

Memorandum of the Regular Meeting of the
Indiana Horse Racing Commission

June 29, 2022

Horseshoe Indianapolis
Marquee Room
4300 N. Michigan Rd.
Shelbyville, IN 46176

Commission members present: Philip C. Borst, Chairman; William McCarty, member, Bill Estes, member, and Gus Levensgood, member.

Commission Staff members present: Deena Pitman, IHRC Executive Director; Dale Pennycuff, IHRC Counsel; Matt Eggiman, IHRC Deputy General Counsel; Jessica Barnes, IHRC Breed Development Director; Wendi Samuelson-Dull, IHRC Chief Financial Officer; Dr. Kerry Peterson, IHRC Equine Medical Director.

Speakers from the audience: Jessica Barnes, IHRC Breed Development Director; Joe Morris, Caesars SVP of Racing; Brian Elmore, Executive Director Indiana Horsemen's Benevolent & Protective Association; Jeff Johnston, Jockeys Guild Representative; Marta Lance, Community Relations Director, Harrah's Hoosier Park; Steve Jarmuz, General Manager, Horseshoe Indianapolis; Rick Moore VP and GM of Racing Harrah's Hoosier Park.

I. Call to Order

Chairman Borst called the meeting to order at approximately 10:30 a.m. A quorum was present.

New IHRC Deputy General Counsel Matt Eggiman was introduced by Chairman Borst.

Chairman Borst called for a moment of silence in remembrance of IHRC General Counsel Noah Jackson.

II. Approval of memorandum and executive session memorandum from the March 1, 2022, meeting.

Chairman Borst asked for a motion for approval of the memorandum and executive session memorandum from the March 1, 2022, Commission Meeting. The vote was unanimous 4-0 for approval.

III. Agenda

Note: All items on the agenda were transcribed by a court reporter from Veritext Legal Solutions. Transcripts are available at www.in.gov/hrc.

1. Readoption of administrative rules scheduled to expire.

Chairman Borst introduced this agenda item and asked Mr. Pennycuff to explain it.

Mr. Pennycuff briefly explained the rule readoption process to the Commission and told the Commission that Commission Staff would be publishing the proposed rules to be readopted on the Legislative Service Agency's website, pursuant to statute. Mr. Pennycuff added that Commission Staff was presenting the rules for informational purposes only today, and that a vote was not required yet unless the Commission wished

to make any changes to the proposed rules.

Chairman Borst asked if there were any questions or comments on the proposed rules to be readopted. Seeing none, Chairman Borst then confirmed that no motion was necessary.

2. Review and consideration of the following Indiana Horse Racing Commission emergency rules:

All Breeds

- i. 71 IAC 9-2.1-5.5 “Affiliate” defined
- ii. 71 IAC 9-2.2-3 Application submission and reimbursement costs
- iii. 71 IAC 9-2.2-4 SPMO license criteria and commission action

Mr. Pennycuff explained to the Commission the proposed emergency rules concerning all breeds. Mr. Pennycuff also explained that the proposed emergency rules were provided in each Commissioner’s packet, that no public comments had been received, and that the Commission typically casts a single vote in favor of all of the proposed emergency rules. Once the rules are filed with the Legislative Service Agency, according to Mr. Pennycuff, the rules go into effect. Mr. Pennycuff then respectfully requested the Commission’s approval of the rules listed in the Commissioner’s packets.

Chairman Borst asked the Commission if there was a motion and a second regarding Mr. Pennycuff’s request to adopt the emergency rules. Commissioner Estes moved to approve the emergency rules. Commissioner McCarty seconded the motion.

Commissioner Borst asked for comments from the public and the Commission on the proposed emergency rules. Seeing no one commenting, Commissioner Borst asked for a vote. The vote was unanimous 4-0 for approval.

3. Consideration and approval of the 2022 Standardbred Advisory Board County fair harness racing program.

Jessica Barnes, IHRC Director of Racing and Breed Development, presented this agenda item. Ms. Barnes explained that the board prescribes the conditions of the Indiana Sire Stakes and the Indiana Sire Fair Circuit, and that the county fairs actually run under the rules and regulations of the United States Trotting Association.

