

Agenda item # 1 (a)

**INDIANA HORSE RACING COMMISSION
BEFORE ADMINISTRATIVE LAW JUDGE**

RICHARD ESTVANKO and)	ISSUE: IHRC Ruling # 14694
ANTHONY GRANITZ)	IHRC Ruling # 14695
)	
Petitioners,)	
)	
vs.)	
)	
INDIANA HORSE RACING)	Bernard L. Pylitt,
COMMISSION STAFF,)	Administrative Law Judge
)	
Respondent.)	

NOTICE OF OPPORTUNITY TO PRESENT BRIEFS AND ORAL ARGUMENT

This matter is pending before the Indiana Horse Racing Commission (“Commission”) on the Recommended Administrative Penalty against Richard Estvanko and Anthony Granitz. On July 28, 2015, the Administrative Law Judge (“ALJ”) designated by the Commission, The Honorable Bernard Pylitt, issued his Findings of Fact, Conclusions of Law, and Recommended Order (“Recommended Order”) in this case. On August 12, 2015, Estvanko and Granitz, by counsel, timely filed their objections to the 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 Estvanko and Granitz or the Commission Staff must be received in the offices of the Commission by 4:00 p.m. on October 30, 2015. The Commission will accept electronic filing at lellingwood@hrc.in.gov.

The Commission will also consider oral argument at its meeting on November 4, 2015. Oral argument will be limited to fifteen minutes per side.

SO ORDERED, 26th day of October 2015.

THE INDIANA HORSE RACING COMMISSION



BY: _____
Thomas Weatherwax
Chairperson
Indiana Horse Racing Commission

Copies forwarded by electronic mail sent on October 26, 2015.

DISTRIBUTION

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**INDIANA HORSE RACING COMMISSION
AN APPEAL BEFORE ADMINISTRATIVE LAW JUDGE BERNARD L. PYLITT**

IN RE: THE MATTER OF RICHARD
ESTVANKO and ANTHONY GRANITZ,

Petitioners,

v.

INDIANA HORSE RACING COMMISSION
STAFF,

Respondent.

ISSUE: IHRC Ruling #14694
IHRC Ruling #14695

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

This matter came before Administrative Law Judge Bernard Pylitt (“ALJ Pylitt”) for a consolidated hearing on the appeal of Stewards’ Rulings 14694 and 14695 by Petitioners Richard Estvanko (“Estvanko”) and Anthony Granitz (“Granitz”).

ALJ Pylitt conducted a hearing in this matter on June 23 and 24, 2015, at the offices of Katz & Korin P. C. in Indianapolis, Indiana by agreement with the parties. The Petitioners were present in person and represented by their counsel Joseph Eddingfield. The Indiana Horse Racing Commission Staff (“Commission Staff”) was represented by its Deputy General Counsel, Holly Newell, and outside counsel, Robin Babbitt. Peter Sacopolous, counsel for Dr. Ross Russell was present during the hearing.

Estvanko and Granitz did not raise or question the appropriateness or reasonableness of the penalties imposed by the Stewards as part of their appeals. They simply appeal the finding that they violated certain regulations.

At the conclusion of the hearing, ALJ Pylitt commended counsel for their complete cooperation during discovery and for a thorough and concise presentation of the evidence including the submission of lengthy stipulations which facilitated the presentation of evidence

and substantially shortened the length of the hearing. Additionally, ALJ Pylitt commended the Petitioners for their demeanor and behavior during the lengthy hearing.

In rendering his findings, ALJ Pylitt was required to weigh the credibility of several witnesses who offered diametrically opposed explanations of where and when a barn walker observed Dr. Ross Russell on Friday morning September 19, 2014.

In considering prior inconsistent statements made by several witnesses, as well as their interest in the outcome in the matter, ALJ Pylitt relied upon the factors set forth in Rule 616 of Indiana's Rules of Evidence. In weighing the testimony, ALJ Pylitt kept in mind the guidance of the Indiana Supreme Court recited in Pattern Jury Instruction 1.17 to use his own personal knowledge, experience, and common sense from daily living, keeping in mind that the number of witnesses who testified about a particular fact need not control the ultimately determination of truth of that fact.

Having considered the administrative record, having conducted a hearing with evidence presented by both sides, having weighed the credibility of the witnesses presented by both sides, and having 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.

FINDINGS OF FACT

I. The Parties

1. During 2014, Petitioners Richard Estvanko ("Estvanko") and Anthony Granitz ("Granitz") were licensees of the Indiana Horse Racing Commission. (Joint Exhibit 1, Stipulations 1, 2.) As a licensee, each acknowledged:

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

2. 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).

3. 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 8.5-1-1.5, 71 IAC 8.5-1-2, 71 IAC 8.5-1-4.2.

4. A trainer is fully responsible for the condition of all horses he trains for guarding and protecting horses in his/her care and for reporting any contact that a practicing veterinarian or their staff may have with a horse within twenty-four (24) hours of a scheduled race. 71 IAC 5.5-3-2, 71 IAC 5.5-3-3 (26) and (30).

5. The Commission Staff is responsible for the day-to-day operations of the Indiana Horse Racing Commission, including enforcement of regulations, and prosecution of violations.

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

7. The Commission Staff is the proper party to this proceeding.

II. Procedural History

8. On September 20, 2014, the Board of Stewards (“Stewards”) received a report from Indiana Grand security that a barn walker observed Dr. Ross Russell, DVM (“Dr. Russell”) in the stall of an “in-today” horse, injecting the horse approximately nine hours prior to its scheduled post time. (Commission Staff Exhibit K., Indiana Grand Incident Report Number 14-090185, dated September 20, 2014; Commission Staff Exhibit J, Equibase Results Chart for the 6th race on September 19, 2014 at Indiana Grand; Commission Staff Exhibit G.)

9. The horse in question Tam Tuff, was a thoroughbred filly trained by Granitz and Estvanko. (Joint Exhibit 1; Stipulations 4 & 5)

10. Granitz was the trainer of record for Tam Tuff and Estvanko was the assistant trainer. (Joint Exhibit 1; Stipulation 4)

11. The September 20, 2014 incident report from Indiana Grand Security served as the basis for the Stewards summary suspension of Estvanko that same day. (Commission Staff Exhibit G, Stewards’ Findings and Conclusions dated November 19, 2014, p.1)

12. Granitz, was out of state at Keeneland on September 19, 2014, and was not summarily suspended. (Commission Staff Exhibit G, Stewards’ Findings and Conclusions November 19, 2014, p. 1).

13. The Stewards upheld the summary suspension of Estvanko on October 2, 2014. (Stewards Ruling #14658.)

14. Estvanko and Granitz timely requested a hearing on the merits before the Stewards.

15. On October 31, 2014, the Stewards conducted a hearing on the merits of this matter.

16. On November 19, 2014, the Stewards issued Findings and Ruling Nos. 14694 and 14695. (Commission Staff Exhibit G, Stewards' Findings dated November 19, 2014.)

17. The Stewards concluded that Estvanko and Granitz were in violation of a number of Commission Rules, suspended Estvanko for 60 days, and fined him \$1,000.00. Granitz was not suspended, but was fined \$2,000.00.

18. Estvanko and Granitz filed a timely appeal of the Stewards' Rulings.

19. Administrative Law Judge Pylitt was assigned to hear the cases *de novo*, and decide the issues framed by the appeal.

20. Estvanko and Granitz bore the burden of persuasion and the burden of going forward and proof before ALJ Pylitt. (I.C. 4-21.5-3-14(c))

21. Estvanko and Granitz each testified during the hearing before ALJ Pylitt. Also testifying on their behalf were Dr. Russell, Stephanie Burchette ("Burchette"), Callie Ramey ("Ramey"), Christina Estvanko and Dee Thoman ("Thoman"). Estvanko and Granitz also presented exhibits into evidence.

22. The Commission Staff presented the testimony of former Indiana Grand barn walker Jamie Kolls ("Kolls"); Dr. Richard Sams, Laboratory Director for LGC, ("Dr. Sams"); Dr. Scot Waterman, DVM, consulting veterinarian to Commission Staff ("Dr. Waterman"); groom Joel Villalta ("Villalta") and trainer Kimberly Hammond ("Hammond"). The Commission Staff also presented exhibits into evidence.

23. 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.*).

24. Three telephonic Prehearing Conferences were conducted by ALJ Pylitt to establish deadlines and facilitate discovery by the parties and to establish a mutually agreeable hearing date.

25. Prior to the hearing, the parties agreed to 22 stipulations, the authenticity and admissibility of 38 documents, and the authenticity of one additional document. The stipulations were admitted into evidence as Joint Exhibit 1.

