

TEXAS RACING COMMISSION
SAFETY & HEALTH COMMITTEE
MEETING

Tuesday,
March 8, 2022

via Facebook

MEMBERS PRESENT:

CONNIE McNABB, D.V.M., TxRC
TRAVIS MAYS, D.V.M., TVMDL
MARSHA ROUNTREE, THP

ON THE RECORD REPORTING
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P R O C E E D I N G S

1
2 MS. ROUNTREE: I know that I've had these
3 discussions with staff, and I know that the discussions
4 have been had within the industry concerning voided claim
5 rules, and I know that I've even been sent some rules from
6 other jurisdictions about voided claim rules. Are you
7 saying now that we are no longer going to look at adopting
8 or investigating, at least, voided claim rules?

9 COMMISSIONER McNABB: Number one, the baseline
10 I have is if you were to have something as a voided claim
11 and the guy doesn't want a horse back whose got the horse,
12 personally, I think a claim is a claim. I've looked at
13 the rules from some of the other states, and you wind up
14 playing ping-pong with the horse.

15 SPEAKER: How about the other states that void
16 claims on actual post-race; it goes to the best one --
17 whether it's first or second, it goes to the best one, and
18 that's where they usually exchange the claim? Post-race
19 injuries, there's other jurisdictions that still, still
20 void a claim on lameness and stuff like that.

21 I don't know whether that needs to be enacted,
22 I'm not saying it does, I mean, it's up to us to look at
23 the horse. And I don't mind being responsible for what I
24 can see; I mind being responsible for what I can't see.

25 MS. ROUNTREE: If we get too deep into HISA, if

1 we get deep enough into that, there's a voided claim rule
2 right in there. So whether we like it or not, we'll be
3 looking at voided claim rules because in the model rules
4 that they're putting forth, it has a voided claim rule.

5 And I know that a lot of the jurisdictions
6 around us are looking at and adopting voided claim rules,
7 and I don't think it's just a way that we're saying, you
8 know, it's a risky game to get into, but I think if we
9 kind of look at the opposite side of that and say, does it
10 not protect the horses?

11 If a trainer knows that he has a lame horse and
12 he's putting that horse in a race and something happens,
13 he's getting that horse back. He might not be so anxious
14 to pass off a lame horse in a claim race if he knows --
15 like one person said, he's going to get a check instead of
16 a vet bill so maybe he's putting that horse in the race.

17 SPEAKER: Keep in mind we started hair testing
18 in Houston at the end of Lone Star, which was basically,
19 what, maybe four months later -- correct me if I'm
20 wrong -- we had like, what, three or four positives, and
21 the people who claimed the horses went ahead and tested
22 them themselves to see.

23 We had three or four come back positive on
24 clenbuterol, albuterol, and that's three or four who
25 decided to do it themselves. If all of them would have

1 been tested, we would have seen the number go up.

2 MS. ROUNTREE: I'll agree to disagree on that
3 one, because I think a legitimate well-written voided
4 claim rule might offer protection for the animal as well
5 as for a new owner that's just trying to come into the
6 business, and suddenly they have a horse that's either
7 broken down on the track or has a bad hair test post-race.

8 SPEAKER: It would have to be tested post-race;
9 that's the only one. You can't arbitrarily go out there
10 and say, okay, this horse is dirty, let's scratch him with
11 no penalty, you know, or whatever penalty the association
12 may give. I don't think that's the answer. And I know
13 it's not an easy thing.

14 (Simultaneous discussion.)

15 SPEAKER: Thank you.

16 SPEAKER: Is the whole issue that the
17 Commission doesn't want to deal with the horse?

18 COMMISSIONER McNABB: Number one, I don't want
19 to have a claim situation that no one owns the horse, so
20 where I come from, you know, I'm not saying it's the only
21 way to do things. Where I come from, you put in a claim,
22 you might lead a horse back to your barn if you've got a
23 racehorse, or you might have something that got hauled off
24 in the meat wagon.

25 SPEAKER: We'll accept the physical looking but

1 I can't look into his body.

2 COMMISSIONER McNABB: Right. Where's the right
3 one? If somebody claims the horse and they go, oh, I
4 didn't know he had a double cowlick, I don't like that, I
5 don't want to give him back.

6 Why don't you come on up?

7 JUDGE PATE: It seems to me the Horsemen's
8 Partnership, if you have a rule you want to propose,
9 that's not what we're really here on today in terms of
10 hair testing, but because of this technology, the claims
11 rate. I would invite you to meet, come up with a rule,
12 talk it over with the staff, and see where it goes.

13 COMMISSIONER McNABB: Thank you, Judge.

14 If indeed it's a essential and moves the ball
15 where we're wanting it to go, and that's to deter the use
16 of the beta-agonists, if we have a high frequency of the
17 stewards saying claims, we won't test for it.

18 Now, do I want to write it in a rule that every
19 horse that gets claimed will have a hair test? That could
20 be done, but I would say after a while that starts to be a
21 lot of good money after bad. But having a high frequency
22 of hair testing --

23 SPEAKER FROM AUDIENCE: I think there's a lot
24 of trainers and owners in the industry right now would be
25 willing to pay for it out of their own pocket. Two

1 hundred dollars for a hair test -- just using that as an
2 example -- is a lot cheaper than me stabling him for six
3 months and not being able to run him again.

4 SPEAKER FROM AUDIENCE: Or put a big fine on
5 the person.

6 SPEAKER FROM AUDIENCE: You don't have to put a
7 big fine on the person who enters that horse.

8 SPEAKER FROM AUDIENCE: File a suspension, and
9 he'll think twice about entering that dirty horse, and as
10 trainers, we know which horse is dirty and which horse is
11 not dirty.

12 So you're not going to enter that dirty horse
13 if you've got a 10- or \$20,000 fine and a year off.
14 You're going to think twice about it.

15 COMMISSIONER McNABB: So what I'm hearing from
16 the industry -- sir, do you want to add on to this?

17 MR. LEWIS: Well, if the concern is about the
18 care of the horse --

19 COMMISSIONER McNABB: I mean, that's a small
20 thing, but just from a starting point.

21 MS. COOK: And your name, sir?

22 MR. LEWIS: Bubba Lewis.

23 So I mean, the thing is, like he said, I'm more
24 than willing to pay the \$200 or whatever it is. I mean,
25 when I sign the claim form -- and I think most owners

1 are -- to protect yourself to get that horse tested when
2 you claim him. Then once I claim that horse, I'm going to
3 take that horse back to my barn. At that point I'm
4 considering he's mine. I'm going to take care of him
5 because I'm thinking I'm going home with him.

6 Now, if it comes out with a bad test and then I
7 can take the horse back, that's the thing. But the horse
8 is going to be cared for, because that's your horse at
9 that point. Now, you do have to get it back, and I
10 understand that could be an issue.

11 SPEAKER FROM AUDIENCE: It is an issue, but it
12 can be worked out.

13 MR. LEWIS: It can be worked out.

14 MS. ROUNTREE: There's another way that it
15 could be done -- and you know, there's brighter minds in
16 here than mine to work out the details -- when we have a
17 claim form, if we had a check box on that claim form and
18 the new owner checked the box and said, I want this horse
19 hair tested after the race and I'm depositing into my
20 horsemen's account the claim tax plus \$200 to make that
21 happen, then the testing cost has been paid for; the owner
22 has made the choice himself to test that horse.

23 SPEAKER FROM AUDIENCE: And you could have an
24 expedited test come back so that horse is not in the wrong
25 hands.

1 COMMISSIONER McNABB: We're trying to have a
2 stop everything at the lab. We're not the only ones using
3 the lab. I mean, the lab is increasing their capacity. I
4 hear exactly what you're saying.

5 MR. LEWIS: And you could elect not to have
6 that done. You know, if I'm an owner and I don't care,
7 you know, some of them guys maybe you can go to the match
8 game, they don't care if it's dirty or not.

9 COMMISSIONER McNABB: If an action is going to
10 happen, if the action runs through our hands, we need to
11 be the ones who pull the hair test. If it's on the claim
12 form that I want to have this horse hair tested, that
13 horse goes to the test barn and the sample is pulled by
14 our vet, the sample is marked and it has got the bar
15 codes, so you can't go back to your barn, pull some hair,
16 send it off, and then expect to give the horse back.

17 (Simultaneous discussion.)

