

**MINUTES
WV RACING COMMISSION
Wednesday, August 12, 2020
WV Racing Commission Conference Room**

The WV Racing Commission met on August 12, 2020 to conduct business and consider administrative matters. Roll call was taken, and present were Chairman Ken Lowe Jr., Commissioner Anthony Figaretti, and Commissioner JB Akers. Counsel was represented by Kelli Talbott.

Approval of May 19th, June 19th, and July 21st minutes

Motions to approve the meeting minutes for May 19th, June 19th, and July 21st was made by Commissioner Akers, seconded by Commissioner Figaretti. Motions were passed.

Adoption of Resolution – Jack Rossi

Joe Moore presented the resolution prepared for previous Chairman Jack Rossi. The resolution was read as the following.

A resolution honoring the service of Jack Rossi.

WHEREAS, the West Virginia Racing Commission wishes to honor the service and dedication Jack Rossi has shown to the thoroughbred and greyhound racing industries in West Virginia.

WHEREAS, Jack Rossi served on the West Virginia Racing Commission for over 11 years, spending the last seven plus years serving as Chairman.

WHEREAS, Jack Rossi's dedication to the racing industry in West Virginia has resulted in improvements in safety & welfare issues, retirement plan for backstretch personnel, agency audit findings, and the integrity of the racing industry in West Virginia.

THEREFOR, be it resolved that the West Virginia Racing Commission would like to thank Commissioner/Chairman Jack Rossi for his support, contributions, and unwavering dedication to the thoroughbred and greyhound racing industries, the West Virginia Racing Commission and the State of West Virginia.

Motion to adopt the resolution was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was passed.

Retirement Plan for the Backstretch Personnel – Sixth Amendment

Mike Lloyd presented on behalf of the Charles Town and Mountaineer Park Horsemen's Benevolent and Protective Association (HBPA) the request for the sixth amendment to the retirement plan for the backstretch personnel. There are four different changes that encompass the sixth amendment to the plan. The first one relates to the eligibility to participants to receive

their money and then come back into the plan. They want to encourage the participants to stay in the plan and not take their money until their retirement even if they are vested, but it turned out the way the plan was written before the participants would be kept out of the plan for a long time. So, they decided they would achieve the disincentive we wanted by keeping them out three years instead of a longer period of time. The second change relates to the allocation of the contributions that are made by Charles Town and Mountaineer racetracks. Previously the contribution from the purse accounts would go into one big bucket and was allocated among all the participants together, but with Charles Town having significantly more participants they were receiving as much as a hundred thousand dollars more of the allocation than the contribution that was made from Charles Town racetrack. So, this amendment though it keeps the plan as a simple plan where participants are all participating in one plan, but the contribution will be allocated separately so that the Charles Town money will go to the Charles Town participants and the Mountaineer money will go to the Mountaineer participants. The last two changes; one is to include in the definition of the backstretch personnel be the individuals who support the backstretch team and licensed. That would allow the administrators and their team to be participants in the plan. The last change relates to changing the plan to allow daily valuations and participants direction on the investments which will save money from the administrator perspective, their third-party administrator Jackson Kelly. It will also provide better investment performance so that people who are older their accounts will be invested more based on their age and their targeted time to retirement. Participants who are younger will have their investments based on more on their longer time until retirement. Mike Lloyd asked if either Maria Catignani or Jana Tertault would like to add anything about the changes being asked.

Maria Catignani with the Charles Town HBPA said Mike Lloyd has covered the proposal as intended and good with it.

Jana Tertault with the Mountaineer Park HBPA agreed as well.

President of the Mountaineer Park HBPA, Jami Poole, stated they highly support doing these changes.

Commissioner Akers asked what the present financial health of the fund is.

Mike Lloyd reported he believes the total amount in the plan is currently six million dollars.

Commissioner Akers asked if any of the changes potentially impact the financial health of the plan in either a negative or positive fashion or is neutral or zero impact.

Mike Lloyd thinks the changes have a likely positive impact in these ways. He will talk about the positive impact and the negative impact. He said these were really good questions and glad Commissioner Akers raised them. So, first the positive impact with the first amendment which is about changing how long you have to stay out of the plan if you take a distribution. He thinks that change is probably neutral because they already have the provision that discourages people from taking their money as soon as they could. They want them to keep that money in there, so it provides for their retirement. The changes were making here are just shorting that period just a little bit, but there is still plenty of disincentive to taking your money early. So, they do not think that will have a change either way. In terms of the allocations between Charles Town and Mountaineer so that their contributions are allocated to their participants is not going to change the health of the financial plan as well as bringing the other backstretch support personnel. It will just add new participants. The last change though which is on the record

keeping making it a daily valuation plan is going to make it a lot more like a regular retirement plan which is valued daily is going to save administrator expenses and it is going to allow participants to have their accounts invested more related to when they are going to retire. So, if a participant is fifty five years old and has five years until retiring their investments will be more or less in a more volatile investment strategy then someone who is their twenties who has lots of years to enjoy the benefit of the market. So, they think that will be a positive change to the plan they think it will make it healthier. It will increase the investment return. He has found the total size of the plan is just under seven million dollars.

