

MINUTES
WV RACING COMMISSION
Friday, July 21, 2017
WV Lottery Conference Room

The WV Racing Commission met on July 21, 2017 to conduct business and consider administrative matters. Roll call was taken and present were Chairman Jack Rossi and Commissioner Ken Lowe, Jr. Commissioner Anthony Figaretti was present via conference call. Counsel was represented by Kelli Talbott.

Approval of the June 27th minutes

The Commissioners and legal counsel received the minutes from the June 27th meeting prior to this meeting. Motion was made by Mr. Figaretti for approval, seconded by Chairman Rossi. Motion passed.

Executive Director's Report
Joe Moore

Joe Moore stated he received the NTRA accreditation report back for Charles Town. He and Erich Zimny have a call scheduled next week with Steve Koch to discuss the report and what necessary steps there are to move forward with the process. He plans on having for the Commission's review an Executive Summary of those steps to be taken at the next Commission meeting.

He provided to the Commissioners the 2017 medication violations at both Charles Town and Mountaineer. For equine testing there were 29 violations at Charles Town, with 7 rescinded, and 19 at Mountaineer Park.

He also provided to the Commissioners for their review the permit holder drug testing currently taking place at Charles Town

With the close of the meet at Mountaineer Park on the horizon, the Commission should begin to consider the proper steps necessary to take with its employees during the dark months. He will be giving the Commission information between now and the next Commission meeting when it will be necessary to make those recommendations and approvals on the employee status.

For more information and clarification, he has given the Commissioners the National Compact on Medications outline. It's a proposed compact that will be the Horse Racing Medication and Drug Testing Interstate Regulatory Compact. It has some proposed statutory language in it that would need to be toyed with to allow for WV to join such Compact. We are still awaiting the commitment from other jurisdictions to move forward and he will keep them updated as more information becomes available.

Chairman Rossi has been asking to reconvene the Racing Industry Committee. He has spoken with several folks over the last few weeks and he has a Committee established with sub-committees being Revenue Enhancement, Statutory Changes, Marketing and then a separate committee whose sole focus would be on Greyhound racing. He plans on getting with these Committee members and organizing an organizational meeting similar to what was done in the past at which point we will allow the sub-committees to go out and hold their meetings and report back to the Commission periodically.

Accountant's Report Joe Moore

Joe Moore stated the annual comparison of live handle decreased nearly .5% compared to FY'16. Export increased over 15% and simulcast decreased slightly over 5%. The overall total in-state handle is down 3.5% compared to last year.

The Commissioners were given the Financial Summary Reports of the Administrative accounts. After the 13th month expenses are recorded he will forward them a year-end balance and detail. He also included in their information the FY'18 Expenditure Schedules for their review.

Legal Update

Kelli Talbott stated she provided the Commissioners with a written report with the status of several cases that are still on the Commission's docket. There are a couple of medication violation Hearings where the purse was forfeited as a result of the positive test that are pending scheduling at Charles Town.

The main item occupying her time lately has been the Rules and reviewing the public comments received, which will be discussed in more detail on the next agenda item.

Consideration of Public Comments & Approval to File – Thoroughbred Rules of Racing

Kelli Talbott stated under the rulemaking process that the Commission is required to adhere to under the law, proposed amendments that the Commission wanted to consider for the 2018 Legislative Session were put out for a 30-day public comment period. That public comment period is a written public comment period. The Commission actually does have a choice when we are putting these out for comment. The Commission can either choose to notice a public hearing where people can attend and give oral comments at a particular time and place or they can choose to do a written public comment period, which is what the Commission chose to do in this case. Wednesday at 5pm the written public comment period ended. The Commission received public comments on various topics from Charles Town racetrack, the Charles Town HBPA, the Mountaineer HBPA, the National HBPA, the North American Association of Racetrack Veterinarians and the Jockey's Guild. These comments involve different topics and different rules. She and Joe Moore have reviewed these and tried to give some analysis of these to the Commission.

The Jockey's Guild comment was about the sections of our Rule that deal with permit holder drug testing. There are some provisions in our Rule that have been in there for a while that deal with circumstances under which the human beings, not horses, can be tested for safety concerns or randomly to determine whether someone is on a substance they shouldn't be and whether that poses a safety risk to themselves and others. The Jockey's Guild gave us a proposal to amend this Rule, several amendments, that would strengthen the Rule and make it more detailed with regard to the procedures for split sample testing available to the permit holder and other items. She and Joe Moore looked at the proposal that the Guild sent and they think their proposal is a good one. They think their proposed amendments are well stated and well taken. There were 2 items in addition to what the Guild submitted that they think the Commission should add to further bolster what the Guild has suggested. One of those would be to allow the Executive Director of the Commission to require a permit holder to produce documentation from a physician that indicates the permit holder is fit to perform whatever duties their permit allows them if that person is on a prescription medication that may, or may not, impair their ability to do their duties. So, the Commission would add a Rule that spoke to that

issue. Also, a Rule that provides, we have a similar provision with regard to equine testing, that if enough urine is not produced to allow for split sample testing, then there would be the option that the original test with the urine that was produced would be conclusive on whether there was a positive test or not. They think the Guild's suggestions are good ones and would add those two items to the Rule and they would recommend that the Commission adopt the Guild's suggestions, with those two additions.

