

CONFIDENTIAL

Case #14-0024

October 15, 2015

Lisa Lee
Acting Gaming Inspector General

Executive Summary

In December 2014, Dr. [REDACTED] contacted this Office and requested a meeting. At that meeting, Dr. [REDACTED] alleged that she was not reappointed to the position of [REDACTED] for [REDACTED] Raceway ([REDACTED] because [REDACTED] [REDACTED] wanted to replace her with another veterinarian, Dr. [REDACTED]. Dr. [REDACTED] further alleged that [REDACTED] had an "inappropriate" relationship with Dr. [REDACTED] and provided copies of select text messages between Dr. [REDACTED] and her which contained inappropriate references to [REDACTED] made by Dr. [REDACTED]. Dr. [REDACTED] also reported that [REDACTED] was not reappointed to his position of [REDACTED] by [REDACTED] and speculated that it was because [REDACTED] was supportive of her reappointment and had sought out others to intervene on her behalf. Following this meeting, Dr. [REDACTED] also alleged that [REDACTED] had appointed and promoted [REDACTED] who is either a family member or close family friend of [REDACTED].

This Office also met with [REDACTED] who reiterated that [REDACTED] did not reappoint Dr. [REDACTED] because he wanted to replace her with Dr. [REDACTED] and that he was not reappointed because he was supportive of Dr. [REDACTED] reappointment.

In furtherance of this investigation, Gaming Commission ("the Commission") records were obtained and reviewed; security footage was obtained and reviewed; and more than a dozen interviews were conducted including, but not limited to, current and former employees of the Commission.

The investigation determined the following:

- 1) There is no evidence that [REDACTED] knew Dr. [REDACTED] prior to her hire or that he had a romantic relationship with her. Dr. [REDACTED] learned of the position from her former employer and both reported that their interactions have primarily been over the telephone with no interaction outside of work.
 - 2) The actions of Dr. [REDACTED] contributed to the perception of an inappropriate relationship between her and [REDACTED]. Dr. [REDACTED] exchanged a number of texts with Dr. [REDACTED] that contained references to [REDACTED] as her boyfriend along with other improper comment such as [REDACTED]. Although Dr. [REDACTED] contends that she merely wanted to cater to Dr. [REDACTED] and "play along," this lapse in judgment not only hurt her credibility as a competent professional, but also impacted upon the management and orderly operation of the track.
 - 3) The perception that favoritism and inappropriate relationships exists is partly the result of the hiring practices utilized to fill the per diem positions at the tracks. [REDACTED] is solely responsible for the interviewing and vetting of candidates for the per diem positions, and his recommendations carry significant weight with Commission executives. As a result, the hiring process is open to criticism and allegations of nepotism and cronyism. Clear written policies regarding the hiring process and the substantive involvement of at least one neutral party should be established.
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Additionally, records documenting the hiring process, including records of interviews and candidate evaluations should be maintained.

- 4) There is no evidence that Dr. [REDACTED] was not reappointed solely because [REDACTED] wanted to replace her with Dr. [REDACTED]. Again, there is no evidence that [REDACTED] and Dr. [REDACTED] were involved in romantic relationship; however, it has been reported that Dr. [REDACTED] can be difficult to work with and that an insufficient number of tests were being conducted. Further, on at least one occasion, Dr. [REDACTED] was personally observed arriving to work at a time later than she had reported. Thus, there existed other legitimate factors in determining if Dr. [REDACTED] should have been reappointed. More importantly, many fail to appreciate that the per diem positions are appointed positions and that each employee serve at the pleasure of the Executive Director and subject to the needs of the Commission, reappointments are not guaranteed.
- 5) The timekeeping measures currently in place at [REDACTED] are of limited utility and a review should be conducted to determine if there are better methods that may be implemented (e.g., reintroducing the biometric scanner). Dr. [REDACTED] claimed that she would often spend time in the Racing Office before signing in at the paddock which resulted in the discrepancy between her sign-in sheet and the security video footage. The use of a biometric scanner upon arrival would address any such discrepancies and any possibility of others signing in or out for another employee.
- 6) There is no evidence that [REDACTED] was not reappointed because he voiced his support for Dr. [REDACTED]. [REDACTED] himself, raised two issues which may have been factors considered in deciding whether to reappoint him. Both of those issues (time and leave and failure to follow directives), although not documented, are legitimate considerations in determining if [REDACTED]' continued per diem employment would fulfill the needs of the Commission. Records documenting performance, time and leave, or other employment related issues should be maintained.
- 7) There is no evidence that [REDACTED] is related to or a close family friend of [REDACTED]. Given the difficulties in recruitment and the need to use less traditional methods in finding candidates, the statements provided regarding [REDACTED]'s hire as well as the assertion that they are not related or socialize together are credible. Further, a search of the Accurant database did not yield any information which would indicate that there is a familial relationship between the two.

In sum, this investigation revealed that although there is no evidence of an inappropriate relationship between Dr. [REDACTED] and [REDACTED], there were several reasons why such a perception may have existed.

First, [REDACTED] is solely responsible for the interviewing and vetting of all the candidates and his recommendations carry significant weight with Commission executives. As a result, the hiring process is open to criticism and allegations of nepotism and cronyism. Clear written policies regarding the hiring process and the substantive involvement of at least one neutral party should be established.

