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**New York State Office of the State Comptroller**  
Thomas P. DiNapoli

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Division of State Government Accountability

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# Equine Health and Safety

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## Gaming Commission

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Report 2017-S-77

November 2018

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# Executive Summary

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## Purpose

To determine whether the Gaming Commission (Commission) is monitoring and enforcing New York State rules and regulations designed to promote the health and safety of equines at New York State racetracks. The audit covered the period from January 1, 2014 through August 29, 2018.

## Background

The Commission regulates all aspects of gaming activity in the State, including horse racing and pari-mutuel wagering, Class III Indian Gaming, the State lottery (including video lottery terminals), and charitable gaming. The Commission was created by Chapter 60 of the Laws of 2012 and became effective February 1, 2013. The law merged the Racing and Wagering Board with the Division of Lottery to form a single State agency. The Commission supervises four thoroughbred tracks: Finger Lakes Gaming and Raceway (which is privately owned), Saratoga Racecourse, Aqueduct Racetrack, and Belmont Park. The New York Racing Association, Inc. (NYRA) operates the latter three under a franchise agreement with the State. The Commission also supervises seven privately owned harness tracks: Batavia Downs, Buffalo Raceway, Monticello Raceway, Saratoga Gaming and Raceway, Tioga Downs, Vernon Downs, and Yonkers Raceway. The Commission's Equine Medical Director (Director) is responsible for all aspects of equine health, safety, and welfare at State racetracks and advises the Commission on equine medication policies, as well as the safety and condition of racetrack facilities and surfaces. The Director supervises all Commission regulatory veterinarians and the New York State Equine Drug Testing Program Laboratory at Morrisville State College. The Director oversees equine testing procedures, ensures compliance with regulatory veterinary protocols, investigates incidents, and monitors the Commission's necropsy (autopsy) program.

## Key Findings

- The Director has implemented many new measures to improve the Commission's practices to promote equine health and safety in New York State. However, we found the Commission could better document daily operating policies and procedures; improve how incident information is recorded in the Equine Breakdown, Death, Injury and Incident Database; and ensure adherence to drug testing requirements.
- While the Commission's internal audit recommended the Commission create a comprehensive database of drug testing samples, the Commission has yet to do so.

## Key Recommendations

- Develop and ensure adherence to written policies and procedures for operations pertaining to equine health and safety for both harness and thoroughbred racetracks, which may include:
  - Daily operating functions for Commission staff.
  - Procedures for post-race drug testing.
  - A uniform incident recording policy.
- As soon as practicable, develop and implement a comprehensive database that more effectively tracks each drug test sample from receipt through final disposition.

## **Other Related Audit/Report of Interest**

[New York Racing Association, Inc.: Financial Condition and Selected Expenses \(2015-S-21\)](#)

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**State of New York**  
**Office of the New York State Comptroller**

**Division of State Government Accountability**

November 13, 2018

Mr. Ronald Ochrym  
Acting Executive Director  
Gaming Commission  
One Broadway Center  
Schenectady, NY 12301

Dear Mr. Ochrym:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Equine Health and Safety*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller*  
*Division of State Government Accountability*

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This report is also available on our website at: [www.osc.state.ny.us](http://www.osc.state.ny.us)

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## Background

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The Gaming Commission (Commission) regulates all aspects of gaming activity in the State, including horse racing and pari-mutuel wagering, Class III Indian Gaming, the State lottery (including video lottery terminals), and charitable gaming. The Commission was created by Chapter 60 of the Laws of 2012 and became effective February 1, 2013. The law merged the Racing and Wagering Board with the Division of Lottery to form a single State agency. The Commission's mission is to "ensure that all lawful gaming and horse racing activity conducted in this State is of the highest integrity, credibility and quality."

The Commission oversees and regulates four thoroughbred racetracks: Finger Lakes Gaming and Raceway (which is privately owned), Saratoga Racecourse, Aqueduct Racetrack, and Belmont Park. The New York Racing Association, Inc. (NYRA) operates the latter three under a franchise agreement with the State. The Commission also oversees seven privately owned harness tracks: Batavia Downs, Buffalo Raceway, Monticello Raceway, Saratoga Gaming and Raceway, Tioga Downs, Vernon Downs, and Yonkers Raceway. This oversight includes stewards (judges at harness race meets), State veterinarians, and other personnel on the premises. The Commission is also responsible for enforcing other rules of racing, including those related to equine medications.

