

5. Should any horse treated with shock wave therapy race within 10 days of treatment:

i. The owner shall be subject to the following penalties:

(1) A first violation shall result the horse being disqualified from the race and any purse money won forfeited. The horse shall also be placed on the Steward's List for a period of 10 days;

(2) A second violation shall result the horse being disqualified from the race and any purse money won forfeited. The horse shall also be placed on the Steward's List for a period of 30 days and shall not be removed in the event of a bonafide transfer of ownership. The same horse need not be involved in both violations in order for the owner to have committed a second violation; and

(3) A third or subsequent violation shall result the horse being disqualified from the race and any purse money won forfeited. The horse shall also be placed on the Steward's List for a period of 90 days and shall not be removed in the event of a bonafide transfer of ownership. The same horse need not be involved in all violations in order for the owner to have committed a third or subsequent violation; and

ii. The trainer shall be subject to the following penalties:

(1) A first violation shall result in a suspension for a minimum period of one year and a fine of \$10,000;

(2) A second violation shall result in a suspension for a minimum period of three years and a fine of \$25,000; and

(3) A third or subsequent violation shall result in a suspension for a minimum period of five years and a fine of \$50,000;

6. Should any horse treated with shock wave therapy breeze within four days, then the following shall apply:

i. The trainer shall be subject to the following penalties:

(1) For a first violation, the trainer shall have his or her license suspended for a minimum of six months and shall be fined a minimum of \$1,000;

(2) For a second violation, the trainer shall have his or her license suspended for a minimum of one year and shall be fined a minimum of \$2,500; and

(3) For a third or subsequent violation, the trainer shall have his or her license suspended for a minimum of three years and shall be fined a minimum of \$5,000; and

ii. If an owner's horse or horses, cumulatively, are found to have breezed within four days of receiving shock wave therapy on three occasions, the horse committing the third violation shall be placed on the Steward's List for a period of 30 days; and

7. A licensed veterinarian's failure to abide by either the pre-notice requirement or the requirement to send a Shock Wave Therapy Treatment Sheet within 24 hours shall be subject to the following penalties:

i. A first violation shall result in a formal written warning;

ii. A second violation shall result in a \$1,000 fine; and

iii. A third or subsequent violation shall result in a minimum 15-day suspension and a \$2,500 fine.

(b) If shock wave therapy is impermissibly performed upon any horse, the racing of that horse within 10 days or breezing of that horse within four days shall serve to aggravate the penalties imposed in (a)1 or 4 above, respectively, against the offending party who performed shock wave therapy.

(c) Any and all penalties assessed against an owner, trainer, veterinarian, or other person for violation of N.J.A.C. 13:70-14A.18 shall be individually assessed against each particular violator based upon his or her own violation history. For example, the same set of facts may be deemed a third violation against the trainer, a second against the owner, and a first against the veterinarian.

(d) Notwithstanding the foregoing, the Judges may punish any person who directed another to violate N.J.A.C. 13:70-14A.18. The person who directed the violator shall be subject to the same penalties as the offender. This includes, but is not limited to, the principal veterinarian of a veterinary practice, a veterinarian who directs a veterinarian technician or other person to perform shock wave therapy or act in any other way that would violate N.J.A.C. 13:70-14A.18, a trainer or owner who directs any other party to perform shock wave therapy or act in any way that would violate

N.J.A.C. 13:70-14A.18, or any other person who directs another to violate N.J.A.C. 13:70-14A.18.

(e) Notwithstanding any of the penalties set forth in (a) above, the Stewards may punish any other person found to be acting in concert with a person performing shock wave therapy in violation of N.J.A.C. 13:70-14A.18, by imposing penalties in accordance with the severity of the conduct up to the maximum provided in this section.

(a)

NEW JERSEY RACING COMMISSION

Harness Racing

Shock Wave Therapy; Penalties for Violating the Shock Wave Therapy Rules

Proposed New Rules: N.J.A.C. 13:71-23.17 and 23.17A

Authorized By: New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Authority: N.J.S.A. 5:5-30.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-066.