Second, the actions of Dr. [REDACTED] further contributed to such a perception. She exchanged a number of texts with Dr. [REDACTED] that contained references to [REDACTED] as her boyfriend along with other improper comment such as [REDACTED]. Although Dr. [REDACTED] contends that she merely wanted to cater to Dr. [REDACTED] and “play along,” this lapse in judgment not only hurt her credibility as a competent professional and affect [REDACTED]’s ability to properly manage, but also negatively impacted upon the orderly operation of the track.

Lastly, although the per diem appointments are subject to the needs of the Commission and at the pleasure of the Executive Director, issues pertaining to performance, time and leave, or any other variable taken into account, were not properly documented. This practice allowed for conjecture that personal gain or some other impermissible basis was the motive behind each personnel decision.

Origin of Case:

In December 2014, Dr. [REDACTED] contacted this Office and requested a meeting.

Nature of Allegation:

Dr. [REDACTED] alleged that she was not reappointed to the position of Supervising Veterinarian for [REDACTED] Raceway (" [REDACTED] because [REDACTED] [REDACTED] wanted to replace her with Dr. [REDACTED] a "younger and prettier" veterinarian. Dr. [REDACTED] further alleged that [REDACTED] had an "inappropriate" relationship with Dr. [REDACTED] and provided copies of select text messages between Dr. [REDACTED] and her which contained improper references to [REDACTED] made by Dr. [REDACTED]

Dr. [REDACTED] further alleged that [REDACTED] was not reappointed to his position of Supervising Inspector by [REDACTED] because [REDACTED] was supportive of her reappointment and had sought out others to intervene on her behalf. She also alleged that [REDACTED] had appointed and promoted [REDACTED], who is either a family member or close family friend of [REDACTED]

Investigative Action:

In furtherance of this investigation, Gaming Commission ("the Commission") records were obtained and reviewed; security footage was obtained and reviewed; and more than a dozen interviews were conducted including, but not limited to, current and former employees of the Commission.

Background

The Commission regulates all horse racing, including Thoroughbred and Standardbred, and pari-mutuel wagering in New York State. There are four Thoroughbred tracks and seven Standardbred (also known as harness) tracks in the state including [REDACTED] which operates year round. In order to facilitate racing and testing at the harness tracks, the Commission employs a number of individuals on a per-diem basis, such employees include: Racing Inspectors, Supervising Inspector, Investigators, Presiding Judge, Assistant to the Presiding Judge, Associate Judges, Recording Judge, Paddock Judge, Starters, and Supervising Veterinarians.

Per-diem employees are appointed to their positions on a quarterly basis and are provided with health benefits as long as they work a minimum of five days per pay period. These employees accumulate sick and annual leave, but are not permitted to use their leave as a mechanism to retain health coverage. Thus, employees often enter into arrangements amongst themselves to work at other tracks when their assigned track is closed.

Although the track employees are in titles covered by collective bargaining agreements, these appointments are subject to the needs of the Commission and the employees serve at the pleasure of the Executive Director for the Commission. Such limitations are clearly noted in the appointment letters that are issued to the employees at the time of their hire. (See, Sample

Currently, the Commission has eight per diem veterinarians to cover each of the tracks and approximately seven additional veterinarians to serve as back-ups.¹ A review of each of the veterinarians' employment application indicate that the backgrounds of the 15 veterinarians varied and that their area of practice/expertise are as follows: large animals – 4; equine – 2; mixed (both large and small) – 6; and small – 3. Despite the differences in the areas of practice, all 15 veterinarians met the qualifications for the position of Supervising Veterinarian.

Dr. [REDACTED]

Dr. [REDACTED] has been licensed to practice veterinarian medicine in New York State since 1982 and according to her resume and employment application, her prior work experience has solely been in equine practice.

In 2003, Dr. [REDACTED] was hired as the Supervising Veterinarian and assigned to [REDACTED]. She received six Employee Performance Evaluations (2007-2012) [REDACTED]. Additionally, the Summary of Actual Performance commentaries contained in all the evaluations [REDACTED]. In December 2014, after completing the racing season at [REDACTED] Dr. [REDACTED] worked briefly at [REDACTED]. Thereafter, Dr. [REDACTED] was not reappointed to her Supervising Veterinarian position at [REDACTED] and in January 2015, her per diem employment with the Commission concluded.

Key Interviews

Dr. [REDACTED]