New York Codes, Rules and Regulations, Title 9 (subchapters regarding thoroughbred racing and harness racing), sets forth the Commission's racing rules and regulations. For example, these regulations require all thoroughbred horses entered in a race to be examined by an appointed qualified veterinarian to determine if each horse is fit to race. The regulations further require, upon the death of any horse on the grounds of a track, a necropsy (autopsy) to be conducted by a qualified veterinarian to determine the cause of death.

Between November 30, 2011 and March 18, 2012, 21 horses died or were euthanized as a result of conditions sustained while racing at Aqueduct Racetrack – approximately double the recorded fatalities in the previous two years and far exceeding the North American average for racing fatalities. This unusual cluster of injuries generated public and industry concern.

At that time, NYRA was directed to hire a qualified independent team of investigators to review the circumstances involving these fatalities, analyze the cause(s), and recommend actions to prevent equine injury and death at NYRA facilities. As a result, the Racing and Wagering Board appointed a Task Force on March 22, 2012, which in turn issued to the Commission 39 recommendations designed to reduce injuries to horses and riders. One recommendation was to appoint an Equine Medical Director (Director) to be responsible for implementing practices to meet the remaining Task Force recommendations and for developing additional safety measures to reduce equine fatalities at State thoroughbred and harness racetracks. The Commission appointed a Director in January 2014.

The Director is responsible for all aspects of equine health, safety, and welfare at State racetracks, which includes advising the Commission on equine medication policies, as well as the safety and conditions of racetrack facilities and surfaces. The Director supervises all on-track regulatory

veterinarians and the New York State Equine Drug Testing Program Laboratory (Lab) at Morrisville State College. The Director oversees equine testing procedures, ensures compliance with regulatory veterinary protocols, investigates incidents, and monitors the Commission's necropsy program.

To share relevant information, the Commission has an Equine Breakdown, Death, Injury and Incident Database (Equine Injury Database) and a Gaming Commission Rulings Database (Rulings Database), which are both searchable and available on its website. The Equine Injury Database lists every horse that has broken down, died, sustained a serious injury, or been involved in an incident at State tracks since 2009. The Rulings Database lists every fine and suspension issued to licensees for nearly three decades.

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## Audit Findings and Recommendations

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Since the Director was appointed in 2014, many new measures have been implemented to improve the Commission's practices to promote equine health and safety in the State. However, we found the Commission could better document daily operating policies and procedures; improve how incident information is recorded in the Equine Injury Database; and ensure adherence to drug testing requirements. Also, although the Commission's internal audit recommended the Commission create a comprehensive database of drug samples, the Commission has yet to do so.

The Commission lacks complete written policies and procedures to guide its staff on certain daily functions, including veterinarian inspections, drug testing, and laboratory standard operating procedures. Consequently, many (about 21 percent) of the written procedures we requested were created in response to our audit requests. Written policies and procedures help ensure employees carry out management's directives to mitigate risks. Documentation of these policies and procedures is critical to the daily operations of an organization, which deploys controls through policies that establish expectations and through procedures that put policies into action. In response to our findings, officials stated that the created documents were actually summaries of existing policies and procedures provided to make the content more understandable. However, we were not told that the information provided during the audit – which at times took over two months to receive – was only summary information, and we were not provided the corresponding policies and procedures.

Additionally, while the Commission does maintain data for the public, policy makers, etc., on equine deaths and injuries at all of the tracks, there is no procedure or standard for determining how incidents should be recorded in the Equine Injury Database. We found inconsistencies with how officials were recording scratches (when a horse is removed from the race prior to the start, which may indicate a potential injury or lameness was discovered), lessening the ability to compare incident information between tracks or to determine which racetracks need further monitoring and guidance.

