

**MINUTES**  
**WV RACING COMMISSION**  
**Tuesday, January 24, 2017**  
**WV Lottery Conference Room**

The WV Racing Commission met on January 24, 2017 to conduct business and consider administrative matters. Roll call was taken and present was Chairman Jack Rossi. Commissioner Bill Phillips and Commissioner Greg McDermott were present via conference call. Counsel was represented by Kelli Talbott.

**Elect Racing Commission Chairman**

Motion was made by Mr. Phillips for Jack Rossi to be re-elected for another term as Chairman, seconded by Mr. McDermott. Motion passed.

**Approval of the December 20 & 29 minutes**

The Commissioners and legal counsel received the minutes from the December 20<sup>th</sup> and December 29<sup>th</sup> meetings prior to this meeting. Mr. Phillips noted two corrections to be made to the December 20<sup>th</sup> minutes. Motion was then made by Mr. Phillips for approval of the December 20<sup>th</sup> minutes, seconded by Mr. McDermott. Motion passed.

Motion was made by Mr. Phillips for approval of the December 29<sup>th</sup> minutes, seconded by Mr. McDermott. Motion passed.

**Executive Director's Report**  
**Joe Moore**

Joe Moore stated the 2017 Legislative Session is upon us. On Thursday, January 19<sup>th</sup>, we received a request from the Secretary's office for any of our Legislative proposals. Those were due in the Secretary's office by the end of day yesterday and has forwarded each Commissioner a copy of what was sent to them. He will keep the Commissioners informed of any additional requests that come through.

He has been working with Rosemary Williams and Erich Zimny on out-of-competition testing and they have had a few conversations regarding expanding our-of-competition testing for this racing calendar. We did it last year for the Stakes races at both Charles Town and Mountaineer and he would like to implement this year to try to get an additional 30 at each track for random testing. He received an email from Ms. Williams prior to this meeting regarding the amount of budget available that we will work with and go through but that is going to be our target for this racing calendar.

He has forwarded the Thoroughbred Medication Violations for Charles Town and Mountaineer for calendar year 2016 to each of the Commissioners, as well as the Injury and Fatality Reports. To note on Charles Town, the fatal injury rate is 1.59 per 1000 starts. That is the lowest we've seen in the last 5 years. The industry average for a dirt track is 1.9 so we're well within that range. There's no real clear factor in the past year as to what changed to cause that drop. There is an idea that going down to the 3 race days a week during the summer that they did in 2016 at least gave those horses additional rest that may have contributed to less injuries but that is speculation.

As for the RCI Model Rule on multiple medication violations and the out-of-competition testing that they recently revised, Mr. Moore and Ms. Talbott have continued to discuss ways and what would be the best approach to address making an attempt at adopting the newly revised language. The last they talked regarding the out-of-competition testing is since we do have current amendments before the Rule-making Committee in the Legislature for that, maybe the best avenue to go is to try to amend what's before them now to adopt the revised language. On the multiple medication violations, actually attempt to file an emergency rule with the Secretary of State considering other jurisdictions are continuing to push at adopting these immediately. In order to do that though, we need to keep in mind the timing factor of that because the emergency rule will only be in effect 15 months from the date it is approved. At the end of that 15 months, if we haven't gotten the rule official through the Rule-making Committee in the next Legislative Session, it would revert back to the original rule. That timing leads up to about March for filing that emergency rule if that's the way the Commission wants to handle that. Nelson Robinson stated he was curious of the reasoning for wanting to test out-of-competition horses. Mr. Moore replied the reasoning in doing the out-of-competition testing is that there are medications they are treating horses with that wouldn't show up post-race. Mr. Robinson commented they are talking pre-race? Mr. Moore replied yes, the out-of-competition is possibly not even on a race card anytime in the near future. This would be a pre-race, at random.

Lastly, we've received the plaque back on the Russell Road Award for Thoroughbred Excellence. The inaugural year, this year, it will be issued to the connections of Russell Road and the Commission will make an official presentation at Charles Town at a later date.