There were public comments from both the Charles Town HBPA and the Charles Town racetrack about the wagering prohibition that we proposed to put in the Rule. Some history on this is right now the Rule only specifically prohibits Racing Officials from wagering on races under the jurisdiction of the Racing Commission. That means people like the Stewards, the State Veterinarians, the starter, the placing judge, the jockey room custodian, the Racing Secretary at the racetrack are forbidden from wagering on races under the jurisdiction of the Racing Commission. We proposed to amend it, and Commissioner Lowe was a proponent of this, to amend the Rule to prohibit track management permit holders, in addition to Racing Officials from wagering on races under the jurisdiction of the Racing Commission. The public comments we received were favorable toward the proposed amendment that we had. There were some suggestions to expand it or alter it somewhat. Charles Town racetrack suggest that we should expand the wagering ban to all track employees, not just track management, and that we should specifically and explicitly include Commission employees and Commissioners in that prohibition. The comment that we received from the Charles Town HBPA was that we should perhaps allow, if we are going to have the ban on track management that we should allow the track management at Charles Town to bet on Mountaineer's races and vice versa. One of the concerns with that is there's so much overlap with horses, trainers, owners between the two tracks that there may be some perception issues there if that were allowed. Basically, looking at those comments, she thinks the Commission has some options. You can keep the proposed amendment exactly how it was put out for public comment and that means that it's limited to track management permit holders wagering. You can extend the proposal to include what the Charles Town racetrack suggested track employees, Commission employees and Commissioners. With regard to the language that basically says that whoever the prohibition applies to, she would suggest to keep it as all races under the jurisdiction of the Racing Commission because of the crossover that she just discussed. Those are the options they have and she didn't have any objection looking at the proposal that the Charles Town racetrack had in extending that broader than just track management. This was a Commissioner Lowe issue and something he wanted us to put forward.

We had a comment from Charles Town racetrack on our Rule on Lasix administration. Right now we do not have the Model Rule on Lasix administration. We have a Rule that allows private veterinarians to administer Lasix on race day. They have to have direct oversight by Commission personnel who have to literally follow them around on the racetrack and watch the Lasix administration to ensure that nothing other than Lasix administration occurs. Charles Town racetrack suggests that we should get the Model Rule, which is that the Commission would appoint veterinarians and at the direction of the Racing Commission administer Lasix. The veterinarians would still be paid out of funds that the trainers and owners have to pay for Lasix administration, it wouldn't be a cost to the Commission, but those veterinarians would do nothing other than administer Lasix on the racetrack. They would not be permitted to have an outside practice and they would work solely at the direction of the Racing Commission. This is a Rule that we looked at and has been a Model Rule for a while and we have looked at over the years since its adoption by ARCI. Every single jurisdiction around us has the Model Rules so we're kind of an outlier in that regard and not having it. She's a proponent of adopting the Model Rules because there's a lot of thought that goes into that at the national level and this particular Rule has already been road tested in all of the states around us and it's worked. The problem that we have, as she understands it, is that there are so few veterinarians on the

racetrack there was some concern if we took the Lasix practice and gave it to these appointed veterinarians, there would be no veterinary practice on the backside at Mountaineer for the trainers and owners. Her suggestion to the Commission is this is not a Rule that has been revisited in the Rule Committee recently. She thinks it needs to be revisited. She thinks we need to look and see whether or not circumstances have changed it and whether it would be appropriate for us or even possible for us to adopt the Model Rule, but she doesn't think we could do it this year. The recommendation for that one was to put it back on the list for the Rule Committee to look at when it reconvenes next year sometime.

The other Model Rule that the Charles Town racetrack proposed that we adopt is a trainer eligibility Rule that ARCI has in place and she's sure there are many other states that have this. The key component of this trainer eligibility Model Rule is the requirement that trainers get 4 hours of continuing education every year to keep their permit. This is another good idea, good Model Rule as far as she's concerned. The only thing we would need to figure out is where the availability for their continuing education would come from in West Virginia. She doesn't know if that's something that can be done online or if we would have to bring outside people in to give that training, but that's another one that she thinks deserves some consideration by the Rule Committee going forward but is not something she thinks we are in a position to adopt this year.

We did get a comment from Charles Town racetrack about our Pari-Mutuel Wagering Rule but unfortunately that Rule wasn't out for public comment so we weren't able to deal with that comment this year. It related to the minimum wager, minimum payout Rule that we tinkered with in the past.

There was a comment from the Charles Town HBPA about a proposed amendment to our Rule that would say that cruelty to a horse, or other animal, would be a reason for the Racing Commission to take action against your Racing permit. The way the Rule reads right now it's just cruelty to a horse but the way this got started and the reason we proposed the amendment is literally one of the State Veterinarians at Mountaineer came to her and said there are other animals on the racetrack other than horses and that she had literally seen people do things that she considered cruel and we couldn't take any action on and it seemed wrong that we would allow folks to potentially be cruel to another animal. So, we proposed to add the words "or other animals". The Charles Town folks and horsemen think that's too broad. They proposed an amendment and she tinkered around with it and came up with some language she thinks addresses the Charles Town horsemen's concerns. It would basically say that cruelty to a horse or any other livestock or domestic animals kept on Association grounds, or the person has been convicted of animal cruelty in a court of competent jurisdiction. That makes it specific that we're not talking about rodent control on the backside which she thinks the horsemen at Charles Town suggested we might take action against someone under the animal category if there was a rat trapped in the barn, which wasn't our intent. That was the variation of language that the Charles Town horsemen proposed and she thinks that language is a fair compromise.

