

**MINUTES**  
**WV RACING COMMISSION**  
**Friday, March 26, 2021**  
**WV Racing Commission Conference Room**

The WV Racing Commission met on March 26, 2021 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.

**To discuss possible measures regarding incidents in order to protect animal and human welfare and to address the substantial and imminent harm posed to animals and racing participants.**

Executive Director, Joe Moore provided overview for reason for emergency meeting. It is his understanding as of this meeting Charles Town has lost nine horses since the beginning of the 2021 meet. Many of those have occurred down the stretch with jockeys running full force not knowing or feeling anything is a miss with the horse. They have been sudden tragic accidents. He is sure there are various reasons or things we as a community can do better. If not already come across it many are aware the Racing Commission and racetrack were approached by a reporter out of Martinsburg. Joe Moore has copied the Commissioners on the Racing Commissions responses. He believes the article came out either Wednesday or Thursday morning. He knows on the Racing Commissions end we need to do a better job with tightening the reins on its necropsy program and mortality review board. The Racing Commission established a mortality review board of our equine medical director, a steward of Charles Town, and representative of the racetrack, a representative of the Charles Town Horsemen's Benevolent and Protective Association (HBPA), and the Racing Commission Charles Town investigator. It has sporadically gained information. He thinks we need to do a better job with each fatality convening the group, doing the necessary interviews with the interested parties, sharing the information that is received more so than just having the necropsy report. Often times the necropsy reports are either inconclusive or just confirm what we already know about the accident. We need to try to do a better job of gaining additional information immediately after the injury occurs. Getting those interviews scheduled, sharing the information with the board, and then subsequently getting the information to the commission level. That is one thing on his radar they need to tighten up on as a Racing Commission, and those who are involved in the mortality review board. We need to get the meetings scheduled as the incidents happen. Get the information together to see if they can identify common trends that are causing the occurrence or are individual accidents that unfortunately occur at this time of year.

Chairman Lowe concurs with Joe Moore and appreciates everyone involved trying to do their job. However, he has one exception with respect to trying is not good enough here. The mortality review board must meet and get reports filed back accordingly to the Racing Commission. There is no excuse. There is not going to be any excuse. Everyone has got a job to do. We are going to find out what is going on with this and get this problem resolved. He is determined to make that happen as best as he can. He asked for the Racing Commission Equine Medical Director, Dr. Chip Daniel, to comment on the matter.

Dr. Daniel said whenever they have any of these breakdowns, he certainly feels at least partially responsible for the potential of missing something. He tries to see the horses as many times as possible. They get a prerace exam. He watches them jog off leaving the paddock. He tries to strategically position himself where he sees them turn around and break off into another jog into various positions for the host parade or the warmup period. Nothing has changed with that. He looked through the list of horses this year trying to see any that raced too much. He found only one horse that had four races in 2021 that broke down in February. So basically, two weeks between starts this year. You cannot do that forever. You can only do that for short period of time. Evidently this one could not. It was a five-year-old horse that broke a cannon bone. Most of the break downs are catastrophic. We have had a couple of horses vanned off and a couple walked off that had some sort of injury. They do not have many of them. They just seem to be catastrophic in nature. The modifications in some of the joint injection rules and medication rules help, but he really does not know why 2020 went well and 2021 is not so far.

Chairman Lowe asked Dr. Daniel if he believes it is not a medication issue and is due to something else.

Dr. Daniel said the other thing he tries to do in studying his list is look at the names for handlers and trainers and stuff like that, but there really is not a pattern that way. He does not believe a whole lot of medication, or we will use the word masking is happening, but is not sure really what is the cause.

Chairman Lowe stated as he understands what Dr. Daniel said it is not matter of medication and not seeing a number frequency occurring with the same trainer or handler. He asked Dr. Daniel if that is correct.

Dr. Daniel said there is one trainer who has a couple of names on the list, but the trainer runs a lot of horses so statistically he doubts its significant.

