



WEDNESDAY, DECEMBER 9, 2015

Fixing Racing

MODERATOR:

E. Jane Murray: Director of Services, Thoroughbred Racing Associations

SPEAKERS:

Dr. Jennifer Durenberger: COO, Racing Matters

Lisa Underwood: Partner, Wyatt, Tarrant & Combs, LLP

Ms. Wendy Davis: Hello.

I think we'll go ahead and get started.

By golly, we are right on the button this time.

We're at the eighth pole.

We're comin' to the wire.

Thank you again for coming to this year's Symposium on Racing and Gaming.

I hope you've enjoyed the new venue. We have.

It is like coming home for us.

We've held the symposium here many, many years.

I'd like to thank our session sponsor, the *Blood-Horse*.

I also wanna let everybody know that we do have a reception after this panel.

We're not breakin' anything open 'til we're all done though, but there'll be a reception with food and adult beverages.

Well, I think we maybe have saved the best for last.

What an interesting title, Fixing Racing.

It's one of the panel sessions that Liz Bracken and I have worked on and are really anxious to hear what our panelists have to say.

For those of you that have been to the symposium many years, for those of you who've been to racing conferences many years and something that has always been complained about is there's no women in racing.

Well, we don't believe that because we have an all-female panel up here, so times are changing.

Thank you, Lonnie.

[Applause]

Ms. Wendy Davis: To lead off our panel is Jane Murray.

She's currently the Director of Services for the TRA.

Prior to that she was the Executive Director of the Florida Standardbred Breeders and Owners Association.

I knew that, but I hafta write it down because it's a tongue twister.

The fun thing about it is Jane is also a graduate of the Race Track Industry Program from many years ago.

We're not gonna tell anybody how many, but she has seen a lot of these conferences.

In fact, way back in the day Jane and I were the registration committee, the two of us and one typewriter.

We've come a long way.

We appreciate it.

We appreciate all of you for making this event such a huge success.

Jane.

Ms. Jane Murray: Thanks, Wendy, for the kind words.

Our panelists today will explain the hows and whys of maintaining our sport's integrity from both the legal and regulatory viewpoint.

They will describe the tools that are currently available to regulators and industry personnel to identify and remove violators from our sport.

They'll also go in — and maybe go into what things we should be doing and new tools that we should be developing.

They're also gonna touch on the legal quandaries that arise when investigating and prosecuting rule violators as well as touch on what more can be done to tighten up our rules and encourage reciprocity between jurisdictions.

Our first speaker this afternoon is gonna be Lisa Underwood.

Lisa is a partner at Wyatt Tarrant and Combs in Lexington, Kentucky where she's the leader of the Equine and Gaming Team and also the Data Privacy and Security Team.

She served as Executive Director of the Kentucky Horse Racing Commission after having served as their acting general counsel.

While at the Kentucky Horse Racing Commission she was also very actively involved in the Association of Racing Commissioners and was awarded the 2009 Len Foote Award for Executive Director of the Year.

Lisa.

Ms. Lisa Underwood: Okay.

How many of you all today thought I was gonna come to talk about how to fix a race?

[Laughter]

Ms. Lisa Underwood:

[Laughter]

Good.

I'm glad no one raised their hands there.

When we saw this title I think we were a little dismayed.

I like to say I sit next to Mike Maloney — who some of you all may know in the room.

He likes to bet on the horses a little bit — and sit next to him at the basketball games back in Kentucky.

I said, "Mike, they've asked me to come out to Tucson to talk about race fixing."

He looked at me and said, "Lisa, are you sure that's the title?"

I said, "Yeah."

[Chuckle]

Then I looked at it again.

It's supposed to be how to fix racing.

What I thought we'd talk about today is I wanna give you a big law-school overview, big-picture overview about the rules and regulations and what the racing commission is supposed to do.

What their authority is, that type of thing. How due process works and then talk about some tools that we can use and some thoughts from a former regulator.

I left the racing commission about four years ago, and so I'm no longer on the state payroll.

Now I'm in a position where I can say what I really think which is really refreshing, and it's nice to be back here.

I was here I think when I was first appointed executive director I spoke, and I've spoken a lot since then.

It's great to be back here when I'm not on a state payroll.

With that let's kick it off with the law-school-type overview.

How many people in the room are lawyers?

I know Mindy is.

I mean, I know we've got a bunch in the room.

Some of this you're gonna be very used to.

Basically, the racing commission is given forceful control of horse racing.

That power, that authority is granted with the racing commission.

In Kentucky the racing commission has plenary power which is very broad, incredibly broad.

Then there are some other general principles and general powers that are in the statute in that the racing commission is supposed to regulate and maintain horse racing meetings free of any corrupt, incompetent, dishonest or unprincipled horse racing practices.

Also another general principle is the racing commission is supposed to dissipate any cloud of association with the undesirable and maintain not only the fact of honesty and integrity in horse racing, but also the appearance of honesty and integrity of horse racing.

I think that's a very important concept that will go throughout my talk and probably in Jen's as well.

The commission in Kentucky, and I'd say it's like that in other states as well, is looking not only at what the facts are, but how does it look to the public and to the bettors and to the other people in the industry and the other people in the race.

Then there are some specific powers that are in the statute.

The commission has the power to eject or exclude people basically from association grounds if in the opinion of the racing commission — so that's a very broad discretionary term — in the opinion of the racing commission their actions reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of horse racing.