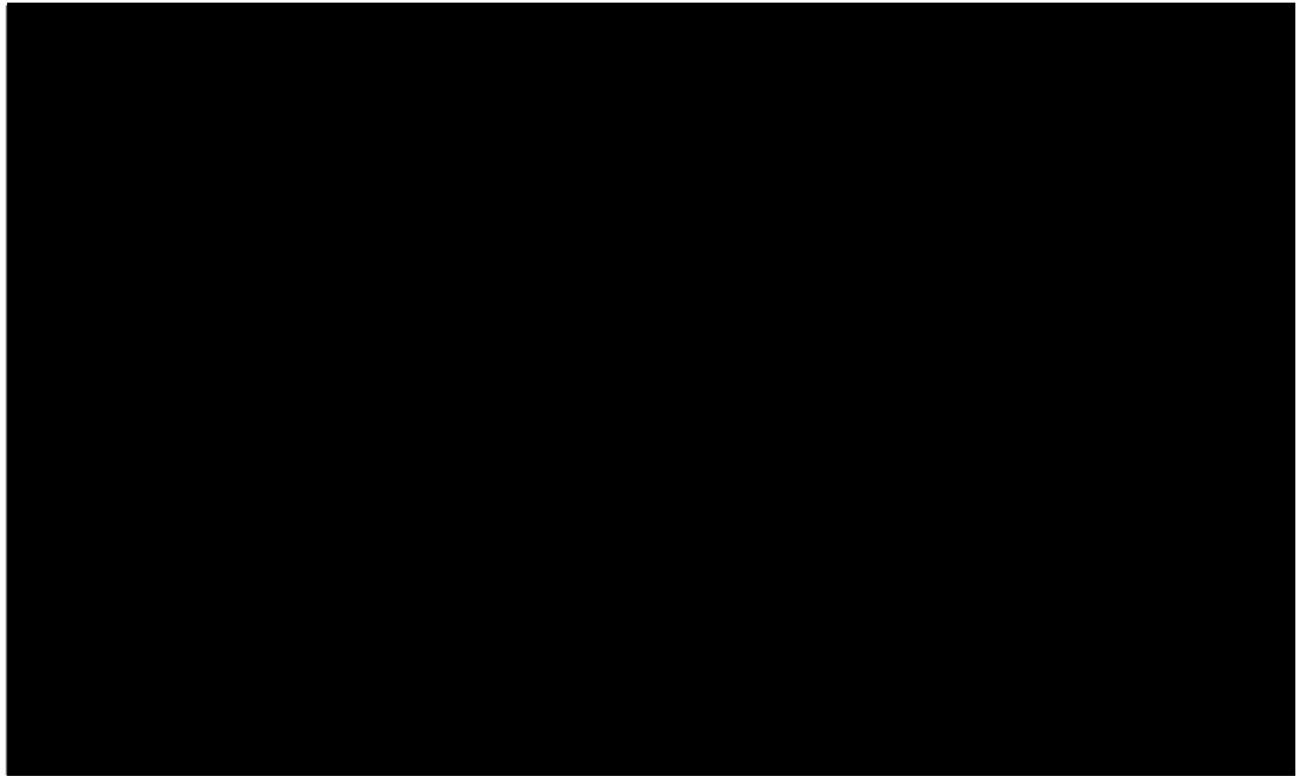
Dr. [REDACTED] stated that she was employed as the Supervising Veterinarian at [REDACTED] on a per diem basis for a number of years. She further stated that she was a stellar employee who always received excellent performance evaluations. Dr. [REDACTED] added that in September 2013, [REDACTED] offered her the opportunity to work at the NYRA tracks as the examining veterinarian for the thoroughbreds which is a promotion of sorts and a testament to her abilities. She described her relationship with [REDACTED] as cordial with limited interaction.

Dr. [REDACTED] stated that she reported directly to [REDACTED] the Presiding Judge at [REDACTED]. She described their relationship as good, but they had disagreed on an issue pertaining to equine health. As a result, she sought out Dr. [REDACTED] the Commission's [REDACTED] for guidance, and Dr. [REDACTED] "sided" with her. Dr. [REDACTED] further stated that she was

¹ Dr. [REDACTED] (NYRA tracks - Aqueduct, Belmont, and Saratoga, and Finger Lakes); Dr. [REDACTED] (Batavia, Buffalo, and Finger Lakes (Harness)); Dr. [REDACTED] (Monticello); Dr. [REDACTED] (Saratoga); Dr. [REDACTED] (Tioga); Dr. [REDACTED] and Dr. [REDACTED] (Vernon); and Dr. [REDACTED] (Yonkers). The back-up veterinarians are Drs. [REDACTED] and [REDACTED] (NYRA tracks); Drs. [REDACTED] and [REDACTED] (Batavia); Dr. [REDACTED] (Buffalo); Drs. [REDACTED] and [REDACTED] (Finger Lakes); Drs. [REDACTED] and [REDACTED] (Monticello); Drs. [REDACTED] and [REDACTED] (Saratoga); Drs. [REDACTED] and [REDACTED] (Vernon); Drs. [REDACTED] and [REDACTED] (Yonkers); and Drs. [REDACTED] and [REDACTED] (NYRA – Saratoga).

not sure if her decision to seek Dr. [REDACTED] opinion was viewed as a slight by [REDACTED] or whether it had upset [REDACTED] that she had done so.

Dr. [REDACTED] reported that [REDACTED] and Dr. [REDACTED] communicated daily either via texts or telephone and that Dr. [REDACTED] often shared with her tidbits of her conversation with [REDACTED]. Dr. [REDACTED] provided screen shots of the texts exchanged between her and Dr. [REDACTED] wherein Dr. [REDACTED] spoke of her communications with [REDACTED]. The references and comments pertaining to [REDACTED] in these texts were inappropriate and are as follows:



In September 2014, Dr. [REDACTED] and did not return to work until almost two months later in November. During her absence, Dr. [REDACTED] and Dr. [REDACTED] covered her shifts at [REDACTED]. Dr. [REDACTED] reported that while she was on leave fellow employees shared with her that testing protocols were changed and that [REDACTED] had been asking others about her performance as well as her time and attendance. Dr. [REDACTED] commented that [REDACTED] inquiries regarding her were "unprecedented." Moreover, she stated that other investigators criticized Dr. [REDACTED] performance and alleged that she allowed lame horses to race and that she failed to follow chain of custody protocols.

