

Staff Report

Re-evaluation

**Indiana HBPA Petition for Registration
for 2014 Funding**

April 28, 2014

Joe Gorajec

Executive Director

Indiana Horse Racing Commission

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Executive Summary

On October 18, 2013, the Indiana Horse Racing Commission's ("IHRC") Executive Director, Joe Gorajec, issued a staff report regarding the Indiana Horsemen's Benevolent and Protective Association's ("IHBPA") application for registration to receive designated slot machine revenue in 2014 for benevolence and other purposes pursuant to 71 IAC 13-1-1 et seq. The staff report indicated "*no substantive deficiencies in the application for registration.*"

On October 26, 2013, an IHBPA board member filed a complaint with the IHRC regarding IHBPA benevolence expenditures. In response to that complaint, commission staff immediately initiated an investigation. The IHRC deferred consideration of the IHBPA application pending the results of the investigation.¹ This report re-evaluates the IHBPA application in light of information discovered during the course of the investigation.

Based upon this re-evaluation, the commission staff recommends that the IHBPA application be DENIED. As an alternative to denial, staff recommends the IHBPA submit a supplemental filing to its original application addressing the deficiencies identified in this report.

Governance and Benevolence

In 2013, the IHBPA received \$1,114,476.40 from a statutorily-mandated allocation of adjusted gross receipts ("AGR") of slot machine revenue under IC 4-35-7-12. Of these monies, the largest share - \$633,686.22 - is earmarked for backside benevolence. The balance is allocated either to a fund for equine promotion and welfare or utilized for general administrative purposes. Due to the nature of the complaint, the focus of the investigation has been on expenditures from the benevolence fund. IHBPA benevolence includes medical, dental and chiropractic benefits to qualified individuals, and in most cases, their spouses and dependent children. These benefits are subject to an annual cap of \$6,000.00 per qualified recipient.² Other benefits, which are not subject to the cap, include burial assistance, emergency assistance, daycare and scholarships.

¹ Pursuant to 71 IAC 13-1-1(c), the money allotted for thoroughbred interests that has traditionally been awarded to the IHBPA is currently being held in escrow until the IHBPA application is considered by the Commission.

² The amount of the cap has varied from year to year. The IHBPA Application from Registration for 2014 monies indicates a benevolence cap of \$5,000.00.

Complaint

On October 26, 2013, the IHRC received a complaint from IHBPA board member Kim Hobson alleging questionable expenditures of IHBPA benevolence monies. Subsequently, Ms. Hobson submitted additional information related to her initial complaint. The complaint made some specific allegations of questionable expenditures but also included several vague, second-hand allegations that proved to be unfounded, untrue, or lacked sufficient information necessary for investigation.

Findings

As a result of its investigation, commission staff has determined that the way in which the IHBPA has administered its benevolence fund program is in need of some material revision. This report discusses commission staff's concerns about the IHBPA application in light of its investigative findings, as well as recommending corrective action steps to address those concerns. The areas of concern are:

- Eligibility Requirements and Program Administration
- Program Participation and Information Dissemination
- Attorney Fees
- Conflict of Interest Violation
- Transparency and Accountability

Eligibility Requirements and Program Administration

Full-Time Employment

Eligibility requirements for benevolence benefits can be found in the Indiana HBPA Benefit Trust's Benevolence Benefit Guidelines (See 2011 Indiana HBPA Benefit Trust Benevolence Benefits Guidelines – "Attachment A"). These eligibility requirements allow for an assistant trainer, groom, hot walker, exercise rider or other stable employee to receive benefits if they "work full-time at their licensed trade." (Emphasis added.) The guidelines do not include a definition of full time. The Application for Benefits form, which is completed by each benevolence applicant, does not include any questions about hours worked per week.

The term "full-time" is important because it is central to the complaint; however, it is an ambiguous term, which, without a definition, is a difficult standard to manage³. Much of the complaint involves allegations that several employees/relatives of Randy Klopp and Lisa Stephens did not qualify for the benefits they received because they did not meet all eligibility requirements, specifically, they were not full-time employees. Mr. Klopp was the

³ The Fair Labor Standards Act does not define full-time; rather, it leaves to the employer the responsibility of defining "full time." Although the federal government leaves to the employer to define "full time", commission staff could find no authority defining "full time" as being any fewer than thirty (30) hours per week.

Indiana HBPA President from 2005–2012. Ms. Stephens is employed by the IHBPA as its Benevolence Trust Administrator since January 1, 2013. Prior to that she acted as an office manager for the IHBPA.