18 MR. LEWIS: Every horse that was signed that
19 you're claiming and checked the box goes to the test barn.

20 SPEAKER FROM AUDIENCE: Legally can the
21 Commission enforce the test results on a test that a third
22 party paid for?

23 COMMISSIONER McNABB: No. If there's a third
24 party, where that comes in is if there's a third party
25 test that's done to comply with the horse's eligibility to

1 come in and then by some reason that we test the horse and
2 the person is discovered that they have falsified that
3 horse's eligibility papers.

4 SPEAKER FROM AUDIENCE: My question is if a
5 third party checks that box and says they want that horse
6 tested, and the Commission tests it and it comes back bad,
7 is there a legal jurisdiction or a problem there with
8 enforcing penalties on a test?

9 COMMISSIONER McNABB: The stewards are looking
10 at the claim slip. Right? So right at that time if
11 there's a box on the claim slip and the stewards say
12 bingo, the stewards go --

13 SPEAKER FROM AUDIENCE: But can they stop that
14 money transaction until the test comes back?

15 MS. ROUNTREE: Absolutely. All we ever have to
16 do to stop the money transaction is to get a notice from
17 the stewards' office.

18 SPEAKER FROM AUDIENCE: But they won't know for
19 a week.

20 MS. ROUNTREE: The Horsemen's bookkeeper puts
21 that money on hold until the test is cleared before we
22 ever would release it. That just takes an order from the
23 stewards.

24 COMMISSIONER McNABB: Yeah, it's on hold.

25 MS. ROUNTREE: They hold it just purse money;

1 claim money can be held just like the purse money can.

2 SPEAKER FROM AUDIENCE: Again, if a third party
3 is responsible for payment of a Commission test, is a good
4 lawyer going to use that to get the test dropped?

5 COMMISSIONER McNABB: Okay. The first part to
6 that, I think we can pretty easily. If indeed someone
7 wants a hair test, the stewards are looking at a claim
8 slip, this horse got claimed, the claimant wants that
9 horse tested at the test barn, lets the test barn know,
10 all that, whether or not that just rolls into the Racing
11 Commission's bill from the lab, and ultimately it could
12 wind up going back to the track to be reimbursed for the
13 test that we do.

14 SPEAKER FROM AUDIENCE: I'm sure of one thing.
15 I'm sure that we do need to have the expertise of the
16 Commission doing the testing. We also need to have the
17 chain of custody, just like any other test, and there
18 should be splits available.

19 COMMISSIONER McNABB: Any hair test that we
20 order is going to have follicles, is going to have split,
21 and fully documented with the identification to validate
22 the trace back to the horse.

23 So a box on the claim slip, the claimant says I
24 want the hair test, all monies and transfers and so forth
25 are still pending, but the horse goes to the new barn,

1 with the hope that they don't geld him.

2 MS. COOK: So one thing we haven't really
3 talked about yet, and it was brought up at the last -- I
4 think the broadcast is working, hi, y'all out there
5 finally, and we will release a transcript of the first
6 part of the meeting, so apologies -- is that Lone Star
7 Park released a couple of days ago their decision to
8 require a clean hair test upon entry at the park -- and
9 they were doing this at Remington Park, and Matt Vann
10 [phonetic] called in on the last meeting and described
11 that -- and the way that they did that was the entry fee
12 that's paid, if the hair test was clean, there was a
13 refund or reimbursement, an incentive of the park,
14 trainers and owners were incentivized to provide a clean
15 hair test.

16 And assuming the horse got all the way through
17 the race and won the purse, they received a refund of what
18 they spent on the hair test, some sort of an arrangement
19 between the park and the owners on that side.

20 So I think this is why we're talking about it,
21 because the Commission wants to stay in its lane and have
22 its chain of custody and its rules, but partnered with the
23 industry, the trainers, the owners, and find a way that we
24 can all do this together.

25 I don't know that we've quite found the answer

1 yet, but I think we're close to it by discussing the park
2 has their requirements, the owners and trainers encourage
3 great behavior from their counterparts, and then we also
4 back that up.

5 Because to me, it's all sort of done pre-race
6 by the community of practice and by the parks, then the
7 Commission is just doing a double-check, you know, on the
8 integrity of what happened in the race.

9 We're not interfering or getting in the middle
10 of the first part. That's sort of a community of practice
11 decision to come together to do that. We're coming around
12 on the backside -- no pun intended -- and making sure that
13 we are validating that that happened the way they all
14 thought it happened. At least that's the way I've been
15 thinking about it to the extent that that helps the
16 Commission.

17 SPEAKER FROM AUDIENCE: Well, we're looking at
18 five weeks, basically, for our first claim event. I think
19 that's a very short time.

20 COMMISSIONER McNABB: Oh, five weeks from now.

21 SPEAKER FROM AUDIENCE: Before we start racing
22 at Houston.

23 COMMISSIONER McNABB: The easy part of this is
24 if we are going to make a rule that all claimed horses
25 will be hair tested, all breeds, or do we make a rule that

1 the stewards use their discretion to hair test but we
2 allow the claimant to request it?

3 So do we need to hair test every horse that
4 gets claimed in every breed, or do we need to give the
5 horsemen the option to say, I want a hair test, and the
6 claim is not final and money doesn't move, it's not
7 released from the Horsemen's bookkeeper until the test
8 comes back?

9 SPEAKER FROM AUDIENCE: I believe that would be
10 a better rule for everybody involved. I mean, I don't see
11 how the racetracks would pay for it. Myself, I don't
12 understand the racetracks that well, but I can't see them
13 having to be responsible for paying for every test.

14 MS. ROUNTREE: Tudor, the tracks right now pay
15 for testing and the way the money could flow here is very,
16 very simple. I mean, when someone drops a claim and they
17 check the box, then they have to deposit the cost of the
18 claim plus the cost of the hair test, and right then that
19 money is put on hold and the money for the hair test gets
20 transferred into an account within our system for Sam
21 Houston Race Park.

22 Every single guy that checked the box pays the
23 money, it goes into the account, and at the end of the
24 month or at the end of the week, or however Sam Houston
25 wants to handle it, they let us know.

1 We're not out trying to collect your money to
2 pay for these tests; they're already there. No one can
3 claim the horse if they check the box; they have to pay
4 the claim price plus the cost of the test.

5 SPEAKER FROM AUDIENCE: I talked to gentlemen
6 in other jurisdictions about it, and they claim a horse
7 for reproductive reasons, not for racing reasons.

8 COMMISSIONER McNABB: It doesn't matter.

9 SPEAKER FROM AUDIENCE: And so I may not like
10 that rule that every horse that went there and got claimed
11 was turned over. I may want that mare for a brood mare.

12 COMMISSIONER McNABB: Here's what I'll say, is
13 if the box is checked, the horse will be sent to the test
14 barn by the stewards. If the box is not checked, then
15 it's purely steward discretion and the stewards working
16 with the vets and with the enforcement.

17 Actionable intelligence is what we called it
18 back when I wore a uniform. But I mean, if we're hearing
19 a lot of noise, and somebody is using a bunch of bad stuff
20 or just observation. We always maintain the option that
21 when we feel it's important to hair test a horse, I want
22 my team that's on the track so say, We have some intel on
23 so-and-so and next horse we'll pull it in. So I don't
24 want anybody to say you can't do that.

25 We reserve the right as we see fit, and we're

1 not always going to tell you, well, it's because Tudor
2 Jordan told us, we're not going to rat you out.

3 MS. ROUNTREE: Happy to make that umbrella
4 wider, and the horsemen are perfectly fine with that, I
5 think.

6 COMMISSIONER McNABB: And you know, talking
7 with the USADA folks, who are not going to be doing the
8 HISA program, but still when they were still in the tube
9 we said, How are you guys going to decide who you're going
10 to be testing with all of your testing?

11 And they said, Intel, 1-800. It isn't like
12 we're out there sniffing everybody's water bucket and all
13 the rest, but still the people who watch every single
14 race, these folks sitting right over there, they see
15 what's going on, they know what's going on on the
16 backside, the enforcement guys, the vets.

17 The vets can say, I've had horses come in the
18 barn, and here's what I'm seeing and I think that that's
19 highly consistent with huh; there might be a time where we
20 just go pay a visit in the barn.

