
**TEXAS RACING COMMISSION
COMMITTEE ON RULES**

Meeting Report

**Texas Department of Public Safety
Bldg. E, First Floor Auditorium
Austin, TX**

**August 31, 2010
1:30 p.m.**

Attending were Commissioners Ann O'Connell and Scott Haywood, Commission staff and representatives from Texas racetrack associations, breed registries, the Texas Horsemen's Partnership, Dr. Andy Schwartz with the Texas Animal Health Commission, and other interested parties. Commissioner O'Connell chaired the meeting.

A. Rule Review Update:

1. Review of Chapter 321, Pari-mutuel Wagering

Staff reported that the Texas Pari-Mutuel Advisory Committee made excellent progress on the rule review at its August 11 and 12 meeting at Sam Houston Race Park. Representatives from the racetracks as well as the three totalisator (tote) vendors participated in the meetings. Staff's goal for that meeting was to finalize the proposed changes to bring to the Rules Committee. However, due to the complexity of the proposed changes, staff reported that work remains, specifically to the section on new tote and terminal standards.

To assist in the development of these standards, the Commission has contracted with BMM Compliance, an Australian firm that has assisted Australia, New South Wales, and Tasmania in updating their pari-mutuel standards. Texas is leading the effort in the U.S. jurisdictions to match rules and regulations with today's technology. As there are only three vendors of tote services operating in the U.S. and all three have contracts with Texas racetracks, the Commission's resulting work product has national implications. Texas' work with BMM, racetrack wagering management and the three tote vendors should provide a smoother roadmap for the rest of the jurisdictions.

When the draft tote and terminal standards rules are complete, staff will again submit the proposed rules to members of the Pari-mutuel Advisory Committee and to the RCI Wagering and Security Committee for further comment. Staff is working to ensure that these new standards are both reasonable and practical to implement, cognizant that changes of this magnitude take a coordinated effort to succeed.

2. Review of Chapter 307, Proceedings before the Commission

Staff researched both RCI Model Rules and other jurisdictions' handling of contested cases, proceedings before stewards and judges, and rulemaking. From this review, the Committee and participants discussed three areas of possible additions to the rule concerning disciplinary hearings before the stewards and judges at the June 8, 2010, Rules Committee meeting.

- **Addressing Rules of Evidence** – Texas’ rules do not address what standard stewards/judges should use in consideration of evidence. The proposed change discussed integrates the RCI model rule on what standard stewards/judges should use in consideration of evidence, with one modification - to address the exceptions to hearsay evidence under the Texas Rules of Evidence.
- **Defining Standard of Proof** – Texas’ rules do not address what standard stewards/judges should use in consideration of the standard of proof. The proposed change discussed incorporates the RCI model rule establishing the burden of proof.
- **Addressing Continuances** – Texas’ rules do not provide guidance to the stewards/judges on what factors should be considered before granting a continuance to a hearing. The proposed change discussed incorporates the RCI model rule governing continuances with one modification – noting that for good cause, the stewards or racing judges may grant a continuance for a reasonable amount of time.

Based on the Commission review and discussion of these changes, the Rules Committee will formalize the proposed rule language and propose it at the next regularly scheduled committee meeting in November, 2010. See page 5 for the suggested changes to Subchapter C, Texas Rules of Racing, Section 307.62 Disciplinary Hearings.

B. Review of Equine Piroplasmiasis Control Efforts

The Commission’s Chief Veterinarian, Dr. Ken Quirk, and the Texas Animal Health Commission’s (TAHC) Assistant Executive Director, Dr. Andy Schwartz, provided a status update on the current Equine Piroplasmiasis (EP) disease control effort. Dr. Schwartz, TAHC’s lead staff member on communicable diseases, also serves on the United States Department of Agriculture’s EP Working Group.

Current Situation

EP is a blood-borne parasitic disease transmitted via tick bites; reuse of needles and syringes; contaminated dental, tattoo, and surgical equipment; or through blood transfusions between infected and uninfected horses.

Dr. Schwartz reported that EP is no longer considered a “foreign animal” disease as the first case was detected in working horses at a South Texas ranch in October, 2009. Of the 2,330 horses tested in association with that case, 409 were identified as positive for the disease.

In response to the South Texas cases, a number of states and some equine events put test requirements in place for horses entering the state or event. To date, this “movement” testing has identified 41 positive horses in Texas, the majority being Quarter Horse (QH) race horses. One Thoroughbred horse has tested positive. None of the positive horses are related to the ranch outbreak.

