

BEFORE AN ADMINISTRATIVE LAW JUDGE
THE HONORABLE BERNARD PYLITT
APPOINTED BY THE INDIANA HORSE RACING COMMISSION

2018 JUN 22 A 11: 30

INDIANA HORSE RACING COMMISSION
STAFF,

Petitioner,

v.

DR. JOSEPH BALIGA,

Respondent.

In re: Administrative Complaint No. 216003

INDIANA
HORSE RACING COMMISSION

**COMMISSION STAFF'S BRIEF IN SUPPORT OF COMMISSION AFFIRMATION OF
RECOMMENDED ORDER DENYING DR. JOSEPH BALIGA'S MOTION FOR
RELIEF FROM JUDGMENT**

The Indiana Horse Racing Commission Staff ("Staff" or "Commission Staff") respectfully submits this brief in support of its request that the Commission affirm the Recommended Order of Administrative Law Judge Bernard Pylitt ("Judge Pylitt") dated March 22, 2018 ("Recommended Order"), pursuant to the Chair's June 7, 2018 Notice of Opportunity to Present Briefs and Oral Argument in the above-referenced matter.

I. PROCEDURAL HISTORY

On November 10, 2016, the Commission Staff filed Administrative Complaint No. 216003 against IHRC licensee Joseph Baliga. Baliga did not make a written request for a hearing, or provide *any* response to the Administrative Complaint.¹

Indiana Horse Racing Commission regulations require that within twenty days the person charged in an Administrative Complaint make a written request for a hearing or remit the amount

¹ The circumstances that led to the Executive Director filing Administrative Complaint No. 216003 also resulted in Baliga being summarily suspended on October 1, 2016. The summary suspension and its attending hearings are procedurally distinct from the Administrative Complaint, and are not at issue here.

of the administrative penalty. Failure to do so results in the waiver of a right to hearing on the administrative penalty as well as any right to judicial review. 71 IAC 10-3-20(d).

On December 6, 2016, twenty-six days after filing the Administrative Complaint, Commission Staff filed and served its Motion for Default. After considering briefs from both parties, ALJ Pylitt entered a Recommended Order Granting Commission Staff's Motion for Default on December 16, 2016. Baliga filed Objections to the Recommended Order, which were received by Commission Staff on December 29, 2016².

On February 24, 2017, the Chairman of the Indiana Horse Racing Commission issued Notice of Opportunity To Present Briefs And Oral Argument (at the Commission Meeting) scheduled for March 7, 2017. Both Baliga and Commission Staff filed briefs pursuant to the Notice. Hearing oral argument, the Commission decided on March 7, 2017, to uphold the ALJ's Recommended Order granting default. The Commission issued its Final Order on March 13, 2017, adopting the ALJ's Recommended Order.

Baliga filed a Petition for Judicial Review in the Madison Circuit Court on April 12, 2017. On October 20, 2017, the Honorable Mark Dudley issued an Order granting the IHRC's Motion to Dismiss Baliga's Petition for Judicial Review, specifically remarking:

- "The two questions posed by the IHRC's motion are whether the IHRC followed its own rules when it defaulted Baliga and did its rules comport with the statutory provision governing defaults at the agency level. The answer to both questions is yes."

² Baliga filed a Motion for Consolidation Pursuant to Trial Rule 42(A) of the Indiana Rules of Trial Procedure on January 17, 2017, seeking to consolidate Baliga's appeal of his summary suspension and the administrative complaint. Commission Staff filed its response on January 18, 2017. ALJ Pylitt issued a Combined Order Denying Respondent's motions for Consolidation on January 19, 2017.

- “Baliga argues his oral request for a hearing made to the judges on October 31, 2016, satisfies the requirements of 71 IAC 10-3-20(d). The court is not persuaded. IHRC’s regulations require a written demand for a hearing in response to the filing of an administrative complaint. IHRC followed its own rules when it entered a default against Baliga.”
- “Baliga’s argument hinges on acts that took place on October 31, 2016, ten (10) days *before* IHRC filed its administrative complaint. It is impossible to file a response or request a hearing before the complaint is even filed. A fundamental problem for Baliga’s position is that the regulatory framework of the IHRC allows for two separate and distinct disciplinary processes that can exist independent of one another even though both procedures can cover the same fact pattern.”

Order Granting Defendants’ Motion to Dismiss, issued October 20, 2017, at pp. 1, 2, 4.

Baliga appealed Judge Dudley’s decision, filing a Notice of Appeal on December 29, 2017.

The case has been fully briefed and transmitted to the Court of Appeals, but no decision has been made as of the date of this filing.

While the matter was pending with the Court of Appeals, Baliga filed this renewed effort for relief from the Commission’s Final Order of March 13, 2017.

II. ANALYSIS

The Indiana Horse Racing enabling statute is at Title 4, Article 31 of the Indiana Code (Pari-mutuel Wagering on Horse Races). Pursuant to the authority established in Title 4, Article 31, the IHRC has promulgated rules to regulate horse racing in Indiana. Those rules are codified at Title 71 of the Indiana Administrative Code. As an administrative agency, the IHRC also derives

authority from and is restricted by the Administrative Orders and Procedures Act ("AOPA") (Indiana Code Title 4, Article 21.5). The Indiana Rules of Trial Procedure also govern administrative proceedings, unless AOPA or an agency offers distinct guidance.³

The procedural posture of this case, reviewed *supra*, is particularly important, given that Baliga had an appeal pending before the Indiana Court of the Appeals when he filed the instant Ind. Trial Rule 60 motion.

The Indiana Supreme Court has adopted a procedure to handle Ind. Trial Rule 60(B) motions when the judgment is on appeal.

- 1) The moving party files with the appellate court an application for leave to file his 60(B) motion. This application should be verified and should set forth the grounds relied upon in a specific and non-conclusory manner.
- 2) The appellate court will make a preliminary determination of the merits of the movant's 60(B) grounds. In so doing the appellate court will determine whether, accepting appellant's specific, non-conclusory factual allegations as true, there is a substantial likelihood that the trial court would grant the relief sought. Inasmuch as an appellate court is not an appropriate tribunal for the resolution of factual issues, the opposing party will not be allowed to dispute the movant's factual allegations in the appellate court.
- 3) If the appellate court determines that the motion has sufficient merit, as described in the preceding paragraph, it will remand the entire case to the trial court for plenary consideration of the 60(B) grounds. Such remand order will terminate the appeal and the costs in the appellate court will be ordered taxed against the party procuring the remand. The decision to remand does not require the trial court to grant the motion. *Caribou Four Corners, Inc. v. Truck Ins. Exchange*, (10th Cir 1971) 443 F.2d 796. If the trial court denies the motion, the movant should file a motion to correct errors addressed to this denial, *Hooker v. Terre Haute Gas Corp.*, (1974) 162 Ind. App. 43, 317 N.E.2d 878, and appeal the denial. In this new appeal any of the issues

³ See, Ind. T.R. 1, which provides: "Except as otherwise provided, these rules govern the procedure and practice in all courts in the state of Indiana in all suits of a civil nature..."

raised in the original appeal may be incorporated, without being included in the second motion to correct errors.

- 4) If the trial court grants the motion, the opposing party may appeal that ruling under the same terms as described in paragraph (3). The original appeal shall be deemed moot.
- 5) If the appellate court denies the application for remand, that ruling may be assigned as grounds for rehearing and, where appropriate, transfer.

Logal v. Cruse, 267 Ind. 83, 87-88, 368 N.E.2d 235, 237 (Ind. 1977). This is known as the *Logal* Procedure.

The Indiana Law Encyclopedia supports the proposition that when an appeal is filed in a higher court, the lower court *no longer has jurisdiction* over the action. "The court on appeal acquires jurisdiction on the date that the Notice of Completion of Clerk's Record is noted in the Chronological Case Summary."⁴ 1A Ind. Law Encyc. *Appeals* § 108 (Westlaw 2018). "Once an appeal has been perfected to the court of appeals or the Supreme Court, the trial court has no further jurisdiction to act upon the judgment appealed from until the appeal has been terminated."⁵ *Id.*

In this case, the Notice of Completion of Clerk's Record was filed on January 23, 2018. See, Chronological Case Summary in re: Joseph Baliga v. Indiana Horse Racing Commission, Indiana Horse Racing Commission Staff (48C06-1704-MI-000307), attached hereto as Exhibit A.

There is also Indiana case law standing for the proposition that when an appeal is filed in a higher court, the lower court no longer has jurisdiction over the action. "When the appeal in this case was perfected, jurisdiction as to questions of child support and property division were

⁴ "The Court on Appeal acquires jurisdiction on the date the Notice of Completion of Clerk's Record is noted in the Chronological Case Summary. Before that date, the Court on Appeal may, whenever necessary, exercise limited jurisdiction in aid of its appellate jurisdiction, such as motions under Rules 18 and 39." Ind. Rules App. Proc., Rule 8.

⁵ "Generally, once an appeal is perfected, the trial court is divested of jurisdiction to alter or amend the judgment." *Harris v. Harris*, 800 N.E.2d 930, 936 (Ind. Ct. App. 2003). *Citations omitted.*

absolutely removed from the trial court.” *Scheetz v. Scheetz*, 509 N.E.2d 840, 849 (Ind. App. 1987). *See also Bright v. State*, 259 Ind. 495, 496, 289 N.E.2d 128, 129 (Ind. 1972) (When appellant filed his motion to correct errors and transcript of record in the Indiana Supreme Court, the entire cause was removed from the trial court, thereby depriving the trial court of any further jurisdiction over the matter. 2 I.L.E. *Appeals* § 231 (1957). The Indiana Supreme Court held the appellant was premature in filing his motion in the trial court at a time the same cause of action was pending in the Supreme Court.)

The Indiana Court of Appeals stated that

[I]t seems clear that any matter which was known to or discoverable by a party within the period when a timely motion to correct errors could have been filed must be raised in a motion to correct errors under T.R. 59 and made the subject of a proper and timely appeal if appellate review is to be had. Any such issue which was raised by, or could have been raised by a timely motion to correct errors and a timely direct appeal may not be the subject of a motion for relief from judgment under T.R. 60.

Snider v. Gaddis, 413 N.E.2d 322, 326 (Ind. App. 1980). The court held that the T.R. 60 Motion for Relief from Judgment was not proper since “[t]he motion merely asserted that the judgement was erroneous [with] [n]either allegation nor proof of any exceptional circumstances which were not known in time to have been included in a timely motion to correct errors” *Id* at 327.

Baliga did not comply with the *Logal* Procedure, and the ALJ, IHRC, and Trial Court accordingly no longer have jurisdiction to consider the matter. Baliga’s Motion for Relief from Judgment fails on the procedural grounds, identified *supra*, as well as substantive grounds.

Given the procedural failing of the Ind. T.R. 60(B) Motion, Commission Staff will not, at this time, engage in an exhaustive substantive response. However, it is notable that while Baliga

tries to litigate the facts that resulted in the filing of the Administrative Complaint against him, filing testimony from a separate case, he failed to file as an exhibit the ALJ's ultimate Recommended Order in that case⁶. In an effort to ensure that the record is clear, Commission Staff attaches hereto as Exhibit B the ALJ's Recommended Order (and IHRC Affirmation) of the *Williams-Davis* matter. Baliga's offering of piecemeal testimony of a matter that was ultimately decided unfavorably to his own position is not persuasive.

Baliga further misrepresents what was communicated during his hearing on his summary suspension, notably relying upon ellipsis to misconstrue quotations from the hearing transcript. Commission Staff would like to provide to the Commission the entirety of the comments made at the October 31, 2016, Hearing before the Hoosier Park Judges (relating to Dr. Baliga's summary suspension). Baliga has not offered the statement in completion.

"Today's hearing is not on the merits of the IHRC's case against Baliga. Rather, it is only to consider whether it is appropriate for Harmon to remain – or, excuse me, for Dr. Baliga to remain suspended pending the hearing on any underlying charges. The merits hearing will come later." (Transcript of October 31, 2016 Hearing Before the Hoosier Park Judges, at p. 6, lines 5-11).

On October 31, 2016, all parties were aware that they were appearing for a hearing on Dr. Baliga's summary suspension. In fact, no Administrative Complaint had been filed. In order for Dr. Baliga to have a hearing on the merits of an Administrative Complaint, at least two things would need to happen: Commission Staff would have to file an Administrative Complaint, and Dr.

⁶ The Indiana Horse Racing Commission on August 25, 2017, affirmed the ALJ's Recommended Order in *Williams-Davis* matter.

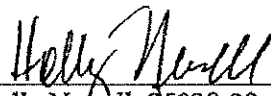
Baliga would have to request a hearing within 20 days of the of filing of the Administrative Complaint. Any discussion of a merits hearing was prospective, and assumed that Dr. Baliga would respect the clearly delineated procedural rules that would govern the proceeding.

Baliga's attempts to argue that he constructively requested a hearing on Administrative Complaint No. 216003 *before* the Complaint had been filed. As noted by Judge Dudley, such an argument defies logic.

IV. CONCLUSION

Judge Pylitt's Recommended Order is well-supported by fact and law. Baliga's attempt at another bite at the apple is a naked attempt to circumvent the procedural course he's already chosen, namely the Court of Appeals' review of Judge Dudley's decision. Baliga's objections to Judge Pylitt's well-reasoned and fully supported Recommended Order are wholly without merit. Accordingly, Commission Staff respectfully requests that the Commission enter a Final Order affirming in all respects Judge Pylitt's Recommended Order of March 22, 2018.

Respectfully submitted,



Holly Newell, 25029-29
Counsel to the Indiana Horse Racing Commission
10 N. Senate Avenue, Suite 311
Indianapolis, IN 46204
hnewell@dwd.in.gov
Counsel for Indiana Horse Racing Commission Staff

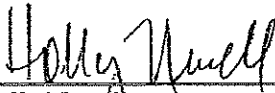
CERTIFICATE OF SERVICE

I hereby certify that before noon EST on June 22, 2018, I served the following parties
with the foregoing Brief, via email and U.S. Mail, first class, postage paid:

Peter J. Sacopulos
Sacopulos Johnson & Sacopulos
676 Ohio Street
Terre Haute, IN 47807
pete_sacopulos@sacopulos.com

Bernard L. Pylitt
Administrative Law Judge
Katz & Korin, PC
334 North Senate Avenue
Indianapolis, IN 46204
BPylitt@katzkorin.com

Dale Pennycuff
1302 North Meridian Street, Suite 175
Indianapolis, IN 46202
dpennycuff@hrc.in.gov



Holly Newell
Counsel to the Indiana Horse Racing Commission

This is not the official court record. Official records of court proceedings may only be obtained directly from the court maintaining a particular record.

Joseph Baliga v. Indiana Horse Racing Commission/Indiana, et al.

Case Number 17A-MI-03009
Court Court of Appeals
Type MI - Miscellaneous Civil
Filed 12/29/2017
Status 05/25/2018 , Transmitted to Court (active)
Reference Original County Cause Number
48C061704MI307
Related Lower Trial Court Case
48C06-1704-MI-000307

Parties to the Case

Appellant Baliga, Joseph

Address

12609 S. County Road 875 W
Daleville, IN 47334

Attorney

Peter J Sacopulos
#1440384, Retained

SACOPULOS JOHNSON & SACOPULOS
676 Ohio Street
Terre Haute, IN 47807
812-238-2565(W)

Appellee Indiana Horse Racing Commission/Indiana

Address

c/o Executive Director Michael Smith
1302 North Meridian Street
Suite 175
Indianapolis, IN 46202

Appellee Indiana Horse Racing Commission Staff

Exhibit A

Address

c/o Michael Smith, Executive Director
 1302 North Meridian Street
 Suite 175
 Indianapolis, IN 46202

Attorney

Curtis Theophilus Hill
 #1399920, Lead, Retained

Indiana Attorney General
 302 West Washington Street
 IGCS-5th Floor
 Indianapolis, IN 46204
 317-232-6201(W)

Attorney

Kyle Martin Hunter
 #3068749, Retained

302 West Washington Street
 IGCS 5th Floor
 Indianapolis, IN 46204
 317-234-3502(W)

Attorney

Patricia C McMath
 #1192149, Retained

Office of the Attorney General
 Indiana Government Center S. Fifth floor
 302 W. Washington St.
 Indianapolis, IN 46207
 317-232-0169(W)

Chronological Case Summary**12/29/2017 Notice of Appeal Filed**

Attorney: Sacopulos, Peter J
 Party: Ballga, Joseph
 File Stamp: 12/29/2017

12/29/2017 Courtesy Copy to Trial Court

Notice of Appeal

Serve: Trial Clerk 48 - Madison
 Trial Court: Trial Clerk 48 - Madison
 Sent Date: 12/29/2017

12/29/2017 Document Transmitted**01/22/2018 Appearance by Deputy AG**

Certificate of Service- Electronically Served 1/19/2018

DAG: McMath, Patricia C
 Party: Indiana Horse Racing Commission/Indiana
 Party: Indiana Horse Racing Commission Staff
 File Stamp: 01/19/2018

01/30/2018 Notice of Completion of Clerk's Record

Transcript Not Requested/Not Available Certificate of Service- Electronically Served 01/23/18

File Stamp: 01/23/2018

02/26/2018 Appearance by Deputy AG

Certificate of Service- Electronically Served 02/22/18

DAG: Hunter, Kyle Martin

Party: Indiana Horse Racing Commission/Indiana

Party: Indiana Horse Racing Commission Staff

File Stamp: 02/22/2018

03/02/2018 Received Document

Receive Date: 02/21/18 Appellant's Brief and Appendix. Pages of the brief are not numbered according to rules of court. The appealed order has been placed in the brief and the certificate of service for the brief does not specify the method of service. The certificate of service for the appendix does not specify the method of service.