Submit written comments by June 30, 2017, to:

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The agency proposal follows:

Summary

Subchapter 23, Medication and Testing Procedures, sets forth the rules of the New Jersey Racing Commission (Commission) relating to the permissible and prohibited practices of administering medications and therapies, as well as the penalties associated with same. The Commission proposes two new rules to the subchapter in order to protect the health and welfare of racehorses in New Jersey, to amend certain aspects of the subchapter to align with current practice, and to safeguard the integrity of the sport.

New N.J.A.C. 13:71-23.17, Shock wave therapy, is proposed to protect racehorses from the impermissible administration of all forms of shock wave therapy. Due to the analgesic effect resulting from shock wave therapy treatment, a horse with a compromising injury may not feel the pain or weakness associated with that injury. Should a horse race or train while under the analgesic effect of shock wave therapy, it could cause great harm to itself or to other horses participating in the training session or race, as well as the horse's driver, and any other horses and drivers on the track. Further, administration of shock wave therapy in violation of the Commission's rules may lead to erosion of the public's perception of the sport. Shock wave therapy has legitimate medicinal benefits but can be abused to mask the injuries of a horse or to attain an unfair racing advantage. The proposed new rules will regulate the administration of shock wave therapy and establish conditions that must be fulfilled for a horse to permissibly receive shock wave therapy treatments. The Association of Racing Commissioners International (RCI), has enacted rules for the regulation of shock wave therapy treatments which have been adopted in part or in whole by many racing jurisdictions in North America. After reviewing the enacted regulations of several states, the Commission is proposing a more comprehensive regulatory scheme with similar goals and objectives as those of our neighboring jurisdictions.

Proposed new N.J.A.C. 13:71-23.17(a) defines the term "shock wave therapy" and explains the types of therapies and treatments regulated by the proposed rule. Subsection (b) enumerates the nine conditions

required for shock wave therapy to be utilized as a permissible form of medicinal treatment.

Proposed new subsection (a) defines “shock wave therapy” to mean “all extracorporeal shock wave therapy or radial pulse wave therapy treatments and any other similar treatments determined to pose similar risks by the State Veterinarian.” The wording of this definition covers the two most common forms of shock wave therapy in use at the time of this rulemaking as well as any additional therapies that may be determined to utilize similar methods or pose similar risks as either of the two named therapies. The determination of similarity shall be left to the discretion of the State Veterinarian, who is expert with such determinations.

Proposed new N.J.A.C. 13:71-23.17(b) lists the nine conditions required in order to achieve permissible administration of shock wave therapy. These conditions have either been created in response to specific practices that have occurred in the State of New Jersey or modeled after the model rules promulgated by the RCI. Other jurisdictions in North America have also modeled their current shock wave therapy rules after the RCI Model Rule.

Proposed new N.J.A.C. 13:71-23.17(b)1 states that only Commission-licensed veterinarians are permitted to perform shock wave therapy on a racehorse. This condition expressly forbids any other person from treating a racehorse with shock wave therapy, including, but not limited to, practicing veterinarians who are not licensed by the Commission and employees of a Commission-licensed veterinarian sent at the behest of the licensed veterinarian to perform the procedure.

Proposed new N.J.A.C. 13:71-23.17(b)2 requires all equipment used to administer shock wave therapy to be in the possession of a Commission-licensed veterinarian when the equipment is brought on any property subject to the jurisdiction of the Commission. This condition does not allow shock wave therapy equipment to be left unattended on the grounds or stored overnight on any property subject to the jurisdiction of the Commission. A Commission-licensed veterinarian is responsible for ensuring that shock wave therapy equipment remains secured within his or her care, custody and control. As a result, the equipment must be kept locked away when not in use.

Proposed new N.J.A.C. 13:71-23.17(b)3 requires that all shock wave therapy machines be registered with the Commission. Some shock wave therapy machines have a “counter,” which displays how many times a particular machine was used. Thus, by keeping track of each registered machine, Commission investigators will be able to verify whether a machine has been used without notice. This proposed paragraph also requires that Commission investigative staff be granted access to any location housing a registered shock wave therapy machine.

