
Alan G. Hevesi
COMPTROLLER



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OFFICE OF THE
NEW YORK STATE COMPTROLLER

DIVISION OF STATE SERVICES

**RACING AND WAGERING
BOARD**

**HORSE RACING
ENFORCEMENT
ACTIVITIES**

Report 2004-S-62

AUDIT OBJECTIVE

Our objective was to determine whether the New York State Racing and Wagering Board (RWB) carries out certain licensure, identification, and regulatory activities consistent with the rules and regulations established by RWB.

AUDIT RESULTS - SUMMARY

We found that RWB needs to improve certain enforcement activities to help ensure compliance with its rules and regulations and to ensure the integrity of horse racing.

- Our audit disclosed that RWB does not assess penalties, such as fines and suspensions, for repeat violators on a consistent basis among racetracks. In addition, fines for repeat offenses are not escalated based on the number of offenses. RWB should implement a policy to guide RWB officials when assessing penalties, especially with respect to repeat violators, which could help deter repeat offenses. [Pages 3-6]
- We found that not all racetracks enforce the requirement to issue track badges and have people wear them to enter certain restricted areas. In fact, two racetracks did not have a badge identification system. It is important to maintain strict controls over access to certain areas of the track to prevent unauthorized access to the horses. [Pages 6-7]
- In addition, RWB does not have an effective system to ensure fines are

paid when required. We also noted that licensees were allowed to pay their fines in installments, a practice not authorized by the Board. Regulatory decisions concerning appeals of penalties are not always posted to RWB's computerized licensing system, which creates the risk that individuals could participate in horse racing when they should not. We also found that RWB does not ensure that applicants have the required identification, such as a valid social security number, which is important to ascertain an applicant's true identity. Furthermore, RWB's computer controls do not fully comply with New York State policy, and RWB does not have an adequate system to properly account for fines and license fees. [Pages 7-12]

Our report contains 16 recommendations designed to improve certain enforcement activities. RWB officials generally agreed with our recommendations and indicated actions either already taken or planned to implement them.

This report, dated November 30, 2006, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or
Office of the State Comptroller
Division of State Services
State Audit Bureau
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

RWB regulates all legalized gambling activities in New York State, except those regulated by the State Lottery. The State Legislature established RWB in 1973 to combine the functions of the various racing commissions existing at that time and thus provide for centralized authority. A three-member governing Board oversees RWB activities; at the time of our audit, one seat had been vacant since 2001.

Pursuant to Article I of the Racing, Pari-Mutuel Wagering and Breeding Law (Law), the Board was given “general jurisdiction over all horse racing activities and all pari-mutuel betting activities, both on-track and off-track, in the state and over the corporations, associations, and persons engaged therein.”

Article II of the Law governs thoroughbred racing and breeding in New York State and Article III governs harness racing. RWB supervises seven privately-owned harness tracks (Batavia Downs, Buffalo Raceway, Monticello Raceway, Saratoga Harness, Syracuse Mile, Vernon Downs and Yonkers Raceway). RWB also supervises four thoroughbred tracks. One track (Finger Lakes) is privately owned, and the other three (Saratoga, Aqueduct and Belmont) are operated by the New York Racing Association under a franchise agreement with the State.

Participants in New York State horse racing, such as horse owners, trainers and jockeys, are required to have an occupational license from RWB before they may participate in racing activities unless exempted from this requirement by RWB or Law. RWB reviews license applications to determine whether the participants have good character and integrity. Applicants must have a valid U.S. social security number, Canadian social security

number, or U.S. tax identification number to receive a valid license. Applicants are also required to submit fingerprints for background checks. In addition, each track is required to have a badge system whereby only persons with identification badges may enter restricted areas of the track.

Each race conducted at a New York State thoroughbred racetrack must be supervised by at least three stewards: one employed by RWB, one employed by the racetrack and one employed by the Jockey Club. At the harness tracks, each race must be supervised by at least three judges, all of whom work for RWB. The stewards and judges view each race from a stand located near the finish line; the viewing stand has several television monitors to permit viewing each race at multiple angles. The stewards and judges observe the races to ensure they are fairly run in accordance with established rules and regulations. Common racing regulatory violations include whipping and other mistreatment of horses, interference during a race, and illegally drugging horses.

RWB has a computerized licensing system (system) that should include information on all licensees, including all of their racing-related violations, together with the applicable penalties, such as fines and suspensions. The system was designed to enable RWB to identify and track expired licenses, note all penalties issued to an individual licensee (rulings), account for payment of license fees and fines, spot unpaid fines, and identify chronic regulatory offenders. Each track has computer terminals for RWB employees to access the licensing system to determine (1) whether a person is currently licensed and (2) the history of their fines and suspensions. In addition, the Board is developing a web-based application known as DESTINY (Data Entry System for Tracks in New York State) which, according to RWB officials, will centralize fine, suspension and other information to

improve their capabilities in monitoring enforcement issues.

RWB's annual report showed there were at least 1,000 identified violations issued by RWB Main Office and the racetracks during each of calendar years 2002, 2003 and 2004. These violations include, but are not limited to driving and riding infractions, general conduct, general business practices, and human and equine drugging. We noted that most of the violations were for equine drugging. The number issued by each are indicated in the following table:

Violations Issued	2002	2003	2004
RWB Main Office	234	5	271
New York Racing Association (Saratoga, Aqueduct and Belmont Racetracks)	61	200	76
Yonkers Raceway	194	234	130
Syracuse Mile	2	0	0
Monticello Raceway	229	188	213
Saratoga Harness	49	109	169
Buffalo Raceway	68	82	103
Vernon Downs	57	82	41
Batavia Downs	44	76	3
Finger Lakes Racetrack	62	71	96
Total	1,000	1,047	1,102

RWB appropriations totaled \$19.5 million for fiscal year 2003-04. For the 2004-05 fiscal year, RWB was authorized to spend \$21.7 million for its operations. Of this amount, \$12 million was for staff and related activities dealing with horse racing regulatory enforcement activities such as: processing racing licenses; holding legal hearings to suspend or fine violators of racing regulations; and testing race horses for prohibited drugs.