PostmarkDate: 02/21/2018

03/02/2018 Notice of Defect Issued

Appellant's Brief

Party: Baliga, Joseph

Serve: Sacopulos, Peter J

Serve: McMath, Patricia C

Serve: Hunter, Kyle Martin

Filing Date: 03/02/2018

03/02/2018 Notice of Defect Issued

Appellant's Appendix

Party: Baliga, Joseph

Serve: Sacopulos, Peter J

Serve: McMath, Patricia C

Serve: Hunter, Kyle Martin

Filing Date: 03/02/2018

03/02/2018 Document Transmitted**03/02/2018 Document Transmitted****03/16/2018 Received Document**

Receive Date: 03/07/18 Appellant's Brief. Brief is now lacking headers. Defect has not been cured.

PostmarkDate: 03/07/2018

03/16/2018 Appendix Filed

Volumes of Appendices: 4 Certificate of Service- Electronically Served 03/07/08

Attorney: Sacopulos, Peter J

Party: Baliga, Joseph

File Stamp: 03/07/2018

03/16/2018 Notice of Defect Cured

Appellant's Appendix

File Stamp: 03/07/2018

03/16/2018 Notice of Defect Not Cured Letter Issued

Appellant's Brief

Party: Baliga, Joseph
 Serve: Sacopulos, Peter J
 File Stamp: 03/16/2018

03/16/2018 Document Transmitted**03/27/2018 Received Document**

Receive Date: 03/19/18 Appellant's Brief. Defects have been cured;however, not within the time allotted in the notice of defect making the brief untimely.

PostmarkDate: 03/19/2018

04/06/2018 Order Issued

Having reviewed the matter, the Court finds and orders as follows: 1. The Clerk of this Court is directed to file as of the date of this order the Appellant's Brief on Appeal that was received on March 19, 2018. 2. Appellee's Brief shall be due within thirty (30) days of the date of this order.

Judicial Officer: Vaidik, Nancy H.
 Serve: Sacopulos, Peter J
 Serve: Hill, Curtis Theophilus
 Serve: McMath, Patricia C
 Serve: Hunter, Kyle Martin
 File Stamp: 04/06/2018

04/06/2018 Document Transmitted**04/10/2018 Brief - Appellant**

Certificate of Service- Electronically Served 03/19/18

Attorney: Sacopulos, Peter J
 Party: Baliga, Joseph
 File Stamp: 04/06/2018

05/17/2018 Brief - Appellee

Certificate of Service- Electronically Served 05/07/18

Attorney: Hunter, Kyle Martin
 Party: Indiana Horse Racing Commission Staff
 File Stamp: 05/07/2018

05/24/2018 Brief - Appellant Reply

Certificate of Service- Electronically Served 3/22/18 (as stated)

Attorney: Sacopulos, Peter J
 Party: Baliga, Joseph
 File Stamp: 05/22/2018

05/25/2018 Case Fully Briefed

Oral Argument Requested: No

FB Date: 05/25/2018

05/25/2018 Transmitted to Court of Appeals**Financial Information**

* Financial Balances reflected are current representations of transactions processed by the Clerk's Office. Please note that any

balance due does not reflect interest that has accrued – if applicable – since the last payment. For questions/concerns regarding balances shown, please contact the Clerk's Office.

Baliga, Joseph

Appellant

Balance Due (as of 06/21/2018)

0.00

Charge Summary

Description	Amount	Credit	Payment
Court Costs and Filing Fees	250.00	0.00	250.00

Transaction Summary

Date	Description	Amount
12/29/2017	Transaction Assessment	250.00
12/29/2017	Counter Payment	(250.00)

This is not the official court record. Official records of court proceedings may only be obtained directly from the court maintaining a particular record.

BEFORE
THE INDIANA HORSE RACING COMMISSION

HRC Licensing Office
IG
AUG 25 2017

INDIANA HORSE RACING
COMMISSION STAFF,

Received

Petitioner,

In Re: Consolidated Matter
Administrative Complaint No.
216007 and Amended
Administrative Complaint
No. 216008

v.

JULIAN WILLIAMS and DYLAN DAVIS,

Respondents.

Final Order

This matter is pending before the Indiana Horse Racing Commission ("Commission") on the Administrative Complaints against Julian Williams and Dylan Davis. The Commission issued the Complaint against Williams on November 22, 2016. It also issued a Complaint against Davis on November 22, 2016. The Complaint against Davis was amended on February 20, 2017. Williams and Davis responded to the Complaints in a timely manner. On May 25, 2017, the Administrative Law Judge ("ALJ") designated by the Commission, Bernard Pylitt, issued his "Findings of Fact, Conclusions of Law, and Recommended Order" ("Recommended Order") in this case. On June 9, 2017, Williams and Davis filed their objections to the Recommended Order. On August 17, 2017, Williams, Davis and the Commission Staff filed their respective briefs and on August 25, 2017, the Commission heard oral argument in the proceedings.

After considering the record in this matter, and the ALJ's Recommended Order, as well as the objections, briefs and arguments of the parties, the Commission, at its


meeting of August 25, 2017, voted as follows. Commissioners Borst, Schenkel, Pillow, McCarty and Lightle voted to affirm said Recommended Order and adopt it as the final order in this proceeding.

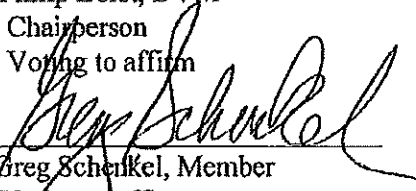
The final vote of the Commission was, therefore, ^{4 NMC} 5 to 0 in favor of affirming said Recommended Order and adopting it as the final order in this proceeding.


The Recommended Order is attached hereto and incorporated herein by reference as Exhibit A.

ISSUED this 25th day of August, 2017.

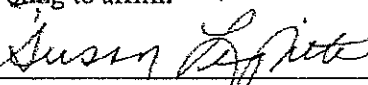
**THE INDIANA HORSE RACING
COMMISSION**

By: 
Philip Borst, DVM
Chairperson
Voting to affirm


Greg Schenkel, Member
Voting to affirm


George Pillow, Member
Voting to affirm

Was not present / did not vote
~~Bill McCarty, Member~~
~~Voting to affirm~~ NMC 8/25/17


Susie Lightle, Member
Voting to affirm

Copies forwarded by electronic mail and U.S. Mail on August ____, 2017:

Peter Sacopulos
676 Ohio Street
Terre Haute, IN 47807
pla@sacopulos.com
Counsel for Respondent

Howard Taylor
Howard Taylor, LLC
123 South Broad Street
Suite 1310
Philadelphia, PA 19109
Counsel for Respondent

Holly Newell
1302 North Meridian Street, Suite 175
Indianapolis, IN 46202
Hnewell@hrc.IN.gov
Counsel for Petitioner

Mike Smith
Indiana Horse Racing Commission
1302 North Meridian Street, Suite 175
Indianapolis, IN 46202
MDSmith@hrc.IN.gov

858281

BEFORE AN ADMINISTRATIVE LAW JUDGE
APPOINTED BY THE INDIANA HORSE RACING COMMISSION

INDIANA HORSE RACING
COMMISSION STAFF,

Petitioner,

v.

JULIAN WILLIAMS and DYLAN DAVIS,

Respondents.

In Re: Consolidated Matter
Administrative Complaint No. 216007
and Amended Administrative Complaint
No. 216008

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

This matter came before Administrative Law Judge Bernard Pylitt ("ALJ Pylitt") for a hearing on the Administrative Complaint filed against assistant trainer Julian Williams ("Williams") under Administrative Complaint No. 216007 and trainer Dylan Davis ("Davis") under Amended Administrative Complaint No. 216008.

PROCEDURAL BACKGROUND

A timely request for a hearing was filed by Williams on December 1, 2016 following the issuance of Administrative Complaint No. 216007 on November 22, 2016 finding violations of 71 IAC 8-1-1.5(b), 71 IAC 5-3-3(a)(5), 71 IAC 5-3-3(a)(18), and 71 IAC 5-3-3(a)(27), and recommended a fine of \$1,000.00 and suspension for a period of sixty (60) days. The ALJ DENIED Williams' Request to hold his appeal in abeyance until the completion of the disciplinary matters against Dr. Joseph Baliga.¹

A timely request for a hearing was filed by Davis on December 1, 2016 following the issuance of Administrative Complaint No. 216008 on November 22, 2016 finding violations of 71

¹ On March 7, 2017, the Indiana Horse Racing Commission suspended Dr. Baliga for a period of five (5) years and permanently banned him from participation in the Lasix Administration Program at Indiana Para-Mutual Horse Racing Tracks following the events on September 30, 2016.

IAC 8-1-1.5(b), 71 IAC 5-3-3(a)(5), 71 IAC 5-3-3(a)(18), and 71 IAC 5-3-3(a)(27), and recommended a fine of \$2,000. The ALJ DENIED Davis' Request to hold his appeal in abeyance until the completion of the disciplinary matters against Dr. Joseph Baliga.

On December 5, 2016, Bernard L. Pylitt, was appointed to serve as the ALJ handling these two matters. In accordance with I.C. 4-21.5-3-18, ALJ Pylitt sent written notice to the parties scheduling a pre-hearing conference for Tuesday, January 10, 2016 at 10:00 a.m. to establish deadlines, facilitate discovery by the parties, and establish a mutually agreeable hearing date. Holly Newell appeared on behalf of the IHRC Staff for the telephonic prehearing conference. Davis appeared with his legal counsel, Howard Taylor, Philadelphia, Pa. Williams also appeared by telephone with his legal counsel Howard Taylor.

On January 10, 2017, a Prehearing Order and Order of Consolidation was issued scheduling these matters for a consolidated hearing on April 24 and 25, 2017, at the offices of Katz & Korin PC in Indianapolis, Indiana by agreement with the parties.

On January 17, 2017, Howard Taylor was granted leave to appear on behalf of Respondents pursuant to 71 IAC 10-5-1.² By letter dated March 2, 2017, Mr. Taylor disclosed for the first time that he owned horses trained by Davis around September 30, 2016 but that he did not own IAM Bonasera.

The parties conducted discovery pursuant to the Prehearing Order.

On February 20, 2017, IHRC Staff filed a Motion to Amend the Administrative Complaint against Davis seeking a sixty (60) day suspension of his license but reducing the amount of the fine originally sought from \$2,000 to \$1,000. All of the allegations in the original Administrative

² 71 IAC 10-5-1(e) provides that the Commission may impose "any condition" upon an attorney appearing before it. The Commission should consider requiring an attorney to certify that he or she has reviewed and is familiar with the Commission's rules regarding hearings and that an out-of-state attorney be familiar with Indiana law.

Complaint against Davis remained the same in the Amended Administrative Complaint.

Respondents objected by letter dated February 21, 2017. Said Motion was granted.

Pursuant to the Prehearing Order, Final Witness and Exhibit lists were to be filed on or before April 7, 2017, along with pre-marked copies of exhibits. The parties submitted timely lists.

On March 14, 2017, Respondents filed a Motion to Preclude Discovery of “any documentation of the test results of IAM Bonasera or any lab results from testing conducted on needles, syringe or vial allegedly found in the Lasix Room” on or about September 30, 2016. Said Motion was more properly a Motion in Limine to prevent certain scientific evidence from being offered during the hearing. Counsel for IHRC Staff did not object. On March 16, 2017, ALJ Pylitt issued an Order granting, in part, said Motion to Preclude Discovery other than the Certificate of Analysis which was ultimately admitted into evidence during the hearing as Respondents’ Exhibit O. Unfortunately, said Motion and Order created confusion and uncertainty during Petra Hartmann’s testimony during the hearing as noted in the Findings of Fact herein and leaving the Commission without the results of any testing of samples drawn from IAM Bonasera on September 30, 2016.

Following review of the deposition transcript of Judge Michael Hall, ALJ Pylitt issued Written Notice of Intent on April 11, 2017 pursuant to I.C. 4-21.5-3-26(f)(2) to take Official Notice of the record in the previous proceeding before the Indiana Horse Racing Commission captioned In Re: The Matter of Richard Estvanko and Anthony Granitz, Petitioners vs. Indiana Horse Racing Commission Staff, Appeal of Judges Rulings #14694 and #14695. A Final Order was issued by the Indiana Horse Racing Commission on November 4, 2015, unanimously adopting the ALJ’s Findings of Fact, Conclusions of Law, and Recommended Order issued on July 28, 2015.

Pursuant to statute, the parties were given an opportunity to file written objections to the ALJ's Intent to Take Official Notice. However, none were filed by Respondents.

The parties filed written joint stipulations on April 14, 2017 including 24 facts as well as their agreement concerning the authenticity and admissibility of 26 documents. These were identified during the hearing as Joint Exhibit 1. Contained within the parties' stipulations were the following facts:

1. At all times relevant Davis was a licensee of the Indiana Horse Racing Commission ("Commission") holding Commission License No. [REDACTED]
2. At all times relevant Williams was a licensee of the Indiana Horse Racing Commission ("Commission") holding Commission License No. [REDACTED]
3. As Commission licensees, Davis and Williams were at all times relevant subject to the rules and statutes regulations pari-mutuel horse racing in the State of Indiana.
4. At all times relevant, Davis was the trainer of the horse IAM Bonasera, a 9-year-old gelding.
5. On September 30, 2016, IAM Bonasera was entered in the fifth race at Hoosier Park.
6. On September 30, 2016, IAM Bonasera was scheduled to receive Lasix prior to the race.
7. During Lasix administration time on September 30, 2016, IAM Bonasera was housed in the paddock stall for Horse 1 in Race 5.
8. On September 30, 2016, Dave Hicks was employed by Hoosier Park as a Lasix Escort.
9. On September 30, 2016, Dr. Joseph Baliga was the veterinarian assigned to administer Lasix to the horses entered to race.
10. On September 30, 2016, Dr. Baliga appeared in the stall reserved for Horse 1 in Race 5 to administer Lasix.
11. Hicks accompanied Dr. Baliga to the stall reserved for Horse 1 in Race 5.

12. On September 30, 2016, Dr. Baliga administered an injection to IAM Bonasera while the gelding was in stall reserved for Horse 1 in Race 5.
13. On September 30, 2016, Hicks reported to the Hoosier Park judges that he believed he saw Dr. Baliga inject IAM Bonasera with a substance he believed to be something other than Lasix.
14. David Hicks did not discuss what he believed he saw with Dr. Baliga.
15. IAM Bonasera did not participate in Race 5 on September 30, 2016.
16. IAM Bonasera was scratched from Race 5 on September 30, 2016.
17. On the evening of September 30, 2016, David Hicks gave a recorded statement to IHRC Director of Security Terry Richwine ("Richwine").
18. On the evening of September 30, 2016, Dr. Baliga gave a recorded statement to Richwine.
19. Dr. Baliga was summarily suspended by the IHRC on October 1, 2016.
20. Davis was not on the grounds of Hoosier Park at Lasix administration time on September 30, 2016.
21. Williams was not on the grounds of Hoosier Park at Lasix administration time on September 30, 2016.
22. Lasix is a brand name of the drug furosemide. It is also sometimes referred to as salix.
23. At all times relevant, Dr. Baliga was providing veterinary services to horses stabled at Hoosier Park, including horses trained by Davis and Williams.
24. The parties agree that Petra Hartmann is qualified by training and experience to issue expert opinions with respect to this matter, but reserve the right to take issue with those opinions.

By their stipulation, the parties agreed to the authenticity and admissibility of certain documents:

- a. Deposition of Mike Hall, conducted on March 27, 2017;
- b. Deposition of Dave Hicks, conducted on March 27, 2017;

- c. Deposition of Dylan Davis, conducted on March 28, 2017;
- d. Deposition of Julian Williams, conducted on March 28, 2017;
- e. Indiana Statutes governing Pari-Mutuel Wagering, found at Title IV, Article 31 of the Indiana Code and Administrative Rules of the Indiana Horse Racing Commission, found at Title 71 of the Indiana Administrative Code;
- f. Invoice No. 14380 issued by Baliga Equine Veterinary Practice to Thomas Lazzaro;
- g. Salix and Paddock Schedule -Hoosier Park Friday September 30, 2016;
- h. Hoosier Park September 30, 2016 Lasix Sign In Sheet;
- i. Hoosier Park September 30, 2016 Horse Identification List;
- j. 2016 IHRC License Application of Dylan Davis;
- k. 2016 IHRC License Application of Julian Williams;
- l. Hoosier Park Official Program Page for the 5th race on September 30, 2016;
- m. Photograph of Lasix Room from Entryway (pre-marked as IHRC Staff Exhibit 3);
- n. Second Interior Photograph of Lasix Room (pre-marked as IHRC Staff Exhibit 4);
- o. Third Interior Photograph of Lasix Room (pre-marked as IHRC Staff Exhibit 5);
- p. Diagram of Hoosier Park Lasix Room (pre-marked as IHRC Staff Exhibit 8);
- q. Photograph of Lasix Barn Shed Row (pre-marked as IHRC Staff Exhibit 9);
- r. Photograph of Lasix Stalls (wide shot) (pre-marked as IHRC Staff Exhibit 10);
- s. Photograph of Lasix Stall for Race 5, Horse 1 (pre-marked as IHRC Staff Exhibit 11);

- t. Diagram of Lasix Stall for Race 5, Horse 1 (pre-marked as IHRC Staff Exhibit 12);
- u. Empty Lasix Bottle (Merck 50 ml) (pre-marked as IHRC Staff Exhibit 13);
- v. Empty Lasix Box (Merck 50 ml) (pre-marked as IHRC Staff Exhibit 14);
- w. Photograph of red topped vial next to Lasix box (pre-marked as IHRC Staff Exhibit 16);
- x. Photograph of David Hicks in Paddock Stall (pre-marked as Respondents Exhibit A)
- y. Photograph of Paddock Stall with door on the Right (pre-marked as Respondents Exhibit B); and
- z. Photograph of empty Paddock Stall (pre-marked as Respondents Exhibit C)

Not all of these documents were offered during the hearing.

