1. **Call the Meeting to Order and Introductions:** Michael Timmons, Chair
   Commissioner Timmons stated that yesterday he was appointed chair to the Maine State Harness Racing Commission by Governor Paul LePage. He also stated that the equine herpes virus infection has had a negative impact on horses at the Meadows and in Pennsylvania, and it can spread to other venues. The Maine State Vets have already become involved.

2. **Review and Approval of Minutes**
   Commissioner McFarland made a motion to approve the minutes of December 14, 2017 as printed. Commissioner Graham seconded. Vote 3-0.
   Commissioner McFarland made a motion to approve the minutes of January 17, 2018 as printed. Commissioner Graham seconded. Vote 3-0.

**Review and Approval of Decision and Orders**
   Commissioner McFarland made a motion to approve the decision and order of Jocelyn Desfosses complaint numbers 2017 MSHRC 10, 11, and 12 as written. Commissioner Graham seconded. Vote 3-0.
   Commissioner McFarland made a motion to approve the decision and order of James Dunn complaint numbers 2017 MSHRC 34 and 35. Commissioner McFarland seconded. Vote 3-0.
   Commissioner McFarland made a motion to approve the decision and order of Nicholas Graffam complaint number 2017 MSHRC 39. Commissioner McFarland seconded. Vote 3-0.
   Commissioner McFarland made a motion to approve the decision and order of Dan Deslandes complaint number 2017 MSHRC 48. Commissioner Graham seconded. Vote 3-0.
   Commissioner McFarland made a motion to approve the decision and order of David Del Pozzo complaint numbers 2017 MSHRC 4 and 5. Commissioner McFarland seconded. Vote 3-0.
   AAG, Guay stated that there was an error on the second decision and order for Allie Hiscock. The first decision and order is correct and the second decision and order is wrong for the purse return. Commissioner Graham made a motion to reference the first decision and order for Allie Hiscock regarding the purse returns. Commissioner McFarland seconded. Vote 3-0.

3. **Review of the Rulemaking Comments and Hearing Record.** On November 22, 2017, a Notice of Agency Rulemaking Proposal was published in Maine’s five daily newspapers marking the beginning of the official comment period for proposed amendments to Chapters 1, 3, 7, 11, 13, 15 and 17 of the Commission’s rules. The Commission held a public hearing on the proposed amendments December 14, 2017. The deadline for written comments was the close of business on December 29, 2017. The Commission reviewed Chapters 1, 3, 13 and 15 at the January 17, 2017 meeting and directed the staff relative to which amendments to accept. The Commission will now review Chapters 7, 11 and 17. Commissioner Timmons asked for a motion for Chapter 1 which includes the basis statement, impact on small business, response to comments, and the amended rule. Commissioner Graham made a motion to approve the packet for Chapter 1 administration.
Commissioner McFarland seconded. Vote 3-0. Mr. Jennings stated that in Chapter 3 he needed to pointed out section 6, duties of the race secretary. This wasn’t really talked about last time but he did mention it at the public hearing. The department proposed to expand this section. Ms. Perkins stated to him that this section was also in Chapter 7, so what he did was merge the new language to what was already existing in Chapter 7 and bring it into Chapter 3. Commissioner Timmons asked for any changes or discussion. Commissioner Graham made a motion to strikeout #2 on page 9.

Commissioner McFarland seconded. Vote 3-0. Commissioner McFarland made a motion to adopt the packet for Chapter 3 officials and racetrack personnel with the change in section 6.

Commissioner Graham made a motion to adopt the packet on Chapter 13. Commissioner McFarland seconded. Vote 3-0. Commissioner McFarland made a motion to accept the packet on Chapter 15. Commissioner Graham asked for a motion on Chapter 13. Commissioner Graham made a motion to adopt the packet on Chapter 13. Commissioner McFarland seconded. Vote 3-0. Commissioner Timmons asked for any changes or discussion. Commissioner Graham seconded. Vote 3-0.

