1. **Call the Meeting to Order and Introductions:** Michael Timmons, Chair

   Richard Shiers from Gorham stated that he has been in the harness racing business for some 35 years, but he has not raced in the last 10 years. He stated that he has been wanting to be on the Commission for the last 3 or 4 years and he’s very pleased to be here.

   Edward Kelleher stated that he’s been around harness racing for a long time. He appreciates the appointment Governor Mills has made for him. He has spent 23 years working for the Chief Justices of the Supreme Court handling business in Augusta and elsewhere. He spent 16 years in the Maine House, so he knows a little bit about procedure.

   Jim Kelley from Millinocket stated that he’s been in the Breeders program for 30 years he guesses. His wife and him have a small breeding farm up there. He’s interested in the industry as a whole and hopefully it will be able to continue for a while longer. He thanks the Governor for his appointment.

2. **Review and Approval of Minutes**

   Commissioner McFarland made a motion to accept the minutes of April 19, 2019 as presented. Commissioner Kelleher seconded. Vote 4-0. Commissioner Shiers did not vote.

   **Review and Approval of Decision and Orders**

   AAG, Guay stated that he circulated an opinion to the Commissioners and he indicated that only Commissioner McFarland and Commissioner Timmons would be able to vote on it because they were the ones that heard the case. That decision is ready for a vote. Commissioner Kelleher asked if they were the only two members that heard the case or were there other members present. AAG, Guay stated there were other members present but they’re no longer on the Commission, so they cannot vote. Commissioner Kelleher stated he understands that, but don’t you have to have 3 votes for a majority. AAG, Guay asked so is your proposal than that they vacate the former decision and retry it. Commissioner Kelleher stated as long as it’s not a procedural problem. He thought you had to have 3 votes here for a majority. AAG, Guay stated the larger framework would be is there enough members to have a meeting. That’s the first issue, and clearly, they have enough members here. Then on any particular business item there would be a vote and technically all 5 of you are available to vote, but because 3 of you had not heard the evidence you would abstain from the vote. So, you’re not recusing yourself from the vote you’re abstaining from the vote. So, the vote would be 2-0-3. It would be an official vote and as long as Commission McFarland and Commission Timmons agree with the written form of the decision and order then it would pass. Commissioner Kelleher stated regardless of not having 3 votes. AAG, Guay stated correct in his opinion it’s law. Commissioner Kelleher stated it’s your opinion and we have to take it either one way or the other isn’t that correct. AAG, Guay stated yes so from now on he will be giving legal opinions and you can decide whether to ignore it or not. That’s essentially the way it works. Commissioner Kelleher stated you’re suggesting that they abstain. AAG, Guay asked Commissioner Kelleher if he thinks he could vote on a matter he didn’t hear. Commissioner Kelleher stated not at all. AAG, Guay stated then he suggests that he abstain. Commissioner Kelleher stated just for the record, 2 votes constitute a win. AAG, Guay stated if it’s 2-0 it would constitute a win. Commissioner Timmons stated that at the time Commissioner, they only had 2 individuals that were serving because at the time the 3rd
individual either had left so they only had 2 people, so they went through the whole process the way it was supposed to go through. Commissioner Kelleher stated that he was only trying to understand the numbers. Mr. Jennings stated that he would like to echo AAG, Guay’s perspective on this. The policy has always been you need a quorum to open a meeting you don’t need a quorum to vote on every particular matter. Commissioner Kelleher stated in the Legislature it’s just the opposite you have to have a quorum. Commissioner McFarland made a motion to approve the Decision and Order for Tracey Whittemore as presented. Commissioner Timmons seconded. Vote 2-0-2. Commissioner Shiers, and Commissioner Kelley abstained. Commissioner Kelleher did not vote.

3. **Discussion Relating to Complaints about Racing Venues.** The Commission will discuss complaints concerning the condition of Maine’s racing venues. Commissioner Timmons stated that he didn’t know about procedure. AAG, Guay stated procedurally the Commission needs to decide what the purpose of this discussion is, and he explained that. The process will drive any discussion. For example, if there is a general concern about all the tracks in the State of Maine that all the tracks need to come into compliance with their new USTA rules or there is something going on that effects all the tracks. Then that is a good discussion and that would be proper. It’s more of an educational type of discussion with the industry that these are the types of things that are going on. If there are issues with any specific or a number of specific venues then it is possible to have a discussion at a meeting in a public discussion to air grievances to hear grievances, but it’s important to understand that that type of meeting will not have any teeth in it and if the Commission would wish to have a track do something different then the proper procedure to do that would be to open an actual proceeding and that there would be evidence taken, the Commission would hear evidence and there would be argument of how the evidence compares to the law and the duties of the tracks or whatever. Then the Commission could order whatever as long as it’s lawful. If the Commission intends to take any type of or would intend to take any type of remedial action you’d have to kind of do that in a hearing.

You have to give notice to the track. The Department of Agriculture would issue a notice of hearing if it’s a racing venue. They would present evidence, there would be witnesses. The racing venue could bring their own witnesses and cross examine witnesses. That’s a more formal process then after that the Commission could vote to impose maybe a condition on a license in order to maintain your license you need to do this, or you need to do that. If you don’t intend to take action then he’s a little less comfortable and he guess you would do a public comment period he would suggest to you that potentially any information that you hear during a public comment period could be argued by the racing venue and in an adjudicatory hearing to potentially have biased you because in a hearing you’re only allowed if there’s a hearing you’re only allowed to consider the evidence at the hearing. The downside to having sort of a public discussion about racing a specific racing venue is that information could potentially be seen as prejudicial at a later hearing. It could be isn’t guaranteed, but it could be. If it’s just a discussion about racing venues in general you’re a lot safer. It’s really hard to know how to proceed because you’re not sure what the issues are, but if you want to take action and that’s something that you think, and you could direct the executive director to do an investigation and potentially hold a hearing. Commissioner Timmons stated he would be more than willing to follow that, and he’s pleased to say that when he personally, as head of the Commission, was approached with a complaint he contacted to Mr. Jennings and made a phone call. Mr. Jennings asked where does that leave them. AAG, Guay stated he thinks he’s hearing that the Chair is asking you to do an investigation. Commissioner Timmons stated that’s true. As representing the Commission as to the protocol and trying to handle the situation professionally with chain of command. AAG, Guay stated are you suggesting that members of the audience that would have complaints instead of giving them to the Commission today give them to Mr. Jennings, so
that he can prepare the material to bring to you for a hearing. Commissioner Timmons stated that he thinks there are others and there are Commissioners and they have new Commissioners they need to be able to move forward knowing that when these things happen whether it’s in any other venue or fair that they’re responsible for that they follow that chain of command and in his case, he felt it started with the executive director.

Commissioner Kelleher stated so what are you saying that if the complaint is made to them as Commissioners or to you you’d bring it forward and then send it down to Mr. Jennings. It seems to him the complaint should come to them and then go to Mr. Jennings.

