Commission Members Present: Michael Timmons, Chair, Gary Reed, William McFarland, William Varney, and Michael Graham

Commission Members Absent: None.

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Miles Greenleaf, and Zachary Matzkin

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

2. **Review and Approval of Minutes**
   Commissioner McFarland made a motion to approve the minutes of May 9, 2018 as presented. Commissioner Graham seconded. Vote 5-0.

3. **Adjudicatory Hearings**:
   a. **RE: Tracey Whittemore, Complaint Numbers 2017 MSHRC 33.** Ms. Whittemore is alleged to have violated MSHRC Rules Chapter 7 and 11. Ms. Whittemore is the trainer of record for the horse “Daniel Semalu”. A blood sample obtained from Daniel Semalu following the Second Race at Union Fair on August 26, 2017 disclosed the presence of methylprednisolone at 689 picograms per milliliter of blood serum. The regulatory threshold for methylprednisolone is 100 picograms per milliliter of blood serum. Tracey Whittemore was present and representing herself. AAG, Guay gave Ms. Whittemore her oath. He asked Mr. Jennings if there is any way they can deal with this in the same proceeding understanding that it doesn’t necessarily mean that there is going to be one violation. Mr. Jennings stated that they are related and that it would make a certain amount of sense. As long as they preserve the right to... AAG, Guay is trying to figure out if they need two hearings or one hearing. There are two segments. One is if there is a violation and second is if there is a violation or violations, what do we do about it. He opened the consolidated hearing and qualified the Commissioners. He asked Ms. Whittemore if she agreed to being the trainer of record for the horse “Daniel Semalu” which raced on August 26, 2017 and September 8, 2017. Ms. Whittemore agreed. AAG, Guay asked if she agreed the horse raced in the second race at Union Fair on August 26, 2017 and the horse also raced in the eighth race at Bangor Raceway on September 9, 2017. Ms. Whittemore agreed. AAG, Guay asked if she agreed on August 26, 2017 that the horse “Daniel Semalu” had an elevated level of methylprednisolone. Ms. Whittemore stated yes but at the time she did not... AAG, Guay asked if the horse had the same elevated level of methylprednisolone on September 8, 2017. Ms. Whittemore stated yes. AAG, Guay stated that by Ms. Whittemore admitted to the violation that they would move to the penalty phase. Mr. Jennings stated that this is the last of the 2017 cases. He recommends methylprednisolone comes out as a penalty Class C page 9, Chapter 17 so the minimum penalty is $500 fine and then because it showed up twice so it would be two violations and second violation comes out as a $1,000 fine and 15
days suspension. Ms. Whittemore stated that she never heard of the drug. She gives the horse supplements. It wasn’t intentional. AAG, Guay asked if the Commissioners had any questions. Commissioner Graham asked Mr. Jennings why did it take eleven months to come to the commission. Mr. Jennings stated that they tried to set it up for the December meeting but Ms. Whittemore was already in Florida at that time so she asked if it could come before the commission when she returns and she just got back a month or so. Ms. Whittemore stated that she returned at the end of April early May. Commissioner McFarland asked Ms. Whittemore if she followed up with the medications that she admittedly gave something to her horse for that in order to try to pinpoint where this may have come from. Ms. Whittemore stated yes. She is very careful of what she gives the horse. She thought it was in one of the supplements that she had given but she has not given that one again. Mr. Whittemore co-owner of the horse stated that his thought on the matter is the lack of time when they told them that the horse had a positive test. He had already raced subsequently. That level went down dramatically. He spoke with Dr. Matzkin and another veterinarian and they were amazed that that level dropped as quickly because typically this drug is used in a drug injection. This horse has never been injected. The powder that it came in was misrepresented to me and her. What his intension is that the horses level dropped dramatically and he feels like they are getting hung twice for the same issue. The evidence supports that theory. AAG, Guay asked Mr. Jennings how long does it take to get preliminary response from the lab. Mr. Jennings stated that he might get a suspicious sample. There may be a delay as much as two weeks. AAG, Guay stated that the lab tells you there may be an issue with the horse. Wouldn’t it be prudent to let the owners know there may be an issue with the horse so they may not put the horse in the box? Mr. Jennings stated that’s a policy decision. AAG, Guay stated but you have the information. Dr. Matzkin stated that there are quite a few suspicious samples