Chairman Lowe asked if there anything else Dr. Daniel wants to add. He is not trying to point fingers. We are just trying to find out what is going on.

Dr. Daniel has talked to the racetrack people, the trainers, and the riders to see if the track's race surface is good. Like he said before he feels a responsibility when the horse breaks down. He tries to go over what he is doing to do something different or improve what he does. He really encourages everybody else involved to do the same, because we like to blame it on all sore horses. He believes that is not the case this time. These horses are jogging good with or without weight on their back. There dropping out from underneath these riders, and it is a dangerous situation in his book. Whether it be the track surface, the base, looking at whatever it is if we are in charge of that entity that is what we need to focus on. The location of some of the breakdowns maybe what is different than in the past. The past the racetrack was always going into the far turn where horses switch leads at the quarter pole, but now it is different. There kind of is a skewing of where the horses are breaking down, and it appears to be on the stretch side of the track more than anywhere else. That is unusual. He does not know if there is something different with the surface on this side. He walks across it every single race. What he is walking on seems to be ok visually, but he is not a racetrack surface expert by any means. He does not know if it has anything to do with it or not.

Chairman Lowe asked if Erich Zimny with Charles Town Racetrack management if he would like to speak.

Erich Zimny said we have convened with these parties as much as Dr. Daniel, Denver Beckner, and the horsemen knows this we are trying to find an answer as much as anybody. They have never received any negative feedback about the racing surface. As people on the call know when the surface is fine you hear people complaining about it let alone with the surface is not fine, we have had zero feedback that the surface is any type of issue. In a way if this is something wholly under our control it would be fixed, but we have never seen any evidence or heard any evidence of that and believe him they have tried. One thing he will say that is born out of studies by multiple vets regarding the condition of the horses that breakdowns not just at Charles Town but in general ninety percent of all failed muscular skeletal breakdowns had some pre-existing pathology at the site of the fatal injury. So, the idea that these are all just perfectly sound horses something just going wrong is easily something Dr. Daniel can see as is anything else. It is hard for him to believe the horses at Charles Town would be any different like everywhere else. Like you all said they are just trying to find answers. Anything he would give would be opinion which would be pretty solid but just that. Once again like everyone else he reiterated they just want to know what is going on. If they did not want to know they would have not worked with all parties, they have done multiple times.

Chairman Lowe asked Erich Zimny if it is fair to represent as far as they know there is nothing that has changed, and he feels the track surface is as good as it can be at this time of year. That is a factor somebody could talk about. Seems to happen more often at times when we are between winter and spring time before the track salt is done away with.

Erich Zimny stated it is possible. How much of that is fact a horse had longer campaign where they are still racing in the winter months versus the surface. He does not know the answer to that question.

Chairman Lowe asked if there is anything else Erich Zimny would like to say on behalf of Charles Town Racetrack.

Erich Zimny said he is happy to respond to any questions that may come up. Like he said before, they want to find out like everyone else what is wrong. They are as worried about it as everybody else. Again, he is going to say what he said at the start if this were something wholly under their control it would be fixed. That would be the easy issue, but it is clearly not. They are up for any solutions as well.

Chairman Lowe expressed his appreciation for Eric Zimny's input and the fact he stated if the issue is something they would need to correct they would do so.

Commissioner Figaretti asked how many horses have the same trainer.

Erich Zimny said there was one trainer with two instances.

Chairman Lowe asked if Jim Miller would like to say anything on behalf of the Charles Town HBPA.