26. Contained within the parties stipulations were the following facts:

- a. On the morning of September 19, 2014, Tam Tuff was housed at Indiana Grand in Barn #6, Stall #61. (Joint Exhibit 1; Stipulation 6)
- b. On the morning of September 19, 2014, Jamie Kolls (“Kolls”) was employed by Indiana Grand as a Barnwalker. (Joint Exhibit 1; Stipulation 7)
- c. On the morning of September 19, 2014, at approximately 10:00 a.m. Kolls began her duties at the Indiana Grand stable gate and then walked to Barns 6, 7, 8, and 9. (Joint Exhibit 1; Stipulation 8)
- d. On September 19, 2014, Tam Tuff was under the direct care, control and training of Estvanko. (Joint Exhibit 1; Stipulation 9)
- e. Tam Tuff participated in the 6th Race conducted at Indiana Grand on September 19, 2014. (Joint Exhibit 1; Stipulation 10)
- f. At all relevant times, Dr. Russell was providing veterinary services to horses stabled at Indiana Grand, including horses trained by Estvanko, Granitz, and Hammond (Joint Exhibit 1; Stipulation 11)

- g. Barns 6 and 7 are in close proximity at Indiana Grand and a person could move from one to the other within a short period of time. (Joint Exhibit 1; Stipulation 16)
- h. Industrial Laboratories tested the Tam Tuff specimens on or about September 24, 2014. (Joint Exhibit 1; Stipulation 23(f))
- i. Industrial Laboratories issued a report on or about October 3, 2014, concluding that the Tam Tuff specimens did not include any prohibited substances.

27. By their stipulation, the parties agreed to the authenticity and admissibility of certain documents, including, but not limited to:

- a. Google map aerial photograph of Indiana Grand barn area (Joint Exhibit 1; Stipulation 23(w));
- b. Exhibit A to the Stewards' Hearing: Diagrams of Barns 6 and 7 at Indiana Grand, Aerial photograph of the backside at Indiana Grand including barns (Joint Exhibit 1; Stipulation 23(c));
- c. Respondents' Exhibit 4 to the Stewards' Hearing, Day Sheets of Dr. Ross Russell for September 19, 2014 (5 pages) (Joint Exhibit 1; Stipulation 23(p));
- d. Photograph of Barn 6, Stall 61 (face-on view of Stall 61) (Joint Exhibit 1; Stipulation 23(y));
- e. Photograph of Barn 6, Stall 61(looking into Stall 61 from right side) (Joint Exhibit 1; Stipulation 23(z));

- f. Photograph of Barn 6, Stall 61(looking into Stall 61 from left side) (Joint Exhibit 1; Stipulation 23(aa));
- g. Photograph of Barn 7, Stall 31 (photographed from interior of stall, looking out) (Joint Exhibit 1; Stipulation 23(ff));
- h. Photograph of Barn 7, Stall 31 (looking into Stall 31 from right side) (Joint Exhibit 1; Stipulation 23(gg));
- i. Photograph of Barn 7, Stall 31 (looking into Stall 31 from left side) (Joint Exhibit 1; Stipulation 23(hh));
- j. Affidavit of Joe Gorajec (with Exhibits) dated June 5, 2015 (Joint Exhibit 1; Stipulation 23(ii)); and
- k. September 19, 2014 Barnwalker Sheets (3 pages) for Kolls relating to Indiana Grand Barns 2, 3, 4, 6, 7, 8 and 9 (Joint Exhibit 1; Stipulation 23(jj)).

III. Exhibits offered during the hearing

Petitioners' Exhibits (which were mislabeled as Respondents exhibits):

- 1. Jamie Kolls, Incident Report 14-090185 dated September 20, 2014.
- 2. Transcription of Jamie Kolls, Interview dated September 20, 2014.
- 3. Affidavit of Jamie Kolls, dated September 20, 2014.
- 4. Deposition of Jamie Kolls dated October 6, 2014.
- 5. Deposition of Dee Thoman dated October 15, 2014.
- 6. Diagram of Barn 6 stall layout at Indiana Grand Racing.
- 7. Diagram of Barn 7 stall layout at Indiana Grand Racing.
- 8. Aerial Photograph of Barns at Indiana Grand, including Barns 6 & 7.

9. Redacted Day Sheets of Dr. Ross Russell for September 19, 2014 removing identifying information about the treatment of other horses.
10. Transcript of Stewards Hearing on October 31, 2014.
11. Stewards findings and conclusions dated November 19, 2014.
12. ARCI Uniform Classification Guidelines for Foreign Substances with Recommended Penalties and Model Rules, as revised January, 2014. (withdrawn).
13. Barn Walker log sheets for Indiana Grand on September 19, 2014.
14. Industrial Laboratories Certificate of Analysis dated October 3, 2014.
15. Deposition of Dr. Ross Russell, March 30, 2015.
16. Written Statement of Stephanie Burchette dated September 23, 2014.
17. Written Statement of Callie M. Ramey dated September 23, 2014.
18. Written Statement of Joel Villalta dated September 24, 2014.

Commission Staff's Exhibits:

A. 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, including, but not limited to:

1. IC 4-31-13;
2. 71 IAC 5.5-1-14;
3. 71 IAC 5.5-3-2;
4. 71 IAC 5.5-3-3;
5. 71 IAC 5.5-3-5;
6. 71 IAC 8.5-1-1.5; and
7. 71 IAC 8.5-1-2;

- B. Redacted 2014 IHRC License Application of Richard Estvanko (removing personal identifying information);
- C. Redacted 2014 IHRC License Application of Anthony Granitz (removing personal identifying information);
- D. Transcript of October 31, 2014 Hearing Before the Board of Stewards with exhibits thereto;
- E. IHRC Ruling Number 14694;
- F. IHRC Ruling Number 14695;
- G. Stewards' Findings and Conclusions in re the Matter of Richard Estvanko and Anthony Granitz, dated November 19, 2014;
- H. September 19, 2014 Indiana Grand "In Today" list;
- I. September 19, 2014 Indiana Grand Program;
- J. Equibase Results Chart for the 6th Race on September 19, 2014 at Indiana Grand;
- K. Indiana Grand Incident Report Number 14-090185, dated September 20, 2014;
- L. Affidavit of Jamie Kolls;
- M. Indiana Grand Barn Map;
- N. Diagram of Indiana Grand Barn 6;
- O. Diagram of Indiana Grand Barn 7;
- P. Aerial view of Indiana Grand Barns 6 and 7;
- Q. Google map aerial photograph of Indiana Grand barn area;
- R. Photograph of Barn 6 (wide view of stalls on southeast side of Barn 6);
- S. Photograph of Barn 6, Stall 61 (face-on view of Stall 61);
- T. Photograph of Barn 6, Stall 61(looking into Stall 61 from right side);

- U. Photograph of Barn 6, Stall 61(looking into Stall 61 from left side);
- V. Photograph of gap between Barns 6 and 7 (taken from southeast side of barns);
- W. Photograph of Barn 7 (wide view of stalls on southeast side of Barn 7);
- X. Photograph of Barn 6 (wide view of stalls on southeast side of Barn 6);
- Y. Photograph of Barn 7, Stall 26 (looking into Stall 26 from left side);
- Z. Photograph of Barn 7, Stall 31 (photographed from interior of stall, looking out);
- AA. Paragraph of Barn 7, Stall 31 (looking into Stall 31 from right side);
- BB. Photograph of Barn 7, Stall 31 (looking into Stall 31 from left side);
- CC. September 19, 2015 Barnwalker Sheets (3 pages) for Kolls relating to Indiana Grand Barns 2, 3, 4, 6, 7, 8 and 9;
- DD. Indiana Grand “In Today” Report dated September 19, 2014;
- EE. IHRC Document titled: “Report Times for Ship-Ins Indiana Grand”;
- FF. Transcript of recorded Statement of Ross Russell, taken October 7, 2014;
- GG. Deposition of Ross Russell, taken March 30, 2015;
- HH. October 28, 2014 letter from Dr. Richard Sams to Joe Gorajec;
- II. Deposition of Kimberly Hammond, taken October 13, 2014;
- JJ. Photo of red-top glass vacutainer blood collection tube;
- KK. Photo of Photo of Tiger-top glass vacutainer blood collection tube;
- LL. Photo of 20 gauge vacutainer needle (pink with red cap);
- MM. Photo of Vacutainer holder (clear);
- NN. Photo of 12 ml syringe in casing (empty);
- 00. Photo of 6 ml syringe in casing (empty);
- PP. Photo of 6 ml syringe filled with yellow liquid, with 18-gauge needle attached;
- QQ. Photo of 12 ml syringe filled with yellow liquid, with 18-gauge needle attached;

RR. Affidavit of Joe Gorajec (with Exhibits) dated June 5, 2015;

SS TT UU

VV. Drawing by Stephanie Burchette during the hearing;

WW. Drawing by Jamie Kolls during the hearing- offered for demonstrative purposes only.

Petitioners' Exhibits 1, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, and 17 were admitted into evidence without objection from the Commission's Staff. Petitioners' Exhibit 2, the transcribed Interview of Jamie Kolls on September 20, 2014 was admitted over the objection of the Commission Staff. Petitioners Exhibits 13, 15, and 16 were not offered into evidence.

Commission Staffs' Exhibits lettered A, B, C, D, E, F, H, I, J, K, L, M, N, O, P, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, OO, RR, VV, WW and XX were admitted into evidence without objection from the Petitioners. Commission Staff Exhibits PP and QQ were admitted for demonstrative purposes over the objection of Petitioners. Exhibit G was withdrawn. Photographs of blown up photographs marked as Exhibits N, O, Q, and XX were offered into the record in lieu of the blown up photographs utilized during the hearing. Color photographs of Exhibits JJ through QQ were offered in lieu of needles, collection tubes, and liquids which were utilized during the hearing.