Mr. Phillips stated he appreciates the efforts to give the Commissioners an update on the efforts being made between the track and the Commission on out-of-competition testing. Secondly, he received 2 proposed Legislative forms yesterday and neither of them have anything to do with Advanced Deposit Wagering which we endorsed 2 years ago and was on the list that was sent to the transition team after the election and he wondered if it was just an oversight or why that was not done? Mr. Moore replied there are 9 proposals that were sent up yesterday and Advanced Deposit Wagering is one of them. He will re-forward to Mr. Phillips after the meeting.

### **Auditor's Report**

Joe Moore stated the Auditor's report has been provided to the Commissioner's and there's nothing on it that is unusual. One item to note is the Supplemental Purse claims for the third quarter were processed and sent to the Auditor's office yesterday for payment.

### **Accountant's Report Joe Moore**

Joe Moore stated live racing has decreased 1% YTD compared to last year. Export handle has increased 16.8%, in large part due to Mountaineer ending their meet in late November compared to October of last fiscal year. In-state handle overall is down 3.5% compared to FY'16.

He has provided the Commissioners the second quarter Average Daily Handle. The average daily handle wagered at our tracks for both live and export are up for Charles Town, Wheeling and Mardi Gras compared to FY'16, down 8% at Mountaineer. The average wagered on live racing alone is down at Charles Town, Mardi Gras and Mountaineer for this fiscal year, and is up at Wheeling Island nearly 7%.

## **Legal Update**

Kelli Talbott stated the Commission was scheduled to have the Jose Nunez hearing at Charles Town last week but Mr. Nunez's counsel was diagnosed with pneumonia and we had to continue the hearing. We are currently in the process of trying to get that hearing re-scheduled.

She has been working with Mr. Moore to get all of the proposed legislation ideas outlined in summary form and also some of the statutory proposals we actually have language drafted and getting those to Secretary Hardy and his office so they can look at them.

She and Mr. Moore have been discussing the options the Commission has with regard to the two new model rules that RCI updated, that being the out-of-competition testing and the multiple medication violation rule. Anytime RCI adopts amendments to a model rule or a new model rule in December, which is what happened here, that puts us in a hard place because our rule-making cycle doesn't coincide with that timeframe. We're required to have rules to the Legislature in July every year, sometimes August if it's an election year, and at that point we are done for the year. The only option is an emergency rule and to be fair about that, that's not an easy route. We will certainly make efforts to see if there's a possibility. Clearly we will have to get the Secretary's office and potentially the Governor's office to approve us to even file an emergency rule and then it's up to the Secretary of State whether or not it constitutes an emergency. The out-of-competition updates that RCI did are a little more complicated because we have amendments to the out-of-competition testing rule pending right now in front of the Legislature. At the time we were working on our out-of-competition testing rule back last year, she had an early draft of what RCI was looking at. Clearly that draft changed over time and what RCI adopted in December differed from that to some degree. She used the early draft that was circulating and she made extensive modifications to our out-of-competition rule based upon that early draft. Ultimately what RCI adopted looked somewhat different from that and because we have those amendments pending now, it's not really feasible to file an emergency rule proposal to try to get the RCI updates.

Mr. Phillips commented we are going to pursue, he assumes, both avenues that Ms. Talbott addressed and as a Commission everyone needs to understand how important it is to go all routes possible to get these two matters done. Chairman Rossi stated we are moving forward on this. Ms. Talbott stated if there was ever enough support for the states to have their Legislatures pass a Compact that the states would belong to and that Compact would dictate that we would essentially automatically adopt any RCI rules that go into effect when they do go into effect, that would clear up a lot of this stuff. Mr. Phillips added that is an option that someone on the RCI Board is interested in pursuing.

## **Wheeling Island request for 12 Mystery Voucher dates**

Joe Moore stated Wheeling Island is requesting a mystery voucher program, not unlike any of the other ones we have seen. The difference here is they have requested it for the entire calendar year. They have requested approval to conduct one mystery voucher program in each of the 12 months.

Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

**Charles Town Capital Improvement Request – Emergency replacement of Barn components, \$19,363.01**

**Charles Town Capital Improvement Request – Barn area recording equipment upgrade, \$113,378.65**

**Charles Town Capital Improvement Request – Longshots fryer gas hookup kit, \$146.20**

Joe Moore stated all three requests are for Charles Town. The first request is for replacement barn components, he believes for the signal that is sent out for the television in the test barn and the other barn areas, in the amount of \$19,363.01. The second request is barn area recording equipment upgrade for \$113,378.65. The last request is an addition to an improvement request that the Commission had last month. This is for the Longshots fryer and is a gas hookup kit in the amount of \$146.20. Becky Carnefix has reviewed all of these documents and requested information she felt was necessary to complete her review. The money is available for these projects and to that extent he recommends them for approval.

Mr. McDermott stated given the amounts concerned, the first and last request are no-brainers, however, the request for \$113,378.65 makes him wonder why it's so much. Erich Zimny replied the request for \$19,363.01 is actually for a water pump in the barn area and not for any kind of television hook-ups and he just wanted to clarify for the Commission what they were approving in that request. Brian Ward stated over the course of the past several years they have been improving camera coverage and recording in the barn area with great results. This request for \$113,378.65 will get the camera additions that have been approved in previous years onto more stable up-to-date recording servers. Mr. McDermott stated he's just reviewing line by line the request. Mr. Phillips stated he doesn't have enough understanding of this amount for a server. Mr. Ward added for the recording server and all necessary components to get it from the barn area up into the surveillance room to the surveillance recording room where it's in a secured server room location. Mr. McDermott stated he's ok with approving the request, his hesitation was to complete a more detailed review than he was able to undertake prior to the meeting. Mr. Ward added Bill Carper may be able to add more insight to how when he first arrived on property recording on the old recorders gave them some challenges and limitations and this allows them to bring all of the recording equipment up-to-date for more reliable coverage. Mr. Phillips stated he would be interested in some reaction from either the Chief Steward or the Investigator. Chairman Rossi asked how critical is this to be approved today? Mr. Ward replied it's not that critical.

Motion was made by Mr. Phillips to table the request for the Barn area recording equipment upgrade for \$113,378.65 until the February meeting. Mr. Zimny asked if the Commission could give them an idea as to what additional information they are looking for and they will provide it. Mr. Phillips replied just a better understanding of what it is and maybe some input from the Chief Steward and Investigator. Chairman Rossi stated he might like a technical person here to look over it and that knows what we are buying to tell us if this is a reasonable number. Motion was seconded by Mr. McDermott. Motion passed.

Motion was made by Mr. McDermott to approve the other two requests, seconded by Mr. Phillips. Motion passed.

## **Permit Reinstatement Request – Claude Cecil**

## **Permit Reinstatement Request – Denise Sanderson**

Joe Moore stated back in the fall of 2016 Mr. Cecil and Ms. Sanderson requested that their permits be reinstated. Their permits were initially revoked due to the neglect of a horse that was in their care. At that point in time it had been approximately 7 months or so since their permits had been revoked. The Commission determined that the length of time that had passed was not sufficient for the mis-care that took place and denied those permits at that time. Since then Mr. Cecil and Ms. Sanderson have again requested that the Commission reinstate their permits. We've received information that the Commissioners have had an opportunity to review from the State Vet at Mountaineer, as well as the Investigator at Mountaineer, on the two requests. Based on the information Mr. Moore has received for review and the recommendation from the State Vet, he would again recommend to the Commission to deny the permits of Mr. Cecil and Ms. Sanderson at this time.

Motion was made by Mr. McDermott to deny the requests of Mr. Cecil and Ms. Sanderson, seconded by Mr. Phillips. Motion passed.