Commissioner Akers asked of Racing Commission staff if there any workload or cost related to the changes in this plan.

Joe Moore said no.

Chairman Lowe asked Mike Lloyd if there is a citizenship requirement to be eligible to participate in the plan. He said there a number of Hispanics doing a good job in the backstretch.

Mike Lloyd said he does not think so. He will go back and look at the plan to confirm, but his recollection is no you do not have to be citizen.

Chairman Lowe asked if someone who is not a United States would qualify after the minimum number of years to receive the same pension.

Mike Lloyd said that was correct.

Chairman Lowe stated it seems it would behoove everyone to Hispanics know that they are covered under this plan as it would encourage them to stay there and do a good job. He asked based on if what Mike Lloyd confirms to be accurate if Maria Catignani knows that Hispanics are aware of it. They provide a valuable service on the backside of the track.

Jana Tertrault said they are aware. They do their fliers about the plan in English and Spanish. The only requirement is they provide proof of income or starts depending on how their licensed. They actually have a large number of participants that are Hispanic. 15:52

Mike Lloyd confirmed there is no requirement to be a United States citizen in order to participate in the plan.

Motion to approve the amendments was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was passed.

Request for Permit Reinstatement – Jerry Dimmett

Joe Moore presented the request for Jerry Dimmett to be reinstated for an owner's permit he has applied for at Mountaineer Park. Mr. Dimmett has a felony background for the manufacturing of methamphetamine. It has been a number of years since his conviction. Mr. Dimmett failed to notify the Racing Commission of his arrest record when he was licensed in WV in 2018/2019 otherwise, he would have been before the Racing Commission previously. An attempt was made by the Mountaineer Park Stewards to contact Mr. Dimmett to ask questions and interview him for the benefit of recommending the approval of his permit. Mr. Dimmett was uncooperative and unwilling to answer any questions which is required by the typical process in

WV for vetting felony applicants. Joe Moore asked the stewards to give Mr. Dimmett a couple of days before they make their recommendation to see if Mr. Dimmett reconsidered his position. Having not heard from Mr. Dimmett the stewards at Mountaineer Park have put their recommendation before you to deny Mr. Dimmett's request for permit based on not cooperating with the stewards on going through the process.

The Commissioners asked if Mr. Dimmett is on the phone and if so if he would like to say anything on his behalf. There was no reply from Mr. Dimmett.

Motion to deny the permit request was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was passed.

Mountaineer Requests Approval of Pick 4 Wager

Joe Moore presented the request to approve Mountaineer Park's request for a Pick 4 Wager; a one dollar minimum wager between Mountaineer's racetracks seventh and eighth race on their Sunday cards and Sentry miles their sister track owned by Sentry Casinos on seventh and eighth races on their Sunday cards as well. The Pick 4 will have a mandatory pay out on November 1st, 2020. The Commissioners have before them the letter from Mountaineer Park as well as the manager of pari-mutuel operations at Sentry bets for review. Joe Moore recommends the approval of request.

Chairman Lowe asked Jim Colvin with Mountaineer Park management if the takeout on the wager is fifteen percent.

Jim Colvin believes that is correct.

Motion to approve request was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was passed.

Mountaineer Capital Reinvestment Request – Drag Floats

Joe Moore presented the capital reinvestment request for a cost of \$75,334.20. The funding is available for the request. Joe Moore recommends the approval of request.

Chairman Lowe asked Jim Colvin if there was trade in value on any existing drag floats.

Jim Colvin reported they are going to continue to use the old floats for right, but that they are in bad condition. They are going to try to repair them, but there is no trade in value whatsoever because they intend on keeping them and maintaining them.

Motion to approve request was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was passed.

Mountaineer Capital Reinvestment Request – Washers/Dryers for Grooms Dorm

Joe Moore presented the capital reinvestment request to purchase two washers and two dryers for the groom's dormitory for a cost of \$3,944.02. The funding is available for the request. Joe Moore recommends the approval of request.

Motion to approve request was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was passed.

Mountaineer Capital Reinvestment Request – Winner’s Circle Gate

Joe Moore presented the capital reinvestment request to purchase a new gate for the winner’s circle at cost of \$4,792. The funding is available for the request. Joe Moore recommends the approval of request.

Motion to approve request was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was passed.