Ms. Barnes explained that the IHRC’s role with those programs is to help set up the fair schedule and control the conditions for those races. The fairs themselves actually put on the fair program through the USTA rules, but the IHRC administers the drug testing

program because already-approved breed development funds are used for their purses.

Finally, Ms. Barnes explained that the costs for the IHRC's involvement in the county fair harness racing program is fairly small, consisting mostly of the drug testing program and a stipend for the fairs to assist them in hiring the required officials for the races, as well as some promotions for the fairs.

Chairman Borst asked if anyone had any questions for Ms. Barnes. Seeing no questions, Chairman Borst asked the Commission if there was a motion and a second regarding approval of the 2022 Standardbred Advisory Board County fair harness racing program. Commissioner Estes moved to approve the emergency rules. Commissioner McCarty seconded the motion. The vote was unanimous 4-0 for approval.

4. Review and consideration of the extension of PENN ADW's Secondary Pari-Mutuel Organization license which will allow PENN ADW to continue providing advance deposit wagering services to Indiana customers.

Mr. Pennycuff explained that of the seven licensed SPMOs, PENN ADW's license is the only one that expires mid-year. The other six licenses expire on December 31st of the licensed year. PENN ADW's license was approved by the commission on July 15, 2021, for a one-year period. It is set to expire next month. Commission Staff is requesting approval of an extension of PENN ADW's license through December 31, 2021, allowing it to align with the other six SPMO license renewals. This extension would require PENN ADW's license to extend approximately six months longer than the one-year period provided for by IHRC rules.

Mr. Pennycuff explained that the Commission may waive a rule if compliance with the rule is impracticable or unduly burdensome, providing waiving the rule will still ensure that the para-mutuel wagering in Indiana will continue to be conducted with the highest standards and the greatest level of integrity. A waiver of the one-year SPMO license rule in this specific instance relieves the burden on PENN ADW and the Commission by allowing all SPMO license renewal periods to begin on January 1 and end on December 31, and assures that para-mutuel wagering on horse races in Indiana would continue to be conducted with the highest standards and greatest level of integrity.

Chairman Borst asked the Commission if there was a motion and a second regarding approval of an extension of PENN ADW's Secondary Pari-Mutuel Organization license. Commissioner McCarty moved to approve the extension. Commissioner Estes seconded the motion. Chairman Borst then asked the public and Commission if anyone had any comments or questions. None were had. The vote was unanimous 4-0 for approval.

5. Petition to amend NYRA Bets' SPMO license reflecting the addition of Caesars Racebook as an affiliate.

Mr. Pennycuff explained that NYRA Bets had a material change to its SPMO license application that would require Commission approval. Specifically, NYRA Bets submitted a petition to add a marketing affiliate ADW service along with an updated plan of operations. The marketing affiliate NYRA Bets wishes to add is Caesars Racebook.

Mr. Pennycuff explained that the Oregon Racing Commission has approved the digital services agreement between NYRA Bets and Caesars Racebook. This is significant because the Oregon Racing Commission conducts yearly audits of all ADW hubs that it licenses, and that will include NYRA Bets and its affiliates. Mr. Pennycuff also explained that this is not an unprecedented request of an SPMO licensee. In 2020, the Commission approved a similar request from TVG when that licensee wished to add FanDuel as an affiliate. The goal is to build interest in horse racing through a familiar brand. The back end of Caesars Racebook is under complete control of NYRA Bets.

Pursuant to the authority given to her by the Commission at the March 2022 meeting, Executive Director Deena Pitman gave NYRA Bets interim approval on June 3, 2022, according to Mr. Pennycuff. Commission Staff requests the Commission affirm the interim approval of NYRA Bets' request.

Chairman Borst asked the Commission if there was a motion and a second regarding the petition to amend NYRA Bets' SPMO license reflecting the addition of Caesars Racebook as an affiliate. Commissioner Estes moved to approve the extension. Commissioner McCarty seconded the motion. Chairman Borst then asked the public and Commission if anyone had any comments or questions. None were had. The vote was unanimous 4-0 for approval.