## **Mountaineer Park HBPA Request to address post-race drug testing issues**

Joe Moore stated the Mountaineer Park HBPA is represented today by Jami Poole, Jana Tetrault and their representatives. They will lead the discussion on this agenda item.

Thomas Decapio, representing the Mountaineer Park HBPA, stated a letter was submitted to the Commission in December regarding the issues that the HBPA has previously addressed. The letter outlines these issues, and in general the post-race drug testing procedure is having an adverse effect on the horsemen in that there has been a large number of what had been determined and labeled as "cloudy test", which is an undefined term that basically means the test was not conclusive either as a positive or as a negative. It is their understanding that the Commission has a contract with the drug testing lab that establishes that a final test result is to be returned in 5 business days and if another test is to be performed, that test is to be performed and the result provided within another 5 business days. What is happening is these cloudy test results are coming back, they are being provided to the Stewards at Mountaineer Park, and they are using the cloudy inconclusive test as being a positive and changing the results of the finish and removing the winner as a number one and moving up the rest of the horses accordingly and then waiting for the final test results to come back. It is their understanding that the bulk of these results that do come back then are negative and during the pendency of these results, which takes up to 30-40 days, the number two that moves up to number one then cannot race in his proper condition. They cited in their letter the appropriate rule, which is 170-1-50.3r, and indicates that no action shall be taken by the Stewards on a report of the primary testing laboratory until an official report is issued by the primary testing laboratory. The cloudy inconclusive result, their contention is, is not an official final report and there should not be any action taken until a final report is issued that says it's a positive. What they are asking is that the rule, as written, is enforced by the Commission.

Mr. Moore commented it's not that we are taking action on the initial cloudy test and removing the winner and issuing a re-order of finish, it's that the result is being held up a lengthier period of time. If he understood correctly Mr. Decapio stated the Stewards are taking the initial cloudy test and removing the first place winner and moving all the other horses up and he doesn't think that's exactly what's taking place. He thinks they are leaving the order of finish as it is until that confirmation test is actually done and maybe that's beginning to be a little bit longer and by rule the horses aren't being able to run back in a condition they desire to run back

in within that timeframe. We're not changing the order of finish. Jami Poole stated this is what they are saying, they did the numbers and at least 130 horses last year were held up a minimum of 3 weeks going back into the race. The rule states wait 5 days, they wait 5 days. The test came back and they wait another 5 days. The horsemen have horses they are paying for everyday and we are costing this owner money. They are costing the owner money because they aren't letting him run the Maiden race. Jim O'Brien, Steward at Mountaineer, stated it's pretty much what Mr. Moore stated. They are defining not taking action as putting a Ruling out disqualifying somebody or not. He certainly understands what the horsemen are saying, it's 5 business days and sometimes it is taking longer. There have been several tests that have gone longer than the 10 days and he understands it is a problem with the horsemen because they can't run their horse where they want to. Charles Town is doing the same thing, as well as Ohio. Mr. Poole replied that's not true. In Ohio you can get your money the next day. Mr. O'Brien stated he talked to the Stewards in Ohio and he's not sure about the money, but they don't let the horse run. Mr. Poole added in Ohio they don't have any such thing as a cloudy test.