We also found that, although there are established procedures for drug testing for all tracks, they are not always being followed at Saratoga Gaming and Raceway. For almost half the races tested in our sample, post-race testing on at least two horses was not performed, as required by the Commission. Additionally, for four of the ten race days selected in our sample at Finger Lakes Gaming and Raceway, not all of the drug tests could be performed due to delays getting blood samples to and tested at the Lab. As drugs often mask pain or pose health risks to the horses, administering drugs near race days puts the horses at risk for injury. Therefore, it is important that drug testing procedures are strictly followed.

### Improvements to the Equine Health and Safety Program

The Director has designed and implemented an internal control program to reduce the number of equine fatalities at New York racetracks – particularly the thoroughbred racetracks, due to the

relatively high number of fatalities over the years. The major components of this internal control program are:

- Assessing the process (identifying areas of vulnerability and risk factors for equine fatalities associated with thoroughbred training and racing);
- Designing and implementing targeted interventions (protective factors) to reduce those vulnerabilities and risk factors;
- Monitoring fatalities at New York racetracks that have those interventions in place while remaining alert for anomalies or additional risk factors; and
- Designing, implementing, and testing additional interventions to reduce equine fatalities.

Since the Task Force report was issued in 2012, the Commission has established multiple interventions, including:

- Creating drug testing procedures to identify the administration of medication that can mask pain and put horses at risk for injury.
- Reforming medication rules to make them more uniform. The new medication rules provide for regulation of 24 therapeutic medications in thoroughbred racing and 19 in harness racing;
- Reorganizing the NYRA veterinary regulatory department;
- Standardizing and enhancing the pre-race examination program;
- Implementing a racetrack surface and weather monitoring program;
- Creating a research team of veterinary practitioners, surgeons, internal medicine specialists, radiologists, pathologists, and an epidemiologist to investigate factors associated with fatal musculoskeletal injury and medical conditions that can cause equine death;
- Amending existing claiming rules and proposing new ones designed to increase trainer accountability and reduce the incentive to enter horses at increased risk of injury in claiming races;
- Developing a collaborative research relationship with the Jockey Club's computer scientists, who develop and administer an equine injury database; and
- Requiring thoroughbred trainers to obtain four hours of continuing education each calendar year as a condition of licensure in New York.

In addition, because of concerns about the number of equine deaths at Saratoga Racecourse from training, racing, and non-racing during 2016 (16 deaths) and 2017 (21 deaths), the Commission initiated a study and plans to produce a comprehensive Equine Safety Review Board report, similar to one issued regarding 2014 fatalities at Saratoga. The Commission expects the report to be completed and released by the end of 2018.

Since the 2012 Task Force report, the number of racehorse deaths has decreased. There were 40 fewer equine fatalities in the State in 2016 than in 2012. In March 2017, the Jockey Club announced a steady national decline in the rate of thoroughbred racing deaths per 1,000 thoroughbred starts, dropping from 1.92 fatalities/1,000 starts in 2012 to 1.54/1,000 in 2016. After 2012, State thoroughbred racetracks have mirrored or done better than the national trend (see the following tables):

NY Thoroughbred Tracks		National Thoroughbred Tracks	
Year	Rate/1,000	Year	Rate/1,000
2012	2.17	2012	1.92
2013	1.66	2013	1.9
2014	1.81	2014	1.89
2015	1.2	2015	1.62
2016	1.4	2016	1.54

## Policies and Procedures

### *General Operating Policies and Procedures*

The Commission lacks complete written policies and procedures to guide racetrack and Commission staff on certain daily functions. Consequently, many (21 percent) of the written procedures we requested were created in response to our audit requests. The Commission lacked written procedures for functions such as veterinarian inspections, certain types of drug testing, and laboratory standard operating procedures. Other policies and procedures were provided to us piecemeal as we requested them. In response to our findings, officials stated that the created documents were actually summaries of existing policies and procedures provided to make the content more understandable. However, we were not told that the information provided during the audit – which at times took over two months to receive – was only summary information and we were not provided the corresponding policies and procedures.

A Standard Operating Procedures (SOP) manual does exist for NYRA examining veterinarians. However, while the SOP is thorough and contains procedures for all aspects of the veterinarians' duties prior to and during a race (i.e., pre-race inspections, providing emergency care to horses), it does not include the procedures for post-race drug testing and only applies to the three NYRA racetracks, not to the Finger Lakes track or to the harness tracks.

