

# **Agenda Item #1**



**FILED:**  
August 3, 2023

**STATE OF INDIANA  
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**

FINAL AGENCY AUTHORITY: Indiana Horse Racing Commission

**PETITIONER: BRAD COX  
RESPONDENT: IHRC STAFF  
OALP CAUSE NUMBERS: HRC-2303-000762  
UNDERLYING ACTION OR ORDER NUMBERS: Appeal of Stewards Ruling No. IG-2023-2906**

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**NONFINAL ORDER TO DISMISS**

On February 27, 2023, pursuant to Stewards Ruling No. IG-2023-2906 (the “Stewards Ruling”),<sup>1</sup> Petitioner was suspended by the Racing Stewards for fifteen days (which was to have begun on April 18, 2023 and end on May 2, 2023) and fined \$500 for an alleged violation of the medication, prohibited substance and trainer responsibility rules under 71 IAC 8.5-1-1.5, 71 IAC 8.5-1-2 and 71 IAC 5.5-3-2.<sup>2</sup> Specifically, after winning the Indiana Oaks race on July 9, 2022 (the “Infraction Date”), the horse “Interstatedaydream” tested positive for the substance Sotalol which was confirmed after split-sample testing. Petitioner timely filed an appeal of the Stewards Ruling and requested a stay of the penalties pending an evidentiary hearing under 71 IAC 10-2-10. On March 13, 2023, the matter was assigned to Administrative Law Judge Michael Buker.

On March 22, 2023, a telephonic Stay Hearing was conducted at which Petitioner had the burden of proof to establish that good cause existed to delay imposition of the penalties imposed by the Racing Stewards.<sup>3</sup> On March 30, 2023, pursuant to the “Order Granting Stay; First Scheduling Order”, a stay of the penalties imposed by the Stewards was granted in favor of Petitioner pending a decision following an evidentiary Hearing.

On April 20, 2023, Petitioner filed his Motion to Dismiss Stewards’ Ruling (“Motion to Dismiss”). On May 1, 2023, Respondent filed its motion in opposition thereto. Having considered the administrative record, the arguments of the parties, having conducted the Stay Hearing, and

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<sup>1</sup> The Stewards Ruling is dated February 27, 2023, the date on which the Senior Steward signed the ruling. The remaining two Stewards signed the ruling on February 28, 2023.

<sup>2</sup> Petitioner also was assessed four multiple medication violation points and ordered to forfeit all trophies, purse money and other awards received in connection with the Indiana Oaks victory.

<sup>3</sup> During the Stay Hearing, both parties appeared by counsel; neither party offered testimony; and sworn affidavits of Petitioner and Richard Sams, PhD. were submitted by Petitioner without objection from Respondent.

Nonfinal Order to Dismiss (Cox)

being in all respects duly advised, the undersigned administrative law judge now issues the accompanying Proposed Findings of Fact,<sup>4</sup> Conclusions of Law, and Nonfinal Order.

### **ANALYSIS**

Indiana Code section 4-31, *et seq.* sets forth the general statutory framework with respect to the conduct of pari-mutuel wagering on horse racing in Indiana. Pursuant to I.C. § 4-31-13-2, the Indiana Horse Racing Commission (“IHRC” or the “Commission”) has delegated to racing Stewards and Judges<sup>5</sup> the power to conduct disciplinary hearings on behalf of the Commission. Under I.C. § 4-31-13-2(a), provided that at least two of the Stewards or Judges concur, Stewards or Judges may impose one or more of the following sanctions against a licensee: (1) a penalty of up to \$5,000, (2) a summary suspension, (3) suspension of a license for up to one year, (4) exclusion from an IHRC-licensed facility, and (5) referral of the matter to the Commission for its consideration. However, I.C. § 4-31-13-2(b) limits the timeframe under which the Stewards may exercise their authority and provides:

“Unless a suspension of a license or the imposition of a civil penalty under this section is appealed by the person sanctioned not more than fifteen (15) days after being sanctioned, the suspension of a license or the imposition of a civil penalty under this section must occur within one hundred eighty (180) days after the date of the violation.”

In addition, IHRC administrative rules under the general heading “Proceedings by Judges” provide “[t]he suspension of a license or the imposition of a civil penalty must occur within one hundred eighty (180) days after the date of the violation under I.C. § 4-31-13-2(b).”<sup>6</sup> For purposes of this Order, the 180 day period during which sanctions must occur after the date of an alleged violation under I.C. § 4-31-13-2(b) or 71 IAC 10-2-7(f) shall be referred to as the “180 Day Limitation Period”.

Petitioner argues the sanctions imposed under the Stewards Ruling did not occur within 180 days after the Infraction Date as required under I.C. § 4-31-13-2(b) and 71 IAC 10-2-7(f) and thus, the Stewards Ruling is “untimely.” Respondent sets forth several arguments why the 180 Day Limitation Period should not apply and thus, the Stewards Ruling is not untimely.

As set forth above, the Stewards Ruling was issued and the underlying sanctions were imposed on February 27, 2023, which is after the date that is 180 days after the Infraction Date (February 27, 2023 is approximately 233 after the Infraction Date). Accordingly, I find (1) the sanctions imposed pursuant to the Stewards Ruling occurred more than 180 days after the Infraction Date; and (2) unless an exception to the 180 Day Limitation applies as discussed

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<sup>4</sup> Proposed Findings of Fact are included as Exhibit A to this Nonfinal Order.

<sup>5</sup> Under 71 IAC 1.5-3-9, a “judge” or “steward” is defined to mean a duly appointed racing official or judge with powers and duties specified by these rules. For purposes of I.C. § 4-31-13-2(b), 71 IAC 10-2-7(f) and this Order, the terms generally are used interchangeably.

<sup>6</sup> 71 IAC 10-2-7(f).

hereunder, the sanctions imposed pursuant to the Stewards Ruling do not satisfy the requirements under either I.C. § 4-31-13-2(b) or 71 IAC 10-2-7(f).

A. Substantial and reliable evidence does not exist to support a conclusion that the 180 Day Limitation Period should be “tolled”.

Respondent argues that the 180 Day Limitation period should be “tolled” because Petitioner requested laboratory packets<sup>7</sup> from University of California, Davis and Industrial Laboratories which delayed the Stewards Hearing and, under Indiana criminal procedure rules, tolling would be permitted for delays caused by Petitioner.<sup>8</sup>

Neither the statute nor the administrative rules provide for an exception to the 180 Day Limitation, and Respondent did not provide authority to support that Indiana criminal procedure rules apply to administrative matters in Indiana.<sup>9</sup> Moreover, the fact that neither the legislature nor the IHRC provided tolling provisions in either I.C. § 4-31-13-2(b) or 71 IAC 10-2-7(f) supports the conclusion that tolling should not be applied with respect to the sanctions imposed pursuant to the Stewards Ruling. “[N]othing may be read into a statute which is not within the manifest intention of the legislature as ascertained from the plain and obvious meaning of the words of the statute”. State of Indiana, Indiana Civil Rights Comm’n v. Indianapolis Newspapers, Inc., 716 N.E.2d 943, 946 (Ind. 1999). Based on the foregoing, I find that tolling principles, pursuant to either the Indiana rules of criminal procedure or otherwise, do not apply to administrative matters and thus, the sanctions imposed by the Stewards under the Stewards Ruling were required to occur within the 180 Day Limitation Period.

B. Substantial and reliable evidence does not exist to support a conclusion that the 180 Day Limitation Period should not apply because Stewards are authorized to interpret IHRC rules when conducting disciplinary hearings of a quasi-judicial nature.

Stewards have been granted authority by the legislature and the Commission to conduct disciplinary hearings which are quasi-judicial in nature. Respondent argues that situations may arise where due to time constraints, weather, illness, recently discovered evidence or other reasons, Stewards do not have sufficient guidance under 71 IAC 10 to discharge their obligations to protect the integrity of horseracing in Indiana. In such cases, Stewards should be able interpret IHRC

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<sup>7</sup> Laboratory or data packets generally include supplemental information in addition to a Certificate of Analysis; e.g., chain of custody information, description of physical sample, identification of laboratory technicians who conducted the tests, etc.

<sup>8</sup> Ind. R. Crim. P. 4(A) provides generally that a defendant should not be detained in jail for more than six months after the filing of criminal charges “except where a continuance was had on [Defendant’s] motion, or the delay was caused by [Defendant’s] act...”

<sup>9</sup> The undersigned administrative law judge is aware of the existence of authority under which attempts to apply court rules to administrative matters have been rejected. Specifically, “[i]t is well established in Indiana law that the trial rules do not govern the operations of administrative agencies, nor even conditions precedent to judicial review of administrative decisions.” Solar Sources, Inc. v. Air Pollution Control Bd., 409 N.E.2d 1136 (Ind. Ct. App. 1980), citing Clary v. National Friction Products (1972), 259 Ind. 581, 290 N.E.2d 53; State v. Bridenhager (1972), 257 Ind. 699, 279 N.E.2d 794.

rules by using other rules of trial procedure not contemplated under the IHRC rules (e.g., to toll the 180 Day Limitation period).

Respondent provided no authority that the legislature or the Commission intended to grant to the Stewards an ability to conduct hearings in a manner that circumvents duly enacted statutory and administrative deadlines. Moreover, and as discussed hereunder, although the Stewards are time barred by the 180 Day Limitation Period on imposing sanctions, the IHRC is not. As such, in situations where Stewards are faced with a possible expiration of the 180 Day Limitation period, the Stewards have an ability to transfer prosecution of such matters to the IHRC for finalization of the disciplinary process. Based on the foregoing, I find the sanctions imposed by the Stewards were required to occur within the 180 Day Limitation Period without regard to the fact the Stewards were granted authority to interpret IHRC rules while conducting disciplinary proceedings of a quasi-judicial nature.

C. Substantial and reliable evidence does not exist to support a conclusion that the 180 Day Limitation Period should not apply because the language of I.C. § 4-31-13-2(b) and 71 IAC 10-2-7(f) should be interpreted as directory instead of mandatory.

Respondent argues the term “must” should be interpreted as directory rather than mandatory with respect to I.C. § 4-31-13-2(b) and 71 IAC 10-2-7(f) based on legislative intent.<sup>10</sup> <sup>11</sup> Respondent asserts “there is simply no language in [I.C. § 4-31-13-2(b) and 71 IAC 10-2-7(f)]” to prevent the IHRC from acting on the violation following expiration of the 180 Day Limitation period”. Respondent further argues that failure to interpret the cited statutory and administrative language in a manner that permits the 180 Day Limitation Period to be avoided would lead to an “unreasonable and absurd result” under Langen.

Again, Respondent ignores the fact that only the Stewards are time barred with respect to the sanctions imposed pursuant to the Stewards Ruling. Moreover, sanctions imposed by the Stewards are one of the first steps in adjudicating a matter under a legislative scheme that provides administrative appeal rights, appeal to the Commission and judicial review rights. Ignoring statutory and administrative deadlines by disrupting the legislative scheme to resolve disputes in a timely, predictable and efficient matter would arguably produce the “unreasonable and absurd results” to be avoided under Langen. Based on the foregoing, I find the language of I.C. § 4-31-13-2(b) and 71 IAC 10-2-7(f) should be construed as mandatory, and the sanctions imposed by the Stewards pursuant to the Stewards Ruling were required to occur within the 180 Day Limitation Period.

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<sup>10</sup> See Hancock Cty. Rural Elec. Membership Corp. v. Greenfield, 494 N.E.2d 1294, 1295 (Ind. Ct. App. 1986); State v. Langen, 708 N.E.2d 617, 623 (Ind. Ct. App. 1999).

<sup>11</sup> The presumption of “shall” as mandatory is rebutted if “it appears from the context or the manifest purpose of the act that the legislature intended a different construction.” Johnson v. Johnson, Ind. App. 460 N.E.2d 978, 979-80 (1984).

- D. Substantial and reliable evidence does not exist to support a conclusion that Petitioner’s potential inability to use split-sample results in his defense justifies an enlargement of the 180 Day Limitation Period.

The split-sample results obtained from the University of California, Davis laboratory confirming the results obtained from the primary sample tested by Industrial Laboratories was received on January 5, 2023; i.e., on the date that was 180 days after the Infraction Date. Under 71 IAC 8.5-3-4(c), “[n]o hearing shall be held concerning the allegations against the trainer or owner, nor shall purse redistribution take place, until split sample testing has been completed and the results of the primary laboratory have been confirmed.” According to Respondent, Petitioner’s rights arguably could have been compromised because it was impossible to conduct a Stewards hearing within the 180 Day Limitation Period under 71 IAC 8.5-3-4(c), which requires that a Stewards hearing cannot occur until split-sample results have been obtained, and split-sample results were not obtained until the 180<sup>th</sup> day after the Infraction Date.<sup>12</sup>

Respondent provided no authority in support of its position. Respondent’s position again ignores the fact that only the Stewards are required to impose sanctions within 180 days of an infraction date, and the IHRC is not bound by such limitation. In a case such as this where it may not be realistic for Stewards to act within the 180 Day Limitation Period, prosecution of the matter could have been referred by the Stewards to Commission Staff which is not subject to the 180 Day Limitation Period. There simply is no basis in the statute or administrative rule to extend the 180 Day Limitation Period because the split-sample results took longer than anticipated to arrive.