We had a comment from the Charles Town horsemen on a Rule that's been on our books for several years. This isn't a Rule we were proposing to amend this year in any way but folks can comment on any aspect of our Rule when we put them out for public comment. Several years ago we adopted a Rule that basically says the Commission or the Stewards can discipline a permit holder if they have knowingly, or without conducting proper due diligence, sold a horse for slaughter directly or indirectly. The Charles Town HBPA proposed that they didn't know what the word "proper" meant in the Rule and that they thought we should define due diligence as meaning if there's a contract between the buyer and the seller and the contract says I won't sell this horse for slaughter, that should be sufficient to comply with the Rule. The other thing the horsemen said was that they didn't know what "due diligence" means. There are all kinds of words and terms in the Rules that don't have a specific definition. There are many terminologies that are used in Rules or statutes like these that aren't defined and it's difficult to

define them. Sometimes they are fact dependent and not an absolute standard. It's difficult to define these exactly. Her proposal is that since the horsemen are concerned about the word "proper" in front of due diligence, she doesn't have any problem in taking the word proper out. She doesn't think it either adds or detracts the Rule one way or the other whether we have the word proper in there. It can just read due diligence. As far as trying to define due diligence, she looked at some legal sources to see how the courts have generally looked at what due diligence is and generally what the courts and case law say is that it means the care that a reasonable person would use or exercise to avoid harm. So she used that concept and added some language into the Rule that says due diligence as used in this subdivision shall mean the care and prudence that a reasonable racing permit holder should exercise to avoid selling a horse to a person or persons that may cause a horse to be conveyed for slaughter. What's reasonable is something that would have to be determined in the course of a fact-finding process in a Hearing. This goes back to the inexactness of sometimes statutes and Rules but she proposed she thinks an alternative but she thinks it may address the horsemen's concerns about the language in that Rule.

Commissioner Lowe stated the issue to him, from a personal standpoint as a horse owner/breeder, is it's too vague. He has talked to people, he has sold horses to people and signed the forms, and they still may do something goofy that he has no control over. When you say directly or indirectly, that's too broad. If it's directly then he should know it, indirectly he has no way to control it. Ms. Talbott stated to the best of her knowledge the Racing Commission has never taken action against anybody for a violation of this Rule since we've had it. So there aren't even any examples of the Racing Commission applying this in some way that would conceivably be called unfair. We've never even enforced this Rule. The tracks have Rules regarding this issue that they've enforced but that's not our Rule. We had a situation at Mountaineer before we had this Rule where the trainer sold the horse to a known kill buyer. The person was known generally in the racing community as a kill buyer and they sold it directly to that person. If we had had this Rule at that time, she thinks it would've fit within the four corners of that Rule. If we had a scenario where you sold your horse to someone that was reliable, that you had no reason to believe was going to sell the horse to slaughter, and those facts came out if indeed there was a case brought against someone, then what happened to it after it changes hands a few times you're not going to be responsible for. That's the nature of some sort of regulatory discretion that goes into this. She understands what Mr. Lowe is saying but she doesn't know how to get it anymore exact than it is, unless you just want to get rid of the Rule, which the Commission has the authority to do so if they desire. There is always going to be some judgment that's exercised by the Stewards or the Racing Commission as to whether one of these cases actually gets brought or not and the reasonableness of your efforts is going to be something that has to be examined. There are many more Rules on the books that are as inexact as this one. She did the best she could with trying to make it cleaner than it was. The Commission's options are to adopt exactly what the Charles Town HBPA has proposed, adopt her stab at taking a stab at it to make it better but not quite as far as the Charles Town horsemen had, or you could take the Rule completely off the books. A decision has to be made today because the Rule has to be final filed with any changes the Commission wants to make by July 28th.

Commissioner Lowe stated his personal preference is he would rather not vote on any Rule if he has to vote on them all and he doesn't like some of them. He'd wait another year and try to get it as best as we can get it. He would rather wait another year and do what he thinks is more correct than put something on somebody that maybe isn't as good as it might be. Ms. Talbott replied if the Commission doesn't do anything this year that's fine with her, but the Rule as it currently is remains a Rule. The Commission can decide they don't want to file any of this, that is an option. Commissioner Lowe stated he doesn't like "directly or indirectly." Chairman Rossi stated that's the current Rule and he doesn't know how far reaching that is. Ms. Talbott

replied the reason that it's indirectly is a lot of times there are middlemen that buy these horses for slaughter and they are known slaughter middlemen. So, if they sell it to a person they know to be one of those slaughter middlemen, then that's indirectly. That's why that language is in there. Commissioner Lowe inquired if a trainer does that, so to speak, and turns the horse back over to the owner and then the owner goes and does that not knowing and they just sold the horse to this person and it turns out they are slaughter people but they had no clue, we can't come back on the trainer can we? Ms. Talbott replied no because the trainer didn't sell the horse.

If the Commission doesn't want to file any of the amendments that they put out for public comment this year Ms. Talbott stated she can withdraw the Rule on the Secretary of State's website and the Rule that went into effect June 2nd will be the current Rule until we look at Rules again for 2019. Chairman Rossi stated he thinks a couple of the amendments they can approve. Commissioner Lowe asked if they could look at those and discuss those.

Chairman Rossi stated Ms. Talbott covered the wagering prohibition already. Commissioner Lowe stated he's in favor of that one. Ms. Talbott stated the proposal that was put out was to prohibit track management permit holders from wagering. We got a public comment from the racetrack that we should extend that and not only say track management but all track employees and throw in Commission members and Commission employees. She is personally fine with that but it's up to the Commissioners to decide which policy they want to choose. She suggested the Commission keep the language under the jurisdiction of the Racing Commission so track officials, management, etc. at one track cannot wager on horses at another track in West Virginia. Commissioner Lowe said he does not have a problem with doing that, particularly whether it's management or Commission members. We have no business wagering on races that are being run in this state. If for no other reason, it looks bad.

Motion was made by Mr. Lowe to implement this Wagering Rule but to extend the proposed ban not only to track management but also to the Commission members and Commission employees, seconded by Chairman Rossi. Motion passed.