Proposed new N.J.A.C. 13:71-23.17(b)4 does not allow shock wave therapy to be administered to any horse currently entered into a race. The condition further states that if shock wave therapy is the recommended treatment for a horse; that horse must be scratched from any race prior to the therapy being administered. For purposes of this regulation, the trainer must make actual contact with the officials in person or over the telephone and submit a scratch slip in order for the horse to be eligible to receive shock wave therapy. The veterinarian performing the shock wave therapy is encouraged to contact the racing officials prior to administering shock wave therapy in order to verify that the horse has been scratched. Should the therapy be performed without first communicating with the officials and scratching the horse, both the trainer and veterinarian shall be liable.

Proposed new N.J.A.C. 13:71-23.17(b)5 bars any horse from racing for a period of 10 days after receiving shock wave therapy. The 10-day period of racing ineligibility begins the day after the shock wave therapy is administered. This condition works in conjunction with the condition found in N.J.A.C. 13:71-23.17(b)9. Therefore, this condition is self-excluding if the proper notification procedures are followed by the veterinarians and trainers involved in the administration of shock wave therapy. However, this condition can lead to the most severe penalties should a veterinarian fail to report shock wave therapy treatment and it is discovered that a horse started a race within the 10-day period after such uninformed treatment.

Proposed new N.J.A.C. 13:71-23.17(b)6 bars all horses from qualifying in any capacity for a period of four days after receiving shock

wave therapy. The four-day period of training or qualifying ineligibility begins the day after the shock wave therapy is administered. Research indicates that horses experience the analgesic effect of shock wave therapy for 72 to 96 hours after administration. This condition helps ensure that racehorses that have undergone shock wave therapy do not resume training until it is safe to do so.

Proposed new N.J.A.C. 13:71-23.17(b)7 sets forth the reporting requirements a licensed veterinarian must complete prior to performing shock wave therapy on a racehorse. This condition requires a licensed veterinarian to notify the State Veterinarian in writing, via e-mail or fax, prior to administering any form of shock wave therapy. This pre-notification must include the name of the horse treated, as well as the name of the horse’s trainer, the registration number of the shock wave therapy machine utilized, the area of the horse treated, and the location of the barn, training facility, race track, office or other location at which the horse was treated. Pre-notification to the State Veterinarian does not eliminate the requirement that the horse shall be scratched from any race in which it is entered before shock wave therapy is performed.

Proposed new N.J.A.C. 13:71-23.17(b)8 works in conjunction with the paragraph (b)7, but requires a fully executed Shock Wave Therapy Treatment Sheet to be submitted by the treating licensed veterinarian to the State Veterinarian via e-mail or fax within 24 hours of treatment. The Shock Wave Therapy Treatment Sheet has several required line items and is maintained by the Commission staff.

Proposed new N.J.A.C. 13:71-23.17(b)9 mandates all racehorses treated with any form of shock wave therapy to be placed on the Commission’s Shock Wave Therapy List for a period of 10 days. This list, which prohibits a horse from racing, is separate and apart from the Steward’s List and the Veterinarian’s List. It is maintained by the State Veterinarian and horses are placed on this list to ensure that no racehorse treated with any form of shock wave therapy is allowed to start a race in the 10-day period following shock wave therapy treatment. Upon the expiration of 10 days, the horse will be removed from the list by Commission staff.

New N.J.A.C. 13:71-23.17A is proposed to specify the penalties to be imposed upon those found to be in violation of N.J.A.C. 13:71-23.17. Subsection (a) describes the minimum penalties for the violation of the conditions set forth in N.J.A.C. 13:71-23.17(b).

Proposed new subsection N.J.A.C. 13:71-23.17A(a) sets for penalties for specific violations of N.J.A.C. 13:71-23.17(b) according to the seriousness of the violation.

Proposed new N.J.A.C. 13:71-23.17A(a)1 correlates directly with N.J.A.C. 13:71-23.17(b)1 and sets forth the penalties to be imposed on any person who performs shock wave therapy upon a racehorse and who is not a Commission-licensed veterinarian. N.J.A.C. 13:71-23.17A(a)1i, ii, and iii detail the violations for a first, second, and third offense, respectively. The range of penalties for a violation of the referenced paragraph reflects the severity of the offense submitted. Penalties may be increased due to the existence of any aggravating factors as determined by the Judges or Commission.