Written policies and procedures help ensure employees consistently carry out management's directives to mitigate risks. Documentation of these policies and procedures is critical to the daily operations of an organization, which deploys controls through policies that establish expectations and through procedures that put policies into action. These documents set forth the fundamental framework and the underlying methods and processes all employees rely on to do their jobs. They provide specific direction to employees in their daily decision making. Without this framework of understanding, conflict can occur and poor decisions can be made, causing harm to the organization's reputation. Further, the efficiency and effectiveness of operations can be adversely affected. Documenting management's directives also assures future management and employees have a reference to continue these directives through organizational and staffing changes.

Since the 2012 Task Force report was issued, the Director has acted as the lead on implementing a series of changes in policies, rules, and guidance to address the recommendations and improve equine safety. The Commission's priority, however, has been making changes in operations –

placing less importance on and devoting fewer resources to documenting and solidifying policies and procedures in writing. Because the Commission has made many significant changes to racing procedures, it is important to document its directives to improve equine safety to ensure those directives are carried out currently and in the future, and in case of any organizational changes.

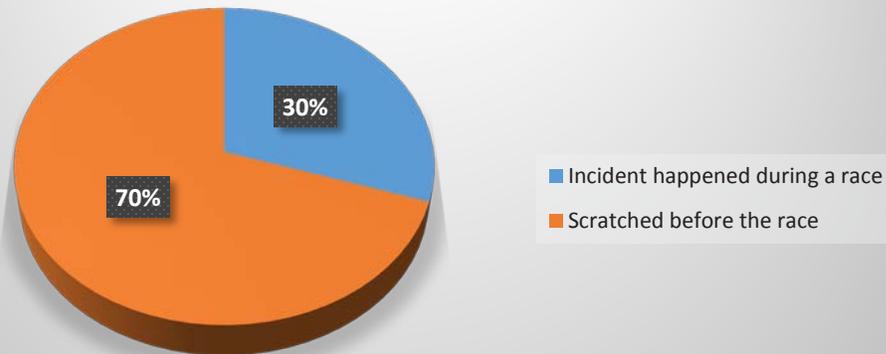
### *Incident Reporting Procedures*

While the Commission does maintain public data on equine deaths and injuries at all of the tracks, there is no procedure or standard for determining how to record incidents in the Equine Injury Database. Inconsistent records make it more difficult to analyze or otherwise use the information to compare incidents among tracks. Additionally, the level of detail recorded for each incident or penalty in the database varies depending on who enters the information, which also affects the ability to compare among racetracks.

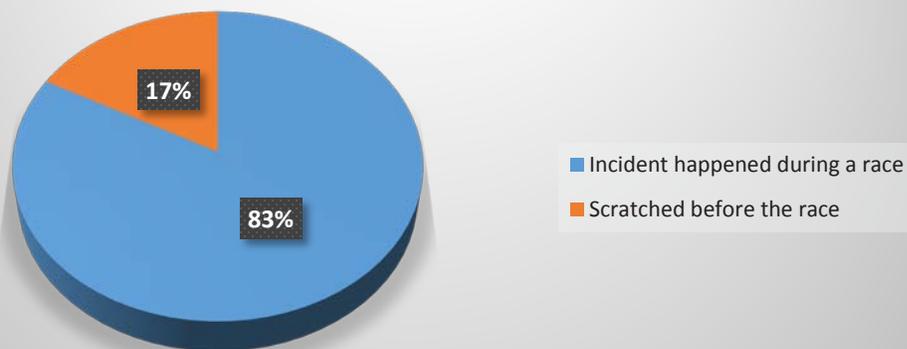
We reviewed the total number of incidents recorded for harness tracks by location and found a majority of incidents were categorized under “Stewards/Vets List,” which includes scratches as well as lameness injuries that occur during (or just after) racing. For the two harness tracks we visited (Saratoga Gaming and Raceway and Monticello Raceway), we found inconsistencies with how scratches are recorded, lessening the ability to compare incident information between tracks. We found Monticello Raceway and Saratoga Gaming and Raceway officials do not appear to record incidents falling under the Stewards/Vets List category in the database in the same way. Saratoga Gaming and Raceway officials record all scratches as incidents, even if a scratch is at the trainer’s request (and no incident occurred during racing) or the scratch is declared at the direction of a racetrack or Commission veterinarian. Monticello did not record these types of scratches as incidents. This inconsistency contributed to a higher number of incidents being recorded at Saratoga Gaming and Raceway than at Monticello. Although all the incidents were recorded as the same type, those that occurred during the race may be more indicative of equine safety issues than those that did not. Veterinary scratches may demonstrate that pre-examination controls are functioning well, showing that lameness or injury is being detected prior to the horse racing. However, due to inconsistencies in how the information is recorded, these distinctions are not readily apparent from the data. In response to our findings, Commission officials stated that officials at Saratoga Gaming and Raceway should not have been using the Equine Injury Database to record pre-race scratches and have since been directed to stop.

