

MINUTES
WV RACING COMMISSION
Thursday, June 1, 2017
WV Lottery Conference Room

The WV Racing Commission met on June 1, 2017 to conduct business and consider administrative matters. Roll call was taken and Chairman Jack Rossi, Commissioner Ken Lowe, Jr. and Commissioner Anthony Figaretti were all present. Counsel was represented by Kelli Talbott.

Approval to file the Thoroughbred Rule changes for 2018 for public comment

Kelli Talbott stated this is the time of year that there is a statutory process that we have to follow to get Legislative rules passed. We are looking at proposed amendments to the Thoroughbred Racing Rule for 2018. We have to put any proposed amendments out for a 30-day written public comment period. At this point, the proposed amendments that she worked on with Joe Moore and with the constituent committee are before the Commission to basically approve to go out for public comment. These proposed amendments have been sent to Secretary Hardy's office to review and be approved, which we are required to do because they have to sign off on them before they can go out for public comment, and at this point we have not heard anything back from them but they know the Commission is meeting to discuss this.

Every year that we get into the Thoroughbred Rule, one of the first things we look at is has ARCI made any amendments to the Model Rule that we need to get updated into our Rule and typically we're always behind in getting certain Model Rule amendments in our Rule because of the length of our rulemaking process. At this point in looking at the ARCI's Model Rules, in December the ARCI just adopted a new out-of-competition testing Model Rule. We looked at our Rule and it needs to be brought up-to-date to be consistent with the Model Rule. Out-of-competition testing is kind of a more and more prevalent thing that states are doing where horses are tested, not just post-race which is the typical way horses are tested, but out-of-competition to ensure that horses aren't training on substances that they should not be training on. So, one of the amendments we are looking at is bringing our Rule up to snuff with the ARCI Model out-of-competition testing Rule.

The other Model Rule amendment that we are looking at is ARCI publishes and updates periodically a comprehensive list of substances that may be found in a horse. It's comprehensive in that it includes both therapeutic and non-therapeutic substances and categorizes those substances for purposes of the severity of penalty and the significance of the drug finding, so we want to update our Rule. The uniform classification guidelines that ARCI publishes is already in our Rule, we are looking to update it to the most recent ARCI version. ARCI also publishes what is called a Controlled Therapeutic Substances list. These are the drugs that are permitted at certain thresholds in post-race testing and this is currently in our Rule but ARCI has updated it so we are looking to get the update of that list in our Rule.

Also, in connection with the out-of-competition testing Rule, ARCI has now promulgated what they call a prohibited list in restricted therapeutic use requirements. That's pretty much a list that contains all of the drugs that would be looked at in out-of-competition testing. That's a new Model Rule of ARCI that was just passed in December so we are looking to get that into our Rule. Mr. Lowe asked in regards to the out-of-competition testing Rule, is that for on-site only or is that allowing testing to be done on people's private property? Ms. Talbott replied that allows us to test a horse anywhere, it's not just on racetrack property and it obligates the owner or the trainer that if we select their horse to test out-of-competition, then they are either required to bring the horse to us within a very short period of time somewhere that we can test it or

wherever it is, let us on the property to do it. Mr. Lowe asked if that includes out of state locations? Ms. Talbott replied it does and in fact in recent times in the limited amount of out-of-competition testing we have done at Charles Town and Mountaineer, all of those horses were tested out of state. Mr. Moore stated in the past couple of years for our Stakes races in WV, we have performed out-of-competition testing on the nominations list. We will coordinate with either State Veterinarians in the other states or if it's a neighboring state that one of our Vets is licensed to do business in, they can go and pull those tests for us. In most cases it has been California and Kentucky shipping horses in and we have worked well with those out of state jurisdictions on assisting us in getting those samples taken. Ms. Talbott added right now we have been doing this with the Stakes races but at some point the Commission would probably want to expand this to more than regular horses on the track and not just Stakes races. Mr. Moore stated we've been working with the tracks this year on finding testing monies to perform additional out-of-competition tests on the grounds and on our local Thoroughbreds. We are expanding it this year and hopefully will be expanding it even further in future years to have a better program designed. Many of the jurisdictions are going through the same steps right now and just designing their out-of-competition programs.