Mr. Jennings presented Chapter 7 for review. Staff compared the penalty section with Chapter 17. He stated that he also looked at the change from the Ad Hoc Committee, and a lot of these changes came from that committee. Commissioner Graham stated that in section 6, subsection 2, page 2 to go back to the original language regarding qualifiers. They discussed section 7, subsection 2.G and decided to change the language to “makes a break on the next race following the qualifying race”. Mr. Jennings asked if they want to keep well slips. Commissioner Graham opposed well slips. Mr. Jennings stated that he would bring this issue up regarding horses being scratched to the judges. Under section 30, Draw, leave in “or drawn in”. He also stated that there was a conflict regarding section 37, Recall in Chapter 7 and in Chapter 3, Section 8, Starting Judge. The Commissioners agreed that Chapter 3 should be corrected. Since the Commissioners voted earlier in the meeting to accept the packet on Chapter 3, they decided to reopen Chapter 3 to correct the wording. Commissioner Graham made a motion to reopen Chapter 3, Section 8, Subsection 13 and delete the wording after “on gait”. Commissioner McFarland seconded. Vote 3-0. Mr. Jennings asked the Commissioners what they thought about the new section B under Chapter 7, Section 46, Duties of Trainer. There was a discussion on the different scenarios and the wording. Mr. Jennings asked if he should craft some language and bring this back. Commissioner Graham state that maybe he should check with New York or New Jersey. AAG, Guay suggested that the rule should be changed. To make the rule clear, the trainer shall be responsible for any activities or conduct of any substitute trainer. Mr. Jennings stated that he will clarify the language under section B. Under section 60, keep the rule the original way. Mr. Jennings stated that he will bring Chapters 11 and 17 to the next meeting for review.