Ms. Talbott stated she gave the Commissioner's some language on the animal cruelty Rule that she thinks makes that better. Chairman Rossi stated he doesn't disagree with that. Ms. Talbott explained the amended language to Commissioner Lowe that was already discussed previously in the meeting. Commissioner Lowe asked if we should consider putting a time limit on that? Ms. Talbott replied we already do. Under our Rule if you are convicted of a crime and it is a misdemeanor, that's something that the Stewards in their discretion can look at and say that was 20 years ago and we're going to give that person a license. If it's a felony, all felony convictions come in front of the Racing Commission and the Commission can decide it's old enough they don't care either. Motion was made by Mr. Lowe to pass this amendment, seconded by Chairman Rossi. Motion passed.

Ms. Talbott stated the transfer of horses Rule is a very difficult issue. This is a Rule that was discussed in the Rule Committee, amendments to our Rule, that pertains to the transfer of horses when a trainer is suspended. In order to try to curtail them transferring those horses to someone who will allow the trainer to continue to financially benefit from those horses and the person is just a front for them, this was language that was proposed and discussed in the Rule Committee that we put forward. We received a public comment from the HBPA who opposes this at Charles Town and we got a public comment in support of this from Charles Town racetrack, so you have competing viewpoints on this. She has given the Commissioner's some thoughts on the options they might have. They can adopt what they put out for public comment, she thinks there's justification to do that. They can decide not to adopt what they put out for public comment because of the concerns that the Charles Town HBPA had about the Rule. The Stewards do, under the current Rule, have quite a bit of authority already to exercise their discretion to not make these transfers but her experience is they have difficulty exercising that authority. She thinks program trainers are a problem on the racetracks and she thinks that this

language is designed to get to that but she thinks there are several policy choices the Commission has about whether they want to do this or not. Mr. Lowe made the motion to delay this Rule, seconded by Chairman Rossi. Motion passed.

The Lasix administration was covered earlier and Ms. Talbott recommended the Commission should defer. Motion was made by Mr. Lowe to delay this Rule, seconded by Chairman Rossi. Motion passed.

Ms. Talbott stated it was the same thing for the trainer eligibility Rule. The key component of that was the continuing education and we need to explore as to whether we have the wherewithal to provide that so she recommends the Commission look at it and delay it. Motion was made by Mr. Lowe to delay, seconded by Chairman Rossi. Motion passed.

The coupled entry Rule was amended last rulemaking cycle and the Legislature made amendments to the Rule to loosen up that process so that more horses having common ties and interests potentially have the ability to race on our racetracks and hopefully increase the number of betting interests that you have. After the Rule went into effect, the Charles Town HBPA voiced concerns with the way it was working at Charles Town. Mr. Moore added as he understood, the Charles Town HBPA, after the Rule went into effect, had an issue that the Rule as it is currently written would basically penalize a trainer for having two horses in the race, but maybe it was under different ownership and the owner would then drop the trainer if he couldn't get his horse in the race and the trainer would lose out that way. We went back several times to come up with language that we could all agree upon and basically it is what the last submission from the Charles Town HBPA was under their recommendation. Whether this addresses every situation in which a trainer may have a partial ownership in horse B and a separate owner owns his second horse in the race, he's not real sure. While Charles Town racetrack and HBPA may have differing opinions on the Rule, last he heard from Mountaineer, they are happy with the Rule as it currently exists. Commissioner Lowe stated if you utilize the date method, from what he's being told where the rub comes from is the owner owns a horse, the trainer owns another horse but the trainer trains them both, which horse gets the preference if you don't use the date? Ms. Talbott replied the Rule language has preference by date. Commissioner Lowe agreed and stated that's why he thinks that is so important. Motion was made by Mr. Lowe to accept this Rule, seconded by Chairman Rossi. Motion passed.

The next three Rules are the most difficult. These are all Model Rules. One of the things put forward as a proposal, since we try to keep abreast of adopting the Model Rules, is the Universal Veterinarians List Rule. This Rule was something that ARCI looked at back in April. The purpose, as she understands it, is that every state has different conditions and terms and rules about horses going on and off of a Vet's list when they have some condition that they're not fit to run a race. ARCI took a stab at adopting a Rule that would make it uniform, if adopted in every state, so that other states can reciprocate each other's Vet's lists. The Charles Town HBPA made a comment about this Rule. One of the provisions of the Model Rule requires the horse to be on the Vet's list for 7 days. The Charles Town HBPA commented that they thought it should be 5 days. She attached a Blood Horse story to the information she submitted to the Commissioner's that was about a debate over that 5 or 7-day issue when the Model Rule was discussed by ARCI back in April. The folks at the national level had very explicit reasons why they thought that 7 days was better than 5. ARCI ultimately adopted the 7-day hiatus Rule.

The other issue she recalls the Charles Town HBPA had with the Model Rule was there are certain terminology in the Rule about the various conditions that a horse might be in that would cause it to be put on the Vet's list. Illness was one of the words used, injury was another word used. The Rule wasn't all-inclusive but it generally described categories of conditions that a horse might be in to get on the Vet's list. They want to take out that language and substitute the word "unfit." The options the Commission have are adopt the Model Rule or not adopt the Model Rule or adopt it with the changes that the Charles Town HBPA has. Her only caution to

that would be that the purpose of the Rule is the Universal Vet's List Rule so if you alter something like the 7 days vs. 5 days, we're just going to be in the same place we are now where we have a different Rule than jurisdictions that adopt the Model Rule and we're not going to be able to have reciprocity of our Vet's list. The whole purpose of the Model Rule is for everyone to be on the same page.

