

Congressional Testimony
November 17, 2005
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Commissioner
California Horse Racing Board

Mr. Chairman and Members of the Committee, thank you for inviting me to testify before you on “Thoroughbred Horse Racing Jockeys and Workers: Examining On-Track Injury Insurance and Other Health and Welfare Issues.:

My testimony is intended to cover four specific topics. They are;

1. Issues and Challenges with the Jockeys’ Guild
2. California’s Efforts to Provide Health and Welfare Coverage for Jockeys and Backstretch Workers
3. Track Safety
4. Competitive Factors and Federal Oversight

Jockeys’ Guild

In October 2004 I became a Commissioner on the California Horse Racing Board. It was about that time that I read of the horrible situation where Gary Birzer, a jockey I had met one time at Mountaineer Park had been rendered paralyzed in a racing incident. I recall when I met Gary I was very impressed with his work ethic - working horses in the mornings, racing in the evening - always with a smile on his face.

When I heard that unlike California there was no adequate accident insurance in place to cover his expenses, I was outraged. How could this possibly be? I placed on our monthly agenda an item for discussion to insure something like this could never occur in California. I specifically asked that Dr. Gertmenian appear to address our concerns. He didn’t show up. Mr. Albert Fiss did attend the meeting, but when asked what steps the Guild was taking to make certain that all of our jockeys were insured, I was given evasive and non-responsive answers.

Things only got worse from there. You see, California does provide Workman’s Compensation coverage for its backside workers, including the riders, and further, California provides over a million dollars a year to the California Health and Welfare Plan, specifically for jockeys that ride at least 50 races in California and 100 races in a calendar year (Exh.1). But when I asked Mr. Fiss if the Jockeys in the jockeys’ room had all registered for the coverage, he never answered my question as he didn’t know. This was unacceptable to me. The Jockeys’ Guild should know so.

The Guild receives approximately \$1 million each year from California for insurance coverage for the California riders. The health plan insuring riders in California is part of a Guild self directed or self insurance plan, that covers all riders in the country. The money derived from California is to be used only for the California riders. We, along with the TOC, have asked repeatedly for the Guild to show that our money is being used for its intended purpose, and to address many concerns related to the Guild (Exh. 2). They have failed to do so. We are not satisfied that our money is being spent for purposes that it was intended, and we are concerned it is being co-mingled with other Guild funds and jockey payments for health insurance. We are unconvinced that we are not subsidizing health insurance for riders in other states.

We are also very concerned, given the Guilds' apparent financial straits, that there is insufficient funding to pay for claims, particularly in the event of a bankruptcy. The Guild has not even collected almost \$1 million of dues from its own members, including large sums from its current Board members. Given the pattern of misrepresentation by the Guild, it is questionable that the Symetra excess policy (Exh. 3) may not be enforceable. We also are alarmed that within one year of the current Guild management taking over, the Jockey Disabled fund has been depleted from \$1,327,083 in 2001 to \$0 in 2003. We still don't know where that money went, and how disability expenses increased to over \$850,000 in 2002 versus \$194,000 in 2001 (Exh. 4).

The Guild is required to provide to us and the Thoroughbred Owners of California, who are also party to the agreement, audited statements for each year's actual expenditures. The Guild has failed to timely comply with this requirement, and only when we insisted that it be done, did we finally receive audits on September 9, 2005, for the years ending 2003 and 2004 (Exh. 5). Those reports highlighted varying concerns of its own auditors, as contained in the Management Letters from the auditors. Concerns included lack of proper controls, allocation of funds, and other procedures that should have been implemented by the Guild (Exh. 6).

Additionally, we note that of the approximate \$1 million dollars contributed by California, approximately 51% of the money provided to the Guild is used for Administrative expenses (Exh. 7). The Guild retains a plan administrator, but they also claim approximately 15%, or \$150,000 for Guild administrative expenses. We need to know why nearly 50 cents of every dollar is not going to our jockeys' health benefits. It is also interesting to note that since 1997 the self directed health plan of the Guild has increased in cost by 83% as compared to the CalPERS increase of 67.2% for the same period. (Exh. 8)

In early 2005, we advised the Guild that we wanted to see alternative health insurance quotes from outside insurance companies. We asked that they competitively bid the insurance coverage. As we sit here today, the Guild has not only failed to seek out any competitive bids, but we have asked for census data so we could obtain alternative bids, and they have failed to provide that information to us, despite repeated requests. Just this past week, I called the Guild asking to speak with Dr. Gertmenian or Albert Fiss, their controller, neither of them were available. I was told that David Shepard, their Chairman

was there, but he never returned my call. The purpose of my calling was to simply ask them to authorize the company that administers the health insurance plan to release census data to an insurance broker who specializes in racing related health insurance. I do not want to see this Guild implode and render our jockeys without health insurance.