21 We reserve the right to do that because that
22 random nature of it maintains that everybody has got a lot
23 more skin in the game, and it's just a whole lot easier
24 and life is a lot nicer when you don't have problems.

25 So hair testing on a claim is box is checked.

1 Any other horse hair tested, whether it's a claim or
2 otherwise, is at steward discretion. Fair enough?

3 And then as far as the tracks go, you know, do
4 we want to just test every single horse, triple our staff
5 and buy a new lab, and the next thing we know, Sam Houston
6 Race Park is saying you guys are putting us out of
7 business.

8 SPEAKER FROM AUDIENCE: Is the tested horse,
9 the trainer, or whoever, subject to all the same
10 penalties? A horse wins a race and the box is checked and
11 hair tested and the test comes back bad, is that test
12 considered a hot test?

13 COMMISSIONER McNABB: A hot test is a hot test,
14 because the substance is prohibited. It isn't prohibited
15 only if you win the race; it is prohibited.

16 SPEAKER FROM AUDIENCE: The horse finished
17 eighth but he's a claimed horse that someone else paid for
18 the test, is that trainer still subject to all the fines?

19 COMMISSIONER McNABB: Yes.

20 MS. ROUNTREE: It's a prosecutable offense.

21 COMMISSIONER McNABB: It's a prohibited
22 substance.

23 Right now we can reach down and test the deemed
24 favorite. Really, if you've got people who are playing
25 high end games, a lot of times it's that deemed favorite

1 that ran last, because next time they're going to run the
2 claim and bet their line. So you want to find the hot
3 tests, you start watching that stuff.

4 Sorry, I just gave away intel.

5 SPEAKER FROM AUDIENCE: We all know that.

6 (General talking and laughter.)

7 COMMISSIONER McNABB: I want to have the
8 stewards be the pointy end of the spear here, and they're
9 getting the intel on what is happening. If they're
10 watching things and things aren't right, or they're
11 watching trainers that are dropping \$20,000 horses down,
12 stealing races, nobody is tested and the horse looks like
13 the label on the clenbuterol bottle.

14 SPEAKER FROM AUDIENCE: One of the problems
15 that we -- a base that a horse is claimed is on
16 clenbuterol is when we get him and try to run him clean,
17 he's going to be a lesser horse.

18 COMMISSIONER McNABB: I can't help that, but
19 yes, indeed.

20 SPEAKER FROM AUDIENCE: But that's a situation
21 that we have to face. So if we can curtail that.

22 COMMISSIONER McNABB: That, and younger
23 trainers who don't know what a clenbuterol horse looks
24 like, if you guys are sitting out on the rail and you've
25 got somebody you're mentoring a little bit.

1 SPEAKER FROM AUDIENCE: Like you said,
2 metabolism is a big part of that, and some horses actually
3 mature earlier than others do, but it's impossible for me
4 to tell you that horse is on clenbuterol.

5 COMMISSIONER McNABB: But now, back to the crux
6 of this is if claimed horse, the claiming trainer checked
7 the box and said, I want a hair test; the horse tested
8 hot, do we revoke the claim, or do we just make the
9 penalty so high you're still stuck with a dink who is
10 going to deflate over the next couple of years but you can
11 have the satisfaction?

12 SPEAKER FROM AUDIENCE: I think you need to
13 revoke the claim, give the money back, and then fine that
14 guy \$10,000.

15 COMMISSIONER McNABB: Can you live with that?

16 SPEAKER FROM AUDIENCE: Your timing on that
17 would have to be so precise.

18 SPEAKER FROM AUDIENCE: That's the reason we're
19 talking to the lab.

20 SPEAKER FROM AUDIENCE: No, I mean, the
21 notification kind of would have to be different.

22 SPEAKER FROM AUDIENCE: Remember, you've got
23 notification, you've got the ability for that trainer to
24 send the split off, and all that has to happen.

25 COMMISSIONER McNABB: The thing being is we get

1 a split and now you have transit time, the horse is in
2 that barn, horses are horses.

3 SPEAKER FROM AUDIENCE: I think that me as the
4 person claiming the horse, if something were to happen
5 where it was a catastrophic probable where the horse had
6 to be put down, even maybe not catastrophic, maybe he had
7 colic, then I would assume responsibility for that horse
8 while he's in my barn if that test was taken immediately
9 after he ran.

10 COMMISSIONER McNABB: Well, the original test
11 would be, but again, not everybody is Tudor Jordan, and so
12 if I have horse and I'm going to get him back and he was
13 in Joe Blow's barn who doesn't know what goes in the tub.

14 SPEAKER FROM AUDIENCE: Even in mine, I could
15 start a horse on clenbuterol if he wasn't in the building.

16 COMMISSIONER McNABB: Giving horses back -- I
17 mean, even now just with blood and urine, there's still
18 turnaround time, things can happen. Somebody might claim
19 a horse and say, well, the first thing we're going to do
20 is we're going to geld him. You revoke that claim and now
21 you've really got -- what kind of hold harmless is
22 there -- you claimed the horse, you're stuck with the
23 horse, but all you know is the hammer is really going to
24 fall on that evil-doer.

25 SPEAKER FROM AUDIENCE: Well, that may be

1 sufficient. That new owner ought to have -- have to look
2 at horse as he cannot compete with it for six months or
3 four months or whatever it is.

4 COMMISSIONER McNABB: You claim the horse and
5 you take the bandages off and he's got a bowed tendon, and
6 you're looking at eight months.

7 SPEAKER FROM AUDIENCE: [inaudible].

8 COMMISSIONER McNABB: You and I know what it
9 looks like.

10 Stewards. Like I said, it's that in-between
11 time and hold harmless or not and then lawsuits start
12 flying around. What's the right answer?

13 SPEAKER FROM AUDIENCE: Just put a big fine on
14 them and see how that works. Instead of trying to give
15 the horse back, just put a big fine on them, \$2,000, a
16 year off, and you've got to keep this horse.

17 (Simultaneous talking in audience.)

18 COMMISSIONER McNABB: I lean more towards that.
19 As a vet, I've been there. I've met my trainer bringing a
20 claimed horse back.

21 SPEAKER FROM AUDIENCE: I wouldn't want a horse
22 back that another trainer had for 30 days, and if you know
23 that horse was coming back, there's no telling what this
24 new trainer might do because he's mad at you for letting
25 him have a hot horse.

1 COMMISSIONER McNABB: Not everyone is a good
2 horseman.

3 SPEAKER FROM AUDIENCE: So if we just put a big
4 fine on him and give him a year off, that will stop a lot
5 of it. And if that doesn't work, then maybe we can do
6 something else a little more severe or something.

7 MS. ROUNTREE: It's really complicated.

8 SPEAKER FROM AUDIENCE: I mean, I'm not going
9 to check a box if I can't get the horse back. Why would I
10 pay for a test?

11 SPEAKER FROM AUDIENCE: Because that way you
12 know whether to run that horse again.

13 (Simultaneous talking in audience.)

14 COMMISSIONER McNABB: It gives you a front row
15 and folding chair and popcorn, but what's that guy
16 getting.

17 SPEAKER FROM AUDIENCE: For the exact same
18 cost.

19 MS. COOK: So back to what I said earlier about
20 how partnership means that everybody owns part of this,
21 the problem is you can't fit all of that into a rule and
22 make that really work, because there's so many variations
23 on a theme.

24 My observation in the short period of time I've
25 had this job is we're making this hard on ourselves

1 because we're trying to do claiming shakes like within
2 minutes. Right? I mean, just as an outsider that's come
3 into this community, we're trying within minutes to solve
4 all kinds of problems, and I recognize that that's just
5 the way it's been for 125 years, but potentially we're
6 making this too hard on ourselves because the way we do
7 the claiming in the first place in the industry -- which
8 is a Horsemen's Partnership, breed associations, sort of a
9 stakeholder discussion -- is why are we making it so hard
10 on ourselves and then trying to run the Commission in
11 there and fix a thing and run this back out.

12 And so there's probably another way to think
13 about it in terms of the rapid pace with which we try to
14 do claiming and all we try to sort out in the shake.

15 I was at Lone Star Park -- I think it was Lone
16 Star Park -- it was a 22-way shake. I mean, and I want to
17 say the post times were -- and I'm going to get this
18 wrong -- less than 20 minutes apart, and then it becomes a
19 frantic chase around, and so I guess that that's the way
20 it's been -- and I'm not the expert on why it's gotten
21 that way -- but I think the community can say maybe we
22 need to slow somehow or adjust the claiming process so
23 there is the time to be able to determine, if you're
24 claiming a horse, whether or not you have an issue with
25 whether or not something has happened with that horse

1 before you actually take ownership, without the
2 Commission.