Mr. Klopp (licensed owner/trainer) employed at least six (6) relatives who worked for him at his farm and at the track. These relatives included his mother, half-brother, half-sister, two uncles, and a nephew. Most of these employees worked an average of 10-20 hours per week during the race meet. In addition, Mr. Klopp employed several non-relatives, many of whom were full-time employees. Most of Mr. Klopp's relatives had no previous IHRC licensing history prior to 2009. As a group Mr. Klopp's relatives were very active participants in the benevolence program. For example, in the three-year period (2010-2012) these relatives received \$55,280.89 in benevolence benefits while working for Mr. Klopp.

Lisa Stephens' husband, Dave Stephens, is a licensed trainer who employed his wife's sister, Debra Hawkins, as a groom. Ms. Hawkins worked for Mr. Stephens primarily at his farm (but occasionally at the track). Ms. Hawkins also was (and still is) employed full time at the Grant County Sheriff's Department.

For the four-year period from 2009-2012, the Indiana HBPA failed to enforce its requirement that benevolence recipients be full-time employees. During this period, fifty-nine (59) individuals were denied benefits. Upon review of all refusals, the commission staff could find no instance of a benevolence applicant being refused benefits because the applicant did not work full time. The commission staff finds no wrongdoing by any legitimate part-time employee who received benefits, as they were never asked how often they worked nor were they requested to provide any documentation regarding hours worked.

Equal Treatment of Licensees

The full-time employment criterion is not the only requirement that was not enforced. There were several others, including a requirement that any owner, trainer, groom, hotwalker or other stable employee be licensed in the State of Indiana for a period of one year prior to making application for benefits.⁴

The commission staff's concerns with the benevolence criteria are not limited to the enforcement of eligibility requirements. Staff's concerns also extend to the issues involving equal treatment of licensees and inclusiveness.

⁴ The fact that the IHBPA is not enforcing its eligibility requirements does not necessarily mean that its actions are contrary to the best interest of racing. As an example, the above referenced requirement to be licensed in Indiana for a one-year period preceding an application for benefits is overly burdensome. Enforcing this requirement would exclude some needy and deserving benevolence applicants from receiving benefits. The way forward, however, is not to ignore poorly drafted requirements. This report should spur the IHBPA to re-evaluate and revise its eligibility guidelines. The results of these revisions should be requirements that are both "enforceable" and "enforced".

With regard to equal treatment, there appears to be a substantially different threshold in the eligibility requirements for horse owners and trainers compared to grooms and other stable employees. An owner or trainer can become eligible by starting a horse(s) five (5) times in Indiana in a given year. This is a very low threshold requiring minimal effort or commitment. A groom or stablehand, however, must presumably be a full-time employee and have been employed a full year. The commission staff finds no sound rationale for this disparity.

The IHBPA benefit criterion also excludes some deserving, needy, hardworking people. It is not uncommon in the stable area for people to cobble together various jobs in order to make a living. We often refer to these people as “dual licensees” because they are licensed by the Commission for more than one job (licensing category). These dual licensees include people who work as grooms, exercise riders, pony riders and on the gate crew, among other jobs. They are often among the hardest working people in the stable area. The nature of these jobs, however, does not require full-time employees. Some of these people may be employed by a trainer or the racetrack, or freelance for a combination of these. Because they may work only part time in a job eligible for benefits, they are excluded from receiving the help they need. In addition, current eligibility criteria may lead people to seek licensure (with minimal actual work in eligible jobs) solely for the purpose of obtaining benefits.

This issue of excluding deserving licensees is in need of serious review and reconsideration. The IHBPA should strive to serve the needs of all the hardworking people who toil in the stable area.

Program Participation and Information Dissemination

The concentration of substantial benefit expenditures among IHBPA “insiders” (Mr. Klopp’s and Ms. Stephens’ extended family as described above), has led staff to question whether eligible licensees know about the benefits available to them.⁵ During the course of the investigation, commission staff was repeatedly advised that the vast majority of licensees learn about the availability of benevolence funds by “word of mouth”.

Inquiry into this matter leads the commission staff to conclude that greater efforts should be made to increase awareness among eligible licensees. Flyers, posters, Facebook, condition books and overnights are just a few examples of some under-utilized ways of disseminating this important information.