At the conclusion of the racing season in December of 2014, Dr. [REDACTED] was informed that she would not be reappointed to her position at [REDACTED]. Dr. [REDACTED] stated that when she asked why, she was informed by [REDACTED] it was because she had been late in reporting to work. She denied that she had ever arrived late and, in sum, believed that she was not reappointed because

of Dr. [REDACTED] relationship with [REDACTED]. Dr. [REDACTED] opined that Dr. [REDACTED] as a small animal practitioner, was unqualified for the supervising veterinarian position at [REDACTED].²

Throughout her interview, Dr. [REDACTED] alluded to a romantic relationship between [REDACTED] and Dr. [REDACTED] but when directly asked that question she declined to define it as such. Instead, she responded that she believed they had a "special relationship" and again made reference to their frequent communications. In a subsequent email between Dr. [REDACTED] and another employee,³ which she provided, she clearly stated though "I never accused them of a romantic relationship, just an inappropriate friendship that he used in an abuse of power to appoint her." (See, Email annexed hereto as Exhibit "5.")

[REDACTED] former Supervising Inspector at [REDACTED] was employed at [REDACTED] since 1981 in various capacities, including Inspector, Recording Judge, Patrol Judge, and Assistant to the Presiding Judge. He assumed the position of Supervising Inspector in 2002 until the conclusion of his tenure in December of 2014 when the Commission elected not to reappoint him.

[REDACTED] stated that he was an exemplary employee and believes that he was not reappointed because he was vocally supportive of Dr. [REDACTED]. He opined that Dr. [REDACTED] should have been reappointed and that she was more qualified than Dr. [REDACTED]. Nonetheless, despite his assertion of exemplary performance, [REDACTED] did recount two issues which may have been factors in the decision whether to reappoint him.

First, [REDACTED] stated that [REDACTED] had indicated to him that he was taking too much time off, which he denied and claimed that he had only taken 3-4 days off [REDACTED]. Second, [REDACTED] stated that he had removed the sign-in book from the Racing Office for a period of 2-3 weeks which had upset [REDACTED] and [REDACTED]. [REDACTED] stated that he had brought the sign-in book to the paddock area because of safety concerns for the female inspectors. He further stated that the inspectors would have otherwise had to sign out in the Racing Office after hours when it was dark and deserted. [REDACTED] explained that the Racing Office was adjacent to the general parking lot and that any individual could have entered the office after hours.

A review of [REDACTED] time and leave for the time period of January 1, 2014, through September 21, 2014, however, revealed that of approximately 177 racing days, [REDACTED] had taken leave (ranging from several hours to a full shift) on 28 dates and that on 14 of those dates, vacation leave was exhausted as opposed to family sick leave or sick leave. Thus, records demonstrate that [REDACTED] had actually taken leave for approximately 15% of the total number of race days during that time, more than what he reported. Additionally, although [REDACTED] cited a concern for safety, he denied having any knowledge of burglaries, thefts, vandalism,

² It should be noted however, that prior to being assigned to [REDACTED] Dr. [REDACTED] was the Supervising Veterinarian for [REDACTED].

³ This employee was interviewed and he/she denied having any knowledge or reason to believe that [REDACTED] had a relationship with Dr. [REDACTED] or that she had received any preferential treatment.

assaults, or any other occurrence in the Racing Office or paddock area would give rise to such concerns. This Office also interviewed other track employees, and no one reported having knowledge of any such incidents or voicing any safety concerns. Further, the operators of ██████████ employ security officers whose responsibilities include conducting regular patrol of the grounds. It is important to note that the sign-in book is retained in the Racing Office as a mechanism to ensure that employees accurately report their work hours in the absence of other means to record time such as a biometric scanner.⁴ All employees, including per diem, must comply with policies and procedures implemented to ensure an orderly operation. Hence, the matters that ██████████ cited may have been factors in determining whether to reappoint him, regardless of his support of Dr. ██████████

Track Employees:

In general, interviews of other track employees revealed that many deemed Dr. ██████████ to be a dedicated and knowledgeable equine veterinarian.⁵ Some individuals commented that although Dr. ██████████ is a very good veterinarian, she could be difficult to work with and that she is abrasive in her interactions with others. Officials at the track reported receiving complaints from horsemen about Dr. ██████████ demeanor as well as having personally experienced her brashness. Some employees also reported a change in the work environment when Dr. ██████████ or others were working at ██████████ and described it as "lighter" and less tense than when Dr. ██████████ worked there.