In December, the ARCI also passed a new Model Rule that deals with the Veterinarian's list and how horses are put on the Vet's list. It's her understanding that many jurisdictions had different rules on when horses go on and when horses come off and the desire was for that to be made uniform in all of the states so the same terms and conditions apply to the Vet's list in all of the states. So, one of the things we did was put on the list that we wanted to adopt the new Universal Vet List Rule that ARCI has just promulgated in December so we can start getting on board with the uniformity of that program.

There are several other things on our list that are not Model Rule items. For example, the Stewards at Charles Town told her that apparently they had a problem with agents naming riders on horses without the trainers consent so they wanted a Rule that says agents can't do that so that was written into the Rule. One of the State Vets at Mountaineer shared with her that our Rule currently prohibits cruelty to a horse but that often times there are other animals at a racetrack or outside the confines of the racetrack that permit holders might engage in an act of cruelty or abuse to. Our Rule was limited to horses and they wanted it expanded to include cruelty to any animal, which seemed reasonable to her. It seemed inconsistent to her that we would let someone abuse another animal so the language was expanded to include other animals. Mr. Lowe stated he can understand that on the track but he doesn't know how you would do that off-site. Ms. Talbott added it would probably typically come up if the local authorities would charge the person criminally or through whatever civil process there is in that state. We typically have something that has been prompted by local law authority and not something we are actively out there checking on.

The other item, and this was prompted by discussions she and Mr. Moore had, is it has been since 2012 that the permit fees were increased and those permit fees are set forth in the Legislative Rules so if we raise them we have to have the Legislature's approval to do it. Every single permit fee has been doubled, and even with that the highest one is \$120. Mr. Moore stated the permits right now range anywhere from \$20-\$60 so they will double and be anywhere from \$40-\$120. Ms. Talbott added if this goes forward and is ultimately approved by the Legislature, these permit fees would go into effect calendar year 2019. Once that additional fee money comes in, by Statute it goes into an account that the Racing Commission can use for administrative operations.

We have a Rule that currently reads only racing officials, which is a specifically defined group of people like the starter, the Racing Secretary, the clerk of scales, are prohibited from wagering on races. We've expanded that to include all track management permit holders that are prohibited from wagering on races at the track.

The last amendment we had is we've had a lot of problems with policing the program/trainer issue at both horse tracks because when a trainer gets suspended or a rule infraction, a lot of times they end up continuing to benefit from those horses because they're transferred to some family member or employee and that person is essentially fronting for the suspended person, so we had a request to look at our Rule about transfers of horses when trainers are suspended so that we could tighten that up and try our best to prohibit a suspended trainer from financially benefitting from a horse that can't be under his trainership due to a suspension. We re-worded that Rule and it would prohibit the transfer of horses from a suspended trainer to family members and other persons directly employed by the trainer.

Chairman Rossi asked Ms. Talbott to refresh him on the constituent group and who was included in that. Ms. Talbott stated it was a representative from the Jockey's Guild, a representative from Mountaineer HBPA and Charles Town HBPA, a representative from Mountaineer racetrack, a representative from Charles Town racetrack, the Stewards from Charles Town and Mountaineer, a State Vet from Charles Town, and the Breeders were invited to participate but they did not send anyone.

