

INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS

Minutes of the 4th Meeting of the 2019 Interim

October 2, 2019

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on Wednesday, October 2, 2019, at 10:00 AM, in Room 154 of the Capitol Annex. Representative Adam Koenig, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Adam Koenig, Co-Chair; Senators Julie Raque Adams, Julian M. Carroll, Denise Harper Angel, Christian McDaniel, Dan "Malano" Seum, Damon Thayer, and Reginald Thomas; Representatives Al Gentry, Thomas Huff, Matthew Koch, Nima Kulkarni, C. Ed Massey, Chad McCoy, Jerry T. Miller, Kimberly Poore Moser, Ruth Ann Palumbo, Phillip Pratt, and Buddy Wheatley.

Guests: Carson Kerr and Joseph T. Fawns, Kentucky Public Protection Cabinet; Jason P. Smith and Cindy Stinnett, Kentucky Boxing and Wrestling Commission; Douglas Keefe, Kentucky Speech-Language Pathology & Audiology Board; Eric Russ, Kentucky Psychological Association; Patrick Cummings, Thoroughbred Idea Foundation; Adam Haley, Casey Roof, and Russ Romine, Kentucky Academy of Audiology.

LRC Staff: Tom Hewlett, Bryce Amburgey, Jasmine Williams, Melissa McQueen, and Lisa W. Moore.

Minutes

The minutes from September 11, 2019, meeting were approved without objection.

Interstate Compact on Audiology and Speech-Language Pathology

Walker Thomas, State Representative, said Kentucky House of Representatives Speaker David Osborne is interested in Kentucky creating interstate compacts in audiology, speech-language pathology, and psychology. Representative Thomas' daughter graduated from the University of Kentucky with a master's degree in speech pathology and confronted numerous barriers when marrying a man in the military and moving across state lines. Every time she moves to another state there are different requirements for her to practice. The goal is to obtain the license in your home state, but be able to practice in any

state within the compact agreement. There is an effort to get ten states to agree to the compact and then fees and by-laws can be established.

Douglas Keefe, M.S., explained the Audiology & Speech-Language Pathology Interstate Compact (ASLP-IC) facilitates the practice of audiology and speech-language pathology by securing a privilege to practice in a member state or through telehealth. He is a member of the Board of Speech-Language Pathology & Audiology and the board's charge is to protect the consumer by ensuring the people who have speech pathology and audiology licenses have taken relevant professional development to keep their license renewed. Consumers should take solace in the fact that participants still have to get their license in their home state and meet all acceptable standards of practice.

Mr. Keefe said the purpose of this Compact is to facilitate interstate practice of audiology and speech-language pathology with the goal of improving public access to audiology and speech-language services. ASLP-IC is operational when ten states enact the legislation for the compact. This compact will emulate and function similar to occupational licensure compacts for nursing, psychology, medicine, physical therapy and emergency medical services.

Mr. Keefe said audiologists and speech-language pathologists licensed in their home state would apply for a privilege to practice under the ASLP-IC. ASLP-IC states will communicate and exchange information including verification of licensure and disciplinary sanctions. They retain the ability to regulate practice in their states. This increases access to client, patient, and student care, and facilitates the continuity of care when clients, patients, and students relocate, or travel. It also promotes cooperation between ASLP-IC states in the areas of licensure and regulation, and offers a higher degree of consumer protection across states lines.

Responding to a question from Chairman Koenig, Representative Thomas said the ASLP-IC draft was written in conjunction with the Council of State Governments (CSG). There are currently seven compacts nationwide, and he said this one is in the infancy stage and Kentucky can help set the guidelines by being in the forefront. Chairman Koenig said Kentucky is finding ways to remove barriers to employment and allowing military personnel and spouses to more easily maintain their profession when relocating. This helps provide services to populations currently underserved or geographically isolated.