4. **Approval of Maine Harness Horsemen’s Association Annual Budget.** Title 8, Section 272-B, provides that up to 3% of the funds that are allocated to supplement purses may be paid to a statewide association of horsemen if that association prepares and approves an annual budget and submits it to the Commission. The Maine Harness Horsemen’s Association has prepared and approved a budget for the Commission’s consideration. Debbie Patterson representing the MHHA was present. She stated that their board voted on a 2.1 percent funding for 2018. Commissioners reviewed the report submitted by the MHHA. Commissioner McFarland stated from their report that their membership was down from the previous year. Ms. Patterson stated that was because some members have passed; and in the past, there would be a whole family as members and now it’s down to just one family member. Commissioner McFarland also wanted to thank the MHHA for including item #40 which is race promotion and support. It is that money that goes to the now four struggling Agricultural Fairs to continue to participate. Commissioner Timmons asked for a motion. Commissioner McFarland made a motion to approve the MHHA budget as presented for 2018. Commissioner Graham seconded. Vote 3-0.
5. **Discussion of the Commission’s Consent Agreement Policy.** State agencies charged with administration of professional licensing laws and associated standards often resolve violations of the law via administrative consent agreements. The consent agreement process generally saves both parties the time and money associated with adjudication. Consequently, in order to encourage resolution through the consent agreement process, the penalties incorporated are generally slightly less than those that would result from adjudication. The Commission has authorized the staff to enter into consent agreements for Penalty Classes B and C, provided that the alleged violator is willing to agree to the minimum penalties contained in Chapter 17. Recently, the staff has found that many licensees favor adjudication, believing they are more likely to receive reduced penalties via that process. The adjudication process places extreme demands on the Department’s resources. The staff would like to discuss whether there may be ways to alter the current incentives which many licensees believe favor adjudication. Mr. Jennings stated that he would like to not invest in adjudicating cases in front of the Commission. He would like to invest his time in to promotion or working on exporting the signal. He thinks the incentives are just slightly backwards. Licensees don’t want to do consent agreements especially if they have multiples because they think they can get a better deal if they come here. The more logical policy is that a consent agreement is beneficial to both parties and that in general a lower penalty than if it comes before the Commission. AAG, Guay stated that other agencies have a built-in incentive. The violations that might be done in a consent agreement might be one flavor with the incentive that they might be found in violation in a less troublesome rule. He also stated that consent agreements are the most often used tool for state agencies in the State of Maine. AAG, Guay stated that he wasn’t sure what Mr. Jennings is asking for. Mr. Jennings stated that he’s not sure legally the best way to present it. He can negotiate a consent agreement and there is no leeway; it has to be the minimum. He comes here to adjudicate the same case and he’s still asking for the minimum penalty. He probably needs to not ask for the minimum if he is adjudicating. AAG, Guay stated that the minimum becomes the bar from what we work down from verses this is the range $100 to $500 and where do we put it in that range. There is never a discussion about someone for example, it may not be their second offense within a 365-day period; however, the licensee has been here twelve times so should they be given the minimum or should they be moving up from the minimum. Maybe if the Commissioners than change under Chapter 17 the minimum to $100 and stop deviating from the minimum you might get more consent agreements. Mr. Jennings stated that policy wise and legal wise he is not sure he is miss stepping. AAG, Guay stated that he would strongly suggest to not ask for the minimum. What you could look at is how high they were over the threshold. If they are a frequent flyer, maybe that gets them off the minimum penalty. Mr. Jennings stated that you take each case individually and look at the degree to which someone has missed the threshold and then you look at the history of the violator. He also stated that there is a proposal for a four year look back. Commissioner Timmons asked what do you give written warnings for. Mr. Jennings stated that it’s only one circumstance in Chapter 17 for the NSAIDS and Class D which is new. Commissioner Timmons asked when you make a decision for the consent agreement you look at just 365 days, so the 365 days if one of these individuals has another test positive and it’s within that 365 days and they have already had a consent agreement how are you going to have another consent agreement with that same party. Mr. Jennings stated that the delegation that the Commissioners made to staff, they said we can do second violations, but we have to give the second violation minimum. Commissioner Graham asked if we publish someplace where the racing community knows that we fine people by a consent agreement. Mr. Jennings stated no. Mr. Greenleaf stated that he sends the information to the United Stated Trotting Association once the consent agreement is signed. AAG, Guay stated that other agencies use OHM to see the consent agreements. You can put a link on the website to the consent agreements because they are public record. Mr. Jennings stated that if there is a perception that some of these things are just languishing and the department has decided not to pursue them then we need to address that in some way. They can be posted on the website or they can go on the
agenda as an FYI. AAG, Guay stated that you can post each one of these with a link. Commissioner Graham stated that he would like these to be more public. Commissioner McFarland stated that this sheet that was passed out has only eight consent agreements and forty-nine cases that they have acted on. Mr. Cobbett stated that there is a fines and suspension list that actually shows the actual people that are under suspension. Mr. Greenleaf puts out a fines and suspension list during the racing season on a weekly basis but it’s not up-to-date very many times. There are people on full suspension that are not on that list. Mr. Jennings stated that as a matter of policy the department can reevaluate, and when we bring a case before the Commission we will look at a variety of things and maybe not be coming in here. Commissioner Timmons stated that the Commission needs to communicate a little bit so we would be up to speed. He doesn’t want to see people on here getting consent agreements that have violated our rules several times and it hurts our integrity within the harness industry itself. Mr. Jennings stated by way of clarity, violated your rules; any particular. AAG, Guay stated that he was going to suggest he can draft delegations and make it like a menu and the Commission could say you’re authorized to do a consent agreement if the person hasn’t had a Chapter 11 violation in the last thirty-six months. Mr. Jennings is on board with that. Commissioner Timmons stated that he is not opposed to a consent agreement but he is referring to the habitual offenders that can go out of state and get four or five positive test last year and the year before and come back up here and go in and sit with a consent agreement. Mr. Jennings asked if he has the legal ability to consider violations from other jurisdictions. AAG, Guay stated yes. You have a minimum to a maximum. The ultimate goal of the penalties and the whole violation process is to protect the integrity of the sport which means whatever you do to the person is going to change the behavior so they’re not likely to do it in Maine harness racing. What you consider is the individual. Just how quickly does the person learn their lesson. That is why during the hearing he breaks it up into two phases and during the penalty phase you can consider all the bad things they have ever done to decide whether to go to the minimum or maximum penalty.