Again, very broad discretion, very broad powers, very broad authority for the commission.

They're supposed to be looking at protecting the honesty and integrity of the sport when they're making their decisions.

Another concept that is in Kentucky's laws and in most of the other state racing jurisdiction is that racing is a privilege.

It is not a right.

That's in our statutes in one place.

Also when a licensee signs a license application there's a statement in there that they understand that participation in racing in Kentucky is a privilege and not a right.

That's a big concept as well.

We've got some tools that we use basically as I think everybody else — everybody in the room knows racing is regulated by the states.

As I just mentioned the job of the commission is to protect the integrity of racing.

They do that through enacting laws and promulgating regulations and then enforcing those laws and regulations.

Just as an example we've got medication laws, and under those laws we also have penalties if you violate the medication laws.

Then we also have other rules that give you guidance on how to conduct yourself if you're a participant in racing.

For example, one of those rules that's not a medication rule, but one of the other general rules is you're not supposed to use a mechanical device on a horse.

Basic rule of racing. Licensees who violate those rules are subject to denial, revocation, or suspension.

Now for the lawyers in the room, you've heard about this concept before about due process, and prob'ly others have too if you've been involved in the game.

Due process basically has the three prongs: notice, the opportunity to be heard, and the right of appeal.

Notice means that if you've possibly committed a violation the stewards need to give you notice of what rules they think you violated.

They're supposed to give you the rule number, the statute number, the regulation number and a description of the facts surrounding that alleged violation.

Then you have an opportunity to be heard, and that's generally your Stewards' Hearing.

Stewards' Hearings are private.

They're private for a reason.

They're supposed to be private.

Think about it. If you're the person with the infraction, you haven't been found guilty yet.

Is it fair for it to be public and be hashed out in the press before you've really had your day in court?

It really isn't.

Stewards Hearings are supposed to be private.

If you lose at the Stewards Hearing and you are, say, suspended or fined, or so forth, then especially in a suspension case you can apply for a stay pending appeal with the racing commission.

On a finding of good cause the executive director may grant the stay.

Then if the stay is denied you can petition the commission to overrule the executive director.

Then the commission has to hold a special meeting to decide whether to grant you the stay or not.

If you lose in front of the commission on your stay request then you can go to Circuit Court.

That's the process, and I think this was described maybe in the description, that frustrates people so much.

Because we'll see people who have say a positive violation or a jockey with a riding infraction work the system and try to delay when they're gonna serve their suspension until it's convenient for them.

That's not really fair to everybody else, and it looks bad.

It just looks bad.

When you're tryin' to protect the integrity of the industry also from an appearance standpoint we need to think about how we can better manage that.

One concept we have in Kentucky if somebody makes a frivolous appeal then you can take that into account when you assess penalties later.

You also can be required — if you're found to have submitted a frivolous appeal you can be required to reimburse the commission for their costs.

There's some move to try to dissuade people from doing that.

General penalty guidelines as I mentioned before with the medication rules you've got specific medication guidelines.

Then in Kentucky we've got some general penalty guidelines for other infractions that don't fall under the medication guidelines, and I'm sure other states have somethin' very similar.

For example, the horse of the licensee can be disqualified from the race.

You can be fined.

You can be suspended or have your license revoked for up to five years, or you can be ejected or excluded.

With all this you're supposed to look at the seriousness of the violation in determining how big of a penalty there should be.

Now this next slide is something that I don't know if it's been used in Kentucky or not.

I didn't do any research, but it's on the books at KRS 230.990. Basically, it is a Class C felony to tamper with or interfere with a horse race with the intent to influence the outcome if you use a device, material or substance that is not approved by the racing commission.

That's major.

A Class C felony carries a minimum of five years and a maximum of ten years.

I want ya to think about this provision in Kentucky law when you hear Jen's talk cuz she's gonna talk about some big-picture concepts with veterinarians and persons who are not in the state.

This act applies to people who are not licensees.

It also applies to persons even if they're outside of Kentucky.

Okay.

Let's go back to the big-picture, law-school-teaching scenario here.

Under the model penal code that lists why you punish people. Why do you punish offenders?

There are a few different reasons.

We learned this in law school first year for those of you who went through that great experience.

One is to prevent the commission of additional offenses.

Basically, you want to get the bad actor off the racetrack.

That's one reason you penalize people. You wanna get him outta the system.

Another reason you wanna punish people is to protect other people.

If you've got other people who are in the industry who are trying to do it right it's frustrating to them to see people breakin' the rules, and they wanna be protected.

One of the reasons you punish people is to protect the people who are doin' it right.

Another reason you punish people is to provide an example and to deter others and to make sure that other people understand what's wrong and what's unacceptable.

Another reason is to try to reform the person.

You might think, okay, this trainer messed up.

Maybe if we give him some days he'll get his act together.

He'll become more cautious about what he's doing.

He'll become more organized about what he's doing, so that he doesn't have that medication positive again in the future.

I think we all know if you've ever looked at the list of violations that our trainers have there are a lotta people out there who still have violations — who have violations but who've come back and are doin' a good job, and they've cleaned up their act.

The reform aspect can work.

Think about do you punish somebody and try to have them reform and come back.

Now there may be other scenarios where you may think the person can't be reformed, and in order to protect the integrity of the sport they just don't need to come back.

I have some ideas on that, but anyway.

