

BEFORE
THE INDIANA HORSE RACING COMMISSION

2017 JUL 26 A 11:06

INDIANA HORSE RACING
COMMISSION STAFF,

INDIANA
HORSE RACING COMMISSION

Petitioner,

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

v.

JULIAN WILLIAMS and DYLAN DAVIS,

Respondents.

NOTICE OF OPPORTUNITY TO PRESENT BRIEFS AND ORAL ARGUMENT

This matter is pending before the Indiana Horse Racing Commission ("Commission") on the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER** issued on May 25, 2017 by the Administrative Law Judge designated by the Commission, Bernard L. Pylitt. On June 9, 2017, Respondents filed their objections to the administrative law judge's Recommended Order.

Notice is hereby given that the Commission will afford both parties an opportunity to present briefs concerning this case. Any briefs filed by Respondent or the Commission **MUST** be received at the offices of the Indiana Horse Racing Commission by noon (Indianapolis time) on Friday, August 18, 2017. No briefs received after this time and date will be accepted. In addition to any hard copies filed, any briefs filed **MUST** be filed electronically at dpitman@hrc.in.gov. Briefs shall be served electronically on the opposing party.

The Commission will consider oral argument on the objections at its meeting on August 25, 2017. The Commission meeting will take place at the Indiana Grand Casino at 4300 North Michigan Avenue, Shelbyville, Indiana. The oral argument will begin at 9:30 a.m. and be limited to **10 minutes** per side.

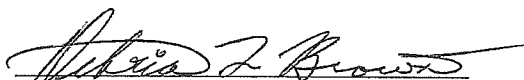
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF OPPORTUNITY TO PRESENT BRIEFS AND ORAL ARGUMENT** has been duly served via email and fist-class United States mail, postage prepaid this 26th day of July, 2017, to the following parties of record:

Holly Newell
Deputy General Counsel, Indiana Horse Racing Commission
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Service by Mail and Electronic Mail


Signature

7/26/17
Date

Indiana Horse Racing Commission
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856776

857850

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.102449.
2. At all times relevant Williams was a licensee of the Indiana Horse Racing Commission ("Commission") holding Commission License No. 150417.
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 "IAM 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. (Transcript, 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:

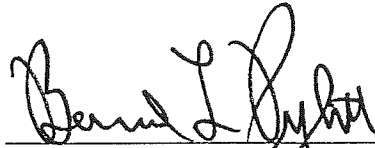
- i. Be suspended for a period of sixty (60) days; and
- ii. Be fined \$1,000.00.

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

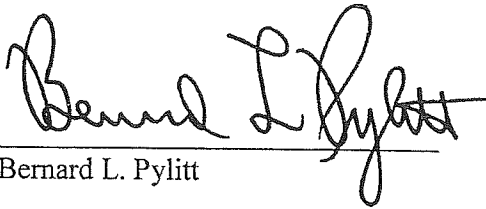
CERTIFICATE OF SERVICE

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:

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Indiana Horse Racing Commission : Administrative Complaint
v. :
Julian Williams : No. 216007 and 216008
And :
Dylan Davis :

**RESPONDENTS' OBJECTIONS TO THE FINDINGS
OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER
OF ALJ BERNARD PYLITT**

Respondents, Julian Williams and Dylan Davis, by and through their attorney, Howard A. Taylor hereby object to the Findings of Fact, Conclusions of Law and Recommended Order of ALJ Bernard Pylitt in the instant matter, and will address same in the order raised by ALJ Pylitt, as following:

**OBJECTIONS TO ALJ'S CHARACTERIZATION OF THE PROCEDURAL
BACKGROUND**

Respondents object to the characterization of the proceedings before the Indiana Horse Racing Commission regarding Dr. Baliga. It is made to appear that Dr. Baliga was not issued a suspension until March 7, 2017, when in fact, Dr. Baliga was issued a summary suspension on September 30, 2016, the date of the incident and at a hearing several days which was prohibited from offering any testimony. Upon information and belief, Dr. Baliga was issued a default for failure to file a timely appeal of the actual Ruling and thus, was permanently prohibited from testifying on his own behalf and the summary suspension remained in effect while not formally adopted by the Commission until that March 7, 2017 meeting.

Respondents also take exception to the ALJ including in his procedural history the fact that Counsel for Respondents owned horses trained by Respondent, Davis, as if this was relevant to the proceedings. Certainly, there could be no conflict of interest as the ALJ was made aware at the initial telephone conference of the fact that counsel was retained because he was a friend of

Respondents, who then obviously requested his representation. There was never any attempt to hide these facts and there was no objection by Staff Counsel, nor should there have been.

Pursuant to the pre-hearing Order, all discovery was to be completed and exchanged by March 31, 2017. The ALJ failed to mention that the Motion was to Preclude the Introduction of Documentation of the Testing **not** a Motion to Preclude the discovery of any documentation, as the deadline for discovery had passed, Respondents' counsel was concerned that a late submission of documentation regarding the test results would be highly prejudicial to Respondents' ability to properly prepare a defense. It was the duty of the Commission Staff to produce these results upon a vial that would have been acquired on September 30, 2016 and, therefore, the Commission Staff had five and one-half months to complete the testing before the Motion. Respondents categorically deny the possibility that their Motion could have created any confusion and uncertainty during Petra Hartmann's testimony at the hearing. Again, the Commission Staff had five and one-half months to obtain results which should have been secured before charges were brought in the first place. Therefore, if there was any confusion, it would be caused by the failure of the Commission Staff to properly gather evidence, and not Respondents' attorney's zealous representation.

Again, Respondents take exception to the Finding that the Commission was left without the result of any testing of the samples drawn from Iam Bonasera on September 30, 2016. The Commission Staff had five and one-half months to secure this information which should have been obtained before charges were ever brought against Respondents.

Respondents take exception to the Official Notice taken by the ALJ of the record in the matter of In Re: The Matter of Richard Estvanko and Anthony Granitz, Petitioners v. Indiana Horse Racing Commission Staff, Appeal of Judge's Ruling No. 14694 and 14695, for several reasons. Preliminary, the Estvanko case was an unpublished Opinion and thus, it was impossible for Respondents to secure a copy of the Transcript, let alone to digest and respond to same within one week. Respondents were thus left to scramble to secure a copy of the Opinion which did not

fully disclose the facts in that case which Respondents believe were easily distinguishable from the instant matter.

Respondents were at a tremendous disadvantage as it was later discovered that Bernard Pylitt was the ALJ presiding over the Estvanko case with Ms. Newell acting as counsel for the Commission Staff. Thus, both the ALJ and Staff Counsel had the advantage of having sat through the proceedings, having a copy of the Transcript, of the entirety of the hearing and being uniquely aware of all of the facts which may or may not have been relevant to the instant matter.

Further, Respondents' counsel was left in the dark by the ALJ when attempting to determine what the ALJ was considering regarding Official Notice. Counsel sent an email to ALJ Pylitt stating "I do not understand what judicial notice is being taken. Are you referring to the application of the assistant trainer responsibility rule, or of Dr. Waterman's testimony about drugs that won't test? Or both? If we are talking about Dr. Waterman, I thought that you ruled that the Commission could not introduce evidence of testing results. Is this case published? How can I get a copy of it?"

In response, I received an email from the ALJ stating:

"I do not know if prior IHRC Ruling is published. It came up during your deposition of Mike Hall on March 27 at page 46 which caused me to issue my Notice. Please check with Holly for a copy of this prior ruling.

When I was the First Assistant US Attorney, an old federal Judge would answer questions from a jury about instructions by telling them to read the instructions again. My Notice clearly states my intent under IOPA and provides you an opportunity to submit any objection by next Monday.

We will discuss any issued with Dr. Waterman's testimony next Tuesday morning."

The email from ALJ Pylitt was sent at 11:20 a.m. on Tuesday, April 11, 2017, leaving less than one week for respondents to gather information sufficient to figure out what judicial notice

was being taken on this unreported opinion. Without the benefit of the transcript, the task was impossible. Respondents were therefore unable to file a timely objection to the Notice of Taking of Official Notice filed by the ALJ to their extreme prejudice.

In fact, after learning some of the pertinent information contained in the Estvanko decision, yet still without the benefit of reviewing the actual Transcript, Respondents have uncovered many issues which clearly differentiate the facts of the Estvanko case from the instant matter, sufficient to preclude the Official Notice taken by the ALJ in this case. The most glaring of the differences is that the Estvanko case dealt with Thoroughbreds and not with Standardbreds. As outlined in Dr. Waterman's testimony, they are worlds apart in that the Thoroughbreds do not enter a secured area such as the paddock, but rather remain in their stalls until they leave for the race. Thus, every horse that is racing on that date has a "In Today" sign on their stall door. No veterinarian is allowed to enter that stall on race day unless in the presence of a security guard.

In the Estvanko matter, there was an allegation by a "watcher" that a veterinarian entered the stall of a horse which was "In Today" without a security guard being present. This alone is a violation sufficient to cause a penalty to the trainer and veterinarian in question.

The instant matter dealt with Standardbreds who are required to enter the paddock, which is a secured area controlled by the Commission. Further, and perhaps of even greater significance is the fact that the Commission either appoints or approves a select group of licensed veterinarians licensed by the State who select one on a rotating basis to administer Lasix to all horses on any given date. The Commission then further mandates that the "Lasix Vet" enter a locked and secured room where, in the presence of a security guard, he draws up the Lasix syringes to be administered on each date. Only the Lasix Vet and the security guard are allowed into the room in question and thus, any trainer is prohibited not only from entering the room, but from viewing the drawing of the syringes with Lasix. Thus, the trainer would have no knowledge or ability to prevent any illicit activity, such as that alleged in this matter.

Additionally, in the Estvanko case, the trainer of the horse in question, Anthony Granitz, was not in the State when the veterinarian allegedly entered his horse's stall. Mr. Estvanko was the assistant trainer for Mr. Granitz and was at the track on the day of the race. Thus, he was acting as the assistant trainer and would be responsible in that capacity, if it were found that the vet, in fact, entered the stall on race day without a security guard.

In this case, both Mr. Davis and his assistant trainer, Julian Williams, were out of State on the date of the race. While it is agreed that Mr. Davis, as the trainer of record is responsible for guarding horses in his care, the Assistant Trainer should only be responsible for activities over which he has control. He is not the ultimate insurer as is the trainer, and thus should not have been held responsible for anything in this case, while he was out of State.

Had the ALJ properly given enough information to review the case in a timely fashion, Respondents certainly would have made these objections on the Record as requested. However, this "Trial by ambush" in citing an unpublished Opinion without providing access to the Transcript, and given a short one week time period to file Objections to issues which the ALJ refused to disclose while Staff Counsel knew exactly what had transpired in that case, allowed improper Official Notice to be taken of inapplicable facts which were easily distinguishable.

The fact that the ALJ chose to remark that the original exhibits were not all pre-marked were of no moment to this proceeding. Only one exhibit, a copy of Mr. Hicks' recorded statement transcribed by a certified court reporter was not pre-marked due to clerical error. This, however, did not affect the case, as counsel stipulated to the admission of the Transcript of the original recorded statement by Staff Counsel.

Next, Respondents disclosed, which they were not required to do, the fact that they may call unnamed trainers in rebuttal. It is well settled in law that a party is not required to disclose rebuttal witnesses as their relevance is dependent upon underlying testimony. As the testimony had not yet occurred, it was undetermined whether any witness would testify. Due to the sensitive

nature of their proposed testimony and fear of retribution by the Commission and/or Hoosier Park employees, all expressed reluctance. Counsel felt it imperative to secure their permission before disclosing their names in advance of the hearing. Unfortunately, permission could not be obtained until one hour after the twenty-four-hour deadline imposed by the ALJ, who then precluded any rebuttal testimony by Respondents. It is significant to note that no such restriction was placed upon Commission staff who did elicit rebuttal testimony, albeit of questionable relevance.

The ALJ felt it necessary to point out that Respondents offered an exhibit which contained allegedly confidential information about two horses which were treated by Dr. Baliga. This was unnecessary to put in the Findings, not germane to the case, and was clearly mentioned only to attempt to embarrass Respondents' counsel. What is not pointed out is the fact that this information was also overlooked by the ALJ and Commission Staff counsel.

For reasons previously noted, Respondents object to the Official Notice by the ALJ of the Estvanko. Respondents find it outrageous that the ALJ would take Official Notice that Dr. Scott Waterman was recognized as an expert in equine medicine, merely because he was so recognized in the Estvanko case. Dr. Waterman simply cannot be qualified as an expert witness in equine medicine and should not have been so qualified in the Estvanko case.

Dr. Waterman has never run any laboratory, and while he is a veterinarian, he has never worked in a large animal practice (Transcript, P. 153, L. 4-15). He has never worked in a racehorse laboratory with medications (Transcript, P. 164, L. 22 – P. 165, L. 4) and knows little if anything about Standardbreds (Transcript, P. 169, L. 7-12) and has never even visited the paddock at Hoosier Park where the instant allegations occurred. (Transcript, P. 171, L. 12-14). In fact, when asked by staff counsel to discuss his experience in the field of equine medicine, he candidly admitted "Well, I guess it is a little vague. I am not exactly sure". (Transcript, P. 152, L. 20-23). Thus, Dr. Waterman himself, tell the Court why he would be qualified as an expert in equine medicine.

**RESPONDENTS' OBJECTIONS TO
ADMISSION OF IHRC STAFF'S EXHIBIT 17 WHICH WAS
A PHOTOGRAPH OF A VIAL**

A Lasix vial is 50 ML, Exhibit 17 is a 10 ML bottle. According to Hicks' testimony, the vial that he allegedly saw in the Lasix room in Dr. Baliga's possession was substantially less than that in Exhibit 17. This exhibit is highly irrelevant and prejudicial in that it has nothing to do with this case, was not the size of the vial allegedly found by Hicks and has no business being part of this case.

**PARTIES
FINDINGS OF FACT:
RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 4**

Respondents object to Finding #4 that the regulations prohibit a licensed veterinarian from having contact with a horse within twenty-four hours prior to the scheduled post time for the race. This condition relates solely to the Thoroughbred industry where an "In Today" sign is placed on the door and no veterinarian is allowed to touch the horse. In the Standardbred industry, there simply is no such regulation, and a veterinarian is certainly allowed to have contact with a horse. He is just prohibited from injecting any substance into the horse, except for Lasix. This demonstrates the confusion that the ALJ had in separating the two sports which Respondents believe led him to take improper Official Notice of the Estvanko case.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 9**

Respondents object to the Finding that Williams "assumed" the same duties, responsibilities and restrictions imposed upon the licensed trainer in the instant matter. To the contrary, Mr. Williams was in Ohio on the night in question and therefore was not acting as the assistant trainer for that night. He therefore did not assume the responsibilities of an assistant trainer on September 30, 2016.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 11**

Respondents object to the Finding that the Commission Staff is separate and distinct from the Commission. To the Commission, it is believed that the Commission Staff works for the Commission and certainly takes its' direction from Michael Smith, who is the Executive Director of the Commission. It was obvious from the proceedings that Mr. Smith was directing this case, and thus, at a minimum, there is the appearance that the two are not separate and distinct.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 13**

Respondents object to Finding No. 13 in that the Finding is only partially accurate in that Hicks testified in his deposition and at the hearing that he contacted Presiding Judge Michael Hall. He testified that he knew Mr. Hall's voice and he was certain that he spoke directly to him. (Transcript, P. 116-117).