Based on the foregoing, I find Respondent’s arguments do not constitute a sufficient basis to interpret a statute in a manner that subverts its “plain and obvious meaning” under State of Indiana, Indiana Civil Rights Comm’n v. Indianapolis Newspapers, Inc. Accordingly, the sanctions imposed pursuant to the Stewards Ruling do not satisfy the requirements under either I.C. § 4-31-13-2(b) or 71 IAC 10-2-7(f).

- E. Substantial and reliable evidence does not exist to support a conclusion that an interest in judicial efficiency, by itself, justifies non-adherence to the 180 Limitation Period.

Respondent argues it is judicially efficient to let the Stewards adjudicate violations within their sanctioning authority; i.e., fines of not more than \$5,000 and suspensions not longer than one year. In such cases, Respondent contends an enlargement of the 180 Day Limitation Period is warranted.

Respondent provided no authority in support of its position. Accordingly, I find a general interest in judicial efficiency, by itself, does not constitute a sufficient basis to interpret a statute in a manner that subverts its “plain and obvious meaning” under State of Indiana, Indiana Civil

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<sup>12</sup> Respondent further argues that Petitioner would have been deprived of counsel of his choice because his attorney was not admitted to the Indiana bar until January 14, 2023; i.e., after the expiration of the 180 Day Limitation Period. As discussed throughout this Order, I find there simply is no basis in the statute or administrative rules for ignoring the 180 Day Limitation Period for such reasons, and the matter could have been referred by the Stewards to Respondent for prosecution in the event Petitioner raised this as an issue.

Rights Comm'n v. Indianapolis Newspapers, Inc. Based on the foregoing, the sanctions imposed pursuant to the Stewards Ruling do not satisfy the requirements under either I.C. § 4-31-13-2(b) or 71 IAC 10-2-7(f).

**ULTIMATE FINDING OF FACT, CONCLUSIONS OF LAW AND NONFINAL ORDER**

1. The sanctions imposed pursuant to the Stewards Ruling occurred more than 180 days after the Infraction Date. Respondent has not established that an exception to the 180 Limitation Period applies. Based on the foregoing, the sanctions imposed pursuant to the Stewards Ruling do not satisfy the requirements under either I.C. § 4-31-13-2(b) or 71 IAC 10-2-7(f).
2. The Indiana Court of Appeals has previously recognized the validity of the time limits set forth in 71 IAC 10-2-7(f) with respect to disciplinary proceedings conducted by the Stewards.<sup>13</sup> In P'Pool, the court discussed distinctions between disciplinary proceedings conducted by Stewards and those conducted by the IHRC.<sup>14</sup> Specifically, the Court of Appeals ruled:

“71 IAC 10-2-7 requires racing judges to impose penalties within sixty days of a violation. As such, disciplinary proceedings before the racing judges have an implied time bar to bringing disciplinary action. At the time of the hearing before the racing judges, the violations regarding [three of the eleven violations at issue in P'Pool] were older than sixty days. As such, the racing judges did not have jurisdiction to impose discipline for those violations.”

The Court provided that 71 IAC 10-3-1(b) provides the IHRC independent investigative and disciplinary authority in addition to that provided to racing Judges and Stewards, and that “[n]o rule or statute imposes a time bar to disciplinary actions brought by the IHRC.” P'Pool is controlling with respect to the current matter; i.e., the administrative rule at issue in P'Pool and the current matter (i.e., 71 IAC 10-2-7(f) are identical (with the exception of a 60 day limitation period instead of 180 days).

Based on the foregoing, I find the Stewards Ruling was issued on February 27, 2023, and the underlying sanctions occurred thereafter, which is more than 180 days after the Infraction Date. I further find Respondent did not establish by substantial and reliable evidence that an exception to the 180 Day Limitation Period applies to this matter. Accordingly, I find the sanctions set forth in the Stewards Ruling did not satisfy the requirements set forth in I.C. § 4-31-13-2(b) and 71 IAC 10-2-7(f) that sanctions imposed

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<sup>13</sup> P'Pool v. Indiana Horse Racing Comm'n, 916 N.E.2d 668, 676 (Ind. Ct. App. 2009). At the time P'Pool was decided, the applicable time limitation under 71 IAC 10-2-7(f) was 60 days and not 180 days as the regulation currently provides.

<sup>14</sup> Disciplinary hearings conducted by Stewards and Judges are addressed generally in 71 IAC 10-2; disciplinary hearings conducted by the IHRC are addressed generally in 71 IAC 10-3.

by the Stewards must occur within 180 days after the alleged violation date. Consequently, the Stewards did not have jurisdiction under P'Pool to impose the penalties set forth in the Stewards Ruling.

### **NONFINAL ORDER**

Having considered all of the facts and evidence presented by the parties, including facts in mitigation, it is recommended that (1) Petitioner's Motion to Dismiss be GRANTED, and (2) this matter be DISMISSED, without prejudice, for lack of jurisdiction under 71 IAC 10-3-16 in favor of Petitioner and against Respondent. It is further recommended the sanctions imposed against Petitioner under Stewards Ruling No. 2023-2906 (including, without limitation, the fine of \$5,000, suspension of Petitioner's license, assessment of medication violation points, forfeiture of all trophies, purse money and other awards received in connection with the 2022 Indiana Oaks victory) and all other Orders issued in connection with this matter be vacated.

In accordance with I.C. § 4-15-10.5-12(b), the undersigned's order disposing of this matter is not final. Specifically, this Nonfinal Order is subject to review by the Indiana Horse Racing Commission. Pursuant to I.C. § 4-21.5-3-29(d), Respondent has fifteen (15) calendar days following receipt of this Nonfinal Order to file written exceptions with the Indiana Horse Racing Commission.

ORDERED: August 3, 2023

**/S/ Michael Buker** \_\_\_\_\_

Hon. Michael Buker  
Administrative Law Judge  
Office of Administrative Law Proceedings

#### **Distributed to Parties:**

Petitioner, Brad Cox – served by Co-Counsel by OALP EService email: Darren A. Craig, Frost Brown at [dcraig@fbtlaw.com](mailto:dcraig@fbtlaw.com) and Joel B. Turner, Frost Brown Todd LLC at [jturner@fbtlaw.com](mailto:jturner@fbtlaw.com).

Respondent, Indiana Horse Racing Commission Staff (Agency) – served by Co-Counsel by OALP EService email: Matthew M. Eggiman at [MEggiman1@hrc.in.gov](mailto:MEggiman1@hrc.in.gov), Dale L. Pennycuff at [DPennycuff@hrc.in.gov](mailto:DPennycuff@hrc.in.gov) and David Rothenberg @ [drothenberg@hrc.in.gov](mailto:drothenberg@hrc.in.gov).

Nonfinal Order to Dismiss (Cox)



**EXHIBIT A**  
**FINDINGS OF FACT**

Pursuant to Ind. Code § 4-21.5-3-27, the following Findings of Fact were used as the basis for the accompanying Nonfinal Order Regarding Summary Judgment. Unless otherwise defined herein, capitalized terms shall have the same meaning as set forth in the Nonfinal Order. To the extent that any Finding of Fact is more properly considered a Conclusion of Law, or conversely, they shall be so treated.

1. As reflected on the Stewards Ruling, the infraction date was July 9, 2022; i.e., the date of the 2022 Indiana Oaks horse race held at Horseshoe Indianapolis in Shelbyville, Indiana.
2. The initial sample report from Industrial Laboratories was dated July 28, 2022.
3. The split-sample result received from the University of California, Davis was dated October 25, 2022.
4. The sanctions imposed pursuant to the Stewards Ruling occurred more than 180 days after the date of the alleged violation date of July 9, 2022, and (2) unless an exception to the 180 Day Limitation applies as discussed hereunder, the sanctions imposed pursuant to the Stewards Ruling do not satisfy the requirements under either I.C. § 4-31-13-2(b) or 71 IAC 10-2-7(f).
5. Tolling principles, pursuant to either the Indiana rules of criminal procedure or otherwise, do not apply to administrative matters and thus, the sanctions imposed by the Stewards under the Stewards Ruling were required to occur within the 180 Day Limitation Period.
6. The sanctions imposed by the Stewards were required to occur within the 180 Day Limitation Period without regard to the fact the Stewards were granted authority to interpret IHRC rules while conducting disciplinary proceedings of a quasi-judicial nature.
7. The language of I.C. § 4-31-13-2(b) and 71 IAC 10-2-7(f) is mandatory, and the sanctions imposed by the Stewards pursuant to the Stewards Ruling were required to occur within the 180 Day Limitation Period.
8. Petitioner's ability to utilize split-sample results in his defense is not a sufficient basis to interpret a statute in a manner that subverts its "plain and obvious meaning" under State of Indiana, Indiana Civil Rights Comm'n v. Indianapolis Newspapers, Inc., and thus, the sanctions imposed pursuant to the Stewards Ruling do not satisfy the requirements under either I.C. § 4-31-13-2(b) or 71 IAC 10-2-7(f).

9. Whether Petitioner could be prohibited from utilizing counsel of his choice for his defense is not a sufficient basis to interpret a statute in a manner that subverts its “plain and obvious meaning” under State of Indiana, Indiana Civil Rights Comm’n v. Indianapolis Newspapers, Inc., and thus, the sanctions imposed pursuant to the Stewards Ruling do not satisfy the requirements under either I.C. § 4-31-13-2(b) or 71 IAC 10-2-7(f).
  
10. A general interest in judicial efficiency, by itself, is not a sufficient basis to interpret a statute in a manner that subverts its “plain and obvious meaning” under State of Indiana, Indiana Civil Rights Comm’n v. Indianapolis Newspapaers, Inc., and thus, the sanctions imposed pursuant to the Stewards Ruling do not satisfy the requirements under either I.C. § 4-31-13-2(b) or 71 IAC 10-2-7(f).

# **Agenda Item #2**



**FILED:**

September 13, 2023

**STATE OF INDIANA  
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**

FINAL AGENCY AUTHORITY: Indiana Horse Racing Commission

**PETITIONER: JAMAL WILLIAMS**

**RESPONDENT: Indiana Horse Racing Commission Staff**

**OALP CAUSE NUMBER: HRC-2206-001429**

**UNDERLYING ACTION OR ORDER NUMBER: Appeal of Administrative Complaint No. 222002 (as amended)**

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**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND NONFINAL ORDER**

This matter came before the undersigned Administrative Law Judge Michael Buker for hearing on the appeal of Administrative Complaint No. 222002 (as amended) issued by the Indiana Horse Racing Commission Staff (“Commission Staff”) against Petitioner, Jamal Williams. On May 24, 2023, a hearing was conducted on this matter (the “Hearing”). Commission Staff was represented by its co-counsel Mr. David Rothenberg, Mr. Matthew M. Eggiman and Mr. Dale Lee Pennycuff. Respondent was represented by his counsel, Mr. Howard A. Taylor and Mr. Peter J. Sacopulos.

**BACKGROUND AND PROCEDURAL SETTING**

Petitioner was at all times relevant licensed as a groom and as a trainer and driver by the Indiana Horse Racing Commission (“IHRC”) to work at its race tracks in Indiana. On May 23, 2022, Respondent issued Administrative Complaint No. 222002 against Petitioner alleging violations of IHRC medication rules. Petitioner timely filed his appeal of the Amended Complaint and on July 20, 2022, the matter was assigned to the undersigned administrative law judge. On

April 20, 2023, Respondent moved to amend Administrative Complaint No. 222002 pursuant to which Petitioner is alleged to have improperly administered substances orally on multiple occasions to horses on days on which the horses were scheduled to race in violation of 71 IAC 8-1-1.5(b), and improperly administered a substance to a horse using a hypodermic needle and syringe on a day on which the horse was scheduled to race in violation of 71 IAC 8-1-1.5(b)(1) (the “Amended Complaint”)<sup>1</sup>. All violations were alleged to have occurred at Harrah’s Hoosier Park in Anderson, Indiana. The Hearing was conducted with respect to the merits of Petitioner’s appeal under I.C. § 4-21.5-3 and 71 IAC 10-3, *et seq.*, pursuant to which Respondent had the burden of proof to establish the penalties imposed by the Racing Stewards should be sustained. Although not required, each party filed its Proposed Findings of Fact, Conclusions of Law and Recommended Order following the Hearing.

In rendering findings and conclusions, I am required to weigh the credibility of witnesses about the matters to which they testified including each witness’s interest, if any, in the outcome of the matter.<sup>2</sup> Having considered the administrative record, conducted a Hearing with evidence (including Supplemental Evidence as defined hereunder) and testimony presented by both parties, weighed the credibility of the witnesses and considered the arguments of counsel, I hereby issue this Findings of Fact, Conclusions of Law and Nonfinal Order. To the extent that any of the

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<sup>1</sup> Respondent’s Motion for Leave to Amend Administrative Complaint in which (a) a charged violation under 71 IAC 8-7-1 was deleted, and (b) the Recommended Penalty was revised to a fine of \$5,000, a suspension of one year (reduced from a \$7,500 fine and four year suspension in the original Administrative Complaint), and forfeiture/redistribution of certain purse monies was not opposed by Petitioner and is hereby GRANTED.