Commissioner Lowe asked what's the reasoning for the Charles Town HBPA wanting to change from 7 to 5? Mr. Moore replied if the horse were to act up in the starting gate and suffer a cut, a cut could be easily bandaged and stitched and the horse could run the next day but the Vet's going to put it on a 7-day Vet list. The argument at the ARCI meeting was just because that cut is the only thing visible you see doesn't mean that horse has not suffered some sort of concussion or underlying other condition that is not apparent at that moment. Ms. Talbott added it's also conceivable that horse is on pain medication as well for the cut and it's better not to have the horse running on the pain medication, and therefore they err on the side of the welfare of the horse and they believe that the 7-day was a more welfare friendly Rule. Commissioner Lowe added typically a horse that's on the Vet's list has to come back and work and be examined by the Vet, or it doesn't get to run again. That's part of what the Vet's responsibility is. How a Vet knows this horse has had pain medication, he doesn't know that. Ms. Talbott replied they would probably ask the trainer and the horse would be tested as well. Commissioner Lowe stated the Model Rules, which he agrees we need a benchmark, however, there are people on these Boards and Committees that don't live the same lifestyle that we do. They don't have the same horses or quality of horses that we do, they don't run under the same conditions. They live in a different world. That's what bothers him the most about the Model Rules. Sometimes these Model Rules don't fit to every occasion. Mr. Moore added to the extent he agrees they may not fit every occasion for every jurisdiction across the board, but to the extent that we deviate from a Model Rule, you're putting West Virginia back out on an island by itself in the racing world. Your options are we adopt it or we don't adopt it. He doesn't really see a point in picking pieces of it that we like or changing it. If we don't take it, we just don't take it. If we do that for these Model Rules it's just segregating us from your surrounding jurisdictions for which horses travel back and forth to. Randy Funkhouser commented from the HBPA's standpoint the out of state competition on a national level, the people at ARCI have not reached conclusions on all of this out-of-state testing and he doesn't think this Commission should go forward until more is worked out on this. The second thing he'd like to comment on is the horsemen at Charles Town are really concerned when they sell a horse and what makes due diligence? He thinks that needs to be defined by the Racing Commission as to actually what due diligence is. Define due diligence before you enforce a Rule that is hollow there. The last thing is with the shortage of entries, he thinks the Commission needs to look at the training Rule that limits trainers and owners from entering into a single race. Ms. Talbott commented if the Commission doesn't want to adopt Model Rules that's their prerogative. She will say that other jurisdictions that do aren't all full of people who are millionaires. The states around us, like Delaware and Maryland, they adopt these Rules and they're not in the stratosphere Mr. Lowe discussed. In the past we've put forth Model Rule amendments because the Commission has been favorable toward adopting those so we can be uniform in the mid-Atlantic, but if you want to choose not to adopt it, that's something that is within your authority to do. Commissioner Lowe asked if we are against one Model Rule are we considered outcast and we are against them all? Ms. Talbott replied not necessarily. Commissioner Lowe asked if the Vet's commented on the 5-day Rule? Ms. Talbott replied we didn't get any public comments other than the ones she gave the Commissioners. There were veterinarians involved at the ARCI level with this and those veterinarians were advocates of the 7-day Rule. Commissioner Lowe stated he tends to lean with the horsemen and the local vets in our jurisdiction and in our state every time. He thinks they are the ones that know the most about these horses, the most about what's best for them and what's good for the owners and what's good for the trainers. If we

can't rely on our vets, who do we rely on? If you're asking for his idea, he says go with the 5-day Rule. That's what horsemen and vets think is a good idea and management wouldn't have a problem with that. Ms. Talbott replied it's not that. The Model Rule is 7 days, not 5. The Charles Town HBPA is proposing to change the Model Rule from 7 to 5 days. We currently don't have anything like that in our Rule at all so if you want to change it to 5 we're changing the Model Rule, which you could theoretically do.

Motion was made by Mr. Lowe to change the Model Rule to 5 days, seconded by Chairman Rossi. Motion passed.

Ms. Talbott stated she's going to take the next two Rules together because they are interrelated. The ARCI spent months on trying to get a more thorough out-of-competition testing Rule and Veterinary Practices Rule. There were a lot of folks at the national level involved in that process as well. Both of these Veterinary Practices and out-of-competition testing Rules are Model Rules with one exception that was mistakenly put into your Rule for public comment. ARCI is still working on a section of this out-of-competition testing Rule that deals with trainer responsibility and has not adopted that yet. That mistakenly, that trainer responsibility piece that ARCI hasn't adopted yet, made it into our Rule for public comment but the rest of what we have in there is verbatim Model Rule language. Some comments were received from Charles Town HBPA, Mountaineer HBPA, the National HBPA and the North American Association of Racetrack Veterinarians with very detailed and involved comments on their opposition to many aspects of this Rule that are too wide ranging for her to talk about in any detail today. It's her understanding that all of this was hashed out at the national level, except for the trainer responsibility piece that she said mistakenly made it in our Rule for public comment. The National HBPA actually endorsed the out-of-competition testing Rule that ARCI passed. Her intent, and Mr. Moore's intent, in putting this forward was for the Commission to adopt the Model Rule, not anything else. She's happy to take out the trainer responsibility piece that the commenters indicated ARCI hadn't adopted yet, but they are still opposed to the Rule even with that out of it. The Commission's options are they can adopt the Model Rule, we can make sure we take out that trainer responsibility piece out since ARCI hasn't adopted it yet, or you can not adopt it at all but attempting to edit it like you just did with the Universal Vet's List, she can tell them she doesn't have the expertise to do that. Experts at the national level went through all of this and came up with this and those folks know more about this than she does. So, she thinks this is one either the Commission adopts or they don't. Commissioner Lowe stated if he reads that all of the groups Ms. Talbott mentioned oppose this, he would suggest they don't do anything with it and get feedback from the three groups that commented and why are they opposed to it? Ms. Talbott stated he can read their comments, they are quite detailed. Commissioner Lowe added he can't imagine that the three groups opposing it could be all wrong.

Motion was made by Mr. Lowe to not do anything with this Rule right now, seconded by Chairman Rossi. Motion passed.