From January 1, 2014 to April 23, 2018, Saratoga Gaming and Raceway recorded 181 incidents in the database, compared to Monticello Raceway’s 71 reported incidents. Of the 181 incidents at Saratoga, 142 (78 percent) fell under the incident type Stewards/Vet List, while Monticello recorded 41 of its 71 incidents (58 percent) in the same category. We reviewed 80 of the 142 incidents from the Stewards/Vet List for Saratoga Gaming and Raceway and, for 56 (70 percent), the horse was scratched before racing. Only 24 of the 80 incidents (30 percent) occurred during racing. For Monticello Raceway, only 7 horses (17 percent) were scratched before racing – 34 of 41 incidents (83 percent) occurred during the race (see the following charts):

### Saratoga Stewards/Vet List Incidents Reviewed



### Monticello Stewards/Vet List Incidents Reviewed



## Drug Testing

Although all tracks have established procedures for post-race drug testing, we found that they are not always followed at Saratoga Gaming and Raceway. Additionally, for the Finger Lakes racetrack, pre-race drug test blood samples were delayed getting to the Lab and therefore could not be tested. Because drugs often mask pain or pose health risks to the horse, their administration near race days puts the horse at risk for injury. Therefore, it is important that drug testing procedures are strictly followed.

The Commission requires the winner and at least one other horse to be drug tested after each race. We reviewed post-race drug tests at Saratoga Gaming and Raceway and Finger Lakes Gaming and Raceway. At Saratoga Gaming and Raceway, we reviewed eight days, during which 92 races were held. For four of the eight days (40 races), we found two horses were not drug tested each day, as required. On three of the four days (35 races), only the winner was drug tested for each race, but no other horse. On the other day, officials sampled only the winner for 5 of the 11 races. Two

horses were tested, as required, for the other six races. Racetrack officials stated this occurred at that time due to budget constraints and lack of officials to obtain samples.

We tested ten race days (87 races) at Finger Lakes Gaming and Raceway. For all 87 races, both the winner and one other horse were tested, as required. However, pre-race blood samples to be tested for total carbon dioxide levels (TCO<sub>2</sub>) were not always received and tested by the Lab within 72 hours for four of the ten days. Horses are tested for TCO<sub>2</sub> to determine if, prior to racing, they have been administered a “milkshake” – a mixture of water, baking soda, sugar, and electrolytes that some trainers/owners believe enhances performance. In order to measure TCO<sub>2</sub> levels accurately, the blood sample needs to be tested within 72 hours because, unlike other drugs, TCO<sub>2</sub> levels naturally dissipate from the blood. Commission officials stated some of the delays occurred due to carrier problems and, in other instances, the Lab could not keep up with the samples due to a shortage of testing equipment. Since the period we reviewed in our testing, officials stated the Lab has added equipment to keep up with peak sampling times.