RWB has about 135 full-time employees and 165 per diem employees. Of these employees, 38 work at the thoroughbred tracks as stewards, assistant stewards, investigators, racing license investigators, supervising race investigators, and assistant supervising racing veterinarian inspectors (who take horse urine samples for testing). At the harness tracks, 171 RWB employees work as presiding judges, starters, associate judges, associate presiding judges, investigators, recording judges, patrol judges, paddock judges and supervising race veterinarian inspectors.

Legislation was passed in 2003 to allow RWB to assess a stated percentage of betting handle at the racetracks so that the racing industry would pay for its regulatory activities. However, this assessment was not sufficient to pay for all of RWB's related cost; there was a shortfall of \$2,425,037 for the 2003-04 fiscal year and \$683,792 for fiscal year 2004-05. RWB's 2005-06 budget approved an increase in the regulatory fee to help finance its full cost of regulating the horse racing industry in New York State.

AUDIT FINDINGS AND RECOMMENDATIONS

Penalties for Repeat Violators

RWB's licensing system includes information on all licensees, including their history of violations. RWB officials at each track have access to these records, which provides them with important information in determining what penalty they should assess if a person violates racing rules and regulations, especially for repeat violators. Raising the penalties for multiple violations could be an incentive for violators to comply with racing rules and regulations.

RWB officials stated that judges and stewards are to use their judgment when determining whether to increase penalties as appropriate for multiple violations of the same rule. RWB officials added that racing officials should review the licensee's past history when assessing penalties. However, RWB has not developed a written policy that states penalties should be increased for multiple violations. Furthermore, RWB has not issued standards regarding how much the penalties should be (except for minimum and maximum penalties), particularly with regard to repeat offenders. Additionally, RWB does not monitor the penalties assessed to determine whether repeat violators have progressively higher penalties. We found variations in how racetracks handle repeat offenses.

We received a file from the RWB licensing system database which showed fines, suspensions, and other regulatory actions issued between January 1, 2002 and December 31, 2004. During this period, a total of 1,561 licensees received a total of 3,220 violations. We selected three separate samples of penalties from this database: licensees who had 20 or more violations for this three-year period (12 licensees), licensees who had between 10 and 19 violations for this three-year period (22 licensees), and licensees who had 10 or more violations in each of calendar years 2002, 2003 and 2004 (12 licensees). We selected these samples to identify the most chronic violators to see how racing officials penalized them. We reviewed the licensing system for these licensees to determine whether the penalties increased as the licensees were identified as being repeat violators of horse racing regulations.

We found that each track handles repeat violators differently with respect to the degree of penalty levied. There is no consistency among racetracks. While racing officials at

Buffalo Raceway and Batavia Downs had increased penalties to licensees who had repeated the same violation, there was no similar trend at the other racetracks. We noted instances where penalties had increased for repeat violators but were later reduced to previous levels after additional violations. We generally found the amount of the fine or the number of days suspended did not increase, despite numerous violations, including numerous occasions of the same violation. Additionally, we noted that the degree of penalty is not affected by the type of license a person holds; the penalties were similar for owners, trainers, drivers and grooms.

In our view, penalties should take into account the level of knowledge and responsibility the individual should possess regarding the racing rules and regulations. For example, an owner would be held to a higher level because they are responsible for their own actions as well as making sure their employees adhere to the rules and regulations. Accordingly, an owner is responsible for ensuring all employees are properly licensed. Such a process does not absolve the employee (e.g., groom), who would continue to be responsible for his/her own actions. However, the penalty would be less than an owner would be assessed for this violation.

We believe a progressive system of assessing penalties could be a valuable deterrent to prevent repeat violators and could improve the integrity of horse racing in New York State with more diligent oversight by RWB. However, RWB officials explained that nearly all violations involving penalties are based on "plea negotiations." The documents provided by RWB related to how fines and penalties are assessed do not provide for plea negotiations and policy needs to address when, and if, such practices are permissible. Although RWB stated "plea negotiations" are

a common occurrence, we did not find any evidence of plea negotiations documented in the licensing system for the individuals in our sample.

Recommendations

1. Implement and distribute to all central office and racetrack employees a written policy for:

- Issuing penalties, fines and suspensions;
- Increasing penalties for repeat violators;
- Using plea negotiations;
- Approving and documenting policy variances; and
- Monitoring policy compliance.

(In response to our draft report, RWB officials stated that they are working on developing procedures and standards for implementation of graduated penalties for racing. They also indicated the issue of installment payments was the practice at one thoroughbred track. The practice was immediately discontinued.)

2. Take steps to improve the accuracy and completeness of the information in the computer licensing system, including periodically testing the accuracy of the information.

(RWB officials agree and have partially implemented the recommendation. The existing data is checked for duplication when entering new fine information into the licensing database.)

Identification Badge System

State rules and regulations provide that thoroughbred and harness racing associations shall implement and maintain an identification system for persons entering the stable area of the track, which includes the backstretch and paddock areas. All persons present in the stable area shall wear their identification badges in plain view. No identification badge may be issued unless the recipient has a current RWB license. Strict controls should be maintained in the stable area because of the possibility of unauthorized access to the horses.