Proposed new N.J.A.C. 13:71-23.17A(a)2 correlates directly with N.J.A.C. 13:71-23.17(b)2 and sets forth the penalties to be imposed upon any person, other than a Commission-licensed veterinarian, who possesses a shock wave therapy machine on property subject to the jurisdiction of the Commission. N.J.A.C. 13:71-23.17A(a)2i, ii, and iii detail the violations for a first, second, and third offense, respectively. The range of penalties for a violation of the referenced paragraph reflects the severity of the offense committed.

Proposed new N.J.A.C. 13:71-23.17A(a)3 correlates directly with N.J.A.C. 13:71-23.17(b)3, and sets forth the penalties to be imposed upon a Commission-licensed veterinarian who possesses an unregistered shock wave therapy machine on property subject to the jurisdiction of the Commission. N.J.A.C. 13:71-23.17A(a)3i, ii and iii detail the violations for a first, second, and third offense, respectively. The range of penalties for a violation of the referenced paragraph reflects the severity of the offense committed.

Proposed new N.J.A.C. 13:71-23.17A(a)4 correlates directly with N.J.A.C. 13:71-23.17(b)4, and sets forth the penalties to be imposed upon any Commission-licensed veterinarian who administers shock wave therapy to a racehorse that has not yet been scratched from a race

in which it is entered, as well as the penalties to be imposed upon a trainer who allowed a racehorse under his or her care to be treated with shock wave therapy prior to being scratched from a race in which it is entered. N.J.A.C. 13:71-23.17A(a)4i, ii, and iii detail the violations for a first, second, and third offense, respectively. The range of penalties for a violation of the referenced paragraph reflects the severity of the offense committed. Penalties may be increased due to the presence of any aggravating factors.

Proposed new N.J.A.C. 13:71-23.17A(a)5 correlates directly with N.J.A.C. 13:71-23.17(b)5, and sets forth the penalties to be imposed upon any trainer who allows a horse under his or her care to run in a race within 10 days of receiving shock wave therapy, as well as penalties to be imposed upon the owner of a horse who runs in a race within 10 days of receiving shock wave therapy. N.J.A.C. 13:71-23.17A(a)5i and ii detail the violations for a first, second, and third offense for the owner and trainer, respectively. The range of penalties for a violation of the referenced paragraph reflects the severity of the offense committed.

Proposed new N.J.A.C. 13:71-23.17A(a)6 correlates directly with N.J.A.C. 13:71-23.17(b)6 and sets forth the penalties to be imposed upon a trainer who allows a horse under his or her care to attempt to qualify within four days of receiving shock wave therapy, as well as penalties to be imposed upon the owner of any horse that attempts to qualify within four days of receiving shock wave therapy. N.J.A.C. 13:71-23.17A(a)6i and ii detail the violations for three cumulative offenses by an owner's horse or horses and for a trainer's first, second, and third offense, respectively. The range of penalties for a violation of the referenced paragraph reflects the severity of the offense committed.

Proposed new N.J.A.C. 13:71-23.17A(a)7 correlates with N.J.A.C. 13:71-23.17(b)7 and 8, and sets forth the penalties to be imposed upon a Commission-licensed veterinarian, should that veterinarian fail to abide by the notification requirements both before and after treatment of a racehorse with shock wave therapy or to submit the required Shock Wave Therapy Treatment Sheet. N.J.A.C. 13:71-23.17A(a)7i, ii, and iii detail the violations for a first, second, and third offense, respectively. The range of penalties for a violation of the referenced paragraph reflects the severity of the offense committed.

Proposed new N.J.A.C. 13:71-23.17A(b) explains that if a horse is raced within 10 days or qualifies within four days, the violator penalized pursuant to N.J.A.C. 13:71-23.17A(a)1 or 4 shall receive the same penalties as the trainer who allowed the horse to race or qualify.