3 SPEAKER FROM AUDIENCE: During the claiming
4 process, that claim is filled out whether we have 15
5 minutes left before post time, so I mean, you have ample
6 time to check that box if that's where we're going to go
7 with that.

8 MS. COOK: Right. But it's the frantic chase
9 around after that of who won the shake and all that.

10 SPEAKER FROM AUDIENCE: Well, they've got that
11 card. They'll know if that guy that won the shake, does
12 he want that horse to go to the test barn. When that
13 horse runs, that information goes to the stewards, the
14 stewards give a call to the owner of the horse that he's
15 going to the test barn.

16 (Simultaneous talking in audience.)

17 COMMISSIONER McNABB: What I would offer is if
18 there's more than one claim and you've got to move on with
19 the racing because they're simulcasting, if there's more
20 than one claim, if any of those forms have a check, you
21 send the horse down to the test barn, and you tell them to
22 pull the hair. It's a lot easier to discard a sample than
23 it is to not pull one.

24 SPEAKER FROM AUDIENCE: Until they call the
25 test barn and say, yeah, go ahead and pull it.

1 SPEAKER FROM AUDIENCE: For the people in the
2 racing office who determine who got the horse to call the
3 stewards and say this is a claimed horse and he is just to
4 go to the test barn, whether he wins, placed second or
5 fifth.

6 COMMISSIONER McNABB: It doesn't matter where
7 he finished.

8 UNIDENTIFIED SPEAKER: Maybe I'm not
9 understanding this, but it appears to me that we have two
10 subjects here. One, if the horse tests positive, the
11 claim is voided and the horse gets taken back.

12 COMMISSIONER McNABB: We haven't decided on
13 that option.

14 UNIDENTIFIED SPEAKER: The other thing is if it
15 tests positive and then the penalty part of it. But to
16 me, those have to be two different things. I don't
17 understand how they match together.

18 So if you want to have a voided claim rule, you
19 have to have a voided claim rule that says if the horse
20 tests positive, you've got the right to void the claim and
21 send the horse back. Now, what you do with the penalty
22 part of it and all of the split samples and all that stuff
23 for the person that had the horse before it run, then
24 that's another part of it.

25 SPEAKER FROM AUDIENCE: But that certainly

1 would be a deterrent for these guys to put horses in that
2 are hot, knowing that they're dirty, or even if they don't
3 know, they need to check their horses before.

4 COMMISSIONER McNABB: From a regulatory
5 position, if the person claiming the horse wants the horse
6 hair tested, it's hair tested. If it's a hot test, then
7 that just makes for a bigger hammer to the guy who entered
8 the claimed horse, but still you wind up with the horse
9 that you claimed.

10 SPEAKER FROM AUDIENCE: [inaudible].

11 COMMISSIONER McNABB: I'm going to pull it like
12 any other sample.

13 JUDGE PATE: Are they going to have a right to
14 challenge it?

15 COMMISSIONER McNABB: Yeah. Because the kind
16 of fine and punishment is going to be significant, so we
17 do need to give them the option for the split. But that's
18 all the more reason why you claimed the horse. You got
19 it, what you bought yourself is a front row to see that.

20 JUDGE PATE: So is the option to get out of the
21 claim the result of the first test or after the results of
22 the confirmation?

23 COMMISSIONER McNABB: If the guy says I want to
24 have a split, then you don't have an answer to that
25 question, so it can be quite some time if the horse is now

1 in a different barn, and like you said, if you've got a
2 good horseman who claimed it, you'd say, well, the horse
3 is being taken care of, but there's people out there I
4 wouldn't let take care of my dog.

5 MS. ROUNTREE: It could be somewhat of a
6 deterrent, though, if a trainer that's putting the horse
7 in a claiming race doesn't know whether that new owner
8 checked the box or not.

9 They're like taking a big chance by putting the
10 horse in, because that owner may have checked that box and
11 they won't know ahead of time, so it may make him think
12 twice about trying to sneak something through there they
13 don't know.

14 SPEAKER FROM AUDIENCE: You hear a lot of
15 excuses, you hear every excuse in the world: Well, I just
16 got the horse yesterday, two weeks ago or whatever, I
17 didn't have time to have him checked.

18 COMMISSIONER McNABB: From where we sit, if the
19 horse ran in the race, he got ordered to the barn, came up
20 positive on that day at that time, there was a prohibited
21 substance in that horse, who is the absolute insurer, do
22 not pass go. The revoking the claim would be so much hold
23 harmless lawsuits.

24 MS. ROUNTREE: I'm not the legal brain.

25 SPEAKER FROM AUDIENCE: Revoking the claim,

1 \$2,500, \$5,000 horses, maybe a 10- every once in a while
2 is basically what we see, but when you get into the
3 Thoroughbreds, you're looking at some \$50,000 horses in
4 that.

5 COMMISSIONER McNABB: Again that's where -- you
6 know, what's an appropriate punishment? And we want to
7 empower our stewards to do what is going to cause enough
8 pain that that person will learn their lesson and
9 everybody else will say I don't want to do that.

10 I think we're kind of beating a dead horse
11 right now.

12 (General talking and laughter.)

13 COMMISSIONER McNABB: So right now I'm still --
14 something is really going to change my mind to revoke a
15 claim, but I'm pretty hard over on making it painful
16 enough and giving the claiming trainer the option to have
17 that test if that test is performed by us and if we have
18 it that a fee is paid so that reimburses the track so that
19 they don't have excess payments.

20 SPEAKER FROM AUDIENCE: I think the trainer can
21 take it upon himself to justify spending \$100 -- of
22 course, we'd like to see it as little as possible, but to
23 justify that he's going to enter a clean horse when he
24 gets that horse.

25 COMMISSIONER McNABB: Can we move on?

1 Okay. Medication Restricted. This is 319.3
2 Medication Restricted. "Except as provided in paragraph
3 (1) of this subsection, beta agonists are prohibited
4 substances and shall not be administered to a horse
5 participating in racing at any time."

6 What I consider a horse participating in racing
7 is if the horse is on the track or if the horse's papers
8 are in the racing secretary's office, that horse is
9 participating in racing.

10 That's part of the pool, is people can enter
11 that horse -- you don't have to be entered, if your papers
12 are in the racing secretary's office, you're stalled on
13 the track, you have a prohibited substance in that horse
14 and we do a random test.

15 SPEAKER FROM AUDIENCE: What if they're
16 stalled --

17 COMMISSIONER McNABB: Stay tuned.

18 (1) "A horse may only be administered
19 clenbuterol or albuterol or any beta agonist if (a) it is
20 prescribed by a licensed veterinarian; (b) within 24 hours
21 of initiating the treatment the trainer or owner has
22 submitted to the Commission a form prescribed by the
23 Commission and signed by the attending veterinarian
24 indicating the name of the horse, the name of the trainer,
25 the name of the attending veterinarian, that the attending

1 veterinarian has personally examined the horse and made an
2 accurate clinical diagnosis justifying the prescription,
3 the proper dosage and administration, and the expected
4 duration of the treatment; and (c) only FDA approved
5 clenbuterol, albuterol or other beta agonist that is
6 labeled for use in the horse is prescribed and dispensed."

7 (2) "A horse that has been administered beta
8 agonists under paragraph (1) of this subsection shall be
9 placed on the veterinarian's list for a period not less
10 than 30 days after the last administration of the drug as
11 prescribed, subject to a negative hair test for
12 clenbuterol, albuterol, or any other beta agonist drug
13 before being removed from the list."

14 Are there any requests for public comment on
15 this agenda item? A licensed veterinarian, theoretically,
16 not only licensed by the State but theoretically if it's
17 the veterinarians on the track there's two licenses. It's
18 not impossible it could be a practicing veterinarian out
19 in the world, but still they have a license in Texas, and
20 if we have somebody that's an evil-doer, we know telephone
21 number to the Vet Board saying you've got somebody who's
22 treating an entire barn full of clenbuterol, and we've got
23 some issues with that.