Then the last one, and I don't know why I left this on here.

I prob'ly shoulda taken it off because I think that's a law school concept, but I'm not sure it really applies in racing.

Some of you all may disagree, but retribution I don't think really plays into the penalties.

I think we do it more to clean up the sport and to try to reform people and to make a level playing field for the people who are tryin' to do it right.

Who's hurt when somebody cheats or when somebody doesn't follow the rules?

Well, obviously others in the race.

Everybody in the race who has done it right, the jockeys, the owners, the trainers, the ones who are followin' the medication guidelines, the ones who aren't over whipping or aren't usin' a buzzer or whatever.

The bettors are hurt.

The issue with the bettors of course is, and this is big for me.

If there's a medication positive they've already cashed their ticket or not cashed their ticket when the medication positive is resolved.

They're outta luck if somebody doesn't do a good job in racing and doesn't follow the rules.

Then lastly who's hurt?

The whole industry.

I think that's everybody in this room.

I think it's everybody who cares about horse racing.

I think when somebody cheats and when there's a bad incident, if it's a jockey buzzer incident, if it's a bad medication positive it offends me personally cuz I love the sport.

I think we've heard a lot of stories these last few days of people who love horse racing.

I feel like it gives a black eye to all of us.

I mean, it hurt me when I was a regulator and people would come up to me and say, "Don't you think people are cheating in horse racing?" or "I wouldn't really spend any money on it."

I just throw that out there as a thought of who's hurt.

Now I'd like to talk about some tools and additional thoughts from a former regulator.

One of the things we did in Kentucky after there was a positive and before the trainer was told that he had a positive we would do a barn search.

Mostly on Class A's and B's, but it depended on the scenario.

Always on a Class A or B when I was there.

Do a barn search. We might do a vet truck search and my buddy, Curtis, I don't know if he's still in the room.

I would call Curtis Linell and ask him to do a wagering analysis to see if anything funny showed up from the wagering perspective.

Think about that as a tool.

We had protocols for big race days such as Oaks Derby, Breeders' Cup.

We had security on every horse and every barn and all that.

That's nothin' new.

We did it when I was there.

It was done before I was there.

One of the things I did after every Derby and after every Breeders' Cup just cuz they were big events.

I would have my team put together their thoughts on what went well and what could be better.

You might wanna think about doin' that for your meet.

We tried to improve every year.

It was a continual improvement deal.

Everybody would do their own section like enforcement would write up their to-do list and what went well, and remember next year we need to have this many radios or whatever.

That just helped for the next year's planning.

Additional thoughts.

This is very high-tech here with the cans.

[Laughter]

Help the regulator.

It's a tough job to be a regulator.

Everybody's shooting at you.

A few times I had situations arrive where someone approached me and said so-and-so is cheating or so-and-so whatever.

So-and-so's doin' this.

I'd say, well, help me catch them.

At one point I even went to the FBI about a situation and brought a couple people with me.

I could not get the informant to help me.

You need to have an educated — a good informant to get the Federal Government involved, or at least that was my experience with that.

Then I had some other experiences where I just needed — the same people who were sayin' this person's cheating, when I asked them for help they wouldn't help me out.

Think about that.

If you're out in the audience and wanna help get the people who shouldn't be in the industry outta the industry think about helping your regulator cuz they can't do it all.

They can't be everywhere.

They don't know everything.

They just have so many resources.

Just a thought.

Another thought and this is somethin' that's really been on my mind.

Amy Zimmerman touched on it yesterday.

I hope most of you all saw the 45-Ideas Panel cuz that was really good.

The idea was out there about transparency which is really a good one.

I mean, there should be transparency in the process.

We've got transparency in the rule-making process for example.

I think we need to balance that with how we treat people.

Amy made a comment about we need to have our fights behind closed doors.

I totally agree with her on that.

I think we need to be treating each other with civility.

I've heard the comment before that we shoot each other in the foot.

I talked to Amy afterwards.

She said, "Yeah, if we had a firing squad we'd be in a circle."

[Chuckle]

I know I felt that way some.

Think about that because if we wanna promote our industry we need to be positive.

It's okay to have disagreements.

Disagreements are good.

We come out with better thoughts, but how can we do it without hashin' it out in the press?

Just a thought.

And makin' it personal, another thought.

National license.

One issue I had from time to time is reciprocity not being honored.

That was very frustrating from a regulator's perspective.

Think about whether it makes sense.

There are a few pros to a national license.

One is it'd be a lot more convenient for owners and trainers and jockeys who ride or participate in racing around the country to go one place.

We need to figure out a way to do it though so that everybody feels protected or that the regulators feel protected.

I talked to one person about the concept last night from a state and that person said, "Yeah, but they might wanna license somebody we wouldn't allow in our state."

That's the ongoing dilemma.

To me it makes sense for people if we're gonna promote the industry too to have a national license to make it easier for people to get a license if they deserve a license.

It also could help from the standpoint if someone has been denied a license in one state because they've had an infraction that would revoke it nationally, and the other state wouldn't even hafta make that judgment call.

Just a thought.

One issue I know we'd hafta think through of course is in Kentucky as in a lotta states the racing commission gets a lot of its revenue from licensing.

You'd hafta think that through and figure out a way to dole it out among the states.

I think that's it for my comments for now, and I'm gonna turn it over for Jen.

Ms. Jane Murray: Thanks, Lisa.