The original, non-redacted versions of Commission Staff Exhibits A and B, and Petitioners Exhibit 9 were placed under seal and part of the record. The original of Commission Staff Exhibits JJ, KK, LL, MM, NN, OO, PP, and QQ were ordered to be maintained and preserved by the Commission Staff until there is a final resolution of this matter or further order.

Findings of Facts underlying the Violations

A. **Substantial, credible, and reliable evidence support the conclusion that the thoroughbred race horse Tam Tuff received a prohibited injection on race day on September 19, 2014, in violation of 71 IAC 8.5-1-1.5(b).**

28. On September 19, 2014, Estvanko and Granitz were licensees of the Indiana Horse Racing Commission. (Joint Exhibit 1; Stipulations 1, 2)

29. Estvanko and Granitz were subject to sanction in the event they “violated or attempted to violate a provision of this article, these rules, or a law or rule with respect to horse racing in a jurisdiction.” (71 IAC 5.5-1-14(b)(4)).

30. On September 19, 2014, 71 IAC 8.5-1-1.5 (b) (1) was in full force and effect which provided in pertinent part:

(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.

31. Estvanko and Granitz responsibilities pursuant to 71 IAC 5.5-3-3(a) included, but were not limited to:

(14) Maintaining a knowledge of the medication record and status of all horses in his or her care; . . .

(26) Guard and protect all horses in his/her care; . . .

(30) Immediately notifying the stewards , or in their absence commission or track security, of any contact a practicing veterinarian or his or her helper has with a horse within twenty-four hours of its scheduled race except for the administration of furosemide in accordance with commission rules.

32. On September 19, 2014, a trainer was required to “prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.” pursuant to 71 IAC 5.5-3-2 (b).

33. On September 19, 2014, an assistant trainer had the “same duties, responsibilities and restrictions as imposed on the licensed trainer” pursuant to 71 IAC 5.5-3-5. “The trainer

shall be jointly responsible for the assistant trainer's compliance with these rules" pursuant to 71 IAC 5.5-3-5,

34. Estvanko and Granitz were further subject to sanctions if they "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(b) (10))

35. On September 19, 2014, Granitz was the trainer of record of the 3-year-old filly Tam Tuff. (Joint Exhibit 1; Stipulation 4)

36. Granitz had been a horse trainer for 33 years and was licensed in several racing jurisdictions. (Transcript, p. 266)

37. On September 19, 2014, Estvanko was the assistant trainer of Tam Tuff. (Joint Exhibit 1; Stipulation 5) He was hired by Gravitz approximately four (4) years earlier. (Transcript, Estvanko Testimony, p. 266)

38. On the morning of September 19, 2014, Tam Tuff was housed in Stall 61 of Barn 6 at Indiana Grand. (Joint Exhibit 1; Stipulation 6)

39. Tam Tuff was entered and raced in the sixth race at Indiana Grand on September 19, 2014. (Joint Exhibit 1; Stipulation 10)

40. On September 19, 2014, Tam Tuff placed second in the sixth race at Indiana Grand. Commission Staff Exhibit D (Transcript of October 31, 2014 Hearing Before the Board of Stewards, Exhibit J thereto)

41. Numerous witnesses testified and offered totally different recollections about the location of the events that barn walker Kolls observed on the backside of Indiana Grand on the morning of September 19, 2014.

42. Two diametrically opposite version of events were presented during the testimony and evidence that was presented to the Administrative Law Judge:

- a. Estvanko and Granitz presented the testimony of Burchette, Ramey, and Dr. Russell to support their contention that Commission Staff witness, Jamie Kolls saw Dr. Russell and his assistant, Ramey, in and around Stall 31 of Barn 7 during the morning of September 19, 2014. At that time, Stall 31 housed the racehorse, Moonlight Success, trained by Hammond. Moonlight Success was not scheduled to race at Indiana Grand on September 19, 2014. Therefore, Moonlight Success was not an “in-today” horse that day which would have substantially restricted the access of a licensed veterinarian to that particular animal. 71 IAC 8.5-4-12.
- b. The Commission Staff presented the testimony of Kolls, Villalta, and Thoman to support its contention that the barn walker observed Dr. Russell injecting Tam Tuff, a horse trained by Estvanko and Granitz, in Stall 61, Barn 6, which was scheduled to race that same evening. Tam Tuff was an “in-today” horse that was prohibited from having unrestricted contact with a licensed veterinarian and/or a race day injection of any substance other than furosemide. Furosemide could only be administered under controlled circumstances in the presence of track security commonly known as a “vet shadower”.

43. The two completely opposite versions of events presented during the hearing varied so significantly that they cannot be reconciled. Accordingly, ALJ Pylitt was required to accept one version of the events to the exclusion of the other.

44. Based upon substantial, credible, and reliable evidence, Jamie Kolls observed Dr. Russell inject an “in-today” horse Tam Tuff between 10:00 and 11:00 o'clock a.m. on September 19, 2014, in and around Barn 6, Stall 61 at Indiana Grand.

B. The version of events from the witnesses and testimony offered by Estvanko and Granitz (other than Dee Thoman) lacked credibility and reliability.

45. Estvanko and Granitz have the greatest interest in the outcome of the proceedings.

46. Estvanko was in Barn 6 from 10:00 a.m. to 10:27 a.m. on September 19, 2014 other than going out to the “manure bins and stuff” but did not see Dr. Russell. (Transcript¹, Estvanko Testimony, pp. 257-258)

47. Neither Estvanko or Granitz had an ownership interest in Tam Tuff on September 19, 2014.

48. There is no evidence that Estvanko or Granitz specifically directed Dr. Russell to inject Tam Tuff on September 19, 2014.

49. Granitz, was out of state at Keeneland on September 19, 2014, and was not summarily suspended. (Commission Staff Exhibit G, Stewards’ Findings and Conclusions November 19, 2014, p. 1).

Dr. Russell’s Testimony:

50. Dr. Russell was a licensed vet at Indiana Grand from 2011 until September 20, 2014. (Transcript, Dr. Russell Testimony, p. 146)

51. During 2014, Dr. Russell provided veterinary services to horses stabled at Indiana Grand, including horses trained by Estvanko, Granitz and Kimberly Hammond.

¹ The testimony at the hearing before ALJ Pylitt on June 23 and 24, 2015 will be referenced in this Recommended Order as “Transcript”.

52. Dr. Russell faces disciplinary proceeding that partially involves the underlying events at issue in this matter. A ruling exonerating the Petitioners would help his own disciplinary case. (Transcript, Dr. Russell Testimony, p. 214).

53. At some time during the morning of September 19, 2014, Dr. Russell drew blood from two horses trained by Hammond located in Barn 7, Stall 31 (Moonlight Success) and Barn 7, Stall 26 (the Cubs Success).

54. Immediately after drawing blood from those two horses, Dr. Russell administered jugs to two horses trained by Hammond located in Barn 7, Stall 37 (Indiana Rodey) and Barn 7, Stall 43 (Will Gracie Shine).

55. No treatment sheets for these two horses were offered into evidence.

56. Dr. Russell and his assistants were all in a “very big rush” that morning. (Transcript, Ramey Testimony, p. 117; Transcript, Dr. Russell Testimony, p. 181) There was a Cobalt meeting scheduled at 11o'clock that morning and they were trying to push in as much as possible. (Transcript, Ramey Testimony, p. 103)

57. Dr. Russell administered multiple injections in eight different barns on the back side at Indiana Grand over an 11 minute period during the afternoon of September 19, 2014. (Transcript, Dr. Russell Testimony, pp. 181-185) (Summary Demonstrative Exhibit)

58. Dr. Russell's Day Sheet for September 19, 2014 were admitted into evidence as Petitioners Exhibit 9. (Transcript, Burchette Testimony, pp. 26, 28-29,36-37,57,74,78-79, 81-84; Transcript, Dr. Russell Testimony, pp. 139-143). The time entries were not entered in any logical order. Day Sheets were clearly not filled out as treatments were completed. Burchette began logging information on the September 19, 2014 Day Sheet around 9:00 a.m. (Transcript,

Burchette Testimony, pp. 27-28) Burchette also transferred times from treatment sheets later in the day. (Transcript, Burchette Testimony, p. 36)

59. Dr. Russell had no issue with or any significant interaction with barn walker Kolls prior to the morning of September 19, 2014. (Commission Staff Ex. GG, Deposition of Dr. Russell taken March 30, 2015, p. 62)

60. Dr. Russell denies ever injecting an in-race horse with any substance other than Lasix. (Transcript, Dr. Russell Testimony, p. 175)

Stephanie Burchette's Testimony:

61. On September 19, 2014, Stephanie Burchette was employed as a Vet Assistant by Russell Equine Sports Management ("RESM"), a LLC owned by Dr. Russell and his wife, Sarah. (Transcript, Burchette Testimony, p. 22; Transcript, Dr. Russell Testimony, pp. 175-176)

62. Following Dr. Russell's summary suspension by the Stewards on September 20, 2014, Burchette was paid \$400 per week until the end of the meet in November 2014 even though she and Dr. Russell were banned from Indiana Grand. (Transcript, Burchette Testimony, pp. 64-66) She also was given \$250 for gas money to drive to Florida after the meet to continue working for Dr. Russell.