<sup>2</sup> During his closing statement at the Hearing, Petitioner’s counsel, Mr. Taylor, made a number of remarks to the effect that all of Respondent’s witnesses were employed by the IHRC, and each “had an agenda” with respect to this matter. [Tr. pp. 176-7]. In light of the fact Mr. Taylor presented no evidence of conspiracy or bias or interest on the part of the witnesses beyond the fact of common employment, I find his remarks were not credible. Accordingly, they were not considered during my deliberations.

Findings of Fact are more appropriately considered Conclusions of Law, or conversely, they shall be so treated.

### **EXHIBITS ADMITTED DURING THE HEARING**

#### Jointly Stipulated Exhibits:

1. A copy of the Joint Stipulations filed by the parties (identified as Exhibit AA);
2. Petitioner's groom license application form dated February 18, 2021 (identified as Joint Stipulation 13(a));
3. Petitioner's trainer and driver license application form dated August 26, 2021 (identified as Joint Stipulation 13(b));
4. Horse identification documents for four horses: "The Bucket", "Prescotts Hope", "A Sham of Amber", and "Meadowbrook Raider" (identified as Joint Stipulation 13(c));
5. A thumb drive containing four closed circuit video clips of the barn and stable areas at Hoosier Park in Anderson, Indiana on December 2 and 3, 2021 of the four horses identified in Paragraph 4 above (identified as Joint Stipulations 13(d) – 13(g));
6. Official program pages from Race 3 and Race 10 on December 2, 2021 at Hoosier Park in Anderson, Indiana (identified as Joint Stipulation 13(h));
7. Paddock sign-in sheets for Harrah's Hoosier Park Race 3 and Race 10 on December 2, 2021 and Race 6 on December 3, 2021 (identified as Joint Stipulation 13(j));
8. Race results from the United States Trotting Association Pathway website for Harrah's Hoosier Park on December 2 and 3, 2021 (identified as Joint Stipulation 13(k)); and
9. Transcript of a deposition of Indiana Horse Racing Commission Executive Director Deena Pitman from May 9, 2023 (identified as Joint Stipulation 13(l)).

Commission Staff's Exhibits:

1. Copies of Indiana administrative rule 71 IAC 8-1-1.5, *Medication* (identified as IHRC Exhibit A1); and
2. Petitioner's Notice of Services of Discovery Responses dated May 8, 2023 (identified as IHRC Exhibit O).

Petitioner's Exhibit:

1. Expert Report of Clara K. Fenger, DVM, PhD, DACVIM dated April 5, 2023 (identified as Petitioner's Exhibit P1).

**WITNESSES WHO TESTIFIED AT THE HEARING**

Respondent's Witnesses:

1. Mr. John McAllister – IHRC Investigator
2. Dr. Kerry Peterson, DVM – IHRC Equine Medical Director
3. Mr. John Zawistowski – IHRC Associate Judge
4. Mr. Kevin Gumm – IHRC Presiding Judge

Petitioner's Witnesses:

1. Dr. Clara Fenger, DVM
2. Mr. Jamal Williams, Petitioner

**RELEVANT REGULATORY AUTHORITY**

71 IAC 8-1-1.5 Medication

Sec. 1.5

(a) No horse participating in a race or entered in a race shall carry in its body any foreign substance as defined in 71 IAC 1 or IC 4-31-2, except as provided for in this rule.

Proposed Findings of Fact, Conclusions of Law and Nonfinal Order (Williams)

(b) No substance, foreign or otherwise, shall be administered to a horse entered to race by:

- (1) injection;
- (2) jugging;
- (3) oral administration;
- (4) tube;
- (5) rectal infusion or suppository;
- (6) inhalation; or
- (7) any other means;

within twenty-four (24) hours prior to the scheduled post time for the first race except furosemide as provided for in this rule. The prohibitions in this section include, but are not limited to, injection or jugging of vitamins, electrolyte solutions, and amino acid solutions. The prohibition also includes, but is not limited to, the topical, oral, or nasal administration of compounds, such as Traileze, Vapol, Vicks vapor-rub, wind-aid, exhale ease, or containing methylsalicylate, camphor, potassium iodide, or products containing “caine” derivatives or dimethylsulfoxide (DMSO).

(c) Substances or metabolites thereof which are contained in equine feed or feed supplements that do not contain pharmacodynamic or chemotherapeutic agents are not considered foreign substances if consumed in the course of normal dietary intake (eating and drinking).

(d) – (e)....

### **FINDINGS OF FACT**

**A. Substantial and reliable evidence exists to support a conclusion that Petitioner administered a substance, foreign or otherwise, to three horses within 24 hours prior to the scheduled post time for a race in which those horses were scheduled to run in violation of 71 IAC 8-1-1.5(b)(3).**

1. Petitioner has admitted to the predicate facts with respect to a violation of 71 IAC 8-1-1.5(b)(3). Specifically, Petitioner has admitted that he orally administered a substance using an oral dosing syringe to three standardbred horses on a date on which each horse



was scheduled to race.<sup>3</sup> [Joint Stipulations, Nos. 5-10; IHRC Ex. O]. However, Petitioner contends the dose syringes contained a mixture of yogurt and aloe vera (the “Yogurt/Aloe Vera Mixture”),<sup>4</sup> which Petitioner contends is food that may be provided to a horse on race day under 71 IAC 8-1-1.5(c). Respondent did not provide any evidence with respect to the contents of the dose syringes. Accordingly, I find the dose syringes contained the Yogurt/Aloe Vera Mixture.

2. Petitioner argues 71 IAC 8-1-1.5(c) is silent with respect to how feed or feed supplements may be administered which creates an ambiguity between subsection (b) of 71 IAC 8-1-1.5 which prohibits race day oral administrations, and subsection (c) of 71 IAC 8-1-1.5 which permits a horse to receive feed or feed supplements on race day. According to Petitioner, any ambiguity with respect to a rule or regulation must be held against the maker (i.e., the IHRC) and thus, oral administration of the Yogurt/Aloe Vera Mixture on race day does not violate 71 IAC 8-1-1.5(b)(3). In support of this position, Petitioner’s witnesses testified as follows:

- a. Dr. Fenger testified that “using a probiotic that you’re feeding every day [constitutes] normal dietary intake”. [Tr. p. 124]
- b. Petitioner testified that some horses may not like the taste of or to swallow the Yogurt/Aloe Vera Mixture, in which case it can be more efficient to administer the mixture by dose syringe to reduce the likelihood that a horse will “splash it all over” or “spit it up”. In addition, using a dose syringe also helps to ensure a horse will consume the entire amount of the mixture. [Tr. pp. 131-2; 145]. Dr. Fenger

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<sup>3</sup> Specifically, Petitioner admitted to orally administering a substance using an oral dosing syringe on December 2, 2021 to “The Bucket”, “Prescotts Hope” and “A Sham of Amber” (collectively, the “Affected Horses”).

<sup>4</sup> Respondent did provide any evidence with respect to the contents of the dose syringes.

testified that dose syringes are often used to administer the Yogurt/Aloe Vera Mixture because horses do not always consume all of their feed from a feed tub.

[Tr. p. 116]

3. Respondent argues administration of any substance via oral administration is strictly prohibited on race day. Respondent further argues that feeding a horse on race day by oral administration is not consumption in the course of normal dietary intake under 71 IAC 8-1-1.5(c).
4. Petitioner is correct in that the race day administration regulations do not explicitly provide that oral administration of a food product on race day is prohibited. However, the regulations provide a clear distinction between oral administration of a substance and consumption in the course of normal dietary intake; i.e., eating and drinking.
  - a. Dr. Peterson testified that “forcibly putting [a substance] down a horse’s mouth” or “forcing a horse to take it” by using a dose or tube syringe, constitutes oral administration and is not permitted on race day under 71 IAC 8-1-1.5(b)(3). [Tr. pp. 43; 53]. Dr. Peterson further testified that the Yogurt/Aloe Vera Mixture could have been poured onto feed as a top dressing to a horse’s feed in its feed bucket. [Tr. pp. 43-4]
  - b. Mr. Gumm testified that “[a person] can’t give a horse anything on race day except [Lasix]”. [Tr. p. 93]. He further testified that, although the phrase “consumption in the course of normal dietary intake (eating and drinking)” is not defined in 71 IAC 8-1-1.5(c), its meaning is very clear to him, and “feeding in a natural way” means nothing is forced down a horse’s throat. [Tr. pp. 100; 102-4]

- c. Dr. Fenger’s testimony that consumption of probiotics and direct fed microbials, such as the Yogurt/Aloe Vera Mixture, on a daily basis constitutes normal dietary intake does not address the manner in which the mixture is provided; i.e., the Yogurt/Aloe Vera Mixture could have been provided to a horse as a top dressing on its feed as supported by the testimony of Dr. Peterson. [Tr. p. 53]
  - d. The terms “eating” and “drinking” are commonly used terms readily understood by most people to connote a voluntary willingness to consume a substance. Force-feeding a substance to a horse, whether in order to simply ensure the horse ingests the entire amount of the substance or otherwise, is not consistent with the plain meaning of those terms.
  - e. Although it is understandable why Petitioner may prefer to orally administer the Yogurt/Aloe Vera Mixture using a dose syringe as opposed to top dressing a horse’s feed, oral administration on race day simply is not permitted under the plain meaning of the language used in the regulations and the overall regulatory scheme contemplated in 71 IAC 8-1-1.5.
5. Based on the foregoing, I find that consumption by a horse “in the course of normal dietary intake (eating and drinking)” does not include the forcible or non-volitional administration of a substance using a dose syringe for purposes of 71 IAC 8-1-1.5(b) and (c). Accordingly, I find Petitioner violated 71 IAC 8-1-1.5(b)(3) when he orally administered the Yogurt/Aloe Vera Mixture to the Affected Horses on December 2, 2021.

**B. Substantial and reliable evidence does not exist to support a conclusion that Petitioner injected a substance, foreign or otherwise, to a horse on race day using a hypodermic needle and syringe at Harrah’s Hoosier Park in violation of 71 IAC 8-1-1.5(b)(1).**

9. Respondent contends the following:
- a. As part of his investigation, Mr. McAllister spoke with a Mr. Orantes, a groom who allegedly observed Petitioner administering injections to the necks of approximately ten horses on days on which the horses were scheduled to race. Mr. Orantes did not testify at the Hearing and reportedly recanted his allegations after speaking with Mr. McAllister. Petitioner did not object to the hearsay testimony by Mr. McAllister with respect to Mr. Orantes's allegations.
  - b. At the Hearing, Respondent played video recordings which showed Petitioner leading the horse "Meadowbrook Raider" into the wash bay at a barn on the grounds of Hoosier Park racetrack. The recordings were from cameras mounted at various locations in the barn including one camera mounted above certain stalls in the barn which included a distant and partially obstructed view of the wash bay area in the barn.
  - c. Shortly before Petitioner led the horse into the wash bay, Petitioner draped a blanket over the top of a sulky (i.e., racing cart) and moved the sulky in front of an aisleway in the barn. Mr. Zawistowski testified that he believed Petitioner covered the sulky with the blanket and moved it in order to conceal his activities while in the wash bay. [Tr. p. 78]
  - d. Petitioner was in the wash bay with the horse and another groom for less than one minute during which Respondent contends Petitioner injected the horse in its neck area with an unknown substance. Dr. Peterson and Mr. Zawistowski both testified it was unusual to only use a wash bay for less than one minute. [Tr. pp. 49-50; 63-5]

10. Mr. Zawistowski testified that it was possible Petitioner was injecting something in the neck area based on the body actions of the lower half of the horse seen in the video recording. [Tr. pp. 80-3; pp. 88-9]
11. It was difficult to ascertain what occurred in the wash bay because of the angle and distance of the wash bay from the camera. For example, Mr. Zawistowski testified that only the bottom half of the horses and both grooms were visible in the video recordings; the top halves of the people and horse could not be seen. [Tr. p. 79]
12. Petitioner contends he never injected a horse, and the recording reflects he was applying cedar oil to the horse's neck. [Tr. pp. 133-6]
13. Petitioner contends he was attempting to dry the blanket when he hung it over the sulky. Petitioner could not explain why he moved the sulky. [Tr. p. 153]
14. Mr. Zawistowski testified that no needles or syringes were found during the investigation of Petitioner. [Tr. p. 89]
15. Based on the foregoing, I find as follows:
  - a. The video evidence does not support Respondent's allegations because of the angle and distance of the wash bay from the camera, and the fact that only the lower halves of the people and horse were visible on the recordings.
  - b. Based on my review of the video evidence, a meaningful reaction by the horse was not observed.
  - c. No needles or syringes were located during the investigation.
  - d. The testimony of Mr. McAllister with respect to the matters related to him by Mr. Orantes, although hearsay, is sufficient to enter an order against Petitioner under I.C. § 4-21.5-3-26 because it was not objected to during the Hearing. However, in

light of the fact that Mr. Orantes apparently recanted his allegations and did not testify at the Hearing, I find that Mr. Orantes's allegations with respect to this matter are not credible.

16. Based on the foregoing, I find that Respondent did not sustain its burden of proof with respect to the allegations that Petitioner injected a horse in violation of 71 IAC 8-1-1.5(b)(1).