EP Positives in Other States

Dr. Schwartz noted Texas is not alone in facing this outbreak. In addition to the 41 horses testing positive in Texas, there are cases in Louisiana, New Mexico, Oklahoma, Colorado, Georgia, Illinois, and North Carolina.

Current Restrictions

Currently, TAHC does not require EP movement testing for any equines crossing the Texas border. However, Dr. Schwartz stated that TAHC would support the Racing Commission adding such a requirement to its Rules of Racing for horses entering a licensed racetrack premise.

Until recently, an entry requirement at each of the Texas racetracks has been either proof of a negative EP test or a Certificate of Veterinary Inspection that attests the horse was inspected and treated for ticks. However, effective August 4, Lone Star Park requires a negative test for entry to the track and effective August 16, Retama Park is requiring all Quarter Horses and Paints to show proof of a negative test.

Disease Transmission – Owner/Trainer Education Needed

Dr. Schwartz reported that disease transmission between QH racing horses is not thought to be via ticks, but rather via contaminated needles or tattoo instruments, or through the use of contaminated blood products. He stressed the need for owner/trainer education on the different methods of transmission and described a recent one-page information document, Protect Your Horses from Equine Piroplasmiasis, available on the U.S. Department of Agriculture's Web site. Available in both English and Spanish, the document highlights best practices in protecting racing equines from what is currently an incurable disease.

Staff committed to posting the information sheets in the test barns. Racetrack management will include the information sheets in all upcoming condition books.

Actions

Dr. Schwartz noted that improvements to the testing process are being made. For example, currently there is not a **test sample form** specifically for EP and the test results certificate is apparently confusing to a lay person. Work at both the national and state level will continue to address this new threat to equine welfare.

To supplement and support the racetracks' policies focused on stopping the spread of this disease, staff will draft proposed language concerning EP testing and continue education outreach to make horsemen aware of best practices related to the disease. Staff will continue to work with Dr. Schwartz and the TAHC to combat this very serious disease.

C. Request by Lone Star Park to Amend Rule 313.110, Coupled Entries.

Lone Star Park (Bart Lang, Director of Racing) presented a proposed rule change designed to increase the number of betting interests in a race. LSP's proposed change would delete the requirement that the horses be coupled if the trainer has an ownership interest in more than one horse in a single race.

At the present time, the Commission rules address the method required when a licensee chooses to enter more than one horse that he or she owns into a single race. The licensees affected by these requirements include both owners and trainers. When licensees choose to enter more than one of their horses (ownership can be partial), the rules require the entries to be ***coupled*** together as a single wagering interest.

At the betting window, this results in one wager applying to more than one horse. Thus, a bettor may select a particular horse and find that another horse in the same race is owned by the same owner or trainer. The money and place position designated to the selected horse will apply to the other horse(s) in what is officially termed a ***coupled entry***.

During Committee discussion of this issue, staff explained that the ***coupled entry*** approach was established years ago, long before video cameras and electronic race observation was available. A ***coupled entry*** was designed to protect the bettors from possible race fixing that might be more likely to occur when two horses owned and controlled by the same individual were competing together. Years ago it was much more difficult to observe one horse and rider “helping” another horse and rider win a race. Today however, it is far less likely to go undetected. Video replays from all the various angles give modern day stewards the ability to identify and investigate any questionable riding observed during a race.

Staff will discuss the proposed change with the states in the South by West region (Arkansas, Louisiana, New Mexico, and Oklahoma) and bring the results to the next Committee meeting. Staff will also forward the proposed change to the RCI Model Rules Committee for discussion at its upcoming meeting. This proposal appears to warrant additional extensive discussion.

The Texas Horsemen’s Partnership, Retama Park, and Sam Houston Race Park support the proposed change at this time.

D. Public Comment

Rob Werstler, Texas Quarter Horse Association, wants to revisit that portion of the furosemide rule regarding the length of time a horse is ineligible to race following a diagnosed Exercise Induced Pulmonary Hemorrhage.

Proposing Changes to the Rules of Racing

Committee on Rules – This Committee meets to discuss policy change and rule proposals generally two weeks before a Commission meeting. The agenda for these meetings are posted at www.txrc.state.tx.us.

Please email info@txrc.state.tx.us to be notified by email of all Commission meetings. The Committee routinely presents requested policy and rule changes to the Commission for its consideration.

Agency rules are adopted in accordance with the Administrative Procedure Act, Texas Govt. Code, Chapter 2001. A weekly publication, the *Texas Register*, serves as the journal of state agency rulemaking for Texas. Any proposed change to the Rules of Racing must first be voted on to be published in the Texas Register for at least a 30 day comment period. Following the required time period, the Commission considers comments and may vote to publish its intention to adopt the proposed change in the Texas Register.