Senator Carroll commended the committee for honoring Kentucky citizens married or traveling in military families, as well as meeting the needs of the seven states bordering Kentucky. All compacts are beneficial and serve valuable purposes. Representative Thomas noted that they are still bound by their home state license rules, and it is a privilege to practice in the other compact states.

Representative Moser said reciprocity across states is a good thing because it removes licensure barriers, and the nursing compact has been very successful. She would like to see an interstate compact for social workers in the future.

Interstate Compact on Psychology

Kentucky State Representative Lisa Willner, Ph.D., Executive Director, Kentucky Psychological Association, said as a licensed psychologist in the Kentucky General Assembly, she is happy to partner with Representative Walker Thomas on bringing forth the Psychology Interjurisdictional Compact (PSYPACT). This is an interstate compact that facilitates the practice of psychology using telecommunications technologies (telepsychology) and/or temporary in-person, face-to-face psychological practice.

Representative Willner said the PSYPACT provides both pros and cons for providers. One pro is that providers who take advantage of the compact can expand their practice, while it also increases competition. There is a severe shortage of licensed psychologists across Kentucky, and the interstate compact can really address client/patient access to care. Many members do not have a single, licensed psychologist in their counties, and this is a huge problem.

Eric Russ, Ph.D., President, Kentucky Psychological Association, said one in four individuals will experience some mental health issue in their lifetime. Licensed psychologists bring years of experience and are experts in diagnosing and treating mental illness. Psychologists work in a multitude of settings including psychiatric hospitals, the VA, community mental health clinics, schools and colleges, healthcare settings, and in private practice.

Dr. Russ said the PSYPACT is an interstate compact that provides a mechanism for the ethical and legal practice of telepsychology. It reduces regulatory barriers and provides for client or patient protection. As people begin to understand more about mental health issues and the need to treat them, there has been an increase in those seeking psychologist services across Kentucky. Unfortunately, like so many other health professionals, psychologists are not always available in underserved areas, including rural regions. Increasingly, psychologists are using telehealth as a means of responding to the demands for services. Psychology is uniquely suited to take advantage of telehealth services as the key intervention is talking and does not require additional equipment, like some medical specialties.

Dr. Russ said mental health treatments are just as effective for patients through a live video link in telehealth as an actual office visit. Recent changes in legislation in Medicaid and insurance reimbursement have made telepsychology within Kentucky a more available option. PSYPACT would be particularly helpful in expanding access to care when patients travel out-of-state and minimize disruptions in patients who move

frequently, such as family of military personnel. Finally, a PSYPACT psychologist living near bordering states would be able to more easily serve those in their geographic region.

Dr. Russ said PSYPACT provides protection to the public by certifying that psychologists have met acceptable standards of practice, and provides compact states with a mechanism to address disciplinary issues that occur across state lines. It increases access to mental healthcare when care is not readily available, while also providing continuity of care for an increasing mobile society. PSYPACT legislation has already been passed in twelve states, and four more have legislation pending. Kentucky, as a psychology compact state, affords fellow Kentuckians with more opportunities to receive the highest level of mental health services from doctorate and licensed psychologists.

Boxing and Wrestling Commission

Joseph Fawns, Legislative Liaison, Public Protection Cabinet, said their legislative request is to amend KRS 229.260 to allow the Medical Advisory Panel to designate one or more of its physician members to assist the Executive Director of the commission in the review of physical exams and other medical records that are submitted at the time of licensure, and to compensate that physician \$500 per month of service. This amendment would assist in the recruitment and retention of experienced and qualified physicians. Moreover, it will help the commission continue to emphasize and promote the standards for the health and safety of all combat sports participants.

Mr. Fawns said the Kentucky Boxing and Wrestling Commission (KBWC) Medical Advisory Panel consists of three to five physicians appointed by the Secretary of the Kentucky Public Protection Cabinet. Each physician must be licensed to practice medicine in Kentucky and knowledgeable in one or more medical fields related to the kinds and types of injuries or conditions likely to be the result of unarmed combat. He noted at least one of the panel members must be a neurologist.