Mr. Hall testified that he did not speak to Mr. Hicks as Mr. Hall had not yet arrived at the track which addresses Mr. Hicks' recollection, perception and veracity. (Transcript, P. 273).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 19**

Again, the term "In Today" is a term of art used for Thoroughbreds. Rather, all horses that are to race on a given night are taken to a restricted area of Hoosier Park, known as the Paddock, which is controlled by the representatives of the Racing Commission.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 33**

Respondents take exception to the Finding that veterinarians typically drew Lasix needed for two or three races in the Lasix Room. This does not appear in the testimony, and Respondents do not believe this to be true. In fact, there is testimony that Hicks and Dr. Baliga returned to the Lasix room after each race so that Dr. Baliga could draw Lasix syringes for the next race.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 39**

Respondents object as the statement is against the testimony of Mr. Hicks. To the contrary, it is Mr. Hicks' testimony is that he saw the vial in Dr. Baliga's hand while drawing Lasix for the fifth race only. This was Hicks' testimony. His later testimony as to where and when he found the vial raises questions as to whether this would have been possible, thus raising further issues as to Hicks' observation, recollection and veracity. (Transcript, P. 41)

**RESPONDENTS' OBJECTION TO
FINDING OF ACT NO. 42**

The Finding omits the fact that Hicks stated in a recorded statement, on the night in question, that the vial had a blue lid, which he later changed to having a red lid, which change occurred after he saw photographs of the vial, which calls into question, Hicks' observation, recollection and veracity. (Transcript, P 86-89)

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 47**

Respondents object to the admission of Exhibit 17, which was an empty 10 ml vial, as irrelevant and immaterial. It is misleading to the case. Hicks himself has testified that the vial that he alleges to have seen was much smaller than the vial admitted as Exhibit 17, and therefore the Exhibit should not have been admitted.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 51**

Respondents object to the Finding that Dr. Baliga removed a pre-filled syringe from his sweatshirt pocket to inject Iam Bonasera. While this is Hicks' testimony, it is unlikely that Hicks could have had a view of Dr. Baliga's actions, as he was on the left side of the horse, and Dr. Baliga was on the right side, and would by definition, be up against the horse as he was administering the Lasix. Again, this calls into question, Hicks' recollection and veracity.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 52**

Hicks could not have had an unobstructed view of Dr. Baliga, as they were on opposite sides with Iam Bonasera between them and Dr. Baliga stood against the horse to administer Lasix. (Transcript, P. 98 and 101-104).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 53**

Respondents object to the Finding that Dr. Baliga removed a pre-filled syringe from his sweatshirt pocket to inject Iam Bonasera. While this is Hicks' testimony, it is unlikely that Hicks could have had a view of Dr. Baliga's actions, as he was on the far side of the horse, and Dr. Baliga would by definition, be up against the horse as he was administering the Lasix. Again, this calls into question, Hicks' observation, recollection and veracity.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 54**

Respondents object to the Finding that Hicks heard the syringe drop into the caddy. Hicks' testimony is incredulous as he testified that he saw Dr. Baliga inject and then turned away. Hicks testified that he "didn't think about watching when he put it back in the caddy". (Transcript, P. 109).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 56**

This Finding of Fact is not supported by Mr. Hicks' testimony. Mr. Hicks testified, both at deposition and at the hearing that he was positive that he spoke with Mike Hall, that he knows his voice, and that there was no doubt in his mind that he was talking to Mr. Hall. (Transcript, P. 116).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 59**

Respondents object to the finding that Hicks did not retrieve the syringe because he was uncomfortable pocketing the needle and syringe. The Finding is contradictory to Mr. Hicks' testimony. Mr. Hicks testified that he did not retrieve the syringe because he believed that the two used syringes in the caddy were the same size and he could not tell the difference. (Transcript, P. 108). To the contrary, however, the only other used syringe in the caddy was a 12-cc syringe used on horse #2 in the fifth race, which was twice the size and easily distinguishable.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 60**

Respondents object to the Finding that Dr. Baliga and Mr. Hicks "got along". This incident was more than a "shouting match" as evidenced by the fact that both have vivid recollection of the incident, some three to four years later, and both admitted that it was loud and heated (Transcript, P. 75, P. 322 and 323).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 64**

Respondents object to the timing as given in this Finding. The statement was not given "shortly after completing Lasix administration". Rather, Hicks returned to the Lasix Room with Dr. Baliga, got all his paperwork together, and threw out the empty syringes before traveling to Gate 1 to give the statement. (Transcript, P. 117).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 67**

Respondents object to the Finding that Hicks returned to the Lasix Room and retrieved a small clear vial similar to IHRC Staff Exhibit 17 from the trash bin. This Finding is inaccurate for several reasons. First, Hicks did testify that he retrieved a vial much smaller than IHRC Staff Exhibit 17 (Transcript, P. 49). Further, Hicks' statement that he went through the trash bin for the

first time that day (Transcript, P. 121) was inconsistent with his recorded statement wherein he stated that he had gone through the trash can “clear to the bottom” before giving the recorded statement. This then also calls into questions Hicks’ recollection and veracity.

**RESPONDENTS’ OBJECTION TO
FINDING OF FACT NO. 71**

Respondents object to the Finding that Hicks had no reason to doubt his recollection. In fact, David Hicks gave a recorded statement the date of the incident, an Affidavit in Staff Counsel’s office two months later, a deposition in March and testified at the hearing. There are marked inconsistencies in all four attestations and therefore his recollection is certainly called into question, as is his veracity. In his recorded statement of September 30, 2016, Hicks stated that he had already searched the trash cans in the Lasix Room, looking for the vial and searched “all the way to the bottom” and found nothing. (Transcript, P. 131-132) At deposition and at trial, Hicks changed his testimony, such that he did not search the trash cans until after he gave the recorded statement when he magically found the vial in the small trash can. (Transcript, P. 120). The first time that Hicks made this claim was in an Affidavit given in the office of staff counsel under their direction. Thus, Hicks has given multiple versions of his actions on the night in question, none of which are consistent. However, the only statement that was given on the date of the alleged incident was that he searched the trash cans for the vial and found nothing.

**RESPONDENTS’ OBJECTION TO
FINDING OF FACT NO. 72**

Respondents object to the Finding that Hicks had no interest in the outcome. Hicks did have an interest in the outcome, as he had long-standing animosity toward Dr. Baliga. (Transcript, P. 75, P. 322 and 323).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 73**

Respondents object to the Finding that Hicks' testimony was credible and reliable. To the contrary, Hicks' testimony was contradictory and wildly inconsistent and thus could not be found credible by any impartial trier of fact. In fact, the ALJ made comment on two separate occasions that Hicks' testimony had been impeached by his prior testimony. (Transcript, P. 89 and 125).

B. DR. SCOTT WATERMAN TESTIMONY

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 79**

Respondents object to the Finding that Dr. Waterman worked as a veterinarian in horse racing. Dr. Waterman has never testified that he worked as a veterinarian in horse racing at any time. To the contrary, Dr. Waterman's testimony that he spent ten years in a small animal practice. (Transcript, P. 147) and that he has never worked in any large animal practice (Transcript, P. 153).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 84**

Respondents object to Dr. Waterman being qualified as an expert witness in this matter merely because he was previously recognized by the Commission in the Estvanko and Granitz matter. Respondents should not be bound a decision made in an unpublished Opinion, the Transcript, of which was not available for review and which case involved clearly distinguishable issues as previously set forth.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 85**

Respondents object to the ALJ qualifying Dr. Waterman as an expert in this case, for reasons previously set forth. Significantly, Dr. Waterman himself, when asked at the hearing to discuss his experience as an expert in equine medicine, candidly admitted "I guess it is a little vague. I am not exactly sure." (Transcript, P. 152). Dr. Waterman is not qualified to testify as an expert in equine medicine and cannot be qualified as such by his own admission. Respondents

therefore object to any testimony and Findings of Fact by the ALJ stemming from the testimony of Dr. Waterman in this matter.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 86**

Respondents object to Dr. Waterman's testimony about the timing of drug administration. Dr. Waterman candidly admitted that he has never run any laboratory (Transcript, P. 153) and that he has never worked in a research laboratory (Transcript, P. 164). Dr. Waterman is simply not qualified to discuss the periods of time to administer substances to achieve maximum effect and his testimony should be stricken.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 87**

Again, Respondents object to Dr. Waterman's testimony and suggest that same should be stricken based upon the foregoing reasons.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 88**

Respondents object to any testimony from Dr. Waterman and suggest that somehow Dr. Waterman's testimony that there are drugs that cannot be detected was taken by this ALJ to signify the fact that if there was, in fact, a drug injected into Iam Bonasera despite any evidence to support that assumption.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 90**

Respondents object to Dr. Waterman's being able to testify regarding Dr. Baliga's treatment records. Again, Dr. Waterman is not qualified to review treatment records from a licensed equine veterinarian. Dr. Waterman has never worked in an equine practice and never described why he felt that Dr. Baliga's records were "questionable".

RESPONDENTS' OBJECTION TO

FINDING OF FACT NO. 91

Respondents object to Dr. Waterman testifying as he believes as to Dr. Baliga's actions. Dr. Waterman is not qualified to discuss how or why a veterinarian would inject a horse without the trainer's knowledge, for the reasons aforesaid. Further, Dr. Waterman's belief is not relevant to this proceeding, which requires that the Commission Staff prove administration of an illicit medication by a preponderance of the evidence, which is a requirement that they simply cannot meet.

C. MICHAEL SMITH TESTIMONY

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 95**

Respondents object to the Finding that both Davis and Williams shared responsibility for horses they trained. Williams was merely an assistant trainer and therefore would only be responsible for horses under his care, custody and control, while he was present. He was not in the State of Indiana on the night in question and therefore cannot share responsibility.

**RESPONDENT'S OBJECTION TO
FINDING OF FACT NO. 96**

Respondents object to the Finding that Williams' actions did not absolve him. For reasons previously stated, the fact that Julian Williams was not in Indiana does absolve him from responsibility due to his status as an assistant trainer, not present on the night in question.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 97**

Objection. It is irrelevant to any case concerning the Respondents herein whether Mr. Smith warned Dr. Baliga with phone calls alleging improper conduct by Dr. Baliga absent some proof that these warnings were made known to Respondents. No such evidence was presented by Commission Staff and thus any warning that Smith would have given to Dr. Baliga is irrelevant to this proceeding.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 100**

Respondents object to any Finding as to whether Mr. Smith warned Dr. Baliga about violating Rules. Director Smith's actions are inconsistent with his testimony. If he assumed that Julian Williams was present, as was his testimony, Williams and Davis would have been equally liable. Julian Williams' absence from Hoosier Park on the date in question, should not have increased Davis' responsibility and/or penalty.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 101**

Objection. Respondents' object to the filing of an Amended Complaint against Davis based upon the fact that neither he nor Williams was present on the date in question. At all times material, Davis was the trainer of Iam Bonasera and therefore his responsibility should not have increased by the fact that neither he nor the second trainer was present at Hoosier Park on September 30, 2016.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 102**

Respondents object to the Finding that the Legislative Directive directed the Standards leading to the filing against the Respondents. Indiana's Integrity Program led to the development of a Lasix Room and a requirement that a security guard be present in said room when the Lasix was drawn. Therefore, if any of the actions alleged, in fact occurred, the program in place would have prevented Respondents from observing the Lasix administration and thereby preventing any illicit administration.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 104**

Respondents object to the Finding that Smith should consider the injection of a horse on race day as an intention to cheat. Mr. Smith should not have considered the injection of the horse on race day when considering a penalty against Respondents. It is not alleged that the Respondents injected any horse on race day. In fact, there is no proof that such administration actually occurred, nor that Respondents had any knowledge of any such injection.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 105**

Respondents object to this Finding concerning Mr. Smith's belief. It is irrelevant what Mr. Smith believed may have occurred. The Commission Staff had the burden to prove that defendants were complicit in Dr. Baliga's alleged activity by a preponderance of the evidence and no such evidence has been offered of Respondents' knowledge or participation. This is mere conjecture on Mr. Smith's part, yet it is offered as evidence of Respondents' participation, which Respondents submit is woefully insufficient to prove knowledge by a preponderance as required.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 106**

Respondents object to the Finding that Smith reviewed facts and sanctions assessed for similar violations. Smith has testified that he formulated his decision on appropriate penalties based on his review of the Estvanko case, which has been distinguished as previously discussed. (Transcript, P. 193).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 107**

While Mr. Smith has experienced training and racing Standardbred Horses for 27 years, he has only been in an Administration Position dealing with penalties since February, 2016, and has only been in this Administrative Positive for seven (7) months at the time of this occurrence. His experience in an administrative capacity is thus called into question in determining any appropriate penalty.

D. PETRA HARTMAN TESTIMONY

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 116**

Respondents object to testimony as to what is possible. What is possible is not relevant to the instant proceeding. The Commission Staff has a burden of proving by a preponderance of the evidence that not only did Dr. Baliga administer something to Iam Bonasera on race day but that the Respondents were aware and complicit in said administration and no such evidence was elicited through this witness. Anything is possible, but no proof was offered.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 117**

Respondents object to this Finding. While the absence of a positive does not prove that a horse has not been injected with a substance, it is not proof that something was administered which apparently is the opinion of the ALJ in this matter, based solely upon the (inconsistent) testimony of Mr. Hicks. There is simply no proof that Iam Bonasera was administered anything on the date in question and the Commission had more than six months to conduct testing of the samples taken from Iam Bonasera to prove same, but could not.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 119**

Respondents object to the "testimony" of IHRC Staff. Counsel for IHRC Staff was not a witness to the proceeding and therefore the ALJ should not have given any consideration to Ms. Newell's testimony. In fact, Ms. Newell "testimony" directly contradicted Petra Hartman's testimony that sample E21020 was the clear vial. Again, Ms. Hartman was offered by Commission Staff and thus her testimony should not have been impeached by "testimony" of Commission Staff counsel. (Transcript, P. 227)

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 120**

Respondents object to the Finding that neither party offered any clear explanation identifying which vial was tested. Absent the comments by Staff Counsel, it does not appear there is any confusion. Ms. Hartman did testify that sample E21020 was the vial. (Transcript, P 227). Further, the Commission has the burden of proving their case. The Commission Staff had exclusive possession of the vial, as well as the other item which was allegedly tested by the Industrial Laboratories. As Commission Staff had exclusive possession of the items tested, six months to complete said testing and the burden to prove their case by a preponderance, it was the Commission Staff's burden to provide a clear explanation as to which vial was tested in Respondents' Exhibit.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 121**

Respondents object to and take exception to any Finding of Fact that they caused confusion or uncertainty by the filing of a Motion to Preclude the Test Results of Iam Bonasera or any lab results from testing on the needles, syringes or vial allegedly found in the Lasix Room. The Commission Staff had six full months from the date of the alleged occurrence until the deadline for discovery to conduct testing on the samples taken from the horse and the vial. They had exclusive possession of these samples during the entirety of that time, as well as the burden of proving their case by a preponderance of the evidence. Mike Smith, on behalf of the Commission

brought these charges and it is incredulous that he would bring such charges before receiving the results of the testing by the laboratory. There was no confusion or uncertainty, other than that caused by Staff Counsel, and their failure to complete the investigation before bringing charges or at least by the Discovery deadline. Respondents find it outrageous that the ALJ found them responsible for “confusion and uncertainty.

**RESPONDENTS’ OBJECTION TO
FINDING OF FACT NO. 122**

Respondents object to the Finding that the Ruling left the Commission without any clear test results. To the contrary, the Commission had six full months to complete testing and it is their dilatory conduct alone which caused by their failure to submit test results. Respondents believe that the testing should have been completed before the Commission brought any charges.

**RESPONDENTS’ OBJECTION TO
FINDING OF FACT NO. 123**

Respondents object to the inference that the somehow had an obligation to provide test results on Iam Bonasera. Rather, the Commission has the burden of proving their case by a preponderance, and Respondents believe that this would require the offering of the test results conducted on samples which were in their exclusive possession.