Dr. Jennifer Durenberger is gonna be up next.

She holds the very unique distinction of having both law and veterinary degrees along with having regulatory experience.

She's previously served as a Director of Racing for the Massachusetts Gaming Commission as well as serving as a commission veterinarian in California and an association steward in Louisiana.

She's an accredited steward and is on the Board of Directors of the Racing Officials Accreditation Program.

Dr. Durenberger now owns her own consulting company, Racing Matters.

Great name by the way.

Dr. Jennifer Durenberger: Thank you.

Ms. Jane Murray: In Saratoga Springs, New York.

Jennifer.

Dr. Jennifer Durenberger: Thanks, Jane, and thanks, Lisa, and thanks to the RTIP for having me here today on the last panel of the last afternoon.

I'm so glad that there's so many of you here.

I did a last panel one year when the attendance was not this large, and so I'm really glad that you all are here and hope that it's worth your while.

If not, the cocktail hour will be starting afterward.

I wanna start with two thoughts in case I run outta time that to me are more important than veterinary-specific things.

One is how many students do we have left in the room?

We do have a few. Okay.

I say this every year.

This is my standard line, and it's as true now as ever.

I'm so glad that you wanna join our industry.

Racing is one of the few things that I can think of where you can go into the profession, and the longer you're in it the more valuable you become.

Welcome and I'm glad you're here.

The second thought, I wanna pick up directly on something that Lisa said.

That is of all of the things that commissions are asked to do, and we do a lot of things, the most under-funded piece of that is investigations.

There was a time when that wasn't as true as it is today, but that's kinda the first thing to go as resources get cut.

When we think about are the commissions doing a good job part of that job is investigations. It's not just rule-making.

We get very excited about rule-making because there's a lotta controversy there.

The boots-on-the-ground piece is something that in my perspective, and I can say this cuz I've also left the public sector at that moment, is that I think that boots-on-the-ground piece is something that we're missing, and it's critical.

All right. We're gonna move on.

When we first huddled about this presentation I was asked to talk about what tools are in our toolbox that might be used to prosecute and sanction veterinarians for their role in inappropriate medication practices.

I use the word inappropriate because we need to remember that what might be entirely appropriate veterinary therapy in a non-racehorse might be highly inappropriate in a regulated environment.

I'm gonna also start with a 30,000-foot view of the regulatory scheme.

I'm gonna not be redundant.

I don't think I am, but I do think that it helps us put some of this in perspective.

Alright.

We've figured this out.

High school Civics, right, we start with the basic principle as Lisa mentioned.

We find it in the Fifth Amendment to the Constitution which is that nobody gets to take away your life, liberty or property without affording you due process.

Part of due process which we sometimes take for granted is that whoever it is that wants to take some action against you, take away that life, liberty or property has to have authority to do so.

We call this jurisdiction.

I can't just decide that I like Lisa's bottle of water and take it cuz that would be theft.

Similarly, if you have an occupational license an agency can't just take it from you unless it has the authority to do so.

Part of that authority — well, we'll trace that here in just a moment.

Most of us are familiar with the blank page.

[Chuckle]

The basic racing regulatory structure which of course starts we have a Federal Constitution.

It's silent on gambling.

We have a Tenth Amendment that ensures that the regulation of gambling will be up to the individual states.

We talked about that in the last panel.

We have a state constitution that probably prohibits gambling.

I picked on New York because I'm from New York.

We have an amendment or some sort of statute that was passed by the legislature which is gonna expressly permit pari-mutuel wagering or any other type of gambling that that state will allow.

We have a state agency which is created by enabling legislation, and it's charged with administering that law.

Lisa talked a little bit about how we do that, and we do that with rule-making.

We do that with occupational licensing.

All of that authority is derived.

It's traceable directly to the legislation that enabled that agency to exist.

The commission is only authorized to do the things and take the actions that its state authorizes it to do.

That varies from state to state.

Enabling statutes are very, very different.

I've always considered in my spare time putting out a 38-state comparison because it is remarkable how different our enabling statutes are.

They're all a creature of whatever the political climate was at the time that encouraged the legislature to enact that statute and to permit pari-mutuel wagering in the state.

That's an academic exercise that I'll save for another time.

We've also got some federal law.

Not just the Interstate Horse Racing Act which actually talks about horse racing specifically, but we have a number of these so-called enforcement statutes. The Wire Act. Some of the RICO legislation. Mail fraud, wire fraud.

These were all enacted in part as aids or tools to help states investigate and prosecute crimes especially when some of the people involved in those crimes are no longer in their jurisdiction because they're not in their state.

As we all know with interstate simulcasting about 90 percent of our revenue is actually placed somewhere off track. Not all of it out state, but somewhere off track.

In addition to the state racing commission though the veterinarians practicing in a pari-mutuel environment have another state administrative agency under which they hafta be licensed.

There's a state veterinary board.

Just like we have 38 different state racing commissions there's 50 veterinary boards out there in all of the different states.

If you're going to practice on the racetrack you hafta first be licensed by that veterinary board before you're eligible for a racing commission license.

The veterinary board and the racing commission serve similar functions.

You can imagine how that works.

If you are ruled off from practicing veterinary medicine in one state the other states may very well find you ineligible for licensure.

We also have some federal agencies involved.