Individuals reported not knowing the reason why Dr. ██████████ was not reappointed but some stated that it may have had to do with her time and attendance. One individual credibly reported that he/she was not aware of what time Dr. ██████████ started her shift, but observed that she frequently arrived at the paddock around 6:30 pm.⁶ This individual stated that other veterinarians who covered for Dr. ██████████ routinely arrived earlier between 5:30 and 6:00 pm, but added that Dr. ██████████ always arrived in time to draw blood ██████████. Others reported that even if they took notice of Dr. ██████████ time of arrival at the paddock, which they did not, they could not definitively state that she was not elsewhere at the track or in the Racing Office. Racing Officials though, noted that Dr. ██████████ was occasionally observed in the office chatting, but did not find it to be a regular occurrence or that she stayed more than a few minutes.

When questioned about Dr. ██████████ the consensus was that she was a pleasant and energetic veterinarian. Many stated that she appeared to be a good veterinarian, but added that they did not know her well enough to share any real insight. No one reported having any knowledge of Dr. ██████████ receiving preferential treatment.

⁴ It was reported that a biometric scanner was used for time keeping purposes prior but required constant repair/maintenance. Subsequently, a sign-in book along with a sign-in sheet were implemented in its place.

⁵ Since many, if not all, of the individuals interviewed are recurring per diem employees at ██████████ their identities are not disclosed.

⁶ Dr. ██████████ start time is 6:10 pm one hour before the 7:10 pm post time.

██████████
██████████ Presiding Judge, stated that he is responsible for the day-to-day operation of ██████████ including its employees. Nonetheless, despite his responsibilities and daily interaction with the staff, his input as to who is appointed or reappointed is not sought. ██████████ explained though, that ██████████ and he were in frequent contact throughout the racing season, and he would regularly apprise him of what happened at the track. He surmised that their communication, as well as ██████████'s personal observation, formulated the basis for deciding whether to reappoint someone to their position.

██████████ stated that the morale was not very good in the paddock and that the inspectors were unhappy. He described Dr. ██████████ as an adequate veterinarian but also as someone who was combative and that horsemen had complained to him about her behavior. ██████████ also cited an instance where he instructed Dr. ██████████ to conduct additional TCO2 testing, and she questioned why and went as far as to show him prior year statistics of positive TCO2 tests results. He further stated that she interfered with staffing decisions and balked at having additional inspectors work. ██████████ commented that he did not have such problems with the other veterinarians and that they complied with his requests for additional test or inspectors without argument. ██████████ stated that he had no direct role in the decision not to reappoint Dr. ██████████ and denied having any knowledge of Dr. ██████████ receiving preferential treatment.

██████████ stated that he has been working at the 11 tracks in New York in various capacities since 1979. Currently, he is the ██████████ and is responsible for the hiring, training and supervision of racing officials which include judges, inspectors, stewards, assistant stewards, veterinarians, starters, and others who work at the track on behalf of the State. ██████████ has approximately 160 subordinates who are assigned to the 11 tracks and report to him. ██████████ explained that throughout the year he visits each track and speaks with Commission employees and track managers. He also communicates regularly with presiding judges and stewards to stay abreast of events. ██████████ stated that Dr. ██████████ supervises the veterinarians on clinical matters, and there is an effort to have him more involved in administrative issues including personnel. He added that he communicates with Dr. ██████████ on veterinarian candidates and vacancies, but Dr. ██████████ is not actively involved in the hiring process.

As noted earlier, ██████████ is responsible for filling each position at the tracks. Although he receives resumes directly or from the Commission's human resources department, he must still aggressively pursue candidates to fill the vacancies. ██████████ explained that the most challenging positions to fill are the veterinarian vacancies because the pay is low and the hours difficult. As an example, ██████████ stated that he had to interview 32 individuals, tracking down leads and recommendations, just to fill one veterinarian position at Buffalo Raceway.

Typically if there is a problem at a track, ██████████ is informed by the presiding judge or steward, and depending upon the severity, the issue may be addressed locally. When questioned about ██████████ ██████████ responded that it was a challenging track to manage and that employee morale was low. Moreover, the Commission was concerned with the low level of testing being

conducted, and he was tasked to determine why and to “shake things up.” [REDACTED] subsequently found that there were attendance and productivity issues at [REDACTED]. As a result, changes to personnel were made including the decision not to reappoint Dr. [REDACTED] and [REDACTED].

[REDACTED] explained that [REDACTED] was not reappointed because he was not effective at managing the inspectors and had also taken a lot of time off. He added that [REDACTED] had been [REDACTED]. [REDACTED] also explained that Dr. [REDACTED] was not reappointed for the reasons cited below, and provided emails and letters to support his contention. (See, Emails and Letters annexed hereto as Exhibit “6.”)

- 1) Dr. [REDACTED] failed to perform adequate testing in that she did not endeavor to perform the level of drug testing sought by the Commission and falsely claimed that there were not enough inspectors working to facilitate testing.
- 2) Dr. [REDACTED] allotted a fixed amount of time to draw samples from a horse. Thus, she and an inspector would “sit around” and wait for the horse to provide a urine sample instead of moving onto another horse. [REDACTED] stated that he had spoken to her about her methodology, and she retorted that was how it was always done and that she was not going to change her ways.
- 3) Complaints from a horsemen’s group that Dr. [REDACTED] did not allow the trainers to properly cool their horses and demanded that horses be produced for testing at a particular time. [REDACTED] noted that while the veterinarian had the final say about testing, these demands seemed to be more prevalent at the end of the night when the motivation may have been to leave as soon as possible.
- 4) Complaints from personnel that Dr. [REDACTED] was difficult to work with.
- 5) On August 4, 2014, during an early Sire Stakes event, he noticed that Dr. [REDACTED] had arrived late and entered the paddock at the conclusion of the second race (after 6:20pm) but her time sheet reflected an arrival time of 6:10 pm.