Consideration of Public Comments Received – ADW Rule

Kelli Talbott informed the Commissioners as the ADW rule is in effect now the Racing Commission also had to file it through the legislative rule making committee process. The rule was put out for a thirty-day public comment period with it ending on July 31st, 2020. There were no comments received. At this point the Racing Commission needs to file it for consideration by the legislature. She recommends for the commissioners to approve filing the rule.

Chairman Lowe asked if Joe Moore could advise so far how the ADW is doing.

Joe Moore reported the Racing Commission approved the vendors to begin taking wagers in WV on July 21st, 2020. He believes at that time Xpress Bet had some paperwork still processing with the WV Secretary of State’s office with final approval on July 22nd, 2020 or so. By the end of July, he believes there was about \$200,000 in wagers taken on the two platforms. He believes it resulted in a source market fee of just north of \$12,000. That is divided up by code to be split up amongst the tracks their previous calendar year’s total handle. There is a formula in future months as a full month of data is accumulated, he will provide that in an accountant’s report with full detail.

Chairman Lowe said so we can say it is gotten out of the gate pretty well.

Joe Moore reported we are accepting wagers bringing money in. The Racing Commission has contracted with the TRPB to not only do the ADW auditing but their wager integrity platform.

Motion to approve request was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was passed.

Consideration of Public Comments Received – Greyhound Rule

Kelli Talbott shared with the Commissioners in advance of putting out both the greyhound and thoroughbred rules for public comment the Racing Commission convened its rules making committee for input. The WV Kennel Owners Association asked for the Racing Commission to look at the health certificate rule that pertains to greyhound which is required to have to be on the racetrack. Dr. Bohenko with the Racing Commission participated in the rules committee meeting. The Racing Commission looked at making some changes to the rule that

would clarify the type of health certificate that had to be provided. It would have provided an exemption if the greyhounds were traveling directly from one WV track to another WV track. They were also trying to work out how long the certificate would be good. The rule put out for public comment is for a fifteen-day certificate. Steve Sarras, the president of the WV Kennel Owners Association, provided a public comment basically supporting all the rule changes except that he recommended the Racing Commission change it to a thirty day certificate or be in effect for a thirty day period. Joe Moore and Kelli Talbott looked at the comment and feels is acceptable from where they are concerned. It would be a simple rule change. Joe Moore and Kelli Talbott recommend approving the rule change as a result of the public comment received.

Chairman Lowe asked if Mr. Sarras wishes to comment any further.

Steve Sarras said he is in agreement with what Kelli Talbott stated. He said they had the discussion with Dr. Bohenko as well. A lot of it is because of logistics in terms of hauling, restrictions with veterinarians, COVID-19, and some shrinkage in the greyhound industry nationally. All of it is included in the public comment which he hopes everyone has a copy of.

Motion to approve rule change from fifteen days to thirty days was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was passed.

Consideration of Public Comments Received –Thoroughbred Rule

Kelli Talbott reported several public comments were received. The first item was for a suggestion from the Charles Town stewards to include jockeys to be able to obtain an occupational permit under the age exception. The exception allows someone who is sixteen or older and is the child of a grandparent or parent who is a licensed permit holder, but currently does not include jockey in the language. She is not certain why jockey was left out when the rule was done, but the legislature made the amendment to the exception during the legislative process. There was no dissent or negative discussion about the proposed change during the rules committee meeting nor were any public comments received in opposition. Joe Moore and Kelli Talbott recommend approving the change.

Motion to approve adding jockey to the age exception was made by Commissioner Figaretti, seconded by Commissioner Akers. Motion was passed.

Kelli Talbott reported the next item proposed by the Jockey's Guild who is a member of the rule making committee. The proposed change is to increase the minimum amount fees that owners/trainers have to pay jockeys who ride their horses. The minimum amount fees have not been raised in several years. There is room in the rule to allow the horsemen and the jockeys to negotiate higher than the minimum. The amounts that have been negotiated to date at both Mountaineer and Charles Town exceed the minimums in the rule. Mountaineer's is a little bit lower than Charles Town's. The Jockey's Guild is proposing to bump up the minimum to what has been negotiated at Mountaineer. There were no public comments received about the proposed rule change. Joe Moore and Kelli Talbott recommend approving the change.

Chairman Lowe asked what the amount fees for either Mountaineer Park or Charles Town.

Danny Wright chief steward with Charles Town reported it is \$100 for Charles Town.

Motion to approve request was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was passed.

Kelli Talbott reported the next item proposed to require trainers and assistant trainers to get continuing education in four hours each calendar year. The proposed change is based on what has been in model rule with the Association of Racing Commissioners International (ARCI) for quite some time to require continuing education. She recalls her understanding in the past the reason for lag in adopting in the past is the industry had to catch up with providers of continuing education in WV or an online mechanism. That since has developed where there are online mechanisms for continuing education. The model rule has been in place for quite some time even around other surround states of WV. The Mid-Atlantic Thoroughbred Racing which WV is a member of is supportive of its members adopting. Two of the fours of continuing education has to be on equine safety, health, and welfare. There are some exemptions that can be granted such as having less than twelve starts during the previous twelve months. There was no opposition to the proposed changes, but there were public comments received in support of the change. Joe Moore and Kelli Talbott recommend approving the change.