**RESPONDENTS’ OBJECTION TO FINDINGS
CONCERNING RESPONDENTS’ DEFENSE**

**RESPONDENTS OBJECTION TO
FINDING OF FACT 126**

Respondents take exception to the footnote to #126 and the issue as to who contacted Mike Hall was irrelevant. Hicks testified on three occasions that he spoke with Mr. Hall directly. He testified that he was sure that he spoke with Mr. Hall and that he knows his voice. (Transcript, P. 116). Hicks clearly could not have talked to Mr. Hall and this brings Mr. Hicks’ recollection,

observation and veracity into question. What is ignored by the ALJ in his Findings is the testimony of Mr. Hall that he personally met with Mr. Hicks on the date in question at a time after his arrival, but before 4:10 PM when he left the Judges' office, stopped at the paddock to be breathalyzed, and went to the Judges' stand in preparation for the first race. Again, this calls into question both Mr. Hicks and Judge Hall's recollection and veracity.

DR. JOSEPH BALIGA'S TESTIMONY

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 136**

Respondents object to the use by the ALJ of the term "In Today". Again, the ALJ chooses to use the term "In Today" horses, a term used exclusively in Thoroughbred racing documenting his reliance upon the Estvanko case which is not applicable to the instant matter.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 143**

Respondents object to the characterization that Dr. Baliga "lied" to Terry Richwine. Dr. Baliga did not lie to Mr. Richwine. Rather, he simply forgot about having the vial, in part due to the stressful situation. (Transcript, P. 318-319). It is an outrageous mischaracterization by the ALJ to state that Dr. Baliga lied to Terry Richwine, and accusation not even made by Staff Counsel.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 146**

Respondents object to the finding that Dr. Baliga did not correct his statement because he did not think it was worth it. Rather, did not advise Mr. Richwine of his recollection of having the vial because he had already been summarily suspended and he felt that the proceedings against him were a "kangaroo court" and the odds were stacked against him. (Transcript, P. 326-327).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 147**

Respondents object to any consideration of Dr. Baliga's penalty in regard to the instant matter. What Dr. Baliga did or didn't do in that Lasix Room cannot be considered unless some evidence is shown that Respondents were aware of the alleged actions, and should not be considered in the instant matter.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 148**

Respondents object to any finding which takes into consideration Dr. Baliga's prior penalty history. It is irrelevant and immaterial whether Dr. Baliga had previously been suspended in 1993 as it relates to this matter. The fact that it was mentioned shows a bias against Dr. Baliga and a predisposition to find Respondents liable. This, in addition to the fact that the suspension was later overturned by the Court and therefore should never have been considered even against Dr. Baliga. (Transcript, P. 284-285).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 150**

Respondents object to mention of Dr. Baliga's treatment log as irrelevant and immaterial to the instant proceeding concerning Respondents. Any consideration of a failure by Dr. Baliga to comply with Indiana Rules is irrelevant to Respondents herein. Further, Dr. Baliga's testimony was that these were handwritten notes made contemporaneous to the treatment rendered, and that he later transcribes them to the computer for billing purposes, (Transcript, P. 291-292) in compliance with the Indiana Regulations.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 151**

Respondents object to the ALJ's characterization that Dr. Baliga's treatment log was questionable without some explanation as to the reason for this Finding. Further, this ALJ is not qualified to make any determination regarding Dr. Baliga's treatment log, which again, was merely a note made contemporaneous to treatment, which was later transcribed onto a computer.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 154**

Respondents object to any finding that counsel for respondents spoke with Dr. Baliga about Mr. Hicks' testimony the day prior, as if there was something improper in said discussion. Dr. Baliga merely asked whether the argument between him and Mr. Hicks was brought up and counsel responded. (Transcript, P. 329).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 155**

Respondents object to the mischaracterization in this finding of Dr. Baliga's testimony concerning a meeting with Dr. Hollendonner. Nowhere in Dr. Baliga's testimony does he state that the main purpose of the meeting was to express concerns or complaints against David Hicks. Rather, Dr. Baliga merely testified that "it was brought up during that time that Dave's a little on edge". (Transcript, P. 325).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 158**

Respondents object to any discussion about Dr. Baliga's prior proceedings before the Commission. This case deals with the respondents and whether they should be held accountable against Mr. Hicks' accusations. Dr. Baliga's feelings about prior proceedings are immaterial and were only be added to these findings to show a predilection against Dr. Baliga and respondents herein.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 160**

Respondents object to the finding that counsel for respondents agreed that Dr. Baliga was upset. It is irrelevant and immaterial to these proceedings that counsel for Respondents acknowledge that Dr. Baliga was upset. Further, as Dr. Baliga himself explained, the fact that he was upset was due to the way his case was handled by this same ALJ. (Transcript, P. 326-327).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 161**

Respondents object to the finding that Dr. Baliga's testimony lacked credibility. To the contrary, respondents believe that Dr. Baliga did testify credibly and he did not contradict prior testimony like Mr. Hicks.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 162**

Respondents object to the finding that Dr. Baliga has interest in the outcome of this proceeding. To the contrary, Dr. Baliga has been summarily suspended by this Commission and his case concluded.

JULIAN WILLIAMS' TESTIMONY

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 166**

Respondents object to the finding that Indiana is the only state that he is licensed as an Assistant Trainer. Mr. Williams testimony was that Indiana was the only state where he has ever seen anyone get licensed as an Assistant Trainer. (Transcript, P. 332).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 171**

Respondents object to the finding that Williams was unaware of what Dr. Baliga administered to horses under his care. Mr. Williams did not testify that he was unaware of what Dr. Baliga was administering to horses under his care. Rather, his testimony was that he didn't recognize many of the entries on Dr. Baliga's bill, which had nothing to do with the treatment administered. (Transcript, P. 346-347).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 180**

Respondents object to the inference taken by the ALJ for the failure of Robert Dean to appear at the hearing. Respondent was under no obligation to call Mr. Dean who would only have testified that he saw Dr. Baliga give the Lasix shot, which was expected. Respondents determined that Mr. Dean was unavailable and therefore removed his name from the final list submitted of those who would testify. Mr. Dean is a licensee of the Indiana Racing Commission and therefore the Commission was empowered to compel his testimony if they so choose.

DYLAN DAVIS TESTIMONY

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 197**

Respondents object to a Finding that Julian Williams was the Assistant Trainer of Iam Bonasera on September 30, 2016. Rather, Mr. Williams was in Ohio and therefore was not serving as an Assistant trainer for Iam Bonasera on that date.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 198**

Respondents object to the ALJ's mischaracterization of Mr. Williams' involvement with veterinary care. In fact, Mr. Williams testified that he does not make decisions, he makes phone

calls to Mr. Davis, (Transcript, P. 385), and that he has never asked Dr. Baliga to treat a horse (Transcript, P. 338).

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 221**

Respondents object to the conclusion that Mr. Williams was serving as an assistant trainer for Dylan Davis on September 30, 2016. To the contrary, Mr. Williams was in Ohio on that date and was not responsible for anything that occurred in Indiana on that date.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 222**

Respondents object to the Conclusion that they were responsible for the condition of Iam Bonasera regardless of the acts of third parties. Under the unique circumstances herein, any act alleged would have occurred in a paddock controlled by the Commission, and further in a locked room, accessible only to the veterinarian and a security officer retained by the racetrack at the instruction of the Commission. Respondents could have no knowledge of, nor could they have done anything to prevent any action, if, in fact it occurred. Respondents remind the Commission that there was no positive test for Iam Bonasera and the only witness to the allegations has provided contradictory testimony on multiple occasions and therefore cannot be found credible.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 225**

Respondents object to the conclusion that the Commission Staff met its burden of proof with regard to the violations without a positive finding and based solely upon the testimony of David Hicks who has offered multiple versions of the events of that date, all of which are contradictory, against other evidence, and which vary from the recollection and testimony of other witnesses.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 226**

Respondents object to the conclusion that the Commission staff established that Dr. Baliga injected Iam Bonasera, by a preponderance of the evidence. There is no substantial credible or reliable evidence that Dr. Baliga injected Iam Bonasera with an unknown substance on September 30, 2016. To the contrary, there was no positive finding that anything was in the horse's system and only offered the aforementioned contradictory and inconsistent testimony of David Hicks. Further, there is yet another reference to an "In-Today" horse which is a term of art used for Thoroughbreds who race from a stable and not from a restricted and regulated area such as the Lasix Room and the Paddock.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 227**

Respondents object to the Conclusion that they did not take precautions to prevent the administration. Even assuming the Commission Staff's version of events, Dr. Baliga's actions would have occurred in a locked, private room in front of a security guard, appointed through the Commission and Respondents would have no way of knowing, let alone stopping Dr. Baliga's actions. Even if Respondents were present, which they were not, they would have only seen Dr. Baliga administer the Lasix shot to Iam Bonasera which was to be expected.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 228**

Respondents object to the Conclusion that they did not provide reliable evidence to contradict the evidence submitted by IHRC Staff. To the contrary, Respondents provided ample evidence to discredit the Staff's sole eyewitness, David Hicks, by pointing out his inconsistent prior testimony, his recollection and observation to the point where the ALJ himself, on multiple occasions, stated that Mr. Hicks has been "effectively impeached". (Transcript, P. 89 and 125). It

is the Commission staff which failed to provide any credible or reliable evidence to support their case.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 229**

Respondent, Williams objects to the Conclusion that he was responsible for Iam Bonasera on September 30, 2016. The cited Statute states that an Assistant trainer may substitute for and assume the same duties. In the instant matter, however, Mr. Williams was out of State and therefore not acting as an Assistant Trainer on that date.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 230**

Respondents object to the Finding that anything was administered to Iam Bonasera on September 30, 2016. There has been no credible evidence offered by Commission Staff that anything was administered to the horse.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 235**

Respondents object to the Conclusions that they violated 71 I.A.C. 8-1-1.5(b) because there has not been any credible evidence offered by the Commission Staff that anything except Lasix was administered to Iam Bonasera on September 30, 2016.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 236**

Respondents object to the Conclusion that they failed to insure the fitness of the horse, Iam Bonasera by allowing race day administration of an unknown substance. The Commission Staff has put forth no credible evidence that any substance was administered to Iam Bonasera except Lasix and they have offered no evidence that Iam Bonasera was unfit on September 30, 2016.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 238**

Respondents object to the Conclusion that they allowed race day administration of an unknown substance to Iam Bonasera on September 30, 2016. To the contrary, there has been no credible evidence offered of administration of anything to Iam Bonasera except Lasix.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 239**

Respondents object to the Conclusion that they violated any of the cited Regulations. There has been no credible evidence offered by Commission Staff that there was any violation.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 240**

Respondents object to the conclusion that a positive drug test is not necessary for there to be a violation of 71 IAC 5-3-3(a)(5)(18) or (27). While a positive drug test is not necessary to prove a violation, there must be some other evidence of administration of an illicit medication. No such evidence has been offered by the Commission Staff.

**RESPONDENTS' OBJECTION TO THE ANALYSIS
AND ULTIMATE FINDINGS OF FACT OF ALJ PYLITT**

RESPONDENTS' OBJECTION OF ANALYSIS NO. 241(b)

Respondents object to the characterization by the ALJ that Respondents have three "contrary theories". Respondents have five alternative theories, each of which is more plausible than that offered by the Commission Staff. Respondents do not believe that David Hicks lied because of a long-time grudge over a frozen Snicker bar. Rather, Respondents believe that Hicks and Baliga do not like each other and that Hicks may have been aware that the Commission was

watching Dr. Baliga, as Mr. Smith testified, and that Hicks simply made up the story to the detriment of Dr. Baliga, not caring about the consequences to Respondents.

Additionally, Respondents believe that a significant argument which is ignored by the ALJ is that even if Mr. Hicks was correct, what is alleged to have occurred would have occurred not only in the Paddock, an area under Commission control, but further in a secured, locked room where only Dr. Baliga and a security guard hired upon the instruction of the Commission, as part of its integrity program, would have been privy to what happened. Respondent could not have known of Dr. Baliga's actions and would only have seen the Doctor administer a syringe full of Lasix which was exactly what he was supposed to do.

Mr. Hicks, however, assigned as part of the State's Integrity Program, by his own testimony, was aware of Dr. Baliga's actions and chose to do nothing to prevent the administration of Lasix to the horse, to the detriment of Respondents. Therefore, Respondents were not responsible for Dr. Baliga's action and Integrity Officer Hicks did nothing to protect Respondents to their detriment.

Perhaps the only time that Hicks testified credibly was at the end of his testimony at the hearing when asked by staff counsel "do your job duties include confronting Lasix veterinarians?" He answered, "if I see something wrong." He was then asked, "But you did not confront Dr. Baliga in this case?" and he answered "no". (Transcript, P. 144). Thus, the only inference that could be drawn from Hicks' testimony is that he did not see Dr. Baliga do anything wrong as he did not confront him.

Over and above this argument, and not mentioned in the Findings of Fact of the ALJ are the dramatic inconsistencies in the testimony of David Hicks. Hicks gave a recorded statement to Officer Richwine on September 30, 2016, the date of the race. After having just left the Lasix Room to give the statement, he stated to Richwine that he had gone through both trash cans "clear to the bottom" and found nothing.

At the hearing, Hicks testified that he only went through the trash in the Lasix Room once (Transcript, P. 121) and this was when he returned to the Lasix Room after giving the statement, to search the trash, and found the vial. (Transcript, P. 66). At the hearing, he denied conducting any search before the statement (Transcript, P. 115), which contradicts the recorded statement given on the date of the race.

At the time of the recorded statement, Hicks told Richwine that the top of the vial was blue. (Transcript, P. 95). Lasix tops are blue. After viewing the photos which clearly showed a red top vial, Hicks changed his testimony (Transcript, P. 88-89). Having seen blue Lasix caps all day long, a red cap should have stuck out in his recollection, but did not.

At deposition, Hicks testified that the label of the vial was torn off such that you could see the glue on the vial. When shown the picture of the vial at the hearing, Hicks changed his testimony and admitted that the label was still on the vial and that he could not remember the glue (Transcript, P. 133-134).

Hicks also testified that he called the Judges to report what he saw, and that he spoke with Presiding Judge Mike Hall. He testified that he knows Mike Hall's voice and there was no doubt in his mind that it was Hall to whom he reported what he saw. (Transcript, P. 116). Yet, Mike Hall candidly testified that he did not speak with Hicks and that he first learned of the alleged allegations in a phone call from Associate Judge Dave Magee (Transcript, P. 265).

Interestingly, Michael Hall testified at deposition and again at the hearing that Hicks came to the Judges' Office and gave a personal interview lasting between 5 and 12 minutes before the Judges left the office to go to the roof of the racetrack. (Transcript, P. 266). This proves unlikely, if not impossible, as Hicks was in the Paddock until the last horse received Lasix which was 4:14 PM (Exhibit 6E) and the Judges left their office at approximately 4:10 (Transcript, P. 267). Hicks specifically denied meeting the Judges (Transcript, P. 117).

Thus, Hicks' testimony was rife with inconsistencies to the point where the ALJ on two separate occasions stated on the record that Mr. Hicks' testimony had been impeached (Transcript, P. 89 and 125). Hicks was the only eye witness to the allegations against Dr. Baliga, and Hicks was the only witness whose testimony was impeached. Incredibly, the ALJ found Hicks to be credible.

The fifth position of Respondents is that Julian Williams is not and cannot be responsible for Dr. Baliga's actions in that he was in Ohio on the night in question, he was not acting as Assistant trainer, and could not have taken any safeguards against the alleged actions of Dr. Baliga.

RESPONDENTS' OBJECTION OF ANALYSIS NO. 243

Respondents object to the Finding and Conclusion by the ALJ that the Commission Staff proved by more than a preponderance of the credible and reliable evidence that Respondents violated Commission Regulations. There simply is no credible and reliable evidence that any violation occurred. This, despite the efforts of the Commission Staff in hiding the recorded statement that David Hicks gave on the night of the race, and failed to supply same in response to Respondents' Request to Produce until Hicks mentioned the statement in his deposition testimony; by refusing to provide proper documentation of the analysis of the samples in a timely fashion as required and by striking rebuttal witnesses who would have further attacked Hicks' already weak credibility.