63. The "Sworn Affidavit of Events"² she signed in September 2014 was typed by Sarah, included information that was provided to her by others, and was not made based upon her own personal knowledge. (Transcript, Burchette Testimony, pp. 74-75) By submitting her Affidavit, Burchette was hopeful that Dr. Russell's summary suspension would be removed and she would be able to continue her work with RESM.

² The purported "Sworn Affidavit of Events" is not a proper Affidavit since it is not sworn to or made under the penalties for perjury. Ramey and Villalta signed similarly deficient Sworn Affidavits of Events.

64. At the time of the hearing, Burchette was the Practice Manager for Dr. Russell at RESM. (Transcript, Burchette Testimony, p. 65)

65. Dr. Russell and Burchette maintained a log containing columns to record which horses, trainer, stall, treatment provided, as well as the time for each horse in a given day which they called "Day Sheets". (Transcript, Burchetter testimony, pp. 20-21)

66. Burchette began logging information on the September 19, 2014 Day Sheet around 9:00 a.m. (Transcript, Burchette Testimony, pp. 27-28)

67. The time entries were not entered in any logical order. Day Sheets were not filled out as treatments were completed. Burchette occasionally entered time in the car and also transferred times from treatment sheets later in the day. (Transcript, Burchette Testimony, pp. 36-37)

68. The September 19, 2014 Day Sheet failed to reflect that Dr. Russell attended the Cobalt meeting at 11:00 a.m., was called away for an emergency around 11:15 a.m., left the Indiana Grand grounds with Ramey, and returned approximately 90 minutes later.

69. Prior to September 19, 2014, Dr. Russell produced treatment records to the Commission's investigators who determined that his records were lacking since they did not contain times or detailed explanations of treatment recorded. (Transcript, Burchette testimony, p. 86) After that, they took steps to make sure the records were accurate.

70. On September 19, 2014, Burchette and Dr. Russell could get from Barn 6 to Barn 7 in about 20 seconds. "It's not a very long walk." (Transcript, Burchette Testimony, pp.79-80)

Callie Ramey Testimony:

71. She was employed as a Vet Assistant by RESM from June to September 2014. (Transcript, Ramey Testimony, p. 90-91) Initially, she gave misleading testimony that she was a vet tech which requires special credentials. (Transcript, Ramey Testimony, pp. 90, 111)

72. Ramey had been to Dr. Russell's house, attended a concert with his wife, and her children had played with Dr. Russell's children. (Transcript, Ramey Testimony, p. 133; Commission Staff Exhibit D, Transcript of October 31, 2014 Hearing Before the Board of Stewards, p. 124)

73. Following Dr. Russell's summary suspension by the Stewards on September 20, 2014, Ramey was also paid through the end of the meet even though she and Dr. Russell were banned from Indiana Grand. (Transcript, Ramey Testimony, pp. 111-112)

74. Ramey was hopeful that Dr. Russell's summary suspension would be removed and she would be able to continue her work with RESM. (Transcript, Ramey Testimony, p. 112)

75. On September 19, 2014, Ramey and Dr. Russell could get from Barn 6 to Barn 7 in about 20 seconds. (Transcript, Ramey Testimony, p. 131)

76. Ramey testified that her interaction with Kolls took place between 10:00 a.m. and 10:15 a.m. while Burchette was at the truck pulling vitamin jugs. (Transcript, Ramey Testimony, p. 101)

Christina Estvanko's Testimony:

77. She is, and was during September 2014, married to Richard Estvanko. (Transcript, Christina Estvanko Testimony, p. 233) The Estvanko family income is dependent upon Estvanko's ability to train horses. (Transcript, Christina Estvanko Testimony, p. 245)

Christina Estvanko had previously been employed by RESM and considered Dr. Russell a “close friend”. (Transcript, Christina Estvanko Testimony, pp. 245-246)

78. Christina Estvanko gave misleading testimony during the hearing that she was a vet tech. However, on cross-examination she admitted that she was not truthful since a Vet Tech required special training which she did not have. (Transcript, Christina Estvanko Testimony, p. 245)

79. Christina Estvanko was in Barn 6 on September 19, 2014 at 10:12 a.m. but did not see Dr. Russell. (Transcript, Christina Estvanko’s Testimony, p. 240)

80. Christina Estvanko was summarily suspended by the Stewards during 2014 for calling Kolls a “whore” and a “stupid bitch”, after Kolls was identified as the barn walker who witnessed Tam Tuff being injected on race day.

81. Christina Estvanko’s license is probationary. (Transcript, Christina Estvanko Testimony, p. 249)

Kimberly Hammond’s Testimony:

82. Hammond was the trainer of the horse, Moonlight Success, which was housed in Stall 31 of Barn 7 during the morning of September 19, 2014. Hammond considered Dr. Russell a friend since she was the recipient of a “huge favor” when he treated a colt at her farm on the evening of September 18, 2014. (Transcript, Hammond Testimony, p. 366)

83. During her earlier deposition, Hammond testified that she would “help Dr. Russell anyway [she] could.” (Transcript, Hammond Testimony, p. 367-368.)

84. Hammond was not at Indiana Grand, or in or around Barn 7, on September 19, 2014 (Transcript, Hammond testimony, p. 368) and therefore had no way of knowing what time a blood draw occurred in Barn 7. (Transcript, Hammond testimony, pp. 368-369)

85. On September 24, 2014, Hammond met with her groom, Joel Villalta, and handed him a “Sworn Affidavit of Events” which contained a misspelling of Villalta’s last name. The “Sworn Affidavit of Events” was in English. (Transcript, Hammond Testimony, p. 372; Transcript, Villalta Testimony, p. 224) Hammond spoke no Spanish and Villalta spoke very limited English. (Transcript, Hammond Testimony, p. 369; Transcript, Villalta Testimony, pp. 222-223) Villalta had not discussed this incident with Hammond or Dr. Russell prior to that time. (Transcript, Villalta Testimony, p. 225) Hammond advised Villalta to sign the Affidavit, which he did. (Transcript, Villalta Testimony, p. 225)

86. During her prehearing deposition, Hammond testified that she did not know where the “Sworn Affidavit of Events” she had given Villalta to sign had come from or even if she had presented it to him for signature. Nine months later, during the hearing, she testified that she “recently remembered” that she obtained the unsigned version of the “Sworn Affidavit of Events” from Dr. Russell. (Transcript, Hammond Testimony, p. 371)

87. The “Sworn Affidavit of Events” signed by Burkette, Ramey, and Villalta were all prepared by or for Dr. Russell.

88. Koll’s direct supervisor, Dee Thoman (“Thoman”) was Subpoenaed as a witness for Petitioners and had no interest in the outcome of the proceedings. Her testimony corroborated Koll’s version of events.

C. Substantial, credible, and reliable evidence and testimony support the version of events presented by the Commission Staff.

Jamie Koll’s Testimony:

89. On September 19, 2014, Kolls was a barn walker employed by Indiana Grand. She was not an employee or representative of the Commission or the Commission Staff. (Transcript, Kolls Testimony, p. 302; Transcript, Thoman Testimony, p. 410)

90. Kolls became a barn walker in mid-July 2014. (Transcript, Thoman Testimony, p. 410)

91. As a barn walker, Kolls would check on “in-today” horses. (Transcript, Kolls Testimony, p. 302)

92. Kolls received little or no training prior to assuming her role as a barn walker.

93. On September 19, 2014, Kolls did not personally know Dr. Russell (Petitioners Ex. 4, Deposition of Jamie Kolls dated October 6, 2014, p. 3) but she knew who he was from previously seeing him in the receiving barn.