### **CONCLUSIONS OF LAW**

1. The undersigned has jurisdiction over this matter pursuant to his appointment by the Indiana Office of Administrative Proceedings and the provisions of I.C. § 4-21.5, *et seq.* and 71 IAC 10-3-7.
2. The IHRC 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 violate its rules.
3. At all times relevant, Petitioner was duly licensed by the IHRC as a groom and as a trainer and driver and subject to all rules and statutes that regulate pari-mutuel horse racing in Indiana.
4. The Amended Complaint was issued in accordance with Indiana statutes and IHRC rules and were supported by substantial, reliable and credible evidence presented to the undersigned administrative law judge.
5. Commission Staff had the burden of persuasion and the burden of going forward with proof on the Amended Complaint by a preponderance of the evidence pursuant to I.C. § 4-21.5-3-14.

6. By a preponderance of the evidence, Commission Staff met its burden of proof with respect to each of the following under 71 IAC 8-1-1.5(b)(3):
  - a. Petitioner orally administered a substance, foreign or otherwise, to the Affected Horses within 24 hours of the horses' scheduled race times;
  - b. The Yogurt/Aloe Vera Mixture is "feed or feed supplements" for purposes of 71 IAC 8-1-1.5(c); and
  - c. Feed or feed supplements may not be orally administered to a horse using a dosage syringe under 71 IAC 8-1-1.5(b)(3).
  
7. By a preponderance of evidence, Commission Staff did not meet its burden of proof as follows:
  - d. Respondent did not establish by a preponderance of the evidence that Petitioner injected a horse with a substance, foreign or otherwise, on a day the horse was scheduled to race under 71 IAC 8-1-1.5(b)(1).

#### **ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Based on all of the evidence presented, including the Hearing and by submission of the parties, Commission Staff met its burden of proof by a preponderance of the evidence that Petitioner violated 71 IAC 8-1-1.5(b)(3), orally administering a substance, foreign or otherwise, to the Affected Horses on three occasions on a date each horse was scheduled to race.
  
2. Based on all of the evidence presented, including the Hearing and by submission of the parties, Commission Staff did not meet its burden of proof by a preponderance of the evidence that Petitioner violated 71 IAC 8-1-1.5(b)(1), injecting the horse "Meadowbrook

Raider” with a substance, foreign or otherwise, within 24 hours of the date on which the horse was scheduled to race.

### **APPROPRIATENESS OF SANCTIONS**

1. Pursuant to 71 IAC 10-3-12(f), Commission Staff may recommend penalties and an administrative law judge may accept, reject or modify the recommended penalty.
2. As set forth above, the Amended Complaint recommended Petitioner be suspended for one year, fined in the amount of \$5,000 and required to forfeit purses with respect to four races.<sup>5</sup> Other than the purse forfeitures, the recommended sanctions set forth in the Amended Complaint did not provide detail with respect to the respective sanctions for violations of race day oral administration rules versus recommended sanctions for violation of race day injection rules.
3. Accordingly, on June 2, 2023 Respondent was ordered to supplement the record and provide additional evidence with respect to how the sanctions proposed in the Amended Complaint were determined with respect to each charge<sup>6</sup> (collectively with Petitioner’s response thereto, the “Supplemental Evidence”).
4. In its Supplemental Evidence, Respondent provided two cases involving race day oral administration violations in Indiana in which violators were suspended for 45 days, fined in the amount of \$1,000 and required to forfeit related purses. Respondent also provided examples of race day oral administration violations in California with suspensions ranging

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<sup>5</sup> Specifically, three races for violation of race day oral administration rules (i.e., races in which the horses “The Bucket”, “Precotts Hope” and “A Sham of Amber” raced) and one race for violation of race day injection rules (i.e., a race in which “Meadowbrook Raider” raced).

<sup>6</sup> Petitioner provided his response on June 14, 2023.



from 30 days to one year and fines of up to \$10,000. [Respondent's Supplemental Evidence, pp. 5-6]

5. In its determination of recommended sanctions, Respondent considered the seriousness of the violations, penalties imposed by the IHRC and other states in the past, Petitioner's clean record (albeit for a relatively short time period as a standardbred licensee)<sup>7</sup> and the fact that only one race day injection violation was alleged to have occurred in recommending the sanctions set forth in the Amended Complaint.
6. In its Supplemental Evidence, Respondent determined the recommended sanctions against Petitioner for violations of the race day oral administration rules should be a 90 day suspension, a fine of \$1,000 and purse forfeiture/redistribution. [Respondent's Supplemental Evidence, p. 6].<sup>8</sup>
7. Petitioner provided a case in Indiana where a groom admitted to violating the race day oral administration rules under 71 IAC 8-1-1.5(b), and the trainer was charged with similar violations under the trainer responsibility rules. The groom was suspended for 45 days, and the trainer was suspended for seven days and fined in the amount of \$1,500 (in addition to purse forfeiture/redistribution). In mitigation the Racing Judges determined the groom acted without the knowledge of the trainer. In a second case in Indiana, a trainer violated the race day oral administration rules and was suspended for 45 days and fined in the amount of \$1,000 (in addition to purse forfeiture/redistribution). In mitigation, the Racing Judges cited Petitioner's admission of guilt, acknowledgement of wrongdoing, willingness

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<sup>7</sup> Respondent represents that according to the United States Trotting Association database (as reflected on its website), 2021 was Mr. Williams first year as a standardbred licensee.

<sup>8</sup> Although not explicitly so stated, the recommended sanctions in excess of the foregoing are presumably attributable to race day injection violations.

to cooperate and his “impeccable record through nearly 50 years of racing.” [Petitioner’s Supplemental Evidence, p. 5]

8. As set forth above, Petitioner has been found to have violated only the race day administration rules under 71 IAC 8-1-1.5(b)(3) and not the race day injection rules under 71 IAC 8-1-1.5(b)(1). Accordingly, a reduction of the recommended sanctions set forth in the Amended Complaint appears to be appropriate.
9. Based on the foregoing and as follows, I find the appropriate period of suspension to be less than one year, as reflected in the Amended Complaint, but more than 90 days, as reflected in Respondent’s Supplemental Evidence:
  - a. Petitioner’s relatively short standardbred licensure record (i.e., he has held his standardbred license only since 2021) compared to much longer records of the individuals involved in cases provided by both Petitioner and Respondent;
  - b. Petitioner has not acknowledged he violated the race day oral administration rules.
  - c. During the Hearing, Mr. Gumm testified that violations of race day administration rules were “serious” because they involved attempts to circumvent the rules.<sup>9</sup> [Tr. p. 95]

### **NONFINAL ORDER**

1. As set forth above, Commission Staff may recommend penalties and an administrative law judge may accept, reject or modify the recommended penalty. 71 IAC 10-3-12(f).
2. A 180 day suspension, fine of One Thousand Dollars (\$1,000) and forfeiture/redistribution of certain purse monies recommended against Petitioner are each reasonable in light of the

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<sup>9</sup> Mr. Gumm testified that race day injections were a “serious, serious violation” of IHRC rules. [Tr. p. 96]

substantial, credible and reliable evidence presented during the Hearing and in the Supplemental Evidence.

3. Having considered all of the facts and evidence presented by the parties, including facts in mitigation, I recommend that a Final Order be entered by the Indiana Horse Racing Commission (1) in favor of the Indiana Horse Racing Commission Staff and against Petitioner with respect to Paragraph 19 of the Amended Complaint (i.e., race day oral administration violations), and (2) in favor of Petitioner and against the Indiana Horse Racing Commission Staff with respect to Paragraph 20 of the Amended Complaint (i.e., race day injection violation), and sanctions be adopted recommending that Petitioner:

(a) Be suspended for a period of 180 days,

(b) Be fined in the amount of One Thousand Dollars (\$1,000), and

(c) Be ordered to forfeit for redistribution certain purse monies as set forth in Paragraphs (a), (b) and (c) on Page 7 of the Amended Complaint; i.e., with respect to the horses “The Bucket”, “Prescotts Hope” and “A Sham of Amber”.<sup>10</sup>

In accordance with I.C. § 4-15-10.5-12(b), the undersigned’s order disposing of this matter is not final. Specifically, this Non-Final Order is subject to review by the Indiana Horse Racing Commission. Pursuant to I.C. § 4-21.5-3-29(d), Petitioner and Respondent each have fifteen (15) calendar days following receipt of this Non-Final Order to file written exceptions with the Indiana Horse Racing Commission.

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<sup>10</sup> Forfeiture and redistribution of the purse set forth in Paragraph (d) on Page 8 of the Amended Complaint (i.e., with respect to the horse “Meadowbrook Raider”) is not recommended.

ORDERED: September 13, 2023

**/S/ Michael Buker** \_\_\_\_\_

Hon. Michael Buker  
Administrative Law Judge  
Office of Administrative Law Proceedings

**Distributed to Parties:**

Jamal Williams, Petitioner – served by Co-Counsel Peter J. Sacopulos by ALP EService email at [pete\\_sacopulos@sacopulos.com](mailto:pete_sacopulos@sacopulos.com) and Co-Counsel Howard Taylor by ALP EService email at [Htayloresq@comcast.net](mailto:Htayloresq@comcast.net).

Indiana Horse Racing Commission Staff (Agency), Respondent – served by Co-Counsel Dale L. Pennycuff by ALP E-Service email at [dpennycuff@hrc.in.gov](mailto:dpennycuff@hrc.in.gov) and Co-Counsel Matthew E. Eggiman, by ALP EService email at [meggiman1@hrc.in.gov](mailto:meggiman1@hrc.in.gov)

# **Agenda Item #3**

STATE OF INDIANA  
BEFORE THE INDIANA HORSE RACING COMMISSION

IN RE:

2024 Application for Registration of Indiana )  
Horsemen’s Benevolent & Protective Association, Inc. )  
Pursuant to 71 IAC 13-1-1 *et seq.* )

**NOTICE OF HEARING AND PRE-HEARING ORDER ON 2024 APPLICATION FOR  
REGISTRATION OF INDIANA HORSEMEN’S BENEVOLENT & PROTECTIVE  
ASSOCIATION PURSUANT TO 71 IAC 13-1-1 ET SEQ.**

This matter comes before the Indiana Horse Racing Commission (hereinafter “the Commission”) on an Application for Approval as a Registered Horsemen’s Association pursuant to 71 IAC 13-1-1 *et seq.* for the calendar year 2024 (hereinafter “the Application”), submitted by the Indiana Horsemen’s Benevolent & Protective Association, Inc. (hereinafter “the Applicant” or “IHBPA”) on or about August 28, 2023. The Commission, by its Chair, issues this notice and order pursuant to the provisions of the Indiana Administrative Orders and Procedures Act, Indiana Code sections 4-21.5-1-1 *et seq.*

**NOTICE OF HEARING**

The Indiana Horse Racing Commission will hold a hearing on Wednesday, October 4, 2023, to begin soon as this matter advances on the Commission’s agenda during its regularly scheduled meeting which will commence at 10:30 am EDT, Clubhouse, at Harrah’s Hoosier Park Racing & Casino, 4500 Dan Patch Circle, Anderson, IN 46013. The Hearing will relate to the following Application that was filed with the Commission on or about August 28, 2023:

2024 Application for Registration of the Indiana Horsemen’s Benevolent &  
Protective Association, Inc. Pursuant to 71 IAC 13-1-1 *et seq.*

The Hearing will be held for the purpose of providing an opportunity for the Applicant to make a presentation of its Application to the Indiana Horse Racing Commission; an opportunity for the Commission to ask questions of any party representatives and witnesses who may testify at the Hearing; and an opportunity for interested nonparty organizations and persons to provide testimony in support of or adverse to the Application.

The Hearing is to be held by the Indiana Horse Racing Commission pursuant to the authority granted to it by Indiana Code section 4-31-1-1, Indiana Code section 4-35-7-12, 71 IAC sections 13-1-1 *et seq.* and Indiana Code sections 4-21.5-3-1 *et seq.* All members of the Indiana Horse Racing Commission intend to act as the Administrative Law Judge for the Hearing. The members include: Philip Borst, Chairman; George Pillow, Bill McCarty, Bill Estes, and Gus Levengood, Members. David Rothenberg, Esq. is and will act as legal counsel to the Indiana Horse Racing Commission during these proceedings. Deena Pitman, Executive Director, will also appear

for the Indiana Horse Racing Commission Staff. Matt Eggiman, Esq. is and will act as legal counsel to the IHRC Staff during these proceedings. Mr. Eggiman may be contacted for information concerning the proposed Hearing schedule, the procedure to be followed at the Hearing, and for inspection of copies of the notice to the parties, at the offices of the Indiana Horse Racing Commission, 1302 N. Meridian St., Ste. 175, Indianapolis, Indiana 46202 (tel. no. 317-233-3119).

### **PRE-HEARING ORDER**

The Commission, by its Chairman, Philip Borst, pursuant to Indiana Code section 4-21.5-3-19(d), issues the following Pre-Hearing Order with respect to the matters described herein:

I. Purpose of the Hearing on Applicant's Petition.

The Commission will consider IHBPA's 2024 Application for Registration as a Registered Horsemen's Association Pursuant to 71 IAC 13-1-1 *et seq.* filed with the Commission on or about August 28, 2023, requesting Commission approval to serve as the registered horsemen's association for the calendar year 2024 to receive the monies specified by Indiana Code section 4-35-7-12 to be distributed for the benefit of thoroughbred owners and trainers.