Commissioner Timmons stated that’s the way he did it because it come to him from several people and he chose to do it this way because he’s been through it before. Commissioner Kelleher stated that it seems reasonable, but he would think the complaint would come to them as Commissioners or to the Chair and then resurface over to you. AAG, Guay stated that he doesn’t think there’s a problem with someone approaching a Commissioner saying they have a concern. One of the things is 4 of you are from the industry, you come into contact with the industry. People might approach you and say I’ve got a concern. He thinks the potential problematic area is if a Commissioner does their own investigation. The executive director would do the investigation and more likely than not with the new protocol they have he would assist the executive director in that investigation. They would do an investigation. They would bring it to the Commission for a decision and if a Commissioner has themselves done an investigation, they’re potentially bias. He wants to make clear that it’s ok for people to go to you and say they have a concern. He would suggest you can listen a little bit and direct them to the executive director, not because you don’t care, but because you don’t want to take yourself out of the case later. You are expected you are out in the industry so if there are complaints you can hold your executive director accountable.

Commissioner Shiers stated that when the word got out that he was the voice of the public and everybody knows he goes to every single race he got bombarded with complaints and so he didn’t investigate any of them and he didn’t respond to any of them either. He’s learning as the rest of them are learning here. What do we do, put a list down and submit them to Mr. Jennings? He’s at the races every day they have races and believe him he gets complaints every day particularly about the people who can’t cash a ticket. Some are legit. Everybody knows he goes to Scarborough Downs and he hasn’t missed a race in 30 years. AAG, Guay one of the biggest concerns is the tote board at Scarborough Downs you can’t read it. They work on it diligently but it’s old and you can’t tell what the odds are. You alluded Mr. Guay that as a Commissioner you can’t walk around, he can’t go to the paddock. AAG, Guay stated no, he didn’t say that. You can’t investigate. You can be in the paddock. You can go where ever you normally go. He thinks a big part of your roll is ask them to speak to Mr. Jennings and if you see them again ask them if they spoke to Mr. Jennings. Commissioner Shiers stated that what he wanted to convey to AAG, Guay is some of this investigating is going to take some time because it’s going to involve film work. One of the biggest complaints he gets is the starting gate goes off and leaves a horse and they don’t return the money if someone bets on it. Commissioner Timmons stated that there are people in the public that want to speak but he doesn’t feel comfortable to allow it. AAG, Guay stated that he would suggest that it would be very tricky to do, and one way to do it would be to cut people off but if they have some type of nonspecific concerns his sense is from a little bit he’s hearing there’s concerns about a specific venue and he doesn’t think that would be appropriate. For example, of the quality of the backstretch cameras at all the fairs. That’s ok to have that kind of discussion here because you’re not picking out any single venue. If that’s the kind of issues the public wants to raise that’s perfectly fine. If someone wants to complain about “x” fairgrounds, paddock or “x” fairgrounds, toilets that he thinks would be better to be done at a hearing. That would be his advice. Commissioner
Kelleher asked the Chair is there anybody in the audience here to make a complaint. Commissioner Timmons stated that’s what he was going to do. If there’s anyone out there that has any feelings about Cumberland or Fryeburg or Scarborough or Bangor we could hear that. Ms. Perkins asked why if there are people here willing to speak why couldn’t it be a general speak, and if you guys decide there is something you need to listen to you appoint Mr. Jennings to look into it. All you’re going to do today is listen. William Kasabuski, owner/trainer stated he’s worked with Mr. Greenleaf and Mr. Jennings with several complaints and harped on Commissioner McFarland shoulder quite a bit and being a member of the planning board in Appleton he gets the same thing. You should do this. You know what we need in this town. Well it’s the same in the paddock. He’s learned to direct it to the correct parties, but you are the one that needs to initiate it. Mr. Jennings always has an answer for him. Commissioner Timmons stated that he will follow through with Mr. Jennings and will try to get a timeline worked out on when they can deal with this.