A Final Prehearing Conference was conducted by telephone with counsel on Tuesday morning, April 18, 2017. A Final Prehearing Order Confirming the hearing was issued. By agreement of the parties, the first day of the hearing was moved to the IHRC offices to receive the testimony of Petra Hartmann, a resident of Colorado via Skype. (See paragraph 3)

Consistent with 71 IAC 10-3-12(j), the Final Prehearing Order clearly required that all original exhibits shall be pre-marked with originals to the court reporter and a pre-marked copy to opposing counsel and the ALJ before the hearing begins. (Paragraph 9) Unfortunately, this did not occur during the hearing. (Transcript, pgs. 91, 236)

During the Final Prehearing Conference, Respondents' counsel disclosed for the first time that he may call any of three (3) unnamed trainers in rebuttal. IHRC Staff requested the identity of these trainers. Respondents refused. IHRC Staff then filed a Motion to Strike Undisclosed Witnesses. ALJ Pylitt issued an Order finding that this testimony as described during the final

prehearing conference was not rebuttal and further ordered that if the identity of these witnesses was not disclosed by noon on April 20, 2017, IHRC Staff's Motion to Strike would be granted. After the noon deadline, ALJ Pylitt emailed counsel (around 1:00 pm) and inquired whether disclosure was made by Respondents. Counsel for IHRC Staff replied that the identity of these three potential witnesses had not been disclosed. ALJ Pylitt then entered an Order Granting the Motion to Strike their testimony at the hearing.

During the Final Prehearing Conference, ALJ Pylitt advised counsel that it would be unnecessary to offer the deposition transcript of any witness called during the hearing except for impeachment purposes. Counsel were further reminded of their obligation to comply with I.C. 25-38.1-4-5.5 and protect medical information about horses which is deemed confidential by statute, as well as the obligation to redact personal information pursuant to Indiana Administrative Rule 9G. Despite the admonition to refrain from offering confidential information about other horses' medical information, Respondents offered Respondents' Exhibit D identifying confidential information about two other horses Dr. Baliga treated on September 30, 2016, which was admitted into evidence without objection. Following the hearing, and after consulting with counsel, ALJ Pylitt entered an Order on May 1, 2017 substituting redacted Exhibit D for the record.

During the hearing, the Indiana Horse Racing Commission Staff ("Commission Staff") was represented by its Deputy General Counsel, Holly Newell. Respondents were present in person and with their counsel Howard Taylor. Day 2 of the hearing was conducted at the law offices of Katz & Korin as originally scheduled.

Commission Staff bore the burden of persuasion and the burden of going forward during the hearing, IC 4-21.5-3-14(c).

Pursuant to I.C. 4-21.5-3-26(f), ALJ Pylitt took official notice of the Indiana pari-mutuel enabling statute (I.C. 4-31 *et seq.*, and I.C. 4-35 *et seq.*), and the IHRC rules that regulate pari-mutuel racing in Indiana (71 IAC *et seq.*).

Pursuant to I.C. 4-21.5-3-26 (f)(2), ALJ Pylitt took official notice of the record of a previous proceeding before the Commission captioned *In Re: Richard Estvanko and Anthony Granitz, Petitioners v. Indiana Horse Racing Commission Staff*, Appeal of Stewards Rulings # 14694 and #14695, including the testimony at the hearing before ALJ Pylitt on June 23 and 24, 2015, Findings of Fact, Conclusions of Law, and Recommended Order issued by the ALJ on July 28, 2015, and the Final Order of the full Commission unanimously adopting the Recommended Order of the ALJ issued on November 4, 2015 and the factual basis in support. Specifically, (1) that Granitz, the trainer of record, was held responsible even though he was in Ohio on the evening in question and (2) Dr. Scot Waterman was recognized by the Commission as an expert in the field of Equine Medicine as it relates to horse racing.

At the conclusion of the hearing, ALJ Pylitt commended Respondents for their demeanor and behavior during the two-day hearing. (Transcript, pg. 399)

In rendering his findings, ALJ Pylitt was required to weigh the credibility of witnesses about what happened to the horse IAM Bonasera in the Paddock area at Hoosier Park prior to the fifth race on Friday, September 30, 2016, as well as each witness's interest, if any, in the outcome in the matter.

Having considered the administrative record, conducted a hearing with evidence and testimony presented by both sides, weighed the credibility of the witnesses and considered the arguments of counsel, ALJ Pylitt issues the following Findings of Fact, Conclusions of Law, and

Recommended Order. To the extent that any of the Findings of Fact are more appropriately considered Conclusions of Law, or conversely, they shall be so treated.

EXHIBITS ADMITTED DURING THE HEARING

Commission Staff's Exhibits:

IHRC Staff Exhibit 1. Indiana Horse Racing Commission Administrative Complaint No. 216008 filed against Dylan Davis on November 22, 2016, as amended on February 20, 2017, and all exhibits attached thereto, specifically:

1. 2016 Indiana Horse Racing Commission ("IHRC") owner/trainer license application form signed by Dylan Davis ("Davis") on March 23, 2016, and received March 24, 2016. (Attached to Administrative Complaint and identified as Exhibit 1 therein);
2. The United States Trotting Association ("USIA") past Ruling Record of Davis. (Attached to Administrative Complaint and identified as Exhibit 2 therein);
3. The Association of Racing Commissioners International ("ARCI") past Ruling Record of Davis. (Attached to Administrative Complaint and identified as Exhibit 3 therein);
4. Copy of the Hoosier Park Official Program Page for the 5th race on September 30, 2016. (Attached to Administrative Complaint and identified as Exhibit 4 therein);
5. Copy of the Result Chart from the 5th race on September 30, 2016 at Hoosier Park, showing the scratch of the horse "LAM Bonasera". (Attached to Administrative Complaint and identified as Exhibit 5 therein);
6. Affidavit of David Hicks and all exhibits attached thereto. (Attached to Administrative Complaint and identified as Exhibit 6 therein);
 - 6(a) Salix and Paddock Schedule - Hoosier Park - Friday September 30, 2016 (Attached to Hicks Affidavit and identified as Exhibit 6A therein);
 - 6(b) Hoosier Park September 30, 2016 Lasix Sign In Sheet (Attached to Hicks Affidavit and identified as Exhibit 6B therein);
 - 6(c) Hoosier Park September 30, 2016 Horse Identification List (Attached to Hicks Affidavit and identified as Exhibit 6C therein).

IHRC Staff Exhibit 2. Indiana Horse Racing Commission Administrative Complaint No. 216007, filed against Julian Williams on November 22, 2016, and all exhibits attached thereto, specifically:

1. The 2016 Indiana Horse Racing Commission ("IHRC") owner/trainer license application form signed by Julian Williams ("Williams") on March 11, 2016, and received March 24, 2016. (Attached to Administrative Complaint and identified therein as Exhibit 1);
2. The United States Trotting Association ("USTA") past Ruling Record of Williams. (Attached to Administrative Complaint and identified therein as Exhibit 2);
3. The Association of Racing Commissioners International ("ARCI") past Ruling Record of Williams. (Attached to Administrative Complaint and identified therein as Exhibit 3);
4. Copy of the Hoosier Park Official Program Page for the 5th race on September 30, 2016. (Attached to Administrative Complaint and identified therein as Exhibit 4);
5. Copy of the Result Chart from the 5th race on September 30, 2016 at Hoosier Park, showing the scratch of the horse "IAM Bonasera". (Attached to Administrative Complaint and identified therein as Exhibit 5);
6. Affidavit of David Hicks and all exhibits attached thereto. (Attached to Administrative Complaint and identified as Exhibit 6 therein);
 - 6(a) Salix and Paddock Schedule-Hoosier Park-Friday September 30, 2016 (Attached to Hicks Affidavit and identified as Exhibit 6A therein);
 - 6(b) Hoosier Park September 30, 2016 Lasix Sign In Sheet (Attached to Hicks Affidavit and identified as Exhibit 6B therein);
 - 6(c) Hoosier Park September 30, 2016 Horse Identification List (Attached to Hicks Affidavit and identified as Exhibit 6C therein).

IHRC Staff Exhibit 3. Photograph of Lasix Room from Entryway

IHRC Staff Exhibit 4. Second Interior Photograph of Lasix Room

IHRC Staff Exhibit 5. Third Interior Photograph of Lasix Room

IHRC Staff Exhibit 8. Photograph of Diagram of Hoosier Park Lasix Room created during the hearing through David Hicks' testimony

IHRC Staff Exhibit 11. Photograph of Lasix Stall for Race 5, Horse 1

IHRC Staff Exhibit 12. Photograph of Diagram of Lasix Stall for Race 5, Horse 1 created during the hearing through David Hicks' testimony

IHRC Staff Exhibit 13. Empty Lasix Bottle (Merck 50 ml) (photo substituted for the record; bottle available during the hearing)

IHRC Staff Exhibit 14. Empty Lasix Box (Merck 50 ml)

IHRC Staff Exhibit 16. Photograph of a vial located by Hicks in the Lasix Room trash on September 30, 2016, with a red top next to Lasix box

IHRC Staff Exhibit 17. Exemplar 10 ml vial (photo substituted for the record; vial available during the hearing)

Respondents Exhibits:

- A. Picture of David Hicks standing in Paddock Stall taken on March 27, 2017
- B. Picture of Paddock Stall with entrance door to the right taken on March 27, 2017
- D. Treatment log of Dr. Joseph Baliga for September 30, 2016. Following the hearing, Redacted D was substituted redacting the names of two other horses treated
- E. Transcript of recorded statement of David Hicks taken by Terry Richwine, Director of Security, on September 30, 2016
- O. Certification of Analysis of vial by Industrial Laboratories dated December 6, 2016

RELEVANT REGULATIONS

71 IAC 5-3-2 Trainer Responsibility

- (a) A trainer is responsible for:

(2)The presence of any prohibited drug, medication, or other substance . . .
In horses he or she trains; and regardless of the acts of third parties.
(emphasis added)

71 IAC 5-3-5 Assistant trainers

- (a) Upon demonstration of a valid need, a trainer may employ an assistant trainer as approved by the judges. The assistant trainer shall be licensed prior

to acting in such capacity on behalf of the trainer.

(b) ...

(c) An assistant trainer may substitute for and shall assume the same duties, responsibilities, and restrictions as imposed on the licensed trainer. In which case, the trainer shall be jointly responsible for the assistant trainer's compliance with these rules. (emphasis added)

71 IAC 5-3-3 Other Responsibilities

(a) A trainer is responsible for the following:

(5) The proper identity, custody, care, health, condition, and safety of horses in his or her charge, including that outlined in 71 IAC 8.

(18) Ensuring the fitness of a horse to perform creditably.

(27) Guard and protect all horses in his or her care.

71 IAC 8-1-1.5(b) Medication

(b) No substance, foreign or otherwise, shall be administered to a horse entered to race by: (1) injection; . . . within twenty four (24) hours prior to the scheduled post time for the first race except furosemide as provided for in this rule.

71 IAC 8-5-12 Contact With Entered Horses

(a) Practicing veterinarians and their helpers are prohibited from having contact with a horse within twenty-four (24) hours of a scheduled race with the exception of the administration of furosemide . . .

71 IAC 8-5-5 Records of Treatment

(a) Every veterinarian licensed by the commission who treats any horse or performs other professional services within the enclosure of an organization licensee during a race meeting, or treats horses off the grounds that are actively participating at a race meeting, shall be responsible for maintaining treatment records or a log book on all horses for which they prescribe, administer, or dispense medication or perform other professional services. The treatment records or log book information shall include, but not be limited to, the following:

(1) The date and time of treatment service.

(2) Name of race track.

(3) The veterinarian's printed name and signature.

(4) The registered name of horse.

(5) The trainer's name.

(6) The barn number or location of horse.

(7) The race date and race number, if any.

(8) The medication and dosage.

(9) The reason for treatment or services.

These records shall be current at all times and available to the commission and the judges upon request. (emphasis added)

PARTIES

1. During 2016, Respondents Davis and Williams were licensees of the Indiana Horse Racing Commission. (Joint Exhibit 1, Stipulations 1, 2.)

2. As a licensee, Davis and Williams each acknowledged under oath:

I understand that participation in racing in Indiana is a privilege, not a right ... By acceptance of said license, I agree to abide by the statutes of the State of Indiana relating to racing, the Indiana Rules and Regulations and rulings or decisions of the Judges/Stewards with the knowledge that rulings or decisions of the Judges/Stewards shall remain in force until reversed or modified by the Indiana Horse Racing Commission

3. The Indiana Horse Racing Commission ("Commission") is an administrative agency created by the legislature pursuant to its enabling statute, I.C. 4-31 *et seq.* The Commission was created for the purpose of ensuring "that pari-mutuel wagering on horse races in Indiana will be conducted with the highest of standards and the greatest level of integrity." I.C. 4-31-1-2. The Commission has a long-standing directive in its governing statute and related administrative regulation that allows the Commission to sanction a licensee if the person has engaged in conduct that is against the best interest of horse racing or compromises the integrity of operations at a track or satellite facility. 71 IAC 5.5-1-14(a)(10).

4. The Commission has specific rules prohibiting the race day injection of all substances except furosemide (foreign or otherwise) medications and regulations that prohibit a licensed veterinarian from having contact with a horse within twenty-four hours prior to the

scheduled post time for the first race on that day with the exception of the highly regulated administration of furosemide. 71 IAC 8-1-1.5 and 71 IAC 8-1-2.

5. The horse in question, IAM Bonasera, was a nine (9) year old gelding trained by Davis and Williams. (Joint Exhibit 1; Stipulation 5).

6. On September 30, 2016, Davis was the trainer of record for IAM Bonasera.

7. On September 30, 2016, Williams was the assistant trainer of record for IAM Bonasera. (Joint Exhibit 1; Stipulation 4).

8. As a licensed trainer, Davis was fully responsible for the condition of all horses he trained, as well as guarding and protecting horses in his care for a horse within twenty-four (24) hours of a scheduled race. 71 IAC 5-3-2.

9. As a licensed assistant trainer, Williams was allowed to substitute for and assumed the same duties, responsibilities, and restrictions imposed upon the licensed trainer. In which case, the trainer shall be jointly responsible for the assistant trainer's compliance with these rules. 71 IAC 5-3-5(c).

10. The Commission Staff is responsible for the day-to-day operations of the Commission, including enforcement of regulations, and prosecution of violations. 71 IAC 2-5-1(a).

11. The Commission Staff is distinct and separate from the Commission.

12. The Commission Staff is the proper party to this proceeding. 71 IAC 10-3-2.

THE EVENTS OF SEPTEMBER 30, 2016 AND FINDINGS OF FACT

13. Late Friday afternoon, September 30, 2016, the Judges at Hoosier Park received a report that David Hicks, the Lasix Escort observed Dr. Joseph Baliga, DVM ("Dr. Baliga")

injecting IAM Bonasera with an unknown substance in its assigned stall in the Paddock prior to its scheduled post time.

14. Davis was outside the State of Indiana on Friday, September 30, 2016 in Delaware. (Transcript, pg. 353)

15. Williams was outside the State of Indiana on Friday, September 30, 2016 in Ohio. (Transcript, pg. 341)

The Commission Staff presented the testimony of David Hicks, Lasix Escort, Dr. Scot Waterman, DVM, Equine Medical Advisor to Commission and Commission Staff ("Dr. Waterman"), Petra Hartmann, Director, Drug Testing Services, Industrial Laboratories, Co., located in Colorado via Skype, and Executive Director Michael Smith. Commission Staff also presented exhibits into evidence. Further, Commission Staff offered the testimony of General Counsel Lea Ellingwood in Rebuttal.

a. **David Hicks Testimony:**

16. David Hicks ("Hicks") was seasonally employed for eight (8) years by Hoosier Park as a Security Officer and served as the Lasix Escort during the past five (5) years. (Transcript, pg. 21)

17. Hicks was the primary Lasix Escort at Hoosier Park during 2016. (Transcript, pg. 23)

18. Hicks has never been disciplined, criticized, written-up, or put on a work improvement plan while employed by Hoosier Park and has received raises over the years. (Transcript, pgs. 21-22)

19. During 2016, the Lasix Escort was responsible to accompany the veterinarian assigned to administer Lasix to "in-today" horses from the Lasix Room to the Paddock and record

the amount of Lasix drawn for each horse along with the time it was administered. (Transcript, pg. 23)

20. The Lasix Escort is also responsible for helping confirm that the correct horse received Lasix by checking the horse's tattoo number against that on the horse identification list provided by the Judges.

21. The Lasix Escort is assigned to protect the integrity of the Lasix program.

22. Lasix is an anti-bleeding medication that trainers have the ability to have administered on race day.

23. Lasix is a brand name of the drug furosemide. It is also sometimes referred to as Salix.

24. The Lasix Room is a secured room that remains locked at all times approximately 8 by 10 feet. (Transcript, pg. 43)

25. The Lasix Room automatically locks when the door closes. (Transcript, pg. 31)

26. The only two people with a key to the Lasix Room on September 30, 2016 were Hoosier Park Integrity Coordinator Sgt. Terry Pyle and Hicks. (Transcript, pg. 32)

27. The Lasix room was located in Barn 17 in the Paddock at Hoosier Park in 2016. (Transcript, pg. 31)

28. During 2016, Dr. Keith Hollendonner assigned one of four practicing veterinarians to administer Lasix for a full week. (Transcript, pg. 201)

29. Dr. Baliga was the assigned Lasix veterinarian on September 30, 2016. (Transcript, pg. 286)

30. On Friday, September 30, 2016, Lasix administration began early at approximately 12:15 p.m. due to a scheduled concert at Hoosier Park.