II. Application Process Timeline.

a. Hearing Date and Time

The hearing will commence at 10:30 am EDT, Clubhouse, at Harrah's Hoosier Park Racing & Casino, 4500 Dan Patch Circle, Anderson, IN 46013. This matter will be heard and will continue, with appropriate recesses, until completed. The record will be closed at the conclusion of the hearing. Thereafter, the Commission will deliberate on and decide whether the Application will be approved or denied and does not comprehend discussion during the deliberation with the Applicant or other interested parties.

b. Incorporation by Reference of IHBPA's 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023 Applications and Related Materials.

The Application incorporates by reference any documents submitted, considered or generated with respect to IHBPA's 2011-2023 Applications for Registration, including, but not limited to, any amended commission staff reports. Note: No substantive changes to the Application made after Friday, September 22, 2023, will be considered as part of the Application.

c. Report of the Commission Staff.

The Commission Staff will review the Application and related information provided and may submit a Staff Report on the Application, which would be

distributed to the Applicant on or before the close of business on Wednesday, September 27, 2023.

d. Exhibits the Commission Proposes to Make a Part of the Record.

A list of exhibits which the Commission intends to make a part of the record may be prepared by the Commission's counsel and distributed to the Applicant's representative or counsel for the Applicant on or before the close of business on Friday, September 22, 2023. It should be understood that even in the absence of filing a list of exhibits, the Commission will offer into evidence the Application, any supplements thereto timely filed by the Applicant and any Staff Report issued by the Commission Staff. It should also be understood that the Commission will take official notice of any record of prior related hearings (including Final Orders) involving the Applicant, pursuant to Indiana Code section 4-21.5-3-26(c). The Applicant must notify the Commission in writing of any exhibit to which it objects on or before noon on Friday, September 29, 2023. If no objection is timely made, all specified exhibits will be made a part of the record at the commencement of the hearing. The Commission may expand that list prior to or at the scheduled hearing, however, the Applicant will be given an opportunity to make an objection to any such additional materials.

e. Witness and Exhibit Lists of Applicants.

Unless the Applicant intends to submit an additional filing or supplement to the Application, no Witness List is contemplated. In the event that the Applicant does submit an additional filing, or otherwise determines that witness testimony is necessary, any such Witness and Exhibit List are to be filed with the Commission on or before noon on Friday, September 29, 2023. When the Applicant files the Witness and Exhibit List, copies of the exhibits are to be left with the Commission so that they can be marked sequentially by the court reporter. While the Applicant may retain its oversized exhibits, reduced copies must be made available to the Commission on or before noon on Friday, September 29, 2023. Documents or exhibits not identified on Applicant's Exhibit List may not be introduced by Applicant.

f. Request for Official Notice.

The Applicant should submit in writing any request for matters to be officially noticed pursuant to Indiana Code section 4-21.5-3-26(f) on or before noon on Friday, September 29, 2023.

g. Issuance of Subpoenas.

The Applicant should submit proposed subpoenas to be issued by the Commission no later than the time that the Witness and Exhibit Lists are filed so that they can



be issued pursuant to Indiana Code section 4-21.5-3-22. Subpoenas shall be issued on the signature of the Chair, or on the signature of the Vice Chairman in the event the Chair is unavailable.

III. Matters Relating to the Conduct of the Hearing.

a. The Commission will be sitting as an Administrative Law Judge at the Hearing.

The Commission is sitting both as an Administrative Law Judge and as “ultimate authority” (pursuant to Indiana Code section 4-21.5-1-15) with respect to this Application for Registration. Indiana Code section 4-21.5-3-11 provides in part that an Administrative Law Judge serving in a proceeding may not communicate directly or indirectly, regarding any issue in the proceeding while the proceeding is pending with any party or any individual who has a direct or indirect interest in the outcome of the proceeding. Such communications are prohibited and are referred to as “ex parte communications.” Additionally, while a Commission Member may communicate separately with another Commission Member and may receive aid from members of the Commission Staff, the Commission Staff is prohibited from having ex parte communications with a Commission member which contain information that would furnish, augment, diminish, or modify the evidence in the record. If the Commission receives an ex parte communication in violation of this statute, please contact counsel for the Commission so that an appropriate public disclosure can be prepared pursuant to the Administrative Orders and Procedures Act. In appropriate circumstances, a Commission Member receiving or otherwise participating in such a prohibited communication can be disqualified from acting further on the Application before the Commission.

Additionally, when acting as an Administrative Law Judge, each Commission Member is prohibited (pursuant to Indiana Codes section 4-21.5-3-12) from commenting publicly, except as to hearing schedules or procedures, about pending proceedings. Accordingly, both the Commission Members and the members of the public are to be mindful of this limitation as the Commission moves forward to consider the evidence and to make a decision on the Application.

b. Hearing to be Conducted under Oath.

The hearing will be conducted under oath or affirmation pursuant to Indiana Code section 4-21.5-3-26(b). In order to ensure consistency, any non-party statements are to be given under oath or affirmation pursuant to Indiana Code section 4-21.5-3-25(f).

c. Staff Review and Presentation of Findings.

The Commission Staff is conducting a review of the Application and may speak to its report (*see* II.d., *supra*) at the hearing.

d. Application Hearing Time Schedule.

The maximum time allotted for each part of the hearing is as follows:

Opening Statement of Applicant	Up to 10 minutes
Oral Presentation by Applicant	Up to 10 minutes
Testimony of Commission Staff	Up to 10 minutes
Testimony of Interested Persons And Organizations	Up to 10 minutes
Rebuttal and Final Statements	Up to 5 minutes

e. Chairman to Rule on Procedural Issues.

The Chair will rule on any procedural issues requiring an immediate ruling which are raised at the hearing on the Application.

f. Commission Free to Ask Questions.

During the hearing on the Applicant's presentation, any Commissioner, the Commission's counsel, or the Commission's Executive Director may ask questions of any witness in the nature of cross-examination or to assist the Commission's understanding of the issues relevant to the Application and any appropriate action to be taken.

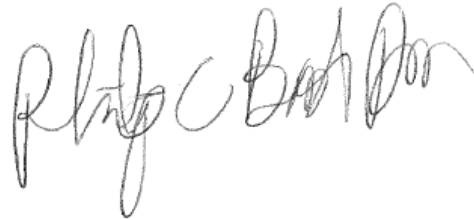
g. Individuals Requesting Time to Speak to the Application.

A sign-up sheet will be made available on the date of the hearing for those interested in speaking during the time allotted for Testimony of Interested Persons and Organizations. An appropriate amount of time will be determined by the Chair at the hearing with consideration of the number of individuals who wish to speak and the total amount of time available in which to do so.

IV. Notice of Pre-Hearing Order

The Applicant is advised that if it fails to attend or participate in the scheduled hearing, or any other stage of the proceeding, the proceeding may be dismissed pursuant to Indiana Code section 4-21.5-3-24.

This Pre-Hearing Order is issued by the Indiana Horse Racing Commission this 19<sup>th</sup> day of September 2023.

A handwritten signature in black ink, appearing to read "Philip C. Borst". The signature is fluid and cursive, with the first name "Philip" being the most prominent.

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Philip Borst, DVM  
Chairman  
Indiana Horse Racing Commission

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon the following parties by email this 19<sup>th</sup> day of September 2023.

Indiana Horse Racing Commission:  
Philip Borst, Chairman  
George E. Pillow, Jr., Member  
William D. McCarty, Member  
Bill Estes, Member  
Gus Levengood, Member  
1302 N. Meridian Street  
Ste. 175  
Indianapolis, IN 46202

Deena Pitman, Executive Director  
Indiana Horse Racing Commission  
1302 N. Meridian St. Ste. 175  
Indianapolis, IN 46202

Jeffrey Stemerick, Esq.  
Taft  
One Indiana Square, Ste. 3500  
Indianapolis, IN 46204

Joseph Davis  
IHBPA President  
1624 Wagner Drive  
Shelbyville, IN 46176

Brian Elmore  
IHBPA Executive Director  
7539 W. Village Way  
New Palestine, IN 46163

/s/ Dale Lee Pennycuff  
Dale Lee Pennycuff  
Staff Counsel



# State of Indiana Indiana Horse Racing Commission

Eric Holcomb, Governor

[www.in.gov/hrc](http://www.in.gov/hrc)

VIA EMAIL TO: Jeffrey Stemerick ([jstemerick@taftlaw.com](mailto:jstemerick@taftlaw.com))

September 18, 2023

RE: Additional information required for IHBPA 2024 Horsemen's Association Application.

Dear Mr. Stemerick:

The Commission is in the process of reviewing IHBPA's 2024 application for recognition as a registered horsemen's association. After conducting a first review of the application, there are a few areas where additional clarification is required.

1. Antonio Duran's Conflict of Interest Policy notarial certificate lists Scott Mullins as the person who appeared in front of the notary. *See* IHBPA Application Tab Q, page 191.
2. The Backside Benevolence Fund for Historical and Budgeted Year Ended December 31, 2022, appears to have calculation errors for Budget Variance for Net Assets, Beginning and Net Assets, Ending. If this is the case, please correct. *See* IHBPA Application Tab M, page 150.

Requested updates when available.

1. Pursuant to 71 IAC 13-1-2(b)(8)(B), the IHBPA references their 2023 Benevolence Assistance Rules and Guidelines which are set to expire on January 1, 2024. Please provide a copy of the 2024 Benevolence Assistance Rules and Guidelines after approval by the IHBPA Board of Directors.

The IHRC will consider the IHBPA application at the October business meeting. Please submit responses to the above at your earliest convenience, but no later than Friday, September 22, 2023.

Sincerely,

*Dale Lee Pennycuff*

Dale Pennycuff  
Staff Counsel  
Indiana Horse Racing Commission

cc: Brian Elmore, Executive Director IHBPA ([brian.elmore4@gmail.com](mailto:brian.elmore4@gmail.com))

## Pitman, Deena

---

**From:** Pennycuff, Dale L  
**Sent:** Tuesday, September 19, 2023 12:06 PM  
**To:** Stemerick, Jeffrey D.; Brian Elmore (brian.elmore4@gmail.com); Joseph Davis (joedondavis@aol.com)  
**Cc:** Pitman, Deena; Rothenberg, David  
**Subject:** RE: IHBPA Notice of Hearing and Pre-Hearing Order

All,

My apologies. The Notice of Hearing and Pre-Hearing Order is for the **2024** Application for Registration of Indiana Horsemen's Benevolent & Protective Association.

Regards,

Dale Lee Pennycuff

Dale Lee Pennycuff  
Legal Department  
Indiana Horse Racing Commission  
1302 N. Meridian Street, Suite 175 | Indianapolis, IN | 46202

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---

**From:** Pennycuff, Dale L  
**Sent:** Tuesday, September 19, 2023 11:59 AM  
**To:** Stemerick, Jeffrey D. <JStemerick@taftlaw.com>; Brian Elmore (brian.elmore4@gmail.com) <brian.elmore4@gmail.com>; Joseph Davis (joedondavis@aol.com) <joedondavis@aol.com>  
**Cc:** Pitman, Deena <dpitman@hrc.IN.gov>; Rothenberg, David <DRothenberg@hrc.IN.gov>  
**Subject:** IHBPA Notice of Hearing and Pre-Hearing Order

All,

Please see the attached Notice of Hearing and Pre-Hearing Order on the 2022 Application for Registration of Indiana Horsemen's Benevolent & Protective Association.

Regards,

Dale Lee Pennycuff

Dale Lee Pennycuff  
Legal Department  
Indiana Horse Racing Commission

**From:** [Rothenberg, David](#)  
**To:** [Rothenberg, David](#)  
**Cc:** [Pitman, Deena](#)  
**Subject:** October 4th Commission Meeting  
**Date:** Thursday, September 14, 2023 5:31:49 PM

---

All,

Hopefully I did not forget anyone here. Our next Commission Meeting is going to take place on October 4<sup>th</sup> at 10:30 am, Hoosier Park. We are trying to move some agenda items to the Fall meeting (this meeting) from what is traditionally in the winter meeting. We have been able to review all of the association annual applications. We have requested some additional paperwork from some and there might be a few other requests in the next week. In any case, the important thing is that you reserve that date for any presentation you might want to make. I will be getting the prehearing order out soon, but the following times will apply to each association:

Opening statement of applicant	Up to 10 minutes
Oral Presentation by applicant	Up to 10 minutes
Testimony of Commission Staff	Up to 10 minutes
Testimony of Interested Persons	Up to 10 minutes
Rebuttal and Final Statements	Up to 5 minutes

Again, I will get those orders out to you ASAP (I will work on them tomorrow).

Any questions, please let me know.

