Jennings stated that the question he wanted to bring back was the interpretation of what it means to be suspended. Some people talk about race days. He noted last year that there was a delay to the hearings. AAG, Guay stated to Mr. Jennings that there were seven cases now that you can put a notice out, and if they don’t show up you control having the hearing. Mr. Jennings stated that there are other pieces that play too. AAG, Guay stated that if someone has a 90 day suspension and there are only 40 race days left you’d say 90 days during scheduled race meets in the State of Maine or because if your thought is 40 days this year and 50 days next year you’d have to split it. Typically they are all consecutive now. Commissioner Varney stated that if we suspend someone for 90 days we can see how many days we have at the end of the year, and take it as each individual case. Mr. Jennings asked for guidance. He says they typically contact the licensee and say are you available for this meeting because we need to have a hearing. That is where it is falling apart.
Commissioner Varney stated that you should not do that. Just send notification. Mr. Jennings stated that he would ask AAG, Guay. AAG, Guay stated that if there is good reason he would grant a stay but typically he doesn’t.

8. Public Comment
Commissioner Varney asked for public comment.
Richard Shiers stated that he is an advocate of taking the horse down as soon as there is notice of a positive test. He stated that taking the horse down has more clout than anything we can do.
Commissioner Varney stated that the person still has a right to a hearing. AAG, Guay stated that there are times when the lab does mess up. The former executive director stated that something doesn’t make sense here, and upon further investigation believe it or not the lab had messed up. There were a whole series of people who were unfairly tagged as so called violators. AAG, Guay also stated that the Commission has done a really good job of getting these purses paid back. Mr. Shiers stated that when some of these people were owed money back from 2015. Mr. Jennings stated that remember those cases were stayed. AAG, Guay stated that there was a superior judge that ordered that we not do anything. The lawyers convinced the judge on their first shot that we might have been wrong. Ultimately, we won and then the judge lifted the stay, but that’s why some of these dates are as old as they are. Commissioner Varney stated that he thinks it would be unfair when the test comes back to suspend the horse without a hearing.

Michael Timmons addressed the Commission. He stated based on being at Cumberland Fair since 1952 since he was a kid until now, and seeing what has happened in the industry and knowing what
we need to do. He thinks we are in the most critical times as it relates to Maine Agricultural Fairs and Maine harness racing as any time he can remember in history. He also stated Mr. Jennings addressed the Legislature regarding the annual report to the VLA in recognizing some of the problems and working on solutions. Mr. Timmons stated that Cumberland and Windsor both have horses stabled year round at their fair grounds that hold harness racing and an agricultural fair at the same time. When LD 1532 was passed through the AG Committee and Senate that’s only part of solving the problem. We need a solution to the horse population. He also stated that we need Scarborough Downs or a Scarborough Downs because if the ball drops and something happens there; we’re got a bigger crisis on our hands than we did before. Currently, they have 175 horses stabled there and if Cumberland lost harness racing, they would lose three or four hundred thousand dollars of income completely. He stated that there are five or six fairs that have been having a problem with harness racing for the past two years, and they have joined together to come up with funds in order for these fairs to keep going. Mr. Timmons stated that Scarborough and Bangor should not go head to head ever. Two venues cannot compete when you don’t have enough horses for one. We need to work together.

Wendy Ireland addressed the Commission. She stated that we are racing too many days. She also stated that when we issue dates to the agricultural fairs, we shouldn’t be racing seven straight days continuously throughout the summer every day. There is a shortage of horses and this is a country wide problem.

Henry Jackson addressed the Commission. He agrees with Ms. Ireland and has for many years. Every year when we had race date assignment hearings, he would recommend to the Commission fewer days and fewer dashes. He thinks the statute needs to be changed so that they can operate with 8 dashes and not have to go 10. When you have two tracks going at the same time, you need to take a hard look at the number of days that your horse supply will take care of. If Oxford does give up their days through the hearing process, they have no problem for anybody picking up those days. All they would ask is if they did reapply that you would consider that for 2018. The reason being is Oxford can no longer lose the amount of money they have every year, and then continue to operate an agricultural fair. They have enjoyed doing it for the number of years they have. Commissioner Varney asked how many horses are going to Plainridge. Mr. Greenleaf stated 50 to 80 horses a week. Commissioner McFarland stated that it’s about the purses. Mr. Greenleaf stated that Maine people aren’t helping Maine racing.

9. **Schedule of Future Meetings:**
   June 23, 2017
   July 21, 2017
   August 18, 2017

10. **Adjourn**
    1:00 p.m.