that don’t turn out to be confirmed. We’d be telling a lot of people to worrying a lot about things. They don’t tell us the drug that’s involved unless he asks them. In this case, the letter didn’t come until a week after the second race. Commissioner Varney agrees with Mr. Whittemore and with AAG, Guay if there is a suspicious substance the horsemen should be notified, and they can take whatever action they want whether to put the horse back in the box or maybe have it tested privately. That’s his opinion and therefore, he would recommend that they would treat this as a same offense and the penalty would be a minimum for a first offense. Commissioner McFarland asked Dr. Matzkin if he recalled at all the number of suspicious test that they give the department notification. Is it far greater. He is referring to the negative ones. Dr. Matzkin stated that he couldn’t give him an accurate number but it could be as many as a quarter of them. Commissioner Graham stated that he agrees with Commissioner Varney on the first part of it but he doesn’t know if they should be notifying people of suspicious test until we have something because people are going to end up scratching their horses. AAG, Guay asked Dr. Matzkin that you’re screening based on thresholds that you’ve given the lab and any of these thresholds would be a violation. Is that correct? Dr. Matzkin stated that for substances that have thresholds. Yes. But some substances there is no thresholds. AAG, Guay stated that the presence of a substance it’s suspected on the preliminary test that there may be a substance in the horse on that day that was beyond what was allowed. Dr. Matzkin stated there may be right on a screen. AAG, Guay suggested to the department well it may be a false positive so we shouldn’t tell people, you can tell people your horse tested it could be a false positive but at least they have the ability to make a decision of whether or not they are going to put the horse in or not. In his view, standing in front of a judge saying the department knows that this horse potentially was in violation but didn’t tell the licensee that information. The licensee can make a decision. Dr. Matzkin stated that we are having this conversation without a whole lot of background. The lab does ten business days to get us
that initial report before we even know it is suspicious. That wouldn’t have covered this case. He stated that it could be two full weeks before we get it back that says it’s suspicious. Commissioner Varney stated to Dr. Matzkin that it could be two weeks before you even know it is suspicious. Dr. Matzkin stated that it can be. Commissioner Varney asked how often is it. Mr. Jennings stated that you’ve got potentially four days just between the time the samples are taken and it arrives at the lab. Mr. Greenleaf stated that it’s six days to report a preliminary from the time it’s received by the lab, and it’s another four days that they need to submit the report for the findings for the final report. Commissioner Varney stated that he is not talking about the final report. Are you saying that they don’t send you something that is suspicious but they only send it to you because you have a relationship with them? Dr. Matzkin stated that he might have had the days wrong. Mr. Greenleaf stated for an example of the first case. The blood was taken on August 26, 2018. The lab received it on August 29, 2018. They reported the final report on September 13, 2018. Commissioner Varney asked what about the suspicious report. Mr. Greenleaf stated between that date. He doesn’t have the preliminary report. So, the second test was already done before this report was submitted. He makes the call as soon as he gets the email telling them listen there’s been a violation so you might want to change something because he knows they are going to get his call sooner then they are going to get the notice of positive test. Dr. Matzkin stated that if they notify every suspicious sample that they had a suspicious sample on the horse, we would have a lot of horses scratched for no reason. Commissioner Varney stated that he would rather scratch a horse than go through with having another positive. Dr. Matzkin stated he agrees and that he is on record saying that these horses should be treated as one violation. They didn’t get to find out about this positive test until a week after the second test. Commissioner Varney stated that he agreed with Dr. Matzkin and it should be treated as one. AAG, Guay stated that’s the only question he had. Commissioner Timmons stated that they need to make a decision on this. Commissioner Varney stated that he would make a motion that the cases be treated as the first violation and the penalty be for the first violation only. Commissioner Graham seconded. Mr. Jennings asked if they are saying a $500 fine. Commissioner Varney stated correct. Commissioner Timmons asked for a vote. Vote 5-0.