94. Dr. Russell had no issue or any significant interaction with Kolls prior to September 19, 2014. (Commission Staff Ex. GG, Deposition of Dr. Russell taken March 30, 2015, p. 62)

95. On September 19, 2014, Kolls worked the 10 a.m. to 4 p.m. shift. (Transcript, Kolls Testimony, p. 303) The weather was nice. When Kolls arrived that morning she went to the stable gate and received her “round sheets” for the day which identified the “in-today” horses (Transcript, Kolls Testimony, pp. 303-304) and a walkie-talkie radio. (Transcript, Kolls Testimony, pp. 333-334)

96. The first barn on Kolls route for the day was Barn 6. (Transcript, Kolls Testimony, pp. 305-306) Kolls first visited Barn 6 “in-today” stalls 9 and 18. (Transcript, Kolls Testimony, p. 306) There is a breezeway/walkway located in the middle of Barn 6. Kolls then walked through this breezeway. (Transcript, Kolls Testimony, p. 307)

97. Kolls first passed Stall 61 in Barn 6 at 10:12 a.m. (Transcript, Kolls Testimony, p. 305)

98. Within 12 minutes after beginning her duties, Kolls saw a blonde girl with a clipboard outside of Stall 61 of Barn 6. She later identified a photograph of this person as Callie Ramey. (Transcript, Kolls Testimony, p. 317) As she approached the stall, Kolls felt that Ramey was acting “suspicious”. (Transcript, Kolls Testimony, pp. 310-311) Ramey was clearly annoyed that she had been approached by Kolls. (Transcript, Kolls Testimony, p. 303) Kolls asked her whether she needed a vet shadower. (Transcript, Kolls Testimony, pp. 311, 317-318) Ramey was short with Kolls, and her body language uninviting, so Kolls left after watching the first injection. (Transcript, Kolls Testimony, p. 318)

99. At almost the same time, Kolls saw Dr. Russell entering Stall 61 of Barn 6 with two syringes. One contained a yellow fluid. (Transcript, Kolls Testimony, pp. 307, 310, 311-314)

100. As she stood within four feet of the stall, Kolls observed Dr. Russell administering a shot into the neck of the horse in the stall. (Transcript, Kolls Testimony, p. 313). She was confident that she saw Dr. Russell with needles and syringes that were not the type of serum separator tube that she was shown at the hearing. (Transcript, Kolls Testimony, p. 315) The needles and syringes contained a yellow liquid and did not contain red blood. (Transcript, Kolls Testimony, pp. 313-314)

101. The equipment used by Dr. Russell for drawing blood looked different than a loaded syringe. (Transcript, Burchette Testimony, p. 78) In addition, the process of drawing blood was different than the process of administering an injection. (Transcript, Ramey Testimony, pp. 130-131)

102. If a person were to observe Dr. Russell drawing blood, they would see the tube filling up quickly with the bright red substance. (Transcript, Ramey Testimony, p. 130)

103. It only takes 30-40 seconds for Dr. Russell to draw a blood sample. (Transcript, Russell Testimony, p. 163)

104. There was a man whom Kolls could not see standing behind the horse in Stall 61 of Barn 6 who was speaking English and did not have an accent. (Transcript, Kolls Testimony, pp. 308, 310, 317)

105. Kolls was confident that she had seen Ramey and Dr. Russell in and around Stall 61 of Barn 6, and not in Barn 7, on September 19, 2014. (Transcript, Kolls Testimony, p. 320)

106. Kolls was “absolutely positive” she saw Dr. Russell injecting a horse in Stall 61 of Barn 6 on the morning of September 19, 2014 and not withdrawing blood. (Transcript, Kolls Testimony, pp. 323 and 339)

107. On September 19, 2014, Kolls finished her last round at 3:26 p.m. (Transcript, Kolls Testimony, p. 333)

108. Kolls’ lack of training in how and when to report suspicious activity around “in-today” horses is irrelevant to the outcome of this hearing and does not serve as a defense to the allegations against Estvanko and Granitz.

109. Kolls testimony was credible and believable.

Dee Thoman’s Testimony:

110. Thoman was employed as a Security Shift Supervisor at Indiana Grand on September 19, 2014. (Transcript, Thoman Testimony, p. 395)

111. When Kolls reported to work the day following September 19, 2014, she reported the incident to Thoman as her direct supervisor. (Transcript, Kolls Testimony, p. 320; Thoman Testimony, pp. 396-397.) Kolls told Thoman that she had seen Dr. Russell giving some sort of an injection to an in-today horse. (Transcript, Thoman Testimony, pp. 396-397)

112. During the afternoon of September 19, 2014, Thoman was responsible for “shadowing” Dr. Russell. She did not complete her shadowing of Dr. Russell until about around 4:42 p.m. after Kolls had left for the day.

113. As the vet shadower she recorded the actual and official time that Dr. Russell administered Lasix. (Transcript, Thoman Testimony, p. 415)

114. Although Kolls did not report seeing Dr. Russell in Barn 6 on the morning of September 19, 2014, she did ask Thoman as her direct supervisor, about the significance of what she had seen the very next time that she saw her. (Transcript, Thoman Testimony, pp. 414-416)

115. Kolls told Thoman that the encounter had taken place in Bunny’s barn. Bunny was a gentleman who worked in Barn 6. (Transcript, Thoman testimony, p. 412)

116. Kolls told Thoman she was positive this had taken place in Stall 61 of Barn 6. (Transcript, Thoman Testimony, p. 413)

117. Thoman told Kolls that this was an extremely serious allegation and that she wanted to walk the route with Kolls so she could “be one hundred percent sure of what she saw and where she saw it. (Transcript, Thoman Testimony, p. 397)

118. On September 20, 2014, Thoman and Kolls walked the circumference of Barns 6 and 7 on two successive trips. (Transcript, Thoman Testimony, p. 400)

119. After the two walked a couple times around Barns 6 and 7, Thoman went to the security office at the stable gate to get a blank incident report and took it to Kolls to fill out in the Receiving Barn where she was working that morning. (Transcript, Thoman Testimony, pp. 399-400, 402). Thoman helped Kolls fill out the first page but did not assist her with the second page of the report, which Kolls filled out on her own. (Transcript, Thoman Testimony, p. 404,405;

Transcript, Kolls Testimony, pp. 322-323; Commission Staff Exhibit K., Indiana Grand Incident Report Number 14-090185, dated September 20, 2014).

120. Kolls narrative in the incident report was consistent with what Thoman had been told by Kolls earlier that morning. (Transcript, Thoman Testimony, p. 404)

121. The substantial, credible and reliable testimony supports the conclusion that Kolls observed Dr. Russell inject the in-today horse Tam Tuff injected with a substance other than furosemide in Barn 6, Stall 61 on September 19, 2014.

Joel Villalta's Testimony:

122. Since Villalta does not speak English fluently, an Indiana Supreme Court approved translator provided translation throughout his testimony before ALJ Pylitt.

123. Villalta did not have a personal relationship with Dr. Russell nor an interest in the proceedings that would call into question the veracity of his testimony.

124. On the morning of September 19, 2014, Villalta's boss, trainer Kimberly Hammond was not at Indiana Grand and therefore not in or around Barn 7. (Transcript, Hammond Testimony, p. 368.)

125. On September 19, 2014, Hammond spoke no Spanish and Villalta spoke very little English. (Transcript, Villalta Testimony, pp. 222-223)

126. On September 24, 2014, Hammond met with Villalta alone, handed him a "Sworn Affidavit of Events" (Petitioners Exhibit 17), which was completely in English, and told him he "needed to sign it". (Transcript, Villalta Testimony, p. 224)

127. Villalta had not discussed the underlying incident with Hammond or Dr. Russell prior to meeting with Hammond on September 24, 2014 to sign his Affidavit. (Transcript,

Villalta Testimony, p. 225) Hammond had no way of knowing where Villalta had been or what he had observed on the morning of September 19. (Transcript, Villalta Testimony, p. 225)

128. Villalta clearly did not understand the substance of the Affidavit that he was asked to sign when it was presented by his former boss Hammond.

129. Villalta consistently testified that he was **not** in Stall 31 of Barn 7 where Dr. Russell claims Villalta was present and holding Moonlight Success while he was drawing blood on the morning of September 19, 2014.

130. Villalta was standing five stalls away from Dr. Russell when Dr. Russell was taking blood from Moonlight Success. (Transcript of October 31, 2014 Stewards Hearing, Commission Staff Exhibit D, p. 145).

131. Villalta was not in the stall at the time that blood was drawn by Dr. Russell on the morning of September 19, 2014. (Transcript of October 31, 2014 Stewards Hearing, Commission Staff Exhibit D, p. 146).

132. Villalta did not hold a horse when Dr. Russell drew blood on September 19, 2014. (Transcript of October 31, 2014 Stewards Hearing, Commission Staff Exhibit D, p. 148).

133. Villalta never held any horse while Dr. Russell drew blood (Transcript of October 31, 2014 Stewards Hearing, Commission Staff Exhibit D, p. 148):

- a. “Q. I want to be very clear about this, Joel. Isn’t it true that on the morning of September 19, 2014 that you were never in Barn 7, Stall 31 holding a horse for Doctor Russell while he pulled blood from the horse in that stall?

A. I was never in that stable.

Q. All right. And, in fact, during that morning, you were never in any stall in Barn 7 holding a horse for Doctor Russell while he pulled blood from a horse, were you?

A. No.”

(Transcript, Villalta Testimony, p. 226; *Emphasis Added*);

- b. Villalta was in the middle of the barn in Stall 37 while Dr. Russell claimed Villalta was holding a horse that he was pulling blood in Stall 31 on the morning of September 19, 2014. (Transcript, Villalta Testimony, pp. 227-228)

134. Villalta's testimony was credible and believable despite being in direct conflict with the testimony of Dr. Russell, Burchette, and Ramey, all who claim that Villalta was physically present in Stall 31 of Barn 7 holding the horse at the time Dr. Russell was allegedly drawing blood from Moonlight Success. (Transcript, Dr. Russell Testimony, pp. 155-156; Exhibit 7 to Commission Staff Exhibit GG, Deposition of Ross Russell taken March 30, 2015; Transcript, Burchette Testimony, p. 42; Commission Staff Exhibit VV; Transcript, Ramey Testimony, pp. 97, 99, 120, 127; Commission Staff Exhibit WW)

135. Villalta was the only disinterested witness who testified that he was not in Stall 31 of Barn 7 while Dr. Russell was drawing blood from Moonlight Success the morning of September 19, 2014.