24 What part of this -- is everybody just numb or
25 have you got some thoughts about this?

1 SPEAKER FROM AUDIENCE: [inaudible].

2 COMMISSIONER McNABB: Off of the racetrack all
3 I can do -- if I have actionable intelligence, I can do
4 what I call pre-race testing.

5 If a horse's papers are in the racing
6 secretary's office or the horse is on the track, at any
7 time we can, based on our own actionable intelligence,
8 say, Mr. Trainer, bring so-and-so horse to the test barn
9 on this day at this time.

10 SPEAKER FROM AUDIENCE: We all realize that we
11 have a problem or we wouldn't be in here trying to solve
12 it. I'm going to say, just from what I know and hear,
13 that 90 probably percent of our problem initiates off the
14 racetrack.

15 COMMISSIONER McNABB: I have no doubt, I have
16 no doubt. I have no doubt that positive tests that we see
17 are not uncommonly leftovers of drugs from horses that
18 were racing in the bushes. I don't have jurisdiction.

19 But if the horse is part of the pool of horses
20 that are eligible to enter races, then it's not out of the
21 realm of possibility that if a horse is off the track but
22 the papers are in the racing secretary's office, not out
23 of the realm of possibility that we could say, Bring that
24 horse in on such-and-such a date, this horse will be
25 tested if we consider that a pre-race test.

1 If a horse is not part of that racing
2 population, I don't have any jurisdiction over it. Do I
3 think that there's people giving bad stuff to horses in
4 the state of Texas? But what are the ones that I can do
5 something about, you know, the ones that are entered for
6 racing so that we can keep them as clean as possible.

7 SPEAKER FROM AUDIENCE: But you can call a
8 horse in from my farm, let's say, a week before he runs to
9 be tested?

10 COMMISSIONER McNABB: Yes, I can.

11 SPEAKER FROM AUDIENCE: To whatever racetrack
12 that you're entered.

13 COMMISSIONER McNABB: To wherever we have got
14 the appropriate testing staff to be able to document,
15 preserve the sample, assure chain of custody to the lab,
16 maintain a split in a secure location, all the things that
17 have to do -- because if indeed we come up with a positive
18 test, fight's on, and we don't go into a fight that we
19 don't intend to win, so we're going to dot all our i's and
20 cross all of our t's. You know, the likelihood that we're
21 going to be pulling a bunch of horses, call up a guy down
22 in South Texas, probably will not happen very often, but
23 I'm not going to say that it's impossible.

24 SPEAKER FROM AUDIENCE: What's the penalty if
25 they don't bring the horse? I mean, there ought to be

1 some kind of recourse for that.

2 COMMISSIONER McNABB: If someone is licensed --
3 it sounds like perhaps we have to have a rule -- if we
4 summon someone -- their papers are in the racing office,
5 we summon them to come and they refuse to come and bring
6 the horse, sounds like then we need a rule if they fail to
7 respond.

8 SPEAKER FROM AUDIENCE: Basically we don't have
9 that kind of rule. Right now we're asking horses in
10 certain stakes and certain futurities and what-have-you to
11 be in there 24 hours prior to post time for that race, so
12 y'all had initiated that rule -- or is that a rule or is
13 that a house rule?

14 COMMISSIONER McNABB: That's a track rule. But
15 if the horse ran in a race and you say that horse goes to
16 the test barn and the trainer says, Like hell, and he just
17 leads him off, the trainer loads him on a trailer and
18 leaves, we can take action there, can we not?

19 SPEAKER FROM AUDIENCE: How about like during
20 the middle of the week just out of the blue when we're not
21 even racing and you want him there?

22 COMMISSIONER McNABB: If the stewards have got
23 reason to say we want to test that horse, it's going to be
24 you're going to show up, and again, it's going to be when
25 we have staff there.

1 We're not going to bring staff when we're not
2 doing things, but you know, you have an appointment next
3 Thursday, you're going to bring this horse. Call Dr. Bond
4 or whichever the veterinarian in charge, and that horse
5 will be identified, sample will be pulled.

6 SPEAKER FROM AUDIENCE: We used to be running
7 four or five days a week, travel Monday and Tuesday, but
8 staff is only there two days a week.

9 COMMISSIONER McNABB: It will be a day, but
10 still we have to have the staff so that we can do all the
11 appropriate chain of custody parts and pieces. But if a
12 person is ordered to surrender their animal for testing
13 and they fail to surrender that animal, does our rule say
14 only post-race or is it just on the stewards' order that
15 the horse is there?

16 SPEAKER FROM AUDIENCE: We've got to have a
17 rule to firm, we've never had that.

18 COMMISSIONER McNABB: Staff?

19 MS. COOK: I'm writing that down, Commissioner.

20 MS. ROUNTREE: I just want to clarify this
21 rule. So we've established up here that a horse may be
22 administered the clenbuterol or beta agonist when
23 prescribed by a licensed veterinarian, and then that
24 veterinarian and the owner is going to fill out the form
25 and submit it to the Commission veterinarian, to Dr. Bond,

1 and he's going to place it on the vet list.

2 So this horse was sick, the vet prescribed it.

3 They notified Dr. Bond, they put it on the vet list, but
4 that horse still has to have a negative hair test before
5 being removed from that list.

6 COMMISSIONER McNABB: What we see is, you know,
7 here are the dates the horse was treated, so we know --
8 and that's a test that we're going to do segments, and we
9 know it's not exact dates, but if the only place in that
10 sample, and that would be one that we'd say this is the
11 getting off the vet list so we'd want to have it
12 segmented, at least of what we find is in the envelope,
13 okay.

14 MS. ROUNTREE: But it says that it has to have
15 a negative hair test before being removed from the list,
16 so it's not leaving any variance or subjective opinion for
17 the stewards that that horse had done the proper thing;
18 it's been treated by the veterinarian and followed all the
19 practices that are required by the Commission.

20 Dr. Bond knows that horse was treated, he's got
21 the paperwork, it's on the vet's list, but it still has to
22 have a negative hair test before it's taken off the vet's
23 list. So there's nothing in that rule that I see that --

24 COMMISSIONER McNABB: We need a refinement of
25 where are we making the accommodation for --

1 MS. ROUNTREE: Somebody that's followed the
2 rules and done exactly the procedure for a horse that was
3 prescribed for an illness but now they have to stay, you
4 know, as a dark horse if the vet is finding this beta
5 agonist in there for five or six months.

6 And so that horse, even though it's followed
7 the rules, it's gone through the procedures, everything
8 it's supposed to do, it'll still sit in the penalty box
9 for four, five, six months until that hair test is clean.

10 Am I seeing something here that's not here?

11 SPEAKER FROM AUDIENCE: The Commission is going
12 to take multiple tests to take that horse off the list.
13 He was put in the segmental. Right?

14 COMMISSIONER McNABB: Right. That's the test
15 that we have to do, the segmental test, and if the only
16 part that's positive -- and I know it's not just at one
17 inch is 30 days -- if the segmental test is consistent
18 with what we have in the vet thing and now we have a good
19 period of time there's nothing there, the horse was done
20 taking the medication and all of the samples from that
21 last 30 days is clean, okay.

22 MS. ROUNTREE: I think we need to refine this
23 rule and allow that.

24 SPEAKER FROM AUDIENCE: Didn't they try this in
25 New Mexico and everybody got on it --

1 COMMISSIONER McNABB: See, that's just it, and
2 that's why we're -- we looked at several of the other
3 states, and this horse, this dose, these dates, we make
4 this very -- because if indeed somebody is saying here's
5 the whole barn and here's your bucket-load of clenbuterol,
6 then we're back off to the races.

7 MS. ROUNTREE: But if we do it like this says
8 and this trainer has done his due diligence and he's
9 obeyed the rules and he's done everything he's supposed to
10 do, he is still not in any more advantageous position than
11 someone that just gave their horse clenbuterol,
12 therapeutically or not, and still had to wait till it had
13 a clean hair test.

14 So nobody is being rewarded, so to speak, or
15 having any sort of advantage for following the rules and
16 doing what they're supposed to do and recording it.

17 COMMISSIONER McNABB: But if we put in the
18 segmental test and the test is consistent with and there's
19 no other indication of beta agonist elsewhere --

20 SPEAKER FROM AUDIENCE: How long would the hair
21 be on this one that was properly treated?

22 MS. ROUNTREE: I don't know. Like we said, it
23 depends on the horse and the metabolism, even the color of
24 the horse, how long it takes for that medication to leave
25 the hair, how long does it take.