We found that two of the tracks visited (Monticello Raceway and Saratoga Harness) do not have a track badge identification system. RWB is aware of this but has not taken any action to correct the situation. In total, we visited four racetracks (Saratoga Harness, Finger Lakes, Aqueduct and Monticello Raceway) and randomly selected a total of 52 individuals to determine whether they had a valid track-issued identification badge, and if a badge identification system was not in place at the track, whether the individuals selected had a current license. Of the 52 individuals selected, five did not have appropriate identification. One of the five had an expired license while the other four had neither a badge nor a license on their person. We found no exceptions at Aqueduct.

We spoke to RWB track investigators at each of the four tracks we visited. The investigators told us they occasionally visit various track locations to check for track identification badges or licenses. However, there was inadequate documentation of such checks. Identification badge and license checks should be properly documented.

In addition, we spoke to track security personnel at the three tracks where we found exceptions and found these security personnel do not check for track identification badges or licenses before individuals enter the stable area. We asked security personnel to explain how such individuals were able to pass by them without showing their identification. Security personnel stated that they recognized them and allowed them to pass through. At Finger Lakes racetrack, we also observed that a security officer allowed a truck carrying several individuals to pass through the backstretch gate to the stable area without checking identification.

In addition, RWB's own testing confirmed the need for investigators and security personnel to do more identification checks. We were advised that RWB's licensing personnel compared 4,734 racing participants' track payroll records with the licensing system for seven locations. They found that 68 individuals were never licensed and 178 individuals had an expired license. RWB subsequently fined the owners of each of the racetracks \$100 for each violation.

Recommendations

3. Enforce the requirement that all tracks use a badge identification system and all people in the stable area display their badges.

(RWB officials replied they took immediate action and issued a policy directive on August 26, 2005 setting forth conditions and requirements for children and family members.)

4. Instruct track investigators to document their identification badge and license checks including, but not limited to date, location, employees checked and action taken for individuals not in compliance.

(RWB officials replied that the RWB Investigators always document activities regarding such checks in an Activity Log. However, they will expand the information in the entry to include the name of every person checked.)

5. Notify track security officers they are required to check for proper identification when racing participants enter the stable area.

(RWB officials replied that access to the backstretch is a serious matter, and that action will be taken to ensure security officers comply with the requirements.)

6. Periodically visit the racetracks to test licensing and identification practices at the facilities.

(RWB officials replied these visits have been made since the Director of Investigations assumed his responsibilities in 1995. As indicated in response to Recommendation number 4, these visits and checks will be fully documented.)

Unpaid Fines

RWB officials advised that if fines are imposed and not paid within 14 days, RWB procedures require that the licensee be suspended from horse racing in the State until the fine is paid in full. RWB rules and regulations also consider any fine assessed but not paid in 30 days as delinquent and requiring that a finance charge be added.

We reviewed RWB's licensing database and identified 26 different licensees in our initial sample who did not pay their fines in full within 14 days, but instead made installment payments until the fines were fully paid. RWB had not suspended the racing privileges of any of these licensees. For example, one

licensee was fined \$3,000 for “drugs in the post race sample of the horse” on June 16, 2004 and full payment was due June 30, 2004 (14 days after the infraction). This licensee only paid \$1,000 in total for this fine, but RWB did not suspend the licensee until April 7, 2005 (more than nine months later). Furthermore, we found that, while the RWB licensing database was designed to calculate finance charges, RWB did not always add finance charges to delinquent payments.

In addition, we examined the entire licensing system database to determine how many fines were not paid within the required 14 days. We found that 885, or more than 50 percent of 1,715 fine notices, were not paid within 14 days. In addition, 329 were paid beyond the 30-day period without being assessed a finance charge. These findings indicate the need for RWB to more closely monitor the collection of fines.

We also concluded that RWB needs controls, such as an automated system feature, to ensure that all licensees who do not pay fines on time are suspended until the fine is paid in full. Allowing licensees to avoid full payment of fines and not imposing the required suspension compromises RWB’s enforcement activities over the racing participants.

Recommendations

7. Use automated system controls to immediately suspend the racing privileges of individuals who do not pay their fines within the required time frame.

(RWB officials indicated that measures have been taken to improve enforcement in this regard.)

8. Monitor to ensure those whose licenses have been suspended do not participate in racing.

(RWB officials agree with the recommendation and have taken action to improve their monitoring efforts so that persons whose licenses have been suspended cannot participate in racing.)

9. Assess finance charges for delinquent payments.

(RWB officials agree and have assigned an employee to monitor all fine issuances and payments, to review all delinquent payments for applicable finance charges and to follow up if additional collection is required.)

Duplicate Fines and Suspensions

RWB does not have adequate controls to identify and prevent fines and suspensions from being entered on the licensing system multiple times. Inaccurate information reduces the effectiveness of the licensing system as a management tool.

We identified 58 individuals who had multiple penalties listed in the licensing system: 16 with a combination of fines and suspensions, and 42 with fines. Twenty-six of the 58 individuals were allowed to pay fines on an installment basis. Each time an installment payment was made, the full amount of the fine was re-entered on the licensing system as a new violation. This results in a distortion of the licensee’s history file as well as the financial information on the licensing system. In addition, the installment payment process is not authorized by the Board or its rules and regulations. The value of the original fines relating to these 58 individuals should have been \$59,225. However, the database showed that these 58 individuals accounted for 163 transactions valued at \$220,400. We noted that 105 of the transactions were duplicates, resulting in an overstatement of \$161,175.