Mr. Fawns said the panel is responsible for advising the Commission on issues relating to the health and safety of combat sports participants. It was created in 2008 as part of a lawsuit settlement.

Mr. Fawns said challenges included panel members being asked to review physicals, often on a daily basis. Members devote a significant amount of time reviewing records outside of their regular practice, and they are not compensated for this valuable service. Members are only compensated for in-person meetings of the panel. Also, recruiting and retaining individuals to serve on the panel has been difficult. Between 2008 and 2016, the panel was vacant. In 2016, four members were appointed and sworn, and seated at once. Since 2016, all members have resigned prior to the expiration of their term. One physician sits on the panel.

Mr. Fawns summarized that the legislative request is to allow the medical advisory panel to designate one or more of its physicians to assist in the review of medical records and be compensated \$500 per month of service. This change will assist in the recruitment and retention of panel members. It also allows the commission to continue to prioritize the health and safety of combat sports participants.

Responding to a question from Senator Seum, Mr. Fawns said the panel would be responsible for all combat sports include boxing, wrestling, mixed martial arts, and kick boxing. Ms. Stinnett clarified it is amateur mixed martial arts, professional wrestling, professional boxing, and professional kick boxing.

Responding to Representative Moser, Mr. Fawns said members of the panel are currently compensated \$100 per meeting, but they do not necessarily meet to review these every day. Ideally, the panel would have one member that would review the physicals for one month and then that person would be compensated \$500. Representative Koenig suggested that the language be amended to say “up to” \$500.

Fixed Odds Wagering on Horse Races

Patrick Cummings, Executive Director, Thoroughbred Idea Foundation, said Kentucky can set an example for the rest of the country in horse wagering. He thanked Chairman Koenig for his leadership related to the thoroughbred industry in Kentucky. The thoroughbred industry is thriving and as a horse owner he said incentives to buy Kentucky breeds and race in Kentucky is strong. He said hopefully Kentucky will also catch up to the rest of the country in allowing sports wagering, and modernizing horse wagering.

Mr. Cummings said horse racing does not have to be only pari-mutuel, and can also include fixed odds wagering. Customers want the opportunity for fixed odds as they know what to expect in return. There are many benefits of amending horse wagering laws to include fixed odds It will modernize a struggling industry, which provides a tremendous amount of jobs, and has a substantial economic impact. It will domesticate a business which American racing operators, including some in Kentucky, are already tapping into internationally. Finally, it will serve as a legal volley against the growing, illicit, off-shore operators who are poaching customers in Kentucky, and hurting horse people in the industry nationwide.

Mr. Cummings said the Thoroughbred Idea Foundation was launched a year ago and is a privately funded think tank for thoroughbred racing. Its purpose is improve the thoroughbred racing industry for all stakeholders, especially its primary customers, gamblers and owners, through the exchange, curation, and advocacy of sound, data-driven ideas, shared with and implemented by the sport’s existing entities.

Mr. Cummings said there are some bright spots in the horse racing industry, but the overall financial metrics of racing are down. The foal crop is at its lowest point since 1965, and wagering on the sport across America is down 50 percent over the last 15 years, after adjusting for inflation. Revenue from wagering is a key driver of prize money, and is the most significant incentive for owners to continue participating in the sport. Fixed odds wagering can help by allowing customers to know exactly their return if the bet is successful. The odds can change, but only to future customers. In Nevada, and other states, customers are enjoying the opportunity to make these fixed odds wager either on a single game, a set of games, or future bets.

Kentucky Derby wagering is open for only ten days currently, but marketing would thrive if the public could wager for ten months on the premier race. The American market for sports betting is widely estimated to be between \$80 and \$150 billion a year, all of it on fixed odds bets. He said to combine fixed odds wagering in horse racing, Kentucky would need a new business model, different pricing to customers, and presenting the sport to modern audiences in a way in which the market is already meeting their expectations with other sports. Bill Knauf, Vice President of Business Operations, Monmouth Park in New Jersey, sees the combination of fixed odds and horse racing as a potential new revenue stream, and they will push the issue during the next year. He believes there is a massive audience out there that bets sports but has never tried to bet horse racing, and they want to engage that customer.