Notwithstanding their total lack of efforts, I have obtained preliminary quotes for medical insurance from Blue Cross or Blue Shield for our California jockeys (Exh. 9). But without the census data we cannot get firm quotations. I ask you to ask Dr. Gertmenian to sign the release of information (Exh. 10) I have before me, so that we can protect our jockeys. If he really cares about these men and women and their families, I can't imagine he wouldn't immediately sign this document.

At your hearing on October 18th, Dr. Gertmenian testified that California had conducted an audit of the Guild and was satisfied. Let me be very clear with respect to his testimony. His statement was completely untrue, and he knows it. We have never been satisfied with the Guild's performance, and the California Horse Racing Board in an open meeting voted unanimously to proceed with a forensic audit of the Guild as a result of that dissatisfaction. (Exh. 11)

As a result of our ongoing problems, and the non responsiveness and untimely performance of the Guild, we have determined that we will have the State of California Department of Finance undertake a forensic audit of the Guild, which is commencing as we speak (Exh. 12). Until such time that we are satisfied that the money provided to the Jockey Guild is being spent appropriately and for its intended purpose, it will be my recommendation to the California Horse Racing Board that all future payments be withheld from this Jockeys' Guild.

All of the California racing industry is dedicated to the welfare of our valued riders. It is unconscionable what happened to Gary Birzer. It is unacceptable that this Guild would not provide replacement wheelchair wheels to a paralyzed rider by the name of Gary Donahue. It is unacceptable that riders who asked questions were thrown off their Board of Directors. And it is horrifying to hear that guild management refers to Gary Birzer as a "casualty of war". There is no war; Gary Birzer is only a casualty of the inept management of this organization.

If Gary Birzer's accident had occurred in California, he would have been entitled to unlimited medical care, disability payments and rehabilitation. Further, had he signed a waiver of liability under the TRA program funded by California tracks, he would have received additional catastrophic injury coverage. In my opinion, it is unacceptable for any track, in any state, to provide any less than what California provides for our valued Jockey partners.

I am convinced that with real Guild leadership - not a group of people looking to wage war - all of the racing industry can and will come together to take care of the riders who put their lives on the line every time they mount a horse.

California's Efforts to provide Health Benefits for its Backstretch Workers:

As mentioned previously, California provides approximately \$1 million dollars a year for Jockeys Health and Welfare Insurance. These monies are derived from uncashed refunds of pari-mutuel tickets. This program began in 1997, and to date has resulted in over \$4,411,000 (Exh. 13) being given to the Jockey's Guild through 2004 for Jockey Health Insurance.

California backside workers, including the jockeys, are covered by Workman's Compensation insurance (Exh. 14). To offset the high cost of this insurance, the California Horsemen's Safety Alliance was formed and incorporated into California Racing Law. Since 2002 and through 2005 approximately \$11,250,000 has been contributed by tracks and horsemen to offset the cost of Workman's Compensation expenses. In 2004, an additional section was added to California Racing Law, which provided that an additional .5% of the takeout on exotic wagers would be used to further defray the high cost of Workman's Compensation Insurance. Since May of 2004 and through October 2005, an additional \$11,300,000 of monies has been collected for costs associated with Workman's Compensation Insurance for our backstretch workers and jockeys.

In addition to the California Health and Welfare Plan, and Workman's Compensation Insurance, California also provides the following monies and services for jockeys and backside employees:

1. Medical and dental care is provided to all backstretch workers by the California Thoroughbred Horsemen's Foundation.
2. Backstretch workers and trainers participate in a pension program administered by the California Thoroughbred Trainers Association. Current assets under management are \$33 million.
3. Disabled Jockey Endowment and the Don McBeth Jockey fund are funded from charitable race day proceeds from all Thoroughbred racing associations. Ultimately, \$2 million will be set aside for these disabled riders. Between 2003 and 2005 to date approximately \$425,000 has been donated to these causes.
4. Recreational programs and facilities at each race track are provided and sponsored by the California Thoroughbred Trainers, the Gregson Foundation, the Racetrack Chaplaincy, and each of our racing associations.
5. Drug and alcohol counseling is provided to all backside workers by the Winners Foundation.
6. Religious services and ministry services are provided by Race Track Chaplaincy of America.

The California Horse Racing Board in conjunction with the Thoroughbred Owners of California, California Thoroughbred Trainers and all of our thoroughbred tracks, have also initiated a comprehensive health study to determine optimum health conditions for jockeys. This comprehensive study, a draft of which is attached to my written testimony, is entitled "Athletic Performance in Jockeys: A Baseline Study of Physiological and

Nutritional Factors.”(Exh.15) This study is intended to lead us to a better approach to establishing safe riding weights for riders based on scientific principles such as body composition, height, gender, age and other variables that the current approach does not take into account. We cannot continue to accept the notion that “one size fits all”. The industry needs to develop better nutritional training and monitoring practices to ensure that weight management is done safely and in a manner that maximizes athletic performance.