Proposed new N.J.A.C. 13:71-23.17A(c) sets forth that the same set of facts may involve several offenders and that each offender shall be assessed penalties individually. For example, the same impermissible shock wave therapy treatment may be the first offense against the veterinarian, the second offense against the owner, and the third offense against the trainer. Each will be assessed the penalties appropriate to each individual's violation history.

Proposed new N.J.A.C. 13:71-23.17A(d) describes the circumstance that arises when a person acts under the direction and authority of another. If, for example, a veterinarian technician is sent by a head veterinarian to perform shock wave therapy and is caught, both the veterinarian technician and the veterinarian who assigned the work to the veterinarian technician shall be subject to the same penalties as co-actors. Likewise, should any person be acting under the direction of another for whom they are employed, both shall be subjected to the same penalties. For example, if the chief veterinarian at a practice assigns a veterinarian to perform shock wave therapy, and the veterinarian then tells the veterinarian technician to perform the procedure, and then the veterinarian technician allows the trainer to perform the procedure, all four actors are subject to liability.

Proposed new N.J.A.C. 13:71-23.17A(e) states that any other person found to be acting in concert with any person performing shock wave therapy in violation of these rules shall be penalized at the discretion of the Judges. This proposed subsection makes it a violation for any person, be they a groom, exercise rider, driver, or other farmhand, to actively assist a perpetrator to complete his or her impermissible action. For example, the actions regulated by this subsection would include a groom that is told to be a "lookout" for any Commission investigators or employees. This subsection is meant to penalize those who participate in covering up the actual act itself. However, this subsection is not intended

to punish a driver who qualifies a horse within four days or a driver who races a horse within 10 days because such persons cannot be expected to know the treatment history of every horse they are asked to drive.

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules will likely result in several benefits to New Jersey's horse racing industry. First, the proposed new rules are intended to increase the safety of the horses, drivers, and spectators. Due to the analgesic effect of shock wave therapy, a horse with a compromising injury may not feel the pain or weakness of that injury after undergoing the procedure. If a horse races in such a condition, severe damage to the horse, driver, other race participants, and potentially the spectators could result.

Second, similarity in standards and rules between the racing bodies throughout the nation is an important aim. Many other jurisdictions have determined that regulation of shock wave therapy is necessary. By implementing comprehensive rules in this State to regulate the practice, New Jersey will hopefully lead the industry in North America by clarifying the permitted and restricted uses of shock wave therapy.

Additionally, adoption of these rules will help protect the integrity of the sport. It is anticipated that strict regulation of shock wave therapy will increase the wagering public's trust in the industry.

By imposing very serious penalties attached to the impermissible use of shock wave therapy, the trainers, owners, veterinarians, and others engaging in these acts will be deterred. There are no envisioned negative social impacts expected to arise from this rulemaking, except by those who choose to violate the new rules.

Economic Impact

Implementation of the proposed new rules will have an economic impact to the offenders and the industry as a whole in the form of fines and penalties assessed. Due to the nature of the practices being prohibited, enforcement of the rules will come at no additional cost to the Commission or the industry as a whole. Violators will be brought before the Judges and penalized in accordance with the rules. The violators will be negatively financially impacted. Since this is a violation and concurrent penalty, there is no way to estimate the number of offenders who may be found in violation of the new rules and thus no way to approximate the fines to be assessed. By statute, all fines paid to the Commission are directed to the Backstretch Fund to be used for the benefit of those who work in the backstretch. There is no other economic impact envisioned at this time.

Federal Standards Statement

A Federal standards analysis is not required as there are no Federal standards or requirements applicable to the proposed new rules. The Commission proposes the new rules pursuant to the rulemaking authority set forth at N.J.S.A. 5:5-30.

Jobs Impact

These proposed new rules are not expected to create or eliminate any jobs in the racing industry. It is likely that additional job responsibilities will be required for certain employees of the Commission, but the responsibilities should be marginal and can be attended to by existing staff.

Agriculture Industry Impact

The proposed new rules will have an insignificant impact on the agriculture industry in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the costs of agriculture.