[REDACTED] stated that as a result of the August 4, 2014 incident, which he witnessed, he conducted a review of Dr. [REDACTED] arrival times from August 1-9, 2014. [REDACTED] review and comparison of the paddock security footage against Dr. [REDACTED] sign-in sheet determined the following:

<u>Date</u>	<u>Sign-in Time</u>	<u>Recorded Time</u>
8/1	6:10 p.m.	6:41 p.m.
8/2	6:10 p.m.	6:40 p.m.
8/4	6:10 p.m.	6:32 p.m.

[REDACTED]

Date	Sign-in Time	Recorded Time
8/7	6:10 p.m.	6:34 p.m.
8/8	6:10 p.m.	6:33 p.m.
8/9	6:10 p.m.	6:06 p.m.

In sum, [REDACTED] analysis showed that Dr. [REDACTED] arrived late on five of the six dates reviewed. [REDACTED] also conducted interviews of other employees at the track in a further effort to determine what time Dr. [REDACTED] was regularly arriving at the track.⁸

[REDACTED] shared his findings with [REDACTED], and the decision not to reappoint Dr. [REDACTED] was made. In mid-December, [REDACTED] called Dr. [REDACTED] and informed her that she would not be reappointed. Thereafter, [REDACTED] appointed Dr. [REDACTED] to replace Dr. [REDACTED] at [REDACTED]

[REDACTED] described Dr. [REDACTED] as a hard working employee who was initially hired for [REDACTED]. To support his contention, he provided Dr. [REDACTED] timesheets which showed that she had traveled extensively throughout the state often to cover 9 of the 11 tracks. [REDACTED] stated that Dr. [REDACTED] was a Cornell University graduate and met all the criteria for the Supervising Veterinarian position. He also explained that when he referred to the 32 interviews he conducted before finally finding a suitable candidate for the [REDACTED] position; it was Dr. [REDACTED] who was the 32nd candidate.

[REDACTED] was interviewed at length about what his relationship, if any, was with Dr. [REDACTED]. [REDACTED] responded that he did not know Dr. [REDACTED] prior to hiring her and that her name was provided to him by another candidate who had turned down the position. He stated that he had initially interviewed Dr. [REDACTED] over the telephone and did not meet her until after she was hired. He denied having any friends or family in common or having any interaction with Dr. [REDACTED] outside of work. [REDACTED] reported that he had no knowledge of Dr. [REDACTED] personal life or what she did outside of the track and added that he can count on one hand how many times he has actually met her. [REDACTED] further denied having interceded in any matter on Dr. [REDACTED] behalf and explained that when she inquired about employment post Buffalo Racing season, he informed her of the standby (back up veterinarian) process and that the veterinarian's typically work coverage out amongst themselves to accommodate leave and other changes in schedule.

[REDACTED] explained that Dr. [REDACTED] and he communicated regularly by phone since she was a new employee. He has never received a complaint about her performance, but he was aware that there was criticism of her because she is a small animal practitioner. [REDACTED] stated that there are other veterinarians employed by the Commission who are small animal practitioners as well and added that most equine veterinarians cannot be hired because of the conflicts of interest provision. When asked why some may harbor a belief that he had a personal relationship with Dr. [REDACTED], [REDACTED] was visibly perturbed and stated that he did not know why the perception would exist and that any such assertion was mean spirited and false.

⁸ Although [REDACTED] inquiry with other track employees may have been the first of its kind known to Dr. [REDACTED] and/or others, it does not necessarily mean that such actions were indeed the first or that it was improper. It is the duty and responsibility of a supervisor to be fully informed of not only the day-to-day operation which he/she manages, but also the performance of his/her subordinates as well.

Similarly, [REDACTED] stated that he has no familial relationship to [REDACTED]. He explained that he met [REDACTED] at the [REDACTED] located near [REDACTED] where he would stay when visiting the track. [REDACTED] was an [REDACTED] and he thought [REDACTED] was a good employee. [REDACTED] stated that he repeatedly asked [REDACTED] if he was interested in part-time employment at [REDACTED] but it was not until [REDACTED] and had his hours at the hotel reduced that he agreed to take a position at the track. [REDACTED] commented that [REDACTED] has worked out well at the track, and he has subsequently hired others from the hotel to work at the track. He commented again how he had to be resourceful in seeking out employees for the track.

Dr. [REDACTED]

Dr. [REDACTED] stated that she learned of the position at [REDACTED] from her former employer, [REDACTED] who had previously worked there. At his suggestion, Dr. [REDACTED] submitted her resume, which was followed by a telephone interview with [REDACTED]. She also met with officials at [REDACTED] before being hired on an emergency basis as the previous veterinarian had been terminated before the end of the racing season.