Commenting on Proposed Changes – Interested parties may attend and comment at both the Committee on Rules and Texas Racing Commission meetings or submit written comment to the Commission regarding proposed changes. Written comments should be submitted to the Texas Racing Commission, P. O. Box 12080, Austin, TX 78711-2080.

Requesting Rule Changes - Under Section 307.102 of the Rules of Racing, a person may request the Commission adopt, amend, or repeal a rule. To assist the Committee on Rules' evaluation of proposed changes, a person should complete the form, ***Request for Proposed Change to an Existing Rule or Addition of a New Rule to the Rules of Racing***, and submit it to the Commission. The form is available at www.txrc.state.tx.us, or by emailing info@txrc.state.tx.us or calling 512-833-6699.

Discussion of Possible Rule Change(s)

Changes to Chapter 307, Proceedings Before the Commission, Subchapter C, Proceedings by Stewards and Judges were considered and discussed at the June 8, 2010, and August 31, 2010 Committee on Rules meetings.

Symbols in proposed rule text: Proposed new language is indicated by underlined text. [~~square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. “(No change)” indicates the existing rule text at this level is not being amended.

Possible Rule Change(s) to Chapter 307. Proceedings Before the Commission, Subchapter C, Proceedings by Stewards and Judges

Section 307.62 Disciplinary Hearings

(a) Authority to Conduct. On their own motion or on receipt of a complaint regarding the actions of an occupational licensee, the stewards and racing judges may conduct a disciplinary hearing regarding the licensee's actions.

(b) Notice of Hearing. Except as otherwise provided by the Rules, the stewards and racing judges shall provide written notice to a person who is the subject of a disciplinary hearing at least 10 calendar days before the hearing. Notice given under this subsection must state the nature of the charges against the person and the possible penalties that may be imposed. The person may waive his or her right to 10 days notice.

(c) Rights of the Licensee. At a disciplinary hearing conducted by the stewards or racing judges, the person who is the subject of the disciplinary hearing has the following rights, all of which the person may waive:

- (1) the right to counsel;
- (2) the right to present a defense;
- (3) the right to make an opening and closing statement;
- (4) the right to call witnesses; and
- (5) the right to cross-examine witnesses testifying against the person.

(d) Evidence.

(1) Each witness at a disciplinary hearing conducted by the stewards or racing judges must be sworn by the presiding steward or racing judge.

(2) To facilitate participation by licensees, the stewards and racing judges may permit witnesses to testify at a disciplinary hearing via telephone if the stewards or racing judges make reasonable assurances that the person testifying is who he or she purports to be.

(3) The stewards and racing judges shall make a record of a disciplinary hearing.

(4) The stewards and racing judges shall allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the stewards and racing judges may disallow evidence that is irrelevant or unduly repetitive of other evidence. The stewards shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony. The stewards and racing judges may admit hearsay evidence if the stewards and racing judges determine the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by state law apply in hearings before the stewards and racing judges. Hearsay evidence that is not otherwise admissible under the exceptions of the Texas Rules of Evidence is an insufficient basis alone for a ruling.

(e) Burden of Proof

The burden of proof is on the person bringing the complaint to show, by a preponderance of the evidence, that the licensee has violated or is responsible for a violation of the Act or a Commission rule.

(f) Continuances

(1) Upon receipt of a notice, a person may request a continuance of the hearing.

(2) For good cause shown, the stewards or racing judges may grant a continuance of any hearing for a reasonable period of time.

(3) The stewards or racing judges may at any time order a continuance on their own motion.

(e g) Agreed Settlement. The person who is the subject of the disciplinary hearing may waive the right to a hearing and subsequent appeal and enter into an agreed settlement with the stewards or racing judges.

(f- h) Failure to Appear. The stewards or racing judges may suspend the license of a person who

fails to appear at a disciplinary hearing after receiving written notice of the hearing until the matter is adjudicated.

(g i) Summary Suspension. If the stewards or racing judges determine that a licensee's actions constitute an immediate danger to the public health, safety, or welfare, the stewards or racing judges may enter a ruling summarily suspending the license, without a prior hearing. A summary

suspension takes effect immediately on issuance of the ruling. If the stewards or racing judges suspend a license under this subsection, the licensee is entitled to a hearing on the suspension not later than three calendar days after the day the license is suspended. The licensee may waive his or her right to a hearing on the summary suspension within the three-day period.

THE NEXT MEETING OF THE COMMITTEE ON RULES IS TENTATIVELY SCHEDULED
FOR TUESDAY, NOVEMBER 2.

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