(After considering the apparent duplicate postings to RWB's database for installment payments as well as for people paying multiple fines with one check, voided transactions and data entry errors, RWB officials advise us that the amount of actual duplicate payments is minimal.)

Auditor's Comment: RWB officials did not address the overstatement of fines assessed on the licensee's history and the information on the licensing system. These amounts are overstated and the exceptions in RWB's database should have been routinely identified and handled.

Recommendations

10. Stop the practice of allowing payments of fines on an installment basis unless the Board amends RWB rules and regulations to authorize this practice.

(RWB officials advised the installment payment process was immediately stopped upon receipt of the audit results.)

11. Develop and implement edit checks in the licensing system to preclude the duplicate entering of payment data.

(RWB officials agree and have taken corrective action.)

Board Decisions Not Reflected in the Licensing System

If licensees disagree with RWB's imposition of a penalty, they may request a hearing from the RWB Board. The final decision of the RWB Board on the hearing should be recorded in the licensing system so that final

decisions can be enforced, as applicable. We found several instances where Board decisions had not been posted to the licensing system.

We reviewed the results of appeals to the RWB Board to determine whether they were recorded in the licensing system and found that 7 of the 153 appeal decisions during our audit period, resulting in suspensions, were not recorded. Upon further investigation, we found that three of the seven licensees served the required suspension, but the licensing system did not show any racing suspension for them. The other four licensees had not served the required suspension; two of the licensees left racing before serving penalties, and the other two licensees were not suspended in a timely manner but instead were scheduled to serve when the 2005 racing season began (one of them should have been suspended in 2002).

We also found that, because racetracks do not always forward documentation that the suspensions were actually served, RWB has no assurance that the licensees complied with the appeal decisions.

Recommendation

12. Develop appropriate methods to enable RWB staff to monitor the RWB Board appeal decisions and to ensure all decisions are complied with and documented in the licensing system.

(RWB officials have taken corrective action. This includes a revision to the Adjudication database so that information recorded in that database will also go into the licensing database without redundant entry.)

Identification Numbers

RWB is responsible for licensing all participants in the racing industry in New York State. Applicants are required to have a valid U.S. social security number, Canadian social security number, or U.S. tax identification number. If they do not have one of these valid identifications, RWB assigns a temporary number until a valid identification is provided.

Social security numbers should be checked to ensure they are valid. Using VERIS, we tested 18,115 licensing records with an expiration date of April 7, 2005 or later, and found that 776 records had a potentially invalid U.S. social security number. It is important that valid identification numbers be provided in order to establish the correct identity of a potential licensee to protect the integrity of the horse racing industry.

RWB officials stated they never performed any validation of identification numbers, but acknowledged the need to do so in the future.

Recommendations

- 13. Investigate the licenses with possible invalid social security numbers.
- 14. As part of the licensing process, validate the authenticity of identification numbers.

(RWB officials agree in part with recommendations 13 and 14 stating that the social security number is used as a unique number to track an applicant in the database. Nevertheless, they will try to investigate the possible invalid social security numbers identified by the audit.)

Auditor's Comment: As indicated in our report applicants are required to have a valid U.S. social security number, Canadian social security number or U.S. tax identification number. Therefore, we believe RWB should check the U.S. social security numbers are valid.

IT System Controls

The New York State Office of Cyber Security and Critical Infrastructure Coordination established Cyber Security Policy P03-002 (Policy) on April 18, 2003 and amended it in 2005. The Policy is mandatory for Information Technology (IT) units at State entities. This Policy sets forth the minimum requirements, responsibilities and accepted behaviors to establish and maintain a secure environment and achieve the State's information security objectives. This Policy documents many of the security practices already in place in some State entities.

We evaluated controls over RWB's licensing system and identified a number of IT control weaknesses in violation of the Policy. During the audit, our detailed observations and recommendations were presented to RWB officials in a separate document.

Recommendation

- 15. Implement the IT control recommendations presented during the audit.

(RWB officials agree and have made good progress on their implementation.)

Controls over Receipts

RWB charges for licenses and assesses fines for violation of racing rules and regulations.

RWB's licensing system is used for recording all monies received.

We used the licensing system to select samples to test if RWB exercised appropriate accountability over the issuance of cash receipt forms. These samples were not intended to determine whether all fines were properly assessed, collected, deposited, and accounted for.

Most license fees and fines are collected at each respective racetrack, and RWB staff at each racetrack has access to terminals that are connected to the licensing system. When licensing fees or fines are paid, the licensing system generates a sequential number for the receipt. (One series of numbers is used for all of the racetracks in the State.) This number is a control number that is printed on the two-copy receipt. One copy of the receipt is given to the licensee and the other is retained by the Board. The licensing system will consider the transaction "invalid" if information is missing and "voided" if an error in preparation requires the transaction to be cancelled. All other transactions are considered "valid."

Our review of a computer list of RWB's receipt database on the licensing system for the period January 1, 2002 through December 6, 2004 showed there were 1,104 missing cash receipt numbers. We brought this to the attention of RWB officials, and they subsequently re-queried the database for the same period. The revised list showed 974 of the 1,104 missing receipt numbers. RWB has not been able to account for the remaining 130 missing receipt numbers. Despite repeated attempts to resolve this issue, RWB officials could not explain the difference. Each time we met, officials provided another reason for the condition, making each response less plausible. We reviewed the 974 recovered receipt numbers and found that 24 of these receipt numbers appeared valid. We

question the validity of the 950 remaining receipt numbers. Many of these receipts were incomplete because they lacked certain required information, such as the licensee's name, occupation, or both.