Chairman Lowe asked who tracks the progress.

Kelli Talbott's understanding is ARCI may be working on a database. She deferred to Joe Moore for more information.

Joe Moore stated the ARCI is contemplating an online database that the trainers could upload their completion of training where progress could be tracked and reported. It would be similar to how the licensing database works at ARCI. It would allow the Racing Commission license clerks to be able to access during the licensing process. Right now, the burden is on the permit holder to maintain certificates they completed a course and present those at the time of their renewal. There is already twelve hours online available for continuing education through New York.

Chairman Lowe inquired about when would the trainers know when they need to start complying.

Joe Moore believes the rule would not go into effect upon approval through the legislative process until April 2021. Trainers would have in theory another eighteen months to get their fours of education before they would have to present during the licensing process.

Chairman Lowe asked if there will be a penalty if they do not do this.

Joe Moore responded they would not be licensed.

Chairman Lowe asked if there is a fee for doing the continuing education.

Kelli Talbott's understanding is there are online continuing education courses available for free. There are probably going to be ones that cost, but there are going to be ones that are free as well.

Chairman Lowe said it could be that the owners may pay for the training to ensure the trainers stay up on it which is similar to how it is done in other professions like real estate.

Motion to approve continuing education requirements for trainers was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was passed.

Kelli Talbott reported the next item proposed is regarding the riding crop. This is something that has been debated at the Mid-Atlantic as well as the ARCI to come up with amendments with how jockeys use the crop during the running of the race. Not only for safety purposes but for directing the horse without injuring the horse. It is not only a safety issue but a public perception issue for how welfare is dealt with. The current rule in place does not say how many times the crop can be used or if it is held in overhand or underhand fashion. Since putting out the proposed rule change the Mid-Atlantic has some updates.

Joe Moore reported the proposed change was put out knowing there would be ample time to consider any changes from the Mid-Atlantic. The difference is when put out to public comment it is a six-strike rule with no underhand holding with a penalty section attached to it. Through further discussion both with the Mid-Atlantic and an ARCI conference call the ARCI rules committee has not yet finalized a model rule. So, the Mid-Atlantic states have decided to move forward. The Racing Commission has modified the model rule after having discussion with the Jockeys Guild and hearing concerns from some prominent jockeys to change the number of strikes to seven after the quarter pole and unlimited use of the underhand until that point for correctional directional matters out of the gate. The penalty section was also removed. Removing the penalty empowers the stewards to apply the appropriate penalty should an excessive use of the crop be determined.

Chairman Lowe asked for confirmation of understanding there would be no predefined penalty as it leaves it to the stewards to make the call and does not change the outcome of the race.

Joe Moore and Kelli Talbott confirmed his understanding to be correct and that the penalty would be assessed only to the jockey.

Commissioner Figaretti asked if there was more time to consider this proposed rule.

Joe Moore reported there was a significant amount of time invested by the various groups with a stake in the change and due to the filing timeline, the decision was needed today.

Chairman Lowe asked Danny Wright is there anything further to consider the difference in length of tracks such as Charles Town and Mountaineer Park.

Danny Wright stated all the work done by everybody already has been good. He had hoped the proposed change that is before the Commissioners today for approval would be the outcome. He is very comfortable with it and that others will be. He is encouraged with the work everyone has done with the proposed change and hopes the Commissioners approves it.

Phil Reale representing the Charles Town racetrack would like to know what the Jockeys Guild thinks about what is being proposed at this point.

Joe Moore reported his understanding of the Jockeys Guild is they were wanting the unlimited use with the underhand within four furloughs. They were ok with a rule for the number of strikes as long as their jockeys had the ability to use the underhand in certain situations for the safety concerns and things of that nature.

Commissioner Akers asked if what is being proposed is exactly the same as the Mid-Atlantic or is it different.

Joe Moore stated it is the exact same rule Maryland and he believes Delaware passed without penalties. He knows Maryland did because he talked the director this week. The seven strike and unlimited underhand is the rule the Mid-Atlantic states will put forth. Some may keep the penalties, and some may not adopt the penalties as we are.

Commissioner Akers asked if there are any other changes anticipated to be made by the Mid-Atlantic or will everything be consistent with our rule.

Joe Moore believes the Mid-Atlantic will move forward with the rule that is being presented for approval.

Commissioner asked for confirmation that there is no final rule from ARCI.

Joe Moore confirmed ARCI has not finalized a final rule and probably will not until at least their December meeting for a board vote on it.