David Rothenberg  
General Counsel  
Indiana Horse Racing Commission  
1302 N. Meridian St., Ste 175  
Indianapolis, IN 46202  
317-232-0399



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# **Agenda Item #4**



STATE OF INDIANA  
BEFORE THE INDIANA HORSE RACING COMMISSION

IN RE:

2024 Application for Registration of Quarter )  
Horse Racing Association of Indiana, Inc. )  
Pursuant to 71 IAC 13-1-1 *et seq.* )

**NOTICE OF HEARING AND PRE-HEARING ORDER ON 2024 APPLICATION FOR  
REGISTRATION OF QUARTER HORSE RACING ASSOCIATION OF INDIANA, INC.  
PURSUANT TO 71 IAC 13-1-1 ET SEQ.**

This matter comes before the Indiana Horse Racing Commission (hereinafter “the Commission”) on an Application for Approval as a Registered Horsemen’s Association pursuant to 71 IAC 13-1-1 *et seq.* for the calendar year 2024 (hereinafter “the Application”), submitted by the Quarter Horse Racing Association of Indiana, Inc. (hereinafter “the Applicant” or “QHRAI”) on or about August 30, 2023. The Commission, by its Chair, issues this notice and order pursuant to the provisions of the Indiana Administrative Orders and Procedures Act, Indiana Code sections 4-21.5-1-1 *et seq.*

**NOTICE OF HEARING**

The Indiana Horse Racing Commission will hold a hearing on Wednesday, October 4, 2023, to begin soon as this matter advances on the Commission’s agenda during its regularly scheduled meeting which will commence at 10:30 am EDT, Clubhouse, at Harrah’s Hoosier Park Racing & Casino, 4500 Dan Patch Circle, Anderson, IN 46013. The Hearing will relate to the following Application that was filed with the Commission on or about August 30, 2023:

2024 Application for Registration of the Quarter Horse Racing  
Association of Indiana, Inc. Pursuant to 71 IAC 13-1-1 *et seq.*

The Hearing will be held for the purpose of providing an opportunity for the Applicant to make a presentation of its Application to the Indiana Horse Racing Commission; an opportunity for the Commission to ask questions of any party representatives and witnesses who may testify at the Hearing; and an opportunity for interested nonparty organizations and persons to provide testimony in support of or adverse to the Application.

The Hearing is to be held by the Indiana Horse Racing Commission pursuant to the authority granted to it by Indiana Code section 4-31-1-1, Indiana Code section 4-35-7-12, 71 IAC sections 13-1-1 *et seq.* and Indiana Code sections 4-21.5-3-1 *et seq.* All members of the Indiana Horse Racing Commission intend to act as the Administrative Law Judge for the Hearing. The members include: Philip Borst, Chairman; George Pillow, Bill McCarty, Bill Estes, and Gus Levensgood, Members. David Rothenberg, Esq. is and will act as legal counsel to the Indiana Horse Racing Commission during these proceedings. Deena Pitman, Executive Director, will also

appear for the Indiana Horse Racing Commission Staff. Matt Eggiman, Esq. is and will act as legal counsel to the IHRC Staff during these proceedings. Mr. Eggiman may be contacted for information concerning the proposed Hearing schedule, the procedure to be followed at the Hearing, and for inspection of copies of the notice to the parties, at the offices of the Indiana Horse Racing Commission, 1302 N. Meridian St., Ste. 175, Indianapolis, Indiana 46202 (tel. no. 317-233-3119).

### **PRE-HEARING ORDER**

The Commission, by its Chairman, Philip Borst, pursuant to Indiana Code section 4-21.5-3-19(d), issues the following Pre-Hearing Order with respect to the matters described herein:

I. Purpose of the Hearing on Applicant's Petition.

The Commission will consider QHRAI's 2024 Application for Registration as a Registered Horsemen's Association Pursuant to 71 IAC 13-1-1 *et seq.* filed with the Commission on or about August 30, 2023, requesting Commission approval to serve as the registered horsemen's association for the calendar year 2024 to receive the monies specified by Indiana Code section 4-35-7-12 to be distributed for the benefit of thoroughbred owners and trainers.

II. Application Process Timeline.

a. Hearing Date and Time

The hearing will commence in the at 10:30 am EDT, Clubhouse, at Harrah's Hoosier Park Racing & Casino, 4500 Dan Patch Circle, Anderson, IN 46013. This matter will be heard and will continue, with appropriate recesses, until completed. The record will be closed at the conclusion of the hearing. Thereafter, the Commission will deliberate on and decide whether the Application will be approved or denied and does not comprehend discussion during the deliberation with the Applicant or other interested parties.

b. Incorporation by Reference of QHRAI's 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023 Applications and Related Materials.

The Application incorporates by reference any documents submitted, considered or generated with respect to QHRAI's 2011-2023 Applications for Registration, including, but not limited to, any amended commission staff reports. Note: No substantive changes to the Application made after Friday, September 22, 2023, will be considered as part of the Application.

c. Report of the Commission Staff.

The Commission Staff will review the Application and related information provided and may submit a Staff Report on the Application, which would be

distributed to the Applicant on or before the close of business on Wednesday, September 27, 2023.

d. Exhibits the Commission Proposes to Make a Part of the Record.

A list of exhibits which the Commission intends to make a part of the record may be prepared by the Commission's counsel and distributed to the Applicant's representative or counsel for the Applicant on or before the close of business on Friday, September 22, 2023. It should be understood that even in the absence of filing a list of exhibits, the Commission will offer into evidence the Application, any supplements thereto timely filed by the Applicant and any Staff Report issued by the Commission Staff. It should also be understood that the Commission will take official notice of any record of prior related hearings (including Final Orders) involving the Applicant, pursuant to Indiana Code section 4-21.5-3-26(c). The Applicant must notify the Commission in writing of any exhibit to which it objects on or before noon on Friday, September 29, 2023. If no objection is timely made, all specified exhibits will be made a part of the record at the commencement of the hearing. The Commission may expand that list prior to or at the scheduled hearing, however, the Applicant will be given an opportunity to make an objection to any such additional materials.

e. Witness and Exhibit Lists of Applicants.

Unless the Applicant intends to submit an additional filing or supplement to the Application, no Witness List is contemplated. In the event that the Applicant does submit an additional filing, or otherwise determines that witness testimony is necessary, any such Witness and Exhibit List are to be filed with the Commission on or before noon on Friday, September 29, 2023. When the Applicant files the Witness and Exhibit List, copies of the exhibits are to be left with the Commission so that they can be marked sequentially by the court reporter. While the Applicant may retain its oversized exhibits, reduced copies must be made available to the Commission on or before noon on Friday, September 29, 2023. Documents or exhibits not identified on Applicant's Exhibit List may not be introduced by Applicant.

f. Request for Official Notice.

The Applicant should submit in writing any request for matters to be officially noticed pursuant to Indiana Code section 4-21.5-3-26(f) on or before noon on Friday, September 29, 2023.

g. Issuance of Subpoenas.

The Applicant should submit proposed subpoenas to be issued by the Commission no later than the time that the Witness and Exhibit Lists are filed so that they can be issued pursuant to Indiana Code section 4-21.5-3-22. Subpoenas shall be issued on the signature of the Chair, or on the signature of the Vice Chairman in the event the Chair is unavailable.

III. Matters Relating to the Conduct of the Hearing.

a. The Commission will be sitting as an Administrative Law Judge at the Hearing.

The Commission is sitting both as an Administrative Law Judge and as “ultimate authority” (pursuant to Indiana Code section 4-21.5-1-15) with respect to this Application for Registration. Indiana Code section 4-21.5-3-11 provides in part that an Administrative Law Judge serving in a proceeding may not communicate directly or indirectly, regarding any issue in the proceeding while the proceeding is pending with any party or any individual who has a direct or indirect interest in the outcome of the proceeding. Such communications are prohibited and are referred to as “ex parte communications.” Additionally, while a Commission Member may communicate separately with another Commission Member and may receive aid from members of the Commission Staff, the Commission Staff is prohibited from having ex parte communications with a Commission member which contain information that would furnish, augment, diminish, or modify the evidence in the record. If the Commission receives an ex parte communication in violation of this statute, please contact counsel for the Commission so that an appropriate public disclosure can be prepared pursuant to the Administrative Orders and Procedures Act. In appropriate circumstances, a Commission Member receiving or otherwise participating in such a prohibited communication can be disqualified from acting further on the Application before the Commission.

Additionally, when acting as an Administrative Law Judge, each Commission Member is prohibited (pursuant to Indiana Codes section 4-21.5-3-12) from commenting publicly, except as to hearing schedules or procedures, about pending proceedings. Accordingly, both the Commission Members and the members of the public are to be mindful of this limitation as the Commission moves forward to consider the evidence and to make a decision on the Application.

b. Hearing to be Conducted under Oath.

The hearing will be conducted under oath or affirmation pursuant to Indiana Code section 4-21.5-3-26(b). In order to ensure consistency, any non-party statements are to be given under oath or affirmation pursuant to Indiana Code section 4-21.5-3-25(f).

c. Staff Review and Presentation of Findings.

The Commission Staff is conducting a review of the Application and may speak to its report (*see* II.d., *supra*) at the hearing.

d. Application Hearing Time Schedule.

The maximum time allotted for each part of the hearing is as follows:

Opening Statement of Applicant	Up to 10 minutes
Oral Presentation by Applicant	Up to 10 minutes
Testimony of Commission Staff	Up to 10 minutes
Testimony of Interested Persons And Organizations	Up to 10 minutes
Rebuttal and Final Statements	Up to 5 minutes

e. Chairman to Rule on Procedural Issues.

The Chair will rule on any procedural issues requiring an immediate ruling which are raised at the hearing on the Application.

f. Commission Free to Ask Questions.

During the hearing on the Applicant's presentation, any Commissioner, the Commission's counsel, or the Commission's Executive Director may ask questions of any witness in the nature of cross-examination or to assist the Commission's understanding of the issues relevant to the Application and any appropriate action to be taken.

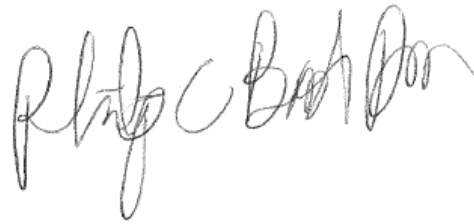
g. Individuals Requesting Time to Speak to the Application.

A sign-up sheet will be made available on the date of the hearing for those interested in speaking during the time allotted for Testimony of Interested Persons and Organizations. An appropriate amount of time will be determined by the Chair at the hearing with consideration of the number of individuals who wish to speak and the total amount of time available in which to do so.

IV. Notice of Pre-Hearing Order

The Applicant is advised that if it fails to attend or participate in the scheduled hearing, or any other stage of the proceeding, the proceeding may be dismissed pursuant to Indiana Code section 4-21.5-3-24.

This Pre-Hearing Order is issued by the Indiana Horse Racing Commission this 19<sup>th</sup> day of September 2023.

A handwritten signature in black ink, appearing to read "Philip C. Borst". The signature is written in a cursive, flowing style.

---

Philip Borst, DVM  
Chairman  
Indiana Horse Racing Commission

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon the following parties by email this 19<sup>th</sup> day of September 2023.

Indiana Horse Racing Commission:  
Philip Borst, Chairman  
George E. Pillow, Jr., Member  
William D. McCarty, Member  
Bill Estes, Member  
Gus Levengood, Member  
1302 N. Meridian Street  
Ste. 175  
Indianapolis, IN 46202

Deena Pitman, Executive Director  
Indiana Horse Racing Commission  
1302 N. Meridian St. Ste. 175  
Indianapolis, IN 46202

Teresa A. Myers  
Executive Director  
P.O. Box 399  
Shelbyville, IN 46176

Chris Duke  
QHRAI President  
P.O. Box 399  
Shelbyville, IN 46176

/s/ Dale Lee Pennycuff  
Dale Lee Pennycuff  
Counsel

**From:** [Pennycuff, Dale L](#)  
**To:** [Teresa Myers \(mtimyers@yahoo.com\)](#); [Chris Duke \(cduke11@aol.com\)](#)  
**Cc:** [Pitman, Deena](#); [Rothenberg, David](#)  
**Subject:** QHRAI Notice of Hearing and Pre-Hearing Order  
**Date:** Tuesday, September 19, 2023 12:45:49 PM  
**Attachments:** [Final Prehearing Order- OHRAI 2024.pdf](#)

---

All,

Please see the attached Amended Notice of Hearing and Pre-Hearing Order on 2024 Application for Registration of Quarter Horse Racing Association of Indiana.

Regards,

Dale Lee Pennycuff

Dale Lee Pennycuff  
Legal Department  
Indiana Horse Racing Commission  
1302 N. Meridian Street, Suite 175 | Indianapolis, IN | 46202

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**From:** [Rothenberg, David](#)  
**To:** [Rothenberg, David](#)  
**Cc:** [Pitman, Deena](#)  
**Subject:** October 4th Commission Meeting  
**Date:** Thursday, September 14, 2023 5:31:49 PM

---

All,

Hopefully I did not forget anyone here. Our next Commission Meeting is going to take place on October 4<sup>th</sup> at 10:30 am, Hoosier Park. We are trying to move some agenda items to the Fall meeting (this meeting) from what is traditionally in the winter meeting. We have been able to review all of the association annual applications. We have requested some additional paperwork from some and there might be a few other requests in the next week. In any case, the important thing is that you reserve that date for any presentation you might want to make. I will be getting the prehearing order out soon, but the following times will apply to each association:

Opening statement of applicant	Up to 10 minutes
Oral Presentation by applicant	Up to 10 minutes
Testimony of Commission Staff	Up to 10 minutes
Testimony of Interested Persons	Up to 10 minutes
Rebuttal and Final Statements	Up to 5 minutes

Again, I will get those orders out to you ASAP (I will work on them tomorrow).

