

**MINUTES**  
**WV RACING COMMISSION**  
**Friday, June 19, 2020**  
**WV Racing Commission Conference Room**

The WV Racing Commission met on June 19, 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.

**Executive Director's Report**

Executive Director, Joe Moore, provided the following overview from the Executive Director's Report. Joe Moore gives an update on the status of the racetracks regarding the Governor's order related to live sporting events. Racetracks will allow spectators at the tracks and Charles Town and Mountaineer Park will resume simulcasting on Monday, June 22, 2020. Delaware North is simulcasting out of the casino while there are no spectators on the grounds.

Commissioner Figaretti asks when the simulcasting will be taken out of the casinos and put back to the tracks where they originally came from.

Kim Florence, General Manager Delaware North at Wheeling Island, informs that this will begin on June 24, 2020 which is the first day of the live race date.

**Charles Town Requests Approval of Stakes Race Schedule**

Joe Moore provided an overview of the following approval of Stakes Race schedule at Charles Town. The purse for the Charles Town Classic is being reduced to \$600,000. There is a \$200,000 Oaks, \$150,000 Dance to Bristol, \$100,000 Robert Hilton Memorial and \$100,000 Russel Road Stakes. All 5 races are to be run on Friday, August 28, 2020. Joe Moore recommends for approval.

Commissioner Figaretti asks for the total amount of money regarding all 5 races.

Joe Moore states that it is \$1.5 million for all 5 races.

Commissioner Lowe asks why this will take place on Friday August 28<sup>th</sup>.

Charlie McIntosh, representing Charles Town Horsemen states that the races were moved to a Friday because all state races were moved, and Charles Town will be running against Saratoga and Del Mar.

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

**Mountaineer Park Requests Approval of Stakes Race Schedule**

Joe Moore provided an overview of the following approval of Stakes Race schedule at Mountaineer Park. Mountaineer Park has submitted 2 Stakes Races, a \$500,000 Grade 3 West Virginia Derby and a \$200,000 Grade 3 Governor's Stakes. These 2 races are to be run on

Saturday, August 1, 2020. Their annual Stakes Races will not run this year. Joe Moore recommends for approval.

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

### **Mountaineer Park Requests Approval of Capital Improvement – track surface**

Joe Moore provided an overview of the following approval of Capital Improvement at Mountaineer Park. This is a capital improvement that has already been completed. It was completed before the beginning of their race meet. The main track at Mountaineer Park was resurfaced. The projected cost was \$220,692. The money is available out of the racetrack video lottery account for capital reinvestment. Joe Moore recommends for approval.

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

### **Request for Reinstatement of Occupational Permit – Sylvester McGill**

Joe Moore provided an overview on the following request for reinstatement of occupational permit. This occupational permit applicant is Sylvester McGill who is seeking an owner/trainer permit reinstatement. The reason Sylvester McGill is before the Racing Commission is because of a misdemeanor. It was an animal cruelty case from Virginia. The Board of Stewards at Charles Town, along with Ray Cave, the investigator at Charles Town, have all interviewed Sylvester McGill and recommend that the Racing Commission will reinstate his permit. There are also many recommendations from industry participants on his behalf.

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

### **Request for Reinstatement of Occupational Permit – Guillermo Rodriguez**

Joe Moore provided an overview for the following request for reinstatement of occupational permit. Guillermo Rodriguez is present at the West Virginia Racing Commission meeting. The occupational permit applicant is Guillermo Rodriguez who is seeking a jockey permit. The reason Guillermo Rodriguez is before the Racing Commission is because of a felony conviction which included possession with intent to distribute. This is the only criminal history Guillermo Rodriguez has. The Board of Stewards at Charles Town, along with Ray Cave, the investigator at Charles Town, have all interviewed Guillermo Rodriguez and recommend that the Racing Commission will reinstate his permit. There are also many recommendations from industry participants on his behalf.

Guillermo Rodriguez states that he is looking forward to having his jockey career back. He states that he has been going through a lot of these past 2 years and apologizes for all of the bad things that he has done in West Virginia. He has still been involved in racing from being an assistant trainer with a stable that has 42 horses but is excited to get back to riding again. He wanted to thank the Racing Commission for all their consideration.