136. Dr. Russell's treatment records for blood draws on Kimberly Hammond's horses, including Moonlight Success, on September 19, 2014 were not offered into evidence.

137. Substantial, credible, and reliable testimony support the conclusion that the interaction between Ramey, Dr. Russell and Kolls during the morning of September 19, 2014 did not take place in or around Stall 31 of Barn 7, but instead took place in and around Stall 61 of Barn 6.

138. Estvanko and Granitz' witnesses' versions of events on September 19, 2014 defy common sense:

- a. Dr. Russell had been under investigation by the Commission Staff for two months prior to the September 19, 2014 incident in Stall 61 of Barn 6. (Commission Staff Exhibit RR, Affidavit of Joe Gorajec with exhibits dated June 5, 2015; Transcript, Burchette Testimony, p.80, 85; Transcript, Ramey Testimony, p. 134) “[W]e were pretty aware that we had a close eye on us.” (Transcript, Burchette Testimony, p. 85)
- b. On September 19, 2014, Dr. Russell understood that he would be in trouble with the regulatory authorities if he even walked into the stall of an “in-today” horse without a vet shadower. (Transcript. Dr. Russell Testimony, p. 211)
- c. Had Dr. Russell been drawing blood from Moonlight Success, he and/or his assistant could have clarified the situation and advised the barn walker that it was not an “in-today” horse. (Transcript, Ramey Testimony, pp. 135-136; Transcript, Dr. Russell Testimony, p. 211), particularly after the barn walker asked whether he needed a vet shadower.

139. The testimony from several witnesses called on behalf of Estvanko and Granitz included other factual discrepancies which could not be reconciled, thereby calling into question those witnesses’ credibility:

- a. Ramey was picked up at the trailer by Burchette around 9:00 a.m. on September 19, 2014. (Transcript, Burchette Testimony, p. 32) Burchette and Ramey both testified that Dr. Russell was not in the car with them. (Transcript, Burchette Testimony, pp. 32, 34, 35; Transcript, Ramey Testimony, pp. 93-113) Dr. Russell “believed” he was in the car when

- Ramey was picked up. (Transcript, Dr. Russell Testimony, p. 152, 179-181)
- b. Dr. Russell's Day Sheet for September 19, 2014 was admitted into evidence as Petitioners Exhibit 9. (Transcript, Burchette Testimony, pp. 26, 28-29,36-37,57,74,78-79, 81-84; Transcript, Dr. Russell Testimony, pp. 139-143). The time entries were not recorded in any chronological order. The Day Sheet was not filled out in real time as treatments were completed. Burchette began logging information on the September 19, 2014 Day Sheet around 9:00 a.m. (Transcript, Burchette Testimony, pp. 27-28)
 - c. Burchette also transferred times from treatment sheets to the Day sheet later that day. (Transcript, Burchette Testimony, pp. 36-37)
 - d. There was a 28 minute gap on the Day Sheet between the time that they treated the last horse in Carolyn Murphy's Barn (Barn 10, Stall 7 at 9:52 a.m.) and the time recorded for the blood draw for Moonlight Success in Barn 7. Stall 31 at 10:20 a.m. (Petitioners Exhibit 9)
 - e. Burchette and Ramey agree that they could get from Barn 6 to Barn 7 with Dr. Russell in. about 20 seconds. (Transcript, Burchette Testimony, pp.79-80; Transcript, Ramey Testimony, p. 131)
 - f. Ramey and Dr. Russell were in a "very big rush" during the morning of September 19, 2014. (Transcript, Ramey Testimony, p. 117; Transcript, Dr. Russell Testimony, p. 181) There was a cobalt meeting scheduled at

11o'clock that morning and they were trying to push in as much as possible. (Transcript, Ramey Testimony, p. 103)

- g. When asked at his deposition whether there was ever a point on the morning of September 19 that his truck was behind Barns 5, 6 or 7, Dr. Russell testified that when he was in a hurry to get from the new barns (Barns 10-12 and 14) to the barns on the other side that he "would take the back way where [he] didn't have to drive through the main row where the horses were." (Commission Staff Exhibit G, Deposition of Dr. Russell taken on March 30, 2015, pp. 42-43. Russell and Ramey acknowledged that there was less traffic, less congestion and less horses in that passageway. (Commission Staff Exhibit G, Deposition of Dr. Russell taken on March 30, 2015, p. 49; Transcript, Ramey Testimony, p. 118). Ramey acknowledged that the use of the "field side" roads would allow them to get closer to the stalls of the horse on that side of the barns. (Transcript, Ramey Testimony, pp. 116-117; Transcript, Thoman Testimony, pp. 419-420).
- h. Despite the fact that they were in a "very big rush" that morning, Dr. Russell claims to have taken an alternate route to reach the Hammond stalls (all on the "field side" of Barn 7) on the morning of September 19, 2014. (Exhibit 5 to Commission Staff Exhibit G, Deposition of Dr. Russell taken on March 30, 2015). In conflict with his deposition testimony, Russell testified that about 99% of the time he did not use the field side roads during the morning.

- i. Burchette claims to have seen the alleged interaction between Ramey and the barn walker in Barn 7. (Transcript, Burchette Testimony, p. 44) According to Ramey's testimony, Burchette turned around into the breezeway to return to the truck before this would have taken place and would not have been able to witness what she claims to have seen. (Transcript, Ramey Testimony, pp. 121-122)
- j. During the treatment of Hammonds' horses on the morning of September 19, 2014, Ramey and Dr. Russell claim that Dr. Russell's truck was in front of Barn 7 in a different location than Burchette. (Transcript, Burchette Testimony, pp. 76-77; Transcript, Ramey Testimony, pp. 96-97; Exhibit 6 to Commission Staff Exhibit G, Deposition of Dr. Russell taken on March 30, 2015)
- k. Burchette and Dr. Russell testified that Villata was assigned to the horses in Hammond Stalls 31 and 26 in Barn 7 on September 19, 2014, where they claimed to be drawing blood from Hammond's horse. (Transcript, Burchette Testimony, pp. 45-46; Transcript, Dr. Russell Testimony, p. 155) According to Burchette, Ramey held the horses that vitamin jugs were administered to after the blood draws had been completed. (Transcript, Burchette Testimony, pp. 45-46) Villalta, however, indicated that a "crazy" horse in Stall 43, Will Gracie Shine, was assigned to him that day and that he held that horse while Dr. Russell administered the vitamin jug. (Transcript, Villalta Testimony, pp. 226-227)

- l. Dr. Russell administered multiple injections in eight different barns on the back side at Indiana Grand over an 11 minute period during the afternoon of September 19, 2014. (Transcript, Dr. Russell Testimony, pp. 181-185) (Summary Demonstrative Exhibit)
- m. According to the official records, Lasix was legally administered to Tam Tuff by Dr. Russell at 3:19 p.m. on September 19, 2014. Lasix was legally administered by Dr. Russell 4 minutes later in Barn 7 to Loving Way. (Commission Staff Exhibit DD)

140. Burchette's explanation about the times recorded on the Day Sheet for September 19, 2014 (Petitioners Exhibit 9), as well as the times recorded, lack any credibility or trustworthiness based, in part, upon the following facts:

- a. Dr. Russell circled and numbered each page of his Day Sheets at the top left corner to keep the information sequential and to make sure that they did not accidentally get lost. (Transcript, Burchette Testimony, p. 81). However, the entries made by Burchette were not chronological. For example, she made the following entries listing times for sequential treatment on page 8 as 1:50, 3:00, 2:00, 2:15, 3:23, 1:42, 3:42, 3:35, 2:50, and 3:22.
- b. Dr. Russell treated 104 horses on September 19, 2014 during a very busy day.
- c. The Day Sheet failed to list the Stall and Barn number for most of the horses treated.

- d. There is a 28 minute gap on the Day Sheet between the time Dr. Russell treated the last horse in Carolyn Murphy's Barn (Barn 10, Stall 7 at 9:52 a.m.) and the time recorded for the alleged blood draw of Moonlight Success in Barn 7, Stall 31 at 10:20 a.m.
- e. There are no entries between 10:45 a.m. and 1:50 p.m.
- f. The Day Sheet fails to reflect that Dr. Russell and his two assistants attended the Cobalt meeting at 11:00 a.m., Dr. Russell was called away for an emergency around 11:15 a.m., he then left the Indiana Grand grounds with Ramey, and returned approximately 90 minutes later.
- g. The Day Sheet erroneously indicates that Dr. Russell gave Tam Tuff Lasix at 6:45 p.m. while official track records clearly indicate that Lasix was administered at 3:19 p.m. in Barn 6.
- h. The Day Sheet erroneously indicates that Dr. Russell gave Tam Tuff Lasix after administering it to Loving Lady, while official track records prove that Loving Lady was administered Lasix at 3:23 p.m., four minutes after Tam Tuff, in Barn 7, including travel time, between Barn 6 and Barn 7, according to Ramey. (Transcript, Ramey Testimony, p. 132)

141. Since it is undisputed that during September 2014, Dr. Russell and his assistants traveled between Barns 6 and 7 in 20 seconds, there was sufficient time for him to have been in Stall 61, Barn 6 with Tam Tuff between 10:00 a.m. and 10:20 a.m. on September 19, 2014.