6. Review of commission rulings – February 23, 2022 – June 21, 2022.

Chairman Borst asked if there were any questions on the Commission rulings. There were no questions.

7. Review and consideration on whether to sign a Voluntary Implementation Agreement with the Horseracing Integrity and Safety Authority (HISA) regarding federal racetrack safety rules effective July 1, 2022, and a review of HISA's six-month fee assessment (July 1 through December 31, 2022).
 - a. Draft Voluntary Implementation Agreement.

b. HISA Fee Assessment documents.

Mr. Pennycuff explains that votes are required on both (a) and (b) and that the votes will be conducted separately. Mr. Eggiman then briefly explains a history of the negotiation of drafts of the Voluntary Implementation Agreement with HISA. Executive Director Pitman explains the details of the agreement.

Executive Director Pitman explains that racetrack safety rules that have been promulgated by HISA will go into effect for thoroughbred racing on July 1, 2022. HISA has requested assistance from state racing commissions with the implementation and enforcement of the racetrack safety rules, including using commission and racetrack personnel. Because many of the rules HISA has promulgated are essentially the same as IHRC rules, utilizing existing resources at the track is in the best interest of racing, the horsemen of Indiana, and HISA for that matter, according to Executive Director Pitman. The Voluntary Implementation Agreement sets forth how those resources will be used.

Executive Director Pitman then requested the Commission direct any questions about the agreement to her, Mr. Pennycuff, or Mr. Eggiman as they are discussing it.

Chairman Borst then gives accolades to those Commission Staff who have worked so hard on the agreement over the past several months. He also praises Caesars, Joe Morris and the horsemen for their work with HISA as well. He then explains how the commission attorneys have re-worked the agreement to favor the commission and the State of Indiana. Finally, he explains that it is probably best to cooperate with HISA, because it is federal law and it is coming whether we like it or not. Chairman Borst then requests Joe Morris inform the audience and commission where Caesars is with HISA.

Mr. Morris gives praise to several individuals for their efforts in working through the HISA process. They include Eric Halstrom, Dr. Hardy, Brian Elmore, Joe Davis, Rodney Prescott, Roy Smith, Caesars staff, and the commission staff. Mr. Morris went into detail with how he and the names mentioned above have worked with the staff at HISA. He praised the partnership between the track, the horsemen, and the regulators (IHRC), stating it is setting a standard for the industry. Mr. Morris then described a meeting that had occurred a couple weeks earlier with HISA staff and approximately 100 horsemen. The horsemen were able to work out a few more details with HISA and were able to speak their minds on several issues. Mr. Morris then opened the floor to any questions.

Commission McCarty praised the efforts Mr. Morris and Caesars on this, but also made it known that he has reservations about the implementation of HISA and will be watching closely over the next few months.

Chairman Borst asked the Commission if there was a motion and a second regarding approval to sign the Voluntary Implementation Agreement with HISA. Commissioner Estes moved to approve signing the agreement. Commissioner McCarty seconded the motion. Chairman Borst then asked the public if anyone had any comments or questions.

Brian Elmore, Executive Director Indiana Horsemen's Benevolent & Protective Association, was the first to speak. Mr. Elmore apologized in advance for the amount of time he was going to be taking up with his comments, especially since the meeting had been going so quickly to that point.

Mr. Elmore explained that the horsemen have had several issues and have had to jump through several hoops with the pending HISA rules. He feels HISA is not ready to be implemented and should be delayed. He also explained that it is difficult to get straight answers from HISA and HISA has not been acting within the authority granted to it by Congress, including how it has been promulgating and implementing rules. One particular rule that had not been implemented at all involved the registration of horsemen with HISA, according to Mr. Elmore, despite what counsel for HISA had told the attendees at the meeting two weeks earlier.