Although she is a small animal practitioner, Dr. [REDACTED] stated that she has been practicing since 2001, serves on multiple boards, and has served as the [REDACTED] County Veterinarian. She also shadowed the back-up veterinarian, Dr. [REDACTED] for a period of time in order to learn the job. Dr. [REDACTED] stated she was initially assigned to work at [REDACTED] but has also covered other tracks including [REDACTED]. She added that although her residence and practices are in [REDACTED] so it is not difficult for her to work at [REDACTED] or at [REDACTED].

Dr. [REDACTED] stated that [REDACTED] offered her the position at [REDACTED] late November/mid-December of last year. She explained that she had to mull the offer over as she [REDACTED]. Although she accepted the position at [REDACTED] she has not relocated to [REDACTED] and instead, travels back to [REDACTED] whenever [REDACTED] is closed. She manages her two veterinary practices during the day via phone with the assistance of her staff. Dr. [REDACTED] asserts that [REDACTED] did not do her a favor when he appointed her to [REDACTED].

Dr. [REDACTED] stated that [REDACTED] kept in constant contact with her to ensure that all was well since she was new to [REDACTED] but those calls have diminished with time. She stated that testing procedures at [REDACTED] differed from that of [REDACTED].

[REDACTED]
[REDACTED] Dr. [REDACTED] reported that [REDACTED] and [REDACTED] were not aware of [REDACTED] and they instructed her to increase testing and to use the inspectors as needed to accomplish the task. She added that the inspectors did not object to the additional testing although [REDACTED] was initially resistant to it. [REDACTED]

Dr. [REDACTED] described Dr. [REDACTED] as someone who has two sides, one which is nice and the other which is confrontational and nasty. She recalled her first meeting with Dr. [REDACTED] and how she remarked "I know why [REDACTED] hired you, you're pretty," despite her credentials. She stated that the other inspectors did not like Dr. [REDACTED] because she was "dictatorial," "demeaning," and "difficult" to work with. Dr. [REDACTED] stated that she is aware that Dr. [REDACTED] has been maligning her reputation and skills, but does not understand why.

Dr. [REDACTED] speculated that Dr. [REDACTED] was insecure about her position because she was disliked and did not get along with [REDACTED]. Dr. [REDACTED] would mock her about [REDACTED] and often referred to [REDACTED] as her boyfriend in texts they exchanged. Dr. [REDACTED] was asked if she may have engaged in any actions that may have contributed to the problem, which she denied. She also denied having addressed [REDACTED] in any inappropriate manner or making any improper comments in texts between her and Dr. [REDACTED]. Dr. [REDACTED] was then shown the text messages cited below, and she responded that Dr. [REDACTED] knew what she meant and that her comments could be misconstrued only if one wanted to do so. (See, Exhibit 4 A-C annexed hereto). Dr. [REDACTED] also provided the following explanations for each of the texts:

Exhibit 4A: Dr. [REDACTED] stated that Dr. [REDACTED] was commenting that [REDACTED] wanted to be a father figure to all the young hires and implied that [REDACTED] was his favorite. [REDACTED] contends that her response [REDACTED] only meant that unlike Dr. [REDACTED], she needed to respond to [REDACTED] whenever he reached out to her.

Exhibit 4B: Dr. [REDACTED] stated that her comments [REDACTED] [REDACTED] [REDACTED] were merely efforts to play along with Dr. [REDACTED] reference to [REDACTED] as her BF.

Exhibit 4C: Dr. [REDACTED] stated that [REDACTED] called to congratulate her on her performance at [REDACTED] and for having been granted accrual time. Her comment [REDACTED] only meant that she wanted to stay in [REDACTED] good graces.

When asked again if she bore any responsibility for the misconception regarding her relationship with [REDACTED] Dr. [REDACTED] reiterated that her comments could only be misconstrued if one wanted to, but added that she had viewed Dr. [REDACTED] as a friend at the time and played along with her not believing that she would use these comments against her.

Dr. [REDACTED] decision to engage in such dialogue with another employee, however, clearly undermined not only her own abilities, but also [REDACTED] ability to properly manage the track and its employees.

Commission Records

A review of the security footage and time records was conducted by this Office. Consistent with [REDACTED] report, the sign-in times for Dr. [REDACTED] differed from the time she was filmed entering and signing in at the paddock. (See also, page 11 for additional details).

A review of Yonkers testing statistics for the years 2012 through July 2015 revealed that [REDACTED] occurred in 2014, the year Dr. [REDACTED] and others covered for Dr. [REDACTED] while she [REDACTED]. That year testing [REDACTED]

Test Year	No. of Race Days	Blood (drawn only by Veterinarians)	Urine	Total Tests Performed	Approximate Percentage Increase in Total Testing Per Year	Average No. of Blood Tests Per Day
2012	238	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2013	238	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2014	222	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2015 (Jan-July)	138	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Test Year	No. of Race Days	Total CO2 Tests Performed	Approximate Percentage Increase Per Year	Average No. of CO2 Tests Per Day
2012	238	[REDACTED]	[REDACTED]	[REDACTED]
2013	238	[REDACTED]	[REDACTED]	[REDACTED]
2014	222	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED] report that the Commission was concerned with [REDACTED] and in comparison to other tracks, was a legitimate issue and one which he is responsible for addressing. Thus, [REDACTED] review of [REDACTED] operations, including his inquiries of the staff, is well within the scope of his duties and responsibilities.