Kelli Talbott stated obviously the Commission has to contract with a lab and there will not be instant results no matter who we contract with. There's always going to be some lag time from the time the samples are collected until you get a result. She doesn't remember the specifics in the Memorandum of Understanding with Industrial but it's so many business days they have to give us a test result and our contract allows for them to ask for an extension of that period of time if cause exists. Sometimes they get a result that says there might be something in this sample and that's what a cloudy test is. It's something that they say they have to conduct further investigation and determine whether there is a positive or not. She doesn't think the Stewards are calling cloudy tests positives. They're not issuing Rulings against people and suspending their licenses based on a cloudy test. They're just holding the results. Chairman Rossi asked who grants the permission for an extension of time? Ms. Talbott replied typically they interact with the Stewards. Mr. Moore added they interact with the Chief Steward if additional time is needed and he knows recently, in the past 3 months or so, there have been additional metabolites showing up in these tests that have caused them to actually have to change their testing procedures to determine whether that was then a positive or not and that needed extra time to take place. He is unaware of the number that Mr. Poole threw out as being that massive, but he is aware over the past several months there has been additional testing needed and configuration of those tests that have caused more time to go by and that was his understanding of what was taking place. Chairman Rossi stated he was surprised by Mr. Poole's number also and his first thought is we need to sit down and collaborate with them and try to look into this and investigate before we can do anything about it. Mr. Poole added they have 3-5 cloudy tests a week and we are actually costing entries at Mountaineer Park by having these issues. If you take an average 3 cloudy tests a week multiplied by the 40 week meet, that gives an average 120. If you look at that average, Mountaineer Park runs a 7 horse field, they could run a 9 horse field but they have horses sitting back. Not all tests are taking 30 days, but no cloudy test is back in 10 days. This is detrimental to the horsemen and detrimental to the racetracks by not letting them run these horses. We're not saying give them the purse, we're just saying don't hold up the horse that runs second from racing. He doesn't think this is detrimental to anybody to do that. Mr. Phillips commented it seems to him from listening to this that there is an issue with our lab and their timeliness in getting these reports back which is driving part of the problem that we're having and we probably need to have some conversation with them and get them speeded up because it's effecting our horsemen and there's not a lengthy meet at Mountaineer anyway.

Chairman Rossi stated he's ready to Commission Ms. Talbott and Mr. Moore to go on a treasure hunt and talk to some people and do some investigation and come back and determine what we are going to do on this. We're not going to resolve it today. Chairman Rossi added Mr.

O'Brien didn't dispute the numbers Mr. Poole stated and that's a lot. Mr. O'Brien added this is a nightmare for everyone involved with trying to enter the horses so if they would stick to the 10 days, the problem would go away. There have been a couple split samples and then there's an extra 30 days added onto it so it is a problem. Mr. Moore commented that's why we are addressing this in January, during Mountaineer's dark time, to have time to speak with the lab and maybe we'll be back in February to provide an update as to where we are. Chairman Rossi added that's his suggestion and maybe not just have an update but perhaps a recommended solution for the Commission. Mr. Phillips added he would like for someone to send him a copy of the Memorandum we have with the lab.

### **Mardi Gras Request to approve WVGoba Juvenile Stakes & WVGoba Open Sprint Stakes**

Joe Moore stated Mardi Gras is requesting the approval to run the \$35,000 Juvenile Stakes and the \$65,000 Open Stakes. The Juvenile Stakes entry deadline will be March 5<sup>th</sup> with the finals for that race held on March 25<sup>th</sup>. The Open Stakes deadline will be May 7<sup>th</sup> with the finals of that race being conducted on May 27<sup>th</sup>. The funding for this comes from the Greyhound Breeding Development Fund and by statute there are \$200,000 expended each year for these Stakes Races, the two at Mardi Gras and the two at Wheeling Island. He recommends for approval.

Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

### **Charles Town request to approve export sites**

Joe Moore stated he believes this may be the last month we have these on the agenda this year. There are 3 letters, one dated January 11<sup>th</sup>, one dated January 12<sup>th</sup> and one dated January 18<sup>th</sup> that have export sites that have been approved by the Charles Town HBPA for the Commission to approve for Charles Town.

Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

### **Agenda Item Submission Deadline**

Joe Moore stated he was going to include this in his Executive Director's report but it was requested by Mr. Phillips to include this on the agenda as an item for discussion. It is his opinion that we need to back up that date for which agenda items are received by the Racing Commission for our consideration. He would like to see that date being the last day of the previous month to be on the agenda. That would give his office somewhere close to a week to vet the issues to see if there's more information needed. It would give the Commissioners up to two weeks to consider and request any additional information. To him it's a simple date for everyone to keep in mind if they have an agenda item for next month's agenda it has to be turned in by the last day of the previous month to the Racing Commission office. Chairman Rossi stated he agrees with that. Mr. Phillips stated he would like to add that we notify all of our normal constituents with an email or some documentation so there is no question in the future about knowing when they are supposed to have everything in. Mr. Moore stated he would send an email to all those people we normally receive items from and will have Mr. Carraher post the new deadline date in a notice on our website.