⁵ The appearance, if not the fact, that IHBPA “insiders” are benefiting disproportionately in relation to the general population of horsemen is not limited to Mr. Klopp’s relatives. In 2010-2012, scholarships valued at \$30,920.00 were awarded to ten individuals. Of this amount, \$10,000.00 (or almost one-third) was awarded to four relatives of IHBPA Directors, Trustees, or employees. Although this sum is modest (and the scholarship program has been discontinued) it is instructive to look at why such a disproportionate distribution came to be. The commission staff found that no eligible student was denied a scholarship. The staff concludes that lack of apparent interest was likely due to eligible students and their parents being unaware of the availability of funds.

Attorney Fees

In the fall of 2011, Roger Spiess (horse owner, IHBPA member) purchased a yearling horse at the Indiana Thoroughbred Owners and Breeders' Auction. The horse was purchased from Roger and Mary Pardieck. Within a few days of purchase, Mr. Spiess requested the horse be returned and his money refunded due to alleged soundness. Mr. Parkieck refused. Attornies subsequently became involved in the dispute, which is still outstanding.

From December 2011 to February 2012, the IHBPA paid Jonathan Palmer, an IHBPA attorney, \$2,355.85 to represent Mr. Spiess in the matter. On April 16, 2012, Steve Stults, then the Director of the IHBPA Benevolence Trust informed Mr. Spiess by letter that – *“Beginning March 6, 2012, the cost for services in this case became your responsibility”*.

Mr. Stults provided the reasoning behind suspending payments as follows:

“It was determined that this case, in fact, was, involved the [ITOBA] Sale, and that it, it was not proper for us, according to our own guidelines, to assist, assist someone who was, who was in, in, in some type of legal action with one of our Indiana organizations that was also funded by the Commission.” - Steve Stults, Interview conducted February 25, 2014.

Commission staff agrees with Mr. Stults' analysis and his decision to suspend future payments. Although the sum was modest and the initial representation brief (three months), this matter has caused considerable consternation and speculation within the thoroughbred community in Indiana arguably in part because information about this private dispute has not been disclosed. What should have been a private disagreement between two horsemen appears to many people as a dispute between two horsemen's associations – and their members and allies.

These modest payments over a brief period of time along with the swift decision to discontinue payments more than two years ago are facts not generally known by horsemen. This lack of knowledge of IHBPA's limited participation has lead to rumor and uninformed speculation. In hindsight, the racing industry would have been better served by an open, honest dialogue between the IHBPA and ITOBA at the time Mr. Stults decided to discontinue attorney payments.

Conflict of Interest Violation

Commission regulation 71 IAC 13-1-3 requires certain information to be submitted with an application for registration, including a conflict of interest policy approved by the Commission⁶.

A pertinent part of this policy in Article III beneath a heading titled “Prohibited Conflicts of Interest” reads as follows:

2. The direction, payment or other transfer of Horsemen’s Association funds (either directly or indirectly) for the use (personal or otherwise) of any relative of an officer, director or employee of that Horsemen’s Association. *It is a violation of this provision for the Horsemen’s Association to hire or retain (whether part-time, salaried or on a contract basis) a relative of any officer, director or employee.* It is not a violation of this provision to compensate the relative of an officer, director or employee of a Horsemen’s Association for providing services to the Horsemen’s Association if that person has provided those same services for compensation to the Horsemen’s Association for at least twelve (12) consecutive months immediately preceding the time that his or her relative began to serve as an officer, director or employee. (Emphasis added.)⁷

On May 21, 2010 the Indiana HBPA hired as a part-time office assistant, employee Lisa Stephens’ daughter, Lindsay Larimore at a rate of \$12.00 per hour.

Such a hiring is a violation of 71 IAC 13-1-10 Violations and Sanctions. Given the rate of pay and the nature of employment, the Commission staff recommends no penalty for this minor violation other than a warning. The IHBPA Board of Directors must be ever mindful of possible conflicts of interest and seek guidance from its legal counsel in such situations.

Transparency and Accountability

The commission staff has received conflicting reports as to the degree of transparency of the benevolence trust operations as it relates to state-directed slot machine monies. The IHBPA continually relied upon the Health Insurance Portability and Accountability Act

⁶ Pursuant to 71 IAC 13-1-3(4), the conflict of interest statement must be executed by all officers, directors, and employees of the horsemen’s association.

⁷ Pursuant to this section, no relative of any board member would be eligible to receive any benevolence money. However, Paragraph 1 of the Prohibited Conflicts of Interest policy provides that a board member is eligible for any benevolence available to any other member. The spirit of this exception likely applies to the family members of board members and the Conflict of Interest policy should be amended to so reflect.

(“HIPAA”)⁸ as a basis for non-disclosure of information related to the distribution of benevolence funds. Other than personal medical records, the commission staff believes that the horsemen’s association should be forthcoming and transparent in matters pertaining to these State directed funds.