Laboratory Testing of Tam Tuff's Blood and Urine:

142. After the sixth race on September 19, 2014, blood and urine samples were taken from Tam Tuff. (Joint Exhibit 1, Stipulation 17)

143. LGC Science Laboratory (“LGC”) was an official testing lab for the Indiana Horse Racing Commission from March through September 2014. (Transcript, Dr. Sams Testimony, pp. 280 and 294)

144. LGC tests samples for racing commissions that are collected from horses. (Transcript, Dr. Sams Testimony, pp. 279 and 280)

145. LGC’s contract with the Indiana Horse Racing Commission was terminated in September, 2014 since it was unable to keep up with the sample load. (Transcript, Dr. Sams Testimony, p. 293) It was not terminated for quality reasons or lack of integrity of test results. (Transcript, Dr. Sams Testimony, p. 299)

146. Dr. Sams served as the Scientific Director of LGC during 2014. (Transcript, Dr. Sams Testimony, p. 279)

147. Dr. Sams is qualified by training and experience to issue expert opinions with respect to this matter. (Joint Exhibit 1; Stipulation 22)

148. Dr. Sams described the testing methods employed by LGC and the limitations as to substances chosen by LGC to be tested for. (Commission Exhibit HH, Transcript, Dr. Sams Testimony, pp. 283, 284, 285, and 289)

149. There are substances that will not be detected because they disappear from the blood and urine samples at such a rapid rate that they decompose before testing occurs. (Transcript, Dr. Sams Testimony, p.284)

150. Designer drugs are synthetic substances produced in laboratories with little knowledge about their chemical makeup thereby making them incapable of being detected. (Transcript, Dr. Sams Testimony, pp. 290-291)

151. Dr. Sams further acknowledged “that we have attempted to add substances to this data base, as we become aware of them, but there are designer drugs and other substances that we have not added to the database because we are not aware of them”. (Commission Exhibit “HH”, p. 2; Transcript, Dr. Sams Testimony, p. 290)

152. 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. (Commission Staff Exhibit HH, October 28, 2014 letter from Dr. Sams to Gorajec; Transcript, Dr. Sams Testimony, pp. 281-283, 283-285, 288)

153. Dr. Scot Waterman is a Veterinarian employed as an animal medical and welfare advisor for the Arizona Department of Racing. (Transcript, Dr. Waterman Testimony, p. 378)

154. Dr. Waterman’s employment includes review of laboratory testing results. (Transcript, Dr. Waterman Testimony, p. 379)

155. Dr. Waterman is also a contract consultant with the Indiana Horse Racing Commission. (Transcript, Dr. Waterman Testimony, p. 378)

156. Dr. Waterman was tendered as an expert (with no objection from Petitioners) in the field of equine medicine as it relates to horse racing. (Transcript, Dr. Waterman Testimony, p. 380)

157. According to Dr. Waterman, “Unfortunately, there are substances that are available that we simply do not have testing methods for.” (Transcript, Dr. Waterman Testimony, p. 381)

158. Not all prohibited substances administered to race horses test positive. (Transcript, Dr. Waterman Testimony, p. 381)

159. Industrial Laboratories in Colorado currently serves as the official lab for the Commission.

160. Testing conducted by Industrial Laboratories did not indicate the presence of any foreign substances in the samples obtained from Tam Tuff on September 19, 2014.

161. Tam Tuff raced on some unknown date “probably 30 days” after September 19, 2014 and finished first. (Transcript, Granitz Testimony, p. 269) Granitz was not informed of any negative post-race result. (Transcript, p. 270) However, no evidence was offered as to the date, location or outcome of that race.

162. The administration to a horse of any substance, other than furosemide, on race day is a violation of the rules of pari-mutuel racing. 71 IAC 8.5-1-1.5(b)

163. At some time between the hours of 10 a.m. and 11 a.m. on September 19, 2014, Dr. Russell injected the thoroughbred filly Tam Tuff with an unidentified substance other than furosemide in Stall 61 of Barn 6.

D. Substantial, credible, and reliable evidence support the conclusion that a practicing veterinarian made prohibited contact with the thoroughbred race horse Tam Tuff on September 19, 2014, in violation of 71 IAC 8.5-4-12 and that Estvanko and Granitz failed to discharge their responsibilities as trainer and assistant trainer pursuant to 71 IAC 5.5-3-3.

164. The ALJ incorporates by reference the facts previously found in paragraphs 28 through 163 of this Recommended Order.

165. On September 19, 2014, Estvanko and Granitz, as trainer and assistant trainer of the horse Tam Tuff, were required to “guard and protect” all horses in their care from unauthorized contact pursuant to 71 IAC 5.5-3-3(a)(26).

166. On September 19, 2014, practicing veterinarians and their helpers were prohibited from having contact with a horse within twenty-four (24) hours of a scheduled race with the exception of the administration of furosemide pursuant to 71 IAC 8.5-4-12.

167. In addition, on September 19, 2014, Estvanko and Granitz were obligated to “immediately” notify the Stewards of any unauthorized contact of a veterinarian with an in-today horse. 71 IAC 5.5-3-3(a)(30).

168. A practicing veterinarian was present in the stall of Tam Tuff within twenty-four hours of its race on September 19, 2014, and that Estvanko and Granitz failed to fulfill the obligations imposed upon them by 71 IAC 5.5-3-3.

CONCLUSIONS OF LAW

169. 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.

170. 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.

171. On September 19, 2014, Estvanko was a licensee of the Indiana Horse Racing Commission, and subject to all rules and statutes that regulate pari-mutuel horse racing in Indiana.

172. On September 19, 2014, Granitz was a licensee of the Indiana Horse Racing Commission, and subject to all rules and statutes that regulate pari-mutuel horse racing in Indiana.

173. Since Estvanko and Granitz requested that the Commission set aside the Stewards' Findings and Conclusions dated November 19, 2014, they have the burden of persuasion and the burden of going forward with proof pursuant to I.C. 4-21.5-3-14.

174. Based upon substantial, credible, and reliable evidence, Jamie Kolls observed Dr. Russell inject an "in-today" horse Tam Tuff between 10:00 and 11:00 o'clock a.m. on September 19, 2014, in and around Barn 6, Stall 61 at Indiana Grand. Therefore, Estvanko and Granitz failed to meet their burden.

175. Estvanko and Granitz failed to present substantial, credible, and reliable evidence that established that the Stewards' Findings and Conclusions dated November 19, 2014, and related rulings were not based upon substantial, credible, and reliable evidence or were somehow not in accordance with Indiana law.

176. The Commission Staff established, by substantial, credible, and reliable evidence that Dr. Ross Russell was present in Stall 61 of Barn 6 between 10 a.m. and 11 a.m. on September 19, 2014, injecting an "in-today" horse Tam Tuff with a substance other than furosemide.

177. Stewards' Rulings Nos. 14694 and 14695 were issued in accordance with Indiana statutes and Commission rules, and were supported by substantial and reliable evidence.

178. On September 19, 2014, Estvanko was responsible for the condition of Tam Tuff, pursuant to 71 IAC 5.5-3-5, 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."

179. Estvanko violated 71 IAC 8.5-1-1.5(b), which stated 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...”

180. Estvanko violated 71 IAC 5.5-3-2(b), which provided that “A trainer shall prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.”

181. Estvanko violated 71 IAC 8.5-3-3(a)(14), which provided that a trainer is responsible for “Maintaining a knowledge of the medication record and status of all horses in his or her care.”

182. Estvanko violated 71 IAC 8.5-3-3(a)(26), which provided that a trainer is responsible to “Guard and protect all horses in his/her care.”

183. Estvanko violated 71 IAC 8.5-3-3(a)(30), which provided that a trainer is responsible to “Immediately notifying the stewards, or in their absence commission or track security, of any contact a practicing veterinarian or his or her helper has with a horse within twenty-four (24) hours of its scheduled race...”

184. On September 19, 2014, Granitz was responsible for the condition of Tam Tuff, pursuant to 71 IAC 5.5-3-2, which provided that a trainer is responsible for the condition of horses she or she trains, regardless of the acts of third parties.

185. Granitz violated 71 IAC 8.5-1-1.5(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...”

186. Granitz violated 71 IAC 5.5-3-2(b), which provided that “A trainer shall prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.”

187. Granitz violated 71 IAC 8.5-3-3(a)(14), which provided that a trainer is responsible for “Maintaining a knowledge of the medication record and status of all horses in his or her care.”

188. Granitz violated 71 IAC 8.5-3-3(a)(26), which provided that a trainer is responsible to “Guard and protect all horses in his/her care.”

189. Estvanko and Granitz’ violations of the aforementioned regulations were contrary to the best interests of horse racing in the State of Indiana.