Commissioner Atkins asked if it is anticipated there would be any significant differences between the Mid-Atlantic and the ARCI rules.

Joe Moore is not sure.

Commissioner Atkins said the last communication he saw from the jockeys on July 20th, 2020 their concerns about limit to the underhand strikes were fixed. They also had some general concerns about how the rule was proposed but the other specific concerns regarding the penalty structure was changed. He asked if there has been any other communication from the Jockeys Guild in opposition to the rule proposed today.

Joe Moore reported he has not.

Commissioner Akers impression of the Jockeys Guild's concern with the penalty structure is it was oppressive and unfair by creating a point system which according to them was unique in the United States. He asked if this was accurate.

Joe Moore stated it is unique. The point system that was created mirrored a point system that WV has currently adopted for medication overdose. To his knowledge he is not aware of any other racing countries have a similar point system. They have strike rules, but he believes it is unique to the United States. It was based on the ARCI point system for medications.

Commissioner Akers asked where the point system came from within the proposed rule before this rule had come out.

Joe Moore said it was Mid-Atlantic point system and derived off of already what WV has adopted for the ARCI medication overdose point system.

Commissioner Akers stated it sounds like the stakeholders are generally in agreement with the rule. They know more about this than he. He does have a personal level of concern. Anytime there is a penalty system that is based purely upon discretion causes him some

concern. The original point-based system and monetary penalties may have been problematic. He is not saying was for the prior point-based monetary penalties. As the rule is currently proposed the stewards have absolute discretion number one as to whether not to impose a penalty, correct?

Joe Moore responded that is correct.

Commissioner Akers stated secondly the stewards would assess what the penalty would be.

Joe Moore responded that is correct.

Commissioner Akers asked where the stewards would attain at their discretion what the penalty amount would be.

Kelli Talbott said the stewards can probably speak to this better. There are instances already where the stewards already have discretion for matters for things like medications. They have their own internal system is how she would describe it for this is going to be the typical fine for this or that. There may be aggravating circumstances they would bump it up in second or third offenses. They might suspend. They will have to develop that kind of internal system for this as well is her observation.

Joe Moore would advise the stewards as Mid-Atlantic effort to coordinate with states like Delaware or Maryland where they have already implemented this to help create uniformity so that jockeys in Maryland know what is going to happen in WV.

Commissioner Akers said the reason he is asking is if obviously people always did the right thing, they would have no rules at all. He is not trying to cast any doubt on anyone's intentions or suggest whatever someone would intentionally try to break these rules or apply them fairly, but you could have significant differences. For example, in the discretionary use of this particular rule from one track to another in WV at least as it is written.

Kelli Talbott said you could as it is written require the stewards to coordinate within WV to ensure they are imposing a consistent penalty.

Commissioner Akers asked if the stewards at each track intend to impose significantly similar if not identical penalty structures for this particular rule if will not be expressly stated.

Danny Wright reported anytime they look to apply a penalty they always work with their sister track to be consistent. He said yes, they will coordinate with Jim at Mountaineer to make sure they are consistent in the process.

Commissioner Akers asked would there be any possible competitive advantage or disadvantage for discretionary use of penalties between tracks from other sister states for example.

Kelli Talbott believes that is why the Racing Commission stewards need to look at what is happening around WV in what these penalties are. The other thing she would add not that she would want the Racing Commission stewards to do something that was an abuse of discretion, but when the steward's hand down a penalty those are appealable to the Racing Commission. So there have been occasion in her time as the Racing Commission's attorney the

stewards have abused their discretion. Not that you want to have people go through that process to get that point. The Commissioners are kind of the check and balance on their exercise of their discretion if they would ever abuse it then the Racing Commission can conceivably overturn it. She thinks it is not a perfect system. It is a system were going to have to work out between the two racetracks, the stewards, and looking at other states to make sure WV stays as consistent as possible.

Commissioner Akers wants to make one final comment for what is worth. He will just say he would not let this derail the adoption of the entire rule because it is large rule of significant change, but he would personally preferred to seen some objective kind of criteria in the rule so that everyone what the playing field is before they step on to it. That does not mean is in favor of the opposed penalty structure existed before. That may have been a terrible proposal, but he wishes there were some objective criteria. He would just ask if they would have review of any potential appeals on this issue in the future he would like to see the tracks come up with best as possible a consistent penalty structure so there is no argument this rule is being applied arbitrarily or in some fashion inconsistently so that the jockeys don't know what they can or cannot do so that certain individuals be treated differently than others whether that is certain or just perception or reality. That being said he just wants to put that on the record otherwise he has no questions and appreciates the opportunity to speak.

Chairman Lowe thanked Commissioner Akers and made note of point well taken.

Motion to approve proposed amendment was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was passed.