Jim Miller said he thinks everyone knows we are all challenged to what is occurring and not really sure what the issue is. It is hard to come up with answers to address. What his board authorized a few weeks ago because they were already very concerned about it is to take samples of the track in various random parts. They have Mick Peterson evaluating those results. He was hoping the results would be available today. So at least they would have Mick Peterson's understanding of the track. Jim Miller was there on Wednesday when a horse broke down in the stretch. It was pretty tight quarters along the rail. Before that someone had asked what the condition was of the track, I would say it was very good track. So, it is kind of hard to say the track was bad. At least on the appearance of the surface and in fairness how horses were moving over it was quite good. He does not know what the base looks like underneath, particularly in the stretch. It seems to be between sixteenth pole and the finish line seems to be where a lot of the events are taking place. He does not know if there is something in the base because when your snapping cannon bones usually that is big strong bone. If a horse has a number of races or is actually a little older that is a pretty strong bone. It would take a pretty catastrophic event for it to break. You might see it in some of the younger horses which have softer bones, but these are older it seems to be and that had a number of races which makes the cannon bone a lot stronger. He guesses what they would recommend at this stage is to pull the track back from the one sixteenth pole to the finish line. Just see what it looks like from one end to the other. He is not saying it would be a solution, but it at least gives us comfort in mind that it is not anything there that would be causing it. We also know that we are given at the end of the winter season the track is winterized the salt and all the other things going on to try to keep the track usable. The track is very hard to maintain in the winter. We would be hopefully switching over to putting new materials into the track and replacing the old. His guess is the current materials are reaching their useful life. Maybe those are a couple of things to look at. Maybe Dr. Daniel could look at the condition of the horse's day after running. He does not know if that would help because usually horses are medicated after they run. That might give an indication whether the horses are sore after the next day. They are concerned and willing to work with everybody. Their owners and trainers are losing, and they are not losing cheap horses either. These are in many cases young nice what they consider making a large investment where they lost the horse. That is a catastrophic event on all fronts for the horses we love and the jockeys which they hope to keep safe. They are happy to look at all solutions to try to reduce. We thought we had a pretty good year last year all considering. Actually, the trend has been going down. These first three months have not been tolerable from an owner standpoint. The last thing they all want to see is a horse breakdown on the track. It just is not right.

Commissioner Figaretti asked if there is a superintendent who takes care of the track been involved in all of this.

Erich Zimny reported very much so. We have had these meetings with their track superintendent as well as his number one assistant involved.

Chairman Lowe asked Denver Beckner with the Charles Town Stewards if they would like to add anything.

Denver Beckner said there are no warnings the horses are sore. There has been one correction that ten horses have been euthanized on the track this year.

Chairman Lowe asked if this was just during racing.

Denver Beckner confirmed it is just during racing.

Chairman Lowe asked Dr. Daniel about training and whether there are numbers there they need to know about as well.

Dr. Daniel reported there are a couple. One was diagnosed as a tendon, another as a high-end leg, and another came back as some sort of aneurism aorta. No pattern. One thing he wants to bring up that he contacted a sister track, Laurel, there was one horse on the vets list for cannon bone type issue over a year prior at Laurel. That particular horse had made six races and its breakdown race was its sixth race in five months. It had run first or second in the previous four. In his line of thinking in the previous two was over that type of pattern. It is hard to tell. Erich Zimny commented on some sort of pre-existing pathology in breakdown horses that is definitely true but, in our case, it is difficult to diagnose that with our current necropsy report. The bones scans and diagnostic procedures are very difficult to achieve. Certainly, in an economic fashion, but that is kind of one thing he has looked for in the necropsy report. Some sort of condition that would have led to the problem, and we just have not seen that. Again, this single horse is the only one he is aware of that had any pre-existing thing, but sometime prior to the breakdown.

Chairman Lowe asked Dr. Daniel whether the necropsy report is effective enough to tell us what happened.

Dr. Daniel reported with the fatality list the cause is based on what they see on the track. So far, they have not had to cross out and put anything else in place of it as a result of the necropsy. The report is just confirming facts they already know. To his knowledge they always draw blood and there has not been any drug overage on any of these horse breakdowns. That is ultimately the question of overdosing or irresponsible use of medication. They have not had to document any case of that so far.