## **Comprehensive Drug Sampling Management System**

In 2016, the Commission’s internal audit group conducted an audit of New York’s Drug Testing and Research Program (NYDTRP) for horse racing. The audit found discrepancies (from 2010 to 2013) between the number of samples reported as collected by the tracks (265,210) and the number of tests reported by NYDTRP (286,144), a difference of 20,934 samples. The audit also noted NYDTRP’s failure to maintain a comprehensive database that tracks samples from receipt to final disposition. Although the audit recommended the Commission create a comprehensive database, it has yet to do so. We found that, during our audit, positive drug results were readily accessible electronically, but details on negative results or on samples that could not be tested (i.e., for TCO<sub>2</sub>) were maintained in hard copy only at each racetrack. The Commission does periodically (generally monthly) receive summary information on all samples, including negative samples, but detailed information is more difficult to retrieve.

A comprehensive database of all detailed results, including those now in hard copy only, could be easily queried by the Commission, and could (among other uses) support data analytics (e.g., trending, identifying patterns) to determine if, for example, racetracks are taking all required samples and whether certain illicit drugs are being used more often than others. Problems with sample testing – such as the issues we identified with the TCO<sub>2</sub> testing – could also be more easily identified. Access to useful data could improve the Commission’s effectiveness and efficiency. Trend analysis and analytics can show weaknesses or anomalies in operating activities that are not otherwise apparent, allowing management and staff to adjust activities to focus resources more effectively.

Lab officials stated they have not received the funding needed to purchase a lab information management system, nor have they developed a comprehensive in-house system. Commission officials told us that they researched systems that track these samples, but the programs are too expensive to create or purchase. They stated they are reviewing less costly software that can perform the same tasks, but have not found any viable options. Commission officials agree that drugs often mask pain, allowing horses to race and train with injuries that would otherwise be

too painful to run on, therefore risking further or more serious injury to the horse or rider. They further agree that testing and tracking all drug samples is a priority.

## Recommendations

1. Develop and ensure adherence to written policies and procedures for operations pertaining to equine health and safety for both harness and thoroughbred racetracks, which may include:
  - Daily operating functions for Commission staff.
  - Procedures for post-race drug testing.
  - A uniform incident reporting policy.
2. As soon as practicable, develop and implement a comprehensive database that more effectively tracks each drug test sample from receipt through final disposition.

## Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether the Commission is monitoring and enforcing New York State rules and regulations designed to promote the health and safety of equines at State racetracks. The audit covered the period from January 1, 2014 through August 29, 2018.

To achieve our audit objective, we interviewed Commission officials and officials at the racetracks we visited. At the four tracks we visited, we toured the facilities and observed the health and safety features. We observed pre-race inspections at two of the four thoroughbred tracks (Aqueduct Racetrack and Finger Lakes Gaming and Raceway). We reviewed the Commission's policies and procedures and applicable laws and regulations. We became familiar with, and assessed the adequacy of, the Commission's internal controls as they related to its performance and our audit objective.

To conduct our testing, we also obtained and used information from the Commission's Equine Injury Database and Rulings Database. We also used veterinarian inspection information from the Jockey Club, Equibase (published results for thoroughbred races), and the United States Trotting Association (published results for harness track races). We determined that the information from the Equine Injury Database, the Rulings Database, and the Jockey Club was reliable enough to be used for our testing (we tested for accuracy, but could not fully test for completeness). We could not determine the reliability of the United States Trotting Association and Equibase data; however, the information we used is publicly available and serves as the industry's standard for reporting racing results. The owners/jockeys, trainers, and Commission officials all have a vested interest in the accuracy of this data, which provides some control. We used the information only for limited areas of our testing and used other corroborating data sources when possible.

To assess drug testing procedures at Saratoga Gaming and Raceway for the four calendar years 2015 through 2018 (partial year), we selected a random sample of 4 of the 34 months the racetrack ran races, and randomly selected 8 of the 50 days within those 4 months that races

occurred. To evaluate drug testing at Finger Lakes Raceway for the same period, we selected a random sample of 4 of the 27 months the track ran races and randomly selected 8 of the 68 days within those 4 months that races occurred. For TCO<sub>2</sub> sampling at Finger Lakes Gaming and Raceway, we also included two additional days in 2014, as those records were readily available. The total population for that year was unknown, and auditors used a random method that cannot be replicated to pull the two additional race days.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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. 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 functions do not affect our ability to conduct independent audits of program performance.