Kelli Talbott shared public comments received not on the amendments but were for changes to the rule. Erich Zimny representing Charles Town Racetrack made the comment pertaining to changing the rule to regulate how disqualification calls are made. The ARCI has been discussing a possible model rule for this. It is not something the Mid-Atlantic has been discussing. Erich Zimny is proposing to adopt a proposed change for regulating how those disqualifications are made. The Racing Commission also received a comment on a part of their rule from the Charles Town HBPA relating to their bookkeeper's distributions. The comment is not for any of the Racing Commission's proposed amendments. When the Racing Commission puts a proposed rule out for public comment people can comment on parts of the rule that are not being proposed for amendment. Both public comments are important issues for the stakeholders. These are significant as far as rule changes go. These were not topics that came up during the rules committee meeting. Joe Moore and Kelli Talbott did not have an opportunity to discuss with all of the stakeholders during the rules committee meeting. They believe the comments proposing these changes merit more study and time to work with all stakeholders before making a definitive decision. Perhaps in a future rule making committee meeting the proposed changes could be more thoroughly discussed. Joe Moore and Kelli Talbott are appreciative of the comments but are recommending not to make changes at this time.

Chairman Lowe appreciates and thanked those who provided the public comments.

Joe Moore concurred and thinks everyone at the table should have input on the changes. Having received the comments through the public comment process does not allow for stakeholders to have the opportunity to provide input. Therefore, he recommends deferring the matters to a future rule making meeting.

Motion to defer was made by Commissioner Figaretti, seconded by Commissioner Akers. Motion was passed.

Commissioner Akers commented the public comment from Erich Zimny gives him significant pause when he states within his letter paragraph three the decisions he is describing or discussing are the byproduct of a deeply flawed system. It is someone who is obviously a stakeholder who is very knowledgeable. If we are under a deeply flawed system Commissioner Akers takes those types of statements seriously. He is not going to just read that and assume that is an off the cuff statement. He is being serious about what he wrote. So, if there are deep flaws in the system, he would appreciate those be brought to the table and be addressed.

Chairman Lowe asked if Erich Zimny would like to respond.

Erich Zimny said he would just pause it. Right now under the way things are written if a horse is the best horse in the race by twenty lengths then the horse wins the race, but something he does in the race prevents a horse finishing seventh from finishing sixth that means he is disqualified. That certainly is an underscoring fact a flawed system. That is our opinion.

Commissioner Akers said if there are things like that Erich Zimny thinks they can fix he would love to talk about it because if these are flaws part of our job is to fix flaws. Maybe there is now way to fix it but would sure like to try if we can.

Chairman Lowe said there will be may more discussions about this subject.

Kelli Talbott added the stewards during their initial and ongoing training learn on how best to make those judgement calls.

Kelli Talbott reviewed the next public comment received from the Mid-Atlantic group on the shockwave therapy rule. They are proposing a minor technical language change in the Racing Commission's rule to keep up with the ARCI model rule. It is Kelli Talbott's recommendation to make the change.

Motion to approve proposed amendment was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was passed.

Kelli Talbott reviewed the first proposed medication rule amendment to change the post racing testing threshold for Nonsteroidal anti-inflammatory drugs (NSAIDs) to conform to the model rule. ARCI made those model rule changes in December of last year. There was sentiment amongst experts found NSAIDs can be given as a therapeutic, but it can mask pain. So, when vets are examining horses for prerace fitness exams to ensure they are sound to race NSAIDs could make it difficult to do so. ARCI consist of multiple experts across the equine industry that provided input from scientific research and developing of the rule in its rules committee. The ARCI also use the expertise of the Racing Medication and Testing Consortium Board (RMTCB). The ARCI board uses all these groups before the rule is put forth on an agenda for the board to decide on. All of the Mid-Atlantic group sister states have adopted these NSAIDs rule changes. West Virginia is the only Mid-Atlantic state that does not have this rule in place. The Racing Commission received comments from Mike Hopkins with Maryland in support of the change. The Racing Commission also received comments in opposition to the change from the Charles Town HBPA and Mountaineer Park HBPA. Kentucky and California who are not Mid-Atlantic states have adopted the rule change. A corresponding change with the rule is

the ARCI had to change the penalty guidelines to be in line with the new thresholds. Kelli Talbott and Joe Moore recommend for the Racing Commission to adopt the proposed rule change to be consistent with the Mid-Atlantic states as well as with the industry standard.

Chairman Lowe asked for both Charles Town HBPA and Mountaineer Park HBPA to explain their reason for opposition to the proposed change.