4. **Overview of 2019 Prohibited Substance Enforcement Policy.** The Commission’s staff investigated how other licensing agencies process enforcement cases and sought an alternative approach that should allow more cases to be resolved via administrative consent agreements as opposed to adjudicatory hearings. For most agencies, consent agreements are the preferred method because they avoid the time and expense associated with adjudicatory hearings, and because the cooperation shown by the licensee warrants consideration that results in a lower penalty. Mr. Jennings stated that he’s been working on enforcement of prohibited substance cases since 2015 now. Before that he oversaw enforcement on a different board. What has been difficult for him to get his arms around is that prior to this year at least the system we have in place for the Harness Racing Commission seems to essentially favor adjudicatory hearings and disfavor, if you will, the process that most licensing agencies use which is consent agreements. They’ve had a number of discussions over the years about this and generally what you try to set up a system in which there are incentives to settle a case by a consent agreement. The advantage to the state is that the amount of resources that are necessary to resolve the case are a small fraction of what’s involved for adjudication. They had a period in which the Commission delegated the authority to resolve cases by consent agreement to the staff and that didn’t work out well and he takes responsibility for that. But part of the problem with that was that it wasn’t as transparent to the public and to the Commissioners exactly what the outcome of various cases were until those consent agreements would just show up. They’ve talked with AAG, Guay and they’ve talked about trying to develop a system that addresses the concerns that the Commissioners have which is they want to know what’s going on with these cases and they want to have a say in them, so they developed a process that he thinks tries to achieve all those end points. In terms of the delegation is essentially withdrawn. All they would do under this system is negotiate an agreement and present it to the Commission. It puts the Commission back in control of deciding the ultimate outcome of any case. It puts it on the agenda, so the public can see exactly when cases are being resolved and how they’re being resolved. It allows the Commission to vote and decide whether you want to accept the agreement or not. In terms of the advantage of the licensee they don’t have to take the day off and come to Augusta. In general the statute provides that cooperation shown by the licensee in resolving a particular violation justifiable may result in the lower side of the penalty scale as opposed to what might be justifiable given all of the mitigating or aggravating circumstances so in this memo dated July 11th he outlined why he thinks it’s important to try and consider taking the cases this way again they show up on the agenda almost exactly the way adjudicatory cases have shown up. They’re listed, they’re described, and the licensee is listed. The reason why he thinks it’s important to consider approaching it
this way is that there’s a lot of important thinks to work on as an executive director in terms of the future of harness racing in the State of Maine, and one of them is trying to get people to the track. He’s determined that’s really a full time job plus a few other full time jobs that they don’t actually have. He feels if he looks at the big picture and he ask himself what’s the most important thing in terms of making sure that harness racing perseveres and hopefully flourishes he feels like working on marketing and some of the other issues that are hugely important, and that he’s not able to devote enough resources to that if he spends all his time writing certified letters and triple checking them and getting them out. So that is, in a nutshell, what he is suggesting. He would like AAG, Guay to potentially offer some insight as to how other licensing agencies typically approach resolution on violations and correct him if he is wrong but as he understands it almost all licensing agencies gravitate to this process first and then if it doesn’t work then you try the backup process which sometimes involves going to court, but in your case more often involves adjudicatory hearing. AAG, Guay stated right but what we had prior to these agencies use consent agreements in several different ways but one of them is the way it was set up prior to this proposed system and that is the award delegates the authority to the executive director within a certain framework to settle cases and those are just settled, and they don’t come to the board. That happens at quite a few agencies. Commissioner Kelleher asked what kind of agencies. AAG, Guay stated professional licensing agencies. Harness racing is a little bit, it’s an interesting agency compared to other agencies that he has experienced working at because there is an element of professional licensing here but there’s also event and venue regulations. You don’t just do professional licensing, but you also regulate the venues, the tracks, and events. Most of the activity that occurs is on the individual license. For example, he was counsel for the Board of Nursing and they have like 25,000 licenses and they have a huge amount of cases, so they delegated to the executive director the ability to settle a bunch of different cases just like you did with Mr. Jennings. You can do Class I or Class IV’s or whatever it was first offenses whatever. They had that in place because the Board with 25,000 licenses they were spending two days a month hearing cases. They finally said you know what we’d rather have the executive director take care of these. These aren’t important enough for their time. Their time is valued, and this is the stuff we want to focus on. He’s understanding it’s been sort of developed the view that the you might feel a little bit removed from that process and would rather be more involved. That makes sense to feel that way if you have more time. Mr. Jennings still does most of the work that would otherwise occupy your time during the mechanics of a hearing like sitting here for an hour getting the information out that you have on a piece of paper instead. From a time, perspective, that time pull on you guys is not there. Commissioner Kelleher stated when he came on this Commission he fully expected to do the business of the Commission. He thinks it sends a bad message to the public about them. No reflection on you Mr. Jennings and your staff. AAG, Guay stated so what this process does is it essentially gets the facts before you. You’re hearing the facts and you’re making a decision on the penalty you’re not advocating that but you’re doing it more efficient way. For whatever reasons if you like the theatrics of a hearing, he is perfectly happy to sit here and be the hearing officer, but some people are critical of it. Hearings take so long. Hearings they occur under Title 5 and every hearing he has a check box list. What Mr. Jennings is doing is short circuiting the theatrics of the hearing but getting you the facts and he’s still getting the facts. The public has the ability to see the facts and the ability for you to decide the case. He respects that you feel that not having a hearing somehow means you’re not serving but he is going to suggest to you that what the consent agreement does is it gets you the very same facts as a hearing will get you. It’s just a more efficient way to do it. He agrees with you. Some people think that might not be the best use of time. This is sort of a different approach so that you’re still very
involved but in a more efficient way. Commissioner Timmons stated that he finds that of the total industry there is a very, very few that consistently want to violate the rules and he thinks when they have to come and sit and listen to what the Commissioners have to say he understands the timing; however, there’s a few things that would jump out at him and the seriousness of the situation is something that he has when they said they were going to do the consent agreement on Class B and C. On Class B which is really a very serious aspects of it he would like to have that individual sitting in front of them when they have the hearing, but that’s basically the only thing. AAG, Guay stated the way he thinks the intent is you guys look at this and say you want to set this one for a hearing. As to case #M, you’d like case #M to come for a hearing. Commissioner Shiers stated that he’s pretty much on board with what’s been said. He wants to compliment Mr. Jennings for recognizing they need to make some improvements in the industry, but he thinks they’re kind of dancing around here. When a positive test comes in that the horse goes on the steward’s list unable to perform until he gets a clean test. He’s saying this because this Commission is just like any other state agency it does not have subpoena power, and to avoid the system they just don’t show up if they’re on the schedule and keep postponing it to the next month; and they race through the season with positive test and they come back at the end of the season and square up with this Commission and take the time when the racings done. The horsemen he’s talked to want the horse to come down. Commissioner Kelleher stated if they failed the drug test they’ve cheated on the game and to accommodate them to a consent agreement doesn’t work well with him. No reflection on you Mr. Jennings. He thinks they have to come up here and testify because they took advantage of the other horsemen when their own horse fails the test. Commissioner Kelley stated he always wondered why the horse never got set down. He just can’t understand that. He agrees with everything Commissioner Shiers said. Case in point speaking of stake races that test from last year in the Stakes race that 50 points that affected the finals, that affected the year end awards. That’s a real problem. He just can’t imagine that was able to happen, so he just wanted to say that he agrees with everything he’s saying. Commissioner McFarland stated that he concurs with Commissioner Shiers. He does believe the horses in order to stem the tie that they’ve had in the past, horses need to be penalized; unfortunately, and set down until they get a clean test. He’s always thought that since he’s sat there. Commissioner Shiers stated that he’s done a little bit of research and some tracks had that it’s a track rule not a state rule. If you’ve had a positive test you’re not allowed to come there. They turn you away. What he’s talking about here today is what’s driving people out of business and it’s discouraging those people who would like to get into the business and buy in; and particularly in the Maine Sire Stakes program and even overnight and the reason for that is the prices of horses today and the prices to raise a baby today you’re looking at in excess of thousands of dollars. They want more protection in what this Commission has been providing them with. William Kasabuski stated that he’s been arguing your point for several years here and have tried to influence the Commission on doing exactly what you said. To the newer Commissioners we do have a harness racing commission here and they help the small horsemen as much as they can. He has kind of consumed that position and goes into the barns and talk to the small horsemen. The small horsemen would really like to see this take place. The only way you’re going to stop the drug problem in this game is to do exactly what he said. From the support of the small horsemen, please give this a lot of consideration. Commissioner Timmons stated that what they are saying and what Mr. Jennings has put together and what AAG, Guay has presented would be that the consent agreement that they’ve discussed and what they will discuss in a minute has been in writing, and sent to you and everything is in the penalty that has been recommended; and the fact that the people that have been involved at this point have agreed with what’s on this paper because they’ve had a discussion and talked about it.