Stanley Whittemore addressed the Commission that bothered him about the testing program. The one test on this horse was for a win the next was a special test. A situation exist with the presiding judge picks a special each day and often times if the judge happens to not like someone the horses get tested far more frequently. Commissioner Timmons stated that is speculation. AAG, Guay stated that he would suggest procedurally that you could go through the executive director.

b. Tracey Whittemore, Complaint Numbers 2017 MSHRC 37. Ms. Whittemore is alleged to have violated MSHRC Rules Chapter 7 and 11. Ms. Whittemore is the trainer of record for the horse “Daniel Semalu”. A blood sample obtained from Daniel Semalu following the Eighth Race at Bangor Raceway on September 8, 2017 disclosed the presence of methylprednisolone at 141 picograms per milliliter of blood serum. The regulatory threshold for methylprednisolone is 100 picograms per milliliter of blood serum. See complaint number 2017 MSHRC 33.

4. Commission Review of a Joint Proposal by the Maine Harness Horsemen’s Association and Maine Standardbred Breeders and Owners Association to Transfer Initial Adjudication of Prohibited Substance Cases to the Track Judges. Both Maine horsemen associations have jointly submitted a proposal to transfer initial adjudication of prohibited substance adjudications to the track judges similar to many other jurisdictions. The
associations contend that the judges can schedule hearings quickly and that resolution of most cases will occur with less delay. The associations also contend that such an approach will free up resources for the Department staff, allowing the Department to focus more resources on other priorities. Michael Hopkins representing Bangor Raceway stated he agreed to the urgency to speed up this process but by making an initial adjudication seems to be putting an extra step in this process. By putting this on the judges are they going to have the opportunity for a state attorney who guided through us this last mission correctly. Will these defenders have the opportunity to hear from the state’s attorney, a state yet be present during this. Certainly, any ruling that their judges make at the track without a state’s attorney is going to be appealed which is going to bring it back here. Again, he thinks it is an extra step in the process. Steve Cobbett representing Scarborough Downs stated in his conversation with Charles Malia they feel it is a disadvantage for their judges at the track to have to hear these types of hearings because they don’t have the same resources that you folks have up here as far as having an attorney to present the case and another attorney to prosecute the case. They don’t have the expertise witnesses that they’re available and Dr. Zach may be available and he may not be available. They are a little unsure or unclear about that. Again, they feel like Bangor does that it’s just an extra step that’s being placed in the process. Commissioner Timmons asked to hear from the associations. Someone that represents the MHHA first and then someone that represents the breeders. Debbie Patterson representing the MHHA stated that this was brought to the MHHA from the fairness committee of the Standardbred breeders who had initially brought this forward. She had a director email this to her for discussion at their board meeting and it was voted 7-1 that their directors agreed with this. If you look in Chapter 3, Section 5, Subsection 3-A Presiding Judge and Associate Judges. Presiding Judges and Associate Judges shall have the authority to: A. Determine all questions of fact relating to racing, and B. Impose penalties as prescribed by these rules. This is her perception of this was basically we have consent agreements so basically, it’s bring it to the track the presiding judge finds out from the state that trainer “x” has a positive. They call trainer “x” and say you have this positive on this drug and this is basically whether it’s first, second or third, what class it is, this is your penalty and are you willing to take it. The trainer “x” can say no and come in front of the Commission and then it goes to that step, or trainer “x” can say yes you know what I thought maybe I gave that drug to close, he is guilty and he’d take whatever his penalty is. Her perception is similar to consent agreements. Diann Perkins representing the Maine Standardbred Breeders and Owner’s Association stated that this subject was brought forward is because they feel delays in bringing these cases before the race commission. When you have to go two to three months and wait for somebody that has a proposed violation and they felt if it was handled by the judges as they have done in the past it would expedite what is going on here. She is not sure in the past that when these judges have their formal hearing that they had to have an attorney general there or they had to have access to some of the things that is available here. These judges are schooled. They are experts and if someone comes up and are sent a letter that there is a violation that they would be able to handle it in a hearing. If the person that is speaking has violated the rules, then this person can through the democratic process appeal to the Harness Racing Commission. Commissioner Varney stated that he has had signals here. He stated that he heard Ms. Patterson say that the judge would call and if they consented they would do the penalty, and I hear Ms. Perkins say that the judge would call and they would have a hearing even if the horsemen didn’t consent there would be a hearing and the judge would make the decision. Is that true or not. Ms. Patterson said yes and then they can appeal to come to the commission. Commissioner Varney stated that you’re saying now that the judge would make a decision and make a fine and do a penalty. Ms. Patterson stated and if they don’t want to do similar to a consent agreement if they don’t want to sign it, yes it would come to the commission. Commissioner Varney stated that Ms. Perkins stated that the judge would have a hearing, dole out the fine and the suspension out. At this point in time, we have the consent. They called (Mr. Greenleaf or Mr. Jennings) and get a consent if the person admits to guilt and consents to the fine, it’s done, they pay, and it’s over; and if they don’t we have a hearing. What he is hearing is Ms. Patterson saying the same thing only going