6. **Discussion of Policies Relating to Licensing.** At one time, apparently, it was possible to obtain a participant’s license at the track through the State Steward. Nowadays, a specialized printer is used to produce a plastic license card with photo identification. In addition, the staff now needs to verify a handful of qualification requirements prior to issuing licenses, some of which require specialized searches through the United States Trotting Association website. Many professional licensing agencies alert applicants to allow time for processing. The HRC staff has no dedicated licensing staff: we’re all generalists dealing with a multitude of tasks and urgencies. The HRC office often has drop in business very late in the day. Some applicants have an expectation that they can arrive just before the close of business on any day of the week and expect to be able to obtain a license. Applicants may apply for a license any time after January 1 of the calendar year. The staff simply wishes to alert the constituency that allowing for a standard processing time of at least two weeks is both reasonable and appropriate. Mr. Jennings stated that he was putting the regulated community on alert that their license might not be available when they come into the office. Commissioner Timmons stated that sometimes there is a feature race at the venue and the owner wasn’t aware of the horse being entered and they need a license. Commissioner Graham asked if the department could give a temporary license. Commissioner Timmons stated that is just an excuse. Commissioner McFarland stated that he would encourage the MHHA to advise their membership that they have a current license when they come through the gate at Windsor Fair. He had about fifteen licensees last year that tried to get through and some even used a magic marker to change the color coated state license.

7. **Illegal Gambling Discussion.** The Commission shall consider whether to authorize its counsel to investigate an allegation of illegal gambling in violation of Title 8 section 300-A. AAG, Guay stated that he received an email forwarded from Mr. Jennings and one directly from Mr. Don
Barberino. Mr. Barberino raises concern that there is an internet venue “Twinspires” that is accepting bets on horseracing. The concern is that activity is a violation of Title 8, Chapter 11, Section 300-A Illegal Wagering which says “1. Illegal wagering on horse races. A person is liable for the damages specified in this section if that person accepts a wager from a person located within this State and: A. A license is required under this chapter to accept the wager; and B. The person who accepts the wager is not licensed to do so under this chapter”. The first thing that needs to be evaluated is whether a license is required to accept the wager. Twinspires is not licensed. Under Title 8, Chapter 11, Section 275-A. Definitions, 8. Off-track betting facility. “Off-track betting facility” means a facility other than a racetrack at which a person is licensed to conduct pari-mutuel wagering on simulcast racing. AAG, Guay stated that it is extremely complicated. He also stated that it is not clear to him if the Maine State Harness Racing Commission has the right of action. Any money that is won in court goes back to the Commission. What is clear to him is anything that happens on this issue the five of you will not be making a decision on it. What he is asking the Commissioners is to authorize him to act on their behalf to look into this and make a referral to the attorney general for a letter if he finds sufficient cause to do that. Commissioner Timmons asked for a motion. Commissioner McFarland made a motion to authorize their counsel to pursue the illegal off track betting that’s going on through Twinspires and through their ADW. Commissioner Graham seconded. Mr. Barberino stated that the new ADW law calls for an RFP to have one vendor for the State of Maine. If you continue to have this other venue take wagers, it would hurt the industry. Vote 3-0.

8. **Other Business**
Commissioner Graham asked Mr. Jennings if he looked into whether or not Scarborough Downs needed to be relicensed or not. Mr. Jennings stated that they have looked into that. He also stated that in the future he would open a dialogue with the new ownership about harness racing. AAG, Guay stated that Scarborough Downs needs to correct their application to say it was leased and not owned.

9. **Public Comment**
None.

10. **Schedule of Future Meetings:**
March 8, 2018
April 12, 2018

11. **Adjourn**
1:24 p.m.