Mr. Jennings stated that there’s a reason why they don’t notify the public about a positive test. AAG, Guay stated if he remembers their process is the lab will communicate initially that there is a suspect sample but then it’s confirmed. Is that correct. Mr. Jennings stated correct. AG, Guay stated that if the expectation is the Commission would just act on a suspect it’s not confirmed yet. Mr. Jennings stated that there seems to be an expectation that the public would be notified about a positive test. We notify the licensee and their policy is and practice is they don’t notify the public until the Commission rules on the case. AAG, Guay stated the general practice in and he’s not sure if it’s in this statute is that investigations are confidential, so if there’s a positive test result theoretically and the way the law reads in other statutes the investigatory stage ends when one of several things happens. Dismissal is one and the executive director doesn’t have the authority to dismiss so that doesn’t happen here and if there’s a notice of hearing given, or a consent agreement presented and that’s when the investigatory phase ends. Generally, all the information during an investigatory phase is not public. That is what the law is. He needs to check if it’s in harness racing law. Commissioner Timmons asked even if Mr. Jennings knew that there was a positive is there any way that the judge and the people who were putting them in. This one got right back in and won an $80,000 race. There was more to it then there would have been had that not happened. Is it totally confidential knowing that it was a stakes horse and that they were racing in the final? You might not know that but if you were told that if Ms. Perkins called and said we’ve got a stakes situation because it is a rule within the stakes thing as it relates to drugs. AAG, Guay stated there are rules to his knowledge in the sire stakes rules about the use of drugs and that they are not allowed. He thinks the issue is to the extent that there’s a positive test result from a lab what about it can action be taken. It’s the proposal that a horse would not be allowed to be in a sire stakes race because it had a positive lab test and he would suggest that without haven researched it the mere presents of a positive test result is not enough to prohibit a horse from being in a race. There’re certain things that have to happen. You have to have a hearing and the Commission has to vote to do something. Beyond that, honestly, it’s not clear to him that the Commission can suspend a horse. The Commission he thinks logically a horse is not suitable or capable or whatever in a condition to be able to race. That requires a present tense judgement that on the date of any one meet that somehow that horse is impaired or something. If you had a test result from 3 weeks ago he doesn’t think the Dr. Matzkin can rely on a test result from 3 weeks ago to say that on sire stakes final day that the horse currently is ginned up. Commissioner Kelley stated that he thinks the issue is the timeline. For instant this one happened the 3rd week in September and this happened at Cumberland Fair and the final was October 14th. What Ms. Perkins is getting at is this horse earned 50 points that day and if he had to forfeit that 50 points because of that positive test. That changes the whole finals. How do you have a timeline where that doesn’t happen. AAG, Guay stated that in the past they would be mindful of accelerating the hearing schedule. Dr. Matzkin stated that it takes much longer. There’s no way you could do it in that timeframe. AAG, Guay stated that from the evidence standpoint the evidence wasn’t there. Ms. Perkins asked with this new statute can they set a horse down. AAG, Guay stated to do that cleanly the Commission would have to consider licensing horses and the reason why is the statute authorizes for suspension of licenses. The statute clearly says the Commission can do that. The statute does not clearly say the Commission can set down a horse. That’s why he’s saying you have to show like if there is pulmonary edema or something they can put on the vet’s list or and this would be the State Vets judgement that there’s a test result and the level was so high, and this stuff stays in there for like a year. He doesn’t think there are many substances like that if he can, within a reasonable scientific certainty, say whoa this horse had this level 2 weeks ago he’s probably still impaired then he thinks the horse can be put on the list. Absent that you can’t punish an
offense by using the steward’s list. That’s only for horses that aren’t capable of competing. Ms. Perkins stated the other issue has to do with the trainers. Changing trainers already this year. Mr. Jennings stated that he would like circle back to agenda item 4. He stated they never really got a result. A few things came up and one was to be able to set down the horses. To his understanding you can’t do that without a hearing and he understands that was the practice many years ago was as soon as you got a positive test you got a notice of hearing and suspension. That apparently does not work under due process and is not a procedurally correct way to go about it. What he would say based on the sentiment of the Commission they will no longer pursue negotiating consent agreements. They spent a considerable amount of time settling these cases. They will put them all on as adjudicatory hearings. AAG, Guay suggested to Mr. Jennings that perhaps he could ask the Commissioners if there are features on the ones because they actually did approve the consent agreements. Maybe that would provide guidance for you. Mr. Jennings stated he thinks no. That’s his discretion and he doesn’t see any economy there. The purpose of it was to be more efficient. He’s heard from the Commissioners they prefer to have those cases in front of them. Honestly, he has some reservations about negotiating an agreement and arriving at an agreement only to have it overturned and guess what, we were only kidding. The answer from his perspective is they won’t attempt to do that anymore. AAG, Guay stated that you did have 2 approved. Commissioner Shiers stated that it puts them back to square one. Those people who cheat and they know how to beat the system and they don’t show up down here and they keep postponing it and postponing it and that just infuriates those other people, the 99 percent that don’t come here. They kind of point their finger towards the Commission. What are they doing down there in Augusta these guys had positive test all summer long and we’re racing against them. He was hoping there was a middle ground and he thinks some of those consent agreements do work and we could alleviate some of those to some degree. He hates to throw it all out. Mr. Jennings stated let’s circle back to the continuances. He thinks the Commission made some sort of policy decision on continuances. Continuances would only be granted under certain conditions or continuances to go south for the winter were not acceptable. We can try to make sure that continuances are kept to only what’s logically and reasonably necessary. Commissioner Shiers asked AAG, Guay if they put somebody on the agenda on the schedule and they don’t show up can they adjudicate his case right then and there or do they have to give him another hearing. AAG, Guay stated that if they have received notice, so when he’s hearing office and someone’s not present then what he’ll do is typically have Mr. Greenleaf sworn in. Very often Mr. Greenleaf will call them to say they have a hearing, so he gets the evidence in from Mr. Greenleaf. They do that when they open the hearing. If there’s not sufficient evidence that the other side had notice in that case and he doesn’t think that’s ever happened because the department is very good at making sure that when they show up they can prove that the other side knew about the hearing. He doesn’t ever remember continuing a hearing on a hearing day. There have been times where people have asked for a continuance and he’s denied it and then they don’t show up. In that case they obviously knew about the hearing because they asked for a continuance. If he does not have evidence that they had notice of the hearing, then they don’t have the hearing. Once there’s evidence that they knew about the hearing they have the hearing even if they’re not here. If they want to take the risk and not show up to the hearing, and have people decide their case without them there that’s their choice. Commissioner Shiers stated if they’re down as trainer and we suspend their license and they don’t show up we suspend their license and they’ve got horses in the box they are going to get scratched. AAG, Guay stated that the Commissioners have given some discretion to the executive director and that’s because occasionally horse supply was tight, and someone might have had horses in the box come the weekend and
there would be an agreement. The fields have been set for the next 2 days we’ll let you participate in those races, but your suspension will begin after that. It’s good to give the staff that discretion because it’s for the overall good of the industry to be able to have a full field to be able to have a race. Technically until you vote on the written decision and order it’s not final. You have a hearing and they don’t show up and you say 30-day suspension, that 30-day suspension does not go into effect legally until the next meeting when you vote on the decision and order like what we did today. Occasionally, especially if they’re here they’ll go talk to Mr. Jennings and say they’re willing to start it immediately so that means they are not going to appeal. They start their suspension immediately. As a matter of law, the suspension doesn’t start until the final decision and order. On a default meaning if someone doesn’t show it’s a little easier because he’s going to assume the facts are going to be proven because nobody is going to be here to argue the facts.