We selected a judgmental sample of 114 of the 950 recovered receipt numbers to test the validity. We found that 28 of these receipt numbers, with a recorded value of \$2,699 were not supported with documentation, such as a copy of the original cash receipt (as is RWB's usual practice). Upon further inquiry, RWB officials explained that these transactions may have resulted from an IT technician testing the receipts system. RWB officials advised us that they entered test data into the system for testing the receipts system. However, they could not support this explanation because RWB does not have a formal system's testing process or documentation thereof.

In another test, we tried to locate the licensing history record for a judgmental sample of 58 receipt numbers with no dollar value recorded and another 28 receipt numbers with \$2,965 in total recorded collections. We were unable to obtain a licensing history for any of them, thereby raising questions as to the authenticity of the transactions. The automated results for all 86 was "The file does not exist."

Based on our testing of issued receipts recorded in the licensing system, we concluded RWB does not have adequate accountability over cash receipts. We believe the problems we found in the receipt database occurred, in part, because RWB does not reconcile receipts issued to receipts recorded on the licensing system.

Recommendation

16. Develop a process to ensure the integrity of cash receipts. At a

minimum, reconcile all receipts issued to recorded receipts and account for all receipts not used.

(Officials agreed with this recommendation.)

AUDIT SCOPE AND METHODOLOGY

We conducted our performance audit in accordance with generally accepted government auditing standards. We audited RWB to determine whether it carries out certain licensure, identification, and regulatory activities consistent with the rules and regulations established by RWB for the period January 1, 2002 through December 31, 2004. To accomplish our objective, we met with RWB officials, interviewed employees, performed observations at harness tracks and thoroughbred tracks, and tested relevant documents. We also obtained a download of RWB's licensing database. Our audit report does not cover charitable gaming and Indian gaming (casinos). Indian gaming will be covered in a separate report.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally

accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

The audit was performed according to the State Comptroller's authority under Article V, Section 1, of the State Constitution; and Article II, Section 8, of the State Finance Law.

REPORTING REQUIREMENTS

We provided a draft copy of this report to RWB officials for their review and comment. RWB officials generally agreed with our recommendations and indicated actions either already taken or planned to implement them. Their comments were considered in preparing this final report. A complete copy of the RWB response is included as Appendix A.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chairman of the New York State Racing and Wagering Board shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include Carmen Maldonado, Gerald Tysiak, Roger C. Mazula, Marianne Boyer, Kenneth Ring, Bruce Brimmer, Christopher Morris, Amanda Strait and Paul Bachman.

APPENDIX A - AUDITEE RESPONSE

APR-30-2006 17:01

NYSRWB A I

P. 02/03



STATE OF NEW YORK RACING AND WAGERING BOARD

Chairwoman
Cheryl Ritohko-Buley

Members
Michael J. Hoblock, Jr.

Executive Director
John G. Cansdale

Secretary to the Board
Gail Pronti

May 1, 2006

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
Division of State Services
State Audit Bureau
123 William Street – 21st Floor
New York, New York 10038

Re: Racing and Wagering Board – Horse Racing Enforcement Activities
Draft Report 2004-S-62

Dear Ms. Maldonado,

Thank you for the opportunity to respond to your draft report. The Racing and Wagering Board's (Board) responses to the findings, recommendations, as well as comments to certain parts of the report are included herein.

Report Recommendations

1. *Implement and distribute to all central office and racetrack employees a written policy for:*

- *Issuing fines and penalties*
- *Increasing penalties for repeat violators*
- *Using plea negotiations*
- *Approving and documenting policy variances*
- *Monitoring policy compliance*

RWB Response: The Board agrees with part of the recommendation. The issue of installment payments of fines involved one thoroughbred track and the practice was immediately discontinued. Plea negotiations for installment payments of fines are thus no longer applicable. Staff has been working on developing procedures and standards for implementation of graduated penalties for racing. The Director of Investigations has been coordinating this effort and has obtained comments from Presiding Judges, Stewards and their respective staff, as well as from other appropriate staff regarding implementing a more structured graduated penalty system. Past rule violations have been reviewed and analyzed to identify the low, median and high fine/suspensions meted out. The next step in this process will be the development and drafting of new policy and procedures.

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<http://www.racing.state.ny.us>

2. *Take steps to improve the accuracy and completeness of the information in the computer licensing system, including periodically testing the accuracy of the information.*

RWB Response: The Board agrees with and has partially implemented the recommendation. The existing data is checked for duplication when entering new fine information into the licensing database. The other corrective action will be to have all fine payments recorded in a separate table, within the database, from license fee revenues.

3. *Enforce the requirement that all tracks use a badge identification system and all people in the stable area display their badges.*

RWB Response: The Board agrees with this recommendation and is considering whether corrective action is best addressed by revision to the applicable rules. In addition, immediate action was taken to and documented in an August 26, 2005 policy directive memorandum from the Executive Director entitled New Restricted Backstretch, Barn Policy for Children and Family Members Only. In summary, the policy sets forth conditions and requirements that children and spouses, domestic partners and immediate family members to be in the company of the licensed individual for backstretch and barn areas. The Board is reviewing the issue of family members in the Paddock as well as guests in the backstretch areas. While this review is being done, the applicable rules continue to apply.

4. *Instruct track investigators to document their identification badge and license checks including, but not limited to date, location, employees checked and action taken for employees checked and action taken for individuals not in compliance.*

RWB Response: The Board agrees with and has already implemented this recommendation. The Board's track and floating racing investigators have always documented these activities in their NYSR&WB Investigator's Activity Logs (Log). The complete set of Logs covering the audit period was provided to the audit team though we acknowledge that the names of each and every person checked for a license was not noted in the Log. As of September 2005, all Board-conducted badge and license checks are assigned a case number with the details and results memorialized in a written report. The case is closed when appropriate action by the responsible Board staff.

