

**MINUTES**  
**WV RACING COMMISSION**  
**Tuesday, January 29, 2020**  
**WV Racing Commission Conference Room**

The WV Racing Commission met on January 29, 2020 to conduct business and consider administrative matters. Roll call was taken, and present were Chairman Jack Rossi, Commissioner Ken Lowe Jr., and Commissioner Anthony Figaretti. Counsel was represented by Kelli Talbott.

**Election of Commission Chair**

Chairman Rossi stated the first item is the election of Commission Chairman.

Commissioner Lowe nominated and made motion to approve Chairman Rossi to stay as Chairman of the Commission, seconded by Commissioner Figaretti. Motion was passed.

Chairman Rossi did not vote and expressed his gratitude for nomination and votes to approve him as Chairman.

**Approval of Dec 10, 2019 minutes**

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

**Executive Director's Report**

Executive Director, Joe Moore, provided the following overview from the Executive Director's Report. The Racing Commission continues to watch for during legislative session is the commission's Thoroughbred Racing Rule. It passed out of the Senate on January 27<sup>th</sup>. It is now setting in House Judiciary. Watching a rational nexus bill that would require agencies to give consideration to applicants with criminal backgrounds. Since the Racing Commission already reviews and considers every felony applicant, they have on a case by case basis it doesn't really affect the Racing Commission's process all that much. Although there is a financial piece to this bill that would waive the initial permit fee for the applicant. So, it could have some financial impact on the permit fees the Racing Commission collects. House Bill 4338 is this year's Advanced Deposit Wagering (ADW) bill. It was originally single referenced in the House Judiciary. House Judiciary passed the bill out with a single amendment to remove the geo-location language. When it was reported to the House floor it was moved to the House Finance Committee for further consideration. While in House Judiciary there a couple of additional amendments that were ultimately defeated, but the purpose of those amendments was to remove the source market fee from the bill altogether. It would have required the ADW provider and the tracks to negotiate some fee privately unknown to the Racing Commission. The other amendment was to reduce the Racing Commission's administrative piece in the bill to half a percent rather than the current one percent. The bill at this time has not made a House Finance agenda yet. Senate Bill 285 is the Greyhound bill. The bill is currently referenced to the Senate Finance Committee. The committee has not yet taken it up for consideration.

Joe Moore, Kelli Talbott, and Dr. Chip Daniel are scheduled to attend the next meeting of Mid-Atlantic racing jurisdictions held in Delaware on March 25<sup>th</sup>. Previously Commissioner Lowe has attended the meetings with them and is welcome to attend this one coming up if he would like.

### **Accountant's Report**

Joe Moore provided an overview of the following from the Accountant's Report. The pari-mutuel wagering comparison for December of Fiscal Year (FY) 2020 shows live handle is down seven percent compared to FY 2019. Total in-state handle has decreased nine and half percent compared to FY2019. The FY2020 expenditure schedules were provided to the commissioners for their review. The Department of Revenue budget review hearing is this afternoon at 3pm in Senate Finance. The House Finance budget hearing is this Friday at 9 A.M.

### **Legal Update**

Legal Counsel, Kelli Talbott, reported and advised on the following needs. She has been assisting Joe Moore tracking some of the racing bills including the Thoroughbred Racing Rule. Kelli Talbott has attended some of the committee meetings where the bills have been taken up in committee. She has also addressed questions from the Senate Judiciary Committee related to the Thoroughbred Racing Rule. She is continuing to keep tabs on the bill in Congress that would change the way racing is regulated to some degree. Particularly with regards to medications. It would place the regulation of that issue essentially in the hands of either the United States Anti-Doping Agency (USADA) or the Federal Trade Commission or both. Yesterday there was a hearing on capitol hill in a House Committee on the bill. Joe Moore and Kelli Talbott both watched the hearing online. She does not immediately know what the politics are or how far it is going to go but seems to keep coming back up and growing support for it from she's observed. This is certainly something the commission will want to keep its eye on moving forward.

Commissioner Lowe asked if any of the federal legislation includes the idea or concept to eliminate Lasix.

Kelli Talbott stated the federal bill as she understands it in its current form has a provision that would prohibit the use. There were people who testified speaking for and against it. There was discussion as well for a movement from some parties to try to get the House to not take any immediate action on the bill that's up there and try to come up with another bill that has industry consensus. She does not know if Lasix would be addressed in another bill.

Commissioner Lowe stated he thinks it is one of the greatest travesties that could happen to the industry if it were banned. If the Racing Commission should do something or can do something, he would make a motion if that is what is needed to not let Lasix be removed.

Kelli Talbott suggested for the Racing Commission to put the matter on a Racing Commission agenda to discuss further. The matter would probably need input from the Governor and Secretary's office as well as coordination with WV congressional delegation.