5. Consent Agenda:

a. RE: Michael Hitchcock, Complaint Numbers 2018 MSHRC 14 & 15. Trainer Michael Hitchcock has tentatively agreed to settle complaint numbers 2018 MSHRC 14 and 15 arising from two positive tests showing elevated levels of total carbon dioxide at the Northern Maine Fair on August 3, 2018. If they go to the first item on the agenda under the consent agreement and you take out Michael Hitchcock. Commissioners our job would be before he signs it and before it’s approved by AAG, Guay because Mr. Hitchcock has already had this meeting. He believes what he’s just heard from their attorney has been presented is that this is the information, and would you look at this and you read this. You’re going to say that you’re either in an agreement with it and this is what the penalty should be, and they’ll need to read this so that the public knows what the outcome is and then they will vote on accepting this consent agreement or someone can make a motion because of a, b, and c they’d like this to go on and be brought to an adjudicatory hearing. AAG, Guay stated that you don’t need to give a reason why. You could say you don’t want to approve it. Commissioner Timmons stated we can concentrate on just this one. Commissioner Shiers stated he is on board with the first 3 if you want to put them all together. Commissioner Timmons stated that he would rather deal with each one of them separately and then the Commissioners or anyone that feels very strongly then they’ll vote. Commissioner Shiers stated that he wanted to divulge to the Commission that Allie Hiscock trained a couple of horses for him about 10 years ago. He feels he can be non-bias. Commissioner McFarland stated that he would like a clarification here with respect to this tentatively agreed to somewhat complaint; however, are they to establish a penalty based on that or has that been discussed with the violator. Mr. Jennings stated that he wants to clarify one thing. It sounds like there’s a perception that there’s a meeting that happens with the licensee, that doesn’t happen. It’s done by phone, by email, and remotely. To get to your point, he thinks you either accept the agreement as it’s written, or you reject it. Commissioner McFarland stated that he doesn’t have an agreement. AAG, Guay stated that they have to look at it. After a quick break, Commissioner Timmons asked Commissioner Shiers if he had stated that he didn’t have a problem with 1, 2, and 3 the way it was written, and the penalties applied. Commissioner Shiers stated that was correct. Commissioner Kelleher stated that he would oppose them all. He thinks they should all be here in front of this Commission. Commissioner Kelley stated that the only one that he is ok with in the consent agreement is Paul Battis. Commissioner Timmons stated that the other 3 that are on
the agenda you would want them to come here for an adjudicatory hearing. Commissioner Kelley stated that’s correct. Commissioner Timmons asked Commissioner McFarland what’s his feeling. Commissioner McFarland stated that he has mixed feelings about bringing everyone here before them each time. These are minor violations. The executive director has determined that these are the lower-class violations and are permitted medications that were over the limit of some type at the time they were raced and tested. He sat on this board for quite a while now and they have tied up many many hours of repetitious testimony in one case after another case with the same results coming out of it. They are going to end up putting a penalty on for minor violation and he doesn’t see it as an efficient use of his time sitting here listening to the same thing over and over for minor violations of a permitted substance; but they were over the allowed amount at the time. The current rule says that a violation that has occurred previously within 365 days. If you’ve a violator today and had a previous one within that one-year time frame, then this violation has to be considered a second offense. However, it does bring some concern to him even though these are permitted substances that certain individuals keep coming forth year after year after year. He understands what the executive director is trying to do, and he does support it with respect to these minor violations. AAG, Guay stated that after you take your vote he could address the 365-day concept, but he thinks there’s been some confusion around that. Commissioner Timmons stated the first one on the list the 365-day Commissioner McFarland would be the penalty Mr. Jennings is $1,500 fine and 30-day suspension and furthermore the trainer signs and submits this agreement and this constitutes a first and second offense, so Mr. Hitchcock that they’re looking at is a $1500 fine and 30-day suspension and when would that take effect. If the Commission accepts this consent agreement that you presented to them on this particular violation when would he be expected to pay the fine and do the 30 days. Mr. Jennings stated that the agreement is not final until he pays the fine and you sign it. He obviously can’t start the suspension until it’s approved, so if you all voted to approve it, they would collect the penalty and he could start his suspension immediately. That’s usually something that’s at the discretion of the executive director and the licensee, but he believes he’s ready to start his suspension immediately. Commissioner Timmons stated that the only other issue is, and he does not see in here and it’s quite typical in every venue you read is that horses under his tenure right now would not be allowed to change ownership in that 30 day period from which he was suspended, and they don’t just get switched to a different person that means the horse is suspended. Commissioner Kelley stated you mean change trainer. Commissioner Timmons stated right he cannot change trainer during that period of time just give the horse to someone else and have everything else be wonderful. Mr. Jennings stated that usually that actually happens before you even make the decision. In terms of the trainer, it’s already been switched when the notice of positive test goes out. He thinks legally they will have to circle back at the end of this process and talk about what authority they really have in terms of the horse because that’s a bit of a problem and he understands what everyone’s saying. He completely supports the notion that having a horse disqualified is probably the better term is a good way to get at the ultimate decision maker because all of our laws point to the person who isn’t the ultimate decision maker which is the trainer, and very few of them in terms of penalty point to the owner; but in terms of setting down those horses or not allowing those horses to race during 30 days we’ve got a number of issues from an authority point of view, and from a problematic perspective in that those horses have usually had their trainers
switched before it even comes to you because as soon as the notice of positive test is out there that’s when the switch happens. It sounds like you don’t approve the agreement because you want those horses out of action for the period of the suspension. Commissioner Kelley stated like on this one “a” in the consent agreement are those penalties the same as the rule says because he hasn’t looked up the rule. Mr. Jennings stated what they are is the minimum penalty for that particular Class B. He’s saying there’s a $1,500 fine and that it’s really a $500 fine and a $1,000 fine because of the second one. The suspension is 15 days for the first and 30 days for the second. The suspension can run concurrently. Commissioner Kelley stated that was the reason he initially didn’t say he was in favor of this because he wondered if the penalty had been taken down. Mr. Jennings stated when you have a chance to look at Chapter 17 in the 3 Classes of drug penalties you’d be able to see this is Class B because this is Total Carbon Dioxide. Commissioner Timmons stated that you said basically there’s a signature on here from Mr. Hitchcock on 7/11 but you said this was done by phone. Mr. Jennings stated and by email, yes. Commissioner Timmons stated that an email to Mr. Hitchcock so that he can see everything that was in here and then his signature back to you says he agrees with everything that’s on here. Mr. Jennings stated correct, or he’s willing to settle the case under these terms. AAG, Guay stated that his advice to Mr. Jennings is don’t bother bring something forward if the other side not going to agree. Diann Perkins stated she didn’t hear you about return of the purse. Commissioner Timmons asked if that’s included anywhere in here. Mr. Jennings stated no it is not. Commissioner Kelleher stated that the law just changed, correct. Mr. Jennings stated correct. Commissioner Kelleher stated no existing rule. Mr. Jennings stated there wasn’t at the time of the violation. Commissioner Kelleher stated that’s one of the reasons why the Commission was holding these up on processing to see what the Legislature was going to do. AAG, Guay stated that the matter of the Gibbs and Grondin and then the matter of the Department of Agriculture verses the Maine State Harness Racing Commission. The Maine State Harness Racing Commission had found that the purse returns were not authorized by statute and that was appealed by the Department of Agriculture. The judge agreed with the interpretation of the Maine State Harness Racing Commission. The statute did not authorize purse returns. Therefore, the Commission was not in a position to require purse returns. They diligently and immediately sought the law change which was fast. Unfortunately, they do have a period of time now that they can’t have purse returns and this is from that timeline. Commissioner Timmons asked what’s the timeline that will be in effect again. Mr. Jennings stated it was an emergency bill. Mrs. Perkins stated it was June 13, 2019 when they signed the bill. How many days do they have to wait? Mr. Jennings stated you don’t have to wait any. AAG, Guay stated it’s for any infractions that occurred after June 13th. Any infractions that occurred prior to June 13th there was not a law on the books that would allow for a purse return. Commissioner Timmons asked about the rules quite stringent that you went exactly by what it said in the rulebook when it come to the amount of the fine because he’d be willing to increase the fine. Mr. Jennings stated yes what they went with was the minimum fine for that particular violation which was what you had in the past delegated. Commissioner Timmons stated and that could not change. AAG, Guay stated that you’d have to have a hearing because he’s agreed to the fine. If you don’t like the amount of money you just go against the consent agreement. The process works if there’s incentive for people to admit to the violations without tying up the time. The theory is you give them credit and you move to the lower end of the
range. It’s like giving them credit for admitting to everything so you’re going to the lower end of the range. It’s not unusual to go to the lower end of the fine. On the 365-day thing, he doesn’t want the Commissioners to think that they’re handcuffed by that guideline. What the guideline essentially says is if two of the events occur within 365 days it’s how you count them so if it happens within the 365-day period it’s another count. However, you can hear about things that happened 3 years ago, 4 years ago, 5 years ago and decide to move up on the penalty range. Here you’re considering going on the minimum because they are cooperating. If you have a frequent flyer before you, and it may not be within the one year so there’s not a second count we’ve had this gentleman here like every year we see him every year, and we’re not going to go on the minimum part of the fine we’re going to the maximum. You have that discretion. Don’t limit yourself to only one year, you can consider the persons whole record. Commissioner Timmons stated they’ve had a chance to discuss this first consent agreement and you have the information, and the substance in this particular case Mr. Jennings. Mr. Jennings stated total carbon dioxide in the blood. Commissioner Timmons asked if this was a Class III. Mr. Jennings stated Class B. Commissioner Timmons stated in this conversation if he wanted to change the penalty, the amount of the fine, and the rest of the board went along with him he could do that and not violate someone’s whatever. AAG, Guay stated no you can’t oppose it. The question before you is do you approve this document as it’s written. Commissioner Timmons stated for a motion. Commissioner Shiers made a motion to grant Michael Timmons the authority to sign off on a consent agreement in relative to Michael Hitchcock. Commissioner Kelley seconded. Commissioner McFarland asked if the chairman can’t and the executive director can’t come to an agreement with Mr. Hitchcock in this case then it goes to an adjudicatory hearing. Mr. Jennings stated yes. Mr. Jennings asked if that is the appropriate motion. AAG, Guay stated it works. The motion would be to approve the consent agreement. Commissioner Timmons asked for a vote. Vote 1-4. Opposed Commissioners Timmons, McFarland, Kelleher, and Kelley. Commissioner Timmons stated that this would go to an adjudicatory hearing.