RESPONDENTS' OBJECTION OF ANALYSIS NO. 245

Respondents object to the Finding and Conclusion by the ALJ that the Commission Staff proved by more than a preponderance of the credible and reliable evidence that Respondents violated Commission Regulations. There simply is no credible and reliable evidence that any violation occurred. This, despite the efforts of the Commission Staff in hiding the recorded statement that David Hicks gave on the night of the race, and failed to supply same in response to Respondents' Request to Produce until Hicks mentioned the statement in his deposition testimony,

by refusing to provide proper documentation of the analysis of the samples in a timely fashion as required, and by striking rebuttal witnesses who would have further attacked Hicks' already weak credibility.

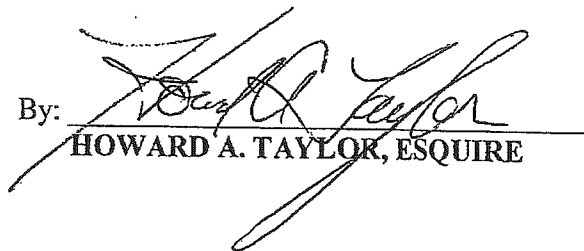
RESPONDENTS' OBJECT TO THE RECOMMENDED ORDER
RESPONDENTS' OBJECTION TO 247-253

Respondents object to the Recommended Order of the ALJ that they be suspended for sixty (60) days and fined \$1,000.00 each. There was one eyewitness to the alleged offense, David Hicks, whose testimony cannot be believed. There was one expert witness offered by the Commission Staff, who himself could not explain his qualifications to testify as an expert witness. Executive Director Smith testified that he based his charges upon the Estvanko matter, a case with a pattern so different that it must be distinguished and cannot apply to the facts herein. Finally, the Commission Staff counsel, who seems more interested in winning her case than promoting the interests of fundamental fairness and justice by withholding evidence.

WHEREFORE, Respondents respectfully request that the Commission over-rule the Recommendation of ALJ Bernard Pylitt and enter an Order in favor of the Respondents.

HOWARD A. TAYLOR, LLC

By: _____


HOWARD A. TAYLOR, ESQUIRE

Indiana Horse Racing Commission : Administrative Complaint
v. :
Julian Williams : No. 216007 and 216008
And :
Dylan Davis :

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following individuals by electronic transmission on the 9th day of June, 2017,

Holly Newell, Esquire
Indiana HRC
1302 N. Meridian Street
Indianapolis, IN 46202

The Honorable Bernard L. Pylitt
334 N. Senate Avenue
Indianapolis, IN 46204

Mike Smith, Director
Indiana Horse Racing Commission
1302 N. Meridian Street
Indianapolis, IN 46202

HOWARD A. TAYLOR, LLC

BY: 
HOWARD A. TAYLOR, ESQUIRE

Indiana Horse Racing Commission : Administrative Complaint
v. :
Julian Williams : No. 216007 and 216008
And :
Dylan Davis :

RESPONDENTS', JULIAN WILLIAMS AND DYLAN
DAVIS, BRIEF IN OPPOSITION OF THE ALJ'S PROPOSED
FINDINGS OF FACT AND RECOMMENDED ORDER

Respondents, Julian Williams and Dylan Davis (hereinafter Respondents) by and through their counsel, Howard A. Taylor and Peter J. Sacopulos, pursuant to Indiana Horse Racing Commission's Notice of Opportunity to Present Brief and/or Argument, issued July 26, 2017, hereby submits their Brief in Opposition to the Recommended Order and respectfully requests that the IHRC reject the Recommended Order and allow them to be heard and the allegations against them be decided on the Merits pursuant to Indiana Law.

Respondents incorporate by reference their Verified Objection to the Findings of Fact and Recommended Order suspending each Respondent for Sixty (60) days together with a Two Thousand Dollar (\$2,000.00) fine dated May 25, 2017 as additional argument and authority for the IHRC to reject the ALJ's Recommended Order. A true and correct copy of same is attached hereto as Exhibit "A". Further, in support of Respondents' position that the ALJ's Recommended Order be rejected, Respondents state:

This case boils down to one thing and one thing only, the credibility and power of observation of Hoosier Park Security Guard, David Hicks, on September 30, 2016. Mr. Hicks claims to have seen Dr. Joseph Baliga draw into a Lasix syringe something other than Lasix, which he allegedly drew from a vial that was purportedly stored in his sweatshirt. He did not confront Dr. Baliga at that time, nor did he ever confront Dr. Baliga, or seek an explanation.

Rather, Hicks followed Baliga to the fifth race Lasix administration. Hicks claims to have seen Dr. Baliga withdraw the syringe from his sweatshirt and administer the contents of the syringe to Iam Bonasera, a horse trained by Dylan Davis. Julian Williams was Davis' assistant trainer.

Again, Hicks said nothing to Dr. Baliga, or to Davis' representatives holding the horse. In fact, he waited three to four more races before calling the Judges to report what he claims to have seen.

The Lasix is drawn up in a highly secured room. Hicks and his supervisor are the only ones with a key. Hicks and the Lasix vet (on this night, Baliga) are the only ones allowed in that room. Thus, Hicks and Baliga are the only ones with knowledge of what occurred in that room on that night.

Neither Dylan Davis nor Julian Williams were present that night. Both were racing in different jurisdictions. However, if they had been present, they would not have been able to witness what Hicks alleged to have occurred.

Iam Bonasera was subsequently scratched and tested. The only thing found in his system was the Lasix Dr. Baliga administered. The vial that Hicks allegedly found was tested and likewise only showed the presence of Lasix.

Dr. Baliga denied administering anything but Lasix to Iam Bonasera. Yet he was summarily suspended by the Commission and later given a five-year suspension without a hearing on the merits. Julian Williams was given a two-month suspension and a One Thousand Dollar (\$1,000.00) fine. While Dylan Davis appealed what was initially only a fine, the Commission subsequently amended the Complaint against him to a sixty-day suspension as well.

The Administrative Complaints were all assigned to ALJ Bernard Pylitt. ALJ Pylitt took “official notice” on an earlier case he tried, Indiana Horse Racing Commission Staff v. Estvanko and Granitz, an unreported case over which he presided. Commission Staff counsel, Holly Newell represented the IHRC in that case, as well as this matter, the summary suspension hearing, appeal of the summary suspension, the administrative complaint, and the appeal of the recommended order entered against Dr. Baliga. Thus, they were intimately aware of the facts of the earlier case.

On the surface, the two cases look astoundingly similar. Both concern an eyewitness accusing a veterinarian of allegedly treating a horse on race day. Both horses were tested with nothing improper found in their system, both veterinarians were suspended, and in both cases, the trainer was charged despite being out of town at the time of the allegations.

However, a closer examination demonstrates stark differences such that the Estvanko Rulings cannot be applied. Estvanko deals with a Thoroughbred. Thoroughbred horses are administered Lasix in their own stall by their own vet.

There is an “In to Go Sign” placed on the door of the stall. Therefore, no vet is allowed in the stall on race day, unless accompanied by a security guard. The mere presence of the vet in the horse’s stall without a guard is a per se violation, regardless of what was done.

In Harness Racing, the horses enter the paddock, a secured area controlled by the Commission. Only licensees with a horse in that night are allowed into the paddock.

Lasix for horses entered that night was drawn by a single veterinarian assigned for that week. He prepares the Lasix in a private, locked room. Only he and the security guard have access to the room, thus preventing any tampering such as is alleged. The trainer would not have access to this room, nor any acknowledge of what occurred. He would only see a Lasix vet administering Lasix to his horse. There is no per se violation, and thus any Ruling from the

Estvanko case would not apply here. The Hearing Officer ignored this differentiation and blindly applied the Estvanko Findings to the instant facts.

ARGUMENT

There are two witnesses privy to any allegations of any violation, David Hicks and Dr. Joseph Baliga. Dr. Baliga candidly testified that he did, indeed, have a vial that he inadvertently brought into the paddock. However, this vial was empty, having been used on a horse Baliga legally treated before entering the paddock. Baliga insists that he never used this vial, nor did he administer anything improper to Iam Bonasera.

Baliga did initially deny having any vial. However, he did later recall having the vial when he entered his treatment log onto his computer for billing several days later. By that time, he had already been summarily suspended and denied the opportunity to testify at his hearing. He felt he was treated unfairly and, therefore, there was no reason to contact security about the vial.

The only other witness is David Hicks, a man who gave two statements, a deposition and trial testimony. Each time Hicks testified, his testimony varied so widely that it is impossible to determine what Hicks saw, or when, and thus his testimony should be discarded.

Security took a recorded statement from Hicks on the night of the race. In his statement, Hicks said that before he came to the security office, he returned to the Lasix room searching for the vial. He went through both trash cans "clear to the bottom", yet found nothing.

Six weeks later, on November 10th, Hicks appeared at the office of IHRC attorneys, Newell and Ellingwood, and, with their aid, he prepared an Affidavit of what occurred. In this sworn statement, Hicks testified that after Lasix rounds were completed, he discovered the vial in

the trash bin in the Lasix room. This is in direct contrast to his recorded statement given on the date of the race.

When questioned at the hearing, Hicks admitted to reviewing the recorded statement before both his deposition testimony and again at the hearing, and agreed that the recorded statement was accurate. He also testified at the hearing that he only went through the trash can once.

Interestingly, he makes no mention of having given this earlier statement. Also interesting is that the recorded statement was not turned over in response to Respondents' Request for Production of Documents. In fact, Respondents were forced to file a Motion to Compel Counsel to turn over this critical piece of evidence.

There were other inconsistencies between Hicks' recorded statement and subsequent testimony. While not quite as dramatic, they clearly call into question Hicks' veracity and perception.

In his recorded statement, he stated that the lid on the vial was blue. However, the pictures taken by Sgt. Pyle on September 20th, clearly show that the vial was red. Hicks opened Lasix bottles with blue caps all night. A red cap should have stood out as something apart from the norm, calling into question his all-important powers of perception.

Hicks also testified at deposition that the vial he found had the label torn off and he could see the glue where the label had been. At the hearing, when confronted with Sgt. Pyle's photos, he changed his testimony to admit that the label was still on the vial and he couldn't see any glue.

Finally, Hicks testified that he saw Dr. Baliga remove the syringe from his sweatshirt and administer it to Iam Bonasera. Nine horses received Lasix in the fifth race on September 30th. Administration began at 1:24 and ended at 1:32. The sequence of administration was scattered as not all caretakers were by their horses. The sequence was such that horse #2 received Lasix first, followed by #1, #5, #6, #4, #3, #7, #8 and #9.

Therefore, in eight minutes, Hicks and Baliga had to traverse the nine stalls, moving up and back. During this time, Hicks had to travel to the stall, ask the dosage, retrieve the correct syringe, confirm the tattoo number on the right side of the horse (while Lasix is administered on the left), hand the groom the clipboard for his signature, record his license number and the time for each horse. Despite this tight schedule, Hicks testified that he had ample time to watch Dr. Baliga sneak a syringe from his sweatshirt.

It must be pointed out that Iam Bonasera is a big horse. Hicks was standing on his right to read the tattoo number and complete the paperwork. Dr. Baliga was standing on the opposite side, up against the horse, giving the shot. On top of all this, Stall #1 in the fifth race is by the door, where horses enter. The sun blasts in through the door into Hicks' face. Thus, Hicks could not have a clear vision of Dr. Baliga's activities in administering Lasix nor any time to observe him.

Another inconsistency is that Hicks testified that he called the Judges to report what he saw after Lasix administration for the 7th or 8th race. Hicks claims to have spoken to Presiding Judge Michael Hall. He knows Mr. Hall's voice and is positive that he spoke with Hall to report Dr. Baliga.

Hall denies speaking with Hicks on the phone that day. In fact, he could not have spoken with Hicks as he was not yet at the track and Hicks did not have his cell phone number.

Interestingly, Hall testified that he met with Hicks personally in his office that day to discuss the matter. Hicks however denies any personal meeting with the Judges on that date. In fact, it would not have been possible for Hicks to have met the Judges because Hicks was in the paddock with Dr. Baliga until after the Judges had left to go to the roof.

Finally, Hicks himself testified that he understood that his job duties include confronting Lasix veterinarians if he sees something wrong. However, Hicks did not confront Dr. Baliga when he allegedly saw him draw from a vial into a syringe of Lasix. He likewise didn't feel the need to confront the doctor when he allegedly saw him pull that same syringe from his sweatshirt to administer to Iam Bonasera.

Again, David Hicks is the only individual giving eyewitness testimony of allegedly improper conduct by Dr. Baliga. However, he has given inconsistent and contradictory statements as to what he saw and did on September 30, 2016. Twice at the hearing, Judge Pylitt stated that Hicks trial testimony had been impeached by his own prior statements. He was the only witness whose testimony was impeached, and this was the only time that Judge Pylitt used that term. Yet somehow Judge Pylitt found Hicks' testimony credible to the exclusion of all others.

Presiding Judge Michael Hall also testified about his conversations with David Hicks. Mr. Hall contradicted Hicks' testimony by denying that he spoke to Hicks on the phone. Hall believes that Hicks may have spoken with Associate Judge Dave Magee, because Magee is who called Hall. Hall also testified that he met with Hicks in person on September 30th in the Judges

Office before leaving for the grandstand. This proves impossible as Hicks remained with Dr. Baliga in the paddock until after the Judges left for the stands. Again, Hicks denied ever meeting with the Judges.

The Commission offered the testimony of Dr. Scott Waterman as an expert in the field of equine medicine. Over objections, ALJ Pylitt allowed him to testify based primarily on his having been previously admitted as an expert in the Estvanko case. This, despite being thoroughly unqualified.

In private practice, Dr. Waterman never worked with large animals. His practice was limited to small animals only. He never worked in a research laboratory or conducted research with horse racing medications. He admitted to knowing little about Standardbreds, and was never in the paddock at Hoosier Park.

Most telling was Waterman's own answers at the hearing to questions by Staff Counsel Newell about his credentials to qualify as an expert in this field. He testified, "I guess it's a little vague. I'm not exactly sure." Yet somehow the ALJ accepted Dr. Waterman as an expert, merely because no one objected in the Estvanko case.

Executive Director Michael Smith also testified for the IHRC as to why he brought charges against the Respondents based upon Dr. Baliga's actions. Smith stated that he did so based upon the Estvanko case. Again, that case dealt with Thoroughbreds, who have a different set of rules and thus should not have been applied to Respondents herein.

Petra Hartman of Industrial Laboratory also testified for the IHRC. Ms. Hartman reviewed the results of testing on the vial allegedly found by David Hicks and another "tangentially involved" in this matter. The vial tested only for the presence of Lasix. The other

vial tested negative. Thus, there simply is no proof offered that anything but Lasix was administered to Iam Bonasera on September 30, 2016.

It is undisputed that Dylan Davis was home in Delaware on September 30, 2016. That is where he oversees the majority of his stable. Julian Williams was in Ohio where he was participating in a major stakes race. However, even if both had been in the paddock on that date, all they would have seen is the Lasix Vet administering Lasix to Iam Bonasera – exactly what he is supposed to do.

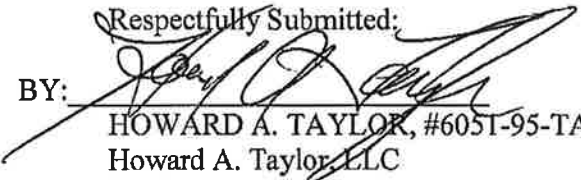
In this matter, the IHRC has failed to meet its burden to establish that anything improper occurred. They have tested the vial that they allege was taken from Dr. Baliga. It only contained Lasix.