1 But we're not providing someone any sort of
2 relief when they've followed the rules rather than
3 somebody that hasn't followed the rules.

4 COMMISSIONER McNABB: It doesn't leave the
5 hair.

6 MS. ROUNTREE: Well, it's not leaving the hair;
7 the hair grows out.

8 COMMISSIONER McNABB: The hair grows, so from
9 the last date of treatment, then 30 days, that's the
10 earliest that the horse is eligible for a hair test, so
11 theoretically, on a segmented test you would expect to see
12 the first part pretty much clean, second part hot.

13 SPEAKER FROM AUDIENCE: So maybe we have an
14 exception for eligibility of a horse that's obeyed the
15 rules.

16 MS. COOK: So I was going to say what's great,
17 the good news is -- so we have about 45 minutes left in
18 this meeting -- the good news is that we've reestablished
19 the Rules Committee, so I think out-of-competition testing
20 in and of itself, which has been the big discussion with
21 HISA, is a separate matter, you know, in terms of what
22 we're trying to accomplish here today, which is to make
23 sure we get through these rules and you're comfortable.

24 At least from this group we've heard the
25 feedback on the rules as they're being adjusted, and then

1 those will obviously be presented at the April 13
2 Commission meeting.

3 So it's really important that we get any edits
4 that you have of these rules and get all the issues out on
5 the table for these.

6 And then what I'm hoping to do is to continue
7 this model between Commission meetings, depending on
8 Commissioner McNabb's or others' assistance, have the two
9 public meetings, I mean, have them at Lone Star Park, have
10 them here, with the gracious help of either Angelo or
11 Dwight, and continue this conversation and then take the
12 next set that's really bothering the community and really
13 work through these things in a real public way, assuming
14 technology is cooperating with us, of course.

15 But I think if you can focus your discussion on
16 making sure that we've covered all the agenda items here
17 and that you're comfortable that we've broadened it enough
18 but we've been able to capture what you're concerned
19 about, then may go into other rules -- I've been taking
20 great notes and looking at the rules over here on the
21 side -- I want to get you back but also keep you on track
22 with the agenda.

23 COMMISSIONER McNABB: So I think for right now
24 if we table this pending we need to get our expert, know
25 what can we know and know what we can't know from a lab

1 test and what would we need to specify on that test.

2 DR. MAYS: Define a period.

3 COMMISSIONER McNABB: Right.

4 All right. Testing Authorized, this is
5 319.301, Testing Authorized.

6 "Testing Authorized (a) the stewards and racing
7 judges may require a specimen of hair, urine, blood,
8 saliva, tissue, or other bodily substance to be taken from
9 a race animal for the purpose of testing for the presence
10 of a prohibited drug, chemical or other substance; (b)
11 testing under this Subchapter may be required at any time
12 in accordance with these rules and may be conducted in an
13 area approved by the Commission veterinarian under the
14 supervision of the Commission veterinarian; (c) a person
15 is not entitled to a purse until drug testing has been
16 completed and the executive secretary has cleared the race
17 for payment."

18 So this predominantly talks about post-race
19 testing. If we do a pre-race test, again, the horse is on
20 the grounds or has its papers in, obviously there's no
21 purse to be revoked but there's still a penalty that is
22 sufficient when we consider these drugs to be Class 1s.

23 So post-race testing, as always, lost purse,
24 fine, a suspension, the appropriate thing. If it is a
25 random or pre-race or a bring your horse in, it will be

1 tested, then it's because it's in violation of having a
2 prohibited substance in the horse on the date of that
3 test, and obviously, that horse isn't eligible to run
4 until it's cleared.

5 Testing of Horses, Admin Code 319.361. The
6 rule as it currently reads is: "Testing of Horses (a) the
7 stewards shall order specimens collected for testing under
8 this Subchapter in accordance with this section; (b) a
9 specimen shall be collected from each horse that finishes
10 first in a race. In addition to the horse designated
11 under subsection (b) of this section, a specimen may be
12 collected from the following horses: a horse that finishes
13 second, and/or a beaten favorite, or for a race with a
14 gross purse of \$50,000 or more, or a horse that finishes
15 third, or a horse selected at random by the stewards, and
16 any other horse designated for cause by the stewards or
17 the commission veterinarian."

18 That last covers there might be times that we
19 just decide you might just get lucky and have to submit a
20 horse because they did a shake and the horse is going in.

21 Other times it can be that pre-race and based on
22 intelligence.

23 We don't have to wait until a horse runs if
24 we're getting hot intelligence; we reserve the right to
25 say that horse, this day, that barn. And I think that's

1 the rule that covers that. It doesn't have to be one or
2 two, unless the legal folks say I'm not reading it right.

3 We're almost closing in on time, and I don't
4 want anybody leaving here feeling that they haven't had a
5 chance to speak their piece or take care of any resolved
6 issues.

7 Would you like to come up here?

8 SPEAKER FROM AUDIENCE: Well, I don't want to
9 walk up, I only have to say this. I've been running
10 horses for a long time and this level of communication
11 we've got now with the Racing Commission is something
12 we've never had, and I think it's something that's going
13 to be really helpful in the future.

14 COMMISSIONER McNABB: Well, we appreciate it.

15 SPEAKER FROM AUDIENCE: It's something that we
16 really feel like we're getting something done now. We
17 appreciate it from the horsemen's point of view

18 COMMISSIONER McNABB: If Texas racing is going
19 to survive, it's up to all of us. Our job is not to
20 promote racing. Our job is we protect the health and
21 welfare and the integrity of racing so everybody feels
22 good about it, but if we don't listen to what you have to
23 say -- I mean, this Commission came perilously close to
24 going pffft.

25 Those of us who have been in the business know

1 we have an important job to do, because if indeed we can't
2 have rules that are livable and workable, this is a tough
3 way to make a living. I tried to make a living back
4 there. Thankfully I did and I walked away under my own
5 power and out of debt, but a lot years it didn't feel like
6 that, so I can appreciate all the risks and everything
7 that you put on the line.

8 But the rules we have, I want you to say, when
9 somebody gets hammered, man, that guy really took a
10 beating but, you know, it was fair, and everybody else,
11 let's not do that; let's just all have horses that when
12 they're popping out of the gate it's a fair race and the
13 \$2 better has a shot.

14 SPEAKER FROM AUDIENCE: And right now, you
15 know, horse racing in Texas is very, very good for us, and
16 the horsemen have been worried about losing it, too. It
17 got to a point we had to do something, and if we take just
18 little steps at a time, we'll eventually get there. But
19 we need to do something, because it's our concern we're
20 going to lose what we've got now if we don't do something.

21 COMMISSIONER McNABB: I think there can be a
22 great future for racing in Texas when people figure out
23 that spending the winter here is a whole lot better than
24 spending the winter in Chicago.

25 MR. WERSTLER: Is there a way you can expedite

1 races with trials? Because here's the problem: By the
2 time we get back the results that one of those horses may
3 have had a positive test that ran in the trials that
4 qualified for a futurity or a derby, they've already
5 entered the back.

6 DR. MAYS: I'm assuming we're talking about
7 hair?

8 MR. WERSTLER: Yes -- no, any test.

9 DR. MAYS: We have in our agreement with the
10 Racing Commission for trials races that completed testing
11 is done within five days.

12 SPEAKER FROM AUDIENCE: That's not enough.

13 DR. MAYS: But that's about as good as it's
14 going to get. I mean, it's going to be very hard.

15 (Simultaneous talking in audience.)

16 SPEAKER FROM AUDIENCE: By the time they go
17 through their due process and everything --

18 MS. ROUNTREE: They don't get due process in
19 the trials.

20 COMMISSIONER McNABB: A negative test is fairly
21 quick, but he can't call a positive until he does the
22 whole process again.

23 DR. MAYS: And doing that in five days --

24 SPEAKER FROM AUDIENCE: There's another
25 procedure that has to go through to move that horse up, if

1 that's what you're trying to get at.

2 COMMISSIONER McNABB: If the conditions are
3 that if there is a hot test and you don't have to do due
4 process, then there you're looking at five days.

5 MR. WERSTLER: Well, you know, we've looked at
6 this a lot as well, and so we don't like the idea of
7 taking away someone's due process.