If you're a veterinarian you need to comply with — you hafta have a license with, be accredited by the Drug Enforcement Agency if you want to possess, use and dispose of DEA controlled substances some of which we use on racehorses.

If you wanna write health certificates so that you're clients can ship horses across state lines you hafta have accreditation with the USDA.

When we talk about what can we do if somebody's inappropriately treating a horse here's the good news for commissions.

Racing is a highly regulated industry.

That's a defined term.

In the legal profession it's right up there with securities trading, casino gaming, nuclear power generation.

It means though at the end of the day that the state will permit the agency to do a lot of rule-making.

A lot of rules restricting or prescribing the conduct of the individuals especially if you have access to the stable area and the horses that reside there within certain guidelines.

We refer to this as plenary power which Lisa talked about earlier.

It also means that the courts give quite a bit of deference within state constitutional parameters as to how the agency interprets both the regulations and the statute that the legislature authorized it to administrate.

Here's the bad news for veterinarians.

Racing is a highly regulated industry.

As a result if you take out an occupational license to work in the pari-mutuel environment regulated by the commission you are agreeing to abide by the rules that restrict the way that you practice medicine in exchange for the presumed benefits that come with the ability to apply your trade on the racetrack or licensed training center.

I'm not quite ready for that yet.

The medication regulations that the commission writes are often a lot more restrictive than those that the veterinary board writes.

The reason for this — and actually you saw it in Lisa's enabling — I'm sorry.

It's not your enabling statute any more.

In the Kentucky enabling statute the language in that statute is to protect against the cloud of association with the undesirable.

Language like that exists in our enabling statutes. It also exists in court decisions at some fairly high levels.

If you're a veterinarian you have access to potentially performance enhancing or retarding medications.

You have pharmacologic knowledge, and you have technical skills that do have the potential to uniquely affect the outcome of a pari-mutuel event, right?

This is not to say that other people who are not licensed as veterinarians can't do the same.

Coming in contact with the horse they may have some or all of those abilities themselves.

There's a lot of examples, but the analogy that I like to make to gaming commissioners who maybe don't have as much familiarity with horse racing as they do with casino regulation is this, in gaming we write a ton of regulations governing

slot machines and table games and the people who have access to the gaming floor. In racing, horses are the gaming floor, right?

Here's the rub.

It's pretty hard to imagine a jockey riding a race in New York who doesn't have a license to be a jockey in New York.

Their job is in that moment, right?

Veterinary care is a year-round thing.

Unless the horse spends his entire life on the grounds licensed by a particular commission there's medications and treatments being administered quite frequently in some cases in a location that the commission has no jurisdiction whatsoever.

This is a very real and practical challenge both from the investigatory standpoint and from the prosecution standpoint.

What I thought I'd do is come up with just sort of four different scenarios to think about.

Then I'm hoping as we get into some discussion here these will be helpful to us.

Scenario One is that the investigation comes to the conclusion that the finding can't be attributed to a veterinarian, right?

Let's be clear.

Not every time we have a medication finding it doesn't necessarily mean a veterinarian was involved.

Also let's not lose sight of this.

It also doesn't necessarily mean that there was tampering involved, right?

I don't wanna forget about that.

Here's some possible sources.

Environmental contamination.

There may have been another person who came in contact with the horse, or there may have been some tampering.

Scenario Number Two, we might have an investigation that says, yeah, we can trace this medication to a veterinarian, but that veterinarian isn't licensed by the

racing commission where the horse actually competed in the race with the prohibited substance in its blood.

Maybe they shipped in from a farm or a private training center.

Maybe from a racetrack or a licensed center in another state.

Scenario Three's a new one. Not entirely new, but it's kinda come up to the forefront a little bit more.

The finding is attributable to a specific veterinarian licensed by the commission where that race took place, but the investigation reveals that he or she provided a therapeutic treatment in the dose and administration manner consistent with the commission's own guidance.

Scenario Four, the investigation knows which veterinarian did this.

They are licensed by the commission in which the race took place, and the treatment was in direct violation of all of the rules. That's a pretty straightforward scenario.

I'm gonna stop here, and then if we need to as we have some discussion we can come back and use this diagram maybe to sorta talk about who has authority in this particular instance and who doesn't.

I think we'll talk about some of the things that we can do if that veterinarian is not licensed in the commission that has jurisdiction over the race where the finding was determined.

All right?

Ms. Jane Murray: Okay.

Dr. Jennifer Durenberger: All right.

Ms. Jane Murray: Very good.

I'd like to invite anybody from the audience to step up to the microphones if you've got a question you'd like to ask of Lisa or Jennifer, but I have a couple of questions first.

Jennifer, is there a veterinary equivalent of a Trainer Responsibility Rule?

Dr. Jennifer Durenberger: There is not, right?

This is something I actually really like to talk about as a veterinarian.

The Trainer Responsibility Rule is basically the way that we say someone has to be held accountable, right?

It was a deal where it was demonstrated that the state's interest in regulating a highly regulated industry was sufficient enough that there was enough of a danger to the other participants and to the wagering customers that someone has to be held accountable, and it imposes a strict liability, right?

It's actually pretty remarkable when you think about it. It's been upheld I think most recently the Fifth Circuit, the Hudson Case.

The language if I remember from that case was something like the Trainer Responsibility Rule, while harsh, is not unconstitutional.

There isn't the equivalent for a veterinarian.