The IHBPA and the Benevolence Trust are both accountable to the IHRC. The Directors and Trustees of each are licensed by the Commission⁹. The fact that funds are being held in escrow pending the results of this investigation is an example of such accountability.

The Trust, however, must also be held accountable to the IHBPA Board. The Trust was established as a separate entity for tax purposes. The benevolence trust board is accountable to the IHBPA insofar as the IHBPA is the entity approved to receive benevolence funds and is responsible to report to the commission specific information regarding the distribution of those funds. Furthermore, the IHBPA Benefit Trust Agreement states, in pertinent part:

“The Association (IHBPA) may remove any or all of the Trust Committee (benevolence board members) if the Association reasonably believes that any or all of the Trust Committee has violated any law or standard of conduct applicable to fiduciaries, advanced notice is not required.” Article VI. 6.1.

Conclusion

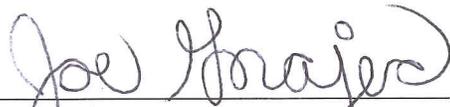
As the Commission designated horsemen’s association pursuant to 71 IAC 13-1-1 et seq., the Indiana HBPA provides valuable and much needed services to its members and others in the horse racing community.

Before it is entrusted with additional funds to continue its mission the IHBPA must first provide the IHRC with the necessary assurance that its administrative policies and procedures are comprehensive and will be uniformly enforced. Commission staff has recommended several corrective action steps to be completed by the IHBPA. Once completed, these documents should be filed as a supplement to the IHBPA’s application for registration. In order to expedite the processing of its application, the commission staff suggests that drafts of the corrective action document be pre-approved prior to filing.

⁸ The HIPAA makes certain medical information provided to a health care provider confidential. (45 CFR Parts 160, 162, and 164.)

⁹ Although past and current HBPA and benevolence trust board members are licensed by the Commission, neither administrative rule nor the HBPA or benevolence trust board bylaws require those members be licensed by the Commission. Commission staff is recommending that all benevolence trust trustees be required to be licensed by the IHRC. Additionally, all such trustees should be required to comply with the Commission’s rules regarding conflict of interest and certification requirements. See generally 71 IAC 13-1-3.

4/28/14
Date


Joe Gorajec
Executive Director

Corrective Action Steps

1. Revise Benevolence Benefit Guidelines

The IHBPA should strive to be inclusive and provide equal treatment to all horsepeople. The guidelines should be drafted in such a way as to be enforceable.

2. Revise Application for Benefits

The application should contain all the information necessary for processing.

3. Revise Benevolence Application Review Process

Procedures should include the individual(s) responsible for each processing step.

4. Establish Written Policy on Attorney Fees

5. Establish Written Marketing Plan

Describe in detail methods for disseminating information regarding benevolence information to prospective applicants.

6. Establish Written Policy on Access to Information

Such policy should strive to be transparent as is reasonably possible and should include, but not be limited to, “who” has access to “what” records and “how” such a request is made and responded to.

7. Establish Written Policy on Addressing Complaints

Such policy should include a complaint form. A copy of each complaint and corresponding response shall be provided to the IHRC’s Executive Director and General Counsel by e-mail.

8. Provide Additional Conflict of Interest Statements and Registration Certification

Each Benevolence Trust trustee shall file a conflict of interest form and registration certification.