31. It was a cool evening and Dr. Baliga wore a sweatshirt. (Transcript, pg. 26)
32. The assigned veterinarian brought his own supplies and Lasix into the Lasix Room. (Transcript, pg. 288)
33. Typically, the veterinarian assigned to Lasix duty drew individual Lasix dosages needed for 2 or 3 races in the Lasix Room before he and the Lasix Escort leave and go to the Paddock area to begin administration.
34. Lasix dosages are drawn from a larger sealed vial of Lasix into a needle syringe provided by the veterinarian similar to IHRC Staff Exhibit 13. (Transcript, pgs. 24, 46).
35. During 2016, Lasix only came in one sized bottle. (Transcript, pg. 163)
36. One vial of Lasix contains enough Lasix to fill multiple syringes.
37. The individually filled syringes are then placed in a caddy which the Lasix Escort carries for the veterinarian.
38. The veterinarian and the Lasix Escort typically returned to the Lasix Room after each race for the veterinarian to draw additional dosages for later races as needed.
39. While Dr. Baliga was in the Lasix Room drawing Lasix for the fourth, fifth, and sixth races on September 30, 2016, Hicks saw a little vial in Dr. Baliga's left hand, which was smaller than the typical vial of Lasix, and Dr. Baliga put the content into a syringe.
40. The vial that Hicks saw Dr. Baliga draw from was clear, unlike the opaque vials that contained Lasix. (Transcript, pg. 53)
41. Hicks witnessed Dr. Baliga draw Lasix into the same syringe which he had drawn fluid from the smaller vial and placed that syringe in his sweatshirt pocket. (Transcript, pg. 41)
42. The smaller vial was the size of a thumb. (Transcript, pg. 53). A typical Lasix bottle was three (3) inches tall. (Transcript, pg. 49). Lasix bottles are dark brown. (Transcript,

pg. 53). Lasix bottles have a blue lid. (Transcript, pg. 95). The smaller vial was three times smaller and crystal clear. (Transcript, pg. 53)

43. While he was doing this, Dr. Baliga turned sideways to disguise his behavior. Hicks felt that Dr. Baliga was "up to something". (Transcript, pg. 41). Hicks felt that Dr. Baliga attempted to obscure what he was doing. (Transcript, pg. 46)

44. Hicks had a clear view of Dr. Baliga's suspicious activities in the Lasix Room. (Transcript, pgs. 45-46)

45. The only people in the Lasix Room on September 30, 2016 were Dr. Baliga and Hicks.

46. IHRC Staff Exhibit 13 was an empty 50ml Lasix bottle admitted for demonstrative purposes to demonstrate a normal vial of Lasix veterinarians always used in 2016. (Transcript, pg. 46)

47. IHRC Staff Exhibit 17 was an empty 10ml vial admitted for demonstrative purposes to demonstrate the size difference between the smaller vial Dr. Baliga used in the Lasix Room and a normal vial. (Transcript, pg. 49)

48. The difference in the size and color of Staff Exhibit 13 and 17 was dramatic.

49. 88 horses were scheduled to receive Lasix on September 30, 2016. One horse was scratched. (IHRC Staff Ex. 1-6; Hicks Affidavit)

50. Dr. Baliga administered Lasix to 14 horses scheduled for Lasix in the first three races on September 30, 2016. (IHRC Staff Ex. 1-6; Hicks Affidavit)

51. Upon arriving at IAM Bonasera's stall in the Paddock reserved for the first horse in the 5th race, Hicks observed Dr. Baliga initially retrieve a Lasix filled syringe from the caddy but then remove the pre-filled syringe from his sweatshirt pocket and inject IAM Bonasera. Dr.

Baliga "swapped" the syringe he had taken from the caddy with the one in his pocket. (Transcript, pgs. 54-55 and 63)

52. Hicks had an unobstructed view of Dr. Baliga, IAM Bonasera, and the stall on September 30, 2016. (Transcript, pg. 63)

53. IAM Bonasera did not obstruct Hick's view of Dr. Baliga in the Paddock on September 30, 2016. (Transcript, pgs. 61-64)

54. After IAM Bonasera was injected, Hicks heard the syringe used by Dr. Baliga as it dropped into the caddy. (Transcript, pg. 109)

55. Later, after Dr. Baliga left the Lasix Room, Hicks telephoned the Judges between 1:49 and 2:27 p.m. at some time between the sixth and eighth race on September 30, 2016 and reported that an incident occurred. (Transcript, pgs. 110, 115).

56. Hicks thought he spoke with Presiding Judge Mike Hall. (Transcript, pg. 116)

57. There is no doubt that Hicks reported this incident to the Judges on September 30, 2016.

58. Hicks chose not to confront Dr. Baliga. (Transcript, pg. 114)

59. Hicks did not retrieve the syringe used by Dr. Baliga (Transcript, pg. 107) since he was not comfortable pocketing the spent needle and syringe. (Transcript, pg. 143)

60. Hicks had worked with Dr. Baliga as his Lasix Escort since the first year Dr. Baliga was at Hoosier Park (Transcript, pgs. 32 and 142), and got along despite an initial "shouting match" three to four years earlier over a Snicker bar in Hicks' refrigerator in the Lasix Room. (Transcript, pg. 75).

61. They had no issues since that incident and they discussed food and their gardens. "He was Polish and I was Polish and we talked about the different foods and his garden and my garden". (Transcript, pg. 142)

62. Dr. Baliga never asked that Hicks be removed as a Lasix Escort. (Transcript, pg. 142)

63. Hicks and Dr. Baliga finished Lasix administration at 4:14 p.m. on September 30, 2016. (Transcript, pg. 139)

64. Shortly after completing Lasix administration on September 30, 2016, Hicks was asked to give a recorded statement to Terry Richwine, Commission's Director of Security. (Transcript, pg. 118)

65. Hicks told Terry Richwine that he searched the trash in the Lasix Room but found nothing. (Respondents' Exhibit E, pg. 9)

66. Hicks told Terry Richwine that he "believed" the small vial Dr. Baliga had in his hand and injected had a blue lid. (Respondents' Exhibit E, pg. 12). At the hearing, Hicks could not recall the color. (Transcript, pg. 87)

67. After providing Terry Richwine with his 15 minute recorded statement, Hicks returned to the Lasix Room and retrieved a small clear vial similar to IHRC Staff Exhibit 17 from the trash bin hidden in an empty Lasix box similar to IHRC Staff Exhibit 14. (Transcript, pgs. 66-67)

68. Hicks contacted his boss Sgt. Terry Pyle who came to the Lasix Room and took a photograph of the vial Hicks found in the trash. (Transcript, pg. 69; IHRC Staff Exhibit 16)

69. No other Lasix bottles discarded by Dr. Baliga that night were found in empty Lasix boxes. (Transcript, pg. 66)

70. Hicks did not know Davis on September 30, 2016. (Transcript, pg. 58)
71. Hicks had no reason to doubt his recollection of what he saw Dr. Baliga doing in the Lasix Room on September 30, 2016 prior to injecting IAM Bonasera. (Transcript, pg. 63)
72. Hicks had nothing to gain from his testimony and had no interest in the outcome.
73. Hicks' testimony was credible and reliable.
- b. **Dr. Scot Waterman Testimony:**
74. Dr. Waterman received his DVM from the University of Illinois in 1990. (Transcript, pg. 146)
75. Dr. Waterman has been under contract as an Equine Medicine Advisor for the Commission since around 2012. (Transcript, pg. 148)
76. Dr. Waterman's employment with Commission includes review of laboratory testing results. (Transcript, pg. 149)
77. Dr. Waterman is also a Veterinarian employed as a quasi-Equine Animal Medical Advisor for the Arizona Department of Gaming Division Racing. (Transcript, pg. 148)
78. Dr. Waterman also serves as contract Equine Medical Advisor for the New Mexico Racing Commission. (Transcript, pg. 148)
79. Dr. Waterman has worked as a veterinarian in horse racing for 16-17 years. (Transcript, pgs. 148, 151)
80. Dr. Waterman is the former Director of Racing Medicine and Testing Consortium ("RMTC"), a position he held for about ten years. (Transcript, pg. 148)
81. Dr. Waterman is an accredited Steward. (Transcript, pg. 150)
82. Dr. Waterman has authored research publications relating to medication and testing issues in horse racing. (Transcript, pg. 151)

83. Dr. Waterman was tendered as an expert in the field of equine medicine as it relates to horse racing over the objection of Respondents. (Transcript, pg. 152)

84. Dr. Waterman had been previously recognized by the Commission as an expert in the Estvanko and Granitz matter.

85. ALJ Pylitt recognized Dr. Waterman as an expert.

86. Dr. Waterman testified that the integrity of Lasix administration is important because of the time of drug administration. "[F]our hours is a prime period of time to administer most substances to achieve an effect when that horse runs. It's actually in some ways unfortunate that that's also the time where Lasix has its peak effect, is going to be administered at four hours. Well, most other things are too. So Lasix is viewed sort of largely in the industry as the opportunity. *That's the point where there's an opportunity for a veterinarian to administer something in addition to Lasix that may have an effect on the horse.* And I believe that was originally the rationale to put the integrity program in place here." (*Id.*, at p. 161) (emphasis added)

87. Dr. Waterman's main concern is about "race-day administration" typically between an hour before post time of a race to about 12 hours because most drugs have a finite duration of action. (Transcript, pg. 154)

88. A negative test is not definitive proof that a horse was not improperly injected on race day. "It is incorrect to assume that a report of no significant finding for a blood or urine sample submitted for analysis is proof that no drugs were administered to the horse from which the samples were collected." Numerous substances could have been administered to the horse. (Transcript, pg. 155)

89. Not all prohibited substances administered to race horses test positive. There are probably “thousands of substances that could be administered that we can’t detect”. (Transcript, pg. 155).

90. Dr. Waterman’s review of Dr. Baliga’s treatment records for September 30, 2016 determined that they were “questionable”. (Transcript, pg. 168)

91. Dr. Waterman would be “hard pressed” to believe a veterinarian such as Dr. Baliga would inject a horse without the trainer’s knowledge. (Transcript, pgs. 175 and 179)

c. Michael Smith Testimony:

92. Michael Smith (“Smith”) has been employed as the IHRC Executive Director since February 2016. (Transcript, pg. 184)

93. Smith had significant training and experience training, breeding, and racing standard-bred horses for 27 years prior to that time. (Transcript, pg. 184)

94. Davis and Williams were granted licenses by the Commission in 2016. Their participation in horse racing in Indiana was a privilege and not a right.

95. Davis and Williams shared responsibility for horses they trained. (Transcript, pgs. 188-189)

96. Williams’ absence from Hoosier Park on September 30, 2016 did not absolve him of responsibility as a trainer. (Transcript, pg. 200)

97. Five to six weeks prior to September 30, 2016, Smith warned Dr. Baliga that Smith received more than one telephone call from reliable sources advising that Dr. Baliga was violating the race day administration rules. Smith warned Dr. Baliga that such behavior would not be tolerated. (Transcript, pgs. 191 and 192)

98. Pursuant to Indiana Code § 4-31-3 and 71 IAC 10-3-20(b), as the Executive Director, Smith issued Administrative Complaint No. 216007 on November 22, 2016 against Williams and recommended that he be fined One Thousand Dollars (\$1,000) and his license suspended for a period of sixty (60) days. (IHRC Staff Exhibit 2)

99. Pursuant to Indiana Code § 4-31-3 and 71 IAC 10-3-20(b), as the Executive Director, Smith issued Administrative Complaint No. 216008 on November 22, 2016 against Davis and recommended that he be fined Two Thousand Dollars (\$2,000)

100. Pursuant to Indiana Code § 4-31-3 and 71 IAC 10-3-20(b), as the Executive Director, Smith issued Amended Administrative Complaint No. 216008 on February 20, 2017 against Davis and recommended that he be fined One Thousand Dollars (\$1,000) and his license suspended for a period of sixty (60) days after he learned that assistant trainer Williams was not present at Hoosier Park on September 30, 2016. (IHRC Staff Exhibit 1)

101. Smith filed the Amended Administrative Complaint against Davis after he learned that neither Williams or Davis were at Hoosier Park on September 30, 2016. (Transcript, pg. 193)

102. The standards demanded by the Commission are keeping with the legislative directive to ensure integrity in pari-mutuel racing in Indiana. (Transcript, pg. 200)

103. Pursuant to 71 IAC 2-11-1, Smith was required to consider the severity of a violation in assessing a penalty.

104. In considering an appropriate penalty, Smith considered the injection of a horse on race day as an intention to cheat and therefore a serious violation. (Transcript, pg. 187)

105. Smith believed that Dr. Baliga would not have injected IAM Bonasera without Davis and Williams knowledge. "I don't believe in my wildest dreams that there is a vet out there

that would intentionally shoot a horse with something that wasn't requested by the people who are training the horse." (Transcript, pg. 206)

106. Based upon Smith's review of the facts and sanctions assessed for similar violations, Smith felt that the penalties proposed were minimal, appropriate, and fair.

107. Pursuant to 71 IAC 10-3-12(f), the special skills and experience and over 27 years prior experience by Smith may be used by the ALJ in evaluating the evidence.

d. Petra Hartmann Testimony:

108. The parties stipulated that Hartmann was qualified by training and experience to issue expert opinions with respect to this matter but reserved the right to take issue with those opinions.

109. Ms. Hartmann testified via Zoom with no objection from Respondents. (Transcript, pg. 218; Final Prehearing Order)

110. She serves as the Lab Director of Laboratory Services at Industrial Laboratories. (Transcript, pg. 219)

111. Industrial Laboratories served as the official lab for the Commission during 2016. (Transcript, pg. 219)

112. The testing performed is done on blind samples. (Transcript, pg. 223)

113. The minimum number of compounds routinely tested by Industrial Laboratories was 375. (Transcript, pg. 220)

114. Industrial Laboratories adds to the range of substances attempting to detect new drugs all of the time. (Transcript, pg. 221)

115. There are substances that can be administered to a horse that will not result in a positive test. (Transcript, pg. 222)

116. It is possible that the blood and urine of a horse injected on race day might test clean. (Transcript, pg. 222)

117. The absence of a positive finding does not indicate that a horse has not been injected with a substance. (Transcript, pg. 223)

118. Testing conducted by Industrial Laboratories of an unidentified vial did not indicate the presence of any foreign substances. This vial was submitted for testing by Commission on September 30, 2016 and a Certificate of Analysis was issued on December 6, 2016 detecting Lasix in one of the two vials submitted. (Respondents' Exhibit O)

119. Counsel for IHRC Staff indicated that vial 2019 that was tested had been retrieved by Hicks from the trash in the Lasix Room at Hoosier Park on September 30, 2016 but that vial 2020 was a separate vial "tangentially related". (Transcript, pg. 228)

120. Neither party offered any clear explanation or testimony identifying which vial was tested in Respondents' Exhibit O. (Transcript, pgs. 226, 230).

121. The confusion and uncertainty surrounding Respondents' Exhibit O was caused in, part, by Respondents' March 14, 2017 Motion to Preclude Discovery of "any documentation of the test results of IAM Bonasera or any lab results from testing conducted on needles, syringe or vial allegedly found in the Lasix Room" on or about September 30, 2016, and the resulting Order granting said Motion to Preclude Discovery, in part, other than the Certificate of Analysis which was admitted during the hearing as Respondents' Exhibit O.

122. Based upon said ruling, the Commission is left without the benefit of any clear test results from IAM Bonasera on September 30, 2016.

123. Neither party offered the results of any testing conducted on samples from IAM Bonasera on September 30, 2016.

RESPONDENTS' DEFENSE

Respondents presented the testimony of Michael Hall, Presiding Judge at Hoosier Park, Dr. Joseph Baliga, and Williams and Davis.

a. **Michael Hall's Testimony:**

124. Hall served as Presiding Judge at Hoosier Park during 2016 in charge of enforcing the rules of the Commission. (Transcript, pg. 257).

125. Hall has been involved with harness racing for 45 years. (Transcript, pg. 258)

126. Hall "could not be exactly sure" who notified him about Hicks' report of Dr. Baliga's behavior on September 30, 2016 between 2:00 and 3:00 p.m., (Transcript, pgs. 265-266) but to the best of his recollection, it was a telephone call from Dave Magee, one of the other two Judges, while he was driving to Hoosier Park.³

127. Hall typically arrives at 3:00 a.m. on race day. (Transcript, pg. 260)

128. On concert days, the first race began at 4:30. (Transcript, pg. 263)

129. Hall called Davis on September 30, 2016 and told him that a security person had seen Dr. Baliga administer something besides Lasix and IAM Bonasera was scratched from the fifth race. (Transcript, pg. 276)

130. IAM Bonasera was scratched. (Stipulation 16)

131. Pursuant to 71 IAC 10-3-12(f), the special skills and experience of the Judges, including over 45 years of experience in racing by Presiding Judge Hall may be used by the ALJ in evaluating the evidence.

³ ALJ Pylitt does not find relevant who notified Hall about Dr. Baliga or the exact time Hicks made his report to the Judges.

b. Dr. Joseph Baliga's Testimony:⁴

132. Dr. Baliga graduated from Purdue University with a Doctor of Veterinary Medicine degree in 1988. (Transcript, pg. 283)

133. Dr. Baliga was a licensed practicing veterinarian at Hoosier Park from 2011 until September 30, 2016. (Transcript, pgs. 284, 316)

134. During 2016, Dr. Baliga provided veterinary services to horses stabled at Hoosier Park for several trainers including Davis and Williams.

135. Dr. Baliga had provided Davis and Williams veterinary services for one and one-half to two years prior to September 30, 2016. (Transcript, pg. 285)

136. On a rotating basis, for one week at a time during 2016, Dr. Baliga and three (3) other DVMS administered Lasix on race day for all "in-today" horses listed on a sheet provided by the Judges. (Transcript, pg. 201)

137. Veterinarians must draw Lasix from sealed Lasix vials. 71 IAC 8-1-5(8)

138. Dr. Baliga arrived at Hoosier Park on September 30, 2016 around noon. (Transcript, pg. 33)

139. Since there was a concert that evening after racing, the time in between Lasix administration for each race was briefly shortened. However, Dr. Baliga believed that he had sufficient time to administer Lasix on September 30, 2016. (Transcript, pg. 296)

140. Following his administration of Lasix on September 30, 2016, Dr. Baliga provided a recorded statement to Terry Richwine and denied injecting any horse with an unauthorized substance or having a vial in his pocket. (Transcript, pgs. 305-306)

141. During his recorded statement, Dr. Baliga claims he was "stressed".

⁴ Dr. Baliga was accompanied during his testimony by his counsel Pete Sacopolis who remained for the remainder of day 2 of the hearing.