Legal Counsel, Kelli Talbott, offered just based on what is shared at Association of Racing Commissioners International (ARCI) meetings there is definitely a specific necropsy protocol that we should be using to look at these catastrophic breakdowns that is different than the average necropsy report. Not certain if the one being performed in WV is the same thing, Joe Moore would have to confirm.

Joe Moore reported the Racing Commission has gained a copy of the protocol and provided it to the state vets to review. When the Racing Commission works with the vendors performing the necropsy reports they provide a copy of the protocol they should look at following. There is a challenge with limited number of organizations who can perform the necropsies, but he and Dr. Daniel are looking into other organizations to partner with to try to ensure protocols are followed.

Dr. Daniel informed the Racing Commission that Joe Moore asked him to call around about this. Fredericksburg, MD and Warrenton, VA are possibilities, but Warrenton has issue with providing 24 hour access.

Commissioner Figaretti asked Dr. Daniel would signs of injury be detectable in the morning if they are training then.

Dr. Daniel stated sometimes there are in the morning, but they work hardest when racing at the nighttime.

Chairman Lowe asked if the Jockey's Guild would like to say anything.

No representation from Jockey's Guild was available at the time.

Erich Zimny asked Dr. Daniel what injuries one would expect to see if shockwave therapies were used in close proximity and what injuries could it potentially mask.

Dr. Daniel said the best use in shockwave therapies are where tendon is attached to bone. There is an area there called sharpies fibers. There is bottom line in the connection. Shockwave can be therapeutic in that area. Now there are other areas that shockwave kind of leaves a numbing effect to the area involved. That is why we have a vet list period where horses cannot run following the shockwave treatment. Now again, that is if everyone follows the rules and the guidelines, we have setup. Any bone lesions shockwave could numb that area or mask a pain or problem in the horse. Anything like that would be discovered in the medical in the test barn. Shockwave is difficult to diagnose. There are some markers that may change the bone that can be performed. They are quite costly. Some of them are experimental at this point.

Chairman Lowe asked if state investigator, Roy Cave, has anything to say.

Roy Cave reporting receiving lots of feedback from horsemen about the track condition. They are afraid of bringing this to track management's attention. Yesterday, a trainer told him he was threatened his stalls would be taken away if anymore breakdowns occurred. The trainer has had two so far. He has run a lot more horses than any these other trainers. It is across the board from trainers and riders who asked not to mention their names for fear of retaliation and concerns with track conditions.

Erich Zimny responded it is nonsense they threaten to take stalls. What they told the trainer yesterday was breakdowns are taken into consideration when giving out stalls. You absolutely have to be careful because any breakdowns that occur under a trainer has to be 100% taken into consideration when you give out stalls. That is not just the case for this trainer, but it is the case for all trainers. The racetrack would be dereliction of duties if they did not do that way. The investigator has been in these meetings with us. Not one time has he said this to us. This is the first the racetrack is hearing this. That is not right.

Joe Moore stated this goes back to the situation and opportunity to improve the mortality review board. He reported we now have representation from Jockey's Guild, Terry Meeks, to speak.

Terry Meeks stated they agree with Jim Miller. They should pull the track back from the sixteenth pole and the finish to eliminate the base being cause. It is a positive thing for Mick Peterson to be involved. Need to look at whether or not shockwave is being used. Jockey's Guild is against shockwave treatment.

Chairman Lowe asked Dr. Daniel if there is a time limit when shockwave treatment can be used.

Dr. Daniel reported it is out to two weeks. Denver Becker shared with Dr. Daniel one of the horses on the list of ten received documentation shockwave treatment was provided fifteen months ago prior to racing. Tracks do allow it and are required to follow protocols to inform track vets so that horse goes on the vet list for the prescribed period of time. We do not embrace shockwave, but we do follow the guidelines in place.

Terry Meeks asked what happens when they do not follow the guidelines.