Commissioner Lowe wants to thank Guillermo Rodriguez for traveling to Charleston for the meeting. Commissioner Lowe states that he has read about Guillermo Rodriguez and highly recommends him to be reinstated.

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

### **Approval of Advance Deposit Account Wagering (ADW) Rule**

Kelli Talbott provided an overview for the following approval of ADW rule. The ADW rule was drafted and Kelli Talbott looked at different state's rules. Kelli Talbott states that she primarily relied on Virginia's rules. Items were incorporated that were consistent with how other licensees in West Virginia are dealt under code. The draft was distributed to some West Virginia stake holders to be viewed. Some changes were suggested, some of which were helpful. For example, Maria Catignani commented on behalf of the Horsemen's Benevolent and Protective Association at Charles Town, that a provision should be added to the questions for applicants for ADW licensure. This would be to find out if an applicant has been involved in any litigation as a party involving ADW. The Racing Commission added this provision. Erich Zimney suggested language for one of the sections that deal with account wagering. How those wagers are made and who can make them. These wagers can be made by telephone. The language that was suggested was changed. There were other comments submitted that Kelli Talbott and Joe Moore were considering and wants the Racing Commission to discuss today. The first comment under consideration includes the rule as its written, if an account holder opens an account with an ADW licensee, one must provide their social security number. The underlying reason for this would be if any account holder had the level of winning that would require reporting to the Internal Revenue Service (IRS), then the ADW licensee must have their SSN. Erich Zimney, representing Charles Town suggested the option to only provide the last 4-digits of SSN at the start and if the winnings need to be reported, the entire SSN could be provided by requesting from the account holder. The second item that is being brought to the Racing Commission's attention is that there is a provision in the rule that requires ADW companies, or licensees to keep records for 1 year. Maria Catignani suggested that records may need to be kept for longer than 1 year.

Joe Moore states that the third item that dealt with confidentiality provision. It is currently in the rule that the confidential PI information will be held only by the ADW provider and its affiliates. Maria Catignani suggested that the affiliates be removed from that language and for it to only read the ADW provider. Erich Zimney suggested that the issuance of an ADW permit be based on a Fiscal Year (FY) since it will be started on July 1, 2020. The Racing Commission made a change to the language to allow for an initial issuance of a 6-month permit at a 50% rate of what is in the rule. This is so that the Racing Commission can begin issuing calendar permits to ADW providers in the same manner as done with the live race dates to the live racetracks. The Racing Commission included in the rule that the first issuance will be good through December 31, 2020 at a cost of \$2,500. Thereafter, it will be an annual permit January through December just as live racing licenses are. Joe Moore opens for discussion on these three remaining issues.

Commissioner Lowe agrees with Erich Zimney about the last 4-digits of SSN's. Commissioner Lowe states that keeping records for 3 years is a reasonable amount of time.

Commissioner Lowe states, regarding the confidentiality provision, if the Racing Commission is aware of who has the responsibility if the information is stolen and he assumes that this would be regarding the ADW company.

Joe Moore states that he would like to get a response from Maria Catignani to elaborate on the reasoning for their comment to help the Racing Commission's decision making.

Phil Reale, representing Charles Town states that certain items may not be discovered immediately. He believes that the Racing Commission might be challenged in certain situations and may need the information. If the documents are reserved electronically, it does not take up any physical space. He believes that the documents should be kept for at least 7 years.

Joe Moore clarifies that the burden of record retention, in this case, is the ADW provider not the state agency. The topic is about the calls that the wagers place and so forth. The ADW provider would be the ones retaining these records, in this case.

Kelli Talbott clarifies that they are discussing the provision in the rule that sets the amount of time the ADW licensee must keep records. The way it was drafted was 1 year, which is what Virginia had in their rule. Kelli Talbott does not have any objections if the Commissioners want to lengthen the time of keeping those records.