142. Dr. Baliga disclosed for the first time during the hearing, and seven months after the incident, that he did possess a non-Lasix vial in the Lasix Room on September 30, 2016. (Transcript, pg. 397)

143. Dr. Baliga lied to Terry Richwine about having a vial in his pocket despite the fact that he had a spent vial of Orgotein which he allegedly injected in a horse prior to Lasix administration as reflected on Respondents' Exhibit D. (Transcript, pgs. 307-310)

144. Orgotein is a free radical scavenger. Free radicals are produced in almost any inflammatory disease to relieve inflammation, (Transcript, pg. 310) but not allowed to be administered race day.

145. Dr. Baliga made no effort to correct his statement to Terry Richwine. (Transcript, pg. 319)

146. Dr. Baliga never corrected his statement to Terry Richwine because he did not think it was worth it. (Transcript, pg. 319)

147. Dr. Baliga was summarily suspended by the Judges that evening for violation of 71 IAC 8-1-1.1(b)(1) and faced a disciplinary proceeding by the Commission as a result of the underlying events at issue in this matter. Ultimately, Dr. Baliga was suspended by the Commission. (Transcript, pg. 327)

148. Dr. Baliga was previously suspended for a period of nine (9) months in 1993 by the Illinois Racing Board, but said suspension was reversed in a subsequent proceeding. (Transcript, pgs. 284-285)

149. Dr. Baliga claims to have kept contemporaneous treatment logs as required by the Commission's regulations. (Transcript, pg. 291)

150. However, Dr. Baliga's treatment log for September 30, 2016 failed to include any dates or times, barn location, trainer's name, dosage, and failed to comply with 71 IAC 8-5-12(a). (Respondents' Exhibit D)

151. Dr. Baliga's treatment log for September 30, 2016 was questionable at best.

152. Dr. Baliga had no independent recollection of having drawn Lasix for the horses in the fifth race on September 30, 2016. (Transcript, pg. 300)

153. Dr. Baliga claims that his relationship with Hicks was "strained at best" based upon an incident involving a Snickers bar three years earlier. (Transcript, pg. 321) Dr. Baliga described dealing with Hicks like dealing with "Captain Queeg from Caine Mutiny". (Transcript, pg. 323)⁵

154. Dr. Baliga and counsel for Respondents discussed Hicks' testimony from day 1 of the hearing before testifying. (Transcript, pg. 329)

155. Dr. Baliga testified that he attended a meeting at Hoosier Park with 10 people including Dr. Keith Hollendonner, IHRC Staff Attorneys, the General Manager of Hoosier Park, and the Stewards, concerning Dr. Hollendonner's request to be in charge of the secured Lasix room at Hoosier Park. According to Dr. Baliga, the main purpose of the meeting was to express concerns or complaints against David Hicks. (Transcript, pg. 325)

156. However, Dr. Baliga never filed any complaint against Hicks. (Transcript, pg. 325)

157. Dr. Baliga denied injecting IAM Bonasera with any substance other than Lasix. (Transcript, pg. 311)

⁵ ALJ Pylitt finds Dr. Baliga's testimony and Respondents' argument that Hicks had a grudge against Dr. Baliga based upon this Snickers incident years before lacking in any credibility and it is therefore rejected.

158. Dr. Baliga described prior proceedings before the Commission as a “Kangaroo Court”. (Transcript, pgs. 320, 326, 327). He refused to explain when asked by Commission Staff (Transcript, pg. 320) but answered for the ALJ. (Transcript, pg. 328)

159. Dr. Baliga’s demeanor during his testimony was confrontational and abrasive.

160. Counsel for Respondents acknowledged that Dr. Baliga “got a little upset” during his testimony.

161. Dr. Baliga’s testimony lacked reliability and credibility.

162. Dr. Baliga has interest in the outcome of this proceeding and clearing his name.

c. Julian Williams Testimony:

163. On September 30, 2016, Williams was licensed as an assistant trainer for Davis by the Commission. (Joint Exhibit 1; Stipulations 1, 2) (Transcript, pg. 332).

164. Williams signed his 2016 application of March 11, 2016. (Transcript, pg. 348)

165. As a licensee, Williams acknowledged under oath:

I understand that participation in racing in Indiana is a privilege, not a right ... By acceptance of said license, I agree to abide by the statutes of the State of Indiana relating to racing, the Indiana Rules and Regulations and rulings or decisions of the Judges/Stewards with the knowledge that rulings or decisions of the Judges/Stewards shall remain in force until reversed or modified by the Indiana Horse Racing Commission

166. Indiana is the only state where Williams is licensed as an assistant trainer. (Transcript, pg. 332)

167. Despite being required to be knowledgeable of the statutes and regulations, Williams was unaware of his obligations in Indiana as an assistant trainer until the Administrative Complaint was filed against him. (Transcript, pg. 333)

168. On September 30, 2016, Williams was the assistant trainer of IAM Bonasera. (Joint Exhibit 1; Stipulation 5)

169. On September 30, 2016, Davis was the trainer of record of the 9-year-old gelding IAM Bonasera. (Joint Exhibit 1; Stipulation 4)

170. According to Williams, Davis made all decisions about veterinary care in 2016. (Transcript, pg. 336)

171. Upon reviewing a bill issued by Dr. Baliga, Williams was unaware of what treatment Dr. Baliga was administering to horses under his care. (Transcript, pgs. 346-347)

172. IAM Bonasera was entered in the 5th race at Hoosier Park on September 30, 2016. (Joint Exhibit 1; Stipulation 10)

173. While Davis had an ownership interest in IAM Bonasera on September 30, 2016, Williams did not. (Transcript, pg. 359)

174. Williams was paid weekly by Davis as his assistant trainer. (Transcript, pg. 333) Williams also received \$25 each time a horse won. (Transcript, pg. 344)

175. Williams did not know in advance which Veterinarian was administering Lasix on September 30, 2016.

176. Williams was outside the State of Indiana Racing in Ohio on September 30, 2016 and had no firsthand knowledge of the events at issue. (Transcript, pg. 341)

177. Williams left Indiana around 11:00 a.m. and was not present at Hoosier Park on Friday evening, September 30, 2016. (Transcript, pg. 341)

178. September 30, 2016 was the only night during the 2016 race season at Hoosier Park that Williams was not present as the assistant trainer for Davis' horses. (Transcript, pg. 346)

179. Williams did not know which of his two Grooms was responsible for IAM Bonasera in his absence on September 30, 2016. (Transcript, pg. 339)

180. Williams hired Robert Dean⁶ in 2016 to serve as a Groom for horses that he and Davis trained at Hoosier Park. (Transcript, pg. 344)

181. Dean was an employee of Davis at Hoosier Park during 2016 who was paid by Williams. (Transcript, pg. 345)

182. Robert Dean brought IAM Bonasera to the Paddock for Lasix on September 30, 2016 as evidenced by his signature on Hicks' Lasix sign-in sheet, and was therefore responsible for IAM Bonasera on September 30, 2016. (Transcript, pg. 345)

183. At approximately 4:45 p.m. on September 30, 2016, Williams was contacted by telephone in Ohio and advised that Dr. Baliga injected the gelding IAM Bonasera with an unidentified substance (Transcript, pg. 340) and therefore scratched from the fifth race.

184. Williams asked that Davis be called and notified by the Judges. (Transcript, pg. 341)

185. Williams denies directing Dr. Baliga to inject IAM Bonasera with anything on September 30, 2016. (Transcript, pg. 342)

186. Davis and Williams have the greatest interest in the outcome of this proceeding.

d. Dylan Davis Testimony:

187. On September 30, 2016, Davis was licensed as a trainer and owner by the Commission. (Joint Exhibit 1; Stipulations 1, 2)

188. As a licensee, Davis acknowledged under oath:

I understand that participation in racing in Indiana is a privilege, not a right ... By acceptance of said license, I agree to abide by the statutes of the State of Indiana relating to racing, the Indiana Rules and Regulations and rulings or decisions of the Judges/Stewards with the knowledge that rulings

⁶ Robert Dean was not called as a witness despite being listed on Respondents' Preliminary Witness List. As a result, the Commission is without the benefit of knowing whether or not Dean saw Dr. Baliga take a syringe from his sweatshirt pocket, as observed by Hicks, rather than from the caddy. If Dean observed Dr. Baliga, he could have questioned him or stopped any unauthorized injection of IAM Bonasera.

or decisions of the Judges/Stewards shall remain in force until reversed or modified by the Indiana Horse Racing Commission

189. Davis was outside the State of Indiana on September 30, 2016 in Delaware. (Transcript, pg. 353) and had no firsthand knowledge of the events at issue.

190. Davis was not present at Hoosier Park on September 30, 2016. (Transcript, pg. 353)

191. Davis was only at Hoosier Park five times during 2016. (Transcript, pg. 358)

192. During 2016, Davis and Williams would normally have 15-18 horses being trained at Hoosier Park at any one time and a total of 35-50 during the 2016 season. (Transcript, pg. 357)

193. During 2016, Davis was a successful trainer with more than 2,000 starts and about 175 wins. (Trascript, pg. 358)

194. On September 30, 2016, Davis was the trainer of record of the 9-year-old gelding IAM Bonasera. (Joint Exhibit 1; Stipulation 4)

195. IAM Bonasera was entered in the 5th race at Hoosier Park on September 30, 2016. (Joint Exhibit 1; Stipulation 10)

196. Davis was a part owner of IAM Bonasera on September 30, 2016. (Transcript, pg. 359)

197. Williams served as Davis' assistant trainer in charge of his horses as well as the day-to-day operations during the 2016 race season at Hoosier Park, and was the assistant trainer of IAM Bonasera on September 30, 2016. (Transcript, pg. 359)

198. Williams handled the communications at Hoosier Park about veterinary care. (Transcript, pg. 360)

199. It was uncommon for Davis to leave horses without a trainer on nights they were racing at Hoosier Park. (Transcript, pg. 359)

200. Despite being required to be knowledgeable of the statutes and regulations, Davis did not know who was taking care of his horses at Hoosier Park on any given night during 2016. (Transcript, pg. 359). Nor did he know who paid for Lasix administration at Hoosier Park in 2016. (Transcript, pg. 360)

201. Dr. Baliga was Davis' veterinarian at Hoosier Park during 2016 and billed him between \$1,000 and \$2,000 per horse each month. (Transcript, pg. 360)

202. Davis did not recognize several of Dr. Baliga's charges for treatment of IAM Bonasera. (Transcript, pg. 361)

203. During the early evening of September 30, 2016, Davis was notified by the Judges that Dr. Baliga injected the gelding IAM Bonasera with an unidentified substance (Transcript, pg. 341) and was scratched from the 5th Race.

204. Davis denies that he directed Dr. Baliga to inject IAM Bonasera on September 30, 2016. (Transcript, pg. 356)

205. Davis did not know Hicks. (Transcript, pg. 355)

206. Davis and Williams have the greatest interest in the outcome of this proceeding.

COMMISSION STAFF REBUTTAL

207. Lea Ellingwood, General Counsel for Commission Staff, was sent to a meeting with Dr. Keith Hollendonner at Hoosier Park by the former Executive Director concerning Dr. Hollendonner's reluctance to comply with the integrity program and his request to be in control of the secured Lasix room at Hoosier Park rather than an independent Lasix Escort.

208. Dr. Baliga appeared at the meeting. Ms. Ellingwood did not anticipate meeting with anybody other than Dr. Hollendonner.

209. Dr. Baliga did not express any concerns or complaints against Hicks contrary to the testimony of Dr. Baliga about that meeting.

210. Hicks' name was not mentioned during the meeting. (Transcript, pg. 371-372)

211. Commission has received no complaints about Hicks as an employee in the integrity program. If complaints were received, they would have come to Ms. Ellingwood's attention.

CONCLUSIONS OF LAW

212. ALJ Pylitt has jurisdiction over this matter pursuant to his appointment by the Commission and the provisions of I.C. 4-21.5 et seq. and 71 IAC 10-3-7.

213. The Commission has promulgated rules, consistent with its legislative directive, that provide for the assessment of sanctions, including license suspension, revocation and/or fines to those who impermissibly medicate race horses on race day.

214. Pursuant to 71 IAC 10-3-12(f), the special skills and experience of the Judges, including over 45 years of experience in racing by Presiding Judge Hall, and over 27 years prior experience by Smith, the Executive Director, may be used by the ALJ in evaluating the evidence.

215. On September 30, 2016, Davis was a licensee of the Commission, and subject to all rules and statutes that regulate pari-mutuel horse racing in Indiana.

216. As trainer, Davis was responsible for the horses in his stable at Hoosier Park during 2016.

217. On September 30, 2016, Williams was a licensee of the Commission, and subject to all rules and statutes that regulate pari-mutuel horse racing in Indiana.

218. As Davis' assistant trainer, Williams was responsible for the horses in Davis' stable at Hoosier Park during 2016.

219. Davis and Williams were granted licenses by the Commission in 2016. Their participation in horse racing in Indiana was a privilege and not a right.

220. Davis was licensed as the trainer and part owner of IAM Bonasera on September 30, 2016.

221. Williams served as Davis' assistant trainer for IAM Bonasera at Hoosier Park on September 30, 2016

222. Pursuant to 71 IAC 5-3-2, on September 30, 2016, Davis and Williams were responsible for the condition of IAM Bonasera, a horse they trained, regardless of the acts of third parties. (emphasis added)

223. Commission Staff had the burden of persuasion and the burden of going forward with proof on the Administrative Complaint by a preponderance of the evidence pursuant to I.C. 4-21.5-3-14.

224. Despite the fact that Davis' and Williams' Administrative Complaints were consolidated for purposes of a hearing, ALJ Pylitt is required to make a recommendation as to each.

225. Based upon substantial, credible, and reliable evidence, Commission Staff met its burden of proof as to all violations alleged against both Davis and Williams in their respective Administrative Complaints.

226. The Commission Staff established, by substantial, credible, and reliable evidence, and by more than a preponderance of the evidence that on September 30, 2016, Dr. Joseph Baliga injected an "in-today" horse I AM Bonasera with an unknown substance other than Lasix during Lasix administration time.

227. Davis and/or Williams did not take precautions to prevent said administration.

228. Davis and Williams failed to present any credible or reliable evidence to contradict the evidence submitted by IHRC Staff during the hearing.

229. On September 30, 2016, Davis and Williams were responsible for the condition of IAM Bonasera, pursuant to 71 IAC 5-3-5, which provided that "An assistant trainer may substitute for and shall assume the same duties, responsibilities, and restrictions as imposed on the licensed trainer. In which case, the trainer shall be jointly responsible for the assistant trainer's compliance with these rules."

230. On September 30, 2016, 71 IAC 8-1-1.5(b), required that "no substance, foreign or otherwise, shall be administered to a horse entered to race by (1) injection...within twenty-four (24) hours prior to the scheduled post time for the first race except furosemide..."

231. On September 30, 2016, 71 IAC 5-3-2(b), required that "A trainer shall prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules." (emphasis added)

232. On September 30, 2016, 71 IAC 5-3-3(a)(5) required that a trainer be responsible for the proper identity, custody, care, health, condition, and safety of horses in his or her charge, including that outlined in 71 IAC 8.

233. On September 30, 2016, 71 IAC 5-3-3(a)(18) required that a trainer be responsible to ensure the fitness of a horse to perform creditably.

234. On September 30, 2016, 71 IAC 5-3-3(a)(26) required that a trainer is responsible to "Guard and protect all horses in his/her care."

235. On September 30, 2016, Davis and Williams both violated 71 IAC 8-1-1.5(b), which provided that "no substance, foreign or otherwise, shall be administered to a horse entered

to race...within twenty-four (24) hours prior to the scheduled post time for the first race except furosemide...”

236. As licensed trainers, Davis and Williams both violated 71 IAC 5-3-3(a)(5) since they failed to be responsible for the proper identity, custody, care, health, condition, and safety of horses in their charge, including that outlined in 71 IAC 8 by allowing the race day administration of an unknown substance to the horse IAM Bonasera on September 30, 2016.

237. As licensed trainers, Davis and Williams both violated 71 IAC 5-3-3(a)(18) since they failed to ensure the fitness of the horse IAM Bonasera to perform creditably by allowing the race day administration of an unknown substance on September 30, 2016.

238. As licensed trainers, Davis and Williams both violated 71 IAC 5-3-3(a)(27) since they failed to “guard and protect all horses in his/her care” by allowing the race day administration of an unknown substance to the horse IAM Bonasera on September 30, 2016.

239. Davis’ and Williams’ violations of the aforementioned regulations were contrary to the best interests of horse racing in the State of Indiana.

240. A positive drug test is not necessary for there to be a violation of 71 IAC 5-3-3(a)(5), (18), or (27).

ANALYSIS AND ULTIMATE FINDINGS OF FACT

241. Two very different versions of the events of September 30, 2016 were presented by the parties from the testimony and evidence presented during the hearing.

- a. Commission Staff presented testimony and evidence in support of their contention that David Hicks observed Dr. Baliga draw a substance from a non-Lasix vial in the Lasix Room, pocket the specially prepared syringe, and inject its contents into IAM Bonasera during Lasix administration.

- b. Respondents presented testimony and evidence to support contrary theories that (1) either Dave Hicks was mistaken about what he had seen, or that (2) Dave Hicks was correct about seeing the vial but that Dr. Baliga had an excuse for its existence, or that (3) Dave Hicks held a long-time grudge against Dr. Baliga relating to a frozen Snickers bar incident years before.

242. The two version of events varied so significantly that they could not be reconciled. Accordingly, ALJ Pylitt must accept one version to the exclusion of the other.