As I mentioned before veterinarians do have unique training and access to medications that can certainly affect the outcome of the race, but there is no veterinary equivalent.

Mm-hmm.

Ms. Jane Murray: Recently, the Indiana Racing Commission settled a case with a veterinarian.

As part of the settlement the commission "agrees to make a recommendation to the Indiana Board of Veterinary Medical Examiners that it take no disciplinary action relative to Dr. Russell's veterinary license."

I bet you got some comments on that one.

Dr. Jennifer Durenberger: I do.

We're gonna run through all the veterinary questions.

[Chuckle]

Dr. Jennifer Durenberger: For those of you who don't know what this case is about, and I'm not at all familiar with the facts of the case other than what I've read in the trade publications.

There was a veterinarian in Indiana, I think at one point it was recommended a 20-year suspension.

It recently settled.

I actually don't know what was being administered.

It did catch my eye that as part of the settlement agreement I think that was reduced to nine years.

Then that agreement to not make a recommendation.

I kinda get back to the whose-statute-is-it-anyway game, right?

The veterinary board is the one that the legislature authorizes to administer the Veterinary Practice Act just as the racing commission administers the Pari-Mutuel Act.

A racing commission if it issues an administrative ruling against a veterinarian, you can factually advise the veterinary board in that state and let them know.

I don't know about recommending to another agency how to administer its stuff.

I'm not sure.

There's probably somethin' here that I don't know about, and I'm sure had to do with cooperation.

Again, it's different if you just let a ruling be known, right?

This person was — here's the administrative ruling that we issued in our state.

When you renew your veterinary license just as any other license, just as any other occupational license in racing you have to disclose if there has been any ruling against your license anywhere else.

If you didn't disclose that, that gets you in trouble as well.

It was very interesting to me.

Mm-hmm.

Put it that way.

Ms. Jane Murray: Well, I think we touched a little bit a few minutes ago on the fact that you can have all the rules in the world, and you can have the commissions ready to take action against violators, but without good, solid, thorough investigations to base your rulings on you're not gonna catch anybody.

I know, Lisa, have you ever had a situation where you did the barn search before you notified the trainer was positive, and what did you find?

What did your investigators come up with?

Ms. Lisa Underwood: Right.

I have had that situation as I mentioned when I gave my presentation, before we would provide the notice to the trainer that he had a positive we would do a barn search.

We would conduct a barn search and might flip the vet truck as well.

We had a positive for one trainer, and I can't remember if it was the Oaks or what the race was.

Anyway, we had a positive for a trainer, and we went to flip his barn and did find some other illegal drugs that were not good, like Class A or B, which led to a whole 'nother slew of penalties.

It does happen.

That is one good tool because if you already have somebody on your radar that has violated — who was not being cognizant or not doing a good job with the medication rules it's possible that they're in violation of some other medication rules.

I mean, they might still be doin' it.

As long as they don't know that they had that positive yet that's one way to try to use your enforcement team a little more wisely.

Ms. Jane Murray: Now I know you had — how many investigators did you have at your beck and call in Kentucky?

Ms. Lisa Underwood: I had three.

Ms. Jane Murray: Three.

Ms. Lisa Underwood: I think that's right.

I think I had three.

I mean, that's not — and sometimes we'd have more tracks running than we had —

[Chuckle]

Ms. Jane Murray: Well, yeah, because it was Thoroughbred, Standardbred, Quarter Horse.

Ms. Lisa Underwood: Right.

We don't have Quarter Horses right now, but we had the Thoroughbred and Standardbred.

At times you might have both Churchill and Kentucky Downs running.

I mean, it could be, and it might even — they're all different parts of the state. Yeah.

Ms. Jane Murray: Even with three investigators if you've got multiple tracks —

Ms. Lisa Underwood: Right.

Ms. Jane Murray: Yeah.

Jennifer, what about Massachusetts?

Now you have the State Police at your beck and call?

Dr. Jennifer Durenberger: Yeah.

The Massachusetts agency has a state police unit that's assigned to it.

I can't speak to how many people they have now.

I would suspect more with the slot machines at Penn National Track, so I don't know.

We had three full-time officers that were with the unit assigned.

Ms. Jane Murray: Now did the investigators in both places did they handle just strictly, for lack of a better word, barn area and that type of investigations, or were they also working on licensing?

I mean, were there licensing investigators that just did that?

I'm tryin' to figure out how thinly they were stretched.

Dr. Jennifer Durenberger: Sure.

No.

In our case they were involved in all of the agency activities, so front side as well.

Ms. Jane Murray: Is that the way it was in Kentucky too?

Ms. Lisa Underwood: Same for us.

Yeah.

It's thinly stretched.

This is why I have that Help Your Regulator slide.

[Chuckle]

Ms. Jane Murray: Help your regulator.

That's something that racing officials and the racing commission's prob'ly need to utilize more is getting those investigators out and maybe hiring more.

I mean, I would imagine.

Ms. Lisa Underwood: Hiring more would be a good thing.

I mean, as Jen said the boots-on-the-ground is one of the best ways not only to catch people, but it can be a deterrent as well.

Dr. Jennifer Durenberger: Also because, as I mentioned, and as we all know, so much of if there actually is somethin' nefarious going on it's probably gonna involve some waging, and so there's some cross-state jurisdiction.

Again, just for jurisdictional reasons alone your investigators need to be empowered to work with other agencies.