2011
Indiana HBPA Benefit Trust
BENEVOLENCE BENEFITS GUIDELINES

A. Eligibility: The following will be eligible to apply for benevolence benefits from the Trust:

1. Any trainer (a) who is, and for the one-year period immediately preceding his or her application has been, licensed in the State of Indiana, (b) who is an Indiana resident and has made at least five starts, or a non-Indiana resident who has made at least ten starts, at an Indiana racetrack in either the previous calendar year or the current calendar year, and (c) whose Indiana starts in the current calendar year exceed 50% of the trainer's total starts during the Indiana live meets in the current calendar year. Eligibility established the previous calendar year is retained until the trainer's first start during an Indiana live meet in the current calendar year, after which the trainer's eligibility will be determined according to clauses (a) through (c), above.
2. Any owner (a) who is, and for the one-year period immediately preceding his or her application has been, licensed in the State of Indiana, (b) who owns the equivalent of at least 100% of a horse, (c) who is an Indiana resident and has made at least five starts, or a non-Indiana resident who has made at least ten starts, at an Indiana racetrack in either the previous calendar year or the current calendar year, and (d) who in the current calendar year has started at least 50% of his or her horses' starts at an Indiana track during the Indiana live meets. Eligibility established in the previous calendar year is retained until the owner's first start during an Indiana live meet in the current calendar year, after which the owner's eligibility will be determined according to clauses (a) through (d), above.
3. Any groom, hot walker, or other stable employee (a) who is, and for the one-year period immediately preceding his or her application has been, licensed in the State of Indiana, (b) who, as demonstrated by the affidavit of an eligible trainer or by being on an eligible trainer's badge list, is employed full-time by an eligible trainer, and (c) who has performed substantial work in the Indiana thoroughbred racing industry.
4. Any eligible trainer, owner, groom, hot walker, or other stable employee, who is, and for the one-year period immediately preceding his or her application has been, licensed in the State of Indiana, may apply for benevolence benefits for (a) his or her spouse, and (b) his or her child who is (i) under the age of 18, (ii) a full time student under the age of 24, or (iii) handicapped, disabled, or otherwise in special need.
5. No person will be eligible to apply for or receive benevolence benefits if he or she (a) is a single person with an adjusted gross income in excess of \$36,000 in the calendar year immediately preceding his or her application, or (b) is a married person who, together with his or her spouse, has an adjusted gross income in excess of \$54,000 in the calendar year immediately preceding his or her application.

B. Restrictions: Before an application for benevolence benefits will be considered:

1. The applicant shall have fully utilized and exhausted all insurance proceeds available to the applicant; and
2. The maximum benevolence benefit that may be granted to any eligible applicant in any calendar year for medical, dental, optical, or prescription services is \$6,000. In addition to this amount, an eligible applicant may be granted burial benefits of up to \$3,000 per calendar year.
3. All applications for benevolence benefits must be submitted to the Director of the Benevolence Trust within six months of the date on which an eligible service was provided to the applicant or an eligible expense incurred.

C. Procedure: The procedure for applying for benevolence benefits and consideration of such applications shall be as follows:

1. An eligible applicant may apply for benevolence benefits either in a written application delivered to the Director of the Benevolence Trust or his designee or by an oral application made in person

in a meeting with the Director of the Benevolence Trust or his designee. In the case of an oral application, the Director of the Benevolence Trust or his designee shall prepare the application from information supplied by the applicant. The applicant's signature must then appear on the prepared application.

2. Within ten business days of receipt of an application for benevolence benefits; the Director of the Benevolence Trust will determine eligibility of the applicant and forward the approved request to the accountant for the Benevolence Trust for processing.
3. If the request for benevolence is denied, or if further information is needed regarding the application, the applicant shall be notified in writing by the Director of the Benevolence Trust within 15 business days following that decision.
4. At the next meeting of the Benevolence Trust Board, the Director will supply all board members with information regarding the requests that have been approved or denied since their last meeting. The Benevolence Trust Board shall consist of no fewer than three members of the IHBPA Benevolence Committee and three members of IHBPA who are not elected board members. The Benevolence Committee of the Benevolence Trust Board shall consist of no fewer than three members of the Board of Directors of the Trust, at least one of whom shall not also be a member of the Board of Directors of IHPBA. The Benevolence Committee of the Trust shall have a Chairperson, who shall not be a member of the Board of Directors of IHBPA. All decisions of the Director of the Benevolence Trust, after review by Benevolence Trust Board, are final and not subject to any appeal or other review unless the Benevolence Trust Board, in its sole discretion, decides to reconsider the decision on the request of the applicant.

D. Criteria: In recommending or taking any action on any application for benevolence benefits, the Director of the Benevolence Trust and the Benevolence Trust Board shall consider the following criteria:

1. The eligibility of the applicant to apply for and receive benevolence benefits as described in part A, above.
2. Whether any Restrictions, as described in part B, above, apply to the application or applicant.
3. The circumstances that gave rise to the application for benevolence benefits, including any responsibility of the applicant in causing those circumstances to come about.
4. The applicant's need for benevolence benefits, including any hardship that will be suffered by the applicant if benevolence benefits are denied and the availability to the applicant of other resources that might mitigate such hardship.
5. The availability of funds budgeted by the Trust for benevolence benefits, including the pendency or expectation of any other applications for benevolence benefits that might require expenditure of those funds in the future.
6. Any other facts or circumstances that the Director of the Benevolence Trust, the Benevolence Trust Committee, or the Board of Directors of the Trust may, in their sole discretion, deem relevant to any action on the application.

E. Amendment: The Board of Directors of the Trust may, in its sole discretion, amend these Guidelines at any time or from time to time without prior notice.