through the judge. Ms. Patterson stated but they do have a right to appeal it so they would come before the Commission. Commissioner Varney stated that Ms. Patterson said that they could consent to the fine or come to the hearing. Ms. Patterson stated that is only her perception of it. Commissioner Reed stated that he would benefit to hear from Judge Malia. Mr. Malia stated that his understanding from the reading of Chapter 11 would be that we would need a change of some language in your current Chapter 11 if you were to reinsert the judges into the process. Currently, the laboratory notifies the commission and the commission notifies the violation to the licensee and the hearing is if necessary is held here. There is no advent for the judges to be involved in the current rule. The last time he was involved with these hearings he was an associate judge and they did have an adjudicatory initiation of the violation with the judges. It was a much more of a cookie cutter situation in those days. We basically had a violation notified and they would give a very basic idea of the penalty to the licensee and he would say that a huge number of them would accept the penalty and not move forward. He suspects that the opposite is true now, and he thinks the judges would have to have some counsel and some advice because we are now talking about nanograms, milligrams, and picograms. That kind of information was not necessary for a judge to understand at the time that they were doing these adjudications. He’s not saying that they couldn’t do it, they would need some institution of relearning. Particularly, Chapter 11 did not exist as it does now and ARCI was not a fact, they had their own rules. The world has changed quite a bit since 1997. He has 75 days that he will be involved and chances are he is going to get quite a bit of them. He did not read Roger Smith’s letter but he’s recalling the days when it was a much much simpler process where they were all involved with what was a prohibited substance. They did not talk about therapeutic medications in those days and there is a lot of clarifications and attenuation as to what is a positive test today. Commissioner Timmons asked Mr. Malia how would he handle it if he had seven fairs and he found out after that fair, and you have different judges at each one of the fairs you don’t usually and the fairs over and those judges are gone and now you’ve been notified that there’s a positive that needs to be dealt with. How are those situations going to be faired out and actually handled and handled in a timeline when that fair is all over and they won’t be back until next year. That sounds like a minor issue but he thinks it could be a major one. Judge Malia stated that he is assuming that these are appeal hearings. Commissioner Timmons stated that he is assuming that there were positive tests at Cumberland Fair and Fryeburg Fair’s over and now we’ve found out there’s positives. You have to gather those judges and bring them back to have a hearing and they have to be paid to do that. Judge Malia stated that a penalty given at one of the fairs giving for instance at Farmington would be adjudicated at the presiding judge at Farmington at the next location. He has adjudicated cases for other judges that couldn’t be there. There is opportunity. The appeal hearing process would be similar to what happened to Mr. Whittemore. The short answer is it’s a problem. What you are explaining is a problem. Commissioner Graham stated that he thinks the whole reason for this is, is because the length of time it takes to get a hearing. He thinks what he is hearing is, they don’t want to go to the judges doing it but we need to somehow make their process faster. He heard that Mr. Whittemore went in November to Florida but his cases were in September, he should have been able to in October have a hearing and not wait to get notified in December. He thinks they need to try to move these things up as quickly as we can. He thinks that’s the biggest complaint the horsemen have is somebody got a positive and it’s six or eight months after. Commissioner Varney stated that he agrees with Commissioner Graham. Since he has been on the board these hearings have come along ways and we’ve caught up some of the backlog, and they are sooner but they need to be even sooner. If the problem is somebody’s in Florida and we don’t want to do that, then we need to address that. By having the track judges hear them say there is a shortage of judges and there’s a problem with judges. Streamlining their process might go a long way. Commissioner McFarland stated that he agrees with the two commissioners. Having sat here for a while on the board, the majority of the delays that they’ve had have been for the benefit of the violator and not a result of what the commission hasn’t done. We have bent over backwards as a Commission not to call violators in at their additional expense of traveling. Yes, maybe the timing could have been better on this one case here, but it would have to have happened in October because you were probably gone in November. That’s an isolated case in his opinion. Commissioner Timmons stated based on what they’ve heard today on item number four what would be the wish moving forward. Ms. Perkins thanked the Commission for the comments she just heard.
She believes that was why the Fairness Committee came up with this proposal it had to do with the length of time of these cases coming before you, they wanted to expedite because it is creating problems. She does agree with Commissioner McFarland that she is tired of people moving to New York or Florida and having to wait. They should be up here. Commissioner Timmons asked the Commission what their wish is on this item. Commissioner Varney stated that he agrees with both Commissioners and streamline their process a little better and make a decision on whether being in Florida for four or five months is sufficient grounds to delay the hearing. They need to decide whether it is or it isn’t, and do it for some and not for others. We have to do it for all or none. We need to discuss at a later date would be appropriate. Commissioner McFarland made a motion that they not transfer the initial adjudication of prohibited substances to the track judges. Commissioner Reed seconded. Vote 5-0.