## Authority

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The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

## Reporting Requirements

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A draft copy of this report was provided to Commission officials for their review and written comment. We considered their comments in preparing this final report and have attached them in their entirety to the end of the report, along with our State Comptroller's Comments, which address some of their specific statements. The Commission agreed with one recommendation and disagreed with another. The Commission disagrees that it should create a comprehensive manual by combining its Standard Operating Procedures manual with post-race sampling procedures. However, we simply recommended that written policies and procedures not yet documented be developed and followed.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Executive Director of the Commission 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 if the recommendations were not implemented, the reasons why.

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## Contributors to This Report

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## Division of State Government Accountability

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### Vision

A team of accountability experts respected for providing information that decision makers value.

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# Agency Comments

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October 19, 2018

Mr. Michael F. Cantwell  
State Program Examiner 2  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street  
Albany, New York 12236

Dear Mr. Cantwell,

The Commission submits the following response to the Comptroller's Final Draft Audit Report on Equine Health & Safety, which was provided to us on September 21, 2018. The Final Draft Audit Report contained two recommendations:

1. Develop and ensure adherence to additional written policies and procedures for operations pertaining to equine health and safety for both harness and thoroughbred racetracks, which may include:
  - Daily operating functions for Commission staff
  - Procedures for post-race drug testing
  - A uniform incident recording policy
2. As soon as practicable, develop and implement use of a comprehensive database that more effectively tracks each drug test sample from receipt through final disposition.

For the reasons detailed below, we reject the former as unnecessary and accept the latter.

### **Response to Recommendation 1.**

Commission Equine Medical Director Dr. Scott E. Palmer designed and implemented an "internal-control program" to reduce the number of equine fatalities at New York racetracks. The components of this internal control program are: 1. to perform an assessment of the process (identify areas of vulnerability and risk factors for equine fatalities associated with Thoroughbred training and racing), 2. design and implement targeted interventions (protective factors) to reduce that vulnerability and risk, 3. continue to monitor fatalities at New York racetracks with those interventions in place while being alert for anomalies or additional risk

factors that may be introduced, and 4. design, implement and test additional interventions to reduce equine fatalities accordingly.

Since 2012, the number of racehorse deaths in New York have significantly declined. During calendar year 2012, there were 74 “racing fatalities” at New York Thoroughbred and Standardbred racetracks, compared to 52 in calendar year 2017. This represented a 30 percent decline. On a per 1,000 starters basis, racing fatalities declined 22 percent, from 2.2 per 1,000 Thoroughbred starters in 2012 to 1.7 per 1,000 Thoroughbred starters in 2017. When comparing the three-year period prior to 2013, when the New York Task Force on Racehorse Health and Safety issued its findings and recommendations, with the last three calendar years, the three-year fatality rate per 1,000 Thoroughbred starters decreased 42 percent, from 2.4 to 1.4. In fact, New York has ranked at or below the national average in Thoroughbred racing fatalities for each of the past five calendar years. The Commission will continue to build upon this success and look to make additional changes that will further minimize injury and promote the safety and health of our equine athletes.

The Commission disagrees that it should create a comprehensive manual by combining the Standard Operating Procedures manual used by racetrack veterinarians with the post-race sampling procedures of the Commission. The recommendation stems from a fundamental misunderstanding regarding the organizations that perform the separate and distinct functions of race day pre-race examination of horses, post-race collection of biologic samples from horses, and drug testing. The Commission does have and has provided documentation of both aspects of on-track equine safety and regulation. A combination of both on-track functions into one procedure manual, however, is not appropriate.

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Comment  
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In the Final Draft Audit Report, OSC writes that: “the commission lacks complete written policies and procedures to guide racetrack and Commission staff on certain daily functions. Consequently, many (21 percent) of the written procedures we requested were created in response to our audit requests.” We note that in the previous draft audit report, OSC did not indicate a percentage but rather listed specific written procedures as examples of this criticism. Without detail, the Commission cannot understand how the 21 percent was derived or what memos comprised the 21 percent to allow for a detailed and specific response. Commission officials nonetheless provided the auditors with comprehensive narrative responses to specific questions regarding what the Commission was doing in support of equine health and safety. In no instance did the Commission create policies and procedures in response to Audit questions.