Mr. Cummings said off-shore entities are attempting to cash in on the growth in fixed odds betting overall. One site, Betusracing, based in Costa Rica, actively recruits and markets to American horse players by hiring several award winning racing journalists to produce content for their platform. These sites allow fixed odds wagering on big races, such as the Kentucky Derby, and can allow American and European customers to make wagers up to ten months prior to a race. This can put TVG and TwinSpires at a disadvantage as the laws do not allow them to offer fixed odds wagering, and they need to be on a level playing field.

Mr. Cummings said Kentucky has the opportunity to modernize horse betting and make a home grown industry. On behalf of the Thoroughbred Idea Foundation and the greater horse racing industry, he asked the committee to remember horse racing when considering any potential bill on legalizing sports betting, or amending existing regulations that limit racing to pari-mutuel wagering. His foundation is privately funded by individuals and not supported financially through Kentucky racetracks.

Responding to a question from Senator McDaniel, Mr. Cummings said Keeneland is supportive of the marketing and business aspect of the measure, while Churchill Downs has not made a public comment. He noted that Churchill Down's silence does not mean it is not supportive of the measure.

Chairman Koenig recognized House Speaker David Osborne and Jay Hartz, Director, Legislative Research Commission, for being in attendance at the meeting.

Senator Thayer said he is supportive of fixed odds wagering and would like the language included in Chairman Koenig's sports wagering bill. He would like Kentucky to lead the way on this issue and the horse industry to be included in the growing popularity of sports wagering being implemented across the country.

Responding to a question from Senator Thayer, Mr. Cummings said regardless of Keeneland and Churchill Downs taking a wait and see approach, this approach could be implemented on a track by track basis. The horse racing sport has been losing fans and not modernizing at the pace it should be, and this offers wagering in a more straightforward, simple fashion. Senator Thayer says horse racing should be innovative to attract new customers to the sport.

Responding to Representative Wheatley, Mr. Cummings said language is very broad in other states that have passed legislation to regulate fixed odds betting. Representative Wheatley said he needs more technical details on fixed odds wagering. He noted pari-mutuel wagering allows for weather and horse cancellations. Mr. Cummings said Australia is a great example as its horse tracks allow for a combination of wagering, two-thirds fixed odds, and one-third pari-mutuel. He noted Australia's horse industry started out as primarily pari-mutuel betting only. The minority of money is on single horse wagers right now in the tote system, which is win, place, or show. Most fixed odds bets on racing are going to be focused on the performance of one horse, not trifectas, or superfectas. One of the concerns that has been suggested for a very long time is that there would be accountability in existing tote pools. It has not been the case that this type of wagering hampers growth and eats into the existing tote pool, and there is a robust 20-year time period to support this position. Fixed odds would not harm the exotic wagers, which account for the majority of the tote handle. Bookmakers do not want to take on the liability of paying out of \$100,000 superfecta in the Kentucky Derby fixed odds where someone hit it multiple times. It does require careful management and there are third parties that can provide those services. It is not a skill that horse track operators would have to possess as there are many firms globally that can manage it.

Responding to a question from Representative Miller, Mr. Cummings said he has no opinion on how to get this legislation passed, or whether it requires a constitutional amendment. He will defer to the committee and their expertise on the best way to get the legislation passed. Representative Miller stated he also supports casino gaming.

Representative Koenig said his non-attorney legal opinion on whether or not this change requires a constitutional amendment, is that fixed odds wagering falls under the same umbrella as sports betting. He indicated that he will have a legal expert coming to

testify at a special called December meeting of the committee. He hopes all members can attend this important discussion on the legalities of sports wagering.