5. **Commission Review of a Rulemaking Proposal by the Maine Harness Horsemen’s Association to Establish Standards for the Maintenance of Tracks and the Distribution of Purse Funds.**

The Maine Harness Horsemen’s Association is advocating for the establishment of standards in Chapter 5 for the proper maintenance of tracks. In addition, the Association supports adding language to Chapter 5 requiring any commercial track that does not have a contract with a statewide association of horsemen to receive approval for its purse payment plan annually. Commissioner Timmons asked if there is someone who would like to speak on this item. Debbie Patterson secretary of the MHHA presented the rulemaking proposal because in Chapter 5, Section 2 it talks about certifying the track and in Chapter 3, Section 5 the only thing it talks about on track conditions is if there is going to be a cancelation and the horsemen’s representative needs to get together. There are no rules basically on what your track needs to be like. The conditions of it. What they are proposing is: 1. Associations are responsible for the management and maintenance of the track and must provide a racing surface that is consistent and safe, and that provides reliable footing for the horses and trainers/drivers for the entirety of their racing meet. 2. Each Association is required to have an annual track maintenance plan that must be available upon request and/or required as part of the license application. 3. The Association shall consult with the Department and the statewide association of horsemen as soon as possible in order to determine whether racing should be cancelled and to provide as much notice as possible to affected participants. 4. Each Association shall provide an adequate drainage system that is maintained regularly. 5. Each Association shall provide adequate equipment and personnel to maintain the track surface in a safe training and racing condition. She stated that there are no rules stating the condition of your track. Commissioner Timmons asked if anyone had questions for Ms. Patterson. There were none. Ms. Patterson stated that Scarborough Downs has been awesome this year. They have a great working relationship with them. She keeps track of the purse money that’s spent and what’s coming in. There are no issues. What the horsemen are concerned about is the uncertainty future of Scarborough. There have been talks of a group potentially that may be wants to open a track if Scarborough does close down. Commissioner Timmons asked if anyone had questions on the track maintenance. AAG, Guay stated that the purpose of this presentation is that the Commission will see rules and during the public hearings part you’re looking more at the text then responding to the text. This is sort of setting up sort of the policy reason why you might see things. Is that correct Mr. Jennings? Mr. Jennings stated he thinks so. This was not on his radar. The Commission in his view could say that they absolutely do not want to go forward with this and he could pull it back. Commissioner Timmons stated based on that comment that you just made they are always going to be open to what they see that could be an issue that they need to address, and when the rulemaking comes along by that time if there is something they need to change or add. He thinks they need to get more input. He says it because they maintain a track 365 days a year at their facility. The weather and trying to keep the track maintained and have it be as perfect as it can be with the weather the way it is, it is not an easy task. When you’re racing and it rains two days especially at a fair you can’t do it the next day because you only have six or eight days to start with. He thinks
most tracks have done a great job to make sure that the track is safe for the people using it and for the horses training on it. He hears what you’re saying and he respects what you are saying. AAG, Guay stated that if they do have a public hearing on rules he would rather not be as active during that meeting because the intent would be that he would do the final rule review, so if he could speak generally to policy. The track condition issue for the Commissioners the newer ones perhaps it’s an issue that the Commission never has had a formal proceeding before it, and from an enforcement perspective in terms of his previous legal advice it is an area in the rules that’s just not defined. You’re not going to have a rule that covers every single facility but there’s absolutely nothing now, and to the extent now that there is something in there and even though it’s perhaps vague it kind of clarifies what the expectation is. Right now, if the Commission chose and there was an issue three or four years ago, to take action at a track it would be a matter of first impression completely of what the expectations are. He would suggest that any text he understands the concerns that it might be too specific but any text at all is better than what they have now. He would suggest the Commission be open minded. As far as the purse, he would also suggest that the Commission has the ability to be a little bit more involved in the purse structures; and to the extent you haven’t that recognize that allowing by rule in certain circumstances to be able to vote on what purses look like. Commissioner Reed stated that track conditions are one of the many things at which he is not an expert of but he would think possibly they might make some progress if we were to implement an informal meeting between the state steward and the horsemen’s rep when there is a question about the track. The horsemen don’t want to lose the day and the state steward is obligated to maintain the integrity of the commission and the racing world. Michael Hopkins of Bangor Raceway stated that the number one priority of any track is to provide a safe race course for these horses and drivers, whether it’s a fair track or a commercial track. We lease the track from the city. We get the track made up and then a fair comes on the track. It’s ruined, we have to redo the entire track again. The track is a soft track and if we feel that track is unsafe to race we will not race. It is well maintained. Steve Cobbett director of operations at Scarborough Downs stated rule 5.2 on certified tracks there is only one track that is certified by surveyors and that is Scarborough Downs. As far as the proposed rule in front of them, under what Ms. Patterson read, the associations are responsible for the management and