b. **RE: Paul Battis, Complaint Number 2018 MSHRC 10.** Trainer Paul Battis has tentatively agreed to settle complaint number 2018 MSHRC 10 arising from a positive test showing an elevated level of dexamethasone at Scarborough Downs on July 7, 2018.

Commissioner Timmons stated the next consent agreement is Paul Battis. His situation was an elevated dexamethasone. This is a first offense. This consent agreement called for a $500.00 fine. Nothing has occurred within the 365 days. What is the Commissioners wish? Commissioner McFarland made a motion to give the chairman the authority to sign the consent agreement on Paul Battis MSHRC 10. Commissioner Shiers seconded. Vote 4-1. Commissioner Kelleher opposed.

c. **RE: Alli Hiscock, Complaint Number 2018 MSHRC 11.** Trainer Alli Hiscock has tentatively agreed to settle complaint number 2018 MSHRC 11 arising from a positive test showing an elevated level of dexamethasone at Scarborough Downs on July 7, 2018.

Commissioner Timmons stated the next is Allie Hiscock. This was an elevated level of dexamethasone. This is a Class IV drug. The violation is a Class C penalty within a 365-day period. Did you count those days Mr. Jennings to be certain? Mr.
Jennings stated that they have a spreadsheet that they keep all of them in and it gives the dates. Commissioner Timmons stated that $1,000.00 fine and a 15-day suspension. Commissioners what is your wish. Commissioner Shiers made a motion to grant the authority to Commission Chair to sign off on Allie Hiscock. Commissioner Kelley seconded. Vote 4-1. Commissioner Kelleher opposed.

d. **RE: David White, Complaint Number 2018 MSHRC 08.** Trainer David White has tentatively agreed to settle complaint number 2018 MSHRC 08 arising from a positive test showing an elevated level of dexamethasone at Scarborough Downs on July 1, 2018.
Commissioner Timmons stated the next is David White. He asked Mr. Jennings if this was a first and a second offense within 365 days. Mr. Jennings stated no. The rule says that if they are in different penalty classes you have to count them separately, and they are in different penalty classes. The second violation has to be within the same penalty class. Commissioner Timmons stated in the matter of David White in the first one was an elevated level of dexamethasone and that’s a Class IV and a fine of $500.00 and no days. He asked the Commissioners what was their wish. Commissioner Kelleher made a motion ought not to pass. Commissioner Kelley seconded. Vote 3-2. Commissioner McFarland and Shiers opposed. This will go for an adjudicatory hearing.

e. **RE: David White, Complaint Number 2018 MSHRC 17.** Trainer David White has tentatively agreed to settle complaint number 2018 MSHRC 17 arising from a positive test showing an elevated level of mepivacaine at Cumberland Fair on September 29, 2018.
Commissioner Timmons stated the second one is a Class B penalty. He asked Mr. Jennings how did he handle only $500.00 if you had two separate for the same person. Why wouldn’t the fine have gone up to a $1,000.00. Mr. Jennings stated because one’s a Class C and one’s a Class B and you don’t count them as second violations if they’re in separate classes. Commissioner Timmons stated that Class B is very serious. Commissioner Kelleher stated ought not to pass. Commissioner Timmons asked Mr. Jennings to explain the rational on the fine. Mr. Jennings stated it’s the same as all the rest of them. It’s the minimum fine for a first offense for a Class B. Commissioner Timmons stated they have a motion of ought not to pass. Commissioner Shiers seconded. Vote 5-0. This will go for an adjudicatory hearing. Diann Perkins stated this has to do with the race commission directly. This was a sire stakes horse it affected of getting a positive and she doesn’t know if he did or not. They should have been notified when this horse test came up because it affected the finals, it affected the points, and it affected the year end awards. And there was over 2 weeks when this happened, and they gave their awards in February. She stated she’s slapping the executive director on the hand because in the past when they’ve had this trouble it was always handled if you are testing a sire stakes horse that information has to come out immediately because it affected the finals and it affected people getting into the finals, so she doesn’t know if he did or not. You talk about not getting people into their industry something like this hurts.
6. **Adjudicatory Hearings:**

a. **RE: James Dunn, Complaint Number 2018 MSHRC 13.** Mr. Dunn is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Dunn is the trainer of record for the horse, “J J S Jet”. A blood sample obtained from J J S Jet following the Sixth Race at Bangor Raceway on July 20, 2018, showed an elevated level of dexamethasone. Commissioner Timmons stated we will hear this case. AAG, Guay stated that Mr. Dunn has obtained counsel and based on an agreement between the office of attorney general and the Department of Agriculture if there is a represented license then he will be the prosecutor. He needs to find a hearing officer to do this case, so they cannot do this case today. Moreover, his lawyer asked for a continuance.