The next Rule is the horse slaughter Rule and it has already been discussed. We've never punished anybody under this Rule. The track has its own Rule and what they do with their own Rules is not something she can control. Our Rule, what she proposed, in response to the Charles Town HBPA's comment was to take out the word proper which they objected to, and she's fine with taking that word out, and they wanted due diligence to be defined and she did the best way possible of defining it that she could and she read that language earlier. If the Commission wants to edit it some other way they can do that, if they want to not do this at all that's fine. Otherwise, the Rule will be what it is now. Chairman Rossi stated he doesn't like what it is now and saying directly or indirectly, that's so broad it's unbelievable. Ms. Talbott replied they can strike that if they want to. Commissioner Lowe stated he still has difficulty in putting a trainer in a position of being able to correctly perform due diligence. Ms. Talbott stated they can get rid of the whole Rule if they want to, that's one option as well. Commissioner Lowe

added he supports totally protecting the animals from slaughter, he just doesn't know that it's worded the best way it could be. Chairman Rossi stated his feeling is go with what Ms. Talbott has written and once we have a little bit of time to look at it, we might have to re-evaluate. Commissioner Lowe asked Chairman Rossi if he was going to take the word indirectly out? Chairman Rossi replied not right now. Commissioner Lowe asked if they could always re-visit this Rule? Ms. Talbott replied it would be 2019 because we are doing Rules for 2018 now.

Motion was made by Mr. Lowe to strike through the word indirectly, seconded by Chairman Rossi. Motion passed.

The last Rule is the Jockey's Guild made some suggestions to add provisions to our permit holder drug testing Rule. She thought they were well taken as did Mr. Moore. They recommend adopting what the Guild proposed with two additional items. One is to allow us to get a fitness for duty report on a permit holder that's on a prescription drug that may or may not impair their ability to perform their duties and also a Rule that says if we don't have enough urine for a split sample, the original sample is conclusive, whatever test results. So, they are recommending the Guild's proposal with those two additions. Commissioner Lowe asked if there should be a time limit on approval by the physician? Mr. Moore asked what approval? Commissioner Lowe stated that they get documentation from a physician that attests to their ability. Mr. Moore replied the way he envisioned it, the approval would last as long as the prescribed medicine was issued to the individual. Commissioner Lowe asked if we could order a test to be made at any time? Mr. Moore replied yes. Ms. Talbott added the way the Rule is now, and would remain this way with the amendments, you can either test a permit holder randomly or for cause. The cause scenario would be that person is slurring and wobbling all over the racetrack and maybe you don't want him to get on a horse so you have him tested. Mr. Moore stated this amendment came after a conversation he's had with Executive Director's in other jurisdictions who do that very same thing.

Motion was made by Mr. Lowe to approve this amendment, seconded by Chairman Rossi. Motion passed.

Request for Permit Reinstatement – Anthony Farris

Ms. Talbott stated the last time Mr. Farris was in front of the Commission was Charles Town racetrack had ejected Mr. Farris, multiple times, but the final one that resulted in him being in front of the Commission in June or July 2016 was that he had been ejected for violating the track policy where he had essentially sold a horse to slaughter directly or indirectly. He contested that ejection and there was a Hearing in front of the Hearing Examiner. Testimony was taken, a thorough vetting was done of all of the circumstances under which the sale of the horse was involved and issued a recommended decision saying that he was upholding the track's ejection. The facts did support the horse was sold for slaughter and that he did not take reasonable care. So, it was recommended for the Commission to uphold the ejection and Mr. Farris would be permitted to request re-entry to the track on March 24, 2017. However, Mr. Farris wanted to come back to the track on the anniversary date, or thereabouts, and he had let his permit expire and the permit is the thing the Racing Commission issues so he does not currently have a racing permit where he would be in a position to request re-entry to the track and if the track refuses that he can file another ejection appeal and that would be heard. The issue before the Commission is whether his permit should be issued at this point. If the Commission reissues the permit, he will still have to request re-entry from the racetrack and they will have to make a decision whether or not to do that. Ms. Talbott added for clarification we never suspended Mr. Farris's permit, he let his permit expire of its own accord. Mr. Farris stated he applied to get back on at Charles Town but since his permit is expired he couldn't file the ejection appeal. Mr. Moore added that Mr. Farris went into the license clerk's office and

applied for his current license and due to the fact it expired during a time of indefinite ejection from the Hearing Examiner which the Commission upheld, it was required for him to come to the Commission to request that permit be granted. Mr. Farior stated he would have never let it expire but he wasn't allowed on the property to renew it. He holds a license in several other jurisdictions.

Motion was made by Mr. Lowe to issue Mr. Farior his permit, seconded by Mr. Figaretti. Motion passed.

**Mountaineer Park Capital Improvement Request – AC/Heat Units Groom Quarters,
\$7,380.78**

Mr. Moore stated this request has been reviewed by Ms. Carnefix and she has confirmed that the money is available for their use and recommends the Commission's approval.

Motion was made by Mr. Lowe for approval, seconded by Mr. Figaretti. Motion passed.

**Charles Town Capital Improvement Request – Photo Finish Scanner Replacement,
\$1,675.00**

Mr. Moore stated this item has also been reviewed by Ms. Carnefix and funding is available for this project and it is recommended for approval.

Motion was made by Mr. Lowe for approval, seconded by Mr. Figaretti. Motion passed.

Charles Town to implement new Pick 6 “Unique Winning Ticket” Wager

Mr. Moore stated Charles Town has submitted this request. The new Pari-Mutuel Wagering Rules go into effect August 1st and this would allow them to run this new Pick 6. It's kind of a carryover type of wager and their plan as it's outlined is to payout, and including any carryover, on WV Breeders Classics day in October.