maintenance of the track and must provide a racing surface that is consistent and safe. They do that currently and if there’s been a problem they contact the horsemen’s rep and state steward; Especially in the spring of the year when the conditions are extremely difficult to have and very often the frost is coming out of the track, and it gets muddy and we work with the horsemen’s rep and other people within their organization to get the day in. As far as having an annual maintenance plan that is extremely difficult as their conditions in spring change, in the summer they change and again in the fall and again in the winter. He thinks they have adequate drainage systems for their facilities. When you’re going to start dictating what they are going to have for equipment and personnel he thinks that’s dictated by income and finance, and he thinks they have all the equipment that they need. Given on certain conditions and finance conditions during the scope of the year we either have more or less personnel. That’s just business in today’s economy. As far as the purse structure that he read, they do enjoy a great relationship this year with the horsemen’s association and they look forward to sitting down at some point and trying to work on a contract. We currently do not have a contract. However, the purse structure that was mentioned is also a negotiable item within that contract and to go and make a rule that if you do not have a contract that they have to have an agreement before hand it kind of creates an unfair bargaining part. Commissioner McFarland stated that he would like to clarify one statement that Mr. Cobbett made and he knows that he did not know this. Windsor Fair is a certified track and it has been in the last fifteen years. Michael Sweeney of Scarborough Downs stated that he would like to concur with the statements made by Ms. Patterson that they have had a good working relationship with the MHHA. It unfortunate though to find out that these rule changes were going to be presented in front of the commission through receipt of the agenda. If a conversation wants to be
had he thinks it proper for people to talk to one another and he wished that had occurred. He is commenting on a couple of points made by Ms. Patterson earlier. She was talking about proposed rules applying primarily to commercial tracks and not to fair tracks, and if that is the case we need to make sure that the rule specifically separates the two entities when it is presented. She did make a comment why it should be pertained to commercial tracks is because the commercial tracks benefit from the 4 percent fund the fund to encourage the continuation of live racing in the State of Maine. He has made this point in front of the Veterans and Legal Affairs Committee and the Maine State Harness Racing Commission that since the opening of the Bangor Racino at the time even with the 4 percent fund the revenues coming in to Scarborough Downs are lower than they were before the advent of the racino. It is just the fact that the business has started to turn around a little bit. Their live handle is up 30 percent, their per dash live handle is up 17 percent this year, and they are hoping to continue on those trends. AAG, Guay stated that any rule or regulation would have to have a rational basis and the rational basis would be the health and safety of the participants and the animals. He thinks that there would have to be a showing that the fine and the payment would be rationally related to that compared to other methods. It is a difficult question. He would say there would be other tools in the tool box if a facility was not maintaining their track which could include a fine. He is not sure it would be distributed to any participants. He doesn’t see in the statute the ability to levy a fine and then distribute to anyone other than to where fines go. He’s not sure if there is a cap on the amount of fines. Mr. Sweeney stated that was his understanding when they went through the rulebook process a few years back and we were getting to the penalty phase they were taking that into consideration. When the rules are promulgated or the proposals are put together that they take those sorts of things into consideration. Commissioner McFarland stated to Mr. Sweeney that he made reference to the 30 percent increase in the handle. Do you know if it is the onsite bet live or is it simulcast? Do you have an idea of the percentage of that 30 percent of what those two are? Mr. Sweeney stated that he doesn’t know what the exact numbers are but he knows in total when you put the off-track handle and on track together. It is pretty much equally balanced between the off-track and on track handle. He stated with the exception of three days this year they have beat their on-track handle from last year, and with the exception of a couple of days they have beat their off-track handle from last year. Commissioner McFarland stated it could be because of full fields for betting. Commissioner Timmons stated that he received a printout of an issue with the Sanford OTB. Steve Cobbett of Scarborough Downs stated that he spoke with Mr. Barberino regarding their signal. They noticed last year there were many days when Sanford’s sling box would not light up and they could tell if they were taking Scarborough’s signal. He brought this complaint to the state steward Dennis May and he forwarded to Mr. Greenleaf. They have had people from Sanford complaining that their signal is not up. The bartender will put the signal up if asked, if they don’t ask they don’t put Scarborough’s signal up. Mr. Cobbett stated that Sanford is not complying with the rule. AAG, Guay stated that if the industry has an issue or complaint they should go through Mr. Jennings. He stated to the extent that he is one of the Commissioners as commission counsel that they do not investigate complaints. Commissioner Timmons stated that he didn’t investigate. He took the information that came from Scarborough to Mr. Jennings. Commissioner Varney stated that he would think that Mr. Jennings could notify Mr. Barberino before the next hearing to get an explanation because he definitely will be asked about it. Commissioner McFarland stated that he could speak a little bit on that because they decided to go streaming versus simulcast last year, but that is an issue whether they’re up and ready. It has to do with personnel that are on that day that don’t know, that haven’t been told but it is the licensee’s responsibility to see that that does happen.