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A procedure manual for the examination of horses is appropriate for the examining veterinarians employed by the racetracks. A procedure manual for the collection, documentation, and shipping of biologic samples from racehorses is appropriate for the Commission. A procedure manual for drug testing is appropriate for the drug testing laboratory. The examining

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\*See State Comptroller’s Comments, Page 20.

veterinarians do not have any responsibility or duties related to post-race drug sampling and testing. The Commission does not conduct Thoroughbred pre-race examinations or test samples. The laboratory personnel have no responsibility or duties related to examining horses or obtaining the samples from horses. For that reason, these should be and are separate documents appropriate for the organizations and individuals who perform those specific functions.

The Final Draft Audit Report accurately identified a discrepancy in the manner that incidents have been reported in the Commission database between Saratoga Raceway and other harness tracks. We disagree with the recommendation that the Commission develop a uniform policy for the scratching of horse entries as unnecessary since one already exists. This recommendation was apparently due to a misunderstanding of database content. Specifically, in an effort to discern patterns unrelated to equine health and safety, Saratoga Raceway judges requested their on-track investigators input a specific report for every scratch. None of the other ten racetrack offices input a report for each scratch. This caused data that made it appear an unusually large number of horses were scratched before races at Saratoga Raceway or that the scratch policy was different at various racetracks. To eliminate future misinterpretation of database content we will discontinue use of the database to include routine scratches.

While the Final Draft Audit Report correctly identifies a discrepancy in the level of detail reported on the Commission website database, it is important to understand that the public database is not intended to provide a high level of detail to the public, rather to simply provide a summary statement that accurately reflects the recording of an incident at the track. Greater detail is contained in an internal Commission database which is used for investigative and research purposes. While efforts will be made to standardize the level of detail entered into the public-facing database, variations do not adversely affect the Commission's ability to investigate these incidents for the protection of equine welfare and safety.

Finally, the Commission has already begun to work with the Finger Lakes Racetrack Veterinary Department to ensure their pre-race examination protocols are of the nature of pre-race examination protocols undertaken at NYRA racetracks.

#### **Response to Recommendation 2.**

The Commission agrees with the recommendation that, when practicable, the Commission develop and implement use of a comprehensive database that tracks each sample from receipt through final disposition. While supportive of securing such an electronic comprehensive database for the processing of samples, we disagree with the implication that there have been missing or untested samples due to a lack of recordkeeping or defect in the applicable procedures for collecting and testing race horse samples.

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The Commission presently documents every single sample from collection to shipment to the testing laboratory. The testing laboratory has a written record of what occurs with every sample it receives, using “blind” sample numbers created by the Commission and affixed to each sample. While this paper-based system does not afford quick and readily sortable access to records, it is effective and does not impede the drug sampling and testing operation conducted by the Commission. The existing practices and procedures employed are sufficient and there have been no missing or untested samples due to any lack of recordkeeping or defect in the applicable procedures.

Thank you for the opportunity to respond to your Final Draft Audit Report. Please feel free to contact us should you have any questions or need additional information.

Yours truly,  


Ronald G. Oehrym  
Acting Executive Director

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## State Comptroller's Comments

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1. We did not recommend that the Commission create a comprehensive manual. What we did recommend was that the Commission create written policies and procedures not yet included in either the Standard Operating Procedures or post-race sampling procedures, thus ensuring all operating procedures are documented.
2. Our preliminary findings, provided to the Commission during the course of the audit, contained the total number of policies and procedures requested by the audit team and the number of policies that appeared to have been created solely for the purpose of the audit. Therefore, sufficient information has been provided to calculate the percentage listed in the report. Also, the preliminary findings listed each policy in question so that Commission officials could reference them as needed.
3. Auditors requested operating policies and procedures for specific Commission functions. However, as noted in the audit report, many of the written procedures were created in response to our requests. Officials stated that the created documents were actually summaries of existing policies and procedures provided to make the content more understandable. However, we were not told the information provided during the audit was summary information, nor were we provided with the corresponding policies and procedures.
4. We did not recommend that the Commission create a uniform scratch policy. Rather, we recommended the Commission create a policy for recording scratches in its database to ensure uniform data collection in the Equine Injury Database.