b. **RE: Randall Smith, Complaint Number 2019 MSHRC 01.** Mr. Smith is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Smith is the trainer of record for the horse, “For Kevin’s Sake”. A blood sample obtained from For Kevin’s Sake following the Third Race at Scarborough Downs on April 20, 2019, showed an elevated level of total carbon dioxide. AAG, Guay stated that Mr. Smith has requested a continuance and that was not opposed by the department and that was granted. Commissioner Kelleher asked what was his reasoning for his continuance. AAG, Guay stated he had not received the notice with sufficient time to prepare.

7. **2020 Race Date Hearing Process.** Last year, the Commission held a one-day hearing in November to determine the race calendar for the following year. The staff believes the one-day hearing does not allow for sufficient consideration and analysis of all that factors that go into development of the calendar. The staff proposes that the race date hearing begin in September with presentation of proposals and continue through the October and (if necessary) November to allow for a more deliberative, methodical process. Mr. Jennings stated that he would like to start the race date hearing in September if possible and possibly just take testimony and proposals about race days without deliberating without necessarily need to for instance have OTB’s because you don’t give them race days and save that for the end. The reason he wants to do that is to give you more time. He would have to ask people to submit their application earlier and he’s just asking the Commissioners what they feel about it. Commissioner Kelley stated that he would be in favor of it. Commissioner Kelleher made a motion to authorize the executive director to do what he suggested. Commissioner McFarland seconded. AAG, Guay stated there has been inquiries as to new licenses of various entities that you have jurisdiction over, so if in fact there are people who are intending to pursue various licenses within the industry. Then they would be required to go through some very extensive type of background checks and by having an application deadline and he thinks you’re going to need to make it September and not only that if there are new licensees and presumably if any of them are tracks then they could potentially fall into the fall for race date allocation. He’s not sure if any of this is going to happen it may be just rumors and rumors spur by motivation provided by sports wagering which is no longer on the table. There has been interest in entities pursuing licensing for next year and he doesn’t know as hearing officer of the race date hearings and he really doesn’t know how that would be handled. He would suggest that if there are going to be new applicants that they be identified by a date certain and the Commission would make that known. If there are people that want to apply, then for 2020 they need to show up or send an indication to the Commission by a certain timeframe. He would also recommend to the Commission as
your attorney that one of the most honestly annoying thing is get this done in a day because people didn’t like coming over a day and a half. People would show up on the day of the hearing and raise an issue that frankly the licensees weren’t prepared to argue that they weren’t aware of that was an issue. Identifying for the first time whether or not an OTB has to have a fryolator or not is not the best time to have that issue raised as the day of the hearing. He would also suggest for the proceedings this year that there be a deadline for issues and contested issues that don’t occur organically he’s not saying that if during the hearing a witness testifies about something and then they discover that and they go down that path but if someone is going to oppose a license or if someone is going to seek a condition on a license or anything like that he does think that he knows that he’s been liberal and the Commission’s been liberal in sort of allowing these things to pop up at the last minute. He thinks the Commission should set a deadline for issues that other licensees and other applicants or intervenors that they would have to raise these issues before you get together and not hear it for the first time on the day of the hearing. He’s going to suggest that they inject a lot more structure in this year’s and if they don’t need the structure they can do their typical hearing. He’s also mindful that he will be probably helping Mr. Jennings on the facility issue whatever it is and to the extent that there could be a remedy it would probably occur during the race date hearing, so he would suggest for people out there, intervenors other licensees, that if you have issues tell Mr. Jennings about them. Let this be researched so that they can tell the hearing officer, whoever that’s going to be, there are issues in the case. For example, he would suggest that proposals for race dates they be submitted by October 1st or whatever it is, and that people cannot just show up for a hearing and throw it out there. Nobody has a chance to look at it. Mr. Jennings do you sense that would be the case. Mr. Jennings stated he really doesn’t know. Commissioner Timmons asked for a vote on the motion. Vote 5-0.

8. Overview/Update on Prohibited Substance Testing. Miles Greenleaf will give an overview/update of the prohibited substance testing results.

Mr. Greenleaf stated there’s been about 1,100 samples taken this year. There’s been 2 positives. The drug rampage isn’t there. They’ve had about 175 TC02 test taken and one of those positives is a TC02. Commissioner Shiers asked if this University of Chicago are they a certified competitive race laboratory. Mr. Greenleaf stated yes, that they are certified. Ms. Perkins asked if there has been any out-of-competition testing. Mr. Greenleaf stated there has.

9. Other Business
a. Grant Request by the Cornish Trotting Park

Mr. Jennings stated that last year the Commission voted to award a $500 grant to the Cornish Trotting Park and to Pembroke. They are both places that sponsor amateur harness racing. He believes the Commissioners view on doing that was it was beneficial to the industry because these are venues that are geographically diverse locations. Commissioner Kelleher asked if they have discretionary power to make a motion. Mr. Jennings stated he believes they do. Commissioner Kelleher asked if they had the money. Mr. Jennings stated yes. Commissioner Kelleher moved the motion. Commissioner Timmons stated that there was a motion to grant $500 to Cornish Trotting Park and to Pembroke. Commissioner McFarland seconded. Vote 5-0.