6. **Commission Discussion about Supporting the Harness Racing at the Pembroke and Cornish Fairs.** Pembroke and Cornish are the last two agricultural fairs that host non-pari-mutuel harness racing. The non-pari-mutuel fairs benefit harness racing in Maine by serving as training grounds for
aspiring participants, and by giving the sport more exposure. The Maine Harness Horsemen’s Association is advocating that the Commission support the last two non-pari-mutuel fairs so that the benefits will also continue. Commissioner Timmons asked who wanted to speak on this topic. Mr. Jennings stated that he might want to clarify the agenda. He might have the wrong terminology. They are not licensed agricultural fairs, they are non-pari-mutuel fairs as such they are not eligible for any sort of stipends distribution through the cascade. Commissioner McFarland stated that the key here is what the word support means. Ms. Patterson stated that every year Ms. Perkins sends the MHHA a letter asking if they will sponsor a race or a blanket. The MHHA is very limited on their marketing and promotional money. Tammy Ramsdell of the Pembroke Fair asked the MHHA for $80 to do a blanket, but Ms. Patterson stated to her that she didn’t think she had the $500 to give her. She stated to Ms. Ramsdell if she had ever asked the Commission because Mr. Jennings might have some promotion money that he has been allocated. Since then Ms. Patterson revisited her budget and their board has to vote on the approval to send Ms. Ramsdell the money. Ms. Patterson stated that these two fairs are approachable. Commissioner Timmons stated so the Commissioner can say that we support this effort that’s what you are asking them to do. He said definitely if it helps harness racing and you find them more accessible. He thinks there is a process it takes two or three years to get to maybe a different level here. For them to do anything financially isn’t what you are really saying so yes, we support it. Commissioner McFarland stated that he isn’t sure the way they are structured and what they do to even come close to qualifying. If you look at the criteria through the Department of Agriculture, Conservation and Forestry has on their application and you don’t give premiums, have exhibits, and so on you are not going to qualify. There are pretty strict criteria to get into the stipend funds in that respect. Ms. Paterson stated that maybe Mr. Jennings can promote them on their Facebook page. Commissioner Graham stated in Cornish that’s where every young driver we have, that’s where they started. We should do everything we can to support it and we should be doing the same thing at Pembroke because that’s where we are getting the interest in harness racing from. Commissioner Varney asked Mr. Jennings how much money he had in the promotion fund. Mr. Jennings stated that there are two things going on. The Commission authorized expenditure of $18,000 commission funding to do marketing. The MSBOA has essentially becomes a partner in that because they have promotion money too. There is a bill that went through the legislature that dissolves the promotional board and gives that money to the commission and that doesn’t go into effect until after August 1, 2018. It is clear in the statute that you can support the industry of harness racing to the extent that it’s part of the industry through promotional activities. Commissioner Graham made a motion to give both of the fairs $500 for promotional purposes. Commissioner Varney seconded. Commissioner Graham stated that’s where we are going to bring harness racing back to what extent we can. These young drivers started there. Catharine Damren stated that Blue Hill was a licensed fair but a non-pari-mutuel fair. Pembroke Fair was sent an application by the Department but they did not hear from them. At one time, the Pembroke Fair was looking to get stipend money. Mr. Sweeney stated that he would caution the commission a little bit about disbursement of money from the fund that Mr. Jennings is the steward of. The commission voted to establish that fund from their budget in order to market the industry. He doesn’t believe in the past since that fund has been established that we have taken a lump sum of money and given it to another entity to do with as they see fit or to market as they see fit. He thinks we start to go down a slippery slope if we start to make grants to other entities. Ms. Perkins stated that she is president of the Cornish Fairgrounds Advisory Committee. The town of Cornish bought the fairgrounds in 1994. Their mandate is to preserve, renovate, and promote the fairgrounds in harness racing. They get no money from the town at all. This is their twentieth year for the horsemen’s day. They would not be able to do this without the support of the MHHA and anybody in harness racing. They receive money through their sponsorship and the Promotion Board has always given them $500. She did ask the MSBOA for money and they did give. She also stated that they could not have done it without the help of the local people. She stated they had a two-
seater jog cart and the legislatives came and participated in the driving. That was a good promotion so the legislatives could know what harness racing is all about. There is a museum in Cornish on harness racing and every year she gets a lot of people donating and just this last year someone donated a one high wheel sulky. Somebody needs to start a harness racing museum because there is not one in the State of Maine. Commissioner Timmons asked AAG, Guay if he came up with the answer of yes or no. AAG, Guay stated that he heard a promotional reason and it is very clear that these activities promote harness racing. There has been significant amount of evidence of that. You are fine. Commissioner Timmons asked for a vote to allow the commission to have the promotion board through Mr. Jennings present $500 to Pembroke and $500 to the Cornish fairs. Vote 5-0