There is the Organization of Racing Investigators, so they really need to be in that network.

It's a great network.

You need to have that because if your investigatory powers stop at the border you're not probably going to be able to do a great job.

Ms. Jane Murray: Well, a lot of our racehorses have become frequent travelers and frequent flyers these days.

Dr. Jennifer Durenberger: Absolutely.

Ms. Jane Murray: They can get treated in one jurisdiction.

I mean, even where we're at in Maryland with the Fair Hill Training Center these horses are racing all through the Mid-Atlantic on any given day.

Lisa Underwood: Well, and when I was there we had great cooperation from the other states.

I mean, for example we did out-of-competition testing for the Derby and the Breeders' Cup, and the veterinarians in the other states where the horses were

where you need to take the sample in a timely manner were always just fabulous to work with.

We never had any pushback.

It was great.

Ms. Jane Murray: What do you guys think about stepping up the veterinary procedures that the commissions regulate?

Should they be more limiting on the actual procedures that are allowed?

Dr. Jennifer Durenberger: You wanna go first?

Ms. Lisa Underwood: Okay.

Since I can say what I really think now as I said earlier.

[Chuckle]

I think it makes no sense at all that we allow individual veterinarians and trainers to have their own medications on the backside.

That's just crazy. I think they oughtta be under the control of the regulator just like they are in Japan and Hong Kong.

I mean, I just I think we oughtta cut way back, way back on who's got access to medications on the backside.

You may disagree with me.

[Laughter]

Dr. Jennifer Durenberger:

[Chuckle]

I will agree with you in part and disagree with you in part.

Ms. Lisa Underwood: Okay.

[Chuckle]

Dr. Jennifer Durenberger: I'm actually gonna go a little bit off topic.

You can pull me back in if you need me to answer your question directly.

Ms. Jane Murray: Okay.

Dr. Jennifer Durenberger: I'm thinking about the TBN article this morning that the British Horse Racing Authority is looking at the disclosure of veterinary treatments in particular breeding operations.

I'm a big believer as a regulator that if we are empowering racing officials and veterinarians — the official veterinarians are racing officials — to ensure that the information that's going into the past performances — if we're giving you the information then we darn well better be gettin' it right.

Cuz as a regulator there's nothing — I would feel really badly if we gave you information that was incorrect because one of my racing officials missed something, or God forbid, make a mistake which we all do cuz we're human.

I'm a big believer that if it's gonna be reported and people are gonna be relying on it to wager, or to claim a horse by the way because you're valuing your claiming prospects, then we'd better get it right.

I don't think that if we're in a system like we currently have that there's any way to ensure the quality of that information when it comes to veterinary records unless we were in a Hong Kong situation or a Japan situation where the regulator's actually controlling the veterinary treatments.

I just don't see how ya do it.

The procedures themselves are different.

Take the breathing operation.

There isn't just one single way that it's performed.

Veterinary surgeons have different levels of skills.

Sometimes things happen with the horse's conformation or the operation itself that affect the outcome a little bit.

Sometimes we wouldn't know about it.

I think it's definitely — I understand the reason for it, but I just as a regulator am very reluctant about providing information that's a little bit difficult to — just think about the difficulties that we've had with reporting the gender to and gelding changes.

Think about everything that's come up with that.

That's a pretty straightforward procedure.

With the exception of some of the cryptorchids that's a pretty straightforward thing.

We've been dealing with this with different rule variations and upping the fines and doing the progressive fines and things for years now.

While I applaud and I understand the interest in it, it worries me as a regulator.

Ms. Jane Murray: Lisa, gettin' back to your comment a little bit about they shouldn't have control of their medications or anything that should be regulated.

I take it you're a proponent of the third-party license administration?

Ms. Lisa Underwood: Yes.

Ms. Jane Murray: That has at least gotten the private vets out of the barns on race day.

Ms. Lisa Underwood: Right.

I think that's a great idea.

Great idea.

Ms. Jane Murray: Yeah.

Once again I'd like to encourage anybody in the audience who's got some questions or even wants to chime in. Dan, come on up.

Come on up.

Audience Member: Is this on?

Ms. Jane Murray: Yep.

Audience Member: I had a question and you were talkin' about it earlier.

Some jurisdictions or some instances in jurisdictions we have a lack of investigative resources for whatever reason.

Where do you draw the line with stewards who to some extent are investigators in watchin' the race and making a decision on disqualifications, looking at wagering patterns, walking the barn area or in the test barn or go into the gate in the morning watching training and see red flags.

Where do you draw the line to the extent that that steward's probably stepped over the line, and now has to recuse himself from considering the violation as a steward?

Ms. Lisa Underwood: I mean, that's a good question because what does happen if it's the steward who's out walkin' the barn area and comes across somebody with a needle who shouldn't have it?

Good question because it's gonna be in front of the stewards later, and then all of a sudden that steward becomes a witness.

I mean, I think that's your point.

You don't want the stewards to end up in that situation.

It's a better scenario if you have enough investigators so that it's the investigator or somebody else who comes upon that situation or finds it.

Does that make sense?

I mean, does that answer what you were —

Audience Member: That answers my question to some extent.

The real answer is field stewards.

Having that fourth safety field steward that's out there that knows what to look for and is a presence on the backside and another set of boots on the ground.

Ms. Lisa Underwood: Right.

Audience Member: I hope more jurisdictions are goin' that direction.