190. The 60 day suspension imposed upon Estvanko was reasonable in light of the substantial and reliable evidence presented at the hearing before the Stewards. The suspension has been served.

191. The fines paid by Estvanko and Granitz were reasonable in light of substantial and reliable evidence presented at the hearing and have been paid prior to the hearing.

192. Pursuant to 71 IAC 10-3-12(f), the special skills and experience of the Stewards, including over one hundred years of experience in racing, may be used in evaluating the evidence.

193. Tam Tuff, having received an administration of a substance, other than furosemide, on race day, in violation of the regulations cited herein is disqualified from the 6th race of September 19, 2014, and the purse is subject to redistribution pursuant to the provisions of 71 IAC 7.5-7-4.

194. ALJ Pylitt recommends that a Final Order be entered by the Indiana Horse Racing Commission in favor of the Indiana Horse Racing Commission Staff and against Estvanko and Granitz, and that said Order affirm Stewards' Ruling Nos. 14694 and 14695 and Commission Staff Exhibit G, Stewards' Findings and Conclusions dated November 19, 2014 in all material respects.

195. ALJ Pylitt adopts the following sanctions from the Stewards' rulings, and recommends that Estvanko:

- a. Be suspended for a period of 60 days from the date of the summary suspension September 20, 2014 up to and including November 18, 2014;
- b. Be fined \$1,000.00; and

196. ALJ Pylitt adopts the following sanctions from the Stewards' rulings, and recommends that Granitz:

- a. Be fined \$2,000.00.

197. ALJ Pylitt adopts the following sanction from the Stewards' rulings, and recommends that:

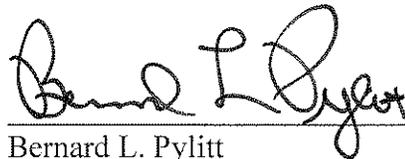
- a. The horse at issue be ordered unplaced, and all purse monies earned be forfeited, returned, and redistributed pursuant to the provisions of 71 IAC 7.5-7-4(a);
- b. Accordingly, Tam Tuff is disqualified from second place in the sixth race on September 19, 2014 at Indiana Grand for the purpose of receiving purse money;

198. ALJ Pylitt adopts the following sanction from the Stewards' Rulings:

- a. Captain Jack Racing Stable LLC as the owner of Tam Tuff is ORDERED to return the purse money earned by Tam Tuff and the Horsemen's Bookkeeper is directed to redistribute the purse money for the 6th race on September 19, 2014, as follows:
- (i) #4 Lovin Lady
 - (ii) #10 Lil Lionne
 - (iii) #8 Junethesecond
 - (iv) #9 Mary Fired Again
 - (v) #2 Hey Hey You You
 - (vi) #6 Fly Jayne
 - (vii) #7 Patton's Speech
 - (viii) #1 Parke Miss

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

RESPECTFULLY SUBMITTED THIS 28th DAY OF JULY, 2015.



Bernard L. Pylitt
Administrative Law Judge

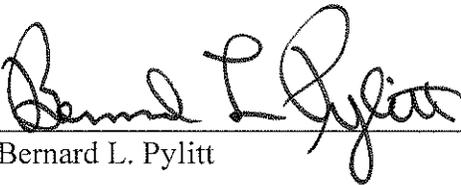
CERTIFICATE OF SERVICE

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 28th day of July, 2015 to the following counsel of record:

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2015 AUG 14 P 3:10

INDIANA HORSE RACING COMM

August 12, 2015

Mr. Thomas Weatherwax
Chairperson
Indiana Horse Racing Commission
1302 North Meridian, Suite 175
Indianapolis, IN 46202

RE: The matter of Richard Estvanko and Anthony Granitz
IHRC Ruling No. 14694 and IHRC Ruling No. 14695

Dear Mr. Weatherwax:

Enclosed please find Formal Objections, being submitted on behalf of my clients, Richard Estvanko and Anthony Granitz, to the proposed Findings of Fact, Conclusions of Law, and Recommended Order entered on July 28, 2015, by the Honorable Bernard Pylitt, Administrative Law Judge. I am enclosing seven (7) copies of our objections, and would appreciate one (1) copy being file-marked and returned to me in the self-addressed, stamped envelope that I have enclosed for the convenience of Commission Staff. I am hopeful that your Board will include my clients' and myself on your agenda at the next scheduled Commission Meeting, and afford us an opportunity to be heard with regard to these objections.

I have provided copies of these objections to Attorney Robin Babbitt, and Holly Newell, as well as a separate copy to Executive Director Gorajec. Please note that I am submitting these to you by way of certified mail, for purposes of compliance with Rule 5(F) of the Indiana Rules of Trial Procedure. Thank you for your consideration of these matters.

Very truly yours,



Joseph W. Eddingfield

JWE/nlr
Enclosures

INDIANA HORSE RACING COMMISSION
AN APPEAL BEFORE ADMINISTRATIVE LAW JUDGE BERNARD L. PYLITT

2015 AUG 14 P 3:
INDIANA HORSE RACING C

IN RE THE MATTER OF RICHARD)
ESTVANKO and ANTHONY GRANITZ)
)
Petitioners-Appellants)
)
Vs.)
)
INDIANA HORSE RACING COMMISSION)
STAFF,)
)
Respondent)

ISSUE: IHRC Ruling #14694
IHRC Ruling #14695

**PETITIONERS-APPELLANTS EXCEPTIONS TO
ADMINISTRATIVE LAW JUDGE'S RECOMMENDED ORDER**

Comes now Richard Estvanko and Anthony Granitz, Petitioners-Appellants in the above captioned cause, by Counsel, Joseph W. Eddingfield, and for their exceptions to the Administrative Law Judge's Recommended Order, state as follows:

I. THE ADMINISTRATIVE LAST JUST ERRED BY DISREGARDING THE CERTIFIED RESULTS OF THE ANALYSIS OF TAM TUFF'S BLOOD AND URINE SAMPLES.

It is without question that blood and urine testing of race horses is integral to the safeguarding of the integrity and fairness of horseracing. The Indiana Administrative Code provisions are thorough and specific as to the requirements which subject horses, trainers, and owners to testing and are equally as thorough as to the penalties and sanctions to which interested parties are subject. 71 IAC 8.5-1-2 affords the Indiana Horse Racing Commission a presumption with regard to findings of violations, and imposition of sanctions, arising from positive test results.

The Certificate of Analysis of blood and urine samples taken from Tam Tuff after her completion of the sixth race at Indiana Grand on September 19, 2014, rendered by Industrial Laboratories, was stipulated to by the Commission, and Appellants, and entered in the record. Said Certificate of Analysis clearly demonstrated no findings of banned or foreign substances in Tam Tuff's blood or urine on September 19, 2014. Appellants respectfully assert that the results of said testing is the most dispositive fact favorable to Appellants' contentions that neither violated any rules.

However, rather than place the proper weight and consideration upon this key item of evidence, the Administrative Law Judge chose to disregard, or at least discount, the significance of the test results, relying on testimony presented by Dr. Richard Sams, Director of LGC Laboratories, and the testimony of Dr. Scott Waterman, a Contract Consultant for the Indiana Horse Racing Commission. Neither of these witnesses testified to any relationship with Industrial Laboratories or any knowledge of the testing protocol for Industrial Labs, or the database of substances utilized by Industrial Labs in its testing process. Dr. Sams specifically testified that he had no knowledge of Industrial Laboratories' database utilized for testing of foreign or banned substances.

With regard to Dr. Waterman, the Administrative Law Judge relies on Dr. Waterman's statement that "unfortunately, there are substance that are available we simply do not have testing methods for". With regard to Dr. Sams, the Administrative Law Judge relies on Dr. Sams' statement "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". Dr. Sams

further testified “that we have attempted to add substances to this database, as we become aware of them, but there are designer drugs and other substances that we have not added to the database because we are not aware of them”. This testimony is an apparent contradiction within itself. One can only conclude that the same could be said about mythical creatures, such as ghosts, unicorns, Big Foot, etc.

Appellants and Counsel found it most surprising that the Commission did not offer any evidence from Industrial Laboratories, or its representatives, concerning any possible deficiencies or inadequacies regarding the testing procedures employed by the lab, as to samples submitted by the Indiana Horse Racing Commission. Instead, the Commission counsel chose simply to attack and impugn the integrity of its own testing process through two (2) witnesses having absolutely no relationship with, or knowledge of, Industrial Laboratories, its testing processes, protocols, and database.

Appellants further raised question with the lack of finding, on the part of the Administrative Law Judge, as to these witnesses’ interests, or disinterests, in the outcome of this proceeding. Appellants would respectfully seek the Commission to take note of the great lengths that the Administrative Law Judge went to in finding that Appellants’ witnesses, particularly Stephanie Burchette, and Callie Ramey, each had an interest in the outcome of the proceeding, which would influence their testimony, and cause each to be less than credible. The evidence with regard to Waterman and Sams is clear that both were contractually connected to the Indiana Horse Racing Commission, the same as Ms. Burchette and Ms. Ramey were to Dr. Russell. One can only speculate as to how the interests of Sams and Waterman influenced their testimony.