Any questions, please let me know.

David Rothenberg  
General Counsel  
Indiana Horse Racing Commission  
1302 N. Meridian St., Ste 175  
Indianapolis, IN 46202  
317-232-0399



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# **Agenda Item #5**

STATE OF INDIANA  
BEFORE THE INDIANA HORSE RACING COMMISSION

IN RE:

2024 Application for Registration of Indiana )  
Thoroughbred Owners and Breeders Association) )  
Pursuant to 71 IAC 13-1-1 *et seq.* )

**NOTICE OF HEARING AND PRE-HEARING ORDER ON 2024 APPLICATION FOR  
REGISTRATION OF INDIANA THOROUGHBRED OWNERS AND BREEDERS  
ASSOCIATION PURSUANT TO 71 IAC 13-1-1 ET SEQ.**

This matter comes before the Indiana Horse Racing Commission (hereinafter “the Commission”) on an Application for Approval as a Registered Horsemen’s Association pursuant to 71 IAC 13-1-1 *et seq.* for the calendar year 2024 (hereinafter “the Application”), submitted by the Indiana Thoroughbred Owners and Breeders Association (hereinafter “the Applicant” or “ITOBA”) on or about August 29, 2023. The Commission, by its Chair, issues this notice and order pursuant to the provisions of the Indiana Administrative Orders and Procedures Act, Indiana Code sections 4-21.5-1-1 *et seq.*

**NOTICE OF HEARING**

The Indiana Horse Racing Commission will hold a hearing on Wednesday, October 4, 2023, to begin as soon as this matter advances on the Commission’s agenda during its regularly scheduled meeting which will commence at 10:30 am EDT, Clubhouse, at Harrah’s Hoosier Park Racing & Casino, 4500 Dan Patch Circle, Anderson, IN 46013. The Hearing will relate to the following Application that was filed with the Commission on or about August 29, 2023:

2024 Application for Registration of the Indiana Thoroughbred Owners  
And Breeders Association Pursuant to 71 IAC 13-1-1 *et seq.*

The Hearing will be held for the purpose of providing an opportunity for the Applicant to make a presentation of its Application to the Indiana Horse Racing Commission; an opportunity for the Commission to ask questions of any party representatives and witnesses who may testify at the Hearing; and an opportunity for interested nonparty organizations and persons to provide testimony in support of or adverse to the Application.

The Hearing is to be held by the Indiana Horse Racing Commission pursuant to the authority granted to it by Indiana Code section 4-31-1-1, Indiana Code section 4-35-7-12, 71 IAC sections 13-1-1 *et seq.* and Indiana Code sections 4-21.5-3-1 *et seq.* All members of the Indiana Horse Racing Commission intend to act as the Administrative Law Judge for the Hearing. The members include: Philip Borst, Chairman; George Pillow, Bill McCarty, Bill Estes, and Gus Levengood, Members. David Rothenberg, Esq. is and will act as legal counsel to the Indiana Horse Racing Commission during these proceedings. Deena Pitman, Executive Director, will also

appear for the Indiana Horse Racing Commission Staff. Matt Eggiman, Esq. is and will act as legal counsel to the IHRC Staff during these proceedings. Mr. Eggiman may be contacted for information concerning the proposed Hearing schedule, the procedure to be followed at the Hearing, and for inspection of copies of the notice to the parties, at the offices of the Indiana Horse Racing Commission, 1302 N. Meridian St., Ste. 175, Indianapolis, Indiana 46202 (tel. no. 317-233-3119).

### **PRE-HEARING ORDER**

The Commission, by its Chairman, Philip Borst, pursuant to Indiana Code section 4-21.5-3-19(d), issues the following Pre-Hearing Order with respect to the matters described herein:

I. Purpose of the Hearing on Applicant's Petition.

The Commission will consider ITOBA's 2024 Application for Registration as a Registered Horsemen's Association Pursuant to 71 IAC 13-1-1 *et seq.* filed with the Commission on or about August 29, 2023, requesting Commission approval to serve as the registered horsemen's association for the calendar year 2024 to receive the monies specified by Indiana Code section 4-35-7-12 to be distributed for the benefit of thoroughbred owners and trainers.

II. Application Process Timeline.

a. Hearing Date and Time

The hearing will commence in at 10:30 am EDT, Clubhouse, at Harrah's Hoosier Park Racing & Casino, 4500 Dan Patch Circle, Anderson, IN 46013. This matter will be heard and will continue, with appropriate recesses, until completed. The record will be closed at the conclusion of the hearing. Thereafter, the Commission will deliberate on and decide whether the Application will be approved or denied and does not comprehend discussion during the deliberation with the Applicant or other interested parties.

b. Incorporation by Reference of ITOBA's 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023 Applications and Related Materials.

The Application incorporates by reference any documents submitted, considered or generated with respect to ITOBA's 2011-2023 Applications for Registration, including, but not limited to, any amended commission staff reports. Note: No substantive changes to the Application made after Friday, September 22, 2023, will be considered as part of the Application.

c. Report of the Commission Staff.

The Commission Staff will review the Application and related information provided and may submit a Staff Report on the Application, which would be

distributed to the Applicant on or before the close of business on Wednesday, September 27, 2023.

d. Exhibits the Commission Proposes to Make a Part of the Record.

A list of exhibits which the Commission intends to make a part of the record may be prepared by the Commission's counsel and distributed to the Applicant's representative or counsel for the Applicant on or before the close of business on Friday, September 22, 2023. It should be understood that even in the absence of filing a list of exhibits, the Commission will offer into evidence the Application, any supplements thereto timely filed by the Applicant and any Staff Report issued by the Commission Staff. It should also be understood that the Commission will take official notice of any record of prior related hearings (including Final Orders) involving the Applicant, pursuant to Indiana Code section 4-21.5-3-26(c). The Applicant must notify the Commission in writing of any exhibit to which it objects on or before noon on Friday, September 29, 2023. If no objection is timely made, all specified exhibits will be made a part of the record at the commencement of the hearing. The Commission may expand that list prior to or at the scheduled hearing, however, the Applicant will be given an opportunity to make an objection to any such additional materials.

e. Witness and Exhibit Lists of Applicants.

Unless the Applicant intends to submit an additional filing or supplement to the Application, no Witness List is contemplated. In the event that the Applicant does submit an additional filing, or otherwise determines that witness testimony is necessary, any such Witness and Exhibit List are to be filed with the Commission on or before noon on Friday, September 29, 2023. When the Applicant files the Witness and Exhibit List, copies of the exhibits are to be left with the Commission so that they can be marked sequentially by the court reporter. While the Applicant may retain its oversized exhibits, reduced copies must be made available to the Commission on or before noon on Friday, September 29, 2023. Documents or exhibits not identified on Applicant's Exhibit List may not be introduced by Applicant.

f. Request for Official Notice.

The Applicant should submit in writing any request for matters to be officially noticed pursuant to Indiana Code section 4-21.5-3-26(f) on or before noon on Friday, September 29, 2023.

g. Issuance of Subpoenas.

The Applicant should submit proposed subpoenas to be issued by the Commission no later than the time that the Witness and Exhibit Lists are filed so that they can be issued pursuant to Indiana Code section 4-21.5-3-22. Subpoenas shall be issued on the signature of the Chair, or on the signature of the Vice Chairman in the event the Chair is unavailable.

III. Matters Relating to the Conduct of the Hearing.

a. The Commission will be sitting as an Administrative Law Judge at the Hearing.

The Commission is sitting both as an Administrative Law Judge and as “ultimate authority” (pursuant to Indiana Code section 4-21.5-1-15) with respect to this Application for Registration. Indiana Code section 4-21.5-3-11 provides in part that an Administrative Law Judge serving in a proceeding may not communicate directly or indirectly, regarding any issue in the proceeding while the proceeding is pending with any party or any individual who has a direct or indirect interest in the outcome of the proceeding. Such communications are prohibited and are referred to as “ex parte communications.” Additionally, while a Commission Member may communicate separately with another Commission Member and may receive aid from members of the Commission Staff, the Commission Staff is prohibited from having ex parte communications with a Commission member which contain information that would furnish, augment, diminish, or modify the evidence in the record. If the Commission receives an ex parte communication in violation of this statute, please contact counsel for the Commission so that an appropriate public disclosure can be prepared pursuant to the Administrative Orders and Procedures Act. In appropriate circumstances, a Commission Member receiving or otherwise participating in such a prohibited communication can be disqualified from acting further on the Application before the Commission.

Additionally, when acting as an Administrative Law Judge, each Commission Member is prohibited (pursuant to Indiana Codes section 4-21.5-3-12) from commenting publicly, except as to hearing schedules or procedures, about pending proceedings. Accordingly, both the Commission Members and the members of the public are to be mindful of this limitation as the Commission moves forward to consider the evidence and to make a decision on the Application.

b. Hearing to be Conducted under Oath.

The hearing will be conducted under oath or affirmation pursuant to Indiana Code section 4-21.5-3-26(b). In order to ensure consistency, any non-party statements are to be given under oath or affirmation pursuant to Indiana Code section 4-21.5-3-25(f).

c. Staff Review and Presentation of Findings.

The Commission Staff is conducting a review of the Application and may speak to its report (*see* II.d., *supra*) at the hearing.

d. Application Hearing Time Schedule.

The maximum time allotted for each part of the hearing is as follows:

Opening Statement of Applicant	Up to 10 minutes
Oral Presentation by Applicant	Up to 10 minutes
Testimony of Commission Staff	Up to 10 minutes
Testimony of Interested Persons And Organizations	Up to 10 minutes
Rebuttal and Final Statements	Up to 5 minutes

e. Chairman to Rule on Procedural Issues.

The Chair will rule on any procedural issues requiring an immediate ruling which are raised at the hearing on the Application.

f. Commission Free to Ask Questions.

During the hearing on the Applicant's presentation, any Commissioner, the Commission's counsel, or the Commission's Executive Director may ask questions of any witness in the nature of cross-examination or to assist the Commission's understanding of the issues relevant to the Application and any appropriate action to be taken.

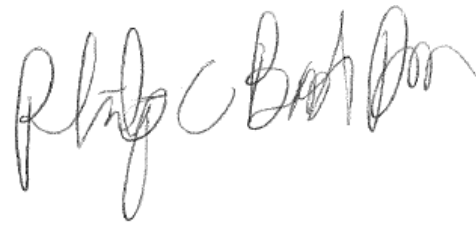
g. Individuals Requesting Time to Speak to the Application.

A sign-up sheet will be made available on the date of the hearing for those interested in speaking during the time allotted for Testimony of Interested Persons and Organizations. An appropriate amount of time will be determined by the Chair at the hearing with consideration of the number of individuals who wish to speak and the total amount of time available in which to do so.

IV. Notice of Pre-Hearing Order

The Applicant is advised that if it fails to attend or participate in the scheduled hearing, or any other stage of the proceeding, the proceeding may be dismissed pursuant to Indiana Code section 4-21.5-3-24.

This Pre-Hearing Order is issued by the Indiana Horse Racing Commission this 19<sup>th</sup> day of September 2023.

A handwritten signature in black ink, appearing to read "Philip C. Borst". The signature is fluid and cursive, with the first name "Philip" being the most prominent.

---

Philip Borst, DVM  
Chairman  
Indiana Horse Racing Commission



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon the following parties by email this 19<sup>th</sup> day of September 2023.

Indiana Horse Racing Commission:

Philip Borst, Chairman  
George E. Pillow, Jr., Member  
William D. McCarty, Member  
Bill Estes, Member  
Gus Levengood, Member  
1302 N. Meridian Street  
Ste. 175  
Indianapolis, IN 46202

Deena Pitman, Executive Director  
Indiana Horse Racing Commission  
1302 N. Meridian St. Ste. 175  
Indianapolis, IN 46202

Pat McGhee  
ITOBA President and Registered Agent  
13526 Molique Blvd.  
Fishers, IN 46037

/s/ Dale Lee Pennycuff  
Dale Lee Pennycuff  
Counsel

**From:** [Pennycuff, Dale L](#)  
**To:** [Pat McGhee](#)  
**Cc:** [Pitman, Deena](#); [Rothenberg, David](#)  
**Subject:** ITOBA Notice of Hearing and Pre-Hearing Order  
**Date:** Tuesday, September 19, 2023 12:36:37 PM  
**Attachments:** [Final Prehearing Order - ITOBA 2024.pdf](#)

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All,

Please see the attached Notice of Hearing and Pre-Hearing Order on the 2024 Application for Registration of Indiana Thoroughbred Owner's and Breeder's Association.