Ms. Talbott stated now what happens is once we file these for public comment, and it's a specific defined 30-day period that will be delineated in the notice, the comments have to be in writing. Once the comment period ends, and any comments are received, the Commission will have to reconvene, consider whatever comments have been submitted, and at that point the Commission gets to deliberate and decide whether any of the comments have merit and if you want to change something as a result of a comment or not. Once that comment evaluation and any changes are made happens, the Rules have to be filed again with the Secretary of State with a copy of all the comments received, if any, an explanation of any changes that were made as a result of a comment, etc. and once that's done, the Rules are ready for the Legislative Rulemaking Review Committee and they get taken up in Interims. That Committee makes a recommendation to the full Legislature when they convene in January. Mr. Lowe asked if individuals that make comments are required to sign their comments? Ms. Talbott replied she doesn't think there's anything in the law that says they have to be signed but she doesn't know why someone wouldn't. She added we've never received a comment that wasn't signed in the almost 10 years she's been the Commission's attorney. Mr. Lowe stated if they were required to sign, or they did, he would suggest consideration be given that they would be kept anonymous. Ms. Talbott replied she cannot do that. We are required, by Statute, to file the public comments. Signing the comments has not been an issue in the past. Mr. Moore added typically the comments when they come in, at least in the past while he's been here, have been mostly by an attorney representing the constituents and formally making this comment on their behalf. Ms. Talbott added public comment means public. When you make the comment, it's public and an actual copy of your comment gets filed with the Rule with the Secretary of State and the Legislative Rulemaking Committee.

Motion was made by Mr. Lowe to put these Rule amendments out for public comment, seconded by Mr. Figaretti. Motion passed.

Approval to hire Charles Town Steward

Joe Moore stated Mike Pearson resigned as a Charles Town Steward back in February. Since February 2017 we have been using a couple of fill-ins to complete our Board of Stewards at Charles Town during the races. Since that time, Commissioner Lowe, Ms. Talbott and Mr. Moore have interviewed a number of individuals who had applied for the vacancy. They've had several discussions regarding those interviewees and have brought forth to the Commission a recommendation of hiring Mr. Denver Beckner as the Steward at Charles Town to fill that vacancy. Mr. Beckner has a very accomplished resume and background in horse racing. He

has filled in for us for nearly 2 years now since Ismael Trejo left to be the Executive Director in New Mexico. He has done a good job for us in that time filling in and has been very dependable when we've needed him. Mr. Lowe added he's surprised Mr. Beckner is out there and that someone else hasn't grabbed him.

Motion was made by Mr. Lowe to hire Denver Beckner as a Charles Town Steward, seconded by Mr. Figaretti. Motion passed.

Adjournment

Chairman Rossi stated the Commission made a decision. The last meeting was the most disruptive meeting he's been in since he's been on the Commission. When people call in and we constantly have to tell people to put their phones on mute, or to keep their dogs from barking, etc., you can't hear what people are saying and it's extremely disruptive. So, we made a decision to say we're not going to go online anymore. We are evaluating some issues where we may try to do meetings more centralized, possibly a Morgantown location, but he doesn't know how much it would cost us to do that. We're not going to promise we're going to do it, but we are looking into some alternatives. We may open it back up to calling in and try it again, but the noise is horrible. We've gotten some negative feedback over this. The Lottery doesn't permit calling in for their meetings. If you want to attend a Lottery meeting, you show up. That's what we said here that we're going to do. We want to be cooperative with horsemen and with the tracks and we're looking at trying to do the best and we are looking into that. Ms. Talbott added she regularly attends other State agency Board meetings and until she represented the Racing Commission, she never had a Board agency let members of the public dial in on a conference call. Occasionally they would let Board Members call in, but not members of the public. If you are member of the public and you want to show up at one of those meetings, you have to go to the meeting. She was recently at a State Board of Education meeting and they have just started streaming she thinks video and audio but it might just be audio of their meetings on their website so members of the public can click on a link and listen but they're not able to talk to anybody or to make noise or do anything that would disrupt the meeting. Chairman Rossi stated he is on the Board of the IMB and the Board Members can be live video and audio when they stream but public cannot and it works fine. Mr. Moore is going to look into that possibility as well, but he's not sure what it's going to take to do that. When Chairman Rossi first joined the Commission, we actually went to the tracks for meetings and we would have some participation, not a lot. Mr. Lowe stated one thing that's important to note is that for horsemen it's a lot more difficult for them to come to Charleston for a meeting because of taking care of their horses than it would be for them to go to Morgantown. They have a chance in attending if it's in Morgantown. Chairman Rossi stated we are looking at it and trying to evaluate it.

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