

**RESPONSE TO PUBLIC COMMENTS
178 CSR 1 THOROUGHBRED RACING**

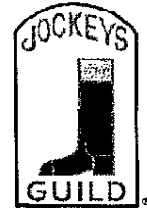
On June 13, 2018, the West Virginia Racing Commission put proposed amendments out for comment that pertained to one topic area: the requirement for jockey concussion protocols to be put in place at licensed thoroughbred racetracks in West Virginia. The rule amendments proposed by the Racing Commission were the adoption of a Model Rule promulgated by the Association of Racing Commissioners International (RCI) in April 2018. The public comment period for the West Virginia Racing Commission's proposal ended on July 13, 2018. While the comment period was still open, on July 10 and 11, 2018, RCI met and modified its Model Rule on jockey concussion protocols.

During the public comment period, both Hollywood Casino at Charles Town Races (HCCTR) and the Jockeys' Guild submitted public comments requesting that the West Virginia Racing Commission consider adopting the most recent version of the RCI Model Rule adopted by RCI in July 2018. These two comments were the only comments that the Racing Commission received on the topic of the jockey concussion protocol rule.

The Racing Commission received one other public comment from "eddieibis@aol.com" stating that "most" of the rules are a violation of his "4th admnt right". The commenting party provided no further detail or explanation in support of this comment.

In response to the comments from HCCTR and the Jockeys' Guild , the Racing Commission determined to modify its proposed jockey concussion protocol rule to reflect the most recent version of the RCI Model Rule adopted in July 2018. In response to the comment from "eddieibis@aol.com", the Racing Commission made no modifications to the rule. The Racing Commission believes that the provisions of the Thoroughbred Racing Rule that allow the search of barn areas and other property and the confiscation of items that are not permitted on racetrack grounds are consistent with the regulatory environment in which thoroughbred racing is conducted and are not in violation of the Fourth Amendment to the United States Constitution.

July 13, 2018



Mr. Joe Moore
West Virginia Racing Commission
900 Pennsylvania Ave., Ste 533
Charleston, WV 25302

Sent via email joe.k.moore@wv.gov

RE: Public Comment §178-1-22.11
Concussion Protocols and Return to Ride Guidelines

Dear Mr. Moore,

Please accept this letter on behalf of the Jockeys' Guild regarding the proposed regulation regarding concussion protocols for jockeys. We greatly appreciate the current proposal for the Concussion Protocols for jockeys riding in West Virginia under §178-1-22.11.

However, in light of the recent ARCI Model Rules Meeting, held on July 9, 2018, in Omaha, we would respectfully suggest a few minor changes to the proposed regulations with regards to the Sport Concussion Assessment Tool, as well as those who are able to complete the Medical Authorization form. Please see our attached suggested changes.

With regards to the Concussion Protocols, based on the information we have gathered and protocols created through collaboration with the University of Kentucky, MedStar, and New York Institute of Technology, it is the Guild's belief that uniform Concussion Protocol and Return to Ride Guidelines, which have established a minimum standard, are in the best interest of racing. For the most part, this standard is similar to protocols currently being used by other sports, utilizing the most current Sports Concussion Assessment Tool, which is presently the SCAT-5, with the exception of minor variances to account for the uniqueness of our industry.

In light of the research and raised awareness, concussions and head injuries are one of the most pressing matters facing all sports, including horse racing. However, here in the United States, racing is one of the only sports that does not have a protocol in place for detecting and managing concussions. The United States lags greatly behind Great Britain in its approach to concussions suffered by riders. Since 2004, all jockeys riding on racetracks under the authority of British Horseracing Authority (BHA) are required to undergo baseline neuropsychological testing annually in order to be licensed. In addition, a standard protocol must be followed before a concussed jockey is permitted to return to riding, which is overseen by the BHA.

The Guild has been working for the past several years to bring awareness to the risks and dangers associated with concussions, not only to the jockeys, but the industry in general. In addition to raising awareness, we have been working on concussion protocols for jockeys and return to ride guidelines to be used. We believe it is one of the most pressing issues facing jockeys and their families today and it has been overlooked by the industry.