Mr. Elmore then described a letter sent to the Federal Trade Commission and HISA from four United States Senators, critical of HISA and its July 1 implementation deadline. He expressed frustration at the lack of financial transparency from HISA. He also described current litigation in federal court that is challenging the constitutionality of HISA and its promulgation of rules.

Mr. Elmore then described the new whip HISA is implementing, and the new whip rules as well. He then called upon horsemen chaplain Otto Thorwarth to assist him with a demonstration of the new whip and whip rules. Mr. Elmore explained that the jockeys are critical of the new whip and rules due to the cracking sound the whip makes (as demonstrated to the audience by he and Mr. Thorwarth). He explained, and Chairman Borst agreed, that animals are often frightened by fireworks. Mr. Elmore added that the sound the new whip makes will scare the horses. He said other jockeys have described the whip as dangerous.

Commissioner Estes then asked Mr. Elmore where the whips are presently being used. Mr. Elmore stated that he did not know of them being used anywhere currently. Jeff Johnston, Jockeys Guild Representative, then explained the history of how the whip was developed, and that the whips were currently being used at Monmouth Park. Though Mr. Johnston explained that they have not been used regularly due to heavy restrictions on their use due to safety issues. He also stated that there have been little to no issues with the whip currently in use in Indiana, and that in all likelihood supply chain issues will arise with the new HISA whip. Finally, Mr. Johnston explained concerns with HISA's maximum strike rule.

Mr. Elmore then concludes his remarks by describing the upcoming Jockeys and Jeans fundraising event at Churchill Downs, and how he and Mr. Morris are serving as ambassadors for the event. He added his appreciation for Caesars being a primary sponsor of the event. Finally, Mr. Elmore stated that he feels the horsemen are being fleeced by the federal government with the new HISA regulations.

Chairman Borst again opened the floor to questions. Commissioner McCarty asked Mr.

Pennycuff and Mr. Eggiman to give a brief summary of the mechanisms that would allow the Commission to pull out of the agreement. Mr. Eggiman explained those mechanisms: a 90-day notice to terminate clause and the agreement's anticipated end date of January 1, 2023. Mr. Eggiman then explained that a new agreement would need to be made that includes the medication and anti-doping regulations that HISA will promulgate beginning January 1, 2023.

Chairman Borst then asked the public and Commission if anyone had further any comments or questions. None were had. The vote was unanimous 4-0 for approval.

Mr. Pennycuff requested the Commission delegate to Executive Director Pitman to sign the HISA Voluntary Implementation Agreement. Commissioner Estes moved to approve delegating authority to Executive Director Pitman to sign the agreement. Commissioner Levensgood seconded the motion. The vote was unanimous 4-0 for approval.

Executive Director Pitman explained that in order to fund itself, HISA will assess a yearly fee to state racing commissions. State racing commissions had until April 1, 2022, to inform HISA whether they would pay the fee. Pursuant to statute, according to Executive Director Pitman, if states did not pay the fee, then the responsibility for payment falls to the thoroughbred racetrack(s) in the state. The IHRC did not inform the authority of a decision by April 1, 2022, so payment defaulted to Horseshoe Indianapolis. Horseshoe was sent a letter from HISA informing them that the amount due for 2022 was \$412,685.

Executive Director Pitman also explained that Horseshoe and the Indiana Horsemen's Benevolent Protective Association worked together to create a solution, whereby funds generated from the racetrack's export signal before expenses and splits would be used. This arrangement would result in equal contributions from Horseshoe's export sales and commission and export monies allocated by contract to the horsemen's purse account. Executive Director Pitman praised the horsemen and Caesars for their collaboration.

Executive Director Pitman then put a proposal in front of the commission. She requested that the Commission pay one-third of the amount (\$137,6562) to help offset the cost to the horsemen and Caesars. She added that a payment like this might not be sustainable for the Commission in the future, and that the payment in no way binds the Commission to pay HISA any fee in the future.

Chairman Borst then praised the horsemen and Caesars as well for their collaboration and thought the Commissions participation in this year's payment would be a good thing. Commissioner McCarty then asked Executive Director Pitman where the \$137,000+ would come from. Executive Director Pitman explained that it would come from the IHRC Integrity Fund, and that the amount available in the fund varies from year to year based upon legal expenses, drug testing expenses, and other activity throughout the year.