Motion was made by Mr. Figaretti for approval, seconded by Mr. Lowe. Motion passed.

Approval of West Virginia Breeders Classics XXXI purse & advertising, \$1,140,000

Mr. Moore stated this request comes for the current year's West Virginia Breeders Classic. They've requested this reimbursement, which is made out of the Racetrack Video Lottery Fund after all the allocations are done for the fiscal year 17. The request is \$1,140,000 and he recommends it for approval. Mr. Figaretti asked about the advertising. Mr. Moore replied we have received a submission of their proposed advertising for which he forwarded out for review. He can send it back out to Mr. Figaretti after the meeting.

Motion was made by Mr. Lowe for approval, seconded by Mr. Figaretti. Motion passed.

Mountaineer Park Training Days

Chairman Rossi stated for both Mountaineer HBPA and the track, as a Commission we are set to regulate and not negotiate a contract. He knows there is a contract out there. We have asked people to sit down and talk and it's obviously an issue about the lack of training or lack of ability for training. His feelings are he thinks the two parties need to sit down and follow their contract and decide how to settle something. He feels like this is a detriment to racing that we have to discuss this in a meeting like this and he wished the two parties could sit down and have a very good talk and try to reach some sort of agreement. He's going to call on Jami Poole and Rosemary Williams to disclose if there was an offer and has it even been considered.

Rosemary Williams stated yes there was an offer made last night. She reached out to Jami Poole. She has not heard back from anyone. Mr. Poole was reaching out to his Board and she has not heard back from him.

Jami Poole stated Ms. Williams did make them an offer last night but it still goes back to the issue of the days of training. The offer never took away the safety issue they have before them. The offer was 5 days a week, they could pick which 2 days they want off and they would take them until November 26th to race. That offer isn't a good offer because they are still going back to the safety issue of the horse. They came to the Commission strictly over the safety of the horse and he can't say it's ok today, and his Board feels the same way. The Board doesn't want to approve this because it's still not taking away the safety issue of the situation. Chairman Rossi stated he thought they were offered 5 days a long time ago. Ms. Williams stated they are training 5 days now. They were back to back and they changed that. Chairman Rossi asked stated the new offer was they could pick their days, was that all? Ms. Williams replied yes. Ms. Williams provided information on how many horses are trained every day. Mr. Poole stated even though there are days where there are fewer horses training than others, those horses are still training.

Nelson Robinson stated he thinks the most important thing to remember is that Mountaineer racetrack is not training horses, they don't own horses, but they have facilities that accommodate the racing industry and also their business. A lot of these constructions and negotiations take place within the contract. There is an existing contract that is in place, that has been in place since February 16, 2016. In that contract there are provisions that stipulate what happens when there is an issue or disagreement. The provision states: In the event there is a disagreement between the parties as to whether any party has complied with the terms or conditions of this agreement, the track and the HBPA shall appoint 3 representatives to the Racing Committee. The Racing Committee shall have no authority to alter the terms and conditions of this agreement. In the event there is a disagreement between the parties as to whether any party has complied with the terms and conditions of the agreement then the track and the HBPA shall choose an arbitrator and 2 arbitrators shall choose a 3rd. There has never been a Racing Committee established and there has never been an issue presented to that Committee and he thinks that's where it should be and the discussion should take place there. Chairman Rossi stated what he just described is both parties are at fault. Rosemary Williams stated they have Committees but there has never been a disagreement where they've had to come together. Chairman Rossi asked Jami Poole if he was aware of any Committee like that? Mr. Poole replied no. Counsel for the Mountaineer HBPA stated they did not come to the Commission first thing. There were numerous attempts at trying to resolve this issue with the track that fell completely on deaf ears and they didn't even get a response. Chairman Rossi stated that's what they are trying to do here is open up everyone's ears. Counsel continued by stating there are two issues here. Mr. Robinson wants to concentrate on there is a contract and things like that. This Commission has governance over all aspects of racing. This is an aspect of racing that affects the riders, the trainers, the horses themselves, the folks that work on the backside and in all honesty the folks in the stands because this is a safety issue. The Commission has numerous materials in front of them from different people and agencies across

the country that say these horses need 6 days. You don't have any other track surveyed that does not train horses 6 days. A lot of them train 7 and run 2. Angel Moore read a section from the contract that states: the track shall permit approved horsemen to use the stalls at its track, barns and other facilities as they exist on the day hereof for training purposes without charge for horses qualified to race at Mountaineer Park. Ms. Moore stated they agreed to, contrary to that, a starting fee that's attached to each horse at each race, \$10-\$25 depending on the purse. That money, verbally, has been committed to go to expenses that the track incurs in allowing them to train which they should be able to do free according to the contract. There is nothing in this contract that would in any way contemplate a limitation on the days they are allowed to train. There is a Rule in the Racing Commission Rules that says you can't be cruel to animals and endangering the welfare of an animal is against public policy. You have all these letters that say it's harmful to these horses if they can't train at least 6 days a week.