Dr. Daniel reported they would more than likely be aware of someone using it due to the nature of its operation making a very distinct sound when being used and very obvious.

Terry Meeks stated he was at an ARCI meeting many years ago where Scott Parsons said he had a trainer come to him who said he purchased a shockwave machine but had no idea how to use it. He wanted help on learning how to use it.

Dr. Daniel said it is kind of like the old gun theory. You outlaw guns and only the criminals will have them. This could be another situation just like that where trainers could buy them privately, we are not going to know that. He then reported there is enough variability with the names on the list it is highly unlikely being if at all widely used.

Chairman Lowe asked Dr. Daniel is it possible and does it make sense to do day after race inspections.

Dr. Daniel stated no unless there is suspicion coming after the race. There is no protocol for that.

Joe Moore stated with all racing checks required it may be beneficial to random and for cause sample review of that horse.

Chairman Lowe asked if it would be similar with what is being done with random drug testing.

Joe Moore said yes.

Dr. Daniel agrees. He thinks outriders and horsemen may be of assistance in detecting risk of injury.

Chairman Lowe agrees that if you see something you should say something. You should report directly to Dr. Daniels.

Dr. Daniel said that is right. We are not trying to get somebody in trouble. Just trying to do the right thing for safety of all.

Joe Moore agrees. The outrider has a part to play in that. Chairman Lowe has mentioned this before that the clocker knows every horse and trainer on the track as well. If an outrider would report to Dr. Daniel or the state investigator, they can follow up then to see what horses and trainers were out there to know who they need to follow up with.

Dr. Daniel stated any information can be useful in prevention.

Chairman Lowe wants to suggest to all, specifically track management. You have a transition coming up from winter to spring. He is taken to mind what the Jockey's Guild and Charles Town HBPA. Can the racetrack move forward with the suggestion of pulling track back to take a look?

Erich Zimny reported they cannot get all the material in at one time. They can do this, and it would just require a couple weeks of down time to do it. They are happy to do this. He can work with Doug Bowling to get materials ordered. They will need to have the Charles Town HBPA in agreement with the time required to do this.

Joe Moore asked Dr. Daniel considering the track layout and the horse population if we are racing too often.

Dr. Daniel stated that we are racing more and in reviewing the protocols are being followed. He does not see issues with horses racing this much. The track in general has had all sorts of horse types being able to run the track. The trainers need to pay attention to the signals when the horses are not able to run.

Chairman Lowe said we cannot let this issue continue. We are going to get this resolved one way or the other.

Joe Moore wants to make sure he is looped in with the winter to spring surface transition planning between the horsemen and the racetrack to ensure everything is accounted for and agreeable.

Dr. Daniel asked if this is something we should take back to the media about what is being done.

Chairman Lowe wants a working committee to work through it and report back to the commissioners. Joe Moore will address all media inquiries. Everyone who has a job to do. Do not be intimidated. Do what is right. Take care of each other. If you see something say something.

Commissioner Akers believes according to what he has heard there have not been any changes with the medication rules, protocols, and tracks conditions. Seems to be a mystery as to why this is occurring. He asked Joe Moore if our tracks were open when other tracks were not last year.

Joe Moore reported we were the first to open back up from COVID shutdown. He cannot say how many horses who would not normally have ran at Charles Town did run from at Charles Town who are on list of ten.

Commissioner Akers asked if there were any changes within jurisdictions that would have impacted Charles Town.

Joe Moore deferred to Dr. Daniel and Denver Beckner whether any of the horses were ship ins.

Dr. Daniel reported the cannon bone injury referred to before was indeed only one ship in from out of state and another from a Jefferson county farm.

Joe Moore shared from the Mid-Atlantic meetings other neighboring Mid-Atlantic jurisdictions have more strict guidelines around some of the medication issues that WV did not adopt last legislative session and out competition testing. It is not probably an issue in other jurisdictions and appears to be isolated to Charles Town.

### **Adjournment**

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