Responding to a question from Senator Seum, Mr. Cummings said several tracks have implemented an open-door policy and it makes it very difficult to track attendance. Mr. Cummings said the horse racing sport has had an issue with attracting young customers, and fixed odds wagering may attract young people and help the future of the sport. They want to know the exact return of their bet. Senator Seum said he cannot imagine horse tracks not using turnstiles to track attendance, and he is concerned about the survival of the horse industry long-term. He has been supportive and in favor of sports wagering for several years.

Responding to a question from Senator Carroll, Mr. Cummings said the tax rate in Kentucky on pari-mutuel wagering is clear, with a percentage appropriated in an established, clear manner to the horsemen and to the state. He said to determine tax percentages for fixed odds racing, the state is starting from scratch. There are examples to follow, and in general on the current pari-mutuel bets, the total takeout paid to the track, is about 20 percent. In Nevada, which has a very efficient sports betting market, the average hold on a sports bet is five percent. There is no expectation that racing would be able to charge five percent even though the customer would love it, it is not a realistic scenario. Racing is funded through wagering, which makes the funding model for players, racetrack operators, and licensees, a higher percentage of tax. It has to be determined how much the percentage is and what piece do the horsemen get to fund purses and prize money. He expects the percentage numbers to be around 10 to 11 percent, although racetracks would probably like it higher. This funding model is completely different, and will require a fresh look. He noted there are international experts who can be engaged to discuss common pitfalls and suggestions for successful tax structures.

Responding to Senator Thomas, Mr. Cummings said the European bookkeepers have an agreement with the American track operators, and are sharing revenue back to the tracks. This is a legitimate business model and would make it difficult to know if there was an infringement on something offshore. It has been estimated that the market for American fixed odds betting by European customers on American races is roughly \$1 billion pounds annually, which is about \$1.4 billion United States dollars, or roughly 10 to 15 percent of total American turnover on racing, which is a significant number. He said there is a wide swath of European countries participating in this betting, as well as Australia, South Africa, and Asia. Asia has the largest overall hold on horse racing. Globally, over \$106 billion is wagered on horse racing through pari-mutuel betting, while \$60 billion is waged on fixed odds betting. The Asian markets are exclusively pari-mutuel, and they are easily the largest markets in the world.

Responding to questions from Representative Gentry, Mr. Cummings said New Jersey's fixed odds wagering amount is a very low percentage of the total handle. New

Jersey has only used this wagering around their biggest races, such as the Haskell Invitational. He noted \$21,000 was handled in fixed odds wagering in the Haskell Invitational at Monmouth Park last year. Representative Gentry said it is a very low percentage, because this type of wagering is so new to the United States, but the potential is very good for higher amounts in the future. Mr. Cummings said a track operator or a bookmaking manager would approach fixed odds wagering liabilities the same way as a sports bet and a racing bet. In many other parts of the world, where fixed odds betting is allowed, sports and racing are intertwined. He said for the sake of the horse racing industry, hopefully Kentucky can get on board with this model. Representative Gentry agreed, but cautioned that moving forward, if Kentucky primarily utilizes fixed odds betting, there is a situation where the outcome could affect the benefit of a license holder; the structure is critical to get correct. He would never be in favor of fixed odds wagering replacing the pari-mutuel wagering completely, but utilizing it as a supplement.

Responding to a question from Representative McCoy, Mr. Cummings said the English funding model has been atrocious, and Kentucky does need to get purse money increased. It is important for horsemen to be involved in all discussions involving purse monies in the horse industry. The International Horse Racing Act from 1978 required the horsemen be involved in selling the rights to the product that they provide and supply. He said obtaining their buy-in, and ensuring their understanding that this concept benefits prize money, is key to its success. He does not know what the exact percentage number should be at this time, and does not currently have a recommendation. The Australian model is a good example, but Americans should want no part of the British model.