Regulatory Flexibility Analysis

The proposed new rules impose reporting, recordkeeping, and compliance requirements on veterinarians, owners, and trainers licensed by the Commission, some of whom operate as small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The recordkeeping and reporting requirements, which are discussed in the Summary above, are applied uniformly to all parties because the goal is to ensure compliance by all individuals responsible for the health and welfare of the race horse. For this reason, the proposed new rules do not

provide a differing or lesser compliance standard based upon business size. No additional professional services are required for compliance.

The initial compliance costs are negligible and should provide no change to the current costs of operating a small business in this industry.

Housing Affordability Impact Analysis

The proposed new rules will have an insignificant impact on the affordability of housing in New Jersey. There is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the new rules relate to the administration of a particular medical treatment upon racehorses.

Smart Growth Development Impact Analysis

The proposed new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the new rules relate to the administration of a particular medical treatment upon racehorses.

Full text of the proposed new rules follows (additions indicated in boldface **thus**):

SUBCHAPTER 23. MEDICATION AND TESTING PROCEDURES

13:71-23.17 Shock wave therapy

(a) "Shock wave therapy" shall mean all extracorporeal shock wave therapy or radial pulse wave therapy treatments and any other similar treatments determined to pose similar risks by the State Veterinarian.

(b) The use of shock wave therapy shall not be permitted, unless the following conditions are satisfied:

1. Only licensed veterinarians are permitted to perform shock wave therapy on a horse;

2. Only licensed veterinarians are permitted to possess or use any instrument used to administer shock wave therapy on the grounds of any property over which the Commission has jurisdiction;

3. All shock wave therapy machines must be registered with the Commission. Investigative staff shall be granted access to any location housing a registered shock wave therapy machine for the purpose of inspecting the machine;

4. Shock wave therapy cannot be administered to any horse currently entered in a race. If a horse is entered, shock wave therapy cannot be administered upon that horse until it is scratched. Should any horse not be scratched at the time shock wave therapy is administered, both the trainer and the licensed veterinarian shall be liable;

5. No horse treated with shock wave therapy shall race for a period of 10 days following treatment with day one beginning on the day after therapy was administered;

6. No horse treated with shock wave therapy shall qualify for a period of four days with day one beginning on the day after therapy was administered;

7. Prior to administering shock wave therapy, a licensed veterinarian must notify the State Veterinarian in writing, via e-mail or fax, which writing shall include the horse's name, the reason for administration of shock wave therapy, the trainer's name, the registration number of the shock wave therapy machine, and the property at which the treatment is performed. This condition does not eliminate the need to ensure the horse is not entered to race prior to administering shock wave therapy;

8. Within 24 hours of administering shock wave therapy, the treating veterinarian shall transmit a "Shock Wave Therapy Treatment Sheet" to the State Veterinarian via e-mail or fax; and

9. Any horse treated shall be placed on the Commission's Shock Wave Therapy List for a period of 10 days from the date of the treatment.

13:71-23.17A Penalties for violating N.J.A.C. 13:71-23.17

(a) Violations of N.J.A.C. 13:71-23.17, Shock wave therapy, shall result in the following penalties:

1. Any person who performs shock wave therapy who is not a licensed veterinarian shall be subject to the following penalties:

i. A first violation shall result in a minimum suspension of 60 days and a \$5,000 fine. The presence of aggravating factors may result in the imposition of a suspension up to 180 days and a fine up to \$10,000;

ii. A second violation shall result in a minimum suspension of 180 days and a \$10,000 fine. The presence of aggravating factors may result in the imposition of a suspension up to one year and a fine up to \$20,000; and

iii. A third or subsequent violation shall result in a minimum two-year suspension and a \$20,000 fine. The presence of aggravating factors may result in permanent license revocation;

2. Should any person other than a licensed veterinarian possess a shock wave therapy machine at any racetrack, off-track stabling facility, or other location subject to the jurisdiction of the Commission, the following penalties shall be imposed upon that person:

i. A first violation shall result in a minimum suspension of 30 days and a \$2,500 fine;

ii. A second violation shall result in a minimum suspension of 90 days and a \$5,000 fine; and

iii. A third or subsequent violation shall result in a minimum one-year suspension and \$10,000 fine;