Ms. Lisa Underwood: That would put a steward on the backside during the races which it wouldn't — you wouldn't have one on the backside during the races.

Audience Member: Exactly.

Ms. Lisa Underwood: Or you shouldn't, so yeah.

Audience Member: Could be in the test barn, could be at the starting gate, could be in the holding paddock.

Dr. Jennifer Durenberger: I am a huge proponent of the safety steward concept.

In Massachusetts we called it field steward cuz I thought that I had different responsibilities in that job description than just safety, so we called it a field steward.

I can't say highly enough about bringing one of those in.

It's a great asset.

If the commission can't afford it maybe there's some operators that could do that as well.

I do get a little concerned though about what are they talkin' about about what they've seen back there with the stewards?

Not necessarily about a specific case, but I can imagine some scenarios where they come in and they're talkin' about what they've observed.

That's what they're supposed to be doing.

Then if something later becomes of that and it's a case that field steward has now already communicated what he's observed to the people that will be adjudicating it.

With that one caution in mind, and I think if you're mindful of it you can make it work.

Everybody get a safety steward.

Ms. Jane Murray: John.

Audience Member: Yes. Hi.

Is there somebody here from the Jock's Guild or somethin'?

[Laughter]

Audience Member: Anyway, I'll do the best I can here.

I'm John Wayne.

I'm Executive Director of the Delaware Thoroughbred Racing Commission.

Just give ya a little background, 15 years as a field agent for the Thoroughbred Racing Protective Bureau, and 9 years as the Assistant GM at Atlantic City Race Course before I went to work for the Delaware Racing Commission.

My point was —

Audience Member: — Dr. Durenberger, we had a —

Audience Member: — in the State of Arizona from 1972 —

Audience Member: I'll defer to the chairman.

Audience Member: — to 1987.

I also raced horses in England and Ireland and France where there was no medication allowed.

I also rode horses on rancheros — for every medication that God ever thought of to win a race out there you used.

I wanna say overall the best thing that could possibly happen was no medication or at least medication that was administered by a veterinarian.

The best thing that cured me — to win races up there and riding the horses was — and it was tough because we were riding 30 miles over the mountains in Santa Barbara and then riding 2 days later.

Well, one of the horses that I had brought there and was riding and a vet administered medication to.

A few other fellas of my camp didn't know we had done that and administered administration to the horse.

When we got down to the starting line the horse's eyes— of my horse's eye were hanging out on stalks —

By the time they got the race started my eyes were hanging out on stalks.

Ever since then no more medication.

It doesn't help the animal.

Ms. Jane Murray: Thank you, Mr. Goodman.

Dr. Jennifer Durenberger: Thank you.

Ms. Lisa Underwood: Thank you.

Ms. Jane Murray: Thank you very much.

[Applause]

Audience Member: Mr. Goodman was Chairman of the Arizona Racing Commission when I was an agent here at Turf Paradise.

We ruled a few guys off, didn't we, Chairman?

[Chuckle]

Audience Member: Anyway, what I was sayin' durin' lunch with Dr. Durenberger was that in 1982 I was working Keeneland and I had a conversation with Mr. Bassett.

Mr. Bassett had asked me the question, he said, "What's your take on the integrity of racing?"

I said, "Well, it's the most important thing." Then he looked at me and he said, "Yeah, but who's responsibility is it?"

I said it's your responsibility, mine, the jockeys, the trainers, the owners, the patrons, the valets, the veterinarians, the guy workin' in the men's room.

It's everyone's responsibility cuz if they see somethin' that affects the integrity of racing they need to report it.

If ya see somethin' say somethin'.

That's a term that's been used up in New York a lot, and it's true today because a black eye in Delaware is a black eye in Pennsylvania, Minnesota, California.

We hafta protect our industry because we're the people there.

If we wanna see our industry grow and prosper then we hafta be the ones to protect it.

That's all I wanted to say.

Ms. Lisa Underwood: Thanks, John.

[Applause]

Ms. Jane Murray: Any other questions from the audience at all or comments?

If not we're about outta time if you guys wanna wrap things up with a few closing comments?

Ms. Lisa Underwood: I think I pretty much covered everything.

Hopefully, I didn't make too many people upset today.

I really appreciate bein' asked back, and I thank you very much.

It was nice to be able to come back when I wasn't on the state payroll and to be able to speak my mind, so thank you.

Ms. Jane Murray: Jennifer.

Dr. Jennifer Durenberger: I always appreciate the opportunity to speak my mind.

[Chuckle]

I guess this is just picking up where I started.

I always worry that the students are concerned about the industry that they're going into.

I don't want anyone to say this is the take-away, and this is how the symposium ended.

We're talking about all of this horse doping and horse drugging and all of that because these are rare events in horse racing.

The reason that we're talking about it is because they're really, really rare, and we wanna eliminate them if at all possible.

I don't want anyone to leave with the impression that it's all doom and gloom out there because this is a fantastic industry, and we're all in this together, guys.

Ms. Jane Murray: Well, I'd like to thank our panelists for their fine legal and veterinary comments that were made today.

Appreciate them comin' out.

Appreciate everybody for stayin' for the last panel of the conference.

I know Wendy and Doug and Liz have a fine party out there planned for us.

They said when we get done they're gonna open the bar.

Hasta la vista.

Dr. Jennifer Durenberger: Have at it.

[Chuckle]

[Applause]