Up until recently, there has been minimal support from the industry and regulators in establishing the necessary databases, further research, and creating guidelines. During the Guild's 2014 Annual Assembly Dr. Kenneth Perrine, a neuropsychologist at the Weill Cornell Brain and Spine Center and an expert in concussion, who worked with Ramon Dominguez said, *"I was amazed once I started talking with Ramon and another jockey about how little oversight there is in terms of concussion management. Unfortunately, you guys are kind of the last of the athletes that sustain concussions to not have some type of guidelines, management, and treatment; especially knowing when you can return to ride. You ride, you get paid; you don't ride, you don't get paid. That is different than any other sport."*

Data supports the fact that jockeys sustain a wide variety of injuries, ranging from bruises and cuts, to life threatening injuries, including severe head and spinal cord injuries. When accidents do occur, the industry shall do everything possible to provide care and minimize the possibilities of injuries. Concussions, if not diagnosed or treated properly, or if the brain is not given adequate time to heal, can lead to life-long issues. Additionally, once an individual has suffered a concussion, they are more susceptible to suffering another one.

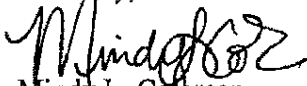
As an industry, it needs to be recognized that concussions affect everyone in racing, including the jockeys. In addition to the mild traumatic brain injury suffered by the individual, everyone on the racetrack, friends, and family can be affected. An individual who suffers a concussion is a risk to themselves and everyone on the track if they are allowed to continue to ride. Additionally, they can be greatly affected later in life if they are not diagnosed properly or managed properly when returning to ride.

It must be understood that while the certified helmets are designed to protect against severe blows to the head, they cannot always prevent a concussion. To date, there is currently no helmet manufactured for ANY sport that is proven to prevent concussions. While it seems there has been a decrease in deaths, there appears to have been an increase in concussions. While we recognize there has been a change in the structure of the helmets, there has also been an increased understanding of concussions and reporting as a result of the awareness.

Based on the recommendations that we have been provided, implementing a concussion protocol is not overly burdensome or expensive. The tracks is simply required to have people who are properly trained in identifying concussions and protocols in place in the event that a licensee has potentially suffered a concussion. Benefits include a safer racing environment and better medical care for licensees.

The Guild sincerely appreciates the Commission's consideration regarding this proposal for Concussion Protocols and Return to Ride Guidelines. Please feel free to contact me via email at mcoleman@jockeysguild.com or in the office at (859)523-5625 if there are any questions or concerns regarding the proposed changes or the suggested protocols.

Sincerely,



Mindy L. Coleman
Counsel

Jockeys' Guild Proposed Changes to §178-1-22.11

22.11 Concussion Protocol. Association shall adopt, have posted, and implement a protocol for diagnosis and management of concussions for jockeys which shall be approved by the Racing Commission. Such protocol shall include an assessment ~~with a minimum of a SCAT-5 exam~~ utilizing the most current "Sport Concussion Assessment Tool" by an individual trained in concussions, which can be a track physician, physician's assistant, paramedic, nurse practitioner, or athletic trainer. Additionally, a return to ride guideline shall be established in order to clear a jockey who has been concussed, or is believed to have been concussed, once he or she is declared fit to ride. Included in such guideline shall be the use of the Medical Authorization for set forth in Table 178-1H at the end of this rule. A completed Medical Authorization form shall serve as the authorization that a licensed physician, licensed physician's assistant, or licensed nurse practitioner, trained in concussion management, has examined the jockey and has cleared the jockey to return to participation. A completed Medical Authorization form shall be submitted by the examining licensed physician, licensed physician's assistant, or licensed nurse practitioner to the Clerk of Scales or the Stewards prior to the jockey's resumption of participation to practice and/or competition.