Responding to a question from Senator Harper Angel, Mr. Cummings said there is a concern among those who are against this idea that operators could lose control. He said the success completely depends on how Kentucky structures the funding model, and enables free market behavior. Kentucky has a unique opportunity to set an example for the rest of the country in the wagering and horseman side of the issue for states who have not yet legalized this type of wagering.

Senator Thayer enjoyed the discussion and noted that Mr. Cummings is a former member of the Hong Kong Jockey Club, and has great experience as a horse owner. He is a wonderful resource for the committee on a variety of horse racing issues and is now a Kentucky thoroughbred horse owner. He emphasized Kentucky is leading the way in the horse industry and has seen an increase in purse sizes due to the addition of the historical horse racing. He said fixed odds wagering is a great supplement to pari-mutuel wagering.

Senator Thayer said operators, the state, and the horsemen/purses must be considered when enacting a taxation plan. He said pari-mutuel wagering contributes to our state's general fund each year, and purse sizes will continue to be of increased importance to all parties. He said Chairman Koenig's sports betting bill has a tax rate of 10 percent for brick and mortar buildings and a 14 percent tax rate for online mobile bets. Kentucky may

want to look at a similar model for fixed odds wagering. The tax rates also have to be kept at a competitive level, or customers will not wager on it. The competition are people doing this illegally, so the tax rate must be at a level that the customer will want to wager on the products, and the operator will invest in it appropriately to attract people who are currently making the wagers illegally. Again, he hopes to see this component added into Chairman Koenig's sports wagering bill and pass out of next year's 2020 Kentucky General Assembly.

Kentucky Academy of Audiology

Adam Haley, Director of Public Policy, Kentucky Academy of Audiology (KAA), said Kentucky is one of seven states that still require audiologists to hold both an audiology license and a license to dispense hearing aids. He introduced Russ Romine, the newly appointed Executive Director, KAA. He deferred to Dr. Roof to discuss the qualifications and background of audiologists.

Dr. Casey Rutledge Roof, President, Kentucky Academy of Audiology, said the Commonwealth of Kentucky has 916,000 residents with hearing loss, representing more than 20 percent of the population. Meanwhile, there are approximately 200 licensed audiologists in the state to serve them. The KAA and its members are dedicated to delivering evidence-based diagnostic and treatment services, including hearing aid dispensing and fitting services that ensure optimal patient outcomes. Unfortunately, archaic regulations impose significant barriers for audiologists seeking to practice in Kentucky.

Dr. Roof discussed the statutes that require licensed audiologists to also hold two separate duplicative licenses for hearing loss treatment and rehabilitative services. KAA recognizes the importance of licensure for professionals involved in fitting and dispensing hearing aids as a means of consumer protection. However, requiring audiologists to hold two licenses for the same services offers no additional protection to the consumer. In fact, subjecting audiologists to the authority of a licensing board, comprised largely of competitors, creates opportunities for unchecked anticompetitive behavior. Additionally, as the education and training requirements for audiologists are substantially more advanced than those of hearing aid specialists, they are unqualified to provide oversight of the licensure for audiologists as it related to the dispensing of hearing aids or any other service within an audiologist's scope of practice. Therefore, the appropriate licensure requirements for the practice of audiology are universally and singularly contained under the Kentucky licensure statute for Audiology, KRS 334A.

Mr. Haley said audiology has undergone many changes in the past few years. He noted eliminating dual licensure requirements will make it easier for consumers to access the hearing health services they need by removing the anti-competitive regulatory framework, as well as the financial penalties tied to the second license for licensed audiologists who are committed to serving them. KAA believes that addressing these unnecessary barriers to practice will help address the shortage of providers in Kentucky's

health professional shortage areas and bring much-needed updates to Kentucky's licensure laws. He noted that KAA will be offering language for an amendment this upcoming 2020 Kentucky General Assembly Session to change that requirement, and bring parity to audiology. There were no questions from members.

With no further business before the committee, the meeting adjourned at 11:30 a.m.