Regards,

Dale Lee Pennycuff

Dale Lee Pennycuff  
Legal Department  
Indiana Horse Racing Commission  
1302 N. Meridian Street, Suite 175 | Indianapolis, IN | 46202

**ATTENTION:** *This message may contain information that is attorney-client privileged, attorney work product or otherwise confidential. If you are not the intended recipient, you are hereby notified that any use and/or disclosure of this message is strictly prohibited, and may result in legal liability on your part. If you received this transmission in error, please notify the sender immediately by reply e-mail and immediately delete the message and any attachments, and destroy any hard copies you may have created.*

**From:** [Rothenberg, David](#)  
**To:** [Rothenberg, David](#)  
**Cc:** [Pitman, Deena](#)  
**Subject:** October 4th Commission Meeting  
**Date:** Thursday, September 14, 2023 5:31:49 PM

---

All,

Hopefully I did not forget anyone here. Our next Commission Meeting is going to take place on October 4<sup>th</sup> at 10:30 am, Hoosier Park. We are trying to move some agenda items to the Fall meeting (this meeting) from what is traditionally in the winter meeting. We have been able to review all of the association annual applications. We have requested some additional paperwork from some and there might be a few other requests in the next week. In any case, the important thing is that you reserve that date for any presentation you might want to make. I will be getting the prehearing order out soon, but the following times will apply to each association:

Opening statement of applicant	Up to 10 minutes
Oral Presentation by applicant	Up to 10 minutes
Testimony of Commission Staff	Up to 10 minutes
Testimony of Interested Persons	Up to 10 minutes
Rebuttal and Final Statements	Up to 5 minutes

Again, I will get those orders out to you ASAP (I will work on them tomorrow).

Any questions, please let me know.

David Rothenberg  
General Counsel  
Indiana Horse Racing Commission  
1302 N. Meridian St., Ste 175  
Indianapolis, IN 46202  
317-232-0399



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# **Agenda Item #6**

STATE OF INDIANA  
BEFORE THE INDIANA HORSE RACING COMMISSION

IN RE:

2024 Application for Registration of )  
Indiana Standardbred Association )  
Pursuant to 71 IAC 13-1-1 *et seq.* )

**NOTICE OF HEARING AND PRE-HEARING ORDER ON 2024 APPLICATION FOR  
REGISTRATION OF INDIANA STANDARDBRED ASSOCIATION  
PURSUANT TO 71 IAC 13-1-1 ET SEQ.**

This matter comes before the Indiana Horse Racing Commission (hereinafter “the Commission”) on an Application for Approval as a Registered Horsemen’s Association pursuant to 71 IAC 13-1-1 *et seq.* for the calendar year 2024 (hereinafter “the Application”), submitted by the Indiana Standardbred Association (hereinafter “the Applicant” or “ISA”) on or about August 30, 2023. The Commission, by its Chair, issues this notice and order pursuant to the provisions of the Indiana Administrative Orders and Procedures Act, Indiana Code sections 4-21.5-1-1 *et seq.*

**NOTICE OF HEARING**

The Indiana Horse Racing Commission will hold a hearing on Wednesday, October 4, 2023, to begin as soon as this matter advances on the Commission’s agenda during its regularly scheduled meeting which will commence at 10:30 am EDT, Clubhouse, at Harrah’s Hoosier Park Racing & Casino, 4500 Dan Patch Circle, Anderson, IN 46013. The Hearing will relate to the following Application that was filed with the Commission on or about August 30, 2023:

2024 Application for Registration of the Indiana Standardbred  
Association Pursuant to 71 IAC 13-1-1 *et seq.*

The Hearing will be held for the purpose of providing an opportunity for the Applicant to make a presentation of its Application to the Indiana Horse Racing Commission; an opportunity for the Commission to ask questions of any party representatives and witnesses who may testify at the Hearing; and an opportunity for interested nonparty organizations and persons to provide testimony in support of or adverse to the Application.

The Hearing is to be held by the Indiana Horse Racing Commission pursuant to the authority granted to it by Indiana Code section 4-31-1-1, Indiana Code section 4-35-7-12, 71 IAC sections 13-1-1 *et seq.* and Indiana Code sections 4-21.5-3-1 *et seq.* All members of the Indiana Horse Racing Commission intend to act as the Administrative Law Judge for the Hearing. The members include: Philip Borst, Chairman; George Pillow, Bill McCarty, Bill Estes, and Gus Levengood, Members. David Rothenberg, Esq. is and will act as legal counsel to the Indiana Horse Racing Commission during these proceedings. Deena Pitman, Executive Director, will also appear for the Indiana Horse Racing Commission Staff. Matt Eggiman, Esq. is and will act as

legal counsel to the IHRC Staff during these proceedings. Mr. Eggiman may be contacted for information concerning the proposed Hearing schedule, the procedure to be followed at the Hearing, and for inspection of copies of the notice to the parties, at the offices of the Indiana Horse Racing Commission, 1302 N. Meridian St., Ste. 175, Indianapolis, Indiana 46202 (tel. no. 317-233-3119).

### **PRE-HEARING ORDER**

The Commission, by its Chairman, Philip Borst, pursuant to Indiana Code section 4-21.5-3-19(d), issues the following Pre-Hearing Order with respect to the matters described herein:

I. Purpose of the Hearing on Applicant's Petition.

The Commission will consider ISA's 2024 Application for Registration as a Registered Horsemen's Association Pursuant to 71 IAC 13-1-1 *et seq.* filed with the Commission on or about August 30, 2023, requesting Commission approval to serve as the registered horsemen's association for the calendar year 2024 to receive the monies specified by Indiana Code section 4-35-7-12 to be distributed for the benefit of standardbred owners and trainers.

II. Application Process Timeline.

a. Hearing Date and Time

The hearing will commence at 10:30 am EDT, Clubhouse, at Harrah's Hoosier Park Racing & Casino, 4500 Dan Patch Circle, Anderson, IN 46013. This matter will be heard and will continue, with appropriate recesses, until completed. The record will be closed at the conclusion of the hearing. Thereafter, the Commission will deliberate on and decide whether the Application will be approved or denied and does not comprehend discussion during the deliberation with the Applicant or other interested parties.

b. Incorporation by Reference of ISA's 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023 Applications and Related Materials.

The Application incorporates by reference any documents submitted, considered or generated with respect to ISA's 2011-2023 Applications for Registration, including, but not limited to, any amended commission staff reports. Note: No substantive changes to the Application made after Friday, September 22, 2023, will be considered as part of the Application.

c. Report of the Commission Staff.

The Commission Staff will review the Application and related information provided and may submit a Staff Report on the Application, which would be

distributed to the Applicant on or before the close of business on Wednesday, September 27, 2023.

d. Exhibits the Commission Proposes to Make a Part of the Record.

A list of exhibits which the Commission intends to make a part of the record may be prepared by the Commission's counsel and distributed to the Applicant's representative or counsel for the Applicant on or before the close of business on Friday, September 22, 2023. It should be understood that even in the absence of filing a list of exhibits, the Commission will offer into evidence the Application, any supplements thereto timely filed by the Applicant and any Staff Report issued by the Commission Staff. It should also be understood that the Commission will take official notice of any record of prior related hearings (including Final Orders) involving the Applicant, pursuant to Indiana Code section 4-21.5-3-26(c). The Applicant must notify the Commission in writing of any exhibit to which it objects on or before noon on Friday, September 29, 2023. If no objection is timely made, all specified exhibits will be made a part of the record at the commencement of the hearing. The Commission may expand that list prior to or at the scheduled hearing, however, the Applicant will be given an opportunity to make an objection to any such additional materials.

e. Witness and Exhibit Lists of Applicants.

Unless the Applicant intends to submit an additional filing or supplement to the Application, no Witness List is contemplated. In the event that the Applicant does submit an additional filing, or otherwise determines that witness testimony is necessary, any such Witness and Exhibit List are to be filed with the Commission on or before noon on Friday, September 29, 2023. When the Applicant files the Witness and Exhibit List, copies of the exhibits are to be left with the Commission so that they can be marked sequentially by the court reporter. While the Applicant may retain its oversized exhibits, reduced copies must be made available to the Commission on or before noon on Friday, September 29, 2023. Documents or exhibits not identified on Applicant's Exhibit List may not be introduced by Applicant.

f. Request for Official Notice.

The Applicant should submit in writing any request for matters to be officially noticed pursuant to Indiana Code section 4-21.5-3-26(f) on or before noon on Friday, September 29, 2023.

g. Issuance of Subpoenas.

The Applicant should submit proposed subpoenas to be issued by the Commission no later than the time that the Witness and Exhibit Lists are filed so that they can

be issued pursuant to Indiana Code section 4-21.5-3-22. Subpoenas shall be issued on the signature of the Chair, or on the signature of the Vice Chairman in the event the Chair is unavailable.

III. Matters Relating to the Conduct of the Hearing.

a. The Commission will be sitting as an Administrative Law Judge at the Hearing.

The Commission is sitting both as an Administrative Law Judge and as “ultimate authority” (pursuant to Indiana Code section 4-21.5-1-15) with respect to this Application for Registration. Indiana Code section 4-21.5-3-11 provides in part that an Administrative Law Judge serving in a proceeding may not communicate directly or indirectly, regarding any issue in the proceeding while the proceeding is pending with any party or any individual who has a direct or indirect interest in the outcome of the proceeding. Such communications are prohibited and are referred to as “ex parte communications.” Additionally, while a Commission Member may communicate separately with another Commission Member and may receive aid from members of the Commission Staff, the Commission Staff is prohibited from having ex parte communications with a Commission member which contain information that would furnish, augment, diminish, or modify the evidence in the record. If the Commission receives an ex parte communication in violation of this statute, please contact counsel for the Commission so that an appropriate public disclosure can be prepared pursuant to the Administrative Orders and Procedures Act. In appropriate circumstances, a Commission Member receiving or otherwise participating in such a prohibited communication can be disqualified from acting further on the Application before the Commission.

Additionally, when acting as an Administrative Law Judge, each Commission Member is prohibited (pursuant to Indiana Codes section 4-21.5-3-12) from commenting publicly, except as to hearing schedules or procedures, about pending proceedings. Accordingly, both the Commission Members and the members of the public are to be mindful of this limitation as the Commission moves forward to consider the evidence and to make a decision on the Application.

b. Hearing to be Conducted under Oath.

The hearing will be conducted under oath or affirmation pursuant to Indiana Code section 4-21.5-3-26(b). In order to ensure consistency, any non-party statements are to be given under oath or affirmation pursuant to Indiana Code section 4-21.5-3-25(f).

c. Staff Review and Presentation of Findings.

The Commission Staff is conducting a review of the Application and may speak to its report (*see* II.d., *supra*) at the hearing.



d. Application Hearing Time Schedule.

The maximum time allotted for each part of the hearing is as follows:

Opening Statement of Applicant	Up to 10 minutes
Oral Presentation by Applicant	Up to 10 minutes
Testimony of Commission Staff	Up to 10 minutes
Testimony of Interested Persons And Organizations	Up to 10 minutes
Rebuttal and Final Statements	Up to 5 minutes

e. Chairman to Rule on Procedural Issues.

The Chair will rule on any procedural issues requiring an immediate ruling which are raised at the hearing on the Application.

f. Commission Free to Ask Questions.

During the hearing on the Applicant's presentation, any Commissioner, the Commission's counsel, or the Commission's Executive Director may ask questions of any witness in the nature of cross-examination or to assist the Commission's understanding of the issues relevant to the Application and any appropriate action to be taken.

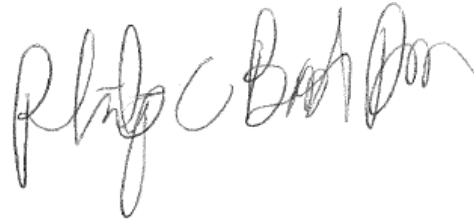
g. Individuals Requesting Time to Speak to the Application.

A sign-up sheet will be made available on the date of the hearing for those interested in speaking during the time allotted for Testimony of Interested Persons and Organizations. An appropriate amount of time will be determined by the Chair at the hearing with consideration of the number of individuals who wish to speak and the total amount of time available in which to do so.

IV. Notice of Pre-Hearing Order

The Applicant is advised that if it fails to attend or participate in the scheduled hearing, or any other stage of the proceeding, the proceeding may be dismissed pursuant to Indiana Code section 4-21.5-3-24.

This Pre-Hearing Order is issued by the Indiana Horse Racing Commission this 19<sup>th</sup> day of September 2023.

A handwritten signature in black ink, appearing to read "Philip C. Borst". The signature is fluid and cursive, with the first name "Philip" being the most prominent.

---

Philip Borst, DVM  
Chairman  
Indiana Horse Racing Commission

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Ste. 175  
Indianapolis, IN 46202

Deena Pitman, Executive Director  
Indiana Horse Racing Commission  
1302 N. Meridian St. Ste. 175  
Indianapolis, IN 46202

Tony Renz  
ISA Executive Director  
311 American Legion Place  
Greenfield, IN 46140

John DeLong  
ISA President  
311 American Legion Place  
Greenfield, IN 46140

/s/ Dale Lee Pennycuff  
Dale Lee Pennycuff  
Counsel

**From:** [Rothenberg, David](#)  
**To:** [Rothenberg, David](#)  
**Cc:** [Pitman, Deena](#)  
**Subject:** October 4th Commission Meeting  
**Date:** Thursday, September 14, 2023 5:31:49 PM

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