



Division of Racing

To: Stephen Crosby, Chairman
Gayle Cameron, Commissioner
Jim McHugh, Commissioner
Bruce Stebbins, Commissioner
Enrique Zuniga, Commissioner

From: Jennifer Durenberger, Director of Racing

Date: 17 April, 2014

Re: **Horses First.**

Commissioners:

Immediately after taking the reins from its predecessor State Racing Commission, this Commission engaged a consultant to review the existing state of the commonwealth's live racing and simulcast operations. The resultant report ("Review of Massachusetts State Racing Commission and Industry," dated July 12, 2012) and the recommendations it contained were used as a roadmap for many of the major changes made to our racing regulatory structure in 2013. Change can sometimes prove difficult, particularly for an industry with a proud 78-year tradition and history. Insulated cultures – and make no mistake that horse racing is an insulated culture – which evolve over the course of decades sometimes fail to appreciate the need for change in the absence of a significant precipitating event or catalyst. Sweeping reform often proves even more challenging.

Starting in the late 2000s, the horse racing industry in North America began to make great strides in the area of uniform medication regulation. This important reform initiative had not yet reached the shores of the Bay State when this Commission was charged with industry oversight, a fact which was reflected front and center in the consultant's 2012 report.



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The Racing Division approached the 2013 live racing season with an eye toward phased-in, incremental change designed to maximize stakeholder buy-in and participation and minimize disruption to operations, while at the same time establishing a solid foundation of effective regulation that reflects the reality of today's racing business model. And the reality of today's racing business model is that change is imperative.

I'd like to first recap for the Commission the changes we introduced in 2013. While incremental, I think you will agree that these reforms were far from insignificant.

They included:

- **The Commission's resolution in support of the Mid-Atlantic and Northeast regional uniform medication initiative;**
- **The Commission's adoption of a comprehensive set of uniform model rules governing medication, veterinary practices, and safety standards;**
- **Elimination of the administration of raceday phenylbutazone (the last state to do so), thereby removing an important asterisk from the national industry;**
- **Providing manuals for trainers and veterinary practitioners outlining our significant medication changes and offering guidelines for compliance;**
- **Contracting with an accredited drug testing laboratory;**
- **Drug testing of all horses working to get off the veterinarians' list;**
- **Collecting and reviewing treatment sheets from private practitioners;**
- **Submitting all horses which died on licensed facility grounds to Tufts Veterinary Hospital for necropsy and other testing;**
- **Enhancing the professional resume of Racing Division staff; and**
- **Posting of stewards' minutes on the Suffolk Downs website.**

But our work was far from done. Following last year's live racing season, the Commission adopted the Association of Racing Commissioners International ("RCI") Controlled Therapeutic Substance Schedule and Multiple Medication Violation model rules, two additional key pieces of the national uniform medication initiative.



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Racing Division staff has been assembling the next phase of model rule change recommendations, which will address key sections on the duties of licensees – both occupational licensees and racetrack operators – and their obligation to contribute to the safety and welfare of racing’s participants and the integrity of the betting product.

For the 2014 live racing season, Racing Division staff will be implementing the following operational changes:

- **Commencement of Commission-controlled furosemide administration;**
- **Implementation of a blood gas testing (TCO₂) program;**
- **Posting of TCO₂ and non-steroidal anti-inflammatory (NSAID) test results levels on the MGC website;**
- **Posting of stewards’ and judges’ rulings and daily reports on the MGC website;**
- **Forming a catastrophic injury review committee;**
- **Hosting educational forums for occupational licensees throughout the year; and**
- **Launching the Racing Division’s “Horses First” commitment to the safety and welfare of our equine athletes.**

The “Horses First” initiative is a guiding principle and letter to stakeholders affirming the Racing Division’s commitment to protecting the safety and welfare of our equine athletes. While its tenets were discussed verbally at new employee orientations and meetings with racing officials last year, this year we put it in writing. The document labeled “Appendix A” appears in our 2014 seasonal employee training manuals, in the 2014 manuals we provide to occupational licensees, and is posted and available in our racetrack commission offices. Commissioners, it is with great pride I tell you that, while the adoption of uniform medication regulations were extremely well received by our stakeholders, *no single action we’ve undertaken has been the target of more compliments* than the sharing of this document with our occupational licensees.

But we’d like to do more.



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The Racing Division is confident that the Commission’s veterinary programs, as evidenced above, are among the most comprehensive in the country. The Chairman of the Jockey Club recently applauded Massachusetts as a state at the forefront of medication reform. We use science and regulation to help us document and maintain the healthiness of our racehorses, and we’re not afraid to step in if intervention becomes necessary. But that’s not enough. **We believe we should also be at the forefront of the movement to demonstrate, through actions and through words, our understanding of the important role we play as stewards of our industry.**

The Racing Division asks the Commission’s help on this important initiative. We ask that the Commission:

- 1) consider passing a resolution in support of welfare guidelines to be applied to racing in the commonwealth;
- 2) consider the inclusion of an affirmative duty on all licensees to report welfare concerns in our next round of rulemaking (this would be a companion rule to the existing prohibitions of conduct detrimental to welfare found in 205 CMR 3.11(25) and 4.13(29); and
- 3) consider whether support of the Racing Regulatory Compact is appropriate.