Commissioner Lowe asked how many horses are there on the grounds in training? Jami Poole replied 500. Ms. Williams added and then they have ship-ins. Commissioner Lowe inquired including the training centers that are around Mountaineer, the total number of horses that are actively training is what? Ms. Williams replied 900. Commissioner Figaretti asked Commissioner Lowe what did he personally think? Commissioner Lowe replied listening to both sides and he hears the horsemen say there are 487, that to him is an argument to have fewer days. When he hears the track say there are 1000 horses, that's the reason to have more days. It sounds to him like they are giving evidence in the opposite direction. Mr. Poole stated there are about 490 on the track and if you count the training centers around them the 900 is probably correct. Ms. Williams stated she could get the Commission the exact number of horses on the track from their stall superintendent if they'd like it. Commissioner Lowe stated to answer his suggestion because there is a provision in their contract on the 4 corners that's already there, it seems to him as though we have to put a time limit on it because timing is important and they only have so much money left. He says to give them 10 days. Each side appoint 3 representatives, just like it's stated in the contract, and come back with an answer. Ms. Moore stated they have gone above and beyond, almost to the point of begging to have a meeting and have been unable to do that. Commissioner Lowe stated to try one more time. Chairman Rossi stated Commissioner Lowe is not just giving a suggestion, he is saying we are going to require both parties to sit down and have a meeting. Counsel for the HBPA asked if the Commission could direct the parties that bind the track be present because the horsemen will have parties that can bind the horsemen and what they get frequently is you're not talking to the right one or we need to run it by this one. Ms. Williams stated they will go with what the contract says and they will establish a 3 member Committee. Commissioner Lowe asked how soon will that be done? Ms. Williams replied she can try to get with them first thing Monday morning and see what she can do on the Committee. Chairman Rossi stated it has to be more than tried, it has to be said we're going to do it. Ms. Williams replied she will do it. Nelson Robinson stated they don't need outside interests involved in their contract discussions. As Ms. Williams just stated they will immediately find 3 people and establish a Racing Committee and they ask the HBPA to do the same and they will meet as soon as possible. Chairman Rossi asked if the General Manager will be one of those three people? The HBPA wants a decision maker there. Mr. Robinson stated if the General Manager determines he wants to be part of that Committee, he'll be part of that Committee. If he decides not, that's not up the HBPA to tell them who or what or when. Jami Poole stated with all the information they gave the Commission they must realize there is a safety issue and they are going to proceed with this knowing there's a safety issue.

Eric Hamelbach, President National HBPA, stated first he wants to thank the Commission for being so interested in animal welfare. The number of horses, while it is relevant, is not the concern here. The concern is the safety and well-being of not only the equine athlete but the human athletes that are on the horses, handlers and those that are taking care of them. He thinks it's proven the healthy horse needs exercise to maintain his

conditioning. You try to equate this to humans, professional athletes train 6-7 days a week. It's an important issue to allow to do so because he feels if you don't you could open yourselves up to a public relations nightmare. We have, throughout the country, seen a decrease in the number of breakdowns to the equine injury database. Not allowing horses to train properly has proven to have an effect on breakdowns in a negative way. You don't want that. You want field sizes, you want horses running. Taking away the ability for a horse to continue to train and be in healthy shape and condition to do so will allow you to keep field sizes that keep handicappers happy. He appreciates the racetrack trying to make a fiscally responsible decision but you can't just force anybody to not take care of their responsibility and in this case professional horsemen taking care of professional athletes need to be able to train them as such. He hopes the Commission will take into consideration this animal welfare issue such that it cannot only concern your racetrack but it could affect us nationally.

Jami Poole stated he would like for one of the Commissioners to be involved in this meeting if they could. Mr. Robinson stated he would object to that because the Commission would then again be involved in the internal affairs between two parties that are in a contract. Chairman Rossi stated he doesn't think it's their point to argue that contract. Counsel for the HBPA agreed with Chairman Rossi.

Mr. Lowe made the motion that bearing in mind all of the issues that have been heard, there is a provision in the contract that exists exactly for a question like this, that considering the safety for everyone involved, the WV Racing Commission directs the parties involved to begin by Monday, July 24th to immediately be allowed to have 6 days of training, only while there is negotiation and no later than Wednesday, July 26th or noon on Friday, July 28th the Commission wants an answer. In this meeting, there will be persons from both parties that have the authority to make a decision which is binding on their entity that they represent. Ms. Williams stated she can't arrange for 6 days of training that fast. Mr. Lowe asked how fast can she arrange it? Ms. Williams stated she will ask the ambulance crew. Mr. Robinson stated the Commission is doing exactly what they contradicted themselves at the beginning of the meeting. Why would they want to sit down with anybody after they've been directed to start and do what these people requested? There's no reason for them to negotiate anything. You've made a mandate, effective with this motion, that we immediately start 6 day racing. What are they going to negotiate? Jami Poole stated on behalf of the horsemen they will negotiate and try to help the best they can to do this. Chairman Rossi stated it seems to him if they go back to the contract and they sit down, who pays for what are things they need to negotiate settling. Counsel for the HBPA stated the horsemen would argue the Commission has the ability given the safety issue to order the track to train 6 days. Ms. Williams stated there's nothing to prevent the horsemen in this meantime while they are negotiating to go down to a training center. Commissioner Lowe asked what it costs for a day of training because it sounds like insurance is the issue. Ms. Williams replied when the insurance policy renewed in January they had 4 days of training and they've already moved it up to 5. Commissioner Lowe asked if there was a way to extend that policy the extra day? Ms. Williams replied she cannot answer that. Commissioner Lowe stated if there is an injury during that extra day and there is no insurance, is she telling them that puts the Corporation at risk? Ms. Williams replied yes. Counsel for HBPA stated he has never seen an insurance policy that says it will cover you on this day but not that day. Ms. Williams stated it's based on the amount of days, not a specific day. Mr. Robinson stated he thinks Commissioner Lowe is on the right course. Let them go back and work within the confines of the contract to try to get this thing solved and out of the way as quickly as possible. Motion was seconded by Chairman Rossi. Commissioner Lowe withdrew his motion.

Chairman Rossi made the motion the two parties get together for a meeting by Wednesday, July 26th, and reach a settlement. Seconded by Commissioner Lowe. Motion passed.

Public Comments

Rosemary Williams stated the purse fund will run in the negative on October 16th. That is the updated calculations.

Adjournment

Motion was made by Mr. Figaretti, seconded by Mr. Lowe. Meeting adjourned.