It is my hope that the entire racing community, including jockeys, will join with us and participate in this study to determine not only optimum and minimum standards for riders, but also establish a reasonable scale of riding weights that is implemented throughout the country.

Track Safety

All of our race tracks in California are maintained in excellent condition. Our horsemen’s organizations including the California Thoroughbred Trainers (CTT) and Thoroughbred Owners of California (TOC) are vigilant in working with our race tracks to insure the safest possible conditions for both horses and riders.

I believe that the California Horse Racing Board was the first regulatory agency to adopt track safety regulations and require track maintenance plans and inspections. Let me just cite a couple of the racing law and regulations that are in existence in California:

Horse Racing Law:

(Section 19481) required the CHRB to adopt safety standards governing track base and racing surface, rails, gaps, turf access, lighting, equipment, drainage, communications, veterinary services, medical and ambulance services, track inspection procedures, housing regulations for workers and inspection of housing facilities.

California Horse Racing board Regulations were adopted specifically:

(Section 1468) governs emergency procedures, communications, and ambulance services.

(section 1469) governs safety of race course

(section 1471) establishes track safety standards and inspections requirements

(section 1472) establishes rail construction and track specifications

(section 1473) governs renovation of dirt track

(section 1474) governs maintenance of dirt track and requires written track safety maintenance program

Prior to the issuance of any license to conduct any race meeting, the CHRB conducts inspections and the racing association must satisfy the CHRB that all procedures are in place before the granting of the license. It is also customary for track safety to be discussed between the representative groups, jockeys, and the California Horse Racing Board to insure that the track surface is safe at all times. When and if there are concerns, it is the policy of the California Horse Racing Board, and all of our tracks, to immediately

address the problem and if the track is deemed to be unsafe for any reason, racing will not be permitted until the problem has been remedied.

California, through UC Davis and a variety of organizations, has participated in a variety of studies to maintain and develop the safest possible track surfaces. As evidence of this commitment to track safety, just recently Hollywood Park determined that its new Turf Course was not fit for racing, and all turf racing at the meeting that just commenced was cancelled.

Competitive Factors and Federal Oversight

Racing throughout the country is facing a transformation. As part of this process many jurisdictions, including California are facing very difficult times. With the advent of casino style gaming at racetracks in many jurisdictions, those without the alternative gaming are fighting for their economic lives. In California alone, two of our five major tracks have been sold and are likely to cease operating as race tracks. Unfortunately, California only has casino style gaming on Indian lands. The result of this disadvantage has been that our purses cannot keep pace with gaming states, and consequently we are losing horses and horsemen to other states throughout the country. (Exh. 16)

But aside from California, racing needs help to regulate issues that reach farther beyond one states borders. With the advent of simulcasting, advance deposit wagering, and the internet, we face a host of problems that need to be addressed. Illegal off shore wagering today is estimated at hundreds of millions of dollars. This money is not reaching our betting pools, and therefore doesn't then benefit the horsemen, tracks or the states where racing is being conducted. We need your help to stop this illegal activity. If we can bring that money back to our racing pools, there will be more money available to pay for new track surfaces, better insurance programs and better health and welfare plans.

We need consistent racing laws and rules that apply to all jurisdictions to insure a safe and level playing field. Uniform medication rules, uniform scale of weights, uniform minimum standards for riders and uniform insurance coverage, including Workman's Comp coverage in all states.

I know that some people in the horse racing industry will not like to hear me advocate any federal oversight, but I look to you not to constrain us, but to help an industry in transition. I ask you to help preserve the billions of dollars invested by tracks, horse owners, trainers, and all participants in a sport they love. I ask that you help us save the tens of thousands of jobs created by this industry. We are at the beginning of a new century, yet we are a sport of tradition, pageantry, and a solid historical background. We are a sport made up of wonderful people from all walks of life. Please help us find a way to insure and employ all of our participants profitably. Help us have an incentive to not tear down tracks, but build tracks. Help us root out those that try and cheat us and take our product beyond our borders. Help us establish common limitations and guidelines on medications to protect our horses. Racing needs your support to adapt to changing times, so it can keep the sport healthy for centuries to come

Again, I would like to thank you for taking the time to conduct this hearing and inviting me to address you.

Appendix

All attachments to Mr. Shapiro's testimony can be viewed online at the Committee's hearing website:

<http://energycommerce.house.gov/108/Hearings/11172005hearing1709/hearing.htm>