The only other evidence presented was the testimony of David Hicks. This is completely unreliable for the many reasons stated aforesaid. There is no evidence of wrongdoing and has caused irreparable harm to Respondents, who would be unable earn a living for two full months, and who would have a permanent record for something that simply never occurred, and over which they would have had no knowledge.

For the reasons stated above, Respondents respectfully request the Commission reject the Recommended Order of ALJ Pylitt.

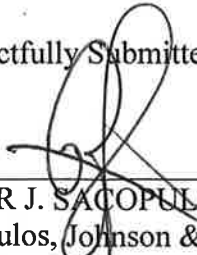
Respectfully Submitted:

BY:


HOWARD A. TAYLOR, #6051-95-TA
Howard A. Taylor LLC
123 South Broad Street
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Philadelphia, PA 19109

Respectfully Submitted:

BY: _____


PETER J. SACOPULOS, #14403-84
Sacopulos, Johnson & Sacopulos
676 Ohio Street
Terre Haute, IN 47807

CERTIFICATION OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon Attorney Holly Newell and Assistant Executive Director Deena Pitman via email on August 17, 2017.

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PETER J. SACOPULOS, ESQUIRE

Indiana Horse Racing Commission : Administrative Complaint
v. :
Julian Williams : No. 216007 and 216008
And :
Dylan Davis :

**RESPONDENTS' OBJECTIONS TO THE FINDINGS
OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER
OF ALJ BERNARD PYLITT**

Respondents, Julian Williams and Dylan Davis, by and through their attorney, Howard A. Taylor hereby object to the Findings of Fact, Conclusions of Law and Recommended Order of ALJ Bernard Pylitt in the instant matter, and will address same in the order raised by ALJ Pylitt, as following:

**OBJECTIONS TO ALJ'S CHARACTERIZATION OF THE PROCEDURAL
BACKGROUND**

Respondents object to the characterization of the proceedings before the Indiana Horse Racing Commission regarding Dr. Baliga. It is made to appear that Dr. Baliga was not issued a suspension until March 7, 2017, when in fact, Dr. Baliga was issued a summary suspension on September 30, 2016, the date of the incident and at a hearing several days which was prohibited from offering any testimony. Upon information and belief, Dr. Baliga was issued a default for failure to file a timely appeal of the actual Ruling and thus, was permanently prohibited from testifying on his own behalf and the summary suspension remained in effect while not formally adopted by the Commission until that March 7, 2017 meeting.

Respondents also take exception to the ALJ including in his procedural history the fact that Counsel for Respondents owned horses trained by Respondent, Davis, as if this was relevant to the proceedings. Certainly, there could be no conflict of interest as the ALJ was made aware at the initial telephone conference of the fact that counsel was retained because he was a friend of



Respondents, who then obviously requested his representation. There was never any attempt to hide these facts and there was no objection by Staff Counsel, nor should there have been.

Pursuant to the pre-hearing Order, all discovery was to be completed and exchanged by March 31, 2017. The ALJ failed to mention that the Motion was to Preclude the Introduction of Documentation of the Testing **not** a Motion to Preclude the discovery of any documentation, as the deadline for discovery had passed, Respondents' counsel was concerned that a late submission of documentation regarding the test results would be highly prejudicial to Respondents' ability to properly prepare a defense. It was the duty of the Commission Staff to produce these results upon a vial that would have been acquired on September 30, 2016 and, therefore, the Commission Staff had five and one-half months to complete the testing before the Motion. Respondents categorically deny the possibility that their Motion could have created any confusion and uncertainty during Petra Hartmann's testimony at the hearing. Again, the Commission Staff had five and one-half months to obtain results which should have been secured before charges were brought in the first place. Therefore, if there was any confusion, it would be caused by the failure of the Commission Staff to properly gather evidence, and not Respondents' attorney's zealous representation.

Again, Respondents take exception to the Finding that the Commission was left without the result of any testing of the samples drawn from Iam Bonasera on September 30, 2016. The Commission Staff had five and one-half months to secure this information which should have been obtained before charges were ever brought against Respondents.

Respondents take exception to the Official Notice taken by the ALJ of the record in the matter of In Re: The Matter of Richard Estvanko and Anthony Granitz, Petitioners v. Indiana Horse Racing Commission Staff, Appeal of Judge's Ruling No. 14694 and 14695, for several reasons. Preliminary, the Estvanko case was an unpublished Opinion and thus, it was impossible for Respondents to secure a copy of the Transcript, let alone to digest and respond to same within one week. Respondents were thus left to scramble to secure a copy of the Opinion which did not

fully disclose the facts in that case which Respondents believe were easily distinguishable from the instant matter.

Respondents were at a tremendous disadvantage as it was later discovered that Bernard Pylitt was the ALJ presiding over the Estvanko case with Ms. Newell acting as counsel for the Commission Staff. Thus, both the ALJ and Staff Counsel had the advantage of having sat through the proceedings, having a copy of the Transcript, of the entirety of the hearing and being uniquely aware of all of the facts which may or may not have been relevant to the instant matter.

Further, Respondents' counsel was left in the dark by the ALJ when attempting to determine what the ALJ was considering regarding Official Notice. Counsel sent an email to ALJ Pylitt stating "I do not understand what judicial notice is being taken. Are you referring to the application of the assistant trainer responsibility rule, or of Dr. Waterman's testimony about drugs that won't test? Or both? If we are talking about Dr. Waterman, I thought that you ruled that the Commission could not introduce evidence of testing results. Is this case published? How can I get a copy of it?"

In response, I received an email from the ALJ stating:

"I do not know if prior IHRC Ruling is published. It came up during your deposition of Mike Hall on March 27 at page 46 which caused me to issue my Notice. Please check with Holly for a copy of this prior ruling.

When I was the First Assistant US Attorney, an old federal Judge would answer questions from a jury about instructions by telling them to read the instructions again. My Notice clearly states my intent under IOPA and provides you an opportunity to submit any objection by next Monday.

We will discuss any issues with Dr. Waterman's testimony next Tuesday morning."

The email from ALJ Pylitt was sent at 11:20 a.m. on Tuesday, April 11, 2017, leaving less than one week for respondents to gather information sufficient to figure out what judicial notice

was being taken on this unreported opinion. Without the benefit of the transcript, the task was impossible. Respondents were therefore unable to file a timely objection to the Notice of Taking of Official Notice filed by the ALJ to their extreme prejudice.

In fact, after learning some of the pertinent information contained in the Estvanko decision, yet still without the benefit of reviewing the actual Transcript, Respondents have uncovered many issues which clearly differentiate the facts of the Estvanko case from the instant matter, sufficient to preclude the Official Notice taken by the ALJ in this case. The most glaring of the differences is that the Estvanko case dealt with Thoroughbreds and not with Standardbreds. As outlined in Dr. Waterman's testimony, they are worlds apart in that the Thoroughbreds do not enter a secured area such as the paddock, but rather remain in their stalls until they leave for the race. Thus, every horse that is racing on that date has a "In Today" sign on their stall door. No veterinarian is allowed to enter that stall on race day unless in the presence of a security guard.

In the Estvanko matter, there was an allegation by a "watcher" that a veterinarian entered the stall of a horse which was "In Today" without a security guard being present. This alone is a violation sufficient to cause a penalty to the trainer and veterinarian in question.

The instant matter dealt with Standardbreds who are required to enter the paddock, which is a secured area controlled by the Commission. Further, and perhaps of even greater significance is the fact that the Commission either appoints or approves a select group of licensed veterinarians licensed by the State who select one on a rotating basis to administer Lasix to all horses on any given date. The Commission then further mandates that the "Lasix Vet" enter a locked and secured room where, in the presence of a security guard, he draws up the Lasix syringes to be administered on each date. **Only** the Lasix Vet and the security guard are allowed into the room in question and thus, any trainer is prohibited not only from entering the room, but from viewing the drawing of the syringes with Lasix. Thus, the trainer would have no knowledge or ability to prevent any illicit activity, such as that alleged in this matter.

Additionally, in the Estvanko case, the trainer of the horse in question, Anthony Granitz, was not in the State when the veterinarian allegedly entered his horse's stall. Mr. Estvanko was the assistant trainer for Mr. Granitz and was at the track on the day of the race. Thus, he was acting as the assistant trainer and would be responsible in that capacity, if it were found that the vet, in fact, entered the stall on race day without a security guard.

In this case, both Mr. Davis and his assistant trainer, Julian Williams, were out of State on the date of the race. While it is agreed that Mr. Davis, as the trainer of record is responsible for guarding horses in his care, the Assistant Trainer should only be responsible for activities over which he has control. He is not the ultimate insurer as is the trainer, and thus should not have been held responsible for anything in this case, while he was out of State.

Had the ALJ properly given enough information to review the case in a timely fashion, Respondents certainly would have made these objections on the Record as requested. However, this "Trial by ambush" in citing an unpublished Opinion without providing access to the Transcript, and given a short one week time period to file Objections to issues which the ALJ refused to disclose while Staff Counsel knew exactly what had transpired in that case, allowed improper Official Notice to be taken of inapplicable facts which were easily distinguishable.

The fact that the ALJ chose to remark that the original exhibits were not all pre-marked were of no moment to this proceeding. Only one exhibit, a copy of Mr. Hicks' recorded statement transcribed by a certified court reporter was not pre-marked due to clerical error. This, however, did not affect the case, as counsel stipulated to the admission of the Transcript of the original recorded statement by Staff Counsel.

Next, Respondents disclosed, which they were not required to do, the fact that they may call unnamed trainers in rebuttal. It is well settled in law that a party is not required to disclose rebuttal witnesses as their relevance is dependent upon underlying testimony. As the testimony had not yet occurred, it was undetermined whether any witness would testify. Due to the sensitive

nature of their proposed testimony and fear of retribution by the Commission and/or Hoosier Park employees, all expressed reluctance. Counsel felt it imperative to secure their permission before disclosing their names in advance of the hearing. Unfortunately, permission could not be obtained until one hour after the twenty-four-hour deadline imposed by the ALJ, who then precluded any rebuttal testimony by Respondents. It is significant to note that no such restriction was placed upon Commission staff who did elicit rebuttal testimony, albeit of questionable relevance.

The ALJ felt it necessary to point out that Respondents offered an exhibit which contained allegedly confidential information about two horses which were treated by Dr. Baliga. This was unnecessary to put in the Findings, not germane to the case, and was clearly mentioned only to attempt to embarrass Respondents' counsel. What is not pointed out is the fact that this information was also overlooked by the ALJ and Commission Staff counsel.

For reasons previously noted, Respondents object to the Official Notice by the ALJ of the Estvanko. Respondents find it outrageous that the ALJ would take Official Notice that Dr. Scott Waterman was recognized as an expert in equine medicine, merely because he was so recognized in the Estvanko case. Dr. Waterman simply cannot be qualified as an expert witness in equine medicine and should not have been so qualified in the Estvanko case.

Dr. Waterman has never run any laboratory, and while he is a veterinarian, he has never worked in a large animal practice (Transcript, P. 153, L. 4-15). He has never worked in a racehorse laboratory with medications (Transcript, P. 164, L. 22 – P. 165, L. 4) and knows little if anything about Standardbreds (Transcript, P. 169, L. 7-12) and has never even visited the paddock at Hoosier Park where the instant allegations occurred. (Transcript, P. 171, L. 12-14). In fact, when asked by staff counsel to discuss his experience in the field of equine medicine, he candidly admitted "Well, I guess it is a little vague. I am not exactly sure". (Transcript, P. 152, L. 20-23). Thus, Dr. Waterman himself, tell the Court why he would be qualified as an expert in equine medicine.

**RESPONDENTS' OBJECTIONS TO
ADMISSION OF IHRC STAFF'S EXHIBIT 17 WHICH WAS
A PHOTOGRAPH OF A VIAL**

A Lasix vial is 50 ML, Exhibit 17 is a 10 ML bottle. According to Hicks' testimony, the vial that he allegedly saw in the Lasix room in Dr. Baliga's possession was substantially less than that in Exhibit 17. This exhibit is highly irrelevant and prejudicial in that it has nothing to do with this case, was not the size of the vial allegedly found by Hicks and has no business being part of this case.

**PARTIES
FINDINGS OF FACT:
**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 4****

Respondents object to Finding #4 that the regulations prohibit a licensed veterinarian from having contact with a horse within twenty-four hours prior to the scheduled post time for the race. This condition relates solely to the Thoroughbred industry where an "In Today" sign is placed on the door and no veterinarian is allowed to touch the horse. In the Standardbred industry, there simply is no such regulation, and a veterinarian is certainly allowed to have contact with a horse. He is just prohibited from injecting any substance into the horse, except for Lasix. This demonstrates the confusion that the ALJ had in separating the two sports which Respondents believe led him to take improper Official Notice of the Estvanko case.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 9**

Respondents object to the Finding that Williams "assumed" the same duties, responsibilities and restrictions imposed upon the licensed trainer in the instant matter. To the contrary, Mr. Williams was in Ohio on the night in question and therefore was not acting as the assistant trainer for that night. He therefore did not assume the responsibilities of an assistant trainer on September 30, 2016.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 11**

Respondents object to the Finding that the Commission Staff is separate and distinct from the Commission. To the Commission, it is believed that the Commission Staff works for the Commission and certainly takes its' direction from Michael Smith, who is the Executive Director of the Commission. It was obvious from the proceedings that Mr. Smith was directing this case, and thus, at a minimum, there is the appearance that the two are not separate and distinct.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 13**

Respondents object to Finding No. 13 in that the Finding is only partially accurate in that Hicks testified in his deposition and at the hearing that he contacted Presiding Judge Michael Hall. He testified that he knew Mr. Hall's voice and he was certain that he spoke directly to him. (Transcript, P. 116-117).