HOLLYWOOD
Casino[®]
AT CHARLES TOWN RACES

VIA EMAIL

June 21, 2018

Mr. Joe Moore
Executive Director
West Virginia Racing Commission
900 Pennsylvania Avenue, Suite 533
Charleston, WV 25302

Dear Mr. Moore:

The purpose of this letter is to provide Hollywood Casino at Charles Town Races' ("HCCTR") public comment on the proposed changes to the West Virginia Thoroughbred Rules of Racing (178 CSR 1), specifically proposed Rule 22.11 that deals with developing a concussion protocol for jockeys and reads:

An association shall adopt, have posted, and implement a protocol for diagnosis and management of concussion of jockeys which shall be approved by the Racing Commission. Such protocol shall include an assessment with a minimum of a SCAT-5 exam by an individual trained in concussions, which can be a track physician, physician's assistant, paramedic, nurse practitioner, or athletic trainer. Additionally, a return to ride guideline shall be established in order to clear a jockey who has been concussed, or is believed to have been concussed, once he or she is declared fit to ride. Included in such guideline shall be the use of the Medical Authorization form set forth in Table 178-1H at the end of this rule. A completed Medical Authorization form shall serve as the authorization that a licensed physician, licensed physician's assistant or licensed nurse practitioner has examined the jockey and has cleared the jockey to return to participation. A completed Medical Authorization form shall be submitted by the examining licensed physician, licensed physician's assistant or licensed nurse practitioner to the Clerk of Scales and the Stewards prior to the jockey's resumption of participation to practice and/or competition.

Our first point of emphasis is that neither HCCTR nor any other stakeholder to our knowledge opposes a concussion protocol in concept or theory. The true difficulties with respect to creating a rule to capture the concept lies in the implementation of such a policy.

HCCTR has been informed that Racing Commissioners International ("ARCI") will be proposing an amendment to the model rule that serves as the template for the new Rule 22.11 above. It is our understanding that this amendment will likely be taken up at the ARCI's Model Rules Committee meeting this July and will offer up language that is less specific and provides the racetracks a bit more flexibility in fashioning the protocols that will eventually go into effect. Should the ARCI update its model rule, we would urge the West Virginia Racing Commission to examine the updated language before making a concrete determination on enacting its own rule.

The era of concussion protocols is relatively new (the NFL adopted theirs in 2009). Unlike the clear-cut case of a broken bone, concussion diagnosis is far murkier territory and concussion protocols are evolving constantly. Should West Virginia adopt a rule that includes specific tests to be administered and templates of forms to be used, HCCTR has a significant concern that we would be doing so very prematurely. The three-year pilot study on jockey concussions being done by the University of Kentucky that is designed to produce the first comprehensive concussion management procedures for riders has not even been completed yet. There is also enhanced risk and liability being borne by the tracks here and no risk or liability assessment has been done by the industry to our knowledge. Passing a rule before any of that is done puts us at risk of enacting a policy without critical and material information -- something none of us want.

Ultimately, regardless of whether or not ARCI ultimately passes a new model rule, HCCTR believes the infancy of industry concussion protocols as well as their evolving nature dictate that any references to specific forms or tests should be stricken from the rule.

One addition HCCTR strongly believes should be added to this proposed rule is language that mandates the Board of Stewards not permit a jockey to compete in races or exercise horses should the jockey enter the concussion protocol until the rider has either cleared the initial screening by track personnel or has procured a valid return to ride authorization. While we operate without such a provision when dealing with other injuries today, the proposed concussion protocol rule is a bit different. Currently, most -- if not all -- instances of jockeys being removed from their mounts are derived from an obvious injury that renders the rider unable to fulfill their obligations or due to a medical reason the jockey themselves raise. With the proposed concussion protocol rule, the onus will be on HCCTR personnel to identify whether a rider becomes subject to the concussion protocol. If a rider enters the concussion protocol, there is virtually no way that the rider would not miss a mount in the following race due to the time it takes to even administer something like a SCAT-5 exam. No different than in other sports, there will almost certainly be individuals ultimately not diagnosed with a concussion that are going to miss some amount of time. If an HCCTR employee is going to be the person directly responsible for removing a jockey from a mount, we need something in the proposed rule that states that decision must be honored until they are cleared out of the protocol.

Should you have any questions, please feel free to contact us.

Regards,



Erich Zimny
Vice President of Racing Operations

CC: Chris McErlean
Lee Monaco
Bill Carper

Moore, Joe K

From: eddieibis@aol.com
Sent: Thursday, June 14, 2018 10:04 PM
To: Moore, Joe K
Subject: rules

dear mr moore after going over the rules i really think they need to be looked at again most are a vliation of my 4th adment right please look at them again and reconsider thank you owner trainer at charles town