3. Should a licensed veterinarian possess an unregistered shock wave therapy machine at any racetrack, off-track stabling facility, or other location subject to the jurisdiction of the Commission, the following penalties shall be imposed upon that veterinarian:

i. A first violation shall result in a \$1,000 fine for failure to register;

ii. A second violation shall result in a \$2,500 fine; and

iii. A third or subsequent violation shall result in a minimum 15-day suspension and \$5,000 fine;

4. Should any veterinarian perform shock wave therapy on a horse that has not been scratched from any race in which it is entered, the veterinarian and trainer shall each be subject to the following penalties:

i. A first violation shall result in a minimum one-year suspension and a \$10,000 fine. The presence of aggravating factors may result in the imposition of a suspension up to three years and a fine up to \$25,000;

ii. A second violation shall result in a minimum three-year suspension and a \$25,000 fine. The presence of aggravating factors may result in the imposition of a suspension up to five years and a fine up to \$50,000; and

iii. A third or subsequent violation shall result in a minimum five-year suspension and a \$50,000 fine. The presence of aggravating factors may result in permanent license revocation and a fine up to \$100,000;

5. Should any horse treated with shock wave therapy race within 10 days of treatment:

i. The owner shall be subject to the following penalties:

(1) A first violation shall result in the horse being disqualified from the race and any purse money won forfeited. The horse shall also be placed on the Steward's List for a period of 10 days;

(2) A second violation shall result in the horse being disqualified from the race and any purse money won forfeited. The horse shall also be placed on the Steward's List for a period of 30 days and shall not be removed in the event of a bonafide transfer of ownership. The same horse need not be involved in both violations in order for the owner to have committed a second violation; and

(3) A third or subsequent violation shall result in the horse being disqualified from the race and any purse money won forfeited. The horse shall also be placed on the Steward's List for a period of 90 days and shall not be removed in the event of a bonafide transfer of ownership. The same horse need not be involved in all violations in order for the owner to have committed a third or subsequent violation; and

ii. The trainer shall be subject to the following penalties:

(1) A first violation shall result in a suspension for a minimum period of one year and a fine of \$10,000;

(2) A second violation shall result in a suspension for a minimum period of three years and a fine of \$25,000; and

(3) A third or subsequent violation shall result in a suspension for a minimum period of five years and a fine of \$50,000;

6. Should any horse treated with shock wave therapy run in a qualifying race within four days, then the following shall apply:

i. The trainer shall be subject to the following penalties:

(1) For a first violation, the trainer shall have his or her license suspended for a minimum of six months and fined a minimum of \$1,000;

(2) For a second violation, the trainer shall have his or her license suspended for a minimum of one year and shall be fined a minimum of \$2,500; and

(3) For a third or subsequent violation, the trainer shall have his or her license suspended for a minimum of three years and shall be fined a minimum of \$5,000; and

ii. If an owner's horse or horses, cumulatively, are found to have run in a qualifying race within four days of receiving shock wave therapy on three occasions, the horse committing the third violation shall be placed on the Steward's List for a period of 30 days; and

7. A licensed veterinarian's failure to abide by either the pre-note requirement or the requirement to send a "Shock Wave Therapy Treatment Sheet" within 24 hours shall be subject to the following penalties:

i. A first violation shall result in a formal written warning;

ii. A second violation shall result in a \$1,000 fine; and

iii. A third or subsequent violation shall result in a minimum 15-day suspension and a \$2,500 fine.

(b) If shock wave therapy is impermissibly performed upon any horse, the racing of that horse within 10 days or the running of that horse in a qualifying race within four days shall serve to aggravate the penalties imposed in (a)1 or 4 above, respectively, against the offending party who performed shock wave therapy.

(c) Any and all penalties assessed against an owner, trainer, veterinarian, or other person for violation of N.J.A.C. 13:71-23.17 shall be individually assessed against each particular violator based upon his or her own violation history. For example, the same set of facts may be deemed a third violation against the trainer, a second against the owner, and a first against the veterinarian.