Motion was made by Mr. Phillips for approval of this new deadline, seconded by Mr. McDermott. Motion passed.

### **Discussion regarding collecting unpaid fines**

Joe Moore stated he and Ms. Talbott have discussed this on multiple occasions. There are areas where the Stewards are issuing fines to permit holders and there is a deadline for those fines to be paid. If there's no suspension of days or anything of that nature tagged to that Ruling, there may or may not be incentive for that permit holder to actually pay the fine by that deadline. We have at least one, maybe a couple, of unpaid fines at this point that have surpassed the deadline for them to be paid. We wanted to open discussion with the Commissioners about the avenues that are available to a State Agency to collect those. He has received from John Myers a list of collection agencies that are actually under State contract as being a first step to pursue collecting these fines. Any additional steps beyond that he and Ms. Talbott would have to work on as far as what legal steps or avenues the Commission may use to collect such fines. There is a fine out there right now on a Class I drug positive that is \$10,000 and has well surpassed its time to be paid. The individual, when contacted, understood he owed the fine and made the statement if we were to contact him any further, he would have his attorney be in touch with us. We have those fines that exist right now.

Ms. Talbott added some of these people actually are suspended when they don't pay the fine or the Class I drug positive Mr. Moore mentioned, his suspension was several years. But sometimes it's difficult to get these people to pay their fines and it's complicated in part because these people don't necessarily reside in the state of West Virginia so trying to bring legal action against somebody in another state to collect has its complications so we thought perhaps if the Commission used one of the collection agencies that's on contract with the State that they could make efforts to collect that money and that would at least be a first step to try and do that.

Mr. Moore stated when this came up he and Ms. Talbott were talking about these unpaid fines and she brought up an example of a Legislative Audit on another Agency where the Legislative Auditor actually had a finding against that Agency of not making the proper attempts to collect these types of unpaid fines.

Mr. Phillips stated he thinks we need to pursue the collections of fines and take whatever legal courses are available to us to do so. Mr. McDermott stated he agrees wholeheartedly, especially under Ms. Talbott's guidance because it is an area of law that needs to be treated with care. Chairman Rossi stated they are approved by the State, as long as we don't get more legal fees than what we bargained for. Ms. Talbott stated she would imagine the collection agency would get a piece of whatever they collected and she doesn't know what that percentage is. Mr. Moore added he has not reviewed the individual contracts, he just reviewed some of the agencies that were on there to see who was under contract with the State. Phil Reale stated he would want to read that contract to be very certain that the Racing Commission doesn't incur liability should whoever they have on the other end of the telephone make statements they're not allowed to make and therefore result in some kind of cause of action against the Commission. Mr. McDermott added that's sort of what he had in mind when he said he'd like for this to be done under Ms. Talbott's careful, watchful eye. Chairman Rossi asked if they could ask for them to investigate it more, the State contract, see what it says and then come back to the Commission and if we approve it we approve it at that time instead of today? Mr. McDermott and Mr. Phillips both stated that was fine with them.



## **Public Comments**

Nelson Robinson stated he was curious about the nine items the Commission would like to proceed with in legislation. Joe Moore replied at this point they are at the Secretary's office, they are in draft form, so if anything is approved out of that office we can certainly send a copy to him.

## **Executive Session – To discuss possible litigation against the Commission by trainer Eddie Clouston**

Motion was made by Mr. McDermott to go into Executive Session, seconded by Mr. Phillips. Motion passed.

Motion was made by Mr. Phillips to come out of Executive Session, seconded by Mr. McDermott. Motion passed.

## **Adjournment**

Motion was made by Mr. McDermott to adjourn, seconded by Mr. Phillips. Meeting adjourned.