5. *Notify track security officers that they are required to check for proper identification when racing participants enter the stable area.*

RWB Response: The Board agrees that access to the backstretch is a serious matter. Although track security officers are aware that this requirement is one of their job functions; the Board will contemplate disciplinary measures against these licensees, ranging from fines to possible license revocation. Additionally, this requirement will be reinforced by the continued onsite presence of our resident and floating investigators.

6. *Periodically visit the racetracks to test licensing and identification practices at facilities.*

RWB Response: The Board agrees with this recommendation and has been making these visits at least since the Director of Investigations assumed his responsibilities in 1995. We will continue this practice of having Racing Investigators periodically visit racetracks for this purpose. Testing of track employees' license status using payroll records will continue to be conducted by the Director of Licensing. Floating Racing Investigators visit each track at least every two weeks and resident Racing Investigators are there each day or night of racing.

Floating Racing Investigators are at each track's opening day conducting comprehensive license and badge checks at gates and barn areas. Gate-check type audits by racing investigators will cover both racetrack employees and horsepeople.

7. *Use automated system controls to immediately suspend the licenses of individuals who do not pay their fines within the required time frame.*

RWB Response: The Board does not agree with immediate license suspension, though it agrees that suspension of eligibility to participate should be immediate. We would like to clarify that privileges to participate in racing are suspended if a fine is not received in time. This is noted on an addendum to the fine notice. Such individuals are ineligible to participate in racing until payment for a fine is received. Formal suspension of a license raises certain due-process issues and procedures. The Occupational Licensing database was revised to automatically create an "A-List" entry when a fine is past due. This complements the use of automatic system generated emails to the Board's track offices listing the name/s. These measures are taken to improve on the Board's enforcement in this regard.

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Comment
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8. *Monitor to ensure that those whose licenses have been suspended do not participate in racing.*

RWB Response: The Board agrees with and has partially implemented the recommendation. Monitoring has been occurring though we have taken steps to improve our efforts. Every track gives a copy of the suspension notice to the Race Secretary in the track's race office. The Race Secretary (a track, not Board employee) will not take any entries for the suspended individual/s. Board officials will then review the entries as well as draft versions of the racing program documents (referred to as "proofs") to check for errors and to ensure that a suspended individual is not on the program. If a horse is found to have been entered by a suspended individual, then the horse is scratched from the race card. The Board will also send a copy of the suspension to track management so that they can distribute the suspended names to Security staff. This latter step will address suspended backstretch workers. Additionally, the automatic emails mentioned in the response to recommendation 7 will also be sent to track management for distribution to its security/guard personnel.

9. *Assess finance charges for delinquent payments.*

RWB Response: The Board agrees with and has implemented this recommendation. Finance charges have always been assessed and were programmed into the license database when first designed. The auditors correctly found they were not always assessed. The Director of Licensing has assigned an individual to monitor all fine issuances and payments to ensure proper assessment of applicable finance charges. One of the responsibilities is to review all delinquent payments recorded in the Occupational Licensing database for applicable finance charges and to follow-up with Board track officials if additional collection is required. The Board is also reviewing options to improve database controls regarding finance charges.

10. *Stop the practice of allowing payments of fines on an installment basis unless the Board amends RWB rules and regulations to authorize the practice.*

RWB Response: The Board agrees with and has implemented this recommendation. This practice was immediately stopped upon presentation of the finding.

* See State Comptroller's Comments, page 21

11. *Develop and implement edit checks in the licensing system to preclude the duplicate entering of payment data.*

RWB Response: The Board agrees with and has implemented this recommendation. The existing data is checked for duplication when entering new fine information into the Licensing database.

12. *Develop appropriate methods to enable RWB staff to monitor RWB Board Appeal decisions and to ensure all decisions are complied with and documented in the licensing system.*

RWB Response: The Board agrees with and has already implemented this recommendation. Staff working for the Secretary to the Board is responsible to follow-up with Board Presiding Judges/Stewards to ensure that all Board Appeal decision particulars have been fully implemented before an appeal is recorded as closed in the Adjudication database. Hearing decisions have been and will continue to be recorded in the Adjudication database. However, the database has been revised so that information entered into it will also go into the licensing database without the need for redundant data entry. Part of this revision process included an integrity review of existing data to ensure that all past decisions are accurately captured in the licensing database.

13. *Investigate the licenses with possible invalid social security numbers.*

RWB Response: The Board agrees in part with the recommendation. There is no specific requirement in the Racing Law or Regulations for the collection or verification of an applicant's social security number (SSN). The Board collects SSN information for the principal purpose of providing a unique identification for the applicant to be tracked in the licensing database. Nevertheless, the Board will endeavor to investigate the possible invalid SSN's that were brought to our attention in the Controller's audit.

14. *As part of the licensing process, validate the authenticity of identification numbers.*

RWB Response: The Board agrees in part with the recommendation. As stated supra, there is no specific requirement in the Racing Law or Regulations for the collection or verification of an applicant's SSN. The SSN is used principally to provide a unique identifier for the individual as a tracking mechanism in the Board's licensing database. The Board does not utilize an applicant's SSN to verify an applicant's identity. It is used as a supplemental, supporting identification in the Board's proof of identity verification process. Notwithstanding, edit checks have been programmed into the licensing database so that input social security numbers can be compared to the Social Security Administration's published criteria for numbers issuance. Additionally, the Licensing Procedures Manual is being updated to reflect these edit parameters and to ensure references to and guidance on applicant SSNs are consistent with the Board's current approach to this issue.