Chairman Rossi agreed the matter should be put on an agenda for another Racing Commission meeting and agree with Kelli Talbott to coordinate and gather input from all pertinent parties is essential.

Commissioner Lowe concurred with putting this as an agenda item on the next meeting and to get plenty of input to let the Racing Commission know how they feel about this matter. He's seen firsthand from his professional experience in racing the benefits for using Lasix.

### **Wheeling Island Requests Changes to 2020 Live Race Calendar**

Joe Moore presented the request to approve two changes to the previously approved Wheeling Island 2020 Live Race Calendar. The changes would be to a special holiday post time on Friday July 3<sup>rd</sup>, 2020 at 3pm and a Christmas Eve race to be held Thursday December 24<sup>th</sup>, 2020 at 1pm for fifteen to twenty races.

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

### **Mountaineer Park Requests Approval for Mystery Vouchers**

Joe Moore presented the request to approve Mountaineer Park Requests Approval for Mystery Vouchers which is similar to previously approved requests in prior years. Mountaineer is requesting to print mystery vouchers which would be worth anywhere from five dollars to ten thousand dollars. The promotion would be conducted on March 14<sup>th</sup> or 28<sup>th</sup>. They propose to send over thirty-seven thousand vouchers to patrons in their database. They request this promotional mystery voucher program be conducted on a monthly basis during 2020. Joe Moore recommends for approval.

Commissioner Lowe asked Joe Moore if the vouchers would be done on just the dates referenced or every month.

Joe Moore stated in previous years the Racing Commission would require the racetracks to seek approval on a monthly basis. However, the Racing Commission a few years ago or so voted to allow for one single request at the beginning of the year for the track to be able to conduct monthly promotions.

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

### **Charles Town Request Approval of 2020 Preference Date System**

Joe Moore presented the request to approve Charles Town Request Approval of 2020 Preference Date System. Charles Town is operating on its current preference date system. This request would become effective of February 1<sup>st</sup>, 2020. It remains unchanged from its previous requests other than some wording changes to the digital certificates from the jockey's club. Joe Moore stated Charlie McIntosh is on the phone if anyone has any questions.

Chairman Rossi asked if Charlie McIntosh had any comments.

Charlie McIntosh stated the change is basically going from physical paper to digital media for the certificate. The only change is to the wording being displayed on the digital certificate in winner's races we have winner's preferred in each of the races. We took it from the

condition book and moved it to the preference page here. Really no change in the preference process. Just cleaned it up and changed some of the wording to allow for the digital certificate.

Commissioner Lowe asked Charlie McIntosh if there has been any objection from the horsemen or breeders.

Charlie McIntosh responded no. The racetrack attended a meeting the horsemen had about the change. The horsemen's executive director, Maria Catignani, has been working with the racetrack and the horsemen to better understand the changes. He believes once they get through the initial transition it will be better for everyone because they will be able to get rid of all level of effort for maintaining the physical paper copies as well as retrieve records easier when necessary.

Commissioner Lowe asked the Chairman if there was anyone who wishes to speak who opposes this change.

Chairman Rossi asked if Maria Catignani would like to make any comments.

Maria Catignani stated they have been working with Charlie McIntosh to ensure a smooth transition in terms of what's going to happen with the digital foal paper. We did have a meeting with the horsemen and the racing office did make a presentation and it went very well. We are trying to work through what's going to happen with the digital foal paper. She thinks the Jockey Club has a little bit of work to do to make it a completely smooth transition, but she thinks they will work through those issues. Regarding the preference date system as long as the language stays the same as last year, we have no issue.

Charlie McIntosh responded the preference process is unchanged. We changed the language a little bit to allow for the reference to digital foal certificates.

Commissioner Lowe asked is there any additional cost for anyone to do this.

Charlie McIntosh is not sure about the cost and deferred to Maria Catignani.

Maria Catignani thinks the only cost would be for any of the horsemen who do not have a computer in order to have access to the certificates. So, what the Charles Town Horsemen's Benevolent & Protective Association (HBPA) has done is purchased a laptop for the horsemen to use at the office to help them with working through the processes. The question she is looking for an answer is when people are actively racing and have to have their foal papers transferred from track to track. They haven't seen how that is going to work and are anxious to see that. Financially they have a computer here if they cannot afford to buy one or can't use their cell phone the CTHPBA are here to help.