243. The evidence presented during the hearing, demonstrated by more than a preponderance of the credible and reliable evidence that Davis violated the following Commission regulations:

- a. 71 IAC 8-1-1.5(b) by allowing the administration of a substance to the standardbred horse "IAM Bonasera" on race day, well within the proscribed twenty-four (24) hour limit, on September 30, 2016;
- b. 71 IAC 5-3-3(a)(5), which charges licensed trainers with the responsibility of the proper identity, custody, care, health, condition, and safety of horses in his or her charge when he failed to care for the health, condition and safety of the horse "IAM Bonasera" by allowing the race-day administration of a substance to the horse on September 30, 2016;
- c. 71 IAC 5-3-3(a)(18), which requires he ensure the fitness of a horse to perform creditably by allowing the race-day administration of a substance to the horse "IAM Bonasera" on September 30, 2016; and

- d. 71 IAC 5-3-3(a)(27), which requires licensed trainers to guard and protect all horses in his or her care by allowing the race-day administration of a substance to the horse "IAM Bonasera" on September 30, 2016.

244. Davis' violations of each of the aforementioned regulations were contrary to the best interests of horse racing in the State of Indiana.

245. The evidence presented during the hearing, demonstrated by more than a preponderance of the credible and reliable evidence that Williams violated the following Commission regulations:

- a. 71 IAC 8-1-1.5(b) by allowing the administration of a substance to the standardbred horse "IAM Bonasera" on race day, well within the proscribed twenty-four (24) hour limit, on September 30, 2016;
- b. 71 IAC 5-3-3(a)(5), which charges licensed trainers with the responsibility of the proper identity, custody, care, health, condition, and safety of horses in his or her charge when he failed to care for the health, condition and safety of the horse "IAM Bonasera" by allowing the race-day administration of a substance to the horse on September 30, 2016;
- c. 71 IAC 5-3-3(a)(18), which requires he ensure the fitness of a horse to perform creditably by allowing the race-day administration of a substance to the horse "IAM Bonasera" on September 30, 2016; and
- d. 71 IAC 5-3-3(a)(27), which requires licensed trainers to guard and protect all horses in his or her care by allowing the race-day administration of a substance to the horse "IAM Bonasera" on September 30, 2016.

246. Williams' violations of each of the aforementioned regulations were contrary to the best interests of horse racing in the State of Indiana.

RECOMMENDED ORDER

247. Commission Staff may recommend penalties and the ALJ may in his discretion accept, reject, or modify the recommended penalty, 71 IAC 10-3-12(f).

248. The 60-day suspension recommended against Williams in his Administrative Complaint was reasonable in light of the substantial, credible, and reliable evidence presented during the hearing.

249. The 60-day suspension recommended against Davis in his Amended Administrative Complaint was reasonable in light of the substantial, credible, and reliable evidence presented during the hearing.

250. The \$1,000 fine recommended in the Administrative Complaint against Williams and the Amended Administrative Complaint against Davis were reasonable in light of substantial, credible, and reliable evidence presented at the hearing.

251. ALJ Pylitt recommends that a Final Order be entered by the Commission in favor of the Commission Staff and against Davis and Williams, and an Order affirming Administrative Complaint Nos. 216007 and 216008 in all material respects.

252. ALJ Pylitt adopts the recommended penalties sought in the Amended Administrative Complaint that Davis:

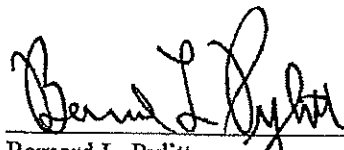
- i. Be suspended for a period of sixty (60) days: and
- ii. Be fined \$1,000.00.

253. ALJ Pylitt adopts the recommended penalties sought in the Administrative Complaint that Williams:

- i. Be suspended for a period of sixty (60) days; and
- ii. Be fined \$1,000.00.

Pursuant to I.C. § 4-21.5-3-29(d), Davis and Williams have 15 calendar days following the receipt of this Recommended Order to file written exceptions with the Indiana Horse Racing Commission.

RESPECTFULLY SUBMITTED THIS 25th DAY OF MAY, 2017.



Bernard L. Pylitt
Administrative Law Judge

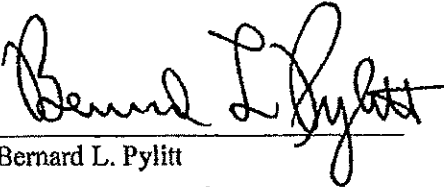
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been duly served via first-class United States mail, postage prepaid and via email this 25th day of May, 2017 to the following:

Howard A. Taylor
Howard A. Taylor, LLC
123 S. Broad Street, Suite 1310
Philadelphia, PA 19109
Email: htayloresq@comcast.net

Holly Newell
Indiana Horse Racing Commission
1302 North Meridian, Suite 175
Indianapolis, IN 46202
Email: hnewell@hrc.in.gov

Michael Smith
Executive Director
Indiana Horse Racing Commission
1302 N. Meridian Street, Suite 175
Indianapolis, IN 46202
Email: msmith@hrc.in.gov


Bernard L. Pylitt

Katz & Korin, PC
334 North Senate Avenue
Indianapolis, IN 46204
Office: 317-464-1100 Fax: 317-464-1111
Email: bpylitt@katzkorin.com

BEFORE THE INDIANA HORSE RACING COMMISSION

INDIANA HORSE RACING COMMISSION STAFF, Petitioner,)	
)	
)	
)	
)	In Re: ADMINISTRATIVE COMPLAINT
v.)	NO. 216003
)	
JOSEPH BALIGA, DVM,)	In Re: An Appeal of Judge's
)	Rulings No. 16146 and 16177
)	
Respondent)	
)	

**RESPONDENT, JOSEPH BALIGA, DVM'S EXCEPTIONS TO THE RECOMMENDED
ORDER DENYING HIS MOTION FOR RELIEF FROM JUDGMENT**

Respondent, Joseph Baliga, DVM, (hereinafter "Baliga"), by counsel, Peter J. Sacopulos, timely files his written exceptions to the Recommended Order Denying His Motion for Relief From Judgment and respectfully requests the IHRC reject said Recommended Order and enter an Order granting him relief from the prior judgment/order of the IHRC dated March 15, 2017.

Baliga agrees that ALJ Pylitt contacted counsel regarding a briefing schedule relative to Baliga's Motion for Relief From Judgment and that a briefing schedule was established. Baliga takes exception to the ALJ's position that no further briefing is necessary. That position is incorrect, adversarial, and prejudicial to Baliga. ALJ Pylitt's decision, without consultation of counsel, to dispense with "further briefing" was and is improper and eliminates Baliga's opportunity to learn of the IHRC Staff's position as well as to Baliga's right to reply and to supplement the record in this matter.

Baliga agrees that on March 12, 2018, he provided written notice to ALJ Pylitt requesting he recuse himself. The reason for this request is that Bernard Pylitt had served as administrative law judge in the companion cases of Licensees, Dylan Davis and Julian Williams. In doing so, ALJ Pylitt found that Baliga was/is not truthful. Certainly, such a finding creates an obvious conflict for an administrative law judge from sitting in judgment of the person he previously judged and concluded is not truthful. Baliga is entitled to a fair and impartial administrative law judge to sit in judgment of his case.

Because of this, the undersigned counsel respectfully requested that ALJ Pylitt recuse himself and, should he not do so, a motion to disqualify him as administrative law judge would be filed. ALJ Pylitt ignored and failed to respond/answer the undersigned's request regarding his recusal. Instead, ALJ Pylitt simply dispensed with the briefing schedule and issued a Recommended Order adverse to Baliga. Failure to respond to the undersigned counsel's request, dispensing with an established briefing schedule, and issuing a recommended order of denial

resulted in bias and prejudice to Baliga. These actions by this ALJ are additional examples of Bernard Pylitt inappropriately advocating for the IHRC Staff. The same are also additional examples of the bias and prejudice Bernard Pylitt has visited and continues to visit upon Baliga.

Baliga agrees that he intends to and will file a motion to disqualify ALJ Pylitt upon receiving relief from the March 15, 2017, judgment.

Additionally, Baliga takes exception with ALJ Pylitt sitting in judgment of his Motion for Relief From Judgment. He does so because ALJ Pylitt is not properly appointed pursuant to I.C. 4-21.5-3-9. I.C. 4-21.5-3-9 requires the ultimate authority, that being the Indiana Horse Racing Commission, to appoint an administrative law judge. Because the Motion for Relief from Judgment is a separate matter and because it seeks relief from a final judgment rather than a recommended order, which was issued by Pylitt, the IHRC is the proper party to consider and rule upon Baliga's Motion for Relief from Judgment. In short, the IHRC should have an initially ruled on Baliga's Motion for Relief from Judgment not the ALJ that issued a recommended order. ALJ Pylitt has issued his recommended order without authority and in contradiction to Indiana Trial Rule 60(B).

Baliga further takes exception to the footnote on page one (1) of the Recommended Order Denying Dr. Joseph Baliga's Motion for Relief from Judgment. He does so because the same incorrectly and inappropriately suggests there was a final order entered relative to the summary suspension of Baliga's license. That is not the case. In fact, the IHRC Staff voluntarily dismissed the summary suspension matter at a point in time when Baliga had timely perfected an appeal of the Judges' ruling. As such, Baliga's Trial Rule 60 Motion for Relief is timely; he is seeking relief from the final order of judgment of March 15, 2017, issued by the IHRC.

Additionally, Baliga takes exception with the ALJ's comment, set forth in said footnote, that the summary suspension and the administrative complaint are "separate disciplinary actions." That is not the case. Both the summary suspension and the administrative complaint allege the same wrongdoing by Baliga. In addition, they have as their bases, the same horse, the same date, the same trainer, the same assistant trainer, the same race, the same venue, etc. The IHRC Staff and ALJ Pylitt's desire that the summary suspension and the administrative complaint be "separate" does not make them so. They are not and this reference is both inaccurate, incorrect, and misleading.

Baliga further takes exception to the ALJ's decision, without counsel being provided any notice or Baliga being given an opportunity to be heard, that he rendered a recommended order to: "...allow the full IHRC to consider Dr. Baliga's Motion for Relief in an expedited fashion..." The expeditious hearing of Baliga's Motion for Relief from Judgment by the Indiana Horse Racing Commission is not appropriate grounds, bases, or excuse for Baliga being denied knowledge of the Commission Staff's position relative to his motion and Baliga being afforded the opportunity to reply, thereby supplementing the record as to this issue.

RELEVANT PROCEDURAL HISTORY

The Relevant Procedural History set forth on pages three (3) through six (6) of the Recommended Order of March 22, 2018, restates and incorporates portions of the Recommended Order of December 16, 2016. Baliga relies on and incorporates by reference his exceptions to said Recommended Order of December 16, 2016, that Baliga timely filed of record on December 29, 2016, and is attached hereto, made a part hereof, and marked as Exhibit "A."

Further, Baliga agrees that a true and exact copy of the Honorable Mark Dudley's Order of October 20, 2017, is attached to the recommended order of March 22, 2018, as Exhibit "B." However, Baliga takes exception with the Relevant Procedural History in that it is incomplete and thereby inaccurate for failure to state that Baliga timely perfected an appeal of the trial court's order and that his appeal is presently pending before the Indiana Court of Appeals and docketed as cause number 17A-MI-3009.

RATIONAL FOR RENDERING THIS RECOMMENDED DECISION

Baliga takes exception with the conclusion that his pending Motion for Relief from Judgment is "another bite out of an apple." It is not. In fact, it is a totally different apple that is presented by way of Baliga's pending motion. It is so for several significant reasons.

Indiana Trial Rule 60(B) provides that: "...on motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment, including a judgment by default, for the following reasons: (1) mistake, surprise, or excusable neglect..." This rule provides the opportunity for Baliga to seek relief from a judgment by default. There was no judgment or judgment by default until March 15, 2017. The arguments relative to the Staff's Motion for Default, Baliga's opposition, and the Recommended Order all predate the March 15, 2017, order of default. As such, pursuant to Indiana Trial Rule 60(B), prior to March 15, 2017, Baliga was not the subject of a judgment by default and a Trial Rule 60(B) motion was not available. Pursuant to Trial Rule 60(B), this is a "new apple" and Baliga's "first bite of that new apple."

Additionally, at the time Baliga was defaulted, there had been no hearing on the merits. Subsequent to March 15, 2017, a hearing was conducted in the companion cases of Dylan Davis and Julian Williams. Several significant facts were established as a result of that/those hearings that evidence Baliga has the basis for a meritorious defense. These significant facts included that both the blood-serum and urine samples taken from the subject horse, IAM BONASERA, were negative. The test results of the vial alleged to have contained a prohibited substance that was improperly administered to the horse on race day was tested and the results were also negative. Further, the IHRC/IHRC Staff's one (1) eyewitness was subject to repeated impeachment. He (Hicks) was/is the only witness subject to impeachment in the two (2) – day trial of the companion cases and the only witness presented that allegedly witnessed Baliga do any prohibited act.

All of the above are highly significant facts evidencing Baliga's position that he has a meritorious defense. This is significant because Indiana Trial Rule 60(B) requires the party seeking relief to establish he/she has a meritorious defense and because ALJ Pylitt, in his

Recommended Order of March 22, 2018, fails to address, at all, the issue of Baliga's evidence in support of his position that he does have a meritorious defense.

Further, at the time of the Recommended Order of December 16, 2016, a timely filed appeal of Baliga's summary suspension was pending. The IHRC Staff voluntarily dismissed the same. This is significant because Baliga was not afforded an opportunity to present a defense on the merits and because the IHRC Staff represented, on the record, at Baliga's summary suspension hearing that: "...Baliga requested a hearing...the merits hearing will come later...." This goes directly to mistake, surprise, and excusable neglect as argued in Baliga's Trial Rule 60(B) motion and supporting brief.

A further reason that Baliga's pending Motion for Relief from Judgment is "a different apple" is that Baliga has submitted the affidavits of Dylan Davis and Julian Williams as well as his affidavit in support of his pending Motion for Relief from Judgment. All evidence mistake, surprise, and excusable neglect, and that Baliga has a meritorious defense and support his position that he is entitled to relief from the March 15, 2017, judgment of default.

ALJ Pylitt's conclusion that "...no evidence of mistake, surprise, or excusable neglect has been pled, or exists..." is simply wrong. Such a statement leaves one to wonder whether the ALJ in fact read Baliga's Motion for Relief from Judgment and supporting brief. A review of Baliga's Motion for Relief from Judgment, supporting brief, and exhibits leads to the inference he has not.

Respectfully submitted,

SACOPULOS JOHNSON & SACOPULOS
676 Ohio Street
Terre Haute, Indiana 47807
Telephone: (812) 238-2565
Fax: (812) 238-1943

By: 
Peter J. Sacopulos, #14403-84

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record by email transmission and Certified U.S. Mail, postage prepaid, this 5th day of April, 2018:

Attorney Holly Newell
Deputy General Counsel
Indiana Horse Racing Commission
1302 North Meridian
Indianapolis, IN 46202
hnewell@hrc.in.gov

Bernard L. Pylitt
Administrative Law Judge
Katz Korin Cunningham PC
334 North Senate Avenue
Indianapolis, IN 46204
Bylitt@kkclegal.com



Peter J. Sappulos

BEFORE THE INDIANA HORSE RACING COMMISSION

2018 JUN 22 A 9:55

INDIANA HORSE RACING)
COMMISSION STAFF,)
Petitioner,)

INDIANA
HORSE RACING COMM.

) In Re: ADMINISTRATIVE COMPLAINT
) NO. 216003

v.)

JOSEPH BALIGA, DVM,)
Respondent)

) In Re: An Appeal of Judge's
) Rulings No. 16146 and 16177

**RESPONDENT, JOSEPH BALIGA, DVM'S, BRIEF IN OPPOSITION TO THE ALJ'S
RECOMMENDED ORDER DENYING HIS MOTION FOR RELIEF FROM
JUDGMENT**

Respondent, Joseph Baliga, DVM, (hereinafter "Baliga"), by counsel, Peter J. Sacopulos, pursuant to the Indiana Horse Racing Commission's (hereinafter "IHRC") Notice of Opportunity to Present Briefs of June 7, 2018, submits his Brief In Opposition to the ALJ's Recommended Order of March 22, 2018 denying his Motion for Relief from Judgment. In support of this brief, Baliga incorporates by reference his: (1) Motion for Relief from Judgment; (2) Brief In Support of Respondent, Dr. Joseph Baliga's, Motion for Relief from Judgment, and; (3) Respondent, Joseph Baliga, DVM's, Exceptions to the Recommended Order Denying His Motion for Relief from Judgment all of which are attached hereto, made a part hereof, and respectively marked as Respondent's Exhibits "A" "B" and "C."

Baliga timely filed, pursuant to Indiana Trial Rule 60, his Motion for Relief from Judgment and Brief In Support of Respondent, Dr. Joseph Baliga's, Motion for Relief from Judgment on March 7, 2018, seeking relief from the IHRC's Order of March 13, 2017. The IHRC Staff did not respond or object to Baliga's motion and supporting brief in advance of the IHRC/IHRC Staff-appointed-ALJ issuing a Recommended Order Denying Baliga's Motion for Relief of Judgment.

Baliga seeks relief from the IHRC's Order of March 13, 2017. Indiana Trial Rule 60 provides that a party/Baliga may seek such relief from the court or agency that issued the order. In this case, the ALJ has inappropriately, and in derogation of Indiana Trial Rule 60, issued a recommended order of denial. The ALJ had no authority to do so. This is because Indiana Trial Rule 60 provides for the court or agency issuing the order (not a recommended order of an ALJ) to consider granting relief of a prior judgment. It must be remembered that this agency's appointed ALJ only recommended a default be entered against Baliga; it was the IHRC, by way of its March 13, 2017, Order that placed Baliga in default. As such, the ALJ's Recommended

Order of March 22, 2018, is inappropriate, prejudicial as to Baliga, contrary to Indiana Trial Rule 60 and should be stricken from the administrative record in this matter.