Chris McErlean from Penn National Gaming states that national gaming is involved in account wagering in several other states, not West Virginia. Chris McErlean discusses the 3 points and states the clarification on the social security matter is not only for IRS but also for background check purposes. This is to verify the identity and residence of the individual. It is standard to add the last 4-digits of SSN on those applications. The request was made to modify the rule. Regarding the retention of records, a standard amount of time is at least 3 years. This could include wagering transactions and phone call data. This would be offered as a compromise amount of time. Chris McErlean asked for clarification on the topic of confidential information.

Kelli Talbott states the rule, as it is read, it is confidential to the ADW licensee and its affiliates. This would mean that whatever ADW licensees and affiliates may have, they would have access to that confidential information. Maria Catignani stated to Kelli Talbott earlier that the Racing Commission should make the confidential information only available to the ADW licensee and strike through its affiliates. Kelli Talbott agrees that if the Racing Commission wants to strike through its affiliates, they can do so.

Joe Moore reads the rule as it is written, which states that no employee or agent of an ADW licensee shall divulge any confidential information related to the placing of any wager or any confidential information related to the operation of the ADW licensee except to the account holders required by this rule, to the Racing Commission, to the ADW licensee and its affiliates and as otherwise required by state or federal law. The Charles Town HBPA requests to amend to only take out the language "and its affiliates".

Chris McErlean states that there is no issue with that request. He is unsure about how the affiliates in the rest of the regulations are noted and is concerned that it will contradict other rules by not allowing the affiliates to fulfill any other obligations.

Kelli Talbott states that it does not contradict any other rules. The last 4-digits of SSN will be required and strike through "and its affiliates". Records will be kept for 3 years.

Commissioner Lowe states that the ADW rules that are provided and being voted on today that the Racing Commission is not relinquishing any rights or claims to any entities that may have accepted prior wagers without a license. Commissioner Lowe wants a clean slate going forward.

Kelli Talbott states that voting to adopt the rule does not mean the Racing Commission is doing anything further than adopting the rule at this moment. Filing the rule on July 1, 2020 does not have anything to do with the concerns being discussed. Kelli Talbott states that the ADW legislation that our legislature passed, goes into effect of July 1, 2020. This date is the earliest that the Racing Commission has legal authorization to start regulating ADW in West Virginia. Under the legislation that was passed, the legislature authorized it to be passed as an emergency rule. Otherwise, the Racing Commission would be waiting until the next legislative session to receive rules which would not work with the timing of the effectiveness of the legislation. This will be filed as an emergency rule and will be out for a 30-day public comment period. At that point, it will go into effect as an emergency rule quickly after filing. There are no outliers in this rule.

Joe Moore states that after voting to approve this rule with the changes that were discussed, the Racing Commission will be prepared to file it on July 1, 2020 with the Secretary of State's office. At that point, Kelli Talbott and Joe Moore will have prepared and finalized the application for ADW companies to use. They will be able to submit applications to the Racing Commission. The Racing Commission must have another meeting in early July to consider the approval of such applications. They can then start regulating and ADW companies can start accepting wagers in the state of West Virginia.

Commissioner Lowe clarifies that his motion is to approve the last 4-digits of SSN, record retention of 3 years and removing the language "and its affiliates".

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

### **Public Comments**

Commissioner Lowe states that Chris McErlean, Erich Zimney and Charlie McIntosh have done a great job at Charles Town. In the past 10 days, 4 individuals have told Commissioner Lowe, or someone that knows him, that they have been given, on the racing side, a permanent furlough. This becomes effective August 1, 2020. Commissioner Lowe wants to understand if this is a business model. Will racing be affected by these 4 people being permanently furloughed at Charles Town.

Erich Zimney states that he does not believe that there has been any communication about permanent furlough. There was a letter that went out that he does not believe said they were permanently furloughed.

Commissioner Lowe states that the information was brought up to him 2 times.

Chris McErlean states that the letter is referred to as a warn letter. This is required under federal law in terms of communicating to employees. This is not just in Charles Town, but for employees across the country as well. Additional furlough and possible permanent furlough may be considered in the future for the company. By federal law, a certain amount of notice

regarding that is required. If there are further questions, they should be reported to the Corporate Human Resources Department for clarification.

### **Adjournment**

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