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

## **Charles Town Requests Post-time change for Sunday Racing**

Joe Moore presented the request to approve Charles Town Requests Post-time change for Sunday Racing. When Charles Town originally requested the approval on a live race calendar there were two Sunday post times on that calendar that carried times of 12:30pm. There is a rule though that required a public referendum that specifically stated they would allow day racing within the hours of 1-6pm. So, Charles Town has come back to the Racing Commission to request the post times for Sunday May 10<sup>th</sup> and Sunday June 21<sup>st</sup> be changed from 12:30pm to 1pm to comply with the rule.

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

## **Approval of Emergency Rule Filing for changes recently made to RCI Model Rules**

Chairman Rossi asked for Joe Moore and Kelli Talbott speak to the agenda item. Since the Racing Commission has not yet filed for emergency rule, he asked Kelli Talbott to brief the Racing Commission on what the emergency rule making process entails.

Kelli Talbott provided background historically how the Racing Commission filed an emergency rule that dealt with double loading into the gate. At the time, the rule required single file loading of horses into the gate. There was some support in the industry due to safety concerns to get horses into the gate quicker that we change the rule to go to double loading. The Racing Commission did do that through the emergency ruling process. That's been awhile ago. The regular rule making process requires the Racing Commission to put rules out for public comment in a June timeframe with a thirty-day public comment period from that point. Then reconvene thirty days to review any public comments and final file the rule in July typically so it can be taken up during the following legislative session. The Racing Commission has a rule up at legislative session now which they started in 2019 to have before them now in 2020 legislative session. Assuming it passes the, rule changes would probably be effective in sometime in Spring/Summer of 2020.

Kelli Talbott briefed then on the emergency rule process that is available to agencies. It is set forth in code. She believes there is some misconception that she hopefully will be able to dispel when she talks about today about how it takes to get an emergency rule. It is certainly quicker than the regular rule making process, but it is not immediate and she's hoping to explain that. So, in order to file what is called an emergency rule the Racing Commission would have to vote to do that then get. The Racing Commission would have to get approval from the Secretary and Governor's offices because the Governor currently still has a rule moratorium in effect that requires his approval prior to filing of any rules. We would then have to file the rule with the Secretary of State. The Secretary of State is the arbiter of whether or not there is an emergency. There is a statutory definition of what an emergency is, and it has to do with public health safety or welfare or to prevent substantial harm she is paraphrasing here. You are required to state what the urgency is, and the Secretary of State is required to review that. The Secretary of State has up to 42 days either approve or disapprove. When you think about an emergency people kind of think of immediate, but in West Virginia (WV) its not immediate but it is quicker than the normal rule making process. So, if the Secretary of State doesn't take any action whatsoever either approve or disapprove then it automatically defaults into going in effect the 42<sup>nd</sup> day, but the emergency rule can only be in effect up to fifteen months. Then it will expire unless you have followed the process to get a permanent rule in place. So, once you file

the emergency rule and assuming it gets approved by the Secretary of State the agency has thirty days to file what's going to be the permanent rule that would follow the normal rule making process. At that point it would have to go out for a thirty-day comment period even though it's an emergency rule. At the conclusion of the comment period it's kind of similar to your regular rule making. The Racing Commission would have to come back to do another filing taking any public comments into consideration to make any changes to the emergency rule. That's basically the process. Because the emergency rule can only be approved for fifteen months there are all kinds of calculations Joe Moore and Kelli Talbott have been walking through the timing just the procedural time of this if the Racing Commission was going to do an emergency rule and make sure that it doesn't expire before a permanent rule can be put in place then were looking at probably not filing something until Spring, April, May. This could not although it's called an emergency could not be immediate, but it will be quicker than the normal rule making process. There will still be a public comment period. There will still be some delay to file this because of the necessary procedures.

Joe Moore stated the rule changes that are before the Racing Commission today deal with insets and interarticular injections. At the last Mid-Atlantic jurisdiction meeting in Delaware he believes in late Summer or early Fall these items were discussed. There was not any vocal opposition at that time to making these changes. These changes fall in line with the Mid-Atlantic groups strategic plan to reduce racehorse fatalities. This is being seen as a safety and welfare issue. In the December board meeting of the Association of Racing Commissioners International (ARCI) which Commissioner Lowe represents the WV Racing Commission who has a seat on that board. Commissioner could probably tell us, but he does not believe there were any votes of the board against making these changes. Joe Moore has been made aware possibly the National HBPA spoke out against it. He does not know of any voting member of the board vocalized an opposition to these changes. One of the particular reasons that the changes seen as necessary is these therapeutic medications as they are currently being administered is seen to have an effect on pre-race exams. These therapeutic medications that are pain masking medications and therefore could have an effect on the ability of your state vet to conduct pre-race exams and identify at risk horses and keep them from running on the track. That is the purpose of these two rules. The Charles Town HBPA has sent the Racing Commissioners a letter in opposition for you to not send this through the emergency rule making process. Joe Moore will defer to Maria Catignani to speak to the letter in more detail. The letter does point out these particular medications being talked about are therapeutic and not performance enhancing. Joe Moore stated it is not the purpose of these changes. It's not to reduce a performance enhancing opportunity. It's a safety and welfare issue dealing with pre-race inspections.