Welfare Guidelines

When it comes to squarely addressing welfare issues in horse racing, there is no doubt that the rest of the world far outpaces the United States. Governing bodies as diverse as the British Horseracing Authority, Trotting South Africa, the Australian Racing Board, the Swedish Trotting Association, the Asian Racing Federation, and Standardbred Canada all subscribe to, endorse, or support a code of welfare or publish welfare guidelines. The majority of these are some close variant of the guidelines established by the International Group of Racing Specialist Veterinarians (“IGSRV”), although Standardbred Canada has taken a slightly different approach. The International Federation of Horseracing Authorities (“IFHA”) has established a set of welfare principles in its International Agreement on Breeding, Racing and Wagering. Though not technically regulatory bodies, domestically, the National Thoroughbred Racing Association, U.S. Trotting Association and Thoroughbred Owners Association have all



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endorsed the American Horse Council's Welfare Code of Practice. All four of these documents are reproduced for your review in Appendix B.

Recommendation: That the Commission consider the endorsement of a set of welfare guidelines following a public comment period. The Racing Division will post all four approaches to the notice and request comment on 1) whether the Commission should endorse a set of guidelines, and if so, 2) what the content of those guidelines should be.

Affirmative Duty

The Racing Division will be presenting a package of licensing regulations based in large part on the RCI Model Rules to the Commission this summer. As part of that package, we will be including a regulation placing an affirmative duty on all racing licensees to report suspected instances of mistreatment. This would be a companion to our existing rules 205 CMR 3.11(25) and 4.13(29) which read:

No licensee or other person under the jurisdiction of the Commission shall subject or permit any animal under his or her control, custody or supervision to be subjected to or to incur any form of cruelty, mistreatment, neglect or abuse or abandon, injure, maim or kill or administer any noxious substance to or deprive any animal of necessary care or sustenance, shelter or veterinary care.

Existing 205 CMR 3.18(8) and 4.30(8) place an affirmative duty on racing officials and their assistants to report "all observed violations" of our regulations.

While the Model Rules extend that affirmative duty to *all* licensees to report "any knowledge he/she has that a violation of these rules has occurred or may occur," [ARCI 008-010 AA(2)] the Racing Division plans to specifically highlight that duty in conjunction with the prohibition on such conduct.

Recommendation: That the Commission support a specific regulation placing an affirmative duty on all racing licensees to report suspected instances of mistreatment of horses as part of the forthcoming regular rulemaking process.



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Racing Regulatory Compact

As noted early in this memo, the reality of today's racing business model is that change is imperative. Enabling statutes and their foundation regulations have their roots in a time where the business of racing took place locally and attendance and on-track handle were the only metrics in town. Today, over 90% of wagering occurs through channels of interstate commerce via the broadcast simulcasting of races and through the internet. In addition to the logistical and political difficulties that come with trying to regulate a sport governed by 38 different statutes and in-force rule books, the revenue structure affecting the various stakeholders differs dramatically when that revenue is attributable to an on-track vs. a simulcast wager. The ability of local law and regulation to keep pace with that change has been, of course, largely resource-driven.

In 2009, the Association of Racing Commissioners International undertook a project to explore the idea of an interstate compact designed to facilitate a streamlined, centralized rule-making process for the industry in order to encourage participation and simultaneous adoption and enforcement of those rules. By effectively pooling administrative resources, no member state would be charged with the Herculean task of trying to reform a \$12 billion dollar national business model at the local level, while maintaining state sovereignty over the regulation of wagering and without usurping that member's regular rulemaking process. The project was undertaken with the assistance of the Council on State Governments. Its steering committee consisted of representatives from several commissions and various industry stakeholders. The result was a model document entitled "A New Interstate Compact to Facilitate State Regulation of Racing and Wagering." It is my understanding that, to date, three states have passed legislation adopting the compact. Six are needed for the compact to take effect. Additional information is available in Appendix C.

Recommendation: If the Commission is interested in exploring this issue in more depth, the Racing Division is happy to invite members of the steering committee and/or RCI to provide additional information or address the Commission in person. This is one of the more complex issues we've brought before you and the purpose of its introduction here is to gauge interest before devoting additional resources to the topic.



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You may be wondering how a proposal to consider this compact fits into our welfare strategy. I leave you with this thought: there are a number of significant challenges facing racing today: a regulatory structure that has not kept pace with a changing business model, sagging customer confidence in both the integrity of the product and the safety and welfare of racing's participants, and too many race days asking too much of a declining horse population. **If we fail to respond to these challenges, as an industry, then we will have no industry to regulate.** Beyond operations, the Racing Division views its role as helping this Commission to develop its understanding of the context for and the practical realities of those challenges and providing you with a creative menu of potential solutions. We stand ready to do whatever we can do to help facilitate these goals.



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