Mr. Hall testified that he did not speak to Mr. Hicks as Mr. Hall had not yet arrived at the track which addresses Mr. Hicks' recollection, perception and veracity. (Transcript, P. 273).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 19**

Again, the term "In Today" is a term of art used for Thoroughbreds. Rather, all horses that are to race on a given night are taken to a restricted area of Hoosier Park, known as the Paddock, which is controlled by the representatives of the Racing Commission.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 33**

Respondents take exception to the Finding that veterinarians typically drew Lasix needed for two or three races in the Lasix Room. This does not appear in the testimony, and Respondents do not believe this to be true. In fact, there is testimony that Hicks and Dr. Baliga returned to the Lasix room after each race so that Dr. Baliga could draw Lasix syringes for the next race.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 39**

Respondents object as the statement is against the testimony of Mr. Hicks. To the contrary, it is Mr. Hicks' testimony is that he saw the vial in Dr. Baliga's hand while drawing Lasix for the fifth race only. This was Hicks' testimony. His later testimony as to where and when he found the vial raises questions as to whether this would have been possible, thus raising further issues as to Hicks' observation, recollection and veracity. (Transcript, P. 41)

**RESPONDENTS' OBJECTION TO
FINDING OF ACT NO. 42**

The Finding omits the fact that Hicks stated in a recorded statement, on the night in question, that the vial had a blue lid, which he later changed to having a red lid, which change occurred after he saw photographs of the vial, which calls into question, Hicks' observation, recollection and veracity. (Transcript, P 86-89)

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 47**

Respondents object to the admission of Exhibit 17, which was an empty 10 ml vial, as irrelevant and immaterial. It is misleading to the case. Hicks himself has testified that the vial that he alleges to have seen was much smaller than the vial admitted as Exhibit 17, and therefore the Exhibit should not have been admitted.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 51**

Respondents object to the Finding that Dr. Baliga removed a pre-filled syringe from his sweatshirt pocket to inject Iam Bonasera. While this is Hicks' testimony, it is unlikely that Hicks could have had a view of Dr. Baliga's actions, as he was on the left side of the horse, and Dr. Baliga was on the right side, and would by definition, be up against the horse as he was administering the Lasix. Again, this calls into question, Hicks' recollection and veracity.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 52**

Hicks could not have had an unobstructed view of Dr. Baliga, as they were on opposite sides with Iam Bonasera between them and Dr. Baliga stood against the horse to administer Lasix. (Transcript, P. 98 and 101-104).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 53**

Respondents object to the Finding that Dr. Baliga removed a pre-filled syringe from his sweatshirt pocket to inject Iam Bonasera. While this is Hicks' testimony, it is unlikely that Hicks could have had a view of Dr. Baliga's actions, as he was on the far side of the horse, and Dr. Baliga would by definition, be up against the horse as he was administering the Lasix. Again, this calls into question, Hicks' observation, recollection and veracity.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 54**

Respondents object to the Finding that Hicks heard the syringe drop into the caddy. Hicks' testimony is incredulous as he testified that he saw Dr. Baliga inject and then turned away. Hicks testified that he "didn't think about watching when he put it back in the caddy". (Transcript, P. 109).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 56**

This Finding of Fact is not supported by Mr. Hicks' testimony. Mr. Hicks testified, both at deposition and at the hearing that he was positive that he spoke with Mike Hall, that he knows his voice, and that there was no doubt in his mind that he was talking to Mr. Hall. (Transcript, P. 116).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 59**

Respondents object to the finding that Hicks did not retrieve the syringe because he was uncomfortable pocketing the needle and syringe. The Finding is contradictory to Mr. Hicks' testimony. Mr. Hicks testified that he did not retrieve the syringe because he believed that the two used syringes in the caddy were the same size and he could not tell the difference. (Transcript, P. 108). To the contrary, however, the only other used syringe in the caddy was a 12-cc syringe used on horse #2 in the fifth race, which was twice the size and easily distinguishable.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 60**

Respondents object to the Finding that Dr. Baliga and Mr. Hicks "got along". This incident was more than a "shouting match" as evidenced by the fact that both have vivid recollection of the incident, some three to four years later, and both admitted that it was loud and heated (Transcript, P. 75, P. 322 and 323).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 64**

Respondents object to the timing as given in this Finding. The statement was not given "shortly after completing Lasix administration". Rather, Hicks returned to the Lasix Room with Dr. Baliga, got all his paperwork together, and threw out the empty syringes before traveling to Gate 1 to give the statement. (Transcript, P. 117).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 67**

Respondents object to the Finding that Hicks returned to the Lasix Room and retrieved a small clear vial similar to IHRC Staff Exhibit 17 from the trash bin. This Finding is inaccurate for several reasons. First, Hicks did testify that he retrieved a vial much smaller than IHRC Staff Exhibit 17 (Transcript, P. 49). Further, Hicks' statement that he went through the trash bin for the

first time that day (Transcript, P. 121) was inconsistent with his recorded statement wherein he stated that he had gone through the trash can “clear to the bottom” before giving the recorded statement. This then also calls into questions Hicks’ recollection and veracity.

**RESPONDENTS’ OBJECTION TO
FINDING OF FACT NO. 71**

Respondents object to the Finding that Hicks had no reason to doubt his recollection. In fact, David Hicks gave a recorded statement the date of the incident, an Affidavit in Staff Counsel’s office two months later, a deposition in March and testified at the hearing. There are marked inconsistencies in all four attestations and therefore his recollection is certainly called into question, as is his veracity. In his recorded statement of September 30, 2016, Hicks stated that he had already searched the trash cans in the Lasix Room, looking for the vial and searched “all the way to the bottom” and found nothing. (Transcript, P. 131-132) At deposition and at trial, Hicks changed his testimony, such that he did not search the trash cans until after he gave the recorded statement when he magically found the vial in the small trash can. (Transcript, P. 120). The first time that Hicks made this claim was in an Affidavit given in the office of staff counsel under their direction. Thus, Hicks has given multiple versions of his actions on the night in question, none of which are consistent. However, the only statement that was given on the date of the alleged incident was that he searched the trash cans for the vial and found nothing.

**RESPONDENTS’ OBJECTION TO
FINDING OF FACT NO. 72**

Respondents object to the Finding that Hicks had no interest in the outcome. Hicks did have an interest in the outcome, as he had long-standing animosity toward Dr. Baliga. (Transcript, P. 75, P. 322 and 323).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 73**

Respondents object to the Finding that Hicks' testimony was credible and reliable. To the contrary, Hicks' testimony was contradictory and wildly inconsistent and thus could not be found credible by any impartial trier of fact. In fact, the ALJ made comment on two separate occasions that Hicks' testimony had been impeached by his prior testimony. (Transcript, P. 89 and 125).

B. DR. SCOTT WATERMAN TESTIMONY

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 79**

Respondents object to the Finding that Dr. Waterman worked as a veterinarian in horse racing. Dr. Waterman has never testified that he worked as a veterinarian in horse racing at any time. To the contrary, Dr. Waterman's testimony that he spent ten years in a small animal practice. (Transcript, P. 147) and that he has never worked in any large animal practice (Transcript, P. 153).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 84**

Respondents object to Dr. Waterman being qualified as an expert witness in this matter merely because he was previously recognized by the Commission in the Estvanko and Granitz matter. Respondents should not be bound a decision made in an unpublished Opinion, the Transcript, of which was not available for review and which case involved clearly distinguishable issues as previously set forth.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 85**

Respondents object to the ALJ qualifying Dr. Waterman as an expert in this case, for reasons previously set forth. Significantly, Dr. Waterman himself, when asked at the hearing to discuss his experience as an expert in equine medicine, candidly admitted "I guess it is a little vague. I am not exactly sure.". (Transcript, P. 152). Dr. Waterman is not qualified to testify as an expert in equine medicine and cannot be qualified as such by his own admission. Respondents

therefore object to any testimony and Findings of Fact by the ALJ stemming from the testimony of Dr. Waterman in this matter.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 86**

Respondents object to Dr. Waterman's testimony about the timing of drug administration. Dr. Waterman candidly admitted that he has never run any laboratory (Transcript, P. 153) and that he has never worked in a research laboratory (Transcript, P. 164). Dr. Waterman is simply not qualified to discuss the periods of time to administer substances to achieve maximum effect and his testimony should be stricken.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 87**

Again, Respondents object to Dr. Waterman's testimony and suggest that same should be stricken based upon the foregoing reasons.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 88**

Respondents object to any testimony from Dr. Waterman and suggest that somehow Dr. Waterman's testimony that there are drugs that cannot be detected was taken by this ALJ to signify the fact that if there was, in fact, a drug injected into Iam Bonasera despite any evidence to support that assumption.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 90**

Respondents object to Dr. Waterman's being able to testify regarding Dr. Baliga's treatment records. Again, Dr. Waterman is not qualified to review treatment records from a licensed equine veterinarian. Dr. Waterman has never worked in an equine practice and never described why he felt that Dr. Baliga's records were "questionable".

RESPONDENTS' OBJECTION TO

FINDING OF FACT NO. 91

Respondents object to Dr. Waterman testifying as he believes as to Dr. Baliga's actions. Dr. Waterman is not qualified to discuss how or why a veterinarian would inject a horse without the trainer's knowledge, for the reasons aforesaid. Further, Dr. Waterman's belief is not relevant to this proceeding, which requires that the Commission Staff prove administration of an illicit medication by a preponderance of the evidence, which is a requirement that they simply cannot meet.

C. MICHAEL SMITH TESTIMONY

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 95**

Respondents object to the Finding that both Davis and Williams shared responsibility for horses they trained. Williams was merely an assistant trainer and therefore would only be responsible for horses under his care, custody and control, while he was present. He was not in the State of Indiana on the night in question and therefore cannot share responsibility.

**RESPONDENT'S OBJECTION TO
FINDING OF FACT NO. 96**

Respondents object to the Finding that Williams' actions did not absolve him. For reasons previously stated, the fact that Julian Williams was not in Indiana does absolve him from responsibility due to his status as an assistant trainer, not present on the night in question.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 97**

Objection. It is irrelevant to any case concerning the Respondents herein whether Mr. Smith warned Dr. Baliga with phone calls alleging improper conduct by Dr. Baliga absent some proof that these warnings were made known to Respondents. No such evidence was presented by Commission Staff and thus any warning that Smith would have given to Dr. Baliga is irrelevant to this proceeding.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 100**

Respondents object to any Finding as to whether Mr. Smith warned Dr. Baliga about violating Rules. Director Smith's actions are inconsistent with his testimony. If he assumed that Julian Williams was present, as was his testimony, Williams and Davis would have been equally liable. Julian Williams' absence from Hoosier Park on the date in question, should not have increased Davis' responsibility and/or penalty.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 101**

Objection. Respondents' object to the filing of an Amended Complaint against Davis based upon the fact that neither he nor Williams was present on the date in question. At all times material, Davis was the trainer of Iam Bonasera and therefore his responsibility should not have increased by the fact that neither he nor the second trainer was present at Hoosier Park on September 30, 2016.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 102**

Respondents object to the Finding that the Legislative Directive directed the Standards leading to the filing against the Respondents. Indiana's Integrity Program led to the development of a Lasix Room and a requirement that a security guard be present in said room when the Lasix was drawn. Therefore, if any of the actions alleged, in fact occurred, the program in place would have prevented Respondents from observing the Lasix administration and thereby preventing any illicit administration.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 104**

Respondents object to the Finding that Smith should consider the injection of a horse on race day as an intention to cheat. Mr. Smith should not have considered the injection of the horse on race day when considering a penalty against Respondents. It is not alleged that the Respondents injected any horse on race day. In fact, there is no proof that such administration actually occurred, nor that Respondents had any knowledge of any such injection.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 105**

Respondents object to this Finding concerning Mr. Smith's belief. It is irrelevant what Mr. Smith believed may have occurred. The Commission Staff had the burden to prove that defendants were complicit in Dr. Baliga's alleged activity by a preponderance of the evidence and no such evidence has been offered of Respondents' knowledge or participation. This is mere conjecture on Mr. Smith's part, yet it is offered as evidence of Respondents' participation, which Respondents submit is woefully insufficient to prove knowledge by a preponderance as required.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 106**

Respondents object to the Finding that Smith reviewed facts and sanctions assessed for similar violations. Smith has testified that he formulated his decision on appropriate penalties based on his review of the Estvanko case, which has been distinguished as previously discussed. (Transcript, P. 193).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 107**

While Mr. Smith has experienced training and racing Standardbred Horses for 27 years, he has only been in an Administration Position dealing with penalties since February, 2016, and has only been in this Administrative Positive for seven (7) months at the time of this occurrence. His experience in an administrative capacity is thus called into question in determining any appropriate penalty.

D. PETRA HARTMAN TESTIMONY

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 116**

Respondents object to testimony as to what is **possible**. What is possible is not relevant to the instant proceeding. The Commission Staff has a burden of proving by a preponderance of the evidence that not only did Dr. Baliga administer something to Iam Bonasera on race day but that the Respondents were aware and complicit in said administration and no such evidence was elicited through this witness. Anything is possible, but no proof was offered.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 117**

Respondents object to this Finding. While the absence of a positive does not prove that a horse has not been injected with a substance, it is not proof that something was administered which apparently is the opinion of the ALJ in this matter, based solely upon the (inconsistent) testimony of Mr. Hicks. There is simply no proof that Iam Bonasera was administered anything on the date in question and the Commission had more than six months to conduct testing of the samples taken from Iam Bonasera to prove same, but could not.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 119**

Respondents object to the “testimony” of IHRC Staff. Counsel for IHRC Staff was not a witness to the proceeding and therefore the ALJ should not have given any consideration to Ms. Newell’s testimony. In fact, Ms. Newell “testimony” directly contradicted Petra Hartman’s testimony that sample E21020 was the clear vial. Again, Ms. Hartman was offered by Commission Staff and thus her testimony should not have been impeached by “testimony” of Commission Staff counsel. (Transcript, P. 227)

**RESPONDENTS’ OBJECTION TO
FINDING OF FACT NO. 120**

Respondents object to the Finding that neither party offered any clear explanation identifying which vial was tested. Absent the comments by Staff Counsel, it does not appear there is any confusion. Ms. Hartman did testify that sample E21020 was the vial. (Transcript, P 227). Further, the Commission has the burden of proving their case. The Commission Staff had exclusive possession of the vial, as well as the other item which was allegedly tested by the Industrial Laboratories. As Commission Staff had exclusive possession of the items tested, six months to complete said testing and the burden to prove their case by a preponderance, it was the Commission Staff’s burden to provide a clear explanation as to which vial was tested in Respondents’ Exhibit.

**RESPONDENTS’ OBJECTION TO
FINDING OF FACT NO. 121**

Respondents object to and take exception to any Finding of Fact that they caused confusion or uncertainty by the filing of a Motion to Preclude the Test Results of Iam Bonasera or any lab results from testing on the needles, syringes or vial allegedly found in the Lasix Room. The Commission Staff had six full months from the date of the alleged occurrence until the deadline for discovery to conduct testing on the samples taken from the horse and the vial. They had exclusive possession of these samples during the entirety of that time, as well as the burden of proving their case by a preponderance of the evidence. Mike Smith, on behalf of the Commission

brought these charges and it is incredulous that he would bring such charges before receiving the results of the testing by the laboratory. There was no confusion or uncertainty, other than that caused by Staff Counsel, and their failure to complete the investigation before bringing charges or at least by the Discovery deadline. Respondents find it outrageous that the ALJ found them responsible for “confusion and uncertainty.

**RESPONDENTS’ OBJECTION TO
FINDING OF FACT NO. 122**

Respondents object to the Finding that the Ruling left the Commission without any clear test results. To the contrary, the Commission had six full months to complete testing and it is their dilatory conduct alone which caused by their failure to submit test results. Respondents believe that the testing should have been completed before the Commission brought any charges.

**RESPONDENTS’ OBJECTION TO
FINDING OF FACT NO. 123**

Respondents object to the inference that the somehow had an obligation to provide test results on Iam Bonasera. Rather, the Commission has the burden of proving their case by a preponderance, and Respondents believe that this would require the offering of the test results conducted on samples which were in their exclusive possession.

**RESPONDENTS’ OBJECTION TO FINDINGS
CONCERNING RESPONDENTS’ DEFENSE**

**RESPONDENTS OBJECTION TO
FINDING OF FACT 126**

Respondents take exception to the footnote to #126 and the issue as to who contacted Mike Hall was irrelevant. Hicks testified on three occasions that he spoke with Mr. Hall directly. He testified that he was sure that he spoke with Mr. Hall and that he knows his voice. (Transcript, P. 116). Hicks clearly could not have talked to Mr. Hall and this brings Mr. Hicks’ recollection,

observation and veracity into question. What is ignored by the ALJ in his Findings is the testimony of Mr. Hall that he personally met with Mr. Hicks on the date in question at a time after his arrival, but before 4:10 PM when he left the Judges' office, stopped at the paddock to be breathalyzed, and went to the Judges' stand in preparation for the first race. Again, this calls into question both Mr. Hicks and Judge Hall's recollection and veracity.