Kelli Talbott reported when the Mid-Atlantic talked about this in the last meeting and then they were aware ARCI adopted these rule changes in December which it's her understanding ARCI talked about these changes in December as well as the Spring meeting there were all kinds of subcommittee meetings that dealt with this. This was a long deliberative process to get to the ultimate vote of ARCI in December. She was aware and certainly out there reading what was happening in the other Mid-Atlantic states with regards to these rule changes. Recently, the Mid-Atlantic partners reached out to the Racing Commission to understand what WV is doing with the changes. The Racing Commission shared with them at the time the earliest the changes could take effect would be 2021. The comment received back from the partners it would make WV a significant outlier. So, Joe Moore and Kelli Talbott asked for an account of what is happening across the other states. They received in response to their request yesterday that; Maryland is adopting the changes and doing an emergency rule to take effect this February, New Jersey has already adopted the changes due to having an automatic rule adoption in place so that when ARCI passes the rule change its adopted by reference in Jew

Jersey, Delaware has adopted the changes as of last week and go in effect in February, Virginia has adopted the rule and taking effect by the time racing starts in the summer, New York has adopted it. With keeping in mind, the emergency rule making process explained earlier there would be due to the procedures necessary time before it would take effect in 2020 which is quicker than following the regular rule making process.

Chairman Rossi asked Commissioner Lowe for any concerns with the changes.

Commissioner Lowe suggests delaying voting on this until next month to allow time for input from everyone.

Chairman Rossi asked for the horsemen from both Mountaineer and Charles Town to provide any comments starting with Mountaineer.

Jamie Poole, President of the Mountaineer HBPA, stated his issue with it is Kentucky is not adopting it, Ohio has not adopted it, and Indiana has not adopted it. That's Mountaineer's competitors. So, if we adopt this were taking horses out of WV and the panhandle because the other tracks haven't adopted it. They may have adopted it around the Charles Town area, but they haven't here. He thinks it will damage their field sizes and how many horses they get at Mountaineer park. He doesn't agree with the testing levels the changes would require.

Maria Catignani, Executive Director of Charles Town HBPA, stated the Maryland Racing Commission put these rules in place in October, but then backed off of them in November because they got push back from the horsemen and they are supposed to go in effect on February 1<sup>st</sup>. As she understands it there is still some dissention going there and it is not foregone conclusion that will absolutely happen on February 1<sup>st</sup>. I would take exception to the fact that we would be an outlier if we don't just go through the regular rule making process. That rule making process has worked for us for years and years. I'm not sure this constitutes this is an emergency because these are therapeutic substances. They are drug class IV penalties and C class. The definition of a class IV is that it is a therapeutic medication that is routinely used in racing horses. Again, I don't see this as an emergency. She does think it is something that has to be addressed. It has to be reviewed, but the real problem is when we talk about the stacking violations as they are proposed there is not enough guidance there for the horsemen. What would happen is if they were a trace level of a substance then that trace level triggers a second positive. She provided a scenario where this could occur. She thinks this is an excessive penalty for something that is a therapeutic substance as defined by the ARCI's definition. She does not know if it benefits them anymore or less to go to the emergency process rather than going through the same process they've gone through for years.

Commissioner Lowe stated there seems to be ample time to work with the stakeholders here in WV to work with us to come up with a workable doable product. That's what he thinks would be our goals and aims. So, he's saying do what was said. He can understand why it's important to some and more important to others, but understands also why it's very important because the very people rely on this industry for their livelihood are the ones he's hearing saying this is not a good idea to rush right into this.

Motion to approve was made by Commissioner Lowe, seconded by Chairman Rossi. Motion was passed.

Chairman Rossi suggested for Joe Moore and Kelli Talbott to setup a meeting with the stakeholders so we can try to get things worked before the next Racing Commission meeting.

## **Executive Session – Legal Advice on ADW Matters**

Motion to approve going into executive session was made by Commissioner Lowe, seconded by Chairman Rossi. Motion was passed.

Motion to approve exit out of executive session was made by Commissioner Lowe, seconded by Chairman Rossi. Motion was passed.

Joe Moore recommends meeting with stakeholders to discuss further ADW.

Motion to approve was made by Commissioner Lowe, seconded by Chairman Rossi. Motion was passed.

## **Public Comments**

## **Adjournment**

Motion to adjourn was made by Commissioner Lowe, seconded by Chairman Rossi. Motion was passed.