8 However, if somebody knows they have a positive
9 test and they still enter the back, we put in our
10 conditions that they have to -- we increase the fines to
11 \$100,000 or whatever.

12 COMMISSIONER McNABB: That's up to you.

13 MR. WERSTLER: But right now most of the time
14 the only reason we even know there's a bad test is because
15 through the grapevine that it's being held. Because from
16 what I understand, y'all can't tell anybody but the owner
17 or the trainer, but we know there's races being held, then
18 all of a sudden people are like, you know, there's a
19 problem with this race here, so in the past that's the
20 only thing we have.

21 And it really leaves a bad taste in everyone's
22 mouth if somebody has a bad test and still runs back in
23 the final and still finishes first, second or third, and
24 six months later they're still adjudicating the due
25 process.

1 COMMISSIONER McNABB: We can't go out and put
2 it on the news. Who we tell is for our purposes and there
3 is a due process. So if someone runs back and it turns
4 out that test was positive, the association -- I mean, you
5 guys have a pretty good stick also. Are you going to
6 penalize them or are you saying if they run back and the
7 first one was hot, that horse wasn't eligible, and so then
8 we have to drag them in to the stewards.

9 MR. WERSTLER: We can penalize them and not
10 allow them to run back in any of our races.

11 SPEAKER FROM AUDIENCE: Make them ineligible.

12 MR. WERSTLER: And that's what we 've been
13 doing.

14 MR. SHERWOOD: Can we take it a step further
15 and maybe speed up the due process, because we've got
16 three weeks between the trials and finals of the Texas
17 Classic and the Futurity. A horse runs in the trials, you
18 said it's five days? Can that be sped up to three days?

19 DR. MAYS: Because we test all the samples
20 simultaneously, whether it's an expedited test or not.

21 MR. SHERWOOD: Okay. Let's say five days.
22 They run the trials on a Friday. You get the tests,
23 hopefully they could speed up the process of getting the
24 tests to you. I know sometimes these tracks wait until
25 the Monday to send the tests, if they could send them

1 Friday night, you've got them first thing Monday morning,
2 you've got Monday, Tuesday, Wednesday, Thursday, Friday,
3 we've got results on a Friday --

4 DR. MAYS: Which is what we currently do.

5 MR. SHERWOOD: -- and we're still in the first
6 week. They notify the stewards, that's where this side of
7 the due process needs to speed up considerably.

8 The stewards call the trainer in and say,
9 You've got a bad test, if you want to send off a split,
10 you've got 24 hours to make that decision. You send the
11 split off, you have to rush the split to where then the
12 second split comes back, it's still before they entered
13 for the finals -- or not the second split but the split --
14 it's still before they've entered for the finals.

15 If that's hot, the hearing needs to be held
16 right then and there when the stewards get that notice
17 that says the split was bad.

18 You call the guy in, you say, Your initial was
19 bad, your split was bad, you're disqualified, fined,
20 whatever. If they want to appeal at that time, that's
21 where what Rob is talking about kicks in.

22 If you run back and then you go through the
23 entire six-, eight-month, one-year due process and you end
24 up losing your case, it's a \$100,000 fine. Because who
25 gets penalized in this thing? Number 11.

1 There's been a ton of number 11s and number 12s
2 that should have been in the finals of these futurities or
3 derbies, and they don't get to run, and then the ultimate
4 horse that had the bad test, whether he's won it, finished
5 fifth, finished eighth, whatever, gets disqualified, gets
6 his purse money taken away, number 11 and 12 didn't get
7 any.

8 COMMISSIONER McNABB: So samples leave the
9 track, we're running Friday and Saturday. Right?

10 SPEAKER FROM AUDIENCE: Friday, Saturday,
11 Sunday, or Thursday, Friday, Saturday, depending on the
12 racetrack.

13 COMMISSIONER McNABB: Because the integrity of
14 the samples is not just time but it's also temperature, so
15 you can't just leave them sitting out somewhere. You have
16 a chain of custody, so there has to be secure transmission
17 and appropriate holding at certain temperatures. So we
18 get samples to the lab?

19 DR. MAYS: Monday morning.

20 COMMISSIONER McNABB: Monday morning. They're
21 not going to get run before Monday morning, but they are
22 there Monday morning.

23 MR. SHERWOOD: Quick question for the lab. Do
24 y'all accept stuff over the weekend or you're just doors
25 locked, completely closed?

1 DR. MAYS: We're open from 8:00 to 12:00 on
2 Saturday mornings, but I don't have staff there to work.

3 MR. SHERWOOD: Not to run the tests but to
4 accept them.

5 DR. MAYS: Yeah, but they're there at 7:30 on
6 Monday morning, so what's the difference?

7 MR. SHERWOOD: Okay, okay. That was just a
8 question.

9 SPEAKER FROM AUDIENCE: How many days a week do
10 you test for hair?

11 MS. COOK: So the other option is that the --
12 two of the parts. because one part has already made it,
13 you submit to clean hair tests which has got plenty of
14 time to get all done before you enter the horse in the
15 race, and the Commission just comes around the backside
16 checking, you know, based on the rules we have, because I
17 hate to say it, but you know, several of us have multiple
18 jobs in the Commission, and we are rebuilding the staff.

19 But I think that part of our issue at the
20 Commission, and I'm just going to say it, is it's been
21 chaotic in the way that we sort of have done things. The
22 way we have done our jobs in the past, in my assessment,
23 was a bit chaotic for the community, and so what you're
24 suggesting I understand, but I think it creates more
25 chaos.

1 MR. SHERWOOD: I'm not even talking about hair.

2 MS. COOK: Okay. But just in general, all of
3 us running in and out of the process, we almost need to
4 say who owns what part of the process will then share the
5 responsibility through the process. Am I making sense?

6 MR. SHERWOOD: Yes, but I'd just like to see
7 the due process part of it sped up. Instead of -- hold
8 on -- this happened at Lone Star. The guy was notified of
9 his bad test on, I believe, the Saturday after the trials,
10 and I think he got to send the split in on Tuesday. They
11 got the results back -- oh, it was the same day that they
12 ran the finals then, the following Saturday, so that took
13 three weeks to run through the due process where I think
14 it could be sped up to two weeks. And then they still
15 haven't had the hearing.

16 SPEAKER FROM AUDIENCE: They haven't had a
17 hearing yet.

18 MS. COOK: Is it a hair test?

19 MR. SHERWOOD: No.

20 MS. COOK: So we can't talk about specific
21 cases, obviously, but this is why we're having this
22 conversation, because we're all concerned.

23 And so, you know, if you're going to have a
24 board of stewards, which optimally you have three stewards
25 at every park and you have a group that hears the hearings

1 and maybe does some of the safety issues, you'd actually
2 have to think of where you want to be -- which is what I'm
3 trying to do for the Commission and for all of you -- and
4 pay to have that professionally trained staff in place to
5 be able to support that, because we all know that there's
6 not enough Commission staff right now to support that,
7 even if it is what we want to do.

8 So I think it's up to the group to say what the
9 future looks like for Texas if we really want to be able
10 to be the most professional racing commission in America.

11 I'm prepared to take us there, but it takes
12 everybody having skin in the game, including funding the
13 right staffing model to be able to get us there, you know,
14 because you literally have human beings working extra
15 hours to drive these splits to the lab, and you have the
16 lab really trying to meet those needs.

17 But the question is what is the standard we're
18 trying to set, but I think you're saying the right things.

19 The question is not so much the details; the question is
20 what standard are we trying to set.

21 MR. SHERWOOD: Okay. We seen in Louisiana last
22 year had horses had that had two horses in the trials of
23 the Laddie, I believe, and one in the Lassie that tested
24 bad and were taken out and other horses moved up.

25 I don't think it happened in New Mexico last

1 year; it happened in New Mexico the year before. So those
2 places are getting it done somehow.

3 SPEAKER FROM AUDIENCE: And then it takes us
4 three weeks to even get a hearing.

5 MS. COOK: Next week I will have had the job
6 120 days, and so this is why we're having this
7 conversation. so I understand so we can get that right.

8 MS. ROUNTREE: Amy, you asked the question what
9 is the standard, and I know it's complicated, and I know
10 there are a lot of moving parts and there are things that
11 can't be done, like you said, without the proper staff in
12 place.