DR. JOSEPH BALIGA'S TESTIMONY

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 136**

Respondents object to the use by the ALJ of the term "In Today". Again, the ALJ chooses to use the term "In Today" horses, a term used exclusively in Thoroughbred racing documenting his reliance upon the Estvanko case which is not applicable to the instant matter.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 143**

Respondents object to the characterization that Dr. Baliga "lied" to Terry Richwine. Dr. Baliga did not lie to Mr. Richwine. Rather, he simply forgot about having the vial, in part due to the stressful situation. (Transcript, P. 318-319). It is an outrageous mischaracterization by the ALJ to state that Dr. Baliga lied to Terry Richwine, and accusation not even made by Staff Counsel.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 146**

Respondents object to the finding that Dr. Baliga did not correct his statement because he did not think it was worth it. Rather, did not advise Mr. Richwine of his recollection of having the vial because he had already been summarily suspended and he felt that the proceedings against him were a "kangaroo court" and the odds were stacked against him. (Transcript, P. 326-327).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 147**

Respondents object to any consideration of Dr. Baliga's penalty in regard to the instant matter. What Dr. Baliga did or didn't do in that Lasix Room cannot be considered unless some evidence is shown that Respondents were aware of the alleged actions, and should not be considered in the instant matter.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 148**

Respondents object to any finding which takes into consideration Dr. Baliga's prior penalty history. It is irrelevant and immaterial whether Dr. Baliga had previously been suspended in 1993 as it relates to this matter. The fact that it was mentioned shows a bias against Dr. Baliga and a predisposition to find Respondents liable. This, in addition to the fact that the suspension was later overturned by the Court and therefore should never have been considered even against Dr. Baliga. (Transcript, P. 284-285).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 150**

Respondents object to mention of Dr. Baliga's treatment log as irrelevant and immaterial to the instant proceeding concerning Respondents. Any consideration of a failure by Dr. Baliga to comply with Indiana Rules is irrelevant to Respondents herein. Further, Dr. Baliga's testimony was that these were handwritten notes made contemporaneous to the treatment rendered, and that he later transcribes them to the computer for billing purposes, (Transcript, P. 291-292) in compliance with the Indiana Regulations.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 151**

Respondents object to the ALJ's characterization that Dr. Baliga's treatment log was questionable without some explanation as to the reason for this Finding. Further, this ALJ is not qualified to make any determination regarding Dr. Baliga's treatment log, which again, was merely a note made contemporaneous to treatment, which was later transcribed onto a computer.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 154**

Respondents object to any finding that counsel for respondents spoke with Dr. Baliga about Mr. Hicks' testimony the day prior, as if there was something improper in said discussion. Dr. Baliga merely asked whether the argument between him and Mr. Hicks was brought up and counsel responded. (Transcript, P. 329).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 155**

Respondents object to the mischaracterization in this finding of Dr. Baliga's testimony concerning a meeting with Dr. Hollendonner. Nowhere in Dr. Baliga's testimony does he state that the main purpose of the meeting was to express concerns or complaints against David Hicks. Rather, Dr. Baliga merely testified that "it was brought up during that time that Dave's a little on edge". (Transcript, P. 325).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 158**

Respondents object to any discussion about Dr. Baliga's prior proceedings before the Commission. This case deals with the respondents and whether they should be held accountable against Mr. Hicks' accusations. Dr. Baliga's feelings about prior proceedings are immaterial and were only be added to these findings to show a predilection against Dr. Baliga and respondents herein.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 160**

Respondents object to the finding that counsel for respondents agreed that Dr. Baliga was upset. It is irrelevant and immaterial to these proceedings that counsel for Respondents acknowledge that Dr. Baliga was upset. Further, as Dr. Baliga himself explained, the fact that he was upset was due to the way his case was handled by this same ALJ. (Transcript, P. 326-327).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 161**

Respondents object to the finding that Dr. Baliga's testimony lacked credibility. To the contrary, respondents believe that Dr. Baliga did testify credibly and he did not contradict prior testimony like Mr. Hicks.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 162**

Respondents object to the finding that Dr. Baliga has interest in the outcome of this proceeding. To the contrary, Dr. Baliga has been summarily suspended by this Commission and his case concluded.

JULIAN WILLIAMS' TESTIMONY

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 166**

Respondents object to the finding that Indiana is the only state that he is licensed as an Assistant Trainer. Mr. Williams testimony was that Indiana was the only state where he has ever seen anyone get licensed as an Assistant Trainer. (Transcript, P. 332).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 171**

Respondents object to the finding that Williams was unaware of what Dr. Baliga administered to horses under his care. Mr. Williams did not testify that he was unaware of what Dr. Baliga was administering to horses under his care. Rather, his testimony was that he didn't recognize many of the entries on Dr. Baliga's bill, which had nothing to do with the treatment administered. (Transcript, P. 346-347).

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 180**

Respondents object to the inference taken by the ALJ for the failure of Robert Dean to appear at the hearing. Respondent was under no obligation to call Mr. Dean who would only have testified that he saw Dr. Baliga give the Lasix shot, which was expected. Respondents determined that Mr. Dean was unavailable and therefore removed his name from the final list submitted of those who would testify. Mr. Dean is a licensee of the Indiana Racing Commission and therefore the Commission was empowered to compel his testimony if they so choose.

DYLAN DAVIS TESTIMONY

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 197**

Respondents object to a Finding that Julian Williams was the Assistant Trainer of Iam Bonasera on September 30, 2016. Rather, Mr. Williams was in Ohio and therefore was not serving as an Assistant trainer for Iam Bonasera on that date.

**RESPONDENTS' OBJECTION TO
FINDING OF FACT NO. 198**

Respondents object to the ALJ's mischaracterization of Mr. Williams' involvement with veterinary care. In fact, Mr. Williams testified that he does not make decisions, he makes phone

calls to Mr. Davis, (Transcript, P. 385), and that he has never asked Dr. Baliga to treat a horse (Transcript, P. 338).

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 221**

Respondents object to the conclusion that Mr. Williams was serving as an assistant trainer for Dylan Davis on September 30, 2016. To the contrary, Mr. Williams was in Ohio on that date and was not responsible for anything that occurred in Indiana on that date.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 222**

Respondents object to the Conclusion that they were responsible for the condition of Iam Bonasera regardless of the acts of third parties. Under the unique circumstances herein, any act alleged would have occurred in a paddock controlled by the Commission, and further in a locked room, accessible only to the veterinarian and a security officer retained by the racetrack at the instruction of the Commission. Respondents could have no knowledge of, nor could they have done anything to prevent any action, if, in fact it occurred. Respondents remind the Commission that there was no positive test for Iam Bonasera and the only witness to the allegations has provided contradictory testimony on multiple occasions and therefore cannot be found credible.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 225**

Respondents object to the conclusion that the Commission Staff met its burden of proof with regard to the violations without a positive finding and based solely upon the testimony of David Hicks who has offered multiple versions of the events of that date, all of which are contradictory, against other evidence, and which vary from the recollection and testimony of other witnesses.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 226**

Respondents object to the conclusion that the Commission staff established that Dr. Baliga injected Iam Bonasera, by a preponderance of the evidence. There is no substantial credible or reliable evidence that Dr. Baliga injected Iam Bonasera with an unknown substance on September 30, 2016. To the contrary, there was no positive finding that anything was in the horse's system and only offered the aforementioned contradictory and inconsistent testimony of David Hicks. Further, there is yet another reference to an "In-Today" horse which is a term of art used for Thoroughbreds who race from a stable and not from a restricted and regulated area such as the Lasix Room and the Paddock.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 227**

Respondents object to the Conclusion that they did not take precautions to prevent the administration. Even assuming the Commission Staff's version of events, Dr. Baliga's actions would have occurred in a locked, private room in front of a security guard, appointed through the Commission and Respondents would have no way of knowing, let alone stopping Dr. Baliga's actions. Even if Respondents were present, which they were not, they would have only seen Dr. Baliga administer the Lasix shot to Iam Bonasera which was to be expected.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 228**

Respondents object to the Conclusion that they did not provide reliable evidence to contradict the evidence submitted by IHRC Staff. To the contrary, Respondents provided ample evidence to discredit the Staff's sole eyewitness, David Hicks, by pointing out his inconsistent prior testimony, his recollection and observation to the point where the ALJ himself, on multiple occasions, stated that Mr. Hicks has been "effectively impeached". (Transcript, P. 89 and 125). It

is the Commission staff which failed to provide any credible or reliable evidence to support their case.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 229**

Respondent, Williams objects to the Conclusion that he was responsible for Iam Bonasera on September 30, 2016. The cited Statute states that an Assistant trainer may substitute for and assume the same duties. In the instant matter, however, Mr. Williams was out of State and therefore not acting as an Assistant Trainer on that date.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 230**

Respondents object to the Finding that anything was administered to Iam Bonasera on September 30, 2016. There has been no credible evidence offered by Commission Staff that anything was administered to the horse.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 235**

Respondents object to the Conclusions that they violated 71 I.A.C. 8-1-1.5(b) because there has not been any credible evidence offered by the Commission Staff that anything except Lasix was administered to Iam Bonasera on September 30, 2016.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 236**

Respondents object to the Conclusion that they failed to insure the fitness of the horse, Iam Bonasera by allowing race day administration of an unknown substance. The Commission Staff has put forth no credible evidence that any substance was administered to Iam Bonasera except Lasix and they have offered no evidence that Iam Bonasera was unfit on September 30, 2016.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 238**

Respondents object to the Conclusion that they allowed race day administration of an unknown substance to Iam Bonasera on September 30, 2016. To the contrary, there has been no credible evidence offered of administration of anything to Iam Bonasera except Lasix.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 239**

Respondents object to the Conclusion that they violated any of the cited Regulations. There has been no credible evidence offered by Commission Staff that there was any violation.

**RESPONDENTS' OBJECTION TO
CONCLUSIONS OF LAW NO. 240**

Respondents object to the conclusion that a positive drug test is not necessary for there to be a violation of 71 IAC 5-3-3(a)(5)(18) or (27). While a positive drug test is not necessary to prove a violation, there must be some other evidence of administration of an illicit medication. No such evidence has been offered by the Commission Staff.

**RESPONDENTS' OBJECTION TO THE ANALYSIS
AND ULTIMATE FINDINGS OF FACT OF ALJ PYLITT**

RESPONDENTS' OBJECTION OF ANALYSIS NO. 241(b)

Respondents object to the characterization by the ALJ that Respondents have three "contrary theories". Respondents have five alternative theories, each of which is more plausible than that offered by the Commission Staff. Respondents do not believe that David Hicks lied because of a long-time grudge over a frozen Snicker bar. Rather, Respondents believe that Hicks and Baliga do not like each other and that Hicks may have been aware that the Commission was

watching Dr. Baliga, as Mr. Smith testified, and that Hicks simply made up the story to the detriment of Dr. Baliga, not caring about the consequences to Respondents.

Additionally, Respondents believe that a significant argument which is ignored by the ALJ is that even if Mr. Hicks was correct, what is alleged to have occurred would have occurred not only in the Paddock, an area under Commission control, but further in a secured, locked room where only Dr. Baliga and a security guard hired upon the instruction of the Commission, as part of its integrity program, would have been privy to what happened. Respondent could not have known of Dr. Baliga's actions and would only have seen the Doctor administer a syringe full of Lasix which was exactly what he was supposed to do.

Mr. Hicks, however, assigned as part of the State's Integrity Program, by his own testimony, was aware of Dr. Baliga's actions and chose to do nothing to prevent the administration of Lasix to the horse, to the detriment of Respondents. Therefore, Respondents were not responsible for Dr. Baliga's action and Integrity Officer Hicks did nothing to protect Respondents to their detriment.

Perhaps the only time that Hicks testified credibly was at the end of his testimony at the hearing when asked by staff counsel "do your job duties include confronting Lasix veterinarians?" He answered, "if I see something wrong." He was then asked, "But you did not confront Dr. Baliga in this case?" and he answered "no". (Transcript, P. 144). Thus, the only inference that could be drawn from Hicks' testimony is that he did not see Dr. Baliga do anything wrong as he did not confront him.

Over and above this argument, and not mentioned in the Findings of Fact of the ALJ are the dramatic inconsistencies in the testimony of David Hicks. Hicks gave a recorded statement to Officer Richwine on September 30, 2016, the date of the race. After having just left the Lasix Room to give the statement, he stated to Richwine that he had gone through both trash cans "clear to the bottom" and found nothing.

At the hearing, Hicks testified that he only went through the trash in the Lasix Room once (Transcript, P. 121) and this was when he returned to the Lasix Room after giving the statement, to search the trash, and found the vial. (Transcript, P. 66). At the hearing, he denied conducting any search before the statement (Transcript, P. 115), which contradicts the recorded statement given on the date of the race.

At the time of the recorded statement, Hicks told Richwine that the top of the vial was blue. (Transcript, P. 95). Lasix tops are blue. After viewing the photos which clearly showed a red top vial, Hicks changed his testimony (Transcript, P. 88-89). Having seen blue Lasix caps all day long, a red cap should have stuck out in his recollection, but did not.

At deposition, Hicks testified that the label of the vial was torn off such that you could see the glue on the vial. When shown the picture of the vial at the hearing, Hicks changed his testimony and admitted that the label was still on the vial and that he could not remember the glue (Transcript, P. 133-134).

Hicks also testified that he called the Judges to report what he saw, and that he spoke with Presiding Judge Mike Hall. He testified that he knows Mike Hall's voice and there was no doubt in his mind that it was Hall to whom he reported what he saw. (Transcript, P. 116). Yet, Mike Hall candidly testified that he did not speak with Hicks and that he first learned of the alleged allegations in a phone call from Associate Judge Dave Magee (Transcript, P. 265).

Interestingly, Michael Hall testified at deposition and again at the hearing that Hicks came to the Judges' Office and gave a personal interview lasting between 5 and 12 minutes before the Judges left the office to go to the roof of the racetrack. (Transcript, P. 266). This proves unlikely, if not impossible, as Hicks was in the Paddock until the last horse received Lasix which was 4:14 PM (Exhibit 6E) and the Judges left their office at approximately 4:10 (Transcript, P. 267). Hicks specifically denied meeting the Judges (Transcript, P. 117).

Thus, Hicks' testimony was rife with inconsistencies to the point where the ALJ on two separate occasions stated on the record that Mr. Hicks' testimony had been impeached (Transcript, P. 89 and 125). Hicks was the only eye witness to the allegations against Dr. Baliga, and Hicks was the only witness whose testimony was impeached. Incredibly, the ALJ found Hicks to be credible.

The fifth position of Respondents is that Julian Williams is not and cannot be responsible for Dr. Baliga's actions in that he was in Ohio on the night in question, he was not acting as Assistant trainer, and could not have taken any safeguards against the alleged actions of Dr. Baliga.

RESPONDENTS' OBJECTION OF ANALYSIS NO. 243

Respondents object to the Finding and Conclusion by the ALJ that the Commission Staff proved by more than a preponderance of the credible and reliable evidence that Respondents violated Commission Regulations. There simply is no credible and reliable evidence that any violation occurred. This, despite the efforts of the Commission Staff in hiding the recorded statement that David Hicks gave on the night of the race, and failed to supply same in response to Respondents' Request to Produce until Hicks mentioned the statement in his deposition testimony; by refusing to provide proper documentation of the analysis of the samples in a timely fashion as required and by striking rebuttal witnesses who would have further attacked Hicks' already weak credibility.

RESPONDENTS' OBJECTION OF ANALYSIS NO. 245

Respondents object to the Finding and Conclusion by the ALJ that the Commission Staff proved by more than a preponderance of the credible and reliable evidence that Respondents violated Commission Regulations. There simply is no credible and reliable evidence that any violation occurred. This, despite the efforts of the Commission Staff in hiding the recorded statement that David Hicks gave on the night of the race, and failed to supply same in response to Respondents' Request to Produce until Hicks mentioned the statement in his deposition testimony,

by refusing to provide proper documentation of the analysis of the samples in a timely fashion as required, and by striking rebuttal witnesses who would have further attacked Hicks' already weak credibility.