15. *Implement the IT control recommendations presented during the audit.*

RWB Response: The Board agrees with these recommendations and has made good progress on their implementation.

16. *Develop a process to ensure the integrity of cash receipts. At a minimum, reconcile all receipts issued to recorded receipts and account for all receipts not used.*

RWB Response: The Board agrees with and has partially implemented this recommendation. Items a) to c) listed below have been implemented, with the remainder as yet to be complete. Additional features will be considered and implemented as appropriate.

- a) The Occupational Licensing database was revised to capture and record the pre-audit activities of the central office revenue custodian.
- b) A new report feature was implemented to generate a report for revenues not yet remitted to the central office revenue custodian. This allows for periodic review.
- c) A feature has been added requiring user input of a description of why a transaction is being terminated, or voided prior to completion.
- d) The Licensing database will be programmed to track all edits made to a transaction receipt number, including staff making the edit, keeping a record of the original data.
- e) Issuance of a receipt number at the end of a complete transaction.
- f) The Licensing database will be revised to allow for the generation of a report showing all receipt numbers issued during a period of time as well as other options.
- g) Automatic emails for any overdue cash sheets and capturing the date monies deposited in the agency's bank account.

Page 3 – *“Applicants may also be required to submit fingerprints for background checks.”*

We suggest the statement be revised. By statute and regulation, applicants shall submit fingerprints for background checks. The citations are Sections 213 (1) and 309 (1), of the NYS Racing, Pari-Mutuel Wagering and Breeding Law and Board Rules 4002.1 (e) and 4101.24 (e).

Page 6 – *“The investigators told us that they occasionally visit various track locations to check for track identification badges or licenses. However, there is no documentation that they performed such checks.”*

* Comment 1

It appears the audit team may have been referring to statements made by resident Racing Investigators and applied those statements to all Racing Investigators. The statement that there is no documentation is incorrect and was addressed in our response to Recommendation 4. Additionally, many of these checks are also visual in nature and would be impractical to document every person encountered who has a badge/license.

There are two sets of Racing Investigators. Each track has a resident Racing Investigator who is on-site during each day/night of racing. There are presently five “floating” Racing Investigators (including the Director of Investigations) who visit various tracks as needed or assigned. Except for the Director of Investigations, the floating Racing Investigators are in the field nearly 100 % of the time working all hours of day or night, as needed. The Director of Investigations also spends a great deal of his time in the field supervising his staff as well as being a working Investigator.

This and other responsibilities for all Racing Investigators are clearly detailed in a 2-volume procedures manual. In addition to checking for badges/licenses, Racing Investigators conduct investigations regarding potential collusions to affect race outcomes, human drug/alcohol use before a race, investigating post-race positive drug test results, notify appropriate Board and track staff of rules infractions, license infractions and any observed criminal behavior. Racing Investigators also follow-up on licensing applications where there are prior criminal histories, make recommendations for denials of licenses, testify at hearings and/or court proceedings, safeguard and maintain chain of custody for any evidence, search barns for drugs and drug paraphernalia that may be used illegally by horsepeople or veterinarians, search Paddock areas, and keep an eye out for undesirables; such as bookmakers.

* See State Comptroller’s Comments, page 21

The Board believes the audit team's results from the on-site random inspections for licenses was generally positive in that only one person with an expired license was found from the sampled individuals. Our comment should not be construed as a minimization of the issue's importance and the Board is appreciative of OSC's efforts on the matter. While no system of controls can provide absolute assurance against a negative outcome, the efforts of our Racing Investigators over the last ten years on this issue has resulted in notable and significant improvements.

Page 6 – *“We found that two of the tracks visited (Monticello Raceway and Saratoga Harness) do not have a track badge identification system. RWB is aware of this but has not taken any action to correct the situation.”*

Monticello Raceway had temporarily suspended its badge policy while VLT construction was occurring. Each track has been polled and a recommendation to amend or revoke the applicable rule will be forthcoming.

Page 7 – *“We noted that RWB's internal audit unit is not involved in the periodic testing of licensing and identification practices, such as visiting respective racetracks.”*

The Board does not have a formal internal audit unit and is not one of the agencies required to maintain one. Nonetheless, certain staff in Audits and Investigations is responsible to conduct internal reviews in addition to other responsibilities. The issue of conducting on-site licensing and identification checks has been addressed in previous comments and will continue to be performed primarily by resident and central office Racing Investigators.

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Comment
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Page 8 – Duplicate Fines and Suspensions – *“However, the database showed that these 58 individuals accounted for 163 transactions valued at \$220,400. We noted that 105 of the transactions were duplicates, resulting in an overstatement of \$161,175.”*

The above statement is incorrect and as written, overstates actual duplicate fines. The text of this draft report appears to contradict the text of the preliminary findings report, which reported on five (5) possible duplicate fines. Our analysis shows there are 2 duplicate fines with an aggregate value of \$150. The other three (3) were not duplicate fines but rather data entry errors where the wrong fine number was recorded. Detailed explanations are noted below and copies of the supporting documentation will be forwarded to OSC under separate cover. Our analysis was based on information contained in a spreadsheet provided to the Board by the audit team. The below-quoted text from the preliminary findings report dated July 14, 2005 is accurate.

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Comment
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“We identified 58 different fines and suspensions that are duplicates (listed two or more times in the database we were provided). Twenty-six out of the 58 duplicate fines and suspensions were the fines that were paid in installments. These 26 appear to be duplicates because every time a payment was made it shows up in the database. Twenty-two of the 58 were listed twice, but one of the payments is for zero or there is the same check number used to pay two different fines. Ten out of the 58 duplicate fines and suspension contain potential duplicate payments to RWB. These duplicate payments are amounts that appear to have been paid twice for the same fine. Upon further analysis we identified that out of the ten potential duplicate payments five of these were not duplicate. They were not duplicates because one of the transactions listed was a voided transaction.”