13 But I think in the back of our minds we should
14 make that standard that we never again want to allow or
15 see an ineligible horse running in the finals of a
16 futurity or derby and excluding the people that would have
17 been eligible except for that horse, so I think that's our
18 standard.

19 How we get there, I'm not sure, but we can find
20 an answer at some point. But that should be our standard,
21 that no more ineligible horses are going to run in these
22 races, excluding the people that did the right thing and
23 should have been eligible.

24 SPEAKER FROM AUDIENCE: That specific race
25 we're talking about was a million-dollar race.

1 COMMISSIONER McNABB: It sounds like there's
2 data that comes out at a certain time. but we don't have
3 our decision-makers there that day, because we're only
4 paying people to be on for race days.

5 SPEAKER FROM AUDIENCE: Exactly.

6 MS. COOK: Quite frankly, if you look at our
7 budget, we are funded for live racing. We are not funded
8 for the enforcement mission, we're not funded for driving
9 those tests to the lab, we're not funded for the hearings
10 we conduct. We're not actually funded for many of these
11 activities that get us to that standard.

12 And so, you know, when we propose what we need
13 to the legislature, we need all of your input, and we need
14 all of you looking at that. I'm serious, because it's not
15 possible to achieve the most professional racing
16 commission in America goal without having the right
17 staffing model and without everyone being all in on that
18 staffing model.

19 And it's possible that wouldn't get funded but
20 we would still -- I agree with you -- aim to have that be
21 the standard, because I 100 percent agree, I don't want
22 the wrong horses running in those races.

23 MR. SHERWOOD: Quick question. Does the rule
24 state how the trainer has to be notified on a bad test? I
25 thought at one time it said they had to be notified in

1 writing by certified mail or something. Would a phone
2 call work?

3 MS. COOK: The book is over there.

4 STEWARD IN AUDIENCE: We contact them
5 personally generally.

6 MR. SHERWOOD: Okay. And that's when the clock
7 starts?

8 STEWARD IN AUDIENCE: Yes, sir.

9 COMMISSIONER McNABB: So for right now, as far
10 as staff goes, I mean, this is a linear process of this,
11 then that, but we need to look at, well, where are the
12 places where there's a difference between the data being
13 available and our ability to act on it.

14 What's the most expedient way to notify a
15 trainer? And if I'm a trainer and I think I might be
16 skating by, I might be really hard to find, so you can't
17 notify me for a long time.

18 So what are the things that there's a failsafe
19 communication that has to happen at a certain time. If a
20 trainer isn't looking at -- he says nobody told me, I
21 think we need to go back and I've got my three key pieces,
22 I have enforcement, the vet staff, and the stewards here.

23 Let's look at this and where is it that when we
24 have a data point that has to be acted on, what's keeping
25 us -- you know, what's the delay on acting on it. And if

1 it's a matter of there's not staff, it has to be money,
2 then that's going to be a staffing thing. If it's a we've
3 got to notify the trainer and he's hiding, you know, it's
4 a dog ate my homework and the kids broke my phone, but now
5 I'm in a million-dollar race, where is the part that we
6 need to do?

7 So this one we have to table.

8 MR. SHERWOOD: And again, I'm not saying take
9 away the due process. Speed it up.

10 COMMISSIONER McNABB: But the other part -- and
11 from the industry -- how do we see to it -- what is -- you
12 tell me what is the way to make sure that that trainer is
13 very interested in being notified? If we document that we
14 did these things to notify him and he went stupid, then
15 he's lost his eligibility?

16 MR. SHERWOOD: Well, I mean, you could notify
17 the trainer, you could notify the owner. I guarantee
18 you'll find somebody.

19 COMMISSIONER McNABB: I'm looking for your
20 input, you know, what is the piece here? If we do these
21 things and the trainer is hiding from us, does he lose his
22 eligibility if we do our part?

23 MR. SHERWOOD: I'd call the owner. I mean, you
24 can't tell me you can't get a hold of somebody. I'd go to
25 the barn. If the horse can't leave the grounds, I'd go to

1 the barn and tell them, whoever is in charge of that
2 horse.

3 COMMISSIONER McNABB: Some of that is having
4 staff, and I hear what you're saying, but if someone is
5 hiding from you, you know, what are the things -- if
6 they're hiding, where is their due diligence to
7 communicate? If we're trying to reach out and they're not
8 wanting to be found because if they just drag their feet,
9 they can slip in that next race.

10 MR. SHERWOOD: Well, the horse can't leave in
11 these situations. If the horse qualifies, they have to
12 stay on the grounds.

13 SPEAKER FROM AUDIENCE: Instead of a \$100 fine,
14 it needs to be a \$10,000 fine.

15 COMMISSIONER McNABB: But here's what I'm
16 saying, is it a condition of being in the race, is that
17 written by the track that if you won this race, you can't
18 leave the grounds again until the next? Is that customary
19 or is that written down?

20 SPEAKER FROM AUDIENCE: We're doing that right
21 now.

22 COMMISSIONER McNABB: But is that required?

23 SPEAKER FROM AUDIENCE: It's required. Yes.

24 COMMISSIONER McNABB: That they cannot leave
25 the grounds?

1 SPEAKER FROM AUDIENCE: On certain stakes races
2 they have to be in at a certain time. Trials and finals,
3 they have to be there from 24 hours prior to the trial
4 till the finals are ran.

5 SPEAKER FROM AUDIENCE: Is that just Lone Star?

6 SPEAKER FROM AUDIENCE: It's every track.

7 COMMISSIONER McNABB: If that's written in on
8 the association side, then it becomes when we have a data
9 point, then how quickly can we act on that data point.
10 Can we do things better? Sure, absolutely.

11 But again, it's a matter of the trainer has to
12 be available to us, but if we've got a captive audience,
13 who can legally receive that information? You know, if
14 he's just got -- you know, it's a little girl who doesn't
15 speak any English --

16 SPEAKER FROM AUDIENCE: Lone Star is not the
17 only one; it's happened at least once a year for at least
18 the past five, six years.

19 COMMISSIONER McNABB: I hear what you're
20 saying, can we make it better. But if it's up to us to
21 communicate in a timely fashion, we also have to have
22 somebody to receive it.

23 So who is eligible to receive it so we can say
24 on this date this barn was told? So the trainer has got
25 to have somebody -- if he's running this prep race, he has

1 got to be responsible to have somebody that we can give
2 notification to.

3 SPEAKER FROM AUDIENCE: Are you right now -- am
4 I mistaken or is it the owner and the trainer are the two
5 people that y'all notify, or you just notify one person?

6 COMMISSIONER McNABB: Charlie?

7 (Speaking from audience.)

8 MS. ROUNTREE: Can Charlie come up here?

9 MR. HALLAM: Charles Hallam, Texas Racing
10 Commission.

11 In my 29 years at the Racing Commission I have
12 never had a problem notifying a trainer of a positive
13 test. I usually get them on the first time I call them.

14 SPEAKER FROM AUDIENCE: And that's how long
15 after you get the report?

16 MR. HALLAM: As soon as I get that report from
17 A&M, when it's sent to me, I'll call them immediately.
18 There are certain things I do before I call, but it's done
19 within about an hour's time.

20 There have been times when that trainer didn't
21 answer the first time I call, and I would call the owner.

22 We have to notify the owners too, and I will guarantee
23 you, when you talk to the owner, the trainer is going to
24 call you right back. It does happen; it has never been a
25 problem.

1 COMMISSIONER McNABB: Let's take a look at out
2 thread and this rule might be ready to go, but if we need
3 to modify this, just so that we can -- I mean, there's
4 still people involved, so you know, we always have a wild
5 card trick.

6 MS. ESTES: When Travis sends me positive
7 notification, I immediately send it out to the
8 investigators, the other stewards, and the vets --

9 COMMISSIONER McNABB: Okay.

10 MS. ESTES: -- so that everybody knows, and
11 that's a brand-new process. This hasn't been done before.

12 COMMISSIONER McNABB: We might be well along in
13 getting a fix. Good news, Connie.

14 Going, going -- what's the auctioneer say --
15 all in, all gone.

16 Thank you very much.

17 (Whereupon, the meeting was concluded.)

18 I certify that the foregoing is a correct
19 transcript from the electronic sound recording of the
20 proceedings in the above-entitled matter.

21 /s/ Nancy H. King _____

3/22/2022 _____

22 Certified Electronic Reporter

Date

23 No. CER/CET-153

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