(d) Notwithstanding the foregoing, the Judges may punish any person who directed another to violate N.J.A.C. 13:71-23.17. The person who directed the violator shall be subject to the same penalties as the offender. This includes, but is not limited to, the principal veterinarian of a veterinary practice, a veterinarian who directs a veterinarian technician or other person to perform shock wave therapy or act in any other way that would violate N.J.A.C. 13:71-23.17, a trainer or owner who directs any other party to perform shock wave therapy or act in any way which would violate N.J.A.C. 13:71-23.17, or any other person who directs another to violate this rule.

(e) Notwithstanding any of the penalties set forth in (a) above, the Judges may punish any other person found to be acting in concert with a person performing shock wave therapy in violation of N.J.A.C. 13:71-23.17 by imposing penalties in accordance with the severity of the conduct up to the maximum provided in this section.

(a)

**NEW JERSEY RACING COMMISSION
Self-Exclusion List**

Proposed Readoption: N.J.A.C. 13:74A

Authorized By: New Jersey Racing Commission, Frank Zanzuccki,
Executive Director.

Authority: N.J.S.A. 5:5-30, 5:5-65.1, and 5:5-65.2.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-067.

Submit written comments by June 30, 2017, to:

Frank Zanzuccki, Executive Director
Department of Law and Public Safety
New Jersey Racing Commission
PO Box 088
Trenton, NJ 08625-0088
E-mail: NJRCWebinfo@lps.state.nj.us

The agency proposal follows:

Summary

Chapter 74A, Self-Exclusion List, sets forth the rules regarding the process of an individual's placement upon the New Jersey Racing Commission (Commission)-maintained self-exclusion list, the activities prohibited to those who appear on the self-exclusion list, the actions taken to enforce the restrictions imposed by the self-exclusion list, and the entities responsible for enforcement of those actions.

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 13:74A, Self-Exclusion List, expires on April 14, 2017. The Commission is proposing to readopt N.J.A.C. 13:74A without change. As this notice of proposed readoption was filed with the Office of Administrative Law prior to the expiration date, that date was extended 180 days to October 11, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2). As the Commission has provided a 60-day comment period, this notice of proposed readoption is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

An administrative review has been conducted and a determination made that the rules contained in the chapter should be continued because the rules are necessary, reasonable, adequate, efficient, and responsive for the purposes for which they were promulgated.

On November 4, 2002, N.J.S.A. 5:5-65.1 and 65.2 became effective. The law directed the Commission to establish a list of persons who voluntarily seek to be excluded from wagering on horse races in the State of New Jersey. The law also provided the limitations placed upon those who voluntarily seek to be added to the list. Once placed on this list, a person would be prohibited from wagering on horse races and appearing at permitted racetracks and licensed off-track wagering facilities where race horse race wagering is authorized in this State.

The New Jersey Racing Commission, in consultation with members of the racing industry, promulgated rules to comply with the statute. On October 18, 2004, N.J.A.C. 13:74A took effect. The chapter was created to allow procedures for a person to voluntarily exclude themselves from wagering on horse racing in the State of New Jersey and for the enforcement of that exclusion. The Commission wishes to continue to maintain oversight of the self-exclusion list and direction of the enforcement procedures that occur as a result of the list's existence.

A summary of the rule sections follows:

N.J.A.C. 13:74A-1.1 defines and explains the applicability of specific terms used in Chapter 74A.

N.J.A.C. 13:74A-1.2 defines the applicability of Chapter 74A.

N.J.A.C. 13:74A-2.1 sets forth the procedures for placement on the self-exclusion list.

N.J.A.C. 13:74A-2.2 codifies the effects to those who are placed on the self-exclusion list.

N.J.A.C. 13:74A-3.1 explains that the list and the application for placement on the list are confidential.

N.J.A.C. 13:74A-4.1 sets forth the procedures for removal from the self-exclusion list.

N.J.A.C. 13:74A-4.2 explains the procedure taken by the Commission upon receipt of an application of removal from the self-exclusion list.

N.J.A.C. 13:74A-5.1 directs Commission permit holders and licensees to establish internal control procedures to enforce the mandates of Chapter 74A should any self-excluded person attempt to gain access to their premises.

N.J.A.C. 13:74A-5.2 directs Commission permit holders and licensees to report any incidents regarding violation of Chapter 74A to the Executive Director of the Racing Commission.