Commissioner McCarty then asked if some of those expenses she mentioned be covered by HISA going forward. Executive Director Pitman explained that some would be

covered by HISA, but that many costs, though unknown now, will still trickle down to the horsemen depending on the kind of anti-doping program that is implemented.

Finally, Commissioner McCarty asked about the payment of the \$137,000+, and whether it would occur as a lump sum or in installments. Executive Director Pitman stated that the Commission could work with the racetrack to ensure it is dispersed in monthly payments. Commissioner McCarty agreed with that idea.

Chairman Borst asked the Commission if there was a motion and a second regarding approval to pay \$137,562 of the HISA assessment fee. Commissioner McCarty moved to approve. Commissioner Estes seconded the motion. Chairman Borst then asked if anyone had any comments or questions. None were had. The vote was unanimous 4-0 for approval. Chairman Borst then reiterated the growing pains that will likely occur as the new HISA rules are implemented, and he stressed patience for everyone involved.

Mr. Pennycuff requested the Commission delegate to Executive Director Pitman authority to approve any modified horsemen's agreement that will be required to implement the fee proposal just passed. Commissioner McCarty moved to approve. Commissioner Estes seconded the motion. The vote was unanimous 4-0 for approval.

8. 2022 Community Giving Report – presentations from Harrah's Hoosier Park and Horseshoe Indianapolis.

Chairman Borst introduced the final item on the agenda. Marta Lance, Community Relations Manager at Harrah's Hoosier Park, summarized the Community Giving Report that was supplied to the Commission. She explained that Caesars Entertainment has been honored as one of the most community minded companies in the US, and that Harrah's Hoosier Park and Horseshoe Indianapolis likewise follow that mindset and are already underway with the 2022 community relations efforts with budget expenses of \$430,000 and \$525,000, respectively.

Ms. Lance explained that through the second quarter of the year, Hoosier Park has given \$250,000 to over 33 organizations and Horseshoe has given \$450,000 to more than 15 organizations within their communities.

Chairman Borst then opened up the meeting to any questions. Commissioner McCarty asked whether Hoosier Park will spend all of its allocated money, due to being below 50% allocated so far. Ms. Lance affirmed that Hoosier Park will allocate all of it. Conversely, Commissioner McCarty asked how Horseshoe had already spent such a large percentage of its allocation only halfway through the year. Steve Jarmuz, General Manager of Horseshoe Indianapolis, explained that Horseshoe had received a backlog of requests at the end of last year. Horseshoe decided to honor those requests and pay from

this year's allocation. He explained that though the allocation number is high so far this year, they are on pace to finish at the \$525,000 number at the end of the year.

Commissioner McCarty stated to Mr. Jarmuz to feel free to exceed your commitment numbers at both tracks this year. Commissioner McCarty then asked about the large \$247,000 allocation in May. Mr. Jarmuz explained that most of that came from two large donations made to two organizations specifically in Shelbyville.

Finally, Commissioner McCarty questioned the differences in where the donations were going within each county. Specifically, that the donations to Shelby County by Horseshoe were going predominately to Shelbyville, and the donations to Madison County by Hoosier Park were primarily going to places in the county outside of Anderson. Commissioner McCarty asked if these numbers would even out, and that Hoosier Park would be acknowledging efforts within Anderson. Mr. Lance said the number would absolutely balance out.

Rick Moore then took the microphone and stated that that Anderson holds a place near and dear to his heart, and he reiterated to the Commission that Hoosier Park will certainly exceed its donation allocation. Commissioner McCarty was going to count on Mr. Moore's statement, and Chairman Borst praised Caesars for its commitment to community giving.

III. Old Business

Chairman Borst asked the Commission about any old business. None was presented.

IV. New Business

Chairman Borst asked the Commission about any new business. None was presented.

V. Adjournment

The meeting was adjourned at approximately 11:50 a.m.