1. **BR-6 (Buffalo Raceway) \$100 – We have determined this be a duplicate fine.** A refund to the individual will be processed. The duplicate entry is Receipt # 1162778.

* See State Comptroller's Comment, page 21

- 2. **MR-13 - \$25** – There are two different fines, each for \$25.00 but with one data entry error for Receipt #1161281. Receipt #1161269 is correctly listed for fine MR-13. Receipt #1161281 is incorrectly recorded for MR-13, rather than the correct number of MR-18.
- 3. **MR-28 - \$100** – There are two different fines, each for \$100.00 but with a data entry error for Receipt #1162047. Receipt # 1162753 is for fine MR-28. Receipt # 1162047 refers to MR-28, rather than the correct fine of MR-15.
- 4. **SR-10 (Saratoga Harness) - \$50** – This is a duplicate fine. A refund to the individual will be processed.
- 5. **FL 2002-49 and FL – 2003-20 (Finger Lakes)** - This is not a duplicate fine; there is a data entry error for Receipt #1185848. Receipt # 1185848 is correctly listed for \$50 but should reference fine FL-2003-20. Receipt # 1174014 correctly records fine FL 2002-49 for \$250.

Page 10 – *“Furthermore, we found that RWB does not add finance charges when payments are delinquent.”*

We acknowledge that finance charges should have been assessed in a number of instances and that corrective action is required. However to make a blanket statement that the Board does not assess finance charges at all is not correct. Calculation of finance charges was designed and programmed into the Licensing database. Corrective action was detailed in the response to Recommendation 9.

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Comment
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Page 10 – *“We brought this to the attention of RWB officials, and they subsequently prepared a new list for the same period. The new list showed that 974 of the 1,104 missing receipt numbers. RWB has not been able to account for the remaining 130 missing receipt numbers or give any explanation.”*

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Comment
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A new list was not prepared, rather IT staff queried the Licensing database for all receipt numbers with incomplete data and generated a report of these transactions, to include the date and time of the partial transaction was first attempted. The query also searched for a complete transaction with the same name, also displaying the date and time of the completed transaction. This report was presented to the OSC auditors for their review. We had identified 76 receipt numbers to be for test transactions, and the remainder incomplete transactions traced to a subsequent completed transaction. To say the Board gave no explanation is untrue as this issue was discussed a number of times and was addressed in our written comments to the preliminary draft report.

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Comment
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Absent from the draft report is our explanation, discussed on several occasions with the audit team leader, that the primary cause for receipt numbers with incomplete transactions is due to a database design weakness. The database was designed and programmed to assign and issue a unique and sequential receipt numbers as soon as the user initiates a new transaction. While a receipt number is generated at the beginning of the transaction, a Receipt Document evidencing receipt of monies is generated at the end of a transaction. A consequence of this design is that when a transaction is terminated before completion, a receipt number will have been used/generated by the licensing database even though relevant data fields may be blank or incomplete. Some reasons for these transaction terminations are computer communications interruptions, keyboarding errors on the part of the Board staff, and power interruptions. As an example, if a person enters a first and last name, enters a dollar amount for a licensee fee, and then terminates the transaction (hitting cancel or hitting the “x” button), a receipt number will be

*See State Comptroller’s Comment, page 21

issued without a complete set of data. These cases will require the user to complete a new transaction with a different assigned receipt number.

It is also possible to have the database use a receipt number without any data being entered into a field. These types of situations will not show up on license history reports, as there is no data associated with the receipt number. This was demonstrated to the audit team during a field visit at Monticello Raceway with copies of the applicable database user screens provided to the auditors. A transaction was initiated, but no data was entered and hitting the "x" button terminated the transaction. This latter issue is the reason for the 130 receipt numbers mentioned in the report. IT staff has been tasked to assess the amount of work necessary to re-program the application to generate receipt numbers only upon completion of a transaction. This would be the best solution in terms of eliminating the condition. As a partial-compensating control, a field was immediately added to the database to require an explanation to be entered for any voided transactions. This will allow for more effective monitoring; as will the generation of a complete sequential listing of all receipt numbers issued by the database.

Page 10 – "RWB advised us that it created a fictitious racetrack for testing the receipts system."

A fictitious racetrack was not created, nor is there any need to do so. IT and certain Licensing staff have entered test data into the Licensing database using actual track names. The auditors were correct in pointing out the test data was not segregated from actual data, as we acknowledge should have been the case. The Board is taking corrective action for the test data condition.

We hope our comments help to better clarify our position on the issues discussed in the text. Please do not hesitate to contact me at 518-395-5400 ext. 1805 with any questions or comments on our response.

Very Truly Yours,



Cheryl R. Rithko-Buley
Chairwoman

cc: John G. Cansdale
Thomas V. Casaregola

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Comment
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* See State Comptroller's Comments, page 21

TOTAL P.09

APPENDIX B - STATE COMPTROLLER'S COMMENTS ON AUDITEE RESPONSE

1. Changes have been made to the report or the recommendation based upon RWB officials' response.
2. The RWB officials addressed the issue of duplicate payments; however, they did not address the information in the report regarding the overstatement of fines assessed. We have reviewed the

data and determined that the fines assessed are overstated by \$161,175 because there was no edit to preclude the duplication of the amount each time a transaction was processed. Therefore, RWB officials need to establish an edit which prevents fines from being repeated each time a transaction is processed.