Baliga anticipates that the IHRC Staff will argue that his Motion for Relief from Judgment is simply a “second bite at the apple.” That is incorrect. In fact, Baliga, by way of this Motion for Relief from Judgment and supporting brief, seeks a first bite at a different and distinct apple. It is a different and distinct apple for multiple reasons.

Subsequent to the Commission’s Order of March 13, 2017, the IHRC/IHRC Staff’s actions (Administrative Complaints) against licensees Dylan Davis and Julian Williams were tried on multiple days before the same IHRC-appointed ALJ. Several significant facts were determined as a result of those hearings that go directly to Baliga’s position of having a meritorious defense to the allegations of wrongdoing of September 30, 2016. Specifically, the following facts were established in the trial of licensees of Davis and Williams:

- (1) The content of the vial that Baliga allegedly administered to the subject Standardbred horse was tested and found to contain only Salix—a permitted substance;
- (2) The results of the blood serum and urine sample taken from the subject Standardbred horse were/are negative;
- (3) The IHRC Staff’s only eyewitness, David Hicks, was impeached not once but multiple times during his testimony. To be impeached is to have one’s credibility called into question. Mr. Hicks was the only witness to the occurrence which is the basis of the allegations against Baliga. (For a detailed analysis of Mr. Hicks’ impeached testimony, see Respondent’s Brief In Support of his Motion for Relief from Judgment at pages 11-15);
- (4) Baliga has offered, in support of his motion, the Affidavits of both Julian Williams and Dylan Davis in support of his position of no wrongdoing.

These facts support Baliga’s position that he has and should be able to assert a meritorious defense to the allegations of wrongdoing. Further, Baliga has now provided evidence, pursuant to Indiana Trial Rule 60, of the existence of mistake, surprise, and/or excusable neglect as set forth in his Brief In Support of his Motion for Relief from Judgment and specifically at pages 2-7; said brief being incorporated by reference and marked as Exhibit “B.” The IHRC is reminded, in this regard, that its Staff, specifically its then Deputy General Counsel, assured Baliga, on the record during a hearing before the IHRC Judges at Hoosier Park on October 31, 2016, that he (Baliga): “...requested a hearing...the merits hearing will come later...” (See transcript of the October 31, 2016, hearing, p. 6, lines 1 and 11 that appear as Exhibit “E” to Baliga’s Brief In Support of his Motion for Relief from Judgment and that is incorporated by reference).

Baliga meets the requirements of Indiana Trial Rule 60 and should be granted relief from this Commission’s Order of March 13, 2017. The general rule in Indiana is that default judgments are not favored. In fact, the late Professor William F. Harvey, arguably the state’s

leading author and civil procedure authority, states as follows in his discussion of Indiana Trial Rule 55:

“The Indiana courts have acknowledged, in applying Trial Rule 55, a cautious approach should be taken in granting motions for default judgments in cases involving a material issue of fact, substantial amounts of money, or weighty policy determinations. *Sears Roebuck and Co. v. Soja*, 932 N.E.2d 245 (Ind. Ct. App. 2012), transfer denied, (Jan. 21, 2011). In fact, Indiana courts have stated a strong public policy favoring the disposition of cases on their merits. *Citimortgage, Inc. v. Barabas*, 975 N.E.2d 805 (Ind. 2012). In deciding whether to enter a default judgment, the trial court must balance the need for an efficient judicial system and society’s interest in finality of judgment against Indiana’s judicial preference for deciding disputes on the merits. *Seleme v. JP Morgan Chase Bank*, 982 N.E.2d 299 (Ind. Ct. App. 2012), transfer denied, 988 N.E.2d 797 (Ind. 2013); *Bunch v. Himm*, 879 N.E.2d 632 (Ind. Ct. App. 2008). Any doubt about the propriety of a default judgment should be resolved in favor of the defaulted party. *Thomison v. IK Indy, Inc.*, 858 N.E.2d 1052 (Ind. Ct. App. 2006).”

See, Harvey, Indiana Practice, Volume 3, §55.1.

It is this Commission’s charge to ensure integrity in Indiana’s racing program. This charge includes licensees receiving a fair and impartial hearing. Baliga contested and defended the allegations against him from September 30, 2016, forward, never wavering in his denial or desire to be heard and present a defense on the merits. This Commission assured Baliga, during a hearing before the IHRC’s Judges and on the record, that Baliga would have such a hearing. That was a promise never kept and flies in the face of the very integrity this Commission is charged to maintain and advance.

Baliga is entitled to defend himself at a hearing on the merits and to relief of this Commission’s Order of March 13, 2017.

.Respectfully submitted,

SACOPULOS JOHNSON& SACOPULOS
676 Ohio Street
Terre Haute, Indiana 47807
Telephone: (812) 238-2565
Fax: (812) 238-1946

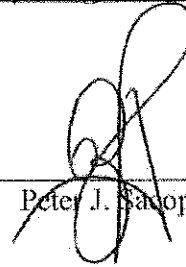
By: 
Peter J. Sacopulos, #14403-84

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record by email transmission this 22nd day of June, 2018:

Attorney Holly Newell
Counsel for Indiana Horse Racing Commission
10 N. Senate, Suite 311
Indianapolis, IN 46204
hnewell@dwd.in.gov

Dale Pennycuff
Legal Department
Indiana Horse Racing Commission
1302 North Meridian
Indianapolis, IN 46202
DPennycuff@hrc.IN.gov



Peter J. Sapopulos

**BEFORE AN ADMINISTRATIVE LAW JUDGE
APPOINTED BY THE INDIANA HORSE RACING COMMISSION**

INDIANA HORSE RACING COMMISSION STAFF, Petitioner,)	
)	
)	
)	In Re: ADMINISTRATIVE COMPLAINT
v.)	NO. 216003
)	
JOSEPH BALIGA, DVM,)	
)	
Respondent)	

**RESPONDENT, DR. JOSEPH BALIGA'S VERIFIED OBJECTIONS TO FINDINGS OF
FACT AND RECOMMENDED ORDER GRANTING DEFAULT JUDGMENT**

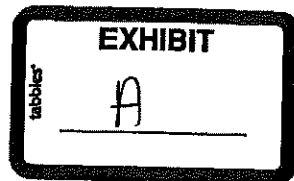
Respondent, Dr. Joseph Baliga, by counsel, Peter J. Sacopulos, pursuant to I.C. 4-21.5-3-29 and in compliance with ALJ Bernard L. Pylitt's Findings of Fact and Recommended Order Granting Default Judgment, respectfully submits his Verified Objections and Exceptions to the ALJ's proposed Findings of Fact and Recommended Order of December 16, 2016. In support of Dr. Baliga's Verified Objections and Exceptions set forth herein, Dr. Baliga states:

I. Respondent's Objections and Exceptions as to the ALJ's Procedural History

1. The procedural history as recited by the ALJ on pages one through three is correct with the exception that the ALJ does not refer to or include Baliga's brief that was filed in support of his Verified Objection and Motion Under I.C. 4-21.5-3-24(b).

2. The section of the Recommended Order that is entitled "Procedural History," contains items that are not "procedural history," but are instead findings of fact or conclusions of law. The last paragraph of page four and the first full paragraph of page five of the Recommended Order does not involve "procedural history;" instead it is a recitation of the ALJ's opinion with which Baliga disagrees with as set forth herein below.

3. Further, the ALJ does not list a complete set of reasons for Respondent's requested denial of the IHRC Staff's Motion for Default Judgment. In addition to the six reasons listed, Respondent argued and advanced these additional reasons: (7) the IHRC Staff knew that the Respondent denied/denies the allegations set forth in the Administrative Complaint, those being the alleged events of September 30, 2016; (8) that both the Summary Suspension and the Administrative Complaint include common questions of law and fact; (9) that even if the neglect was/is not excusable, which Respondent maintains that it was/is, that Indiana Trial Rule 60(B)(8) requires default judgment not be entered if there are justifiable reasons that exist. In this case,



there is justifiable reason why a specific request for hearing was not filed that includes two actions that were simultaneously maintained by the Indiana Horse Racing Commission, those being the Summary Suspension and the Administrative Complaint. Both of which have as their basis the same alleged incident of September 30, 2016. In the case of the Summary Suspension, hearings were had, discovery initiated, requests for appeal timely filed and pursued etc. The ALJ's Recommended Order should be rejected. To do otherwise would result in the the licensee/professional being stripped of his IHRC license for five (5) years, suffering a lifetime ban from LASIX administration in the State of Indiana and suffering a significant monetary fine. For this penalty to be imposed with no hearing on the merits is additional justifiable reason to deny the requested Motion for Default Judgment as is the time line in question. That being even if Dr. Baliga's actions/denial are determined not to constitute an answer, his request for hearing was only days past due when the IHRC filed the Motion for Default Judgment.

II. Objections to Proposed Findings of Fact

1. Respondent does not object to Finding of Fact number one.

2. Respondent does not object to Finding of Fact number two.

3. Respondent objects to Finding of Fact number three. Both the IHRC's Summary Suspension and the IHRC's Administrative Complaint identify Dr. Joseph Baliga as a Respondent and both list as Petitioner, the IHRC/IHRC Staff. In fact, Respondent's Notice of Appeal that was timely filed of record reflects the identity of the parties as Respondent and Petitioner and both filings by the IHRC relate to the alleged incident of September 30, 2016, that occurred at Hoosier Park.

4. Respondent, in part, objects to Finding of Fact number four. The appeal that was timely filed of record, a true and exact copy of which is attached hereto and marked as Exhibit "A", reflects parties as IHRC and Dr. Baliga. Both the Summary Suspension and the Administrative Complaint set forth Respondent's name in the upper left corner of the first page. Respondent further objects to this finding in that it suggests the possible order listing the two parties, IHRC/IHRC Staff and Dr. Baliga, as being a dispositive fact relative to Dr. Baliga being denied an opportunity to present a defense as to the merits of the allegations set forth against him. In fact, Respondent believes a just, fair and equitable outcome requires an examination of the parties' actions preceeding the IHRC Staff's filing of the Motion for Default Judgment that includes, and that is undisputed, Dr. Baliga's hiring of counsel, counsel entering an Appearance on behalf of Dr. Baliga, a motion filed on behalf of Dr. Baliga regarding scheduling, an objection to that motion filed by the IHRC Staff, discovery being served and objections being filed to that discovery, hearings being set, hearings being conducted, the allegations of September 30, 2016 at Hoosier Park being denied by Dr. Baliga in both the Summary Suspension and the Administrative Complaint, under oath, and a timely appeal being filed and pending.

5. Respondent objects, in part, to Finding of Fact number five. While Respondent admits

that the penalties sought are different, the underlying event leading to both the Summary Suspension action and the corresponding Administrative Complaint are the same. Both relate to the alleged events of September 30, 2016 at Hoosier Park. Both relate to the same day, the same horse, the same trainer, the same owner, the same LASIX escort, the same urine and blood serum samples/test results as well as the same allegations that Dr. Baliga has denied, under oath, and that Dr. Baliga seeks to defend on the merits for which he has, to date, been denied, and for which he has sought and preserved his right to appeal.

6. Respondent objects to Finding of Fact number six for the reason that it is not a finding of fact at all, but instead is a conclusion of law.

7. Respondent objects to Finding of Fact number seven for the reason that it is not a finding of fact at all, but instead is a conclusion of law. Subject to this objection, however, Respondent agrees that I.C. 4-21.5-3-24(d) requires, in the absence of an answer, a request for hearing within twenty (20) days of receipt of an Administrative Complaint. The hearing request is to place the IHRC on notice of the Licensee/Respondent's intent to dispute the allegations, have his or her case heard and determined on the merits, and to preserve his or her right to an impartial hearing and, if necessary, to judicial review. Although a formal notice was not filed within twenty (20) days of the filing of the Administrative Complaint, Dr. Baliga clearly demonstrated his intent to be heard on the facts and circumstances surrounding the events of September 30, 2016 that is the subject of both the IHRC's Summary Suspension matter and the Administrative Complaint. He retained counsel, he sought a hearing in the Summary Suspension matter, he initiated discovery, he filed motions regarding scheduling issues, he prepared for, attended and participated in hearings and timely appealed the decision entered against him which said appeal remains pending. Additionally, he denied, under oath, the allegations made against him in the summary suspension hearing, those being common allegations regarding the alleged events of September 30, 2016 at Hoosier Park. Respondent argues this denial, under oath, constitutes an answer pursuant to 71 IAC 10-3-21, thereby preserving his right to a hearing and judicial review and that the same, together with the pending appeal, evidenced the Respondent's intent to be heard and heard on the merits. Also, and significantly, counsel for the IHRC, Holly Newell, knew of all the above as she was/is counsel of record in both pending matters.

8. Respondent objects, in part, to Finding of Fact number eight. The undersigned counsel has represented multiple licensees in matters before the Indiana Horse Racing Commission and has represented and defended several licensees in matters wherein the IHRC has assigned Bernard Pylitt as the Administrative Law Judge and in which the licensee petitioned for judicial review of the IHRC's final ruling. The undersigned counsel had not, until representing Respondent in this matter, been involved in a matter or situation where his client was the Respondent in two paralleling and coinciding actions arising from the same incident and in which his client had engaged and participated in litigation on a summary suspension matter including hearings, scheduling matters, discovery, and the filing of and preserving his right to appeal after denying, under oath, the allegations against him. In this case, Dr. Baliga took all of these steps and engaged in said litigation in connection with the same allegations in the summary

suspension matter as have been alleged in the administrative complaint. Both matters involve the same alleged event.

9. Respondent does not object to Finding of Fact number nine.

10. Respondent objects, in part, to Finding of Fact number ten. The undersigned counsel has represented multiple licensees in matters before the Indiana Horse Racing Commission and has represented and defended several licensees in matters wherein the IHRC has assigned Bernard Pylitt as the Administrative Law Judge and in which the licensee petitioned for judicial review of the IHRC's final ruling. The undersigned counsel had not, until representing Respondent in this matter, been involved in a matter or situation where his client was the Respondent in two paralleling and coinciding actions arising from the same incident and in which his client had engaged and participated in litigation on a summary suspension matter including hearings, scheduling matters, discovery, and the filing of and preserving his right to appeal after denying, under oath, the allegations against him. In this case, Dr. Baliga took all of these steps and engaged in said litigation in connection with the same allegations in the summary suspension matter as have been alleged in the administrative complaint. Both matters involve the same alleged event.

11. Respondent objects, in part, to Finding of Fact number eleven. He admits that a formal request for hearing, pursuant to I.C. 4-21.5-3-24(b) was not made. Respondent maintains that the Recommended Order granting Default Judgment should be rejected because this was not a case of Dr. Baliga and/or Dr. Baliga's counsel ignoring or not addressing the IHRC/IHRC Staff's alleged incident of September 30, 2016. In fact, to the contrary, Dr. Baliga, under oath, has denied wrongdoing related to the alleged incident of September 30, 2016 in both the Summary Suspension matter and the Administrative Complaint matter and attended and testified at a hearing on that/this matter, engaged in discovery, requested that he be heard on the merits of his defense, objected to being denied his right to present a defense on the merits, and appealed a ruling that was entered against him which remains pending. It is clear from the proceedings, taken in total, from September 30, 2016 to date, that Dr. Baliga has, is, and continues to deny the allegations against him, that the record in this matter reflects the same, and that counsel for the IHRC had full knowledge of Dr. Baliga's position.

12. Respondent objects to Finding of Fact number twelve for the reason that it is not a finding of fact at all, but instead is a conclusion of law. Respondent further objects to Finding of Fact number twelve for the reason that, it is a mis-statement of the law. The Indiana General Assembly did not determine that the time limit for requesting a hearing following receipt of an administrative complaint is jurisdictional. That time limit was imposed by the IHRC in its regulations. Regulations are not enacted by the General Assembly. Regulations are promulgated by agencies, which in this case, is the IHRC. The Indiana General Assembly has made no determination as to whether or not the IHRC's regulation that was promulgated is appropriate or not.

13. Respondent objects, in part, to Finding of Fact number thirteen. The undersigned counsel admits that he mistakenly believed he had requested a hearing. Baliga and the undersigned counsel object to the balance of the Finding of Fact number thirteen. The undersigned counsel believes that since both the Summary Suspension and the Administrative Complaint have as their subject the same incident of September 30, 2016, that Dr. Baliga has denied, under oath, his answer to that/those allegations as well as the extensive litigation/work and exchange with counsel for the IHRC/IHRC Staff including motions, pleading, service of discovery, hearings, transcripts of hearings, and a timely filed appeal as well as his specific objection to not being permitted the opportunity to be heard on the merits, has preserved his right to hearing on the merits in this matter and, if necessary, to judicial review. The ALJ's conclusion that the undersigned counsel's mistake was not "credible" is against the weight of the evidence.

Additionally, the IHRC's filing of the Administrative Complaint under a separate administrative number was and is a source of confusion. This can be seen in the ALJ's Order of December 6, 2016, entitled "Order Following Prehearing Conference and Scheduling Hearing." The hearing of December 6, 2016, was scheduled to hear and address issues related to administrative matters 16176 and 16177 regarding the summary suspension. The order itself is captioned, in part, "In Re: An Appeal of Judges' Ruling 16146 and 16177." Yet, the ALJ references Administrative Complaint 216003 in that Order. The Administrative Law Judge also references all three administrative numbers in his recommended order granting default judgment against Dr. Baliga. Doing so is understandable when all three matters are related to the same alleged incident.

Counsel for Dr. Baliga had, relative to defending his client as to the alleged incident of September 30, 2016, appeared, engaged in motion pleading, engaged in and initiated discovery, attended and represented his client at a hearing, wherein Dr. Baliga testified under oath that he denied the allegations asserted against him relative to the alleged incident of September 30, 2016, and timely filed for an appeal that is pending regarding the same alleged incident that is the subject of the IHRC's Administrative Complaint. For the ALJ to find that the undersigned counsel's position that he "believed" he had preserved his right to a hearing on the merits relative to the alleged incident of September 30, 2016, lacks credibility, is simply unfair.