Jim Miller with the Charles Town HBPA said they have many objections with how this rule has been implemented and just because several jurisdictions have jumped over the cliff does not mean WV should as well. The question has always been the medication is therapeutic which means it has no performance enhancing ability whatsoever, but it helps the horse. So now what we are doing is taking three of the most used therapeutic medications by horsemen which are very inexpensive and now we are going to try to put a whole new test system in place with new thresholds which for all practical purposes has no scientifically derived analysis as to the impact on racing or the impact on the horse. There is no peer review. The thresholds are only really set because that is the level of testing the various labs test at. That makes absolutely no sense. What we need is more commonsense rules in WV and this is just one setup where there are guys out there who cheat which he deplors, but they are not caught because we do not have the means to test and catch those guys. The same time you are catching the innocent trainers with innocent mistakes on medications that actually help the horse. These are the therapeutic medications. These are not performance enhancing medications. It is all being done under the guise of what took place out in California and things when they had very bad track and hurt a lot of horses. Again, a big mistake by the Stronach group and the people that ran those tracks. Now it is being pushed back on us in WV. These rules make absolutely no sense and do not help the horse in any way. The Mid-Atlantic is a good group, but he does not think they really reflect on the news with the horses that we have. Sometimes it is hard to differentiate between horses that are running and the Preakness and elsewhere with much higher purse levels. Our horses run at a much lower purse level. These therapeutic drugs are necessary in order to keep the horses comfortable. We are talking about the medication generally that is taken like aspirin for a headache. That is really what we are talking about. Let us not get too far out. Most of the therapeutics we are discussing here and how we are changing them does not take away all the horse's pain because it does not. It goes through the horse's system fairly quickly. So that was the reason why we want to look at it with really there would be rather a more scientific approach that be done. Let us get the science right instead of going where one jurisdiction in California starts it and comes across the country and the Mid-Atlantic adopts it and just crams it down. In Maryland they crammed it down. The horsemen were not happy about it at the time. He would rather not see it crammed down here in WV.

Joe Moore said it is important to distinguish the process the Mid-Atlantic group, the ARCI scientific advisory board, and the RMTC goes through to develop rules. Absent any sort of veterinary school expertise in WV as a regulator who is part of the ARCI as a member jurisdiction of a national agency with an umbrella group who uses the RMTC to accredit our labs which are fine and everything else it important for him to put before you all of ARCI's model rules changes. Now if you all take public comments and you decide it is not for this jurisdiction that is your discretion. The ARCI deal with tracks like Finger Lakes where they are more in line with Charles Town and the Mid-Atlantic.

Phil Reale asked to speak.

Chairman Lowe agreed to proceed.

Phil Reale appreciates what Joe Moore said, but at the same token the North American Association of Racetrack Veterinarians (NAARV) takes is in opposition to this rule. He thinks there is also a stacking problem. No one is talking about the environmental NSAIDs that are in the stall in powder form and gets into a horse's system. There was not even a horse that was treated for it. The fact you have two which are sometimes used in concert with each other to address inflammation. What miniscule amounts what is in this rule really puts trainers absolutely at risk of having their own integrity questions almost every day. He thinks it needs to be looked at. There are other in large organizations of veterinarians who do not necessarily agree with ARCI on this rule.

Kelli Talbott shared with Chairman Lowe's permission the American Association of Equine of Practitioners (AAEP) which is a large group than NAARV does support this rule at the ARCI level. The NAARV comment attached to Kentucky's rule Phil Reale is referring to was rejected and adopted the model rule. There is no doubt there are different positions on this but is not the only NAARV point of view weighing in on this. AAEP is in favor of this. As for environmental contamination the Racing Commission has a rule that deals with environmental contamination. The Racing Commission has had instances where the test would indicate whether it was NSAIDs or some other substance the determination was made to where the substance was likely in the horse due to environmental contamination and the rule in place allows for the Racing Commission to deal with it.

Chairman Lowe said in all due respects appreciates being on the ARCI board where there a great group of people who are very knowledgeable for the most part he feels so alone in their sometimes, because being from WV dealing with some or many of the horses being lesser value. They do let him speak, but his bucket does not carry much water. It is kind of small. So, he can say to them on things they can not do that at Charles Town or Mountaineer Park. He does not get much traction. In fact, he does not get any traction on couple other issues as well. He understands what is being said by Kelli Talbott and Joe Moore, but he cannot see doing it without enough evidence even with enough from international's perspective. He just cannot see doing without knowing more. Could we just defer this until more studies are done? Does that effect anything else if we say no to this, Kelli Talbott or Joe Moore?

Joe Moore said you can say no to it not to adopt the model rule.

Chairman Lowe asked if we could come back to it.

Kelli Talbott said yes, we can come back to it in a future rule making cycle.

Chairman Lowe wants to do what is right or what is fair. He asked if Commissioner Akers would like to make a motion or a comment.