[REDACTED]

Findings:

This investigation determined the following:

- 1) There is no evidence that [REDACTED] knew Dr. [REDACTED] prior to her hire, or that he had a romantic relationship with her. Dr. [REDACTED] learned of the position from her former employer, and both reported that their interactions have primarily been over the telephone with no interaction outside of work.
- 2) The actions of Dr. [REDACTED] contributed to the perception of an inappropriate relationship between her and [REDACTED]. Dr. [REDACTED] exchanged a number of texts with Dr. [REDACTED] that contained references to [REDACTED] as her boyfriend along with other improper comment such as [REDACTED]. Although Dr. [REDACTED] contends that she merely wanted to cater to Dr. [REDACTED] and to "play along," this lapse in judgment not only hurt her credibility as a competent professional, but also impacted upon the management and orderly operation of the track.
- 3) The perception that favoritism and inappropriate relationships exists is partly the result of the hiring practices utilized to fill the per diem positions at the tracks. [REDACTED] is solely responsible for the interviewing and vetting of candidates for the per diem positions and his recommendations carry significant weight with Commission executives. As a result, the hiring process is open to criticism and allegations of nepotism and cronyism. Clear written policies regarding the hiring process and the substantive involvement of at least one neutral party should be established.
- 4) There is no evidence that Dr. [REDACTED] was not reappointed solely because [REDACTED] wanted to replace her with Dr. [REDACTED]. Again, there is no evidence that [REDACTED] and Dr. [REDACTED] were involved in romantic relationship, however, it has been reported that Dr. [REDACTED] can be difficult to work with and that an insufficient number of tests were being conducted. Further, on at least one occasion, Dr. [REDACTED] was personally observed arriving to work at a time later than she had reported. Thus, there exist other legitimate factors in determining if Dr. [REDACTED] should be reappointed. More importantly though, many fail to appreciate that the per diem positions are appointed positions and that each employee serve at the pleasure of the Executive Director and subject to the needs of the Commission, reappointments are not guaranteed.
- 5) The timekeeping measures currently in place at [REDACTED] are of limited utility and a review should be conducted to determine if there are alternate methods that may be implemented (e.g., reintroducing the biometric scanner). Dr. [REDACTED] claimed that she would often spend time in the Racing Office before signing in at the paddock which resulted in the discrepancy between her sign-in sheet and the security video footage. The use of a biometric scanner upon arrival would address any such discrepancies and any possibility of others signing in or out for another employee.
- 6) There is no evidence that [REDACTED] was not reappointed because he voiced his support for Dr. [REDACTED]. ~~[REDACTED] himself, raised two issues which may have been~~

factors considered in deciding whether to reappoint him. Both of those issues (time and leave and failure to follow directives) although not documented, are legitimate considerations in determining if [REDACTED] continued per diem employment would fulfill the needs of the Commission.

- 7) There is no evidence that [REDACTED] is related or a close family friend of [REDACTED]. Given the difficulties in recruitment and the need to use less traditional methods in finding candidates, the statements provided regarding [REDACTED]'s hire as well as the assertion that they are not related or socialize together are credible. Further, a search of the Accurant database did not yield any information which would indicate that there is a familial relationship between the two.

Conclusions & Recommendations:

As a result of the above findings, it is recommended that this case be closed as partially substantiated. This investigation revealed that although there is no evidence of an inappropriate relationship between Dr. [REDACTED] and [REDACTED], there were several reasons why such an opinion was allowed to have formed.

First, [REDACTED] is solely responsible for the interviewing and vetting of all the candidates and his recommendations carry significant weight with Commission executives. As a result, the hiring process is open to criticism and allegations of nepotism and cronyism. Clear written policies regarding the hiring process and the substantive involvement of at least one neutral party should be established. Additionally, records documenting the hiring process, including records of interviews and candidate evaluations should be maintained.

Second, the actions of Dr. [REDACTED] further contributed to such a perception. She exchanged a number of texts with Dr. [REDACTED] that contained references to [REDACTED] as her boyfriend along with other improper comment such as [REDACTED]. Although Dr. [REDACTED] contends that she merely wanted to cater to Dr. [REDACTED] and to "play along," this lapse in judgment not only hurt her credibility as a competent professional, but also impacted upon [REDACTED]'s ability to properly manage and the orderly operation of the track.

Third, although the appointments are subject to the needs of the Commission and at the pleasure of the Executive Director, issues pertaining to performance, time and leave, or any other variable taken into account should be properly documented.

Lastly, in an effort to properly and accurately account for the hours worked by an employee, a review of the current measures to document time should be conducted and the use of a biometric scanner reconsidered.

Accordingly, the following is recommended:

- 1) The reassignment/removal of Dr. [REDACTED] from [REDACTED] Raceway as her actions have raised questions about her own abilities and negatively impacted upon the ability of [REDACTED] to properly manage as well as the operation at [REDACTED]
- 2) The drafting of clear written hiring practices, including the involvement of a third party, and retention of documentation related to interviews and references.
- 3) The retention/creation of records documenting performances, time and leave, or other factors considered for re-appointment.
- 4) A review of current time keeping practices and the utility of a biometric scanner.