RESPONDENTS' OBJECT TO THE RECOMMENDED ORDER
RESPONDENTS' OBJECTION TO 247-253

Respondents object to the Recommended Order of the ALJ that they be suspended for sixty (60) days and fined \$1,000.00 each. There was one eyewitness to the alleged offense, David Hicks, whose testimony cannot be believed. There was one expert witness offered by the Commission Staff, who himself could not explain his qualifications to testify as an expert witness. Executive Director Smith testified that he based his charges upon the Estvanko matter, a case with a pattern so different that it must be distinguished and cannot apply to the facts herein. Finally, the Commission Staff counsel, who seems more interested in winning her case than promoting the interests of fundamental fairness and justice by withholding evidence.

WHEREFORE, Respondents respectfully request that the Commission over-rule the Recommendation of ALJ Bernard Pylitt and enter an Order in favor of the Respondents.

HOWARD A. TAYLOR, LLC

By: _____

HOWARD A. TAYLOR, ESQUIRE

Indiana Horse Racing Commission : Administrative Complaint
v. :
Julian Williams : No. 216007 and 216008
And :
Dylan Davis :

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following individuals by electronic transmission on the 9th day of June, 2017,

Holly Newell, Esquire
Indiana HRC
1302 N. Meridian Street
Indianapolis, IN 46202

The Honorable Bernard L. Pylitt
334 N. Senate Avenue
Indianapolis, IN 46204

Mike Smith, Director
Indiana Horse Racing Commission
1302 N. Meridian Street
Indianapolis, IN 46202

HOWARD A. TAYLOR, LLC

BY: 
HOWARD A. TAYLOR, ESQUIRE

BEFORE THE INDIANA HORSE RACING COMMISSION

INDIANA HORSE RACING COMMISSION
STAFF,

2017 AUG 18 A 11: 35

Petitioner,

v.

DYLAN DAVIS and JULIAN WILLIAMS,

Respondent.

In Re: CONSOLIDATED MATTER
ADMINISTRATIVE COMPLAINT
NOS. 216008 and 216007

**BRIEF OF COMMISSION STAFF IN SUPPORT OF COMMISSION AFFIRMATION
OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE**

The Indiana Horse Racing Commission Staff (“Staff” or “Commission Staff”) respectfully submits this brief in support of its request that the Commission affirm the Findings of Fact, Conclusions of Law, and Recommended Order (“Recommended Order”) of Administrative Law Judge Bernard Pylitt (“Judge Pylitt”) dated May 25, 2017, which is submitted pursuant to the Chairman’s July 26, 2017, Notice of Opportunity to Present Briefs and Oral Argument in the above-referenced matter.

I. INTRODUCTION

On Friday, September 30, 2016, the Standardbred IAM Bonasera was scratched from Race 5 at Hoosier Park Racing and Casino (“Hoosier Park”), by the Judges, due to a report by David Hicks (“Hicks”), the Lasix Escort, that he observed Dr. Joseph Baliga, DVM (“Dr. Baliga”) inject IAM Bonasera with an unknown substance, when the horse was scheduled to receive Lasix in its assigned stall (Horse 1, Race 5) in the Paddock prior to its scheduled post time. Neither Dylan Davis (“Davis”), the trainer of record, nor Julian Williams (“Williams”), the assistant trainer of record, were on the grounds of Hoosier Park on the afternoon of September 30, 2016, at Lasix administration time.

Administrative Complaint No. 216007 was filed 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 recommending Williams be fined \$1,000.00 and suspended for sixty (60) days. Williams timely requested a hearing on December 1, 2016.

Administrative Complaint No. 216007 was filed 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 recommending Davis be fined \$2,000.00. Davis timely requested a hearing on December 1, 2016.

On December 5, 2016, Judge Pylitt, was appointed to serve as the Administrative Law Judge (“ALJ”) handling these two matters.

On February 22, 2017, 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 Complaint against Davis remained the same in the Amended Administrative Complaint. Respondents objected by letter dated February 21, 2017. Staff’s Motion was granted.

During the hearing, the Staff was represented by its Deputy General Counsel, Holly Newell. Respondents were present in person and with their counsel, Howard Taylor.

Staff bore the burden of persuasion and the burden of going forward during the hearing. IC 4-21.5-3-14(c). Pursuant to IC 4-21.5-3-26(f), Judge Pylitt took official notice of the Indiana pari-mutuel enabling statute (IC 4-31 *et seq.*, and IC 4-35 *et seq.*), and the Indiana Horse Racing Commission (“IHRC”) rules that regulate pari-mutuel racing in Indiana (71 IAC *et seq.*).

Pursuant to IC 4-21.5-3-26(f)(2), Judge 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 Nos. 14694 and 14695, including the testimony at the hearing before Judge Pylitt on June 23 and 24, 2015, the Findings of Fact, Conclusions of Law, and Recommended Order issued by the ALJ on July 28, 2015, and the Final Order of the full IHRC 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.

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, Judge Pylitt issued the Findings of Fact, Conclusions of Law, and Recommended Order. In his Recommended Order, Judge Pylitt found, among other things, that:

1. 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 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.
2. Davis' violations of each of the aforementioned regulations were contrary to the best interests of horse racing in the State of Indiana.
3. 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 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.
4. Williams' violations of each of the aforementioned regulations were contrary to the best interests of horse racing in the State of Indiana.
5. Staff may recommend penalties and the ALJ may in his discretion accept, reject, or modify the recommended penalty. 71 IAC 10-3-12(f).
6. The sixty (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.
7. The sixty (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.
8. 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.
9. Judge Pylitt recommends that a Final Order be entered by the Commission in favor of the Commission Staff and against Davis and Williams, and affirming Administrative Complaint Nos. 216007 and 216008 in all material respects.
10. Judge Pylitt adopts the recommended penalties sought in the Amended Administrative Complaint that Davis:
 - a. Be suspended for a period of sixty days: and
 - b. Be fined \$1,000.00.
11. Judge Pylitt adopts the recommended penalties sought in the Administrative

Complaint that Williams:

- a. Be suspended for a period of sixty days; and
- b. Be fined \$1,000.00.

Pursuant to IC § 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.

On July 26, 2017, Chairperson Philip Borst, DVM, issued his Notice Of Opportunity To Present Briefs And Oral Argument giving notice that each party will have the opportunity to present briefs and oral arguments concerning the ALJ's Recommended Order. Any briefs filed must be received in the offices of the Commission by noon on Friday, August 18, 2017.

II. RELEVANT LAW

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 Commission 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 Commission also derives authority from and is restricted by the Administrative Orders and Procedures Act ("AOPA") (Indiana Code Title 4, Article 21.5).

The relevant provisions of 71 IAC *et seq.* are as follows:

71 IAC 5-3-2 Trainer responsibility

(a) The 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.**

...

(b) 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)

71 IAC 5-3-5 Assistant trainers

(a) Upon the 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.

...

(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.

IV. ARGUMENTS

A. Respondents' Objections to ALJ's Characterization of the Procedural

Background¹.

The Respondents' objections attempt to create confusion about the procedural background laid out by the ALJ in his Recommended Order. Instead, the objection clarifies that

¹ The procedural background of the Baliga matter is not germane to this proceeding; however, Respondents have misstated the facts of that case. It is sufficient to note that Baliga was not summarily suspended until the March 7, 2017 meeting. Baliga's summary suspension was lifted on January 18, 2017.

counsel for Williams and Davis himself struggled to understand the nature of the case before the ALJ, and the nature of the charges his clients faced.

The ALJ's mention of Respondents' counsel's ownership of race horses trained by Respondents is important only in the timing of the disclosure. The ownership was not disclosed until *after* the IHRC Staff had not objected to his participation in the case, and *after* the ALJ had agreed to accept his appearance.

The question of evidence and vial testing is one that seems to have eluded counsel for Respondents for the entirety of the proceeding. Of importance are these salient details:

1. Counsel for Respondents did not request the results from the samples taken from IAM Bonasera on September September 30, 2016. Respondents' discovery requests sought only *post-race* blood analyses. As has been noted, IAM Bonasera was scratched from the September 30, 2016 race. Accordingly, no post-race samples from IAM Bonasera exist.
2. Commission Staff's case is based on an eyewitness account of what happened in the Lasix room and paddock on September 30, 2016. Two witnesses both testified that there are many substances that simply do not test. Commission Staff made its case based on the eyewitness testimony. No test results were necessary for Commission Staff to prove its case. The absence of evidence is *not* the evidence of absence.
3. When counsel for Respondent filed the Motion to Preclude Discovery, Commission Staff did not object. Accordingly, pursuant to Respondents' own Motion, any additional testing relating to the recovered vial was out. Respondents' desire to bring in evidence that was contrary to their own Motion to Preclude is puzzling.

4. Counsel for Respondents did not seek appropriate chain of custody documentation, despite having the opportunity to do so in the course of discovery. Respondents' failure to request the needed documentation led to the confusion during Hartmann's testimony. Hartmann was asked to discuss an exhibit² entered by the Respondents, which she was able to do. However, Respondents' failure to gather the supporting chain of custody documentation left the exhibit to exist in a vacuum. Had Respondents sought the appropriate chain of custody paperwork, no such confusion would have existed. It is not Commission Staff's responsibility to build a case for the Respondents. Respondents made a tactical error in their preparation of their discovery requests. Their failure is their own, not Commission Staff's.
5. It is well documented throughout the record that counsel for Respondents failed to object to the ALJ's April 11, 2017 Notice of Intent to Take Official Notice of Previous Proceeding Before the Indiana Horse Racing Commission. The ALJ's Notice was clear: Either party had until April 17, 2017 to contest to the Official Notice. Respondents did have an opportunity to review the case documents. Respondents requested "everything that is in your file concerning the case of Granitz and Estevanko(sic) v IHRC". Given the substantial size of the file at issue, and Respondents' request for "everything," Commission Staff was able to provide such access (electronically) by April 14, 2017. Respondents had the time and opportunity (through April 17, 2017) to object, but failed to file an objection. Again, Respondents' tactical failures that they now regret are their own. The ALJ accordingly took Notice of the Prior Proceeding.

² The exhibit at issue, Respondents Exhibit O, included the results from two separate vials that were tested by Industrial Laboratories Company.

B. Objections based on witness testimony

Respondents largely base their objections on the witnesses presented by Commission Staff. Commission Staff will support the testimony of each.

1. **Petra Hartmann** – Petra Hartmann is the Director of Drug Testing Services at Industrial Laboratories Company (“Industrial”). Hartmann testified that many substances simply cannot be detected. The Respondents offered no experts of their own to contradict Hartmann’s testimony. Respondents also use their attack of Hartmann’s testimony to attempt to create a higher burden for Commission Staff, suggesting that Commission Staff had to prove that Respondents were complicit in the race day administration to IAM Bonasera. No such requirement exists in the IHRC regulations or pari-mutuel statute.
2. **Dr. Scot Waterman** – Dr. Waterman has worked with many horse racing regulatory bodies, including Arizona, New Mexico, and Indiana. He is the former Executive Director of the Racing Medication and Testing Consortium. He is a licensed veterinarian. While he hasn’t practiced on race horses, he has dedicated the past fifteen years of his professional life to horse racing matters. Respondents’ attempts to discredit Dr. Waterman simply fail. Dr. Waterman was tendered and accepted as an expert, and he offered testimony to support Commission Staff’s case. Once again, Respondents failed to call any experts of their own to challenge Dr. Waterman’s testimony *or* credentials. Dr. Waterman testified, broadly, about the administration of substances on race day. He advised that many of the substances administered on race day are not detected by laboratories, and he stated that many trainers believe that these prohibited administrations will give their horse a boost during the race.

3. **Mike Smith** – Mike Smith is the Executive Director of the Indiana Horse Racing Commission. Respondents object to the content of his testimony, particularly when Smith advised the ALJ that he had warned Dr. Baliga about improper conduct. First, the Respondents misconstrue the warning, characterizing it as a phone call. Both Smith and Baliga testified that it was a face-to-face conversation. Second, Respondents are frustrated that they were not aware that this testimony was coming. Commission Staff identified Mike Smith as a witness from the beginning of this matter. Respondents had the opportunity to depose Mike Smith, yet instead chose to depose Mike Hall,³ who was not identified as a Commission Staff witness. Respondents' failure to depose the witness identified on Commission Staff's Witness List is Respondents' failure. Smith also addressed Trainer Responsibility. The Trainer Responsibility rule is broad, and it is clear. Any attempts to shirk the responsibility levied by the rule flies in the face of the rule's intent. A trainer (and by extension, assistant trainer) is fully responsible for the horses in his care. Without such a strict provision, everyone can abdicate responsibility, and nobody can be held responsible. It is preposterous to consider a state of affairs wherein a trainer or assistant trainer can choose to not be in the state on a race day, and thereby abdicate responsibility for his or her horses. Racing in Indiana is a privilege, and high standards are demanded of participations who choose to seek the privilege of participation. Smith has held the position of IHRC Executive Director since early 2016, and has participated in horse racing for a quarter century. He reasonably relies on past Commission actions in making recommendations for penalties. He has been

³ Mike Hall is an IHRC Standardbred Judge.

selected and hired by the Commission to effectuate the legislature's charge to ensure that pari-mutuel wagering on horse races in Indiana be conducted with the highest of standards and the greatest level of integrity.

4. **Dave Hicks** – Dave Hicks is a Security Guard and Lasix Escort at Hoosier Park. Hicks advised the Commission Staff of what he witnessed on September 30, 2016, specifically Dr. Baliga preparing a non-lasix concoction in the Lasix Room, and then injecting the contents of that needle into the Davis/Williams-trained horse IAM Bonasera. Respondents would like to create confusion about Hicks' testimony, but he has been unwavering about the salient points: 1. On September 30, 2016, Dr. Baliga filled a syringe from a vial that did not contain Lasix; and 2. Dr. Baliga injected the contents of that vial into the standardbred race horse IAM Bonasera that same day.

C. Objections based on Respondents' Witnesses and Defense

Respondents simply failed to present a cohesive, believable defense. As has been stated, this case was based on eyewitness testimony. IHRC Staff presented the testimony of Mr. Hicks, who is a Hoosier Park security guard with an unblemished employment record. To counter Hicks, Respondents presented Dr. Baliga. Dr. Baliga has a very clear interest in the outcome of these proceedings, given that he is facing discipline relating to the same matter. Tales of a long-held grudge stemming from the moving of a Snickers bar simply do not create a real question of Hicks' motive.

Respondents further state that anticipated rebuttal testimony should have been allowed despite their refusal to identify the witnesses. Again, Respondents seem confused on the law, trying to draw a comparison between the rebuttal witnesses called by IHRC Staff. The key distinction is whether these witnesses are anticipated. In the case of the trainers who Respondents expected to call, the trial rules and case law make it very clear that they must be

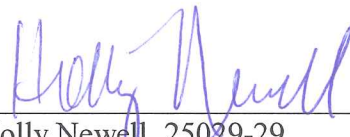
identified. However, witnesses for the purpose of rebuttal who are not anticipated obviously cannot be disclosed prior to the hearing. Commission Staff filed a Motion to Strike the anticipated rebuttal witnesses, citing *McCullough v. Archbold Ladder Co. and The Sherwin-Williams Co.*, 605 N.E.2d 175, 179 (Ind. 1993) (“[T]he nondisclosure of a rebuttal witness is excused only when that witness was unknown and unanticipated; known and anticipated witnesses, even if presented in rebuttal, must be identified pursuant to a court order, such as a pre-trial order, or to a proper discovery request.”)

V. CONCLUSION

The ALJ’s Recommended Order is well-supported by the evidence that he considered. Judge Pylitt clearly provides support for each of his findings.

Respondents’ objections to the ALJ’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 May 25, 2017, and that it impose the penalties recommended therein.

Respectfully submitted,



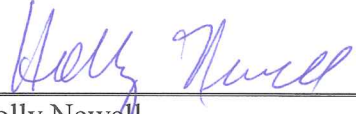
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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2017, I served the following parties with the foregoing Brief, via email and U.S. Mail, first class, postage paid, and email:

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