Commissioner Akers said he would like to share his thoughts. He believes both Commissioners agree. He would normally defer to them with especially with their expertise at the track which he does not have. It appears to him at least some segments of the population this is a controversial rule at least within WV not some other jurisdictions. He did read Phil Reale's letter in particular in very close details and was appreciative of him providing the correspondence. He takes his comments very seriously and planned on addressing some of those today but does not need to do that today based on the way this appears to be going. He

totally agrees in the attachment that sometimes doing something can be worse than doing nothing. You should not make a knee jerk reaction when it appears your making changes when it does not make it better. That ideology he agrees. He is not saying agrees with all the conclusion in the report from the NAARV. Kelli Talbott's comments today there is a larger veterinarians organization supports this rule is very influential to him. It carries a lot of weight. The fact other jurisdictions have adopted this rule. It appears to him there is never going to be complete agreement with this type of rule. He respectfully disagrees with what Jim Miller said that this is only a therapeutic drug. He understands what he means by that. He knows that an NSAIDs is not a performance enhancement by itself, but he would say he thinks there would be times with people and horses and NSAIDs would allow you to perform when you otherwise could not. He thinks it could be a performance enhancer in only that the horse did not have NSAIDs in its system maybe it could not race at all. So, he thinks sometimes that a distinction without difference. He takes the staff's recommendations very seriously. Joe Moore and Kelli Talbott both are advocating for the proposed rule change, but the other two Commissioners do not appear to be for it. It appears to him the objection from the horsemen is WV's racing structure is more difficult in terms of the horses we have, and our system compared to some of the sister states. The financial circumstances we face a little more difficult and the implementation of this rule might make it more difficult to race in WV. He would the rule adoption would elevate horse racing in WV and not make it worse. Generally, with his background as lawyer looks for consistency with rules and he does not like for WV to be an outlier jurisdiction when it comes to any issue when trying to do business in the state. So, if the Mid-Atlantic states where most of our racing is done to be out of step with the other states gives him great concern. He came into the meeting in favor of adopting the rule, but he believes he will be outvoted. He just wants to go on the record respectfully for the reason he supports the adoption and not deferring it.

Motion to approve proposed amendment was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was denied with Chairman Lowe and Commissioner Figaretti voting against the measure and Commissioner Akers in voting in favor of adopting it.

Kelli Talbott presented the next proposed medication rule amendment relating to Bisphosphonates. The model rule prohibits the use in horses under four years of age and regulates its use in horses four years of age and older. Her understanding of the rule is if you give the drug to horses under four years of age it will have a negative impact on their bone modeling while trying to make sure older horses receive proper use. She does not believe there were any comments received in opposition to the proposed rule change. Joe Moore and Kelli Talbott recommend approving.

Motion to approve proposed amendment was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was passed.

Kelli Talbott presented the next medication rule for adopting the latest model rule for the uniform classification guidelines. They identify whether it is therapeutic, nontherapeutic, or performance enhancing as well as the severity. It also classifies the penalty to assess. She does not believe there were any comments received in opposition to the proposed rule change. Joe Moore and Kelli Talbott recommend approving.

Motion to approve proposed amendment was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was passed.

Kelli Talbott presented the proposed rule change for adopting the latest ARCI Endogenous, Dietary, or Environmental Substances Schedule. She does not believe there were any comments received in opposition to the proposed rule change. Joe Moore and Kelli Talbott recommend approving.

Motion to approve proposed amendment was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was passed.

Kelli Talbott presented the proposed rule change for adopting the latest model rule to change the Intra-articular joint injection time threshold from seven days to fourteen days. The Charles Town HBPA comments in opposition against adopting the rule. Joe Moore and Kelli Talbott recommend approving.

Chairman Lowe asked if anyone from Charles Town HBPA would like to speak.

Jim Miller feels the current seven days in the rule is enough time, but the proposed fourteen days due to the nature of how racing is in WV would not have any benefit.

Commissioner Akers understands based on the size of other larger tracks how the fourteen days works for them but may not for the tracks in WV such as Charles Town. He asked whether or not the comments from the two veterinarians associations were taken before the adoption by Kentucky.

Kelli Talbott said yes.

Racing Commission veterinarian, Dr. Bohenko, spoke up in favor of adopting the rule to protect the welfare and safety of horses.

Commissioner Akers shared his appreciation of Dr. Bohenko's opinion.

Chairman Lowe asked Dr. Bohenko whether the quality of the horse is a factor when considering the adoption of the rule.

Dr. Bohenko said it does not factor into and that all horse's welfare and safety benefit from this rule.

Chairman Lowe said he believes the difference with WV is its seventy-two-hour rule.

Motion to strike the proposed amendment was made by Chairman Lowe, seconded by Commissioner Akers. Motion to strike the rule was voted in favor by Chairman Lowe and Commissioner Figaretti with Commissioner Akers voting against to strike. Motion approved.

Public Comments

Adjournment

Motion to adjourn was made by Commissioner Akers, seconded by Commissioner Figaretti. Motion was passed.