7. **Other Business:**

Commissioner Timmons stated that he would take the meeting out of order. Don Barberino addressed the Commission regarding the location of his off-track betting facility. He stated that the building that he is currently located at has been sold. He needs to be out of the current building by August 28, 2018. He has a new location at 38 College Avenue in Waterville, Maine. AAG, Guay stated that they would need to reopen the hearing to amend the license. Mr. Barberino is trying to minimize the down time. AAG, Guay stated that his suggestion to the Commission and to the Department would be that Mr. Jennings issue and he doesn’t think it needs to be published in the newspaper, but to the parties to reopen the OTB licensing hearing for the limited purpose of approving a change of venue for Pioneer Gaming. Commissioner Timmons stated that if you bring everything back here at the next meeting, we can deal with it. Mr. Barberino stated that he just wants to let everyone know he has to move and he is moving. AAG, Guay stated that unfortunately like other matters that come before this Commission. Your matter is very tightly regulated by statute. You have a license and there is a process for licensing of OTB’s. Mr. Barberino wasn’t anticipating a vote. It was more for informational purposes.

Commissioner Timmons stated that he would like to hear the update on the ADW if no one objects. There were none. AAG, Guay stated that the Commissioners voted for him to contact the Oregon State Harness Racing Commission on their behalf and he did so. The State of Oregon licenses multi-jurisdictional simulcasting which is the same as ADW. The State of Oregon licenses entities that do simulcasting of harness racing in other states and they contemplate by rule that they’d be residents of other states like the State of Maine that would be transacting business with their licensees. Mr. Barberino provided him with this information. He did some do diligence and found it unusual but Mr. Barberino was right. He put in a request for them to identify which facility they license in Oregon that has Maine residents betting on simulcasting. His understanding is they requested to put a formal FOIA. He should be receiving a response next week. He asked for a list of entities that listed Maine as a state that they do business in, and they also have to file an operating plan that describes the operation in setting up accounts for residents of other states. He asked them for any entity that have accounts in Maine if they will submit that as well. What he will do with that information as you will recall under your statute if there is an indication there is simulcasting occurring by unlicensed individuals and certainly what we’ll do is take a look at the list that Oregon provides him and compare it to our list in the state of Maine. If they are not licensed, then he will bring it to the Attorney General and ask her to submit a letter to these entities in the other states putting them on notice. That would end what we would do as a commission because we do not have primary enforcement action we can’t do anything to these entities. What the Attorney General’s letter does, is it allows for an acceleration damages if there is a private right of action. If he finds relative information, he would share that with the executive director of the Gambling Control Board.
Commissioner Timmons asked Mr. Jennings to send a letter to Fryeburg Fair on behalf of the Commission that if there is anything we can do to help them in the next few months. Kim Pike addressed the Commission regarding Fryeburg Fair. He stated that it was the sheep and cattle barns that were destroyed. They will have tents this fall. Nothing will be canceled. Ms. Perkins gave a brief report on the sire stakes. They have 3 trotters in the colt division and the other races are full cards. They are on task for the 3 year olds. Mr. Sweeney stated that the 3 year olds have been very competitive and good betting races. Mr. Whittemore stated that he would like to see that the state stewards adjudicate positive cases rather than judges. Ms. Perkins stated that they are doing declarations on line and there is a glitch. There is a procedure that needs to be followed so a couple of horsemen didn’t declare on line correctly. Mr. Jennings stated that earlier in the year there was a discussion on whether to use a head-on camera. Commissioner McFarland stated that Windsor is planning on using the head-on camera.

AAG, Guay stated that he would ask to have 2 minutes to go into executive session to receive legal advice by counsel. Commissioner Reed made a motion to go into executive session. Commissioner Varney seconded. Vote 5-0. They added an adjournment to that too.

8. **Schedule of Future Meetings:**
   - August 22, 2018
   - September 13, 2018

9. **Adjourn**
   - 11:27 a.m.