10. Public Comment

Bill Kasabuski stated that he had a question to address to AAG, Guay. He is retired from the State of Maine in the Department of Corrections. One of the state workers explained to
him that a state that has a commission is given full authority of the legislative body to the Commission to make rules and laws and therefore it doesn’t have to be voted on in Augusta by the public. The Commissioner could just say that all workers are working 90 hours a week and that’s the way it is. He could just make these rules up as they go. He’s going to challenge you guys as to how much authority you really do have. Why don’t we take that horse that’s on probation now for having a positive test? You can’t enter a race until you prove yourself innocent so that horse is now the trainer’s going to be worried, he can’t get into another race, he knows the horse is crooked. All these trainers know what horse is crooked. He doesn’t know where the authority ends. Can you explain that to him? AAG, Guay stated that it’s hard to give a brief answer because this was the subject matter of the Department of Agriculture verses the Maine State Harness Racing Commission. This was a big part of that case. Unfortunately, he spent many years of his life looking into this and he will tell you that the Harness Racing Commission Law is in some respect kind of confusing, but the short answer is at a higher level is the Legislature gives authority to agencies and the agencies only have the authority that the Legislature has given to them. For example, on the purse returns the law had said that the Commission could issue fines and suspensions. The Legislature did not give the power until the last session to do purse returns. The legal advice that your former, whoever it was, is somewhat correct; however, when it comes to, especially when it comes to your constitutional protected right and that would include the use of a horse a property right. The Legislature has to authorize the executive branch the ability to take that away from citizens and under what circumstances and in terms of setting horses down the Legislature has not explicitly given that power to the Commission; so the Commission can’t create itself authority because it thinks it should be able to do it if it impacts an individual, if it impacts a property right. Now they can have rules like the color of the licenses, what kind of silks and stuff like that; but when it comes to taking things away from people the Commission has to be granted the power to do that, and the Commission has not been granted the power to set horses down. What it can do is find horses not eligible to race in a race. That they clearly can do. But that is tied into a specific race and a specific condition of a horse on that day. With all do respect, he disagrees with the prior advice that you were given. This body cannot give itself powers the Legislature has not given to it. Mr. Kasabuski stated you would think the Commission falls under the rules and guidelines of a Commission and that’s why the Governors have Commissions, so they don’t have to be bothered with frivolous craziness like 8 guys tied up for 6 hours. AAG, Guay stated that the law allows the executive branch to give itself powers. That’s your view of what the law is. He respectfully disagrees with that. He thinks the Legislature has to authorize. It’s not like the Legislature says, ok Class B penalties $50 dollars. They can’t create a power for themselves. The Legislature has to say this is what you can do. Mr. Kasabuski asked why can’t we hold the purses until the results come in like Delaware does, AAG, Guay stated you can. Mr. Kasabuski stated in his viewpoint and he sees a lot of stuff going on they’re just not getting caught. AAG, Guay stated that you can hold the purses for a reasonable amount of time. You can’t hold them for a year. Mr. Kasabuski stated how about they expedite these tests and tell them hey we need this stuff back within 9 days. Sometimes they don’t get their checks for 3 weeks anyway. You’ve got 3 weeks to get a positive or negative and then you can send out checks. AAG, Guay stated that’s a policy decision the Commission could consider.

Mrs. Perkins stated on behalf of the Maine Breeders and Owner’s Association they welcome all the new Commissioners here. She wanted to say the sire stakes has been going very successfully. They have raced in Bangor, Presque Isle, and Scarborough and this Friday the 2 year olds are starting for the first time in Bangor. Then they race on Sunday at Scarborough. They have a few horses that have to be coupled. When they are at the draws
it’s something that’s taken a little bit of extra time. Everybody’s been very cooperative. When they had the earn and learn at Scarborough she was hoping that they got through them before the rain.

Ed MacColl stated that he’s the attorney for Scarborough Downs and as a concerned member of the public; and he would like to comment on the grant action that was taken today, and he’s concerned that there might be future request for grants and specifically Commissioner Kelleher asked a question whether the Commission had the money. These two grants pretty modest and seemed entirely reasonable but whether you have the money is a fair question. The answer from the executive director was you do have the money and he said the word eleven and then he cut himself off and he thinks the next words were going to be million dollars. He respectfully submits that the Commission does not have the money and certainly doesn’t have eleven million dollars to give away as it sees fit. He met with the executive director and he thinks with AAG, Guay on this issue. This is the nature of his concern. Over the years the harness racing industry has come to depend on subsidies from slot machines that were supposed to be at their racetracks but aren’t at their racetracks although the slot machines in Bangor are owned by the racetrack. That distribution has come to be known as the Cascade and they were concerned for the years including back when Commissioner Kelleher who was in the legislature by having him being in the appropriations process every year, and they compromised with the Legislature that took it out of the appropriation process and then they agreed that to the extent money from that Cascade was needed to fund the administrative business of harness racing your budget you could skim off the top and you can skim off the top for your administrative expenses. There has been a number of bills in the Legislature this past year and he doesn’t think any passed that addressed the question of whether you could do things to skim off the top and move more money around. All he believes either failed or were carried over because the Legislative committees involved are very concerned they shouldn’t touch that Cascade. They understand it was a negotiated proposition among the entire industry and the Legislature and they should not have administrative agencies changing the allocation of funds provided for by…. The Commission as part of it’s setting its administrative budget sets a budget every couple years. Last year there was a meeting on the budget and apparently the interpretation of some people might be that the Commission voted itself authority to spend the entire Cascade as it wants to on grants; and those of them in the industry didn’t understand they didn’t have notice of any such proposal and the budget that they voted on was never provided to the members of the industry, and he didn’t see it until close to a year later, as far as he knows, nobody did. He listened to the tape of the meeting. It wasn’t passed around and shared with anybody but to the Commissioners so $500 for each one of these organizations seems reasonable, and he doesn’t plan to go to court to make an issue out of it. He hopes as they go forward that there be real concern if there are any more proposals that the Commission should just give money away because the way the procedure works is the Commission staff of the department has authority to write to the treasurer, and say ok the administrative budget has been spent up to this amount now for grants taken it all off the top of the Cascade. The fairs get less, the tracks get less, the purses get less, everybody gets less, and it goes to whoever we voted to give it for. $500 this week for this month or two good organizations is a concern to him procedurally but not a concern to him substantively, and it certainly could become a very important and crippling concern if it were to continue; and the proposals to say Bangor Raceway doesn’t really need any money it owns a casino so why don’t we give everybody a grant that equals all of Bangor’s money. That would just be wrong to Bangor they should get their money under the law. Everybody should get their money under the law. That’s his view. He hopes if there are any further grants you can have a conversation about how they work and understand that process better.
Commissioner Kelleher stated having voted on the prevailing side on other business granting Cornish Park and Pembroke $500 request he moves that they reconsider their action. Mr. MacColl made an interesting point to him. Commission Timmons asked for a second. Hearing no second, it failed.

Zachary Matzkin stated he had a comment concerning the consent agreement voting. You all made those votes without almost any discussion of your rational. It would be really helpful in the future if the Commissioners would go on the record as to why they made those votes up or down. Commissioner Kelleher stated that some of them were on the record. He was on the record stating that he wants the participants here. Dr. Matzkin stated right but they can assume the reasoning is you were not satisfied with the penalties. In the past, Commissioner Kelleher stated don’t consume that under his position. Dr. Matzkin stated that trainer’s that show up here for a hearing get off with way less than the minimum penalty that’s what the history shows. Commissioner Kelleher stated well the past is the past.

AAG, Guay stated he understands his position and he may have given advice slightly different. It’s better for the Commissioners to not take a public position. Dr. Matzkin stated this is the frustration you see from Mr. Jennings. AAG, Guay stated he understands.

11. Schedule of Future Meetings:
August 23, 2019

12. Adjourn
12:00 p.m.