14. Respondent objects to Finding of Fact number fourteen. Counsel recognizes that a summary suspension and an administrative complaint have been filed. Counsel believes that there are compelling reasons that fairness and equity require the ALJ's recommended order of December 16, 2016 be rejected. Those reasons do constitute excusable neglect and include the following:

- (1) The undersigned counsel believed that his client answered and denied the allegations relative to the subject alleged incident of September 30, 2016 at Hoosier Park and that the right to a hearing had been preserved.

(2) That significant work was performed as to the defense of the allegation that is the subject of both the Administrative Complaint and the Summary Suspension including motion pleading, initiating discovery, preparing for hearings, attending and participating in hearings, the offering of the testimony of Dr. Baliga, under oath, denying the allegations against him that constitute an answer, and the timely filing and preserving of an appeal in the summary suspension matter regarding the alleged events of September 30, 2016.

(3) The undersigned counsel did not realize that the Administrative Complaint had been filed with a separate administrative complaint number. Because a hearing had taken place and a timely request for appeal to preserve Dr. Baliga's right to present testimony and evidence on the merits of his defense had been filed, the undersigned counsel mistakenly believed that a written request for hearing was not necessary.

(4) Baliga, in connection with the timely filing of his Verified Objection to Petitioner's Motion for Default and Respondent's Motion Under IC 4-21.5-3-24(b) That The Proposed Default Order Not Be Imposed tendered as Exhibits "5" and "6" an Answer and Request for Hearing on December 12, 2016. This was done within days of the twenty (20) day deadline pursuant to 71 IAC 10-3-20(d) and days of the IHRC/IHRC Staff's Motion for Default Judgment.

(5) In fact, when the undersigned counsel was personally served a copy of the IHRC's Motion for Default, at the prehearing conference, in connection with Administrative Cause Number 216003, the undersigned counsel was dismayed because he felt that he had preserved the right to his client's hearing by the proceedings that had taken place in Administrative Cause Numbers 16146 and 16177.

(6) Adding to this confusion is the fact that Administrative Cause Numbers 16146, 16177, and Administrative Complaint Number 216003, filed by the IHRC against Dr. Baliga involve and have as the subject of their Complaint the common incident that occurred on the same date, involving the same horse, and the same allegations supported by the same witness(es).

(7) This confusion is seen in the ALJ's Order that addresses all pending matters regarding Dr. Baliga and does so because of the commonality of the underlying alleged incident that Dr. Baliga has answered and has denied, under oath.

(8) Even assuming the undersigned counsel's confusion and neglect is not excusable, there are grounds and basis as set forth herein, that justify the IHRC rejecting the ALJ's proposed order. Indiana Courts have a long history of dislike for default judgments. The recommended order granting the default judgment

should be rejected because the grounds and basis set forth herein justify relief from the ALJ's recommended order. The ALJ's recommended order, if not denied, would result in Dr. Baliga not having his "day in court" in these administrative proceedings, not having a hearing on the merits of his defense and being denied the right to a judicial review of an administrative order which seeks a potential career ending penalty that includes a 5 year suspension, a lifetime ban from participation of LASIX administration in the State of Indiana, at Indiana's pari-mutuel horse racing tracks as well as a monetary fine of \$20,000. Additionally, the history of the parties, the litigation and counsel from September 30, 2016 to date, suggests equity and fairness requires a hearing on the merits and, if necessary, the Respondent's right to judicial review. These are ample grounds and basis for the IHRC to deny the ALJ's recommended order. To suspend a professional's practice without a hearing on the merits, given the extensive procedural history relative to the alleged incident of September 30, 2016, is unjust, unfair, and does not further the integrity of Indiana racing.

- (15) Respondent does not object to Finding of Fact number fifteen.
- (16) Respondent does not object to Finding of Fact number sixteen.
- (17) Respondent does not object to Finding of Fact number seventeen.
- (18) Respondent does not object to Finding of Fact number eighteen.
- (19) Respondent does not object to Finding of Fact number nineteen.

III. Objection to Recommended Order

A recommended order of default is improper in this case. The IHRC filed its Motion for Default pursuant to IC 4-21.5-3-24 and 71 IAC 10-3-20(d), as well as Indiana Trial Rule 55. The ALJ then issued a written notice of a proposed default with dismissal order which said order is dated December 6, 2016 and was issued in accordance with IC 4-21.5-3-24(a). Therefore, these entire proceedings pertaining to a default judgment sought by the IHRC have been conducted in accordance with IC 4-21.5-3-24.

IC 4-21.5-3-24(b) provides that within seven days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. Counsel for Dr. Baliga did so in a timely fashion.

While counsel for Dr. Baliga discussed, in his objection to the default and brief, an Indiana Supreme Court case that was decided under Indiana Trial Rule 60(B), there was never an

Indiana Trial Rule 60(B) motion pending before the ALJ, as no order of default had ever been entered. Counsel for Baliga merely discussed the Indiana Supreme Court Case of *Huntington National Bank vs. Car-X Assoc. Corp.*, 39 N.E.3d 652, as discussed further below, to show the disfavor that the Indiana Supreme Court has for default judgments, as well as the relief which would be afforded by Indiana Trial Rule 60(B).

IC 4-21.5-3-24(b) is silent as to what would constitute sufficient grounds to be put forward by the party against whom a default is sought. One may only assume that the grounds set forth in Indiana Trial Rule 60(B) would be applicable, although there is nothing in IC 4-21.5-3-24(b) that requires that a meritorious defense be asserted or evidence of said meritorious defense be presented. Nevertheless, Baliga in fact tendered his Affidavit stating that not only did he have a meritorious defense but also stating that he has at all times denied the allegation that he administered a substance to a horse on the date in question that was other than LASIX. See paragraphs two and three of the Affidavit of Dr. Joseph Baliga.

The ALJ relies on the Indiana Court of Appeals Decision in *Thompson v. Thompson*, 811 N.E.2d 888, 903-04 (Ind. Ct. App. 2004) in recommending that the IHRC Staff's Motion for Default Judgment be granted and the recommended penalties be imposed. The ALJ does so despite the strong and historical position of the Indiana courts disfavoring default judgments and Indiana's preferred policy that courts/administrative agencies decide matters on the merits (see *Citimortgage, Inc. v. Barabas*, 975 N.E.2d 805 (Ind. 2012) and *Cherokee Air Products, Inc. v. Burlington Ins. Co.*, 887 N.E.2d 984 (Ind. App. 2008)).

The case of *Thompson v. Thompson*, supra, is a decision involving a Petition for Dissolution and associated issues. That decision and the portion of the same relied on by the Administrative Law Judge in his recommended order is distinguishable from the issue presented in Respondent's Objection to the ALJ's Findings of Fact and Recommended Order of December 16, 2016. Specifically, the portion of the decision in *Thompson v. Thompson*, supra, dealing with excusable neglect involves relief from an order that had been entered. In the case of Dr. Baliga, no order has been entered—only recommended. Also, the Court in *Thompson v. Thompson*, supra, included in its analysis that the husband (Jack) was required to establish a meritorious defense. That is not the case or required by I.C. 4-21.5-3-24. That being said, Dr. Baliga has denied, under oath, the allegations against him relative to the alleged incident of September 30, 2016, thereby answering the same and preserving his right to a hearing on the merits and, if necessary, his right to judicial review. Further, the fact that precipitated the filing of the Indiana Trial Rule 60(B) motion in *Thompson v. Thompson*, supra, involved a hearing where counsel failed to appear. This was not the case in the matter before the Commission. Both Dr. Baliga and the undersigned counsel appeared at all hearings in both the summary suspension and the administrative complaint matter.

The Indiana Court of Appeals in *Thompson v. Thompson*, supra, did hold, in pertinent part, consistent with Indiana case law history that: "...in making decisions regarding relief from judgment,...the trial court (administrative agency) must balance the need for an efficient judicial

system against the judicial preference for resolving the dispute on their merits..." See *Thompson v. Thompson*, *supra*, at 903 (emphasis added). Additionally, the ALJ ignored Respondent's argument pursuant to Indiana Trial Rule 60(B)(8) that has been set forth and articulated herein.

The general rule in Indiana is that default judgments are not favored. In fact, the late Professor William F. Harvey, arguably the state's leading author and civil procedure authority, states as follows in his discussion of Indiana Trial Rule 55:

"The Indiana courts have acknowledged, in applying Trial Rule 55, a cautious approach should be taken in granting motions for default judgments in cases involving a material issue of fact, substantial amounts of money, or weighty policy determinations. *Sears Roebuck and Co. v. Soja*, 932 N.E.2d 245 (Ind. Ct. App. 2012), transfer denied, (Jan. 21, 2011). In fact, Indiana courts have stated a strong public policy favoring the disposition of cases on their merits. *Citimortgage, Inc. v. Barabas*, 975 N.E.2d 805 (Ind. 2012). In deciding whether to enter a default judgment, the trial court must balance the need for an efficient judicial system and society's interest in finality of judgment against Indiana's judicial preference for deciding disputes on the merits. *Seleme v. JP Morgan Chase Bank*, 982 N.E.2d 299 (Ind. Ct. App. 2012), transfer denied, 988 N.E.2d 797 (Ind. 2013); *Bunch v. Himm*, 879 N.E.2d 632 (Ind. Ct. App. 2008). Any doubt about the propriety of a default judgment should be resolved in favor of the defaulted party. *Thomison v. IK Indy, Inc.*, 858 N.E.2d 1052 (Ind. Ct. App. 2006)."

See, Harvey, *Indiana Practice*, Volume 3, §55.1.

The Indiana Supreme Court in 2015, over a decade after the Indiana Court of Appeals' decision in *Thompson v. Thompson*, *supra*, made its feelings known not only about default judgments being entered but also as to attorneys using Trial Rule 55 as a surprise sword.

In *Huntington National Bank v. Car-X Assoc. Corp.*, 39 N.E.3d 652, the court first examined the question of whether or not the bank's failure to appear and defend the lawsuit in a timely fashion constituted "excusable neglect" under Indiana Trial Rule 60(B)(1). The trial court had entered a default judgment against the bank when it had been served with a complaint and summons on January 27, 2014, but still had not filed its answer as of February 25, 2014, which was six days after its deadline to respond. In declining to find that the neglect of the bank was "excusable," the court noted that while all neglect is not excusable, it is "excusable" within the meaning of the Rule, when it is something that can be explained by an unusual, rare, or unforeseen circumstance. The court decided that the bank's normal employee being on maternity leave was not a circumstance that should be used as an excuse for delaying judicial proceedings beyond the court deadlines. The court noted that because there is no general rule as to what constitutes excusable neglect under Trial Rule 60(B)(1), each case must be determined on its particular facts. *Huntington National Bank*, 39 N.E.3d at 655.

In this case, counsel for the Respondent sets forth in his verified motion the sworn reasoning as to why the answer and request for hearing were not timely filed, which was because of his confusion concerning the administrative complaint being filed under a separate cause number. Counsel's sworn statement as to his belief that his client's right to a hearing on the merits had been preserved because of actions taken in the separate cause should constitute excusable neglect within the meaning of the rule. This situation, at least as pertaining to defense counsel, is unusual, as the defense counsel felt that he had previously filed whatever was necessary, only to find out later that he had not because the two matters were pending under separate cause numbers.

Even if the ALJ determines that Dr. Baliga is not entitled to relief on the basis of excusable neglect, Trial Rule 60(B)(8) requires that a default judgment be avoided for "any reason justifying relief from the operation of the judgment" other than those set forth in other subsections of Trial Rule 60. Of course, the party must file the motion within reasonable time and allege a meritorious claim or defense.

In the *Huntington National Bank* case, the court found that the bank was entitled to relief under 60(B)(8) for equitable reasons, such as its substantial interest in the real estate through its mortgage, its "excusable reason" for untimely responding, its quick action to set aside the default judgment once the complaint and summons were discovered, its significant loss if the default judgment were not set aside, and the minimal prejudice to *Car-X* should the case be reinstated. In this case, Dr. Baliga submits that the principles of equity, fairness and justice require that he be able to have a hearing on the substantive allegations and the merits of his meritorious defense for the following equitable reasons: (1) Dr. Baliga's quick action in preparing this objection and motion along with the proposed Answer and Request for Hearing; (2) a significant loss to be imposed upon Dr. Baliga if the default judgment is entered; (3) the public policy of the courts in this State to decide cases on the merit rather than procedural traps; and (4) the lack of prejudice to the IHRC should its motion be denied and the case go forward on the merits.

Further, and most importantly, the Indiana Supreme Court in the *Huntington National Bank* case made itself very clear, with two full paragraphs of discussion, that a default judgment is "an extreme remedy," and should not be used as a, "trap to be set by counsel to catch unsuspecting litigants" or as a "gotcha" device when an email or even a phone call to the opposing party inquiring about the receipt of service would prevent a windfall recovery and enable fulfillment of the Court's strong preference to resolve cases on the merits. See *Huntington National Bank*, 39 N.E.3d at 11, citing *Smith vs. Johnston*, 711 N.E.2d at 1259, 1264 (Ind. 1999); *Coslett v. Weddle Bros. Const. Co. Inc.*, 798 N.E.2d at 859, 861 (Ind. 2003). In discussing counsel using a default judgment as a trap or a "gotcha" device instead of emailing or calling opposing counsel, the court stated as follows:

"This is especially true where, as here, it is easy to locate the opposing party or counsel, and just as simple to pick up a phone and remind counsel of an imminent deadline—a courtesy every attorney would like (and very well may need)

extended to him or her at some point in his or her career. Such a moment of professionalism and civility can reap significant dividends both in the resolution of the case itself and in the legal community in general. By fostering a spirit of fair competition and collegiality, courteous attorneys better serve their clients and greatly improve the quality of our profession... Though trial courts may continue to grant default judgments where a party undoubtedly fails to defend or prosecute a lawsuit, we strongly urge attorneys not to resort to seeking such a measure unless and until no other method would move the case forward." (Emphasis added).

Huntington National Bank 39 N.E.3d at 652.

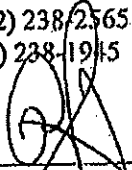
IV. Conclusion

For the foregoing reasons, Dr. Baliga respectfully requests the Indiana Horse Racing Commission to reject the Recommended Order Granting Default Judgment, and that Dr. Baliga be allowed to defend the allegations against him on the merits, as is favored under Indiana law, and allow him to call witnesses and offer evidence as to his defense and that his right to both a hearing and judicial review, if necessary, be preserved.

Respectfully submitted,

SACOPULOS, JOHNSON & SACOPULOS
676 Ohio Street
Terre Haute, IN 47807
Telephone: (812) 238-2565
Facsimile: (812) 238-1915

By: _____


Peter J. Sacopulos, #14403-84
Counsel for Dr. Joseph Baliga

VERIFICATION

I hereby affirm under the penalties of perjury that the above and foregoing representations are true and correct to the best of my knowledge.



Peter J. Sacopulos

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record via email and first class U.S. Mail, postage prepaid, this 28th day of December, 2016:

Holly Newell
Deputy General Counsel
Indiana Horse Racing Commission
1302 North Meridian
Indianapolis, IN 46202
Hnewell@hrc.IN.gov

The Honorable Bernard L. Pylitt
Administrative Law Judge
Katz & Korin
334 North Senate Avenue
Indianapolis, IN 46204-1708
bpylitt@katzkorin.com



Peter J. Saccupubs

- c. Respondent requested samples of both blood serum and urine be taken, yet no test results were offered resulting in a lack of evidence of the subject Standardbred horse being administered any substance other than LASIX.
- d. That the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff had the duty to prove, by a preponderance of the evidence, the alleged violation occurred but offered no evidence or testimony, of any witness with personal knowledge of any event in this case, to support the continuation of a summary suspension.

Respectfully Submitted,



Peter J. Sacopulos, #14403-84
SACOPULOS, JOHNSON & SACOPULOS
676 Ohio Street
Terre Haute, IN 47807
Telephone: (812) 238-2565
Facsimile: (812) 238-1945
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record by first class U.S. Mail, postage prepaid, this 14th day of November, 2016:

Holly Newell
Deputy General Counsel
Indiana Horse Racing Commission
1302 North Meridian
Indianapolis, IN 46202
HNewell@hrc.in.gov

IHRC JUDGES
Hoosier Park
4500 Dan Patch Circle
Anderson, IN 46013
judges@hrc.in.gov



Peter J. Sacopulos



INDIANA HORSE RACING COMMISSION
APPEAL

State Form 48793 (R3 /7-13)

In Re: 16177 (Ruling Number)

DR. JOSEPH BALIGA

708-363-1932

(Name of Appellant)

(Telephone)

12609 S. Co. Rd. 875 W, Daleville

Indiana

47334

(Address)

(City)

(State)

(ZIP)

970519

07/19/1955

(IN License Number)

(Date of Birth (month, day, year))

I hereby appeal the decision of the Judges/Stewards at Hoosier Park on 11/01/2016
in connection with the above referenced ruling. (Date of Ruling (month, day, year))

Reasons for Appeal (attach additional sheets if necessary): See attached Notice of Appeal that was timely filed
with the Commission on 11/14/2016.

Peter J. Sacopulos, Counsel of Record for Appellant, Dr. Joseph Baliga.-----This form is being submitted to supplement Petitioner's Notice of Appeal that was timely filed on 11/14/2016, which is attached.


(Signature of Appellant)

11-17-2016
(Date (month, day, year))

If you will be represented by legal counsel and know the name of your attorney, please complete the following.

Name of Attorney: Peter J. Sacopulos, #14403-84

Mailing Address: 676 Ohio Street

Terre Haute, IN 47807

Telephone Number / Fax Number: 812-238-2565 / 812-238-1945

DO NOT WRITE BELOW THIS LINE.

All appeals shall be made in writing and must be filed with the Commission within fifteen (15) days after the Judges' or other Officials' ruling is served upon the Appellant.

(Signature of Judge/Steward or Other Official)

Distribution: Executive Director, Judges/Stewards, Appellant